



**BOARD OF DIRECTORS
REGULAR MEETING AGENDA
OCTOBER 15, 2025 - 1:30 PM**

Members of the public who wish to attend in person may do so at:

5401 Old Redwood Highway, 1st Floor
Petaluma, CA 94954

The SMART Board of Directors will facilitate using a dual format with listening and participation available through Zoom and in-person. SMART provides several remote methods for viewing the SMART Board Meetings and providing Public Comment.

HOW TO WATCH THE LIVE MEETING USING THE ZOOM

<https://sonomamarintrain-org.zoom.us/j/85410509881?pwd=pButHwakIVNRUQA9u5YBDy0fHXFD2h.1>

Webinar ID: 854 1050 9881; Passcode: 971474

TELECONFERENCE

Members of the public wishing to participate via teleconference can do so by dialing in the following number the day of the meeting: (669) 900-9128; Access Code: 854 1050 9881; Passcode: 971474.

WATCH THE BOARD MEETING VIA LIVESTREAM

View the live broadcasts of Board meetings online at: <https://www.sonomamarintrain.org/meetings>

To view the meeting, select "View Event" at the time of the meeting.

HOW TO PROVIDE COMMENTS ON AGENDA ITEMS

Prior To Meeting: Technology limitations may limit the ability to receive verbal public comments during the meeting. If you wish to make a comment you are strongly encouraged to please submit your comment to Board@SonomaMarinTrain.org by 5:00 PM on Tuesday, October 14th, 2025.

During the Meeting: The SMART Board Chair will open the floor for public comment during the Public Comment period on the agenda. Please check and test your computer settings so that your audio speaker and microphones are functioning. Speakers are asked to limit their comments to two (2) minutes. The amount of time allocated for comments during the meeting may vary at the Chairperson's discretion depending on the number of speakers and length of the agenda.



**BOARD OF DIRECTORS
REGULAR MEETING AGENDA
OCTOBER 15, 2025 – 1:30 PM**

Members of the public who wish to attend in person may do so at:

5401 Old Redwood Highway, 1st Floor
Petaluma, CA 94954

1. Call to Order
2. Approval of the September 17, 2025, Board Meeting Minutes
3. Board Member Announcements
4. General Manager's Report
5. Public Comment on Non-Agenda Items

Consent Calendar

- 6a. Accept Monthly Ridership Report – September 2025
- 6b. Approve Monthly Financial Status Report – July & August 2025
- 6c. Adopt Resolution No. 2025-28, authorizing the General Manager to Execute Change Order 04 to Contract No. PL-PS-24-001 (Real-Time information Displays) with Modern Railway Systems in the amount of \$38,889

Regular Calendar

7. Adopt Resolution No. 2025-29, amending Resolution No. 2025-19, the Fiscal Year 2025/2026 Adopted Budget to increase appropriation authority – *Presented by Chief Financial Officer Heather McKillop*
8. Adopt Resolution No. 2025-30, authorizing the General Manager to Award two (2) On Call Real Estate Advisory and Property Rights Acquisition Support Service Agreements – *Presented by Real Estate Manager Randy Friedland*
9. Authorize the General Manager to execute Amendment No. 3 to Agreement No. OP-SV-22-011 with Code 3 Entertainment Services LLC dba Code 3 Transportation for Microtransit Operations and Maintenance Services to extend the term of the Agreement for one year utilizing an available option in the Agreement and increase the Not-to-Exceed amount by \$1,205,703.96 for a new Not-to-Exceed amount of \$2,339,209.96 – *Presented by Planning Manager Emily Betts*
10. Chief Financial Officer's Personal Services Contract – *Presented by General Manager Eddy Cumins*

11. SMART Pathway Update – *Presented by Senior Planner Zoe Unruh*

Closed Session

12. Conference with legal counsel regarding existing litigation pursuant to California Government Code Section 54956.9(a); Number of cases: (2)
 1. Application of City of Santa Rosa for a Crossing at Jennings Avenue; CPUC No. A.15-05-014
 2. James Duncan v. SMART; CPUC No. C.21-06-011
13. Next Board of Directors Meeting, November 19, 2025 – 1:30 PM – 5401 Old Redwood Highway, 1st Floor, Petaluma, CA 94954
14. Adjournment

ACCOMMODATIONS:

Public participation is solicited without regard to race, color, national origin, age, sex, gender identity, religion, disability or family status. Upon request, SMART will provide written agenda materials in appropriate alternative formats, or make disability-related modification or other accommodation, to enable individuals to participate in and provide comments at/or related to public meetings. To request a modification, accommodation, service, or alternative format, please submit a request, including your name, phone number and/or email address, and a description of the modification, accommodation, service, or alternative format requested at least two (2) days before the meeting. Requests may be submitted to the Clerk of the Board by email at board@sonomamarintrain.org or by phone at (707) 794-3330. Requests can also be made by mail to SMART, 5401 Old Redwood Highway, Suite 200, Petaluma, CA 94954 (must be received at least two days before the meeting). Requests will be granted whenever possible and resolved in favor of accessibility.



**BOARD OF DIRECTORS
REGULAR MEETING MINUTES
SEPTEMBER 17, 2025 - 1:30 PM**

5401 Old Redwood Highway, 1st Floor
Petaluma, CA 94954

1. Call to Order [06:14 Minutes Mark on the Video Recording]

Chair Coursey called the meeting to order at 1:30pm. Vice Chair Sackett, Directors Fleming, Garbarino, Lucan, Milberg, Pahre, Paulson, and Rabbitt were present. Directors Cader Thompson, Colin, and Kelley were absent.

2. a. Approval of the July 16, 2025, Board Meeting Minutes [07:10 Minutes Mark on the Video Recording]

MOTION: Director Milberg moved approval of the July 16, 2025, and August 20, 2025, Board Meeting Minutes as presented. Vice Chair Sackett seconded. The motion carried 8-0-1, with Director Fleming abstaining and Directors Cader Thompson, Colin, and Kelley absent.

- b. Approval of the August 20, 2025, Board Meeting Minutes [07:10 Minutes Mark on the Video Recording]

MOTION: Director Milberg moved approval of the August 20, 2025, Board Meeting Minutes as presented. Vice Chair Sackett seconded. The motion carried 9-0, with Directors Cader Thompson, Colin, and Kelley absent.

3. Board Member Announcements [07:57 Minutes Mark on the Video Recording]
None

4. General Manager's Report [08:06 Minutes Mark on the Video Recording]

The Chair noted that this item would be taken up a little later in the meeting.

5. Public Comments on Non-Agenda Items [08:12 Minutes Mark on the Video Recording]
None

6. Consent [08:29 Minutes Mark on the Video Recording]
 - a. Accept Monthly Ridership Report – August 2025

- b. Authorize the General Manager to execute contract amendment No. 8 to the Nossaman LLP, Legal Services Contract in order to increase the contract amount by \$400,000
- c. Authorize the Chair to Execute the three-year Collective Bargaining Agreement between Sonoma-Marín Area Rail Transit (SMART) and the International Brotherhood of Teamsters, Local Union Number 665

Board/Public Comments [08:35 Minutes Mark on the Video Recording]

None

MOTION: Director Pahre moved approval of the Consent Agenda, as presented. Director Lucan seconded. The motion carried 9-0, with Directors Cader Thompson, Colin, and Kelley absent.

7. Authorize the General Manager or his designee to execute Agreement No. MK-PS-24-001 with FivePaths, LLC for a not to exceed amount of \$303,300 to develop and launch a new website and maintain the new website for an initial term of three years. Additionally, authorize the General Manager to execute up to two (2) optional one-year extensions thereafter – *Presented by Communications & Marketing Specialist Allison Mattioli* [09:57 Minutes Mark on the Video Recording]

Directors Cader Thompson and Colin joined the meeting.

Board Comments [13:39 Minutes Mark on the Video Recording]

Directors Paulson Milberg provided comment and asked questions, which Communications & Marketing Specialist Allison Mattioli and Five Paths, LLC Partner Eric Leland addressed.

MOTION: Director Pahre moved to authorize the General Manager or his designee to execute Agreement No. MK-PS-24-001 with FivePaths, LLC for a not to exceed amount of \$303,300 to develop and launch a new website and maintain the new website for an initial term of three years, as presented. Director Cader Thompson seconded the motion. The motion carried 11-0, with Director Kelley absent.

8. Adopt Resolution No. 2025-25, amending Resolution No. 2025-19, the Fiscal Year 2025/2026 Adopted Budget to increase appropriation authority and modify position authority – *Presented by Chief Financial Officer Heather McKillop* [17:30 Minutes Mark on the Video Recording]

Board/Public Comments [18:41 Minutes Mark on the Video Recording]

None

MOTION: Director Pahre moved to adopt Resolution No. 2025-25, amending Resolution No. 2025-19, the Fiscal Year 2025/2026 Adopted Budget to increase appropriation authority and modify position authority, as presented. Director Milberg seconded. The motion carried 11-0, with Director Kelley absent.

9. Adopt Resolution No. 2025-26, awarding a Progressive Design-Build Phase I Agreement to Stacy and Witbeck/Herzog, A Joint Venture in an amount of \$21,754,398.54 to complete Phase 1 work consisting of field investigations, surveys, and engineering design to a 65 percent level – *Presented by Chief Engineer Bill Gamlen* [19:44 Minutes Mark on the Video Recording]

Board Comments [33:18 Minutes Mark on the Video Recording]

Chair Coursey and Directors Milberg and Garbarino asked questions, which Chief Engineer Bill Gamlen addressed.

MOTION: Director Lucan moved adoption of Resolution No. 2025-26, awarding a Progressive Design-Build Phase I Agreement to Stacy and Witbeck/Herzog, A Joint Venture in an amount of \$21,754,398.54 to complete Phase 1 work consisting of field investigations, surveys, and engineering design to a 65 percent level, as presented. Director Rabbitt seconded the motion. The motion carried 11-0, with Director Kelley absent.

Following the vote, the Board and audience applauded. General Manager Cumins remarked that this was a significant milestone for SMART and expressed appreciation to the Engineering and Procurement teams for their work in bringing the project to this stage. Chair Coursey also noted that this action represents the latest extension of the SMART system since its initial approval in 2008 and highlighted the progress made despite prior delays and challenges.

10. Adopt Resolution No. 2025-27, Resolution of Necessity to acquire real property interests by eminent domain for the SMART pathways project - *Presented by General Manager Eddy Cumins* [39:17 Minutes Mark on the Video Recording]

The Chair opened the public hearing for Resolution No. 2025-27. Property owners had been asked to indicate in advance if they intended to participate. SMART received two written requests to appear at the hearing: Karen Alves and Jimmy Pacciorini. Mr. Pacciorini was not present. SMART also received a written objection from Attorney Reed Ripley on behalf of three property owners in lieu of appearing and 101 letters in support of adopting Resolution No. 2025-27. All correspondence and comments were entered into the public record. The Chair noted that public comment would be welcomed either in person or online to any other members of the public wishing to speak. General Manager Eddy Cumins presented an overview of the SMART Pathways project, including background, the parcels involved, staff analysis, staff recommendations, and the legal requirements for adopting the Resolution of Necessity.

Board Comment [48:36 Minutes Mark on the Video Recording]

Director Milberg asked for clarification on the number of letters received and the

number of property owners still to be contacted, as well as those who could not be reached. General Counsel Jessica Sutherland responded.

Public Comment [50:02 Minutes Mark on the Video Recording]

- **Karen Alves** requested clarification about impacts on her property, common areas, and the HOA, including fencing and easement boundaries, and asked for a meeting to review how the project would affect her property.
- **Jeanette Zibura-Strong** expressed that she is not opposed to the pathway but sought clarification on maintenance responsibilities for landscaping and trees adjacent to her property.

Supporters included:

- **Eris Weaver**, Sonoma County Bicycle Coalition, emphasized completing the remaining pathway to provide safe transportation for commuters and recreational users
- **John Burella**, owner of seven parcels in Windsor, requested staking of property lines to confirm no impacts
- **Kelsey Barnett**, in contract for property in Windsor, echoed Burella's comments and expressed support
- **Nathan Spindell**, Sonoma County Bicycle Coalition, emphasized safe access for children, seniors, and low-income residents
- **Mary Berkey**, Town Green Village Association, expressed support but noted timing of notification and requested staking of affected areas

Board Discussion [01:08:30 Minutes Mark on the Video Recording]

Director Rabbitt asked about the current status of demarcation survey points and any ongoing planning in the area. General Manager Cumins responded that staff has a good understanding of property line zones, does not intend to move any existing pathway or structures, and will follow up with commenters to provide additional information. The Chair suggested passing around a sign-in sheet to collect contact information, and Cumins invited attendees to meet with the Real Estate Manager, Randy Friedland, to collect their contact information.

Director Garbarino asked staff to clarify the timeline of notifications and provide a record of efforts to contact property owners at the Town Green Village Association. General Counsel Sutherland explained that initial offers were sent to identified property owners, and additional efforts were made to contact the HOA when they indicated potential ownership, though some could not be reached.

Director Colin asked why the Board was being asked to consider the Resolution at

this time and about requests to delay. General Counsel Sutherland explained that threatened litigation necessitated timely action to protect the project.

Director Paulson inquired whether all Zoom participants were included in the compensation offers; General Manager Cumins confirmed they were and reiterated that no structures or landscaping would be moved, and no additional costs are expected for property owners.

Chair Coursey asked General Manager Cumins to review the findings required for adoption of the Resolution of Necessity:

- (1) Public interest and necessity require the project;
- (2) Project is planned or located in the manner most compatible with greatest public good and least private injury;
- (3) Property in the resolution is necessary for the project; and
- (4) An offer of just compensation has been made to the property owners.

The Chair noted that the vote requires a two-thirds majority.

Director Rabbitt clarified that the path already exists at the locations listed and that no existing structures would be removed. General Manager Cumins confirmed that all areas outside of the pathway and railroad right-of-way will remain unchanged.

Director Milberg noted the value of a continuous safe pathway connecting multiple North Bay city centers and the public benefit it provides, reflecting on the broader importance of transportation networks.

MOTION: Director Fleming moved to close the public hearing. Vice Chair Sackett seconded the motion. The motion carried 11-0, with Director Kelley absent.

MOTION: Director Paulson moved adoption of Resolution No. 2025-27, Resolution of Necessity to acquire real property interests by eminent domain for the SMART pathways project, as presented. Director Cader Thompson seconded the motion. A roll call vote was taken to confirm the two-thirds majority required. The motion carried 11-0, with Director Kelley absent.

4. General Manager's Report [\[01:20:52 Minutes Mark on the Video Recording\]](#)

General Manager Cumins provided a PowerPoint presentation, which is posted on SMART's website. Highlights included:

- Ridership Report
- Transit Month / Rail Safety Week
- Pathway Opening Events

- Recent Awards
- Jim Eddie Tribute
- Questions

Board Comments [01:28:40 Minutes Mark on the Video Recording]

Chair Coursey and Directors Pahre, Rabbitt, and Garbarino expressed admiration and praise for Jim Eddie and noted that he will be missed.

11. Next Board of Directors Meeting, **October 15, 2025 – 1:30 PM** – 5401 Old Redwood Highway, 1st Floor, Petaluma, CA 94954
12. Adjournment – Meeting adjourned at 2:55 PM

Respectfully submitted,

Samantha Frias
Interim Clerk of the Board

Approved on: _____



Sonoma-Marin Area Rail Transit
5401 Old Redwood Hwy, Suite 200
Petaluma, CA 94954

P: 707-794-3330
F: 707-794-3037
W: www.SonomaMarinTrain.org

BOARD OF DIRECTORS

Chris Coursey, Chair
Sonoma County Board of Supervisors

Mary Sackett, Vice Chair
Marin County Board of Supervisors

Janice Cader Thompson
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Victoria Fleming
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Ariel Kelley
Sonoma County Mayors' and
Councilmembers Association

Eric Lucan
Marin County Board of Supervisors

Mark Milberg
Transportation Authority of Marin

Barbara Pahre
Golden Gate Bridge,
Highway/Transportation District

Gabe Paulson
Marin County Council of Mayors and
Councilmembers

David Rabbitt
Sonoma County Board of Supervisors

GENERAL MANAGER
Eddy Cumins

October 15, 2025

Sonoma-Marin Area Rail Transit Board of Directors
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954

SUBJECT: Monthly Ridership Report – September 2025

Dear Board Members:

RECOMMENDATIONS: Information Item

SUMMARY:

We are presenting the monthly ridership report for activity for the month of September 2025. This report shows trends in ridership for SMART by tracking Total riders, Average Weekday riders, and Average Saturday riders, Average Sunday/Holiday riders, as well as bicycles and mobility devices on board the trains. The report also includes total users counted on the SMART Pathway for the month, and total riders on the SMART Connect shuttles.

With the transition to the Automatic Passenger Counter (APC) in October 2022, SMART has a highly accurate method of tracking boardings and alightings at stations that does not depend on manual counts by the conductors. The APC system has been tested and validated at a 99% accuracy level and has been certified for passenger count use by the Federal Transit Administration (FTA); the system was revalidated and recertified by FTA in June 2025. Both APC-based ridership and fare-based collection rider counts are shown in the attached report to give a full picture of ridership. APC-based ridership captures all riders, including riders with passes who neglect to tag on or off, riders who fail to activate their mobile app tickets, as well as free-fare riders.

This report compares the most recent month to the same month during the prior year, as is standard industry practice for tracking trends over time. These reports also note relevant details associated with fare program discount usage and trends in riders bringing bicycles onboard as well as riders who use mobility devices.

SMART's ridership data through September 2025 is posted on the SMART website (<https://sonomamarintrain.org/RidershipReports>).

FISCAL IMPACT: None

REVIEWED BY: [x] Finance /s/ [x] Counsel /s/

Sincerely,

 /s/
Emily Betts
Planning Manager

Attachment(s): Monthly Ridership Report – September 2025

SEPTEMBER 2025 SMART RIDERSHIP REPORT

SMART Ridership Report

October 15, 2025

Page 1 of 5

September 2025 saw steady ridership from the previous month, with average weekday ridership at 4,699, down .2% from August and up 28% over September 2024. Average Saturday and Sunday ridership increased by 1% and decreased by 7%, respectively, from the previous month, and increased 41% and 21%, respectively, over September 2024. Total monthly ridership was 121,621, up 31% over August 2024 and 93% over September 2019 (pre-COVID).

As background, SMART modified services in March 2020 due to the COVID-19 pandemic, with weekend service annulled, and weekday service reduced to 16 trips. In May 2021, SMART added back 10 weekday trips. Saturday service was restored in May 2021, and Sunday service in May 2022. In June 2022, SMART added 10 additional weekday trips, and in October 2022, SMART added 2 additional midday trips, for a schedule of 38 trips per weekday. In May 2023, SMART added two evening trips on Friday and Saturday, known as the Starlighter. In October 2023, SMART suspended the Starlighter service but increased weekend service, running 16 trips total on both Saturday and Sunday. In August 2024, SMART added two additional round trips for a total of 42 trips each weekday. In late May 2025, SMART began running service to Windsor Station.

The tables below present data for September 2024 and 2025 year-over-year, and the Fiscal Year to date (July-September). Ridership for the fiscal year to date is tracking 39% over the same time period in FY25.

MONTHLY TOTALS YEAR-OVER-YEAR	SEPTEMBER 2024	SEPTEMBER 2025	% Change
Ridership	92,834	121,621	31%
Fare-based Ridership (Clipper + App Only)	49,896	62,559	25%
Average Weekday Ridership	3,658	4,699	28%
Average Saturday Ridership	1,922	2,714	41%
Average Sunday Ridership	1,999	2,415	21%
Bicycles	14,334	17,344	21%
Mobility Devices	242	321	33%

**Discrepancy between total ridership change and fare-based ridership change due to launch of Free Fare program for youth and seniors on April 1, 2024.*

FISCAL YEAR (Jul - Sep)	Fiscal Year 2025	Fiscal Year 2026	% Change
Ridership	272,750	379,833	39%
Fare-based Ridership (Clipper + App Only)	147,151	188,379	28%
Average Weekday Ridership	3,396	4,725	39%
Average Saturday Ridership	2,019	2,837	41%
Average Sunday Ridership	1,946	2,705	39%
Bicycles	38,333	48,986	28%
Mobility Devices	745	1,200	61%

SEPTEMBER 2025 SMART RIDERSHIP REPORT

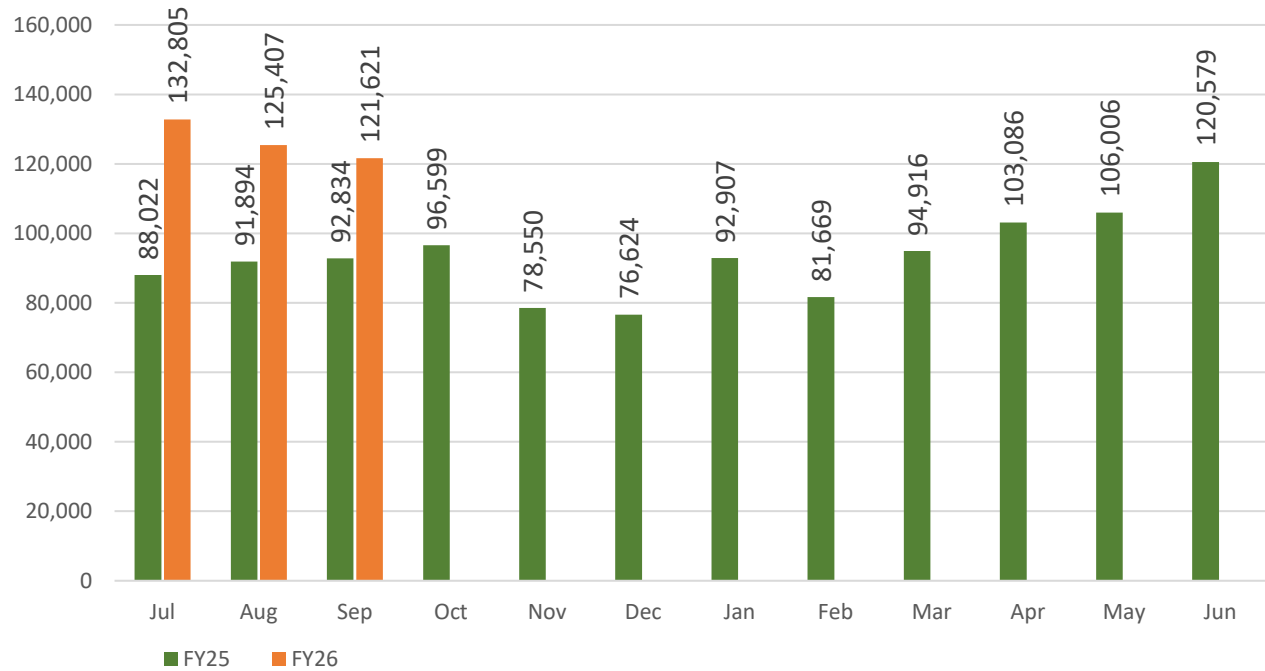
SMART Ridership Report

October 15, 2025

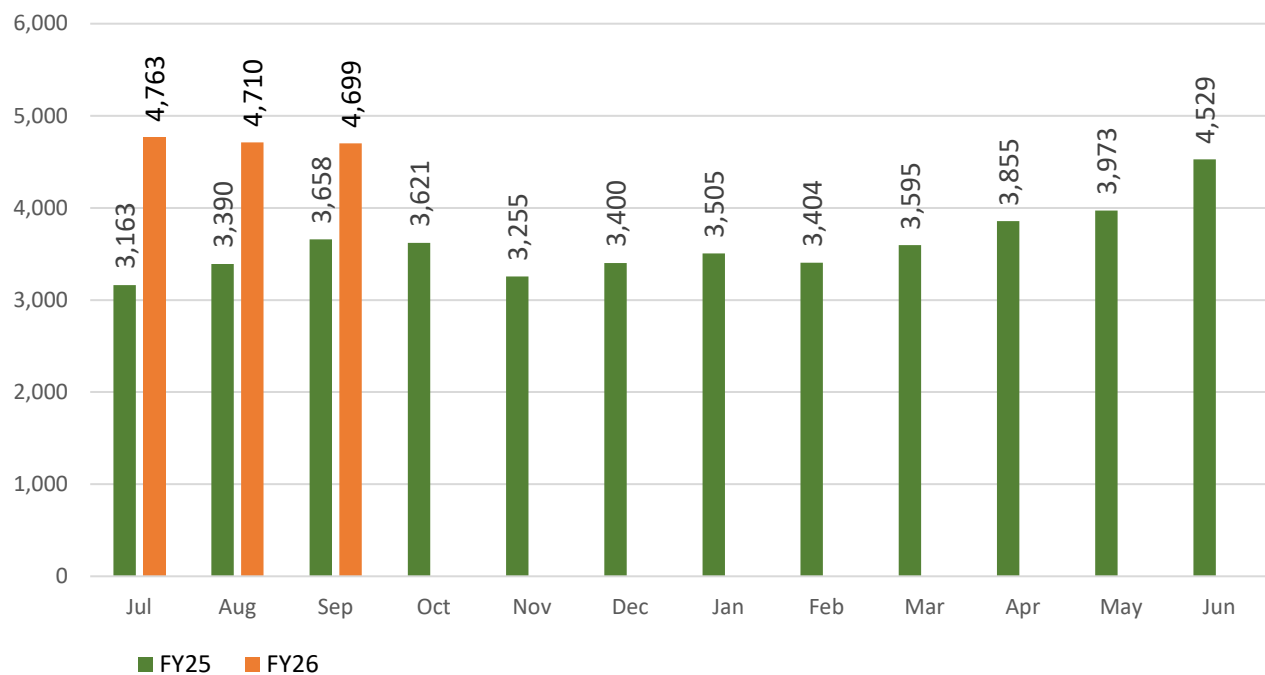
Page 2 of 5

The following charts compare the average weekday ridership, average weekend ridership, and monthly totals for FY25-FY26.

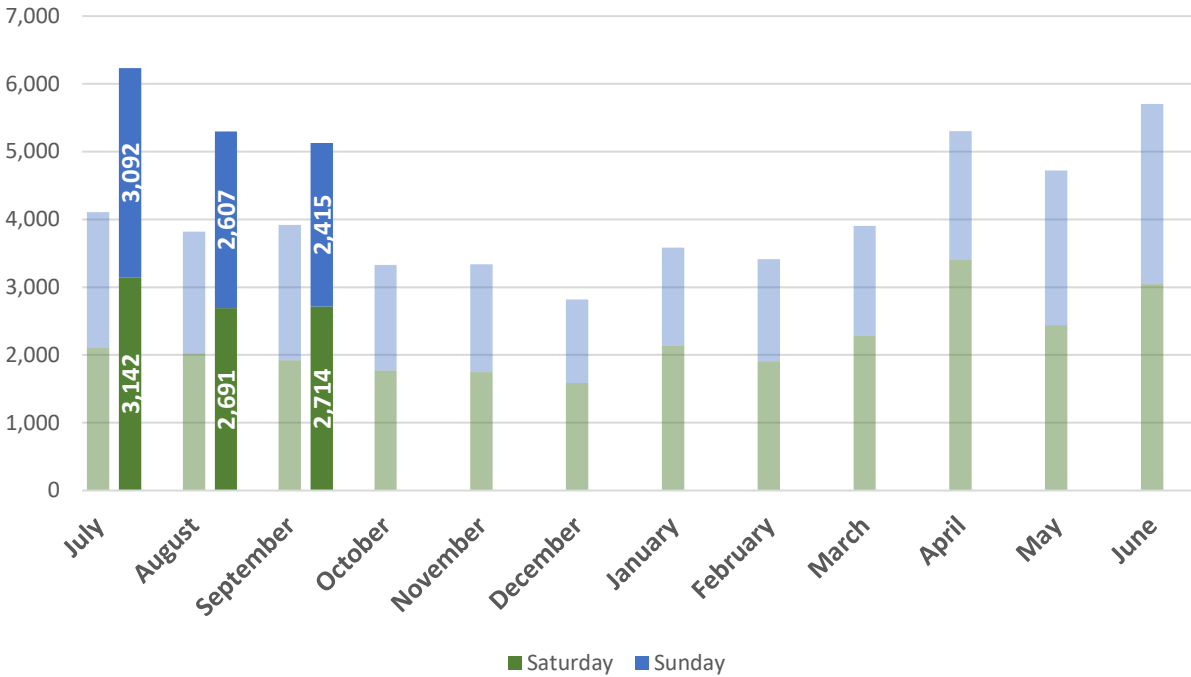
SMART Monthly Ridership (FY25 - FY26)



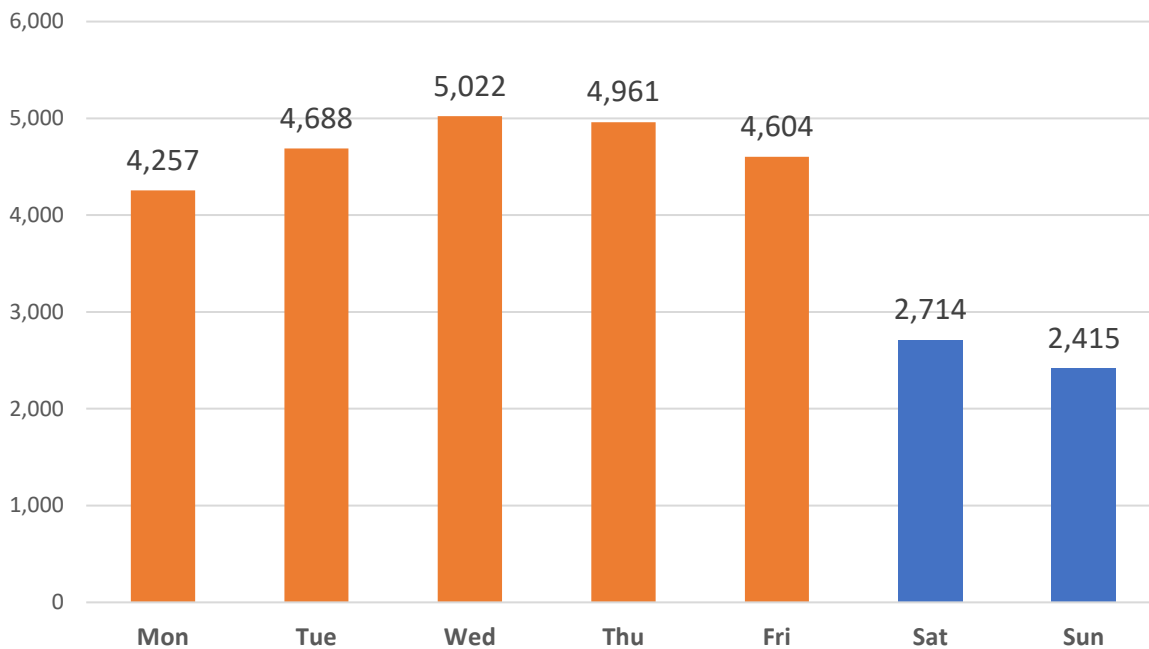
SMART Average Weekday Ridership (FY25 - FY26)



SMART Average Weekend Boardings (FY25 - FY26)



Average Boardings by Day of Week (September 2025)

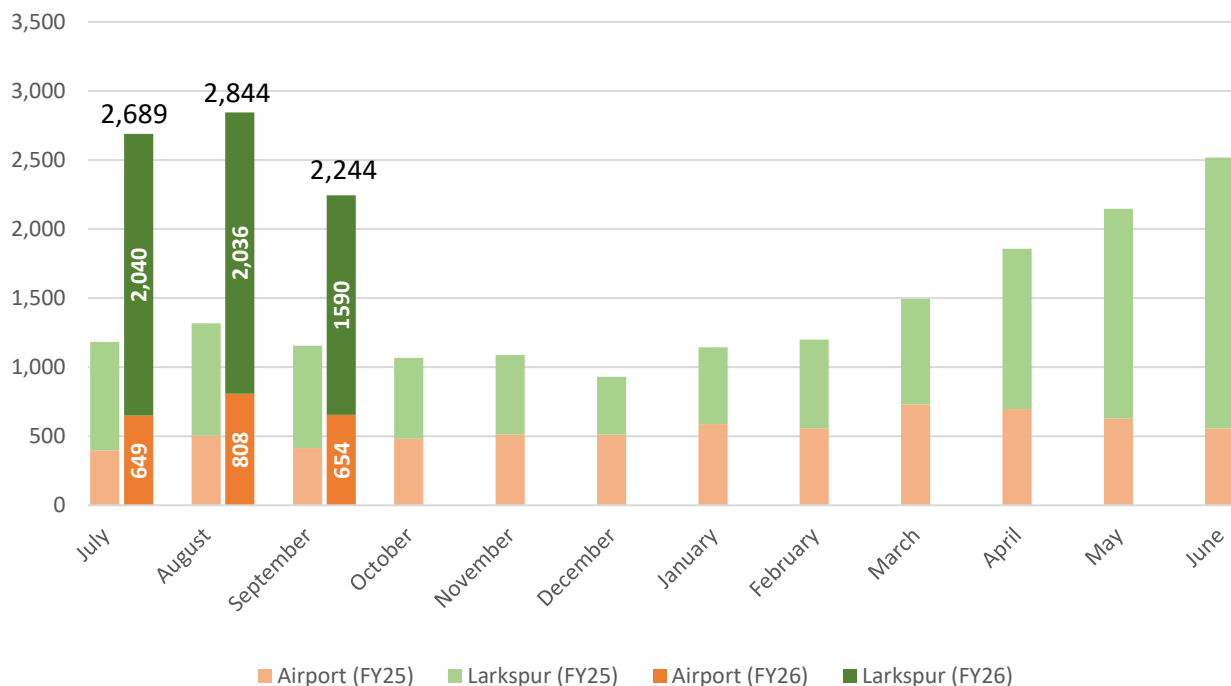


SMART Connect Program

SMART currently operates two on-demand shuttles, SMART Connect Airport and SMART Connect Larkspur. SMART Connect Airport, launched in June 2023, serves the SMART Sonoma County Airport station, the Charles M. Schultz Sonoma County Airport, and the surrounding area. SMART Connect Larkspur, launched in June 2024, serves the SMART Larkspur station, the Golden Gate Larkspur Ferry Terminal, and the surrounding Larkspur Landing area. The goal of the SMART Connect program is to facilitate first-and-last mile connections from SMART stations through the provision of a reliable on-demand shuttle that SMART riders can use for transit transfers, work and school commutes, and other destinations. SMART Connect uses microtransit software from The Routing Company called Ride Pingo, which allows users to pre-book trips or book a ride on-demand. Riders can also book by phone or walk-on, space available. In April 2025, Connect Shuttle service hours at Larkspur were expanded from 4 to 7 days per week; both shuttle locations now offer daily service.

Total September monthly ridership for the SMART Connect program was 2,244 riders.

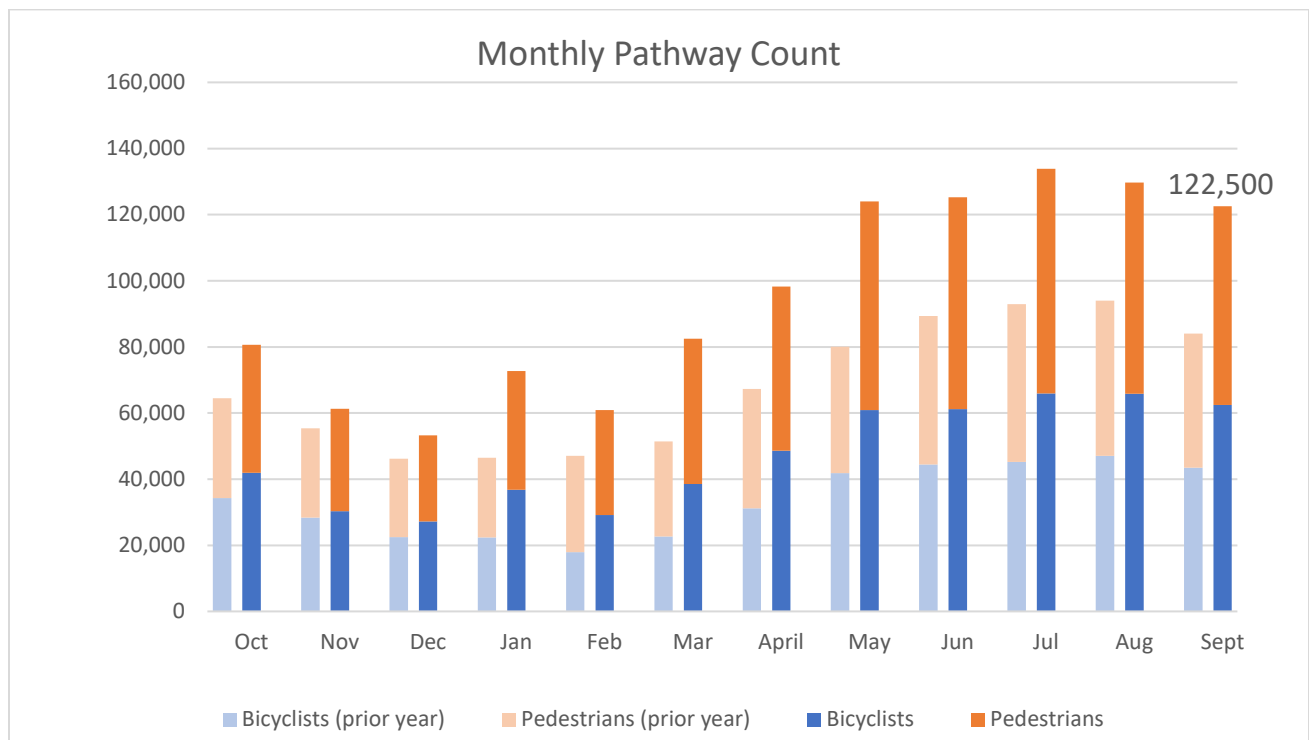
SMART Connect Ridership (FY25-FY26)



SMART Pathway

As of May 2025, SMART has installed 14 counters on the Pathway, with six in Marin County and eight in Sonoma County. The counters differentiate between bicycles and pedestrians, and track data by time of day and day of the week. The counters cannot distinguish between unique users but based on the estimated average trip length of 3 miles, and the average spacing between counters of 3.7 miles, the counts are considered an accurate estimate of monthly pathway usage. As additional pathway segments are constructed, counters will be placed on those segments to measure pathway usage. To date, count data has shown a fairly even split between pedestrians and bicyclists.

In September 2025, SMART counted 122,500 users on the pathway, an increase of 46% compared to the same month in the prior year. The increased counts are attributed to higher volumes of users on existing pathway segments as well as counts of users on newly opened pathway segments.





Sonoma-Marin Area Rail Transit
5401 Old Redwood Hwy, Suite 200
Petaluma, CA 94954

P: 707-794-3330
F: 707-794-3037
W: www.SonomaMarinTrain.org

BOARD OF DIRECTORS

Chris Coursey, Chair
Sonoma County Board of Supervisors

Mary Sackett, Vice Chair
Marin County Board of Supervisors

Janice Cader Thompson
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Victoria Fleming
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Ariel Kelley
Sonoma County Mayors' and
Councilmembers Association

Eric Lucan
Marin County Board of Supervisors

Mark Milberg
Transportation Authority of Marin

Barbara Pahre
Golden Gate Bridge,
Highway/Transportation District

Gabe Paulson
Marin County Council of Mayors and
Councilmembers

David Rabbitt
Sonoma County Board of Supervisors

GENERAL MANAGER
Eddy Cumins

October 15, 2025

Sonoma-Marin Area Rail Transit Board of Directors
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954

SUBJECT: Monthly Financial Status - July & August 2025

Dear Board Members:

RECOMMENDATION: Consent Item

SUMMARY:

This report provides information for the first two months of Fiscal Year (FY) 2026, including details on the Board Adopted Budget through Budget Amendment #2. Attached, you will find separate charts displaying both budgeted and actual revenues and expenditures for passenger rail and freight. The "actual" columns reflect revenues and expenditures for the first two months of FY 2026 (July and August). Additionally, for passenger rail, we have included more detailed information on sales tax and fare revenues, presenting current data alongside comparative figures from FY 2022 to FY 2026.

The report further outlines the approved budget, actual expenditures, and remaining budget balance. Please note that expenditures may not occur evenly throughout the fiscal year; many significant costs, are incurred at specific intervals. Additionally, we have included information on SMART's investment policy, detailing where our funds are held and the current amounts. Lastly, we present the current obligations, reserves, and fund balance requirements for FY 2026.

Sincerely,

/s/
Heather McKillop
Chief Financial Officer

Attachment(s):

- 1) Monthly Financial Status Report
- 2) Contract Summary Report



MONTHLY FINANCIAL STATUS

July & August 2025

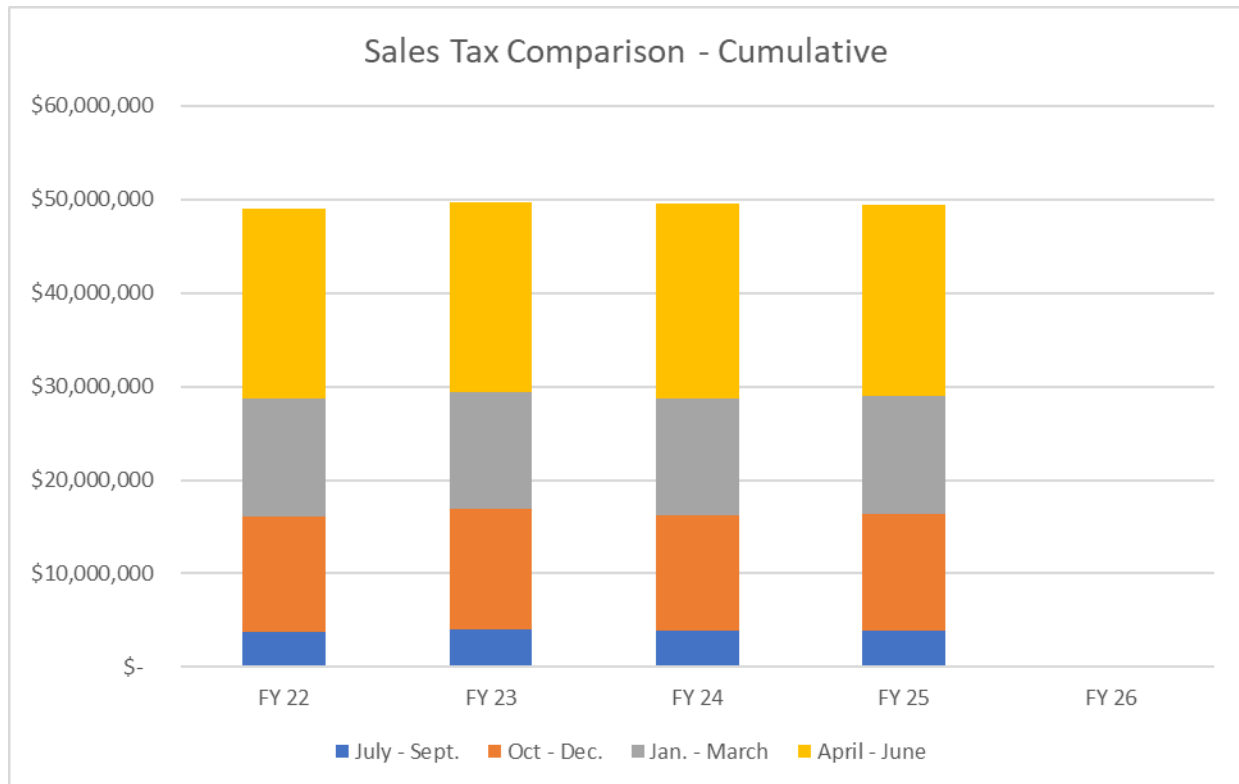
PASSENGER REVENUES

	FY 2025-26 Approved Budget + Amendments #1-#2	Actual	Amount Over / (Under) Budget	% Over/(Under) Budget	% of FY Remaining
Revenues					
Passenger Rail					
Sales/Use Taxes	\$ 48,300,300	\$ -	\$ (48,300,300)	-100%	83%
Sales Collections	\$ (839,870)	\$ -	\$ 839,870		83%
Interest and Lease Earnings	\$ 1,294,025	\$ 173,951	\$ (1,120,074)	-87%	83%
Miscellaneous/ Other Revenue	\$ 343,736	\$ 99,327	\$ (244,409)	-71%	83%
Passenger Fares	\$ 2,541,000	\$ 487,726	\$ (2,053,274)	-81%	83%
Parking Fares	\$ 17,580	\$ 5,603	\$ (11,977)	-68%	83%
Shuttle Fares	\$ 8,000	\$ 1,713	\$ (6,287)	-79%	83%
State Grants	\$ 14,343,729	\$ -	\$ (14,343,729)	-100%	83%
Federal Funds	\$ 11,064,920	\$ -	\$ (11,064,920)	-100%	83%
Other Governments	\$ 2,614,356	\$ -	\$ (2,614,356)	-100%	83%
Passenger Rail	\$ 79,687,776	\$ 768,320	\$ (78,919,456)	-99%	83%

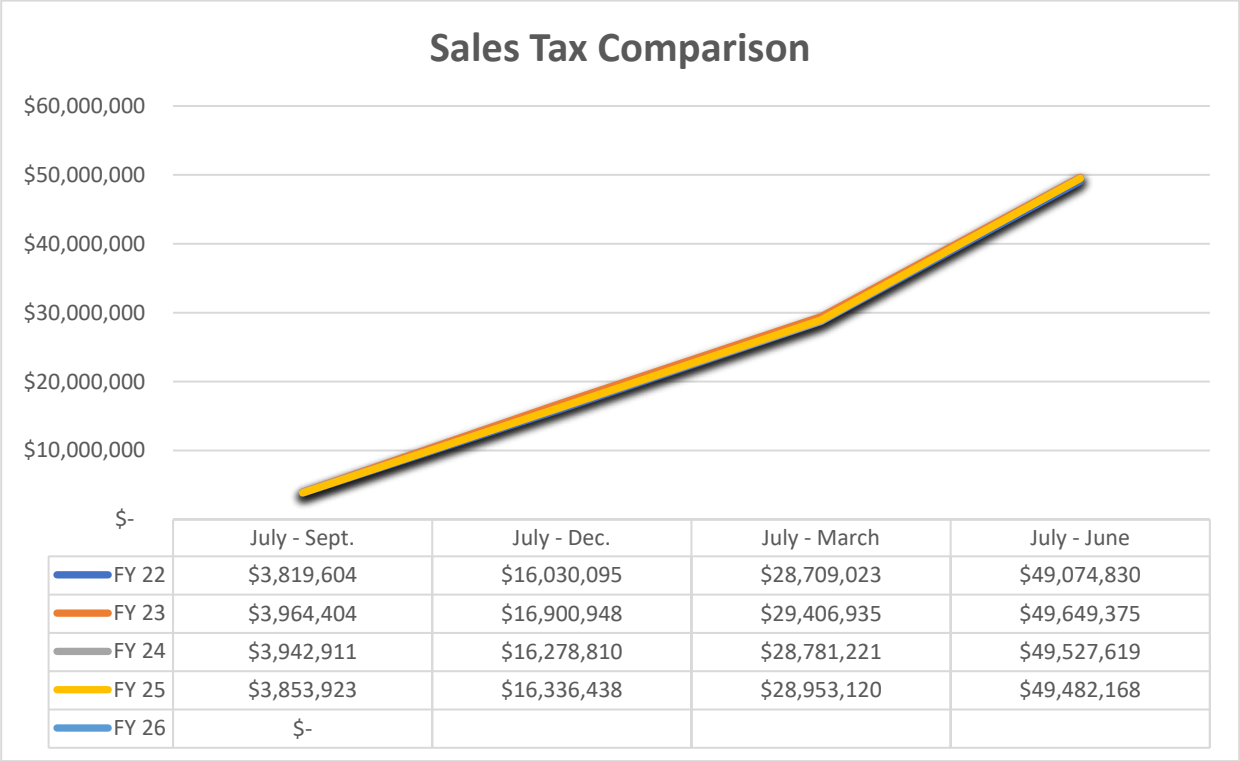
**Measure Q Sales Tax
Fiscal Year (FY) 2026**

Time Period	July - Sept.	Oct - Dec.	Jan. - March	April - June
FY 26 Forecasted Sales Tax	\$ 3,864,024	\$ 12,075,075	\$ 12,558,078	\$ 19,803,123
Actual	\$ -	\$ -	\$ -	\$ -
Difference	\$ (3,864,024)	\$ (12,075,075)	\$ (12,558,078)	\$ (19,803,123)

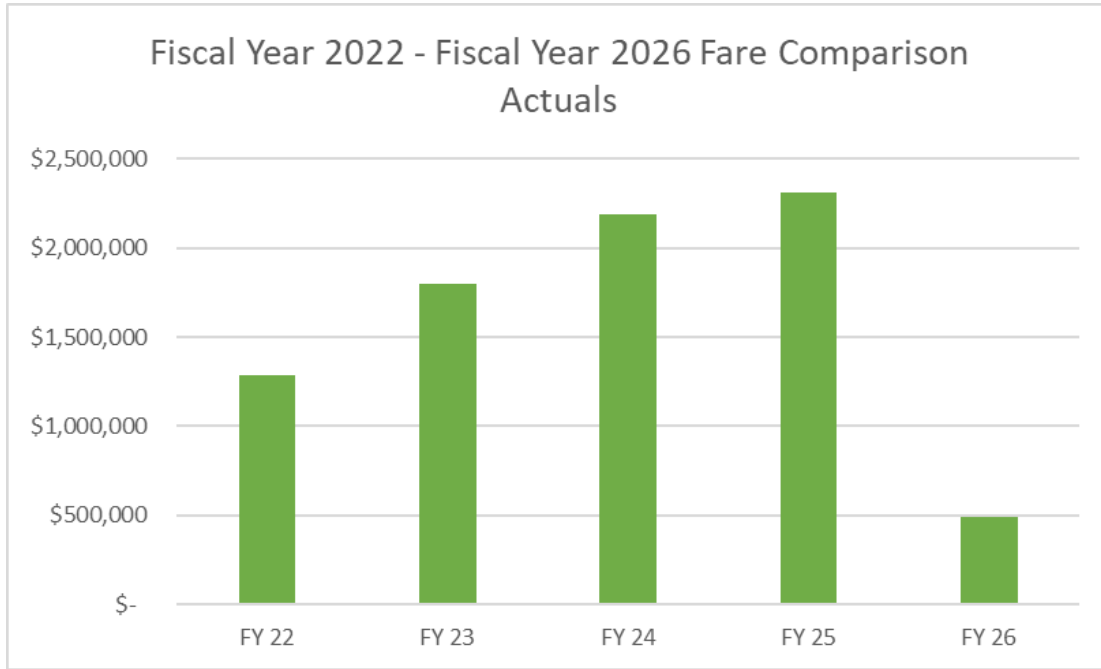
**Fiscal Year 2022-2026 Net Sales Tax Comparison
(by Quarter)**



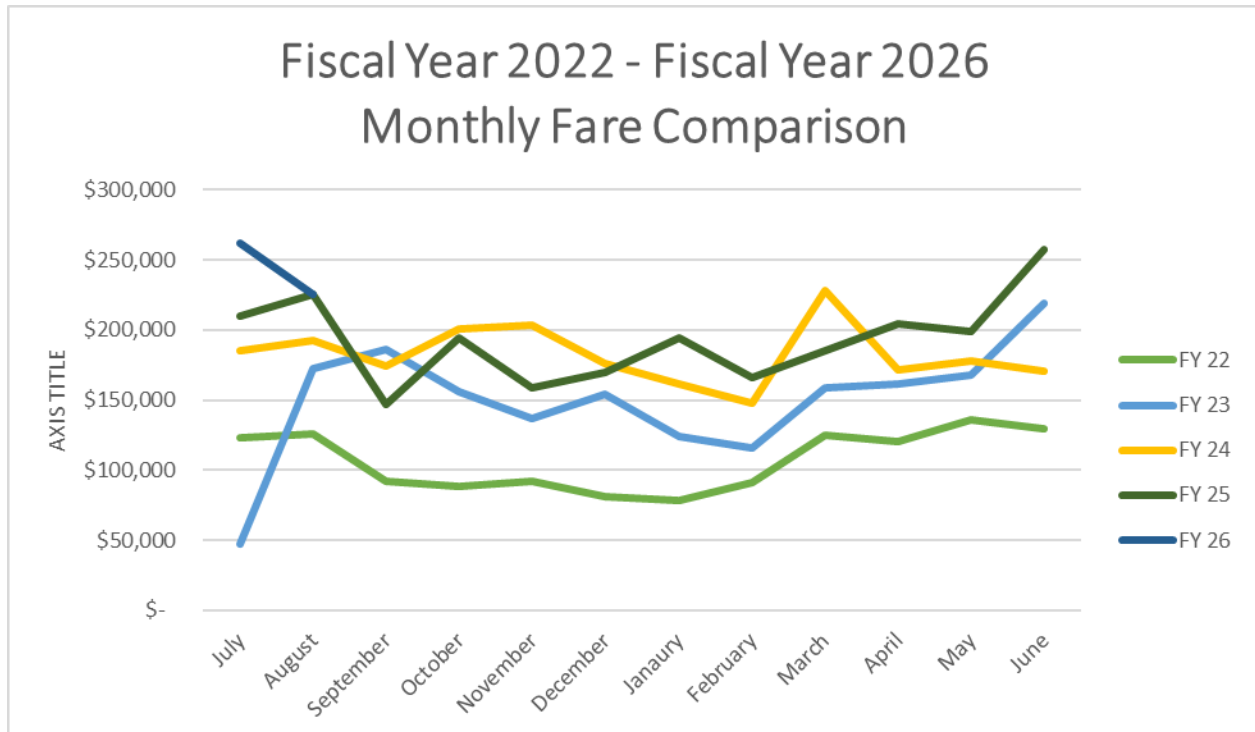
Fiscal Year 2022-2026 Cumulative Sales Tax Comparison



Fiscal Year 2022-2026 Fare Revenue Comparison



Fiscal Year 2021-2025 Monthly Fare Revenue Comparison



PASSENGER EXPENSES

	FY 2025-26 Approved Budget + Amendments #1-#2	Actual	Amount Over / (Under) Budget	% Over/(Under) Budget	% of FY Remaining
Passenger Expenses					
Administration					
Salaries & Benefits	\$ 7,449,242	\$ 1,185,753	\$ (6,263,489)	-84%	83%
Services & Supplies	\$ 12,606,618	\$ 1,218,337	\$ (11,388,281)	-90%	83%
Administration Subtotal	\$ 20,055,860	\$ 2,404,090	\$ (17,651,770)	-88%	83%
Operations					
Salaries & Benefits	\$ 21,034,689	\$ 2,634,360	\$ (18,400,329)	-87%	83%
Services & Supplies	\$ 7,298,157	\$ 615,434	\$ (6,682,723)	-92%	83%
Operations Subtotal	\$ 28,332,846	\$ 3,249,794	\$ (25,083,052)	-89%	83%
Capital					
Salaries & Benefits	\$ 401,481	\$ 134,455	\$ (267,026)	-67%	83%
Services & Supplies	\$ 5,334,408	\$ 1,433	\$ (5,332,975)	-100%	83%
Capital Subtotal	\$ 5,735,889	\$ 135,888	\$ (5,600,001)	-98%	83%
Total Passenger Expenses	\$ 54,124,595	\$ 5,789,772	\$ (48,334,823)	-89%	83%
Passenger (Capitalized) Expenses					
Facilities	\$ 4,530,365	\$ 108,697	\$ (4,421,668)	-98%	83%
Infrastructure	\$ 1,003,017	\$ -	\$ (1,003,017)	-100%	83%
Equipment	\$ 7,951,250	\$ 27,792	\$ (7,923,458)	-100%	83%
Nonrevenue vehicles	\$ 622,000	\$ -	\$ (622,000)	-100%	83%
Revenue vehicles	\$ -	\$ -	\$ -		
Land	\$ -	\$ -	\$ -		
Other Governments	\$ 862,939	\$ -	\$ (862,939)		
Total Passenger (Capitalized) Expenses	\$ 14,969,571	\$ 136,489	\$ (14,833,082)	-99%	83%
Passenger Expenses + Capitalized	\$ 69,094,166	\$ 5,926,261	\$ (63,167,905)	-91%	83%

FREIGHT REVENUES

	FY 2025-26 Approved Budget + Amendments #1-#2	Actual	Amount Over / (Under) Budget	% Over/(Under) Budget	% of FY Remaining
Revenues					
Freight					
State Operating/ Capital Grant (42341)	\$ 1,114,327	\$ -	\$ (1,114,327)	0%	83%
Caltrans	\$ 7,000	\$ -	\$ (7,000)	\$ -	83%
State Shortline Grant (42342)	\$ 441,950	\$ -	\$ (441,950)	0%	83%
Freight Movement Fees	\$ 800,000	\$ 142,591	\$ (657,409)	-82%	83%
Leases	\$ 270,000	\$ 32,390	\$ (237,610)	-88%	83%
Freight Storage	\$ 40,000	\$ -	\$ (40,000)	-100%	83%
45(g) Tax Credit & Misc. Revenues	\$ 261,000	\$ 261,970	\$ 970	0%	83%
Freight	\$ 2,934,277	\$ 436,951	\$ (2,497,326)	-85%	83%

FREIGHT EXPENSES

	FY 2025-26 Approved Budget + Amendments #1-#2	Actual	Amount Over / (Under) Budget	% Over/(Under) Budget	% of FY Remaining
Freight Expenses					
Administration					
Salaries & Benefits	\$ -	\$ -	\$ -		
Services & Supplies	\$ -	\$ -	\$ -		
Administration Subtotal	\$ -	\$ -	\$ -		
Operations					
Salaries & Benefits	\$ 1,075,089	\$ 121,269	\$ (953,820)	-89%	83%
Services & Supplies	\$ 1,018,289	\$ 94,325	\$ (923,964)	-91%	83%
Operations Subtotal	\$ 2,093,378	\$ 215,594	\$ (1,877,784)	-90%	83%
Capital					
Salaries & Benefits	\$ 7,000	\$ 2,690	\$ (4,310)	-62%	83%
Services & Supplies	\$ 833,898	\$ -	\$ (833,898)	-100%	83%
Capital Subtotal	\$ 840,898	\$ 2,690	\$ (838,208)	-100%	83%
Total Freight Expenses	\$ 2,934,276	\$ 218,284	\$ (2,715,992)	-93%	83%
Freight (Capitalized) Expenses					
Facilities		\$ -	\$ -		
Infrastructure		\$ -	\$ -		
Equipment		\$ -	\$ -		
Nonrevenue vehicles		\$ -	\$ -		
Revenue vehicles		\$ -	\$ -		
Land		\$ -	\$ -		
		\$ -	\$ -		
Total Freight (Capitalized) Expenses	\$ -	\$ -	\$ -		
Freight Expenses + Capitalized	\$ 2,934,276	\$ 218,284	\$ (2,715,992)	-93%	83%

CAPITAL PROJECTS

Capital Project Report July - August 2025					
	Total Project Budget	Expended in Prior Fiscal Years	Budgeted in FY26	Remaining Project Budget	Project Status
PASSENGER RAIL PROJECTS					
Extension: Windsor Systems	\$ 18,102,142	\$ 17,716,426	\$ 200,000	\$ 185,716	Completing punch list items.
Development: Healdsburg Extension Progressive Design-Build	\$ 3,250,000	\$ 366,536	\$ 2,883,464	\$ -	Work is ongoing.
Extension: Healdsburg Phase I	\$ 265,058,000	\$ -	\$ -	\$ 265,058,000	Progressive Design-Build contract in procurement phase.
Station: Petaluma North	\$ 13,226,422	\$ 13,049,129	\$ 150,000	\$ 27,292.89	Finishing punchlist items related to the station.
SGR: McDowell Grade Crossing	\$ 3,875,274	\$ 3,639,641	\$ 50,000	\$ 185,633.03	Finishing punchlist items related to the crossing.
Pathway: Golf Course to Bellevue and Southpoint to Penngrove Construction	\$ 20,864,890	\$ 20,038,481	\$ 149,429	\$ 676,980.30	Completing punchlist items.
Pathway: Design for 7 Segments in Marin and Sonoma Counties	\$ 3,936,755	\$ 2,513,843	\$ 221,660	\$ 1,201,252	Conducting engineering design and pursuing environmental permits to prepare segments for construction.
Pathway: Design for 5 Segments in Marin County	\$ 6,323,781	\$ 2,172,537	\$ 275,000	\$ 3,876,244	Conducting engineering design and pursuing environmental permits to prepare segments for construction.
Pathway: Joe Rodota Trail	\$ 1,531,749	\$ 56,108	\$ 1,456,655	\$ 18,986.37	Awaiting funding allocation, preparing contract documents
WFO: Joe Rodota to Third Street Traffic Signal (City of Santa Rosa)	\$ 985,658	\$ 122,719	\$ 862,939	\$ -	Completing design work, construction will be packaged in combination with the Joe Rodota Trail project
WFO: Santa Rosa Downtown Station Access (Developer)	\$ 703,017	\$ -	\$ 703,017	\$ -	Will be packaged for construction in combination with Joe Rodota Trail project
Pathway: Hanna Ranch to Vintage	\$ 7,070,119	\$ 35,995	\$ 1,145,000	\$ 5,889,124	Awaiting funding allocation, preparing contract documents
Pathway: Guerneville Rd to Airport Blvd Pathway Permitting and Construction	\$ 14,212,729	\$ 18,095	\$ 1,125,012	\$ 13,069,622	In design, awaiting funding allocation. Pursuing NEPA clearance and environmental permitting.
Pathway: Puerto Suello Tunnel	\$ 561,465	\$ 56,816	\$ 504,649	\$ -	Design and environmental clearance work is underway.
Station: Civic Center Kiss-n-Ride Design	\$ 224,000	\$ -	\$ 224,000	\$ -	Preparing design contract documents
State of Good Repair: St Vincent Culvert Repairs	\$ 250,000	\$ -	\$ 250,000	\$ -	In design.
FREIGHT RAIL PROJECTS					
State of Good Repair: Bridge Rehabilitation Phase II (3 Bridges)	\$ 745,424	\$ 65,765	\$ 679,659	\$ -	Awarded repair Contract.
State of Good Repair: Grandview Grade Crossing	\$ 158,240	\$ -	\$ 158,240	\$ -	Work completed

INVESTMENTS

Investments are guided by the SMART investment policy adopted each year with the budget. The policy outlines the guidelines and practices to be used in effectively managing SMART's available cash and investment portfolio. District funds that are not required for immediate cash requirements are to be invested in compliance with the California Code Section 53600, et seq.

SMART uses the Bank of Marin for day-to-day cash requirements and for longer term investments the Sonoma County Treasury Pool is used. This chart reflects a point in time versus a projection of future fund availability.

<u>Cash On Hand</u>	
Bank of Marin	\$ 35,280,382
Sonoma County Investment Pool *	\$ 48,498,869
Total Cash on Hand	\$ 83,779,251
<u>Reserves</u>	
Self-Insured	\$ 2,370,675
OPEB/ CalPERS	\$ 6,574,676
Operating Reserve	\$ 12,959,990
Capital Sinking Fund	\$ 12,317,250
Corridor Completion	\$ 5,500,000
Total Reserves	\$ 39,722,591
Cash Balance	\$ 44,056,660
Less: Current Encumbrances	\$ (32,959,626)
Balance	\$ 11,097,034
Less: Estimated FY26 Year-end Fund Balance	\$ (54,557,229)
Remaining Balance	\$ (43,460,195)
* Doesn't include trustee accounts	



Contract Summary

PASSENGER RAIL

Active contracts as of 8/31/2025

Contractor	Scope	FY 25/26 Encumbered	FY 25/26 Actuals
Afaf Translations LLC	Oral and Document Translation Services	\$ 8,000	\$ -
Alcohol & Drug Testing Services, LLC	Administration of DOT-Regulated, FRA-Regulated, and SMART-Regulated Drug and Alcohol Program Services	\$ 45,000	\$ 1,291
Alex Ruiz Sr. dba North Bay Bottling	Water Delivery Service to Fulton Facility	\$ 600	\$ 171
Alliant Insurance Services, Inc.	Insurance Brokerage and Risk Management Consulting Services	\$ 50,000	\$ -
American Rail Engineers Corporation DBA Airshark	Railroad Bridge Inspections, Bridge Engineering, and Related Services	\$ 20,000	\$ -
American Red Cross & Its Constituent Chapters and Branches	American Red Cross CPR/First Aid/ AED Training Certification Services and Cards	\$ 240	\$ 240
Asbury Environmental Services DBA World Oil Environmental Services	Hazardous and Non-Hazardous Waste Removal, Disposal, and Related Services	\$ 200	\$ -
Atlas Copco Compressors LLC	Air Compressor Maintenance Services	\$ 2,005	\$ -
Bach-Simpson, A Division of Wabtec Canada, Inc	Event Recorder Overhaul and Maintenance Services	\$ 27,640	\$ 6,590
BKF Engineers	Design & Engineer Seven (7) Multi-Use Pathway Segments in Sonoma and Marin Counties	\$ 230,910	\$ -
BKF Engineers	Design & Permitting of the Puerto Suello Non-Motorized Pathway	\$ 385,465	\$ 217,249
Bolt Staffing Service, Inc.	Temporary Staffing Services	\$ 40,000	\$ -
Bright Star Security, Inc.	Security Services at Cal Park Tunnel	\$ 5,718	\$ 953
Cal Interpreting & Translations	Communication Access Realtime Translation (CART) Services	\$ 13,000	\$ -
City Towel & Dust Services, Inc. DBA Sunset Linen & Uniform	Laundering and Pressing Services for SMART-Owned Uniforms	\$ 1,400	\$ 149
Code3 Entertainment Services, LLC	Microtransit Operator Services	\$ 159,354	\$ 31,028
Construction Testing Services, Inc.	On Call Construction Materials Testing Services	\$ 3,437	\$ 3,295
Cooperative Personnel Services dba CPS HR Consulting	Employee Recruiting Services	\$ 30,000	\$ 7,000
County of Sonoma	Non-Revenue Fleet Maintenance and Repair Services	\$ 60,000	\$ 7,627
County of Sonoma	Ongoing Maintenance and Monitoring of Riparian Enhancement Project at Helen Putnam Regional Park	\$ 264,089	\$ 51,899
County of Sonoma	Ongoing Maintenance and Monitoring of Riparian Enhancement Projects at Crane Creek Regional Park	\$ 250,861	\$ 36,712
CSW Stuber-Stroeh Engineering Group Inc.	Design & Engineer Five (5) Multi-Use Pathway Segments in Marin Counties	\$ 250,000	\$ -
Data Ticket, Inc.	Citation Issuance and Administration for Illegal Parking at SMART's Facilities	\$ 1,950	\$ 150
Eco-Compteur Inc.	Pedestrian and Bicycle Pathway Counter Software Reporting Tools and Support	\$ 12,600	\$ -
Eide Bailly LLP	Independent Auditor	\$ 58,670	\$ -
eLock Technologies LLC	Ongoing Maintenance and Operation Support for Bicycle eLockers at SMART Stations	\$ 11,850	\$ 2,963
EMR LLC DBA Maxaccel	Software System for Managing and Reporting FRA Compliance	\$ 143,356	\$ 2,705
EMR LLC DBA Maxaccel	Learning Management System and Support Services	\$ 17,850	\$ 1,032
FinQuery	LeaseQuery Accounting Software and Support Services	\$ 12,594	\$ 12,594
Foster & Foster Consulting Actuaries, Inc.	GASB 75 and GASB 68 Compliance and Actuarial Services	\$ 5,500	\$ 4,250
George Hills Company	Third-Party Administrator and Property and Liability Claims Adjusting Services	\$ 18,808	\$ 3,500
Golden Five LLC	Microsoft Office 365 Managed Services and Technical Support Services	\$ 81,000	\$ 26,549
Hanford Applied Restoration & Conservation	San Rafael Creek Riparian Mitigation Implementation, Maintenance, and Monitoring Project	\$ 43,018	\$ 2,971
Hanford Applied Restoration & Conservation	Maintenance and Monitoring of the Las Gallinas Creek Watershed Riparian Enhancement Planting	\$ 16,535	\$ 1,263
Hanson Bridgett LLP	Labor and Employment Legal Services	\$ 140,000	\$ 2,781
Hunt Oil of California	Supply and Deliver Valvoline Premium Blue 15W40 Motor Oil	\$ 12,668	\$ 341
Integrated Security Controls, Inc.	On Call Maintenance Support for SMART's Existing CCTV and Access Control Systems	\$ 10,000	\$ -
Intelligent Technology Solutions, LLC	IBM Maximo Maintenance and Management System Software and Technical Support Services	\$ 280,816	\$ 189,990
Khoury Consulting, LLC	California State Legislative Advocacy Services	\$ 124,000	\$ 10,000
Knorr Brake Holding Corporation DBA Knorr Brake Company LLC	Master Controller Overhaul and Upgrade Services	\$ 184,409	\$ 27,792
Knorr Brake Holding Corporation DBA Knorr Brake Company LLC	Standard Brake System Overhaul Services	\$ 1,151,404	\$ -
Krauthamer & Associates LLC	Employee Recruiting Services	\$ 20,000	\$ -
Lance A. O'Connor	DOT & FRA Regulated Pre-Employment & Recertification Screenings	\$ 2,500	\$ -
Masabi LLC	SMART's Mobile Ticketing Application and Technical Support Services	\$ 31,500	\$ 5,250
Mission Linen Supply	Rental and Laundering of Uniforms	\$ 17,112	\$ 2,262
Modern Railway Systems	TDX & Communication System Monitoring and Maintenance	\$ 46,411	\$ 7,735
Modern Railway Systems	Passenger Information Display Real Time Signage, Content Management Software, and Support	\$ 42,439	\$ -

Contractor	Scope	FY 25/26 Encumbered	FY 25/26 Actuals
Modern Railway Systems	Design and Construction of the Windsor Extension Systems	\$ 103,322	\$ -
Mountain F Enterprises, Inc.	On Call Tree Trimming, Removal, and Arborist Services.	\$ 6,540	\$ -
MuniServices, LLC.	Sales and Use Tax Recovery Services	\$ 40,000	\$ 3,949
Nelson Connects	Temporary Staffing Services	\$ 50,866	\$ 2,879
Netspeed LLC	Avaya Phone System Support Services	\$ 14,400	\$ 1,200
Nick Barbieri Trucking, LLC	Supply and Delivery of Diesel Fuel and Diesel Exhaust Fluid	\$ 1,100,000	\$ 14,069
Nossaman LLP	Legal Services Regarding Rail Transit Issues	\$ 572,500	\$ 12,605
Occupational Health Centers of CA, A Medical Corp.	DOT & FRA Regulated Pre-Employment & Recertification Screenings	\$ 25,000	\$ 475
Olson Remcho LLP	Legal Advisory Services on Ordinances and Retail Sales and Use Tax	\$ 5,000	\$ 368
Parodi Investigative Solutions	Pre-Employment Investigation and Background Screening	\$ 25,000	\$ 1,000
PFM Financial Advisors, LLC	Financial Advisory Services	\$ 5,000	\$ -
Pitney Bowes, Inc.	Lease of Postage Meter Machine and Postage Fees	\$ 5,800	\$ 501
Pivotal Vision	PivotalSenseAI System Software License and Maintenance Program	\$ 2,300	\$ 2,300
Portola Systems, Inc.	Management, Maintenance, and Configuration Support of the SMART Station Network.	\$ 270,615	\$ 179,975
RSE Corporation	On-Call Civil Engineering, Design, and Land Surveying Services	\$ 30,000	\$ -
Ryan Dunnigan	Pre-Employment, Post Incident, and Return-to-Duty Psychological Evaluations	\$ 24,000	\$ 608
Sierra-Cedar Group Holdings, LLC dba Sierra-Cedar, LLC	Oracle Enterprise Resources Planning Software Support Services	\$ 92,000	\$ 6,273
Sonic Telecom, LLC	Fiberoptic Backhaul Circuit between Rail Operation Center and Larkspur Station	\$ 21,000	\$ 1,717
SPTJ Consulting	Administration Network Management, Monitoring, and Technical Support Services	\$ 212,544	\$ 17,712
Square Signs LLC dba Front Signs	SMART Pathway Wayfinding Sign Fabrication and Installation	\$ 51,855	\$ 50,660
Sue R. Evans	Title Investigation Services	\$ 20,000	\$ 3,835
The Routing Company	Microtransit Software Application Design, Implementation, and Ongoing Support	\$ 17,263	\$ 989
Toshiba America Business Solutions	Lease and Maintenance Agreement of SMART Multi-Function Copy Machines	\$ 40,485	\$ 2,593
Triangle Land Restoration	Riparian Mitigation Implementation and Monitoring for Segments 1 & 2	\$ 64,000	\$ 3,763
Triangle Land Restoration	Riparian Mitigation Implementation and Maintenance Project at Windsor Creek	\$ 105,275	\$ 3,276
Triangle Land Restoration	Riparian Mitigation Implementation and Maintenance Project at Helen Putnam Regional Park	\$ 78,332	\$ 7,307
Triangle Land Restoration	Riparian Enhancement Project at Crane Creek Regional Park	\$ 480,490	\$ 85,088
Urban Transportation Associates, Inc.	Automatic Passenger Counter System and Ongoing Technical Support	\$ 35,835	\$ -
Van Scoyoc Associates, Inc.	Federal Legislative Advocacy Services	\$ 60,000	\$ 5,000
Web Master Designs, LLC	As-Needed Website Support Services	\$ 938	\$ 75
WRA, Inc.	On-Call Environmental Mitigation and Permitting Support	\$ 20,000	\$ 8,837
WRA, Inc.	On-Call Environmental Consulting Support Services	\$ 181,000	\$ 61,766
	TOTAL	\$ 8,096,268	\$ 1,147,151

FREIGHT RAIL			
Contractor	Scope	FY 25/26 Encumbered	FY 25/26 Actuals
American Rail Engineers Corporation DBA Airshark	Railroad Bridge Inspections, Bridge Engineering, and Related Services	\$ 30,000	\$ -
Dida, Inc. dba Wine Country Sanitary	Portable Restroom Rental and Service for Freight Depot	\$ 1,600	\$ 197
Freight Rail Tracking Software	Railcar Transportation Application Software and Support	\$ 6,000	\$ 385
GATX Rail Locomotive Group, LLC	Lease of Freight Locomotive 1501	\$ 53,905	\$ 4,694
Hue & Cry, Inc	Alarm Monitoring and Notification Services at Freight Depot	\$ 1,000	\$ 249
Lambertus J Verstegen DBA South West Locomotive Repair	As-Needed Freight Locomotive Maintenance and Repair Services	\$ 9,389	\$ 9,389
Mickco, Inc	45G Tax Credit Advisory and Assignment Services	\$ 15,718	\$ 15,718
Nick Barbieri Trucking, LLC	Supply and Delivery of Diesel Fuel and Diesel Exhaust Fluid	\$ 75,000	\$ 3,865
Summit Signal, Inc.	Inspections, Testing, and Routine Maintenance Services for Signal Equipment	\$ 46,620	\$ 7,770
Summit Signal, Inc.	Emergency Call-Out Maintenance Services for Signal Equipment	\$ 8,005	\$ 6,651
	TOTAL	\$ 247,237	\$ 48,919

Actuals-To-Date include invoices that have been matched to a Purchase Order but may not have been paid as of 8/31/25



Sonoma-Marin Area Rail Transit
5401 Old Redwood Hwy, Suite 200
Petaluma, CA 94954

P: 707-794-3330
F: 707-794-3037
W: www.SonomaMarinTrain.org

BOARD OF DIRECTORS

Chris Coursey, Chair
Sonoma County Board of Supervisors

Mary Sackett, Vice Chair
Marin County Board of Supervisors

Janice Cader Thompson
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Victoria Fleming
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Ariel Kelley
Sonoma County Mayors' and
Councilmembers Association

Eric Lucan
Marin County Board of Supervisors

Mark Milberg
Transportation Authority of Marin

Barbara Pahre
Golden Gate Bridge,
Highway/Transportation District

Gabe Paulson
Marin County Council of Mayors and
Councilmembers

David Rabbitt
Sonoma County Board of Supervisors

GENERAL MANAGER
Eddy Cumins

October 15, 2025

Sonoma-Marin Area Rail Transit Board of Directors
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954

SUBJECT: Adopt Resolution No. 2025-28, authorizing the General Manager to Execute Change Order 04 to Contract No. PL-PS-24-001 (Real-Time information Displays) with Modern Railway Systems in the amount of \$38,889.

Dear Board Members:

RECOMMENDATION: Approve Resolution No. 2025-28, authorizing the General Manager to execute Change Order 04 to Contract No. PL-PS-24-001 (Real-Time information Displays) with Modern Railway Systems in the amount of \$38,889 for a total-not-exceed contract amount of \$622,416.21.

SUMMARY:

The Real-Time Information Displays at SMART stations included procurement and installation of real-time signs, procurement and installation of ADA-compliant text-to-speech buttons, licensing of Content Management System (CMS) software, and ongoing technical service and support.

The original contract included Content Management Software (\$21,219.56/year) for five years. The first payment was made in November 2024, and the future payments will be made in November 2025, November 2026, November 2027, and November 2028.

Change Order 004 covers the additional annual support fee required to display and maintain real-time connecting bus and ferry information from Golden Gate Transit, Marin Transit, Petaluma Transit, Sonoma County Transit, and Santa Rosa CityBus on real-time signs at SMART stations with transfers. The additional annual cost is \$7,777.80/year for a total of \$38,889 over five years.

The Real-Time Information Displays have been installed and tested and are operating successfully at all SMART Stations. The management of the Contract will now move to the Information Technology Services Department as it is now maintenance of hardware and software.

Staff recommends approving Resolution No. 2025-28 authorizing the General Manager to execute Change Order 004 to Contract No. PL-PS-24-001 with Modern Railway Systems in the amount of \$38,889 for a total-not-exceed contract amount of \$622,416.21.

FISCAL IMPACT: Funding for Fiscal Year 2026 is included in the Fiscal Year 2025/2026 budget. Funding for future year expenses will be included in those budgets at that time.

REVIEWED BY: [x] Finance ____/s/____ [x] Counsel ____/s/____

Sincerely,

/s/
Emily Betts
Planning Manager

Attachment(s):

- 1) Resolution Number 2025-28
- 2) Change Order 04

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT APPROVING CHANGE ORDER 04 TO CONTRACT NO. PL-PS-24-001 WITH MODERN RAILWAY SYSTEMS FOR SUPPORT OF REAL-TIME SIGNAGE AT SMART STATIONS

WHEREAS, the Sonoma-Marín Area Rail Transit District (SMART) executed Contract No. PL-PS-24-001 with Modern Railway Systems on August 21, 2024; and

WHEREAS, the project is currently in the maintenance and support phase; and

WHEREAS, SMART will display and maintain real-time connecting bus and ferry information from Golden Gate Transit, Marin Transit, Petaluma Transit, Sonoma County Transit, and Santa Rosa CityBus on real-time signs at SMART stations with transfers; and

WHEREAS, Change Order 04 will provide for the additional annual support fees to maintain current correct real-time bus and ferry information;

NOW, THEREFORE, BE IT RESOLVED THAT THE BOARD OF DIRECTORS OF SMART HEREBY FINDS, DETERMINES, DECLARES, AND ORDERS AS FOLLOWS:

1. The foregoing Recitals are true and correct and are incorporated herein and form a part of this Resolution.
2. The General Manager is authorized to execute Change Order 04 to Contract No. PL-PS-24-001 with Modern Railways Systems in the amount of \$38,889 for a total not-to-exceed contract amount of \$622,416.21. A Copy of which is attached hereto is hereby awarded.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 15th day of October 2025, by the following vote:

DIRECTORS:

AYES:

NOES:

ABSENT:

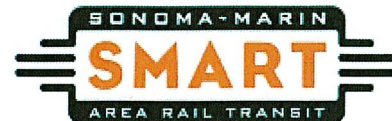
ABSTAIN:

Chris Coursey, Chair, Board of Directors
Sonoma-Marín Area Rail Transit District

ATTEST:

Samantha Frias, Interim Clerk of the Board of Directors
Sonoma-Marín Area Rail Transit District

Contract No.: PL-PS-24-001
 Contract Title: Real-Time Passenger Information Displays
 Change Order No: 04
 Title: Annual Support Fee for Partner Transit Agency Info Integration



Issued to:

Modern Railway Systems (MRS)
 2800 Harbor Bay Parkway
 Alameda, California 94502

CO Title: Annual Support Fee for Partner Transit Agency
 Info Integration

The original Contract Price due to this CO will change by: \$38,889

The Contract Performance Time for the procurement portion of this contract will be unchanged: August 31, 2025

EXCEPT AS MODIFIED BY THIS CHANGE ORDER, ALL TERMS AND CONDITIONS OF THE CONTRACT, AS PREVIOUSLY MODIFIED, REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT. THE PARTIES AGREE THAT THIS CHANGE ORDER IS A FINAL AND EQUITABLE ADJUSTMENT OF THE CONTRACT TIME AND CONTRACT AMOUNT AND CONSTITUTES A MUTUAL ACCORD AND SATISFACTION OF ALL CLAIMS, CURRENT OR FUTURE, OF WHATEVER NATURE CAUSED BY OR ARISING OUT OF THE FACTS AND CIRCUMSTANCES SURROUNDING THIS CHANGE ORDER INCLUDING, BUT NOT LIMITED TO, DIRECT, INDIRECT AND CONSEQUENTIAL COSTS; ADDITIONAL TIME FOR PERFORMANCE; AND THE IMPACT OF THE CHANGE SPECIFIED IN THIS CHANGE ORDER, ALONE OR TAKEN WITH OTHER CHANGES, ON THE UNCHANGED WORK.

Description of Change:

Connectpoint designed an easy-to-read, non-intrusive graphic layout to display the partner transit information on the existing SMART real-time information displays.

Partner Transit Agency GTFS (General Transit Feed Specification) information includes transit agency, route name, route number, direction, headsign destination, scheduled, and/or real-time departure information.

To maintain the partner transit agency information, especially with anticipated bus schedule changes, the annual support fees for the Real-time Passenger Information Displays with partner transit agency information increased by \$7777.80/year for a total of \$38,889.

The original Content Management Software cost was \$21,219.56/year. First payment was made in November 2024.

Planned payments will be made in November 2025, November 2026, November 2027, November 2028:

Fiscal Year		FY 26	FY 27	FY 28	FY 29
Date		Nov-25	Nov-26	Nov-27	Nov-28
Content Management Software Years 2,3,4,5 Maintenance of Baseline Realtime sign functionality		\$21,219.56	\$21,219.56	\$21,219.56	\$21,219.56
Additional Annual Support Fee (Partner Transit Agency Info) for maintenance of partner transit agency data integration (5 payments to be made over 4 years)		\$7,777.80	\$7,777.80	\$7,777.80	\$7,777.80
			\$7,777.80		
Total IT Maintenance (Original plus CO 04 annual support fees)		\$28,997.36	\$36,775.16	\$28,997.36	\$28,997.36

Contract No.: PL-PS-24-001
Contract Title: Real-Time Passenger Information Displays
Change Order No: 04
Title: Annual Support Fee for Partner Transit Agency Info Integration



IN WITNESS WHEREOF, the Sonoma - Marin Area Rail Transit and Modern Railway Systems (MRS) have executed this Change Order as of the last date written below.

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT:

Concurred By: _____
Judy King, Project Manager **Date**

Concurred By: _____
Bill Gamlen, Chief Engineer **Date**

Reviewed By: _____
Heather McKillop, Chief Financial Officer **Date**

The undersigned agrees to the terms and conditions described herein.

Modern Railway Systems (MRS)

Printed Name: Colby Phillips

By: _____
Authorized Signatory for Contractor **Date**

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT:

By: _____
Eddy Cumins, General Manager **Date**



AGENDA ITEM 7

Sonoma-Marín Area Rail Transit
5401 Old Redwood Hwy, Suite 200
Petaluma, CA 94954

P: 707-794-3330
F: 707-794-3037
W: www.SonomaMarinTrain.org

BOARD OF DIRECTORS

Chris Coursey, Chair
Sonoma County Board of Supervisors

Mary Sackett, Vice Chair
Marin County Board of Supervisors

Janice Cader Thompson
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Victoria Fleming
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Ariel Kelley
Sonoma County Mayors' and
Councilmembers Association

Eric Lucan
Marin County Board of Supervisors

Mark Milberg
Transportation Authority of Marin

Barbara Pahre
Golden Gate Bridge,
Highway/Transportation District

Gabe Paulson
Marin County Council of Mayors and
Councilmembers

David Rabbitt
Sonoma County Board of Supervisors

GENERAL MANAGER

Eddy Cumins

October 15, 2025

Sonoma- Marin Area Rail Transit Board of Directors
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954

SUBJECT: Budget Amendment #4 – Amending the Fiscal Year 2025/2026 Adopted Budget

Dear Board Members:

RECOMMENDATIONS:

Adopt Resolution No. 2025-29, amending Resolution No. 2025-19, the Fiscal Year 2025/2026 Adopted Budget to increase appropriation authority.

SUMMARY:

SMART requests a budget amendment to make various changes to the Fiscal Year 2025/2026 Board-approved Budget. This amendment budgets additional funds, including roll forward funds, and makes corrections to the Freight Budget.

An additional \$9,777 worth of Measure Q sales tax funds are being rolled into Fiscal Year 2025/2026 to fund the completion of three IT projects originally planned for Fiscal Year 2025. These projects were not able to be completed in the previous fiscal year due to extended timelines including long lead times and installation and implementation necessary once items arrived. These projects include routers and switches to be installed at SMART's Rail Operation Center.

SMART is adding funds to the Fiscal Year 2025/2026 Budget. This includes \$100,000 in funds from the State of California's Local Partnership Program (LPP) to be matched Measure Q funds already budgeted for the purchase of a battery-powered railcar mover. Grant funding of \$2,000,000 is added to the Healdsburg Extension project from the Measure M Cooperative Agreement with Sonoma County Transportation and Climate Authorities (SCTCA). Additionally, there were state grant funds remaining in Fiscal Year 2025 for the SMART Connect shuttle service that are being rolled into this fiscal year in the amount of \$65,705, allowing SMART to swap out of Measure Q funds originally budgeted for that service.

This action adds funds and staff time costs to the Freight Budget for SMART's engineering construction support on a Caltrans project related to the Novato Creek Bridge in the amount of \$12,500 as well as corrects the totals on the Appendix B table. Previously, the totals on the table had not updated to include the funding and expenses on the Brazos Branch Bridge Repairs project from the second Budget Amendment.

FISCAL IMPACT:

Revenues offset expenses for an overall fund balance of \$54,535,516 for Passenger Rail and Pathway, and a Freight fund balance of \$0.

REVIEWED BY: [x] Finance ____/s/____ [x] Counsel ____/s/____

Sincerely,

/s/

Heather McKillop
Chief Financial Officer

Attachment(s):

- 1) Resolution No. 2025-29 – FY 2025/2026 Budget Amendment #4
- 2) Revised Appendix A
- 3) Revised Appendix B

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT, STATE OF CALIFORNIA, AMENDING RESOLUTION NO. 2025-19, THE ANNUAL BUDGET FOR FISCAL YEAR 2025-2026 TO PROVIDE FOR AN INCREASE IN SPENDING AUTHORITY

WHEREAS, as part of its approval of the Annual Budget for Fiscal Year 2025-2026, the Board of Directors considered the annual expenditures necessary for the Sonoma-Marín Area Rail Transit District; and

WHEREAS, the Board approved Budget Amendment #1 which modified expenditure authority and revised position authority; and

WHEREAS, the Board approved Budget Amendment #2 to modify expenditure authority for the rollforward of funds and acceptance of additional funding; and

WHEREAS, the Board approved Budget Amendment #3 to modify expenditure authority for Phase I of the Healdsburg Extension project and the Teamsters agreement, and to revise position authority; and

WHEREAS, the Board desires to Amend the Annual Budget Resolution No. 2025-19, Fiscal Year 2025-2026 Adopted Budget, to modify the expenditure authority to include additional grant funding and the final carryforward of funds from Fiscal Year 2025;

NOW, THEREFORE, BE IT RESOLVED that expenditure authority in Resolution No. 2025-19, Fiscal Year 2025-2026 Adopted Budget Appendix A and B are hereby amended.

BE IT FURTHER RESOLVED except as specifically amended or supplemented by this Resolution, Resolution No. 2025-19, together with all supplements, amendments, and exhibits thereto is, and shall continue to be, in full force and effect as originally adopted, and otherwise constrained herein shall, or shall be construed to, modify, invalidate, or otherwise affect and provision of Resolution No. 2025-19.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 15th day of October, 2025, by the following vote:

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

Resolution No. 2025-29
Sonoma-Marin Area Rail Transit District
October 15, 2025

Chris Coursey, Chair, Board of Directors
Sonoma-Marin Area Rail Transit District

ATTEST:

Samantha Frias, Interim Clerk of the Board of Directors
Sonoma-Marin Area Rail Transit District

Appendix A - Passenger Rail/Pathway Sources & Uses							
FISCAL YEAR 2025-2026 BUDGET - SOURCES							
		FY 26 Budget	Amendment #1	Amendment #2	Amendment #3	Amendment #4	Total
	Beginning Fund Balance *	\$ 61,508,650					\$ 61,508,650
	Revenues						
	SMART S&U Tax						
	Measure Q	\$ 48,300,300					\$ 48,300,300
	Measure Q Cost of Collection	\$ (683,796)	\$ (156,074)				\$ (839,870)
	Net Sales & Use Tax	\$ 47,616,504	\$ (156,074)				\$ 47,460,430
	Measure Q Roll Forward	\$ 3,975,611		\$ 425,957		\$ 9,777	\$ 4,411,345
	Transfer from Capital Fund	\$ -					\$ -
	Transfer from Corridor Reserve	\$ 1,500,000					\$ 1,500,000
	Subtotal	\$ 53,092,115	\$ (156,074)	\$ 425,957	\$ -	\$ 9,777	\$ 53,371,774
	Federal Funds						
	5307 - Urbanized Area Formula Funds (Preventative Maintenance)	\$ 4,246,710					\$ 4,246,710
	5337 - Federal State of Good Repair Funds	\$ 4,937,716					\$ 4,937,716
	Discretionary Earmark	\$ 1,520,000		\$ 97,144			\$ 1,617,144
	FTA / OBAG 2 - Hanna Ranch to Vintage Way	\$ 91,600					\$ 91,600
	FTA/ OBAG 3 - Hanna Ranch to Vintage Way	\$ 171,750					\$ 171,750
	Subtotal	\$ 10,967,776	\$ -	\$ 97,144	\$ -	\$ -	\$ 11,064,920
	State Funds						
	AHSC - Affordable Housing and Sustainable Communitieis	\$ 1,610,000					\$ 1,610,000
	ATP - Active Transportation Program	\$ -		\$ 99,429			\$ 99,429
	Caltrans Sustainability Communities Competative Planning Grant	\$ 159,354					\$ 159,354
	ITIP - Complete Streets	\$ 896,000					\$ 896,000
	LCTOP - Low Carbon Transit Operating	\$ 760,918					\$ 760,918
	LPP - Local Partnership Program	\$ 727,443	\$ 200,000			\$ 100,000	\$ 1,027,443
	SRA - State Rail Assistance	\$ 3,700,000					\$ 3,700,000
	STA - State Transit Assistance (Population)	\$ 1,309,770		\$ (42,817)			\$ 1,266,953
	STA - State Transit Assistance (Revenue)	\$ 2,094,129					\$ 2,094,129
	STA - MASCOTS	\$ -		\$ 800,000			\$ 800,000
	STA - SGR (State of Good Repair)	\$ 363,183					\$ 363,183
	State Funds - Shuttle Service	\$ 250,000				\$ 65,705	\$ 315,705
	TIRCP - Petaluma Station	\$ -		\$ 150,000			\$ 150,000
	TIRCP - Windsor to Healdsburg Project Development	\$ 1,380,000		\$ (113,680)			\$ 1,266,320
	TIRCP - Windsor to Healdsburg Phase I				\$ 33,359,000		\$ 33,359,000
	Subtotal	\$ 13,250,797	\$ 200,000	\$ 892,932	\$ 33,359,000	\$ 165,705	\$ 47,868,434
	Regional Funds						
	Regional Measure 3 (RM3)	\$ 1,048,400					\$ 1,048,400
	MTC - MASCOTS	\$ -	\$ 600,000	\$ (600,000)			\$ -
	Measure M - Healdsburg					\$ 2,000,000	\$ 2,000,000
	Subtotal	\$ 1,048,400	\$ 600,000	\$ (600,000)	\$ -	\$ 2,000,000	\$ 3,048,400
	Other Sources						
	Advertising	\$ 175,000					\$ 175,000
	Charges for Services	\$ 112,851					\$ 112,851
	Fare Revenues - Passenger Rail	\$ 2,541,000					\$ 2,541,000
	Fare Revenues - Shuttle	\$ 8,000					\$ 8,000
	Interest Earning	\$ 800,000					\$ 800,000
	Misc.	\$ 55,885					\$ 55,885
	Parking	\$ 17,580					\$ 17,580
	Rent - Real Estate	\$ 494,025					\$ 494,025
	Other Governments/Private Sector	\$ 1,534,821		\$ 31,136			\$ 1,565,956
	Subtotal	\$ 5,739,161	\$ -	\$ 31,136	\$ -	\$ -	\$ 5,770,297
	Total Revenues	\$ 84,098,249	\$ 643,926	\$ 847,169	\$ 33,359,000	\$ 2,175,482	\$ 85,589,344
	Total Revenues + Fund Balance	\$ 145,606,899	\$ 643,926	\$ 847,169	\$ 33,359,000	\$ 2,175,482	\$ 182,632,475
FISCAL YEAR 2025-2026 BUDGET - USES							
		FY 26 Budget	Amendment #1	Amendment #2	Amendment #3	Amendment #4	Total
	Debt Service	\$ 16,996,844					\$ 16,996,844
	Salaries & Benefits	\$ 30,549,100	\$ 1,046,346		\$ 87,417		\$ 31,682,864
	Reduction for Salaries Charged to Projects	\$ (1,663,687)					\$ (1,663,687)
	Reduction for Allocation of Salaries/ Services/ Supplies to Freight	\$ (34,944)					\$ (34,944)
	Service & Supplies	\$ 18,382,301	\$ 221,819				\$ 18,604,120
	Total Salaries, Benefits, Service, & Supplies	\$ 47,232,770	\$ 1,268,165	\$ -	\$ 87,417	\$ -	\$ 48,588,352
	Contribution to OPEB/ CalPERS Liability Fund	\$ 750,000					\$ 750,000
	Contribution to Capital Sinking Fund	\$ 1,000,000					\$ 1,000,000
	Operating Reserve	\$ 1,231,027					\$ 1,231,027
	Total Reserve Contributions	\$ 2,981,027	\$ -	\$ -	\$ -		\$ 2,981,027
	Total Debt Service, Operating, Reserves	\$ 67,210,640	\$ 1,268,165	\$ -	\$ 87,417	\$ -	\$ 68,566,223
	Balance	\$ 78,396,259	\$ (624,239)	\$ 847,169	\$ 33,271,583	\$ 2,175,482	\$ 114,066,252
	Non-Capital Projects	\$ 4,658,214		\$ 2,763,789			\$ 7,422,003
	Total Non-Capital Projects	\$ 4,658,214	\$ -	\$ 2,763,789	\$ -	\$ -	\$ 7,422,003
	State of Good Repair and Projects	\$ 8,831,723					\$ 8,831,723
	Total State of Good Repair	\$ 8,831,723	\$ -	\$ -	\$ -	\$ -	\$ 8,831,723
	Capital Projects						
	Equipment	\$ 2,576,151				\$ 109,777	\$ 2,685,928
	Facilities	\$ 6,683,886		\$ (2,123,803)	\$ 33,359,000	\$ 2,000,000	\$ 39,919,083
	Infrastructure	\$ -		\$ 50,000			\$ 50,000
	Non-Revenue Vehicles	\$ 346,000	\$ 276,000				\$ 622,000
	Land Acquisition	\$ -					\$ -
	Total Capital Expenditures	\$ 9,606,037	\$ 276,000	\$ (2,073,803)	\$ 33,359,000	\$ 2,109,777	\$ 43,277,010
	Ending Fund Balance	\$ 55,300,285	\$ (900,239)	\$ 157,183	\$ (87,417)	\$ 65,705	\$ 54,535,516

Appendix B - Freight Sources and Uses						
FISCAL YEAR 2025-2026						
		FY 26 Budget	Amendment #1	Amendment #2	Amendment #4	Total
	Beginning Fund Balance	\$ -				\$ -
	Revenues					
	California State Transportation Agency (Cal STA)	\$ -				\$ -
	CA Priority Legislative Budget Projects 2023	\$ 750,000				\$ 750,000
	CA Priority Legislative Budget Projects 2024	\$ 237,648	\$ 24,500	\$ 102,179		\$ 364,327
	Caltrans SR 37 Construction Support	\$ 7,000				\$ 7,000
	Caltrans Novato Creek Bridge Construction Support	\$ -			\$ 12,500	\$ 12,500
	State Shortline Grant	\$ 339,771		\$ 102,179		\$ 441,950
	Freight Movement Fees	\$ 800,000				\$ 800,000
	Leases	\$ 270,000				\$ 270,000
	Storage	\$ 40,000				\$ 40,000
	45(g) Tax Credit	\$ 251,000				\$ 251,000
	Misc.	\$ 10,000				\$ 10,000
	Total Revenues	\$ 2,705,419	\$ 24,500	\$ 204,357	\$ 12,500	\$ 2,946,776
	Total Revenues + Fund Balance	\$ 2,705,419	\$ 24,500	\$ 204,357	\$ 12,500	\$ 2,946,776
	Expenditures					
	Salaries & Benefits	\$ 1,075,089			\$ 12,500	\$ 1,087,589
	Services & Supplies	\$ 943,789				\$ 943,789
	Blackpoint Bridge Emergency Repair	\$ -	\$ 24,500			\$ 24,500
	SR 37 Grade Crossing PE Review	\$ 7,000				\$ 7,000
	Tie Replacement	\$ 50,000				\$ 50,000
	Brazos Branch Bridge Repairs (3 Bridges)	\$ 475,301		\$ 204,357		\$ 679,658
	Grade Crossing Repair	\$ 154,240				\$ 154,240
	Total	\$ 2,705,419	\$ 24,500	\$ 204,357	\$ 12,500	\$ 2,946,776
	Ending Fund Balance	\$ -	\$ -	\$ -	\$ -	\$ -



AGENDA ITEM 8

Sonoma-Marin Area Rail Transit
5401 Old Redwood Hwy, Suite 200
Petaluma, CA 94954

P: 707-794-3330
F: 707-794-3037
W: www.SonomaMarinTrain.org

BOARD OF DIRECTORS

Chris Coursey, Chair
Sonoma County Board of Supervisors

Mary Sackett, Vice Chair
Marin County Board of Supervisors

Janice Cader Thompson
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Victoria Fleming
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Ariel Kelley
Sonoma County Mayors' and
Councilmembers Association

Eric Lucan
Marin County Board of Supervisors

Mark Milberg
Transportation Authority of Marin

Barbara Pahre
Golden Gate Bridge,
Highway/Transportation District

Gabe Paulson
Marin County Council of Mayors and
Councilmembers

David Rabbitt
Sonoma County Board of Supervisors

GENERAL MANAGER

Eddy Cumins

October 15, 2025

Sonoma-Marin Area Rail Transit Board of Directors
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954

SUBJECT: Adopt Resolution No. 2025-30, authorizing the General Manager to Award two (2) On Call Real Estate Advisory and Property Rights Acquisition Support Service Agreements

Dear Board Members:

RECOMMENDATION:

Adopt Resolution No. 2025-30, authorizing the General Manager to award two (2) On-Call Real Estate Advisory and Property Rights Acquisition Support Service Agreements to support rail and pathway design and construction activities.

The two contracts being recommended for award are as follows:

1. Contract No. RE-PS-25-001 – Monument ROW
2. Contract No. RE-PS-25-002 – Bender Rosenthal Incorporated

Each contract will have an initial term of three years, with two additional one-year options to extend thereafter and a maximum not-to-exceed amount of \$1,650,000.00 across both contracts.

SUMMARY:

SMART has and continues to design and construct passenger rail and pathway projects. These On-Call Real Estate Advisory & Property Acquisition Support Service Agreements will provide real estate expertise and support to assist staff in implementing projects in the areas of Real Estate and Right of Way, including but not limited to:

1. Research;
2. Valuations;
3. Negotiations;
4. Title; and
5. Acquisitions Services

A Request for Proposals was issued on May 21, 2025, for On-Call Real Estate Advisory & Property Acquisition Services under Solicitation No. RE-PS-25-001. SMART received five (5) responsive Proposals on June 25, 2025. A selection committee evaluated the proposals based on the evaluation criteria published in the Request for Proposal which included: Service Approach, Demonstrated History of Performing Similar Work, Key Personnel Qualifications, and Pricing. The Selection Committee established a competitive range, which included the top three ranked Proposers, and conducted interviews with these firms. Upon completion of the evaluation process, the Selection Committee is recommending that SMART award two contracts to the top two ranked Proposers, Monument Row and Bender Rosenthal Incorporated to support SMART's real estate advisory

and property acquisition needs.

Staff recommends adopting Resolution No. 2025-30, authorizing the General Manager to execute Agreement No. RE-PS-25-001 with Monument ROW and Agreement No. RE-PS-25-002 with Bender Rosenthal Incorporated, each with an initial term of three years with two one-year options to extend and a maximum not-to-exceed amount of \$1,650,000.00 across both Agreements to serve as SMART's on-call real estate advisory and property acquisition support bench.

FISCAL IMPACT: There is no impact to the Fiscal Year 2025/2026 Budget currently. Funding will be identified when the services are needed.

REVIEWED BY: [x] Finance /s/ [x] Counsel /s/

Very truly yours,

/s/
Randy S. Friedland
Real Estate Manager

Attachment(s):

- 1) Resolution Number 2025-30
- 2) Agreement RE-PS-25-001 with Monument Row
- 3) Agreement RE-PS-25-002 with Bender Rosenthal Incorporated

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT APPROVING TWO (2) AGREEMENTS FOR ON-CALL REAL ESTATE ADVISORY AND PROPERTY RIGHTS ACQUISITION SUPPORT SERVICES

WHEREAS, the Sonoma-Marín Area Rail Transit District (SMART) has built and is expanding the SMART passenger rail and pathway system through design and construction activities; and

WHEREAS, SMART has determined that additional professional services resources are needed to assist staff in the areas of Real Estate Research, Valuations, Negotiations and Acquisitions Services; and

WHEREAS, SMART issued a Request for Proposals on May 21, 2025, for On-Call Real Estate Advisory and Property Rights Acquisition Services under Solicitation No. RE-PS-25-001; and

WHEREAS, SMART received five (5) responsive proposals on June 25, 2025; and

WHEREAS, SMART, through a Selection Committee, evaluated the Proposals using the evaluation criteria published in the Request for Proposal; and

WHEREAS, the Selection Committee determined that the top two-ranked Proposers, Monument ROW and Bender Rosenthal Incorporated, provided the best overall value to SMART and should be awarded On-Call Real Estate Advisory and Property Acquisition Support Service Agreements; and

WHEREAS, SMART included a provision in the Request for Proposal solicitation allowing SMART to award one or more Agreements resulting from the Solicitation; and

NOW, THEREFORE, BE IT RESOLVED THAT THE BOARD OF DIRECTORS OF SMART HEREBY FINDS, DETERMINES, DECLARES, AND ORDERS AS FOLLOWS:

1. The forgoing Recitals are true and correct and are incorporated herein and form a part of this Resolution.
2. Authorize the General Manager to execute Contract No. RE-PS-25-001 with Monument ROW and Contract No. RE-PS-25-002 with Bender Rosenthal Incorporated, with a total maximum not-to-exceed amount across both Contracts in the amount of \$1,650,000.00, and an initial term of three years with two one-year options to extend at the General Managers discretion.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 15th day of October 2025, by the following vote:

Resolution No. 2025-30
Sonoma-Marin Area Rail Transit District
October 15, 2025

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

Chris Coursey, Chair, Board of Directors
Sonoma-Marin Area Rail Transit District

ATTEST:

Samantha Frias, Interim Clerk of the Board of Directors
Sonoma-Marin Area Rail Transit District

AGREEMENT FOR CONSULTANT SERVICES

This agreement (“Agreement”), dated as of October 15, 2025 (“Effective Date”) is by and between the Sonoma-Marín Area Rail Transit District (hereinafter “SMART”), and Monument Row whose place of business is located at 3626 Fair Oaks Blvd., Suite 300, Sacramento, CA 95864 (hereinafter “Consultant”).

RECITALS

WHEREAS, Consultant represents that it is qualified, licensed, and experienced in the areas of real estate advisory, property rights acquisition services, and related real estate support services; and

WHEREAS, in the judgment of the Board of Directors of SMART or District, it is necessary and desirable to employ the services of Consultant to provide on-call real estate advisory and property rights acquisition services; and

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

ARTICLE 1. RECITALS.

Section 1.01 The above Recitals are true and correct.

ARTICLE 2. LIST OF EXHIBITS.

Section 2.01 The following exhibits are attached hereto and incorporated herein:

- (a) Exhibit A: Scope of Work & Timeline
- (b) Exhibit B: Schedule of Rates
- (c) Exhibit C: State of California Requirements

ARTICLE 3. REQUEST FOR SERVICES.

Section 3.01 Initiation Conference. SMART’s Real Estate Manager or designee (hereinafter “SMART Manager”) will initiate all requests for services through an Initiation Conference, which may be in person, by telephone, or by email. During the Initiation Conference, the SMART Manager and Consultant will establish and agree on a specific task for the project.

Section 3.02 Amount of Work. SMART does not guarantee a minimum or maximum amount of work under this Agreement.

ARTICLE 4. SCOPE OF SERVICES.

Section 4.01 Scope of Work. Consultant shall perform services within the timeframe outlined in **Exhibit A** (cumulatively referred to as the “Scope of Work”).

Section 4.02 Cooperation With SMART. Consultant shall cooperate with the SMART Manager in the performance of all work hereunder.

Section 4.03 Performance Standard. Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant’s profession. If SMART determines that any of Consultant’s work is not in accordance with such level of competency and standard of care, SMART, in its reasonable discretion, shall have the right to do any or all of the following: (a) require Consultant to meet with SMART to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 7; or (d) pursue any and all other remedies at law or in equity.

Section 4.04 Assigned Personnel.

- (a) Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time SMART, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from SMART.
- (b) Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder on behalf of the Consultant are deemed by SMART to be key personnel whose services were a material inducement to SMART to enter into this Agreement, and without whose services SMART would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of SMART.
- (c) In the event that any of Consultant’s personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant’s control, Consultant shall be responsible for timely provision of adequately qualified replacements.
- (d) Consultant shall assign the following key personnel for the term of this Agreement:

Bob Morrison, Principal-In-Charge & Project Manager (Monument Row)
Jennifer Cole, Negotiation Specialist (Monument Row)
Ryan Humphrey, Negotiation Specialist (Monument Row)
Jesse Ortiz, Relocation Lead (Monument Row)
Adam Bogorad, Appraisal Director (Monument Row)
Krystal Thompson, Title and Closing (Monument Row)
Terry Larson, Appraiser (Larson Valuations)

Adam Bursch, Appraiser (Western Valuation Solutions)
Jared Calabrese, Appraiser (Wester Valuation Solutions)
Griffin Wayne, Title and Escrow (Commonwealth Land Title Company)

ARTICLE 5. PAYMENT.

For all services required hereunder, Consultant shall be paid in accordance with the following terms:

Section 5.01 Consultant shall invoice SMART on a monthly basis, detailing the tasks performed pursuant to the Scope of Work requested by the SMART Manager and the hours worked. SMART shall pay Consultant within 30 days after submission of the invoices.

Section 5.02 Consultant shall be paid in accordance with the rates established in **Exhibit B**. The total amount payable by SMART for all Task Orders resulting from this Agreement shall not exceed \$1,650,000.00. Consultant shall submit its invoices in arrears on a monthly basis in a form approved by the Chief Financial Officer. The invoices shall show or include: (i) the Task Order Number and corresponding Purchase Order Number; (ii) the task(s) performed; (iii) the time in quarter hours devoted to the task(s) along with the job classification for the individual(s) performing the task and their corresponding hourly rate or rates (time and material tasks); (iv) firm fixed fees for fixed rate tasks; (v) SBE and DBE Participation and Payment Summary showing the dollar amounts paid to each SBE and DBE firm on the invoice and a running total for the task; and (vi) copies of receipts for reimbursable materials/expenses, if any. All reimbursable expenses must comply with SMART's Travel Guidelines and must receive prior approval. Consultant's reimbursement for materials/expenses shall not include items already included in Consultant's overhead as may be billed as a part of its labor rates set forth in **Exhibit B**. SMART does not reimburse Consultant for travel time.

Section 5.03 Consultant agrees that 48 CFR Part 31, Contract Cost Principles and Procedures and 2 CFR Part 200 shall be used to determine the allowability of individual terms of cost. Any costs for which payment has been made to the Consultant that are determined by subsequential audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the Consultant to SMART.

Section 5.04 Consultant must submit all invoices on a timely basis, but no later than thirty (30) days from the date the services/charges were incurred. District shall not accept invoices submitted by Consultant after the end of such thirty (30) day period without District pre-approval. Time is of the essence with respect to submission of invoices and failure by Consultant to abide by these requirements may delay or prevent payment of invoices or cause such invoices to be returned to the Consultant unpaid.

ARTICLE 6. TERM OF AGREEMENT.

Section 6.01 The term of this Agreement shall remain in effect through October 14, 2028, with two (2) one-year options to extend at SMART sole discretion OR whenever the maximum not-to-exceed amount is reached, whichever occurs first, unless terminated earlier in accordance with the provisions of **Article 7** below. The period of performance for each specific

project shall be in accordance with the Task Order for that project. No Task Order will be written which extends beyond the expiration date of this Agreement.

ARTICLE 7. TERMINATION.

Section 7.01 Termination Without Cause. The District's obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the District for any payment may arise until funds are made available by the District for this contract and until the Contractor or Consultant receives notice of such availability, as such and notwithstanding any other provision of this Agreement, at any time and without cause, SMART shall have the right, at their sole discretion, to terminate this Agreement by giving 30 days written notice to the other party.

Section 7.02 Termination for Cause.

- (a) Termination for Cause. Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, SMART may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.
- (b) Opportunity to Cure. In the case of a termination for breach or default, allow the breaching or defaulting party up to ten (10) calendar days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If the breaching or defaulting party fails to remedy to the non-breaching party's satisfaction the breach or default of any of the terms, covenants, or conditions of this Agreement within the timeframe to cure contained in the written notice setting forth the nature of said breach or default, the non-breaching non-defaulting party shall have the right to terminate the Agreement without any further obligation to the other. Any such termination for default shall not in any way operate to preclude the other party from also pursuing all available remedies for said breach or default.

Section 7.03 Delivery of Work Product and Final Payment Upon Termination.

In the event of termination by either party, Consultant, within 14 days following the date of termination, shall deliver to SMART all materials and work product subject to **Section 12.08** and shall submit to SMART an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

Section 7.04 Payment Upon Termination. Upon termination of this Agreement by SMART, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services are to be paid on an hourly or daily basis, then Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to termination times the applicable hourly or daily rate; provided further

that if SMART terminates the Agreement for cause pursuant to **Section 7.02**, SMART shall deduct from such amount the amount of damage, if any, sustained by SMART by virtue of the breach of the Agreement by Consultant.

Section 7.05 Authority to Terminate. The Board of Directors has the authority to terminate this Agreement on behalf of SMART. In addition, the General Manager, in consultation with SMART Counsel, shall have the authority to terminate this Agreement on behalf of SMART.

ARTICLE 8. INDEMNIFICATION

Consultant agrees to accept all responsibility for loss or damage to any person or entity, including SMART, and to indemnify, hold harmless, and release SMART, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, to the extent caused by the Consultant's negligence, recklessness or willful misconduct in its performance or obligations under this Agreement. Consultant agrees to provide a complete defense for any claim or action brought against SMART based upon a claim relating to Consultant's performance or obligations under this Agreement. Consultant's obligations under this Section 8 apply whether or not there is concurrent negligence on SMART's part, but to the extent required by law, excluding liability due to SMART's conduct. SMART shall have the right to select its legal counsel at Consultant's expense, subject to Consultant's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

ARTICLE 9. INSURANCE.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its Subcontractors, Consultants, and other agents to maintain, insurance as described below. If the Consultant maintains broader coverage and/or higher limits than the minimums shown below, SMART requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to SMART.

Section 9.01 Workers' Compensation Insurance. Workers' Compensation as required by the State of California, with Statutory Limits, and Employer's Liability insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

Section 9.02 General Liability Insurance. Commercial General Liability insurance covering products-completed and ongoing operations, property damage, bodily injury and personal injury using an occurrence policy form, in an amount no less than \$1,000,000 per occurrence, and \$2,000,000 aggregate.

Section 9.03 Automobile Insurance. Automobile Liability insurance covering bodily injury and property damage in an amount no less than \$1,000,000 combined single limit per accident. Said insurance shall include coverage for owned, hired, and non-owned vehicles.

Section 9.04 Professional Liability Insurance (Errors and Omissions).
Professional Liability insurance with limit no less than \$2,000,000 per occurrence or claim, and \$2,000,000 aggregate.

Section 9.05 Endorsements. Prior to commencing work, Consultant shall file Certificate(s) of Insurance with SMART evidencing the required coverage and endorsement(s). Said endorsements and Certificate(s) of Insurance shall stipulate:

- (a) SMART, its officers, and employees shall be named as additional insured on all policies listed above, with the exception of the workers compensation insurance policy and the professional services liability policy (if applicable).
- (b) That the policy(ies) is Primary Insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim which Consultant is liable, up to and including the total limit of liability, without right of contribution from any other insurance effected or which may be effected by the Insureds.
- (c) Inclusion of the Insureds as additional insureds shall not in any way affect its rights either as respects any claim, demand, suit or judgment made, brought or recovered against Consultant. Said policy shall protect Consultant and the Insureds in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.
- (d) Consultant hereby grants to SMART a waiver of any right to subrogation which any insurer of said Consultant may acquire against SMART by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not SMART has received a waiver of subrogation endorsement from the insurer.
- (e) The insurance policy(ies) shall be written by an insurance company or companies acceptable to SMART. Such insurance company shall be authorized to transact business in the state of California.

Section 9.06 Deductibles and Retentions. Consultant shall be responsible for payment of any deductible or retention on Consultant's policies without right of contribution from SMART. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the name insured is not acceptable.

Section 9.07 Claims Made Coverage. If any insurance specified above is written on a claims-made coverage form, Consultant shall:

- (a) Ensure that the retroactive date is shown on the policy, and such date must be before the date of this Agreement or beginning of any work under this Agreement;

- (b) Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and
- (c) If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to Agreement effective date, Consultant shall purchase “extending reporting” coverage for a minimum of three (3) years after completion of the work.

Section 9.08 Documentation. The following documentation shall be submitted to SMART:

- (a) Properly executed Certificates of Insurance clearly evidencing all coverages and limits required above. Said Certificates shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current Certificates of Insurance evidencing the above-required coverages and limits on file with SMART for the duration of this Agreement.”
- (b) Copies of properly executed endorsements required above for each policy. Said endorsement copies shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current endorsements evidencing the above-specified requirements on file with SMART for the duration of this Agreement.
- (c) After the Agreement has been signed, signed Certificates of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.

Please email all renewal certificates of insurance and corresponding policy documents to InsuranceRenewals@sonomamarintrain.org.

Section 9.09 Policy Obligations. Consultant’s indemnity and other obligations shall not be limited by the foregoing insurance requirements.

Section 9.10 Material Breach. If Consultant, for any reason, fails to maintain insurance coverage, which is required pursuant to this Agreement, the same shall be deemed a material breach of this Agreement. SMART, in its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. These remedies shall be in addition to any other remedies available to SMART.

Section 9.11 Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice to SMART.

ARTICLE 10. PROSECUTION OF WORK.

When work is requested of Consultant by SMART, all due diligence shall be exercised and the work accomplished without undue delay, within the performance time specified in the Task Order. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, wildfire,

pandemic, and civil unrest or any other similarly unforeseen reason beyond the control of Consultant, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

ARTICLE 11. EXTRA OR CHANGED WORK.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the SMART Manager in a form approved by SMART Counsel. The Board of Directors or General Manager must authorize all other extra or changed work. The parties expressly recognize that SMART personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of SMART.

ARTICLE 12. REPRESENTATIONS OF CONSULTANT.

Section 12.01 Standard of Care. SMART has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by SMART shall not operate as a waiver or release.

Section 12.02 Status of Consultant. The parties intend that Consultant, in performing the services specified herein, shall act as an independent Contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of SMART and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits SMART provides its employees. In the event SMART exercises its right to terminate this Agreement pursuant to **Article 7**, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

Section 12.03 Taxes. Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including but not limited to state and federal income and FICA taxes. Consultant agrees to indemnify and hold SMART harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case SMART is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish SMART with proof of payment of taxes on these earnings.

Section 12.04 Records Maintenance. Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to SMART for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder. Consultant and Subconsultants shall permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by the State, for the purpose of any investigation to ascertain compliance with this document.

Section 12.05 Conflict of Interest. Consultant covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by SMART, Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with SMART disclosing Consultant's or such other person's financial interests.

Section 12.06 Nondiscrimination. Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition (including cancer), pregnancy, physical disability (including HIV and AIDS), mental disability, denial of family care leave, sexual orientation or other prohibited basis, including without limitation, SMART's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference. Consultant shall also comply with the provisions of the Fair Employment and Housing Act (California Government Code, Section 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 et seq.).

Section 12.07 Assignment Of Rights. Consultant assigns to SMART all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications and work product, if any, now or later prepared for SMART by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to SMART in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as SMART may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of SMART. Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of SMART.

Section 12.08 Ownership And Disclosure Of Work Product. Any and all work product resulting from this Agreement is commissioned by SMART as a work for hire. SMART shall be considered, for all purposes, the author of the work product and shall have all rights of

authorship to the work, including, but not limited to, the exclusive right to use, publish, reproduce, copy and make derivative use of, the work product or otherwise grant others limited rights to use the work product. All reports, original drawings, graphics, plans, studies, and other data or documents (“documents”), in whatever form or format, assembled or prepared by Consultant and other agents in connection with this Agreement shall be the property of SMART. SMART shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to SMART all such documents, which have not already been provided to SMART in such form or format, as SMART deems appropriate. Such documents shall be and will remain the property of SMART without restriction or limitation. Consultant may retain copies of the above- described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of SMART.

ARTICLE 13. DEMAND FOR ASSURANCE.

Each party to this Agreement undertakes the obligation that the other’s expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. “Commercially reasonable” includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party’s right to demand adequate assurance of future performance. Nothing in this **Article 13** limits SMART’s right to terminate this Agreement pursuant to **Article 7**.

ARTICLE 14. ASSIGNMENT AND DELEGATION.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

ARTICLE 15. METHOD AND PLACE OF GIVING NOTICE, SUBMITTING INVOICES AND MAKING PAYMENTS.

All notices, invoices, and payments shall be made in writing and shall be given by personal delivery, U.S. Mail or email. Notices, invoices, and payments shall be addressed as follows:

If to SMART Manager:

Sonoma-Marín Area Rail Transit District
Attn: Randy Friedland
5401 Old Redwood Highway, Suite 200

Petaluma, CA 94954
rfriedland@sonomamarintrain.org
707-794-3069

If to SMART Billing:

Sonoma-Marín Area Rail Transit District
Attn: Accounts Payable
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954
billing@sonomamarintrain.org
707-794-3330

If to Consultant:

Monument Row
Attn: Bob Morrison
3626 Fair Oaks Blvd., Suite 300
Sacramento, CA 95864
bmorrison@monumentrow.com
916-717-7069

When a notice, invoice or payment is given by a generally recognized overnight courier service, the notice, invoice or payment shall be deemed received on the next business day. When a copy of a notice, invoice or payment is sent by facsimile or email, the notice, invoice or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, invoice or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, invoices and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

ARTICLE 16. MISCELLANEOUS PROVISIONS.

Section 16.01 Subcontractor Listing. Consultant has listed the following Subcontractors that will be used during the performance of work:

Name of Subcontractor	Description of Work
Larson Valuations 231 Market Pl, # 534 San Ramon, CA 94583	Appraisal Services
Western Valuation Solutions 3917 Sweetwater Dr, Rocklin, CA 95677	Appraisal Services
Commonwealth Land Title Company 4400 McArthur Blvd, Suite #800 Newport Beach, CA 92660	Title and Escrow Services

Section 16.02 Use of Recycled Paper. SMART requires that all printing jobs

produced under this Agreement be printed on recycled content papers. Recycled-content papers are defined as papers containing a minimum of 30 percent postconsumer fiber by weight. All papers used in the performance of a print job for SMART shall be recycled-content paper. The recycle logo or “chasing arrows” cannot be used on printed material unless the paper contains a minimum of 30 percent postconsumer material. If paper meets the 30 percent requirement, ask that the recycling logo be printed on the project.

Section 16.03 No Waiver of Breach. The waiver by either Party of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

Section 16.04 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and SMART acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and SMART acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

Section 16.05 Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

Section 16.06 Licensing Laws. The Consultant and all subcontractors shall be appropriately licensed in the State of California for all work performed under this Agreement and any Consultant not so licensed is subject to the penalties imposed by applicable federal, state, and local laws. Consultant and all subcontractors shall maintain active licenses that are in good standing with all applicable regulatory agencies.

Section 16.07 Drug-Free Workplace. Consultant certifies that it will provide a drug-free workplace in compliance with Government Code §8350-§8357.

Section 16.08 Relationships of the Parties: No Intended Third-Party Beneficiaries. The Parties intend by this Agreement to establish a cooperative funding relationship, and do not intend to create a partnership, joint, venture, joint enterprise, or any other business relationship. There is no third person or entity who is an intended third-party beneficiary under this Agreement. No incidental beneficiary, whatever relationship such person may have with the Parties, shall have any right to bring an action or suit, or to assert any claim against the Parties under this Agreement. Nothing contained in this Agreement shall be construed to create and the Parties do not intend to create any rights in third parties.

Section 16.09 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Venue for any action to enforce the terms of this Agreement or for the breach thereof shall be in the Superior Court of the State of California in the County of Marin.

Section 16.10 Use of SMART Name and Logo Restrictions. Consultant is prohibited from using SMART's name and logo unless expressly authorized herein or by written authorization from SMART's legal counsel.

Section 16.11 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

Section 16.12 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

Section 16.13 Acceptance of Electronic Signatures and Counterparts. The parties agree that this Contract, Agreements ancillary to this Contract, and related documents to be entered into this Contract will be considered executed when all parties have signed this Agreement. Signatures delivered by scanned image as an attachment to electronic mail or delivered electronically through the use of programs such as DocuSign must be treated in all respects as having the same effect as an original signature. Each party further agrees that this Contract may be executed in two or more counterparts, all of which constitute one and the same instrument.

Section 16.14 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

CONSULTANT: MONUMENT ROW

By: _____
Bob Morrison, Vice President

Date: _____

SONOMA-MARIN AREA RAIL TRANSIT (SMART)

By: _____
Eddy Cumins, General Manager

Date: _____

**CERTIFICATES OF INSURANCE ON FILE WITH AND
APPROVED AS TO SUBSTANCE FOR SMART:**

By: _____
Ken Hendricks, Procurement and Contracts Manager

Date: _____

APPROVED AS TO FORM FOR SMART:

By: _____
District Counsel

Date: _____

EXHIBIT A

SCOPE OF WORK & TIMELINE

I. Overview

The Sonoma-Marín Area Rail Transit District (SMART) is contracting with Monument Row to provide on-call real estate advisory and property rights acquisition support services.

A. Objective:

From time to time, SMART may require right-of-way and real estate services including advisory, negotiations, acquisitions, relocations, valuation, title and closing activities, along with correlating litigation support. Consultant shall be ready to support SMART's needs when they arise and shall be well-versed in performing these services according to current California Department of Transportation ("CalTrans") policies and procedures and other applicable state and local laws and regulations.

II. Contract Management

All work shall be initiated, scheduled, and reviewed by SMART's Real Estate Manager, or designee. Work will be initiated through written Task Orders. All work performed under this contract will require a Task Order to be executed and issued prior to work commencing. Any work performed outside of a fully executed Task Order will not be reimbursed.

Two firms were awarded a contract resulting from the original solicitation process to serve as SMART's On-Call Real Estate Advisory and Property Rights Acquisition Support Services bench. The SMART Manager will present each task order's scope of work to each firm for Proposal. The request shall clearly describe each task required, the schedule for completion, deliverables, and acceptance criteria, as well as provide evaluation criteria for how SMART will evaluate Proposals. Whichever firm and Proposal SMART determines is best suited for each task based on the established evaluation criteria will be awarded the Task Order for that work. The not-to-exceed amount of \$1,650,000 is the maximum amount SMART may award across the entirety of both contracted firms.

III. Scope of Work

Consultant may be tasked with performing any of the following real estate and property rights acquisition support services when issued a Task Order:

A. Basic Real Estate Support Services

This work may involve supporting SMART's Real Estate Department in various real property related activities such as; public workshops or meetings; title

reports; valuation waiver reports; appraisals; appraisal reviews; negotiations (initial and follow-up contact with property owners); arm's length transaction negotiations with owners; (i.e. pre-condemnation determination); preparation of correspondence, diaries, forms, agreements, document preparation; closings; recordation; condemnation; relocation assistance services and related services, and performance of other real estate consulting services and related matters as requested by SMART. This work may include providing litigation support services, including property rights research; title searches, obtaining preliminary title reports, appraisal/appraisal reviews, expert witness services, testimony and other legal administrative services in connection with acquiring properties or securing property rights.

B. Project Scoping & Development Phase Services.

1. Individual outreach to property owners
2. Agreements of Understanding
3. Participation in Public Meetings
4. Real Property Research

C. Right-of-Way Phase Services.

1. Perform title research and prepare title reports for impacted properties.
2. Perform valuation waiver reports and/or appraisals and/or appraisal reviews as appropriate.
3. Negotiate with impacted property owners and provide documentation of meeting minutes.
4. Prepare all closing documentation and record all negotiated settlements.
5. Recommend a course of action (up to and including condemnation for any settlements that cannot be successfully negotiated and assist in the execution of chosen course of action.
6. Provide relocation assistance and advisory services in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the "Federal Act") and Chapter 10 of CalTrans' Right-of-Way Manual.

IV. SMART's Reservation of Rights

While it is SMART's intent to utilize Consultant for all on-call real estate advisory and property rights acquisition support tasks that the agency may require, SMART does reserve the right to contract separately with another Consultant when required by grant and/or the granting entity, when any action of the California Public Utilities Commission or other regulatory agency dictates, when work was previously done on

any portion of a parcel by another Consultant and SMART desires to use that Consultant for consistency, and when SMART's legal counsel determines a different Consultant is in the best interest of the District for a particular task or tasks factoring in litigation needs.

If SMART determines contracting with a separate Consultant is necessary or required and competes these services, Consultant may submit a Proposal as long as it does not have an organizational or other conflict of interest.

Real-estate support services related to SMART-owned parcels for sale and individual properties proposed for purchase by SMART for office or maintenance are generally excluded from this Agreement; however, SMART may at its sole discretion authorize a Task Order to be awarded to Consultant if determined it is in the best interest of the District to do so.

V. Timeline for Each Requirement / Task

All deliverables and timelines for work will be clearly described in each task order and shall be mutually agreed upon by SMART and Consultant in writing prior to the start of any work performed.

VI. Acceptance Criteria

The SMART Manager or designee responsible for each Task Order shall review work performed by the Consultant to ensure performed work meets the requirements of each task order. SMART shall not pay the Consultant for the Consultant's work under this Contract and the charges incurred by the Consultant that does not confirm to the requirements specified in this Contract and to the applicable Task Order, and such work shall be corrected at the Consultant's sole expense at no additional cost to SMART. Upon successful completion and acceptance of work, the SMART Manager shall provide written acceptance of the work and recommend submission of the invoice for review.

EXHIBIT B
SCHEDULE OF RATES

Name / Classification	Fully Burdened Hourly Rate
Principal	\$325.00
Project Director	\$265.00
Program Manager	\$240.00
Senior Project Manager	\$230.00
ROW Project Manager 2	\$220.00
ROW Project Manager 1	\$180.00
Senior Acquisition Agent / Senior Relocation Agent / Senior Analyst	\$160.00
Acquisition Agent 2 / Relocation Agent 2	\$135.00
Acquisition Agent 1 / Relocation Agent 1	\$125.00
Senior Project Coordinator	\$140.00
Project Coordinator 2	\$125.00
Project Coordinator 1	\$115.00
Senior Project Analyst	\$160.00
Project Analyst 2	\$140.00
Project Analyst 1	\$115.00
Researcher	\$100.00
Professional Staff	\$95.00
Project Controller 2	\$110.00
Project Controller 1	\$85.00
Project Support Specialist 3	\$105.00
Project Support Specialist 2	\$95.00
Project Support Specialist 1	\$85.00

The above hourly rates are exclusive of local travel/mileage, photocopying, first class postage and overnight courier service. These expenses such as pre-approved travel and lodging, outside exhibit preparation, requested overnight courier or registered and/or certified mail (return receipt requested) charges, and specialty reproduction (unless otherwise specified) will be billed at cost.

Appraisal Type	Firm Fixed Price
Full Narrative Appraisal	\$6,000.00
Appraisal Review for Full Narrative	\$3,000.00
Limited Narrative Appraisal	\$3,200.00
Appraisal Review for Limited Narrative	\$2,500.00
Appraisal Waiver Valuation Report	\$3,000.00
Summary Statement Appraisal	No Cost

If there is a multiple parcel assignment, SMART and Consultant may agree to a discount % off the firm fixed prices above to account for economies of scale. If agreed upon, this would be reflected as a discount % off of the firm fixed price on the resulting invoice.

Litigation Fees

In the event that Monument Row is required to perform any act in relation to litigation arising out of any project with SMART (for example, expert consulting, responding to a complaint, or proceeding with discovery and trial), such services will be invoiced at two times the regular hourly rates.

Title Run-Up

Title run-up is a datedown prior to closing, which will be performed automatically when the files is released to record and is provided at no additional cost.

General Rate Information

Any materials/supplies authorized by SMART will be at cost with receipt documentation.

Any travel authorized under this Agreement will be in accordance with SMART's current Travel Guidelines for Contractors.

Subcontractor services, other than those identified in this Agreement, if any, will be billed at cost with receipt documentation and must receive SMART's prior written approval.

The rates shall be fixed for the first three years. Upon completion of the initial three-year term, and prior to the commencement of each subsequent year, Consultant may, upon 60 days written notice to SMART, request an increase in the rates equal to the Consumer Price Index, San Francisco Area, as reported by the Bureau of Labor Statistics, U.S. Department of Labor, using the month of June for the most recent year. The maximum increase shall be 5%. If Consultant does not submit a request at least 60 days before the start of the succeeding Agreement year, Service Provider waives any CPI increase for that year.

EXHIBIT C STATE OF CALIFORNIA REQUIREMENTS

1. General.

In performance of its obligations pursuant to this Agreement or Purchase Order [Hereinafter "Agreement"], the Contractor, Seller, Service Provider, or Consultant [Hereinafter "Contractor"] agrees to comply with all applicable provisions of the State of California and local law, regulations, and directives. The terms of the most recent amendment to any state or local laws, regulations, directives, and amendments to the grant or cooperative agreement providing funding for this Agreement that may be subsequently adopted, are applicable to the Agreement to the maximum extent feasible, unless the State of California provides otherwise in writing. The State regulations set forth in this Agreement to be observed in the performance of the Agreement are subject to change, and such changed requirements will apply to this Agreement as required. Contractor shall include in its subcontracts, and require its subcontractors of every tier to include in their respective subcontracts, provisions incorporating the requirements of this Attachment. Contractor's failure to comply with these requirements shall constitute a material breach of this Agreement and may result in the withholding of progress payments to the Contractor, in addition to other remedies.

It is the responsibility of the Contractor and its subcontractors to ensure that all clauses included in this Exhibit applicable to the work specified within the Agreement are adhered to by the Contractor and its subcontractors.

2. Access To Records and Reports.

Applicability: All Contracts

Contractor shall comply with the following requirements:

(a) Record Retention. Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-Contracts, leases, subcontracts, arrangements, other third-party Contracts of any type, and supporting materials related to those records.

(b) Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. §200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

(c) Access to Records. The Contractor agrees to provide access to SMART, the State of California, and its contractors to inspect and audit records and information related to

performance of this contract as reasonably may be required. Contractor shall also permit SMART, the State of California, or their authorized representatives, to inspect all project work, materials, payrolls, and other data, and to audit the books, records, and accounts of Contractor and its subcontractors pertaining to the Agreement.

(d) Access to the Site of Performance. The Contractor agrees to permit the State of California and its contractors access to the sites of performance under this contract as reasonably may be required.

(e) State Audit, Inspection, Access to Records and Retention of Records Requirements. Contractor and its subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred costs by line item for the project. Contractor and its subcontractors' accounting systems shall conform to generally accepted accounting principles (GAAP) and all records shall provide a breakdown of total costs charged to the project, including properly executed payrolls, time records, invoices and vouchers as well as all accounting generated reports. Contractor and its subcontractors shall permit representatives of the State and State Auditor to inspect, examine, make excerpts or transcribe Contractor and its subcontractors' work, documents, papers, materials, payrolls, books, records, accounts, any and all data relevant to this Agreement at any reasonable time and to audit and verify statements, invoices or bills submitted by Contractor and its subcontractors pursuant to this Agreement, and shall provide copies thereof upon request and shall provide such assistance as may be reasonably required in the course of such audit or inspection.

The State, its representatives and the State Auditor further reserve the right to examine, inspect, make copies, or excerpts of all work, documents, papers, materials, payrolls, books and accounts, and data pertaining to this Agreement and to inspect and re-examine said work, documents, papers, materials, payrolls, books, records, accounts and data during the life of the Agreement and for the three (3) year period following the final payment under this Agreement, and Contractor and its subcontractors shall in no event dispose of, destroy, alter or mutilate said work, documents, papers, materials, payrolls, books, records, accounts and data in any manner whatsoever for three (3) years after final payment under this Agreement and all pending matters are closed.

Any costs for which Contractors and its subcontractors have received payment that are determined by subsequent audit to be unallowable under the terms of this agreement may be required to be repaid to SMART by the Contractors and its subcontractors. Should Contractor and its subcontractors fail to reimburse money due SMART within 30 days of demand, or within such other period as may be agreed between the parties hereto, SMART is authorized to withhold future payments due Contractor and its subcontractors from any source.

The Contractor agrees that the Contract Cost Principles and Procedures at least as restrictive as 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 *et seq.*, shall be used to determine the allowability of individual items of costs.

The Contractor agrees to comply with Federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements

to State and Local Governments.

Any costs for which payments have been made to the Contractor, which are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 *et seq.*, or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, are subject to repayment by Contractor to SMART.

Any subcontract entered into as a result of this Agreement shall contain all the provisions of this section.

3. **ADA Access**

Applicability: All Construction, Architecture & Engineering, Operations Management, and Rolling Stock Contracts

The contractor agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the State of California, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project or Services.

4. **Civil Rights.**

Applicability: All Contracts

The following Federal Civil Rights laws and regulations apply to the Agreement:

1. **Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:
 - a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
 - b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national

origin.

2. **Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
3. **Nondiscrimination on the Basis of Age.** The “Age Discrimination Act of 1975,” as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.
4. **Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

Civil Rights and Equal Opportunity

The Sonoma-Marín Area Rail Transit District is an Equal Opportunity Employer. As such, SMART agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, SMART agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age.
2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal

Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age.
4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability.
5. **Promoting Free Speech and Religious Liberty.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

The Contractor also agrees to include these requirements in each subcontract.

5. Clean Water Act

Applicability: All Contracts > \$150,000

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Violations must be reported to SMART and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of \$150,000:

Clean Air Act

- a. The contractor agrees to comply with all applicable standards, orders or regulations

issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

- b. The contractor agrees to report each violation to SMART and understands and agrees that SMART will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The contractor agrees to include these requirements in each subcontract exceeding \$150,000.

Federal Water Pollution Control Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to SMART and understands and agrees that SMART will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000.

6. Contract Work Hours and Safety Standards Act.

Applicability: All Operations Management, Service Agreements, Rolling Stock Purchases, and Construction Contracts >\$100,000.

- a. Where applicable (see 40 U.S.C. § 3701 et seq), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II.
- b. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- c. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. SMART shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

7. Davis Bacon Act and Copeland Anti-Kickback Act

Applicability: All Construction Contracts > \$2,000

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, “Labor Standards

Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

8. Debarment and Suspension

Applicability: All Contracts > \$25,000

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount). As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- i. Debarred from participation in any federally assisted Award;
- ii. Suspended from participation in any federally assisted Award;
- iii. Proposed for debarment from participation in any federally assisted Award;
- iv. Declared ineligible to participate in any federally assisted Award;
- v. Voluntarily excluded from participation in any federally assisted Award; or
- vi. Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by SMART. If it is later determined by SMART that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to SMART, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

9. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.

Applicability: All Contracts

- a) SMART, Contractors, and Subcontractors are prohibited from obligating or expending loan or grant funds to:
 - 1) Procure or obtain;
 - 2) Extend or renew a contract to procure or obtain; or
 - 3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - (ii) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - (iii) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - (iv) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- c) See Public Law 115-232, section 889 for additional information.
- d) See also § 200.471.

10. Restrictions on Lobbying

Applicability: All Contracts > \$100,000

Conditions on use of funds.

- (a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or

employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- (b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.
- (c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.
- (d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.
- (e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

Certification and disclosure.

- (a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:
 - (1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or
 - (2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.
- (b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:
 - (1) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or
 - (2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000, Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.
- (c) Each person shall file a disclosure form at the end of each calendar quarter in which

there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

- (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
- (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
- (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

- (1) A subcontract exceeding \$100,000 at any tier under a Federal contract;
- (2) A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;
- (3) A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or,
- (4) A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement, Shall file a certification, and a disclosure form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

11. Safe Operation of Motor Vehicles.

Applicability: All Contracts

Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or SMART.

Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

12. Procurement of Recovered Materials

Applicability: All Contracts > \$10,000

The Contractor agrees to comply with all the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. The Contractor agrees to comply with the U.S. Environmental Protection Agency (US EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials”, 40 CFR Part 247.

13. Special DOL EEO Clause

Applicability: All Construction Contracts > \$10,000

The contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60- 741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

14. Termination.

Applicability: All Contracts > \$10,000

In addition to the Termination provisions contained in the Agreement, the following Termination provisions apply.

(a) Termination for Convenience. SMART may terminate this Agreement, in whole or in part, at any time by written notice to the Contractor when it is in SMART's best interest. The Contractor shall be paid its costs, including Agreement close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to SMART to be paid the Contractor. If the Contractor has any property in its possession belonging to SMART, the Contractor will account for the same, and dispose of it in the manner SMART directs.

(b) Termination for Default [Breach or Cause]. If the Contractor does not deliver supplies in accordance with the Agreement delivery schedule, or, if the Agreement is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, SMART may terminate this Agreement for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the Contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by SMART that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, then SMART, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

(c) Opportunity to Cure. SMART in its sole discretion may, in the case of a termination for breach or default, allow the Contractor up to ten (10) calendar days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to SMART's satisfaction the breach or default of any of the terms, covenants, or conditions of this Agreement within ten (10) calendar days after receipt by Contractor of written notice from SMART setting forth the nature of said breach or default, SMART shall have the right to terminate the Agreement without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude SMART from also pursuing all available remedies against Contractor and its sureties for said breach or default.

(d) Waiver of Remedies for any Breach. In the event that SMART elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Agreement, such waiver by SMART shall not limit SMART's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement.

(e) Termination for Convenience (Professional or Transit Service Contracts) SMART, by written notice, may terminate this contract, in whole or in part, when it is in SMART's best interest. If this contract is terminated, SMART shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

(f) Termination for Default (Supplies and Service) If the Contractor fails to deliver

supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, SMART may terminate this contract for default. SMART shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of SMART.

(g) Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, SMART may terminate this contract for default. SMART shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of SMART's goods, the Contractor shall, upon direction of SMART, protect and preserve the goods until surrendered to SMART or its agent. The Contractor and SMART shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of SMART.

(h) Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, SMART may terminate this contract for default. SMART shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, SMART may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to SMART resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by SMART in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if:

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of another contractor in the performance of a

contract with SMART, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. The Contractor, within [10] days from the beginning of any delay, notifies SMART in writing of the causes of delay. If, in the judgment of SMART, the delay is excusable, the time for completing the work shall be extended. The judgment of SMART shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract.
3. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of SMART.

(i) Termination for Convenience or Default (Architect and Engineering Contracts).

SMART may terminate this contract in whole or in part, for SMART's convenience or because of the failure of the Contractor to fulfill the contract obligations. SMART shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the SMART's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. SMART has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of SMART, SMART's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, SMART may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by SMART.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of SMART.

(j) Termination for Convenience or Default (Cost Type Contracts) SMART may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of SMART or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from SMART, or property supplied to the Contractor by SMART. If the termination is for default, SMART may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of

termination. The Contractor shall promptly submit its termination claim to SMART and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of SMART, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a Notice of Termination for Default, SMART determines that the Contractor has an excusable reason for not performing, SMART, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

15. Violation and Breach of Contract.

Applicability: All Contracts

Rights and Remedies of SMART

The duties and obligations imposed by the Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by SMART or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Rights and Remedies of Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by SMART, the Contractor expressly agrees that no default, act or omission of SMART shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless SMART directs Contractor to do so) or to suspend or abandon performance.

Remedies

Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between SMART and the Contractor arising out of or relating to this Agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within California.

Disputes

Disputes arising in the performance of this Agreement which are not resolved by agreement of the parties shall be decided in writing by SMART's General Manager. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the General Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the General Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance during Dispute

Unless otherwise directed by SMART, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

16. Conformance with National ITS Architecture

Applicability: All ITS Contracts

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards pursuant to 23 CFR § 940. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

17. Severability

Applicability: All Contracts

The Contractor agrees that if any provision of this Agreement or any amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to State of California laws, regulations, requirements, and guidance will continue in effect.

18. Trafficking in Persons

Applicability: All Contracts

The contractor agrees that it and its employees that participate in this contract, may not:

- (a) Engage in severe forms of trafficking in persons during the period of time that the contract is in effect;
- (b) Procure a commercial sex act during the period of time that the contract is in effect;
- or
- (c) Use forced labor in the performance of the contract or subagreements thereunder.

19. Rights to Inventions Made Under a Contract or Agreement.

Applicability: All Research and Development Contracts

Contractor agrees to comply with the requirements of 37 C.F.R. §401.2(a), "Rights to

Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts and Cooperative Agreements” and any implementing regulations issued by SMART.

20. Domestic Preferences for Procurements

Applicability: All Contracts

Contractor shall make every effort to provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). This section must be included in all subcontracts.

For the purposes of this section:

- 1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- 2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

21. Whistleblower Protections

Applicability: All Contracts

An employee of the Contractor or Subcontractor must not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (a)(2) of 41 U.S.C. 4712 information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant. The Contractor and their subcontractors must inform their employees in writing of employee whistleblower rights and protections under 41 U.S.C. 4712. See statutory requirements for whistleblower protections at 10 U.S.C. 4701, 41 U.S.C. 4712, 41 U.S.C. 4304, and 10 U.S.C. 4310.

AGREEMENT FOR CONSULTANT SERVICES

This agreement (“Agreement”), dated as of October 15, 2025 (“Effective Date”) is by and between the Sonoma-Marín Area Rail Transit District (hereinafter “SMART”), and Bender Rosenthal Incorporated whose place of business is located at 2825 Watt Avenue, Suite 200, Sacramento, CA 95821 (hereinafter “Consultant”).

RECITALS

WHEREAS, Consultant represents that it is qualified, licensed, and experienced in the areas of real estate advisory, property rights acquisition services, and related real estate support services; and

WHEREAS, in the judgment of the Board of Directors of SMART or District, it is necessary and desirable to employ the services of Consultant to provide on-call real estate advisory and property rights acquisition support services; and

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

ARTICLE 1. RECITALS.

Section 1.01 The above Recitals are true and correct.

ARTICLE 2. LIST OF EXHIBITS.

Section 2.01 The following exhibits are attached hereto and incorporated herein:

- (a) Exhibit A: Scope of Work & Timeline
- (b) Exhibit B: Schedule of Rates
- (c) Exhibit C: State of California Requirements

ARTICLE 3. REQUEST FOR SERVICES.

Section 3.01 Initiation Conference. SMART’s Real Estate Manager or designee (hereinafter “SMART Manager”) will initiate all requests for services through an Initiation Conference, which may be in person, by telephone, or by email. During the Initiation Conference, the SMART Manager and Consultant will establish and agree on a specific task for the project.

Section 3.02 Amount of Work. SMART does not guarantee a minimum or maximum amount of work under this Agreement.

ARTICLE 4. SCOPE OF SERVICES.

Section 4.01 Scope of Work. Consultant shall perform services within the timeframe outlined in **Exhibit A** (cumulatively referred to as the “Scope of Work”).

Section 4.02 Cooperation With SMART. Consultant shall cooperate with the SMART Manager in the performance of all work hereunder.

Section 4.03 Performance Standard. Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant’s profession. If SMART determines that any of Consultant’s work is not in accordance with such level of competency and standard of care, SMART, in its reasonable discretion, shall have the right to do any or all of the following: (a) require Consultant to meet with SMART to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 7; or (d) pursue any and all other remedies at law or in equity.

Section 4.04 Assigned Personnel.

- (a) Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time SMART, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from SMART.
- (b) Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder on behalf of the Consultant are deemed by SMART to be key personnel whose services were a material inducement to SMART to enter into this Agreement, and without whose services SMART would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of SMART.
- (c) In the event that any of Consultant’s personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant’s control, Consultant shall be responsible for timely provision of adequately qualified replacements.
- (d) Consultant shall assign the following key personnel for the term of this Agreement:
 - Renee Baur, Principal-In-Charge & Project Manager (BRI)
 - Lucas Smith, Negotiation Specialist (BRI)
 - Vivian Thompson, Negotiation Specialist (BRI)
 - David Houghton, Appraisal Manager (BRI)
 - Rebekah Green, Relocation Manager (BRI)
 - Ann Kay, Escrow Officer (First American Title Company)

ARTICLE 5. PAYMENT.

For all services required hereunder, Consultant shall be paid in accordance with the following terms:

Section 5.01 Consultant shall invoice SMART on a monthly basis, detailing the tasks performed pursuant to the Scope of Work requested by the SMART Manager and the hours worked. SMART shall pay Consultant within 30 days after submission of the invoices.

Section 5.02 Consultant shall be paid in accordance with the rates established in **Exhibit B**. The total amount payable by SMART for all Task Orders resulting from this Agreement shall not exceed \$1,650,000.00. Consultant shall submit its invoices in arrears on a monthly basis in a form approved by the Chief Financial Officer. The invoices shall show or include: (i) the Task Order Number and corresponding Purchase Order Number; (ii) the task(s) performed; (iii) the time in quarter hours devoted to the task(s) along with the job classification for the individual(s) performing the task and their corresponding hourly rate or rates (time and material tasks); (iv) firm fixed fees for fixed rate tasks; (v) SBE and DBE Participation and Payment Summary showing the dollar amounts paid to each SBE and DBE firm on the invoice and a running total for the task; and (vi) copies of receipts for reimbursable materials/expenses, if any. All reimbursable expenses must comply with SMART's Travel Guidelines and must receive prior approval. Consultant's reimbursement for materials/expenses shall not include items already included in Consultant's overhead as may be billed as a part of its labor rates set forth in **Exhibit B**. SMART does not reimburse Consultant for travel time.

Section 5.03 Consultant agrees that 48 CFR Part 31, Contract Cost Principles and Procedures and 2 CFR Part 200 shall be used to determine the allowability of individual terms of cost. Any costs for which payment has been made to the Consultant that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the Consultant to SMART.

Section 5.04 Consultant must submit all invoices on a timely basis, but no later than thirty (30) days from the date the services/charges were incurred. District shall not accept invoices submitted by Consultant after the end of such thirty (30) day period without District pre-approval. Time is of the essence with respect to submission of invoices and failure by Consultant to abide by these requirements may delay or prevent payment of invoices or cause such invoices to be returned to the Consultant unpaid.

ARTICLE 6. TERM OF AGREEMENT.

Section 6.01 The term of this Agreement shall remain in effect through October 14, 2028, with two (2) one-year options to extend at SMART sole discretion OR whenever the maximum not-to-exceed amount is reached, whichever occurs first, unless terminated earlier in accordance with the provisions of **Article 7** below. The period of performance for each specific project shall be in accordance with the Task Order for that project. No Task Order will be written which extends beyond the expiration date of this Agreement.

ARTICLE 7. TERMINATION.

Section 7.01 Termination Without Cause. The District's obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the District for any payment may arise until funds are made available by the District for this contract and until the Contractor or Consultant receives notice of such availability, as such and notwithstanding any other provision of this Agreement, at any time and without cause, SMART shall have the right, at their sole discretion, to terminate this Agreement by giving 30 days written notice to the other party.

Section 7.02 Termination for Cause.

- (a) Termination for Cause. Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, SMART may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.
- (b) Opportunity to Cure. In the case of a termination for breach or default, allow the breaching or defaulting party up to ten (10) calendar days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If the breaching or defaulting party fails to remedy to the non-breaching party's satisfaction the breach or default of any of the terms, covenants, or conditions of this Agreement within the timeframe to cure contained in the written notice setting forth the nature of said breach or default, the non-breaching non-defaulting party shall have the right to terminate the Agreement without any further obligation to the other. Any such termination for default shall not in any way operate to preclude the other party from also pursuing all available remedies for said breach or default.

Section 7.03 Delivery of Work Product and Final Payment Upon Termination.

In the event of termination by either party, Consultant, within 14 days following the date of termination, shall deliver to SMART all materials and work product subject to **Section 12.08** and shall submit to SMART an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

Section 7.04 Payment Upon Termination. Upon termination of this Agreement by SMART, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services are to be paid on an hourly or daily basis, then Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to termination times the applicable hourly or daily rate; provided further that if SMART terminates the Agreement for cause pursuant to **Section 7.02**, SMART shall deduct from such amount the amount of damage, if any, sustained by SMART by virtue of the breach of the Agreement by Consultant.

Section 7.05 Authority to Terminate. The Board of Directors has the authority to terminate this Agreement on behalf of SMART. In addition, the General Manager, in consultation with SMART Counsel, shall have the authority to terminate this Agreement on behalf of SMART.

ARTICLE 8. INDEMNIFICATION

Consultant agrees to accept all responsibility for loss or damage to any person or entity, including SMART, and to indemnify, hold harmless, and release SMART, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, to the extent caused by the Consultant's negligence, recklessness or willful misconduct in its performance or obligations under this Agreement. Consultant agrees to provide a complete defense for any claim or action brought against SMART based upon a claim relating to Consultant's performance or obligations under this Agreement. Consultant's obligations under this Section 8 apply whether or not there is concurrent negligence on SMART's part, but to the extent required by law, excluding liability due to SMART's conduct. SMART shall have the right to select its legal counsel at Consultant's expense, subject to Consultant's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

ARTICLE 9. INSURANCE.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its Subcontractors, Consultants, and other agents to maintain, insurance as described below. If the Consultant maintains broader coverage and/or higher limits than the minimums shown below, SMART requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to SMART.

Section 9.01 Workers' Compensation Insurance. Workers' Compensation as required by the State of California, with Statutory Limits, and Employer's Liability insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

Section 9.02 General Liability Insurance. Commercial General Liability insurance covering products-completed and ongoing operations, property damage, bodily injury and personal injury using an occurrence policy form, in an amount no less than \$1,000,000 per occurrence, and \$2,000,000 aggregate.

Section 9.03 Automobile Insurance. Automobile Liability insurance covering bodily injury and property damage in an amount no less than \$1,000,000 combined single limit per accident. Said insurance shall include coverage for owned, hired, and non-owned vehicles.

Section 9.04 Professional Liability Insurance (Errors and Omissions). Professional Liability insurance with limit no less than \$2,000,000 per occurrence or claim, and \$2,000,000 aggregate.

Section 9.05 Endorsements. Prior to commencing work, Consultant shall file Certificate(s) of Insurance with SMART evidencing the required coverage and endorsement(s). Said endorsements and Certificate(s) of Insurance shall stipulate:

- (a) SMART, its officers, and employees shall be named as additional insured on all policies listed above, with the exception of the workers compensation insurance policy and the professional services liability policy (if applicable).
- (b) That the policy(ies) is Primary Insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim which Consultant is liable, up to and including the total limit of liability, without right of contribution from any other insurance effected or which may be effected by the Insureds.
- (c) Inclusion of the Insureds as additional insureds shall not in any way affect its rights either as respects any claim, demand, suit or judgment made, brought or recovered against Consultant. Said policy shall protect Consultant and the Insureds in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.
- (d) Consultant hereby grants to SMART a waiver of any right to subrogation which any insurer of said Consultant may acquire against SMART by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not SMART has received a waiver of subrogation endorsement from the insurer.
- (e) The insurance policy(ies) shall be written by an insurance company or companies acceptable to SMART. Such insurance company shall be authorized to transact business in the state of California.

Section 9.06 Deductibles and Retentions. Consultant shall be responsible for payment of any deductible or retention on Consultant's policies without right of contribution from SMART. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible of retention provision limiting payment to the name insured is not acceptable.

Section 9.07 Claims Made Coverage. If any insurance specified above is written on a claims-made coverage form, Consultant shall:

- (a) Ensure that the retroactive date is shown on the policy, and such date must be before the date of this Agreement or beginning of any work under this Agreement;
- (b) Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and

- (c) If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to Agreement effective date, Consultant shall purchase “extending reporting” coverage for a minimum of three (3) years after completion of the work.

Section 9.08 Documentation. The following documentation shall be submitted to SMART:

- (a) Properly executed Certificates of Insurance clearly evidencing all coverages and limits required above. Said Certificates shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current Certificates of Insurance evidencing the above-required coverages and limits on file with SMART for the duration of this Agreement.”
- (b) Copies of properly executed endorsements required above for each policy. Said endorsement copies shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current endorsements evidencing the above-specified requirements on file with SMART for the duration of this Agreement.
- (c) After the Agreement has been signed, signed Certificates of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.

Please email all renewal certificates of insurance and corresponding policy documents to InsuranceRenewals@sonomamarintrain.org.

Section 9.09 Policy Obligations. Consultant’s indemnity and other obligations shall not be limited by the foregoing insurance requirements.

Section 9.10 Material Breach. If Consultant, for any reason, fails to maintain insurance coverage, which is required pursuant to this Agreement, the same shall be deemed a material breach of this Agreement. SMART, in its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. These remedies shall be in addition to any other remedies available to SMART.

Section 9.11 Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice to SMART.

ARTICLE 10. PROSECUTION OF WORK.

When work is requested of Consultant by SMART, all due diligence shall be exercised and the work accomplished without undue delay, within the performance time specified in the Task Order. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, wildfire, pandemic, and civil unrest or any other similarly unforeseen reason beyond the control of Consultant, the time for Consultant’s performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

ARTICLE 11. EXTRA OR CHANGED WORK.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the SMART Manager in a form approved by SMART Counsel. The Board of Directors or General Manager must authorize all other extra or changed work. The parties expressly recognize that SMART personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of SMART.

ARTICLE 12. REPRESENTATIONS OF CONSULTANT.

Section 12.01 Standard of Care. SMART has relied upon the professional ability and training of Consultant as a material inducement to enter into this Agreement. Consultant hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Consultant's work by SMART shall not operate as a waiver or release.

Section 12.02 Status of Consultant. The parties intend that Consultant, in performing the services specified herein, shall act as an independent Contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of SMART and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits SMART provides its employees. In the event SMART exercises its right to terminate this Agreement pursuant to **Article 7**, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

Section 12.03 Taxes. Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including but not limited to state and federal income and FICA taxes. Consultant agrees to indemnify and hold SMART harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case SMART is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish SMART with proof of payment of taxes on these earnings.

Section 12.04 Records Maintenance. Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to SMART for inspection at any reasonable time. Consultant shall maintain such records for a

period of four (4) years following completion of work hereunder. Consultant and Subconsultants shall permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by the State, for the purpose of any investigation to ascertain compliance with this document.

Section 12.05 Conflict of Interest. Consultant covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by SMART, Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with SMART disclosing Consultant's or such other person's financial interests.

Section 12.06 Nondiscrimination. Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition (including cancer), pregnancy, physical disability (including HIV and AIDS), mental disability, denial of family care leave, sexual orientation or other prohibited basis, including without limitation, SMART's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference. Consultant shall also comply with the provisions of the Fair Employment and Housing Act (California Government Code, Section 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 et seq).

Section 12.07 Assignment Of Rights. Consultant assigns to SMART all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications and work product, if any, now or later prepared for SMART by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to SMART in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as SMART may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of SMART. Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of SMART.

Section 12.08 Ownership And Disclosure Of Work Product. Any and all work product resulting from this Agreement is commissioned by SMART as a work for hire. SMART shall be considered, for all purposes, the author of the work product and shall have all rights of authorship to the work, including, but not limited to, the exclusive right to use, publish, reproduce, copy and make derivative use of, the work product or otherwise grant others limited rights to use the work product. All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by

Consultant and other agents in connection with this Agreement shall be the property of SMART. SMART shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to SMART all such documents, which have not already been provided to SMART in such form or format, as SMART deems appropriate. Such documents shall be and will remain the property of SMART without restriction or limitation. Consultant may retain copies of the above- described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of SMART.

ARTICLE 13. DEMAND FOR ASSURANCE.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this **Article 13** limits SMART's right to terminate this Agreement pursuant to **Article 7**.

ARTICLE 14. ASSIGNMENT AND DELEGATION.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

ARTICLE 15. METHOD AND PLACE OF GIVING NOTICE, SUBMITTING INVOICES AND MAKING PAYMENTS.

All notices, invoices, and payments shall be made in writing and shall be given by personal delivery, U.S. Mail or email. Notices, invoices, and payments shall be addressed as follows:

If to SMART Manager:

Sonoma-Marín Area Rail Transit District
Attn: Randy Friedland
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954
rfriedland@sonomamarintrain.org
707-794-3069

If to SMART Billing:

Sonoma-Marín Area Rail Transit District
Attn: Accounts Payable
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954
billing@sonomamarintrain.org
707-794-3330

If to Consultant:

Bender Rosenthal Incorporated
Attn: Renee Baur
2825 Watt Avenue, Suite 200
Sacramento, CA 95821
r.baur@benderrosenthal.com
916-978-4900 ext. 2005

When a notice, invoice or payment is given by a generally recognized overnight courier service, the notice, invoice or payment shall be deemed received on the next business day. When a copy of a notice, invoice or payment is sent by facsimile or email, the notice, invoice or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, invoice or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, invoices and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

ARTICLE 16. MISCELLANEOUS PROVISIONS.

Section 16.01 Subcontractor Listing. Consultant has listed the following Subcontractors that will be used during the performance of work:

Name of Subcontractor	Description of Work
Sierra West Valuation 312 Natoma Street Folsom, CA 95630	Appraisal Review Services
First American Title Insurance Company 3000 W. Main Street Visalia, CA 93291	Title and Escrow Services

Section 16.02 Use of Recycled Paper. SMART requires that all printing jobs produced under this Agreement be printed on recycled content papers. Recycled-content papers are defined as papers containing a minimum of 30 percent postconsumer fiber by weight. All papers used in the performance of a print job for SMART shall be recycled-content paper. The recycle logo or "chasing arrows" cannot be used on printed material unless the paper contains a minimum of 30 percent postconsumer material. If paper meets the 30 percent requirement, ask that the recycling logo be printed on the project.

Section 16.03 No Waiver of Breach. The waiver by either Party of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term

or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

Section 16.04 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and SMART acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and SMART acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

Section 16.05 Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

Section 16.06 Licensing Laws. The Consultant and all subcontractors shall be appropriately licensed in the State of California for all work performed under this Agreement and any Consultant not so licensed is subject to the penalties imposed by applicable federal, state, and local laws. Consultant and all subcontractors shall maintain active licenses that are in good standing with all applicable regulatory agencies.

Section 16.07 Drug-Free Workplace. Consultant certifies that it will provide a drug-free workplace in compliance with Government Code §8350-§8357.

Section 16.08 Relationships of the Parties: No Intended Third-Party Beneficiaries. The Parties intend by this Agreement to establish a cooperative funding relationship, and do not intend to create a partnership, joint, venture, joint enterprise, or any other business relationship. There is no third person or entity who is an intended third-party beneficiary under this Agreement. No incidental beneficiary, whatever relationship such person may have with the Parties, shall have any right to bring an action or suit, or to assert any claim against the Parties under this Agreement. Nothing contained in this Agreement shall be construed to create and the Parties do not intend to create any rights in third parties.

Section 16.09 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Venue for any action to enforce the terms of this Agreement or for the breach thereof shall be in the Superior Court of the State of California in the County of Marin.

Section 16.10 Use of SMART Name and Logo Restrictions. Consultant is prohibited from using SMART's name and logo unless expressly authorized herein or by written authorization from SMART's legal counsel.

Section 16.11 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

Section 16.12 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

Section 16.13 Acceptance of Electronic Signatures and Counterparts. The parties agree that this Contract, Agreements ancillary to this Contract, and related documents to be entered into this Contract will be considered executed when all parties have signed this Agreement. Signatures delivered by scanned image as an attachment to electronic mail or delivered electronically through the use of programs such as DocuSign must be treated in all respects as having the same effect as an original signature. Each party further agrees that this Contract may be executed in two or more counterparts, all of which constitute one and the same instrument.

Section 16.14 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

CONSULTANT: BENDER ROSENTHAL INCORPORATED

By: _____
Renee Baur, Chief Executive Officer

Date: _____

SONOMA-MARIN AREA RAIL TRANSIT (SMART)

By: _____
Eddy Cumins, General Manager

Date: _____

**CERTIFICATES OF INSURANCE ON FILE WITH AND
APPROVED AS TO SUBSTANCE FOR SMART:**

By: _____
Ken Hendricks, Procurement and Contracts Manager

Date: _____

APPROVED AS TO FORM FOR SMART:

By: _____
District Counsel

Date: _____

EXHIBIT A

SCOPE OF WORK & TIMELINE

I. Overview

The Sonoma-Marín Area Rail Transit District (SMART) is contracting with Bender Rosenthal Incorporated to provide on-call real estate advisory and property rights acquisition support services.

A. Objective:

From time to time, SMART may require right-of-way and real estate services including advisory, negotiations, acquisitions, relocations, valuation, title and closing activities, along with correlating litigation support. Consultant shall be ready to support SMART's needs when they arise and shall be well-versed in performing these services according to current California Department of Transportation ("CalTrans") policies and procedures and other applicable state and local laws and regulations.

II. Contract Management

All work shall be initiated, scheduled, and reviewed by SMART's Real Estate Manager, or designee. Work will be initiated through written Task Orders. All work performed under this contract will require a Task Order to be executed and issued prior to work commencing. Any work performed outside of a fully executed Task Order will not be reimbursed.

Two firms were awarded a contract resulting from the original solicitation process to serve as SMART's On-Call Real Estate Advisory and Property Rights Acquisition Support Services bench. The SMART Manager will present each task order's scope of work to each firm for Proposal. The request shall clearly describe each task required, the schedule for completion, deliverables, and acceptance criteria, as well as provide evaluation criteria for how SMART will evaluate Proposals. Whichever firm and Proposal SMART determines is best suited for each task based on the established evaluation criteria will be awarded the Task Order for that work. The not-to-exceed amount of \$1,650,000 is the maximum amount SMART may award across the entirety of both contracted firms.

III. Scope of Work

Consultant may be tasked with performing any of the following real estate and property rights acquisition support services when issued a Task Order:

A. Basic Real Estate Support Services

This work may involve supporting SMART's Real Estate Department in various real property related activities such as; public workshops or meetings; title reports; valuation waiver reports; appraisals; appraisal reviews; negotiations (initial and follow-up contact with property owners); arm's length transaction negotiations with owners; (i.e. pre-condemnation determination); preparation of correspondence, diaries, forms, agreements, document preparation; closings; recordation; condemnation; relocation assistance services and related services, and performance of other real estate consulting services and related matters as requested by SMART. This work may include providing litigation support services, including property rights research; title searches, obtaining preliminary title reports, appraisal/appraisal reviews, expert witness services, testimony and other legal administrative services in connection with acquiring properties or securing property rights.

B. Project Scoping & Development Phase Services.

1. Individual outreach to property owners
2. Agreements of Understanding
3. Participation in Public Meetings
4. Real Property Research

C. Right-of-Way Phase Services.

1. Perform title research and prepare title reports for impacted properties.
2. Perform valuation waiver reports and/or appraisals and/or appraisal reviews as appropriate.
3. Negotiate with impacted property owners and provide documentation of meeting minutes.
4. Prepare all closing documentation and record all negotiated settlements.
5. Recommend a course of action (up to and including condemnation for any settlements that cannot be successfully negotiated and assist in the execution of chosen course of action.
6. Provide relocation assistance and advisory services in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the "Federal Act") and Chapter 10 of CalTrans' Right-of-Way Manual.

IV. SMART's Reservation of Rights

While it is SMART's intent to utilize Consultant for all on-call real estate advisory and property rights acquisition support tasks that the agency may require, SMART does reserve the right to contract separately with another Consultant when required by

grant and/or the granting entity, when any action of the California Public Utilities Commission or other regulatory agency dictates, when work was previously done on any portion of a parcel by another Consultant and SMART desires to use that Consultant for consistency, and when SMART's legal counsel determines a different Consultant is in the best interest of the District for a particular task or tasks factoring in litigation needs.

If SMART determines contracting with a separate Consultant is necessary or required and competes these services, Consultant may submit a Proposal as long as it does not have an organizational or other conflict of interest.

Real-estate support services related to SMART-owned parcels for sale and individual properties proposed for purchase by SMART for office or maintenance are generally excluded from this Agreement; however, SMART may at its sole discretion authorize a Task Order to be awarded to Consultant if determined it is in the best interest of the District to do so.

V. Timeline for Each Requirement / Task

All deliverables and timelines for work will be clearly described in each task order and shall be mutually agreed upon by SMART and Consultant in writing prior to the start of any work performed.

VI. Acceptance Criteria

The SMART Manager or designee responsible for each Task Order shall review work performed by the Consultant to ensure performed work meets the requirements of each task order. SMART shall not pay the Consultant for the Consultant's work under this Contract and the charges incurred by the Consultant that does not confirm to the requirements specified in this Contract and to the applicable Task Order, and such work shall be corrected at the Consultant's sole expense at no additional cost to SMART. Upon successful completion and acceptance of work, the SMART Manager shall provide written acceptance of the work and recommend submission of the invoice for review.

**EXHIBIT B
SCHEDULE OF RATES**

Name / Classification	Fully Burdened Hourly Rate
Renee Baur – Principal Project Manager	\$266.00
Senior Project Manager	\$239.00
Project Manager	\$202.00
Assistant Project Manager	\$160.00
David Houghton - Sr. Designated Member (MAI/SRA/AI-GRS/ARA)	\$234.00
Designated Member (MAI/SRA/AI-GRS/ARA)	\$207.00
Senior Appraiser	\$186.00
Appraiser	\$160.00
Senior Right of Way Specialist	\$186.00
Lucas Smith - Senior Acquisition Agent	\$160.00
Vivian Thompson - Senior Acquisition Agent	\$160.00
Acquisition Agent	\$128.00
Rebekah Green – Senior Relocation Agent	\$170.00
Relocation Agent	\$153.00
Senior Project Coordinator	\$144.00
Project Coordinator	\$106.00
Senior Land Agent	\$134.00
Land Agent	\$106.00
Researcher	\$96.00
Administrative Support II	\$91.00
Administrative Support I	\$75.00

Appraisal Type	Firm Fixed Price
Full Narrative Appraisal	\$4,500.00
Appraisal Review for Full Narrative	\$1,500.00
Limited Narrative Appraisal	\$3,600.00
Appraisal Review for Limited (Restricted) Narrative Appraisal	\$1,200.00
Appraisal Waiver Valuation Report	\$2,200.00
Summary Statement Appraisal	No Cost

Acquisition Unit Fees	Firm Fixed Price
Permit to Enter / Right of Entry	\$1,200.00
Permit to Enter and Construct	\$1,800.00
Lease / License	\$2,000.00
Joint Use Agreement	\$2,000.00
Temporary Construction Easement – Refer to Milestone Billing Schedule	\$3,200.00
Partial Acquisition - Refer to Milestone Billing Schedule	\$3,500.00
Full Acquisition - Refer to Milestone Billing Schedule	\$3,500.00

Other ROW Services – Base Unit Fees	Firm Fixed Price
Preliminary Title Report	\$900.00
Right-of-Way Estimate / Data Sheet	\$5,000.00
Escrow – Refer to Milestone Billing Schedule	\$1,200.00
Right-of-Way Certification	\$2,500.00

Milestone Billing - Temporary Construction Easement	Firm Fixed Price
Offer Package Sent	\$1,350.00
Sixty (60) Days or when an Agreement is Reached, whichever is Sooner	\$1,350.00
Final Project Closeout; Files Transmitted	\$500.00

Milestone Billing - Acquisition	Firm Fixed Price
Offer Package Sent	\$1,500.00
Sixty (60) Days or when an Agreement is Reached, whichever is Sooner	\$1,500.00
Final Project Closeout; Files Transmitted	\$500.00

Project Management, Condemnation Support or Extended Escrow will be billed as Time & Materials.

Milestone Billing - Escrow	Firm Fixed Price
Funds deposited into escrow	\$600.00
Escrow Closes	\$600.00

Escrow Services are comprehensive and include the following subtasks:

- Ensure that all parties who are mentioned as vested owners are the property owners and have the authority to sign the acquisition documents.
- If the vesting is in an entity (Corporation, LLC, Trust, Partnership, etc.), ensure that they provide their entity documents to demonstrate proof of authority.
- Remove any title exceptions that are not in the acquisition area.
- Prepare all necessary conveyance documents; demand and release of liens and encumbrances.
- Ensure that all conditions precedent and conditions subsequent provided for in the Purchase Agreement are met and satisfied prior to the close of escrow.
- Coordinate with the escrow company and file all applicable forms and documents.
- At the close of escrow, ensure that the escrow company issues an Owner's Policy of Title Insurance effectively insuring SMART's interest and ownership of the property or property interests acquired.

General Rate Information

Any materials/supplies authorized by SMART will be at cost with receipt documentation.

Any travel authorized under this Agreement will be in accordance with SMART's current Travel Guidelines for Contractors.

The rates shall be fixed for the first three years. Upon completion of the initial three-year term, and prior to the commencement of each subsequent year, Consultant may, upon 60 days written notice to SMART, request an increase in the rates equal to the Consumer Price Index, San Francisco Area, as reported by the Bureau of Labor Statistics, U.S. Department of Labor, using the month of June for the most recent year. The maximum increase shall be 5%. If Consultant does not submit a request at least 60 days before the start of the succeeding Agreement year, Service Provider waives any CPI increase for that year.

TITLE INSURANCE RATES AND FEES ON NEXT PAGE

CALIFORNIA SCHEDULE OF TITLE INSURANCE RATES & FEES
(FIRST AMERICAN TITLE INSURANCE COMPANY)

- where the Company is performing primary escrow services, recording services other than those invoiced by a third party either per transaction or per document.

Basic Escrow Services do not include the following services:

- notary and signing services;
- interest bearing account set-up;
- delivery charges and messenger charges not included in Basic Escrow Services required or requested by someone other than the Company;
- additional Fee for Escrows involving I.R.C. § 1031 Exchanges as set forth in Section C-E-7 below;
- charges for services obtained from a third party (other than the Company) and not otherwise specifically included in this Schedule;
- recording charges, transfer taxes or any other governmental charges, including any charges imposed by The Building Homes and Jobs Act (effective January 1, 2018); and
- other than for a transaction serviced by the First American Mortgage Solutions Group division of the Company, recording services invoiced by a third party either per transaction or per document.

C-E-2) COMMERCIAL SALE ESCROW FEE

- (a) **ESCROW REGION 1:** For use in the following counties: **Alpine, Amador, Calaveras, El Dorado, Fresno, Kern, Kings, Madera, Mariposa, Merced, Stanislaus, Tulare, and Tuolumne.**

Amount of Insurance Up to and Including:	Fee
\$60,000	\$775
\$100,000	\$925
\$150,000	\$1,000
\$200,000	\$1,050
\$250,000	\$1,100
\$300,000	\$1,150
\$350,000	\$1,200
\$400,000	\$1,250
\$450,000	\$1,300
\$500,000	\$1,350
\$550,000	\$1,400

Amount of Insurance Up to and Including:	Fee
\$600,000	\$1,450
\$650,000	\$1,550
\$700,000	\$1,610
\$750,000	\$1,725
\$800,000	\$1,840
\$850,000	\$1,955
\$900,000	\$2,070
\$950,000	\$2,185
\$1,000,000	\$2,300
\$2,000,000	\$2,700
\$3,000,000	\$3,200

C-G-5) LITIGATION GUARANTEE (CLTA GUARANTEE FORM NO. 1)

100% of the Commercial Basic Title Insurance Rate, based upon the value of the estate or interest involved, with a minimum of \$500.

A continuation report (CLTA Guarantee Form No. 2) may be issued within twenty-four (24) months from the date of the original guarantee for a Rate of \$100.

Where it is necessary to reissue a previously issued trustee's sale guarantee as a litigation guarantee or vice versa, or to reissue any such guarantee for the benefit of a newly substituted trustee, the Rate shall be \$100.

C-G-6) CHAIN OF TITLE GUARANTEE (CLTA GUARANTEE FORM NO.6)

\$250, plus \$5 for each item reported over 100, subject to a minimum Rate of \$250. The amount of insurance shall be \$1,000. For amount of insurance in excess of \$1,000, the Rate shall be calculated using the Commercial Basic Title Insurance Rate, with a minimum of \$250.

C-G-7) MECHANIC'S LIEN GUARANTEE (CLTA GUARANTEE FORM NO. 9)

\$75 per parcel, plus \$5 for each lien over two reported. The amount of insurance shall be equal to the calculated Rate rounded up to the next \$100.

C-G-8) JUDGMENT AND TAX LIEN GUARANTEE (CLTA GUARANTEE FORM NO. 10)

\$75 per name (husband and wife or registered domestic partners considered one name), plus \$5 for each lien over two reported. The amount of insurance shall be equal to the calculated Rate rounded up to the next \$100.

C-G-9) PERSONAL PROPERTY ENCUMBRANCE GUARANTEE (CLTA GUARANTEE FORM NO. 11)

\$35 per name (husband and wife or registered domestic partners considered one name), per year, with a minimum of \$100. \$25 for a continuation guarantee to cover the recordation of additional documents.

The amount of insurance shall be equal to the calculated Rate rounded up to the next \$100.

Amounts of insurance in excess of this amount may be provided for an additional Rate of 60% of the Commercial Basic Title Insurance Rate.

C-G-10) LOT BOOK GUARANTEE (CLTA GUARANTEE FORM NO. 12)

(a) Long Form

\$75 per parcel for furnishing the name of the record owner and recorded deeds of trust or mortgages affecting the land, plus \$5 per document to include any of the following documents, subject to a minimum Rate of \$250:

Agreement Not to Encumber	Homestead
Agreement to Convey	Lien Contract
Assignment of Rents	Notice of Completion

C-G-21) LENDER'S DATE-DOWN GUARANTEE

The Lender's Date-Down Guarantee shall be issued with an amount of insurance of \$1,000. The Rate for the guarantee is \$150.

If within one year from the date of the guarantee: (1) a Trustee's Sale Guarantee is ordered by the assured, or (2) a policy of title insurance is ordered by the assured insuring the title to the estate or interest created by a deed in lieu of foreclosure, either of which describe all or a portion of the same land described in the guarantee, the entire Rate paid for the guarantee may be credited towards the Rate for the Trustee's Sale Guarantee, or the policy of title insurance, as the case may be.

C-G-22) CONSTRUCTION LOAN DISBURSEMENT GUARANTEE

The Construction Loan Disbursement Guarantee can be issued in place of a CLTA 122 endorsement to cover Construction Loan disbursements during the construction period. It can be issued to the construction lender regardless of which title insurer issued the policy of title insurance insuring the Construction Loan. It is a requirement of the Company that a policy of title insurance must have been issued by some title insurer insuring the Construction Loan in order for this guarantee to be issued. The Rate for this guarantee shall be 10% of the Commercial Basic Title Insurance Rate, based upon the amount of the advance, with a minimum of \$100 per guarantee, and a maximum of \$300 per guarantee.

C-G-23) MARITAL PROPERTY GUARANTEE

The Marital Property Guarantee shall be issued on real property with an amount of insurance of \$25,000 for a Rate of \$175. Additional Guarantees shall be issued on additional real property with the same ownership with an amount of insurance of \$25,000 for a Rate of \$150.

C-G-24) ADDITIONAL INSURANCE

Provided underwriting approval is obtained, amounts of insurance for a guarantee in excess of the amount shown in this section may be provided for an additional Rate based upon the amount of insurance, as follows: 25% of the Commercial Basic Title Insurance Rate for guarantees naming an owner as assured; 10% of the Commercial Basic Title Insurance Rate for guarantees naming a lender as assured. Maximum Rates shown in this section do not apply if additional amounts of insurance is requested.

C-G-25) CONDITION OF TITLE GUARANTEE (CLTA GUARANTEE FORM NO. 28)

The Condition of Title Guarantee (CLTA 28) shall be issued on real property with a maximum Guarantee of \$2,500 for a Rate of \$400 for Residential single parcel properties and \$500 for Commercial single parcel properties. For each additional and contiguous parcel, a Rate of \$400 shall apply.

A continuation report (CLTA Guarantee Form No. 2) may be issued within twenty-four (24) months from the date of the original guarantee for a Rate of \$100.

COMMERCIAL BASIC TITLE INSURANCE RATE

COMMERCIAL BASIC TITLE INSURANCE RATE							
Amount of Insurance Up to and Including	Rate	Amount of Insurance Up to and Including	Rate	Amount of Insurance Up to and Including	Rate	Amount of Insurance Up to and Including	Rate
\$30,000	\$400	\$430,000	\$1,283	\$830,000	\$1,922	\$1,230,000	\$2,460
40,000	400	440,000	1,300	840,000	1,939	1,240,000	2,472
50,000	400	450,000	1,317	850,000	1,954	1,250,000	2,484
60,000	458	460,000	1,334	860,000	1,969	1,260,000	2,496
70,000	493	470,000	1,351	870,000	1,984	1,270,000	2,508
80,000	530	480,000	1,368	880,000	1,999	1,280,000	2,520
90,000	565	490,000	1,385	890,000	2,015	1,290,000	2,532
100,000	603	500,000	1,402	900,000	2,030	1,300,000	2,544
110,000	626	510,000	1,415	910,000	2,047	1,310,000	2,556
120,000	649	520,000	1,431	920,000	2,062	1,320,000	2,568
130,000	673	530,000	1,447	930,000	2,077	1,330,000	2,580
140,000	696	540,000	1,463	940,000	2,092	1,340,000	2,592
150,000	719	550,000	1,479	950,000	2,108	1,350,000	2,604
160,000	742	560,000	1,495	960,000	2,123	1,360,000	2,616
170,000	765	570,000	1,510	970,000	2,138	1,370,000	2,628
180,000	789	580,000	1,526	980,000	2,153	1,380,000	2,640
190,000	811	590,000	1,542	990,000	2,168	1,390,000	2,652
200,000	839	600,000	1,558	1,000,000	2,184	1,400,000	2,664
210,000	858	610,000	1,572	1,010,000	2,196	1,410,000	2,676
220,000	881	620,000	1,587	1,020,000	2,208	1,420,000	2,688
230,000	903	630,000	1,603	1,030,000	2,220	1,430,000	2,700
240,000	926	640,000	1,619	1,040,000	2,232	1,440,000	2,712
250,000	948	650,000	1,635	1,050,000	2,244	1,450,000	2,724
260,000	970	660,000	1,651	1,060,000	2,256	1,460,000	2,736
270,000	993	670,000	1,667	1,070,000	2,268	1,470,000	2,748
280,000	1,015	680,000	1,682	1,080,000	2,280	1,480,000	2,760
290,000	1,038	690,000	1,698	1,090,000	2,292	1,490,000	2,772
300,000	1,060	700,000	1,714	1,100,000	2,304	1,500,000	2,784
310,000	1,069	710,000	1,728	1,110,000	2,316	1,510,000	2,787
320,000	1,086	720,000	1,744	1,120,000	2,328	1,520,000	2,798
330,000	1,103	730,000	1,759	1,130,000	2,340	1,530,000	2,809
340,000	1,120	740,000	1,775	1,140,000	2,352	1,540,000	2,821
350,000	1,137	750,000	1,791	1,150,000	2,364	1,550,000	2,832
360,000	1,154	760,000	1,807	1,160,000	2,376	1,560,000	2,843
370,000	1,171	770,000	1,823	1,170,000	2,388	1,570,000	2,854
380,000	1,189	780,000	1,839	1,180,000	2,400	1,580,000	2,866
390,000	1,206	790,000	1,854	1,190,000	2,412	1,590,000	2,877
400,000	1,223	800,000	1,870	1,200,000	2,424	1,600,000	2,888
410,000	1,250	810,000	1,891	1,210,000	2,436	1,610,000	2,892
420,000	1,266	820,000	1,907	1,220,000	2,448	1,620,000	2,903

COMMERCIAL BASIC TITLE INSURANCE RATE							
Amount of Insurance Up to and Including	Rate	Amount of Insurance Up to and Including	Rate	Amount of Insurance Up to and Including	Rate	Amount of Insurance Up to and Including	Rate
\$1,630,000	\$2,914	\$2,030,000	\$3,348	\$2,430,000	\$3,588	\$2,830,000	\$3,828
1,640,000	2,925	2,040,000	3,354	2,440,000	3,594	2,840,000	3,834
1,650,000	2,937	2,050,000	3,360	2,450,000	3,600	2,850,000	3,840
1,660,000	2,948	2,060,000	3,366	2,460,000	3,606	2,860,000	3,846
1,670,000	2,959	2,070,000	3,372	2,470,000	3,612	2,870,000	3,852
1,680,000	2,971	2,080,000	3,378	2,480,000	3,618	2,880,000	3,858
1,690,000	2,982	2,090,000	3,384	2,490,000	3,624	2,890,000	3,864
1,700,000	2,993	2,100,000	3,390	2,500,000	3,630	2,900,000	3,870
1,710,000	3,001	2,110,000	3,396	2,510,000	3,636	2,910,000	3,876
1,720,000	3,013	2,120,000	3,402	2,520,000	3,642	2,920,000	3,882
1,730,000	3,023	2,130,000	3,408	2,530,000	3,648	2,930,000	3,888
1,740,000	3,035	2,140,000	3,414	2,540,000	3,654	2,940,000	3,894
1,750,000	3,047	2,150,000	3,420	2,550,000	3,660	2,950,000	3,900
1,760,000	3,058	2,160,000	3,426	2,560,000	3,666	2,960,000	3,906
1,770,000	3,069	2,170,000	3,432	2,570,000	3,672	2,970,000	3,912
1,780,000	3,080	2,180,000	3,438	2,580,000	3,678	2,980,000	3,918
1,790,000	3,091	2,190,000	3,444	2,590,000	3,684	2,990,000	3,924
1,800,000	3,102	2,200,000	3,450	2,600,000	3,690	3,000,000	3,930
1,810,000	3,116	2,210,000	3,456	2,610,000	3,696		
1,820,000	3,127	2,220,000	3,462	2,620,000	3,702		
1,830,000	3,138	2,230,000	3,468	2,630,000	3,708		
1,840,000	3,149	2,240,000	3,474	2,640,000	3,714		
1,850,000	3,160	2,250,000	3,480	2,650,000	3,720		
1,860,000	3,171	2,260,000	3,486	2,660,000	3,726		
1,870,000	3,183	2,270,000	3,492	2,670,000	3,732		
1,880,000	3,194	2,280,000	3,498	2,680,000	3,738		
1,890,000	3,205	2,290,000	3,504	2,690,000	3,744		
1,900,000	3,216	2,300,000	3,510	2,700,000	3,750		
1,910,000	3,229	2,310,000	3,516	2,710,000	3,756		
1,920,000	3,241	2,320,000	3,522	2,720,000	3,762		
1,930,000	3,252	2,330,000	3,528	2,730,000	3,768		
1,940,000	3,263	2,340,000	3,534	2,740,000	3,774		
1,950,000	3,274	2,350,000	3,540	2,750,000	3,780		
1,960,000	3,285	2,360,000	3,546	2,760,000	3,786		
1,970,000	3,296	2,370,000	3,552	2,770,000	3,792		
1,980,000	3,308	2,380,000	3,558	2,780,000	3,798		
1,990,000	3,319	2,390,000	3,564	2,790,000	3,804		
2,000,000	3,330	2,400,000	3,570	2,800,000	3,810		
2,010,000	3,336	2,410,000	3,576	2,810,000	3,816		
2,020,000	3,342	2,420,000	3,582	2,820,000	3,822		
For each \$10,000 above \$3,000,000 and up to and including \$5,000,000 add \$6.00							
For amounts of insurance above \$5,000,000 see Section C-D Major Projects.							

EXHIBIT C STATE OF CALIFORNIA REQUIREMENTS

1. General.

In performance of its obligations pursuant to this Agreement or Purchase Order [Hereinafter "Agreement"], the Contractor, Seller, Service Provider, or Consultant [Hereinafter "Contractor"] agrees to comply with all applicable provisions of the State of California and local law, regulations, and directives. The terms of the most recent amendment to any state or local laws, regulations, directives, and amendments to the grant or cooperative agreement providing funding for this Agreement that may be subsequently adopted, are applicable to the Agreement to the maximum extent feasible, unless the State of California provides otherwise in writing. The State regulations set forth in this Agreement to be observed in the performance of the Agreement are subject to change, and such changed requirements will apply to this Agreement as required. Contractor shall include in its subcontracts, and require its subcontractors of every tier to include in their respective subcontracts, provisions incorporating the requirements of this Attachment. Contractor's failure to comply with these requirements shall constitute a material breach of this Agreement and may result in the withholding of progress payments to the Contractor, in addition to other remedies.

It is the responsibility of the Contractor and its subcontractors to ensure that all clauses included in this Exhibit applicable to the work specified within the Agreement are adhered to by the Contractor and its subcontractors.

2. Access To Records and Reports.

Applicability: All Contracts

Contractor shall comply with the following requirements:

(a) Record Retention. Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-Contracts, leases, subcontracts, arrangements, other third-party Contracts of any type, and supporting materials related to those records.

(b) Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. §200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

(c) Access to Records. The Contractor agrees to provide access to SMART, the State of California, and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required. Contractor shall also permit SMART, the State of California, or their authorized representatives, to inspect all project work, materials, payrolls, and other data, and to audit the books, records, and accounts of Contractor and its subcontractors pertaining to the Agreement.

(d) Access to the Site of Performance. The Contractor agrees to permit the State of California and its contractors access to the sites of performance under this contract as reasonably may be required.

(e) State Audit, Inspection, Access to Records and Retention of Records Requirements. Contractor and its subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred costs by line item for the project. Contractor and its subcontractors' accounting systems shall conform to generally accepted accounting principles (GAAP) and all records shall provide a breakdown of total costs charged to the project, including properly executed payrolls, time records, invoices and vouchers as well as all accounting generated reports. Contractor and its subcontractors shall permit representatives of the State and State Auditor to inspect, examine, make excerpts or transcribe Contractor and its subcontractors' work, documents, papers, materials, payrolls, books, records, accounts, any and all data relevant to this Agreement at any reasonable time and to audit and verify statements, invoices or bills submitted by Contractor and its subcontractors pursuant to this Agreement, and shall provide copies thereof upon request and shall provide such assistance as may be reasonably required in the course of such audit or inspection.

The State, its representatives and the State Auditor further reserve the right to examine, inspect, make copies, or excerpts of all work, documents, papers, materials, payrolls, books and accounts, and data pertaining to this Agreement and to inspect and re-examine said work, documents, papers, materials, payrolls, books, records, accounts and data during the life of the Agreement and for the three (3) year period following the final payment under this Agreement, and Contractor and its subcontractors shall in no event dispose of, destroy, alter or mutilate said work, documents, papers, materials, payrolls, books, records, accounts and data in any manner whatsoever for three (3) years after final payment under this Agreement and all pending matters are closed.

Any costs for which Contractors and its subcontractors have received payment that are determined by subsequent audit to be unallowable under the terms of this agreement may be required to be repaid to SMART by the Contractors and its subcontractors. Should Contractor and its subcontractors fail to reimburse money due SMART within 30 days of demand, or within such other period as may be agreed between the parties hereto, SMART is authorized to withhold future payments due Contractor and its subcontractors from any source.

The Contractor agrees that the Contract Cost Principles and Procedures at least as restrictive as 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 *et seq.*, shall be used to determine the allowability of individual items of costs.

The Contractor agrees to comply with Federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Any costs for which payments have been made to the Contractor, which are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 *et seq.*, or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, are subject to repayment by Contractor to SMART.

Any subcontract entered into as a result of this Agreement shall contain all the provisions of this section.

3. **ADA Access**

Applicability: All Construction, Architecture & Engineering, Operations Management, and Rolling Stock Contracts

The contractor agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the State of California, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project or Services.

4. **Civil Rights.**

Applicability: All Contracts

The following Federal Civil Rights laws and regulations apply to the Agreement:

1. **Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:
 - a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
 - b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal

Employment Opportunity,” September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

2. **Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
3. **Nondiscrimination on the Basis of Age.** The “Age Discrimination Act of 1975,” as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.
4. **Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

Civil Rights and Equal Opportunity

The Sonoma-Marín Area Rail Transit District is an Equal Opportunity Employer. As such, SMART agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, SMART agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age.
2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the

Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age.
4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability.
5. **Promoting Free Speech and Religious Liberty.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

The Contractor also agrees to include these requirements in each subcontract.

5. Clean Water Act

Applicability: All Contracts > \$150,000

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the Federal Water

Pollution Control Act as amended (33 U.S.C. § 1251-1387). Violations must be reported to SMART and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of \$150,000:

Clean Air Act

- a. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- b. The contractor agrees to report each violation to SMART and understands and agrees that SMART will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The contractor agrees to include these requirements in each subcontract exceeding \$150,000.

Federal Water Pollution Control Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to SMART and understands and agrees that SMART will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000.

6. Contract Work Hours and Safety Standards Act.

Applicability: All Operations Management, Service Agreements, Rolling Stock Purchases, and Construction Contracts >\$100,000.

- a. Where applicable (see 40 U.S.C. § 3701 et seq), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II.
- b. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

- c. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. SMART shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

7. Davis Bacon Act and Copeland Anti-Kickback Act

Applicability: All Construction Contracts > \$2,000

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

8. Debarment and Suspension

Applicability: All Contracts > \$25,000

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount). As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- i. Debarred from participation in any federally assisted Award;
- ii. Suspended from participation in any federally assisted Award;
- iii. Proposed for debarment from participation in any federally assisted Award;
- iv. Declared ineligible to participate in any federally assisted Award;
- v. Voluntarily excluded from participation in any federally assisted Award; or
- vi. Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by SMART. If it is later determined by SMART that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to SMART, the Federal Government may pursue available remedies, including but not limited to suspension

and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

9. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.

Applicability: All Contracts

- a) SMART, Contractors, and Subcontractors are prohibited from obligating or expending loan or grant funds to:
 - 1) Procure or obtain;
 - 2) Extend or renew a contract to procure or obtain; or
 - 3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- (ii) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- (iii) Telecommunications or video surveillance services provided by such entities or using such equipment.
- (iv) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- c) See Public Law 115-232, section 889 for additional information.

d) See also § 200.471.

10. Restrictions on Lobbying

Applicability: All Contracts > \$100,000

Conditions on use of funds.

- (a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.
- (c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.
- (d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.
- (e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

Certification and disclosure.

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

- (1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000;
or

(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

- (1) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or
- (2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000, Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

- (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
- (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
- (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

- (1) A subcontract exceeding \$100,000 at any tier under a Federal contract;
- (2) A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;
- (3) A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or,
- (4) A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement, Shall file a certification, and a disclosure form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

11. Safe Operation of Motor Vehicles.

Applicability: All Contracts

Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or SMART.

Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

12. Procurement of Recovered Materials

Applicability: All Contracts > \$10,000

The Contractor agrees to comply with all the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. The Contractor agrees to comply with the U.S. Environmental Protection Agency (US EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials”, 40 CFR Part 247.

13. Special DOL EEO Clause

Applicability: All Construction Contracts > \$10,000

The contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60- 741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

14. Termination.

Applicability: All Contracts > \$10,000

In addition to the Termination provisions contained in the Agreement, the following Termination provisions apply.

(a) Termination for Convenience. SMART may terminate this Agreement, in whole or in part, at any time by written notice to the Contractor when it is in SMART's best interest. The Contractor shall be paid its costs, including Agreement close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to SMART to be paid the Contractor. If the Contractor has any property in its possession belonging to SMART, the Contractor will account for the same, and dispose of it in the manner SMART directs.

(b) Termination for Default [Breach or Cause]. If the Contractor does not deliver supplies in accordance with the Agreement delivery schedule, or, if the Agreement is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, SMART may terminate this Agreement for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the Contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by SMART that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, then SMART, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

(c) Opportunity to Cure. SMART in its sole discretion may, in the case of a termination for breach or default, allow the Contractor up to ten (10) calendar days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to SMART's satisfaction the breach or default of any of the terms, covenants, or conditions of this Agreement within ten (10) calendar days after receipt by Contractor of written notice from SMART setting forth the nature of said

breach or default, SMART shall have the right to terminate the Agreement without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude SMART from also pursuing all available remedies against Contractor and its sureties for said breach or default.

(d) Waiver of Remedies for any Breach. In the event that SMART elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Agreement, such waiver by SMART shall not limit SMART's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement.

(e) Termination for Convenience (Professional or Transit Service Contracts) SMART, by written notice, may terminate this contract, in whole or in part, when it is in SMART's best interest. If this contract is terminated, SMART shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

(f) Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, SMART may terminate this contract for default. SMART shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of SMART.

(g) Termination for Default (Transportation Services) If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, SMART may terminate this contract for default. SMART shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of SMART's goods, the Contractor shall, upon direction of SMART, protect and preserve the goods until surrendered to SMART or its agent. The Contractor and SMART shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of SMART.

(h) Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within

the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, SMART may terminate this contract for default. SMART shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, SMART may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to SMART resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by SMART in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if:

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of another contractor in the performance of a contract with SMART, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. The Contractor, within [10] days from the beginning of any delay, notifies SMART in writing of the causes of delay. If, in the judgment of SMART, the delay is excusable, the time for completing the work shall be extended. The judgment of SMART shall be final and conclusive for the parties, but subject to appeal under the Disputes clause(s) of this contract.
3. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of SMART.

(i) Termination for Convenience or Default (Architect and Engineering Contracts).

SMART may terminate this contract in whole or in part, for SMART's convenience or because of the failure of the Contractor to fulfill the contract obligations. SMART shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the SMART's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. SMART has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of SMART, SMART's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, SMART may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by SMART.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of SMART.

(j) Termination for Convenience or Default (Cost Type Contracts) SMART may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of SMART or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from SMART, or property supplied to the Contractor by SMART. If the termination is for default, SMART may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to SMART and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of SMART, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a Notice of Termination for Default, SMART determines that the Contractor has an excusable reason for not performing, SMART, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

15. Violation and Breach of Contract.

Applicability: All Contracts

Rights and Remedies of SMART

The duties and obligations imposed by the Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by SMART or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Rights and Remedies of Contractor

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by SMART, the Contractor expressly agrees that no default, act or omission of SMART shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless SMART directs Contractor to do so) or to suspend or abandon performance.

Remedies

Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between SMART and the Contractor arising out of or relating to this Agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within California.

Disputes

Disputes arising in the performance of this Agreement which are not resolved by agreement of the parties shall be decided in writing by SMART's General Manager. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the General Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the General Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance during Dispute

Unless otherwise directed by SMART, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

16. Conformance with National ITS Architecture

Applicability: All ITS Contracts

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards pursuant to 23 CFR § 940. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

17. Severability

Applicability: All Contracts

The Contractor agrees that if any provision of this Agreement or any amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to State of California laws, regulations, requirements, and guidance will continue in effect.

18. Trafficking in Persons

Applicability: All Contracts

The contractor agrees that it and its employees that participate in this contract, may not:

- (a) Engage in severe forms of trafficking in persons during the period of time that the contract is in effect;
- (b) Procure a commercial sex act during the period of time that the contract is in effect; or
- (c) Use forced labor in the performance of the contract or subagreements thereunder.

19. Rights to Inventions Made Under a Contract or Agreement.

Applicability: All Research and Development Contracts

Contractor agrees to comply with the requirements of 37 C.F.R. §401.2(a), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts and Cooperative Agreements” and any implementing regulations issued by SMART.

20. Domestic Preferences for Procurements

Applicability: All Contracts

Contractor shall make every effort to provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). This section must be included in all subcontracts.

For the purposes of this section:

- 1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- 2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

21. Whistleblower Protections

Applicability: All Contracts

An employee of the Contractor or Subcontractor must not be discharged, demoted, or

otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (a)(2) of 41 U.S.C. 4712 information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant. The Contractor and their subcontractors must inform their employees in writing of employee whistleblower rights and protections under 41 U.S.C. 4712. See statutory requirements for whistleblower protections at 10 U.S.C. 4701, 41 U.S.C. 4712, 41 U.S.C. 4304, and 10 U.S.C. 4310.



AGENDA ITEM 9

Sonoma-Marin Area Rail Transit
5401 Old Redwood Hwy, Suite 200
Petaluma, CA 94954

P: 707-794-3330
F: 707-794-3037
W: www.SonomaMarinTrain.org

BOARD OF DIRECTORS

Chris Coursey, Chair
Sonoma County Board of Supervisors

Mary Sackett, Vice Chair
Marin County Board of Supervisors

Janice Cader Thompson
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Victoria Fleming
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Ariel Kelley
Sonoma County Mayors' and
Councilmembers Association

Eric Lucan
Marin County Board of Supervisors

Mark Milberg
Transportation Authority of Marin

Barbara Pahre
Golden Gate Bridge,
Highway/Transportation District

Gabe Paulson
Marin County Council of Mayors and
Councilmembers

David Rabbitt
Sonoma County Board of Supervisors

GENERAL MANAGER

Eddy Cumins

October 15, 2025

Sonoma- Marin Area Rail Transit Board of Directors
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954

SUBJECT: Approval of Amendment No. 3 to Agreement No. OP-SV-22-011 with Code 3 Entertainment Services LLC dba Code 3 Transportation for Microtransit Operations and Maintenance Services

Dear Board Members:

RECOMMENDATIONS:

Authorize the General Manager to execute Amendment No. 3 to Agreement No. OP-SV-22-011 with Code 3 Entertainment Services LLC dba Code 3 Transportation for Microtransit Operations and Maintenance Services to extend the term of the Agreement for one year utilizing an available option in the Agreement, increase the Not-to-Exceed amount by \$1,205,703.96 for a new Not-to-Exceed amount of \$2,339,209.96, revise the list of key personnel, replace the Service Provider's primary point of contact and method and place of giving notice, and modify the service schedule.

SUMMARY:

SMART entered into an Agreement with Code 3 Transportation on April 19, 2023, to provide Microtransit operations and maintenance services. Service began at Sonoma County Airport Station in June 2023 and at Larkspur Station in June 2024. This amendment extends the term of the agreement for an additional year, through April 18, 2027, utilizing an available option in the contract and increases the not-to-exceed amount by \$1,205,703.96 for a new not-to-exceed amount of \$2,339,209.96 to cover the additional year of service, as well as, funding the service at Airport and Larkspur stations 7 days per week. Finally, this Amendment revises the list of key personnel to reflect current staffing and modifies the scope of work to reflect minor changes in the Airport shuttle schedule.

FISCAL IMPACT: Funds for Amendment #3 are already included in the Fiscal Year 2025/2026 Adopted Budget.

REVIEWED BY: [x] Finance /s/ [x] Counsel /s/

Sincerely,

/s/
Emily Betts
Planning Manager

Attachment(s):

- 1) Code 3 Entertainment Services LLC Agreement No. OP-SV-22-011 – Amendment #3

**THIRD AMENDMENT TO THE SERVICE AGREEMENT BETWEEN
THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
AND CODE 3 ENTERTAINMENT SERVICES LLC DBA CODE 3 TRANSPORTATION**

This Third Amendment dated as of October 15, 2025 (the “Third Amendment”), to the Service Agreement by and between Code 3 Entertainment Services LLC dba Code 3 Transportation (hereinafter referred to as “Service Provider”) and the Sonoma-Marin Area Rail Transit District (hereinafter referred to as “SMART”), dated as of April 19, 2023 (the “Original Agreement,” as amended and supplemented by the First Amendment, Second Amendment, and now this Third Amendment, the “Agreement”).

RECITALS

WHEREAS, Service Provider and SMART previously entered into the Original Agreement on April 19, 2023 to provide Microtransit operations and maintenance services; and

WHEREAS, SMART previously executed the First Amendment on May 22, 2024 to modify the scope of work to option in microtransit shuttle service at SMART’s Larkspur Station and add Golden Gate Highway, Bridge and Transportation District as an additional insured party; and

WHEREAS, SMART previously executed the Second Amendment on March 11, 2025 to modify the scope of work to adjust service hours for the Sonoma County Airport Microtransit Shuttle effective April 7, 2025 and expand the Larkspur Microtransit shuttle service operating hours to seven days per week effective April 7, 2025; and

WHEREAS, SMART desires to amend the Agreement to extend the term of the Agreement through April 18, 2027 utilizing the first option to extend available in the Agreement, increase the not-to-exceed amount by \$1,205,703.96 for a new not-to-exceed amount of \$2,339,209.96, revise the list of Key Personnel, replace the Service Provider’s primary Point of Contact and Method and Place of Giving Notice, and modify the scope of work in Exhibit A “Scope of Work & Timeline”; and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. **“ARTICLE 2. LIST OF EXHIBITS”**. The following exhibits are attached hereto and incorporated herein:
 - (a) Exhibit A: Scope of Work & Timeline

The Exhibit A “Scope of Work & Timeline” is hereby amended by the Exhibit A “Scope of Work & Timeline” included in this Third Amendment.

2. **“ARTICLE 4. SCOPE OF SERVICES”.** Section 4.04(d) is hereby deleted and replaced with the following:

Aaron Lesavoy – COO & SMART Account Manager (primary point of contact)
Laura Flenner – Operations Manager / Office Manager
Jenna Randall – Accounting / HR / Administrative – Invoicing Support
Ali Butt – Dispatch & Support Services Oversight

3. **“ARTICLE 5. PAYMENT”.** Section 5.02 is hereby deleted and replaced with the following:

“Section 5.02 Service Provider shall be paid for the satisfactory performance of the work described in the Exhibit A “Scope of Work & Timeline” in accordance with the rate schedule established in the Exhibit B “Schedule of Rates”. The Not-to-Exceed (NTE) amount of \$2,339,209.96 for this Agreement includes labor, supervision, applicable surcharges such as taxes, insurance and fringe benefits as well as indirect costs, overhead and profit allowance, equipment, materials and supplies; in no case shall Service Provider be reimbursed for an amount in excess of the NTE amount without a formal written amendment to this Agreement. Service Provider must submit all invoices on a timely basis, but no later than thirty (30) days from the date the services/charges were incurred. Service Provider shall include the following information in its invoice to SMART: 1) Service Vehicle Type (e.g. Vehicle 1, Vehicle 2, Vehicle 3, Vehicle 4, or Vehicle 5), 2) Station Vehicle is Assigned, 3) Number of Service Hours, Applicable Hourly Service Rate, and 4) Liquidated Damages in the form of a credit, if any.”

4. **“ARTICLE 7. TERM OF AGREEMENT”.** Section 7.01 is hereby deleted and replaced with the following:

“Section 7.01 The term of this Agreement shall remain in effect through April 18, 2027 with one (1) additional one-year option to extend if mutually agreed upon by both parties, unless terminated earlier in accordance with the provisions of **Article 8** below.”

5. **“ARTICLE 16. METHOD AND PLACE OF GIVING NOTICE, SUBMITTING INVOICES AND MAKING PAYMENTS.** Article 16 is hereby deleted and replaced with the following:

“All notices, invoices, and payments shall be made in writing and shall be given by personal delivery, U.S. Mail or email. Notices, invoices, and payments shall be addressed as follows:

If to SMART Manager: Sonoma-Marine Area Rail Transit District
Attn: Emily Betts
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954
ebetts@sonomamarintrain.org
707-794-3330

If to SMART Billing: Sonoma-Marine Area Rail Transit District
Attn: Accounts Payable
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954
billing@sonomamarintrain.org
707-794-3324

If to Service Provider: Code 3 Entertainment Services, LLC dba
Code 3 Transportation
Attn: Aaron Lesavoy,
3392 Clayton Road
Concord, CA 94519
aaron@code3transportation.com
(925) 878-1763

When a notice, invoice or payment is given by a generally recognized overnight courier service, the notice, invoice or payment shall be deemed received on the next business day. When a copy of a notice, invoice or payment is sent by facsimile or email, the notice, invoice or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, invoice or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, invoices and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph."

6. Except to the extent the Agreement is specifically amended or supplemented hereby, the Agreement, together with all supplements, amendments and exhibits thereto is, and shall continue to be, in full force and effect as originally executed, and nothing contained herein shall, or shall be construed to, modify, invalidate, or otherwise affect any provision of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment as of the date first set forth above.

**SONOMA-MARIN AREA RAIL TRANSIT
DISTRICT**

Dated: _____

By _____
Eddy Cumins, General Manager

**CODE 3 ENTERTAINMENT SERVICES LLC
DBA CODE 3 TRANSPORTATION**

Dated: _____

By: _____
Lester Lesavoy, Chief Executive Officer

APPROVED AS TO FORM:

Dated: _____

By _____
District Counsel

EXHIBIT A

SCOPE OF WORK & TIMELINE

The Exhibit A “Scope of Work & Timeline” in the Agreement is hereby amended as follows:

Article III Scope of Work, Section B “Service Areas” is hereby deleted and replaced with the following:

B. Service Areas

a. Sonoma County Airport Station Microtransit Service Operations

i. Service Area

1. The Service Area will be approximately 2 miles around the Sonoma County Airport SMART Station located at 1130 Airport Boulevard, Santa Rosa, CA 95403. SMART may adjust the service area at its discretion.
2. The dispatch and scheduling software will allow the route to have both “fixed timepoint” stops, which are served on every run, and “virtual” stops scheduled by the software, which are served on an on-demand basis based on rider requests. SMART may adjust these fixed timepoints at its discretion.
3. SMART will have an advertised schedule for this service area showing the fixed timepoints at both the SMART Station and the Sonoma County Airport Terminal.
4. Riders may schedule rides using a smartphone app, calling in to a call center (Staffed by SMART or it’s Third-Party Software Provider), or by walking-on at the time of the trip. While riders will be encouraged to book their trips ahead of time, the operator of the vehicle will be required to book walk-on trips using the microtransit software as needed.

ii. Service Hours

1. Service Hours shall be:

- a. Weekdays: 7:15am – 6:15pm (Pacific) with a non-revenue break between 11:15pm – 12:15pm (Pacific)
- b. Weekends: 9:15am – 7:45pm (Pacific) with a non-revenue break between 1:15pm – 2:15pm (Pacific).

“Service Hours” are defined as the in-service hours for the SMART shuttle services, regardless of whether a passenger is on board.

Service hours are subject to change. Changes to schedules shall be planned in advance with notification in writing to the Service Provider. Changes to schedules will require mutual agreement by both SMART and the Service Provider.

2. Services shall be 7 days per week, including Holidays on which SMART operates service.

iii. Vehicle Requirements for this Station

1. Initially, the vehicle providing microtransit service at this station shall be the Vehicle Type 5. SMART shall have the right to request alternative vehicles based on service demand needs following implementation of the service. Service Provider shall accommodate such requests in a timely manner.
2. The vehicle shall have designated space for luggage.
3. Dedicated overnight parking for the service vehicle may be made available at SMART’s Airport Station parking lot if mutually agreed upon in writing by both SMART and Service Provider.
4. This vehicle may include a vehicle wrap at SMART’s request.

b. Larkspur Station Microtransit Service Operations

i. Service Area

1. The Service Area will be approximately 1-2 miles around the Larkspur SMART Station located at 600 Larkspur Landing Circle, Larkspur, CA 94939. SMART may adjust the service area at its discretion.
2. The dispatch and scheduling software will allow the route to have both “fixed timepoint” stops, which are served on every run, and “virtual” stops scheduled by the software, which are served on an on-demand basis based on rider requests. SMART may adjust these fixed timepoints at its discretion.
3. The service will follow a schedule of stops at the Larkspur Ferry Terminal and the Larkspur SMART Station, as included in the

Ride Pingo software. Other destinations will be served on an on-demand basis.

4. Riders may schedule rides using a smartphone app, calling in to a call center (Staffed by Service Provider), or by walking-on at the time of the trip. While riders will be encouraged to book their trips ahead of time, the operator of the vehicle will be required to accept and book walk-on trips using the microtransit software.

ii. Service Hours

- a. Weekdays (Monday through Friday): 7:00am – 6:15pm (Pacific) with a non-revenue break between 12:45pm – 2:00pm (Pacific).
- b. Weekends: 8:30am – 7:30pm (Pacific) with a non-revenue break between 11:30am to 12:30pm (Pacific).

“Service Hours” are defined as the in-service hours for the SMART shuttle services, regardless of whether a passenger is on board.

Service hours are subject to change. Changes to schedules shall be planned in advance with notification in writing to the Service Provider. Changes to schedules will require mutual agreement by both SMART and the Service Provider.

2. Services shall be 7 days per week, including Holidays on which SMART operates service.
3. Service days may be expanded based on customer demand.

iii. Vehicle Requirements for this Station

1. Initially, the vehicle providing microtransit service at this station shall be the Vehicle Type 2. SMART shall have the right to request alternative vehicles based on service demand needs following implementation of the service. Service Provider shall accommodate such requests in a timely manner.
2. Overnight parking for the service vehicle is available at SMART’s Larkspur Station parking lot. This parking lot is a public parking lot and parking will be at Service Provider’s own risk.
3. This vehicle may include a vehicle wrap at SMART’s request.



AGENDA ITEM 10

Sonoma-Marín Area Rail Transit
5401 Old Redwood Hwy, Suite 200
Petaluma, CA 94954

P: 707-794-3330
F: 707-794-3037
W: www.SonomaMarinTrain.org

BOARD OF DIRECTORS

Chris Coursey, Chair
Sonoma County Board of Supervisors

Mary Sackett, Vice Chair
Marin County Board of Supervisors

Janice Cader Thompson
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Victoria Fleming
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Ariel Kelley
Sonoma County Mayors' and
Councilmembers Association

Eric Lucan
Marin County Board of Supervisors

Mark Milberg
Transportation Authority of Marin

Barbara Pahre
Golden Gate Bridge,
Highway/Transportation District

Gabe Paulson
Marin County Council of Mayors and
Councilmembers

David Rabbitt
Sonoma County Board of Supervisors

GENERAL MANAGER
Eddy Cumins

October 15, 2025

Sonoma- Marin Area Rail Transit Board of Directors
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954

SUBJECT: Renewal of Personal Service Agreement for the Chief Financial Officer

Dear Board Members:

RECOMMENDATION: Approve Personal Service Agreement for the Chief Financial Officer.

SUMMARY:

On November 4, 2020, the SMART Board of Directors approved a Personal Services Agreement for the Chief Financial Officer. The current five (5) year agreement ends on November 30, 2025. Over the past five (5) years, the Chief Financial Officer has performed her duties in an exemplary manner. Her last performance evaluation was conducted by the General Manager, and she was rated outstanding. The Board looks forward to her continuing to serve as the Chief Financial Officer.

The Board of Directors now desires to execute a five (5) year Personal Service Agreement for the position of Chief Financial Officer in the spirit of the original agreement to include the following:

1. Term shall be for five (5) years beginning on November 30, 2025, and ending on November 30, 2030.
2. Vacation will be accrued at the Exempt Managerial Employee leave accrual equivalent to 11-15 years of service
3. Salary will remain the same as her current salary.
4. All other provisions will remain the same as the current contract.

FISCAL IMPACT: The additional cost of the vacation accrual will be \$2,448 for this fiscal year and can be absorbed into the Fiscal Year 2025/2026 budget.

REVIEWED BY: [x] Finance /s/ [x] Counsel /s/

Sincerely,

/s/
Eddy Cumins
General Manager

Attachment(s):

- 1) Personal Services Agreement for Chief Financial Officer – Heather McKillop

AGREEMENT FOR PERSONAL SERVICES – CHIEF FINANCIAL OFFICER

This Agreement is made this 15th day of October 2025 by and between the Sonoma-Marín Area Rail Transit District, (hereinafter “SMART”) and Heather Amy McKillop (hereinafter called “EMPLOYEE”).

WITNESSETH:

WHEREAS, SMART desires to retain EMPLOYEE as its Chief Financial Officer; and,

WHEREAS, EMPLOYEE acknowledges that by accepting the position of Chief Financial Officer, she will be an at-will employee.

NOW, THEREFORE, BE IT AGREED by and between the parties as follows:

1. Term of Employment. SMART hereby employs EMPLOYEE in the position of Chief Financial Officer for a period of five (5) years, commencing on November 30, 2025, and ending on November 30, 2030, subject, however, to termination as herein provided.
2. Duties. EMPLOYEE shall perform the duties of Chief Financial Officer as set forth in the SMART job specification, attached hereto as Exhibit A, as it now provides or may hereafter be amended, and such other duties as may be prescribed by the General Manager or SMART Board of Directors.
3. Compensation.
 - a. EMPLOYEE's salary shall be \$318,364.80 per annum. SMART in its sole discretion, may consider step increase(s), within the employee's approved salary range to EMPLOYEE's salary in conjunction with annual performance evaluations.
 - b. Except as herein provided, EMPLOYEE shall be entitled to the same fringe benefits and cost of living adjustments generally provided to SMART unrepresented employees, as specified in SMART's personnel policies; EMPLOYEE shall pay her portion of PERS retirement contributions, currently at 7.75%.
 - c. EMPLOYEE shall accrue vacation at the Exempt Managerial Employee leave accrual equivalent to 11 -15 years of service.
 - d. EMPLOYEE shall receive a cell phone and car allowance of \$300 per pay period.

4. Performance review. The General Manager shall prepare an annual report of EMPLOYEE's performance and shall, upon request by the Board Chair, provide a copy of the performance evaluation to the Board. Should the Board wish to discuss the EMPLOYEE's performance, the Board may do so at any time by scheduling a closed session meeting for such purposes. EMPLOYEE agrees that concerns that the SMART Board of Directors or the individual members of the Board have concerning EMPLOYEE's performance are not "specific complaints or charges brought against an employee by another person or employee" as that phrase is used in Government Code §54957 and that the notice requirement of that section is, under those circumstances, inapplicable.
5. Expiration and Non-renewal. At the expiration of the term of this Agreement, EMPLOYEE's employment shall automatically terminate. SMART agrees to give written notice of its intention of non-renewal at least sixty (60) calendar days in advance of the expiration of this Agreement; provided, however, that failure to give said notice of non-renewal shall cause this Agreement to be extended for an additional period of sixty (60) calendar days from date of notice of non-renewal, and shall not result in an automatic renewal of the agreement. Upon expiration of the Agreement, EMPLOYEE shall be entitled to the same benefits as those described in Exhibit B paragraph 2. In no event shall this Agreement be construed to extend beyond the five-year term provided in Section 1 the additional sixty (60) days as provided herein.
6. Termination
 - a. EMPLOYEE shall serve at the will and pleasure of the SMART Board of Directors and may be terminated at the will of the Board as provided in Exhibit B. EMPLOYEE expressly waives and disclaims any right to any pre-termination or post termination notice (except as set forth in the first sentence of Section 3 of Exhibit B) and hearing.
 - b. EMPLOYEE may terminate his/her employment at any time by delivering to the SMART Board of Directors her written resignation. Such resignation shall be irrevocable and shall be effective not earlier than sixty (60) calendar days following delivery. With the approval of the Board of Directors, a resignation may be rescinded at any time prior to the effective date of the resignation. At the request of the Board of Directors or with its approval, the originally scheduled date of resignation may be extended for any agreed upon period of time.
 - c. From the date upon which EMPLOYEE either resigns or is notified of SMART's intention to terminate the Agreement until the actual date

upon which the resignation, termination, or expiration becomes effective, EMPLOYEE shall continue to devote her full time, attention, and effort to the duties anticipated hereunder and shall perform the same in a professional and competent manner. If requested, EMPLOYEE shall assist SMART in orienting EMPLOYEE's replacement and shall perform such tasks as necessary to affect a smooth transition in the leadership of SMART. These tasks may also include providing information or testimony regarding matters which arose during EMPLOYEE's term as Chief Financial Officer.

- d. EMPLOYEE acknowledges, understands, and warrants that EMPLOYEE shall have no further right or claim to employment after the expiration of the term of this Agreement. Except as provided herein, no other document, handbook, policy, resolution, or oral or written representation shall be effective or construed to be effective to extend the term hereof or otherwise grant EMPLOYEE any right or claim to continued employment with SMART.
7. Nonassignability. EMPLOYEE shall not, during the term of this Agreement, make any assignment or delegation of any of its provisions without the prior written consent of SMART's General Manager.
8. Compliance with Law. EMPLOYEE shall, during her employment hereunder comply with all laws and regulations applicable to such employment. Any act or omission of EMPLOYEE constituting a public offense involving moral turpitude or a withholding of labor with materially impacts SMART, is a material breach of this Agreement relieving SMART of any and all obligations hereunder. Such act or omission shall constitute sufficient grounds for EMPLOYEE's termination pursuant to this Agreement.
9. Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive state of the terms of the Agreement, pursuant to Section 1856 of the Code of Civil Procedure. No modifications of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.
10. No Representations or Warranties on Tax or Retirement Issues. EMPLOYEE acknowledges and agrees that SMART has not made any representations or warranties regarding tax consequences or retirement compensation pertaining to her salary and benefits.

ATTEST:

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

Clerk of the Board

By: _____
Chairman, Board of Directors

EMPLOYEE

Heather McKillop

EXHIBIT A to Personal Services Agreement with Heather McKillop
Job Description for the Position of Chief Financial Officer

Chief Financial Officer

DEFINITION

Under administrative direction, plans, organizes, manages, and provides administrative direction and oversight for all functions and activities of the Finance Department including budgeting, accounting, financial forecasting, grant development, debt management, investments, regulatory compliance, financial reporting, and procurement; develops the District's strategic financial goals and plans; formulates departmental policies, goals, and directives; coordinates assigned activities with other District departments, officials, outside agencies, and the public; fosters cooperative working relationships among District departments and with intergovernmental, regulatory agencies, and various public and private groups; provides highly responsible and complex professional assistance to the General Manager in areas of expertise; and performs related work as required.

SUPERVISION RECEIVED AND EXERCISED

Receives executive direction from the General Manager. Exercises direct supervision over supervisory, professional, technical, and administrative support staff.

CLASS CHARACTERISTICS

This is an executive management position that is contracted with the District Board of Directors. Oversees, directs, and participates in all activities of the Finance Department, including short- and long-term financial planning for the District, as well as development and administration of departmental policies, procedures, and services. This class provides assistance to the General Manager in a variety of administrative, coordinative, analytical, and liaison capacities. Successful performance of the work requires knowledge of public policy and program activities, authority and role of an elected Board of Directors, and the ability to develop, oversee, and implement projects and programs in a variety of areas. The incumbent is accountable for accomplishing departmental planning and operational goals and objectives, and for furthering District goals and objectives within general policy guidelines.

EXAMPLES OF TYPICAL JOB FUNCTIONS (Illustrative Only)

Management reserves the right to add, modify, change, or rescind the work assignments of different positions and to make reasonable accommodations where appropriate so qualified employees can perform the essential functions of the job.

- Assumes full management responsibility for all Finance Department programs, services, and activities including budgeting, accounting, financial forecasting, debt management,

investments, procurement, grants management, payroll, regulatory compliance, and financial reporting.

- Develops, directs, and coordinates the implementation of goals, objectives, policies, procedures, and work standards for the Department; establishes, within District policy, appropriate budget, service, and staffing levels.
- Selects, trains, motivates, and directs Department personnel; evaluates and reviews work for acceptability and conformance with department standards; works with employees to correct deficiencies; implements discipline and termination procedures.
- Develops District budgets and a variety of budget reports; collaborates with managers to determine their budgetary needs; monitors District revenues and continually refines projected costs and revenues; ensures credibility of Finance staff by providing timely and accurate analysis of budgets, financial trends, and forecasts; reviews and authorizes purchase orders on both budget and account verifications.
- Manages all accounting functions to include the general ledger, accounts payable, accounts receivable, and inventory. Ensures proper implementation and administration of internal controls and separation of duties. Collaborates with and provides pertinent information to auditors in preparation of annual audits; prepares the District's Annual Comprehensive Financial Report; verifies year-end financial statements; reviews single audits and reports findings to the Board. Ensures timely and accurate processing of the District's payroll.
- Implements the District's grants program to include application of grants, reporting, compliance, billing, and closeout.
- Management of the procurement process to include approval of purchase orders, compliance with state and federal requirements. Negotiates contracts and agreements; coordinates with legal counsel and District department representatives to determine District needs and requirements for contractual services.
- Negotiates contracts and agreements; coordinates with legal counsel and District department representatives to determine District needs and requirements for contractual services.
- Responsible for the District's debt portfolio, continuing disclosure, and annual rating agency surveillance.
- Management of the District's cash and investment portfolio.
- Manages to the overall quality of the department's service by developing, reviewing, and implementing policies and procedures to meet legal requirements and District needs; continuously monitors and evaluates the efficiency and effectiveness of service delivery methods and procedures; identifies opportunities for improvement; directs the implementation of change.
- Monitors legislative, legal, regulatory, technology, and societal changes and court decisions that may affect the work of the department; determines equipment acquisition, training programs, and procedural changes to ensure retention of qualified staff and the provision of services to the community in an effective, efficient, and economical manner.
- Establishes and maintains strong relationships with senior leadership to assist in identifying their needs and recommending a full range of business solutions; provides senior leadership

with advice on the financial implications of business activities; provides recommendations to strategically enhance the District's financial performance and business opportunities.

- Ensures District compliance with applicable federal, state, and local regulatory laws and rules regarding financial and tax reporting, grant compliance, and procurement.
- Conducts a variety of departmental organizational and operational studies and investigations; recommends modifications to programs, policies, and procedures as appropriate.
- Participates in and makes presentations to the Board of Directors and a wide variety of committees, boards, and commissions on financial activities.
- Attends and participates in professional group meetings; stays abreast of new trends and innovations in the field of transit finance and accounting.
- Prepares, reviews, and presents staff reports, various management and information updates, and reports on special projects as assigned by the General Manager.
- Responds to public inquiries and complaints and assists with resolutions and alternative recommendations; serves as a spokesperson for the Department at a variety of community events, meetings, and other public relations activities.
- Ensures staff observe and comply with all District and mandated safety rules, regulations, and protocols.
- Performs other duties as assigned.

QUALIFICATIONS

Knowledge of:

- Administrative principles and practices, including goal setting, program development, implementation, and evaluation, and supervision of staff, either directly or through subordinate levels of supervision.
- Principles and practices of leadership.
- Principles and techniques for working with groups and fostering effective team interaction to ensure teamwork is conducted smoothly.
- Principles and practices of strategic plan development.
- Functions, authority, responsibilities, and limitations of an elected board.
- Generally Accepted Accounting Principles (GAAP) and Government Accounting Standards Board (GASB) regulations.
- Technical financial and accounting theory.
- Auditing practices, procedures, and regulatory requirements.
- Government-wide financial statements, fund financial statements, and required supplementary information.
- Methods and techniques of developing technical and administrative reports, and business correspondence.
- Federal, state, and local laws, codes, and regulations relevant to assigned areas of responsibility.
- Techniques for providing a high-level of customer service by effectively dealing with the public, vendors, contractors, and District staff.

- The structure and content of the English language, including the meaning and spelling of words, rules of composition, and grammar.
- Modern equipment and communication tools used for business functions and program, project, and task coordination, including computers and software programs relevant to work performed.

Ability to:

- Develop and implement goals, objectives, practices, policies, procedures, and work standards.
- Prepare and administer large and complex budgets including multi-year budgets for multiple funds; allocate limited resources in a cost-effective manner.
- Interpret, apply, explain, and ensure compliance with federal, state, and local policies, procedures, laws, and regulations.
- Plan, organize, direct, and coordinate the work of professional and technical personnel; delegate authority and responsibility.
- Effectively manage annual audits in conjunction with external auditors.
- Prepare financial statements and analyze the District's financial strengths and weaknesses.
- Research, analyze, and evaluate new service delivery methods, procedures, and techniques.
- Effectively represent the District and the department in meetings with governmental agencies, contractors, vendors, and various businesses, professional, regulatory, and legislative organizations.
- Prepare clear and concise reports, correspondence, policies, procedures, and other written materials.
- Use tact, initiative, prudence, and independent judgment within general policy, procedural, and legal guidelines.
- Effectively use computer systems, software applications relevant to work performed, and modern business equipment to perform a variety of work tasks.
- Communicate clearly and concisely, both orally and in writing, using appropriate English grammar and syntax.
- Establish, maintain, and foster positive and effective working relationships with those contacted in the course of work.

Education and Experience:

Any combination of training and experience that would provide the required knowledge, skills, and abilities is qualifying. A typical way to obtain the required qualifications would be:

Education:

- Bachelor's degree from an accredited college or university with major coursework in finance, accounting, business management, public administration, or a related field.

Experience:

- Eight (8) years of increasingly responsible professional and administrative experience in public agency financing, including four (4) years of management experience.

Licenses and Certifications:

- Possession of a valid California Class C driver's license, to be maintained throughout employment.

PHYSICAL DEMANDS

- Must possess mobility to work in a standard office setting and use standard office equipment, including a computer; vision to read printed materials and a computer screen; and hearing and speech to communicate in person and over the telephone. This is primarily a sedentary office classification although standing in work areas and walking between work areas may be required. Finger dexterity is needed to access, enter, and retrieve data using a computer keyboard or calculator and to operate standard office equipment. Positions in this classification occasionally bend, stoop, kneel, reach, push, and pull drawers open and closed to retrieve and file information. Employees must possess the ability to lift, carry, push, and pull materials and objects up to 20 pounds.

ENVIRONMENTAL CONDITIONS

- Employees work in an office environment with moderate noise levels, controlled temperature conditions, and no direct exposure to hazardous physical substances. Employees may interact with upset staff and/or public and private representatives in interpreting and enforcing departmental policies and procedures.

SMART is an equal opportunity employer.

EXHIBIT B

Personal Services Agreement with Heather McKillop Termination and Administrative Leave Provisions

1. As provided in the Employment Agreement, to which this Attachment B is attached and incorporated, SMART may terminate EMPLOYEE's employment as set forth herein.
2. Termination with Severance Compensation. Termination of EMPLOYEE's employment may be affected by SMART giving sixty (60) days' prior written notice to EMPLOYEE. Upon such termination, EMPLOYEE shall be entitled to additional salary and deferred compensation equal to that which would accrue during ninety (90) calendar days following termination and to be computed at the rate applicable on the date of termination plus the cash equivalent of all accumulated vacation and unused sick leave as of the day of termination. EMPLOYEE's health benefits and SMART's portion of the retirement and health premium contributions shall continue to remain in effect for a period of ninety (90) calendar days from the date of termination. EMPLOYEE's acceptance of said severance pay shall constitute a final settlement and satisfaction of all claims of EMPLOYEE against SMART arising out of her employment.
3. Termination without Severance Compensation. SMART may terminate EMPLOYEE's employment without obligation to pay severance at any time by giving notice of employment discrepancies and an opportunity to respond to such discrepancies prior to termination. Notice is accomplished by SMART depositing a written notice in the United States mail that is addressed to EMPLOYEE at her last known address. After termination without severance pay has been affected, EMPLOYEE shall have no further rights under this agreement or to continued employment with SMART. Just cause for termination without severance pay includes, but is not limited to, unauthorized absence, conviction of a felony or of any criminal act involving moral turpitude; unauthorized use of SMART vehicles and equipment; conviction of driving under the influence, reckless driving, or hit-and-run driving whether on or off the job, in a SMART vehicle; unauthorized possession of weapons or explosives on SMART premises; violation of safety rules and regulations which jeopardize the safety of others and/or which could result in bodily injury to others or damage to SMART property; sexual harassment of or unlawful discrimination against another employee or applicant for employment; violence or threatening behavior; stealing SMART money or property; dishonesty; loss of professional license; and failing a drug or alcohol test.
4. Statement of Reasons for Termination. SMART and EMPLOYEE will, within a reasonable period of time, not to exceed 10 working days, attempt to agree on a mutually acceptable statement as to the reasons for termination. If the parties cannot mutually agree to an acceptable statement of the reasons for termination within the time period set forth above, the SMART Board of Directors may, in its

sole discretion, publish its reasons for termination. In such event, publication shall consist of filing the reasons with the Clerk of the Board at a regular or special meeting following the disclosure required by Section 54957.1 of the Government Code. A copy of the statement shall be made for EMPLOYEE and kept for employee of the office of the Board's Clerk. Within ninety (90) calendar days following the announcement of termination, EMPLOYEE may present a written response to the Board which will be maintained as a public record. The parties agree that other than as provided above, they will not make any other public statement concerning EMPLOYEE's termination without severance pay.

5. Administrative Leave. Upon receiving a specific complaint or charge brought against EMPLOYEE by another person or employee, the General Manager for SMART may place EMPLOYEE on administrative leave when, in the sole opinion of the General Manager, EMPLOYEE's removal from office would be in the best interests of SMART. The General Manager's decision to place EMPLOYEE on administrative leave is subject to ratification by the Board of Directors at its next noticed Board closed session meeting. The administrative leave with compensation will commence on the General Manager's delivery to EMPLOYEE's office of a written notice to that effect. Upon the delivery of the notice to EMPLOYEE's office, performance of EMPLOYEE's job duties under this agreement are suspended but all other provisions of this Agreement shall remain in full force and effect. SMART and EMPLOYEE agree that SMART will incur damages, if, during the period of administrative leave, EMPLOYEE performs or attempts to perform any of the duties of her position, or in any other way interferes with the administration or operation of SMART. SMART and EMPLOYEE agree that the measurement of these damages would be difficult and speculative and accordingly further agree that if EMPLOYEE performs or attempts to perform any of the duties provided in the job specification for the position of Chief Financial Officer, or in any other way interferes with the administration or operation of SMART, SMART's duties to compensate EMPLOYEE under the Agreement are discharged for each day during which EMPLOYEE engages in such non-cooperation and/or interference. The administrative leave and the suspension of job duties shall terminate on the General Manager's delivery to EMPLOYEE's office of a written notice to that effect.



AGENDA ITEM 11

Sonoma-Marin Area Rail Transit
5401 Old Redwood Hwy, Suite 200
Petaluma, CA 94954

P: 707-794-3330
F: 707-794-3037
W: www.SonomaMarinTrain.org

BOARD OF DIRECTORS

Chris Coursey, Chair
Sonoma County Board of Supervisors

Mary Sackett, Vice Chair
Marin County Board of Supervisors

Janice Cader Thompson
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Victoria Fleming
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Ariel Kelley
Sonoma County Mayors' and
Councilmembers Association

Eric Lucan
Marin County Board of Supervisors

Mark Milberg
Transportation Authority of Marin

Barbara Pahre
Golden Gate Bridge,
Highway/Transportation District

Gabe Paulson
Marin County Council of Mayors and
Councilmembers

David Rabbitt
Sonoma County Board of Supervisors

GENERAL MANAGER

Eddy Cumins

October 15, 2025

Sonoma- Marin Area Rail Transit Board of Directors
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954

SUBJECT: SMART Pathway Update

Dear Board Members:

RECOMMENDATIONS: Information Only

SUMMARY:

SMART's enabling legislation, AB 2224, provides for the construction and operation of complementary bicycle and pedestrian pathways as part of its rail transit system. SMART's Bicycle and Pedestrian Pathway (the "Pathway") is being completed in phases and is designed to accommodate walking, bicycling, and other non-motorized uses. To date, SMART has made significant progress towards completing and enhancing the Pathway, in order to fulfill the commitments of Measure Q and in alignment with SMART's Strategic Plan.

BACKGROUND:

Pathway Status

The pathway component of the SMART Project, once complete, will consist of over 70 miles of mostly Class I, separated multi-use path that parallels the rail alignment and provides connections to and between SMART's rail stations. To date, SMART and local agencies have completed over 39 miles of the Pathway. The most recently completed segments of pathway include the Windsor Extension pathway from Airport Blvd. to Windsor River Rd., the Southpoint Blvd. to Main St. segment between Petaluma and Penngrove, and the Golf Course Dr. to Bellevue Ave. segment between Rohnert Park and Santa Rosa. Additionally, SMART completed the McInnis Pkwy. to Smith Ranch Rd. segment in San Rafael in late 2024 and celebrated its opening in January 2025.

SMART has been awarded funding to construct more than 11 miles of environmentally-cleared pathway.

The funded segments include:

- Hanna Ranch Rd. to Vintage Wy. South in Novato;
- Joe Rodota Trail to 3rd St. in Santa Rosa;
- Guerneville Rd., Santa Rosa to Airport Blvd., Unincorporated Sonoma County;
- Windsor River Rd., Windsor to Front St., Healdsburg; and
- Grove St., Healdsburg to Lytton Springs Rd., Unincorporated Sonoma County.

Consistent, with the 2025-2030 Strategic Plan, SMART continues to position the remaining 20 miles of SMART's environmentally-cleared pathway for construction funding.

These segments are in the planning or design phases. Of the 20 remaining miles, around 5 miles are in Marin and include the segments from:

- Smith Ranch Rd., San Rafael to Main Gate Rd./Hamilton Station, Novato;
- State Access Rd. to Frosty Lane, Novato;
- Vintage Wy. North to the north side of Novato Creek, Novato; and
- Grant Ave. to Rush Creek Pl., Novato.

The other 15 miles of environmentally-cleared Pathway are in Sonoma. These segments include:

- Main St., Penngrove to E. Railroad Ave., Rohnert Park;
- Santa Rosa Downtown to 6th St. in Santa Rosa; and
- Lytton Springs Rd., Unincorporated Sonoma County to 1st St., Cloverdale.

In addition to the 70 miles of SMART's environmentally-cleared pathway project, SMART has also explored the feasibility of future pathway segments, in accordance with the 2025-2030 Strategic Plan, including the Puerto Suello Hill Pathway in San Rafael. In 2022, a feasibility study for the Puerto Suello Hill Pathway Segment was completed, which evaluated alternative alignments for a pathway that would connect from the top of Puerto Suello Hill to San Pedro Rd. in San Rafael. In March 2025, the SMART Board approved a contract to complete the environmental phase and the preliminary engineering for the most feasible Puerto Suello Hill alignment that was identified in the 2022 feasibility study.

SMART is also continuing to enhance the Pathway and improve pathway information to make the facility easier to use. In 2025, SMART completed the installation of pathway wayfinding across the Pathway and made improvements and updates to the pathway landing page on SMART's website.

Pathway Utilization

With the addition of newly completed segments and the recently implemented wayfinding improvements, pathway users have steadily increased. SMART measures pathway utilization using bicycle and pedestrian counters that are located at fixed locations along SMART's pathway network. In Fiscal Year (FY) 2025, 1,029,421 trips were counted on the pathway, which was 39 percent higher than the trips counted in the prior fiscal year. In FY25, SMART also carried a record number of bikes on board the train, 146,898 bikes, 28 percent higher than FY24. Notably, in FY25, SMART's rail ridership was its highest ever, with 1,123,686 passenger trips. These statistics demonstrate the significant multimodal travel SMART's rail and pathway system provide, the importance of the pathway as a first/last mile connection for the many people that reach the train by biking and walking, and the utility the pathway provides for biking and walking trips that occur independent of the train.

FISCAL IMPACT:

This is an informational item and has no fiscal impact.

REVIEWED BY: [x] Finance /s/ [x] Counsel /s/

Sincerely,

/s/
Emily Betts
Planning Manager