



**BOARD OF DIRECTORS
MEETING AGENDA
May 18, 2022 – 1:30 PM**

In accordance with AB 361, Sonoma-Marin Area Rail Transit District Resolution No. 2021-24, Governor Newsom's March 4, 2020, State of Emergency due to the COVID-19 pandemic and Marin and Sonoma Counties Health Officials recommendations to continue measures that promote social distancing the SMART Board of Directors Meeting will continue to be held virtually through Zoom.

MEMBERS OF THE PUBLIC MAY NOT ATTEND THIS MEETING IN PERSON

ZOOM TELECONFERENCE INSTRUCTIONS

PUBLIC COMMENT PRIOR TO MEETING:

If you wish to make a comment you are strongly encouraged to please submit your comment by 5:00 p.m. on Tuesday, May 17, 2022 at <https://www.surveymonkey.com/r/SMARTBoardComments>

PUBLIC COMMENT 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.

1. Call to Order
2. Approval of the May 4, 2022 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 – April 2022

Regular Calendar

7. Authorize the General Manager to Award Contract No. HR-PS-22-002 to Alcohol & Drug Testing Services, LLC to provide Alcohol and Drug Testing Program Management Services in an amount of \$108,000 for the initial term of three years – *Presented by Ken Hendricks*
8. Authorize the General Manager to Award a Purchase Order to CDW-G, LLC for the Purchase of Administration Network Hardware in the amount of \$226,467.21 – *Presented by Ken Hendricks*
9. Authorize the General Manager to Award Contract No. FR-PS-22-009 to South West Locomotive Repair to perform a basic overhaul and repair service on SMART's Railpower RP20DB Locomotive in an amount \$135,676.43 – *Presented by Ken Hendricks*
10. Approve a Resolution Authorizing the General Manager to Execute Contract No. CV-BB-22-001 to Air & Lube Systems, for Construction of a Maintenance Building & Train Wheel Press Installation for an amount of \$282,273 – *Presented by Bill Gamlen*
11. Fiscal Year 2022 Draft Budget (Information and Discussion) – *Presented by Heather McKillop*
12. Closed Session
 - a. Conference with Labor Negotiator Eddy Cumins, General Manager pursuant to Government Code Section 54957.6
Agency Designated Representative: General Manager
Represented Employees: Operating Engineers Local 3, IAMAW Local Lodge No. 1414, and Teamsters Local 665; and Unrepresented Employees
 - b. Conference with Legal Counsel regarding existing litigation pursuant to California Government Code Section 54956.9(a); Filemon Hernandez, et al. V. Sonoma-Marin Area Rail Transit District (SMART) – United States District Court for the Northern District of California – CIV No. 4:21-CV-01782
13. Next Regular Meeting of the Board of Directors, June 1, 2022 – 1:30 PM
14. Adjournment

DISABLED ACCOMODATIONS:

Upon request, SMART will provide for written agenda materials in appropriate alternative formats, or disability-related modification or accommodation, to enable individuals with disabilities to participate in and provide comments at/related to public meetings. 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 should be emailed to Leticia Rosas-Mendoza, Clerk of the Board at lrosas@sonomamarintrain.org or submitted by phone at (707) 794-3072. Requests made by mail SMART's, 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
May 4, 2022 - 1:30 PM**

In accordance with AB 361, Sonoma-Marín Area Rail Transit District Resolution No. 2021-24, Governor Newsom's March 4, 2020, State of Emergency due to the COVID-19 pandemic, and Marin and Sonoma Counties Health Officials recommendations to continue measures that promote social distancing, the SMART Board of Directors Meeting will continue to be held virtually through Zoom.

MEMBERS OF THE PUBLIC MAY NOT ATTEND THIS MEETING IN PERSON

1. Call to Order

Chair Rabbitt called the meeting to order at 1:30pm. Directors Bagby, Colin, Coursey, Fudge, Garbarino, Hillmer, Lucan and Pahre were present; Director Arnold absent; Directors Pahre and Rogers joined later.

2. Approval of the April 20, 2022, Board Meeting Minutes

Vice Chair Pahre joined at 1:33 pm

MOTION: Director Lucan moved approval of April 20, 2022, Board Meeting Minutes as presented. Director Garbarino second. The motion carried 10-0 (Director Arnold absent; Director Rogers joined later).

3. Board Members Announcements

Chair Rabbitt stated that he attended former General Manager Mansourian's retirement gathering. He thanked everyone who participated to make the event memorable. SMART's Train 101 will have a plaque honoring Mr. Mansourian for his years of service.

4. General Manager's Report

General Manager Cumins provided a brief update on the following:

- Listening Session
- Ridership
- Butter & Eggs Day
- Sunday Service

- Park & Ride Utilization
- Trip Planning Improvements

Listening Session

Completed Listening Sessions:

- Ridership (April 6th)
 - 45 participants (excluding SMART Staff)
 - 553 survey responses
 - 35 emails
- Pathways (April 13th)
 - 60 participants (excluding SMART Staff)
 - 183 survey responses
 - 11 emails
- Extensions (April 20th)
 - 54 participants (excluding SMART Staff)
 - 203 surveys
 - 13 emails
- Freight (April 27th)
 - 34 participants (excluding SMART Staff)
 - 65 survey responses
 - 1 email

Ridership Update

- In April SMART carried 34,258 riders. This is slightly less than March due to having two less weekdays in the month.
- Average weekday boardings are at 1,420 for the month of April, slightly up from March at 1,388.
- Some people misunderstand what daily boardings mean; there are a lot of people that think 1,420 boardings mean there are 710 people using the system twice a day – going to and from their destination. This is not true. I had SMART’s planning department look into this and in the month of April we had 7,283 unique individuals riding the train.
- In February we had a 21 % increase over January, followed by an increase of 18% in March, and a modest 2% bump in April.

Petaluma Butter and Eggs Day

On April 23, the day of the Petaluma Butter & Eggs Day Parade and Festival, SMART carried 1,371 passengers, which is up 118% from the previous Saturday.

Sunday Service

On May 1, SMART resumed Sunday train service, carrying 633 riders, which was 60% of pre-pandemic average for Sunday.

Park & Ride Utilization

The Park & Ride utilization is significantly up:

- Sonoma County Airport station is up 267 %
- Rohnert Park is up 554%

- Petaluma is up 827%
- Novato San Marin is above pre-pandemic levels with an increase of 447%
- Hamilton is also above pre-pandemic levels with an increase of 320%
- Larkspur station is up 159%

Trip Planning Improvements

Staff has been working with Google Transit to improve the quality of SMART information – how Google Maps represents bicycle facilities. Also, Google users can now see the rail line on Google Maps.

Comments

Director Colin asked if staff has seen a commensurate or an impact on ridership since the free parking at stations. General Manager Cumins responded that there has been an increase in ridership, however, it is hard to determine if the free park and ride was the cause and could be that people are returning to work.

Director Coursey asked how vehicles are being counted in the parking lots and do people still have to register their vehicles. General Manager Cumins responded that staff have been manually counting and there are cameras at each of those sites that assist us in monitoring the vehicles. The Code Compliance Officers who monitor the system daily, check the parking lots everyday between 12 to 2pm. Currently, we do not have an electronic way of checking vehicles.

Director Fudge asked if staff noticed that the path from Dutton Avenue and rail line was not on Google maps and did staff contact Google to fix the problem. General Manager Cumins responded that this effort was staff driven. She thanked staff for being proactive because this will increase ridership.

Chair Rabbitt thanked staff for all their work and for all the data that was presented. It is important to show the trends of Sunday Service.

5. Public Comment on Non-Agenda Items

Eris Weaver stated that she is excited about Sunday service. She informed everyone that May is National Bike month and not sure what that will do to ridership. She announced that today is bike to school day and May 20 is bike to workday. She is very appreciative along with her colleagues that SMART is participating. There will be energizer stations at the Downtown Petaluma Station and San Rafael station. There are various activities occurring during the month of May that can be found at www.bikesonoma.org

Dani Sheehan stated that there is a missed opportunity that SMART is not included in the traffic reports on TV and radio. She suggested that staff reach out to be included. She is excited about Sunday service.

Director Bagby suggested that staff verify with Apple Maps. She thanked SMART staff for being at the Cloverdale Citrus fair on April 21-24th. General Manager Cumins responded that staff will check Apple maps.

Director Rogers joined at 1:53pm

6. Consent

- a. Consider and Approve a Resolution to continue virtual Tele/Video Conference Meetings during the COVID-19 State of Emergency
- b. Approval of Monthly Financial Reports
- c. Authorize the General Manager to execute Contract Amendment No. 4 to Professional Services Contract with American Rail Engineers Corporation
- d. Approve a Resolution Authorizing the General Manager to Execute Contract Amendment No. 6 with GHD, Inc

Chair Rabbitt stated that agenda item 6b Monthly Financial Reports omitted a chart. The chart was emailed to board members and will be posted on SMART's website. He asked for Board and public comments on the proposed Consent Agenda.

MOTION: Director Garbarino moved approval of the Consent Agenda as presented. Director Pahre second. The motion carried 11-0 (Director Arnold absent)

7. Eide Bailly CPA and Business Investors will provide a briefing of SMART's Annual Financial Audit – *Presented by Heather McKillop*

Chief Financial Officer, Heather McKillop stated that the Eide Bailly is SMART's new auditing firm and very excited to have them.

They have spent a week with staff preparing for the interim audit and will be back in the fall to finish that work once the fiscal year is done. As part of their engagement, they are required to notice the board on their progress. She introduced Nathan Edelman who is a partner at Eide Bailey who provided a presentation, which is on SMART's website. Highlights include:

- About Eide Bailly
- Client Experience
- Scope of the Audit
- Timing

Comments

Chair Rabbitt stated that he is very familiar with the company.

8. SMART proposes to add 10 weekday trips beginning Monday, June 13th bringing the weekday schedule trips and 36 trips – *Presented by Emily Betts*

Principal Planner, Emily Betts provided a PowerPoint presentation which is posted on SMART's website: Highlights include:

- Background
- How Does SMART prioritize service changes?
- Travel Patterns and SMART Boardings
- North Bay Travel Patterns

- Public Input
- Transfer Considerations
- Transfers (Fiscal Year 2022 to date)
- Schedule Goals
- Schedule Constraints
- Weekday Service Changes – 36 Trips
- Improved Connections
- Next Steps

Comments

Chair Rabbitt asked if there are any personnel adjustments to accommodate the additional trips. General Manager Cumins responded that there will be no change in personnel, during early stages of COVID there was a decision not to do layoffs and have the positions to run the additional service. We will see a significant increase in service and very minor changes in the operating budget

Chair Rabbitt stated that connections are important for people for convenience and because frequency increases ridership. He asked what can be done to compete or attract more riders to increase ridership. Ms. Betts responded that staff is contacting key employers and destinations as a way of orienting SMART service changes.

General Manager Cumins stated that one of the most exciting things in that presentation, other than additional frequency, was those improved connections. The primary focus of the planning staff was to look at ways to make these connections better and usable for riders. We are going to make the system easier to use, not only is it going to be more frequent but it's going to connect better to the overall system.

Director Lucan thanked staff for a great report and timing could not be any better with gas increasing and giving the community more access and options. He asked if staff have identified if SMART could operate faster than 32 minutes. General Manager Cumins responded that is going to be a goal and he has been speaking with staff. SMART is planning to partner with the State to identify what can be done with what we have today and where do you need strategic double tracking to be able to meet the goal. In the long term, we need to find a way to operate on a 30/60 headway and be consistent, that will make it much easier for us to align with our bus partners and provide a better overall service.

Director Bagby thanked Ms. Betts for her presentation and explaining how it was done because it helps the Board members and the public understand the nature of the process. She asked if staff is working with the author of SB 917 on how it would affect our development of APP integration in future. General Manager Cumins responded that at the Small Operators meeting that occurs every Tuesday afternoon, this is always a topic of discussion. As that legislation moves forward and we will see where it lands, there are a lot of transit agencies that are working together daily and having Ms. Betts and the relationships that she has with other organizations that offer the bus service and connecting services has been great. SMART relationships are good and continuing to improve and focus because the buses are critical component to our first and last mile challenges.

Rick Luttmann asked if a prospective rider would see post and pre-change train schedule on the website. Mr. Stevens responded that the [new train schedule](#) will be on the website in a downloadable PDF form.

Eris Weaver stated that she is incredibly happy for the additional trips. She is not surprised to see low transfers to Sonoma County Transit. She said it is a half mile extremely ugly walk from the bus mall station to Downtown Santa Rosa Train station which is a huge deterrent and is not aware of any busses going or stopping near the station. She suggested that the bus mall station be moved near the train station to remove barriers between different systems.

Director Coursey stated that there is existing historic right-of-way siding north of Novato near the dump station and has it been considered for the future?. General Manager Cumins responded that it has been discussed and it is to be considered and model these different areas and determine what it would take to do it.

Director Coursey stated that there is a bus stop at Third Street at the railroad tracks.

Lastly, Chair Rabbitt stated that this will be an action item for approval of the additional trips.

MOTION: Director Rogers moved to approve the addition of 10 weekday trips beginning Monday, June 13th bringing the weekday schedule trips and 36 trips as presented. Director Fudge second. The motion carried 11-0 (Director Arnold absent).

9. Next Regular Meeting of the Board of Directors, May 18, 2022 – 1:30 PM
10. Adjournment - Meeting adjourned at 2:30pm

Respectfully submitted,

Leticia Rosas-Mendoza
Clerk of the Board

Approved on: _____



May 18, 2022

David Rabbitt, Chair
Sonoma County Board of Supervisors

Barbara Pahre, Vice Chair
Golden Gate Bridge,
Highway/Transportation District

Judy Arnold
Marin County Board of Supervisors

Melanie Bagby
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Damon Connolly
Marin County Board of Supervisors

Chris Coursey
Sonoma County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Eddy Cumins
General Manager

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Suite 200
Petaluma, CA 94954
Phone: 707-794-3330
Fax: 707-794-3037
www.sonomamarintrain.org

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

SUBJECT: Monthly Ridership Report – April 2022

Dear Board Members:

RECOMMENDATIONS: Accept Monthly Ridership Report

SUMMARY:

We are presenting the monthly ridership report for activity for the month of April 2022. This report shows trends in ridership for SMART by tracking Totals, Average Weekday riders, and Average Saturday/Holiday riders, as well as bicycles and mobility devices. We have added charts and graphs of the information to further illustrate system trends.

As discussed in prior presentations to the Board, both Onboard Counts and Fare-based collection rider counts are shown to give a full picture of ridership. Onboard Counts capture all riders, including the riders who are riding during the Free Fare Days or Programs offered by the Board, riders with passes who neglect to tag on or off, as well as categories of riders such as children under five years old. Clipper + Mobile App paid fare reports do not capture all riders.

This and future reports will compare the most recent month to the same month during the prior year, as is standard industry practice for tracking trends over time. The report also shows progress so far in the Fiscal Year compared to the same time in the last Fiscal Year, to enable tracking of riders relative to budget expectations. These reports also note relevant details associated with fare program discount usage and trends in riders bringing bicycles onboard. As this data collection and reporting process evolves, we will continue to revise data discussion and presentation in the reports.

SMART's rider data for March is posted on the SMART Ridership website (<http://sonomamarintrain.org/RidershipReports>) and SMART's detailed April 2022 data will be posted once validated.

The report covers the gradual return of riders to SMART as Bay Area Counties continue to lift COVID-19 restrictions schools, restaurants, retail shops, offices, and other places of work.

FISCAL IMPACT: None

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

Respectfully,

 /s/
Emily Betts
Principal Planner

Attachment(s): Monthly Ridership Report – April 2022

APRIL 2022 SMART RIDERSHIP REPORT

SMART Ridership Report
Board of Directors
May 18, 2022

SMART's April 2022 ridership was **nearly triple** that of April 2021, which was impacted by the COVID-19 shutdown. Average weekday ridership rose steadily from February 2021, with a dip in December and January, and rose again in February and March 2022. **April average weekday ridership (1,420) was the highest since the pandemic began.**

Throughout the region, automobile traffic levels have returned to pre-pandemic levels and transit agencies are seeing gradual ridership recovery. Fuel prices rose around 20% in March and remained high in April, which likely contributed to rising transit ridership. SMART recovered to approximately 53% of pre-pandemic weekday ridership levels in April. However, COVID-related restrictions and ongoing remote-work trends continue to have a dampening effect on transit ridership throughout the Bay Area.

As a reminder, 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, resulting in the current 26 weekday trip schedule. Saturday service was also restored the last two weekends in May 2021, with 3 morning and 3 afternoon round trips. On May 1, 2022, SMART restored Sunday service with 12 trips per day, and is planning to add 10 additional weekday trips in June 2022.

The tables below present data from April 2021 and 2022, year-over-year, and compare fiscal years to date (July – April).

MONTHLY TOTALS YEAR-OVER-YEAR	APR 2021	APR 2022	% Change
Ridership (Onboard Counts)	11,908	34,258	188%
Paid Ridership (Clipper + App Only)	11,228	31,872	184%
Average Weekday Ridership (Onboard Counts)	541	1,420	162%
Average Saturday/Holiday Ridership (Onboard Counts)	0	889	N/A
Bicycles	2,248	4,814	114%
Mobility Devices	39	130	233%

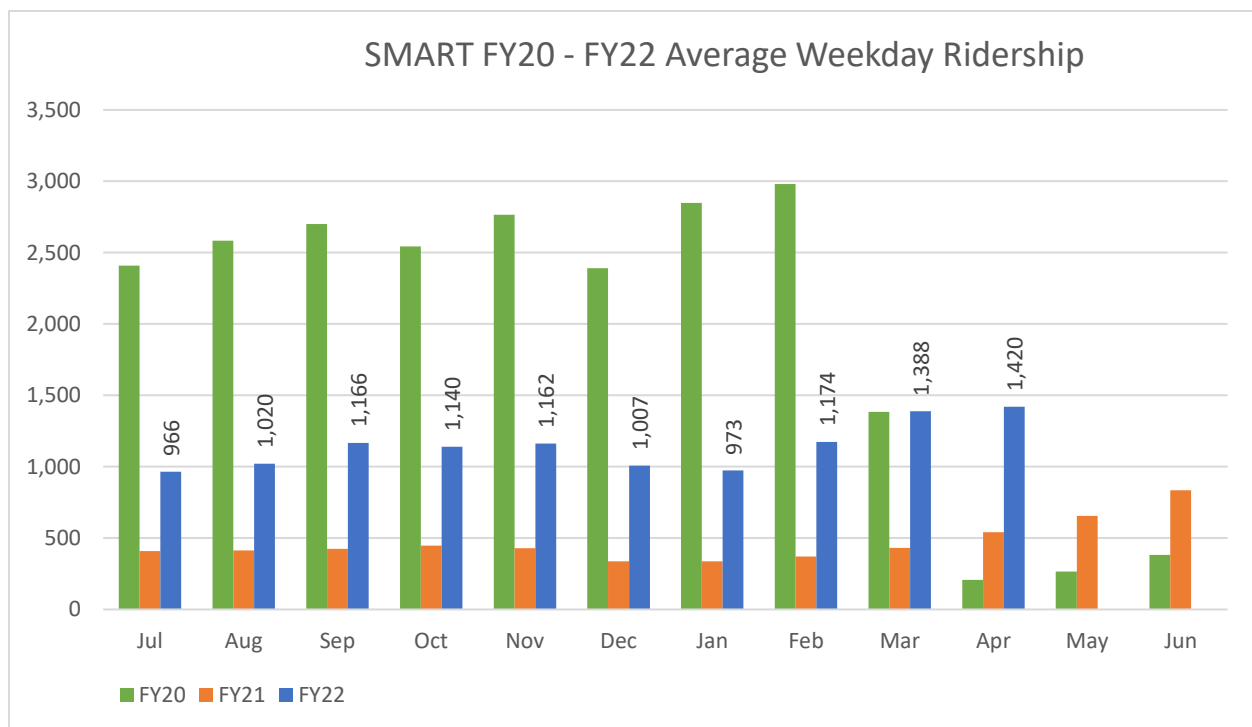
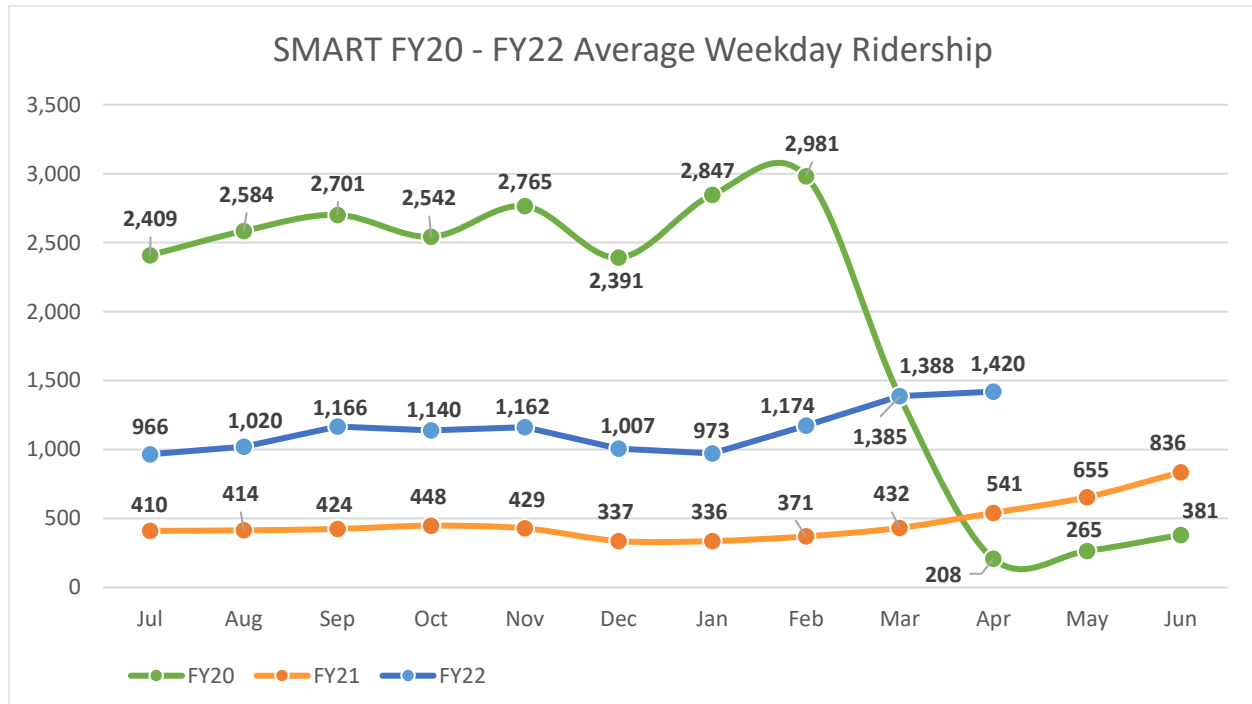
For FY22 to date, total ridership is **more than triple** that of FY21 and the number of bicycles on board has doubled.

FISCAL YEAR-TO-DATE (JUL-APR)	Fiscal Year 2021	Fiscal Year 2022	% Change
Ridership (Onboard Counts)	88,431	274,148	210%
Paid Ridership (Clipper + App Only)	82,963	251,931	204%
Average Weekday Ridership (Onboard Counts)	414	1,143	176%
Average Saturday/Holiday Ridership (Onboard Counts)	0	687	N/A
Bicycles	18,052	41,428	129%
Mobility Devices	260	1,196	360%

APRIL 2022 SMART RIDERSHIP REPORT

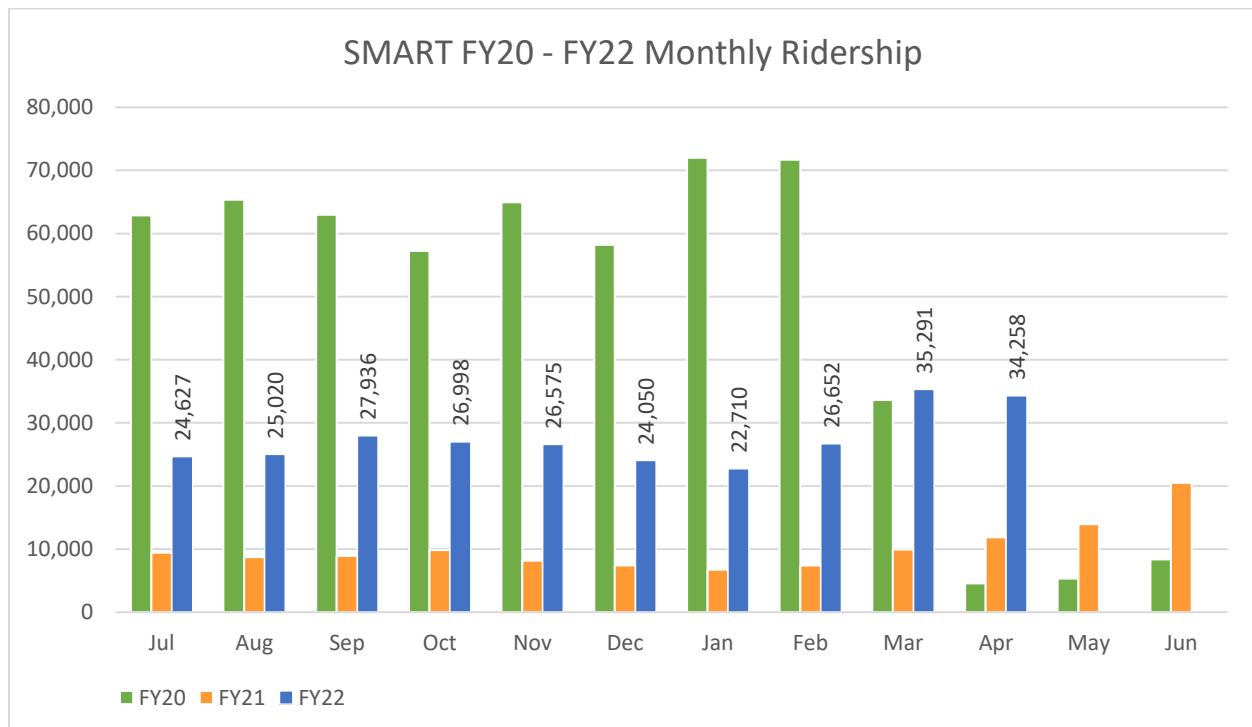
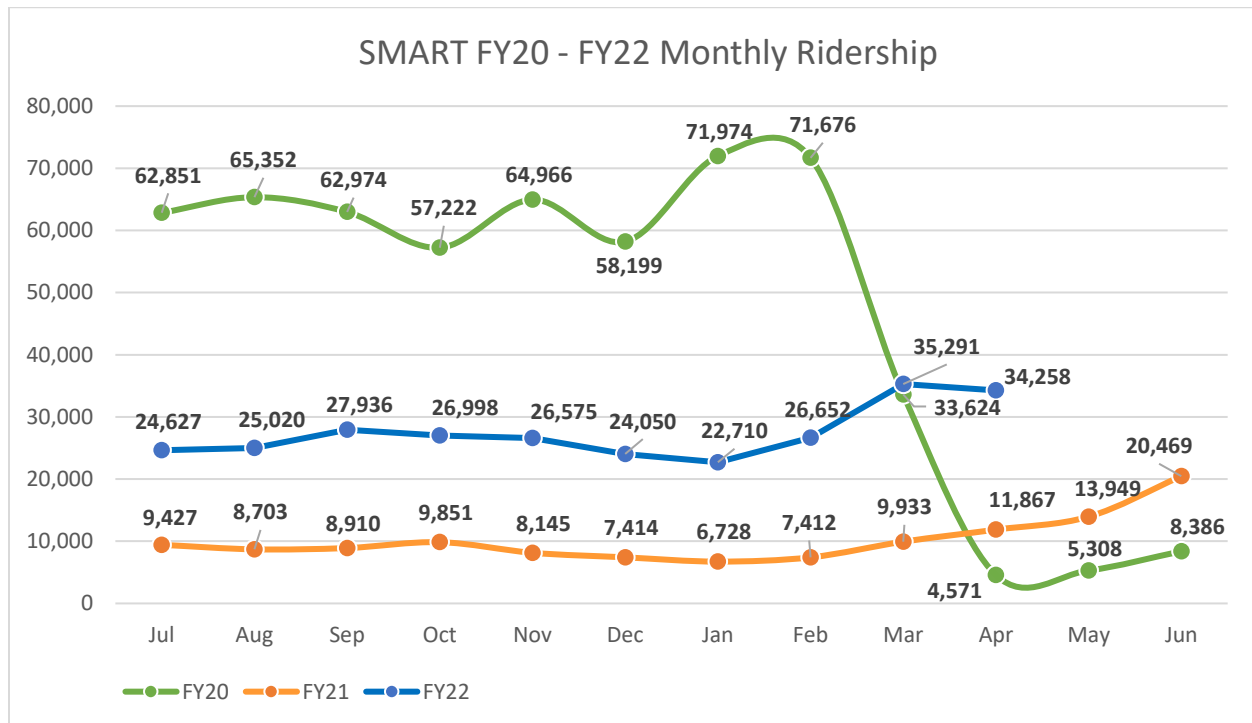
SMART Ridership Report
Board of Directors
May 18, 2022

The following charts compare the monthly totals and average weekday ridership for FY20-FY22 to date and illustrate monthly and average weekday ridership trends.



APRIL 2022 SMART RIDERSHIP REPORT

SMART Ridership Report
Board of Directors
May 18, 2022





David Rabbitt, Chair
Sonoma County Board of Supervisors

Barbara Pahre, Vice Chair
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Highway/Transportation District

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May 18, 2022

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

SUBJECT: Authorize the General Manager to Award Contract No. HR-PS-22-002 to Alcohol & Drug Testing Services, LLC to provide Alcohol and Drug Testing Program Management Services.

Dear Board Members:

RECOMMENDATION:

Staff recommends authorizing the General Manager to award contract No. HR-PS-22-002 to Alcohol & Drug Testing Services, LLC (ADTS, LLC) to provide alcohol and drug testing program management services with a not-to-exceed amount of \$108,000 for the initial term of three years.

SUMMARY:

SMART contracts with a third-party alcohol and drug testing service to perform drug and alcohol testing program services that are regulated by the Department of Transportation (DOT) and by the Federal Railroad Administration (FRA). Contracted services include limited, third-party program administration, specimen collection and testing, medical review officer and lab provided services, document control and other related services.

The existing third-party contract for these services expires on June 30, 2022. In anticipation of the contract expiration SMART issued a Request for Proposal (RFP) on March 2, 2022, under Solicitation No. HR-PS-22-002.

SMART received 5 responsive proposals from the following firms:

1. Alcohol & Drug Testing Services, LLC
2. DATCO Services Corporation
3. DSI Medical Services
4. Midlands Testing Services, Inc.
5. Norton Medical Industries

SMART's selection committee reviewed the proposals using the evaluation criteria specified in the RFP. The criteria included: demonstrated history of administering a regulated drug and alcohol program, key personnel qualifications, service approach and price.

Following the evaluation of the proposals, the selection committee made the determination that Alcohol & Drug Testing Services, LLC provides the overall best benefit to SMART and is recommending the firm for the award of this contract.

Staff recommends authorizing the General Manager to award Contract No. HR-PS-22-002 to Alcohol & Drug Testing Services, LLC to provide DOT and FRA-regulated alcohol and drug testing program management services with a not-to-exceed amount of \$108,000 for the initial term of three years. This contract also has one two-year option to extend at SMART's discretion following the initial term.

FISCAL IMPACT: Funding is anticipated in the Fiscal Year 2022-23 budget and assumed in subsequent years.

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

Very truly yours,

/s/

Ken Hendricks

Procurement Manager

Attachment: Alcohol & Drug Testing Services, LLC Contract Agreement No. HR-PS-22-002

AGREEMENT FOR CONSULTANT SERVICES

This agreement (“Agreement”), dated as of July 1, 2022 (“Effective Date”) is by and between the Sonoma-Marín Area Rail Transit District (hereinafter “SMART”), and Alcohol & Drug Testing Services, LLC (hereinafter “Consultant”).

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and experienced third-party administrator to provide Department of Transportation (DOT)-regulated and Federal Railroad Administration (FRA)-regulated drug and alcohol programs including limited third-party administration, specimen collection and testing, medical review officer (MRO) and lab-provided services, document control, and related 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 Department of Transportation (DOT)-regulated and Federal Railroad Administration (FRA)-regulated drug and alcohol programs including limited third-party administration, specimen collection and testing, medical review officer (MRO) and lab provided services, document control, and related services.

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: FTA & DOT Requirements

ARTICLE 3. REQUEST FOR SERVICES.

Section 3.01 Initiation Conference. SMART’s Human Resources 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 sole 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. Key personnel shall be as listed in the applicable Task Order.
- (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:
Jennifer Phillips, Client Service Manager; Amber Bohm, Dispatch Manager;

Katy Bykerk, Collector Manager; Cindy Leathers, FRA Post-Accident Support Manager, Jana Tripodi, Collector Trainer/ Auditor; David Nahin, MD, Medical Review Officer (MRO).

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**; provided, however, that total payments to Consultant shall not exceed \$36,000 for Fiscal Year 2023, \$36,000 for Fiscal Year 2024, and \$36,000 for Fiscal Year 2025, without the prior written approval of SMART. 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(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s), as applicable; and (iv) 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 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 June 30, 2025, with one (1) two-year option to extend at SMART's discretion unless terminated earlier in accordance with the provisions of **Article 7** below.

ARTICLE 7. TERMINATION.

Section 7.01 Termination Without Cause. 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. 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.

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 for each occurrence. 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) and, upon request, a certified duplicate original of any of those policies. 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.

SMART reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

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. At SMART's request, Consultant shall provide certified copies of the policies that correspond to the policies listed on the Certificates of Insurance. 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. Alternatively, SMART may purchase such required insurance coverage, and without further notice to Consultant, SMART may deduct from sums due to Consultant any premium costs advanced by SMART for such insurance. These remedies shall be in addition to any other remedies available 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, or wildfire, 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, pregnancy, disability, 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.

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, if any, now or later prepared 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. To the extent Consultant incorporates into the work product any pre-existing work product owned by Consultant, Consultant hereby acknowledges and agrees that ownership of such work product shall be transferred to SMART. 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: Colleen Day-Flynn 5401 Old Redwood Highway, Suite 200 Petaluma, CA 94954 CDay-Flynn@sonomamarintrain.org 707-794-3330
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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
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If to Consultant:	Alcohol & Drug Testing Services, LLC Jennifer Phillips, Client Services Manager 211 Hobson Ave., Ste. B Hot Springs, AR 71913 jennifer.phillips@adtllc.com , sales@adtllc.com 501-574-9711
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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 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 16.02 No Waiver of Breach. The waiver by SMART 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 16.03 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 16.04 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 16.05 No Third-Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

Section 16.06 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 16.07 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 16.08 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 16.09 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 16.10 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: ALCOHOL & DRUG TESTING SERVICES, LLC

By: _____
N. Scott Belford, CFO/Senior Member

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 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 Alcohol & Drug Testing Services, LLC (Consultant) to provide SMART with Department of Transportation (DOT) and Federal Railroad Administration (FRA) regulated drug and alcohol program services. Services shall include limited third-party program administration, specimen collection and testing, licensed and certified medical review officer (MRO) and lab provided services, document control and related services.

All services shall be conducted in compliance with all applicable federal, state and local regulations.

II. Project Management

All work shall be initiated, scheduled, and reviewed by SMART's Human Resources Manager, or designee. Work may be initiated in writing or by teleconference.

III. Scope of Work

1. Scope of Services

Limited, Third-Party Administration of Drug and Alcohol Program.

Consultant shall provide limited, third-party administration services and maintenance of SMART's drug and alcohol program for employees in designated employee pools. SMART shall provide Consultant with the identifiers of covered employees to be included in each pool. Consultant shall maintain the pool lists including the annual set-up of the pools, monthly selections for testing and periodic updates to pool membership. The services to be provided include:

A. Administration Services

- i. Maintain a current database of all employees who are required to participate in the program.
- ii. Preserve employees' personally identifiable information (PII) and maintain confidentiality.

- iii. Provide a DOT-approved automated employee random selection procedure.
- iv. Provide SMART with all federally required documentation, reporting, verification, and records as applicable.
- v. Provide DOT compliance reports.
- vi. Generate annual DOT Management Information Systems (MIS) customized reports for the Agency, if applicable.
- vii. Advise SMART of federal or state requirements with respect to the regulation of drug and alcohol testing programs and related issues.

B. Specimen Collection – Urine and Breath Specimens

- i. Provide normal business hours access to clinics and/or provide on-site testing at SMART locations (7:00 a.m. to 5:00 p.m.).
- ii. Provide access to clinics and/or onsite, as-needed Breath Alcohol Testing (BAT).
- iii. Provide after-hours testing, either scheduled or unscheduled. Testing shall be available 24 hours a day, every day and will be requested on an as-needed basis.
- iv. Provide proper chain of custody with all necessary forms.
- v. Provide collection supplies and ensure all testing equipment is certified, calibrated and in proper working order.
- vi. All specimen collectors shall wear identification badges and appropriate attire and comport themselves with a professional demeanor.
- vii. Utilize rapid testing collection supplies when applicable and allowed under Company Authority.
- viii. Provide transportation or shipment of specimens to a laboratory certified by the U.S. Department of Health & Human Services (HHS), Substance Abuse and Mental Health Services Administration (SAMHSA).
- ix. Ensure that storage and shipment of specimens are in accordance and compliant with applicable federal, state, and local regulations.
- x. Provide reporting to SMART using confidential protocol.
- xi. Provide proper documentation of all collections.
- xii. All documentation shall be accurate, legible, on the correct forms and provided to SMART upon completion of tests or as requested.
- xiii. Affidavits shall be provided to SMART to correct non-fatal errors in the collection process, as needed.

C. Medical Review Officer (MRO) and Laboratory Services

- i. Provide licensed and certified MRO services to receive all test results from laboratory for negative and positive determination.
- ii. MRO shall contact employees for additional medical information as needed within the required regulatory timeframe.
- iii. MRO shall communicate results to SMART and document all test results in accordance with all applicable rules and regulations.

- iv. Ensure results are communicated to SMART from the MRO and/or lab within regulatory timelines-

2. Testing Pools

SMART currently has the following testing pools in place, which are subject to change at SMART's discretion. Additional pools may be implemented in the future at SMART's discretion.

The DOT-Regulated pools for covered employees are administered under 49 CFR Part 219. The following tests may be conducted:

- Pre-Employment Test
- Random Test
- Reasonable Cause Test
- Reasonable Suspicion Test
- Return-to-Duty Test
- Follow Up Test
- Post-Accident Test

The Company Authority pool is administered for all employees not covered by the FRA regulations or for DOT regulated covered employees. The following tests may be conducted under this pool:

- Pre-Employment Test
- Random Test
- Post-Incident / Reasonable Cause Test
- Reasonable Suspicion Test
- Return-to-Service Test
- Follow Up Test

The Ensured Testing pool was implemented by SMART to ensure that applicable employees are tested at least once per calendar year or every two years.

3. SMART Onsite Locations

- SMART Rail Operations Center
3748 Regional Parkway,
Santa Rosa, CA 95403
- SMART Administrative Office
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954
- Fulton Facility
1200 River Road
Fulton, CA 95403
- Roblar Facility
105 Roblar Drive
Novato, CA 94949

Additional onsite locations may be added in the future.

4. Additional Services

Consultant may provide the following additional services at the request of the SMART Manager:

a. FRA Mandatory Post Accident – Expert Advisory Counseling Services

Consultant will walk collector/ hospital/ clinic staff through the entire post-accident process for all federal post-accident events per 49 CFR 40 Part 219.201.

b. Expert Witness Testimony

Consultant shall provide expert witness testimonial services.

c. Training Services

Consultant shall provide Supervisory Signs & Symptoms Training and/or FRA Post Accident Training per 49 CFR 40- FRA Part 219.11. All trainings include training materials.

IV. **Timeline for Each Requirement / Task**

Consultant shall provide documents required by DOT and FRA as requested and maintain all records related to the DOT urine specimen collections and alcohol screenings. Consultant shall maintain documentation showing that it meets all DOT and FRA requirements.

V. **Acceptance Criteria**

The SMART Manager shall review the work performed under this Agreement to ensure it meets the requirements of the contract and each task order. In the event that any work is found to be defective, Consultant shall replace the defective work at no additional cost to SMART upon notification by the SMART Manager that the work is defective.

EXHIBIT B

SCHEDULE OF RATES

Specimen Collection Services DOT or Company Authority Collections (Per Test)	On-Site Fees
Call Out Fee (per collector) Miscellaneous fee are additional. Call out fee is per collector, and cancellation applies if cancelled with less than 24 hours' notice.	\$150.00
Urine Specimen Collection Collection only, does not include Lab & MRO services	\$40.00
Instant Urine Specimen Collection - Onsite (Non-DOT only) Includes collection & kit only	\$45.00
Alcohol Screening	\$40.00
Alcohol Confirmation Utilized when initial screening results are at or above 0.020	\$40.00
On-Site Time Fee From arrival time to last test time, billed in 15-minute increments	\$40.00/hr.
Miscellaneous Fees	
Lab and MRO Services –(5 Panel Urine Test) Subject to vendor price changes which will be passed through at cost	\$30.00
Specimen reconfirmation testing when donor has a non-negative & requests split specimen to be sent to another lab Subject to vendor price changes which will be passed through at cost – (CRL& NMR)	\$250.00
Short Notice Less than 24 hours' notice	\$75.00
After Hours Weekends, Holidays, and 7 pm – 6:59 am local time weekdays	\$75.00
Excess Travel fee Round trip in excess of 100 miles, for every 100 miles traveled	No charge
Mileage Based on SMART's Travel Guidelines	varies
Donor Refusal After collector has started paperwork	100%
Cancellation Charge Call out fee will apply if cancelled with less than 24 hours' notice, and miscellaneous fees will apply if collector is in route when cancelled.	see call out fee
Direct Observer Service	\$75.00
FRA Mandatory Post Accident – Expert Advisory Counseling Fee We will walk collector/ hospital/ clinic staff through the entire post-accident process. This fee will apply to all federal post-accident events - 49 CFR 40 Part 219.201	\$500.00
Expert Witness Testimony Fee By phone or in person	By phone \$25.00 per qtr. hour In person \$50.00 per qtr. hour
Parking, Tolls, Hotel and other out of pocket expenses Based on SMART's Travel Guidelines	At Cost
Vendor Surcharges Economically driven surcharges e.g., fuel (Based on SMART's Travel Guidelines)	At Cost
Supervisory Signs & Symptoms + FRA Post Accident - 49 CFR 40- FRA Part 219.11 (g) Include training materials	\$1000 minimum plus all travel related expenses. Includes up to 20 employees, \$20/per additional person
Annual Fee for DOT Random Pool Generation <u>with</u> MIS Reporting Capability -Price is per employee in each pool with a maximum of \$500/pool if required donor data is transmitted in an MS Excel or MS Access readable format. Includes MIS reporting as required by DOT	\$15/pp/pool with \$100 minimum
Annual fee for Non-DOT Random Pool Generation <u>without</u> MIS Reporting Price is per employee in each pool with a maximum of \$500/pool. Price includes lab statistical summary. Does not include MIS reporting capability.	\$10/pp/pool with \$50 minimum

All materials, if any, shall be invoiced to SMART at cost with receipt documentation submitted and with prior written approval by the SMART Manager.

All rates shall be fixed for the initial three-year term. Upon completion of the initial three-year term, and prior to the commencement of the optional term of this Agreement, Consultant may, upon 30 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 April for the most recent year. The maximum increase shall be 5%.

EXHIBIT C

FTA & DOT REQUIREMENTS UNITED STATES DEPARTMENT OF TRANSPORTATION (DOT), FEDERAL TRANSIT ADMINISTRATION (FTA) AND CALIFORNIA DEPARTMENT OF TRANSPORTATION REQUIREMENTS

1. General.

In performance of its obligations pursuant to this Agreement or Purchase Order [Hereinafter “Agreement”], the Contractor, Service Provider, Seller, or Consultant [Hereinafter “Contractor”] agrees to comply with all applicable provisions of federal, state and local law, regulations, and FTA directives. The terms of the most recent amendment to any federal, state or local laws, regulations, FTA 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 FTA provides otherwise in writing. The Federal or 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.

2. Fly America.

The Contractor agrees to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the U.S. General Services Administration’s regulations at 41 CFR §§301-10.131 – 301-10.143, which provide that recipients and subrecipients of Federal funds and their Contractors are required to use U.S. flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. If a foreign air carrier is used, the Contractor shall submit an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

3. Energy Conservation.

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. §6321 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance required under FTA regulations, “Requirements for Energy Assessments,” 49 C.F.R. Part 622, subpart C.

4. **Clean Water.**

The Contractor agrees:

(a) to comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 - 1388, *et seq.* 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 FTA and the appropriate EPA Regional Office; and

(b) to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

5. **Byrd Anti-Lobbying Amendment, as amended by the Lobbying Disclosure Act of 1995.**

Contractors that apply or bid for an award must file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

Byrd Anti-Lobbying Certificate - Certification for Contracts, Grants, Loans, and Cooperative Agreements (to be submitted with each bid or offer exceeding \$100,000)

The undersigned Contractor certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with 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.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to 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 this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).

- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure.

Date: _____

Company Name: _____

Print Name: _____

Title: _____

Signature: _____

6. Federal Changes.

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this Agreement. Contractor's failure to so comply shall constitute a material breach of this Agreement.

7. Clean Air.

The Contractor agrees to:

(a) comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 – 7671q, *et seq.* 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 FTA and the appropriate EPA Regional Office; and

(b) include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

8. Recovered Materials and Solid Wastes.

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). The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. Furthermore, Contractor will comply with Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

9. No Obligation by the Federal Government.

(a) SMART and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to SMART, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the Agreement.

(b) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

10. Program Fraud and False or Fraudulent Statements or Related Acts.

(a) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 C.F.R. Part 31, apply to its actions pertaining to this project. Upon execution of the Agreement, the Contractor certifies or affirms the

truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement or the FTA assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(b) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(c) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

11. Special Termination Provisions. 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 the Government'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. 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 Agreement 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) 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) 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 or Default (Architect and Engineering Contracts). SMART may terminate this Agreement in whole or in part, for SMART's convenience or because of the failure of the Contractor to fulfill the Agreement 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 SMART all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Agreement, whether completed or in process.

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

If the termination is for failure of the Contractor to fulfill the Agreement 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 Agreement 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.

12. Suspension and Debarment.

This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractors, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or

proposer certifies as follows.

Suspension and Debarment Certificate

The Contractor hereby certifies that neither the Contractor, nor its principals, as defined at 49 CFR 29.995, nor its affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

This certification is a material representation of fact relied upon by SMART. If it is later determined 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 49 CFR 29, Subpart C 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 similar provision requiring such compliance in its lower tier covered transaction.

Company Name: _____

By: _____

Print Name: _____

Title: _____

Date: _____

13. Civil Rights.

The following requirements apply to the Agreement:

(a) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and 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, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(b) Equal Employment Opportunity The following equal employment opportunity requirements apply to the Agreement:

(1) Race, Color, Creed, National Origin, Sex In accordance with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, 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. Parts 60, *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the project. 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, creed, national origin, sex, sexual orientation, gender identity, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(2) Age In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) Disabilities In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

14. 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.

15. Performance During Dispute.

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

16. Claims for Damages.

Should either party to the Agreement suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he 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 of damage.

17. 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.

18. Rights and Remedies.

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.

19. Disadvantaged Business Enterprises.

In addition to the requirements set forth in the Notice to Proposers or Bidders regarding Disadvantaged Business Enterprise (DBE) Information the following requirements apply to this Agreement.

(a) This Agreement is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 0.03%.

(b) The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

(c) The successful bidder/offer or will be required to report its DBE participation

obtained through race-neutral means throughout the period of performance.

(d) The contractor shall promptly pay any and all subcontractors by an instrument that guarantees availability of funds immediately upon deposit of said instrument. The contractor shall include, in its monthly invoice submission to SMART, amounts to pay for all subcontractors' acceptable invoices, no later than 30 days after receipt of such invoices. Unless otherwise approved in writing by SMART, the contractor shall, within ten (10) days after receipt of the payment made by SMART, pay to each of its immediate subcontractors for satisfactory performance of its contract, the amounts to which they are entitled, after deducting any prior payments and any amount due and payable to the contractor by those subcontractors. Any delay or postponement of such payment may take place only for good cause and with SMART's prior written approval. If the contractor determines the work of the subcontractors to be unsatisfactory, the contractor must immediately notify in writing SMART (with a separate notice to the Liaison Officer if the subcontractor is a DBE) and state the reasons. Failure by the contractor to comply with this requirement will be construed to be breach of contract and may be subject to sanctions as specified in the contract.

(e) Should SMART make incremental inspections and, upon approval of the contractor's work at various stages of the contract, pay a portion of the retainage, the contractor shall promptly, within 30 days after SMART has made such payment, pay to the subcontractor who has satisfactorily completed all of its work and whose work is covered by SMART's inspection and approval, all retainage owed to the subcontractor. SMART's incremental inspections, approval or release of a portion of the retainage under this section shall not constitute acceptance.

(f) The Contractor must promptly notify SMART whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of SMART. In this situation, the prime contractor shall provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time period specified, SMART will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, SMART may issue a termination for default proceeding.

20. Exclusionary or Discriminatory Specifications.

Apart from inconsistent requirements imposed by Federal statute or regulations, Contractors shall comply with the requirements of 49 U.S.C. § 5323(h)(2) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

21. No Federal Government Obligations to Contractor and Third Parties.

Absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to Contractor, or any other third party in

connection with the performance of the Agreement. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, contract, or subagreement, the Federal Government continues to have no obligations or liabilities to any party, including the Contractor.

22. Geographic Restrictions.

Contractor shall refrain from using state or local geographic preferences, except those expressly mandated or encouraged by Federal statute, and as permitted by SMART.

23. Access To Records and Reports.

Contractor shall comply with the following requirements:

- (a) **Record Retention.** Contractor shall, during the course of the Agreement and for three years after final payment, retain and maintain complete readily accessible records, documents, reports, contracts, and supporting materials relating to the Agreement as SMART may require.
- (b) **Access to Records.** Contractor shall permit SMART, the Secretary of Transportation and the Comptroller General of the United States, 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. In accordance with 49 U.S.C. § 5325(g), Contractor shall require each subcontractor to permit SMART, the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that subcontractor agreement and to audit the books, records, and accounts involving that subcontractor agreement as it affects the Agreement.
- (c) **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.

24. ADA Access.

Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 *et seq.*; section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; 49, U.S.C. § 5301(d); and the following Federal regulations including any amendments thereto:

- (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (c) U.S. DOT regulations "Americans with Disabilities (DA) Accessibility Specifications for Transportation Vehicles," 49 C.F.R. Part 38;
- (d) U.S. DOT regulations, "Nondiscrimination on the basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (e) U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part

- 36;
- (f) U.S. General Services Administration (GSA) regulations, “Accommodations for the Physically Handicapped,” 41 C.F.R. Subpart 101-19;
 - (g) U.S. Equal Employment Opportunity Commission, “Regulations to implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630;
 - (h) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled,” 47 C.F.R. Part 64, Subpart F;
 - (i) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. Part 609; and
 - (j) Any implementing requirements FTA may issue.

25. Fair Labor Standards Requirements.

Contractor shall comply with the minimum wage and overtime provisions of the Fair Labor Standards Act, as amended, 29 U.S.C. §§ 206 and 207, which apply to employees performing work under the Agreement.

26. Contract Work Hours and Safety Standards Act.

(40 U.S.C. §§ 3701 – 3708) Contractor shall comply with 40 U.S.C. § 3702 and § 3704, as supplemented by Department of Labor regulations (29 C.F.R. part 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer based on 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. 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.

Contractor shall comply with the determinations pertaining to these requirements that may be made in accordance with applicable U.S. Department of Labor (DOL) regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5.

Contractor shall comply with U.S. DOL regulations, “Recording and Reporting Occupational Injuries and Illnesses,” 29 C.F.R. Part 1904; “Occupational Safety and Health Standards,” 29 C.F.R. Part 1910, and “Safety and Health Regulations for Construction,” 29 C.F.R. Part 1926.

27. State Fair Employment Practices.

In the performance of work under this Agreement, Contractor and its subcontractors will not unlawfully discriminate, harass or allow harassment, against any employee or

applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (including cancer), age (over 40), marital status and denial of family care leave. Contractor and its subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 *et seq.*) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 *et seq.*). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900 (a-f), set forth in chapters of Division 4 of Title 2 of the California Code of Regulations are incorporated into this agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Contractor and its subcontractors shall include the nondiscrimination and compliance provisions of this clause in all subcontractor agreements to perform work under this agreement.

Contractor and its subcontractors will permit access to all records of employment, employment advertisements, 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 SMART for the purpose of investigation to ascertain compliance with this Fair Employment Practices Section.

28. Metric System.

To the extent required by U.S. DOT or FTA, Contractor shall use the metric system of measurement, as may be required by 49 U.S.C. §§ 205a *et seq.*; Executive Order No. 12770, "Metric Usage In Federal Government Programs," 15 U.S.C. § 205a note; and other regulations, guidelines, and policies issued by U.S. DOT or FTA. To the extent practicable and feasible, Contractors shall accept products and services with dimensions expressed in the metric system of measurement.

29. Environmental Protection

Contractor shall comply with the following requirements:

(a) Contractor shall comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 *et seq.* consistent with Executive Order. No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; PTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 *et seq.*; and joint FHWA/FTA regulations, "Environmental impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

(b) Contractor shall comply with all Federal transit laws, such as 49 U.S.C. §5323(c)(2) and 23 U.S.C. §139, as applicable.

(c) Contractor shall report and require each subcontractor at any tier to report any violation of these requirements resulting from any Contract activity of Contractor or subcontractor to FTA and the appropriate U.S. EPA Regional Office.

30. Privacy Act.

Contractor agrees to comply with, and assures the compliance of its employees with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C § 552. Contractor understands that the requirements of the Privacy Act, including civil and criminal penalties for violation of the Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

31. Veterans Preference.

As provided in 49 U.S.C. §5325(k), the Contractor, to the extent practicable, agrees and assures that each subcontractor:

1. Will give a hiring preference to veterans, as defined in 5 U.S.C. §2108, who have the skills and abilities required to perform construction work required under Agreement in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53; and
2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

32. Safe Operation of Motor Vehicles.

- (a) Seat Belt Use. Contractor agrees to implement Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. §402 note, (62 Fed Reg. 19217), by:

Adopting and promoting 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.

- (b) Distracted Driving, Including Text Messaging While Driving. Contractor agrees to comply with Executive Order No. 13513, “Federal Leadership on Reducing Text Messaging While Driving,” 23 U.S.C. §402, U.S. DOT Order 3902.10, “Text Messaging While Driving”, and U.S. DOT Special Provision pertaining to Distracted Driving:

- a. Safety. 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 the company owns, leases, or rents, or a privately-owned vehicle when on official business in connection

with the Agreement, or when performing any work for or on behalf of SMART.

- b. Contractor agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

33. Alcohol Misuse and Prohibited Drug Use.

Contractor and all Subcontractors shall comply with:

- a. Federal Transit Laws, specifically 49 U.S.C. §5331
- b. FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 655
- c. Applicable provisions of U.S. DOT regulations, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," 49 C.F.R. Part 40

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

Contractor certifies and confirms that no services provided or supplies installed or utilized under this contract constitute telecommunications services, equipment or systems prohibited under Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (P.L. 115-232), and as may be implemented by 2 C.F.R. 200.216. If Contractor later learns that prohibited telecommunications services, equipment or systems have been supplied, installed, or utilized under this Contract, Contractor shall immediately inform SMART in writing. SMART may require the Contractor to promptly replace such prohibited service, equipment and systems at the Contractor's sole cost.

35. Domestic Preferences for Procurements

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.

36. Incorporation of Federal Transit Administration (FTA) Terms.

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any SMART requests which would cause SMART to be in violation of the FTA terms and conditions.



May 18, 2022

David Rabbitt, Chair
Sonoma County Board of Supervisors

Barbara Pahre, Vice Chair
Golden Gate Bridge,
Highway/Transportation District

Judy Arnold
Marin County Board of Supervisors

Melanie Bagby
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Damon Connolly
Marin County Board of Supervisors

Chris Coursey
Sonoma County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Eddy Cumins
General Manager

5401 Old Redwood Highway
Suite 200
Petaluma, CA 94954
Phone: 707-794-3330
Fax: 707-794-3037
www.sonomamarintrain.org

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

SUBJECT: Authorize the General Manager to award a Purchase Order to CDW-G, LLC for the Purchase of Administration Network Hardware in the amount of \$226,467.21.

Dear Board Members:

RECOMMENDATION:

Authorize the General Manager to award a Purchase Order to CDW-G, LLC for the purchase of Administration Network Hardware in the amount of \$226,467.21.

SUMMARY:

SMART's IT Department maintains and manages SMART's network infrastructure. This network includes equipment at SMART facilities that was implemented between 2012 and 2015. As part of maintaining a state of good repair and up-to-date security features, these devices must be replaced as the existing equipment has reached the end of its useful life.

The purchase of this equipment will maintain functionality and up-to-date security of the following systems:

Petaluma

- Enterprise Grade Indoor Wi-Fi system
- Primary and Secondary Firewall Switches
- Building Security Switches
- Primary and Secondary Interconnection to other SMART offices

ROC

- Enterprise Grade Indoor Wi-Fi system
- Enterprise Grade Outdoor Wi-Fi system
- Primary and Secondary Internet Access
- Primary and Secondary Internal Routers
- ROC Datacenter Network equipment
- Primary and Secondary Firewall Switches
- Primary and Secondary Interconnection to other SMART offices

Fulton

- Enterprise Grade Indoor Wi-Fi system
- Interconnection to other SMART offices

This purchase leverages the National Association of State Procurement Officials (NASPO) Cooperative Contract # AR3227 for the purchase of the replacement equipment required. Government Code §6502 et seq. authorizes local governments, including Special Districts such as SMART, to utilize cooperative purchasing agreements to take advantage of greater economies of scale and efficiency since these contracts are competitively bid at a higher level. The State of California, through Participating Addendum 7-20-70-47-01, has elected to participate and has authorized other state agencies, cities, counties, and other local governments to utilize this agreement for the purchase of data communications equipment, including that which SMART is requesting approval to purchase. By utilizing this cooperative contract, SMART is achieving between 35% - 45% off of the manufacturer's price for this equipment.

Staff recommends authorizing the General Manager to award a Purchase Order to CDW-G, LLC for the purchase of Admin Network Hardware in the amount of \$226,467.21.

FISCAL IMPACT: Funding is included in the Board Approved Fiscal Year 2021-22 Budget.

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

Very truly yours,

 /s/
Ken Hendricks
Procurement Manager



May 18, 2022

David Rabbitt, Chair
Sonoma County Board of Supervisors

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Petaluma, CA 94954

SUBJECT: Authorize the General Manager to Award Contract No. FR-PS-22-009 to South West Locomotive Repair to perform a basic overhaul and repair service on SMART's Railpower RP20DB Locomotive.

Dear Board Members:

RECOMMENDATION:

Staff recommends authorizing the General Manager to award Contract # FR-PS-22-009 to Lambertus J. Verstegen dba South West Locomotive Repair to perform a basic overhaul and repair service on SMART's Railpower RP20DB Locomotive with a not-to-exceed amount of \$135,676.43.

SUMMARY:

SMART recently acquired four locomotives (3 owned and 1 leased) when it took over the freight operation from the Northwestern Pacific Railroad Company. The condition of these locomotives upon SMART taking over the freight operation showed that significant maintenance had been deferred on some of the units. One of the SMART-owned Railpower GenSet locomotives in particular requires an urgent basic overhaul and repair service to be performed to meet Federal Railroad Administration (FRA) maintenance standards and to ensure the continued reliability of service to its customers.

Given the long lead time for parts and the urgency of the repairs needed, SMART has negotiated a contract with Lambertus J. Verstegen dba South West Locomotive Repair, a firm qualified and experienced in performing maintenance and repairs on Railpower GenSet locomotives. This firm is already familiar with SMART's newly inherited Railpower GenSet locomotives as the firm had performed maintenance and repairs on these same units while they were owned by the Northwestern Pacific Railroad Company.

Given the urgency of the repairs needed, SMART has negotiated a contract with Lambertus J. Verstegen dba South West Locomotive Repair, a firm qualified and experienced in performing maintenance and repairs on Railpower GenSet locomotives. This firm is already familiar with SMART's newly acquired Railpower GenSet locomotives as the firm had performed maintenance and repairs on these same units while they were owned by the Northwestern Pacific Railroad Company.

Staff recommends authorizing the General Manager to award Contract # FR-PS-22-009 to Lambertus J. Verstegen dba South West Locomotive Repair to perform this urgent basic overhaul and repair service on SMART's Railpower RP20DB Locomotive with a not-to-exceed amount of \$135,676.43.

FISCAL IMPACT: Funding is included in the approved Fiscal Year 2022 Freight Operations budget.

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

Very truly yours,

/s/
Ken Hendricks
Procurement Manager

Attachment(s): Contract Agreement No. FR-PS-22-009

SERVICE AGREEMENT

This agreement ("Agreement"), dated as of May 18, 2022 ("Effective Date") is by and between the Sonoma-Marín Area Rail Transit District (hereinafter "SMART"), and Lambertus J. Verstegeñ dba South West Locomotive Repair (hereinafter "Service Provider").

RECITALS

WHEREAS, Service Provider represents that it is a duly qualified and experienced in the areas of locomotive maintenance, repair, and related 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 Service Provider to perform a basic overhaul and repair service on SMART's Railpower RP20DB; 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

ARTICLE 3. REQUEST FOR SERVICES.

Section 3.01 Initiation Conference. SMART's Freight 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.

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

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

Section 4.03 Performance Standard. Service Provider 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 Service Provider’s profession. If SMART determines that any of Service Provider’s work is not in accordance with such level of competency and standard of care, SMART, in its sole discretion, shall have the right to do any or all of the following: (a) require Service Provider to meet with SMART to review the quality of the work and resolve matters of concern; (b) require Service Provider 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) Service Provider 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 Service Provider to perform work hereunder, Service Provider 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 Service Provider 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. Service Provider shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of SMART. Key personnel shall be as listed in the applicable Task Order.
- (c) In the event that any of Service Provider’s personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Service Provider’s control, Service Provider shall be responsible for timely provision of adequately qualified replacements.
- (d) Service Provider shall assign the following key personnel for the term of this Agreement:
Phil Verstegen

ARTICLE 5. PAYMENT.

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

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

Section 5.02 Service Provider shall be paid, as full compensation for the satisfactory completion of the work described in the Scope of Work (Exhibit A), for the negotiated amount of \$135,676.43, regardless of whether it takes Consultant more time to complete or costs are more than anticipated. The not-to-exceed (NTE) amount of \$135,676.43 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 Consultant be reimbursed for an amount in excess of the NTE amount without a formal written amendment to this Agreement. Consultant must submit all invoices on a timely basis, but no later than thirty (30) days from the date the services/charges were incurred. SMART does not reimburse for travel time.

Section 5.03 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. District shall not accept invoices submitted by Service Provider 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 Service Provider to abide by these requirements may delay or prevent payment of invoices or cause such invoices to be returned to the Service Provider unpaid.

ARTICLE 6. TERM OF AGREEMENT.

Section 6.01 The term of this Agreement shall remain in effect until February 28, 2023, unless terminated earlier in accordance with the provisions of **Article 7** below.

ARTICLE 7. TERMINATION.

Section 7.01 Termination Without Cause. 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. Notwithstanding any other provision of this Agreement, should Service Provider 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 Service Provider written notice of such termination, stating the reason for termination.

Section 7.03 Delivery of Work Product and Final Payment Upon Termination. In the event of termination by either party, Service Provider, 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, Service Provider 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 Service Provider 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 Service Provider 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 Service Provider.

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

Service Provider 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 Service Provider, to the extent caused by the Service Provider's negligence, recklessness or willful misconduct in its performance or obligations under this Agreement. Service Provider agrees to provide a complete defense for any claim or action brought against SMART based upon a claim relating to Service Provider's performance or obligations under this Agreement. Service Provider'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 Service Provider's expense, subject to Service Provider'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 Service Provider 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, Service Provider shall maintain and shall require all of its Subcontractors, Service Providers, and other agents to maintain, insurance as described below. If the Service Provider 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 Service Provider. 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 for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles.

Section 9.04 Endorsements. Prior to commencing work, Service Provider shall file Certificate(s) of Insurance with SMART evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. 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 Service Provider 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 Service Provider. Said policy shall protect Service Provider 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) Service Provider hereby grants to SMART a waiver of any right to subrogation which any insurer of said Service Provider may acquire against SMART by virtue of the payment of any loss under such insurance. Service Provider 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.

SMART reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

Section 9.05 Deductibles and Retentions. Service Provider shall be responsible for payment of any deductible or retention on Service Provider'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 9.06 Claims Made Coverage. If any insurance specified above is written on a claims-made coverage form, Service Provider 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, Service Provider shall purchase "extending reporting" coverage for a minimum of three (3) years after completion of the work.

Section 9.07 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. At SMART's request, Service Provider shall provide certified copies of the policies that correspond to the policies listed on the Certificates of Insurance. Service Provider 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. Service Provider 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 9.08 Policy Obligations. Service Provider's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

Section 9.09 Material Breach. If Service Provider, 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 Service Provider resulting from said breach. Alternatively, SMART may purchase such required insurance coverage, and without further notice to Service Provider, SMART may deduct from sums due to Service Provider any premium costs advanced by SMART for such insurance. These remedies shall be in addition to any other remedies available to SMART.

ARTICLE 10. PROSECUTION OF WORK.

When work is requested of Service Provider 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, or wildfire, the time for Service Provider's performance of this Agreement shall be extended by a number of days equal to the number of days Service Provider 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 Service Provider 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 Service Provider shall be entitled to no compensation whatsoever for the performance of such work. Service Provider 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 SERVICE PROVIDER.

Section 12.01 Standard of Care. SMART has relied upon the professional ability and training of Service Provider as a material inducement to enter into this Agreement. Service

Provider 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 Service Provider's work by SMART shall not operate as a waiver or release.

Section 12.02 Status of Service Provider. The parties intend that Service Provider, 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. Service Provider 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, Service Provider 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. Service Provider 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. Service Provider 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 Service Provider'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, Service Provider agrees to furnish SMART with proof of payment of taxes on these earnings.

Section 12.04 Records Maintenance. Service Provider 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. Service Provider shall maintain such records for a period of four (4) years following completion of work hereunder. Service Provider and SubService Providers 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. Service Provider 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. Service Provider 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, Service Provider 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 Service Provider's or such other person's financial interests.

Section 12.06 Nondiscrimination. Service Provider 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, pregnancy, disability, 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.

Section 12.07 Assignment Of Rights. Service Provider 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, if any, now or later prepared by Service Provider in connection with this Agreement. Service Provider 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. Service Provider'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. Service Provider 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. To the extent Service Provider incorporates into the work product any pre-existing work product owned by Service Provider, Service Provider hereby acknowledges and agrees that ownership of such work product shall be transferred to SMART. All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Service Provider 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, Service Provider 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. Service Provider 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: Jon Kerruish, Freight Manager 5401 Old Redwood Highway, Suite 200 Petaluma, CA 94954 jkerruish@sonomamarintrain.org 707-285-8252
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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
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If to Service Provider:	Lambertus J. Verstegen dba Southwest Locomotive Repair Attn: Phil Verstegen PO Box 189 Forest Falls, CA 92339 phillip@swlocomotive.com
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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 No Waiver of Breach. The waiver by SMART 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 16.02 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. Service Provider 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. Service Provider and SMART acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

Section 16.03 Claims Made Against Service Provider. Service Provider shall provide SMART with copies of all correspondence and records relating to any claims made against the Service Provider while working on SMART's property by SMART employees or third-party on a monthly basis.

Section 16.04 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 16.05 No Third-Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

Section 16.06 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 16.07 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 16.08 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 16.09 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 16.10 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.

**SERVICE PROVIDER: LAMBERTUS J. VERSTEGEN DBA SOUTH WEST
LOCOMOTIVE REPAIR**

By: _____
Lamburtus Verstegen, Owner

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 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 Lambertus Verstegen dba South West Locomotive Repair to perform mobile locomotive maintenance and repair services on its Railpower RP20DB locomotives.

The locomotive is housed and operated out of SMART's Schellville Depot located at 1480 Hwy 121, Sonoma, CA 95476.

All work performed under this Agreement shall be per Federal, State, and local laws and regulations. Ensuring safe operation of this locomotive is critical for SMART and therefore special attention will be given to the maintenance and repair of all safety equipment.

II. Project Management

All work shall be initiated, scheduled, and reviewed by the Freight Manager or designee (hereinafter "SMART Manager"). Work may be initiated in writing or by teleconference.

III. Scope of Work

South West Locomotive Repair shall perform the following services as part of the basic overhaul and repair service of the NWP 2009 Gen-Set Locomotive:

A. Inspection and Repairs:

- a. Perform an initial visual inspection of the NWP 2009 Gen-Set Locomotive and provide a report of its initial condition.
- b. Replace the existing locomotive batteries with new locomotive batteries and properly dispose of the used batteries.
- c. Replace the two (2) PODs (engines) heads with rebuilt heads, including Injectors
- d. Replace RTO Chopper, and perform a test of the electrical system
- e. Replace the exhaust cover on one (1) POD (engine)
- f. Replace oil filter on PODs (3-engines)
- g. Clean and replace crankcase vents on PODs (3-engines)
- h. Change engine oil and anti-freeze in rebuilt POD (3-engines)
- i. Perform tests on the rebuilt PODs (2-engines)
- j. Remove and replace heads on PODS (2-engines)

B. Qualify the PODs (3-Engines) and Components:

- a. Perform a visual inspection of the PODs (3-engines).
 - i. Identify the condition of the rebuilt PODs (2-engines).
 - ii. Inspect the PODs (3-engines) performance under full load.
- b. Perform electrical tests:
 - i. Conduct test on RTO Chopper per manufactures instructions.
 - ii. Perform operational RPM test per manufactures instructions
 - iii. Perform operational test on the batteries charging system per manufactures instructions.
 - iv. Perform operational testing on Micro Processor Controlled Control System including Fault Codes & Blink Codes
- c. Perform Mechanical Tests:
 - i. Perform a visual inspection to include:
 - 1. Identify the condition of all wire looms and connections for tightness
 - 2. Visually inspect for cracks or other damage
 - 3. Identify the condition of all PODs (3-engines).
 - 4. Visually inspect PODs (3-engines) for oil and water leaks and other damage.
 - 5. Test all PODs (3-engines) under full load, per manufactures Instructions.
 - ii. Prepare repair estimation for repair work not included in the basic overhaul and maintenance service (Only if applicable)
 - 1. If additional repair work is required on any of the PODs (3-engines), Service Provider will submit an itemized repair estimate to SMART's Manager for review.
 - 2. SMART's Manager must approve the repair cost in writing prior to any repair work being performed.

C. Clean and Repair the following Components:

- a. Remove batteries and properly dispose of the used batteries
- b. Install new batteries and connections.
- c. Perform electrical voltage test of the new batteries after installing, per manufactures guidelines.

D. Mechanical Repair and Maintenance of 3-POD's (engines)

- a. Perform cleaning of the engine.
- b. Replace the heads with rebuilt ones per factory settings.
- c. Install new oil and air filters.
 - i. Fill PODs with new oil (Oil Supplied by SMART).
 - ii. Fill PODs with new anti-freeze (Anti-Freeze Supplied by SMART).
- d. Replace Injectors 16 injectors on Pods (2-engines).

- i. Check for fuel leaks after repair.
- e. Replace Exhaust Cover on 1-POD (engine)

E. Final Quality Assurance Testing

- a. Perform final quality assurance testing to ensure it meets manufacturer requirements to be placed back into service.

F. Provide SMART with a final report of the basic overhaul activity, test results, and condition of the locomotive.

G. Notification of Service Completion

- a. Service Provider shall notify the SMART Manager when the overhaul repairs and service has been completed and is ready for final inspection.

H. SMART's Responsibilities:

- a. SMART shall be responsible for providing access to the site and facilities during the performance of work.
- b. SMART shall be responsible for ordering and supplying any fluids needed, such as oil and anti-freeze.
- c. SMART will be responsible for proper disposal of used oil waste.

IV. Timeline for Each Requirement

Service Provider and SMART shall mutually agree upon service schedule in writing.

V. Warranty of Work

Service provider shall warrant all parts used in the performance of this work under the manufacturer's standard warranty period. Service Provider shall also warrant all labor and workmanship, as long as there is no indication of abuse, negligence, or misuse by SMART. Service Provider shall provide the SMART Manager with a list of the warranty periods for the parts used upon completion of the project.

VI. Acceptance Criteria

Upon Service Completion, SMART's Freight Manager or designee shall inspect the locomotive PODs (engines) and electrical equipment replacements to ensure it meets the requirements identified in the contract. Upon the successful completion of the work, the SMART Manager shall issue a Notice of Acceptance and instruct the Service Provider to submit its invoice.

**EXHIBIT B
SCHEDULE OF RATES**

PROJECT DESCRIPTION	PROJECT COST
Basic Overhaul and Repair Service	\$135,676.43

The Total Project Cost listed above includes all labor, supervision, materials, insurance, taxes, travel, shipping, overhead, profit, and all other direct and indirect costs associated with performing the work under this Agreement.



David Rabbitt, Chair
Sonoma County Board of Supervisors

Barbara Pahre, Vice Chair
Golden Gate Bridge,
Highway/Transportation District

Judy Arnold
Marin County Board of Supervisors

Melanie Bagby
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Damon Connolly
Marin County Board of Supervisors

Chris Coursey
Sonoma County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Eddy Cumins
General Manager

5401 Old Redwood Highway
Suite 200
Petaluma, CA 94954
Phone: 707-794-3330
Fax: 707-794-3037
www.sonomamarintrain.org

May 18, 2022

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

SUBJECT: Approve Resolution No. 2022-19 Authorizing the General Manager to Execute Contract No. CV-BB-22-001 with Air & Lube Systems, Inc. in an amount of \$282,273 and a term through August 31, 2022.

Dear Board Members:

RECOMMENDATION:

Approve Resolution No. 2022-19 authorizing the General Manager to execute Contract No. CV-BB-22-001 with Air & Lube Systems, Inc., for Construction of a Maintenance Building & Train Wheel Press Installation for an amount of \$282,273 and a contract term through August 31, 2022.

SUMMARY:

SMART is procuring a wheel press machine that will allow the Vehicle Maintenance Department to remove and install train wheels from the truck axle. Since the Diesel Multiple Unit (DMU) trains have been on the SMART property, SMART has contracted with outside entities to remove and install wheels. The new wheel press is scheduled to be delivered later this year.

This contract completes the preparatory work of reconfiguring a portion of the SMART Rail Operations Center to make room for the wheel press as well as installing key infrastructure and assisting with the wheel press installation. The work is divided into four parts:

1. Relocate storage containers to make room for the facility reconfiguration.
2. Convert an existing canopy structure into an enclosed secure room that will become the vehicle maintenance parts storage.
3. Install electrical power equipment and cabling for the wheel press.
4. Assist in the installation of the wheel press machine by installing anchor bolts, providing crane lifting services, connecting power, and other related support activities.

SMART conducted a competitive procurement for the work. The contract was advertised on March 21, 2002. A pre-bid conference was held at the Rail Operations Center on March 31, 2002. Bids were received on April 15, 2022. SMART received one bid from the Air & Lube Systems, Inc., who was determined to be responsible and responsive. The contract has a term through August 31, 2022.

Staff recommends approving Resolution No. 2022-19 authorizing the General Manager to execute Contract No. CV-PS-22-001 with Air & Lube Systems for Construction of a Maintenance Building & Train Wheel Press Installation Inc. for an amount of \$282,273 and a term through August 31, 2022.

FISCAL IMPACT: Funding is available in the FY 22 budget.

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

Very truly yours,

/s/
Bill Gamlen, P.E.
Chief Engineer

Attachment(s):

- 1) Resolution No. 2022-19
- 2) Air & Lube Systems Contract No. CV-PS-22-001

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
APPROVING CONTRACT NO. CV-BB-22-001 WITH AIR & LUBE SYSTEMS, INC. FOR CONSTRUCTION
OF A MAINTENANCE BUILDING & TRAIN WHEEL PRESS INSTALLATION**

WHEREAS, the Sonoma-Marín Area Rail Transit District (SMART) is procuring a railroad train wheel press ; and

WHEREAS, preparatory work is required to reconfigure a portion of the Rail Operations Center and install structural and electrical improvements to accommodate the wheel truing machine; and

WHEREAS, SMART conducted a competitive procurement for Contract No. CV-BB-22-001; and

WHEREAS, SMART received one (1) bid from Air & Lube Systems, Inc. who was determined to be responsible and responsive; 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. CV-BB-22-001 with Air & Lube Systems, Inc., for a total contract amount of \$282,273 and term of the agreement through August 31, 2022.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 18th day of May 2022, by the following vote:

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

David Rabbitt, Chair, Board of Directors
Sonoma-Marín Area Rail Transit District

ATTEST:

Leticia Rosas-Mendoza, Clerk of Board of Directors
Sonoma-Marín Area Rail Transit District

AGREEMENT FOR CONTRACTOR SERVICES

THIS AGREEMENT, dated this 18th day of May, 2022, ("Effective Date") by and between Air & Lube Systems, Inc. whose place of business is located at 8353 Demetre Ave, Sacramento, CA 95828 ("Contractor"), and the SONOMA-MARIN AREA RAIL TRANSIT DISTRICT, a Special District of the State of California ("SMART").

Construction of a Maintenance Building & Train Wheel Press Installation

CONTRACT # CV-BB-22-001

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, Contractor and SMART agree as follows:

Article 1. Work

- 1.1 Contractor shall complete all Work specified in the Contract Documents, in accordance with the Specifications, Plans, Drawings, and all other terms and conditions of the Contract Documents.

Article 2. Notices to SMART

- 2.1 SMART has designated John Riley, Project Manager, to act as SMART's Representative(s), who will represent SMART in performing SMART's duties and responsibilities and exercising SMART's rights and authorities in Contract Documents. SMART may change the individual(s) acting as SMART's Representative(s), or delegate one or more specific functions to one or more specific SMART's Representatives, including without limitation engineering, architectural, inspection and general administrative functions, at any time with written notice and without liability to Contractor. Each SMART's Representative is the beneficiary of all Contractor obligations to SMART, including without limitation, all releases and indemnities.

Project Manager:	John Riley
Address:	5401 Old Redwood Hwy, Suite 200 Petaluma, CA 94954
Phone:	707-794-3070
Email:	jriley@sonomamarintrain.org

- 2.2 All notices or demands to SMART under the Contract Documents shall be to SMART's Representative at: **5401 Old Redwood Hwy Suite 200, Petaluma, CA, 94954** or to such other person(s) and address(es) as SMART shall provide to Contractor.

Article 3. Contract Time and Liquidated Damages

- 3.1 Contract Time and Notice to Proceed.

Contract Time commences on the date established in the Notice to Proceed that is issued by SMART. SMART reserves the right to modify or alter the Commencement Date of the Work. SMART may give a Notice to Proceed at any time within 60 calendar days after the Notice of Award. Contractor shall not perform any Work at the Site prior to the date on which the Contract Time commences to run.

Contractor shall achieve full project completion as follows:

Project 1: NTP + 60 Calendar Days
Project 2: NTP + 75 Calendar Days
Project 3: NTP + 75 Calendar Days
Project 4: NTP + 90 Calendar Days

Contractor shall complete the Work so that a final Inspection Report can be issued in accordance with Section 01770 (Contract Closeout).

The term of this Agreement shall remain in effect through August 30, 2022.

3.2 Liquidated Damages.

SMART and Contractor recognize that time is of the essence of this Agreement and that SMART will suffer financial loss (See Paragraph 3.3 Below), if all or any part of the Work is not completed within the times specified above, plus any extensions thereof allowed in accordance with the Contract Documents. Consistent with Article 14 of Document 00700 (General Conditions), Contractor and SMART agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of actual damages incurred by SMART because of a delay in completion of all or any part of the Work. Accordingly, SMART and Contractor agree that as liquidated damages for delay, Contractor shall pay SMART:

- 3.2.1 **One hundred dollars (\$100)** for each Day that expires after the time specified herein for Contractor to achieve Substantial Completion of each project, until achieved.
- 3.2.2 **One hundred dollars (\$100)** for each Day that expires after the time specified herein for Contractor to achieve Final Inspection Report of each project, until achieved.
- 3.2.3 **One thousand dollars (\$1,000)** per hour per SMART train car delayed or obstructed.
- 3.2.4 **Two thousand dollars (\$2,000)** per day of delay if any damage to the track caused by Contractor.

These measures of liquidated damages shall apply cumulatively and except as provided below, shall be presumed to be the damages suffered by SMART resulting from delay in completion of the Work.

- 3.3 Liquidated damages for delay shall only cover project administrative (such as Project management and consultant expenses) and cost damages suffered by SMART as a result of delay. Liquidated damages shall not cover the cost of completion of the Work, damages resulting from Defective Work, lost revenues or costs of substitute facilities, or damages suffered by others who then seek to recover their damages from SMART (for example, delay claims of other contractors, subcontractors, tenants, or other third-parties), and defense costs thereof.

Article 4. Contract Sum

- 4.1 Contractor shall be paid, as full compensation for the satisfactory completion of the work described in the Contract Documents in accordance with the budget established in the Fee Schedule (Exhibit A) of this Agreement, provided, however, that Contractor agrees to perform all services described for the contract sum of \$282,273.00. SMART's Project Manager may authorize progress payments as work is completed. The contract sum 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 Contractor be reimbursed for an amount in excess of the NTE amount without a formal written amendment or Change Order to this Agreement.

Article 5. Contractor's Representations

In order to induce SMART to enter into this Agreement, Contractor makes the following representations and warranties:

- 5.1 Contractor has visited the Site and has examined thoroughly and understood the nature and extent of the Contract Documents, Work, Site, locality, actual conditions, as-built conditions, and all local conditions, and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.
- 5.2 Contractor has examined thoroughly and understood all reports of exploration and tests of subsurface conditions, as-built drawings, drawings, products specifications or reports, available for Bidding purposes, of physical conditions, including Underground Facilities, or which may appear in the Drawings. Contractor accepts the determination set forth in these Documents and Document 00700 (General Conditions) of the limited extent of the information contained in such materials upon which Contractor may be entitled to rely. Contractor agrees that, except for the information so identified, Contractor does not and shall not rely on any other information contained in such reports and drawings.
- 5.3 Contractor has conducted or obtained and has understood all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in Section 5.2 of this Document 00520) that pertain to the subsurface conditions, as-built conditions, Underground Facilities and all other physical conditions at or contiguous to the Site or otherwise that may affect the cost, progress, performance or furnishing of Work, as Contractor considers necessary for the performance or furnishing of Work at the Contract Sum, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Document 00700 (General Conditions); and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such purposes.
- 5.4 Contractor has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- 5.5 Contractor has given SMART prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered in or among the Contract Documents and as-built drawings and actual conditions and the written resolution thereof through Addenda issued by SMART is acceptable to Contractor.
- 5.6 Contractor is duly organized, existing and in good standing under applicable state law, and is duly qualified to conduct business in the State of California.
- 5.7 Contractor has duly authorized the execution, delivery and performance of this Agreement, the other Contract Documents and the Work to be performed herein. The Contract Documents do not violate or create a default under any instrument, agreement, order or decree binding on Contractor.
- 5.8 Contractor has listed the following Subcontractors pursuant to the Subcontractor Listing Law,

California Public Contract Code §4100 *et seq.*:

Name of Subcontractor and Location of Mill or Shop	Description of Work: Reference To Bid Items	Subcontractor's License No.
Summit Crane Company	Crane Service	1016455

- 5.9 Contractor has designated **Oleg Koval**, Project Manager, to act as Contractor's Representative(s), who will represent Contractor in performing Contractor's duties and responsibilities and exercising Contractor's rights and authorities in Contract Documents. Contractor may change the individual(s) acting as Contractor's Representative(s), or delegate one or more specific functions to one or more specific Contractor's Representatives, at any time upon prior written notice and approval and without liability to SMART, but Contractor is limited to two representatives.

Project Manager: Oleg Koval
Address: 8353 Demetre Ave
Sacramento, CA 95828
Phone: Office: (916) 642-7204 Mobile: (916) 257-8957
Email: Okoval@airandlube.com

Article 6. Contract Documents

- 6.1 Contract Documents consist of the following documents incorporated by reference, including all changes, Addenda, and Modifications thereto:

IFB	Invitation for Bid for "Construction of a Maintenance Building & Train Wheel Press Installation
Document 00700	General Conditions
General Requirements	Division 1 Specifications
Technical Specifications	Technical Specifications and Exhibits

- 6.2 There are no Contract Documents other than those listed in this Agreement, Article 6. The Contract Documents may only be amended, modified or supplemented as provided in Document 00700 (General Conditions).

Article 7. Insurance

Contractor shall procure and maintain for the duration of the Agreement insurance against all claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees, or subcontractors with limits and deductibles specified below:

- 7.1 Commercial 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 \$5,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

Said policy shall include a Railroads CG 24 17 endorsement removing the exclusion of coverage for bodily injury or property damage arising out of operations within 50 feet of any railroad property and affecting any railroad bridge, trestle, tracks, roadbeds, tunnel, underpass or crossing. A follow form Excess Liability policy may be utilized to satisfy the required limits of liability under this section.

Coverage may be met by a combination of primary and umbrella or excess insurance, but umbrella and excess shall provide coverage at least as broad as specified for underlying coverage.

- 7.2 Comprehensive Automobile Liability Insurance. Comprehensive Automobile Liability Insurance shall cover bodily injury and property damage in an amount no less than \$5,000,000 per accident for bodily injury and property damage. Said insurance shall include coverage for owned, hired, and non-owned vehicles.

Said policy shall also include a CA 20 70 10 13 endorsement removing the exclusion of coverage for bodily injury or property damage arising out of operations within 50 feet of any railroad bridge, trestle, track, roadbeds, tunnel, underpass, or crossing.

- 7.3 Workers' Compensation and Employer's Liability Insurance. Workers' Compensation and Employer's Liability Insurance, 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.

- 7.4 Contractor's Pollution Liability Insurance. Contractor's Pollution Liability Insurance in an amount no less than \$2,000,000 per occurrence. The Contractor's Pollution Liability policy shall be written on an occurrence or per claim basis with coverage for bodily injury, property damage and environmental damage, including cleanup costs arising out of third-party claims, for pollution conditions, and including claims of environmental authorities, for the release of pollutants caused by construction activities related to the Contract. Coverage shall include the Contractor as the named insured and shall include coverage for acts by others for whom the Contractor is legally responsible.

Coverage to be provided for bodily injury to or destruction of tangible property, including the resulting loss of use thereof, loss of use of tangible property that has been physically injured, and natural resource damage. There shall be no exclusions or limitations regarding damages or injury from existence, removal or abatement of lead paint. There shall be no insured vs. insured exclusion in the policy.

- 7.5 Railroad Protective Liability Insurance. Prior to commencement of construction activities, Contractor shall procure and maintain Railroad Protective Liability insurance, in SMART's name, with limits of liability of no less than \$5,000,000 per project, for losses arising out of injury to or death of all persons, and for physical loss or damage to or destruction of property, including the loss of use thereof.

- 7.6 Builder's Risk. Builder's Risk (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions. Such coverage shall name the SMART as a loss payee as their interest may appear.

- 7.7 Required Endorsements. Prior to commencing work, Contractor shall file Certificate(s) of Insurance with SMART evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. Said endorsements and Certificate(s) of Insurance shall stipulate:

- 1) SMART, its officers, and employees shall be named as additional insured on all policies listed with the exception of the Workers Compensation Policy.
- 2) 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 Contractor

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.

- 3) 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 Contractor. Said policy shall protect Contractor 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.
- 4) Contractor hereby grants to SMART a waiver of any right to subrogation which any insurer of said Contractor may acquire against SMART by virtue of the payment of any loss under such insurance. Contractor 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.
- 5) Pursuant to Revocable License between Sonoma County Water Agency (SCWA) and Sonoma-Marin Area Rail Transit District (SMART), SCWA, its officers, and employees shall be named as additional insured on Contractor's Commercial General Liability Insurance. Insurance certificates shall be mailed to Sonoma County Water Agency at 404 Aviation Boulevard, Santa Rosa, CA 95403-9019) and shall reference License No. 2170.

7.8 General Requirements.

All policies of insurance shall be placed with insurers acceptable to SMART. The insurance underwriter(s) for all insurance policies except Workers' Compensation shall have an A. M. Best Company rating of A VII or better. Required minimum amounts of insurance may be increased should conditions of Work, in opinion of SMART, warrant such increase. Contractor shall increase required insurance amounts upon direction by SMART.

Contractor shall pay all insurance premiums, including any charges for required waivers of subrogation or the endorsement of additional insured. If Contractor fails to maintain insurance, SMART may take out comparable insurance, and deduct and retain amount of premium from any sums due Contractor under Contract Documents.

If injury occurs to any employee of Contractor, Subcontractor or sub-subcontractor for which the employee, or the employee's dependents in the event of employee's death, is entitled to compensation from SMART under provisions of the Workers' Compensation Insurance and Safety Act, as amended, or for which compensation is claimed from SMART, SMART may retain out of sums due Contractor under Contract Documents, amount sufficient to cover such compensation, as fixed by the Act, as amended, until such compensation is paid, or until it is determined that no compensation is due. If SMART is compelled to pay compensation, SMART may, in its discretion, either deduct and retain from the Contract Sum the amount so paid, or require Contractor to reimburse SMART.

If any coverage required is written on a claims-made coverage form:

1. The retroactive date must be shown, and this date must be before the execution date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
3. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the Contractor must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.

4. A copy of the claims reporting requirements shall be submitted to SMART for review.

Contractor shall require and verify that subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure SMART is named additional insured on insurance required from subcontractors.

Nothing in Article 7 shall be construed as limiting in any way the extent to which Contractor or any Subcontractor may be held responsible for payment of damages resulting from their operations.

Please email all renewal Certificates of Insurance and corresponding policy documents to InsuranceRenewals@sonomamarintrain.org.

Article 8. Contract Bonds

All alterations, extensions of time, extra and additional work and other changes authorized by the Contract Documents may be made without securing the consent of the surety or sureties on the Contract Bonds.

8.1 Payment Bond

Contractor shall furnish a Payment Bond (Labor and Materials Bond) in an amount not less than 100 percent of the Contract price, excluding allowances. Payment bond shall be executed by an admitted surety insurer (California Civil Code Section 9554). An "admitted surety insurer" shall be defined as follows:

A corporate insurer or a reciprocal or interinsurance exchange to which the Insurance Commissioner has issued a certificate of authority to transact surety insurance in this state, as defined in Section 105 of the Insurance Code (California Code of Civil Procedures Section 995.120).

8.2 Performance Bond

Contractor shall furnish a Performance Bond in an amount not less than 100 percent of the Contract price, excluding allowances. Performance bond shall be executed by an admitted surety insurer (California Civil Code Section 9554). An "admitted surety insurer" shall be defined as follows:

A corporate insurer or a reciprocal or interinsurance exchange to which the Insurance Commissioner has issued a certificate of authority to transact surety insurance in this state, as defined in Section 105 of the Insurance Code (California Code of Civil Procedures Section 995.120).

Article 9. Miscellaneous

- 9.1 Terms and abbreviations used in this Agreement are defined in Document 00700 (General Conditions) and Section 01420 (References and Definitions) and will have the meaning indicated therein.

- 9.2 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.

- 9.3 It is understood and agreed that in no instance are the persons signing this Agreement for or on behalf of SMART or acting as an employee, agent, or representative of SMART, liable on this Agreement or any of the Contract Documents, or upon any warranty of authority, or otherwise, and

it is further understood and agreed that liability of the SMART is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.

- 9.4 Contractor shall not assign any portion of the Contract Documents, and may subcontract portions of the Contract Documents only in compliance with the Subcontractor Listing Law, California Public Contract Code §4100 *et seq.*
- 9.5 The Contract Sum includes all allowances (if any).
- 9.6 In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Contractor or Subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time SMART tenders final payment to Contractor, without further acknowledgment by the parties.
- 9.7 Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are deemed included in the Contract Documents and shall be made available to any interested party on request. Pursuant to Section 1861 of the Labor Code, Contractor represents that it is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor shall comply with such provisions before commencing the performance of the Work of the Contract Documents.
- 9.8 Should any part, term or provision of this Agreement or any of the Contract Documents, or any document required herein or therein to be executed or delivered, be declared invalid, void or unenforceable, all remaining parts, terms and provisions shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby. If the provisions of any law causing such invalidity, illegality or unenforceability may be waived, they are hereby waived to the end that this Agreement and the Contract Documents may be deemed valid and binding agreements, enforceable in accordance with their terms to the greatest extent permitted by applicable law. In the event any provision not otherwise included in the Contract Documents is required to be included by any applicable law, that provision is deemed included herein by this reference (or, if such provision is required to be included in any particular portion of the Contract Documents, that provision is deemed included in that portion).
- 9.9 This Agreement and the Contract Documents shall be deemed to have been entered into in the County of Sonoma, State of California, and governed in all respects by California law (excluding choice of law rules). The exclusive venue for all disputes or litigation hereunder shall be in Sonoma County. Both parties hereby waive their rights under California Code of Civil Procedure Section 394 to file a motion to transfer any action or proceeding arising out of the Contract Documents to another venue.
- 9.10 Contractor accepts the claims procedure established by Article 12 of Document 00700 (General Conditions), as established under Section 930.2 of the California Government Code.
- 9.11 No Third-Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.
- 9.12 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.

IN WITNESS WHEREOF the parties have executed this Agreement the day and year first above written.

CONTRACTOR: AIR & LUBE SYSTEMS, INC.

By: _____
Miguel Micheltorena, Owner & Secretary

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 Manager

Date: _____

APPROVED AS TO FORM FOR SMART:

By: _____
District Counsel

Date: _____

EXHIBIT A FEE SCHEDULE

PROJECT	PROJECT DESCRIPTION	QTY	UNIT	COST
1	Container Relocation	1 EA	LS	\$4,350.00
2	Structural Scope of Work	1 EA	LS	\$149,967.00
3	Electrical Scope of Work	1 EA	LS	\$48,283.00
4	Install and Connect Machine (Train Wheel Press)	1 EA	LS	\$79,673.00
TOTAL COST:				\$282,273.00

GENERAL INFORMATION

LS = Lump Sum

Costs are in United States Dollars

The above costs include all labor, supervision, equipment, materials, supplies, insurance, overhead, profit, and all other direct and indirect costs associated with performing the work included in this Agreement.



May 18, 2022

David Rabbitt, Chair
Sonoma County Board of Supervisors

Barbara Pahre, Vice Chair
Golden Gate Bridge,
Highway/Transportation District

Judy Arnold
Marin County Board of Supervisors

Melanie Bagby
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Damon Connolly
Marin County Board of Supervisors

Chris Coursey
Sonoma County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Eddy Cumins
General Manager

5401 Old Redwood Highway
Suite 200
Petaluma, CA 94954
Phone: 707-794-3330
Fax: 707-794-3037
www.sonomamarintrain.org

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

SUBJECT: Fiscal Year 2023 Draft Budget

Dear Board Members:

RECOMMENDATIONS: Information and Discussion Item

SUMMARY:

The Fiscal Year 2023 Draft Budget is being presented for the Board of Director's and the public's review.

Passenger Rail and Pathways

For Fiscal Year 2023, total revenues are estimated at \$88.4 million and total expenditures are estimated at \$80.9 million. The remaining \$7.5 million will be added to the fund balance. The estimated fund balance at the end of Fiscal Year 2023 is estimated at \$44.9 million.

Freight Rail

For Fiscal Year 2023, total revenues are estimated at \$5.5 million and total expenditures are estimated at \$3.9 million. The remaining \$1.6 million will be added to the fund balance. The estimated fund balance at the end of Fiscal Year 2023 is estimated at \$2.8 million.

Comments on the Draft Budget

The draft Fiscal Year 2023 budget is posted on our website and will be available for public comment through Friday, June 3rd. Comments can be emailed to Heather McKillop, Chief Financial Officer at hmckillop@sonomamarintrain.org or sent to:

Sonoma-Marin Area Rail Transit District
Atten: Heather McKillop
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954

The SMART Board of Directors will be asked to adopt the final budget at their meeting on Wednesday, June 15th. The Board will be notified of all comments received and whether they have been incorporated into the final document.

Sincerely,

/s/

Heather McKillop

Chief Financial Officer

Cc: Draft Fiscal Year 2023 Budget



SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

Fiscal Year 2023 Draft Budget

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Sonoma-Marin Area Rail Transit District's Board of Directors

SMART is governed by a 12-member Board consisting of elected officials appointed as specified in AB 2224: two county supervisors each from Marin and Sonoma counties, three appointed City Council members from each county and two representatives from the Golden Gate Bridge District.

David Rabbitt – Chair

Sonoma County Board of Supervisors

Judy Arnold

Marin County Board of Supervisors

Kate Colin

Transportation Authority of Marin

Debora Fudge

Sonoma County Mayors and Councilmembers
Association

Chris Coursey

Sonoma County Board of Supervisors

Eric Lucan

Transportation Authority of Marin

Barbara Pahre – Vice Chair

Golden Gate Bridge District

Melanie Bagby

Sonoma County Mayors and Councilmembers
Association

Damon Connolly

Marin County Board of Supervisors

Patty Garbarino

Golden Gate Bridge District

Daniel Hillmer

Marin County Council of Mayors and
Councilmembers

Chris Rogers

Sonoma County Mayors and Councilmembers
Association

Sonoma-Marin Area Rail Transit Executive Management Team

Eddy Cumins

General Manager

Bill Gamlen

Chief Engineer

Tom Lyons

General Counsel

Heather McKillop

Chief Financial Officer

About SMART

The Sonoma-Marín Area Rail Transit (SMART) District was established by the California Legislature through the enactment of AB 2224 in 2002. The SMART District includes both Sonoma and Marin Counties and was created for the purpose of providing unified and comprehensive structure for the ownership and governance of the passenger and freight rail system within Sonoma and Marin Counties and to provide passenger and freight train service along the existing publicly owned railroad right-of-way.

SMART passenger rail service began in August of 2017 with two-way passenger train service on 43 miles to 10 stations between Downtown San Rafael in Marin County and Airport Boulevard in Sonoma County.

Train service is provided in state-of-the-art diesel multiple unit (DMU) rail vehicles utilizing one of the first Positive Train Control systems for passenger rail. Prior to the COVID-19 shutdown, service was provided roughly every 30-minutes during commute hours with additional service midday and weekends. In late 2019, two new stations were built in Downtown Novato and Larkspur near the regional Ferry to San Francisco. These two stations in Marin County brought rail service to its current total of 45 miles with 12 passenger stations. SMART also manages 24 miles of bicycle/pedestrian pathway on its right-of-way connecting to the stations where cyclists can find secure parking at the station or on-board the train for their bikes.

SMART's History

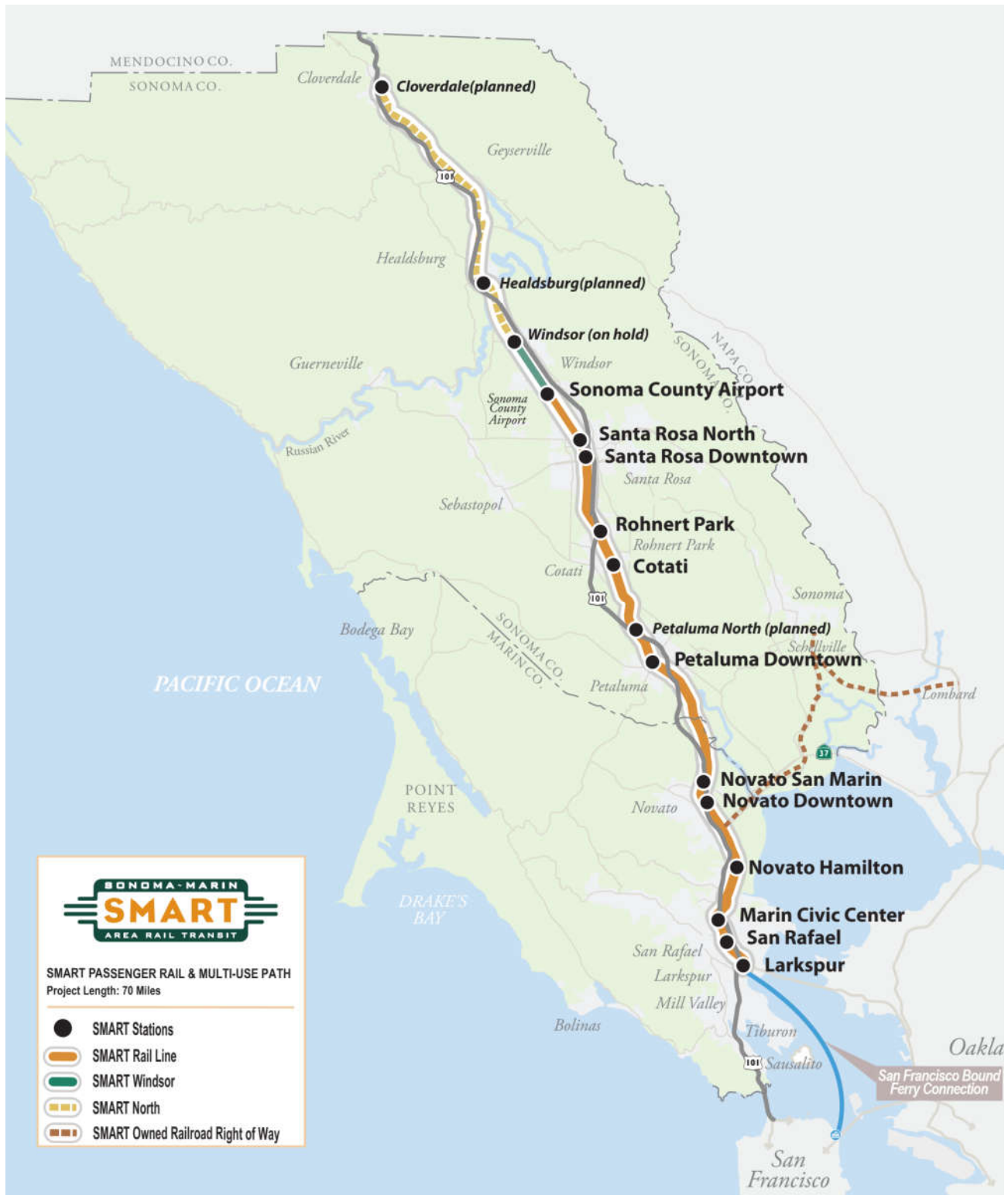
2002	SMART was created by the California Legislature
2008	SMART's ¼ cent sales tax was passed
August 2017	Service Started between San Rafael and Santa Rosa Airport to include 34 trips/ weekday and 10 trips/ weekend
October 2017	Tubbs Fire
August 2018	1 st Anniversary of the start of service
January 2019	One Millionth Rider Mark
February 2019	Flooding
August 2019	2 nd Anniversary of the start of service
October 2019	Kincade Fire
December 2019	Larkspur Extension opens
January 2020	Service increases to 38 trips/ weekday
March 2020	COVID-19 Shelter-in-Place Orders go into effect. Trips reduced to 16 trips/ weekday and no weekend service

August 2020	3 rd Anniversary of the start of service
August 2020	LNU Lighting Complex Fires
May 2021	<ul style="list-style-type: none"> Fares are lowered by 40% Additional 10 weekday trips are added for a total of 26 weekday trips Saturday service returns
June 2021	Reached Two Millionth Rider Mark
August 2021	4 th Anniversary of the start of service
November 2021	New General Manager is hired
May 2022	Sunday service returns
June 2022	Additional 10 weekday trips are added for a total of 36 weekday trips



SMART's System

SMART currently has 45 miles of commuter rail and has completed 24 miles of pathway connecting users to its 12 stations.



System Statistics

- Forty-five (45) miles rail corridor – connecting the Larkspur Ferry to the Sonoma County Airport
- Twenty-four (24) miles of pathway providing a first/ last mile connection to the rail corridor
- Twelve (12) stations
- Six (6) park-n-ride lots
- Sixty-eight (68) public crossings
- Twenty-seven (27) bridges
- Two (2) tunnels
- Fleet of 18 Diesel Multiple Units (DMUs)



SMART Overview

The last several years have been challenging with many highs and lows. We have seen ridership ebb and flow depending on local and national COVID restrictions. We believe, however, that Fiscal Year (FY) 2023 will define what we want the future of SMART to look like and how we will get to that future.

In November of 2021, SMART hired a new General Manager, Eddy Cumins. One of the first things General Manager Cumins did when he got to SMART was embark on a process to develop our Mission, Vision, and Strategic Objectives with the SMART Board of Directors. Based on the Board's adoption of the Vision, Mission, Strategic Objectives, and Values, SMART held four (4) listening sessions on each strategic objective in the month of April 2022. In addition, feedback and input was accepted through surveys and emails. We had 193 members of the public participate on Zoom, 1,004 participate by taking the survey, and 60 sent emails.

The feedback received from this outreach as well as input received from other events and meetings will be used to develop goals, strategies, and measurements aimed toward SMART's future success.



Performance Measures

In FY 21, SMART looked at developing performance measures to help the agency move from reporting data to measuring performance. After several meetings with the Board of Directors, the following measures were determined to merit agency focus on the near term.

Derived Metrics from the National Transit Database (NTD)

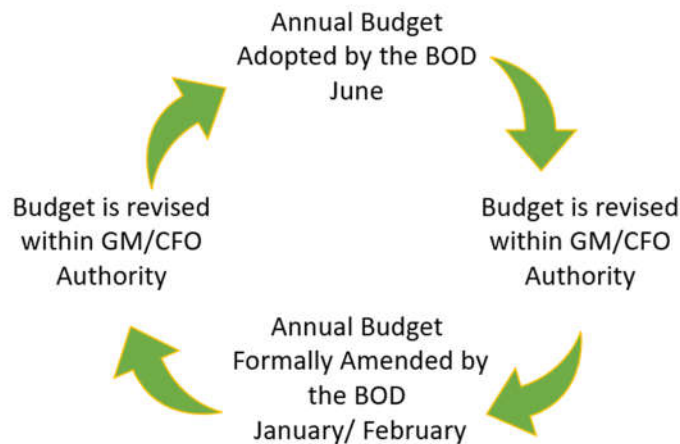
- Operating Expense per Vehicle Revenue Mile
- Operating Expense per Passenger Mile
- Passenger Trips per Vehicle Revenue Mile
- Average Fare per Passenger

Performance Metric	2019	2020	2021
Operating Expense per Vehicle Revenue Mile	\$ 29.78	\$ 35.01	\$ 62.35
Operating Expense per Passenger Mile	\$ 1.50	\$ 2.13	\$ 7.89
Passenger Trips per Vehicle Revenue Mile	0.8	0.7	0.3
Average Fare per Passenger	\$ 5.71	\$ 5.45	\$ 5.75

Fiscal Year's 2020 and 2021 were both impacted by COVID and reduced or curtailed service. These metrics may change or be added to in the future based on the outcome of the process that SMART is currently undertaking.

Budget Cycle

The Administrative Code of SMART, as adopted by the Board of Directors in July 2013, provides that the Board of Directors will adopt an annual budget no later than the District's June meeting for the ensuing fiscal year.



The budget outlines the expected revenues and expenditure amounts needed for salaries, benefits, services, supplies, capital and other necessary spending throughout the fiscal year. The budget limits the amount of total expenditures that can be incurred without further Board approval.

In the event that total expenditures need to be increased, a budget amendment can be presented to the Board of Directors for approval.

Mid-year, an amended budget will be presented to the Board of Directors for approval. The amended budget will include the most recent expectations for revenues and expenditures projected through fiscal year end.

Budget adjustments can be made and approved by the Chief Financial Officer as long as total expenditures in the Board-adopted budget are not exceeded.

At the end of each fiscal year, once the financial audit has been finalized, a comparison of the previous year's budget to actual expenditures will be generated and presented to the Board of Directors for information.

Basis of Budgeting

The District's financial statements are reported using the accrual basis of accounting. Revenues are recorded when earned and expenses are recorded when a liability is incurred regardless of the timing of related cash flows. Sales taxes are recorded when earned and reported as non-operating revenue. Grants and similar items are recognized as revenue as soon as all eligibility requirements imposed by the provider have been met.

The District's budget is prepared on a modified accrual basis with the following exceptions:

- Inclusion of capital outlays and debt principal payments as expenditures
- Inclusion of asset sale proceeds and debt issuance proceeds
- Exclusion of gains and losses on disposition of property and equipment
- Exclusion of the non-cash portion of long-term unfunded pension accruals

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Fund Structure

SMART reports its financial activity as one enterprise. We have two funds, the General Fund, with several sub funds for purposes of segregating expenditures, and the Freight Fund.

Fund	Description
01	General Fund
02	Bond Fund
03	Bond Reserve Fund
08	General Reserve Fund
15	Self-Insurance Fund
18	OPEB Pension Fund
20	Equipment Replacement Fund
30	Landing Way Replacement Fund
50	Capital Projects Fund
60	Freight

BUDGET OVERVIEW

The FY 23 revenue estimate for passenger rail and pathways totals \$88.5 million compared to \$68 million in FY 22. There are several primary differences. The first is sales tax. We are estimating that sales tax will be almost 10% higher in FY 23 than it was in FY 22. We are also estimating that we will receive an additional \$8.7 million in federal funds. These additional funds are a result in higher allocations of 5307 funds and discretionary American Rescue Plan funds. We are expecting construction of the Sonoma County Pathway Gap project and the Payran to Lakeville Pathway project, which are funded by grants, therefore bringing in additional grant funds to FY 23.

Regarding expenditures, several changes were made to the way we budget certain expenditures. In the past, salaries were budgeted based on the highest point on the salary scale for every position whether it was filled or vacant. Going forward salaries will be budgeted based on the actual cost of filled positions and based on the middle of the salary range for vacant positions. In addition, we have added 4 ½ positions. They are:

- Administrative Assistant - Will be used to back up the front desk receptionist and assist all employees at the Petaluma office
- Bridge Tender (1/2 FTE) – Will improve coverage and reduce overtime in this area
- Information Systems Analyst – Manage cybersecurity to protect critical systems
- Risk Manager – Needed due to increased complexities in evaluating risk from an insurance perspective especially in railroad liability. Assist legal in claims
- Senior Planner – Will support pathway planning and will be the single point of contact for pathway issues

We will upgrade an Assistant Engineer position to a Senior Engineer position as this reflects the need to manage multiple complex projects going forward. With these changes, the overall salaries and benefit budget is still \$553,037 or 2.3% less than in FY 22.

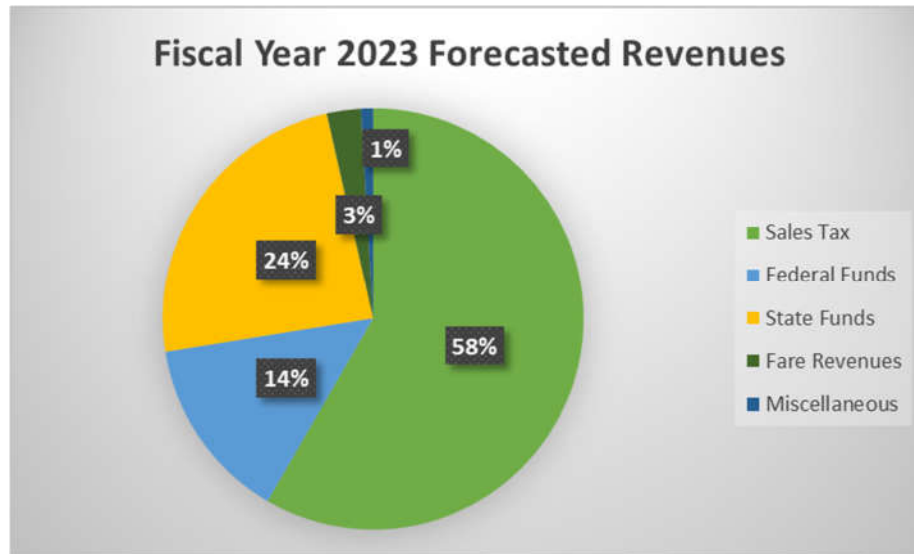
The operating budgets for Administration, Passenger Rail Operations, and Engineering/ Capital Programs total \$16.9 million which is \$1.1 million/ 6% less than FY 22. This budget includes \$1.425 million for planning projects, \$ 0.883 million for environmental projects, \$4.5 million for State of Good Repair projects, and \$ 15.4 million for new capital projects. We have also budgeted

\$500,000 towards the OPEB/ Pension liability reserve, \$2 million towards the capital replacement reserve, and \$2 million for potential grant matches.

In March of 2022 SMART began operating freight services. Revenues for freight operations are estimated at \$5.5 million. We anticipate spending \$786,060 on salaries and benefits, \$979,616 on operations, and \$2,182,919 on capital repairs and replacements in FY23.

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Revenues



	FY 22 Amended Budget	FY 23
Revenues		
SMART S&U Tax		
Measure Q	\$ 46,981,000	\$ 51,622,000
Federal Funds		
5307 - Urbanized Area Formula Funds (Preventative Mtce)	\$ 2,957,733	\$ 4,148,529
American Rescue Plan	\$ 7,225,294	\$ 7,507,797
FRA Suicide Prevention Grant	\$ 80,000	\$ -
Quick Strike (CMAQ) (Pathway Payran to Lakeville)	\$ -	\$ 806,000
State Funds		
STA - State Transit Assistance (Revenue)	\$ 1,757,364	\$ 2,291,573
STA-State Transit Assistance (Population)	\$ 516,794	\$ 534,918
SB1 - SRA - State Rail Assistance	\$ 3,058,638	\$ 3,700,000
LCTOP - Low Carbon Transit Operating	\$ 225,623	\$ 534,762
State - TIRCP SH 37 Network Integration	\$ 30,000	\$ 750,000
STA-SGR (State of Good Repair)	\$ 309,308	\$ 550,349
SB1 - Local Partnership Program	\$ 679,000	\$ 1,392,000
ATP - SoCo Pathway - CTC/Caltrans/MTC	\$ 983,957	\$ 11,470,569
State - Cap and Trade/ TIRCP DMUs	\$ 1,100,000	\$ -
Other Sources		
Fare Revenues	\$ 1,200,000	\$ 2,310,768
Parking	\$ 27,000	\$ -
Interest Earning	\$ 275,000	\$ 277,750
Advertising	\$ 90,000	\$ 225,000
Rent - Real Estate	\$ 258,865	\$ 266,631
Misc.	\$ 30,000	\$ 30,900
Charges for Services	\$ 57,500	\$ 28,325
Regional Funds		
Other Governments	\$ 15,000	\$ -
County Intergovernmental Funds -SCTA TIF (SoCo Pathway)	\$ 146,998	\$ -
Total Revenues	\$ 68,005,074	\$ 88,447,871

Sales Tax

On November 4, 2008, more than two-thirds of the voters in Sonoma and Marin counties approved Measure Q implementing the 2008 Measure Q Sales Tax. The 2008 Measure Q Sales Tax is a sales and use tax of one quarter of one percent (1/4%) imposed for a period of 20 years beginning April 1, 2009, on the gross receipts from all tangible personal property sold at retail businesses in the counties and a use tax at the same rate on the storage, use, or other consumption in the counties of such property purchased from any retailer, subject to certain exceptions. While we saw a decrease of revenues in Fiscal Year 2020, we have seen significant growth in sales tax revenues in Fiscal Years 2021, 2022 and now in the forecast for 2023. Fiscal Year 2023 is estimated to be a 9.8% increase over Fiscal Year 2022.

SMART HISTORICAL SALES TAX COLLECTIONS

Fiscal Year	SMART Sales Tax Rate	SMART Total Sales Tax Revenue	% Change
2010	0.25%	\$ 24,059,929	
2011	0.25%	\$ 26,826,843	11.50%
2012	0.25%	\$ 28,303,501	5.50%
2013	0.25%	\$ 30,435,753	7.53%
2014	0.25%	\$ 32,473,329	6.69%
2015	0.25%	\$ 33,845,426	4.23%
2016	0.25%	\$ 34,776,012	2.75%
2017	0.25%	\$ 36,061,895	3.70%
2018	0.25%	\$ 37,135,476	2.98%
2019	0.25%	\$ 41,241,140	11.06%
2020	0.25%	\$ 38,978,630	-5.49%
2021	0.25%	\$ 45,981,000	17.96%

State Revenues

SMART receives formula allocation from four (4) state revenue programs itemized below. SMART may receive other state grants but those are allocated on an application basis, are project specific, and are typically one-time allocations.

- **State Transit Assistance:** A portion of the revenues derived from the sales tax on diesel fuel purchases and registration fees is appropriated by the State Legislature to the State Transit Assistance Program ("STA") for public transportation purposes. These STA revenues are allocated to public transit agencies throughout the State based on population and operating revenues through a formula that has changed in recent years but was clarified and solidified in 2017 following the passage of AB 1113 (Bloom), as signed into law by Governor Brown in July 2017. In addition, the State of Good Repair

(SGR) Program provides annual funding to transit operators in California for eligible transit maintenance, rehabilitation, and capital projects

- **State Rail Assistance:** One of the new funding sources created by SB 1 is the State Rail Assistance (SRA) program. SRA directs a 0.5% portion of new diesel sales tax revenue for allocation: half to the five (including, Altamont Corridor Express Authority (ACE), North County Transit Development Board (Coaster), Peninsula Corridor Joint Powers Board (Caltrain), Sonoma-Marín Area Rail Transit District (SMART), Southern California Regional Rail Authority (Metrolink)) commuter rail providers and half to intercity rail corridors.
- **State Local Partnership Program:** SB 1 created the Local Partnership Program which continuously appropriates funding annually from the Road Maintenance and Rehabilitation Account to local and regional transportation agencies that have sought and received voter approval of taxes or that have imposed fees, which taxes or fees are dedicated solely for transportation improvements.
- **Low Carbon Transit Operations Program (LCTOP):** LCTOP was created to provide operating and capital assistance for transit agencies to reduce greenhouse gas emissions and improve mobility, with a priority on serving disadvantaged communities. Approved projects in LCTOP will support new or expanded bus or rail services, expand intermodal transit facilities, and may include equipment acquisition, fueling, maintenance and other costs to operate those services or facilities, with each project reducing greenhouse gas emissions.

Federal Revenues

SMART is a direct recipient of Federal Transit Administration (FTA) Funds.

- **5307 Funds:** FTA Urbanized Area Formula Funds which can be used for capital projects, operating assistance, job access, reverse commute projects, and transportation related planning. SMART became eligible for these funds starting in Fiscal Year 2019-20.
- **American Rescue Plan Funds:** SMART applied for and received discretionary American Rescue Plan (ARP) additional assistance funding in the amount of \$7,471,416. This has resulted in over \$15 million of ARP funds between FY 22 and FY 23.

Fare Box Revenues

Farebox Revenues: SMART passengers pay for their rides using the fare structure approved by the SMART Board in 2015 and 2016. SMART participates in the regional Clipper fare system that allows riders to transfer seamlessly among Bay Area operators using one fare media card. SMART also has its own mobile ticket app that provides easy purchasing of multiple or discounted tickets without purchasing a Clipper card. The fares are based on the distance travelled by a rider, like other commuter rail services. In May of 2021, fares were lowered by approximately 40%. SMART

also provides several discounts to SMART riders with a youth, senior, low income, and passengers with disabilities fare. See chart below.

One-Way						
	Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Daily Max
Adult Fare	\$ 1.50	\$ 3.00	\$ 4.50	\$ 6.00	\$ 7.50	\$ 15.00
Seniors, youth, low-income, and passengers with disabilities (50%)	\$ 0.75	\$ 1.50	\$ 2.25	\$ 3.00	\$ 3.75	\$ 7.50

In May 2021, a new “Weekend Day Pass” was implemented. The Weekend Day Pass is \$10.00 for adults and \$5.00 for seniors, youth, passengers with disabilities and START customers. The Weekend Day Pass offers unlimited rides for the entire day. In September 2021, the 31-day pass was lowered to \$135.00 for adults and \$67.50 for youth, seniors, and passengers with disabilities.

The current reduction in fares has been authorized to run through August of 2022. This budget assumes fares are at the reduced levels through June 30, 2023.

Farebox recovery ratio, also known as the fare recovery rate, is the fraction of operating expenses which are met by the fares paid by passengers. The calculation is total fare revenues divided by the total operating expenses. The fare box recovery assuming the budgeted fare revenues and budget expenses would be 6% for fiscal year 2023.

Other SMART Revenues

- Interest and Lease Earnings: Includes leases and interest earnings which are expected to remain relatively the same in Fiscal Year 2023 and advertising revenue is expected to increase based on emergence from the pandemic and a new advertising vendor
- Miscellaneous Revenues: Vary each year, but are assumed to be like Fiscal Year 2022
- Advertising Revenues: Revenues from advertising space sold onboard trains and station platform shelter panels
- Parking Revenue: The Board suspended parking fees through August 2022. We are assuming parking fees are suspended for all Fiscal Year 2023 in this budget
- Charges for Services: Includes flagging services

Expenditures

Passenger Rail Operations

Passenger Rail Operations has three (3) major divisions that work together to move people in a safe, reliable, and affordable way.

The Transportation Division is responsible for operating the trains, checking fares, assisting passengers, ensuring onboard passenger safety, and guaranteeing compliance with FRA regulations related to train operations and passenger service. In addition, the Operations Control Center monitors the status of the entire system, dispatches passenger and freight trains, and is the emergency point of contact for outside first responder agencies.

The Vehicle Maintenance Division is responsible for preventative maintenance work, inspections, cleaning, and repairs of the Diesel Multiple Units (DMUs), along with interior inspections and cleaning.

The Maintenance of Way Division is responsible for track and right of way inspection and maintenance, train control and grade crossing warning device maintenance and regulatory required inspections, and maintenance of all SMART owned facilities (stations, moveable bridge electronics and mechanics, buildings, and right of way fencing.)

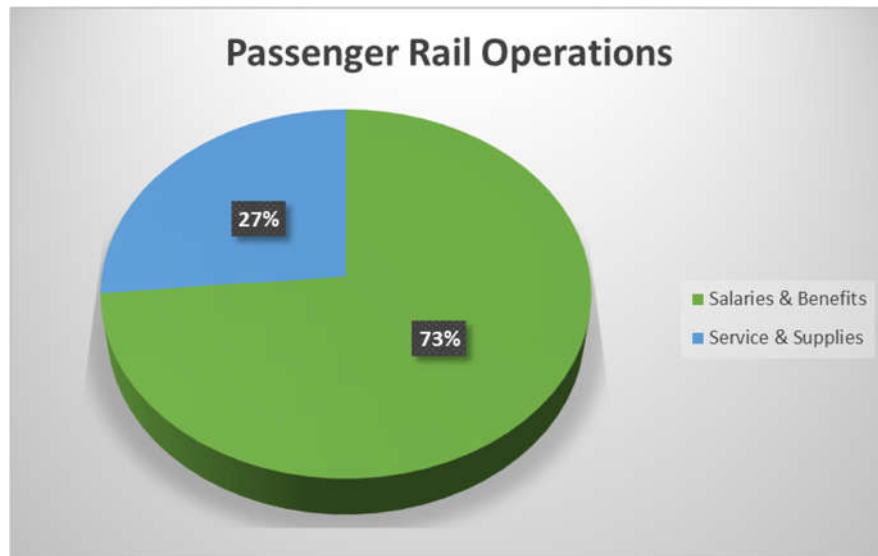
In addition to Transportation, Vehicle Maintenance and Maintenance of Way two additional functions are under the operations budget.

Public Safety

The Public Safety Department coordinates with Federal, State, and local jurisdictions to provide incident response, facility safety, and keep the public and our customers safe.

Train Control Systems

The Train Control Systems is responsible for monitoring and managing SMART's train control systems. The train control systems perform such functions as: safely route trains, safely separate trains, track and report the location of trains, detecting and report broken rail, detect and report misaligned switches, detect and report misaligned bridges, and detect and report faults. In addition, other integral parts of the train control systems include positive train control (PTC), traffic signal interconnection, and grade crossing warning systems.



Account Description	FY 22 Amended Budget	FY 23 Requested Budget
Maintenance of Equipment	\$ 442,576	\$ 467,378
Maintenance of Radios	\$ 163,750	\$ 151,386
Maintenance of Signals	\$ 258,816	\$ 230,000
Maintenance of Facilities	\$ 247,080	\$ 248,680
Maintenance of Railway	\$ 394,250	\$ 170,750
Maintenance of Pathway	\$ 12,000	\$ 22,500
Training & Travel Expense	\$ 94,000	\$ 61,500
Fare Collection Fees	\$ 292,100	\$ 196,000
Rental/ Leases - Equipment	\$ 49,020	\$ 58,000
Maintenance of Revenue Vehicles	\$ 1,153,475	\$ 471,700
Mileage Reimbursement & Auto Tolls	\$ -	\$ 1,000
Contract Services - Administrative	\$ 616,940	\$ 616,740
Contract Services - Transportation	\$ 93,000	\$ 93,000
Communications	\$ 242,500	\$ 78,700
Uniform Expense	\$ 137,000	\$ 103,000
Fuel and Lubricants	\$ 1,323,000	\$ 1,885,000
Memberships	\$ 2,900	\$ 3,050
Miscellaneous Expense	\$ 2,000	\$ 36,500
Office Expense	\$ 70,000	\$ 45,000
Postage	\$ 6,000	\$ 8,000
Small Tools and Equipment	\$ 220,928	\$ 186,500
Software	\$ -	\$ 43,400
Utilities	\$ 705,275	\$ 657,520
Grand Total	\$ 6,526,610	\$ 5,835,304

The Operations Department has 109 full-time equivalent (FTE) employees with an estimated budget for salaries and benefits of \$16,138,923. One new position has been added in FY23. It is a ½ FTE for Bridge Tending. Salaries and Benefits make up 73% of the total Operations budget, see above.

In May of 2022, SMART brought back Sunday service and on June 13, 2022, will add an additional ten (10) trips during the week, bringing the total trips to 36 per day on weekdays. Since we budgeted for this additional service in Fiscal Year 2022, the overall budget will not increase as a result. The largest jump in cost in the operations budget is related to the increased price of fuel. However, even with an increase in service, the overall operations budget went down \$839,597 or 4%.



Administration

The Administration budget funds the day-to-day business functions of the organization such as finance, human resources, planning, legal, real estate, and information technology.

Communications and Marketing Department

The Communications Department consists of three different areas of focus: Media and Public Relations, Marketing, and Customer Service.

Media and Public Relations is responsible for keeping SMART's external audiences informed and engaged about the agency's services, programs, and projects. Some examples are:

- Digital and Social Media Platforms
- Websites
- Media relations
- Community presentation, construction outreach, and events
- Rail Safety Education

Marketing is responsible for outreach and marketing. Some examples are:

- Digital, Print, On-Board Train, and Platform Advertising
- Marketing Collateral

Customer Service is responsible for responding to customer inquiries through phone calls and emails received.

Finance and Procurement Department

The Finance Department includes the following functions:

- Budget
- Accounting
- Finance

- Treasury
- Payroll
- Procurement
- Grants Budgeting and Reporting

Human Resource Department

Human Resources is responsible for personnel issues, recruitment and selection of employees, employee compensation, labor negotiations, and performance management.

Information Technology (IT) Department

The Information Technology (IT) Department develops, operates, and maintains SMART's information and telecommunications systems.

- Maintains the cybersecurity of all SMART IT systems
- Administrative Information Systems for 4 offices including email, servers, and printers
- Railroad Information Systems such as CCTV, radio, platform equipment, and fare collection devices
- 776 devices consisting of computers, cell phones, vehicle locators, printers, radios, and network devices

Legal Department

The Legal department is responsible for the following:

- Transactional Matters
- Litigation
- Risk Management

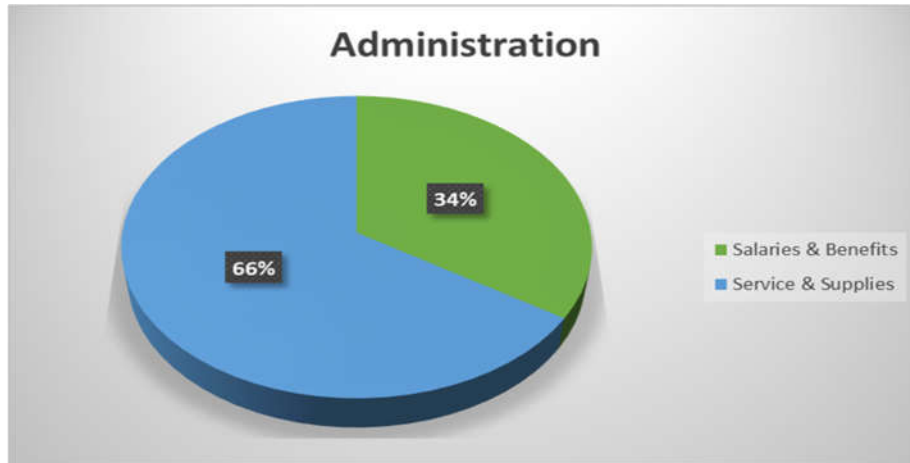
Planning Department

Planning is responsible for the following functions:

- Rail and multiuse pathway planning and service delivery studies
- Ridership and Service planning analyses and recommendations
- Capital planning studies
- Local and regional agency planning coordination
- First-last mile solutions planning

Real Estate

The Real Estate Department is responsible for managing SMART's Right-of-Way, processes all third-party requests for access to the Right-of-Way, and property sales, acquisitions; supports all departments with title research and boundary information.



Account Description	FY 22 Amended Budget	FY 23 Requested Budget
Insurance	\$ 2,172,121	\$ 2,897,327
Provisions for Claims	\$ 492,587	\$ 500,000
Maintenance of Facilities	\$ 3,000	\$ 3,000
BOE Admin Fees	\$ 1,000,000	\$ 900,000
Auditing/ Accounting Services	\$ 54,885	\$ 51,030
Fiscal Accounting Services	\$ 5,100	\$ 5,100
Legal	\$ 2,120,000	\$ 1,176,000
Agency Extra Help	\$ 102,500	\$ 100,000
Training & Travel Expense	\$ 128,000	\$ 152,000
Printing Services	\$ 54,800	\$ 40,800
Fiscal Agent Fees	\$ 5,000	\$ 5,000
Permits/ Fees	\$ 18,070	\$ 500
Professional Services - Collection Agency Fees	\$ 5,000	\$ -
Public/ Legal Notices	\$ 43,000	\$ 41,500
Rental/ Leases - Equipment	\$ 47,000	\$ 56,000
Rental/ Leases - Buildings	\$ 481,193	\$ 460,866
Mileage Reimbursement & Auto Tolls	\$ 39,620	\$ 38,820
Contract Services - Administrative	\$ 1,877,774	\$ 1,828,974
Contract Services - Personnel	\$ 145,772	\$ 214,500
Communications	\$ 49,250	\$ 243,200
Claims Processing Payroll	\$ 35,400	\$ 37,170
Uniform Expense	\$ 5,000	\$ 5,000
Memberships	\$ 45,930	\$ 52,879
Miscellaneous Expense	\$ 5,000	\$ 1,000,000
Office Expense	\$ 80,860	\$ 60,000
Books/ Periodicals	\$ 7,000	\$ 10,500
Postage	\$ 10,000	\$ 10,000
Small Tools and Equipment	\$ 2,000	\$ 2,000
Computer Hardware	\$ 179,860	\$ 111,000
Computer Software	\$ 411,181	\$ 593,720
Marketing/ Promotional Items	\$ -	\$ 20,000
Public Relations Expense	\$ 619,000	\$ 44,000
Grand Total	\$ 10,245,902	\$ 10,660,886

SMART's District Administration has 32 full time equivalent (FTE) employees with an estimated budget for salaries and benefits of \$5,522,935. Four new positions have been added: Risk Manager, Senior Planner, Information Systems Analyst, and Administrative Assistant. Salaries and Benefits make up 34% of the total administrative budget, see above, which is opposite the composition of the Operations budget.

In the Administrative budget there is a notable increase in the estimate for insurance, the largest driver being railroad liability insurance. We have not received our final insurance quotes, but we are anticipating a large increase. The other area where there was an increase is miscellaneous expense. In previous budgets, contingencies were budgeted in each of the Departments, i.e., Capital, Operations, Information Systems. In this budget, all the contingency funds are budgeted under one line item, miscellaneous expense. These funds will now be under the purview of the General Manager versus the individual Division or Department heads. Legal expenses and public relations expenses are two areas that we expect costs to go down significantly from Fiscal Year 2022. For Fiscal Year 2023, the overall Administration budget is higher by \$13,606 or less than 1%.

Planning Projects

Survey our Current Riders – Onboard Survey

- Customer satisfaction
- Demographics
- SMART's only onboard survey was conducted in 2017/18 by MTC Consultants

Pathway Wayfinding

- Development of design standards and framework for a multi-level wayfinding system for the SMART multi-use pathway. The wayfinding will help riders navigate along the pathway to connecting routes to major destinations, including SMART Stations

Corridor-Level Service Planning Study

- Partner with Caltrans to conduct corridor-level service planning analyses of the SMART mainline, extension to Cloverdale, and the east-west Hwy 37 Corridor
- Determine infrastructure improvements needed to achieve clockface headways

- Evaluate fleet requirements based on service parameters
- Assess impacts of station locations on ridership and service demand
- Conduct additional analyses as needed on the SMART Brazos branch interface with State Route 37 corridor.

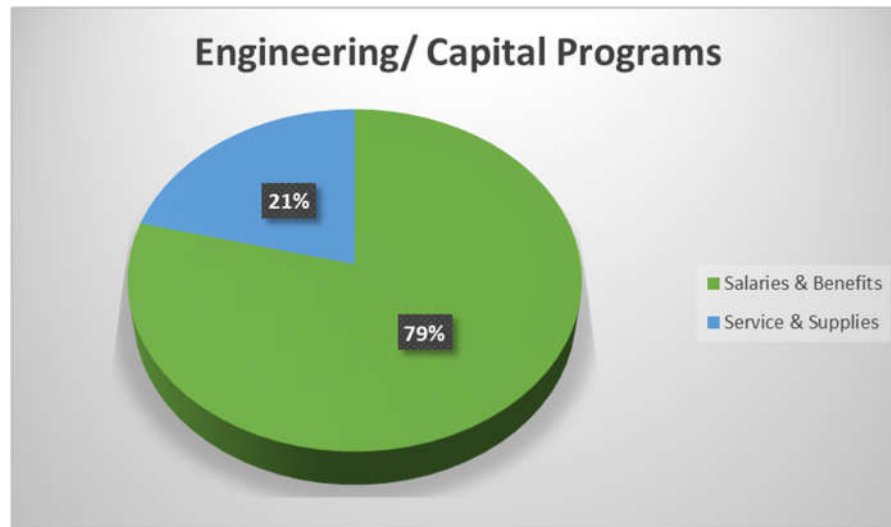
First/ Last Mile

- Range of first-last mile solutions depending on the connections needed at each station, including on-demand shuttles, improved local transit service, and bicycle and pedestrian facilities.



Engineering/ Capital Programs

Capital Programs is responsible for planning and managing the expansion of the rail and pathway systems, managing SMART's existing infrastructure, supporting grant applications, and coordinating with local municipalities.



Account Description	FY 22 Amended Budget	FY 23 Requested Budget
Training & Travel Expense	\$ 3,000	\$ 5,000
Contracted Services	\$ 425,000	\$ 352,000
Permit Fees	\$ 30,000	\$ 30,000
Mileage Reimbursement & Auto Tolls	\$ 1,000	\$ 1,000
Communications	\$ 7,700	\$ 5,600
Memberships	\$ 1,500	\$ 500
Small Tools and Equipment	\$ 3,000	\$ -
	\$ 471,200	\$ 394,100

Engineering/ Capital Programs has seven FTE which includes upgrading an Assistant Engineer to a Senior Engineer. Total salary and benefits costs are estimated at \$1,479,062 of which \$1,193,147 or 80% is estimated to be charged to projects. Engineering/ Capital Programs budget decreased by \$80,468 or 4%.

Environmental Projects

The FY 23 budget includes new and ongoing environmental projects that are a result of securing environmental regulatory permits for construction work.

- Mira Monte Mitigation

- Riparian Mitigation for Initial Operating Segment
- San Rafael Creek Mitigation for Larkspur Segment
- Las Gallinas Riparian Enhancement & Monitoring

DRAFT

State of Good Repair and Capital Projects

49 CFR 625.5 defines State of Good Repair (SGR) as the condition in which a capital asset can operate at a full level of performance. Per FTA, “having well maintained, reliable transit infrastructure – track, signal systems, bridges, tunnels, vehicles and stations – will help ensure safe, dependable and accessible services.”

SMART has broken our costs into State of Good Repair and Capital Projects. State of Good Repair expenditures are those costs that keep our assets in a condition where the asset can operate at a full level of performance. This requires regular repairs and replacement of those assets. The budget by category is outlined below.

	FY 22	FY 23
State of Good Repair		
Track, MOW, and Facilities	\$ 300,000	\$ 436,275
Safety and Security	\$ -	\$ 477,225
DMU	\$ 2,680,844	\$ 703,500
Bridges	\$ 280,620	\$ 796,988
Other Construction	\$ 2,122,761	\$ 1,050,000
Information Technology	\$ 390,600	\$ 260,400
Non-Revenue Vehicles	\$ 170,000	\$ 467,250
Equipment	\$ -	\$ 263,998
Total State of Good Repair	\$ 5,944,825	\$ 4,455,636

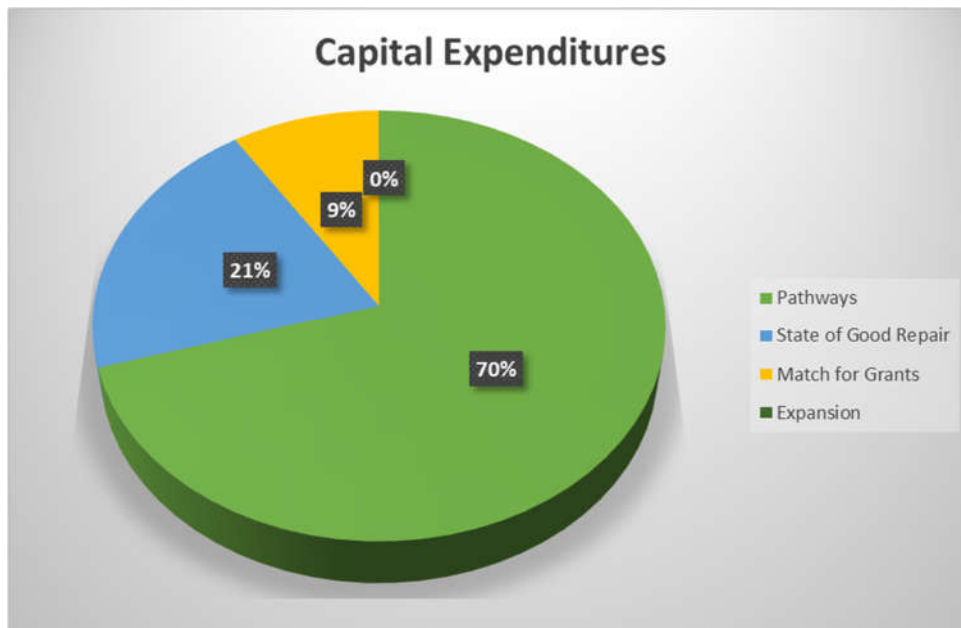
Projects that fall under Capital Projects are those projects that result in new assets such as expanding passenger rail North of Santa Rosa or new pathways. It would also include equipment or vehicles if they were added and not purchased to replace an existing asset.

	FY 22	FY 23
Capital Projects		
Pathways	\$ 5,820,691	\$ 15,349,795
Expansion	\$ 7,234	\$ 2,133
Total Capital Expenditures	\$ 5,827,925	\$ 15,351,927

Currently, the Windsor extension project is on hold pending successful resolution of a State Supreme Court case involving funding for this project or until we secure additional funding to complete. In FY 23, we have funded the following for pathways pending litigation resolution:

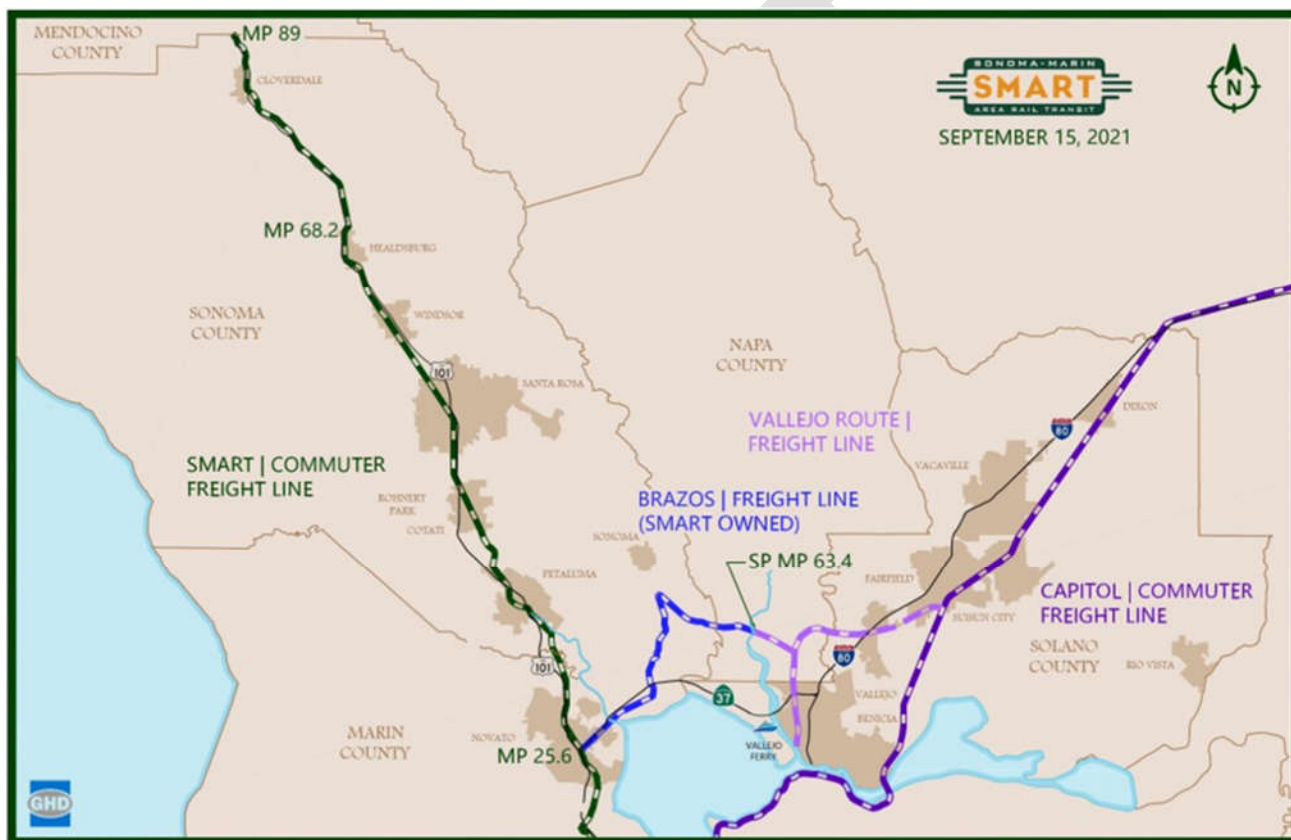
- Design and permitting of Marin and Sonoma pathways
- Sonoma County Gap Closure Pathway Construction
- Joe Rodota Trail to 3rd Street Construction
- Payran to Lakeville Construction

In addition, \$2 million has been budgeted to provide matching funds for grants that we are pursuing in FY 23.



FREIGHT

In March of 2022, SMART assumed the freight operations from the Northwestern Pacific Railroad Company (NWPCo) which had been operating service from Napa County to Petaluma since 2011. SMART will be operating this service with SMART employees. Currently there are four customers, and they receive primarily feed grain. In addition, there is freight car storage location at the Schellville yard. Service consists of two round trips to Petaluma customers a week as well as two round trips to the California Northern Railroad to receive and deliver rail cars to and from the interchange.



Revenues and expenditures for freight operations are being tracked separately in Fund 60. Administrative expenses will be allocated based on a ratio of total miles freight operates verses total miles passenger rail operates. In addition to the administrative allocation, this ratio will be used for other allocation of expenses such as radio maintenance and mainline track maintenance.

The SMART Board of Directors previously approved six (6) FTE to operate the Freight Division for the organization. The FY 23 budget for salaries and benefits for freight operations is estimated at \$786,060. This could vary slightly as not all positions have been hired and the actual cost of

the Railroad Retirement benefit is not yet known. The details regarding these positions can be found in Appendix C.

Now that SMART has acquired the freight operations, we have been evaluating and prioritizing the work that needs to be done to run the service and comply with all Federal Railroad Administration requirements. Work has already begun to clean up Schellville Depot and design has begun on necessary repairs to high priority bridges. In addition, the Freight Manager has been reaching out to returning and potential new customers to increase revenues to replace the revenues lost with the elimination of storage fees from Liquid Petroleum Gas (LPG) tanker cars.

	FY 23
Revenues	
State Grant (42341)	\$ 4,000,000
State Grant (Blackpoint)	\$ 206,000
Freight Movement Fees	\$ 1,100,000
Leases	\$ 145,743
Storage	\$ 92,000
Total Revenues	\$ 5,543,743

Note: FY 22 Budget was only for March – June of 2022 and represented a partial year.



Expenditures: Account Description	FY 22 Amended Budget	FY 23 Requested Budget
Cost Allocation	\$ 20,000	\$ 99,372
Insurance	\$ 20,000	\$ 20,000
Maintenance of Equipment	\$ 6,800	\$ 98,750
Maintenance of Radios	\$ -	\$ 1,017
Maintenance of Signals	\$ 11,574	\$ -
Maintenance of Facilities	\$ -	\$ 25,000
Maintenance of Railway	\$ 48,420	\$ 60,000
Maintenance of Revenue Vehicles	\$ 40,400	\$ 105,000
Legal Services	\$ 25,000	\$ 25,000
Training & Travel Expense	\$ -	\$ 15,000
Permits and Fees	\$ 3,800	\$ 5,000
Rental/ Leases - Equipment	\$ 12,000	\$ 65,000
Mileage Reimbursement & Auto Tolls	\$ -	\$ 2,500
Contract Services - Administrative	\$ 327,686	\$ 181,628
Communications	\$ -	\$ 18,500
Uniform Expense	\$ -	\$ 5,000
Fuel and Lubricants	\$ 21,200	\$ 170,000
Memberships	\$ -	\$ 750
Small Tools and Equipment	\$ -	\$ 25,000
Computer Hardware	\$ -	\$ 9,000
Computer Software	\$ 10,000	\$ 33,100
Utilities	\$ -	\$ 15,000
Grand Total	\$ 546,880	\$ 979,616

CARRYFORWARD FUNDS/EXPENDITURES

As part of the FY 22 budget, we are anticipating carrying forward approximately \$ [REDACTED] million from FY 22 to FY 23. This includes projects and programs that are not estimated to be completed or expended in FY 22. Both the revenues and expenditures will be rolled forward. Because we are estimating what will be spent between now and June 30, 2022, this number will most likely change and will be adjusted in FY 23.

Reserves

SMART has several reserves that have been established for various purposes.

Pension Liability Reserve

This reserve is to ensure that we have funds set aside for future pension costs. We have set aside \$500,000 for FY 23 but this figure could change as the actual contribution is based on the year-end actuarial calculation. Once we close the books, we will be able to calculate the amount of pension liability. Once that is known we can true-up the amount transferred to this reserve in the FY 23 amended budget.

Equipment Reserve

This reserve is used to accumulate funds for future capital equipment needs such as DMU replacement. The current balance is \$7,625,000. We are recommending the addition of \$2,000,000 in FY 23 as an ongoing contribution to prepare for future capital replacement needs.

Corridor Completion Reserve

This reserve was established in the FY 2020/2021 amended budget to set aside funds for design, environmental, or leveraging grants. The current balance is \$7,000,000.

Operating Reserve

The FY 22 operating reserve is \$10 million. We have calculated 25% of the operating costs for FY 2021/2022 which would result in a reserve of \$9.8 million. Since this is below the \$10 million minimum threshold, the reserve will remain at \$10 million for FY 23.

The current estimated fund balance after deducting the reserves is \$44,880,219.

Debt

In October of 2020, SMART pursued a successful taxable advance refunding of the 2011A bonds. The refunding matched the existing March 1, 2029, final maturity of the 2011A bonds. These bonds are secured by a gross lien of SMART's $\frac{1}{4}$ cent sales tax. The bonds were rated "AA" by Standard & Poor's. The new debt service schedule is listed below.

Fiscal Year	Series 2020 Bonds Principal	Series 2020 Bonds Interest	Debt Service
2021	\$3,365,000.00	\$566,576.35	\$3,931,576.35
2022	13,280,000.00	1,656,755.80	14,936,755.80
2023	14,015,000.00	1,581,192.60	15,596,192.60
2024	14,765,000.00	1,479,443.70	16,244,443.70
2025	15,580,000.00	1,324,115.90	16,904,115.90
2026	15,860,000.00	1,136,844.30	16,996,844.30
2027	16,105,000.00	893,869.10	16,998,869.10
2028	16,385,000.00	614,930.50	16,999,930.50
2029	13,615,000.00	284,281.20	13,899,281.20
Total	\$122,970,000.00	\$9,538,009.45	\$132,508,009.45

APPENDIX A – PASSENGER RAIL OVERVIEW OF SOURCES & USES

	FY 22 Amended Budget	FY 23	Difference
Beginning Fund Balance *	\$ 37,466,206	\$ 37,393,310	\$ (72,896)
Revenues			
SMART S&U Tax			
Measure Q	\$ 46,981,000	\$ 51,622,000	\$ 4,641,000
Federal Funds			
5307 - Urbanized Area Formula Funds (Preventative Mtce)	\$ 2,957,733	\$ 4,148,529	\$ 1,190,796
American Rescue Plan	\$ 7,225,294	\$ 7,507,797	\$ 282,503
FRA Suicide Prevention Grant	\$ 80,000	\$ -	\$ (80,000)
Quick Strike (CMAQ) (Pathway Payran to Lakeville	\$ -	\$ 806,000	\$ 806,000
State Funds			
STA - State Transit Assistance (Revenue)	\$ 1,757,364	\$ 2,291,573	\$ 534,209
STA-State Transit Assistance (Population)	\$ 516,794	\$ 534,918	\$ 18,124
SB1 - SRA - State Rail Assistance	\$ 3,058,638	\$ 3,700,000	\$ 641,362
LCTOP - Low Carbon Transit Operating	\$ 225,623	\$ 534,762	\$ 309,139
State - TIRCP SH 37 Network Integration	\$ 30,000	\$ 750,000	\$ 720,000
STA-SGR (State of Good Repair)	\$ 309,308	\$ 550,349	\$ 241,041
SB1 - Local Partnership Program	\$ 679,000	\$ 1,392,000	\$ 713,000
ATP - SoCo Pathway - CTC/Caltrans/MTC	\$ 983,957	\$ 11,470,569	\$ 10,486,612
State - Cap and Trade/ TIRCP DMUs	\$ 1,100,000	\$ -	\$ (1,100,000)
Other Sources			
Fare Revenues	\$ 1,200,000	\$ 2,310,768	\$ 1,110,768
Parking	\$ 27,000	\$ -	\$ (27,000)
Interest Earning	\$ 275,000	\$ 277,750	\$ 2,750
Advertising	\$ 90,000	\$ 225,000	\$ 135,000
Rent - Real Estate	\$ 258,865	\$ 266,631	\$ 7,766
Misc.	\$ 30,000	\$ 30,900	\$ 900
Charges for Services	\$ 57,500	\$ 28,325	\$ (29,175)
Regional Funds			
Other Governments	\$ 15,000	\$ -	\$ (15,000)
County Intergovernmental Funds -SCTA TIF (SoCo Pathway)	\$ 146,998	\$ -	\$ (146,998)
Total Revenues	\$ 68,005,074	\$ 88,447,871	\$ 20,442,797
Total Revenues + Fund Balance	\$ 105,471,280	\$ 125,841,181	\$ 20,369,901
Debt Service	\$ 14,936,756	\$ 15,596,193	\$ 659,437
Salaries & Benefits	\$ 23,693,957	\$ 23,140,920	\$ (553,037)
Reduction for Salaries Charged to Projects	\$ (822,804)	\$ (1,193,147)	\$ (370,343)
Reduction for Allocation of Salaries/ Services/ Supplies to Freight	\$ -	\$ (99,372)	\$ (99,372)
Service & Supplies	\$ 17,997,311	\$ 16,890,290	\$ (1,107,021)
Total Salaries, Benefits, Service, & Supplies	\$ 40,868,464	\$ 38,738,691	\$ (2,129,773)
Contribution to OPEB/ CalPERS Liability Fund	\$ 500,000	\$ 500,000	\$ -
Contribution to Capital Sinking Fund	\$ -	\$ 2,000,000	\$ 2,000,000
Self Insured Fund	\$ -	\$ -	\$ -
Operating Reserve	\$ 217,116	\$ -	\$ (217,116)
Total Reserve Contributions	\$ 717,116	\$ 2,500,000	\$ 1,782,884
Planning		\$ 1,425,000	\$ 1,425,000
Environmental		\$ 883,015	\$ 883,015
Total Planning & Environmental	\$ -	\$ 2,308,015	\$ 2,308,015
Total Debt Service, Operating, Reserves, Environmental/ Planning	\$ 56,522,336	\$ 59,142,899	\$ 2,620,563
Balance	\$ 48,948,944	\$ 66,698,282	\$ 17,749,338

	FY 22	FY 23	Difference
State of Good Repair			
Track, MOW, and Facilities	\$ 300,000	\$ 436,275	\$ 136,275
Safety and Security	\$ -	\$ 477,225	\$ 477,225
Train Control	\$ -	\$ -	\$ -
DMU	\$ 2,680,844	\$ 703,500	\$ (1,977,344)
Bridges	\$ 280,620	\$ 796,988	\$ 516,368
Other Construction	\$ 2,122,761	\$ 1,060,500	\$ (1,062,261)
Information Technology	\$ 390,600	\$ 260,400	\$ (130,200)
Non-Revenue Vehicles	\$ 170,000	\$ 467,250	\$ 297,250
Equipment	\$ -	\$ 263,998	\$ 263,998
Total Capital Expenditures	\$ 5,944,825	\$ 4,466,136	\$ (1,478,689)
	FY 22	FY 23	Difference
Other Capital Projects			
Pathways	\$ 5,820,691	\$ 15,349,795	\$ 9,529,104
Expansion	\$ 7,234	\$ 2,133	\$ (5,101)
Total Capital Expenditures	\$ 5,827,925	\$ 15,351,927	\$ 9,524,002
	FY 22	FY 23	Difference
Future Match for Federal/ State Funds	\$ -	\$ 2,000,000	\$ 2,000,000
	FY 22	FY 23	
Ending Fund Balance	\$ 37,176,194	\$ 44,880,219	\$ 7,704,025
* Excludes Reserves			

APPENDIX B – FREIGHT OVERVIEW OF SOURCES & USES

	FY 23
Beginning Fund Balance	\$ 1,234,675
Revenues	
State Grant (42341)	\$ 4,000,000
State Grant (Blackpoint)	\$ 206,000
Freight Movement Fees	\$ 1,100,000
Leases	\$ 145,743
Storage	\$ 92,000
Total Revenues	\$ 5,543,743
Total Revenues + Fund Balance	\$ 6,778,418
	FY 23
Salaries	\$ 786,060
Service & Supplies	\$ 979,616
Total Salaries, Benefits, Service, & Supplies	\$ 1,765,676
Balance	\$ 5,012,742
	FY 23
Blackpoint Bridge	\$ 574,650
Highway 37 Grade Crossing Reconstruction	\$ 600,000
Brazos Branch - Bridge Repairs (High Priority)	\$ 865,269
New York Air Brake	\$ 68,000
PTC	\$ 75,000
Total Capital & SOGR	\$ 2,182,919
Balance	\$ 2,829,823

APPENDIX C – POSITION AUTHORIZATION

Will be available in final budget.

DRAFT

APPENDIX D -STATISTICAL INFORMATION

SMART is a special district established by the California Legislature through the enactment of AB 2224 in 2002. The SMART District includes both Sonoma and Marin Counties and was created for the purpose of providing unified and comprehensive structure for the ownership and governance of the passenger and freight rail system within Sonoma and Marin Counties and to provide passenger and freight train service along the existing publicly owned railroad right-of-way.

Marin County

Marin County is in the northwestern part of the San Francisco Bay Area. Its county seat is San Rafael. Marin County is across the Golden Gate Bridge from San Francisco, and is included in the San Francisco–Oakland–Berkeley, CA Metropolitan Statistical Area.

As of 2019, Marin County had the sixth highest income per capita of all U.S. counties. The county is governed by the Marin County Board of Supervisors.

San Quentin State Prison is located in the county, as is George Lucas' Skywalker Ranch. Autodesk, the publisher of AutoCAD, is also headquartered there, as well as numerous other high-tech companies. The Marin County Civic Center was designed by Frank Lloyd Wright and draws thousands of visitors a year to guided tours of its arch and atrium design. Marin County's natural sites include the Muir Woods redwood forest, the Marin Headlands, Stinson Beach, the Point Reyes National Seashore, and Mount Tamalpais.

Sonoma County

Sonoma County is in the northwestern part of the San Francisco Bay Area. Its county seat and largest city is Santa Rosa. It is to the north of Marin County and the south of Mendocino County.

Sonoma County includes the Santa Rosa and Petaluma Metropolitan Statistical Areas. It is the northernmost county in the nine-county San Francisco Bay Area region.

In California's Wine Country region, which also includes Napa, Mendocino, and Lake counties, Sonoma County is the largest producer. It has thirteen approved American Viticultural Areas and more than 350 wineries. The voters have twice approved open space initiatives that have provided funding for public acquisition of natural areas, preserving forested areas, coastal habitat, and other open spaces.

**POPULATION OF MARIN COUNTY
AND INCORPORATED CITIES**

Area	2016	2017	2018	2019	2020	2021
Marin County	263,010	262,313	262,234	260,969	258,956	259,512
Belvedere	2,129	2,131	2,148	2,139	2,124	2,103
Corte Madera	9,631	9,625	10,043	10,138	10,114	10,147
Fairfax	7,528	7,533	7,714	7,443	7,399	7,496
Larkspur	12,312	12,325	12,588	12,331	12,253	12,963
Mill Valley	15,024	14,956	14,669	14,743	14,674	14,002
Novato	54,593	54,516	54,151	54,062	53,702	53,008
Ross	2,538	2,536	2,528	2,548	2,550	2,330
San Anselmo	13,017	12,982	12,908	12,845	12,757	12,772
San Rafael	60,551	60,661	60,020	60,207	59,807	61,179
Sausalito	7,227	7,234	7,421	7,301	7,252	7,159
Tiburon	9,644	9,647	9,366	9,581	9,540	9,065
Remainder of County	68,816	68,167	68,678	67,631	66,784	67,288

Note: City statistics as of January 1, 2021, County statistics as of July 1, 2021
Source: State of California, Department of Finance, Demographic Research Unit

**POPULATION OF SONOMA COUNTY
AND INCORPORATED CITIES**

Area	2016	2017	2018	2019	2020	2021
Sonoma County	503,322	502,758	498,849	495,058	491,134	484,674
Cloverdale	8,927	8,988	9,141	9,279	9,213	9,029
Cotati	7,376	7,453	7,739	7,628	7,533	7,512
Healdsburg	11,734	11,757	12,232	12,166	12,089	11,174
Petaluma	61,488	61,657	62,251	62,195	61,873	59,756
Rohnert Park	42,586	42,490	43,178	43,134	43,069	44,287
Santa Rosa	176,937	178,064	177,017	175,183	173,628	177,396
Sonoma	10,929	11,072	11,423	11,164	11,050	10,755
Windsor	27,445	27,492	28,356	28,596	28,248	26,134
Remainder of County	155,900	153,785	147,512	145,713	144,431	138,631

Note: City stats as of January 1, 2021, County stat as of July 1, 2021
Source: State of California, Department of Finance, Demographic Research Unit.

UNEMPLOYMENT RATES

The following compares unemployment rates for the State of California, Marin County, and Sonoma County for March 2022. These rates are not seasonally adjusted.

Area	Period	Labor Force	Unemployment	Unemployment Rate
California	Mar-22	19,131,300	933,700	4.9%
Marin County	Mar-22	132,000	3,100	2.3%
Sonoma County	Mar-22	249,100	7,400	3.0%

Source: State of California, California Employment Development Department

MEASURES OF INCOME

The following compares per capita personal income and total personal income for California, Marin County, and Sonoma County.

Area	Period	Income Type	Income
California	2020	Per Capita Personal Income - BEA	\$ 69,958
		Total Personal Income - BEA	\$ 2,763,312,000,000
Marin County	2020	Per Capita Personal Income - BEA	\$ 145,575
		Total Personal Income - BEA	\$ 37,461,199,000
Sonoma County	2020	Per Capita Personal Income - BEA	\$ 71,386
		Total Personal Income - BEA	\$ 34,966,152,000

Source: State of California, California Employment Development Department

MEDIAN PRICE OF HOMES SOLD

Area	Year	Property Value
California	2020	\$ 646,245
Marin County	2020	\$ 1,463,750
Sonoma County	2020	\$ 711,875

Source: State of California, California Employment Development Department

BUILDING PERMITS

Building Permits – Multi-Family Homes

Area	Period	# of Permits	Total Costs
California	2020	43,420	\$ 8,330,538,576
Marin County	2020	3	\$ 350,000
Sonoma County	2020	224	\$ 37,992,566

Source: State of California, California Employment Development Department

Building Permits – Single Family Homes

Area	Period	# of Permits	Total Costs
California	2020	51,537	\$ 14,252,828,191
Marin County	2020	87	\$ 38,449,781
Sonoma County	2020	1,086	\$ 348,394,360

Source: State of California, California Employment Development Department

Building Permits – All Construction

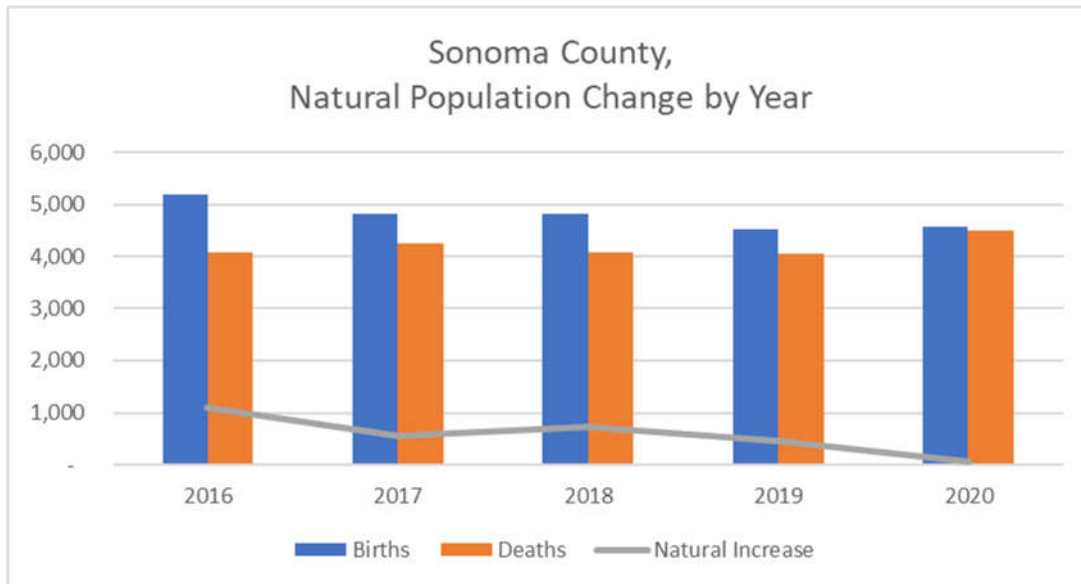
Area	Period	# of Permits	Total Costs
California	2020	94,957	\$ 22,583,366,767
Marin County	2020	90	\$ 38,799,781
Sonoma County	2020	1,310	\$ 386,386,926

Source: State of California, California Employment Development Department

DEMOGRAPHICS OF MARIN AND SONOMA COUNTIES

Sonoma County

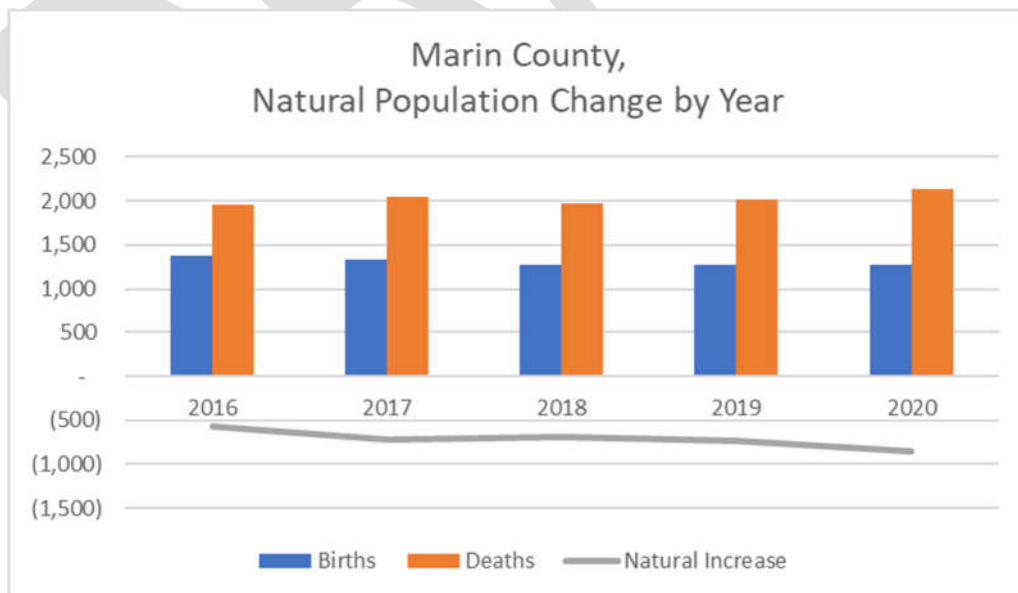
- Average age in 2020 was 42.4
- 36.4% of residents 25 or older have a bachelor's degree
- Life expectancy is 80.6 years



Source: California Department of Public Health and California Department of Finance, Demographic Research Unit

Marin County

- Average age in 2020 was 47.1
- 60.2% of residents 25 or older have a bachelor's degree
- Life expectancy is 85.2 years



Source: California Department of Public Health and California Department of Finance, Demographic Research Unit

APPENDIX E - STATEMENT OF INVESTMENT POLICY

1.0 Policy:

This investment policy is intended to outline the guidelines and practices to be used in effectively managing the SMART District (District's) available cash and investment portfolio. District monies not required for immediate cash requirements will be invested in compliance with the California Government Code Section 53600, et seq.

2.0 Scope:

This policy applies to all the financial assets accounted for in the District's Comprehensive Annual Financial Report and any new fund created by the District, unless specifically exempted. The investment of bond proceeds will be governed by the provisions of relevant bond documents.

3.0 Prudence:

The Board of Directors and Chief Financial Officer adhere to the guidance provided by the "prudent investor rule," California Government Code Section 53600.3, which obligates a fiduciary to ensure that "when investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency. Within the limitations of this section and considering individual investments as part of an overall strategy, investments may be acquired as authorized by law."

4.0 Objectives:

In accordance with California Government Code Section 53600.5, and in order of importance, the Chief Financial Officer shall adhere to the following three criteria:

- (a) Safety of Principal – Safety of principal is the foremost objective of the investment program. Investments of the District shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio.
- (b) Liquidity – Investments shall be made whose maturity date is compatible with cash flow requirements and which will permit easy and rapid conversion into cash without substantial loss of value.
- (c) Return on Investment – The District's investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into account the District's investment risk constraints and the cash flow characteristics of the portfolio.

5.0 Delegation of Authority:

The authority of the Board to purchase or sell securities for the District's portfolio, may be delegated by the Board to the Chief Financial Officer, who shall thereafter assume full responsibility for those transactions until the delegation of authority is revoked. The Chief

Financial Officer shall act in accordance with established written procedures and internal controls for the operation of the investment program consistent with this investment policy.

The oversight responsibility for the investment program is hereby delegated to the Chief Financial Officer who shall monitor and review all investments for consistency with this Investment Policy.

The Chief Financial Officer may delegate investment decision making and execution authority to an independent SEC-registered investment advisor. The advisor shall comply with this Policy and such other written instructions as are provided by the Chief Financial Officer.

6.0 Investment Procedures:

The Chief Financial Officer shall establish written operational procedures pertaining to the investment of District funds as needed. These procedures shall be compliant with the parameters and limits set forth by this investment policy. The procedures should regulate actions regarding safekeeping, repurchase agreements, wire transfer agreements, banking service contracts, and collateral/depository agreements. Such procedures shall include explicit delegation of authority to persons responsible for investment transactions. No person may engage in an investment transaction except as provided under the terms of this policy and the procedures established by the Chief Financial Officer.

7.0 Ethics and Conflicts of Interest:

Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions. Employees and investment officials shall disclose any material interests in financial institutions with which they conduct business to the Chief Financial Officer. They shall further disclose any personal financial/investment positions that could be related to the performance of the investment portfolio. Employees and officers shall refrain from undertaking personal investment transactions with the same individual with whom business is conducted on behalf of the District.

8.0 Authorized Financial Dealers and Institutions:

For brokers/dealers of government securities and other investments, the Chief Financial Officer shall select only brokers/dealers who are licensed and in good standing with the California Department of Securities, the Securities and Exchange Commission, the National Association of Securities Dealers or other applicable self-regulatory organizations. Before engaging in investment transactions with a broker/dealer, the Chief Financial Officer shall obtain a signed verification form that attests the individual has reviewed the District's Investment Policy and intends to present only those investment recommendations and transactions to the District that is appropriate under the terms and conditions of the Investment Policy.

If an Investment Advisor is authorized to conduct investment transactions on the District's behalf, the Investment Advisor may use their own list of approved broker/dealers and financial institutions for investment purposes.

9.0 Authorized and Suitable Investments:

The District is governed by the California Government Code, Sections 53600, *et seq.* Within the context of these limitations, the investments listed below are authorized. Those investments not identified are considered to be ineligible.

1. **U.S. Treasury Obligations.** United States Treasury notes, bonds, bills, or certificates of indebtedness, or those for which the full faith and credit of the United States are pledged for the payment of principal and interest.
2. **U.S. Agency Obligations.** Federal agency or United States government-sponsored enterprise obligations, participations, or other instruments, including those issued by or fully guaranteed as to principal and interest by federal agencies or United States government-sponsored enterprises.
3. **California State and Local Agency Obligations.** Obligations of the State of California or any local agency within the state, including bonds payable solely out of revenues from a revenue producing property owned, controlled or operated by the state or any local agency or by a department, board, agency or authority of the state or any local agency.
4. **Other State Obligations.** Registered treasury notes or bonds of any of the other 49 United States in addition to California, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by a state or by a department, board, agency, or authority of any of the other 49 United States, in addition to California.
5. **Bankers' Acceptances.** Time drafts or bills of exchange that are drawn on and accepted by a commercial bank and brokered to investors in the secondary market. The maximum maturity of an issue will be 180 days. Securities eligible for investment under this subdivision shall be rated in the highest letter and number category by nationally recognized statistical-rating organization. The maximum exposure shall be no more than 40% of the portfolio value. However, no more than 30 percent of the agency's money may be invested in the bankers' acceptances of any one commercial bank pursuant to this section.
6. **Commercial Paper.** Commercial paper of "prime" quality of the highest ranking or of the highest letter and number rating as provided for by a nationally recognized statistical-rating organization. The entity that issues the commercial paper shall meet all of the following conditions in either paragraph a or paragraph b:
 - a. The entity meets the following criteria: (i) Is organized and operating in the United States as a general corporation. (ii) Has total assets in excess of five hundred million dollars (\$500,000,000). (iii) Has debt other than commercial paper, if any, that is rated "AA" or higher by a nationally recognized statistical-rating organization.

- b. The entity meets the following criteria: (i) Is organized within the United States as a special purpose corporation, trust, or limited liability company. (ii) Has program wide credit enhancements including, but not limited to, over collateralization, letters of credit, or surety bond. (iii) Has commercial paper that is rated “AA” or higher, or the equivalent, by a nationally recognized statistical-rating organization.

Eligible commercial paper shall have a maximum maturity of 270 days or less. The District may invest no more than 25 percent of its money in eligible commercial paper. The District may purchase no more than 10 percent of the outstanding commercial paper of any single issuer.

- 7. **Medium-Term Notes.** Medium-term notes are defined in Government Code Section 53601 as all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. Notes eligible for investment under this subdivision shall be rated “AA” or better by a nationally recognized statistical-rating organization. Purchases of medium-term notes shall not include other instruments authorized by section 53601 and may not exceed 30% of the portfolio value.
- 8. **Negotiable Certificates of Deposit.** Negotiable certificates of deposit issued by a nationally or state-chartered bank, a savings association or a federal association (as defined by Section 5102 of the Financial Code), a state or federal credit union, or by a state-licensed branch of a foreign bank. Securities eligible for investment under this subdivision shall be rated in the highest letter and number category by a nationally recognized rating service for short-term ratings (A-1/P1/F-1) and AA or better for longer-term ratings. Purchases of negotiable certificates of deposit may not exceed 30 percent of the District’s aggregate portfolio.
- 9. **Time Deposits.** The District may invest in non-negotiable time deposits (CDs) that are FDIC insured or fully collateralized in a state or national bank, savings association or federal association, federal or state credit union located in California, including U.S. branches of foreign banks licensed to do business in California. To be eligible to receive local agency deposits, a financial institution must receive a minimum overall “satisfactory rating” for meeting the credit needs of California Communities in its most recent evaluation. CDs are required to be collateralized as specified under Government Code Section 53630 et seq. The District, at its discretion, may waive the collateralization requirements for any portion that is covered by federal deposit insurance. The District shall have a signed agreement with any depository accepting District funds per Government Code Section 53649. No deposits shall be made at any time in CDs issued by a state or federal credit union if a member of the Governing Council or the Finance Director serves on the board of directors or any committee appointed by the board of directors of the credit union. In accordance with Government Code Section 53638, any

deposit shall not exceed that total shareholder's equity of any depository bank, nor shall the deposit exceed the total net worth of any institution.

10. **Local Agency Investment Fund (LAIF)** is a pooled investment fund through the State Chief Financial Officer. Deposits for the purpose of investment in the Local Agency Investment Fund of the State Treasury may be made up to the maximum amount permitted by State Treasury policy.

11. **Money Market Funds.** The Chief Financial Officer may invest in shares of beneficial interest issued by diversified management companies that are money market funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (Government Code Section 53601(k).)

The following criteria will be used in evaluating companies:

- a. Attain the highest-ranking letter and numerical rating provided by not less than two nationally recognized rating services; or
 - b. Have an investment advisor registered or exempt from registration with the Securities and Exchange Commission with not less than five (5) years' experience managing money market mutual funds and with assets under management in excess of \$500,000,000.
 - c. The maximum purchase price of shares shall not exceed 20% of the portfolio. However, no more than 10 percent of the agency's funds may be invested in shares of beneficial interest of any one mutual fund.
12. **Local Government Investment Pools.** Shares of beneficial interest issued by a joint powers authority organized pursuant to Government Code Section 6509.7 that invests in the securities and obligations authorized in subdivisions (a) to (o) of Government Code Section 53601, inclusive. Each share shall represent an equal proportional interest in the underlying pool of securities owned by the joint power's authority. To be eligible under this section, the joint powers authority issuing the shares shall have retained an investment adviser that meets all the following criteria:
- a. The adviser is registered or exempt from registration with the Securities and Exchange Commission.
 - b. The adviser has not less than five years of experience investing in the securities and obligations authorized in subdivisions (a) to (o) Government Code Section 53601, inclusive.
 - c. The adviser has assets under management more than five hundred million dollars (\$500,000,000).

Credit criteria and sectors and issuers percentages for investments listed in this section will be determined at the time the security is purchased. A decline in the overall investment balances that causes the percent to any investment above its maximum policy limit will not be considered out of compliance. The District may from time to time be invested in a security whose rating is downgraded. In the event a rating drops below the minimum allowed rating category for that given investment type, the Chief Financial Officer shall notify the District General Manager and District Council and recommend a plan of action.

10.0 Prohibited Investments:

Under the provisions of California Government Code Sections 53601.6 and 53631.5, the District shall not invest any funds covered by this Investment Policy in inverse floaters, range notes, mortgage-derived, interest-only strips or any investment that may result in a zero-interest accrual if held to maturity.

11.0 Collateralization:

Collateralization is required on Certificates of Deposit as per California Government Code section 53601. The collateralization level for certificates of deposit is 100% of market value of principal and accrued interest.

The entity chooses to limit collateral to the following: U.S. Treasuries and Federal Agency Obligations. Collateral will always be held by an independent third party with whom the entity has a current custodial agreement. A clearly marked evidence of ownership (safekeeping receipt) must be supplied to the entity and retained. The right of collateral substitution is granted.

12.0 Safekeeping and Custody:

All securities purchased may be delivered versus payment ("DVP") basis and held in safekeeping pursuant to a safekeeping agreement.

13.0 Maximum Maturities:

To the extent possible, the District will attempt to match its investments with anticipated cash flow requirements. For certain instruments, the term of the investment is limited by market convention or as otherwise prescribed herein. No investments may be acquired that exceed five (5) years, unless approved by the Board at least 90 days in advance of the purchase.

14.0 Internal Control:

The Chief Financial Officer shall establish an annual process of independent review by an external auditor. This review will provide internal control by assuring compliance with policies and procedures. The Chief Financial Officer may, at any time, further restrict the securities approved for investment as deemed appropriate.

15.0 Performance Standards:

The investment portfolio will be designed to obtain a market average rate of return during budgetary and economic cycles, taking into account the District's investment risk constraints and cash flow needs.

16.0 Reporting:

In accordance with Government Code Section 53607, the Chief Financial Officer shall submit an annual report to the Board indicating the types of investment by fund, institution, date of maturity, and amount of deposit, and shall provide the current market value of all securities with a maturity of more than twelve (12) months, rates of interest, and expected yield to maturity.

17.0 Investment Policy Adoption:

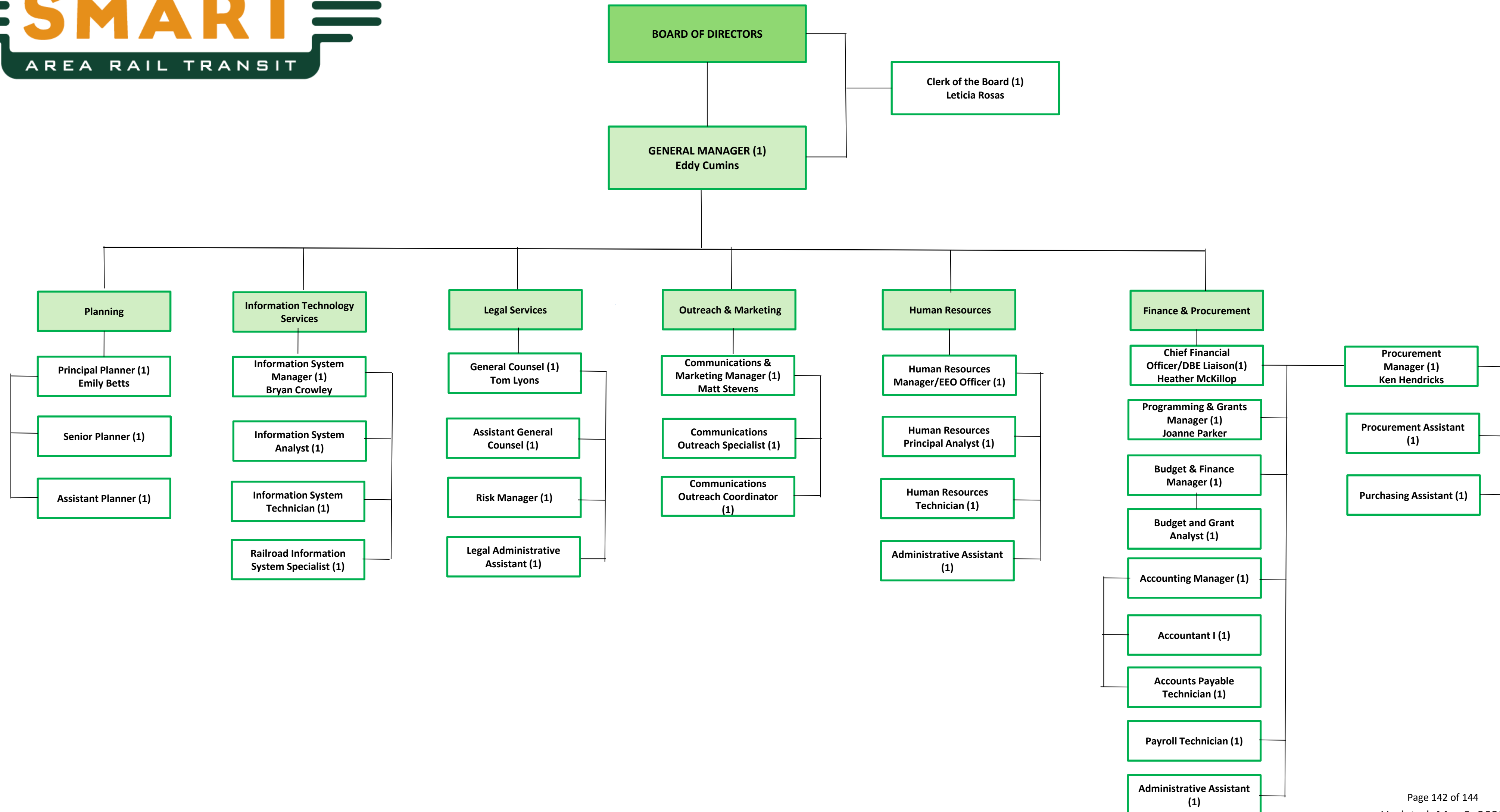
The Chief Financial Officer may, at any time, further restrict the securities approved for investment as deemed appropriate.

Additionally, the Chief Financial Officer shall annually send a copy of the current Investment Policy to all approved dealers. Each dealer is required to return a signed statement indicating receipt and understanding of the District's investment policies.

APPENDIX F – ORGANIZATION CHART

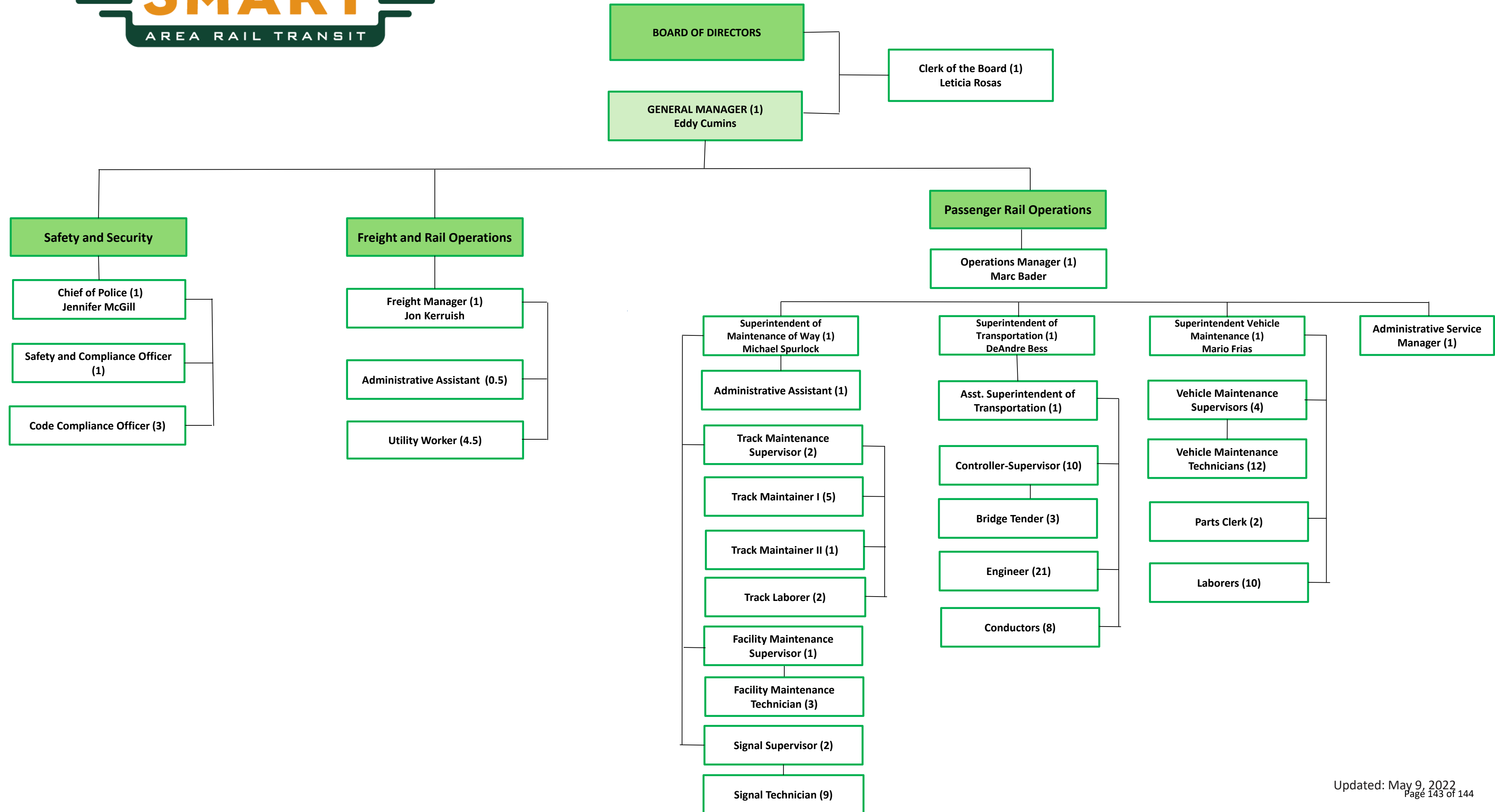


ADMINISTRATION/FINANCE ORGANIZATION CHART





OPERATIONS ORGANIZATION CHART





CAPITAL ORGANIZATION CHART

