



**BOARD OF DIRECTORS
MEETING AGENDA
June 16, 2021 – 1:30 PM**

**IN ACCORDANCE WITH GOVERNOR’S EXECUTIVE ORDERS N-25-20 AND N-29-20
THE SMART BOARD OF DIRECTORS MEETING WILL BE HELD VIRTUALLY**

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, June 15, 2021 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 periods 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 June 2, 2021 Board Minutes
3. Board Member Announcements
4. General Manager’s Report
5. Public Comment on Non-Agenda Items
6. Consent Calendar
 - a. Accept Monthly Ridership Report – May 2021

Regular Calendar

7. Authorize the General Manager to Execute Six (6) Contract Amendments totaling \$586,800 as needed for Fiscal Year 2021-22
8. Authorize the General Manager to Award Contract No. OP-PS-21-003 to Samuel R. Whitehead, Jr. dba Precision Wireless Service for SMART Land Mobile Radio maintenance, technical support, and consultation for an initial term of three years with a total not-to-exceed amount of \$120,000
9. Authorize the General Manager to Award Contract No. FN-PS-21-001 to MuniServices, LLC to provide sales and use tax auditing and forecasting services for an amount of \$143,322 for three years
10. Next Regular Meeting of the Board of Directors, July 7, 2021 – 1:30 PM
11. 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-mendoza@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
June 2, 2021 - 1:30 PM**

**IN ACCORDANCE WITH GOVERNOR'S EXECUTIVE ORDERS N-25-20 AND N-29-20
THE SMART BOARD OF DIRECTORS MEETING WILL BE HELD VIRTUALLY**

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, Connolly, Fudge, Garbarino, Hillmer, Lucan, Rogers, and Pahre were present; Director Arnold joined later; Director Gorin absent.

2. Approval of the May 19, 2021 Board Minutes

MOTION: Director Hillmer moved approval of May 19, 2021 Board Minutes as presented. Director Rogers second. The motion carried 10-0 (Director Arnold joined later; Director Gorin absent).

3. Board Members Announcements

None

4. General Manager's Report

General Manager Mansourian reported that since the start of passenger service in August 2017, SMART has carried 1,983,000 passengers, 207,000 bicycles, and over 7,400 wheelchairs. There has been an increase of 20% in riders within the last week, especially on Friday, May 28th. The ridership data is posted on the website.

He stated that at the request of Chair Rabbitt he has explored when SMART will start to conduct public meetings in person. SMART is waiting for the Governor to make an announcement and it will depend on his orders. Over a year ago, the Governor issued an executive order stating that public meetings be held virtual using telephones or other teleconference systems. Holding meetings in person will depend on the executive orders from the Governor. Assembly Bill 339, introduced by Mr. Lee has generated a lot of opposition. The State is exempting themselves from the mandate, but they are requiring that local government agencies conduct a hybrid

system, both in place and virtual meetings. Once we know whether we are legally being directed to do one way or another, we will seek the Board direction.

Comments:

Chair Rabbitt stated that most agencies are in transition to perform in person meetings. The Sonoma County Board of Supervisors closed session meeting was conducted in person with the combination of streaming and making sure it could function with a hybrid system.

Director Fudge stated that the Town of Windsor councilmembers will be meeting in person tonight and members of the public will join via Zoom. The Town of Windsor is considering continuing to have the public meetings via Zoom to attract more participation. She asked if SMART is planning any type of celebration since we are near 2 million passengers. General Manager Mansourian responded that staff is working on that milestone especially since economy is reopening.

Director Arnold joined at 1:40pm

Chair Rabbitt thanked the staff for having live music at a few of the station on Saturday; it was a very nice celebration to start of weekend service. He asked if the 20% increase was throughout the day on Friday. Also, in terms of meeting in person, the goal is not to frustrate the public by meeting in person and limiting the people that can come in the room. We all feel the same way in terms of balancing that with the COVID protocols that are still in place today and what will be announced. The SMART Board room is not large, and we do not want to frustrate anyone by them not being able to attend the meeting in person.

General Manager Mansourian responded that the biggest jump on Friday was in the middle of the day.

5. Public Comment on Non-Agenda Items

Eris Weaver stated that she used the e-ticket app to get the discounted fare for the first time. She and several friends took the train from Cotati to San Rafael and then bicycled across the Richmond-San Rafael Bridge to visit Richmond. She noticed and enjoyed the way- finding that was available which had very good. They felt very safe riding in Richmond. They just finished a very successful national bike month with a lot of activities. They had approximately over 100 people participate in ride of silence to honor those who have died on the road. She said that she submitted a letter of support for the Meridien Corona Station grant to Ms. Parker.

6. Consent

- a. Approval of Monthly Financial Reports
- b. Approval of Resolutions Authorizing the General Manager to Execute Change Orders CO-014 to Contract No. CV-DB-18-001 and CO-003 to Contract No. SYS-DB-18-001 that modifies the Contract provisions while the Windsor Extension work is temporary suspended until the Regional Measure 3 (RM3) funding is allocated
- c. Approval of a Resolution Authorizing the General Manager to Negotiate Final Terms and Enter into an Interagency Coordination Agreement Supporting Operations of the Sonoma-Marin Bike Share Pilot Program

Chair Rabbitt. asked for Board and public comments on the proposed Consent Agenda.

MOTION: Director Lucan moved approval of the Consent Agenda as presented. Director Rogers second. The motion carried 11-0 (Director Gorin absent).

7. Approval of Resolutions Adopting the Fiscal Year 2021-22 Budget, Annual Appropriation Limit and Investment Policy

Chief Financial Officer, Heather McKillop, stated that today we are asking for adoption of the fiscal year 2021-22 and SMART is in a much better place, both operationally and financially, than one year ago. This time last year was very difficult during the budget adoption process when it was uncertain. Now we have more certainty and SMART started to restore passenger service and there is money in the budget. We still could use some additional federal relief funds to be able to move forward with additional service to get SMART back to pre-pandemic schedule.

Staff will be presenting the fiscal year 2021 amended budget to an actual comparison in the fall after it has completed the audit and will be able to show the ending numbers.

Since last month's presentation two changes have been made: 1) the cost of Puerto Suello to North San Pedro pathway feasibility study has been reduced from \$100K to \$30K, which will be a shared cost with the City of San Rafael; and 2) the fare reductions (lowered from \$3.50 to \$1.50 for non-discounted adult one zone.

In addition, a new "Weekend Day Pass" will be implemented on June 5th. The Weekend Day Pass is \$10 for adults and \$5 for seniors, youth or passengers with disabilities and low-income passengers and the pass offers unlimited rides for the entire day. In September 2021, when Clipper implements the 31-day pass which will cost \$135 for adults and \$67.50 for seniors, youth, or passengers with disabilities.

On page 79 of the Board packet is the Calculation of SMART's Appropriation Limits. The calculation is done each year in accordance with the California Constitution requirement and includes the cost of living and population growth from last year. The calculation is \$152.5M and SMART's budget is \$55M and we are significantly below that appropriation cap.

On page 86 of the Board packet is list 4 park-in-ride lots which should be 6 park-in-rides. The budget also includes:

- Appendix A - Overview of all Sources and Uses
- Appendix B – Position Authorization
- Appendix C – Statistical Information
- Appendix D – Statement of Investment Policy

We received a comment regarding performance measures, and we identified those performance measures in the budget on page 87. Staff made a presentation in April, regarding the performance measures. At that time there was a lot of discussion about the information that SMART currently provides to the National Transit Database (NTD) reporting and we illustrated a lot of the charts and numbers that are reported every year. We discussed what measures made the most sense for SMART and took into consideration the characteristics of

SMART. SMART has been in operation for 3 ½ years and then we had a pandemic, the fact that we operate a rail, own the infrastructure, and operate our own service with a very linear fixed guideway for 45 miles that can not be moved or changed.

The letter claimed that the measures being proposed are industry standards and while she agrees that these measures are required for us to be reported to NTD, she disagrees that this is necessarily what transit agencies use to determine whether they are successful or not, and whether they should make certain decisions and in a particular direction. It really all depends on the goals of the agency. If we had chosen a cost recovery ratio as our measure, that would have really driven the decision making that the board had done around the fare reduction. If it was said that we want to cost recovery that is high, meaning our fares cover a very high amount of our operating costs, as the advisor to the Board, she would have said you may not want to reduce your fares or increase service, because by increase service you are increasing the operational costs, by reducing fares you are reducing the amount of money that's going to cover and therefore your cost recovery ratio would go down and that is an example of why you may not want to use that type of a metric.

SMART has selected performance measures that were agreed in April 2021. These will be the measures that will provide information and how we make decisions that help the agency achieve the goals moving forward.

Therefore, staff recommends approval of the fiscal year 2021-22 budget, annual appropriation limit, and the investment policy.

Comments:

Vice Chair Pahre thanked Ms. McKillop for including the legal sites. She appreciates the time and the energy that went into pulling all those policies out so that we at least have a reference when we read it.

Director Bagby thanked Ms. McKillop for they way the information was laid out. This is a document that she will be able to refer to and the public will be able to look at. She appreciates the thoroughness and a very clean and clear documents that we are not only going to use today by also going forward.

Director Lucan stated that the budget mentions the performance measures and we talked the environmental benefits. It says that in addition the following measures will be developed around pathway usage, on time performance, and customer experience. Funds have been set aside in the fiscal year 22 budget to further develop those measures and is it safe to assume that environment is also included in that narrative or should it be added. Ms. McKillop responded that it is included. Director Lucan suggested including it in the paragraph on page B-7 of the budget. Chair Rabbitt stated that there is no objection, and it is a good suggestion.

Director Garbarino thanked Ms. McKillop for great presentation, it was very methodical, very well laid out and easily to understand a very good report.

Chair Rabbitt stated that he agrees with his colleagues and thanked Ms. McKillop for a very thorough, clear, concise document and a lot of work behind it. As strange as this year has been SMART is in a much better place than a year ago and going forward.

Director Hillmer appreciates how responsive the budget document and the overall presentation from Ms. McKillop has been discussing the budget in a series of meeting. It is almost as if she can keep a conversation going between meetings and come back immediately with lots of adaptations to the public and the board comments. He values that very much.

Public Comments

Jim Schmidt commended the CFO on the budget data reporting and for the first time since inception of SMART' monthly reports since August of 2017, there is finally an actual expenditure budget closure for the end of the year. He recommended the Board to establish a best guess pool for end of year results; it would be interesting to see how well the Board does. He is disappointed that the performance metrics that have been established are not reported. He thinks the average passenger costs will be approaching \$100, which is an extraordinarily high. The Board has not addressed these questions at all in any discussion and he encouraged the Board to do so.

David Oster commend Ms. McKillop on the budget and is very glad that staff is not guessing at numbers.

MOTION: Director Rogers moved the Approval of Resolutions Adopting the Fiscal Year 2021-22 Budget, Annual Appropriation Limit and Investment as presented. Director Bagby second. The motion carried 11-0 (Director Gorin absent).

8. Authorize the General Manager to Award Service Agreement No. OP-SV-21-002 with Empire Cleaners for laundry, dry cleaning and pressing services for SMART-owned employee uniforms in the amount of \$180,000

Procurement Coordinator, Ken Hendricks, stated that SMART contracts for laundry, dry cleaning and pressing services for SMART-owned employee uniforms are provided for approximately 30 Operations and Transportation staff members.

In anticipation of the contract expiring on June 30, 2021, a formal Invitation for Bid was issued to procure these services. SMART received a total of 2 bids from the following vendors:

1. Empire Cleaners
2. Fiat Luxx DBA Expert Discount Cleaners

An Invitation for Bid is awarded to the lowest responsive responsible bidder. Of the two bids received, Empire Cleaners was the lowest bidder. The funding for the first year is include in the operations budget for fiscal year 2021-22 and assumed in each subsequent year. Empire Cleaners is SMART's current provider and they have provided reliable and quality service over the past five years, SMART expects this level of service to continue with the award of this Agreement.

Staff recommends authorizing the General Manager to award Service Agreement (OP-SV-21-002) to Empire Cleaners for laundry, dry cleaning and pressing services for SMART-owned employee uniforms in the amount of \$180,000 for the initial three year term.

Comments:

Vice Chair Pahre stated that is the right thing to do. She was taken back by how long the contract is for all the contracts this board approves. She thanked staff for being on top of that work.

MOTION: Director Arnold moved to Authorize the General Manager to Award Service Agreement No. OP-SV-21-002 with Empire Cleaners for laundry, dry cleaning and pressing services for SMART-owned employee uniforms in the amount of \$180,000 as presented. Director Fudge second. The motion carried 11-0 (Director Gorin absent).

9. Authorize the General Manager to Award Contract No. OP-PS-21-002 with Portola Systems Inc. for ongoing management and maintenance support for the existing SMART Station Network for an initial term of three years with a total not-to-exceed amount of \$722,460

Procurement Coordinator, Ken Hendricks stated that SMART's stations encompass the configuration of the communication transmission system and network equipment necessary to allow for data, voice, and video transmission from station devices to the SMART Data Center. The station network supports the following: Ticket Vending Machines, Clipper Interface Devices, Security Cameras and Access Control, Emergency Telephones, Wi-Fi, and Public Address systems at the platforms.

SMART's station network must be monitored and maintained 24 hours a day, 7 days per week, and 365 days per year to ensure that SMART maintains connectivity to all station network resources required for running a safe and efficient operation.

The existing contract for station network monitoring and maintenance is set to expire June 30, 2021. In anticipation SMART issued a Request for Proposal to procure the next contract. SMART received four proposals from the following firms: NetXperts, Inc., Portola Systems, Inc., Tilson Technology Management, and W. Bradley Electric, Inc. SMART's evaluation committee reviewed and evaluated criteria identified in the proposal. Following the review and evaluation of all proposals received, the evaluation committee selected to retain Portola Systems, Inc. as the firm providing the best overall value to SMART.

Funding is included in the budget for fiscal year 2021-22 and assumed in subsequent years. Therefore, staff recommends authorizing the General Manager to award contract OP-PS-21-002 with Portola Systems Inc. for an amount not to exceed \$722,460 for an initial term of three years terms.

MOTION: Director Garbarino moved to Authorize the General Manager to Award Contract No. OP-PS-21-002 with Portola Systems Inc. for ongoing management and maintenance support for the existing SMART Station Network for an initial term of three years with a total not-to-exceed amount of \$722,460 as presented. Director Arnold second. The motion carried 11.0 (Director Gorin absent).

10. Authorize the General Manager to execute Contract Amendment No. 1 with Hogan Lovells, LLP in the amount not to exceed \$350,000 for specialized legal services

District Counsel, Tom Lyons, stated Contract Amendment No. 1 with Hogan Lovells is to provide specialized legal services in variety of regulatory, transportation, federal, state and

governmental agencies matter. Mr. Kevin Sheys is a Partner with Hogan-Lovells and has considerable expertise and experience in working with all the Federal agencies overseeing railroads and freight operators. He has been assisting SMART with various legal and regulatory issues related to the acquisition of the freight easement, common carrier responsibilities and the establishment of freight operations before the Surface Transportation Board (STB).

SMART anticipates the continued need for Hogan-Lovells, LLP expertise and specialized knowledge for supplemental legal support on an as-needed basis.

Comments:

David Schonbrunn stated that the Board has not been informed as to any of the background of why this contract has a very large increase in legal retainer. This is in response to filings that his organization made with the Surface Transportation Board that challenged SMART as an appropriate freight operator. The expectation was that the freight operating rights would slide through to SMART without any legal issues. There is a legal issue now and he believes that is why you're being asked to proceed with a much higher dollar number than you've previously authorized. He strongly urged the Board to get a close session meeting with District Counsel to get fully briefed on the agency's risks. He believes that things are not going to go well with this attempt to gain freight operating rights because they will oppose them. SMART may be in a lot deeper than it is recognized, since the project was approved in May 2020, against his advice, because the Board had no financial documents and the implication that that gave both to the public and to the Surface Transportation Board, was that you were not buying this freight operator for purposes of operating freight. To the extent that you can have a closed session, since this is not litigation, but in fact it's an administrative action, he thinks the Board needs to be briefed before you should be willing to allow more funds to be exposed for this matter.

Richard Brand asked who Mr. Rudy Solo is, and when is staff going to have a report on the freight turnover. He said this contract is a lot of money for specialized legal services that seemed to be in relation to freight. He suggested that the public needs to know a little bit more about the freight program before allocating a large amount of money.

Director Arnold asked if staff have any comments to the concerns that were voiced.

District Counsel Lyons responded that the contract is on an as-needed basis, so it is not anticipated what the variables are. He reminded the Board that SMART is going to be setting up freight operation system and there are a lot of moving parts with regards to tax credits, package fees, contracts with freight operators. These items are specific to Mr. Shey's knowledge base and the contract is not just items for Surface Transportation Board, but it is in assisting SMART to become a common carrier with all that relates to the freight transportation.

Chair Rabbitt stated the Board has been briefed on many of these items. For the people who say they support rail if they do not threaten lawsuits the legal costs will be a lot less and it's unfortunate that as a result, legal costs go up when you're faced with these particular issues,

MOTION: Director Garbarino moved to Authorize the General Manager to execute Contract Amendment No. 1 with Hogan Lovells, LLP in the amount not to exceed \$350,000 for specialized legal services as presented. Director Arnold second. The motion carried 11-0 (Director Gorin absent).

11. Approval of a Resolution Adopting a Continuing Disclosure Policy

Chief Financial Officer, Heather McKillop, stated that there are a lot of documents that are required to issue bonds and assure that SMART is financially viable and can repay the bonds that have been processed. The security of those bonds and that SMART is doing due diligence and providing financial information in any required disclosures that may be needed as financial situations change. For instance, when the pandemic started many transit agencies had to reduce service, which is one of the things that would be discussed through this Disclosure Policy for your approval. With that comes with Board and staff training which Mr. Solo will provide today. He is SMART's Bond and Disclosure Council who will provide the Board roles and responsibilities in continuing disclosure. We have created a procedure for staff that will be trained on how the annual disclosure works and identifying any events that may come up that would require additional disclosure. The purpose of the policy is for the Board to get familiar with the roles and responsibilities and adopting the Policy on behalf of SMART.

She introduced Rudy Solo from Nixon Peabody, who provided a short training for the Board on the purpose of continuing disclosure. Highlights included:

What are the Responsibilities of the SMART Board of Directors for SMART Bond Disclosures

- Why did Congress Adopt Federal Securities Laws
- Who is the Securities Exchange Commission and why is it so concerned about our market
- What are issuers obligation under the Federal Securities Laws
- What the Securities Exchange Commission is doing and why it is so concerned
- So what do Issuers need to do
- Why are Issuers required to do to comply with the Federal Securities Laws when Issuing bonds
- Why did the Securities Exchange Commission create continuing disclosure requirements pursuant to Rule 15C2-12
- Why has Securities Exchange Commission focused even more on continuing disclosure in the last 10 years
- What do our continuing disclosure undertakings require us to do
- What do good continuing disclosure practices look like
- What does SMART staff do to comply with these requirements
- What are the Directors responsible to do
- Appendix A: 15C2-12 Events

Lastly, Ms. McKillop said she is very familiar with Continuing Disclosures, and in her career, she has a few events disclosures and is familiar with tracking those things.

Chair Rabbitt thanked Ms. McKillop and Mr. Solo for the presentation.

Comments:

Vice Chair Pahre said that it is big deal to go out for new bonds. She thanked former Chief Financial Officer Ms. McGrath for putting the deal together and Ms. McKillop who will obviously going to have to track it for the next 20 years. Even if there is Bond Council available, we do not need to underestimate it since there is a lot of work.

Director Bagby stated that page 231 of the Board of Director packet shows action items and asked for timeframes for creating a Disclosure Working Group and establishing a Disclosure officer. Ms. McKillop responded that she has written the procedure and the liaison person would be the Chief Financial Officer, District Counsel and Fiscal Manager. The purpose of the disclosure group is to make sure that you have not only internal people but also external people that are advising along the way. She receives phone calls from individual investors, and they look at those documents and want information and additional disclosures. Staff also makes sure that all the documents related to investment including how much debt is outstanding in one place. She is working with Mr. Solo to identify the disclosures in the financial reports. Mr. Solo stated that Ms. McKillop wrote an excellent policy.

Lastly, Ms. McKillop said that the Board's role really comes into play in two areas: 1) if something impacts the agency and it is confidential there is District Counsel on the team, and it can be reviewed and determined whether it needs to be disclosed; and 2) when bonds are issued there are a lot of documents that will require review and to understand the responsibility.

Public Comments

Steve Birdleough asked, when SMART begins to increase freight operations along with Highway 37 developments and freight operations to Willits, what will it add to the disclosure requirement. Mr. Solo responded that the primary thing the investor care about is that they want to make sure that they are getting their money back and how does it affect sales tax, if those things have a negative impact on sales taxes and as part of the ongoing disclosure and outgoing annual reports that trend will be included.

MOTION: Director Pahre moved Approval of a Resolution Adopting a Continuing Disclosure Policy as presented. Director Rogers second. The motion carried 11-0 (Director Gorin absent).

12. Listening Forum Action Summaries (*Discussion*)

General Manager Mansourian stated that this is a terrific moment to look at SMART's report card. We started having listening session in September 2020 via Zoom and at the conclusion of every session, staff posted the full audio/video immediately on SMART's website along with executive summary of what was discussed. On March 17th Board meeting the Board received hundreds of raw data that was organized by location and topics. Today, you are receiving the list of action summaries where items had a common denominator with an update on the items and these items are ongoing.

He is recommending to the Board that given the feedback received regarding the Citizens Oversight Committee that it be postponed until the new General Manager is appointed, since she/he may have different ideas and experience for the Board to consider.

Staff is asking to receive feedback on the materials presented today and if there are any other items that should be elevated up to this level and start considering those for policy discussion, as well as implementation discussion.

This report clearly shows that staff has been listening, planning and we have been implementing and devoting a lot of resources. Your Board has been devoting tremendous amount of capital in what the public has asked for.

Comments:

Chair Rabbitt thanked the General Manager and staff for all the work on this.

Director Rogers stated that he appreciates seeing it categorized in this form. There are two items that he heard from the public: 1) Board composition in particular the enabling legislation was written precludes Sonoma and Sebastopol from having Council members serve on the SMART Board and he would like to see that that changed; and 2) At-grade crossings and the policy perspective of that and bringing that before the SMART Board for discussion.

Director Connolly stated that he appreciates the summary. One of the ongoing discussions points we have been having is around communications and marketing strategy and acknowledge the work with the San Rafael Chamber of Commerce, and he assumed similar efforts will be going on in Sonoma County with the Chambers, in particular, as has been flagged one area that could be a growth opportunity, we heard it loud and clear through the listening sessions is the tourism sector linking our North Bay communities with San Francisco through utilization is SMART with obviously the wine country. We really should position ourselves as a convenient way of traveling to do that and grow that sector. In addition to the Chambers in Marin and Sonoma, we should connect with hotels and tour providers in San Francisco. He is happy with the direction this is going.

Director Bagby stated that there is glaring exclusion on page 235 of the Board packet because plenty of Cloverdale residents are paying their fair share of the sales tax saying they want the train to go to Cloverdale. She is not sure what is the intention to commitment to finishing a rail line to Healdsburg. Now that Congressman Huffman has publicly announced that he's looking for an earmark for that Russian River Bridge and she would like to see the language amended. She suggested having a Board discussion regarding at-grade crossing.

Director Lucan stated that he agrees with Directors Rogers and Bagby in regard to Board composition, what would be the next steps in that process.

General Manager Mansourian responded that at-grade crossings discussion will occur in a few months. In 2010, the Board adopted a very strict policy and will need to revisit the policy once the Freight issue is resolved. Regarding the Board of Directors composition, he talked to Senator McGuire staff and asked if the Board decides to change Assembly Bill 2224 that created SMART if they were willing to carry the legislation and they answered yes. General Manager Mansourian asked for a timeframe, and they responded June/July if it is non-controversial. If the item becomes controversial or brings and attracts a lot of other discussion, then it might not be able to get done in this timeframe. If the thought is a simple composition change, then the item could be agendaized for the next meeting or first meeting in July and we can then inform Senator McGuire.

Director Rogers suggested that the timing is less urgent even if he is bringing the item for discussion. The legislature has just been told that in the House, all the Members are going to

be limited to only 12 bills moving forward with the most important things that they have been working on through the year.

The composition of this Board changes after each election cycle for Sonoma County Mayor's and Council members association which will appoint new people in January/February 2023. He thinks that it is great for this Board to have that discussion and to move forward and the most appropriate timing would be that to have this later in the year and then have a piece of legislation that we all agree on it ready to be introduced in January or February of next year and work it through its normal process.

Director Bagby said she certainly will be willing to revisit the conditions of the legislation, but she does not want to limit the discussion to that one thing. She stated that many people from northern Sonoma County are very interested in having a station in Geyserville. It is a non-city or a non-town with a considerable population and known for tourist and bicycling destination. The intention of not having a depot in an unincorporated area was to prohibit Growth outside of city centers, however, she thinks that having the possibility of having service to one of these areas is something that people who were on that listening session we are asking for. Their voices should be heard, they are supporters of SMART and carry the sales tax, and do not happen to live in an incorporated area. What is very different about Geyserville from Healdsburg south is that it is a population center that is unincorporated. If SMART is considering amending the governing rules, maybe possibly make an exception just for that area, because there is a distance between Cloverdale and Healdsburg (and there will be parking challenges in Downtown Healdsburg just for SMART's operations seems to my untrained eye that that is a great option for people and get them off the freeway. She suggested it be considered.

Director Lucan said that trying to time this discussion with the legislative calendar is a difficult exercise. Perhaps addressing it sooner knowing that it might take time and certainly addressing the specific concerns that Director Rogers brought up and looking a little bit broader because he did hear through the listening session other ideas around the Board structure, including completely changing the board whether it is elected or not. He thinks it's important to weigh the pros and cons of all options. He said firsthand from all the different hats that we wear sometimes we are representing one interest wearing one hat and as soon as the meeting is concluded, we are representing another interest wearing another hat and sometimes that is good and sometimes that is bad. He suggested having the conversation sooner than later since it was discussed during a listening session and knowing it will take more than one meeting.

Chair Rabbitt asked if there is anything else that needs to be look at in the legislation or when we pass new sales tax extension, could it trump what is in the originally legislation and, specifically, it seems to him the at-grade crossings are also a result of the initial legislation and the promises made regarding the speed of the train and how long it take to get from one end to another which dictates safety issues. Shall we make a master list of items to amend and where does it have to be amended in Sacramento or can we simply pass our measure and amend them at that point in time so. District Counsel Mr. Lyons responded that for items that were passed by the enabling legislation, you will have to go to back to Sacramento to make those changes. However, there are items that he tracks that have become stale. For instance, the termination of the size of a construction contract that dates in 2002 and 2004 that has not kept up with CPI. With respect to the at-grade crossing policy it was done to match the Federal

Railroad Administration and the California Public Utility Commission predilection for reducing or eliminating crossings, because as we all know, the crossings are usually the location in which vehicles pedestrians and bicyclists collide with other vehicles pedestrians and trains in this case. The Board is welcome to revisit that with the understanding that any more crossings that are put into the system add risk and liability.

Chair Rabbitt stated that the Metropolitan Transportation Commission has a resolution regarding housing units within a quarter mile or half mile which we have used the averaged over the course of time, including with different stations that were added to make those numbers work. He is not sure if the resolution is still appropriate because it assumes that every stop is residential to residential to residential as opposed to a work center.

Director Bagby stated that as someone who believes in city center development, she completely understands the mindset about what mindset, but when we are talking about SMART expanding and the backbone of our transportation. She is a cyclist, but every once in a while she gets on the train and bus. We must be realistic about how people really use the system and need flexibility if it is going to be more than a commuter rail.

Chair Rabbitt stated that SMART is three years in now and maybe be part of the tourism industry is in terms of going in on marketing and communications with them to provide that opportunity. Sonoma County heavily invest in tourism and if SMART wanted to be a member that might not be a bad thing.

Vice Chair Pahre stated that in the early years Director Fudge was a relentless advocate for SMART being part of the tourism to Windsor. She worked with SMART, the Town of Windsor and the Mayor to get all kinds of tourist oriented coordination. She thinks it's going to be a correlation between the cities and the counties, and SMART can certainly interface.

Public Comment

Eris Weaver echoed Director Rogers interest in addressing the at-grade crossings and want to see that Jennings crossing move forward. She has used to train as a tourist and seen other people do as well, there is a group that comes from Marin to the Airport Stations with their bikes to ride through Sonoma County. We need to be careful and not over promise. To come to wine country tourism without a car right now is difficult since there are not many wineries near the station, however once you get further north there will be. She has run into people who got stuck because they thought that the Airport Train station was at the Airport or that the Larkspur station was to the ferry terminal. If you are not clear about the messaging around that step and then somebody has a bad experience and will not ride again. She thinks, encouraging tourism that are compatible with the train and other kinds of transportation methods would be excellent and need to be realistic and not over promise the public.

Sheila Baker stated that she likes to ride the train to Airport Station and ride to Windsor, Healdsburg and Geyserville. She recalls the Town of Windsor being voted the bicycle capital of the nation and it is an amazing place and town. She encourages people to take their bikes on the train and ride around.

Chair Rabbitt stated he heard from his colleagues was the Board composition not being a rush but the need to understand the scale and scope. The at-grade crossings, the policy or the one

off approach analysis, and how do we go forward on a policy in general, or does it have to be specific to each instance. The communications marketing is talking about tourism and growth opportunities that are out there. We want more ridership and can continue to look for those opportunities and what is the best way to move forward on that. The language with the completion of the line, including to Cloverdale as opposed to Healdsburg.

General Manager Mansourian stated that this is excellent feedback. In regard to communication, it was suggested that we start a relationship with the City of Santa Rosa Chamber as the City of San Rafael Chamber and staff has been in contact and will have more information soon.

He will start a new category called "Legislation Constraints", which will include Geyserville Station since there is a section that says only new station in Sonoma County can be built in the urban areas. It has been nineteen years since the legislation was approved and there was a lot of give or take at that time.

He asked for clarification on the Board composition request with a timeframe. This is not a one time discussion.

Director Rogers stated that he does not have a problem starting the discussion sooner. He was offering, given that this boards composition will not change until the beginning of 2023, perhaps doing the legislation next year to ease some of that pressure on the Senator and allow the Board to give some clarity.

Chair Rabbitt asked if Senator McGuire has another SMART bill that he could add this and not have to be a standalone. General Manager Mansourian responded that Senator McGuire is currently working on Senate Bill 69 which deals with NCRA and the Redwood trail. General Manager Mansourian said he is happy to put this item on in September, October or November Board meetings.

Director Lucan stated that things tend to take longer than what is anticipated that is why he was inclined to start the conversation earlier like July and not being very optimistic about the legislative calendar it is just a matter of, getting everything polished and easy for the legislators to move forward.

Vice Chair Pahre stated that she is not hearing consensus around the direction it would go and suggested looking at our calendars and see what else is going on. During the summer, the Board normally does not meet in July. It seems like an easy fix, but she is not sure it will be. She said that going through the entire legislation to see what other items need to be fixed. Having this conversation is not going to be a short meeting and we are going to have new General Manager and need to think of the timing and what it really means for us to make some major policy decision.

Chair Rabbitt stated that until we have the discussion of the scale and scope, he is not sure if it will be controversial, to add cities of either county that are off the line as representatives on the Board or the ability to represent the Board and there is a wide range of opportunities.

Vice Chair Pahre said that if it is decided to go to an all-elected board, then the Golden Gate Bridge needs to be part of that conversation because her seat tends not to be from the mainstream of Sonoma and Marin, but it is an important seat, because it represents the Bridge and the Highway 37 spurs.

General Manager Mansourian said he heard in regards to the board composition to beginning conversation in September and October with the goal of the following January, February legislation session. At the same time staff will be identifying other legislation constraints. As soon as the Surface Transportation Board has acted on the freight, we will begin the process of presenting background and options for the Board on the at-grade crossings on the passenger and commercial sides, which is very important since we want to promote freight and spurs and there are a lot of policies that your Board needs to consider.

Chair Rabbitt asked how would staff look at the at-grade crossings, would it be based on criteria for approval process or decision point process. General Manager Mansourian responded that staff has been looking into this item for a couple of years and its going to be a very important discussion for your Board. The Board made a decision 10 years ago and some parts may or may not be relevant today.

If the Board were having that discussion today, he would be urging the Board to consider items from a policy point and not from a specific project vs project, because if you get into that then you are no longer dealing with policy or you're becoming project sponsors and staff becomes very confused. The freight becomes a different discussion because the business opportunities do not have the funding to pay for connections and new at-grade crossings and want SMART to fund those. In the North County there are many crossings that have been operating historically and those folks do not have the money to pay for crossing improvements. Because you are setting up a policy for another decade and complying with Federal and State policies, it is going to be one of the biggest decisions the Board makes.

Chair Rabbitt suggested having a map of the crossings, both public and private to understand the spacing of the frequency of them and not all crossings are created equal.

Director Rogers stated that he understands the General manager wants to make sure that it sticks to a policy level, but there are some other considerations that he is not sure exactly how you fall into policy. For instance, one of the big disputes is over the Jennings crossing which the CPUC and the City of Santa Rosa Engineer has stated that the crossing is safe, but then SMART has not built it. He thinks we do need to be able to get into some of those conversations about specific crossings and, yes, look globally at the policy for what we're doing, but, ultimately, this is a train that's funded by the people, and I think that the reason that the Board has the composition, is for us to be able to get into some of those conversations about what is in the best interest of not just the rail system, but the communities that it serves as well.

Chair Rabbitt stated that trying to get private property owners who have been using the crossing for years and years and not paying any attention to it or the ability to cross it understand that you are going to have to either pay for improvement and or filter into less opportunities going forward once the rail comes through. We need to make sure that we do have something going forward there, because there are going to be a lot in the north end of the Sonoma County.

13. Next Regular Meeting of the Board of Directors, June 16, 2021 – 1:30 PM

14. Adjournment - Meeting adjourned at 3:45pm

Respectfully submitted,

Leticia Rosas-Mendoza
Clerk of the Board

Approved on: _____



June 16, 2021

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

Kate Colin
Transportation Authority of Marin

Damon Connolly
Marin County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Susan Gorin
Sonoma County Board of Supervisors

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Farhad Mansourian
General Manager

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

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

SUBJECT: Monthly Ridership Report – May 2021

Dear Board Members:

RECOMMENDATIONS: Information Item

SUMMARY:

We are presenting the monthly ridership report for activity for the month of May 2021. This report shows trends in ridership for SMART by tracking Totals, Average Weekday riders, and Average Weekend/Holiday riders via the two methods we employ to track riders on a daily basis: Onboard Counts and Clipper + Mobile App paid fares. The report details bicycles and wheelchairs counted as well. We have added charts and graphs of the information to further illustrate system trends.

As discussed in prior presentations to Your Board, using both Onboard Counts and Fare collection counts of riders is necessary to track progress. Onboard Counts capture all riders, including the riders who are riding during the Free Fare Days or Free Fare Programs offered by Your Board, riders with passes who neglect to tag on or off, as well as categories of riders such as children under five years old. Therefore, 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 April 2021 was posted on the SMART Ridership website (<http://sonomamarintrain.org/RidershipReports>) and SMART's detailed May 2021 data will be posted once validated.

FISCAL IMPACT: None

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

Very truly yours,

/s/

Joanne Parker
Programming and Grants Manager

Attachment(s): May 2021 Monthly Ridership Report

MAY 2021 (COVID-19) SMART RIDERSHIP

SMART Ridership Report
Board of Directors
June 16, 2021

SMART's May 2021 ridership was up 162% over May 2020, which was heavily impacted by the COVID-19 shutdown. Average weekday ridership had been rising steadily from April until October 2020, as COVID rates improved, and then took a dip in the winter months as pandemic conditions worsened and the stay-at-home orders were renewed; however, ridership has risen steadily since February 2021, with April 2021 average weekday ridership increasing 21% over March 2021, and May 2021 increasing 21% over April 2021.

As a reminder, SMART modified services in March 2020 due to the COVID-19 pandemic, with weekend service annulled starting March 21 & 22, 2020, and weekday service reduced first by 4 trips (down to 34) on March 23, 2020, then by another 18 trips, (down to 16), on April 6, 2020. Beginning on Monday, May 24, 2021, SMART added service to the weekday schedule with two new morning trips and three new afternoon trips, resulting in 26 weekday trips. Saturday service was also restored the last two weekends in May, with 3 morning and 3 afternoon round trips. Ridership has responded positively to these service increases, with average weekday ridership increasing 22% after the service change.

COVID-19 related public health orders have varied slightly between Sonoma and Marin Counties, as well as across the Bay Area and State. While Marin County had seen some school openings earlier in the 2020-21 school year, Sonoma County schools did not open in person until mid-April 2021 or later. By early June most schools are on summer break, though many are running summer school programs to make up work lost to COVID. Throughout the region, automobile traffic levels have returned to pre-pandemic levels in some areas and transit agencies are seeing the first signs of ridership recovery.

FISCAL YEAR-TO-DATE (JUL - MAY)	Fiscal Year 2020	Fiscal Year 2021	% Change*
Total Ridership (Onboard Counts)	558,717	102,323	-82%
Total Paid Ridership (Clipper + App Only)	457,070	95,946	-79%
Average Weekday Ridership (Onboard Counts)	2,098	786	-63%
Average Weekday Paid Ridership (Clipper + App Only)	436	398	-9%
Total Bikes Onboard	62,838	20,631	-67%
Total Wheelchairs Onboard	2,100	397	-81%

Total ridership year-to-date is down 82%. Fare payments through May through the Clipper and SMART App systems were down 79% from the previous year. The total number of bicycles onboard is down 67%. However, the share of riders bringing bikes on board since April 2020 has averaged 21%, which is twice the share bringing bikes on board pre-pandemic.

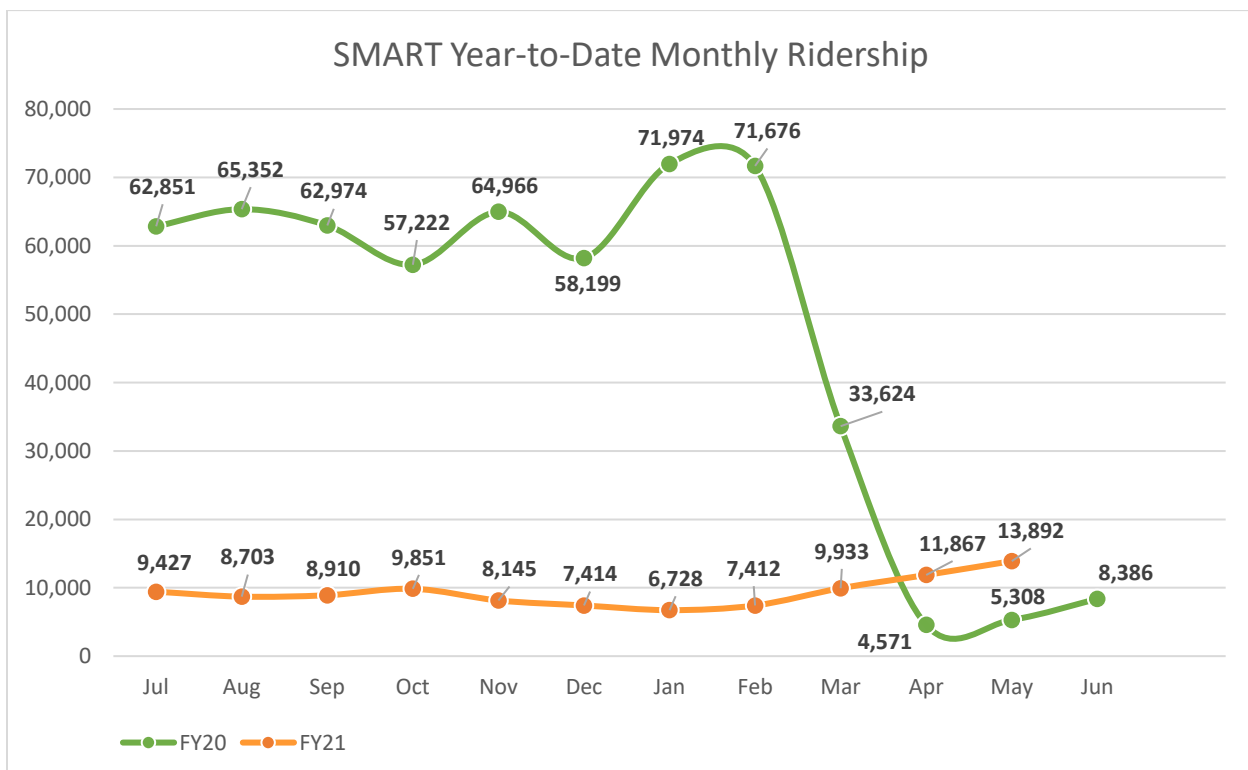
MAY 2021 (COVID-19) SMART RIDERSHIP

SMART Ridership Report
Board of Directors
June 16, 2021

MONTHLY TOTALS YEAR-OVER-YEAR	MAY 2020	MAY 2021	% Change
Total Ridership (Onboard Counts)	5,308	13,892	162%
Total Paid Ridership (Clipper + App Only)	4,911	12,983	164%
Average Weekday Ridership (Onboard Counts)	265	675	155%
Average Weekday Paid Ridership (Clipper + App Only)	247	614	149%
Average Weekend/Holiday Ridership (Onboard Counts)	0	398	N/A
Average Weekend/Holiday Paid Ridership (Clipper + App Only)	0	328	N/A
Total Bikes Onboard	1,297	2,579	99%
Total Wheelchairs Onboard	14	137	879%

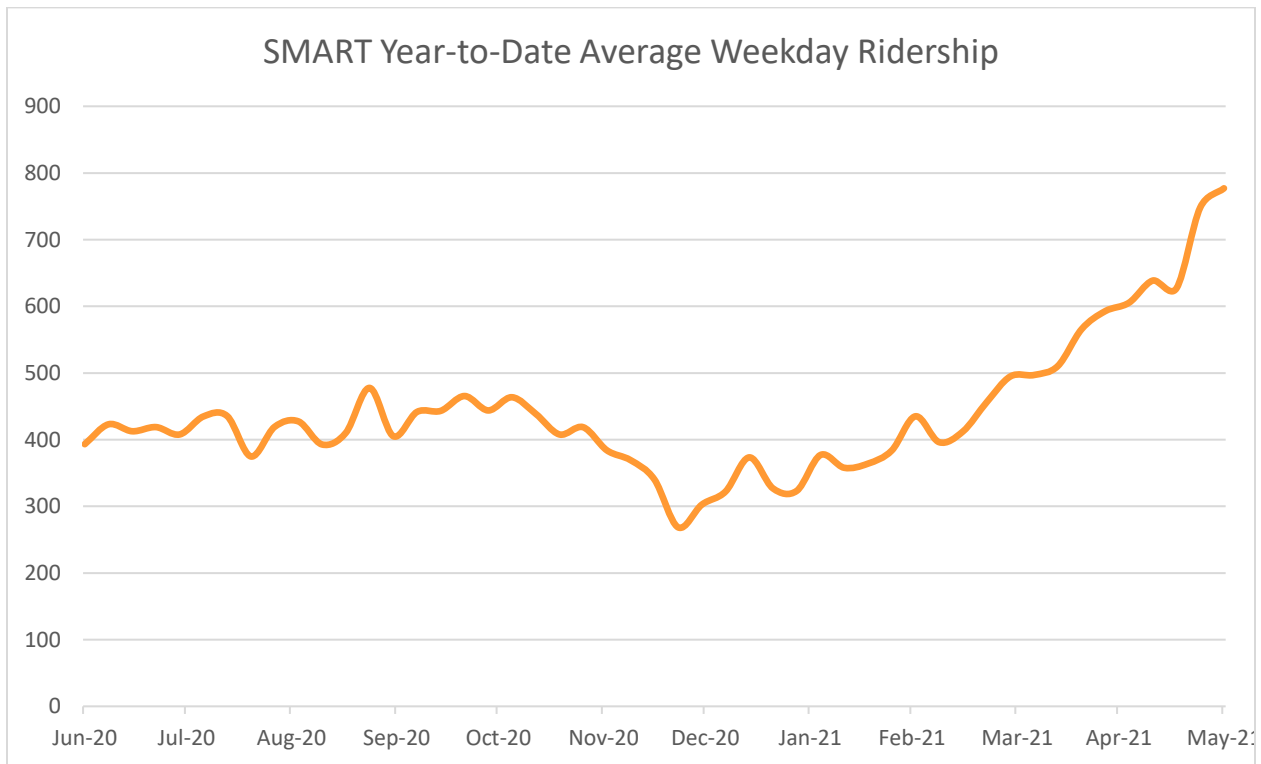
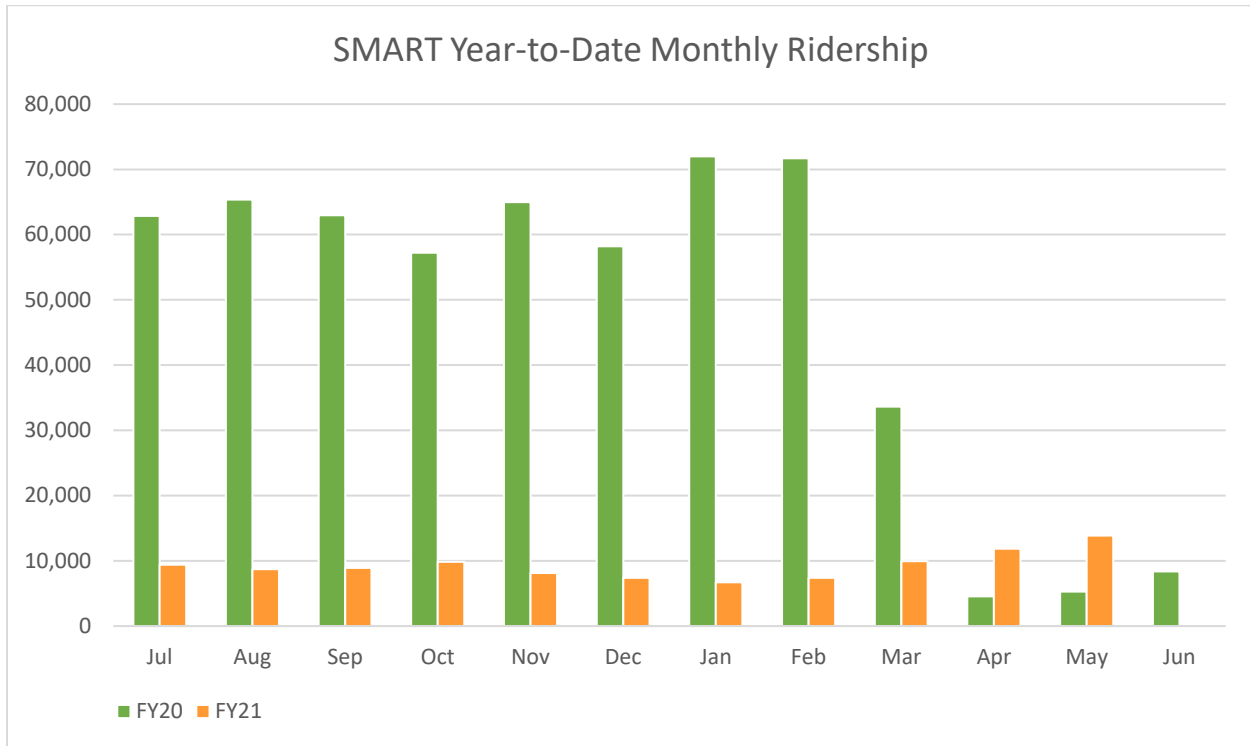
Total ridership for May 2021 was 17% higher than April 2021, with a continuing increase in the share of youth ridership from 7% in March, to 10% in April, and 13% in May. Clipper START participation remains at less than 1% of boardings.

The following charts illustrate year-to-date monthly and average weekday ridership trends.



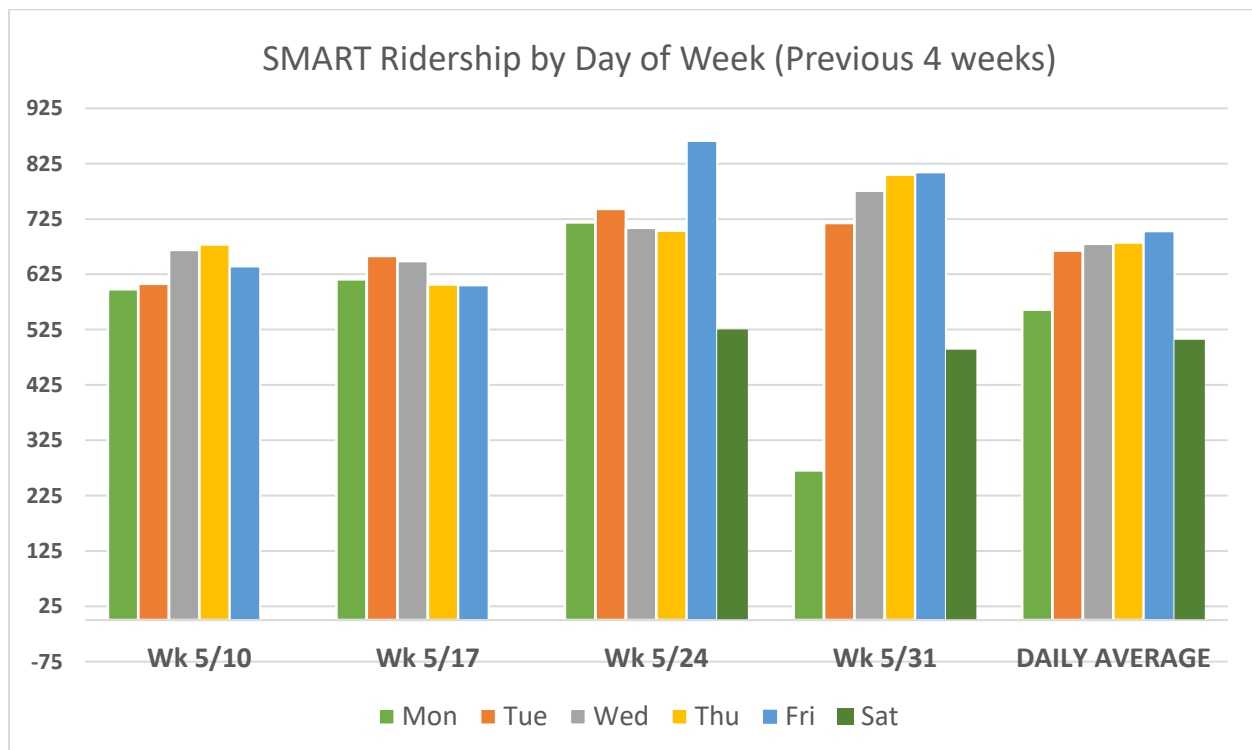
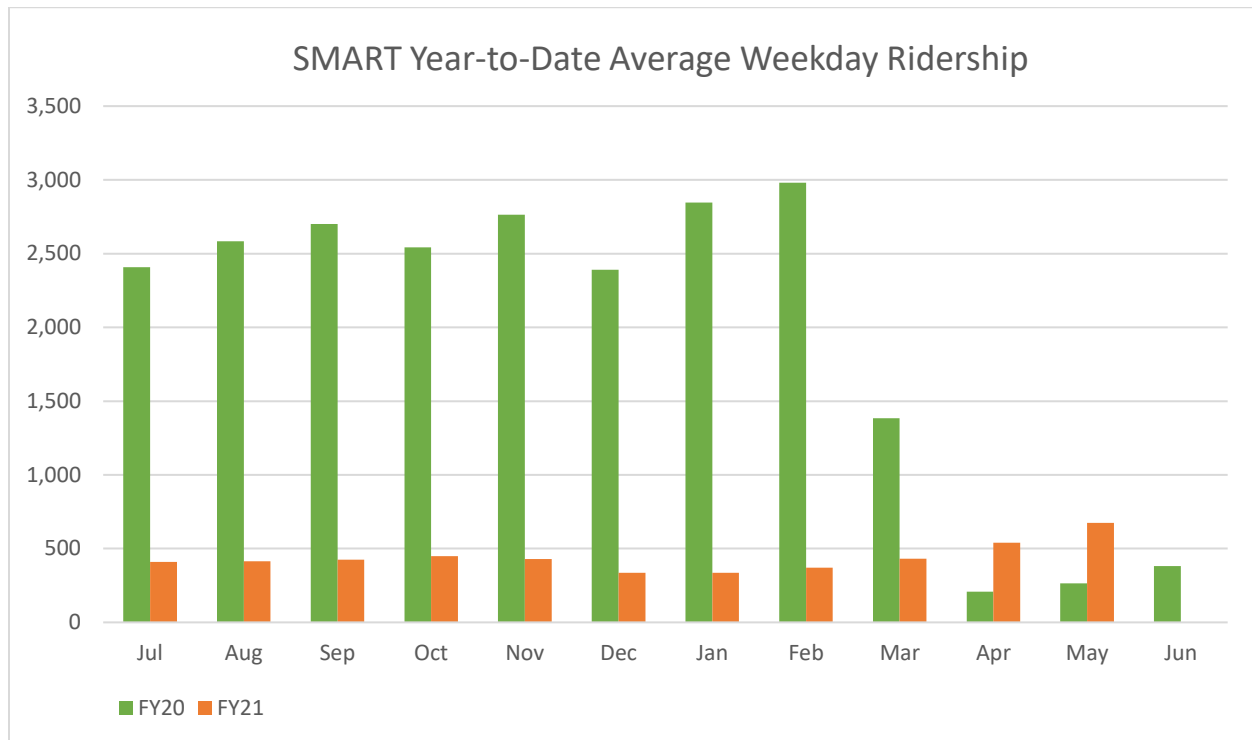
MAY 2021 (COVID-19) SMART RIDERSHIP

SMART Ridership Report
Board of Directors
June 16, 2021



MAY 2021 (COVID-19) SMART RIDERSHIP

SMART Ridership Report
Board of Directors
June 16, 2021





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
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Farhad Mansourian
General Manager

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

June 16, 2021

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

SUBJECT: Contract Extensions for the Start of Fiscal Year 2021-22

Dear Board Members:

RECOMMENDATIONS:

Authorize the General Manager to execute six contract amendments totaling \$586,800 as needed for Fiscal Year 2021-22.

SUMMARY:

As the current fiscal year ends on June 30, 2021, and we begin Fiscal Year 2021-22, there are several ongoing contracts that we request your authority to extend. The total amount of the contract authority we are seeking is \$586,800. Funding for the contract extensions is included in the Board adopted Fiscal Year 2021-22 budget and the actual contract extensions are attached to this Board report.

The Contract Amendment Summary, which is attached, provides a list of each contractor, a description of their work, the amount of amendment, total not-to-exceed amount and the expiration date of each contract. We request your authority to execute these amendments for the new fiscal year.

FISCAL IMPACT: Funding is included for these contract amendments in the Fiscal Year 2022 Board adopted budget.

Very truly yours,

/s/

Heather McKillop
Chief Financial Officer

Attachment(s):

Contract Amendment Summary Sheet

- Alcohol and Drug Testing Services, LLC (ADTS)
- American Rail Engineers Corporation
- Dr. Mark Clementi
- GHD, Inc.
- Hanson Bridgett, LLP
- WRA, Inc.

CONTRACT AMENDMENT SUMMARY
June 16, 2021

Contractor and Scope	Type	Proposal Amendment Amount	New Not-to-Exceed Amount	New Expiration Date
Alcohol and Drug Testing Services, LLC (ADTS) <ul style="list-style-type: none"> Provide Department of Transportation's regulated drug and alcohol program 	Drug Testing Services	\$18,000	\$112,000	June 30, 2022
American Rail Engineers Corporation <ul style="list-style-type: none"> Railroad bridge inspection, bridge engineering and design, and related services 	Railroad Bridge Engineering and Inspection	\$90,000	\$210,000	September 21, 2022
Dr. Mark Clementi <ul style="list-style-type: none"> Pre-employment psychological evaluations of operations personnel 	Pre-employment psychological evaluations	\$18,000	\$176,000	June 30, 2022
GHD, Inc. <ul style="list-style-type: none"> Autocad drawing management Design, hydraulics and hydrology assistance, traffic engineering and technical field and office support services 	Engineering Services	\$85,000	\$1,369,000	June 30, 2022
Hanson Bridgett, LLP <ul style="list-style-type: none"> Legal expertise in public agency contracts, employee benefits, Labor negotiations, employer/ employee relations, and public transit matters 	Collective Bargaining Contract Negotiations	\$150,000	\$800,000	June 30, 2022
WRA, Inc. <ul style="list-style-type: none"> Environmental permitting management, technical consulting, construction compliance monitoring and related support services 	Engineering Environmental Support	\$225,800	\$995,800	June 30, 2022
TOTAL:		\$586,800		

**FIFTH AMENDMENT TO AGREEMENT FOR CONSULTANT SERVICES
BETWEEN THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
AND ALCOHOL & DRUG TESTING SERVICES, LLC (ADTS)**

This Fifth Amendment dated as of June 17, 2021 (the “Fifth Amendment”) to the Agreement for Consultant Services by and between the Sonoma-Marin Area Rail Transit District (“SMART”) and Alcohol & Drug Testing Services, LLC (ADTS) (“CONSULTANT”), dated as of May 1, 2014 (the “Original Agreement,” and as amended by the First, Second, Third, Fourth, and now this Fifth Amendment, the “Agreement”).

RECITALS

WHEREAS, SMART and CONSULTANT previously entered into the Original Agreement to provide the Department of Transportation’s regulated drug and alcohol program including specimen collection, document control and related services; and

WHEREAS, the Agreement had previously been amended to increase the not-to-exceed amount and extend the term; and

WHEREAS, SMART desires to increase the not-to-exceed amount of the Agreement by \$18,000.00 for a total not-to-exceed amount of \$112,000.00, extend the term through June 30, 2022, and to include a provision to allow for electronic signature delivery using DocuSign; and

NOW, THEREFORE, in consideration of the recitals set forth above and the covenants contained herein, it is mutually agreed by and between the parties that:

AGREEMENT

1. **“ARTICLE 5. PAYMENT”** Article 5 of the Agreement is amended as follows:

In addition to the not-to-exceed amount set forth in the Original Agreement, the contract amount shall be increased by an amount not-to-exceed \$18,000.00, for the provisions of services, for an aggregate not-to-exceed amount of \$112,000.00 for the Agreement.

2. **“ARTICLE 6. TERM OF AGREEMENT”** Article 6 of the Agreement is hereby deleted and replaced with the following:

The term of this Agreement shall remain in effect through June 30, 2022 unless terminated earlier in accordance with the provisions of **Article 7.**”

3. **“ARTICLE 16. MISCELLANEOUS PROVISIONS”. Section 16.09**
“Acceptance of Electronic Signatures and Counterparts” is hereby added to the Agreement. Section 16.09 states:

“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.”

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

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Fifth Amendment as set forth below.

**SONOMA-MARIN AREA RAIL TRANSIT
DISTRICT**

Dated: _____

By _____
Farhad Mansourian, General Manager

**ALCOHOL & DRUG TESTING
SERVICES, LLC**

Dated: _____

By _____
Its _____

APPROVED AS TO FORM:

Dated: _____

By _____
District Counsel

**THIRD AMENDMENT TO THE AGREEMENT FOR CONSULTANT SERVICES
BETWEEN AMERICAN RAIL ENGINEERS CORPORATION
AND SONOMA-MARIN AREA RAIL TRANSIT DISTRICT**

This Third Amendment dated as of June 16, 2021 (the “Third Amendment”), to the Agreement for Consultant Services by and between American Rail Engineers Corporation (hereinafter “Consultant”) and the Sonoma-Marín Area Rail Transit District (hereinafter “SMART”), dated as of September 21, 2018 (the “Original Agreement,” as amended and supplemented by the First and Second Amendments and this Third Amendment, the “Agreement”).

RECITALS

WHEREAS, SMART and Consultant entered into the Original Agreement to employ the services of Consultant for railroad bridge inspection, bridge engineering and design, and related services; and

WHEREAS, SMART and Consultant previously amended the Agreement to update the pricing and utilize the first and second of three year-long term extensions; and

WHEREAS, SMART desires to amend the Agreement to use the third of the three (3) one-year extensions to extend the term to September 21, 2022 and to increase the not-to-exceed amount of the Agreement by \$90,000 for a total not-to-exceed amount of \$210,000.

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

AGREEMENT

1. **“ARTICLE 5. PAYMENT.** Section 5.02 is amended as follows:

Section 5.02 Consultant shall be paid on a time and expense basis in accordance with **Exhibit B**; provided, however, that total payments to Consultant shall not exceed \$210,000, 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); 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, Addendum 1**. SMART does not reimburse Consultant for travel time.

2. **“ARTICLE 6. TERM OF AGREEMENT.** Section 6.01 is amended as follows:

Section 6.01 The term of this Agreement shall remain in effect until September 21, 2022 by exercising the third of three one-year options to renew at SMART’s discretion unless terminated earlier in accordance with the provisions of **Article 7**.

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

THIS SPACE INTENTIONALLY LEFT BLANK

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

**SONOMA-MARIN AREA RAIL TRANSIT
DISTRICT**

Dated: _____

By _____
Farhad Mansourian, General Manager

**AMERICAN RAIL ENGINEERS
CORPORATION**

Dated: _____

By _____

APPROVED AS TO FORM:

Dated: _____

By _____
District Counsel

**FIFTH AMENDMENT TO AGREEMENT FOR CONSULTANT SERVICES
BETWEEN THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
AND DR. MARK CLEMENTI**

This Fifth Amendment dated as of June 17, 2021 (the “Fifth Amendment”) to the Agreement for Consultant Services by and between the Sonoma-Marín Area Rail Transit District (“SMART”) and Dr. Mark Clementi (“CONSULTANT”), dated as of April 1, 2014 (the “Original Agreement,” and as amended by the First, Second, Third, Fourth, and now this, the Fifth Amendment, the “Agreement”).

RECITALS

WHEREAS, SMART and CONSULTANT previously entered into the Original Agreement to provide pre-employment psychological evaluations of operations personnel; and

WHEREAS, SMART previously amended the Agreement to extend the term and increase the not-to-exceed amount; and

WHEREAS, SMART desires to amend the Agreement to increase the not-to-exceed amount by \$18,000.00, for a total not-to-exceed amount of \$176,000.00, extend the term through June 30, 2022, revise the rate schedule, and to include a provision to allow for electronic signature delivery using DocuSign.

NOW, THEREFORE, in consideration of the recitals set forth above and the covenants contained herein, it is mutually agreed by and between the parties that:

AGREEMENT

1. **“ARTICLE 2. LIST OF EXHIBITS”** Section 2.1 is amended as follows:

“Exhibit B-1: Scope of Work” is hereby deleted in its entirety and replaced with the “Exhibit B-1: Scope of Work” included in this Fifth Amendment.

2. **“ARTICLE 5. PAYMENT”** Article 5, Section 5.02 of the Agreement is amended as follows:

Section 5.02. Consultant shall be paid per psychological evaluation conducted, in accordance with **Section 5.01**; provided, however, that total payments to Consultant shall not exceed \$176,000, 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)

DR. MARK CLEMENTI
FIFTH AMENDMENT
HR-PS-14-002

Page 1 of 4

the rate per psychological evaluation (s); and (iii) copies of receipts for reimbursable materials/expenses, if any.

3. **“ARTICLE 6. TERM OF AGREEMENT”** Article 6 of the Agreement is hereby deleted and replaced with the following:

“ARTICLE 6. TERM OF AGREEMENT. The term of this Agreement shall remain in effect through June 30, 2022 unless terminated earlier in accordance with the provisions of **Article 7** of the Agreement.”

4. **“ARTICLE 16. MISCELLANEOUS PROVISIONS”. Section 16.09**
“Acceptance of Electronic Signatures and Counterparts” is hereby added to the Agreement. Section 16.09 states:

“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.”

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

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Fifth Amendment as set forth below.

**SONOMA-MARIN AREA RAIL TRANSIT
DISTRICT**

Dated: _____

By _____
Farhad Mansourian, General Manager

DR. MARK CLEMENTI

Dated: _____

By _____
Dr. Mark Clementi, Owner

APPROVED AS TO FORM:

Dated: _____

By _____
District Counsel

EXHIBIT B-1 SCOPE OF WORK

Consultant shall perform services as listed below:

1. **Pre-employment evaluations:** Upon request of SMART and at the direction of the Human Resources Manager, Consultant shall conduct psychological assessments and evaluations of candidates for employment with the SMART District
 - Each assessment and evaluation shall result in a formal written recommendation by the Consultant as to the mental suitability or appropriateness of each candidate evaluated for designated SMART positions.
 - Consultant will work with SMART Operations and Human Resources personnel to develop psychological screening dimensions to be used in pre-employment psychological evaluations.
2. **Critical Incident Stress Debriefing:** Upon request of SMART and at the direction of the Human Resources Manager, Consultant shall conduct psychological assessments of employees who have been involved in critical accidents/incidents. Consultant will make a written recommendation as to the readiness of the employee involved in the accident/incident to return to work.
3. **Fitness for Duty Evaluation:** Upon request of SMART and at the direction of the Human Resources Manager, Consultant shall conduct psychological assessments and evaluations of employees for continued employment with the SMART District.
 - Each assessment and evaluation shall result in a formal written recommendation by the Consultant as to the employee's fitness for duty.

Work will be assigned on an as-needed basis. SMART does not guarantee any minimum or maximum amount of work under this Agreement.

SCHEDULE OF RATES:

1. Standard Pre-Employment Psychological Evaluation: \$725.00 each
 - a. Remote Evaluation Fee (Optional with SMART approval): +\$49.00 each
2. Return to Duty/Fitness for Duty Psychological Evaluation: \$885.00 each
 - a. Remote Evaluation Fee (Optional with SMART approval): +\$49.00 each
3. Critical Incident Stress Debriefing: \$350.00 for 1st hour and \$285.00 for each additional hour (billed in 15-minute increments)
4. No-Show appointments (less than 72 hours notice given): Full price of evaluation

DR. MARK CLEMENTI
FIFTH AMENDMENT
HR-PS-14-002

Page 4 of 4

**EIGHTH AMENDMENT TO THE AGREEMENT FOR CONSULTANT SERVICES
BETWEEN THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
AND GHD, INC.**

This Eighth Amendment dated as of June 16, 2021 (the “Eighth Amendment”), to the Agreement for Consultant Services by and between GHD, Inc. (hereinafter referred to as “CONSULTANT”) and the Sonoma-Marin Area Rail Transit District (hereinafter referred to as “SMART”), dated as of December 1, 2013 (the “Original Agreement,” as amended and supplemented by the First through Seventh Amendments, and now this Eighth Amendment, the “Agreement”).

RECITALS

WHEREAS, CONSULTANT and SMART previously entered the Original Agreement to develop professional engineering support for such tasks as Autocad drawing management and design, hydraulics and hydrology assistance, traffic engineering, and technical field and office support services in support of SMART Project design and construction; and

WHEREAS, CONSULTANT and SMART previously entered into various Amendments to the Agreement between February 1, 2014 and July 1, 2019 to increase the not-to-exceed amount, add geotechnical work to the scope of work, and extend the term of the Agreement; and

WHEREAS, CONSULTANT and SMART desire to amend the Agreement to increase the not-to-exceed amount by \$85,000 for a total not-to-exceed amount of \$1,369,000 and to extend the term to June 30, 2022.

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

AGREEMENT

1. **ARTICLE 5. PAYMENT** Article 5 of the Agreement is amended as follows:

In addition to the not-to-exceed amount set forth in the Original Agreement and subsequent Amendments, the contract amount shall be increased by an amount not-to-exceed \$85,000 for an aggregate not-to-exceed amount of \$1,369,000.

2. **ARTICLE 6. TERM OF AGREEMENT** Article 6 of the Agreement is hereby deleted and replaced in its entirety with the following:

“ARTICLE 6. TERM OF AGREEMENT. The term of this Agreement shall remain in effect until June 30, 2022, unless terminated earlier in accordance with the provisions of **Article 7.**”

3. Except to the extent the Agreement is specifically amended or supplemented hereby, the Agreement, together with all supplements, amendments and exhibits thereto is,

and shall continue to be, in full force and effect as originally executed, and nothing contained herein shall, or shall be construed to, modify, invalidate, or otherwise affect any provision of the Agreement.

THIS SPACE INTENTIONALLY LEFT BLANK

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

**SONOMA-MARIN AREA RAIL TRANSIT
DISTRICT**

Dated: _____

By _____
Farhad Mansourian, General Manager

GHD, INC.

Dated: _____

By _____
Consultant

APPROVED AS TO FORM:

Dated: _____

By _____
District Counsel

**TENTH AMENDMENT TO AGREEMENT FOR CONSULTANT SERVICES
BETWEEN THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
AND HANSON BRIDGETT, LLP**

This TENTH AMENDMENT dated as of June 17, 2021 (the “Tenth Amendment”) to the Agreement by and between the SONOMA-MARIN AREA RAIL TRANSIT DISTRICT (“SMART”) and HANSON BRIDGETT, LLP (“CONSULTANT”), dated as of June 20, 2012 (the “Original Agreement,” and as amended by the First through Ninth Amendments and now this Tenth Amendment, the “Agreement”).

RECITALS

WHEREAS, SMART and CONSULTANT previously entered into the Original Agreement to provide specialized legal expertise in public employee benefits, public transportation issues, and intellectual property matters; and

WHEREAS, SMART and CONSULTANT previously entered into various Amendments to the Agreement between July 1, 2013 and June 17, 2020, to update the Scope of Services, increase the not-to-exceed amount, and extend the term of the Agreement; and

WHEREAS, SMART desires to amend the Agreement to increase the not-to-exceed amount by \$150,000 for a total not-to-exceed of \$800,000, to extend the term through June 30, 2022, and to include a provision to allow for electronic signature delivery using DocuSign; and

NOW, THEREFORE, in consideration of the recitals set forth above and the covenants contained herein, it is mutually agreed by and between the parties that:

AGREEMENT

1. **“ARTICLE 2. COMPENSATION”** Is hereby amended as follows:

“Compensation for services over the life of the Agreement shall not exceed \$800,000 without a formal Amendment to the Agreement.”

2. **“ARTICLE 3. TERM”** Is hereby deleted and replaced in its entirety with the following:

“The term of this Agreement shall remain in effect through June 30, 2022, unless terminated earlier in accordance with the provisions of **Article 8.**”

3. **“ARTICLE 23. COUNTERPARTS”**. Article 23 “Counterparts” is hereby deleted in its entirety and replaced with the following:

“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.”

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

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Tenth Amendment as set forth below.

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

Dated: _____

By _____
Farhad Mansourian, General Manager

HANSON BRIDGETT, LLP

Dated: _____

By _____
Madeline Chun, Partner

APPROVED AS TO FORM:

Dated: _____

By _____
District Counsel

EXHIBIT A – REVISION I SCOPE OF WORK & TIMELINE

Tasks 8 and 9 are in addition to Tasks 1-7 from the Exhibit A Scope of Work in the Original Agreement and the First Amendment.

Task 8 – Black Point Bridge Fender Repair Permitting

Consultant shall lead the effort to secure permits for the repair work to the Black Point Bridge fender system. This will include preparing and submitting permits to all of the applicable regulatory agencies. Consultant shall answer questions from the agencies in order to assure complete permit applications and follow the process to secure permits for the work.

Task 9 – Timber Trestle Replacement Permitting

Consultant shall lead the effort to secure permits for the replacement of two timber railroad trestles: 1) Pacheco Creek; and 2) San Antonio timber trestles. This will include preparing and submitting permits to all of the applicable regulatory agencies. Consultant shall answer questions from the agencies in order to assure complete permit applications and follow the process to secure permits for the work.

**FOURTH AMENDMENT TO AGREEMENT FOR CONTRACTOR SERVICES
BETWEEN THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
AND WRA, INC.**

This Fourth Amendment dated as of June 16, 2021 (the “Fourth Amendment”) to the Agreement for Contractor Services by and between the Sonoma-Marín Area Rail Transit District (“SMART”) and WRA, Inc. (“Contractor”), dated as of July 1, 2018 (the “Original Agreement,” and now as amended by the First through Third Amendments, and this Fourth Amendment, the “Agreement”).

RECITALS

WHEREAS, SMART and Contractor entered into the Original Agreement to provide environmental permitting management, technical consulting, construction compliance monitoring, and related support services; and

WHEREAS, SMART previously amended the Agreement to increase the not-to-exceed amount, extend the termination date, and amend the Scope of Work to include baseline studies necessary for the Windsor Extension Project and the Novato to Suisun Passenger Rail Feasibility Study; and

WHEREAS, SMART desires to amend the Agreement to increase the not-to-exceed amount by \$225,800 for a total not-to-exceed amount of \$995,800 for continued monitoring, permitting, maintenance, and compliance support, as well as extend the term of the Agreement through June 30, 2022. In addition, SMART desires to amend the Scope of Work to include the Black Point Bridge Fender Repair Permitting and the Timber Trestle Replacement Permitting.

NOW, THEREFORE, in consideration of the recitals set forth above and the covenants contained herein, it is mutually agreed by and between the parties that:

AGREEMENT

1. “ARTICLE 2. LIST OF EXHIBITS.”

“Exhibit A: Scope of Work & Timeline” Exhibit A is amended by this Exhibit A – Revision I to include environmental studies related to the Black Point Bridge Fender Repair Permitting and the Timber Trestle Replacement Permitting, as attached.

2. “ARTICLE 5. PAYMENT.” Article 5 shall be amended as follows:

“Section 5.02 Contractor shall be paid on a time and expense basis in accordance with **Exhibit B**; provided, however, that total payments to Contractor shall not exceed \$995,800 without the prior written approval of SMART.”

3. **“ARTICLE 6. TERM OF AGREEMENT.”** Article 6 is amended as follows:

Section 6.01 The term of this Agreement shall remain in effect until June 30, 2022 unless terminated earlier in accordance with the provisions of **Article 7**.

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

THIS SPACE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have executed this Fourth Amendment as set forth below.

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

Dated: _____

By _____
Farhad Mansourian, General Manager

WRA, INC.

Dated: _____

By _____

Its _____

APPROVED AS TO FORM:

Dated: _____

By _____
District Counsel

EXHIBIT A – REVISION I SCOPE OF WORK & TIMELINE

Tasks 8 and 9 are in addition to Tasks 1-7 from the Exhibit A Scope of Work in the Original Agreement and the First Amendment.

Task 8 – Black Point Bridge Fender Repair Permitting

Consultant shall lead the effort to secure permits for the repair work to the Black Point Bridge fender system. This will include preparing and submitting permits to all of the applicable regulatory agencies. Consultant shall answer questions from the agencies in order to assure complete permit applications and follow the process to secure permits for the work.

Task 9 – Timber Trestle Replacement Permitting

Consultant shall lead the effort to secure permits for the replacement of two timber railroad trestles: 1) Pacheco Creek; and 2) San Antonio timber trestles. This will include preparing and submitting permits to all of the applicable regulatory agencies. Consultant shall answer questions from the agencies in order to assure complete permit applications and follow the process to secure permits for the work.



June 16, 2021

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

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Susan Gorin
Sonoma County Board of Supervisors

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Farhad Mansourian
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 Contract No. OP-PS-21-003 to Samuel R. Whitehead, Jr. dba Precision Wireless Service for SMART Land Mobile Radio maintenance, technical support, and consultation for an initial term of three years with a total not-to-exceed amount of \$120,000.

Dear Board Members:

RECOMMENDATION:

Authorize the General Manager to Award Contract No. OP-PS-21-003 to Samuel R. Whitehead, Jr. dba Precision Wireless Service for SMART Land Mobile Radio maintenance, technical support, and consultation for an initial term of three years with a total not-to-exceed amount of \$120,000.

SUMMARY:

SMART's Land Mobile Radio (LMR) system is the primary communication link between, Dispatch, Trains, Support, and Maintenance personnel along SMART right-of-way. In addition, SMART personnel use this system to communicate with marine traffic at the Haystack Bridge in Petaluma, California, over a Coast Guard voice channel, and over regional VHF Emergency Response channels. This system was established for SMART in 2016.

The following types of equipment make up the SMART Land Mobile Radio system:

- Dispatch Consoles
- Mountaintop Radio Repeater Sites
- Handheld Radios
- Train Radios
- Vehicle Radios

SMART's Land Mobile Radio system is an operation-critical system required for running a safe and efficient train operation. The system must always maintain uninterrupted communication with all field personnel. To ensure the system is always functioning properly, it is imperative that regularly scheduled preventative maintenance is performed and on-call technical support is available.

Due to the highly technical and complex nature of the system, we contract with a third-party consultant to perform these scheduled inspections, preventative maintenance services, and provide on-call technical support. The existing contract for Land Mobile Radio maintenance is set to expire June 30, 2021. In anticipation of the contract expiration, SMART issued a Request for Proposal to procure the next contract. Although the Request for Proposal was well advertised, SMART received only one proposal in response from Precision Wireless Service. This is a highly specialized service requiring technical capabilities that few firms have in our region.

SMART's evaluation committee reviewed and evaluated the proposal using the evaluation criteria identified in the Request for Proposal. Following the evaluation, reference checks and negotiations were conducted. The evaluation committee recommends to retain Precision Wireless Service as the firm providing the best overall value in terms of technical qualifications and price to the District.

Precision Wireless was the firm who first implemented and commissioned the Land Mobile Radio System for SMART in 2016. This firm has provided SMART with exceptional maintenance and consultation services since the system was first implemented.

Staff recommends authorizing the General Manager to Award Contract No. OP-PS-21-003 to Samuel R. Whitehead, Jr. dba Precision Wireless Service for SMART Land Mobile Radio maintenance, technical support, and consultation for an initial term of three years with a total not-to-exceed amount of \$120,000.

FISCAL IMPACT: Funding for the first year is included in your board adopted Fiscal Year 2022-23 budget and assumed in subsequent years.

REVIEWED BY: ☒ Finance /s/ ☐ Counsel /s/

Very truly yours,

 /s/

Ken Hendricks
Procurement Manager

Attachment(s): Precision Wireless Service Contract Agreement No. OP-PS-21-003

AGREEMENT FOR CONSULTANT SERVICES

This agreement ("Agreement") dated as of July 1, 2021 ("Effective Date") is by and between the Sonoma-Marín Area Rail Transit District (hereinafter "SMART"), and Samuel R. Whitehead Jr., dba Precision Wireless Service (hereinafter "Consultant").

RECITALS

WHEREAS, Consultant represents that it is duly qualified and experienced in the areas of Land Mobile Radio (LMR) system support 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 technical support and to perform maintenance of SMART's LMR system.

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: Equipment List
- (c) Exhibit C: Schedule of Rates
- (d) Exhibit D: FTA & DOT Requirements

ARTICLE 3. REQUEST FOR SERVICES.

Section 3.01 Initiation Conference. SMART's Railroad Information Systems Specialist or designee (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.

SAMUEL R WHITEHEAD, JR.
DBA PRECISION WIRELESS SERVICE
AGREEMENT No. OP-PS-21-003

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:
Randy Larsen, Cynthia Evers, Sam Whitehead, Ron Fambrini.

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 invoice.

Section 5.02 Consultant shall be paid in accordance with the rates established in **Exhibit C**; provided, however, that total payments to Consultant shall not exceed \$120,000.00 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 names and classifications of the persons performing the work; (iii) the time in quarter hours devoted to the task(s); (iii) the fixed price for the service or hourly rate or rates of the persons performing the task(s); (iv) certified payroll reports; and (v) 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 C**. 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 until June 30, 2024, with two (2) one-year options to extend at SMART's sole discretion thereafter 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, both parties 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.

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. Said policy shall include a Railroads CG 24 17 endorsement removing the exclusion of coverage, if applicable, 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.

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. 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.

Section 9.04 Professional Liability. Professional Liability Errors and Omissions Insurance appropriate to the Consultant's profession, with limits no less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate.

Section 9.05 Cyber Liability Insurance. Cyber Liability Insurance with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Consultant in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.

Section 9.06 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 Worker's Compensation and Professional Liability.
- (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 9.07 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 9.08 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 9.09 Documentation. The following documentation shall be submitted to SMART:

- (a) Properly executed Certificates of Insurance clearly evidencing all coverages and limits required above. Said Certificates shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current Certificates of Insurance evidencing the above-required coverages and limits on file with SMART for the duration of this Agreement.
- (b) Copies of properly executed endorsements required above for each policy. Said endorsement copies shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current endorsements evidencing the above-specified requirements on file with SMART for the duration of this Agreement.
- (c) Upon SMART's written request, Consultant shall provide certified copies of the insurance policies to SMART. Said policy copies shall be submitted within thirty (30)

days of SMART's request. 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.

Section 9.10 Policy Obligations. Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

Section 9.11 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, high water, or other Act of God, 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 General Manager or Information Systems 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 Railroad Administration (FRA), state and local laws and regulations, 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. 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 Project Manager: Sonoma-Marine Area Rail Transit District
Attn: TiLiAnne Tanner
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954
ttanner@sonomamarintrain.org
707-794-3330

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

If to Consultant: Precision Wireless Service
Attn: Sam Whitehead
PO Box 407
Potter Valley, CA 95469
samw@precisionradio.com
707-743-3000
707-246-4794 (cell)

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. 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 16.03 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 16.04 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 16.05 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 16.06 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 16.07 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 16.08 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 16.09 Prevailing Wage. Contractor and each Subcontractor shall pay to all workers employed on the Work not less than the prevailing rate of wages as determined in accordance with the Labor Code as indicated herein. All Contractors/vendors doing business with public agencies throughout the State of California (including SMART) shall comply with applicable labor compliance requirements including, but not limited to prevailing wages, SB 854, Labor Code Sections 1725.5, 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815. Public Works Contractor Registration Program, Electronic Certified Payroll Records submission to the State Labor Commissioner and other requirements described at <http://www.dir.ca.gov/Public-Works/Contractors.html>.

Applicable projects are subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

Section 16.10 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

THIS SPACE INTENTIONALLY LEFT BLANK

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

**SAMUEL R. WHITEHEAD, JR. DBA
PRECISION WIRELESS SERVICE**

By: _____

Its: _____

Date: _____

SONOMA-MARIN AREA RAIL TRANSIT (SMART)

By: _____
Farhad Mansourian, General Manager

Date: _____

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

By: _____
Ken Hendricks, Procurement Coordinator

Date: _____

APPROVED AS TO FORM FOR SMART:

By: _____
District Counsel

Date: _____

EXHIBIT A

SCOPE OF WORK & TIMELINE

I. Overview

SMART is contracting with Samuel R, Whitehead, Jr. dba Precision Wireless Service (Consultant) to perform scheduled preventative maintenance inspections, on-call technical support and consultation for its Land Mobile Radio system and related communication equipment (LMR).

Consultant will be responsible for all preventative maintenance inspections, technical support, and maintenance of SMART LMR equipment as needed to maintain the LMR in operating condition.

II. Project Management

All work shall be initiated, scheduled, reviewed, and approved by SMART's Railroad Information Systems Specialist or designee (SMART Manager) by written task order.

III. General Requirements

Consultant shall be available on call 24 hours per day, 7 days per week for the duration of the contract term.

Due to the sensitivity of the information Consultant will be working with, Consultant will be required to sign SMART's Confidentiality and Non-Disclosure Agreement prior to the start of any work being performed.

Service Work Severity and Response Time Requirements

Consultant shall respond to requests for work in accordance with the failure criticality list below:

1. Critical Failure, which is defined as loss of communication on a primary system that requires an immediate response. Consultant shall arrive on-site within 6 hours of notification by the SMART Manager.
2. Major Failure, which is defined as a loss of primary system, but still operating on a suitable alternative system shall require Consultant to be on-site within 24 hours of notification by the SMART Manager.
3. Minor Failure, which is defined as an operations degradation, but still functioning shall require Consultant to be on-site on the next business day after notification by the SMART Manager.

4. Non-Critical or off-line services shall require Consultant to be on-site within 30 days after notification by the SMART Manager.

IV. Scope of Work

Task 1 - Semi-annual Inspection and Maintenance of Equipment at Repeater Sites, the Haystack Bridge and the Rail Operations Center (ROC)

Consultant will perform preventative maintenance inspections twice per year at the Repeater Sites located on mountain tops, hills and ridges in Marin and Sonoma County. All preventative maintenance inspections at all locations shall be conducted according to the equipment manufacturers' recommendations, requirements, and industry standards. Consultant will coordinate with the SMART Manager for the scheduling and authorization of each preventative maintenance inspection.

Typical equipment located at the Repeater sites is listed in Exhibit B.

Consultant will also perform preventative maintenance inspections twice per year of equipment located at the Haystack Bridge in Petaluma, California and at the ROC in Santa Rosa, California.

Typical equipment located at the Haystack Bridge and at the ROC is listed in Exhibit B.

Any issues found during preventive maintenance inspections will be reported to SMART while Consultant is onsite. At SMART's discretion, SMART may authorize immediate preventive maintenance work or have the Consultant complete a failure report and provide recommendations for repairs in the preventive maintenance inspection report. If immediate onsite work is recommended, Consultant shall provide the SMART Manager with an approximate cost estimate and timeline for completion for each job prior to any services being performed. Immediate preventative maintenance work does not include construction or repair activities requiring a contractor's license.

Preventative Maintenance Inspection Reports

After each preventative maintenance inspection of the Repeater Sites, Haystack Bridge and ROC, Consultant shall provide a written report and recommendations within one week from the date of onsite service. The written report shall include the following:

- Detailed description of all work performed during the inspection.
- Condition of the equipment.
- Recommendations for repairs or reconditioning work, together with a list of parts and accessories; and,

- If repair work is recommended by Consultant, an itemized proposal covering material, parts, and labor costs. The proposal shall be written according to the time and material rates listed in Exhibit C.
- Scheduling of repairs shall be within one week of SMART's approval of the repairs.

Site Access

SMART does not own the property where the Repeater sites are located. Access to the Repeater sites is arranged individually by site location. Landowner permission is required for access. The SMART Manager will coordinate with Consultant for site access.

Access to the Haystack Bridge and to the ROC will be coordinated with the SMART Manager.

Task 2. On Call Service

Consultant shall be available on an as-needed basis to service the LMR equipment. This does not include construction or repair activities requiring a contractor's license. SMART will contact Service Provider through email or by phone call to initiate all on-call service of LMR equipment.

If service is required of the handheld or mobile radios, upon request of the SMART Manager, Consultant will pick up all equipment at the ROC and return equipment to the ROC when serviced.

Response times to requests for on call maintenance will be in accordance with the Service Work Severity and Response Time Requirements listed in Section III above.

Task 3. Radio Assessment

Upon request of the SMART Manager, Consultant shall provide recommendations and assist SMART with strategic and operational short and long-term planning of LMR equipment replacement(s), upgrades, and provide information on end-of-life / support of any LMR radio equipment. These recommendations shall include approximate costs for replacement and installation of equipment. Consultant shall also assist SMART in planning for Capital Improvement Project funding and yearly budgets as it applies to the LMR as requested by SMART.

Task 4. Licensing Requirements

Upon request of the SMART Manager, Consultant shall assist SMART in ensuring all Federal Communications Commission (FCC) licenses for all sites and frequencies are up-to-date and renewed.

V. Invoices

Semi-annual preventative maintenance inspections will be charged on a fixed fee basis per location. All on call service work will be on a time and materials basis. All replacement parts or equipment will be invoiced at cost plus freight and invoices shall include receipts for all parts charged to SMART. The per site fixed fees and time and material rates are listed in Exhibit C.

VI. Acceptance Criteria

SMART's Information Systems Manager or designee shall review all work performed by the Consultant. When the work performed meets SMART's requirements, SMART will issue a notice of acceptance and recommend the Consultant submit an invoice for review. If the work was not performed per SMART's requirements, the Consultant shall be instructed to correct the defective work at the sole expense of the Consultant prior to recommending an invoice be submitted.

EXHIBIT B EQUIPMENT LIST

Typical equipment components at each of the Repeater sites

Quantity	Description	Make
1	Power supply	DuraComm
1	Network switch	CISCO
4	Repeaters	Kenwood
1	Power distribution panel	DuraComm
1	Power failure signal radio	Kenwood
1	DC/AC inverter	DuraComm
1	AC to DC power supply	DuraComm
1	Battery charger	DuraComm
6	Deep cycle batteries	Generic
1	A transmitter combining system that includes crystal filters and amplifiers	Telewave
1	Transmitter combining equipment	Telewave
1	One receiver antenna	Generic
2	Transmit antennas	Generic

Typical equipment at the Haystack Bridge

Quantity	Description	Make
2	Radio base stations	Kenwood
1	Associated equipment	Various

Typical equipment at the ROC

Quantity	Description	Make
3	Radio consoles – each containing the following: A radio console monitor A radio console computer One speaker One microphone	Various
1	Radio Equipment Rack	Generic 19” Rack
1	Radio Interface Unit	Mindshare
4	Base Station Radios	Kenwood
1	Rack power supply	DuraComm
2	Rack battery chargers	DuraComm
135 (Approximate)	Handheld radios	Kenwood
30 (Approximate)	Vehicle mounted mobile radios	Kenwood

EXHIBIT C SCHEDULE OF RATES

Semiannual Inspection and Maintenance of Equipment at Repeater Sites, the Haystack Bridge and the Rail Operations Center (ROC)

Site Location	Fixed Rate per Inspection	Annual Frequency of Inspection	Total Cost
Geyser Peak	\$1,110.00	Two	\$2,200.00
Sonoma Mountain	\$1,110.00	Two	\$2,200.00
Big Rock Ridge	\$1,110.00	Two	\$2,200.00
San Rafael Hill	\$1,110.00	Two	\$2,200.00
Cal Park Tunnel	\$1,110.00	Two	\$2,200.00
Puerto Suello	\$1,110.00	Two	\$2,200.00
Haystack Bridge	\$555.00	Two	\$1,100.00
ROC	\$925.00	Two	\$1,850.00

Hourly Rates for On Call and As Needed Services

General Description	Rate
Technician Service Hourly Rate	\$185.00
Technician Service Overtime Hourly Rate	\$277.50
Technician Service Hourly Rate, after hours, holidays and weekends*	\$350.00
Pickup and delivery of equipment at the ROC	\$92.50 per pickup or delivery
Minimum charge for service at any repeater site (excluding semiannual inspection)	\$555.00
Minimum charge for service at the ROC (excluding semiannual inspection)	\$370.00
Minimum charge for service at the Haystack Bridge (excluding semiannual inspection)	\$370.00
Administrative fee for parts shipping and receiving**	\$92.50

*Standard hours are Monday through Friday, 8:00 a.m. to 5:00 p.m.

**Replacement parts shall be billed at cost plus freight. All invoices shall include receipts for any parts charged to SMART.

EXHIBIT D
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, 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. Buy America.

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and

15 passenger wagons produced by the Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Certificates for Use of steel, iron and manufactured products

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Date: _____

Company Name: _____

Print Name: _____

Title: _____

Signature: _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date: _____

Company Name: _____

Print Name: _____

Title: _____

Signature: _____

4. Cargo Preference - Use of United States Flag Vessels.

The Contractor agrees to comply with the requirements of 46 U.S.C. §55305, and U.S. Maritime Administration regulations, “Cargo Preference – U.S.-Flag Vessels,” 46 C.F.R Part 381.

(a) to use privately owned United States flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Agreement to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels;

(b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Contractor in the case of a subcontractor’s bill-of-lading); and

(c) to include these requirements in all subcontracts issued pursuant to this Agreement when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

5. Seismic Safety.

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations, 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor further agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. §7701 et seq. The Contractor also agrees to ensure that all work performed under this Agreement including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

6. 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.

7. **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.

8. **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: _____

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

Name of Contractor: _____

By: _____

Print Name: _____

Title: _____

Date: _____

16. 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.

16. 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.

17. Performance During Dispute.

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

18. 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 or damage.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. Copeland “Anti-Kickback” Act

Contractor agrees to comply with Section 1 of the Copeland “Anti-Kickback” Act, as amended, 18 U.S.C. §874, Section 2 of the Copeland “Anti-Kickback” Act, as amended, 40 U.S.C. §3145, and U.S. DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States,” 29 C.F.R. Part 3.

30. Davis-Bacon Act

Contractors and subcontractors at any contract tier agree to comply with the Davis-Bacon Act. 40 U.S.C. Sections 3141 et seq., and implementing DOL regulations “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction” 29CFR Part 5. The Davis-Bacon Act requires that contractors pay wages to laborers and mechanics at a rate not less than the minimum wages specified in the wage determination made by the Secretary of Labor. The Davis-Bacon Act also requires contractors to pay wages not less than once a week. The Davis-Bacon Act requirements are applicable for all construction, alteration, or repair contracts that exceed \$2,000 and are FTA assisted.

31. 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.

32. 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.

33. 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.

34. 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.

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

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

36. Rights in Data and Copyrights.

- (a) The Contractor agrees to provide a license to its subject data to SMART and the Federal Government that is royalty-free, non-exclusive, and irrevocable. The license must permit SMART or the Federal Government to reproduce, publish, or otherwise use the subject data or permit other entities or individuals to use the subject data provided those actions are taken for SMART or the Federal Government purposes.
- (b) Definition of “Subject Data.” As used in this section, “subject data” means recorded information, whether or not copyrighted, that is delivered or specified to be delivered as required by the Agreement. Examples of subject data include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Agreement.
- (c) Contractor grants to SMART and U.S. DOT a worldwide, non-exclusive, non-transferable, paid-up, royalty-free copyright license, including all rights under copyright, to any and all Publications and Digital Data Sets as such terms are defined in the U.S. DOT Public Access plan, resulting from scientific research funded either fully or partially by this Agreement. Contractor herein acknowledges that the above copyright license grant is first in time to any and all other grants of copyright license to such Publications and/or Digital Data Sets, and that SMART and the U.S. DOT shall have priority over any other claim of exclusive copyright to the same.

37. Patent Rights.

Contractor agrees that:

- (a) Depending on the nature of the Agreement, SMART and the Federal Government may acquire patent rights when the Contractor produces a patented or patentable invention, improvement, or discovery;
- (b) SMART’s and the Federal Government’s rights arise when the patent or patentable information is conceived or reduced to practice with federal assistance provided through the Agreement; or
- (c) When a patent is issued or patented information becomes available, the contractor shall notify SMART immediately and provide a detailed report satisfactory to SMART who

will then notify the FTA as required.

- (d) Its rights and responsibilities in that federally assisted invention, improvement, or discovery will be determined as provided in applicable federal laws, regulations, requirements, and guidance, including any waiver thereof; and
- (e) Unless SMART or the Federal Government determines otherwise in writing, irrespective of its status or the status of any Contractor as a large business, small business, state government, state instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, or individual, the Contractor will transmit the Federal Government's patent rights to the FTA, as specified in 35 U.S.C. §200 et seq., and the U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

38. 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.

39. 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.

40. 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

41. 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.



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

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Susan Gorin
Sonoma County Board of Supervisors

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Chris Rogers
Sonoma County Mayors' and
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Farhad Mansourian
General Manager

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

June 16, 2021

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

SUBJECT: Contract Approval for Sales and Use Tax Auditing and Forecasting Services

Dear Board Members:

RECOMMENDATIONS:

Authorize the General Manager to Award Contract No. FN-PS-21-001 to MuniServices, LLC to provide sales and use tax auditing and forecasting services for \$ 143,322 for three years (FY 22-24) and \$105,721 for Option Years 1 and 2 (FY 25 & 26).

SUMMARY:

SMART contracts for sales and use tax auditing as well as sales tax forecasting services. These services are required to maximize sales and use tax revenue collections and minimize lost revenue by detecting and documenting misallocations of SMART's ¼ % sales and use tax. In addition, the selected vendor will be responsible for reporting on and forecasting sales and use tax revenue for SMART.

SMART's existing contract for this service is set to expire on June 30, 2021. In anticipation of the contract expiration, a request for proposal was issued. SMART received two responsive proposals from the following firms:

- HdL Companies
- MuniServices, LLC

SMART's evaluation committee reviewed the two proposals based on the following technical criteria:

- Approach to and Understanding of Scope of Services
- Key personnel Qualifications and Experience
- Prior History and References

In addition to the technical qualification and expertise review, SMART compared the price proposals submitted by each firm.

The evaluation committee determined that the proposal submitted by MuniServices, LLC provided the overall best value to the district.

The fee proposed by MuniServices, LLC is broken into two component parts. The first is on a contingency fee basis. It is 17.5%. The fee applies only to the quarter(s) for which the error occurred as documented in the petition filed with the California Department of Tax and Fee Administration. This fee is the largest component of the compensation.

The second component is the quarter fee for forecasting and reporting. It is \$3,500 quarterly or \$14,000 annually. There is an annual price adjustment consistent with the percentage change in the Consumer Price Index – West Urban (CPI-WU) at the beginning of each calendar year. For purposed of the contract we have assumed 3% each January, but that may go up or down depending on the actual CPI-WU percentage change.

Staff recommends authorizing the General Manager to Award Contract No. FN-PS-21-001 to MuniServices, LLC to provide sales and use tax auditing and forecasting services for \$ 143,322 for three years (FY 22-24) and \$105,721 for Option Years 1 and 2 (FY 25 & 26).

FISCAL IMPACT: Funding is included in the Fiscal Year 2022 Board adopted budget.

Very truly yours,

/s/

Heather McKillop
Chief Financial Officer

Attachment(s): MuniServices Contract Agreement No. FN-PS-21-001

AGREEMENT FOR CONSULTANT SERVICES

This agreement (“Agreement”), dated as of July 1, 2021 (“Effective Date”) is by and between the Sonoma-Marín Area Rail Transit District (hereinafter “SMART”), and MuniServices, LLC (hereinafter “Consultant”).

RECITALS

WHEREAS, Consultant represents that it is duly qualified and experienced in performing sales and use tax auditing, recovery, forecasting, 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 conduct a sales and use tax audit and recovery service in connection with CDTFA’s administration of SMART’s one-quarter cent sales tax measure and to provide revenue forecasting services, including, but not limited to, providing sales tax analysis and reporting 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

ARTICLE 3. REQUEST FOR SERVICES.

Section 3.01 Initiation Conference. SMART’s Chief Financial Officer, 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 Chief Financial Officer 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 Chief Financial Officer 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:

Paul Colangelo, Chief Executive Officer
Kennon Walthall, Senior Vice President Revenue Enhancement
Janis Varney, Vice President, Sales and Use Tax Audit/Project Manager
Angel Rivera, Sr., Sales and Use Tax Analyst/Audit Supervisor
Linda Latta, Sales and Use Tax Corrections Supervisor
Sandra Heuer, Supervisor of Transactions and Use Tax
Irene Reynolds, Director of Client Relations

Mark Bryson, Senior Economic Business Analyst
Francesco Mancia, VP Government Relations
Amy O’Gorman Jenkins, Lobbyist
Thomas Adams, Client Success Manager

ARTICLE 5. PAYMENT.

Section 5.01 Not-to-Exceed Amount. Consultant shall be paid in accordance with the rates established in **Exhibit B**; provided, however, that total payments to Consultant shall not exceed \$143,322, without the prior written approval of SMART.

Section 5.02 Transactions and Use Tax Audits. Consultant shall provide its Transactions and Use Tax Audit services on a contingency basis as more fully described in the rate schedule attached hereto as Exhibit B. As provided in Exhibit B, Consultant shall receive, as full compensation for its Transactions and Use Tax Audit Services (inclusive of any expenses incurred by Consultant in the performance of said Services), a percentage of the new revenue generated as a direct result of consultant’s actions in accordance with the schedule set forth in Exhibit B. No compensation will be paid to Consultant until SMART has received the revenue from the CDTFA. Thereafter, Consultant shall submit an invoice to SMART, detailing the tasks performed pursuant to the Scope of Work requested by the SMART Chief Financial Officer, setting forth the amount recovered through those efforts, and requesting the agreed upon contingency fee. SMART shall pay Consultant within 30 days after submission of the invoices. SMART shall not withhold applicable federal or state payroll and other required taxes, or other authorized deductions from each payment made to the Consultant.

Section 5.03 Sales Tax Analysis and Reporting Services, Forecasting and Consulting. Consultant shall be paid a fixed quarterly fee for its Sales Tax Analysis and Reporting Services, Forecasting, and Consulting Services in accordance with the rates in Exhibit B. Consultant shall submit its invoices in arrears on a quarterly basis in a form approved by the Chief Financial Officer. The invoices shall show or include: (i) the task(s) performed; and (ii) the deliverables provided to SMART. SMART shall pay Consultant within 30 days after submission of the invoices.

Section 5.04 Additional Services. No claims for additional services performed or expenses incurred by Consultant will be allowed unless such additional work is authorized by SMART in writing prior to the performance of such services or the incurrence of such expenses. Any additional services authorized by the Board of Directors shall be compensated at such rates as are negotiated between and mutually agreed upon by the parties.

ARTICLE 6. TERM OF AGREEMENT.

Section 6.01 The term of this Agreement shall be effective on July 1, 2021 and shall remain in effect until June 30, 2024 with two (2) one-year options to extend thereafter at SMART’s sole 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, both parties 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 Chief Financial Officer or 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.

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. Professional Liability insurance for all activities of Consultant arising out of or in connection with this Agreement in an amount no less than \$2,000,000 combined single limit for each occurrence.

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.
- (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. 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) Upon SMART's written request, Consultant shall provide certified copies of the insurance policies to SMART. Said policy copies shall be submitted within thirty (30) days of SMART's request. 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.

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, high water, or other Act of God, 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 Chief Financial Officer or General 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 Confidentiality. Consultant understands and hereby acknowledges that Consultant and its agents, employees, subcontractors, and assigns, will, in the course of performing its obligations under the Agreement, obtain, have access to, or create material that must be held in confidence. Consultant, on behalf of itself and its agents, employees, assigns, assistants, and all persons acting in concert with or at Consultant's direction (collectively, "Consultant's Personnel"), hereby covenants that Consultant and Consultant's Personnel shall: (1) maintain all records, files, and other information obtained, generated or retained in relation to the services performed under this Agreement in a confidential and secure manner; and (2) not release any reports, information, or other materials prepared by Consultant or in its possession in connection with this Agreement, whether deemed confidential or not, to any person or entity other than Consultant's Personnel (to the extent necessary to fully perform Consultant's obligations under the Agreement) and to SMART's Chief Financial Officer or his/her designee without the prior written consent of SMART; and (3) not discuss discoveries or conclusions with any entity other than Consultant's Personnel (to the extent necessary to fully perform Consultant's obligations under the Agreement) and SMART without the prior written consent of SMART.

SMART shall grant authorization if disclosure is required by law. Consultant shall clearly mark all SMART's files, written communications with SMART, and other SMART-related documents with the following notice: "Privileged and Confidential". Consultant's obligations pursuant to this section shall not include or extend to information which: (i) has become a matter of public knowledge other than through an act or omission of Consultant; or (ii) was in the possession or was known to Consultant prior to the disclosure of such information by SMART, as evidenced by the written records of the Consultant, and was not received directly or indirectly from SMART or any work performed by Consultant under the Agreement; or (iii) has become or becomes available to Consultant from an independent third party in accordance with such third

party's legal rights without any restrictions on disclosure; or (iv) is required to be disclosed by Consultant to a third party in response to a subpoena or order of a court or an administrative agency, provided that Consultant shall inform SMART promptly upon receipt of such subpoena or order so that SMART shall have an opportunity to seek a protective order, if SMART so chooses.

Without limiting the generality of the foregoing, Consultant expressly acknowledges and understands that it shall be bound by the requirements set for in Section 7056(b) of the California Revenue and Taxation Code, and Consultant hereby warrants and covenants that it shall fully comply with the dictates from said Section 7056, including the following:

- 1) Consultant shall disclose information contained in, or derived from, the sales transactions and use tax records from the CDTFA only to an officer or employee of SMART; and
- 2) Consultant shall not perform consulting services for any retailer during the term of this Agreement; and
- 3) Consultant shall not retain the information contained in, or derived from, the CDTFA sales or transactions and use tax records, after termination of this Agreement.

Consultant's covenants under this section shall survive termination of the Agreement.

Section 12.09 Ownership And Disclosure Of Work Product. All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant and other agents in connection with this Agreement shall be the property of SMART. SMART shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to SMART all such documents, which have not already been provided to SMART in such form or format, as SMART deems appropriate. Such documents shall be and will remain the property of SMART without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of SMART.

ARTICLE 13. DEMAND FOR ASSURANCE.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under

the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this **Article 13** limits SMART's right to terminate this Agreement pursuant to **Article 7**.

ARTICLE 14. ASSIGNMENT AND DELEGATION.

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

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

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

If to SMART Manager:	Sonoma-Marín Area Rail Transit District Attn: Heather McKillop 5401 Old Redwood Highway, Suite 200 Petaluma, CA 94954 hmckillop@sonomamarintrain.org 707-794-3320
If to SMART Billing:	Sonoma-Marín Area Rail Transit District Attn: Accounts Payable 5401 Old Redwood Highway, Suite 200 Petaluma, CA 94954 billing@sonomamarintrain.org 707-794-3330
If to Consultant:	MuniServices, LLC Attn: Thomas Adams 5716 Corsa Avenue, Ste 203 Westlake Village, CA 91362 Thomas.adams@avenuinsights.com 916-926-9019

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. 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 16.03 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 16.04 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 16.05 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 16.06 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 16.07 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 16.08 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 16.09 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

[SIGNATURE PAGE TO FOLLOW]

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

CONSULTANT: MUNISERVICES, LLC

By: _____
Mike Melka, Chief Financial Officer

Date: _____

SONOMA-MARIN AREA RAIL TRANSIT (SMART)

By: _____
Heather McKillop, Chief Financial Officer

Date: _____

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

By: _____
Ken Hendricks, Procurement Coordinator

Date: _____

APPROVED AS TO FORM FOR SMART:

By: _____
District Counsel

Date: _____

EXHIBIT A

SCOPE OF WORK & TIMELINE

I. Overview

SMART is contracting with MuniServices, LLC to conduct a sales and use tax audit and recovery service in connection with the California Department of Tax and Fee Administration's ("CDTFA") administration of SMART's one-quarter cent sales tax measure and to provide regular revenue forecasting services. The objective of the transactions and use tax audit and recovery service is to maximize SMART's sales tax revenue and minimize the cost of lost revenue.

II. Project Management

All work shall be initiated, scheduled, and reviewed by SMART's Chief Financial Officer, or designee, by written task order.

III. Scope of Work

The work performed under this Agreement is split into three tasks:

- 1) Sales, Transactions and Use Tax Auditing Services (SUTA)
- 2) Forecasting Services
- 3) Additional Consulting Services.

A. Task 1: Sales, Transactions, and Use Tax Auditing Services (SUTA)

Consultant shall perform the following services under this task:

1. Identify and correct the sales/ transactions/ use tax reporting errors of businesses that, based on the nexus of their activities, are not reporting SMART sales and use tax properly.
2. Detect, document, and correct sales/use tax reporting errors/omissions and thereby generate new, previously unrealized revenue for SMART.
3. Contact personnel in sales, operations and/or tax accounting departments each target business to determine whether a point of sale /delivery/use reporting error exists.
4. Provide to SMART reports addressing each taxpayer reporting error, recommended corrective action and estimated sales and use revenue.

5. Respond to denials of correction by the California Department of Tax and Fee Administration (CDTFA) with timely reconfirmation documentation.
6. Receive and process quarterly sales and use tax payment distribution reports provided by the California Department of Tax and Fee Administration (CDTFA).
7. Monitor and analyze the sales and use tax payment distribution reports with a focus on:
 - a. Accounts with previously detected reporting errors
 - b. Accounts representing total sales and use tax revenue to identify and investigate significant aberrations.
 - c. Accounts receiving deficiency assessments.
8. Maximize SMART's income and minimize cost of lost revenue by detecting and documenting misallocations before the revenues become unrecoverable.
9. Ensure that the revenue information used for ongoing economic analysis includes all sales and use tax generators.
10. Services should include three distinct types of audits:
 - a. Field Audits
 - b. Permit Audits
 - c. Quarterly Sales Tax Payment Distribution Audits
11. Routinely review all proposed and actual California Department of Tax and Fee Administration (CDTFA) negative adjustments to SMART's sales and use tax.

B. Task 2: Forecasting Services

1. Each quarter MuniServices, LLC shall meet with SMART staff to review SMART's Sales, Transaction and Use Tax performance results on both a cash and economic basis.
2. Provide quarterly reports.
 - a. Quarterly Reports shall include: Actuals to-date, Actuals for the most recent quarter, comparisons to previous year, a forecast for next quarter, cash receipts analysis, a regional comparison report, quarterly changes report, per capita sales tax charts, historical trend analysis, top 100 businesses, and other reports request by the District.
3. Provide an annual sales and use tax revenue forecast for use in Annual Budgets each fiscal year.
4. Provide an annual comparison report of historical forecasts to actuals each fiscal year.
5. Provide a 5-year forecast upon request.

- a. Anticipate 2 to 3 reports during the term of this contract.
 - b. The report shall provide a five-year transactions tax forecast with multiple scenarios as requested by SMART.
 - c. The five-year forecast shall combine city-specific business level activity with regional economic indicators and national economic trends.
- 6. Provide a 10-year forecast for Short Term Transit Plan upon request.
 - a. Anticipate 2 to 3 reports during the term of this contract.
- 7. Provide SMART with full access and training on the Clearview Data Analytics tool. This tool shall allow SMART staff to research local business activity and export data for further analysis. Clearview Data Analytics provides SMART access to:
 - a. Consolidated economic reports that include:
 - i. Key trends at the category, segment, and retailer levels.
 - ii. A quick view of key retailer performance.
 - iii. Customized cash forecast by fiscal year.
 - iv. Retailer search and recent payment history.
 - v. Rankings of the sales tax producers in SMART's jurisdiction for recent periods.
 - vi. Potential one-time payments.
 - b. Provide Cash Trends and distribution summaries that include:
 - i. Fiscal year-to-date totals for SMART's cash
 - ii. Economic changes and identify key retailers driving cash changes.
 - iii. Cash performance comparison to other jurisdictions to benchmark performance.
 - iv. Cash distributions from the CDTFA.
 - c. Provide Geo Area Reports (cash and economic) & GIS maps that include:
 - i. Review trends and where the growth or declines within the geo-area are concentrated and uncover the key drivers of those changes.
 - ii. Export a 10-year history of each geo-area directly to excel for use in SMART's internal reports.
 - iii. Visualize SMART's geo-areas and summarize by category and segment.
 - iv. Dynamically view the revenue changes in SMART's geo-areas over time.
 - v. Compare the performance of one geo-area to another.

SMART may use any of the data or downloads from the Clearview Data

Analytics tool as a visualization tool in a presentation.

C. Task 3: Additional Consulting Services

1. SMART may request additional consulting services outside the scope of work included in Task 1 and Task 2.
2. Work will be issued by Task Order and will include the scope of work, deliverable requirements, and not-to-exceed amounts.
3. SMART and MuniServices, LLC shall mutually agree on any additional consulting work, deliverables, and cost prior to the start of any project.
4. All additional consulting services will be performed on a time and materials basis. The hourly rates for personnel are established in Exhibit B. All materials not included in the consultant's overhead shall be invoiced to SMART at cost with receipts provided.

IV. **Acceptance Criteria**

SMART's Chief Financial Officer or designee shall review all work performed by the Consultant. If the work performed met SMART's requirements, SMART will recommend the consultant submit an invoice for review. If the work was not performed per SMART's requirements, the Consultant shall be instructed to correct the defective work at the sole expense of the consultant prior to recommending an invoice be submitted.

EXHIBIT B
SCHEDULE OF RATES

TASK 1: SALES, TRANSACTIONS AND USE TAX AUDITING SERVICES

Task Description	Contingency Fee
Sales, Transactions and Use Tax Auditing Services	17.5%

This service is provided to SMART on a contingency fee basis on the additional revenue received by SMART as a result of the accounts identified and corrected by MuniServices, LLC. For the Quarterly Distribution Report (QDR) misallocation or deficiency errors detected and corrected, MuniServices' compensation shall only include the quarter(s) for which the error actually occurred as documented in the petition filed with the CDTFA. The QDR errors are billed for the specific quarter(s) identified and do not involve billing for go-forward quarters.

This fee applies to revenue received for SMART for all retroactive quarters only that are corrected within the statute of limitation prior to the Date of Knowledge (DOK) quarter for all misallocated or deficient errors identified and submitted to the CDTFA on behalf of SMART. The fee will not be applicable to any prospective quarters received by the agency as a result of MuniServices' audit work. Additionally, MuniServices shall not receive contingency fees for corrections resulting from claims filed by SMART staff or for identical claims under multiple SMART tax jurisdiction accounts. The Date of Knowledge is the quarter during which MuniServices notifies the CDTFA of the existence of a misallocation or deficiency.

Because these services result in corrections of misallocations and other revenue after cessation of services performed by MuniServices for SMART, SMART agrees that with regards to misallocations identified to the CDTFA whose DOK occurred during MuniServices performance of services for SMART or for other revenue resulting from MuniServices actions taken during the term of the Agreement, that SMART's obligation to pay MuniServices in accordance with the compensation language of the Agreement will survive expiration or termination of the Agreement for any reason. Additionally, notwithstanding any other provision of the Agreement, if the Agreement is terminated or expires, MuniServices will continue to pursue corrections of accounts identified during the term of the Agreement that have not been corrected by the CDTFA as of the effective date of termination or expiration. The period after termination during which MuniServices is pursuing correction of accounts identified before termination is referred to as the "completion period." SMART will compensate MuniServices in accordance with the compensation language of the Agreement for corrected misallocations that result from MuniServices efforts during the completion period. SMART will also take all necessary steps to allow MuniServices to continue to receive the required information from the CDTFA during this completion period.

The Contingency Fee shall be fixed for the duration of the Agreement.

TASK 2: FORECASTING SERVICES

Task Description	Fee
Forecasting Services	\$3,500 per Quarter

The fee shall be adjusted at the beginning of each calendar year by the percentage change in the Consumer Price Index – West Urban (CPI-WU) as reported by the Bureau of Labor Statistics. The adjustments are based on the CPI-WU from December of the prior calendar year. Each Annual Fee adjustment shall not be less than two percent (2%) or greater than ten percent (10%).

TASK 3: ADDITIONAL CONSULTING SERVICES

MuniServices, LLC may offer optional and premium services at the time service becomes available or perform additional consulting services that are outside the scope of Task 1 or Task 2. These services will be provided on a time and materials basis based on the rates below.

Classification	Hourly Rate
Principal	\$200.00
Project Manager/Director & IT	\$175.00
Client Services Executive	\$150.00
Senior Analyst	\$125.00
Analyst	\$100.00
Administrative	\$75.00

Any materials used will be invoiced to SMART at cost with prior approval received.

The hourly rates described in Task 3 are subject to adjustment if mutually agreed upon by both parties in writing.