



**BOARD OF DIRECTORS
MEETING AGENDA
July 7, 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, July 6, 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 16, 2021 Board Minutes
3. Board Member Announcements
4. General Manager’s Report
5. Public Comment on Non-Agenda Items
6. Consent Calendar
 - a. Approval of Monthly Financial Reports
 - b. Extension of Current General Manager Contract until December 31, 2021

Regular Calendar

7. Authorize the General Manager to Award Two (2) Contracts to Provide as-needed temporary staffing services to BOLT Staffing Service, Inc. and Gary D. Nelson Associates, Inc. each with a not-to-exceed amount of \$300,000 for the initial three-year term and \$100,000 for each option year 1 and 2
8. Closed Session
 - a. Conference with Labor Negotiator General Manager, Farhad Mansourian pursuant to California Government Code Section 54957.6
 - b. Conference with Legal Counsel regarding existing litigation pursuant to California Government Code Section 54956.9(a); Filemon Hernandez et al v. Sonoma-Marín Area Rail Transit
United States District Court for the Northern District of California Case No. CIV No. 4:21-cv-01782
Number of cases: 1
 - c. Conference with Legal Counsel regarding existing litigation pursuant to California Government Code Section 54956.9(a); James Duncan v. Sonoma-Marín Area Rail Transit; City of Santa Rosa, Real Party in Interest; County of Sonoma, Real Party in Interest
Sonoma County Superior Court Case No. SCV-266092
Number of cases: 2
9. Report Out of Closed Session
10. Next Regular Meeting of the Board of Directors, July 21, 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 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

1. Call to Order

Vice Chair Pahre called the meeting to order at 1:34pm. Directors Arnold, Bagby, Colin, Connolly, Fudge, Garbarino, Hillmer, and Lucan were present; Directors Gorin, Rabbitt and Rogers absent.

2. Approval of the June 2, 2021 Board Minutes

MOTION: Director Garbarino moved approval of June 2, 2021 Board Minutes as presented. Director Hillmer second. The motion carried 9-0 (Directors Gorin, Rabbitt and Rogers absent).

3. Board Members Announcements

Director Connolly stated that he had an opportunity to personally ride the train last Saturday, taking advance of the weekend service. The train was on time, and they were crowded in both directions. He took the train to Santa Rosa for a meeting, then to Cotati to attend a graduation reception, and the bus back home. The service was great, and it seems like people are aware of it, judging by the ridership which looks good right now. He was able to add mileage to his “Ride with Damon” for the next few weeks. He encouraged everyone to ride the train.

Director Garbarino stated that she attended the State of the North Bay Conference hosted by the North Bay Leadership Council. Many speakers talked about what will remote work look like in the future. She was personally interested in that, obviously, as someone who operates a business. She is praying that the mass transit options will be utilized more fully in the future, and perhaps Zoom meetings can take cars off the road too. Caltrans has the plan to put a superstructure overpass through the Center of their property. She will be happy to share the recording of the conference if anyone is interested.

4. General Manager's Report

General Manager Mansourian reported that since the start of passenger service in August 2017, SMART has carried 1,991,000 passengers, 209,000 bicycles, and over 7,500 wheelchairs. SMART is rapidly approaching 2 million passengers and staff is coordinating outreach efforts. The prediction is that SMART will hit the mark next week; stay tune with announcements and acknowledgments.

He stated that California is celebrating the removal of most of the Pandemic related regulations. As a public agency, SMART is regulated by the Federal Government and the Transportation Security Administration continues to state mask are required for everyone, regardless of vaccination status when they are on "Public Transit". On the train we will continue to make announcements that facial covering is required by federal regulation.

He announced that the General Manager's recruitment brochure has been posted on SMART's website that links to the KL2 Connects LLC recruiters website.

Mr. Mansourian said that SMART's staff in partnership with the City of Petaluma and Danco have submitted the grant application to fund the second Petaluma station. We are expected to hear about the grant in October 2021.

Mr. Mansourian said that he and staff continues to work with Congressman Huffman to obtain funding for the Healdsburg Bridge. The allocation of funds has cleared with two committees and now going through Congress and Senate. Congressman Huffman has been instrumental in working to secure funding for the bridge.

Mr. Mansourian stated that Assembly Bill 339, introduced by Mr. Lee, is a bill that is requiring local government agencies to conduct a hybrid system for open and public meetings. The Bill was opposed by League of California Cities and the California State Association of Counties. Staff continues to monitor the Assembly Bill, which was approved at the Assembly floor and will keep the Board informed.

He announced that SMART staff will be holding a potential ceremony on July 3rd, 4th and 5th to celebrate the opening of California and the Nation's Birthday. Golden Gate Ferry, Bus, Marin Transit and SMART are coordinating schedules during those dates with possible limited service on Sunday, July 4th.

Mr. Mansourian introduced District Counsel, Tom Lyons, who provided an update on the Surface Transportation Board (STB) decision on June 11th regarding Freight services. Mr. Lyons stated that STB approved the acquisition of the rail line from milepost 89 South and for operating authority in March 2021. On Friday, June 11th the Surface Transportation Board approved the final component of this complex transaction, which is the authorization for NWPCo, the freight operator, to discontinue services on rail line, opening the pathway for SMART to become the carrier and rail freight operator with an effective date of July 11th. Mr. Mansourian offered an apology to SMART passengers for the extreme delays on Tuesday, June 15th. He said that four freight cars weighing about 200,000 pounds each were

derailed while being loaded and unloaded on private property causing equipment to be rolled towards SMART's mainline. SMART's positive train control technology, which detects intrusion or presence of another train in our system, was activated. We had excessive delays all day long; because the passenger train had to go at an extremely slow speed around that area and it took our team, as well as freight and customer all day to be able to get these four cars, off the rail. The cars were placed back on the track later in the evening. The incident was not caused by SMART; however, the passengers and the public deserve an explanation. There were many lessons learned, and we will continue figuring out what else we could have done so these things do not happen.

Lastly, Mr. Mansourian stated that Chief Financial Officer, Heather McKillop, will provide your Board with the update of all the conversations surrounding the distribution of federal funds and Metropolitan Transportation Commission (MTC).

Ms. McKillop stated that the Bay Area is anticipate receiving approximately \$1.7 billion for the transit providers in the Bay area. SMART received \$14.9 million of CARES Act funding and \$1.7 million of CRRSAA money. SMART has been successful receiving funds to date, and we have expended all those funds and close those grants. We are looking forward to getting additional funds from money from this APTA Funds. The allocation was arguing should be based on the urbanized area formula, which is how SMART receives 5307 funds, and how the money was allocated to the Bay Area on those urbanized areas. If SMART were to receive the proportional share it would be approximately \$10.9 million. During the budget process, it was discussion that SMART needed approximately \$2.2 million minimum each year to be able to return to pre-pandemic levels of service. On June 9th, MTC allowed the seven large operators to make presentations as well as the small operators were given four slots. SMART's representative was Rachel Eide from Santa Rosa City Bus. She did a great job on the presentation from the Sonoma County Transit Operators, one of the themes that we talked about was the allocation from the urbanized area. There were four overall themes, even though each of the transit agencies is different and how they receive money and how they potentially operate; 1) the need for additional resources to get to pre-pandemic levels; 2) a long term sustainability issue; 3) large losses from farebox ; and 4) limited operator availability, the shortages of being able to hire and that is across the Bay Area. MTC gave a presentation about their goals and how the funds shall be distributed. In July they are planning on taking this recommendation from MTC to the Program and Allocations Committee, although they said they may bypass that committee and go directly to the Commission. We are expecting additional information over the coming weeks, as to what MTC proposal will be.

Public Comments

Richard Brand clarified on the derailment incident. He stated that the incident was cause by a customer and not by NWPCo or SMART. He provided a brief overview of how the customer caused the problem.

5. Public Comment on Non-Agenda Items

Vice -Chair Pahre acknowledged public comment received by Mike Arnold via email.

Eris Weaver expressed her experience with the derailment incident yesterday. She had been contemplating taking the train home, rather than bicycling because of the heat, she ended up not riding the train because of delays. She suggested having more information regarding freight traffic and what the implications will be. She has frequently noticed is that for a variety of delays on the service, she gets the alert a half hour after, once she is standing on the platform with the train half an hour late. It would be helpful to receive the message when it first surfaced so passengers can plan around the delays and alternative routes.

6. Consent
 - a. Accept Monthly Ridership Report – May 2021

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

MOTION: Director Lucan moved approval of the Consent Agenda as presented. Director Bagby second. The motion carried 8-0 (Director Arnold abstain; Directors Gorin, Rabbitt and Rogers absent).

7. Authorize the General Manager to Execute Six (6) Contract Amendments totaling \$586,800 as needed for Fiscal Year 2021-22

Chief Financial Officer, Heather McKillop, stated that the current fiscal year ends on June 30th. There are six contracts that we request authority to extend with the total amount of \$586,800. Therefore, staff request your approval of these contract amendments for the new fiscal year.

MOTION: Director Garbarino moved to Authorize the General Manager to Execute Six (6) Contract Amendments totaling \$586,800 as needed for Fiscal Year 2021-22as presented. Director Fudge second. The motion carried 8-0 (Director Arnold abstain; Directors Gorin, Rabbitt and Rogers absent).

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

Procurement Manager, Ken Hendricks, stated that SMART's Land Mobile Radio system is primary communications link between, Dispatch, Trains, Support and Maintenance personnel along SMART's right-of-way. In addition, SMART's 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.

In anticipation of the contract expiring on June 30, 2021, a formal Invitation for Bid was issued to procure these services. 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 and recommends retaining Precision Wireless Service. 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 for an initial term of three years with a total not-to-exceed amount of \$120,000.

MOTION: Director Hillmer moved to 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 as presented. Director Lucan second. The motion carried 8-0 (Director Arnold abstain; Directors Gorin, Rabbitt and Rogers absent).

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

Chief Financial Officer, Heather McKillop, stated that the existing contract for these services will expire on June 30, 2021. A request for proposal was issued to provide 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.

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

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%, which is currently less than previous contract.

Therefore, staff recommends authorizing the General Manager to Award Contract No. FN-PS-21-001 to MuniServices, LLC in an amount of \$143,322 for three years and \$105,721 for Option Years 1 and 2.

MOTION: Director Hillmer moved to 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 as presented. Director Fudge second. The motion carried 8-0 (Director Arnold abstain; Directors Gorin, Rabbitt and Rogers absent).

10. Next Regular Meeting of the Board of Directors, July 7, 2021 – 1:30 PM
11. Adjournment - Meeting adjourned at 2:10pm

Respectfully submitted,

Leticia Rosas-Mendoza
Clerk of the Board

Approved on: _____



July 7, 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: Monthly Finance Reports

Dear Board Members:

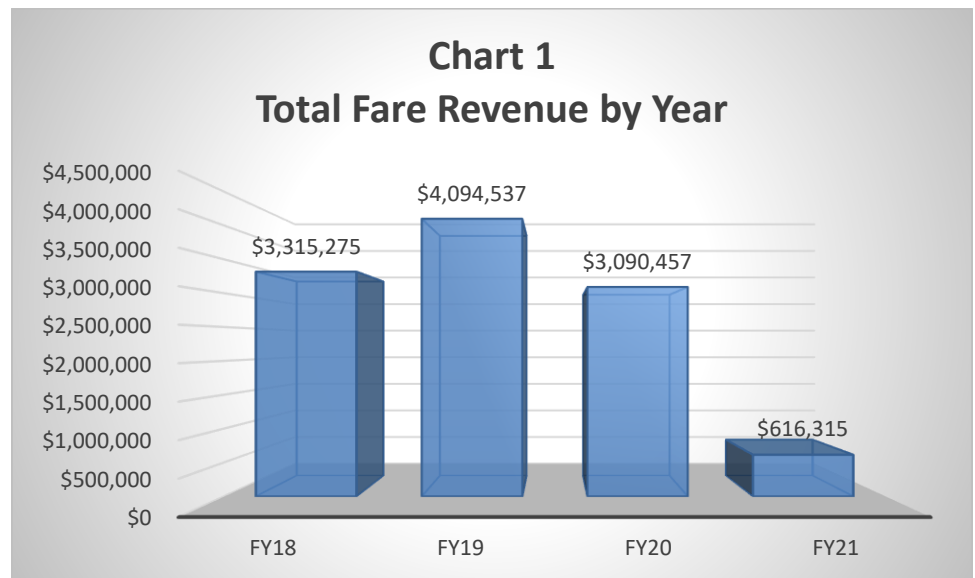
RECOMMENDATION: Approval of Monthly Financial Reports

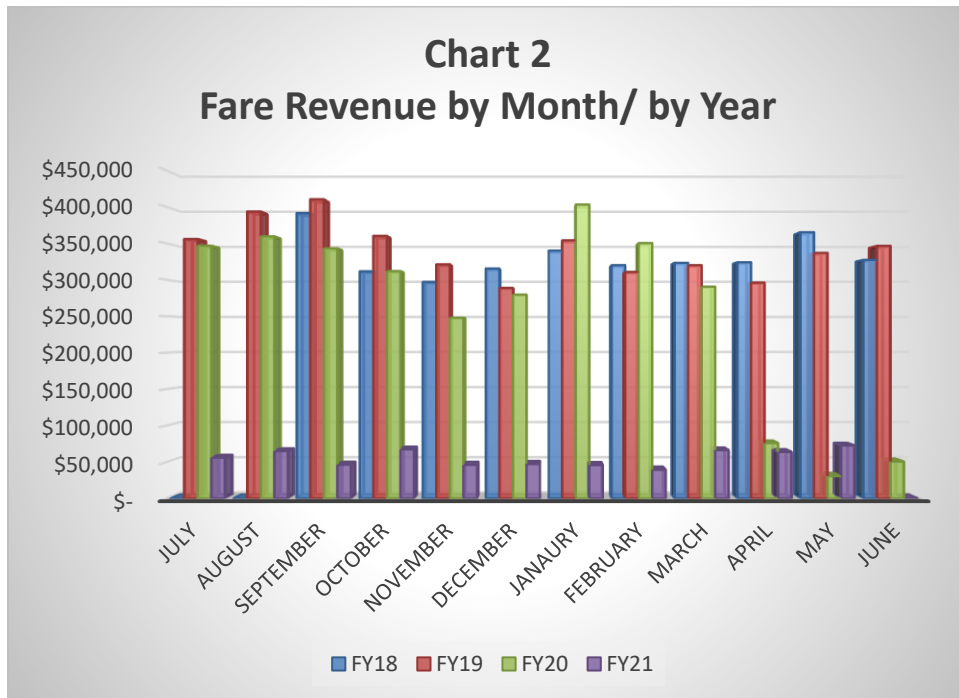
SUMMARY:

We are presenting the monthly reports for activity through the month of May which includes transactions for eleven months of Fiscal Year 2020-21.

Fare Revenue

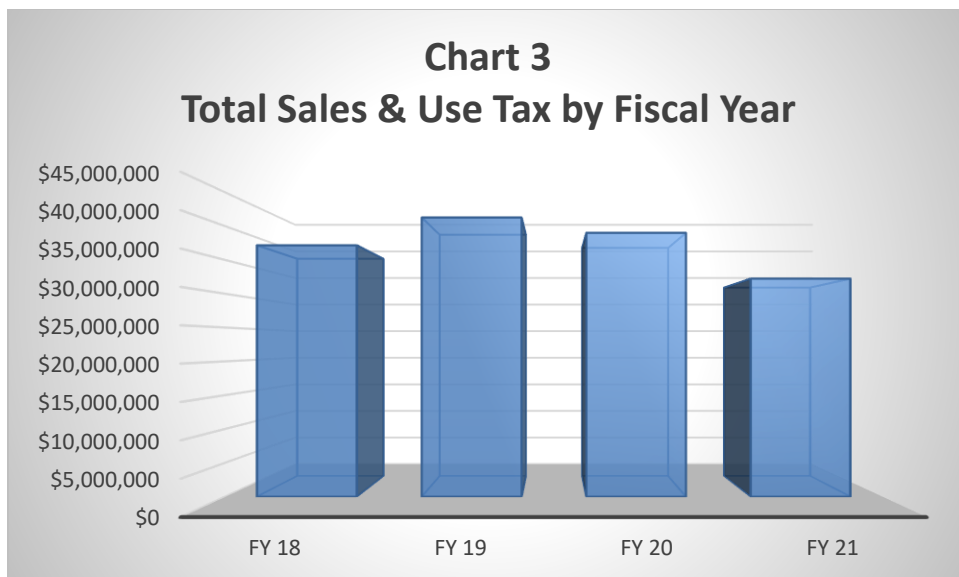
Fare revenue is \$616,315 for the first eleven months of FY 2020/21. Chart 1 is fare revenue comparison for FY 2018 – FY 2021 to date. Chart 2 is fare revenue comparison by month and fiscal year. In addition to the fare revenues, SMART has collected \$3,559 in parking fees.

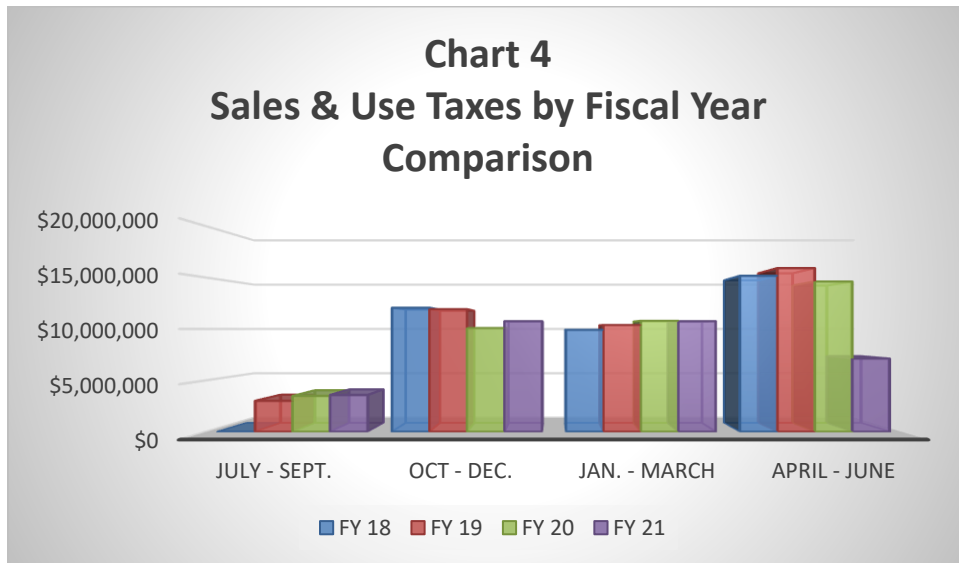




Sales & Use Tax

The amended budget estimate for sales and use tax is \$39,133,000. Through May 2021, we have received \$32,215,545. We are expected to meet our estimated sales and use tax for FY 2020/21. See chart 3 for a comparison of sales tax by fiscal year and chart 4 for sales tax by month by fiscal year.





Very truly yours,

/s/

Heather McKillop
Chief Financial Officer

Attachment(s): 1) Monthly Finance Report
2) Contract Summary Report

Sonoma-Marín Area Rail Transit District
Monthly Finance Reports
Through May 2021

FY 2020-21					
	Revised Budget			Actual	Remaining Budget
Administration					
Sales/Use Taxes	\$	20,653,096	*	\$ 20,748,989	\$ -
Interest Earnings		380,000		255,069	124,931
Rent - Real Estate		313,700		306,632	7,068
Advertising Revenue		45,000		18,176	26,824
Miscellaneous Revenue		4,120,693		4,884,945	-
Administration Subtotal		25,512,489		26,213,811	158,823
Operations					
Sales/Use Tax		7,695,003		7,695,003	-
Fare & Parking Revenue		680,525		619,873	60,652
Federal Funds		11,584,064		10,221,172	1,362,892
State Grants		6,175,380		3,527,918	2,647,462
Other Charges		65,000		91,011	-
Operations Subtotal		26,199,972		22,154,977	4,071,006
Capital					
Sales/Use Tax		3,771,553		3,771,553	-
Federal Funds		4,494,025		2,500,000	1,994,025
State Grants		14,029,000		111,189	13,917,811
Other Governments/Misc		4,956,500		3,503,382	1,453,118
Measure M		157,348		63,424	93,924
Capital Subtotal		27,408,426		9,949,548	17,458,878
Freight					
State Grants		6,000,000		45,814	5,954,186
Freight Subtotal		6,000,000		45,814	5,954,186
Revenue Total		\$ 85,120,887	*	\$ 58,364,150	\$ 27,642,893
Expenditures					
Administration					
Salaries & Benefits	\$	5,041,970		\$ 3,998,826	\$ 1,043,144
Services & Supplies		6,182,844		3,636,186	2,546,658
Debt Service/Other Charges		14,284,675		5,102,339	9,182,336
Machinery & Equipment		3,000		2,416	584
Administration Subtotal		25,512,489		12,739,767	12,772,722
Operations					
Salaries & Benefits		15,510,578		10,558,811	4,951,767
Services & Supplies		8,243,519		3,741,656	4,501,863
Buildings & Capital Improvements		2,445,875		749,858	1,696,017
Operations Subtotal		26,199,972		15,050,325	11,149,647
Capital					
Salaries & Benefits		1,417,761		1,157,323	260,438
Services & Supplies		852,736		266,110	586,626
Other Charges		3,786,500		3,403,893	382,607
Machinery & Equipment		3,177,138		-	3,177,138
Infrastructure		18,174,041		12,071,954	6,102,087
Capital Subtotal		27,408,176		16,899,280	10,508,896
Freight					
Expenditures		6,000,000		45,814	5,954,186
Freight Subtotal		6,000,000		45,814	5,954,186
Expenditure Total		\$ 85,120,637	**	\$ 44,735,186	\$ 40,385,451

Investment Report	
	Amount
Sonoma County Treasury Pool	
Bond Reserve Fund	\$ -
Interest Fund	450,519
Principal Fund	3,322,520
Sonoma County Treasury Pool Subtotal	\$ 3,773,039
SMART Operating Accounts	
Bank of Marin	33,659,496
Sonoma County Treasury Pool	36,857,898
SMART Operating Accounts Subtotal	\$ 70,517,394
Investment Report Total	\$ 74,290,433

Capitol Project Report				
	Budget	Actual	Remaining	
Additional Railcar Purchase				
Revenues	\$ 11,000,000	\$ 8,250,000	\$	2,750,000
Expenditures	\$ 11,000,000	\$ 8,250,000	\$	2,750,000
Windsor Extension				
Revenues	\$ 65,000,000	\$ 14,753,326	\$	50,246,674
Expenditures	\$ 65,000,000	\$ 24,408,475	\$	40,591,525
Sonoma County Pathway Connector Project				
Revenues	\$ 13,573,526	\$ 1,199,183	\$	12,374,343
Expenditures	\$ 13,573,526	\$ 1,199,183	\$	12,374,343

* Total differs from revenue total in the Amended Budget. Variance is related to line 1 of Table 1 of the Amended budget, and is the amount of Sales Tax we anticipate will transfer to fund balance at Year-end.

** Expenditures are \$889,941 higher than amount shown in Amended Budget, and are a roll-forward from Fiscal Year 2019-20



Contract Summary

Active Contracts as of June 1, 2021

Contractor	Scope	Fiscal Year 20/21 Projected	Fiscal Year 20/21 Actuals-To-Date
A.J. Janitorial Service	Janitorial Services for all Stations, Roblar, ROC, and Fulton	\$109,500.00	\$84,600.00
AI-Media, Inc.	As Needed Live Captioning Services for Public Meetings	\$7,500.00	\$4,005.00
Air Technology West	Maintenance and On-Call Repair for Air Compressors	\$7,856.00	\$2,995.00
Alcohol & Drug Testing Services, LLC	DOT Drug and Alcohol Testing	\$25,000.00	\$10,703.00
Allen, Glaessner, Hazelwood LLP	Legal Services for Litigation and Rail Transit Issues	\$10,500.00	\$0.00
Alliant Insurance Services	Insurance Brokerage and Risk Management Services	\$70,000.00	\$0.00
American Integrated Services, INC.	On-Call Biohazard Remediation Services	\$50,000.00	\$0.00
American Rail Consultants, Inc.	Railroad Bridge Engineering, Inspection, & Design	\$40,000.00	\$21,094.00
Aramark Uniform Services	Employee Uniform Provider and Cleaning Service	\$18,000.00	\$16,227.00
Asbury Environmental Services (AES)	Recycling & Disposal Service for Used Oil, Fuel Filters, Rags, and Related Equipment	\$20,253.00	\$1,460.00
Barbier Security Group	Security Patrol Services along Right-of-Way	\$74,825.00	\$0.00
Barnes & Company, LLC	Safety Outreach Services	\$15,100.00	\$15,100.00
Becoming Independent	Emergency Bus Bridge Services	\$50,000.00	\$9,000.00
Bettin Investigations	Background Investigations	\$8,000.00	\$2,894.00
Bright Star Security, Inc.	Security Patrol Services at SMART's Cal Park Tunnel	\$10,440.00	\$8,700.00
Burke, Williams & Sorensen, LLP	Litigation Support Services	\$100,000.00	\$0.00
Business Training Library, LLC	Cloud-Based Learning Courses	\$12,605.00	\$12,605.00
Certified Employment Group	Temporary Staffing Services	\$35,000.00	\$11,187.00
Cinquini & Passarino, Inc.	Right-of-Way Land Surveying and Related Services	\$36,000.00	\$4,128.00
Civic Edge Consulting	Social Media Outreach Strategy Consulting	\$99,975.00	\$57,775.00
CMC Traffic Control Specialists	Flagging and Traffic Control Services for SMART's Maintenance of Way Projects	\$10,000.00	\$8,758.00
Corey, Canapary & Galanis	NTD Compliant Passenger Counting Services	\$26,282.00	\$8,617.00
DeAngelo Brothers, LLC (DBI Services)	Vegetation Control Services	\$38,000.00	\$37,651.00
Delta Wheel Truing Solutions	Modifications to the Wheel Truing Machine	\$34,911.00	\$34,911.00
Doug Williams	Fire and Life Safety Consultant	\$8,000.00	\$1,185.00
Dr. Lance O'Connor	Occupational Health Screening Services	\$3,000.00	\$210.00
Dr. Mark Clementi	Pre-Employment Psychological Evaluations	\$25,000.00	\$14,736.00
eLock Technologies, LLC	Station Bike Lockers and Maintenance Services	\$13,130.00	\$5,565.00
Emily Betts	Transit Planning & Related Services	\$50,000.00	\$23,020.00
Empire Cleaners	Uniform Dry-Cleaning, Laundering, and Related Services	\$40,000.00	\$10,095.00
Emtec Consulting Services, LLC	Oracle Accounting System Support Services	\$15,000.00	\$0.00
Engelke Construction, Inc.	Driveway Approach Construction and Replacement of Concrete Wheel Stops	\$24,193.00	\$24,193.00
Environmental Logistics, INC.	On-Call Biohazard Remediation Services	\$150,000.00	\$0.00
Federated Indians of Graton Rancheria	Tribal Monitoring for Ground-Disturbing Activities - Windsor	\$13,500.00	\$619.00
Gary D. Nelson Associates, Inc.	Temporary Staffing and Placement Services	\$20,000.00	\$0.00
George Hills Company, Inc.	Third Party Claims Administration Services	\$25,000.00	\$3,625.00
GHD, Inc.	3 Segments MUP Petaluma - Penngrove - Rohnert Park	\$1,240,342.00	\$887,576.00
GHD, Inc.	SWPP Compliance, AutoCAD Management, Traffic and Hydraulic Analysis	\$52,371.00	\$31,847.00
Golden Gate Bridge, Highway and Transportation District	Customer Service Support Services	\$30,971.00	\$30,971.00
GP Crane & Hoist Services	Cal/OSHA Crane Inspection Services	\$15,000.00	\$4,104.00
Granicus, Inc.	Media Streaming and Internet Broadcasting Services	\$2,514.00	\$2,514.00
Hanford A.R.C.	Implementation and Monitoring Las Gallinas Creek Riparian Enhancement Plan	\$16,600.00	\$12,136.00
Hanson Bridgett LLP	Legal Services	\$100,000.00	\$61,991.00
Heavy Equipment Transportation, Inc.	Transportation of Heavy Equipment	\$7,350.00	\$5,470.00
Herzog Contracting Corp.	Purchase of Hi-Rail Scrubber Brush Truck	\$458,410.00	\$458,410.00
Hogan Lovells LLP	Legal Services - Freight and Passenger Rail Sector	\$25,000.00	\$13,962.00
Holland Company	Track Geometry and Measurement Services	\$24,000.00	\$24,000.00
Hulcher Services, Inc.	On-Call Derailment Services	\$100,000.00	\$0.00
Innovative Business Solutions	Payroll processing services	\$35,400.00	\$21,695.00
Integrative Security Controls, Inc.	CCTV Maintenance and Support	\$25,000.00	\$0.00
Intelligent Technology Solutions, Inc.	Maximo MMS Implementation and Support Services	\$228,000.00	\$157,222.00
JMA Civil, Inc.	On-Call Civil & Rail Engineering Design Services	\$96,000.00	\$71,825.00
Leete Generators	Generator Maintenance	\$4,829.00	\$4,829.00

Contractor	Scope	Fiscal Year 20/21 Projected	Fiscal Year 20/21 Actuals-To-Date
LM Disability Consulting	Disability Access Consulting	\$12,000.00	\$2,556.00
Masabi LLC	SMART Mobile Ticketing Pilot Project	\$570,000.00	\$47,500.00
MaxAccel	Compliance Management Software Design/Implementation/Asset Management	\$15,785.00	\$13,332.00
Maze & Associates	Financial Audit Services	\$53,116.00	\$43,094.00
MGridner, LLC	Project Management Services	\$30,000.00	\$2,730.00
Michael Seybold dba Farmhouse Teaching Services	First Aid, CPR, and AED Certification Training for Administrative Staff	\$2,000.00	\$1,014.00
Mike Brown Electric Co.	On-Call Electrical Maintenance	\$25,000.00	\$0.00
Militus, Inc.	Cyber Security Services	\$40,000.00	\$40,000.00
Mission Linen Supply	Employee Uniform Services	\$18,000.00	\$7,333.00
Modern Railway Systems, Inc.	Design and Construction of Systems Improvements for the Windsor Extension Project	\$5,000,000.00	\$3,688,807.00
Netspeed Solutions, Inc.	SMART Phone System Maintenance	\$16,118.00	\$11,867.00
Netwoven Inc.	SharePoint Maintenance, Support, Implementation, and Related Services	\$113,000.00	\$68,181.00
Nextdoor Inc.	Use of Nextdoor Platform for Community Notifications	\$19,554.00	\$17,012.00
Nixon Peabody LLP	Bond Counsel Services	\$100,000.00	\$80,000.00
Nixon Peabody LLP	As-Needed Disclosure and Bond Counsel Services	\$10,500.00	\$0.00
North Bay Petroleum	Provision of Fuel for DMUs	\$527,900.00	\$37,930.00
North Bay SAP Services	Substance Abuse Professional Services	\$3,800.00	\$600.00
Occupational Health Centers of CA	Pre-Employment Evaluation Services	\$19,888.00	\$4,985.00
Oracle	Fusion ERP System	\$47,712.00	\$35,784.00
Pamco Machine Works, Inc.	Railroad Wheel Pressing Services	\$174,920.00	\$72,219.00
Parodi Investigative Solutions	Pre-Employment Background Investigation Services	\$18,000.00	\$9,100.00
PFM Financial Advisors, LLC	As-Needed Financial Consultant Services	\$40,000.00	\$0.00
PFM Financial Advisors, LLC	Bond Refinancing Financial Advising Services	\$150,000.00	\$150,000.00
Pivotal Vision, LLC	Security Software Licensing	\$2,200.00	\$2,200.00
Portola Systems, Inc.	SMART Station Network Configuration Services	\$220,545.00	\$209,931.00
Precision Wireless	Tech Support and Maintenance for Land Mobile Radio	\$78,268.00	\$18,081.00
Premier Fall Protection, Inc.	Inspection and Certification Services for SMART's Fall Protection Equipment	\$8,000.00	\$2,784.00
Project Finance Advisory Limited	Freight Service Option Analysis	\$67,726.00	\$34,802.00
Public Financial Mangement, Inc.	Arbitrage Rebate Compliance Services	\$2,000.00	\$2,000.00
Railquip, INC.	Inspection and Certification Services for Portable Electric Lifting Jacks	\$2,000.00	\$1,375.00
Railquip, INC.	Providing Portable Hydraulic Rerailing Equipment, Training, and Related Services	\$147,721.00	\$147,722.00
Santa Rosa Fire Equipment Service, Inc.	SMART Fire Equipment Maintenance	\$5,000.00	\$2,851.00
SEFAC USA	Portable Lifting Jack Inspection and Certification Services	\$8,000.00	\$1,270.00
Sonoma County Fleet Operation Division	Non-Revenue Fleet Maintenance Services	\$70,000.00	\$59,297.00
Sperry Rail Service	Rail Flaw Detection Services	\$13,500.00	\$0.00
SPTJ Consulting	Network Infrastructure, Security, Migration and Setup Services	\$340,470.00	\$120,415.00
Stacy and Witbeck, Inc.	Design/Build Construction of Civil, Track & Structures of Windsor Extension	\$11,389,651.00	\$10,435,182.00
Stacy and Witbeck/Herzog, JV	Design/Build Construction of Civil, Track & Structures Improvements of Larkspur Extension	\$443,166.00	\$443,166.00
Stantec Consulting Services, Inc.	Environmental Permit Management and Construction Compliance Monitoring	\$30,830.00	\$6,439.00
Stericycle, Inc.	Medical Waste Pick-Up and Disposal Services	\$1,836.00	\$0.00
Sue Evans	Real Estate Aquisition, Relocation Services, Appraisal Support, Title Investigation Services	\$17,500.00	\$11,115.00
Sumitomo Corporation	Manufacture & Delivery of Rail Vehicles	\$2,750,000.00	\$0.00
Summit Signal, Inc.	Emergency Call-Out Services for Track and Signals	\$11,056.00	\$9,868.00
Survival CPR & First Aid, LLC	First Aid and CPR Training, AED Compliance Program	\$10,000.00	\$9,454.00
Swiftly, Inc.	AVL Mobile Application and Website Interface	\$8,400.00	\$8,400.00
Testing Engineers, Inc.	Material Failure Analysis on cracked flywheel from DMU	\$4,500.00	\$4,500.00
Trailant, LLC	Online Training Program	\$1,060.00	\$1,060.00
Transportation Analytics	Transit Financial Modeling, Benchmarking, Performance Metrics, Benefit-Cost Analysis, and Strategic Planning Services	\$33,020.00	\$26,010.00
Trillium Solutions, Inc.	Transit Feed Mapping Software	\$1,000.00	\$1,000.00
United Mechanical Incorporated	HVAC Maintenance Services at SMART Facilities	\$8,709.00	\$6,487.00
United Mechanical Incorporated	Repair Air Dryer located at ROC	\$3,317.00	\$3,317.00
United Mechanical Incorporated	HVAC Service, Maintenance and Related Services	\$10,513.00	\$3,545.00
Van Scoyoc Associates	Federal Lobbying Services	\$60,000.00	\$50,000.00

Contractor	Scope	Fiscal Year 20/21 Projected	Fiscal Year 20/21 Actuals-To-Date
VenTek Transit Inc.	Fare Vending Machine Operations and Maintenance Services	\$210,414.00	\$135,541.00
VenTek Transit Inc.	Clipper Vending Machine Operations and Maintenance Services	\$45,746.00	\$42,796.00
VenTek Transit Inc.	Clipper Card Vending Machine Contract Assigned to SMART	\$77,138.00	\$0.00
WBE	Existing CCTV System On-Call Maintenance	\$25,000.00	\$6,707.00
West Coast Arborists, Inc.	Tree Trimming and Tree Removal Services	\$30,000.00	\$0.00
WRA Environmental Consultants	Environmental Permitting, Management, & Support Services	\$189,245.00	\$167,753.00
Ziebarth and Associates, Inc.	Freight Service Consulting Services	\$20,000.00	\$6,469.00
	Totals:	\$27,113,181.00	\$18,539,791.00

Actuals-To-Date includes invoices that have been approved as of May 31, 2021, but may not have been processed in SMART's Financial System.



July 7, 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

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

SUBJECT: Extension of Current General Manager Contract until December 31, 2021.

Dear Board Members:

SUMMARY:

As we commence the recruitment process for our retiring General Manager, our recruiter has informed us that the timeline for an inclusive and thorough national search, will extend into September/October of this year. I have spoken with Mr. Mansourian about the Board's desire to have a smooth transition of leadership and have asked him to continue his service beyond his announced retirement date of August 17. He has graciously agreed to assist in this transition. This overlap will allow the new General Manager time to be sufficiently briefed on the opportunities and challenges the District currently faces.

We recommend that the termination date of the General Manager's current contract be extended from August 17 to December 31, 2021 with all other contract terms remaining the same.

Very truly yours,

/s/

David Rabbitt
Chair

/s/

Barbara Pahre
Vice-Chair

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



July 7, 2021

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Sonoma County Board of Supervisors

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Marin County Council of Mayors and
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Eric Lucan
Transportation Authority of Marin

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Farhad Mansourian
General Manager

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

SUBJECT: Authorize the General Manager to award contracts to BOLT Staffing Service, Inc. and Gary D. Nelson Associates for as-needed temporary staffing services.

Dear Board Members:

RECOMMENDATION:

Authorize the General Manager to award two contracts to provide as-needed temporary staffing services to BOLT Staffing Service, Inc. and Gary D. Nelson Associates, Inc. each with a not-to-exceed amount of \$300,000 for the initial three-year term (FY22-24) and \$100,000 for each option year 1 and 2 (FY25 & 26).

SUMMARY:

During SMART's day-to-day business, temporary staffing support services may be required for either short-term or long-term assignments. Temporary staffing services help support various leaves of absences by staff and other immediate business needs that arise requiring additional personnel. To react quickly to these needs when they arise, SMART's Human Resources team has two firms on contract ready to provide placements on an as-needed basis depending on the skillset required and availability of candidates.

In addition to temporary staffing placements, these firms provide direct-hire recruitment services and pre-employment skills-based testing on an as-needed basis to SMART as part of SMART's regular hiring process.

SMART's two existing contracts for as-needed temporary staffing services expired on June 30, 2021. In anticipation of the contract expirations, SMART issued a Request for Proposal to procure the next two contracts.

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

SMART received proposals from the twenty-five firms listed below:

All About IT, Inc.	Gary D. Nelson Associates, Inc.
Allied Express Solutions	Howroyd-Wright Employment Agency, Inc.
Aneu Strategies Group, Inc.	HS Solutions, Inc.
Bolt Staffing Service, Inc.	Info Way Solutions, LLC
BuzzClan, LLC	Infojini, Inc.
Cambay Consulting, LLC	LanceSoft, Inc.
CathyJon Enterprises, Inc.	MSys, Inc.
CommunityForce, Inc.	Perfect Timing Personnel Services, Inc.
Compunnel Software Group, Inc.	RADgov, Inc.
Datson360, LLC	Solution Staffers, Inc.
Diskriter, Inc.	Tryfacta, Inc.
Elegant Enterprise-Wide Solutions, Inc.	vTech Solutions, Inc.
Flysoft, Inc.	

SMART's evaluation committee reviewed the twenty-five proposals using the evaluation criteria identified in the Request for Proposal. Following the review and evaluation of all proposals received, the evaluation committee is recommending the award of two contracts to best position the District for the next three to five years. The Selection Committee is recommending BOLT Staffing Service, Inc. and Gary D. Nelson Associates, Inc. as the two firms providing the best overall value in terms of qualifications and price to the District. Both firms are local to Sonoma County specializing in providing agencies with local staffing resources. In addition, BOLT Staffing Service, Inc. is a certified Disadvantaged Business Enterprise ("DBE") and small business enterprise ("SBE"). These firms have a proven track record of success and are uniquely equipped to support SMART's ever-changing and growing needs as a new transit agency.

In conclusion, staff is recommending that the Board authorize the General Manager to award two contracts to provide as-needed temporary staffing services to BOLT Staffing Service, Inc. and Gary D. Nelson Associates, Inc. each with a not-to-exceed amount of \$300,000 for the initial three-year term (FY22-24) and \$100,000 for each option year 1 and 2 (FY25 & 26).

FISCAL IMPACT: Funding is included in the Fiscal Year 2021-22 budget and assumed in subsequent years.

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

Very truly yours,

/s/

Ken Hendricks

Procurement Manager

Attachment(s): Agreement No. HR-PS-21-002 – BOLT Staffing Service, Inc.
 Agreement No. HR-PS-21-005 – Gary D. Nelson Associates, Inc.

AGREEMENT FOR CONSULTANT SERVICES

This agreement (“Agreement”), dated as of July __, 2021 (“Effective Date”) is by and between the Sonoma-Marín Area Rail Transit District (hereinafter “SMART”), and Bolt Staffing Service, Inc. (hereinafter “Consultant”).

RECITALS

WHEREAS, Consultant represents that it is duly qualified and experienced in the areas of temporary staffing solutions, pre-employment testing, direct-hire recruitment, and related services; and

WHEREAS, Consultant represents that it is a certified Disadvantaged Business Enterprise (“DBE”) and certified Small Business Enterprise (“SBE”) and will maintain these certifications while under contract with SMART; 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 as-needed temporary staffing services, pre-employment testing, direct-hire recruitment, and support to SMART; and

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

AGREEMENT

ARTICLE 1. RECITALS.

Section 1.01 The above Recitals are true and correct.

ARTICLE 2. LIST OF EXHIBITS.

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

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

ARTICLE 3. REQUEST FOR SERVICES.

Section 3.01 Initiation Conference. SMART’s Human Resources Manager, or assigned designee, will initiate all requests for services through an Initiation Conference, which may be in person, by telephone, or by email.

Section 3.02 Amount of Work. SMART does not guarantee a minimum or

maximum amount of work under this Agreement.

ARTICLE 4. SCOPE OF SERVICES.

Section 4.01 Scope of Work. 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 Human Resources Manager or assigned designee 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.
- (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:

Scott Crossen, Account Manager
Joanne Sanders, President
Camila Matthews, Staffing Coordinator
Stephanie Gutierrez, Staffing Coordinator

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 weekly basis, detailing the temporary employees that were provided to SMART as requested by SMART's Human Resources Manager or assigned designee. SMART shall pay Consultant within 30 days after submission of the invoices.

Section 5.02 Consultant shall be paid in accordance with the rates established in **Exhibit B**; provided, however, that total payments to Consultant shall not exceed \$300,000, without the prior written approval of SMART. Consultant shall submit its invoices in arrears on a weekly basis in a form approved by the Chief Financial Officer. The invoices shall show or include: (i) the name and job classifications for each temporary employee; (ii) the time in quarter hours worked for each temporary employee; (iii) the corresponding hourly rates; (iv) any testing service fees, and (v) all approved timesheets. SMART shall not be liable for invoices that cannot be substantiated by the Consultant. 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 July 7, 2024, with two (2) one-year options to extend 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.

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

Section 9.04 Professional Liability Insurance (Errors & Omissions). Professional Liability insurance with limit no less than \$1,000,000 per occurrence or claim, and \$2,000,000 aggregate.

Section 9.05 Endorsements. Prior to commencing work, Consultant shall file Certificate(s) of Insurance with SMART evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. Said endorsements and Certificate(s) of Insurance shall stipulate:

- (a) SMART, its officers, and employees shall be named as additional insured on all policies listed above, with the exception of 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 9.06 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 Human Resources 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 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 Manager:	Sonoma-Marín Area Rail Transit District Attn: Lisa Hansley 5401 Old Redwood Highway, Suite 200 Petaluma, CA 94954 lhansley@sonomamarintrain.org 707-794-3039
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If to SMART Billing:	Sonoma-Marín Area Rail Transit District Attn: Accounts Payable 5401 Old Redwood Highway, Suite 200 Petaluma, CA 94954 billing@sonomamarintrain.org 707-794-3330
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If to Consultant:	Bolt Staffing Service, Inc. Attn: Scott Crossen 955 Broadway Sonoma, CA 95476 scrossen@sonomamarintrain.org 707-787-8057
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When a notice, invoice or payment is given by a generally recognized overnight courier service, the notice, invoice or payment shall be deemed received on the next business day. When a copy of a notice, invoice or payment is sent by facsimile or email, the notice, invoice or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, invoice or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, invoices and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

ARTICLE 16. MISCELLANEOUS PROVISIONS.

Section 16.01 No Waiver of Breach. The waiver by SMART of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term

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

Section 16.02 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. 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: BOLT STAFFING SERVICE, INC.

By: _____
Anthony Pizziol, Chief Operating Officer

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 Manager

Date: _____

APPROVED AS TO FORM FOR SMART:

By: _____
District Counsel

Date: _____

EXHIBIT A

SCOPE OF WORK & TIMELINE

I. Overview

Bolt Staffing Service, Inc. ("Consultant") is being contracted with to provide as-needed temporary staffing services with the primary objective of providing SMART with qualified and competent temporary personnel on a timely basis. Consultant shall also provide SMART with pre-employment testing services for SMART's regular hire program, as well as, direct-hire recruitment services on an as-needed basis.

II. Project Management

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

III. Scope of Work

A. Temporary Staffing Service Requests

- a. SMART's Human Resources Manager, or designee, will submit a request to the Consultant's dedicated contact person(s) in charge of coordinating requests for SMART.

- i. SMART will make every opportunity to give as much notice as possible prior to the temporary staffing need. The minimum notice shall be 24-hours in advance.

Consultant shall begin working on the request within two (2) hours of receiving notice from the SMART Manager or designated personnel. For non-urgent needs, Consultant shall be expected to fill entry level and mid-level staffing needs within two (2) to four (4) calendar days. For urgent needs, Consultant is capable of filling next-day needs.

- ii. Each request for temporary staffing services to the Consultant will include the following elements:

- 1. Job Type or Classification
 - 2. Skills & Qualifications Required
 - 3. Any Special Testing or Background Check Requirements
 - 4. SMART Facility Location
 - 5. Start Date
 - 6. Estimated Length of Assignment
 - 7. Any other requirements SMART might have (Ex. Requiring a temporary employee to sign a Confidentiality & Non-Disclosure Agreement prior to the start of work).

- iii. SMART may request temporary employee assistance at any of its facilities, including but not limited to the following locations:

1. SMART's Headquarter Office
5401 Old Redwood Hwy, Suite 200, Petaluma, CA 94954
 2. SMART's Rail Operation Center
3748 Regional Parkway, Santa Rosa, CA 95403
 3. SMART's Maintenance of Way Facility
1200 River Road, Fulton, CA 95439
- b. Consultant shall provide SMART's Human Resources Manager, or designee, with a list of qualified and trained temporary employees available who meet the minimum qualifications and skill sets required by SMART and have passed both the reference and background checks. The Consultant shall include the hourly rate of the proposed candidate that is within the range identified in the Exhibit B "Schedule of Rates" depending on experience and qualifications. SMART's Manager shall review the proposed candidates and rates proposed.
- i. Consultant shall comply with all applicable federal and state privacy protection laws and ensure that the available temporary staffing personnel have passed both the reference and background check, including criminal history checks, prior to the start date of the assignment. This service will be provided to SMART at no additional cost.
 - ii. The Consultant shall be required to ensure that all personnel supplied, who are required by law, regulation, or standard to possess a qualification of licensure, registration, credentials, licensure and/or certifications prior to temporary placement have current and active status and are in good standing.
- Consultant shall be expected to maintain a current file for each employee and shall provide a copy of the employee's credentials and/or license upon SMART's request.
- iii. Temporary employees required to drive a vehicle while working for SMART must have a clean driving record and hold all required licenses. These employees must pass a driver record check as a part of the background check conducted by the temporary service Contractor.

B. Direct-Hire Recruitment

SMART may request direct-hire recruitment services from Consultant while under Agreement.

- a. Process

- i. SMART's Human Resources Manager, or designee, will submit a request to the Consultant's dedicated contact person(s) in charge of coordinating requests for SMART.
- ii. Each request for direct hire recruiting services to the Consultant will include the following elements:
 1. Job Type and Classification
 2. Skills & Qualifications Required
 3. Any other requirements or information deemed necessary by SMART's Human Resources Manager
- iii. Consultant shall perform the following process:
 1. Post direct hire position
 2. Source and Connect with Candidates
 3. Interview Candidates
 4. Perform Pre-Employment Screens (if required)
 5. Present Candidate to SMART

C. Reporting Requirements

a. Summary and Analysis of Placements

At SMART's request, the Consultant shall be responsible for furnishing a summary and analysis of the Consultant's placements for a specified period to be determined by SMART.

This report shall include total hours worked during the month by name, classification, pay rate, and bill rate with a running total of hour's worked and amount paid per fiscal year (July 1-June 30).

b. Audit Reports

The Consultant's performance of the contract may be subject to audit by SMART. The Consultant shall make available to SMART's Finance Department all records and information necessary for the performance of such audit. Such audit will be performed in compliance with generally accepted auditing standards. Reports rendered will adhere to the confidentiality provisions (if any) in the contract.

D. General Requirements

a. Personnel Skills

Consultant shall provide access to a wide range of employee skills including but not limited to: Microsoft Word, Microsoft Excel, Microsoft Access, Microsoft PowerPoint, Bilingual Skills, and manual labor experience.

b. Application Process

Consultant shall agree to perform ongoing recruitment outreach and maintain an application process, which includes skill assessment and evaluation, custom matching of employees to job requirements, and reference checking of prospective employees.

c. Background Checks & Reference Checks

Consultant shall conduct reference checks and background checks, including criminal history checks, on all temporary employees during the Consultant's application process.

d. Temporary Employee Conduct

All temporary employees shall be required to be on-time for work, be courteous and respectful to SMART employees and members of the public they interact with, respect all SMART's property, and maintain a professional appearance at all times.

e. Timesheet Approval Process

Consultant shall maintain a timecard submittal and approval type process that is regularly monitored for accuracy. An electronic timecard submittal and approval process is preferred. Consultant shall provide training to SMART's Human Resources Manager.

f. Transfer of Temporary Employee(s) by SMART

SMART shall be allowed to transfer temporary employee(s) within the District (where needed) upon notification by telephone or email to the Consultant. This service shall be at no additional cost to SMART.

g. SMART Referred Applicant ("Payroll Service")

SMART shall be allowed to request a specific individual, when available, to fill a temporary need. Consultant shall charge the rate identified in the "SMART Referred Employees ("Payrolling Service")" section of the Exhibit B "Schedule of Rates".

h. Use of Testing Services

Throughout the term of this Agreement, SMART will be granted the use of Consultant's online software skills assessment testing programs for use during SMART's standard hiring process for regular positions.

Consultant's tests are broken down into two categories: 1) Job Tests and 2) Skill Tests.

Job Tests: Assessments that combine multiple subjects needed for a wide range of job positions, such as but not limited to the following:

1. Call Center Operator
2. Administrative Specialist
3. Office Manager
4. Accounting Clerk
5. IT Systems Support Analyst.

Subject Tests: Single-subject predefined tests, suitable for testing candidates at all levels in-depth on a single subject. These subjects include, but are not limited to the following:

1. Project Management
2. Accounting and Bookkeeping Principles
3. Microsoft Office (Word, Excel, PowerPoint, etc.)
4. Language Tests (English, Spanish, French, German, etc.)
5. Basic Math
6. Typing

Consultant has over 1,000 tests that SMART can utilize to qualify candidates for positions. SMART will work with Consultant on which tests shall be utilized on a case-by-case basis. This service is provided to SMART at no additional charge.

i. Guarantees

i. Temporary Staffing Guarantee

Provide a 24-hour guarantee of no charge in the event a temporary employee placed is unsatisfactory and the department requests a replacement within the first 24-hour period.

ii. Direct Hire Guarantee

30-Day Money-Back Guarantee (Full Refund Back, including the Deposit). This applies if employee who is hired leaves within 30 days or if SMART terminates employee within 30 days of first day.

90-Day Replacement Guarantee at no additional cost to SMART.

j. Administration Requirements

- i. Consultant shall provide the administration and maintenance of all employment and payroll records, and payroll processing for temporary employees.
- ii. Consultant shall manage and process all paperwork and be responsible for all costs related to social security, state and federal withholding taxes, unemployment claims, and workers compensation claims for all temporary workers placed resulting from this contract.

- iii. Consultant shall handle and process all billing for temporary service placements with SMART.
- iv. Temporary employee loss of required licenses, certifications, etc.

The Consultant shall immediately notify SMART's Human Resources Manager, or designee, should any personnel supplied under this contract, loses their credentials, licensure, and/or certifications required to perform the job while working for SMART.

k. Nondiscrimination

Consultant shall adhere and comply with all state and federal laws with respect to discrimination in employment and shall not discriminate against any individual in a protected class.

l. Patient Protection and Affordable Care Act

Consultant shall comply with the provisions of the Patient Protection and Affordable Care Act.

m. Immigration and Control Act of 1986

Consultant shall comply with the provisions of the Immigration and Control Act of 1986 by verifying the employment eligibility of each temporary employee.

IV. **Deliverables and Timelines**

Consultant shall begin working on each staffing request within two (2) hours of receiving notice from the SMART Manager or designated personnel.

For non-urgent needs as identified by SMART's Manager during the request, Consultant shall be expected to fill entry level and mid-level staffing needs within two (2) to four (4) calendar days.

For urgent needs as identified by SMART's Manager during the request, Consultant is capable of filling next-day.

All other deliverables and timelines related to each service request will be provided to Consultant in writing and requires mutual agreement by both parties.

V. **Acceptance Criteria**

SMART's Human Resources Manager shall review the work performed under this Agreement to ensure it meets the requirements of the contract. In the event that any work is found to be defective, Consultant shall replace the defective work at no additional cost to SMART.

EXHIBIT B SCHEDULE OF RATES

Consultant shall use the rates established in this Exhibit B “Schedule of Rates” to propose hourly rates for temporary staffing candidates depending on the job classification, availability, qualifications, and experience. SMART’s Manager must approve the hourly rate proposed for all candidates. The rates identified below shall be held for the duration of the contract, including all option years.

Non-SMART Referred Employees

Job Classifications	Base Hourly Rate Range, \$	Overhead Rate Range, \$	Margin %	Total Hourly Bill Rate, \$
Administrative Assistant	17 - 22	2.72 - 3.52	12.8%	22.61 - 29.26
Administrative Manager	28 - 35	4.48 - 5.6	12.8%	37.24 - 46.55
Executive Assistant	24 - 30	3.84 - 4.8	12.8%	31.92 - 39.9
HR Administrator	17 - 22	2.72 - 3.52	12.8%	22.61 - 29.26
HR Manager	23 - 29	3.68 - 4.64	12.8%	30.59 - 38.57
Contract Administrator	24 - 28	3.84 - 4.48	12.8%	31.92 - 37.24
Receptionist	17 - 22	2.72 - 3.52	12.8%	22.61 - 29.26
Customer Service Representative	17 - 22	2.72 - 3.52	12.8%	22.61 - 29.26
Customer Service Manager	23 - 27	3.68 - 4.32	12.8%	30.59 - 35.91
Operations Assistant	17 - 22	2.72 - 3.52	12.8%	22.61 - 29.26
Operations Supervisor	23 - 27	3.68 - 4.32	12.8%	30.59 - 35.91
Data Entry Specialist	17 - 22	2.72 - 3.52	12.8%	22.61 - 29.26
Payroll Specialist	18 - 23	2.88 - 3.68	12.8%	23.94 - 30.59
Payroll Manager	26 - 30	4.16 - 4.8	12.8%	34.58 - 39.9
A/R Specialist	19 - 24	3.04 - 3.84	12.8%	25.27 - 31.92
A/P Specialist	19 - 24	3.04 - 3.84	12.8%	25.27 - 31.92
Staff Accountant	24 - 32	3.84 - 5.12	12.8%	31.92 - 42.56
Accounting Manager	28 - 40	4.48 - 6.4	12.8%	37.24 - 53.2
Controller	45 - 75	7.2 - 12	12.8%	59.85 - 99.75
Financial Analyst	24 - 27	3.84 - 4.32	12.8%	31.92 - 35.91
Finance Manager	32 - 45	5.12 - 7.2	12.8%	42.56 - 59.85
Finance Director	50 - 80	8 - 12.8	12.8%	66.5 - 106.4

The Overhead Rate includes all payroll taxes, workers compensation insurance, unemployment insurance, ACA Compliance, Sick Pay, COVID-19 leave, and administrative costs, including Reference Checks, Skill Assessments, Sex Offender Checks, Social Security Checks, Education Verifications, and Employment verifications.

SMART Referred Employees (“Payrolling Service”)

Job Classification	Base Hourly Rate Range, \$	Margin %	Total Hourly Bill Rate Range, \$
Administrative Assistant	17 - 22	10.08%	21.93 - 28.38
Administrative Manager	28 - 35	10.08%	36.12 - 45.15
Executive Assistant	24 - 30	10.08%	30.96 - 38.7
HR Administrator	17 - 22	10.08%	21.93 - 28.38
HR Manager	23 - 29	10.08%	29.67 - 37.41
Contract Administrator	24 - 28	10.08%	30.96 - 36.12
Receptionist	17 - 22	10.08%	21.93 - 28.38
Customer Service Representative	17 - 22	10.08%	21.93 - 28.38
Customer Service Manager	23 - 27	10.08%	29.67 - 34.83
Operations Assistant	17 - 22	10.08%	21.93 - 28.38
Operations Manager	23 - 27	10.08%	29.67 - 34.83
Data Entry Specialist	17 - 22	10.08%	21.93 - 28.38
Payroll Specialist	18 - 23	10.08%	23.22 - 29.67
Payroll Manager	26 - 30	10.08%	33.54 - 38.7
A/R Specialist	19 - 24	10.08%	24.51 - 30.96
A/P Specialist	19 - 24	10.08%	24.51 - 30.96
Staff Accountant	24 - 32	10.08%	30.96 - 41.28
Accounting Manager	28 - 40	10.08%	36.12 - 51.6
Controller	45 - 75	10.08%	58.05 - 96.75
Financial Analyst	24 - 27	10.08%	30.96 - 34.83
Finance Manager	32 - 45	10.08%	41.28 - 58.05
Finance Director	50 - 80	10.08%	64.5 - 103.2

Additional Services

Service	Description	Fee	Unit of Measure
Background Check	7-Year Criminal Exam	\$150.00	USD
Reference Check	Contact Professional References	\$0.00	USD
DMV Record	Check for Points, DUIs, other Driving Infractions	\$20.00	USD
Drug Screening	Exam for all Schedule I controlled substances	\$25.00	USD
Skills Testing	Range of Skill Assessments applicable to all job classifications	\$0.00	USD
Sex Offender Check	Check Megan's Law Registration	\$0.00	USD
Social Security Screen	Confirm Identity & Employment Eligibility	\$0.00	USD
Education Verification	Confirm bachelor's and post-graduate degrees	\$0.00	USD
Employment Verification	Confirm employment with Prior Employers	\$0.00	USD

Direct-Hire Fee Schedule

Deposit: \$500.00 Non-Refundable Deposit due prior to the start of the recruitment

Fee: 20% of Employee Annual Salary (\$500 Deposit is applied to this Fee)

EXHIBIT C

FTA & DOT REQUIREMENTS

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

1. General.

In performance of its obligations pursuant to this Agreement or Purchase Order [Hereinafter “Agreement”], the Contractor, 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. 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.

4. 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.

5. 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.

6. 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: BOLT Staffing Service, Inc.

Print Name: _____

Title: _____

Signature: _____

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. Suspension and Debarment.

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

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

Suspension and Debarment Certificate

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

This certification is a material representation of fact relied upon by SMART. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to SMART, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a similar provision requiring such compliance in its lower tier covered transaction.

Company Name: BOLT Staffing Service, Inc.

By: _____

Print Name: _____

Title: _____

Date: _____

14. 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.

15. 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.

16. Performance During Dispute.

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

17. 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.

18. 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.

19. 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.

20. 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 0.3%.

(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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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

38. 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.

AGREEMENT FOR CONSULTANT SERVICES

This agreement (“Agreement”), dated as of July ___, 2021 (“Effective Date”) is by and between the Sonoma-Marín Area Rail Transit District (hereinafter “SMART”), and Gary D. Nelson Associates, Inc. (hereinafter “Consultant”).

RECITALS

WHEREAS, Consultant represents that it is duly qualified and experienced in the areas of temporary staffing solutions, pre-employment testing, direct-hire recruitment, 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 as-needed temporary staffing services, pre-employment testing, direct-hire recruitment, and support to SMART.

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

AGREEMENT

ARTICLE 1. RECITALS.

Section 1.01 The above Recitals are true and correct.

ARTICLE 2. LIST OF EXHIBITS.

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

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

ARTICLE 3. REQUEST FOR SERVICES.

Section 3.01 Initiation Conference. SMART’s Human Resources Manager, or assigned designee, will initiate all requests for services through an Initiation Conference, which may be in person, by telephone, or by email.

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

ARTICLE 4. SCOPE OF SERVICES.

Section 4.01 Scope of Work. 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 Human Resources Manager or assigned designee 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.
- (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:

Mary Bartholomew, Regional Vice President
Rachel Ramirez, Recruiting Manager

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 weekly basis, detailing the temporary employees that were provided to SMART as requested by SMART's Human Resources Manager or assigned designee. SMART shall pay Consultant within 30 days after submission of the invoices.

Section 5.02 Consultant shall be paid in accordance with the rates established in **Exhibit B**; provided, however, that total payments to Consultant shall not exceed \$300,000, without the prior written approval of SMART. Consultant shall submit its invoices in arrears on a weekly basis in a form approved by the Chief Financial Officer. The invoices shall show or include: (i) the name and job classifications for each temporary employee; (ii) the time in quarter hours worked for each temporary employee; (iii) the corresponding hourly rates; (iv) any testing service fees, and (v) all approved timesheets. SMART shall not be liable for invoices that cannot be substantiated by the Consultant. 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 July 7, 2024, with two (2) one-year options to extend 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.

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

Section 9.04 Professional Liability Insurance (Errors & Omissions). Professional Liability insurance with limit no less than \$1,000,000 per occurrence or claim, and \$2,000,000 aggregate.

Section 9.05 Endorsements. Prior to commencing work, Consultant shall file Certificate(s) of Insurance with SMART evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. Said endorsements and Certificate(s) of Insurance shall stipulate:

- (a) SMART, its officers, and employees shall be named as additional insured on all policies listed above, with the exception of 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 9.06 Deductibles and Retentions. Consultant shall be responsible for

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

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

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

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

- (a) Properly executed Certificates of Insurance clearly evidencing all coverages and limits required above. Said Certificates shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current Certificates of Insurance evidencing the above-required coverages and limits on file with SMART for the duration of this Agreement.
- (b) Copies of properly executed endorsements required above for each policy. Said endorsement copies shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current endorsements evidencing the above-specified requirements on file with SMART for the duration of this Agreement.
- (c) 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 Human Resource 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 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 Manager:

Sonoma-Marín Area Rail Transit District
Attn: Lisa Hansley
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954

lhansley@sonomamarintrain.org
707-794-3330

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
707-794-3039

If to Consultant:

Gary D. Nelson Associates, Inc.
Attn: Rachel Ramirez
5341 Old Redwood Hwy, Suite 340
Petaluma, CA 94954
rramirez@nelsonstaffing.com
707-576-1670

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.

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

CONSULTANT: GARY D. NELSON ASSOCIATES, INC.

By: _____
Joe Prusko, Chief Financial Officer

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 Manager

Date: _____

APPROVED AS TO FORM FOR SMART:

By: _____
District Counsel

Date: _____

EXHIBIT A

SCOPE OF WORK & TIMELINE

I. Overview

Gary D. Nelson Associates, Inc. is being contracted with to provide as-needed temporary staffing services with the main objective of providing SMART with qualified and competent temporary personnel on a timely basis. Consultant shall also provide SMART with pre-employment testing services for SMART's regular hire program, as well as direct-hire recruitment services on an as-needed basis.

II. Project Management

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

III. Scope of Work

A. Temporary Staffing Service Requests

- a. SMART's Human Resources Manager, or designee, will submit a request to the Consultant's dedicated contact person(s) in charge of coordinating requests for SMART.
 - i. SMART will make every opportunity to give as much notice as possible prior to the temporary staffing need; however, the minimum notice shall be 24 hours in advance.
 - ii. Each request for temporary staffing services to the Consultant will include the following elements:
 1. Job Type or Classification
 2. Skills & Qualifications Required
 3. Any Special Testing or Background Check Requirements
 4. SMART Facility Location
 5. Start Date
 6. Estimated Length of Assignment
 7. Any other requirements SMART might have (Ex. Requiring a temporary employee to sign a Confidentiality & Non-Disclosure Agreement prior to the start of work).
 - iii. SMART may request temporary employee assistance at any of its facilities, including but not limited to the following locations:
 1. SMART's Headquarter Office
5401 Old Redwood Hwy, Suite 200, Petaluma, CA 94954
 2. SMART's Rail Operation Center
3748 Regional Parkway, Santa Rosa, CA 95403

3. SMART's Maintenance of Way Facility
1200 River Road, Fulton, CA 95439

b. Consultant shall provide SMART's Human Resources Manager, or designee, a list of qualified and trained temporary employees available who meet the minimum qualifications and skill sets required by SMART and have passed both the reference and background checks. The Consultant shall include the hourly rate of the proposed candidate that is within the range identified in the Exhibit B "Schedule of Rates" depending on experience and qualifications. SMART's Manager shall review the proposed candidates and rates proposed.

i. Consultant shall comply with all applicable federal and state privacy protection laws and ensure that the available temporary staffing personnel have passed both the reference and background check, including criminal history checks, prior to the start date of the assignment. This service will be provided to SMART at no additional cost.

ii. The Consultant shall be required to ensure that all personnel supplied, who are required by law, regulation, or standard to possess a qualification of licensure, registration, credentials, licensure and/or certifications prior to temporary placement have current and active status and are in good standing.

Consultant shall be expected to maintain a current file for each employee and shall provide a copy of the employee's credentials and/or license upon SMART's request.

iii. Temporary employees required to drive a vehicle while working for SMART must have a clean driving record and hold all required licenses. These employees must pass a driver record check as a part of the background check conducted by the temporary service Contractor.

B. Direct-Hire Recruitment

SMART may request direct-hire recruitment services from Consultant while under Agreement.

a. Process

i. SMART's Human Resources Manager, or designee, will submit a request to the Consultant's dedicated contact person(s) in charge of coordinating requests for SMART.

- ii. Each request for direct hire recruiting services to the Consultant will include the following elements:
 - 1. Job Type and Classification
 - 2. Skills & Qualifications Required
 - 3. Any other requirements or information deemed necessary by SMART's Human Resources Manager
- iii. Consultant shall perform the following process:
 - 1. Post direct hire position
 - 2. Source and Connect with Candidates
 - 3. Interview Candidates
 - 4. Perform Pre-Employment Screens (if required by)
 - 5. Present Candidate to SMART

C. Reporting Requirements

a. Summary and Analysis of Placements

At SMART's request, the Consultant shall be responsible for furnishing a summary and analysis of the Consultant's placements for a specified period to be determined by SMART.

This report shall include total hours worked during the month by name, classification, pay rate, and bill rate with a running total of hour's worked and amount paid per fiscal year (July 1-June 30).

b. Audit Reports

The Consultant's performance of the contract may be subject to audit by SMART. The Consultant shall make available to SMART's Finance Department all records and information necessary for the performance of such audit. Such audit will be performed in compliance with generally accepted auditing standards. Reports rendered will adhere to the confidentiality provisions (if any) in the contract.

D. General Requirements

a. Personnel Skills

Consultant shall provide access to a wide range of employee skills including but not limited to: Microsoft Word, Microsoft Excel, Microsoft Access, Microsoft PowerPoint, Bilingual Skills, and manual labor experience.

b. Application Process

Consultant shall agree to maintain an application process, which includes skill assessment and evaluation, custom matching of employees to job requirements, and reference checking of prospective employees.

c. Background Checks & Reference Checks

Consultant shall conduct reference checks and background checks, including criminal history checks, on all temporary employees during the Consultant's application process.

d. Temporary Employee Conduct

All temporary employees shall be required to be on-time for work, be courteous and respectful to SMART employees and members of the public they interact with, respect all SMART's property, and maintain a professional appearance at all times.

e. Timesheet Approval Process

Consultant shall maintain a timecard submittal and approval type process that is regularly monitored for accuracy. An electronic timecard submittal and approval process is preferred. Consultant shall provide training to SMART's Human Resources Manager.

f. Transfer of Temporary Employee(s) by SMART

SMART shall be allowed to transfer temporary employee(s) within the District (where needed) upon notification by telephone or email to the Consultant. This service shall be at no additional cost to SMART.

g. SMART Referred Applicant ("Payroll Service")

SMART shall be allowed to request a specific individual, when available, to fill a temporary need. Consultant shall charge the rate identified in the "SMART Referred Employees ("Payrolling Service")" section of the Exhibit B "Schedule of Rates".

h. Use of Testing Services

During the term of this Agreement, SMART may request the use of Consultant's online software skills assessment testing as part of SMART's standard hiring process for regular positions. Consultant shall allow SMART the use of its pre-employment testing assessments. Available assessments include, but are not limited to, the following:

1. Software Programs (Including the entire Microsoft Suite)
2. Typing
3. Grammar
4. Basic Math Calculations
5. Data Entry
6. Accounting Terminology

7. Entry Level to Advanced Accounting Knowledge

These assessments shall be invoiced to SMART based on the rates established in Exhibit B.

i. Guarantee

i. Temporary Staffing Guarantee

Provide a 24-hour guarantee of no charge in the event a temporary employee placed is unsatisfactory and the department requests a replacement within the first 24-hour period.

j. Administration Requirements

- i. Consultant shall provide the administration and maintenance of all employment and payroll records, and payroll processing for temporary employees.
- ii. Consultant shall manage and process all paperwork and be responsible for all costs related to social security, state and federal withholding taxes, unemployment claims, and workers compensation claims for all temporary workers placed resulting from this contract.
- iii. Consultant shall handle and process all billing for temporary service placements with SMART.
- iv. Temporary employee loss of required licenses, certifications, etc.

The Consultant shall immediately notify SMART's Human Resources Manager, or designee, should any personnel supplied under this contract, loses their credentials, licensure, and/or certifications required to perform the job while working for SMART.

k. Nondiscrimination

Consultant shall adhere and comply with all state and federal laws with respect to discrimination in employment and shall not discriminate against any individual in a protected class.

l. Patient Protection and Affordable Care Act

Consultant shall comply with the provisions of the Patient Protection and Affordable Care Act.

m. Immigration and Control Act of 1986

Consultant shall comply with the provisions of the Immigration and Control Act of 1986 by verifying the employment eligibility of each temporary employee.

IV. Deliverables and Timelines

Consultant shall begin working on each staffing request within two (2) hours of receiving notice from the SMART Manager or designated personnel. Consultant shall provide SMART's Manager with an anticipated timeline for filling each service request based on the urgency of the need as determined by SMART.

All deliverables and timelines related to each service request will be provided to Consultant in writing and requires mutual agreement by both parties.

V. Acceptance Criteria

SMART's Human Resources Manager shall review the work performed under this Agreement to ensure it meets the requirements of the contract. In the event that any work is found to be defective, Consultant shall replace the defective work at no additional cost to SMART.

EXHIBIT B SCHEDULE OF RATES

Consultant shall use the rates established in this Exhibit B “Schedule of Rates” to propose hourly rates for temporary staffing candidates depending on the job classification, availability, qualifications, and experience. SMART’s Manager must approve the hourly rate proposed for all candidates. The rates identified below shall be held for the duration of the contract, including all option years.

Non-SMART Referred Employees

Job Classification	Base Hourly Rate	Overhead Rate	Margin%	Total Hourly Bill Rate
Reception	\$18-\$23	\$5.35-\$6.83	38.30%	\$30.24-\$38.64
Administrative Assistant	\$20 - \$25	\$5.94-\$7.43	38.28%	\$33.36-\$42.00
Data Entry	\$18 -\$23	\$5.35-\$6.83	38.30%	\$30.24-\$38.64
Accounting Specialist	\$23-\$26	\$6.83-\$7.72	44.58%	\$40.08 – \$45.31
Staff Accountant	\$28-\$34	\$8.32-\$10.10	44.56%	\$48.79 – \$ 59.25
Senior Accountant	\$33.65-\$40.85	\$9.99 – \$12.13	44.55%	\$58.64 – \$71.18

The Overhead Rate includes the following: FICA, FUTA, Medicare, Workers Comp, Insurance, Misc (benefits, screenings, government mandated training), and recruiting.

SMART Referred Employees (“Payrolling Service”)

Job Classification	Base Hourly Rate	Overhead Rate	Margin%	Total Hourly Bill Rate
Reception	\$18-\$23	\$4.63-\$5.91	19.32%	\$26.10-\$33.35
Administrative Assistant	\$20 - \$25	\$5.14-\$6.43	19.28%	\$29.0-\$36.25
Data Entry	\$18 -\$23	\$4.63-\$5.91	19.32%	\$26.10-\$33.35
Accounting Specialist	\$23- \$26	\$5.91-\$6.68	19.31%	\$33.35-\$37.70
Staff Accountant	\$28-\$34	\$7.20-\$8.74	19.29%	\$40.60-\$49.30
Senior Accountant	\$33.65-\$40.85	\$8.65-\$10.50	18.07%	\$48.79-\$59.23

The Overhead Rate includes the following: FICA, FUTA, Medicare, Workers Comp, Insurance, Misc (benefits, screenings, government mandated training), and recruiting.

Additional Services

Service	Fee	Unit of Measure
Pre-Employment Testing	\$10.00	Per Assessment

Direct-Hire Fee Schedule

Direct Hire Fee = 25% of the annual salary.

Each placement is guaranteed for sixty (60) days, effective the day the candidate begins. If the SMART terminates the employee for cause or the employee voluntarily resigns during the first 60 calendar days, the fee will be prorated at 1/60th of the original fee for each

consecutive calendar day employed, and the portion of the fee that exceeds that amount will be refunded.

Temp to Hire Conversion Terms

The fee to hire Consultant's temporary employees on a full-time basis is as follows. The fee will be 25% of the employee's expected base salary based on the schedule below. Part-time roles have a minimum fee of \$5,500.

Note: There is not a guarantee for a temporary-to-hire placement.

Hours	Credit
0-180	No Credit
181-360	Credit Equal to 25% of the Fee
361-540	Credit Equal to 50% of the Fee
541-720	Credit Equal to 75% of the Fee
720 +	\$1,000 Conversion Fee

EXHIBIT C FTA & DOT REQUIREMENTS

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

1. General.

In performance of its obligations pursuant to this Agreement or Purchase Order [Hereinafter “Agreement”], the Contractor, 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. 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 loading 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.

4. 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.

5. 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.

6. 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,
GARY D. NELSON ASSOCIATES, INC.
AGREEMENT No. HR-PS-21-005

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: Gary D. Nelson Associates, Inc.

Print Name: _____

Title: _____

Signature: _____

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. Suspension and Debarment.

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

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

Suspension and Debarment Certificate

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

This certification is a material representation of fact relied upon by SMART. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to SMART, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a similar provision requiring such compliance in its lower tier covered transaction.

Company Name: Gary D. Nelson Associates, Inc.

By: _____

Print Name: _____

Title: _____

Date: _____

14. 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.

15. 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.

16. Performance During Dispute.

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

17. Claims for Damages.

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

18. 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.

19. 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.

20. 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 0.3%.

(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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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

38. 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.