



**BOARD OF DIRECTORS  
MEETING AGENDA  
September 1, 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, August 31, 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 July 21, 2021 Board Minutes
3. Board Member Announcements
4. General Manager’s Report
5. Public Comment on Non-Agenda Items
6. Consent Calendar
  - a. Accept Monthly Ridership Report - July 2021
  - b. Approval of Monthly Financial Reports - June 2021

## Regular Calendar

7. Authorize the General Manager to Award Contract No. OP-PS-21-004 to Modern Railway Systems for Track Driver Extra (TDX) Dispatch System Technical Support Services, Rail Network Technical Support Services and Rail Network Management System Implementation for an initial term of one year, with a total not-to-exceed amount of \$157,000
8. Authorize the General Manager to Execute Contract Amendment No. 1 with Nossaman, LLP for specialized legal support services in the amount of \$200,000, for a contract not-to-exceed the amount of \$275,000
9. Approve a Resolution Amending the Fiscal Year 2021-22 Budget by Budgeting \$3,151,221 in projected American Rescue Plan (ARP) Funding; Authorize additional spending authority of \$427,907; and Authorize Position Changes
10. Approve a Resolution Amending District Hiring Policy and Procedure to include Proof of COVID-19 Vaccination as a Condition of New Employment
11. Next Regular Meeting of the Board of Directors, September 15, 2021 – 1:30 PM
12. Adjournment

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### 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](mailto: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  
July 21, 2021 - 1:30 PM**

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

**MEMBERS OF THE PUBLIC MAY NOT ATTEND THIS MEETING IN PERSON**

1. Call to Order

Chair Rabbitt called the meeting to order at 1:32pm. Directors Colin, Connolly, Fudge, Garbarino, Gorin, Hillmer, Lucan and Rogers were present; Directors Bagby and Pahre joined later; Director Arnold absent.

2. Approval of the July 7, 2021 Board Minutes

**MOTION:** Director Lucan moved approval of July 7, 2021 Board Minutes as presented. Director Gorin second. The motion carried 9-0 (Directors Bagby and Pahre joined later; Director Arnold absent).

3. Board Members Announcements

Director Rogers stated that last week he recused himself from City of Santa Rosa Closed Session Jennings Avenue meeting. He asked when is the Board anticipating to discuss the at-grade crossing policy that was promised to the public a couple months ago since there are a couple of projects coming up that conflict with the policy. and are important to specific communities like Santa Rosa and Cloverdale. The Town of Windsor just received their own at-grade crossing through downtown. Chair Rabbitt responded that once a legal proceeding started it threw timelines off for when the Board will take up the matter, so we'll continue to talk to Counsel about the appropriateness of when that comes back. The sooner we can get out of a legal proceeding, the sooner that that item can be heard by the Board.

Director Bagby joined at 1:36pm

#### 4. General Manager's Report

General Manager Mansourian reported that since the start of passenger service in August 2017, SMART has carried 2,017,000 passengers, 213,000 bicycles, and over 7,700 wheelchairs. There is 20% of our daily riders now arriving with their bicycles which is significant, and it shows the partnership between first and last mile connections to SMART's stations.

Vice Chair Pahre joined at 1:38pm

On Sunday, July 18<sup>th</sup>, Santa Clara Valley Transportation Authority (VTA) held a memorial to honor the nine employees we lost in the May 26 tragedy. Two staff members attended the memorial representing SMART.

General Manager Mansourian introduced Chief Financial Officer, Heather McKillop, who provided an announcement. She stated that for the 8<sup>th</sup> year in a row, SMART has received the "Government Finance Officers Association Certificate of Achievement for Excellence in Financial Reporting" a distinguished award. Chair Rabbitt thanked and congratulated staff for the good work and appreciated keeping the books in order.

#### Comments

Director Colin asked for clarification on public comment received prior to meeting, specifically about the assumptions on SMART's ridership going forward to the Metropolitan Transportation Commission (MTC) Programming and Allocation Committee. Assuming the information is correct, there was an assumption of a 200% increase over this past year. Ms. McKillop said that Mr. Arnold wrote that SMART underestimated the ridership for current fiscal year and overestimated for fiscal year 2022 and 2023. Currently is very difficult to estimate ridership, estimates were for the purpose of fare revenue. For fiscal year 2021 SMART estimated 125,000 riders and for fiscal year 2022 we estimated 250,000 riders which is reflected in the chart. A large increase was between 2022 and 2023 and will know more once as we go through the fiscal year 2022 and get to the 2023 budget and we will adjust accordingly. Staff will continue to provide ridership reports to the Board monthly. Director Colin asked if staff is concerned that the percentage is different than what other agencies are submitting, when she looks at other agencies, SMART's numbers are quite different, she added; will staff be reviewing them next year or sooner to look out of alignment with all the other transit agencies. Mrs. McKillop responded that staff will be reviewing them monthly and can adjust accordingly with the budget. At this time, she is not concerned, and several agencies are predicting a much higher number for fiscal year 2022.

Chair Rabbitt stated that he can speak from being on the Blue Ribbon Transit Recovery Task Force and as the Chair of MTC Programming Allocation Committee that the numbers depend on if you're a commuter service versus an inner city transit bus service. The transit buses have recovered quicker, the Golden Gate Bridge Ferry service lost 98% of the customers. The numbers are swinging all over the place, and we can hope that we can get back to pre-pandemic ridership numbers. There's a lot of the telecommuting, and what holds for the future is also playing into that, they are just projections now.

5. Public Comment on Non-Agenda Items

Eris Weaver thanked Director Rogers for continuing to work on the Jennings Avenue crossing issue, which is a very important segment to the community. Since bicycle riders have increased, she suggested that staff consider increasing the capacity of bicycles on the train. She addressed her concerns a couple of meeting ago regarding the delay receiving Nixle alerts. She has had several conversations with the Communications Manager, Matt Stevens, to discuss and compare the alerts at the time of the incidents and she is happy to report that the alerts are being received on a timely manner.

6. Consent

- a. Accept Monthly Ridership Report – June 2021
- b. Approve a Resolution and Authorize the Board Chair to Execute the Agreement with International Brotherhood of Teamster, Local Union Number 665 for the period of July 8, 2021 to June 30, 2022
- c. Approve a Resolution Implementing Cost-of-Living Increase for Unrepresented Employees for Fiscal Year 2021-22
- d. Approve a Resolution Authorizing the General Manager to execute Contract Amendment No. 4 to Contract No. CV-PS-19-001 with GHD, inc. for Engineering Design and Support Services - Additional Vehicular Traffic Signal Design at the At-Grade Crossings for an amount of \$65,801 and increasing the overall total contract amount to \$1,306,143

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

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

7. Authorize the General Manager to Award contract FN-PS-21-002 to Sierra-Cedar, LLC for as-needed Oracle ERP Software consultation and support services with a not-to-exceed amount of \$75,000 for FY 2022, \$100,000 for FY2023, and \$100,000 for each option year

Procurement Manager, Ken Hendricks, stated that SMART utilizes Oracle's Enterprise Resource Planning (ERP) Software to perform several critical financial functions for the District, including; accounts payable services, accounts receivable management, cash management, purchasing and vendor management. SMART contracts with a third-party consultant to provide as-needed technical support and problem resolution.

SMART's existing contract for as-needed Oracle ERP software consultation and support services expired on June 30, 2021. SMART issued a Request for Proposal and received 11 proposals. SMART's evaluation committee reviewed the proposals using the technical evaluation criteria identified in the Request for Proposal. The Evaluation Committee recommended Sierra-Cedar, LLC as the firm providing the best overall value in terms of qualifications and price to the District.

Funding is included in the Fiscal Year 2021-22 budget and assumed in subsequent years. Staff is recommending that the Board authorize the General Manager to Award Contract No. FN-PS-21-002 to Sierra-Cedar, LLC for a not-to-exceed amount of -\$75,000 for FY2022, \$100,000 for FY2023, and \$100,000 for each option year.

**MOTION:** Vice Chair Pahre moved to Authorize the General Manager to Award contract FN-PS-21-002 to Sierra-Cedar, LLC for as-needed Oracle ERP Software consultation and support services with a not-to-exceed amount of \$75,000 for FY 2022, \$100,000 for FY2023, and \$100,000 for each option year as presented. Director Garbarino second. The motion carried 11-0 (Director Arnold absent).

8. Status Report on Freight and Related Activities (*Information*)

General Manager, Farhad Mansourian stated that on May 20, 2020, the Board authorized several items as part of the policy determinations to become a freight service provider. At your September 2, 2020, meeting you received an update.

Today you will receive an additional update. In cooperation with Senator McGuire's Office, State of California, North Coast Railroad Authority (NCRA) and Northwestern Pacific Company (NWPCo) many steps have been accomplished in the complex transition are ongoing.

Funding:

- \$4 million for the purchase of NWPCo from the State of California has been funded and received by SMART and it is held in a special account;
- \$2 million for SMART for freight related activities has been funded by the State of California and has been received by SMART and it is held in a special account;
- On July 13, 2021; Governor signed the budget bill that provides \$4M additional state funding for freight related activities;

Agreements:

- The Purchase Agreement between SMART and NWPCo has been finalized and executed by both parties.
- The Baseline Agreement between the State of California and SMART has been finalized and executed by both parties.

Other Activities:

- A Request for Proposal (RFP) was released, and a consultant was selected to conduct a Freight Rail Operations, Maintenance, Capital Costs, and Opportunities Analysis. A Consultant was selected, and an Executive Summary will be ready by your next Board meeting.
- On or after March 4, 2021, SMART was authorized by the Surface Transportation Board (STB) to acquire the right-of-way and freight rail easement from North Coast Railroad Authority (NCRA).
- On February 22, 2021, the freight operator, Northwestern Pacific Railroad Company (NWPCo), Petitioned the Surface Transportation Board (STB) for Discontinuance of Service Exemption (requesting authority to ceases being the freight operator).
- On June 11, 2021, the STB approved NWPCo's petition for discontinuance of service and authorized SMART to assume freight operations and common carrier duties over the rail

line which became final on July 11, 2021.

- Staff is reviewing the existing spur(s) and at-grade crossing Policies that need to be amended to reflect the responsibility and ability to allow for or modify existing spur/crossing for freight operations. Staff anticipates presenting by the end of 2021
- Staff is studying and analyzing the best option to provide freight service to the current and future customers. We will present our analysis for Your Board for your approval before the end of 2021.
- Staff is negotiating with the current freight operator to continue providing service for the existing customers while we are completing our analysis.

Chair Rabbitt thanked Senator McGuire who has been the driving force behind the entire package associated with freight service and the Redwood trail going north.

### Comments

Director Gorin thanked staff for the report and the contract with NWPCo and she is glad to hear that the Board will be discussing various options in the future. She said that the Sonoma Valley residents want to see those tanker cars moved out of the valley, they are dangerous to the valley and really impinging upon the beauty and the safety and the perception of our visitors about the safety of Sonoma Valley. She asked when the tanker cars will be removed from the area. Mr. Mansourian responded that he would appreciate the board's feedback while the contract negotiations are in process, and while staff analyzing whether SMART provides freight service internally or contracts it out, use these next few months as an opportunity to communicate with the community. He suggested having a community meeting to receive feedback of the issues in Sonoma Valley. As you remember these LPG tanks appear without SMART and the community's knowledge and we had to go into an offensive or defensive roll. It would be great to have the community meeting in the next month or two, so we can clearly understand the issues. Once we receive and have all the information that will become part of the decision making process. When the analysis is presented on whether freight services should be contracted or performed in-house, we will also present the financial and staffing aspects. If the Board is on-board, he will contact Norm Gilroy and start the community meeting process. Director Gorin stated that three years ago she convened a community meeting at Sonoma Raceway regarding the LPG tank cars, and the community was not happy with the tanker cars suddenly appearing in the Valley which affects far more than just Norm Gilroy and the neighbors. This is of concern to the City Council, the City of Sonoma, Community leaders including Michelle Heston of Sonoma Mission Inn, Steve Page, Ram's Gate Winery. When there is heavy rainfall the operator moves the trains, right at the mouth of the Valley so prominently displayed, which is not a good image for Sonoma Valley. She said she would be willing to help convene a group of Community members and includes far more than just Mr. Gilroy and the immediate neighbors.

Director Lucan asked what would be the best way to express our appreciation to Senator McGuire and his staff for getting us to this point. Mr. Mansourian responded that Senator McGuire has been tremendous as well as his staff making this vision come true. He said he will research and see what would be the best. An acknowledgement from our Board Chair or entire Board would be very good we'd be happy to assist in drafting a letter for your

consideration. Director Lucan said that the Board will be discussing and developing a protocol, but in the meantime, what advice would you have for the Board if we get inquiries from the Community, regarding spurs or any other freight information. Mr. Mansourian responded that staff is setting up internally, however all inquiries should be forward to him at this time and he will provide information to appropriate staff. There are several different questions that might come up that can go to different staff not one person. The operations team and the Operations Manager are getting set up internally to now visit our new territory and become familiar with some of the problems that, unfortunately, for many decades have gone on without any attention and the public is beginning to call SMART and complain. SMART's concern is making sure that new acquired right-of-way does not become a fire hazard so we're spending time and money to make the territory in compliance with the best fire practices. The Chief Engineer is visiting sites where reports of slides and flooding issues were reported, we anticipate having a beautiful winter and we are getting prepared and learning of the flooding issues. He said that once the new General Manager arrives and freight division is established, they will continue to report to the Board.

Director Lucan stated that it is very promising that we provide even greater access for the Community to reach out to the Board and provide a greater level of service. General Manager Mansourian mentioned that staff gets involved right of way when the issues that come up. We want to ensure the right information gets to the right people at the right time.

Director Bagby thanked Director Lucan for bringing up the topic of how to handle inquiries. When she served as the Chair of Russian River Watershed Association, there was interest in inviting other agencies to be part of the new permitting requirements that the organization helps with water quality issues. She suggested that if any Board members think or know about any entities or opportunities that can take advantage to make it simpler for SMART staff. She thanked General Manager Mansourian for taking this new responsibility of the right-of-way and hopefully there will be some funding to address the long neglected issues. The North County residents have been concerned regarding trespassing, fire danger or dangerous situations which have gone unaddressed for a long time and there is frustration because of misinformation.

Chair Rabbitt stated that he is interested in making sure that the continuation of that freight service is going forward to the existing freight service. He asked if SMART going to continue operation service. General Manager Mansourian responded that there will be no gap during the transition. First, your board has expressed that there should be no gap and the Federal Government also requires there be no gap. The freight operator clearly understands, and SMART will continue serving the existing customers.

General Manager Mansourian stated that due to the drought, there is a lot more material coming through rail due to local farming not having water available and was informed that there is more traffic for the grain coming by rail. If the drought continues, then that can increase so we're making sure existing customers, see no gap and continue to serve, regardless of the contractual agreement.



Chair Rabbitt said that it is great ,especially on the Agricultural side because with the drought they are already hurting financially and if they must pay increased costs and shipping it's only going to put businesses out. He has been contacted twice by the water train, which is an interesting concept for drought relief by someone out of Sacramento with connections to the Northwest. He is glad that Director Gorin's discussed the issues regarding the LPG tank and the Board will have to obviously discuss a policy consideration and if there's going to be a financial consideration or Community benefit. The Board and staff want freight service to be successful. Being a public transit agency (train agency) and taking freight service, the approach might be a little different in terms of the investments in the infrastructure and how that gets shared with customers to entice businesses going forward. He is looking forward to the discussions and the information provided by the consultant.

Director Gorin stated that the forefront it's a political discussion. SMART is going out for reauthorization and does not serve Sonoma Valley, so it needs to be a very sensitive discussion and a recognition that if we want the votes of Sonoma Valley, we need to do something with the tanker car.

Director Bagby suggested planning Outreach in the North County, to clarify the jurisdictional issues and to let the public know the proper way is to contact SMART regarding their different issues. She said that Director Gorin brought up a great point in anticipation of going out to the taxpayers again for the renewal, it is great customer service. She suggested conducting research on a feasibility study and how freight service is offered. She understands that it is a very specialized consulting practice and hope the Sonoma County Economic Development Board can be included since they are a great resource.

Chair Rabbitt asked if there is the ability to bring in any kind of federal or state funds for freight service. Will SMART be better as a public entity and does the operation model effect, can bring in those dollars. We want to benefit as much as possible from outside funding sources and will any of this be brought by the consultant or is that a separate topic that will need to be considered in a business model. General Manager Mansourian responded that he will discuss with Grants Manager, Joanne Parker since the last few years, SMART tried because NCRA and NWPCo was short in cash. We looked very hard to get them money, especially in NWPCo. and there was not a lot of money out there, however we will look for a Public Private Partnership, which is the best model. If SMART is successful and get a new business that want spurs and access to get trucks off the roadway that would be the best model. Staff will conduct full analysis and report back to the Board. Staff has conducted a lot of research and analysis on water being provided from Montana and Kansas through freight. We have stopped that analysis until more information becomes available and will provide the Board with information in a future meeting. He will also share the information with Sonoma County Water Agency and both Marin County Water Agencies.

Chair Rabbitt stated that nobody would have thought that there might be a need to haul water, and two years ago there was two feet of water running down the middle of Guerneville

### Comments

Steve Birdleough stated that he appreciates the depth of questioning and staff responses to all the questions. The freight issue is important from the environmental perspective because moving goods by freight is three to five times more energy efficient than moving it on the highway. It is not the question of relieving congestion; it is a question of reducing the greenhouse gas impact of the freight. This is a very important area, and he hopes that over the years, the freight activity of SMART grows exponentially.

Chair Rabbitt stated that although the focus obviously is North/South here in SMART having that East connection for freight is vital and making sure that that track is going to be of quality and safe, obviously it's very important. The State putting up the dollars to be able to invest in that is vital, and we will continue to work with Senator McGuire to continue to make those improvements year over year.

Chair Rabbitt stated that the Board will not have meetings in August and is planning on meeting in person at the next meeting, which is September 1, 2021. Always dependent upon what the health orders are going to be at the time; he will inform everyone prior to the meeting. SMART will still have zoom access, it will be hybrid for the public to be able to participate.

9. Next Regular Meeting of the Board of Directors, September 1, 2021 – 1:30 PM
10. Adjournment - Meeting adjourned at 2:22pm

Respectfully submitted,

Leticia Rosas-Mendoza  
Clerk of the Board

Approved on: \_\_\_\_\_



September 1, 2021

**David Rabbitt, Chair**  
Sonoma County Board of Supervisors

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

**Judy Arnold**  
Marin County Board of Supervisors

**Kate Colin**  
Transportation Authority of Marin

**Damon Connolly**  
Marin County Board of Supervisors

**Debora Fudge**  
Sonoma County Mayors' and  
Councilmembers Association

**Patty Garbarino**  
Golden Gate Bridge,  
Highway/Transportation District

**Susan Gorin**  
Sonoma County Board of Supervisors

**Dan Hillmer**  
Marin County Council of Mayors and  
Councilmembers

**Eric Lucan**  
Transportation Authority of Marin

**Chris Rogers**  
Sonoma County Mayors' and  
Councilmembers Association

**Farhad Mansourian**  
General Manager

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

**SUBJECT:** Monthly Ridership Report – July 2021

Dear Board Members:

**RECOMMENDATIONS:** Accept Monthly Ridership Report

**SUMMARY:**

As the SMART Board meetings for August 2021 were cancelled, we are presenting the monthly ridership report for activity for the month of July 2021 at the first September Board meeting. The monthly ridership report for August 2021 will be presented as regularly scheduled at the second board meeting in September. This report shows trends in ridership for SMART by tracking Totals, Average Weekday riders, and Average Weekend/Holiday riders via the two methods we employ to track riders on a daily basis: Onboard Counts and Clipper + Mobile App paid fares. The report details bicycles and wheelchairs counted as well. We have added charts and graphs of the information to further illustrate system trends.

As discussed in prior presentations to Your Board, using both Onboard Counts and Fare collection counts of riders is necessary to track progress. Onboard Counts capture all riders, including the riders who are riding during the Free Fare Days or Free Fare Programs offered by Your Board, riders with passes who neglect to tag on or off, as well as categories of riders such as children under five years old. Therefore, Clipper + Mobile App paid fare reports do not capture all riders.

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

SMART's rider data for June 2021 was posted on the SMART Ridership website (<http://sonomamarintrain.org/RidershipReports>) and SMART's detailed July 2021 data will be posted once validated.

The report covers riders returning to SMART as public health rules fluctuate with Bay Area Counties modifying their Shelter-In-Place restrictions and recommendations due to increasing COVID rates blended with the opening of schools, restaurants, retail shops, offices, and other places of work.

**FISCAL IMPACT:** None

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

Very truly yours,

      /s/        
Joanne Parker  
Programming and Grants Manager

Attachment(s): Monthly Ridership Report – July 2021

## JULY 2021 (COVID-19) SMART RIDERSHIP

SMART Ridership Report  
Board of Directors,  
September 1, 2021

Despite ongoing COVID-impacted conditions, SMART's total monthly July 2021 ridership was up 161% over July 2020, which was heavily impacted by the COVID-19 shutdown. Average weekday ridership had been rising steadily from April until October 2020, as COVID rates improved, and then took a dip in the winter months as pandemic conditions worsened and the stay-at-home orders were renewed; however, ridership has risen steadily since February 2021, with average weekday ridership for June 2021 increasing 27% over May 2021, and average weekday ridership for July 2021 increasing 15% over July 2020.

As a reminder, SMART modified services in March 2020 due to the COVID-19 pandemic, with weekend service annulled starting March 21 & 22, 2020, and weekday service reduced first by 4 trips (down to 34) on March 23, 2020, then by another 18 trips, (down to 16), on April 6, 2020. Beginning on Monday, May 24, 2021, SMART added service to the weekday schedule with two new morning trips and three new afternoon trips, resulting in 26 weekday trips. Saturday service was also restored starting the last two weekends in May, with 3 morning and 3 afternoon round trips. Saturday ridership has been strong, seeing approximately 70% of average weekday ridership levels on less than half the number of train trips.

COVID-19 related public health orders have varied slightly between Sonoma and Marin Counties, as well as across the Bay Area and State. While Marin County had seen some school openings earlier in the 2020-21 school year, Sonoma County schools did not open in person until mid-April 2021 or later. Throughout the region, automobile traffic levels have returned to pre-pandemic levels in some areas and transit agencies are seeing the first signs of ridership recovery. However, the Delta variant and ongoing remote-work trends due to COVID continue to have a detrimental effect on transit ridership throughout the Bay Area.

This report presents data from July 2020 and 2021; fiscal year-to-date data is identical due to the start of a new fiscal year in July, so that table is omitted from this report.

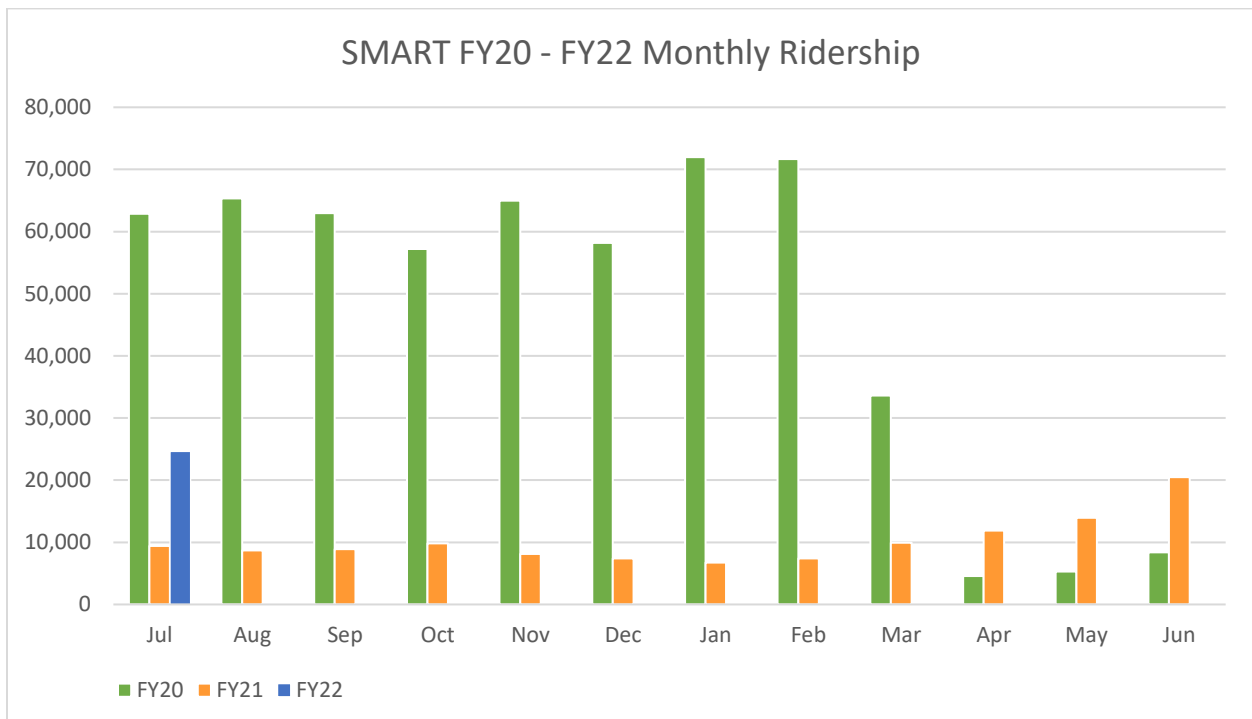
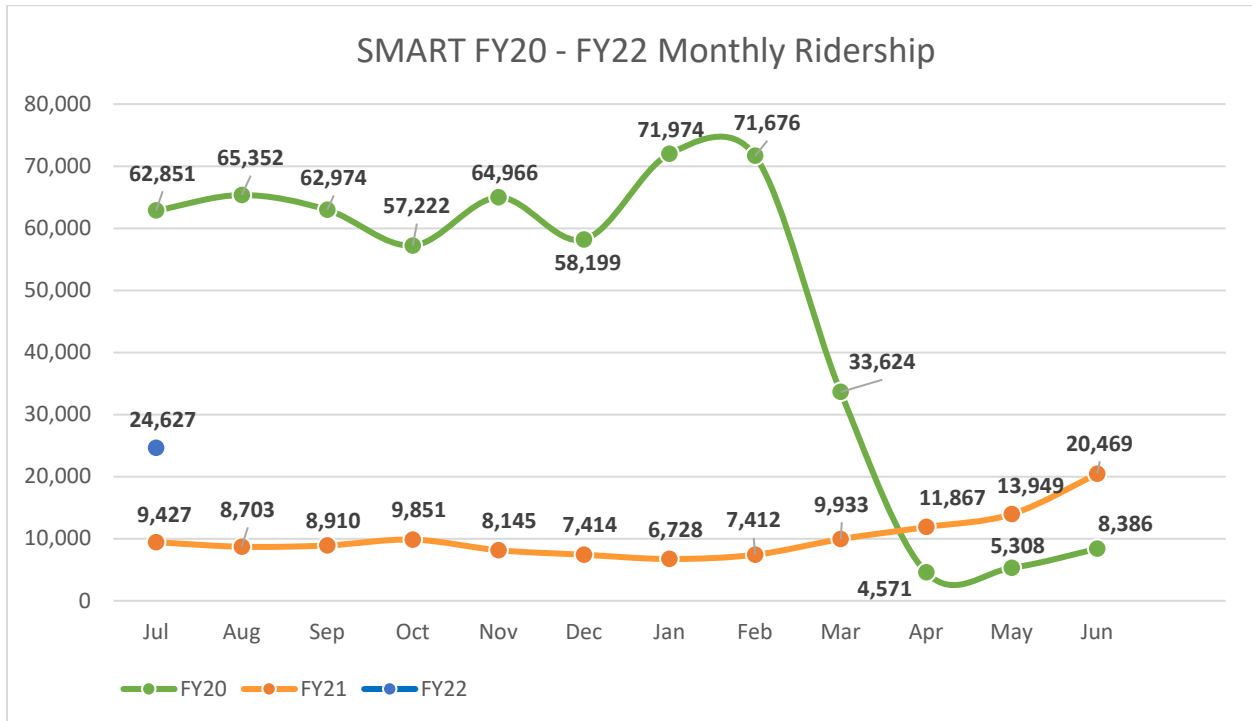
MONTHLY TOTALS YEAR-OVER-YEAR	JULY 2020	JULY 2021	% Change
Total Ridership (Onboard Counts)	9,427	24,627	161%
Total Paid Ridership (Clipper + App Only)	8,720	22,322	156%
Average Weekday Ridership (Onboard Counts)	410	966	136%
Average Weekday Paid Ridership (Clipper + App Only)	379	884	133%
Average Weekend/Holiday Ridership (Onboard Counts)	0	680	N/A
Average Weekend/Holiday Paid Ridership (Clipper + App Only)	0	581	N/A
Total Bikes Onboard	2,143	3,999	87%
Total Wheelchairs Onboard	24	152	533%

Total ridership for July 2021 was more than double the previous July, and 20% higher than June 2021. Youth and senior ridership trends remain stable, with youth ridership expected to increase in August with the start of school. Clipper START participation continues to grow slowly (73 boardings in July) but remains at less than 1% of total monthly boardings.

The following charts compare the monthly totals and average weekday ridership for June and illustrate monthly and average weekday ridership trends.

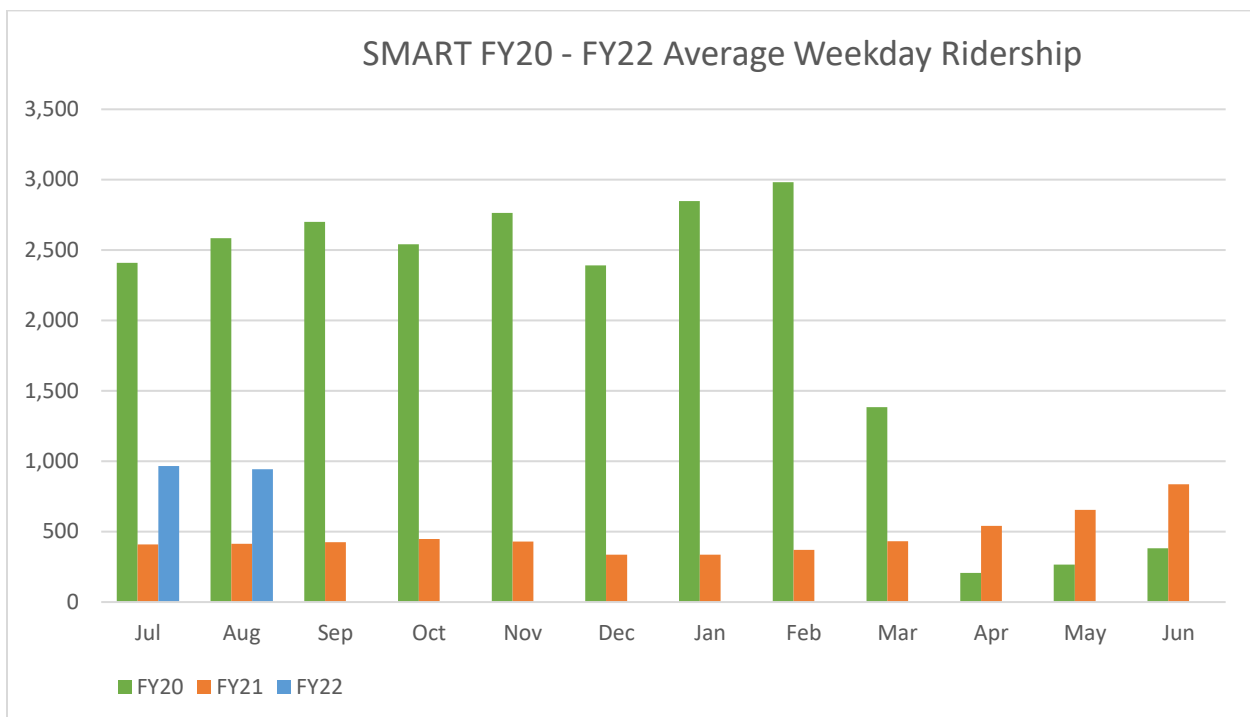
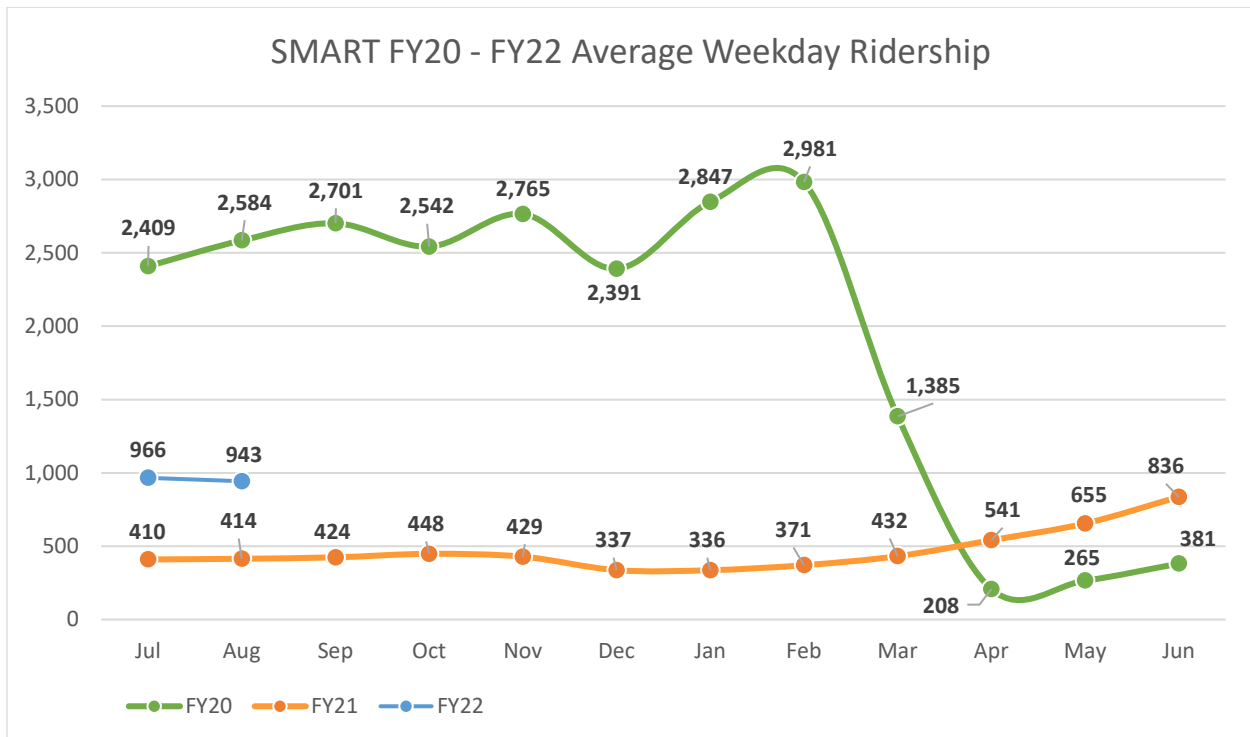
## JULY 2021 (COVID-19) SMART RIDERSHIP

SMART Ridership Report  
Board of Directors,  
September 1, 2021



## JULY 2021 (COVID-19) SMART RIDERSHIP

SMART Ridership Report  
Board of Directors,  
September 1, 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  
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**Patty Garbarino**  
Golden Gate Bridge,  
Highway/Transportation District

**Susan Gorin**  
Sonoma County Board of Supervisors

**Dan Hillmer**  
Marin County Council of Mayors and  
Councilmembers

**Eric Lucan**  
Transportation Authority of Marin

**Chris Rogers**  
Sonoma County Mayors' and  
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**Farhad Mansourian**  
General Manager

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September 1, 2021

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

**SUBJECT:** Monthly Finance Reports

Dear Board Members:

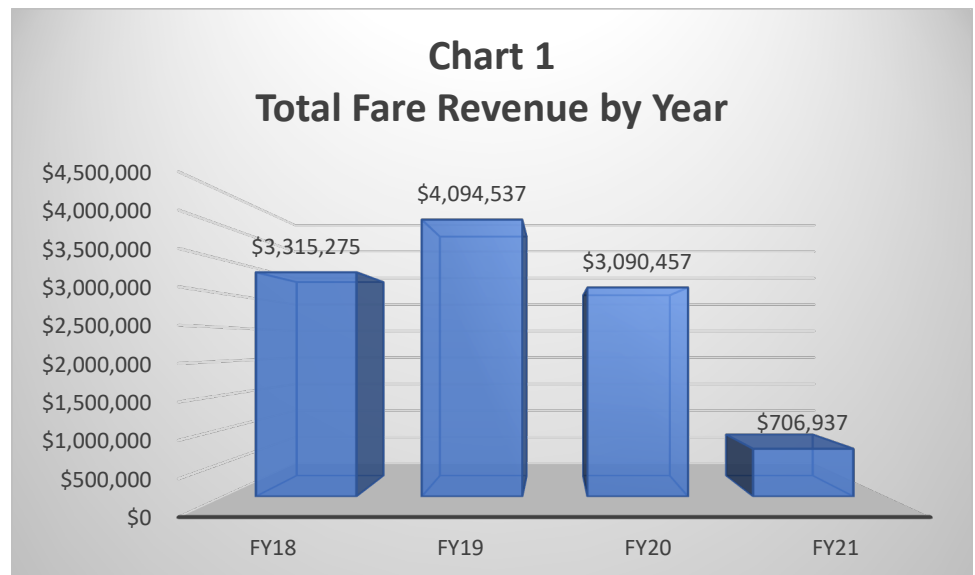
**RECOMMENDATION:** Approval of Monthly Financials through June 2021

**SUMMARY:**

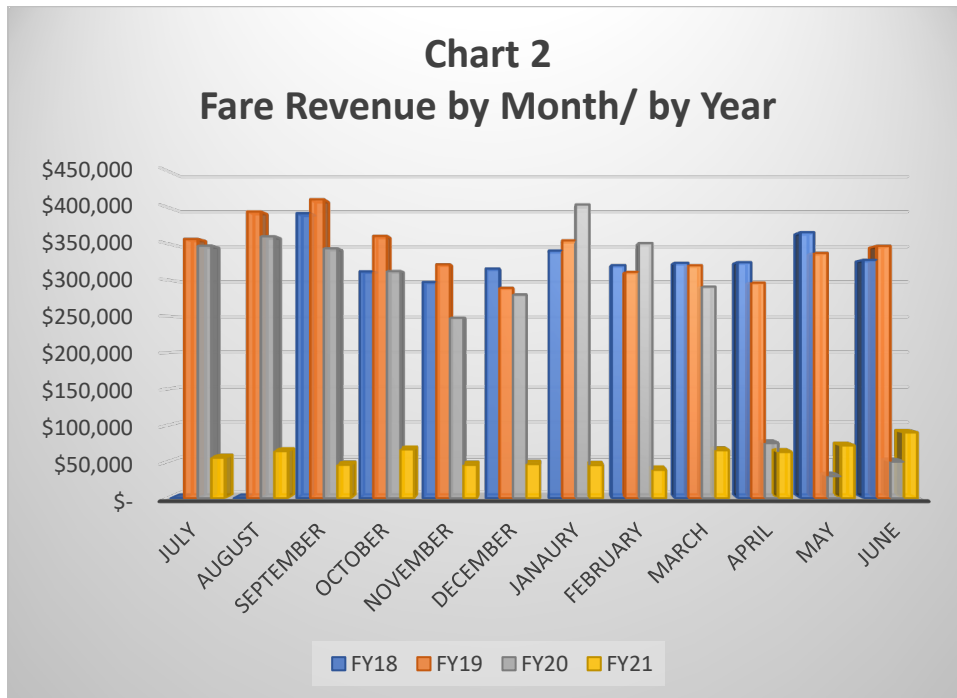
We are presenting the monthly reports for activity through the month of June which includes transactions for twelve months of Fiscal Year 2020-21. This is not the final report for Fiscal Year 2020-21. After the Financial Audit is complete, we will submit to the Board a comparison of FY 2020-21 budget to actual. Amounts may change between this report and the final one.

**Fare Revenue**

Fare revenue is \$706,937 for 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 \$5,306 in parking fees in FY 21.

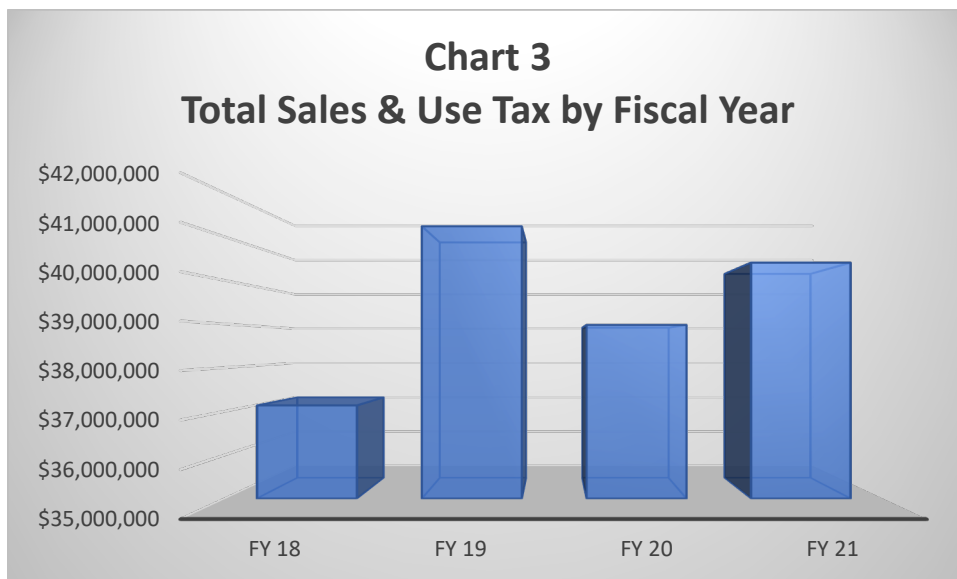


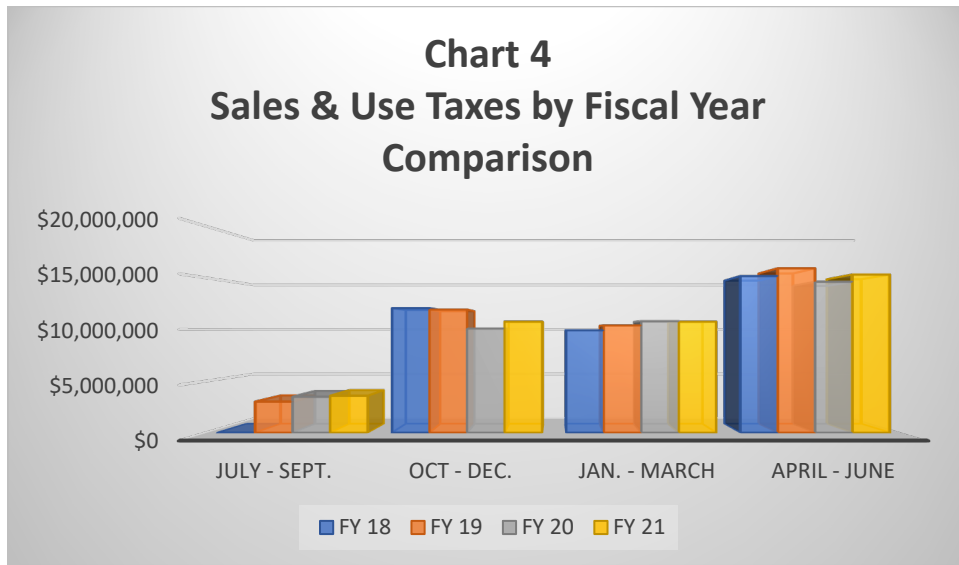




### Sales & Use Tax

The amended budget estimate for sales and use tax is \$39,133,000. To date, we have received \$40,395,964. We have already exceeded our forecast and have June's payment left to receive. We are expecting revenues to come in around \$5 million over the forecast 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.





As was mentioned previously, we will be preparing a budget to actual report with variances after the annual audit has been completed.

Very truly yours,

/s/

Heather McKillop  
Chief Financial Officer

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

Sonoma-Marin Area Rail Transit District  
Monthly Finance Reports  
Through June 2021 (Preliminary - Not final year-end report)

	FY 2020-21			Remaining	
	Revised Budget		Actual	Budget	
Revenues					
Administration					
Sales/Use Taxes	\$	20,653,096	* \$	28,929,558	-
Interest Earnings		380,000		375,378	4,622
Rent - Real Estate		313,700		315,399	-
Advertising Revenue		45,000		18,176	-
Miscellaneous Revenue		4,120,693		4,949,880	-
Administration Subtotal		25,512,489		34,588,391	4,622
Operations					
Sales/Use Tax		7,695,003		7,695,003	-
Fare & Parking Revenue		680,525		712,244	-
Federal Funds		11,584,064		10,862,279	721,785
State Grants		6,175,380		4,507,649	1,667,731
Other Charges		65,000		87,479	-
Operations Subtotal		26,199,972		23,864,654	2,389,516
Capital					
Sales/Use Tax		3,771,303		3,771,303	
Federal Funds		4,494,025		2,500,000	1,994,025
State Grants		14,029,000		1,974,418	12,054,582
Other Governments/Misc		4,956,500		4,516,441	440,059
Measure M		157,348		63,424	93,924
Capital Subtotal		27,408,176		12,825,586	14,582,590
Freight					
State Grants		6,000,000		175,861	5,824,139
Freight Subtotal		6,000,000		175,861	5,824,139
Revenue Total \$ 85,120,637 \$ 71,454,492 \$ 22,800,867					
Expenditures					
Administration					
Salaries & Benefits	\$	5,041,970	\$	4,540,051	\$ 501,919
Services & Supplies		6,182,844		4,280,140	1,902,704
Debt Service/Other Charges		14,284,675		6,739,724	7,544,951
Machinery & Equipment		3,000		2,416	584
Administration Subtotal		25,512,489		15,562,331	9,950,158
Operations					
Salaries & Benefits		15,510,578		11,994,006	3,516,572
Services & Supplies		8,243,519		4,783,283	3,460,236
Buildings & Capital Improvements		2,445,875		783,930	1,661,945
Operations Subtotal		26,199,972		17,561,219	8,638,753
Capital					
Salaries & Benefits		1,417,761		1,313,994	103,767
Services & Supplies		852,736		313,363	539,373
Other Charges		3,786,500		3,663,951	122,549
Machinery & Equipment		3,177,138		1,650,000	1,527,138
Infrastructure		18,174,041		12,723,067	5,450,974
Capital Subtotal		27,408,176		19,664,375	7,743,801
Freight					
Expenditures		6,000,000		175,861	5,824,139
Freight Subtotal		6,000,000		175,861	5,824,139
Expenditure Total \$ 85,120,637 * \$ 52,963,786 \$ 32,156,851					

Investment Report		
	Amount	
<b>Sonoma County Treasury Pool</b>		
Interest Fund		583,752
Principal Fund		4,430,520
<b>Sonoma County Treasury Pool Subtotal</b>	<b>\$</b>	<b>5,014,272</b>
<b>SMART Operating Accounts</b>		
Bank of Marin		32,948,360
Sonoma County Treasury Pool		36,918,235
<b>SMART Operating Accounts Subtotal</b>	<b>Total</b>	<b>\$ 69,866,595</b>
<b>Investment Report Total</b>	<b>\$</b>	<b>74,880,867</b>

Capital Project Report			
	Budget	Actual	Remaining
<b>Additional Railcar Purchase</b>			
Revenues	\$ 11,000,000	\$ 9,900,000	\$ 1,100,000
Expenditures	\$ 11,000,000	\$ 9,900,000	\$ 1,100,000
<b>Windsor Extension</b>			
Revenues	\$ 65,000,000	\$ 14,753,326	\$ 50,246,674
Expenditures	\$ 65,000,000	\$ 24,408,475	\$ 40,591,525
<b>Sonoma County Pathway Connector Project</b>			
Revenues	\$ 13,691,763	\$ 3,120,907	\$ 12,374,343
Expenditures	\$ 13,691,763	\$ 3,120,907	\$ 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 July 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	\$101,280.00
Ai-Media, Inc.	As Needed Live Captioning Services for Public Meetings	\$8,325.00	\$8,325.00
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	\$15,270.00
Allen, Glaessner, Hazelwood LLP	Legal Services for Litigation and Rail Transit Issues	\$10,500.00	\$8,218.00
Alliant Insurance Services	Insurance Brokerage and Risk Management Services	\$70,000.00	\$49,072.00
American Integrated Services, INC.	On-Call Biohazard Remediation Services	\$50,000.00	\$0.00
American Rail Engineers Corporation	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	\$1,580.00
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	\$14,000.00
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	\$10,440.00
Burke, Williams & Sorensen, LLP	Litigation Support Services	\$100,000.00	\$2,536.00
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	\$14,378.00
Civic Edge Consulting	Social Media Outreach Strategy Consulting	\$168,000.00	\$156,187.00
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	\$21,866.00
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	\$1,335.00
Dr. Lance O'Connor	Occupational Health Screening Services	\$3,000.00	\$810.00
Dr. Mark Clementi	Pre-Employment Psychological Evaluations	\$25,000.00	\$19,540.00
eLock Technologies, LLC	Station Bike Lockers and Maintenance Services	\$13,130.00	\$8,348.00
Emily Betts	Transit Planning & Related Services	\$50,000.00	\$23,020.00
Empire Cleaners	Uniform Dry-Cleaning, Laundering, and Related Services	\$40,000.00	\$11,804.00
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	\$4,786.00
GHD, Inc.	3 Segments MUP Petaluma - Penningrove - Rohnert Park	\$1,240,342.00	\$1,062,621.00
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	\$4,554.00
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	\$13,336.00
Hanson Bridgett LLP	Legal Services	\$106,404.00	\$106,404.00
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	\$147,000.00	\$116,303.00
Holland Company	Track Geometry and Measurement Services	\$24,000.00	\$24,000.00

<b>Contractor</b>	<b>Scope</b>	<b>Fiscal Year 20/21 Projected</b>	<b>Fiscal Year 20/21 Actuals-To-Date</b>
Hulcher Services, Inc.	On-Call Derailment Services	\$100,000.00	\$0.00
Innovative Business Solutions	Payroll processing services	\$35,400.00	\$26,082.00
Integrative Security Controls, Inc.	CCTV Maintenance and Support	\$25,000.00	\$3,633.00
Intelligent Technology Solutions, LLC	Maximo SaaS Development, Implementation, and Related Services	\$53,811.00	\$53,811.00
Intelligent Technology Solutions, LLC	Maximo MMS Implementation and Support Services	\$199,543.00	\$157,222.00
JMA Civil, Inc.	On-Call Civil & Rail Engineering Design Services	\$96,000.00	\$71,825.00
KL2 Connects	GM Recruitment Services	\$25,000.00	\$11,250.00
Koppers Railroad Structures, Inc.	Railroad Timber Bridge Repair	\$64,675.00	\$64,675.00
LC Disability Consulting	Disability Access Consulting	\$12,000.00	\$2,556.00
Leete Generators	Generator Maintenance	\$4,829.00	\$4,829.00
Masabi LLC	SMART Mobile Ticketing Pilot Project	\$57,600.00	\$57,000.00
MaxAccel	Compliance Management Software Design/Implementation/Asset Management	\$15,785.00	\$14,899.00
Maze & Associates	Financial Audit Services	\$53,116.00	\$43,094.00
MGrodner, 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	\$12,775.00
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	\$108,847.00
Nextdoor Inc.	Use of Nextdoor Platform for Community Notifications	\$19,554.00	\$17,128.00
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	\$3,025.00
North Bay Petroleum	Provision of Fuel for DMUS	\$527,900.00	\$180,543.00
North Bay SAP	Substance Abuse Professional Services	\$3,800.00	\$1,200.00
Nossaman LLP	Litigation, Rail Transit Issues, and other related legal services	\$43,000.00	\$28,519.00
Occupational Health Centers of CA	Pre-Employment Evaluation Services	\$19,888.00	\$6,885.00
Oracle	Fusion ERP System	\$48,308.00	\$48,308.00
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	\$12,600.00
PFM Financial Advisors, LLC	As-Needed Financial Consultant Services	\$40,000.00	\$1,150.00
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	\$61,569.00
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	\$63,008.00
Public Financial Mangement, Inc.	Arbitrage Rebate Compliance Services	\$2,000.00	\$2,000.00
Railquip, INC.	Providing Portable Hydraulic Rerailing Equipment, Training, and Related Services	\$147,722.00	\$147,722.00
Railquip, INC.	Inspection and Certification Services for Portable Electric Lifting Jacks	\$2,000.00	\$1,375.00
Santa Rosa Fire Equipment Service, Inc.	SMART Fire Equipment Maintenance	\$5,000.00	\$4,295.00
SEFAC USA	Portable Lifting Jack Inspection and Certification Services	\$8,000.00	\$1,270.00
Sherwood Electromotion, Inc.	Overhaul Auxillary Generators (Permanent Magnet Alternator)	\$10,000.00	\$6,040.00
Sonoma County Fleet Operation Division	Non-Revenue Fleet Maintenance Services	\$60,000.00	\$62,828.00
Sperry Rail Service	Rail Flaw Detection Services	\$13,500.00	\$0.00
SPTJ Consulting	Network Infrastructure, Security, Migration and Setup Services	\$340,470.00	\$155,920.00

Contractor	Scope	Fiscal Year 20/21 Projected	Fiscal Year 20/21 Actuals-To-Date
Stacy and Witbeck, Inc.	Design/Build Construction of Civil, Track & Structures of Windsor Extension	\$11,389,651.00	\$10,958,442.00
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	\$8,664.00
Stericycle, Inc.	Medical Waste Pick-Up and Disposal Services	\$1,836.00	\$0.00
Sue Evans	Real Estate Acquisition, Relocation Services, Appraisal Support, Title Investigation Services	\$17,500.00	\$11,115.00
Sumitomo Corporation	Manufacture & Delivery of Rail Vehicles	\$1,650,000.00	\$1,650,000.00
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
Triliant, LLC	Online Training Program	\$1,060.00	\$1,060.00
Transportation Analytics	Transit Financial Modeling, Benchmarking, Performance Metrics, Benefit-Cost Analysis, and Strategic	\$33,020.00	\$26,370.00
Trillium Solutions, Inc.	Transit Feed Mapping Software	\$1,000.00	\$1,000.00
United Mechanical Incorporated	HVAC Service, Maintenance and Related Services	\$10,513.00	\$4,773.00
United Mechanical Incorporated	Repair Air Dryer located at ROC	\$3,317.00	\$3,317.00
United Mechanical Incorporated	HVAC Maintenance Services at SMART Facilities	\$8,709.00	\$6,487.00
Van Scoyoc Associates	Federal Lobbying Services	\$60,000.00	\$60,000.00
VenTek Transit Inc.	Fare Vending Machine Operations and Maintenance Services	\$210,414.00	\$194,526.00
VenTek Transit Inc.	Clipper Card Vending Machine Contract Assigned to SMART	\$77,138.00	\$0.00
VenTek Transit Inc.	Clipper Vending Machine Operations and Maintenance Services	\$45,746.00	\$42,796.00
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	\$29,755.00
WRA Environmental Consultants	Environmental Permitting, Management, & Support Services	\$189,245.00	\$179,465.00
Ziebarth and Associates, Inc.	Freight Service Consulting Services	\$20,000.00	\$6,469.00
	<b>Totals:</b>	<b>\$25,856,661.00</b>	<b>\$21,883,228.00</b>

Actuals-To-Date includes invoices that have been approved as of June 30, 2021, but may not have been processed in SMART's Financial System.



September 1, 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](http://www.sonomamarintrain.org)

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

**SUBJECT:** Authorize the General Manager to Award Contract No. OP-PS-21-004 to Modern Railway Systems

Dear Board Members:

**RECOMMENDATION:**

Authorize the General Manager to Award Contract No. OP-PS-21-004 to Modern Railway Systems for Track Driver Extra (TDX) Dispatch System Technical Support Services, Rail Network Technical Support Services and Rail Network Management System Implementation for an initial term of one year, with a total not-to-exceed amount of \$157,000.

**SUMMARY:**

SMART's commuter and freight service depends upon the reliable functioning of SMART's Computer-Aided train Dispatching system, and the fiber optic network that provides systemwide communication for SMART's Train Control and Grade Crossing Warning systems. These systems were initially placed into service in 2017 and operate continuously.

SMART's Computer-Aided Dispatching system, and the fiber optic network are mission-critical systems that are essential for running SMART's safe and efficient operation. The Computer-Aided Dispatching System serves as the operational nerve center of the railroad, allowing dispatchers to control the routing of all trains, track train location, and monitor the system's health status over 45 miles of railroad. The fiber optic network, and the associated apparatus provides fault-tolerant, redundant paths for communication, which are used to link all train control and grade crossing warning systems, which includes SMART's safety-critical Positive Train Control (PTC) system.

The following types of equipment make up the Computer-Aided Dispatching system, and the fiber optic Rail Network:

- Proprietary Computer-Aided Dispatching Software
- Dispatcher Workstations
- Database Servers
- Application Servers
- Ruggedized Network Switches
- Fiber Optic Transceivers
- Media Converters



These systems, which operate continuously, must maintain a high level of reliability and availability. They require constant monitoring, maintenance, and troubleshooting. The maintenance of these complex and proprietary systems requires specialized knowledge, training, and qualifications. SMART needs third-party technical support for the following systems:

- Computer-Aided Dispatching system
- Fiber-optic Rail Network
- Implementation of a Rail Network Management System.

These three service components will provide SMART with the necessary tools to continue to successfully operate the Computer-Aided Dispatch system and fiber optic Rail Network.

Modern Railway Systems (MRS) was the designer and system integrator of SMART's Rail Network and Computer-Aided Dispatching system in 2017 as well as the Larkspur Extension and the Novato Downtown Station in 2019. MRS is also the designer of SMART's upcoming Windsor Extension. These systems are key components of SMART's Positive Train Control system, which has been certified by the Federal Railroad Administration.

Due to the proprietary nature of the Track Driver Extra (TDX) Dispatch System, SMART must contract with the supplier, Modern Railway Systems to obtain technical support for the TDX system. In addition, as Modern Railway Systems is the designer and integrator of SMART's fiber optic Rail Network, they are best qualified to perform on-call technical support.

Staff recommends authorizing the General Manager to Award Contract No. OP-PS-21-004 to Modern Railway Systems for Track Driver Extra (TDX) Dispatch System Technical Support Services, Rail Network Technical Support Services and Rail Network Management System Implementation for an initial term of one year, with a total not-to-exceed amount of \$157,000.

**FISCAL IMPACT:** Funding for the first year is included in your board adopted Fiscal Year 2021-22 budget and assumed in subsequent years.

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

Very truly yours,

/s/  
Aaron Parkes  
Manager of Train Control Systems

Attachment(s): Modern Railway Systems Contract No. OP-PS-21-004

## **AGREEMENT FOR CONSULTANT SERVICES**

This agreement (“Agreement”), dated as of \_\_\_\_\_, 2021 (“Effective Date”) is by and between the Sonoma-Marín Area Rail Transit District (hereinafter “SMART”), and Modern Railway Systems (hereinafter “Consultant”).

### **RECITALS**

WHEREAS, Consultant represents that it is duly qualified and experienced in the areas of TDX software monitoring, communications network maintenance, 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 monitor and maintain SMART’s communications network and TDX system.

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

### **AGREEMENT**

#### **ARTICLE 1. RECITALS.**

Section 1.01        The above Recitals are true and correct.

#### **ARTICLE 2. LIST OF EXHIBITS.**

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

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

#### **ARTICLE 3. REQUEST FOR SERVICES.**

Section 3.01        Initiation Conference. SMART’s Manager of Train Control Systems will initiate all requests for services through an Initiation Conference, which may be in person, by telephone, or by email. During the Initiation Conference, the Manager of Train Control Systems and Consultant will establish and agree on a specific task for the project.

## 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 Manager of Train Control Systems 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 available resources 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 available resources without the prior written consent of SMART. Any specific resources requirements on a task order shall be as listed in the applicable Task Order.
- (c) In the event that any of Consultant’s personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Consultant’s control, Consultant shall be responsible for timely provision of adequately qualified replacements.
- (d) Consultant shall employ qualified resources for the term of this Agreement with qualifications equal to or greater to the below examples:

Jen Sloneker – 6 years experience Network  
Beth Bombalicky – 7 years experience Network/5 years NMS  
Mark Buchert – 7 years TDX/8 years GE Dispatch Systems  
Doug Brown - 5 years TDX  
Chris Duggan - 4 years TDX

Ross McDougall – 5 years TDX  
Joseph Shuey – 5 years TDX  
Brad Bergstrom- 10 years Network HW  
Mike Cara-Donna- 20 years of generalized knowledge in all 3 areas. TDX / office systems, Networking, NMS systems.  
Mike Hatmaker- 8 years network experience.  
Don Flounders- 10 years network communications

## **ARTICLE 5. PAYMENT.**

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

Section 5.01 Consultant shall invoice SMART on a monthly basis, detailing the tasks performed pursuant to the Scope of Work requested by the SMART Manager of Train Control Systems. 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 \$157,000.00, without the prior written approval of SMART. Consultant shall submit its invoices in arrears on a monthly basis and in a format that is mutually agreed upon by both SMART and the Consultant. The invoices shall show or include: (i) the monthly fees and task order(s) performed; (ii) any additional time in hours above the established monthly service fee; (iii) the hourly rate or rates for the additional hours; and (iv) copies of receipts for reimbursable materials/expenses, if any. All reimbursable expenses must comply with SMART's Current Travel Guidelines and/or receive prior approval from SMART's Manager of Train Control Systems. Consultant's reimbursement for materials/expenses shall not include items already included in Consultant's overhead as may be billed as a part of its labor rates set forth in **Exhibit B**.

Section 5.03 Consultant must submit all invoices on a timely basis, but no later than forty (40) days from the date the services/charges were incurred. District shall not accept invoices submitted by Consultant after the end of such forty (40) 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 for one (1) year with two (2) additional one-year options to renew 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 Manager of Train Control Systems and General Manager, in consultation with SMART counsel, shall have the authority to terminate this Agreement on behalf of SMART.

## ARTICLE 8. INDEMNIFICATION

Consultant agrees to accept all responsibility for loss or damage to any person or entity, including SMART, and to indemnify, hold harmless, and release SMART, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, to the extent caused by the Consultant's negligence, recklessness or willful misconduct in its performance or obligations under this Agreement. Consultant agrees to provide a complete defense for any claim or action brought against SMART based upon a claim relating to Consultant's performance or obligations under this Agreement. Consultant's obligations under this Section 8 apply whether or not there is concurrent negligence on SMART's part, but to the extent required by law, excluding liability due to SMART's conduct. SMART shall have the right to select its

legal counsel at Consultant's expense, subject to Consultant's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

## **ARTICLE 9. INSURANCE.**

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its Subcontractors, Consultants, and other agents to maintain, insurance as described below.

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

Section 9.02      General Liability Insurance. Commercial General Liability insurance covering products-completed and ongoing operations, property damage, bodily injury and personal injury using an occurrence policy form, in an amount no less than \$1,000,000 per occurrence, and \$2,000,000 aggregate. Said policy shall include a Railroads CG 24 17 endorsement removing the exclusion of coverage, if applicable, for bodily injury or property damage arising out of operations within 50 feet of any railroad property and affecting any railroad bridge, trestle, tracks, roadbeds, tunnel, underpass or crossing.

Section 9.03      Automobile Insurance. Automobile Liability insurance covering bodily injury and property damage in an amount no less than \$1,000,000 combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles. Said policy shall also include a CA 20 70 10 13 endorsement removing the exclusion of coverage for bodily injury or property damage arising out of operations within 50 feet of any railroad bridge, trestle, track, roadbeds, tunnel, underpass or crossing.

Section 9.04      Professional Liability Insurance. Professional Liability insurance covering liability arising out of any negligent act, error or omission in performance of design or engineering services for the Project in an amount no less than \$2,000,000 per claim. If any Design Professional Services are furnished by a Subcontractor, the Subcontractor shall be required to provide professional liability coverage.

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

- (a) SMART, its officers, and employees shall be named as additional insured on all policies listed above with the exception of the workers compensation and professional liability policies.
- (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, pandemic, 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. Certain markets providing essential labor and materials required by the Consultant may experience significant, industry-wide economic fluctuation during the performance of the agreement due to the COVID-19 pandemic that may impact price, availability and delivery time frames. Although the existence of the COVID-19 pandemic is known, the length and extent of its continuing impacts are not, nor are its impact on future availability, cost and productivity of labor, materials,



equipment and supplies. Thus, the COVID-19 pandemic will be considered a Act of God Event if conditions deviate from that known.

#### **ARTICLE 11. EXTRA OR CHANGED WORK.**

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

#### **ARTICLE 12. REPRESENTATIONS OF CONSULTANT.**

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

Section 12.02     Status of Consultant. The parties intend that Consultant, in performing the services specified herein, shall act as an independent Consultant 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 SMART 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     Ownership And Disclosure Of Work Product. All reports, original drawings, graphics, plans, studies, and other data or documents (“documents”) specific to the existing SMART TDX V2 and Rail Network systems, 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. Software development created while performing work under this agreement that impacts the source code and functionality of the TDX

system shall be deemed proprietary and will be the sole property of the Consultant. The Consultant is under no obligation to provide the source code of their TDX system to 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, overnight courier, U.S. Mail or email. Notices, invoices, and payments shall be addressed as follows:

If to SMART Project Manager:	Sonoma-Marín Area Rail Transit District Attn: Aaron Parkes, Manager of Train Control Systems 5401 Old Redwood Highway, Suite 200 Petaluma, CA 94954 <a href="mailto:aparkes@sonomamarintrain.org">aparkes@sonomamarintrain.org</a> 707-794-3084
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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 <a href="mailto:billing@sonomamarintrain.org">billing@sonomamarintrain.org</a> 707-794-3330
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If to Consultant:

Modern Railway Systems  
Attn: Shon Tulik  
8201 Southpark Lane, Ste 200  
Littleton, CO 80120  
[stulik@modrailsystems.com](mailto:stulik@modrailsystems.com)  
720-542-3325

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 date indicated on the delivery tracking notice. 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, Agreement's 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: MODERN RAILWAY SYSTEMS**

By: \_\_\_\_\_

Its : \_\_\_\_\_

Date: \_\_\_\_\_

**SONOMA-MARIN AREA RAIL TRANSIT (SMART)**

By: \_\_\_\_\_  
Farhad Mansourian, General Manager

Date: \_\_\_\_\_

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

By: \_\_\_\_\_  
Ken Hendricks, Procurement Manager

Date: \_\_\_\_\_

**APPROVED AS TO FORM FOR SMART:**

By: \_\_\_\_\_  
District Counsel

Date: \_\_\_\_\_

## **EXHIBIT A**

### **SCOPE OF WORK & TIMELINE**

#### **I. Overview**

SMART is contracting with Modern Railway Systems (“Consultant”) to perform monitoring and maintenance services on SMART’s TDX dispatch software and rail network. This service will be a combination of remote monitoring and maintenance activities, as well as, onsite maintenance and training activities.

The scope of work for this contract is characterized in 4 categories of work:

1. Monthly TDX Software and Network, and Maintenance Services (Category 1).
2. Optional Task - Annual site visits to perform inventory and audit evaluation (Category 2).
3. Optional Task - Annual site visits to provide training to SMART personnel (Category 3).
4. Specific Task orders as requested by SMART to provide upgrades or replacements to the TDX or Network systems (Category 4).

#### **II. Project Management**

SMART’s Manager of Train Control Systems shall initiate, coordinate, review, and monitor all work associated under this Agreement.

#### **III. Scope of Work**

##### **1. Monthly TDX Software and Network Maintenance (Category 1):**

The Consultant shall perform the following services under Category 1:

##### **A. Inclusion**

Monthly maintenance and monitoring will be to provide services as needed to SMART and provide ready technical resources when called upon up to 20 hours per month. If the full 20 hrs of a month are not exercised SMART can roll over the unused hours to the next month granted the unused hours month is not an end of agreement month. Rolled over hours are only available for the next month and will not get rolled over to subsequent months. All base month hours will be used first then any rolled over hours from the previous month. Example Month one 10 hours as are used leaving 10 hours remaining, SMART shall have 30

hours of time during Month two. Any additional support that is required beyond the available base and rolled over hours a month will be billed at an additional time and materials rate as shown in Exhibit B.

## **B. Applicable Equipment Coverage**

- (i) Commuter Rail Network communication switches, routers, cameras, RTUs, UPS units, managed media converters, workstations and network topology
- (ii) Commuter Rail TDX systems (Servers, Workstations)

## **C. TDX Maintenance Services**

- i) Maintenance or Enhancement Releases and New Enhancements to the Licensed Software Package(s) if compatible and applicable. Such point releases, updates, upgrades and/or enhancements to the Program shall be made available to SMART via download or by requesting Consultant to install remotely, for no additional charge. Consultant shall notify SMART of the Maintenance Releases via email to SMART's Manager of Train Control Systems or designated representative prior to the installation taking place. Consultant shall install all approved maintenance or enhancement releases and new enhancements outside of SMART's revenue service operating hours.
- ii) Consultant shall make reasonable efforts to diagnose any server, office network or workstation hardware issues.

## **D. On Call Emergency Response**

Consultant shall provide on call emergency response to diagnose and repair issues with the software or server communication according to the severity levels identified in Paragraph III.1.D below.

Consultant shall provide a call number or calling tree to be used by SMART for Emergency Response. SMART will provide a list of designated personnel that are authorized to call. This same procedure will be used for both TDX and Network services described above. Consultant resources will be assigned based on the severity level or task as identified in this Agreement. Consultant will assign its resources based on their knowledge and experience to ensure that SMART has the most appropriate resource performing the needed actions. Additional resources



can and will be assigned as appropriate based on the nature of the issue and their associated years of experience and knowledge of SMART.

## **E. Response Times / Service Levels**

The following will be used for production problem severity levels and response times. Consultant as part of the Monthly fee will have staff available to respond to SMART task requests 24/7.

Depending on the issue and the severity level that is assigned Consultant will work with SMART to solve the issue within the resolution hours listed during normal business hours. Consultant will involve knowledgeable and experienced personnel capable of solving the issue based on the severity of the situation and understands that sometimes issues will require work outside normal business hours.

### **1. Severity Level One (1) Response Level**

**Definition:** System is not available or severely compromised. A severity level one issue severely affects the ability of the railroad to conduct its normal train operations, may adversely impact safety, or may constitute a Federal Railroad Administration (“FRA”) or Surface Transportation Board (“STB”) rule violation. A severity level one issue may also be discovered by Consultant and declared before SMART has encountered the problem.

**Workflow:** The workflow for a declared Level One issue requires immediate attention in the following manner:

1. The first priority will be to identify an acceptable work-around.
2. If a work-around identified is acceptable to SMART, the problem will automatically be reassigned a Level 2 severity.
3. Problems with no immediately identified work around will be escalated internally by Consultant to the appropriate management level personnel to ensure continuous work with SMART in resolving the problem.

*Response Time:* A qualified person(s) as per section 4.04 will be in contact with SMART's personnel within 30 minutes (½ Hour) after a Severity Level One issue is declared.

*Acceptable Resolution Time:* 4 hours.

***Example Level 1: Two or more rail switches under one Rapid Spanning Tree Protocol ("RSTP Ring") goes out of service.***

## **2. Severity Level Two (2) Response Level**

**Definition:** System is functional but partially compromised. Some features are not available or not functioning properly. A severity level two issue moderately affects SMART's operations or business as declared by SMART.

*Response Time:* A qualified person(s) per section 4.04 will be in contact with SMART's personnel within 2 Hours after a Severity Level Two issue is declared.

*Acceptable Resolution Time:* 16 Business hours.

***Example Level 2: If one Rail switch goes out of service, the network will re-converge.***

## **3. Severity Level Three (3) Response Level**

**Definition:** Loss of a system component that has adequate manual workaround procedures available, or non-critical or nuisance type of problems.

*Response Time:* A qualified person(s) per section 4.04 will be in contact with SMART's personnel within 4 Hours after a Severity Level Three issue is declared.

*Acceptable Resolution Time:* 10 Business Days

***Example Level 3: An Uninterruptible Power Supply ("UPS") unit is functioning in the field, but is not talking to the***

**network. The UPS will stay functional and the network card may need to be replaced.**

#### **4. Severity Level Four (4) Response Level**

**Definition:** Support requests. This level is used to request assistance with an issue. It is also used for questions about the use of the application, related subsystems or system interfaces.

**Response Time:** A qualified person(s) per section 4.04 will be in contact with SMART's personnel within 2 Business Days after a Severity Level Four issue is declared.

**Acceptable Resolution Time:** No set time-frame.

Will be referred to a business analyst for prioritization and resolution. Industry, legal, regulatory issues will be given first priority.

***Example Level 4: A field device shows intermittent errors of connecting and reconnecting to the network, but the rail switch has no errors or alarms to confirm a network issue.***

## **2. Optional Task - Annual Site Visits to Perform Inventory and Audit Evaluation (Category 2):**

At SMART's request, the Consultant shall perform the following services under Category 2:

SMART may request the Consultant to perform one (1) annual site visit during each annual period of this Agreement. During the requested site visit, Consultant shall perform: 1) system audits for the TDX Software and Commuter Rail Network equipment, and 2) any required or outstanding maintenance, system optimizations, or installation of any maintenance upgrades.

The annual site visit shall include:

### **A. Initial Inventory**

Table A.1 on the following page includes the initial inventory covered by this Agreement in regard to TDX software. Table A.1 is subject to change based on a complete inventory to be performed onsite by Consultant.

Table A.1

COVERED ELEMENT	DESCRIPTION	VERSION
LOCATION DESCRIPTION	CUSTOMER SMART	
SOFTWARE FAMILY	TDX V2	
SERVER SOFTWARE LICENSE	2	2.3.2.0
WORKSTATIONS SOFTWARE LICENSE	3	2.3.2.0
STX SERVER	SCHEDULE MODULE	2.3.2.0
STX EDITOR	APPL TO CREATE & EDIT SCHEDULES	2.0.5.0

Not Included are:

- (i) External Modules (i.e. Report Generator)
- (ii) Transit Control (C++ based)

Table A.2 below includes the initial inventory of equipment included in this Agreement regarding network services. Table A.2 is subject to change based on complete inventory to be done onsite by Consultant.

Table A.2

COVERED ELEMENT	DESCRIPTION	VERSION
LOCATION DESCRIPTION	CUSTOMER SMART	XX
NODE SWITCHES	QTY 18	XX

RAIL SWITCHES	QTY 109	XX
CAMERAS	QTY 10	XX
UPS UNITS **	QTY 18	XX
RTUs	QTY 16	XX
MEDIA CONVERTERS	QTY 16	XX
NMS SERVER *	QTY 1	XX
RADIO SWITCH	QTY 2	XX
TCC SWITCH	QTY 2	XX

\* Requires What's-Up-Gold. Licensing costs to be paid for by SMART as part of the initial NMS implementation.

\*\* UPS(s) at the stations do not have a network card, so this service would only apply to Node UPS units.

## B. Inventory Deliverables (TDX)

Consultant shall prepare an inventory of materials that will be needed in order to produce configuration management and troubleshooting needs.

Consultant shall produce an inventory of all TDX equipment and software/database configurations in use at SMART at the time of execution.

In the event that any Maintenance/Enhancement Release or New Product release requires new/upgraded hardware or third-party software (Operating System, Microsoft Office, SQL Server, etc.) in order to function properly, SMART will be provided the following options:

- i. Decline the release.
- ii. SMART Purchases the required hardware and/or software in preparation for the release. Consultant shall review the specifications of equipment prior to SMART purchasing.
- iii. Any upgrades for non-Consultant's software that SMART's Manager of Train Control Systems authorizes is considered out-of-scope work and will be charged separately. SMART is not required to purchase these upgrades through Consultant.

## C. Inventory Deliverables (Network)

Consultant shall perform a full inventory of the Rail Communications Network devices.

- i) Consultant will perform a full audit of the rail communications network.
- ii) Consultant will generate a report of all switch names, IP addresses, serial numbers, location, firmware and a copy of all switch current configurations via the new SMART Rail Network Management System (“NMS”).

Consultant will validate the existing topology diagram from the NMS for rail network devices.

- i) This validated topology will be for SMART and Consultant use when maintaining and troubleshooting the system.
- ii) Consultant shall generate a report of all SNMP capable devices that are able to send SNMP traps.
- iii) Consultant shall validate the existing topology diagram from the NMS for all Rail Network switches.

If the topology and reports are not able to be generated by no fault of Consultant on the NMS, there may be additional charges per commitment level rates to bring that system(s) functional status to generate the topology and reports.

#### **D. Spare Equipment**

Consultant and SMART shall take reasonable efforts to build a list of spare parts and equipment to be used for immediate resolution of potential failures. It is expected that SMART will purchase this equipment and store it onsite. Consultant and SMART shall maintain a shared list of the status of these spare parts. Consultant shall assist SMART in recommending parts and equipment that are not proprietary, but readily available from a variety of manufacturers and resellers.

### **3. Optional Task - Annual Site Visits to Provide Training to SMART’s Personnel (Category 3):**

At SMART’s request, the Consultant shall perform the following services under Category 3:

Consultant shall provide a separate training visit for both TDX and Commuter Rail Network equipment during each annual period of this Agreement.

Training shall be conducted over two (2) eight (8) hour periods, onsite at SMART's facility.

The training session with SMART maintenance personnel will be performed and documented with the intent and expectation that SMART will be able to maintain the system on their own with the resource of Consultant as a backup for situations that require more advanced knowledge, troubleshooting or equipment vendor support. During these training sessions, Consultant will cover TDX dispatcher use, general troubleshooting, network topology, equipment access, directions on how to perform product replacement, and describe any changes that have been made over the year.

#### **4. Specific Task Orders as Requested by SMART to Provide Upgrades or Replacements to the TDX or Network Systems (Category 4):**

The Consultant shall perform the following services under Category 4:

Initially, SMART has requested deployment and setup of a new Network Maintenance System ("NMS")

##### **A. Network Management System ("NMS")**

- i) Consultant shall install, configure, and train SMART on the new What's-Up-Gold NMS. The NMS will be for Simple Network Management Protocol ("SNMP") Trap monitoring only of SNMP devices on the SMART rail network. Any additional monitoring or automations beyond SNMP Trap monitoring of manufacturer critical alarms requested by SMART will be considered out-of-scope.
- ii) Consultant will supply SMART with a rack-mount server that is pre-loaded with the NMS software and all necessary licenses to monitor the SNMP capable Commuter Rail Network devices listed in this document. Supply of the IP address information to configure the server and other monitored devices will be done by either the results of the network audit or will be provided by SMART if a network audit is not exercised. Consultant will configure the server and install the NMS software and licenses which will be licensed and owned by SMART.
- iii) The following describes the Consultant's onsite implementation scope of work. It is expected that SMART will supply the necessary rack space and power required (including backup power for the server) for the new NMS Server. Consultant shall:
  - a. Install, wire and power the NMS server

- b. Configure the SNMP parameters on the Rail Network devices.
  - c. Upgrade firmware of the monitored SNMP capable Rail Network devices, as necessary, to the required firmware version to support the NMS.
  - d. Discover the monitored devices on the NMS software.
  - e. Configure of manufacturer recommended “critical alarms” only.
  - f. Set up the maps for monitored devices.
  - g. Configure a web client on two (2) SMART supplied workstations.
- iv) Consultant has identified initial SNMP Trap MiBs, indicated in Appendix A, MiB List. The MiBs included in Appendix A represent the standard alerts available from each device. Consultant will coordinate with SMART to determine specific MiBs to be configured for each monitored device.
- v) Consultant anticipates that re-configuration of the network devices will take approximately 5 nights during non-revenue hours to complete re-configuration and re-booting of monitored devices as needed. SMART will need to support Consultant in completing these tasks during non-revenue hours.
- vi) Consultant assumes all monitored devices on the Rail Network are accessible from a single location. SMART is responsible for any firewall modifications necessary for the NMS server to have connectivity to all of the monitored devices.
- vii) Automated notifications, such as email, are not part of this scope of work.
- viii) The NMS server has a standard 3yr hardware warranty and a 3yr What’s-Up-Gold Service plan.

## **B. New Product/Equipment Setup**

- i) At SMART’s discretion, Consultant may be tasked with the set-up, configuration and installation of any new replacement Product/Equipment that is needed at no additional cost, as long as that Product/Equipment falls into the range of Product/Equipment that Consultant is currently servicing under this Agreement.
- ii) SMART shall be responsible for procuring the replacement Product/Equipment. Consultant shall provide specification review



services of the equipment SMART intends to purchase at no additional cost.

#### **IV. General Clarifications to Scope of work**

##### **A. Third-Party Licensing and Support Agreements**

SMART shall purchase and maintain support contracts, as required, for any third-party software and hardware support, as required by manufacturers. For example, any NMS support, or network switches for extended warranty, service or maintenance of products.

##### **B. Not a Warranty**

This Agreement is not an extended warranty. All hardware, parts and third-party software involved will be supported and configured as needed by Consultant, but the costs for underlying hardware, parts and third-party software is not included in this Agreement.

##### **C. Items Excluded**

All trips required onsite, other than those allocated in the agreed to Service Level term, will be billed at the Consultant's hourly rate and travel costs.

##### **D. Travel and Other Direct Costs**

All travel and other direct costs shall be approved by SMART's Manager of Train Control Systems if required to support maintenance and monitoring services. Travel costs must be in accordance with SMART's Travel Guidelines for Contractors or as agreed by SMART's Manager of Train Control Systems.

##### **E. Acceptance Criteria**

SMART's Manager of Train Control Systems shall review the performance of all work on a regular basis for routine services or following the completion of any specific tasks. Upon successful review of work, the Manager of Train Control Systems will provide a Notice of Acceptance as required in the task orders.

##### **F. New Products**

New products and new modules of the Program ("New Products") are not included in this Agreement and would be considered out-of-scope.

## **G. Graphics**

Consultant shall provide configuration or graphics changes to the current Licensed Software Package as requested by SMART. This agreement does NOT include SMART alignment expansions, additional track or new stations, nor added controls and indications to the current system; both are considered out-of-scope services. Graphic changes may be performed by SMART with the Consultant's support, or Consultant will provide these at no additional cost. Consultant will generally roll these together for a release no more frequently than once a month. Requests for software changes prior to this Agreement should be completed before activation of this Agreement.

## **H. Access**

Consultant shall provide means for remote Internet access for monitoring and troubleshooting.

## **I. SMART's Responsibilities**

Provide a single point of contact to respond to project inquiries, review documents and provide approval ensuring continuity of work.

Provide any necessary project details and systems requirements.

Have a technical resource available to work with Consultant during implementation to resolve any issues in a timely fashion.

**EXHIBIT B**  
**SCHEDULE OF RATES**

**Implementation Services**

Description	Unit of Measure	Cost
Network Management System (Category 4-A)	Lump Sum	\$68,132.30

The Implementation Services listed above shall be invoiced in arrears following project completion and SMART acceptance.

**Standard Services**

Description	Unit of Measure	Cost
Monthly TDX Software & Network Maintenance (Category 1)	Per Month	\$7,382.35
TDX Engineer	Per Hour	\$220.92
Network Engineer	Per Hour	\$127.64

The rates for Standard Services are subject to an automatic escalation of 3% to be added to each renewal (12-month period)

**Optional Services**

Description	Unit of Measure	Cost
Optional Task - Annual Audit Site Visit	Per Audit	\$14,244.57
Optional Task – Annual Training Site Visit	Per Training	\$20,891.06

**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. Buy America.**

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured

products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by the Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11.

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

## **Certificates for Use of steel, iron and manufactured products**

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

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

Date: \_\_\_\_\_

Company Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

Company Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

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

(b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of 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.

#### **5. 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.

#### **6. 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.

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

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

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

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

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that

all subrecipients shall certify and disclose accordingly.

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

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

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

Date: \_\_\_\_\_

Company Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

#### 8. **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.

#### 9. **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.

#### **10. 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.

#### **11. 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.

#### **12. 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.

**13. 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.

#### **14. Suspension and Debarment.**

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

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

proposer certifies as follows.

### **Suspension and Debarment Certificate**

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

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

Name of Contractor: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

### **15. Civil Rights.**

The following requirements apply to the Agreement:

(a) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

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

(1) Race, Color, Creed, National Origin, Sex In accordance with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with

all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60, *et seq.*, (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, national origin, sex, sexual orientation, gender identity, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(2) Age In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

## **16. Disputes And Escalation.**

Disputes arising in the performance of this Agreement which are not resolved informally 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.

## **17. Performance During Dispute.**

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

## **18. Claims for Damages.**

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

## **19. Remedies.**

Unless this Agreement provides otherwise and the Parties have not resolved their disputes pursuant to Section 16 above, all claims, counterclaims, disputes and other matters in question between SMART and the Contractor arising out of or relating to this Agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within California.

## **20. Rights and Remedies.**

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

## **21. Disadvantaged Business Enterprises.**

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

(a) This Agreement is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 0.03%. There is no DBE participation goal established for this specific contract.

(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 Contractor will be required to report its DBE participation obtained through race-neutral means throughout the period of performance if there is a DBE contract goal specified.

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

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

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

## **22. Exclusionary or Discriminatory Specifications.**

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

## **23. No Federal Government Obligations to Contractor and Third Parties.**

Absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to Contractor, or any other third party in connection with the performance of the Agreement. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, contract, or subagreement, the Federal Government continues to have no obligations or liabilities to any party, including the Contractor.

## **24. Geographic Restrictions.**

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

## **25. Access To Records and Reports.**

Contractor shall comply with the following requirements:

- (a) **Record Retention.** Contractor shall, during the course of the Agreement and for three years after final payment, retain and maintain complete readily accessible records, documents, reports, contracts, and supporting materials relating to the Agreement as SMART may require.
- (b) **Access to Records.** Contractor shall permit SMART, the Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives, to inspect all project work, materials, payrolls, and other data, and to audit the books, records, and accounts of Contractor and its subcontractors pertaining to the Agreement. In accordance with 49 U.S.C. § 5325(g), Contractor shall require each subcontractor to permit SMART, the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that subcontractor agreement and to audit the books, records, and accounts involving that subcontractor agreement as it affects the Agreement.
- (c) **State Audit, Inspection, Access to Records and Retention of Records Requirements.** Contractor and its subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred costs by line item for the project. Contractor and its subcontractors' accounting systems shall



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

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

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

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

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

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

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

## **26. ADA Access.**

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

- (a) U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 C.F.R. Part 37;
- (b) U.S. DOT regulations, “Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 C.F.R. Part 27;
- (c) U.S. DOT regulations “Americans with Disabilities (DA) Accessibility Specifications for Transportation Vehicles,” 49 C.F.R. Part 38;
- (d) U.S. DOT regulations, “Nondiscrimination on the basis of Disability in State and Local Government Services,” 28 C.F.R. Part 35;
- (e) U.S. Department of Justice (DOJ) regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 C.F.R. Part 36;
- (f) U.S. General Services Administration (GSA) regulations, “Accommodations for the Physically Handicapped,” 41 C.F.R. Subpart 101-19;
- (g) U.S. Equal Employment Opportunity Commission, “Regulations to implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630;
- (h) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled,” 47 C.F.R. Part 64, Subpart F;
- (i) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. Part 609; and
- (j) Any implementing requirements FTA may issue.

## **27. Fair Labor Standards Requirements.**

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

## **28. Contract Work Hours and Safety Standards Act.**

(40 U.S.C. §§ 3701 – 3708) Contractor shall comply with 40 U.S.C. § 3702 and § 3704, as supplemented by Department of Labor regulations (29 C.F.R. part 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer based on a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are

applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

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

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

## **29. 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.

## **30. Metric System.**

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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.

### **31. 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.

### **32. 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.

### **33. 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.

### **34. Rights in Data and Copyrights.**

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- (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.

### **35. 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.

### **36. 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.

### **37. 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.

### **38. 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

### **39. Incorporation of Federal Transit Administration (FTA) Terms.**

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



**David Rabbitt, Chair**  
Sonoma County Board of Supervisors

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

**Judy Arnold**  
Marin County Board of Supervisors

**Melanie Bagby**  
Sonoma County Mayors' and  
Councilmembers Association

**Kate Colin**  
Transportation Authority of Marin

**Damon Connolly**  
Marin County Board of Supervisors

**Debora Fudge**  
Sonoma County Mayors' and  
Councilmembers Association

**Patty Garbarino**  
Golden Gate Bridge,  
Highway/Transportation District

**Susan Gorin**  
Sonoma County Board of Supervisors

**Dan Hillmer**  
Marin County Council of Mayors and  
Councilmembers

**Eric Lucan**  
Transportation Authority of Marin

**Chris Rogers**  
Sonoma County Mayors' and  
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

September 1, 2021

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

**SUBJECT:** Approval of Contract Amendment No. 1 with Nossaman, LLP

Dear Board Members:

**RECOMMENDATION:**

Authorize the General Manager to execute Amendment No. 1 with Nossaman, LLP for specialized legal support services in the amount of \$200,000, for a contract not-to-exceed the amount of \$275,000.

**SUMMARY:**

Since 2010, Nossaman has assisted SMART in a number of real estate negotiations, public contracting issues and litigation matters. Nossaman has specialized legal expertise in a variety of real estate, transportation, and local governmental agencies matters. The District anticipates the continued need for Nossaman's Litigation support and specialized experience in real estate negotiations and transactions.

Staff recommends that the District continue to retain the services of Nossaman for supplemental specialized legal support on an as-needed basis. Contract Amendment No. 1 provides for an increase in an amount of \$200,000 for a not to exceed the amount of \$275,000.

**Fiscal Impact:** Funding for the contract is included in the legal services budget for the Fiscal Year 2021-2022.

**REVIEWED BY:** [ X ] Finance /s/ [ ] Counsel \_\_\_\_\_

Very truly yours,

/s/  
Thomas Lyons  
General Counsel

Attachment(s): Nossaman, LLP Contract Amendment No. 1



**FIRST AMENDMENT TO AGREEMENT FOR CONSULTANT SERVICES  
BETWEEN THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT  
AND NOSSAMAN LLP.**

This First Amendment dated as of September 1, 2021 (the “First Amendment”) to the Agreement for Consultant Services by and between the Sonoma-Marín Area Rail Transit District (“SMART”) and Nossaman LLP (“CONSULTANT”), dated as of May 4, 2021 (the “Original Agreement,” and as amended by this First Amendment, the “Agreement”).

**RECITALS**

WHEREAS, SMART and CONSULTANT previously entered into the Original Agreement to provide SMART with various legal services regarding litigation, rail transit issues (including railroad regulatory issues), design build projects, eminent domain proceedings and related issues; and

WHEREAS, SMART desires to increase the not-to-exceed amount of the Agreement by \$200,000 for a total not-to-exceed amount of \$275,000.

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

**AGREEMENT**

1. **“ARTICLE 4. COMPENSATION”** is hereby amended as follows:

“Total compensation under this Agreement shall not exceed \$275,000.”

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

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

**SONOMA-MARIN AREA RAIL TRANSIT DISTRICT**

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Farhad Mansourian, General Manager

**NOSSAMAN LLP**

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Consultant

**APPROVED AS TO FORM:**

Dated: \_\_\_\_\_

By \_\_\_\_\_  
District Counsel



September 1, 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

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[www.sonomamarintrain.org](http://www.sonomamarintrain.org)

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

**SUBJECT:** Programming of the American Rescue Plan (ARP) Funding and Position Changes

Dear Board Members:

**RECOMMENDATIONS:** Approve Resolution No. 2021-20 Amending the Fiscal Year 2021-22 Budget, Resolution No. 2021-11 by budgeting \$3,151,221 in projected ARP funding, authorize additional spending authority of \$427,907, and authorize position changes.

**SUMMARY:**  
***Programming ARP Funds***

ARP Revenue

The Bay Area received \$1.7 billion in ARP funds. The Metropolitan Transportation Commission (MTC) has decided to allocate the funds in two or perhaps three tranches. The first tranche was approved by the MTC Board in July.

In the past two allocations that SMART received, Coronavirus Aid, Relief, and Economic Security Act (CARES) and Coronavirus Response and Relief Supplemental Appropriations (CRRSAA), the funds were allocated directly to the transit agencies. SMART received a total of \$16.7 million. These funds were budgeted in FY 2020 and FY 2021 and the funds were completely expended by December 31, 2020.

For the ARP distribution, MTC has allocated the first tranche in the amount of \$8,942,170 to Sonoma County operators in a lump sum. Petaluma Transit, Santa Rosa Bus, Sonoma County Transit, Sonoma County Transportation Authority (SCTA) and SMART have met on several occasions and have agreed on how the funds should be allocated. Of the \$8,942,170 it was agreed that SMART should receive \$3,151,221.

Since the funds were allocated in July by MTC in a lump sum to Sonoma County, SCTA's and MTC's governing bodies will need to approve the specific allocations that the operators have agreed to. They will be doing so in their September/October meetings. We are asking to budget these funds subject to approval by SCTA and MTC.

ARP Expenditures

These funds will be used to restore service to pre-pandemic levels over the course of Fiscal Year 2021/2022. We are asking for these funds to be budgeted now so that we can start the hiring process for Engineer/ Conductor. To restore service, we needed both funding and personnel. We have determined that to get to pre-pandemic levels of service we need four (4) additional Engineer/ Conductor. The hiring and onboarding process takes approximately 6 months.

Description	Amount (6 months)
4 Engineer/ Conductor	\$276,907
Additional revenue vehicle maintenance costs	\$83,000
Fuel	\$68,000
Total	\$427,907

The expenditures are only assumed for 6 months based on the ability to hire and train employees. The difference between the ARP allocation and the Fiscal Year 2021/2022 costs (\$2,723,314) will be put in the fund balance for future programming. See Attachment I.

Position Changes

The following changes are requested to Appendix B of the FY 2021/2022 budget. See Revised Appendix B in Attachment II. We are reclassifying the following position titles, but there are no changes to salaries:

- Procurement Assistant to Purchasing Assistant
- Accounting Assistant to Accounts Payable Technician

We are changing the Accountant to an Accountant I. This will result in a lower salary range. As mentioned above, we are adding four (4) Engineer/ Conductor positions. This brings the total count to 29.

**FISCAL IMPACT:** Expenditures for increased service as detailed above will be offset by the ARP funding. The position changes other than the Engineer/ Conductor positions will result in a decrease in funding or will remain the same.

**REVIEWED BY:** [ x ] Finance\_\_\_\_/s/\_\_\_\_

[ x ] Counsel\_\_\_\_/s/\_\_\_\_

Very truly yours,

/s/

Heather McKillop  
Chief Financial Officer

Attachment(s):

- 1) Resolution No. 2021-20
- 2) Attachment I – September Amendment
- 3) Attachment II – FY 21-22 Position Authorization

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT AMENDING RESOLUTION NO. 2021-11 TO REVISE THE ANNUAL BUDGET FOR FISCAL YEAR 2021-22 TO PROVIDE FOR REVISED EXPENDITURE AUTHORITY AND INCREASED POSITION AUTHORITY**

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**WHEREAS**, as part of its approval of the Annual Budget for Fiscal Year 2021-22, the Board duly considered the annual expenditures necessary for the Sonoma-Marín Area Rail Transit District; and

**WHEREAS**, on June 2, 2021, the Board adopted Resolution No. 2021-11 approving the annual budget for Fiscal Year 2021-22; and

**WHEREAS**, Resolution No. 2021-11 considered the appropriation of funds for Operating expenses as part of the Annual Budget; and

**WHEREAS**, the Board desires to Amend the Annual Budget to provide increased appropriation authority for costs associated with adding service and revised position authority; and

**WHEREAS**, Resolution No. 2021-11 considered the creation of employee positions and fixed the compensation and salary for those positions; and

**NOW, THEREFORE, BE IT RESOLVED THAT** Resolution No. 2021-11, FY 2021-22 Annual Budget, Exhibit A, is hereby;

**NOW THEREFORE, BE IT ALSO RESOLVED** that Resolution No. 2021-11, Exhibit A, Appendix B (SMART Position Authorizations), is hereby revised to add four (4) Engineer/Conductor positions, change the title of two (2) positions with no salary change, and change the title of one position with a lower salary range, see Attachment II, and;

**BE IT FURTHER RESOLVED** except as specifically amended or supplemented by this Resolution, Resolution No. 2021-11, together with all supplements, amendments and exhibits thereto is, and shall continue to be, in full force and effect as originally adopted, and nothing contained herein shall, or shall be construed to, modify, invalidate, or otherwise affect any provision of Resolution No. 2021-11.

**Resolution No. 2021-20**  
**Sonoma-Marín Area Rail Transit District**  
**September 1, 2021**

**PASSED AND ADOPTED** at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 1<sup>st</sup> day of September 2021, by the following vote:

**DIRECTORS:**

AYES:

NOES:

ABSENT:

ABSTAIN:

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

ATTEST:

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

## Attachment I

DESCRIPTION	FY 2019-20 FINAL ACTUALS	FY 2020-21 APPROVED AMENDED BUDGET PLUS ADJUSTMENTS	FY 2021-22 CURRENT APPROVED BUDGET	FY 2021-22 PROPOSED BUDGET CHANGES	FY 2021-22 REVISED BUDGET
<b>EXPENDITURES:</b>					
<b>OPERATIONS</b>					
<b>Salaries and Benefits</b>					
Employee Salaries	10,651,825	11,845,176	12,172,316	206,738	12,379,054
Employee Benefits	2,990,424	3,665,401	4,124,429	70,169	4,194,598
<b>Total Salaries and Benefits</b>	<b>13,642,248</b>	<b>15,510,578</b>	<b>16,296,746</b>	<b>276,907</b>	<b>16,573,653</b>
<b>Services and Supplies</b>					
Uniform Expense	71,007	136,000	137,000		137,000
Communications	194,829	228,100	196,500		196,500
Maintenance-Equipment	371,030	454,676	442,576		442,576
Maintenance-Radios	115,432	151,400	163,750		163,750
Maintenance-Revenue Vehicles	1,169,501	2,576,119	742,500	83,000	825,500
Maintenance-Railway	793,540	373,090	394,250		394,250
Maintenance of Signals	122,214	204,351	200,000		200,000
Maintenance-Buildings/Facilities	205,150	248,567	247,080		247,080
Maintenance - Pathway	8,297	10,000	12,000		12,000
Transportation Services	190,391	93,000	93,000		93,000
Office Expense	71,489	86,500	76,000		76,000
Agency Extra Help	-	5,000	2,500		2,500
Rents/Leases - Equipment	60,911	82,020	73,020		73,020
Minor Equipment	190,563	253,688	217,190		217,190
Computer Software and Hardware	194,564	268,880	-		-
Training, Travel and Memberships	31,966	63,180	94,000		94,000
Fuel and Lubricants	950,388	905,000	1,255,000	68,000	1,323,000
Miscellaneous	1,801	4,500	4,900		4,900
Professional Services	1,604,750	1,415,020	909,040		909,040
Utilities	563,607	700,525	705,275		705,275
<b>Total Services and Supplies</b>	<b>6,911,428</b>	<b>8,259,616</b>	<b>5,965,581</b>	<b>151,000</b>	<b>6,116,581</b>
<b>Buildings &amp; Capital Improvements (Capital Assets)</b>					
Buildings & Improvements		-	-		
Vehicles, Equipment	1,988,014	2,349,778	2,931,000		2,931,000
<b>Total Buildings and Capital Improvements</b>	<b>1,988,014</b>	<b>2,349,778</b>	<b>2,931,000</b>	<b>-</b>	<b>2,931,000</b>
<b>TOTAL OPERATIONS EXPENDITURES</b>	<b>\$ 22,541,691</b>	<b>\$ 26,119,972</b>	<b>\$ 25,193,327</b>	<b>\$ 427,907</b>	<b>\$ 25,621,234</b>

## Appendix B

## Fiscal Year 2021-22 : Proposed Position Authorization - Revised

Position	Authorized FTE	Salary Range: Annual		Salary Range: Hourly		COMMENTS
		Low	High	Low	High	
ADMINISTRATIVE POSITIONS						
<del>Accountant</del> Accountant I	1	<del>\$ 78,874</del> \$ 67,371	<del>\$ 95,888</del> \$ 81,890	<del>\$ 37.92</del> \$ 32.39	<del>\$ 46.10</del> \$ 39.37	Updated position title and pay range
<del>Accounting Assistant</del> Accounts Payable Technician	1	\$ 57,242	\$ 69,576	\$ 27.52	\$ 33.45	Updated position title
Administrative Assistant	1	\$ 54,454	\$ 66,186	\$ 26.18	\$ 31.82	
Assistant General Counsel	1	\$ 145,558	\$ 176,925	\$ 69.98	\$ 85.06	
Assistant Planner*	1	\$ 75,109	\$ 91,312	\$ 36.11	\$ 43.90	
Chief Financial Officer	1	\$ 232,710	\$ 282,859	\$ 111.88	\$ 135.99	
Clerk of the Board	1	\$ 82,846	\$ 100,714	\$ 39.83	\$ 48.42	
Communications and Marketing Manager	1	\$ 142,022	\$ 172,619	\$ 68.28	\$ 82.99	
Community Outreach Coordinator	1	\$ 77,002	\$ 93,579	\$ 37.02	\$ 44.99	
Community Outreach Specialist	1	\$ 116,542	\$ 141,648	\$ 56.03	\$ 68.10	
Fiscal Manager	1	\$ 131,893	\$ 160,326	\$ 63.41	\$ 77.08	
General Counsel	1	\$ 232,710	\$ 282,859	\$ 111.88	\$ 135.99	
General Manager	1	\$ 290,000	\$ 330,000	\$ 139.42	\$ 158.65	
Human Resources Manager	1	\$ 128,648	\$ 156,374	\$ 61.85	\$ 75.18	
Human Resources Principal Analyst	1	\$ 116,542	\$ 141,648	\$ 56.03	\$ 68.10	
Human Resources Technician	1	\$ 71,469	\$ 86,861	\$ 34.36	\$ 41.76	
Information Systems Manager	1	\$ 128,648	\$ 156,374	\$ 61.85	\$ 75.18	
Information Systems Technician	1	\$ 78,874	\$ 95,888	\$ 37.92	\$ 46.10	
Intern	Multiple Positions	Up to total amount	\$ 60,000			
Legal Administrative Assistant	1	\$ 71,469	\$ 86,861	\$ 34.36	\$ 41.76	
Payroll Technician	1	\$ 57,242	\$ 69,597	\$ 27.52	\$ 33.46	
Principal Planner	1	\$ 125,757	\$ 152,838	\$ 60.46	\$ 73.48	
<del>Procurement Assistant</del> Purchasing Assistant	1	\$ 59,550	\$ 72,384	\$ 28.63	\$ 34.80	Updated position title
Procurement Manager	1	\$ 108,243	\$ 131,560	\$ 52.04	\$ 63.25	
Programming and Grants Manager	1	\$ 149,219	\$ 181,397	\$ 71.74	\$ 87.21	
Real Estate Manager	1	\$ 160,659	\$ 195,291	\$ 77.24	\$ 93.89	
Senior Administrative Analyst	1	\$ 95,659	\$ 116,272	\$ 45.99	\$ 55.90	
Senior Real Estate Officer	1	\$ 108,243	\$ 131,560	\$ 52.04	\$ 63.25	
Supervising Accountant	1	\$ 93,330	\$ 113,443	\$ 44.87	\$ 54.54	
Subtotal Administrative Full Time Equivalents (FTE)		28				

Appendix B : Continued on Next Page (Page 1 of 3)



## Appendix B

### Fiscal Year 2021-22 : Proposed Position Authorization - Revised

Position	Authorized FTE	Salary Range: Annual		Salary Range: Hourly		COMMENTS
		Low	High	Low	High	

#### CAPITAL POSITIONS

Assistant Engineer *	2	\$ 91,062	\$ 110,656	\$ 43.78	\$ 53.20	
Associate Engineer*	2	\$ 108,243	\$ 131,560	\$ 52.04	\$ 63.25	
Principal Engineer*	1	\$ 142,022	\$ 172,598	\$ 68.28	\$ 82.98	
Chief Engineer	1	\$ 190,965	\$ 232,107	\$ 91.81	\$ 111.59	
Manager Train Control Systems	1	\$ 190,965	\$ 232,107	\$ 91.81	\$ 111.59	
Project Extra hires *		\$ -	\$ 50,000	\$ -	\$ -	
<b>Subtotal Capital Full Time Equivalents (FTE)</b>		<b>7</b>				

\* Denotes Limited-Term Position Dependent on Project need

Table 5 : Continued on Next Page (Page 2 of 3)

**Appendix B**
**Fiscal Year 2021-22 : Proposed Position Authorization - Revised**

Position	Authorized FTE	Salary Range: Annual		Salary Range: Hourly		COMMENTS
		Low	High	Low	High	
OPERATIONS POSITIONS						
Administrative Assistant	1	\$ 54,454	\$ 66,186	\$ 26.18	\$ 31.82	
Administrative Analyst-Purchasing	1	\$ 87,090	\$ 105,851	\$ 41.87	\$ 50.89	
Administrative Services Manager	1	\$ 91,062	\$ 110,677	\$ 43.78	\$ 53.21	
Assistant Superintendent of Transportation	1	\$ 110,947	\$ 134,867	\$ 53.34	\$ 64.84	
Bridge Tender*	2.5	-	\$ 68,203	-	\$ 32.79	
Chief of Police	1	\$ 173,014	\$ 210,330	\$ 83.18	\$ 101.12	
Code Compliance Officer	3	\$ 69,763	\$ 84,781	\$ 33.54	\$ 40.76	
Controller /Supervisor	10	\$ 97,594	\$ 118,643	\$ 46.92	\$ 57.04	
Conductor**	11	\$ 72,966	\$ 85,821	\$ 35.08	\$ 41.26	
Engineer-Conductor**	<del>25</del> 29	\$ 87,714	\$ 103,189	\$ 42.17	\$ 49.61	Added 4 FTE
Extra Hires Operations		-	\$ 350,000	-	-	
Facilities Maintenance Supervisor	1	\$ 100,506	\$ 122,179	\$ 48.32	\$ 58.74	
Facilities Maintenance Technician	3	-	\$ 85,322	-	\$ 41.02	
Laborers-Vehicle Maintenance	10	-	\$ 65,707	-	\$ 31.59	
Laborers-Track Maintenance	2	-	\$ 63,773	-	\$ 30.66	
Operations Manager	1	\$ 190,965	\$ 232,107	\$ 91.81	\$ 111.59	
Parts Clerk	2	\$ 64,750	\$ 78,707	\$ 31.13	\$ 37.84	
Railroad Information Systems Specialist	1	\$ 113,714	\$ 138,195	\$ 54.67	\$ 66.44	
Safety & Compliance Officer	1	\$ 131,893	\$ 160,326	\$ 63.41	\$ 77.08	
Signal Supervisor	2	\$ 108,243	\$ 131,560	\$ 52.04	\$ 63.25	
Signal Technician	9	-	\$ 112,965	-	\$ 54.31	
Signal Technician Trainee***	2	-	\$ 84,718	-	\$ 40.73	
Superintendent of Vehicle Maintenance	1	\$ 131,893	\$ 160,326	\$ 63.41	\$ 77.08	
Superintendent of Transportation	1	\$ 131,893	\$ 160,326	\$ 63.41	\$ 77.08	
Superintendent Signals and Way	1	\$ 131,893	\$ 160,326	\$ 63.41	\$ 77.08	
Track Maintainer 1	5	-	\$ 84,490	-	\$ 40.62	
Track Maintainer 2	1	-	\$ 92,934	-	\$ 44.68	
Track Maintenance Supervisor	2	\$ 100,277	\$ 121,930	\$ 48.21	\$ 58.62	Adjusted per Collective Bargaining Agreement - Resolution 2021-18
Vehicle Maintenance Supervisor	4	\$ 103,002	\$ 125,216	\$ 49.52	\$ 60.20	
Vehicle Maintenance Technician	12	-	\$ 103,251	-	\$ 49.64	
Subtotal Operations Full Time Equivalents (FTE)**		108.5	\$ 6,214,776			
TOTAL ALL SMART DEPARTMENTS		143.5				

\*\* Engineer/Conductor may be filled by Conductors, Total FTE for both positions combined is 29

\*\*\*Signal Technicians may be filled by Signal Technician Trainees, Total FTE for both is 9

**Table 5: Page 3 of 3**



September 1, 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:** Amend District Hiring Policy and Procedure to include Proof of COVID-19 Vaccination as a Condition of New Employment.

Dear Board Members:

**RECOMMENDATION:**

Approve Resolution No. 2021-21 Amending HRM-0021, Hiring Policy and Procedure to require proof of vaccination for COVID-19 as part of the pre-employment screening process.

**SUMMARY:**

On March 18, 2015, the District issued its Personnel Policies and Procedures which included HRM-0021, Hiring Policy and Procedure, that describes the District's hiring and pre-employment screening process. Due to a recent increase in cases of COVID-19, the State Public Health Officer, the Marin County Health Officer and the Sonoma County Health Officer have recently issued orders requiring certain employees in high-risk settings to provide proof of vaccination and if not vaccinated, to submit to regular COVID-19 testing. State and County health officials are strongly encouraging employers to implement similar measures. The intent of these actions is to reduce transmission of the virus and encourage vaccination.

Data shows the recent surge of new infections of COVID-19 is primarily affecting the unvaccinated. As of August 18, 2021, in Sonoma County, new cases of COVID-19 per 100,000 residents was 41.9 among unvaccinated residents and 9.6 among vaccinated residents. In Marin County, the new case rate per 100,000 residents was 39.1 among unvaccinated and 11.8 among vaccinated residents. In response to the issued orders and strong recommendations, we are proposing to revise the District's Hiring Policy and Procedure to require proof of vaccination for all new hires as part of the employment screening process. Applicants may request an accommodation for religious or medical reasons. Human Resources currently oversees the pre-employment screening process and will administer the changes. This policy will be effective upon approval.

**FISCAL IMPACT:** There is no fiscal impact.

**REVIEWED BY:** [ x ] Finance \_\_\_\_\_/s/\_\_\_\_\_ [ x ] Counsel \_\_\_\_\_/s/\_\_\_\_\_

Very truly yours,

/s/

Lisa Hansley  
Human Resources Manager

Attachment(s):

- 1) Resolution No. 2021-21
- 2) HRM-0021, Hiring Policy and Procedure

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT, STATE OF CALIFORNIA, REVISING HRM-0021, HIRING POLICY AND PROCEDURE EFFECTIVE SEPTEMBER 1, 2021**

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**WHEREAS**, the Board of Directors has been granted the statutory power to adopt rules and regulations for the administration of employer-employee relations; and

**WHEREAS**, on March 18, 2015, the Board approved Resolution Number 2015-04 adopting the District's personnel policies and procedures manual; and

**WHEREAS**, in light of the current health crisis, the Board wishes to revise its Hiring Policy and Procedures to include proof of vaccination for COVID-19 as part of the pre-employment screening process to provide for the increased health and safety of District employees and the public; and

**NOW THEREFORE, BE IT RESOLVED** by the Board of Directors of the Sonoma-Marín Area Rail Transit District hereby adopts HRM-0021, Hiring Policy and Procedure attached to this Resolution as Exhibit A;

**BE IT FURTHER RESOLVED** that all previously adopted versions of HRM-0021, Hiring Policy and Procedure are hereby repealed and replaced by Exhibit A.

This resolution shall be and is hereby declared to be in full force and effect from the date of its passage.

**PASSED AND ADOPTED** at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 1st day of September 2021, by the following vote:

**DIRECTORS:**

AYES:

NOES:

ABSENT:

ABSTAIN:

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

ATTEST:

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



## Section 3: Employment Practices

### HRM- 0021 HIRING POLICY AND PROCEDURE

#### 1. POLICY

The Sonoma Marin Area Rail Transit District (SMART or “District”) believes that hiring qualified individuals to fill positions contributes to the overall strategic success of the District. In hiring the most qualified candidates for positions, the following hiring process is applicable:

#### 2. PROCEDURE

- a. **PERSONNEL REQUISITIONS.** When a new position is created or a vacancy in an existing position allocation occurs or is anticipated, the hiring manager will send a written hiring request to the Human Resources Manager. A member of Human Resources will meet with the hiring manager to review the duties and requirements of the position and to plan the recruitment process.
- b. **JOB POSTINGS.** All regular exempt and non-exempt job openings are posted on SMART’s website for employees and the public to review. Jobs remain on the posting until the position is filled or until a date at management’s discretion. Job postings are updated as vacancies occur.
- c. **RECRUITMENT ADVERTISING.** Positions are advertised externally based upon need and budget requirements. Human Resources is responsible for placing all recruitment advertising.
- d. **INTERNAL TRANSFERS.** Employees who have been in their current position for at least one year may apply for internal job openings. The one-year requirement may be waived with the consent of the General Manager and Human Resources. All applicants for a posted vacancy will be considered on the basis of their qualifications and ability to perform the job successfully. Internal candidates who are not selected will be notified by Human Resources. Once transferred to a new position, employees will enter into a Probationary period for the new position if the transfer involves a promotion to a higher job class.
- e. **INTERVIEW PROCESS.**
  - i. Human Resources or the hiring manager will screen applications and/or resumes for minimum qualifications prior to scheduling interviews.

- ii. Initial interviews are generally conducted by Human Resources and/or the hiring department. Team interviews may be conducted as needed for some positions. If a team interview is conducted, a structured interview process is recommended. Interview questions should be compiled by the interviewing team and reviewed by Human Resources. After the team completes the interview process, the results of the interview should be forwarded to the hiring manager/supervisor for review.
  - iii. Job specific skill tests may be administered as part of the screening or interview process. Such examinations may include writing samples, technical skills or general subject matter testing related to the position.
  - iv. All interview notes, applications and resumes of applicants not selected will be forwarded to Human Resources for appropriate retention. Human Resources will notify applicants who are not selected.
  - v. Applicants selected during the interview process will be placed in a pool of potential candidates for background screening. Applicants will remain on this pooled list until such time as the District initiates a new recruitment process.
  - vi. The hiring manager or supervisor has responsibility for making a hiring decision however all new hires require approval by the General Manager.
- f. REFERENCE CHECKS, CRIMINAL BACKGROUND CHECKS, AND DRUG AND ALCOHOL TESTING.
- i. Once a decision has been made regarding interest in hiring an applicant, an offer will be made contingent upon satisfactory completion of reference checks and criminal background checks. The District recognizes the importance of maintaining a safe workplace with employees who are honest, trustworthy, qualified, reliable, and nonviolent, and who do not present a risk of serious harm to their co-workers or others. For purposes of furthering these concerns and interests, the District reserves the right to investigate an individual's prior employment history, personal references, and educational background, as well as other relevant information. The hiring manager or assigned Background Investigator will check references for all candidates.
  - ii. In addition, the District may request consumer reports or investigative consumer reports at any time during the course of an individual's employment with the District, if any, for purposes of evaluating suitability for employment, promotion, reassignment or retention as an employee. The District does this as a condition of an applicant being hired and as a condition to an employee being promoted to a position which places him or her in a fiduciary relationship with the District or in a safety sensitive position.

- iii. Consistent with legal requirements, the District also reserves the right to obtain and to review an applicant's or an employee's criminal history, and other relevant information, and to use such information when making employment decisions. Any criminal activity resulting in a conviction during employment must be reported to the Human Resources Department immediately. A decision concerning continued employment will be reviewed at that time. Conviction of a crime will not be an absolute bar to employment, promotion, reassignment, or retention as an employee. The District will conduct an individualized assessment and consider the specific circumstances of any situation before making an employment decision.
- iv. Human Resources will contact final candidates to complete pre-employment medical testing, including a drug and alcohol screen where applicable. Some positions may also require psychological profile testing.
- v. Pre-employment medical testing for positions designated as safety sensitive will include screening for sleep disorders consistent with Department of Transportation guidelines. Employees in safety sensitive positions who are later diagnosed with a sleep disorder must report this diagnosis to the District immediately by contacting Human Resources. Such safety sensitive employees must provide documentation to Human Resources from their treating physician that the condition is appropriately treated and must receive annual evaluations to ensure the employee is fit for duty. A safety sensitive employee will be considered unfit for duty and removed from service until such documentation is provided if they:
  - (i) fail to report this diagnosis; or
  - (ii) are not taking appropriate treatments as prescribed/instructed by their physician; and/or
  - (iii) fail to produce documentation of fitness for duty.

COVID Vaccination Requirement –Due to the current health emergency this policy establishes a requirement that all applicants for employment with the District who are selected for hire will provide proof of vaccination once a conditional offer of employment has been made. Prior to beginning employment, persons who have accepted a job offer from the District must complete a COVID-19 Vaccination Verification Form and show proof of full COVID-19 vaccination to the Human Resources Department. Acceptable forms of documentation include a COVID-19 Vaccination Record Card issued by the Department of Health and Human Services Centers for Disease Control and Prevention (CDC) or the World Health Organization Yellow Card or the Digital State of California record from <https://myvaccinerecord.cdph.ca.gov/>. Proof of vaccination must include full legal name, date of birth, date(s) of vaccination and COVID-19 vaccine manufacturer. Applicants may request an accommodation based on medical exemption, disability, or religious objection from the Human Resources Department. Disability is defined as a physical or mental disorder or condition that limits a major life activity and any



other condition recognized as a disability under applicable law. "Disability" includes pregnancy, childbirth, or a related medical condition where reasonable accommodation is medically advisable.

- g. **JOB OFFERS.** After successful completion of the background and pre-employment testing process, Human Resources or the hiring manager/supervisor will notify the General Manager and discuss making a final job offer to the candidate. The hiring manager or Human Resources will contact the candidate to confirm the employment offer.
- h. **INITIAL START DATE AND ORIENTATION.** On the initial start date, employees will complete required paperwork and their orientation. Employees must complete the necessary paperwork in Human Resources or at the location of the new position. Human Resources staff and/or the employee's direct supervisor will complete the "New Hire Checklist" with new employees and review District policies and procedures. All documents should be returned to Human Resources as well as an original completed application form, Form I-9 with a copy of supporting I-9 documents, Federal and state tax forms, and any certifications and licensure information within one week of hire date.
- i. **IMMIGRATION COMPLIANCE:** The District complies with applicable immigration law, including the Immigration Reform and Control Act of 1986 and the Immigration Act of 1990. As a condition of employment, every individual must provide satisfactory evidence of his or her identity and legal authority to work in the United States. This documentation must be provided within three (3) days from the start of employment. Employees may be asked to leave the premises to get the appropriate documents. If an employee cannot verify his or her right to work in the United States, the District may be obligated to terminate that employee's employment.

### **3. APPROVAL**

EFFECTIVE DATE: March 18, 2015

REVISED: September 28, 2018

REVISED: January 19, 2021

REVISED: September 1, 2021