



**BOARD OF DIRECTORS
MEETING AGENDA
November 2, 2022 – 1:30 PM**

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

MEMBERS OF THE PUBLIC MAY NOT ATTEND THIS MEETING IN PERSON

[ZOOM TELECONFERENCE INSTRUCTIONS](#)

PUBLIC COMMENT PRIOR TO MEETING:

If you wish to make a comment you are strongly encouraged to please submit your comment by 5:00 p.m. on Tuesday, November 1, 2022 at <https://www.surveymonkey.com/r/SMARTBoardComments>

PUBLIC COMMENT DURING THE MEETING:

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

1. Call to Order
2. Approval of the October 19, 2022, Board Meeting Minutes
3. Board Member Announcements
4. General Manager's Report
5. Public Comment on Non-Agenda Items

Consent Calendar

- 6a. Consider and Approve a Resolution to continue virtual Tele/Video Conference Meetings during the COVID-19 State of Emergency
- 6b. Approval of Monthly Financial Reports – September 2022
- 6c. Approve a Resolution to Amend Fiscal Year 2023 Budget to provide for the Carryforward of funds from Fiscal Year 2022

Regular Calendar

- 7. Fiscal Year 2022 Budget to Actual Comparison (*Information*) – *Presented by Heather McKillop*
- 8. Approve a Resolution Authorizing the General Manager to Award Contract No. CV-BB-22-002 with Central Pacific Engineering for the Pedestrian Path-of-Travel Improvement Project for a total contract amount of \$195,520 – *Presented by Bill Gamlen*
- 9. Approve a Resolution Authorizing the General Manager to Award Contract No. FR-BB-22-003 with Stacy & Witbeck, Inc. for the Highway 37 At-Grade Crossing Repair Project for a total contract amount of \$378,694 and a contract term through February 28, 2023 – *Presented by Bill Gamlen*
- 10. Reappoint and Approve Amendment to Personal Service Agreement Contract for the position of General Counsel – *Presented by General Manager Cumins*
- 11. Closed Session – Conference with Legal Counsel regarding existing litigation pursuant to California Government Code Section 54956.9(a); Dennis Muelrath, et al. v. Sonoma-Marín Area Rail Transit District; Sonoma County Superior Court - SCV 27-17-87; Number of cases: 1
- 12. Report Out Closed Session
- 13. Next Regular Meeting of the Board of Directors, November 16, 2022 – 1:30 PM
- 14. Adjournment

DISABLED ACCOMODATIONS:

Upon request, SMART will provide for written agenda materials in appropriate alternative formats, or disability-related modification or accommodation, to enable individuals with disabilities to participate in and provide comments at/related to public meetings. Please submit a request, including your name, phone number and/or email address, and a description of the modification, accommodation, service, or alternative format requested at least two (2) days before the meeting. Requests should be emailed to *Leticia Rosas-Mendoza, Clerk of the Board* at lrosas@sonomamarintrain.org or submitted by phone at (707) 794-3072. Requests made by mail SMART's, 5401 Old Redwood Highway, Suite 200, Petaluma, CA 94954 must be received at least two days before the meeting. Requests will be granted whenever possible and resolved in favor of accessibility.



**BOARD OF DIRECTORS
REGULAR MEETING MINUTES
October 19, 2022 - 1:30 PM**

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

MEMBERS OF THE PUBLIC MAY NOT ATTEND THIS MEETING IN PERSON

1. Call to Order

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

2. Approval of the October 5, 2022, Board Meeting Minutes

Directors Arnold and Bagby joined at 1:32pm

MOTION: Director Coursey moved approval of October 5, 2022; Board Meeting Minutes as presented. Director Lucan second. The motion carried 9-0 (Directors Hillmer and Pahre absent; Director Connolly joined later).

3. Board Members Announcements
None

4. General Manager's Report

General Manager Cumins provided a brief update on the following:

- Ridership
- Pathway Grand Opening
- Questions

Ridership Update

- Average weekday boardings continue to increase. Month to date in October, SMART averaged 2,144 riders per day, which is a 9% increase over the last month (September) and is 88% more than ridership in October 2021
- October 2022 daily boardings have reached 84% of October 2019 (pre-COVID) weekday boardings.

- Tuesday, Wednesday, and Thursday continue to be SMART's highest ridership days, but Mondays and Fridays have been showing improvement over the last few weeks.
- Weekday ridership continues to climb steadily, setting new daily post-COVID ridership records over the past few weeks.
- General Manager Cumins illustrated a slide containing historical monthly ridership since 2017, including a line showing the pre-COVID 2019 average
 - General Manager Cumins stated that SMART's analysis was different from an analysis developed by Mike Arnold, submitted in the Public Comment for the October 19 board meeting. SMART's analysis compares 2022 monthly ridership to that of 2019.
 - Mr. Arnold's analysis compares all other transit agencies to 2019 ridership data but compared SMART using January/February 2020 data, where SMART saw a significant increase in ridership in those months when the Larkspur and Novato Downtown stations opened.
 - General Manager Cumins did not think Mr. Arnold's rationale was necessarily bad, but that it assumed all other transit agencies in the Bay Area had not made any service adjustments since 2019 and that was1 very likely inaccurate.
 - General Manger Cumins said that unless the SMART Board advises otherwise, SMART will continue to compare its recovery to 2019 ridership data consistent with other Bay Area agencies.
 - General Manager Cumins suggested that when we look at how SMART compared to 2019, the agency is performing very well.
- General Manager Cumins illustrated a slide comparing SMART's return to ridership to other Bay Area transit operators. When looking at the latest NTD data, August 2022 ridership is 74% of August 2019 ridership, and SMART is ranked second in the Bay Area in terms of ridership recovery. General Manager Cumins stated that when looking at this slide, proposals made by SMART staff and decisions made by the SMART Board are having a positive impact on ridership recovery.

Pathway Grand Opening

General Manager Cumins reminded the Board of Directors and the public that SMART and the City of Petaluma were hosting a grand opening ceremony on Saturday, October 22, 2022, for the pathway segment between Payran Street and South Point Boulevard.

Comments

Chair Rabbitt thanked General Manager Cumins and staff for providing the Board recommendations to increase ridership.

5. Public Comment on Non-Agenda Items

Rick Coates stated that he has had the opportunity to ride SMART the last few weeks and he is very impressed on the increase of passengers. He thanked the Board members, General Manager Cumins and staff for continuing to make improvements.

Director Connolly joined 1:41pm

6. Consent

- a. Accept Monthly Ridership Report – September 2022

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

MOTION: Director Garbarino moved approval of the Consent Agenda Items as presented. Director Arnold second. The motion carried 10-0 (Directors Hillmer and Pahre absent).

7. Authorize the General Manager to Award Contract No. IT-PS-22-002 with Militus, Inc. to provide Cybersecurity and Network Threat Analysis and Assessments for SMART in an amount of \$120,000 for the initial term of three years – *Presented by Ryan Brumley*

Information Systems Analyst, Ryan Brumley, stated that SMART's Information Technology Team manages, secures, and maintains a complex infrastructure across all SMART offices. Part of maintaining good network security involves a third-party audit of SMART's networks to discover and remediate any vulnerabilities. This preventative maintenance activity ensures the continued security of SMART systems.

SMART issued a Request for Proposal to procure a cybersecurity specialist and received twenty (20) proposals. The Selection Committee reviewed the proposals using the evaluation criteria identified in the Request for Proposal. Following the evaluation of the proposals, reference checks, and negotiations, the Selection Committee recommended that Militus, Inc. provides the overall best benefit to SMART.

Therefore, staff recommends authorizing the General Manager to Award Contract No. IT-PS-22-001 to Militus, Inc. to provide Cybersecurity and Network Threat Analysis and Assessments for SMART in an amount of \$120,000 for the initial term of three years. The approval will also authorize the General Manager to extend the Agreement at his discretion using the two one-year options to extend.

Comments

Chair Rabbitt stated that is phenomenal to receive twenty (20) proposals.

MOTION: Director Colin moved to Authorize the General Manager to Award Contract No. IT-PS-22-002 with Militus, Inc. to provide Cybersecurity and Network Threat Analysis and Assessments for SMART in an amount of \$120,000 for the initial term of three years as presented. Director Arnold second. The motion carried 10-0 (Directors Hillmer and Pahre absent).

8. Authorize the General Manager to Award Contract No. OT-PS-22-001 to Khouri Consulting, LLC to provide State Legislative Advocacy Services for SMART in an amount of \$120,000 for Year 1, \$120,000 for Year 2, \$120,000 for Year 3, \$126,000 for Optional Year 4, and \$126,000 for Optional Year 5 – *Presented by Ken Hendricks*

Procurement Manager, Ken Hendricks, stated that earlier this year SMART's General Manager and Board of Directors in collaboration with staff and public input received from the listening sessions, developed the "SMART House" model with four strategic objectives (Ridership, Pathways, Extensions, and Freight) serving as the four pillars. As SMART continues to advance these strategic initiatives, adding a State Lobbyist to assist in securing additional funding and project support at the State Legislative level is critical.

SMART issued a Request for Proposal to procure a State Lobbyist and received seven (7) responsive proposals. The Selection Committee reviewed the proposals using the evaluation criteria identified in the Request for Proposal and short-listed the top two ranked Proposers and conducted in-person interviews. The Selection Committee recommended that Khouri Consulting, LLC provides the overall best benefit to SMART.

Therefore, staff recommends authorizing the General Manager to Award Contract No. OT-PS-22-001 to Khouri Consulting, LLC in an amount of \$120,000 for Year 1, 2 and 3; and \$126,000 for Optional Year 4, and \$126,000 for Optional Year 5.

Comments

Chair Rabbitt asked if in the proposals received was common for the \$10K monthly cost. Mr. Hendricks responded that historically SMART has paid the amount and, in the proposals, there were some that were lower and higher.

MOTION: Director Lucan moved to Authorize the General Manager to Award Contract No. OT-PS-22-001 to Khouri Consulting, LLC to provide State Legislative Advocacy Services for SMART in an amount of \$120,000 for Year 1, \$120,000 for Year 2, \$120,000 for Year 3, \$126,000 for Optional Year 4, and \$126,000 for Optional Year 5 as presented. Director Rogers second. The motion carried 10-0 (Directors Hillmer and Pahre absent).

9. Approve a Resolution Amending the Fiscal Year 2023 Annual Budget for increased appropriation of \$14,100,000 for the completion of the construction of a second Petaluma SMART Station at Corona Road, Petaluma – *Presented by Heather McKillop*

Chief Financial Officer, Heather McKillop, provided a PowerPoint presentation which is posted on the SMART's website. Highlights include:

Petaluma North In-Fill Station Budget Amendment

- Funding Sources
 - State Transit and Intercity Rail Capital Program Funds (TIRCP)
 - Total funds - \$10.1M
 - Sonoma County Transit Authority (SCTA)
 - Total Funds - \$2.0M
 - City of Petaluma
 - Total Funds - \$2.0M (*pending Board and Council Approvals*)
 - Combined with Sonoma County Pathway project and McDowell Crossing
 - \$578,813 of the \$10.1M is for the McDowell Crossing
- Design
 - Request for Proposal planned to be released October/November 2022
 - Design contract awarded January 2023
- Construction
 - Construction contract estimated to be awarded Summer 2023
 - Construction completion estimated late Summer 2024

Comments

Director Colin asked to clarify if the funds of \$14.1M are from SMART's budget. Ms. McKillop responded that SMART is required to appropriate grant funds in the SMART's budget to spend the funds.

Eris Weaver stated that she is having difficulties viewing the shared screen.

Duane Bellinger stated that he took the train/ferry to a baseball game. He is happy to see more cars in the parking lots. He voiced his concerns regarding the parking at Corona Station and encouraged the Board not to sell the Downtown Petaluma property. For Measure Q, there was a 75% in favor of SMART and for Measure I, there was only 48% in favor of SMART.

Chair Rabbitt thanked General Manager Cumins and staff for pursuing funds and working with all the entities to bring this project forward. Look forward to this important new station coming active in the second largest City.

MOTION: Director Arnold moved to Approve a Resolution Amending the Fiscal Year 2023 Annual Budget for increased appropriation of \$14,100,000 for the completion of the construction of a second Petaluma SMART Station at Corona Road, Petaluma as presented. Director Garbarino second. The motion carried 10-0 (Directors Hillmer and Pahre absent).

10. Approve SMART Field Trip Program for Youth in Grades K-12 School Groups – *Presented by Emily Betts*

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

Field Trip Program

- Background
- Proposed Field Trip Program
- Sonoma County Destinations
- Marin County Destinations
- Field Trip Guidelines on SMART's Website: <https://www.sonomamarintrain.org/FieldTripProgram>

Comments

Director Fudge is very pleased for this program. This program is going to create new riders to the SMART train.

Director Bagby stated that this program is going to be a great resource for many teachers. She suggested that staff contact the Sonoma County Water and Energy because they have staff in education that can help school and students. She looks forward in being able to attend a field trip in the future.

Dani Sheehan stated that this program is a good example of community outreach. She thanked staff for all the work.

Steve Birdlebough stated that he looks forward to expanding the program further.

Eris Weaver thanked staff for the program. She is concerned about the safety of some of the children walking toward particular destinations. She suggested that safety concerns at some of the locations are addressed.

Director Lucan asked how staff anticipated promoting the program. Ms. Betts stated that staff has a comprehensive school list of Sonoma and Marin County and will be providing them with marketing materials.

Chair Rabbitt stated that this program will provide the first train ride to many kids. This is a valuable program for schools in both counties.

MOTION: Director Garbarino moved to Approve SMART Field Trip Program for Youth in Grades K-12 School Groups as presented. Director Bagby second. The motion carried 10-0 (Directors Hillmer and Pahre absent).

11. Bicycle and Pedestrian Counters on Segments of the Multi-Use Pathway (Information/Discussion) – *Presented by Emily Betts*

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

Bicycle and Pedestrian Counters

- Why Count Pathway Users
- Counter Locations
- Bike Counter Technology
- Average Weekday Pathway Users
- Weekday vs. Weekend Users
- Monthly Totals
- Next Steps

Comments

Director Coursey stated that this is interesting and great information to have. He is very impressed that the numbers are close to, or maybe just a little more than our ridership numbers received monthly. Ms. Betts agreed.

Director Garbarino stated that she has seen them in operation in Anchorage with a mini billboard that indicates how many bicycles have crossed. She thanked staff for the work on this plan.

Director Lucan asked for clarification for the location of the counters/trackers. Ms. Betts responded that there was no science reason for the location of the counters/trackers. It will be interesting data to see on the existing segments and these counters will allow us to do that. We would purchase additional counters as needed or desired and install it at that new location. Director Lucan asked if the counters could differentiate between a pedestrian and a bike and if they have the capabilities of determining the speed of a bike. Ms. Betts responded that the counters can differentiate between bike and pedestrian, however it cannot determine the speed of the bike. Director Lucan stated that in the future of tracking it might be interesting to track the speed of bicycles.

Director Fudge stated that we all know Cal Park Tunnel would be a huge success. She acknowledged Deb Hubsmith who served at the Marin County Bicycle Coalition and championed this tunnel and pathway. This is a huge testament of her hard work and others as well.

Matthew Hartzell thanked the Board members and Ms. Betts for the presentation. This is valuable data, and I just we want to so express our support for collecting it and sharing it. The data show that the Cal Park Tunnel is an enormous success. There is a couple other locations in the United States, where there's a tunnel with a bike path and an operating railroad sharing the tunnel in the same space, and we have one in Marin County.

Eris Weaver stated that she is happy to see this data, and to have unobtrusive the counters are. She is looking forward to seeing the results once the gaps are closed. Her hypothesis is that there will be an increase of bicycles when there is a farther distance that they can go. She suggested that staff interview people using the pathway.

Dani Sheehan suggested that the data be incorporated with the ridership totals. She asked if the counters are tracking north and south riders. Ms. Betts responded that the counters are bi-directional.

Zoe Reckas thanked the Board, staff and Ms. Betts for all the hard work installing pedestrian counters on the pathway. Having the data helps demonstrate that SMART is a multimodal agency. She greatly appreciated the opportunity to provide input on the locations of the pathway counters and looks forward to continued collaboration with SMART and the MCBC As well as with our friends at the Sonoma County Bicycle Coalition.

Jack Swearingen stated that SMART and/or schools can arrange for public safety officers/crossing guard to be at the field trip location. He reminded the public that SMART is and has been rail and trail and both should count together in the cost per passenger.

Rick Coates stated that he took his bicycle on the train and rode the trail. He was one of those counted going through the tunnel. Every time he goes through the tunnel, he notices the plaque honoring Ms. Hubsmith and can't get enough credit for her dedication, he added.

Lastly, Chair Rabbitt thanked staff for all the work and very important data to have available.

Chair Rabbitt adjourned the Board to Closed Session at 2:31pm on the following:

12. Closed Session
 - a. Conference with Board of Directors Regarding Reappointment of General Counsel (Labor Negotiations) – Pursuant to California Government Code Section 54957.6
Agency Designated Representative: General Manager / Board of Directors' Chair
Employee: General Counsel – Unrepresented
 - b. Conference with General Manager Cumins, pursuant to California Government Code Section 54956.8 regarding Real Estate Property Negotiations
Property: APN's: 007-153-014 through 007-153-018
D Street and Lakeville, Petaluma
Negotiating Parties: General Manager Cumins – Petaluma Riverfront LLC

13. Report Out Closed Session

District Counsel Lyons reported out of Closed Session at 3:15pm on the following:

b. Conference with Board of Directors Regarding Reappointment of General Counsel (Labor Negotiations) – Pursuant to California Government Code Section 54957.6
Agency Designated Representative: General Manager / Board of Directors' Chair
Employee: General Counsel – Unrepresented
Report Out: Direction given to staff

b. Conference with General Manager Cumins, pursuant to California Government Code Section 54956.8 regarding Real Estate Property Negotiations
Property: APN's: 007-153-014 through 007-153-018
D Street and Lakeville, Petaluma
Negotiating Parties: General Manager Cumins – Petaluma Riverfront LLC
Report Out: Direction given to staff

14. Next Regular Meeting of the Board of Directors, November 2, 2022 – 1:30pm

15. Adjournment - Meeting adjourned at 3:17pm.

Respectfully submitted,

Leticia Rosas-Mendoza
Clerk of the Board

Approved on: _____

Resolution No. 2022-01.11 (NOV)
Sonoma-Marín Area Rail Transit District
November 2, 2022

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT, STATE OF CALIFORNIA, AND RELATED FINDINGS REGARDING VIRTUAL-CONFERENCE MEETINGS DURING THE COVID-19 STATE OF EMERGENCY

WHEREAS, on March 4, 2020, Governor Newsom proclaimed pursuant to his authority under the California Emergency Services Act, California Government Code Section 8625, that a state of emergency exists with regards to a novel coronavirus (a disease now known as COVID-19); and

WHEREAS, on June 4, 2021, in lifting many restrictions that the State previously imposed due to COVID-19, the Governor indicated that those changes did not end the ongoing emergency; and

WHEREAS, following expiration of the Executive Orders, on September 16, 2021, the Governor signed into law Assembly Bill 361 (“AB 361”), allowing for teleconference meetings under the Brown Act during declared states of emergency; and

WHEREAS, Marin and Sonoma Health Officials continue to recommend that we continue to emphasize social distancing in order to minimize the potential spread of COVID-19 during indoor, public meetings;

WHEREAS, in light of this recommendation, the Board of Directors of SMART desires to continue to have the flexibility, for itself to meet virtually via tele/video conference.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board of Directors of SMART has resolved to continue with Teleconference meetings with the option for a limited in-person and virtual teleconference participation, and has reconsider the circumstances of the emergency and determine that the current circumstances continues to directly impact the ability to meet in-person safely;
2. There is an ongoing proclaimed state of emergency relating to the novel coronavirus causing the disease known as COVID-19.
3. State and Local officials continue to recommend measures to promote social distancing, and as a result of that emergency, large gatherings that meet in person would present imminent risks to the health or safety of attendees of in-person meetings and of this legislative body within the meaning of California Government Code Section 54953(e)(1).

Resolution No. 2022-01.11 (NOV)
Sonoma-Marin Area Rail Transit District
November 2, 2022

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marin Area Rail Transit District held on the 2nd day of November 2022, by the following vote:

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

ATTEST:

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



November 2, 2022

David Rabbitt, Chair
Sonoma County Board of Supervisors

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

Judy Arnold
Marin County Board of Supervisors

Melanie Bagby
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Damon Connolly
Marin County Board of Supervisors

Chris Coursey
Sonoma County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Eddy Cumins
General Manager

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

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

SUBJECT: Monthly Financial Status

Dear Board Members:

RECOMMENDATION: Approval of Monthly Financial Report

SUMMARY:

In this report, we have broken out passenger and freight. We have provided both budgeted revenues and expenditures for both in separate charts in the attached document. The actual column reflects revenues and expenditures for July – September 2022 or the first quarter of Fiscal Year 2023. In addition, for passenger, we have shown more detail regarding sales tax and fare revenues to show current and comparative information over the last four years.

Information on the approved budget, actual expenditures, and remaining budget have been provided. Please keep in mind that expenditures do not always occur on a straight-line basis, many large expenditures such as debt service only occur on specific intervals. In addition, we are including more extensive information on our capital program.

We have also included information regarding SMART's investment policy, where our funds are being held, and how much is currently being held. In addition, we have shown the current obligations, reserves, and fund balance requirements for FY 2022-23.

Very truly yours,

/s/
Heather McKillop
Chief Financial Officer

Attachment(s):

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



MONTHLY FINANCIAL STATUS

SEPTEMBER 2022

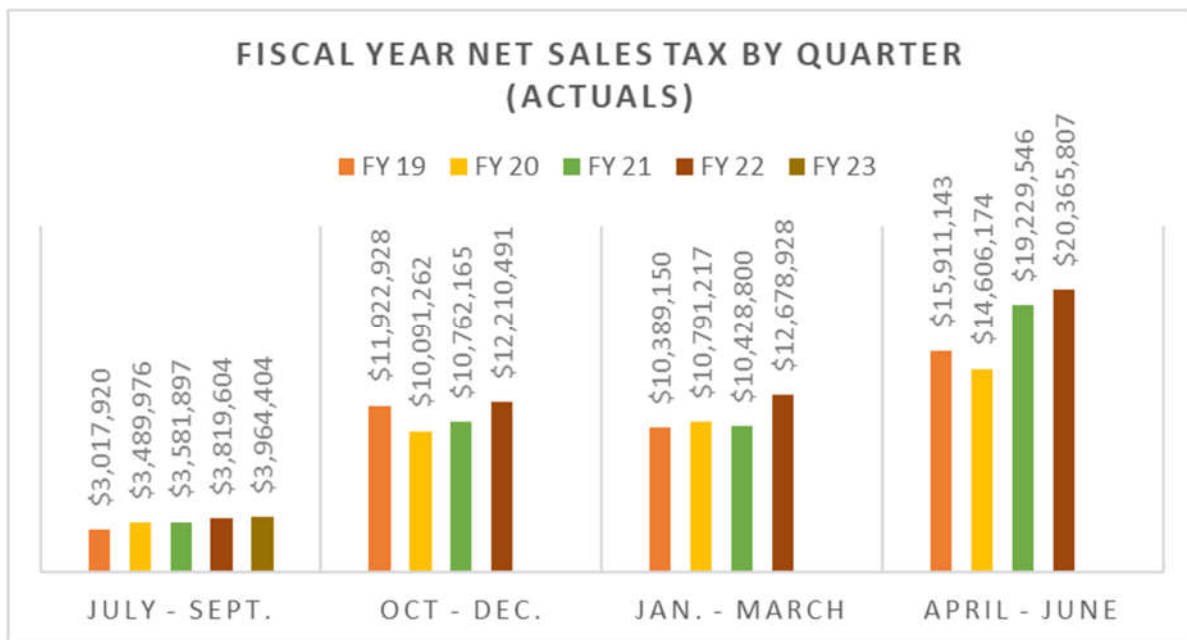
PASSENGER REVENUES

	FY 2022-23 Approved Budget	Actual	Amount Over/ Under Budget	Comments
Revenues				
Passenger Rail				
Sales/Use Taxes	\$ 51,622,000	\$ 3,964,404	\$ (47,657,596)	Sales Taxes are recorded when received not when earned
Interest and Lease Earnings	\$ 544,381	\$ 128,408	\$ (415,973)	Leases renew throughout the year
Miscellaneous Revenue	\$ 255,900	\$ 63,352	\$ (192,548)	
Passenger Fares	\$ 2,310,768	\$ 405,786	\$ (1,904,982)	
State Grants	\$ 21,224,171	\$ 1,524,981	\$ (19,699,190)	State grants are received throughout the year
Charges For Services	\$ 28,325	\$ 26,122	\$ (2,203)	Includes dispatching and flagging services which are performed throughout the year
Federal Funds (Non-COVID Relief)	\$ 4,954,529	\$ -	\$ (4,954,529)	Federal funds are received on a reimbursable basis. Funds have to be expended before they can be requested.
Federal Funds (COVID)	\$ 7,507,797	\$ -	\$ (7,507,797)	Federal funds are received on a reimbursable basis. Funds have to be expended before they can be requested.
Other Governments	\$ -	\$ 30,000	\$ 30,000	
Passenger Rail Subtotal	\$ 88,447,871	\$ 6,143,053	\$ (82,304,818)	

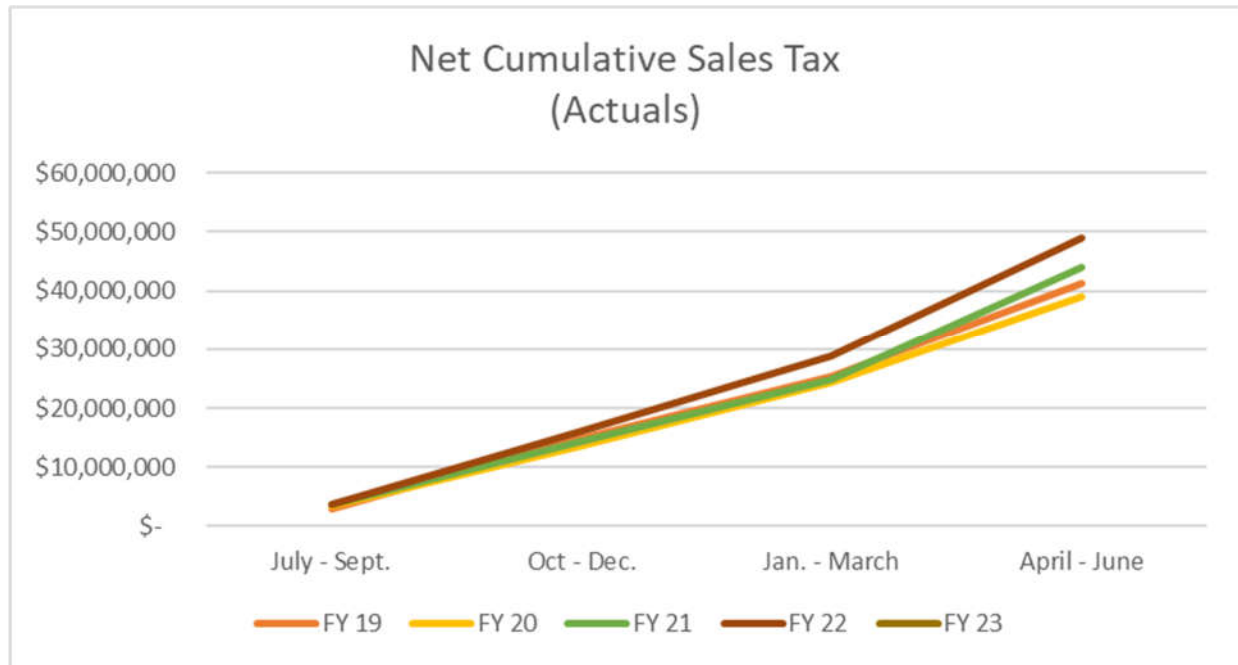
Measure Q Sales Tax
Fiscal Year (FY) 2022/2023

Time Period	July - Sept.	Oct - Dec.	Jan. - March	April - June
Forecasted FY 23 Budget	\$ 4,017,856	\$ 12,844,262	\$ 13,337,013	\$ 21,422,870
Actual	\$ 3,964,404			
Difference	\$ (53,452)			

Fiscal Year 2019-2023 Net Sales Tax Comparison
(by Quarter)

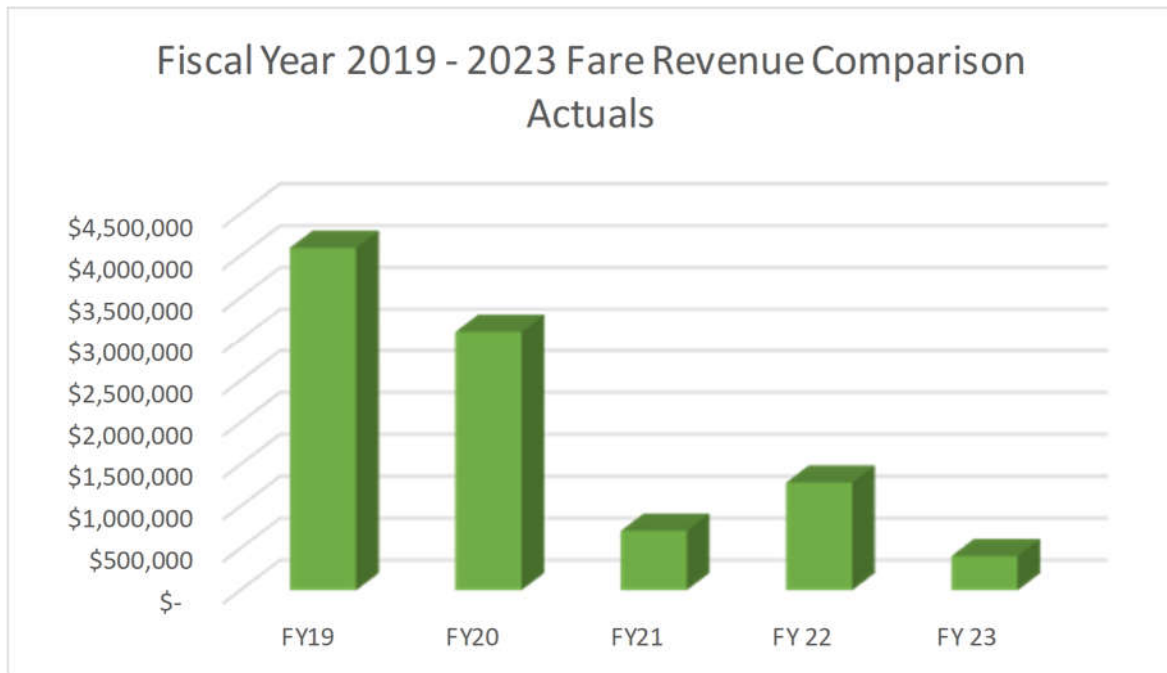


Fiscal Year 2019-2023 Net Cumulative Sales Tax Comparison

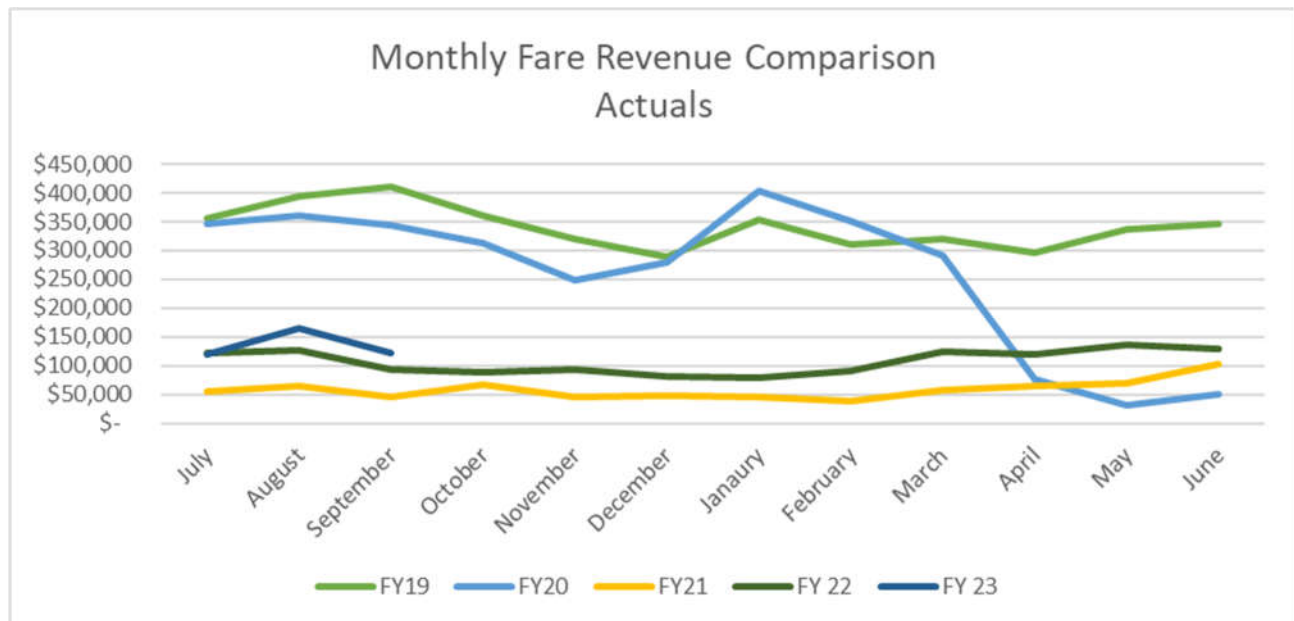


Note: Sales Taxes are recorded when received not when earned.

Fiscal Year 2019-2023 Fare Revenue Comparison



Fiscal Year 2019-2023 Monthly Fare Revenue Comparison



PASSENGER EXPENDITURES

Administration	Operations	Capital
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0% - 50% 50% - 75%
75% - 100%



0% - 50% 50% - 75%
75% - 100%



0% - 50% 50% - 75%
75% - 100%



	FY 2022-23 Approved Budget	Actual	Amount Over/ Under Budget
Passenger Expenditures			
Administration			
Salaries & Benefits	\$ 5,535,249	\$ 1,124,958	\$ (4,410,291)
Services & Supplies	\$ 11,927,874	\$ 1,386,013	\$ (10,541,861)
Administration Subtotal	\$ 17,463,123	\$ 2,510,971	\$ (14,952,152)
Operations			
Salaries & Benefits	\$ 16,602,921	\$ 3,420,642	\$ (13,182,279)
Services & Supplies	\$ 6,612,449	\$ 823,377	\$ (5,789,072)
Operations Subtotal	\$ 23,215,370	\$ 4,244,019	\$ (18,971,351)
Capital			
Salaries & Benefits	\$ 301,774	\$ 272,924	\$ (28,850)
Services & Supplies	\$ 1,505,840	\$ 31,663	\$ (1,474,177)
Capital Subtotal	\$ 1,807,614	\$ 304,587	\$ (1,503,027)
Total Passenger Expenditures	\$ 42,486,107	\$ 7,059,577	\$ (35,426,530)

Passenger (Capital) Expenditures			
Buildings & Capital Improvements	\$ 2,756,191	\$ -	\$ (2,756,191)
Machinery & Equipment	\$ 574,833	\$ 148,846	\$ (425,987)
Infrastructure	\$ 19,732,829	\$ 678,296	\$ (19,054,533)
Total Passenger (Capital) Expenditure	\$ 23,063,853	\$ 827,142	\$ (22,236,711)

Passenger Expenditures + Capital	\$ 65,549,960	\$ 7,886,719	\$ (57,663,241)
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FREIGHT REVENUES

	FY 2022-23 Approved Budget	Actual	Amount Over/ Under Budget	Comments
Revenues				
Freight				
Sales/Use Taxes	\$ -	\$ -	\$ -	
Interest and Lease Earnings	\$ 145,743	\$ 235,089	\$ 89,346	Leases renew throughout the year
Miscellaneous Revenue	\$ -	\$ 10,051	\$ 10,051	
Freight Traffic	\$ 1,100,000	\$ 117,183	\$ (982,817)	
State Grants	\$ 4,206,000	\$ -	\$ (4,206,000)	State grants are received throughout the year
Charges For Services	\$ 92,000	\$ 1,068	\$ (90,932)	Includes freight car storage.
Federal Funds (Non-COVID Relief)	\$ -	\$ -	\$ -	
Federal Funds (COVID)	\$ -	\$ -	\$ -	
Other Governments	\$ -	\$ -	\$ -	
Freight Subtotal	\$ 5,543,743	\$ 363,391	\$ (5,180,352)	

FREIGHT EXPENDITURES

■ 0% - 50% ■ 50% - 75%
■ 75% - 100%



	FY 2022-23 Approved Budget	Actual	Amount Over/ Under Budget
Freight Expenditures			
Administration			
Salaries & Benefits	\$ -	\$ -	\$ -
Services & Supplies	\$ -	\$ -	\$ -
Administration Subtotal	\$ -	\$ -	\$ -
Operations			
Salaries & Benefits	\$ 893,563	\$ 178,633	\$ (714,930)
Services & Supplies	\$ 1,045,967	\$ 93,262	\$ (952,705)
Operations Subtotal	\$ 1,939,530	\$ 271,895	\$ (1,667,635)
Capital			
Salaries & Benefits	\$ -	\$ -	\$ -
Services & Supplies	\$ 2,497,419	\$ 24,455	\$ (2,472,964)
Capital Subtotal	\$ 2,497,419	\$ 24,455	\$ (2,472,964)
Total Freight Expenditures	\$ 4,436,949	\$ 296,350	\$ (4,140,599)

Freight (Capital) Expenditures			
Buildings & Capital Improvements	\$ -	\$ -	\$ -
Machinery & Equipment	\$ 143,000	\$ -	\$ (143,000)
Infrastructure	\$ -	\$ -	\$ -
Total Freight (Capital) Expenditures	\$ 143,000	\$ -	\$ (143,000)

Freight Expenditures + Capital	\$ 4,579,949	\$ 296,350	\$ (4,283,599)
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CAPITAL PROJECTS

Capital Project Report					
	Total Project Budget	Expended in Prior Fiscal Years	Budgeted in FY23 (Includes Amended Budget)	Remaining to be Budgeted in Future Years	Project Status
PASSENGER RAIL PROJECTS					
Windsor Extension	\$ 65,000,000	\$24,256,464	\$ -	\$ 40,743,536	Funds on hold, pending MTC lawsuit on RM3 funding. Awaiting Supreme Court decision
Sonoma County Pathway Connector Project - Design & Construction	\$ 17,482,847	\$ 2,240,211	\$10,986,919	\$ 4,255,717	Finishing design & permitting stage - Will be combined with the Petaluma North Station for construction phase
Marin & Sonoma Pathway Design & Permitting	\$ 10,752,215	\$ 604,212	\$ 2,331,354	\$ 7,816,649	In design phase
McInnis Pkwy. at Bridgewater Dr. to Smith Ranch Rd. Construction (0.74 miles)	\$ 2,158,026	\$ -	\$ -	\$ 2,158,026	In design phase
Joe Rodota to 3rd St. Construction	\$ 296,824	\$ 17,330	\$ 255,199	\$ 24,295	In design - Construction will pend on grant execution
Payran to Lakeville Pathway - Design & Construction	\$ 1,140,096	\$ -	\$ 1,140,096	\$ -	Project NTP for construction issued 10/19/2022
Basalt Creek Timber Bridge Replacement	\$ 626,103	\$ 77,543	\$ 129,888	\$ 418,672	Completing environmental permitting and mitigation prior to construction
San Antonio Tributary Timber Trestle Replacement	\$ 1,071,264	\$ 81,358	\$ 222,240	\$ 767,666	In design phase
McDowell Blvd. Crossing Reconstruction - Design & FY21 Const.	\$ 1,150,000	\$ 35,744	\$ 1,000,000	\$ 114,256	In design phase - Will be combined with Petaluma North Station for construction phase
FREIGHT RAIL PROJECTS					
Black Point Bridge - Fender Replacement	\$ 875,742	\$ 89,044	\$ 722,800	\$ 63,898	Construction started October 3rd
Highway 37 Grade Crossing Reconstruction	\$ 600,000	\$ -	\$ 600,000	\$ -	Award pending Board approval on 11/2/2022
Brazos Branch Bridge Repairs	\$ 944,749	\$ 16,594	\$ 915,269	\$ 12,886	In design phase

INVESTMENTS

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

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

<u>Cash On Hand</u>	
Bank of Marin	\$ 30,350,072
Sonoma County Investment Pool *	\$ 64,836,744
Total Cash on Hand	\$ 95,186,816
<u>Reserves</u>	
Self-Insured	\$ 2,370,675
OPEB/ CalPERS	\$ 3,574,676
Operating Reserve	\$ 10,000,000
Capital Sinking Fund	\$ 9,625,000
Corridor Completion	\$ 7,000,000
Total Reserves	\$ 32,570,351
Cash Balance	\$ 62,616,465
Less: Current Encumbrances	\$ 8,323,208
Balance	\$ 54,293,257
Less: Estimated FY23 Year-end Fund Balance	\$ 45,365,112
Remaining Balance	\$ 8,928,145
* Does not include funds held by the trustee for debt service	



Contract Summary

Active Contracts as of October 1, 2022

PASSENGER RAIL

Contractor	Scope	Fiscal Year 22/23 Projected	Fiscal Year 22/23 Actuals-To-Date
A.J. Janitorial Service	Janitorial Services for all Stations, Roblar, ROC, and Fulton	\$110,000.00	\$26,820.00
AI-Media Technologies, LLC	Closed-Captioning Services	\$13,000.00	\$720.00
Air & Lube Systems, Inc.	Structural Alterations to the Rail Operation Center and Installation of the Wheel Press Machine	\$275,500.00	\$0.00
Alcohol & Drug Testing Services, LLC	DOT and FRA-regulated Drug and Alcohol Testing Services	\$36,000.00	\$4,768.00
Allen, Glaessner, Hazelwood LLP	Legal Services for Litigation and Rail Transit Issues	\$100,000.00	\$2,328.00
Alliant Insurance Services	Insurance Brokerage and Risk Management Services	\$70,000.00	\$0.00
American Integrated Services, INC.	On-Call Biohazard Remediation Services	\$50,000.00	\$0.00
American Rail Engineers Corporation	Railroad Bridge Engineering, Inspection, & Design	\$24,700.00	\$6,017.00
Asbury Environmental Services (AES)	Hazardous and Non-Hazardous Waste Removal and Disposal Services	\$10,000.00	\$95.00
Atlas Copco Compressors, LLC	Air Compressor Maintenance Services	\$8,400.00	\$0.00
BBM Railway Equipment, LLC	Wheel Press Machine - Furnish, Install, Configure, Test, Commission, and Train SMART Staff	\$289,392.00	\$0.00
Becoming Independent	Emergency Bus Bridge Services	\$22,000.00	\$2,000.00
Bettin Investigations	Pre-Employment Investigation, Background Screening, and Related Services	\$2,500.00	\$0.00
BKF Engineers Inc.	Design and Engineering Services for MUP Segments in Sonoma and Marin Counties	\$1,164,451.00	\$255,419.00
Bolt Staffing Service, Inc.	Temporary Staffing Services	\$60,000.00	\$14,620.00
Bright Star Security, Inc.	Security Patrol at SMART's Cal Park Tunnel	\$10,980.00	\$1,830.00
Business Training Library, LLC	Cloud-Based Learning Courses	\$12,410.00	\$9.00
Cinquini & Passarino, Inc.	Right-of-Way Land Surveying and Related Services	\$20,000.00	\$0.00
Craft & Commerce, LLC	Marketing and Community Outreach Services and Support	\$200,000.00	\$12,500.00
CSW/Stuber-Stroeh Engineering Group	Design and Engineering Services for 5 MUP Segments in Marin County	\$947,719.00	\$0.00
D Block Security	Security and Patrol Services	\$75,000.00	\$0.00
DeAngelo Contracting Services, LLC	Assignment of OP-SV-21-006 Vegetation Control Services	\$43,250.00	\$0.00
Dikita Enterprises, Inc	NTD Compliant Passenger Counting Services	\$40,688.00	\$0.00
Doug Williams	Fire and Life Safety Consultant	\$3,585.00	\$315.00
Dr. Lance O'Connor	Occupational Health Screening Services	\$3,000.00	\$0.00
Dunnigan Psychological & Threat Assessments, LLC	Employment-Related Psychological Evaluation Services	\$25,000.00	\$3,600.00
Eide Bailly LLP	Financial Audit Services	\$50,885.00	\$0.00
eLock Technologies, LLC	Station Bike Lockers and Maintenance Services	\$13,130.00	\$0.00
Empire Cleaners	Operations Uniform Dry Cleaning, Laundering, and Related Services	\$18,000.00	\$2,625.00
Environmental Logistics, INC.	On-Call Biohazard Remediation Services	\$150,000.00	\$0.00
Gary D. Nelson Associates, Inc.	Temporary Staffing and Placement Services	\$40,000.00	\$0.00
George Hills Company, Inc.	Third Party Claims Administration Services	\$45,000.00	\$660.00
Golden Five, LLC	Microsoft 365 Consulting Services	\$44,000.00	\$7,510.00
GP Crane & Hoist Services	Cal/OSHA Inspection Services	\$3,960.00	\$2,200.00
Granicus, Inc.	Media Streaming and Internet Broadcasting Services	\$12,248.00	\$12,248.00
Hanford A.R.C.	Implementation and Monitoring, San Rafael Creek Riparian Enhancement Project	\$39,610.00	\$6,602.00
Hanford A.R.C.	Maintenance and Monitoring the the Las Gallinas Creek Watershed Riparian Enhancement Planting	\$21,215.00	\$2,944.00
Hanson Bridgett LLP	Legal Services	\$150,000.00	\$27,517.00
HCI Systems, Inc.	Fire Equipment Inspection and Certification	\$9,774.00	\$0.00
Hogan Lovells LLP	Legal Services - Freight and Passenger Rail Sector	\$50,000.00	\$8,459.00
Holland Company	Track Geometry and Measurement Services	\$24,000.00	\$0.00
Hulcher Services, Inc.	On-Call Derailment Services	\$75,000.00	\$0.00
Hunt and Sons, Inc.	Bulk Delivery of Motor Oil (15W40)	\$16,000.00	\$0.00
Innovative Business Solutions	Payroll Processing Software	\$31,700.00	\$4,485.00
Integrative Security Controls, Inc.	CCTV Maintenance and Support	\$30,000.00	\$2,218.00
Intelligent Technology Solutions, LLC	Maximo SaaS Development, Implementation, and Related Services	\$222,122.00	\$169,683.00
LC Disability Consulting	Disability Access Consulting	\$12,000.00	\$0.00
LeaseQuery, LLC	Lease Software Licensing and Software Support Services	\$25,000.00	\$11,900.00
Leete Generators	Generator Inspection and Maintenance Services	\$5,000.00	\$0.00
Lisa Wolper, LCSW, SAP	Substance Abuse Professional Services	\$5,000.00	\$600.00
Masabi LLC	SMART Mobile Ticketing Pilot Project	\$57,000.00	\$9,500.00
MaxAccel	Compliance Management Software Design/Implementation/Asset Management	\$58,000.00	\$7,403.00

Contractor	Scope	Fiscal Year 22/23 Projected	Fiscal Year 22/23 Actuals-To-Date
Mike Brown Electric Co.	On-Call Electrical Maintenance	\$25,000.00	\$0.00
Mission Linen Supply	Employee Uniform Services	\$32,084.00	\$5,544.00
Modern Railway Systems, Inc.	Monitoring and Maintenance SMART's Communications Network and TDX System	\$91,250.00	\$7,382.00
MuniServices, LLC	Sales Tax Recovery Services	\$89,408.00	\$3,500.00
Netspeed Solutions, Inc.	SMART Phone System Maintenance	\$15,684.00	\$0.00
North Bay Petroleum	Provision of Fuel for DMUs	\$1,563,353.00	\$138,272.00
Nossaman LLP	Litigation, Rail Transit Issues, and other related legal services	\$200,000.00	\$9,671.00
Occupational Health Centers of CA	Pre-Employment Evaluation Services	\$8,679.00	\$2,054.00
Oil Stop, LLC	Automotive Repair and Service	\$2,000.00	\$1,288.00
Oracle	Fusion ERP System	\$60,000.00	\$13,817.00
Parodi Investigative Solutions	Pre-Employment Background Investigation Services	\$27,500.00	\$2,075.00
Peterson Mechanical, Inc.	HVAC Maintenance Services	\$24,000.00	\$0.00
PFM Financial Advisors, LLC	Financial Advisory Services	\$75,000.00	\$0.00
Portola Systems, Inc.	SMART Station Network Maintenance and Configuration Services	\$255,000.00	\$205,291.00
Precision Wireless	Tech Support and Maintenance for Land Mobile Radio	\$31,150.00	\$9,435.00
Quinn Covarrubias, a Professional Law Corporation	Legal Services for Rail Transit Matters	\$100,000.00	\$7,080.00
SEFAC USA	Portable Lifting Jack Inspection and Certification Services	\$8,000.00	\$0.00
Sherwood Electromotion, Inc.	Overhaul Services for SMART's Permanent Magnet Alternators	\$60,000.00	\$0.00
Sierra-Cedar, LLC	Oracle Enterprise Resources Planning Software	\$150,000.00	\$7,383.00
Sonoma County Fleet Operation Division	Non-Revenue Fleet Maintenance Services	\$10,000.00	\$554.00
Sperry Rail Service	Rail Flaw Detection Services	\$13,500.00	\$0.00
SPTJ Consulting, Inc.	Network Monitoring and Support Services	\$303,219.00	\$0.00
Stericycle, Inc.	Medical Waste Pick-Up and Disposal Services	\$2,000.00	\$0.00
Summit Signal, Inc.	Call-Out Maintenance and Repair Services for Signal Grade Crossings	\$10,000.00	\$0.00
Survival CPR & First Aid, LLC	First Aid and CPR Training, AED Compliance Program	\$2,800.00	\$0.00
Swiftly, Inc.	AVL Mobile Application and Website Interface	\$8,820.00	\$0.00
Triliant, LLC	Online Training Program	\$3,000.00	\$0.00
Tri Valley Recycling, Inc.	eWaste Collection and Recycling	\$100.00	\$0.00
Trillium Solutions, Inc.	Transit Feed Mapping Software	\$2,000.00	\$0.00
UTCRA, LLC	Wheel Pressing Services	\$25,000.00	\$0.00
Van Scoyoc Associates	Federal Lobbying Services	\$30,000.00	\$5,000.00
VenTek Transit Inc.	Fare Vending Machine Operations and Maintenance Services	\$282,704.00	\$41,992.00
Vista Broadband Networks, Inc.	Broadband Services	\$9,000.00	\$0.00
W.J.C. Electric, Inc. dba Hahn Automotive	Non-Revenue Vehicle Repair and Service	\$58,000.00	\$9,154.00
West Coast Arborists, Inc.	Tree Trimming and Tree Removal Services	\$30,000.00	\$0.00
WRA, Inc.	As-Needed Environmental Consulting Services	\$100,000.00	\$21,008.00
TOTALS:		\$8,534,470.00	\$1,098,095.00

FREIGHT

American Rail Engineers Corporation	Railroad Bridge Engineering, Inspection, & Design	\$50,000.00	\$21,698.00
Asbury Environmental Services (AES)	Hazardous and Non-Hazardous Waste Removal and Disposal Services	\$10,000.00	\$0.00
DeAngelo Contracting Services, LLC	Assignment of OP-SV-21-006 Vegetation Control Services	\$30,000.00	\$0.00
E&M Electric and Machinery, Inc.	Bridge Automation Software Design Services	\$2,500.00	\$1,500.00
Freight Rail Tracking Software Vendor	Freight Rail Tracking Software	\$29,574.00	\$800.00
GATX Rail Locomotive Group, LLC	Freight Locomotive Lease Agreement	\$32,850.00	\$9,025.00
Hue & Cry, Inc.	Security System at Schellville Depot	\$1,500.00	\$0.00
Hulcher Services, Inc.	On-Call Derailment Services	\$25,000.00	\$0.00
Lambertus J. Verstegen dba South West Locomotive Repair	Overhaul and Repair Services of Locomotive RP20DB	\$20,000.00	\$0.00
Manson Construction Co.	Black Point Bridge Repair	\$552,000.00	\$0.00
North Bay Petroleum	Provision of Fuel for DMUs	\$90,000.00	\$4,491.00
Summit Signal, Inc.	Routine Freight Rail Maintenance and Inspections	\$80,000.00	\$10,064.00
Wine Country Sanitary, Inc.	Portable Toilet Rental and Maintenance	\$1,576.00	\$589.00

Contractor	Scope	Fiscal Year 22/23 Projected	Fiscal Year 22/23 Actuals-To-Date
WRA, Inc.	Black Point Biological Monitoring - Freight	\$10,000.00	\$0.00
	TOTALS:	\$935,000.00	\$48,167.00

Actuals-To-Date includes invoices that have been approved as of September 30, 2022, but may not have been processed in SMART's Financial System.



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

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Dan Hillmer
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Chris Rogers
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Eddy Cumins
General Manager

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

November 2, 2022

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

SUBJECT: Budget Amendment for Carryforward of Funds from Fiscal Year 2022 to Fiscal Year 2023.

Dear Board Members:

RECOMMENDATIONS:

Approve Resolution No. 2022-35 which amends the Fiscal Year 2023 budget (Resolution No. 2022-22) to provide for the carryforward of funds in the amount of \$352,409 from Fiscal Year 2022 to Fiscal Year 2023.

SUMMARY:

Each year there are funds that were budgeted but not expended due to projects or programs that are multi-year in nature or due to an unforeseen circumstance that delays projects into the next fiscal year. In the Fiscal Year 2023 budget, we estimated that there would be \$4,244,309 million that would be carried forward from Fiscal Year 2022 to Fiscal Year 2023. That estimate was based on information that we had at the end of the third quarter of the fiscal year. We now have Fiscal Year 2022 year-end information and the amount of the carryforward for the projects is \$4,596,718 or a difference of \$352,409.

The following chart shows the proposed changes for the carryforward of funds associated with specific projects.

Account Description	Current FY23 Budget	Proposed Additional Rollover	Total Proposed Budget
Joe Rodota Trail to 3rd Street	\$ 267,752	\$ 24,295	\$ 292,047
SoCo Pathway Gap Closure - Includes \$2 million additional contribution	\$ 10,986,919	\$ 75,384	\$ 11,062,302
Path of Travel Improvements - Four Locations	\$ 263,091	\$ 1,432	\$ 264,523
McInnis Parkway to Smith Ranch Road Permitting	\$ 371,376	\$ 7,935	\$ 379,311
MP 29.31 Basalt Creek Timber Trestle Replacement (#1)	\$ 147,332	\$ 58,561	\$ 205,894
MP 31.47 San Antonio Tributary Timber Trestle (#2)	\$ 247,152	\$ 57,640	\$ 304,792
N. McDowell Boulevard Crossing Reconstruction	\$ 1,050,000	\$ 114,256	\$ 1,164,256
	\$ 18,497,337	\$ 339,503	\$ 18,836,839
Account Description	Current FY23 Budget	Proposed Rollover	Total Proposed Budget
Brazos Branch - Bridge Repairs (High Priority)	\$ 915,269	\$ 8,406	\$ 923,675
	\$ 915,269	\$ 8,406	\$ 923,675
Account Description	Current FY23 Budget	Proposed Rollover	Total Proposed Budget
Rail Operations and Maintenance Facility	\$ 277,000	\$ 4,500	\$ 281,500
	\$ 277,000	\$ 4,500	\$ 281,500

FISCAL IMPACT: No fiscal impact. These funds were not expended in Fiscal Year 2022 and are therefore available to carryforward into FY 2023.

Sincerely,

/s/

Heather McKillop
Chief Financial Officer

Attachment(s): Resolution No. 2022-35

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT, STATE OF CALIFORNIA, AMENDING RESOLUTION NO. 2022-22, THE ANNUAL BUDGET FOR FISCAL YEAR 2022-2023 TO PROVIDE FOR ADDITIONAL APPROPRIATION AUTHORITY

WHEREAS, as part of its approval of the Annual Budget for Fiscal Year 2022-2023, the Board of Directors considered the annual expenditures necessary for the Sonoma-Marín Area Rail Transit District; and

WHEREAS, on June 15, 2022, the Board adopted Resolution No. 2022-22 approving the annual budget for Fiscal Year 2022-2023; and

WHEREAS, Resolution No. 2022-22 considered the appropriation of carryforward funds for projects that were not going to be completed in Fiscal Year 2022; and

WHEREAS, the estimate for the carryforward was done in the third quarter of Fiscal Year 2022 and now the records have been closed for Fiscal Year 2022 and the amount of carryforward is higher by \$352,409; and

WHEREAS, the Board desires to Amend the Annual Budget to provide increased appropriation authority;

NOW, THEREFORE, BE IT RESOLVED that Resolution No. 2022-22, Fiscal Year 2022-2023 Annual Budget is hereby amended to increase expenditure authority by \$352,409 for the additional funds that will be carry forward from Fiscal Year 2022 to Fiscal Year 2023.

BE IT FURTHER RESOLVED except as specifically amended or supplemented by this Resolution, Resolution No. 2022-22, 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 and provision of Resolution No. 2022-22.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 2nd day of November 2022, by the following vote:

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

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



November 2, 2022

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

SUBJECT: Fiscal Year (FY) 22 Budget to Actual Comparison

Dear Board Members:

RECOMMENDATIONS: Information Item

SUMMARY:

Finance has finalized all the Fiscal Year 2022 processes and has prepared a reconciliation of FY22 budgeted revenues and expenditures verses actual revenues and expenditures. In addition, we have added a comment section, so the reader has an idea of the reason for the differences.

Passenger Revenues

Overall revenues were higher by approximately 6% or \$3.7 million, of which most came from higher than forecasted sales tax revenues.

Passenger Expenditures

Expenditures came in significantly lower than budgeted. There were three main reasons:

- Salaries and benefits were approximately 16% or \$3.9 million lower due to two reasons. (1) Vacancy savings due to difficulty in filling positions (2) Budgeting positions at the top of the salary range
- Services and supplies were approximately 47% or \$8.3 million under budget due to spending less in contracted/ consultant services, vehicle maintenance, fare collection, fuel, and bus bridges
- Capital projects expenditures were 85% under budget due to projects not progressing as quickly as was originally anticipated. These expenditures are anticipated to be made in Fiscal Year 23.

Freight Revenues

We collected less in freight movement fees but more in storage fees in FY 22. In addition, we collected \$157,522 in rent which was not previously budgeted and utilized \$923,912 less in state grant funds.

Freight Expenditures

Expenditures came in slightly over budget by \$9,899 or .2%. There were savings in salaries and benefits, but service and supplies were over budget due to having to extend the 3rd party operator a few months and the cost allocation for administrative costs.

FISCAL IMPACT: No fiscal impact.

Very Truly Yours,

/s/

Heather McKillop
Chief Financial Officer

Attachment(s): Fiscal Year 2022 Budget to Actual Comparison

Fiscal Year 2022 Budget to Actual Comparison

General Fund

Account	Total Budget	Receipts	Over/ Under Budget	+/- %	Comments
Sales/Use Taxes	\$ 45,981,000	\$ 49,074,830	\$ 3,093,830	7%	Sales were stronger than forecasted
Interest Earned/ Lease Revenue/ Advertising	\$ 623,865	\$ 1,037,160	\$ 413,295	66%	Lease revenue and advertising were higher than anticipated
Miscellaneous Revenue	\$ 30,000	\$ 50,585	\$ 20,585	69%	Miscellaneous reveues were higher based on insurance reimbursements that were received but not budgeted
Fares	\$ 1,200,000	\$ 1,283,111	\$ 83,111	7%	Ridership was higher than anticipated which resulted in higher fares
Parking Fees	\$ 27,000	\$ 11,789	\$ (15,211)	-56%	Parking fees were suspended during the fiscal year so revenues were less than anticipated
State Grants	\$ 8,660,684	\$ 8,069,751	\$ (590,933)	-7%	State grants were just slightly lower than anticipated
Charges for Service	\$ 57,500	\$ 198,118	\$ 140,618	245%	Flagging reimbursements were higher than anticipated
Federal Funds (COVID & Non-COVID)	\$ 10,263,027	\$ 10,751,080	\$ 488,053	5%	Federal funds were very close to what we anticipated receiving for FY 22
Other Intergovernmental Revenue	\$ 161,998	\$ 227,187	\$ 65,189	40%	
Total Revenues	\$ 67,005,074	\$ 70,703,609	\$ 3,698,535		

Account	Total Budget	Expenditures	Over/ Under Budget	+/- %	Comments
Salaries & Benefits	\$ 23,980,396	\$ 20,123,110	\$ (3,857,286)	-16%	Vacany savings - Unable to fill positions (examples: Finance, Outreach, Maintenance of Way, Engineers/ Conductors)
Service/ Supplies	\$ 17,912,977	\$ 9,571,214	\$ (8,341,763)	-47%	Spent less in contracted/ consulting services, vehicle maintenance, fuel, bus bridges, fare collections
Other Charges	\$ 7,413	\$ 7,412	\$ (1)	0%	
Equipment/ Buildings & Improvements	\$ 3,215,541	\$ 2,287,479	\$ (928,062)	-29%	Delay in getting equipment in for IT
Capital Projects	\$ 8,914,234	\$ 1,321,240	\$ (7,592,994)	-85%	Projects did not move as quickly in FY 22 as was originally anticipated. Most of these expenditures will occur in FY 23.
Other Governments	\$ 30,000	\$ 27,753	\$ (2,247)	-7%	
Account and Fund Transfers	\$ (816,560)	\$ (311,125)	\$ 505,435	-62%	This is an allocation of Engineering salaries to projects. With less project work done, less expenditures are charged to projects.
Total Expenditures	\$ 53,244,001	\$ 33,027,083	\$ (20,216,918)		

Freight

Account	Total Budget	Total Utilized	Over/ Under Budget	+/- %	Comments
CalSTA - Freight Rights	\$ 4,000,000	\$ 4,000,000	\$ -	0%	
CalSTA - Other Freight Funds	\$ 1,803,473	\$ 879,561	\$ (923,912)	-51%	We didn't need to utilize as much state grant revenue as originally expected in FY 22
Freight Movement Fees	\$ 372,000	\$ 295,433	\$ (76,567)	-21%	We collected less in fees than we anticipated
Storage Fees	\$ 115,400	\$ 178,690	\$ 63,290	55%	We collected more in fees than we anticipated
Leases	\$ -	\$ 157,522	\$ 157,522		The amount of lease revenue was unknown at the time that the budget was done, therefore we didn't have this revenue source budgeted
Total Revenues	\$ 6,290,873	\$ 5,511,206	-\$779,667		

Account	Total Budget	Expenditures	Over/ Under Budget	+/- %	Comments
Salaries & Benefits	\$ 79,329	\$ 22,518	\$ 56,811	72%	SMART took over operations in July instead of March so salaries were less than anticipated.
Service/ Supplies	\$ 672,441	\$ 687,780	\$ (15,339)	-2%	We had to use the 3rd party vendor for operations longer than was anticiptaed
Equipment/ Buildings & Improvements	\$ 4,000,000	\$ 4,000,000	\$ -	0%	
Account and Fund Transfers	\$ -	\$ 31,573	\$ (31,573)		This is the allocation from passenger to freight for administrative support
Total Expenditures	\$ 4,751,770	\$ 4,741,871	\$ 9,899		



November 2, 2022

David Rabbitt, Chair
Sonoma County Board of Supervisors

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

Judy Arnold
Marin County Board of Supervisors

Melanie Bagby
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Damon Connolly
Marin County Board of Supervisors

Chris Coursey
Sonoma County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Eddy Cumins
General Manager

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

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

SUBJECT: Approve a Resolution Authorizing the General Manager to Award Contract No. CV-BB-22-002 with Central Pacific Engineering

Dear Board Members:

RECOMMENDATION:

Approve Resolution No. 2022-34 authorizing the General Manager to Award Contract No. CV-BB-22-002 with Central Pacific Engineering for the Pedestrian Path-of-Travel Improvement Project for a total contract amount of \$195,520.

SUMMARY:

This construction contract for pedestrian improvements at five (5) grade crossing locations which includes path-of-travel improvements, fencing, and signage. The five locations within this contract include:

- Mission Street in San Rafael
- Pacheco Street in San Rafael
- Paloma Avenue in San Rafael
- East "D" Street in Petaluma
- East Washington Street in Petaluma

These pedestrian improvements are primarily within SMART's existing Right-of-Way (ROW) and are intended to enhance the safety of the crossings. The improvements consist of fencing channelization, signage, and striping.

SMART awarded and constructed pedestrian enhancements at 32 locations along the main line in 2019 and 2020. The locations in this contract represent the final locations that needed a more robust design before improvements could be constructed.

SMART advertised a competitive bid package on September 6, 2022, for the work and received three (3) bids, for construction services for the five locations in San Rafael and Petaluma. Central Pacific Engineering was the lowest responsive and responsible bidder with a bid price of \$195,520. This work was planned for in the Fiscal Year 2023 Budget.

Staff recommends authorizing the General Manager to award Contract No. CV-BB-22-002 with Central Pacific Engineering for a total not to exceed of \$195,520.

FISCAL IMPACT: This work is included in the Capital Plan and has been budgeted for in FY23 budget.

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

Very truly yours,

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

Attachment(s):

- 1) Resolution No. 2022-34
- 2) Central Pacific Engineering Contract Agreement

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
APPROVING CONTRACT NO. CV-BB-22-002 WITH CENTRAL PACIFIC ENGINEERING FOR CONSTRUCTION
SERVICES FOR PEDESTRIAN PATH-OF-TRAVEL IMPROVEMENTS IN SAN RAFAEL AND PETALUMA**

WHEREAS, the Sonoma-Marín Area Rail Transit District (SMART) is constructing pedestrian improvements at five grade crossing locations including Mission Street in San Rafael, Pacheco Street in San Rafael, Paloma Street in San Rafael, E. “D” Street in Petaluma, and E. Washington Street in Petaluma; and

WHEREAS, SMART issued an Invitation for Bid on September 6, 2022 to construct the pedestrian improvements; and

WHEREAS, SMART received three (3) bids on September 30, 2022; and

WHEREAS, SMART determined that Central Pacific Engineering was the lowest responsible and responsive bidder; and

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

1. The forgoing Recitals are true and correct and are incorporated herein and form a part of this Resolution.
2. Authorize the General Manager to execute Contract No. CV-BB-22-002 with Central Pacific Engineering, for a total contract amount of \$195,520.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 2nd day of November 2022, by the following vote:

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

ATTEST:

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

DOCUMENT 00 52 00
AGREEMENT FOR CONTRACTOR SERVICES

This agreement (“Agreement”), dated as of November 2, 2022 (“Effective Date”) is by and between the Sonoma-Marín Area Rail Transit District, a Special District of the State of California (hereinafter “SMART”), and Central Pacific Engineering, LLC, whose place of business is located at 205 De Anza Blvd. # 106, San Mateo, CA 94402 (hereinafter “Contractor”).

PEDESTRIAN PATH OF TRAVEL IMPROVEMENTS
CONTRACT # CV-BB-22-002

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

A G R E E M E N T

ARTICLE 1. LIST OF EXHIBITS

Section 1.01 The following exhibits are attached hereto and incorporated herein:

- (a) Exhibit A: Schedule of Rates

ARTICLE 2. WORK.

Section 2.01 Contractor shall complete all work specified in the Contract Documents, in accordance with the Specifications, Drawings, and all other terms and conditions of the Contract Documents.

ARTICLE 3. NOTICES TO SMART.

Section 3.01 SMART has designated Alexandra Majoulet, Project Manager, to act as SMART’s Representative(s), who will represent SMART in performing SMART’s duties and responsibilities and exercising SMART’s rights and authorities in Contract Documents. SMART may change the individual(s) acting as SMART’s Representative(s), or delegate one or more specific functions to one or more specific SMART’s Representatives, including without limitation engineering, architectural, inspection and general administrative functions, at any time with written notice and without liability to Contractor. Each SMART’s Representative is the beneficiary of all Contractor obligations to SMART, including without limitation, all releases and indemnities.

Section 3.02 All notices or demands to SMART under the Contract Documents shall be to SMART’s Representative at: **5401 Old Redwood Hwy Suite 200, Petaluma, CA, 94954** or to such other person(s) and address(es) as SMART shall provide to Contractor.

Project Manager: Alexandra Majoulet

Phone: 707-285-8186
Email: amajoulet@sonomamarintrain.org

ARTICLE 4. CONTRACT TIME AND LIQUIDATED DAMAGES.

Section 4.01 Contract Time and Notice to Proceed. Contractor shall achieve Project Completion within forty-five (45) working days from the date from when the Notice to Proceed is issued.

SMART may give a Notice to Proceed at any time within 60 Days after the Notice of Award. Contractor shall not do any Work at the Site prior to the date on which the Contract Time commences to run.

Contractor shall complete the Work so that a Final Inspection Report can be issued in accordance with Section 01 77 00 – Contract Closeout Procedures included in the General Requirements.

Section 4.02 Liquidated Damages. SMART and Contractor recognize that time is of the essence for this Agreement and that SMART will suffer financial loss if the Contractor causes an operational service delay or if any part of the Work is not completed within the times specified above, plus any extensions thereof allowed in accordance with the Contract Documents. Consistent with Article 14 of Document 00 70 00 (General Conditions), Contractor and SMART agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of actual damages incurred by SMART because of an operational service delay or delay in completion of all or any part of the Work. Accordingly, SMART and Contractor agree that as liquidated damages for service interruption (Freight Operations & Passenger Operations), Contractor shall pay SMART \$1,867.00 per hour delayed rounded up to the next hour.

ARTICLE 5. CONTRACT SUM.

Section 5.01 SMART shall pay Contractor the Contract Sum for completion of Work in accordance with the Contract Documents as follows:

Total Contract Sum: \$195,520.00

The Contract Sum includes all allowances (if any).

ARTICLE 6. CONTRACTOR REPRESENTATIONS.

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

Section 6.01 Contractor has visited the Site and has examined thoroughly and understood the nature and extent of the Contract Documents, Work, Site, locality, actual conditions, as-built conditions, all local conditions, and all federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto..

Section 6.02 Contractor has examined thoroughly and understood all reports of exploration and tests of subsurface conditions, as-built drawings, drawings, products specifications or reports, available for Bidding purposes, of physical conditions, including Underground Facilities, or which may appear in the Drawings. Contractor accepts the determination set forth in these Documents and Document 00 70 00 (General Conditions) of the limited extent of the information contained in such materials upon which Contractor may be entitled to rely. Contractor agrees that, except for the information so identified, Contractor does not and shall not rely on any other information contained in such reports and drawings.

Section 6.03 Contractor has conducted or obtained and has understood all such examinations, investigations, explorations, tests, reports and studies that pertain to the subsurface conditions, as-built conditions, Underground Facilities and all other physical conditions at or contiguous to the Site or otherwise that may affect the cost, progress, performance or furnishing of Work, as Contractor considers necessary for the performance or furnishing of Work at the Contract Sum, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Document 00 70 00 (General Conditions); and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such purposes.

Section 6.04 Contractor has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

Section 6.05 Contractor has given SMART prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered in or among the Contract Documents and as-built drawings and actual conditions and the written resolution thereof through Addenda issued by SMART is acceptable to Contractor.

Section 6.06 Contractor is duly organized, existing and in good standing under applicable state law, and is duly qualified to conduct business in the State of California.

Section 6.07 Contractor has duly authorized the execution, delivery and performance of this Agreement, the other Contract Documents and the Work to be performed herein. The Contract Documents do not violate or create a default under any instrument, agreement, order or decree binding on Contractor.

Section 6.08 Contractor has listed the following Subcontractors pursuant to the Subcontractor Listing Law, California Public Contract Code §4100 *et seq.*:

Name of Subcontractor and Location of Mill or Shop	Description of Work: Reference To Bid Items	Contractor's License No.
Central Pacific Engineering	Self-Performing Work	1083786

Section 6.09 Contractor has designated Vladimir Rivkin, Project Manager, to act as Contractor's Representative(s), who will represent Contractor in performing Contractor's duties and responsibilities and exercising Contractor's rights and authorities in

Contract Documents. Contractor may change the individual(s) acting as Contractor's Representative(s), or delegate one or more specific functions to one or more specific Contractor's Representatives, at any time upon prior written notice and approval and without liability to SMART, but Contractor is limited to two representatives.

Project Manager: Vladimir Rivkin
Address: 205 De Anza Blvd. # 106, San Mateo, CA 94402
Phone: 650-504-1231
Email: vladimir@cpenorcal.com

ARTICLE 7. CONTRACTOR DOCUMENTS.

Section 7.01 Contract Documents consist of the following documents incorporated by reference, including all changes, reference documents, Addenda, and Modifications thereto:

Document 00 52 00:	This Agreement
IFB:	Invitation for Bid
Document 00 70 00:	General Conditions
General Requirements:	General Requirements
Technical Specifications:	Technical Specifications
Plansheets:	Plansheets

Section 7.02 There are no Contract Documents other than those listed in Section 7.01. The Contract Documents may only be amended, modified or supplemented as provided in Document 00 70 00 (General Conditions).

ARTICLE 8. INSURANCE.

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

Section 8.01 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 8.02 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 \$5,000,000 per occurrence. Said insurance shall remain in effect for five (5) years after Final Completion and acceptance of the final payment for the Work, contractual liability, and coverage for explosion, collapse, and underground hazards.

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. A follow form Excess Liability policy may be utilized to satisfy the required limits of liability under this section.

Section 8.03 Comprehensive Automobile Insurance. Automobile Liability insurance covering bodily injury and property damage in an amount no less than \$5,000,000 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 8.04 Contractor's Pollution Liability Insurance. Contractor's Pollution Liability Insurance in an amount no less than \$2,000,000 per occurrence or claim. The Contractor's Pollution Liability policy shall be written on an occurrence basis with coverage for bodily injury, property damage and environmental damage, including cleanup costs arising out of third-party claims, for pollution conditions, and including claims of environmental authorities, for the release of pollutants caused by construction activities related to the Contract. Coverage shall include the Contractor as the named insured and shall include coverage for acts by others for whom the Contractor is legally responsible.

Coverage to be provided for bodily injury to or destruction of tangible property, including the resulting loss of use thereof, loss of use of tangible property that has been physically injured, and natural resource damage. There shall be no insured vs. insured exclusion in the policy.

Section 8.05 Railroad Protective Liability Insurance. Prior to commencement of construction activities, Contractor shall procure and maintain Railroad Protective Liability insurance, in SMART's name, with limits of liability of no less than \$5,000,000 per occurrence, for losses arising out of injury to or death of all persons, and for physical loss or damage to or destruction of property, including the loss of use thereof. The additional named insureds shall be the Sonoma-Marín Area Rail Transit District, and shall cover all other railroads operating on the right-of-way.

Section 8.06 Endorsements. Prior to commencing work, Contractor shall file Certificate(s) of Insurance with SMART evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. Said endorsements and Certificate(s) of Insurance shall stipulate:

- (a) SMART, its officers, and employees shall be named as additional insured on all policies listed above, with the exception of the workers compensation insurance policy (as applicable).
- (b) That the policy(ies) is Primary Insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim which Contractor is liable, up to and including the total limit of liability, without right of contribution from any other insurance effected or which may be effected by the Insureds.
- (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 Contractor. Said policy shall protect Contractor and the Insureds in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy

beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

- (d) Contractor hereby grants to SMART a waiver of any right to subrogation which any insurer of said Contractor may acquire against SMART by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not SMART has received a waiver of subrogation endorsement from the insurer.
- (e) The insurance policy(ies) shall be written by an insurance company or companies acceptable to SMART. The insurance underwriter(s) for all insurance policies except Workers' Compensation shall have an A.M. Best Company rating of A VII or better. Such insurance company shall be authorized to transact business in the state of California. Required minimum amounts of insurance may be increased should conditions of Work, in opinion of SMART, warrant such increase. Contractor shall increase required insurance amounts upon direction by SMART.

Section 8.07 Deductibles and Retentions. Contractor shall be responsible for payment of any insurance premiums, including any charges for required waivers of subrogation or the endorsement of additional insured. Contractor shall also be responsible for the payment of all deductibles or retention on Contractor's policies without right of contribution from SMART.

Section 8.08 Injuries. If injury occurs to any employee of Contractor, Subcontractor or sub-subcontractor for which the employee, or the employee's dependents in the event of employee's death, is entitled to compensation from SMART under provisions of the Workers' Compensation Insurance and Safety Act, as amended, or for which compensation is claimed from SMART, SMART may retain out of sums due Contractor under Contract Documents, amount sufficient to cover such compensation, as fixed by the Act, as amended, until such compensation is paid, or until it is determined that no compensation is due. If SMART is compelled to pay compensation, SMART may, in its discretion, either deduct and retain from the Contract Sum the amount so paid, or require Contractor to reimburse SMART.

Section 8.09 Subcontractor Responsibility. Contractor shall require and verify that subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure SMART is named additional insured on insurance required from subcontractors.

Section 8.10 Claims Made Coverage. If any insurance specified above is written on a claims-made coverage form, Contractor 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, Contractor shall purchase “extending reporting” coverage for a minimum of three (3) years after completion of the work.

Section 8.11 Documentation. The following documentation shall be submitted to SMART:

- (a) Properly executed Certificates of Insurance clearly evidencing all coverages and limits required above. Said Certificates shall be submitted prior to the execution of this Agreement. At SMART’s request, Contractor shall provide certified copies of the policies that correspond to the policies listed on the Certificates of Insurance. Contractor 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. Contractor agrees to maintain current endorsements evidencing the above-specified requirements on file with SMART for the duration of this Agreement.
- (c) After the Agreement has been signed, signed Certificates of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.

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

Section 8.12 Policy Obligations. Contractor’s indemnity and other obligations shall not be limited by the foregoing insurance requirements.

Section 8.13 Material Breach. If Contractor, 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 Contractor resulting from said breach. Alternatively, SMART may purchase such required insurance coverage, and without further notice to Contractor, SMART may deduct from sums due to Contractor any premium costs advanced by SMART for such insurance. These remedies shall be in addition to any other remedies available to SMART.

ARTICLE 9. MISCELLANEOUS.

Section 9.01 Terms and Abbreviations. Terms and abbreviations used in this Agreement are defined in Document 00 70 00 (General Conditions) and Section 01 42 19 (Reference Standards) included in the General Requirements and will have the meaning indicated therein.

Section 9.02 Use of Recycled Paper. SMART requires that all printing jobs produced under this Agreement be printed on recycled content papers. Recycled-content

papers are defined as papers containing a minimum of 30 percent postconsumer fiber by weight. All papers used in the performance of a print job for SMART shall be recycled-content paper. If paper meets the 30 percent requirement, the recycling logo should be printed on the project.

Section 9.03 Signers of this Agreement. It is understood and agreed that in no instance are the persons signing this Agreement for or on behalf of SMART or acting as an employee, agent, or representative of SMART, liable on this Agreement or any of the Contract Documents, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of the SMART is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.

Section 9.04 No Assignment of Contract. Contractor shall not assign any portion of the Contract Documents, and may subcontract portions of the Contract Documents only in compliance with the Subcontractor Listing Law, California Public Contract Code §4100 *et seq.*

Section 9.05 Assignment of Rights to Awarding Body. In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Contractor or Subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time SMART tenders final payment to Contractor, without further acknowledgment by the parties.

Section 9.06 Prevailing Wages. Contractor and all Subcontractors shall pay to all workers employed not less than the prevailing rate of wages as determined in accordance with the Labor Code as indicated herein.

All Contractors, contractors, and subcontractors doing business with public agencies through the State of California (including SMART) shall comply with applicable labor compliance requirements including, but not limited to prevailing wages, SB 854, Labor Code Sections 1725.5, 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815. Public Works Contractor Registration Programs, Electronic Certified Payroll Records submission to the State Labor Commissioner and other requirements, described at <http://www.dir.ca.gov/Public-Works/Contractors.html>.

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

Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are deemed included in the Contract Documents and shall be made available to any interested party on request.

Pursuant to Section 1861 of the Labor Code, Contractor represents that it is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured

against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor shall comply with such provisions before commencing the performance of the Work of the Contract Documents.

Section 9.07 Licensing Laws. The Contractor and all subcontractors shall comply with the provisions of Chapter 9 Division 3 of the Business and Professions code concerning the licensing of contractors. All Contractors shall be licensed in accordance with the laws of the State of California and any Contractor not so licensed is subject to the penalties imposed by such laws. Prior to commencing any work under contract, all Contractors and subcontractors must show that they hold appropriate and current Contractor Licenses in the State of California. The Contractor shall provide such subcontractor information, including the class type, license, number, and expiration date to SMART.

Section 9.08 Drug-Free Workplace. Contractor certifies that it will provide a drug-free workplace in compliance with Government Code §8350-§8357.

Section 9.09 Continuation of Work. Should any part, term or provision of this Agreement or any of the Contract Documents, or any document required herein or therein to be executed or delivered, be declared invalid, void or unenforceable, all remaining parts, terms and provisions shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby. If the provisions of any law causing such invalidity, illegality or unenforceability may be waived, they are hereby waived to the end that this Agreement and the Contract Documents may be deemed valid and binding agreements, enforceable in accordance with their terms to the greatest extent permitted by applicable law. In the event any provision not otherwise included in the Contract Documents is required to be included by any applicable law, that provision is deemed included herein by this reference (or, if such provision is required to be included in any particular portion of the Contract Documents, that provision is deemed included in that portion).

Section 9.10 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 9.11 Claims Procedures. Contractor accepts the claims procedure established by Article 12 of Document 00 70 00 (General Conditions), as established under Section 930.2 of the California Government Code.

Section 9.12 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 9.13 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 9.14 Acceptance of Electronic Signatures and Counterparts. The

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

Section 9.15 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.

CONTRACTOR: CENTRAL PACIFIC ENGINEERING, LLC

By: _____
Vladimir Rivkin, Managing Member

Date: _____

SONOMA-MARIN AREA RAIL TRANSIT (SMART)

By: _____
Eddy Cumins, General Manager

Date: _____

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

By: _____
Ken Hendricks, Procurement Manager

Date: _____

APPROVED AS TO FORM FOR SMART:

By: _____
District Counsel

Date: _____

**EXHIBIT A
SCHEDULE OF RATES**

ITEM	ITEM DESCRIPTION	QTY	UNIT	UNIT COST	EXTENDED COST
1	Mobilization	1	LS	\$10,000.00	\$10,000.00
2	Site Clear, Grubbing, and Earthwork	1	LS	\$15,000.00	\$15,000.00
3	Traffic Control	1	LS	\$15,000.00	\$15,000.00
4	Erosion Control and SWPPP	1	LS	\$8,500.00	\$8,500.00
5	Sidewalk Improvements	1	LS	\$35,000.00	\$35,000.00
6	Asphalt Concrete Improvements	1	LS	\$25,000.00	\$25,000.00
7	Concrete Crossing Panels	1	LS	\$25,000.00	\$25,000.00
8	Channelization – Pipe Railing	16	LF	\$85.00	\$1,360.00
9	Channelization – Chain-Link Fence	273	LF	\$95.00	\$25,935.00
10	Sign Panel on Railing	8	EA	\$1,500.00	\$12,000.00
11	Sign Panel on Post	2	EA	\$1,500.00	\$3,000.00
12	Wood Fence Modification	1	LS	\$15,000.00	\$15,000.00
13	12” Traffic Stripe	189	LF	\$25.00	\$4,725.00
TOTAL:					\$195,520.00

The cost listed in each item are in United States Dollars and include all costs for labor, materials, supervision, tools, equipment, services, subcontractors, suppliers, taxes, insurance, shipment, delivery, overhead, profit, and all other costs necessary to perform the required work.

ITEM DESCRIPTIONS:

1. Item 1: Mobilization

Mobilization shall be paid for at the contract lump sum price, which price shall not exceed 10% of the contract amount and shall include full compensation for furnishing all labor, materials, tools, equipment, incidentals, and doing all the work involved in mobilization and de-mobilization, including developing water supply, establishing a staging area, notification, coordination with crews of other contractors and any other items enumerated in SMART Standards, these Special Provisions or on the Project Plans, and no additional allowance will be made therefore.

2. Item 2: Site Clear, Grubbing, Earthwork

Will be measured and paid for as a lump sum which price shall include all labor, materials, and equipment required to clear and grub the area of work prior to performing earthwork. This work includes, but is not limited to the removal of shrubs, vegetation and other materials, tree trimming, hauling,

removal and disposal of roughly 35 linear feet of chain link fence, earthwork, site restoration, and clean-up in accordance with SMART's technical specifications. There is approximately 3.4 cubic yards of required cut and 3.1 cubic yard of required import borrow. Remaining spoils will be left and graded on site.

3. Item 3: Traffic Control

Traffic Control shall be paid for at the contract lump sum price, which price shall include full compensation for furnishing all labor, materials, tools and equipment, encroachment permits, notifications, and doing all work involved in vehicular and pedestrian traffic control including, but not limited to, temporary relocation of regulatory signs, installing project and public notification signs, flagging, providing, placing, maintaining, and removal of temporary paths and/or ramps, excavation, compaction, furnishing, and placement of asphalt concrete and/or PCC, barricades, toe-rails, hand rails.

4. Item 4: Erosion Control & SWPPP

Erosion Control & SWPPP will be measured and paid for as a lump sum which price shall include all labor, materials, and equipment required to install, maintain, and remove temporary erosion control, including, but not limited to, water pollution control program. Shall include final stabilization of construction site in accordance with post construction measures of NPDES permit.

5. Item 5: Sidewalk Improvements

Will be measured and paid for as a lump sum price which shall include all labor, materials, and equipment required to remove existing concrete, place new concrete sidewalk and retaining walls, and place ballast. This work includes but is not limited to the removal concrete materials, hauling, disposal, clean-up, ballast placement, and constructing concrete complete in place, including but not limited to, demolition, removal and disposal of excavated material, backfill and compaction, aggregate base, forming, expansion joint filler, reinforcing, steel reinforcement, doweling, pigmentation, applying curing material, removing discoloring, furnishing and installing truncated dome warning systems, steel reinforcements, dowels, and any other items necessary to install minor concrete not specifically enumerated in the Agency Standards, these Special Provisions or on the Project Plans, and no additional allowance will be made therefor. Full compensation for furnishing all labor, materials, tools, equipment, and incidentals and for doing all the work involved in constructing the Curb Ramps complete in place, including marking, and sub grade preparation, shall be included in the contract price, and no additional allowance will be made, therefore in accordance with SMART's technical specifications.

6. Item 6: Asphalt Concrete Improvements

Will be measured and paid for as a lump sum which shall include all labor, materials, and equipment required to remove existing asphalt concrete. This work includes but is not limited to the removal asphalt concrete materials, hauling, disposal, clean-up and doing all work involved in placing asphalt concrete, including tack coat, geotextile fabric, and any other work required for the installation of asphalt concrete not specifically enumerated in the State Standards, these Special Provisions or on the Project Plans, and no additional allowance will be made, therefore in accordance with SMART's technical specifications.

7. Item 7: Concrete Crossing Panels

Concrete Panel will be measured and paid for by lump sum including full compensation for all work including labor, equipment, and materials. Cost shall include complimentary work including asphalt demolition, as well as disposal of all waste materials including, but not limited to, panels and asphalt.

8. Item 8: Channelization – Pipe Railing

Metal Hand Railing shall be measured and paid for by the linear foot which shall include full compensation for materials, fabrication, labor, materials, tools, equipment, and all work involved in the installation of metal hand railings.

9. Item 9: Channelization – Chain-Link Fence

Chain Link Fences shall be measured and paid by the linear foot of the various heights and types of Chain Link Fence in conformance with Sections 32 31 13 of the Technical Specifications and plan set and no additional compensation will be allowed.

10. Items 10 & 11: Signs

Signs will be measured and paid for each sign installed in accordance with Sections 10 14 00 of the Standard Specifications and the contract drawings including full compensation for all work including labor, equipment, and materials. Contractor shall install, provide sign, signpost including concrete, and hardware as shown in plans.

11. Item 12: Wood Fence Modification

Wood fence modification will be measured and paid for by the lump sum price for full compensation of all work including labor, equipment, and materials. Cost shall include complimentary work including removing a section of fencing, setting a new pressure treated 4" x 4" fence post (including foundation) at new fence termination, and modifying the existing fence as

needed.

12.Item 13: 12” Traffic Stripe

Traffic Stripes and Pavement Markings shall be measured and paid as linear feet of 12” white traffic paint stripe including full compensation for all work including labor, equipment, materials, city inspection fees shall be paid as a lump under Traffic Stripes and Pavement markings.



November 2, 2022

David Rabbitt, Chair
Sonoma County Board of Supervisors

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

Judy Arnold
Marin County Board of Supervisors

Melanie Bagby
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Damon Connolly
Marin County Board of Supervisors

Chris Coursey
Sonoma County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Eddy Cumins
General Manager

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

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

SUBJECT: Approve a Resolution Authorizing the General Manager to Award Contract No. FR-BB-22-003 with Stacy & Witbeck

Dear Board Members:

RECOMMENDATION:

Approve Resolution No. 2022-36 authorizing the General Manager to award Contract No. FR-BB-22-003 with Stacy & Witbeck, Inc. for the Highway 37 At-Grade Crossing Repair Project for a total contract amount of \$378,694 and a contract term through February 28, 2023.

SUMMARY:

State Route 37 crosses the SMART track at SR 121 in Sonoma County. This at-grade crossing experiences considerable vehicular traffic and needs repair. This contract will replace the existing track and crossing panels. To properly reconstruct the crossing, SMART has arranged a full roadway closure with Caltrans. Provisions for traffic detours have been incorporated in the contract.

SMART advertised a competitive bid package on September 20, 2022, for the work and received three (3) bids on October. Stacy & Witbeck, Inc. was the lowest responsive and responsible bidder with a bid price of \$378,694. This work was planned for and is included in the FY23 freight budget.

Staff recommends authorizing the General Manager to award Contract No. FR-BB-22-003 for the Highway 37 At-Grade Crossing Repair Project with Stacy & Witbeck, Inc. for a total contract amount of \$378,694 and a contract term through February 28, 2023.

FISCAL IMPACT: This has been budgeted for in FY23 freight budget.

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

Very truly yours,

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

Attachment(s):

- 1) Resolution No. 2022-36
- 2) Stacy & Witbeck, Inc. Contract Agreement

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
APPROVING CONTRACT NO. FR-BB-22-003 WITH STACY & WITBECK, INC. FOR HIGHWAY 37 AT-GRADE
CROSSING REPAIR**

WHEREAS, the Sonoma-Marín Area Rail Transit District (SMART) is repairing the Highway 37 At-Grade crossing in Sonoma; and

WHEREAS, SMART issued an Invitation for Bid on September 20, 2022 to construct the pedestrian improvements; and

WHEREAS, SMART received three (3) bids on October 18, 2022; and

WHEREAS, SMART determined that Stacy & Witbeck, Inc. was the lowest responsible and responsive bidder; and

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

1. The forgoing Recitals are true and correct and are incorporated herein and form a part of this Resolution.
2. Authorize the General Manager to execute Contract No. FR-BB-22-003 with Stacy & Witbeck, Inc., for a total contract amount of \$378,694.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 2nd day of November 2022, by the following vote:

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

ATTEST:

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

DOCUMENT 00 52 00
AGREEMENT FOR CONTRACTOR SERVICES

This agreement ("Agreement"), dated as of November 2, 2022 ("Effective Date") is by and between the Sonoma-Marín Area Rail Transit District, a Special District of the State of California (hereinafter "SMART"), and Stacy and Witbeck, Inc., whose place of business is located at 2800 Harbor Bay Parkway, Alameda, CA 94502 (hereinafter "Contractor").

Hwy 37 At-Grade Crossing Repair
CONTRACT # FR-BB-22-003

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

A G R E E M E N T

ARTICLE 1. LIST OF EXHIBITS

Section 1.01 The following exhibits are attached hereto and incorporated herein:

- (a) Exhibit A: Schedule of Rates

ARTICLE 2. WORK.

Section 2.01 Contractor shall complete all work specified in the Contract Documents, in accordance with the Specifications, Drawings, and all other terms and conditions of the Contract Documents.

ARTICLE 3. NOTICES TO SMART.

Section 3.01 SMART has designated John Riley, Project Manager, to act as SMART's Representative(s), who will represent SMART in performing SMART's duties and responsibilities and exercising SMART's rights and authorities in Contract Documents. SMART may change the individual(s) acting as SMART's Representative(s), or delegate one or more specific functions to one or more specific SMART's Representatives, including without limitation engineering, architectural, inspection and general administrative functions, at any time with written notice and without liability to Contractor. Each SMART's Representative is the beneficiary of all Contractor obligations to SMART, including without limitation, all releases and indemnities.

Section 3.02 All notices or demands to SMART under the Contract Documents shall be to SMART's Representative at: **5401 Old Redwood Hwy Suite 200, Petaluma, CA, 94954** or to such other person(s) and address(es) as SMART shall provide to Contractor.

Project Manager: John Riley
Phone: 707-478-7531
Email: jriley@sonomamarintrain.org

ARTICLE 4. CONTRACT TIME AND LIQUIDATED DAMAGES.

Section 4.01 Contract Time and Notice to Proceed.

SMART may issue a Notice to Proceed at any time within 60 Days after the Notice of Award. Contractor shall not perform any Work prior to the receipt of the Notice to Proceed.

All repair work must be completed within a pre-approved 24-hour work window coinciding with a 24-hour full closure of Highway 37 to accommodate the work.

Blackout weekends during which work will not be allowed are Thanksgiving weekend (November 24-27), Christmas (December 23-27) and New Years (December 30 – January 2).

Contractor shall complete the Work so that a Final Inspection Report can be issued in accordance with Section 01 77 00 - Contract Closeout Procedures included in the General Requirements.

The term of this Agreement shall remain in effect through February 28, 2023.

Section 4.02 Liquidated Damages. SMART and Contractor recognize that time is of the essence for this Agreement and that SMART will suffer financial loss if the Contractor causes an operational service delay or if any part of the Work is not completed within the times specified above, plus any extensions thereof allowed in accordance with the Contract Documents. Consistent with Article 14 of Document 00 70 00 (General Conditions), Contractor and SMART agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of actual damages incurred by SMART because of an operational service delay or delay in completion of all or any part of the Work. Accordingly, SMART and Contractor agree that as liquidated damages for delay Contractor shall pay SMART \$1,867.00 per hour delayed rounded up to the next hour for any freight operations delays.

ARTICLE 5. CONTRACT SUM.

Section 5.01 SMART shall pay Contractor the Contract Sum for completion of Work in accordance with the Contract Documents as follows:

Total Contract Sum: \$378,694.00

The Contract Sum includes all allowances (if any).

ARTICLE 6. CONTRACTOR REPRESENTATIONS.

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

Section 6.01 Contractor has visited the Site and has examined thoroughly and understood the nature and extent of the Contract Documents, Work, Site, locality, actual conditions, as-built conditions, all local conditions, and all federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of

construction to be employed by Contractor and safety precautions and programs incident thereto.

Section 6.02 Contractor has examined thoroughly and understood all reports of exploration and tests of subsurface conditions, as-built drawings, drawings, products specifications or reports, available for Bidding purposes, of physical conditions, including Underground Facilities, or which may appear in the Drawings. Contractor accepts the determination set forth in these Documents and Document 00 70 00 (General Conditions) of the limited extent of the information contained in such materials upon which Contractor may be entitled to rely. Contractor agrees that, except for the information so identified, Contractor does not and shall not rely on any other information contained in such reports and drawings.

Section 6.03 Contractor has conducted or obtained and has understood all such examinations, investigations, explorations, tests, reports and studies that pertain to the subsurface conditions, as-built conditions, Underground Facilities and all other physical conditions at or contiguous to the Site or otherwise that may affect the cost, progress, performance or furnishing of Work, as Contractor considers necessary for the performance or furnishing of Work at the Contract Sum, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Document 00 70 00 (General Conditions); and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such purposes.

Section 6.04 Contractor has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

Section 6.05 Contractor has given SMART prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered in or among the Contract Documents and as-built drawings and actual conditions and the written resolution thereof through Addenda issued by SMART is acceptable to Contractor.

Section 6.06 Contractor is duly organized, existing and in good standing under applicable state law, and is duly qualified to conduct business in the State of California.

Section 6.07 Contractor has duly authorized the execution, delivery and performance of this Agreement, the other Contract Documents and the Work to be performed herein. The Contract Documents do not violate or create a default under any instrument, agreement, order or decree binding on Contractor.

Section 6.08 Contractor has listed the following Subcontractors pursuant to the Subcontractor Listing Law, California Public Contract Code §4100 *et seq.*:

Name of Subcontractor and Location of Mill or Shop	Description of Work: Reference To Bid Items	Subcontractor's License No.
Bay Area Traffic Solutions, Inc.	Item 2 – 56% (Traffic Control)	917034

connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees, or subcontractors with limits and deductibles specified below:

Section 8.01 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 8.02 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 \$5,000,000 per occurrence. Said insurance shall remain in effect for five (5) years after Final Completion and acceptance of the final payment for the Work, contractual liability, and coverage for explosion, collapse, and underground hazards.

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. A follow form Excess Liability policy may be utilized to satisfy the required limits of liability under this section.

Section 8.03 Comprehensive Automobile Insurance. Automobile Liability insurance covering bodily injury and property damage in an amount no less than \$5,000,000 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 8.04 Contractor's Pollution Liability Insurance. Contractor's Pollution Liability Insurance in an amount no less than \$2,000,000 per occurrence or claim. The Contractor's Pollution Liability policy shall be written on an occurrence basis with coverage for bodily injury, property damage and environmental damage, including cleanup costs arising out of third-party claims, for pollution conditions, and including claims of environmental authorities, for the release of pollutants caused by construction activities related to the Contract. Coverage shall include the Contractor as the named insured and shall include coverage for acts by others for whom the Contractor is legally responsible.

Coverage to be provided for bodily injury to or destruction of tangible property, including the resulting loss of use thereof, loss of use of tangible property that has been physically injured, and natural resource damage. There shall be no insured vs. insured exclusion in the policy.

Section 8.05 Railroad Protective Liability Insurance. Prior to commencement of construction activities, Contractor shall procure and maintain Railroad Protective Liability insurance, in SMART's name, with limits of liability of no less than \$5,000,000 per occurrence, for losses arising out of injury to or death of all persons, and for physical loss or damage to or destruction of property, including the loss of use thereof. The additional named insureds shall be the Sonoma-Marín Area Rail Transit District, and shall cover all other railroads operating on the right-of-way.

Section 8.06 Builder's Risk Insurance. Builder's risk covering all risks of

direct physical loss of or damage to property (including additional perils of flood, earthquake and collapse) with a limit of \$378,694.00. Coverage shall apply to all materials, supplies, and equipment that are consumed on or intended for specific installation in the Project while such materials, supplies, and equipment are located at the Project site(s). Coverage for transit and storage away from the Project site(s) shall be covered as appropriate.

Section 8.07 Endorsements. Prior to commencing work, Contractor shall file Certificate(s) of Insurance with SMART evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. Said endorsements and Certificate(s) of Insurance shall stipulate:

- (a) SMART, its officers, and employees shall be named as additional insured on all policies listed above, with the exception of the workers compensation insurance policy (as applicable).
- (b) That the policy(ies) is Primary Insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim which Contractor is liable, up to and including the total limit of liability, without right of contribution from any other insurance effected or which may be effected by the Insureds.
- (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 Contractor. Said policy shall protect Contractor and the Insureds in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.
- (d) Contractor hereby grants to SMART a waiver of any right to subrogation which any insurer of said Contractor may acquire against SMART by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not SMART has received a waiver of subrogation endorsement from the insurer.
- (e) The insurance policy(ies) shall be written by an insurance company or companies acceptable to SMART. The insurance underwriter(s) for all insurance policies except Workers' Compensation shall have an A.M. Best Company rating of A VII or better. Such insurance company shall be authorized to transact business in the state of California. Required minimum amounts of insurance may be increased should conditions of Work, in opinion of SMART, warrant such increase. Contractor shall increase required insurance amounts upon direction by SMART.

Section 8.08 Deductibles and Retentions. Contractor shall be responsible for payment of any insurance premiums, including any charges for required waivers of subrogation or the endorsement of additional insured. Contractor shall also be responsible for the payment of all deductibles or retention on Contractor's policies without right of contribution from SMART.

Section 8.09 Injuries. If injury occurs to any employee of Contractor, Subcontractor or sub-subcontractor for which the employee, or the employee's dependents in the event of employee's death, is entitled to compensation from SMART under provisions of the Workers' Compensation Insurance and Safety Act, as amended, or for which compensation is claimed from SMART, SMART may retain out of sums due Contractor under Contract Documents, amount sufficient to cover such compensation, as fixed by the Act, as amended, until such compensation is paid, or until it is determined that no compensation is due. If SMART is compelled to pay compensation, SMART may, in its discretion, either deduct and retain from the Contract Sum the amount so paid, or require Contractor to reimburse SMART.

Section 8.10 Subcontractor Responsibility. Contractor shall require and verify that subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure SMART is named additional insured on insurance required from subcontractors.

Section 8.11 Claims Made Coverage. If any insurance specified above is written on a claims-made coverage form, Contractor 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, Contractor shall purchase "extending reporting" coverage for a minimum of three (3) years after completion of the work.

Section 8.12 Documentation. The following documentation shall be submitted to SMART:

- (a) Properly executed Certificates of Insurance clearly evidencing all coverages and limits required above. Said Certificates shall be submitted prior to the execution of this Agreement. At SMART's request, Contractor shall provide certified copies of the policies that correspond to the policies listed on the Certificates of Insurance. Contractor 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. Contractor agrees to maintain current endorsements evidencing the above-specified requirements on file with SMART for the duration of this Agreement.
- (c) After the Agreement has been signed, signed Certificates of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.

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

Section 8.13 Policy Obligations. Contractor's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

Section 8.14 Material Breach. If Contractor, 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 Contractor resulting from said breach. Alternatively, SMART may purchase such required insurance coverage, and without further notice to Contractor, SMART may deduct from sums due to Contractor any premium costs advanced by SMART for such insurance. These remedies shall be in addition to any other remedies available to SMART.

ARTICLE 9. MISCELLANEOUS.

Section 9.01 Terms and Abbreviations. Terms and abbreviations used in this Agreement are defined in Document 00 70 00 (General Conditions) and Section 01 42 19 (Reference Standards) included in the General Requirements and will have the meaning indicated therein.

Section 9.02 Use of Recycled Paper. SMART requires that all printing jobs produced under this Agreement be printed on recycled content papers. Recycled-content papers are defined as papers containing a minimum of 30 percent postconsumer fiber by weight. All papers used in the performance of a print job for SMART shall be recycled-content paper. If paper meets the 30 percent requirement, the recycling logo should be printed on the project.

Section 9.03 Signers of this Agreement. It is understood and agreed that in no instance are the persons signing this Agreement for or on behalf of SMART or acting as an employee, agent, or representative of SMART, liable on this Agreement or any of the Contract Documents, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of the SMART is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.

Section 9.04 No Assignment of Contract. Contractor shall not assign any portion of the Contract Documents, and may subcontract portions of the Contract Documents only in compliance with the Subcontractor Listing Law, California Public Contract Code §4100 *et seq.*

Section 9.05 Assignment of Rights to Awarding Body. In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Contractor or Subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time SMART tenders final payment to Contractor, without further acknowledgment by the parties.

Section 9.06 Prevailing Wages. Contractor and all Subcontractors shall pay to all workers employed not less than the prevailing rate of wages as determined in accordance with the Labor Code as indicated herein.

All Contractors, contractors, and subcontractors doing business with public agencies through the State of California (including SMART) shall comply with applicable labor compliance requirements including, but not limited to prevailing wages, SB 854, Labor Code Sections 1725.5, 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815. Public Works Contractor Registration Programs, Electronic Certified Payroll Records submission to the State Labor Commissioner and other requirements, described at <http://www.dir.ca.gov/Public-Works/Contractors.html>.

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

Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are deemed included in the Contract Documents and shall be made available to any interested party on request.

Pursuant to Section 1861 of the Labor Code, Contractor represents that it is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor shall comply with such provisions before commencing the performance of the Work of the Contract Documents.

Section 9.07 Licensing Laws. The Contractor and all subcontractors shall comply with the provisions of Chapter 9 Division 3 of the Business and Professions code concerning the licensing of contractors. All Contractors shall be licensed in accordance with the laws of the State of California and any Contractor not so licensed is subject to the penalties imposed by such laws. Prior to commencing any work under contract, all Contractors and subcontractors must show that they hold appropriate and current Contractor Licenses in the State of California. The Contractor shall provide such subcontractor information, including the class type, license, number, and expiration date to SMART.

Section 9.08 Drug-Free Workplace. Contractor certifies that it will provide a drug-free workplace in compliance with Government Code §8350-§8357.

Section 9.09 Continuation of Work. Should any part, term or provision of this Agreement or any of the Contract Documents, or any document required herein or therein to be executed or delivered, be declared invalid, void or unenforceable, all remaining parts, terms and provisions shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby. If the provisions of any law causing such invalidity, illegality or unenforceability may be waived, they are hereby waived to the end that this Agreement and the Contract Documents may be deemed valid and binding agreements, enforceable in accordance with their terms to the greatest extent permitted by applicable law. In the event any provision not otherwise included in the Contract Documents is required to be included by any applicable law, that provision is deemed included herein by

this reference (or, if such provision is required to be included in any particular portion of the Contract Documents, that provision is deemed included in that portion).

Section 9.10 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 9.11 Claims Procedures. Contractor accepts the claims procedure established by Article 12 of Document 00 70 00 (General Conditions), as established under Section 930.2 of the California Government Code.

Section 9.12 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 9.13 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 9.14 Acceptance of Electronic Signatures and Counterparts. The parties agree that this Contract, Agreements ancillary to this Contract, and related documents to be entered into this Contract will be considered executed when all parties have signed this Agreement. Signatures delivered by scanned image as an attachment to electronic mail or delivered electronically through the use of programs such as DocuSign must be treated in all respects as having the same effect as an original signature. Each party further agrees that this Contract may be executed in two or more counterparts, all of which constitute one and the same instrument.

Section 9.15 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.

CONTRACTOR: STACY AND WITBECK, INC.

By: _____
Kurt Kniffin, Executive Vice President, West Region

Date: _____

SONOMA-MARIN AREA RAIL TRANSIT (SMART)

By: _____
Eddy Cumins, General Manager

Date: _____

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

By: _____
Ken Hendricks, Procurement Manager

Date: _____

APPROVED AS TO FORM FOR SMART:

By: _____
District Counsel

Date: _____

**EXHIBIT A
SCHEDULE OF RATES**

ITEM	ITEM DESCRIPTION	QTY	UNIT	COST
1	Mobilization / Demobilization	1	LS	\$35,294.00
2	Highway 37 Traffic Control	1	LS	\$76,000.00
3	Demolition	1	LS	\$56,200.00
4	Subgrade Reconstruct	1	LS	\$38,200.00
5	Track Reconstruct	1	LS	\$148,000.00
6	Finalize Reconstruct	1	LS	\$5,000.00
7	Allowance for Unsuitable Subgrade	1	LS	\$20,000
TOTAL COST:				\$378,694.00

The cost listed in each line item are in United States Dollars and include all costs for labor, materials, supervision, tools, equipment, services, subcontractors, suppliers, taxes, insurance, shipment, delivery, overhead, profit, and all other costs necessary to perform the required work.

ITEM DESCRIPTIONS:

1. Item 1: Mobilization / Demobilization

Item 1 includes:

Mobilization and demobilization as required to perform the work, and all material and equipment staging required to perform the work within a 24-hour shutdown of Highway 37.

2. Item 2: Highway 37 Traffic Control

Item 2 includes:

- a. Provide an engineered Traffic Control Plan for review and approval by Caltrans.
- b. Provide all signage, personnel, and agency coordination (SMART, Caltrans, California Highway Patrol) as needed for a 24-hour full closure of Highway 37 and the SMART railroad.

**NOTE THAT ITEMS 3, 4, 5, & 6 OCCUR DURING THE 24-HOUR
HIGHWAY CLOSE**

3. Item 3: Demolition

Item 3 includes:

- a. Demolish track and roadway as needed for repair work.
- b. Remove and dispose of all material.

4. Item 4: Subgrade Reconstruct

Item 4 includes:

- a. Prepare and compact existing subgrade.
- b. Proof roll for Engineers review and acceptance.

5. Item 5: Track Reconstruct

Item 5 includes:

Repair At Grade crossing per plan at existing grade and location, including subballast, HMA underlayment, track drain, ballast, ties, rail, track crossing panels, OTM, and HMA roadway paving.

6. Item 6: Finalize Reconstruct

Item 6 includes:

- a. Test railroad crossing signal equipment for correct operation in coordination with SMART.
- b. Test adjacent highway signal for correct operation in coordination with SMART and Caltrans.

7. Item 7: Allowance for Unsuitable Subgrade

Item 7 includes:

Overexcavate Unsuitable Subgrade and replace with Class 2 aggregate at 95% compaction as directed by SMART Engineer.



November 2, 2022

David Rabbitt, Chair
Sonoma County Board of Supervisors

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

Judy Arnold
Marin County Board of Supervisors

Melanie Bagby
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Damon Connolly
Marin County Board of Supervisors

Chris Coursey
Sonoma County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Eddy Cumins
General Manager

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

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

SUBJECT: Reappointment of General Counsel

Dear Board Members:

RECOMMENDATION:

Reappoint and approve Amendment to Personal Service Agreement Contract for the General Counsel for three (3) years expiring October 17, 2025.

SUMMARY:

In 2013 the Board established the General Counsel position to better coordinate legal services to meet SMART's growing needs. Over the last nine years our General Counsel has performed his duties in an exemplary manner. Mr. Lyons has assisted the district in developing its overall legal strategy, instituted district wide legal policies and procedures while managing the districts legal resources to meet the District's day-to-day legal needs. Mr. Lyons has provided guidance on a wide range of compliance, risk management and district governance matters and continues to provide practical legal advice across all District functions including, construction contracts, permitting, human resources, litigation, real estate, public/private rail crossings, right-of-way, and regulatory matters.

FISCAL IMPACT: This position is included in the Fiscal Year 2022-23 budget.

Very truly yours,

/s/

Eddy Cumins
General Manager

Attachment(s): Employment Agreement

SECOND AMENDMENT TO
PERSONAL SERVICES AGREEMENT
[SMART GENERAL COUNSEL]

This Second Amendment dated October 17, 2022, is made by and between the Sonoma-Marín Area Rail Transit District (“SMART”), and Thomas F. Lyons (“EMPLOYEE”).

RECITALS

WHEREAS, SMART and EMPLOYEE previously entered into the Original Personal Services Agreement appointing EMPLOYEE to the position of General Counsel and providing terms and conditions of employment therein; and

WHEREAS, SMART and EMPLOYEE desire to amend the Original and First Amended Personal Service Agreement as set forth below.

NOW THEREFORE, in consideration of the recitals set forth above and the agreements contained herein, it is mutually agreed by the parties as follows:

AGREEMENT

1. **Section 1. Term of Employment** is hereby deleted in its entirety and replaced with the following:

“1. Term of Employment. SMART hereby employs EMPLOYEE to the position of General Counsel for a period of three years commencing on October 17, 2022, and ending on October 17, 2025 subject to the termination as herein provided.”

2. Except to the extent that the Agreement is specifically modified and amended above, the Original Personal Service Agreement dated October 17, 2013, and as amended by First Amended Agreement dated October 17, 2017, shall remain in full force and effect and nothing contained herein shall be construed to modify, invalidate, or otherwise effect any provisions of that Agreement.

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

SONOMA-MARIN AREA RAIL
TRANSIT DISTRICT

EMPLOYEE:

By_____

David Rabbitt, Chair, Board of Directors

By_____

Thomas F. Lyons

APPROVED TO AS FORM FOR SMART:

Jessica Sutherland