



BOARD OF DIRECTORS MEETING AGENDA November 16, 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 15, 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 November 2, 2022, Board Meeting Minutes
3. Board Member Announcements
4. General Manager's Report
5. Public Comment on Non-Agenda Items

Consent Calendar

- 6a. Accept Monthly Ridership Report – October 2022
- 6b. Authorize the General Manager to enter into an Intergovernmental Service Agreement No. OP-SV-22-010 with the County of Sonoma's Fleet Operations Division to perform maintenance, repair, and equipment installation services for SMART's non-revenue fleet vehicles and heavy equipment with a not-to-exceed amount of \$100,000 for each Fiscal Year 2023-2027

Regular Calendar

- 7. Approve a Resolution Authorizing the General Manager to Execute a Purchase Agreement to purchase wetland credits from the Burdell Ranch Wetland Conservation Bank for an amount of \$834,000 to fulfill San Francisco Bay Regional Water Quality Control Board permit requirements – *Presented by Bill Gamlen*
- 8. Approve a Resolution Authorizing the General Manager to Execute Contract No. EV-BB-22-004 with Triangle Properties, Inc for the Pathway Riparian Enhancement Implementation and Monitoring Project with Triangle Properties, Inc. for a total contract amount of \$235,510 and a term through January 31, 2028 – *Presented by Bill Gamlen*
- 9. Governor Newsom announced that the COVID-19 State of Emergency will end on February 28, 2023. With the State of Emergency ending, remote meetings pursuant to AB-361 will no longer be available and the District must again hold public meetings in compliance with the general requirements of the Brown Act (*Discussion*) – *Presented by General Manager Cumins*
- 10. Next Regular Meeting of the Board of Directors, December 7, 2022 – 1:30 PM
- 11. Adjournment

DISABLED ACCOMODATIONS:

Upon request, SMART will provide for written agenda materials in appropriate alternative formats, or disability-related modification or accommodation, to enable individuals with disabilities to participate in and provide comments at/related to public meetings. Please submit a request, including your name, phone number and/or email address, and a description of the modification, accommodation, service, or alternative format requested at least two (2) days before the meeting. Requests should be emailed to *Leticia Rosas-Mendoza, Clerk of the Board* at lrosas@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
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.

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1. Call to Order

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

URGENCY ITEM

Chair Rabbitt stated that SMART has an Urgency Item which came to the District's attention after the Board of Directors Agenda was posted.

AGENDA ITEM A - SUMMARY:

This emergency item came to the District's attention after the posting of the Agenda on Friday, October 28, 2022. The timber trestle bridge at Railroad Slough, MP-B38.97, failed on October 28, 2022, when the SMART Freight Team was switching cars in Schellville.

In order to continue freight operations, maintain a critical connection to the interchange and the national railroad system, and to be able to continue to serve SMART's freight customers, the District must take immediate corrective action to repair or replace the inoperable bridge.

General Counsel recommends that the Board make a finding by two-thirds vote pursuant GOV. CODE § 54954.2(b) to add this item to the agenda on your November 2, 2022, meeting.

MOTION (2/3 required): Director Bagby moved approval to include ITEM A to the November 2, 2022 meeting agenda.. Director Lucan second. The motion carries 10-0 (Directors Connolly and Hillmer absent).

2. Approval of the October 19, 2022, Board Meeting Minutes

MOTION: Director Arnold moved approval of October 19, 2022 Board Meeting Minutes as presented. Director Garbarino second. The motion carried 10-0 (Directors Connolly and Hillmer absent).

3. Board Members Announcements

Director Lucan stated that he took his family to the Roaring Camp Railroad to ride the nineteenth Century Redwood steam train near Santa Cruz. The conductor shared an interesting history regarding how we use the train horns today.

4. General Manager's Report

General Manager Cumins provided a brief update on the following:

- CARB Proposed In-Use Locomotive Regulation
- Governor Newsom Announcement
- Ridership
- Marketing
- Pathway Grand Opening
- Questions

CARB Proposed In-Use Locomotive Regulation

- Proposed regulation requires locomotives and multiple units (MU) to be 100% zero-emission by 2030 (passenger) 2035 (freight)
- Partnering with other commuter and intercity railroads through the California Transit Association
- Voicing concerns regarding the proposed regulation's timing, structure, and compliance requirements
- Hearing Schedule for November 17th and 18th

Governor Newsom Announcement

- Governor Newsom announced the COVID-19 State of Emergency will end February 28, 2023
- This timeline is intended to provide state and local agencies with the time needed to prepare for the phase-out of certain Executive Orders
 - Eliminates option for remote Board meetings
- SMART Staff will bring this item to the Board for discussion on November 16th
- Considerations
 - In-person meeting implementation date
 - Meeting frequency
 - Zoom option for the public
 - Other considerations

Ridership Update

- In October, SMART carried 56,765 passengers
- Ridership was up 15.5% over September and up 99% vs last year
- Fiscal Year 2023 ridership reaching pre-COVID levels
- October 2022 at 99.2% of October 2019 ridership
 - Kincadee fire = 4 days reduced service / 3 days cancelled service
- October ridership at 86% of pre-COVID monthly average

Marketing

General Manager Cumins presented the new Halloween social media advertisement. He has received great feedback on recent ads.

Pathway Grand Opening

General Manager Cumins provided a video of the grand opening ceremony of the pathway segment between Payran Street and South Point Boulevard on Saturday, October 22, 2022. He stated that families, Petaluma City and Elected officials, Community groups, SMART staff, and several Board members attended.

He thanked Chair Rabbitt and Vice Chair Pahre for speaking at the event as well as Directors Lucan, Connolly and Bagby for attending.

The event was planned and organized by Communications and Marketing Department staff Julia Gonzalez and Matt Stevens, and the Maintenance of Way team. He thanked the following SMART staff: Troy Arend, Nick DeRenzi, Noel Olvera, Bryan Crowley, Ken Hendricks, Nicole Masters, Chris Bearden, Emily Betts, Bill Gamlen, Alexandra Majoulet and Simone Mosley.

Comments

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

Director Bagby stated that it was a great event, and she had the opportunity to speak with members of the Sonoma County Bicycle Coalition who were supporting the event and said that Karyn Gear from Great Redwood Trail Agency also attended the event. It was a great day to be on the train/pathway and she will try to take the train more often, she added. Everyone on the train worked cooperatively to make the train ride successful.

Lastly, Chair Rabbitt thanked General Manager Cumins for looking out for the District's best interest and moving toward the zero emission vehicles. A locomotive is a very tough vehicle to experiment with because they are very expensive. He appreciates General Manager Cumins expertise in locomotives and looks forward to a good outcome. At the event, there were three (3) items that the public suggested: 1) mile trackers; 2) trash cans; and 3) dog waste bags.

5. Public Comment on Non-Agenda Items

Doug Kerr stated that on September 1st he emailed the Board regarding a Press Democrat article dated July 23, 2019, which contained a quote from him. He stated that SMART must come up with a valid target date to get to Healdsburg and Cloverdale. Without a plan and target dated the public will assume that passenger service will not go to Cloverdale and will put any sales tax extension in jeopardy. He never received a response from the Board and SMART needs to have a definitive date to deliver what the voters approved in 2008.

6. Consent

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

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

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

URGENCY ITEM - ITEM A

Approve a Resolution Authorizing the General Manager to Execute Contract No. FR-ER-22-001 for Emergency Repairs to the Timber Trestle Bridge at Railroad Slough (MP-B38.97) for a total not to exceed \$425,000

Chief Engineer, Bill Gamlen, provided a PowerPoint presentation of the location of the bridge. He stated that the timber trestle bridge at Railroad Slough failed on Friday, October 28, 2022, when the SMART Freight Team was switching rail cars in Schellville. Several pile caps were crushed, and timber beams were split which made the bridge inoperable. The bridge is a critical link to the SMART main line and must be traveled over to serve freight customers in Petaluma. Given the critical connection is required for SMART to fulfill its common carrier obligations, repairs of this bridge must take place immediately.

Staff is developing an emergency repair contract and securing a contractor to make these repairs. Therefore, staff recommend authorizing the General Manager to execute a contract in an amount not to exceed \$425,000.

Comments

Chair Rabbitt asked if the repair be limited to the area that failed. Mr. Gamlen responded that the work would get the bridge back into normal operating condition. It will be done in two phases, an initial phase that will make it passable, and then more permanent repairs. Economically it makes sense to get this all done and get it repaired at once. Chair Rabbitt said that there is a Request for Proposal for the work. Mr. Gamlen responded that SMART issued a Request for Proposal to hire a contractor to do bridge repairs on the Brazos line and other bridges that need various repairs.

Director Colin asked how long it will take until the final repair, and if the amount for the first phase also includes some initial foundational work for the long-term repair? Mr. Gamlen responded that this contract would get the bridge to operating conditions.

Steve Birdlebough said that he would hope that in the future staff can have a standing ability to make immediate repairs to maintain schedules.

Chair Rabbitt stated that he does not think there was a loss in time for getting to the repairs, since it happened on Friday, and today is Wednesday. Although it comes down to the spending authority the Board offers to the General Manager. He appreciates Mr. Birdlebough comment and the Board will evaluate the spending authority for the future.

MOTION (4/5required): Director Garbarino moved to approve ITEM A Approve a Resolution Authorizing the General Manager to Execute Contract No. FR-ER-22-001 for Emergency Repairs to the Timber Trestle Bridge at Railroad Slough (MP-B38.97) for a total not to exceed \$425,000 as presented. Director Arnold second. The motion carries 10-0 (Directors Connolly and Hillmer absent).

7. Fiscal Year 2022 Budget to Actual Comparison (*Information*) – Presented by Heather McKillop

Chief Financial Officer, Heather McKillop presented the Fiscal Year 2022 revenues and expenditures. Highlights include:

Passenger Revenue

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

Passenger Expenditures

- 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. These expenditures have been rolled over to Fiscal Year 2023.

SMART anticipated ending Fiscal Year 2022 with about \$12 million in savings and therefore those funds will be returned to the unrestricted fund balance.

Freight Revenues

We collected less in freight movement fees but more in storage fees in Fiscal Year 2022. We have \$780k that was rolled forward to spend in future fiscal years.

Freight Expenditures

Expenditures came in slightly over budget. 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.

SMART received the \$4 million from the State on Friday October 30, 2022. An update regarding the sales tax revenue will be presented in the future.

Comments

Vice Chair Pahre stated that Chair Rabbitt had the cost of pathway per inch or foot the day of the grand opening. Construction cost is very expensive, and she appreciated the fact that SMART funds are carefully being used.

Chair Rabbitt stated that the cost of building/construction is going up and inflation is very high at this time.

Jack Swerengen asked if the funds for the bridge repair come from the State. Ms. McKillop responded that the repairs will use budgeted funds and since the repairs will cost more than anticipated, State grant funds will be used.

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*

Chief Engineer, Bill Gamlen, provided an overview PowerPoint presentation which is posted on SMART's website. Highlights include:

Five (5) grade crossing pedestrian safety improvements, which includes fencing channelization, signage, and stripping. The locations are as follows:

- 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 and are intended to enhance the safety of the crossing.

SMART advertised a competitive bid on September 6, 2022, and received three (3) bids. Central Pacific Engineering was the lowest responsive and responsible bidder with a price of \$195,520. Staff recommend authorizing the General Manager to award Contract No. CV-BB-22-002 and approve Resolution No. 2022-34.

Comments

Director Colin stated she is grateful that the Board is considering this item today. Those are high pedestrian areas and having these additional safety enhancements will be fantastic.

Director Coursey thanked Mr. Gamlen for the use of maps and in both presentations today. There has been some discussion in the bicycling community about being able to get bikes around some of these barriers on trails, and particularly longer bikes like tandems and bikes that are pulling baby trailers. He asked if those kinds of things are being considered as building these things. Mr. Gamlen responded those are certainly considerations for the pathway projects.

Matthew Hartzell thanked Mr. Gamlen for the presentation and the improvements. He said that Mission Avenue is used by bicycles because it is the route to the North-South Greenway and the bicyclists currently use that sidewalk to get to the Puerto Suello path and continue up. Hopefully the redesign on Mission Avenue eases the cyclists, especially longer cargo type of bicycles.

MOTION: Director Colin moved to Approve 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 as presented. Director Arnold second. The motion carried 10-0 (Directors Connolly and Hillmer absent).

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*

Chief Engineer, Bill Gamlen, provided an overview PowerPoint presentation which is posted on SMART's website. Highlights include:

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 on September 20, 2022 and received three (3) bids. Stacy & Witbeck, Inc. was the lowest responsive and responsible bidder with a bid.

Staff recommends approving Resolution No. 2022-36 authorizing the General Manager to award Contract No. FR-BB-22-003 with Stacy & Witbeck, Inc. for a total contract amount of \$378,694 and a contract term through February 28, 2023.

Comments

Director Lucan asked how does a 24-hr closure work on a on a roadway especially like Highway 37? Mr. Gamlen responded that it requires a lot of signage and coordination with the contractor.

Chair Rabbitt asked how long the panels have lasted since they seem relatively new. Mr. Gamlen responded that the freight operator reconstructed this crossing a couple of years ago, and they used some recycled materials, and probably did not rebuild it to the robust nature. For this work the contractor is going to use solid panels into the subgrade and make it as strong as possible.

Thomas Els stated that he attended the Highway 37 Ad Hoc committee where they discussed the widening of the slew entrance from a sixty foot bridge to a four hundred foot bridge. He recommended changing the grade and raising the grade over the rail from the intersection area of Hwy 121 and 37 all the way across the top of the rail, and then you go to your four hundred foot bridge.

Jack Swearengen stated that trucks and automobiles are doing damage to the crossings and not the trains. He said that Caltrans should pay for the repairs.

MOTION: Director Arnold moved to 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 \$378,69 and a contract term through February 28, 2023, as presented. Director Rogers second. The motion carried 10-0 (Directors Connolly and Hillmer absent).

10. Reappoint and Approve Amendment to Personal Service Agreement Contract for the position of General Counsel – *Presented by General Manager Cumins*

Chair Rabbitt thanked Mr. Lyons for his service to SMART and is appreciative of his legal counsel, especially since SMART is a young entity, and Mr. Lyons has done a stellar job, he added.

General Manager Cumins stated that Mr. Lyons has been SMART's General Counsel for the past nine years and has been doing an excellent job providing legal with all District's functions, including: Construction, Permitting, Human Resources, Litigation, Real Estate and Railroad Right-of-Way issues, therefore, we are recommending reappointing the terms of Mr. Lyons contract.

MOTION: Director Pahre moved to Reappoint and Approve Amendment to Personal Service Agreement Contract for the position of General Counsel as presented. Director Arnold second. The motion carried 10-0 (Directors Connolly and Hillmer absent).

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

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-Marin Area Rail Transit District; Sonoma County Superior Court - SCV 27-17-87; Number of cases: 1
12. Report Out Closed Session

District Counsel Lyons reported out of Closed Session at 2:53pm on the following:

Conference with Legal Counsel regarding existing litigation pursuant to California Government Code Section 54956.9(a); Dennis Muelrath, et al. v. Sonoma-Marin Area Rail Transit District; Sonoma County Superior Court - SCV 27-17-87; Number of cases: 1
Report Out: No Action Taken; Nothing to report

13. Next Regular Meeting of the Board of Directors, November 16, 2022 – 1:30pm
14. Adjournment - Meeting adjourned at 2:55pm.

Respectfully submitted,

Leticia Rosas-Mendoza
Clerk of the Board

Approved on: _____



November 16, 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
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Eddy Cumins
General Manager

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

SUBJECT: Monthly Ridership Report – October 2022

Dear Board Members:

RECOMMENDATIONS: Accept Monthly Ridership Report

SUMMARY:

We are presenting the monthly ridership report for activity for the month of October 2022. This report shows trends in ridership for SMART by tracking Totals, Average Weekday riders, and Average Saturday riders, Average Sunday/Holiday riders, as well as bicycles and mobility devices.

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

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

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

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

FISCAL IMPACT: None

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

Respectfully,

 /s/
Emily Betts
Principal Planner

Attachment(s): Monthly Ridership Report – October 2022

OCTOBER 2022 SMART RIDERSHIP REPORT

SMART Ridership Report
November 16, 2022

October 2022 saw a continued ridership increase for SMART, with total boardings 89% over September 2021. Youth ridership remains high, at 13% of total boardings, and SMART saw 2,688 Clipper BayPass boardings in October, the new free fare program for SRJC students. Both weekday and weekend ridership are strong, with total monthly ridership up 79% and Saturday up 62% over September 2021.

Throughout the region, automobile traffic levels have returned to pre-pandemic levels and transit agencies are seeing ridership recovery. October average weekday ridership (2,272) was the highest since the pandemic began; SMART has recovered to approximately 88% of pre-pandemic average monthly ridership. Travel remains bi-directional; over the last 6 months, 61% of the trips originated in Sonoma, 39% of the trips originated in Marin.

As a reminder, SMART modified services in March 2020 due to the COVID-19 pandemic, with weekend service annulled and weekday service reduced to 16 trips. In May 2021, SMART added back 10 weekday trips, resulting in the current 26 weekday trip schedule. Saturday service was also restored the last two weekends in May 2021, with 3 morning and 3 afternoon round trips. On May 1, 2022, SMART began Sunday service with 12 trips per day, and added 10 additional weekday trips on June 12, 2022. On October 3, 2022, SMART added 2 additional midday trips, for a total of 38 trips per weekday.

The tables below present data for October 2021 and 2022, year-over-year. Ridership for the fiscal year to date is up 89% over the same time period for FY22.

FISCAL YEAR-TO-DATE (JUL - OCT)	Fiscal Year 2022	Fiscal Year 2023	% Change
Ridership	104,612	197,929	89%
Fare Payments (Clipper + App)	95,524	174,768	83%
Average Weekday Ridership	1,072	1,916	79%
Average Saturday/Holiday Ridership	641	1,036	62%
Average Sunday Ridership	0	820	N/A
Bicycles	17,072	34,761	104%
Mobility Devices	554	718	30%

Total October ridership has more than doubled over last October. Bicycles on board are up 139% and passengers boarding with mobility devices has also nearly doubled.

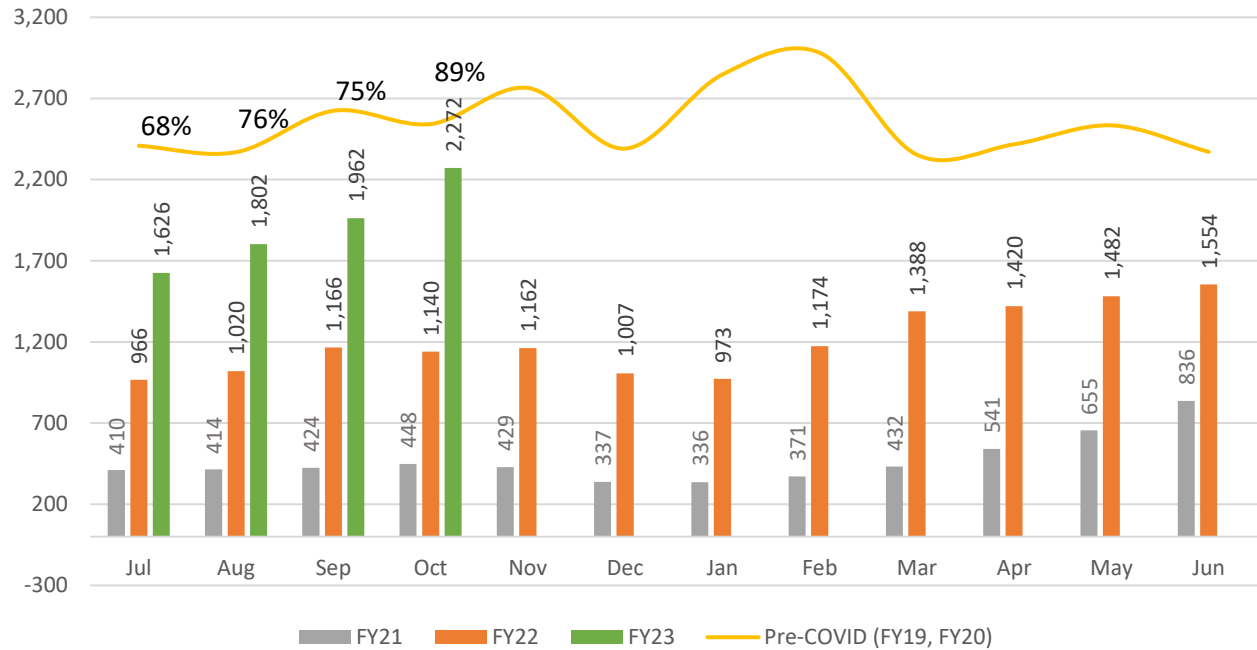
MONTHLY TOTALS YEAR-OVER-YEAR	OCT 2021	OCT 2022	% Change
Ridership	26,998	56,765	110%
Fare Payments (Clipper + App)	24,662	47,796	94%
Average Weekday Ridership	1,140	2,272	99%
Average Saturday/Holiday Ridership	613	1,033	69%
Average Sunday Ridership	0	780	N/A
Bicycles	4,043	9,643	139%
Mobility Devices	107	207	93%

OCTOBER 2022 SMART RIDERSHIP REPORT

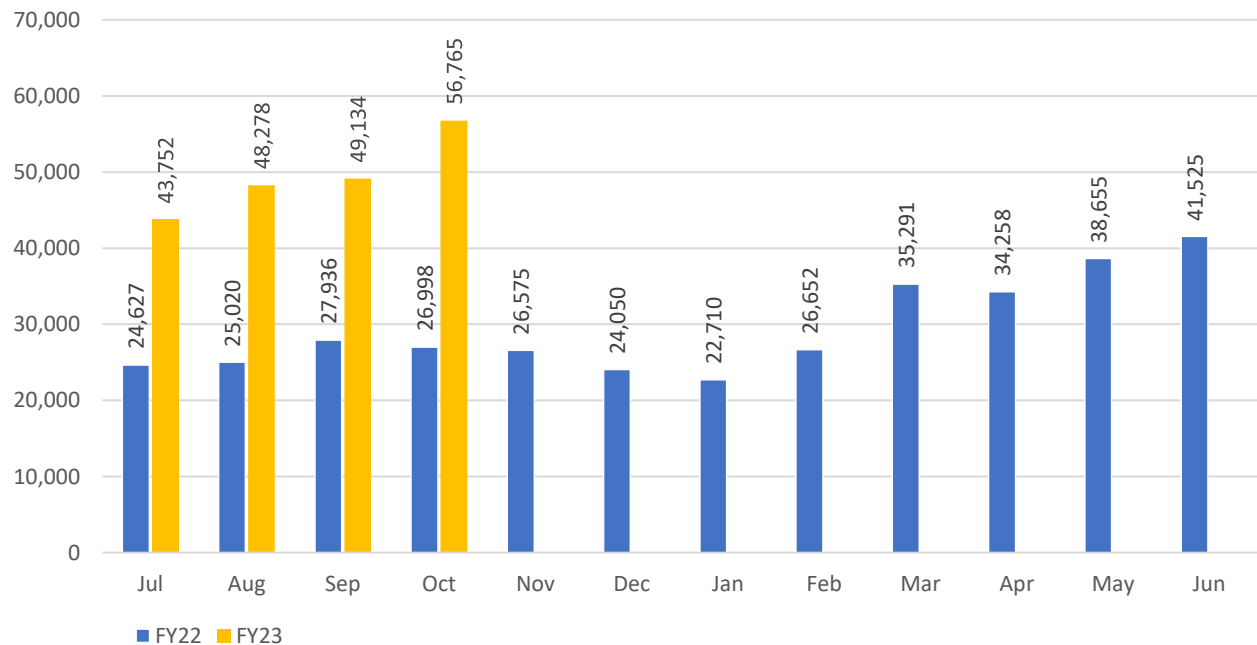
SMART Ridership Report
November 16, 2022

The following charts compare the average weekday ridership and monthly totals for FY21-FY23.

SMART Average Weekday Ridership



SMART FY22 - FY23 Monthly Ridership





November 16, 2022

David Rabbitt, Chair
Sonoma County Board of Supervisors

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Golden Gate Bridge,
Highway/Transportation District

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General Manager

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www.sonomamarintrain.org

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

SUBJECT: Authorize the General Manager to enter into an Intergovernmental Service Agreement with the County of Sonoma's Fleet Operations Division to Perform Fleet Maintenance and Related Services

Dear Board Members:

RECOMMENDATION:

Authorize the General Manager to enter into an Intergovernmental Service Agreement No. OP-SV-22-010 with the County of Sonoma's Fleet Operations Division to perform maintenance, repair, and equipment installation services for SMART's non-revenue fleet vehicles and heavy equipment. This contract will have a not-to-exceed amount of \$100,000 for each Fiscal Year 2023-2027.

SUMMARY:

The County of Sonoma's Fleet Operations Division has performed routine maintenance, repairs, and equipment installation on SMART's non-revenue vehicles and heavy equipment since 2017. SMART has a current fleet of thirty-six (36) vehicles consisting of sedans, SUVs, maintenance trucks, and several pieces of heavy equipment. Regular preventative maintenance and repair services are required to ensure these vehicles are safe and operable for our staff to use. The existing contract is set to expire, and SMART has negotiated this new contract with the County of Sonoma to continue providing these services.

FISCAL IMPACT: Funding is included in the approved Fiscal Year 2022-23 Operations Budget and assumed in subsequent years.

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

Very truly yours,

/s/
Ken Hendricks
Procurement Manager

Attachment(s): Sonoma County Fleet Operations Agreement No. OP-SV-22-010

**INTERGOVERNMENTAL SERVICE AGREEMENT
BETWEEN
THE COUNTY OF SONOMA
AND
SONOMA-MARIN AREA RAIL TRANSIT DISTRICT (SMART)**

THIS SERVICE AGREEMENT ("Agreement") is entered into and effective as of November 1, 2022 ("Effective Date"), by and between Sonoma-Marín Area Rail Transit District ("SMART") and The County of Sonoma ("County (collectively, the "Parties)").

RECITALS

WHEREAS, the Fleet Operations Division of County's General Services Department ("Fleet Operations") operates maintenance facilities and has documented experience in fleet management, emergency response vehicle equipment installations, service and repair of publicly-owned vehicles and equipment; and

WHEREAS, SMART owns a fleet of vehicles that need periodic maintenance, repairs, and installation of equipment in vehicles; and

WHEREAS, SMART desires to have County provide maintenance, repair services, and installation of equipment for its fleet of vehicles on an as-requested basis; and

WHEREAS, the County is prepared to provide these services to SMART, and pursuant to Government Code sections 23008, 54981, and other applicable law, is authorized to perform work, contract for performance of municipal services, and furnish goods for other public agencies whenever economical and satisfactory to do so; and

WHEREAS, SMART has a variety of standard and specialized vehicles and equipment that are used to provide primary services to its citizens; and

WHEREAS, SMART seeks that its fleet be maintained and managed in a manner that provides maximum availability of vehicles while monitoring and controlling the cost of owning and operating the fleet.

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

AGREEMENT

1. SCOPE OF SERVICES.

The County agrees to offer to SMART the services identified in Exhibit "A" attached hereto and incorporated herein by this reference (hereinafter "Services").

2. CONTACT INFORMATION AND HOURS OF OPERATION.

Contact information and hours of operation for the Services are provided in Exhibit “B”. From time to time, Exhibit “B” may be updated by County to reflect any changes to the contact information or hours of operation stated therein.

3. CHARGES AND BILLING.

3.1 Payment. All Services performed hereunder, shall be invoiced and paid on a time and material/expense basis in accordance with the rate computation method and the rates set forth in Section 3.2 herein. County shall invoice SMART within thirty (30) days of the completion of the Services covered by the Scope of Services. SMART shall pay invoices within thirty (30) days of receipt. Invoices to SMART shall be sent via email to billing@sonomamarintrain.org and shall reference Contract No OP-SV-22-010.

3.2 Billing and Rates. All expenses, including labor, materials, fuel, parts, and third-party charges, shall be charged to SMART at direct cost based on the established rates at the time such Services were performed, provided, however, that total payments to County shall not exceed \$100,000 for FY2023, \$100,000 for FY 2024, \$100,000 for FY2025, \$100,000 for FY2026, and \$100,000 for FY2027, without the prior written approval of SMART. It shall be SMART’s responsibility, and not County’s, to track and otherwise ensure compliance with the stated Not to Exceed amounts. The County’s rates are established each fiscal year and are subject to change. By April 1st of each year, County shall notify SMART of any changes in the rates. If SMART objects to any rate changes, SMART shall promptly notify County of its objections. If the Parties are unable to agree on the rate modifications by June 1st of each year, this Agreement shall automatically terminate. SMART accepts the County’s current rates for the Services which are attached as Exhibit “C”.

4. INSURANCE.

Each party shall be responsible for maintaining the insurance specified in attached Exhibit “D”.

5. TERM OF AGREEMENT.

This Agreement shall commence on the Effective Date and shall have a term through June 30, 2027.

6. TERMINATION.

6.1 Termination Without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, County and SMART shall each have the right, in their sole discretion, to terminate this Agreement by giving thirty (30) days written notice to the other party.

6.2 Termination for Cause. Notwithstanding any other provision of this Agreement, should a party fail to perform any of its material obligations hereunder or otherwise violate any of the terms of this Agreement, the other party, in addition to any other remedies, may immediately terminate this Agreement by giving the noncompliant party written notice of such termination, stating the reason for termination.

6.3 Completion of Pending Services. The Parties agree that if either party terminates the Agreement pursuant to this Section 6, or if this Agreement automatically terminates pursuant to Subsection 3.2, SMART will pay County for all Services authorized up until the effective date of termination in accordance with this Agreement. The Parties agree that the County will complete any Services for which a written work order has been signed by SMART and accepted by County before the effective date of termination or the date of automatic termination in accordance with the terms of this Agreement and the Scope of Services, unless the Parties agree in writing otherwise.

6.4 Authority to Terminate. The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the County General Services Department Director, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County. SMART's Board of Directors has the authority to terminate this Agreement on behalf of SMART. In addition, the Operations Manager, or General Manager, in consultation with SMART Counsel, shall have the authority to terminate this Agreement on behalf of SMART.

7. COUNTY'S REPRESENTATION.

County represents that County possesses the necessary skills in performing the Services. SMART has relied upon said representation as a material inducement to enter into this Agreement. County shall, therefore, provide properly skilled professional and technical personnel to perform all Services under this Agreement. It is expressly understood that County, its agents and employees shall act in an independent capacity and not as officers, employees or agents of SMART. This Agreement shall not be construed as an agreement for employment.

8. FACILITIES AND EQUIPMENT.

For preventative maintenance, equipment installation, and repair work performed at County's facilities, the County shall, at its sole cost and expense, furnish all facilities and tools that may be required for furnishing Services pursuant to this Agreement. For preventive maintenance, equipment installation, or repairs performed on SMART property by mutual agreement of the Parties in writing, SMART shall provide the facilities for such repair. SMART shall not furnish to County additional facilities or equipment, unless SMART otherwise agrees in writing to provide the same. County Fleet Operations will provide vehicle and equipment services identified in Exhibit "A" at any of the following locations.

County of Sonoma Fleet Operations Light Equipment Maintenance Facility
709 Russell Avenue
Santa Rosa, CA 95403

County of Sonoma Fleet Operations Heavy Equipment Maintenance Facility
1200 Century Court
Santa Rosa, CA 95403

Upon separate mutual agreement of the Parties in writing:

SMART
3748 Regional Parkway
Santa Rosa, CA 95403

Any field service location identified by SMART

9. LICENSES, PERMITS, ETC.

County shall, at County's sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits or other such approvals which are legally required for performing the Services.

10. INSPECTION.

All work done and materials furnished by County shall be subject to inspection and approval by SMART.

11. PROGRESS REPORTS.

Upon SMART's request, County shall provide written progress reports of all oral and written observations, opinions, recommendations, analyses, progress and conclusions related to County's performance of the Services.

12. NEITHER PARTY AN AGENT.

Neither Party may act as an agent pursuant to this Agreement. Neither Party shall have the authority, express or implied, pursuant to this Agreement to bind the other Party to any third party obligation whatsoever.

13. STANDARD OF PERFORMANCE.

County warrants that the services to be furnished pursuant to this Agreement will be performed in a professional and workmanlike manner consistent with applicable government industry standards.

Labor furnished is warranted for the lifetime of the installation. Warranty shall be voided if subsequent alterations are made by anyone other than County. Materials and equipment

shall be limited to warranties as provided by the manufacturer. Warranties do not apply to abuse or misuse for other than its intended purpose.

14. ASSIGNMENT/TRANSFER.

Neither Party shall make an assignment or transfer in whole or in part of this Agreement without the prior written consent of the other Party.

15. COMPLIANCE WITH ALL LAWS.

County shall fully comply with all applicable local, state and federal rules, laws, regulations and ordinances pertaining to performance of the Services required hereunder.

16. OWNERSHIP OF DOCUMENTS.

County shall provide documents in electronic form in a format required by SMART.

17. AMENDMENT.

This Agreement may be amended only by a written instrument executed by both Parties.

18. GOVERNING LAW; VENUE.

This Agreement shall be enforced and interpreted under the laws of the State of California. Any action arising from or brought in connection with this Agreement shall be venued in a court of competent jurisdiction in the County of Sonoma, State of California.

19. COUNTY'S BOOKS AND RECORDS.

County shall maintain any and all ledgers, books of accounts, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to SMART, and records which demonstrate performance under this Agreement, for a minimum period of three (3) years from the date of final payment to County pursuant to this Agreement.

Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the SMART's General Manager, SMART's General Counsel, SMART's Chief Finance Officer, or a designated representative of these officers.

20. INDEPENDENT AGENCIES.

20.1 Each party is and shall at all times remain a wholly independent agency and not an officer, employee or agent of the other party. Neither party shall have the authority to bind the other party in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against the other party, whether by contract or otherwise, unless such authority

is expressly conferred or arises under this Agreement or is otherwise expressly conferred in writing by the other party.

20.2 The personnel performing the Services under this Agreement on behalf of County shall at all times be under County's exclusive control. Neither party, nor any elected or appointed boards, officers, officials, employees or agents of the party, shall have control over the conduct of the other party or any of the other party's officers, employees, or agents except as set forth in this Agreement. Neither party shall at any time or in any manner represent that the other party or any of the other party's officers, employees, or agents are in any manner officials, officers, employees or agents of the other party.

21. NOTICES.

Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section. All such notices shall be sent by:

- A. Personal delivery, in which case notice is effective upon delivery;
- B. Certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt as confirmed by a return receipt;
- C. First Class Mail, in which case notice shall be deemed delivered on receipt;
- D. Nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery as confirmed by the delivery service receipt; or
- E. Facsimile or e-mail transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a facsimile transmission report or electronic receipt is generated reflecting the accurate transmission thereof. Any notice given by facsimile or email shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a non-business day.

SMART:

Attn: Eddy Cumins, General Manager
5401 Old Redwood Hwy., Ste. 200
Petaluma, CA 94954
707-794-3330 main office
707-794-3037 fax

County of Sonoma:
Attn: Director of General Services
2300 County Center Dr. A200
Santa Rosa, Ca. 95403
707-565-2550 main office
707-565-2358 fax

22. DISPUTE RESOLUTION.

22.1 Authority to Act Under This Agreement. All action pursuant to this Agreement requiring approval of or agreement by “SMART” may be authorized by General Manager, or a duly authorized delegate, as long as such decisions or actions are within the authority of the General Manager. Except as specifically stated in this Agreement otherwise, all action pursuant to this Agreement requiring approval of or agreement by “County” may be authorized by the Director of General Services, or a duly authorized delegate, as long as such decisions or actions are within the authority delegated to the Director by the Sonoma County Board of Supervisors.

22.2 Problem Resolution and Dispute Process. If at any time, a disagreement or problem should arise concerning the operation of this Agreement, the parties agree that the dispute will be resolved at the division manager level within SMART and County’s respective organizations. If the appropriate Manager and the Fleet Manager are unable to resolve the problem within 30 days, the matter should then go to General Manager and the Director of General Services or their respective designees.

23. INDEMNIFICATION; LIMITATION AND RELEASE.

County agrees to accept all responsibility for loss or damage to any person or entity, including SMART, and to defend, indemnify, hold harmless, and release SMART, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including County, that arise out of, pertain to, or relate to County’s performance or obligations under this Agreement, but only to the extent of County’s negligence or misconduct.

NOTWITHSTANDING, COUNTY SHALL NOT BE LIABLE TO SMART OR TO ANY PERSONNEL, SUBCONTRACTOR OR OTHER PERSON OR ENTITY CLAIMING THROUGH SUCH PARTY, FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES, ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY SERVICES RENDERED IN RELATION HERETO.

24. ENTIRE AGREEMENT.

This Agreement, including the attached Exhibits “A” through “D,” is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to

Code of Civil Procedure Section 1856. No statements, representations or other Agreements, whether oral or written, made by any parties which are not embodied herein shall be valid and binding. Except as expressly stated otherwise herein, this Agreement shall not be modified or amended except pursuant to a written amendment signed by both parties. The County General Services Department Director, in consultation with County Counsel, may execute minor amendments on behalf of the County. The Parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

25. WAIVER.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision nor a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by either party of any Services by the other party shall not constitute a waiver of any of the provisions of this Agreement.

26. EXCUSABLE DELAYS.

Neither party shall be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of the Parties. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments not parties to this Agreement, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather.

27. CONSTRUCTION/SEVERABILITY.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s). The Parties acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. The Parties acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

28. 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.

29. USE OF RECYCLED PAPER.

All printing jobs produced under this Agreement shall 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.

30. 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.

31. HEADINGS.

The headings used in this Agreement are for convenience only and are not intended to affect the interpretation or construction of any provisions herein.

32. ENTIRE AGREEMENT.

This Agreement, including the Exhibits attached hereto and incorporated herein, constitutes the entire agreement between the Parties with respect to the Services and supersedes all prior agreements or understandings, oral or written, between the Parties in this regard.

[Signature Page to Follow]

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

SMART:

By: _____
Eddy Cumins
General Manager

Dated: _____

**APPROVED AS TO FORM FOR
SMART:**

By: _____
Tom Lyons
District Counsel

Dated: _____

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

By: _____
Ken Hendricks, Procurement Manager

Date: _____

COUNTY OF SONOMA:

By: _____
Johannes Hoevertsz
Director of General Services

Dated: _____

**APPROVED AS TO FORM FOR
COUNTY:**

By: _____
Jeremy Fonseca
Deputy County Counsel

Dated: _____

**CERTIFICATE OF INSURANCE
ON FILE AND RECOMMENDED
FOR APPROVAL FOR COUNTY:**

By: _____

Date: _____

EXHIBIT A

SCOPE OF WORK

1. Maintenance, Repair, Equipment Installation, Regulatory Inspections, and Safety Services Which Can Be Performed:

- Preventive Maintenance (PM) services
- All unscheduled repairs
- Safety checks as required and requested
- Installation of equipment in or on vehicles
- Field service and repairs
- Stationary generator service and repairs
- California Highway Patrol Biennial Inspection of Terminals safety inspections at required intervals
- California Air Resources Board emissions testing and inspections at required intervals
- State of California Bureau of Automotive Repair emissions testing and inspections at the required intervals

2. Frequency of Work Performed:

All work performed shall be at the discretion of SMART on an “as requested” basis. The work will be performed according to Fleet Operations availability to do so, based on the current workload at the time of the request or scheduling the work at a future date that meet the needs of both entities. Neither County or SMART guarantee any amount or frequency of work or availability.

3. Estimated Costs:

Upon SMART’s request for services, Fleet Operations will provide an estimate that will include the scope and description of the work to be performed, a listing of the parts or equipment to be used, the amount of labor time estimated to complete the work, any sublet repair costs, and the total cost of all of the work to be performed. The designated SMART representative(s) with authorization to approve said work will sign and date the estimate and return a copy to Fleet Operations, by mail, fax, or e-mail.

All verbal authorizations by the designated SMART representative(s) to perform work will be memorialized in Fleet Operation’s fleet management software to include the date, approximate time, name of the authorizing SMART representative, and the total amount of the authorized works. Designated SMART representative(s) will follow up with an e-mail sent to Fleet Operations memorializing the specific work authorized and total costs. Verbal authorizations shall not exceed \$1,000. The memorialized information will be available to SMART upon request.

Any individual vehicle's service or repair estimate that exceeds \$2,500 will require SMART's Chief Financial Officer's written approval prior to the work being performed.

SMART's Chief Financial Officer is Heather McKillop at hmckillop@sonomamarintrain.org or 707-794-3330.

THIS SPACE INTENTIONALLY LEFT BLANK

EXHIBIT B

COUNTY FACILITIES AND CONTACT INFORMATION

I. County Hours of Operation

Fleet Administration: 7:30 A.M. to 4:30 P.M., Monday through Friday
Shops: 7:30 A.M. to 4:00 P.M. Monday through Friday
Closed for lunch from Noon to 12:30 P.M.
Holidays: Standard County holidays are observed.

II. Phone numbers

Administration
709 Russell Avenue
Santa Rosa, CA 95403

Fleet Manager – For Department Fleet Programs. 707-565-5423

Assistant Fleet Manager – For Department Fleet Programs 707-565-2505

Department Analyst – For invoicing and customer service issues 707-565-2692

Senior Office Assistance – For general information,
scheduling repairs and PM's, status of repairs or service 707-565-2639

Light Equipment Maintenance Facility 707-565-2932
709 Russell Avenue
Santa Rosa, CA 95403

Light Equipment Maintenance Supervisor – For technical assistance.

Heavy Equipment Maintenance Facility 707-565-5422
1200 Century Court
Santa Rosa, CA 95403

Heavy Equipment Maintenance Supervisor - For scheduling
repairs or service, status of repairs or service, technical assistance.

EXHIBIT C

COUNTY OF SONOMA FLEET OPERATIONS RATES 2022-2023 Fiscal Year July 1st through June 30th

Rates:

Light Equipment Maintenance Facility Shop Hourly Rate: \$133.25

Includes maintenance and repairs performed on automobiles, light duty trucks with a rated carrying capacity of 1 ton or less and are powered by a gasoline engine, vans, and BAR emissions testing.

Heavy Equipment Maintenance Facility Shop Hourly Rate: \$171.83

Includes maintenance and repairs performed on medium and heavy-duty trucks with a rated carrying capacity greater than 1 ton, generators, off-road equipment, CARB emissions testing, CHP BIT inspections, custom fabrication and welding work, and field service maintenance and repairs.

Mark-Up on Parts Sold: 27.2%

Mark-Up on Fuel Sold: \$.296 per gallon

Subcontracted Work:

Any Subcontracted work by a third-party contractor shall be invoiced to SMART at actual cost.

EXHIBIT D

INSURANCE REQUIREMENTS

Each party shall maintain the insurance or self-insurance specified below.

1. **Workers Compensation and Employers Liability Insurance**

- a. Workers' Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- b. Employers' Liability with limits of 1,000,000 per Accident; 1,000,000 Disease per employee; 1,000,000 Disease per policy.
- c. **Required Evidence of Coverage:**
 - i. Certificate of Insurance

2. **General Liability Insurance**

- a. Commercial General Liability Insurance on an occurrence basis, no less broad than ISO form CG 00 01.
- b. Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The General Aggregate shall apply separately to each Project.
- c. The Parties shall disclose any deductible or self-insured retention in excess of \$25,000, and are responsible for any deductible or self-insured retention.
- d. Each Party shall be an additional insured for liability arising out of ongoing and completed operations by or on behalf of the other Party in the performance of this Agreement.
- e. The insurance provided to each Party as an additional insured shall apply on a primary and non-contributory basis with respect to any insurance or self-insurance maintained by the other Party.
- f. **Required Evidence of Coverage:**
 - i. Copy of the additional insured endorsement;
 - ii. Copy of the endorsement indicating that coverage for Customer is primary and non-contributory; and
 - iii. Certificate of Insurance.

3. **Automobile Liability Insurance**

- a. Minimum Limits: \$1,000,000 combined single limit per accident.
- b. Coverage shall apply to all owned, hired and non-owned autos.
- c. **Required Evidence of Coverage:**
 - i. Certificate of Insurance.

4. Documentation

- a. All required Evidence of Coverage shall be submitted prior to the execution of this Agreement.
- b. Required Evidence of Coverage 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.

5. Policy Obligations

The parties' indemnity and other obligations shall not be limited by the foregoing insurance requirements.

6. Material Breach

If either party fails to maintain insurance coverage which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. The other party, at its sole option, may terminate this Agreement and obtain damages from the party committing said breach.



November 16, 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: Authority to Purchase Wetlands Credits from the Burdell Ranch Wetland Conservation Bank

Dear Board Members:

RECOMMENDATION:

Approve Resolution No. 2022-37 authorizing the General Manager to execute a purchase agreement for 0.6 acres of seasonal freshwater credits from the Burdell Ranch Wetland Conservation Bank for an amount of \$834,000.

SUMMARY:

This purchase will fulfill regulatory permit requirements to mitigate permanent impacts to wetlands as part of constructing two segments of bicycle pathway in Sonoma County.

BACKGROUND

Regulatory resource agencies permit projects that impact Waters of the State (or US) in terms of the watershed in which the impact occurs. The primary way of mitigating impacts to wetlands is by purchasing credits in a wetland bank. A wetland bank must be approved by resource agencies such as the Army Corps of Engineers, the California Regional Water Quality Control Board, and others in order to qualify as a suitable mitigation bank. There are seasonal freshwater and tidal wetland mitigation banks. The wetlands credits that were established by SMART at the Mira Monte Marin restoration site are for tidal wetlands.

The Segment 1 and 2 Pathway Projects that are planned from Petaluma to Penngrove received a Clean Water Act Section 401 Water Quality Certification from the San Francisco Bay Regional Water Quality Control Board that requires SMART to purchase 0.571 acres of freshwater seasonal wetland credits to mitigate for permanent impacts. There is only one source for freshwater seasonal wetland credits in the impacted watershed - the Burdell Ranch Wetland Conservation Bank.

Staff recommends approval of Resolution No. 2022-37 authorizing the General Manager to purchase 0.6 acres of wetlands credits from the Burdell Ranch Wetland Conservation Bank for an amount of \$834,000 to fulfill San Francisco Bay Regional Water Quality Control Board permit requirements.

FISCAL IMPACT: This environmental mitigation purchase is included in the pathway project budget and is budgeted for in FY23 budget.

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

Very truly yours,

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

Attachment(s): Resolution No. 2022-37

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
APPROVING THE PURCHASE OF SEASONAL FRESHWATER WETLAND MITIGATION CREDITS FROM THE
BURDELL RANCH WETLAND CONSERVATION BANK**

WHEREAS, the Sonoma-Marín Area Rail Transit District (SMART) is constructing two segments of bicycle and pedestrian pathways in Sonoma County: 1) Petaluma to Penngrove: Southpoint Boulevard to Main Street; and 2) Rohnert Park to Santa Rosa: Golf Course Drive to Bellevue Avenue ; and

WHEREAS, construction of the two pathway segments will generate permanent impacts to 0.57 acres of freshwater seasonal wetlands; and

WHEREAS, regulatory construction permits require SMART to mitigate the wetland impacts; and

WHEREAS, the Burdell Ranch Wetland Conservation Bank is an agency approved wetland bank that has 0.6 acres of seasonal freshwater wetland mitigation credits available for purchase;

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 purchase 0.6 acres of seasonal freshwater wetland mitigation credits the Burdell Ranch Wetland Conservation Bank for a total contract amount of \$834,000.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 16th 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



November 16, 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 Execute Contract No. EV-BB-22-004 with Triangle Properties, Inc for Pathway Riparian Enhancement Implementation and Monitoring Project

Dear Board Members:

RECOMMENDATION:

Approve Resolution No. 2022-38 authorizing the General Manager to Execute Contract No. EV-BB-22-004 with Triangle Properties, Inc for the Pathway Riparian Enhancement Implementation and Monitoring Project with Triangle Properties, Inc. for a total contract amount of \$235,510 and a term through January 31, 2028.

SUMMARY:

This contract implements riparian planting and establishment monitoring for five (5) years to mitigate for impacts associated with the construction of two pathway segments in Sonoma County:

1. Petaluma to Penngrove: Southpoint Boulevard to Main Street
2. Rohnert Park to Santa Rosa: Golf Course Drive to Bellevue Avenue

BACKGROUND:

SMART is preparing to construct two segments of bicycle and pedestrian pathway in Sonoma County. Riparian impacts are a result of planning the construction work. The impacts can be such things a bridge shading a waterway or the removal of riparian vegetation to construct the pathway. Mitigating for the riparian impacts is a permit condition from the California Department of Fish and Wildlife as well as the California Regional Water Quality Control Board. The project was able to develop mitigation plantings in the SMART right-of-way near the Segment 1 (Petaluma to Penngrove) pathway project. The project includes five (5) years of maintenance and monitoring of the plantings.

SMART advertised a competitive bid package on October 7, 2022, for the work and received three (3) bids on October 31, 2022. Triangle Properties, Inc. was the lowest responsive and responsible bidder with a bid price of \$235,510.

Staff recommends approval of Resolution No. 2022-38 authorizing the General Manager to Execute Contract No. EV-BB-22-004 with Triangle Properties, Inc. for a total not to exceed amount of \$235,510 and contract term through January 31, 2028.

FISCAL IMPACT: This work budgeted for in FY23 budget.

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

Very truly yours,

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

Attachment(s):

- 1) Resolution No. 2022-38
- 2) Triangle Properties, Inc Contract No. EV-BB-22-004

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
APPROVING CONTRACT NO. EV-BB-22-004 WITH TRIANGLE PROPERTIES, INC. FOR PATHWAY RIPARIAN
ENHANCEMENT IMPLEMENTATION & MONITORING**

WHEREAS, the Sonoma-Marín Area Rail Transit District (SMART) is constructing two segments of bicycle and pedestrian pathways in Sonoma County: 1) Petaluma to Penngrove: Southpoint Boulevard to Main Street; and 2) Rohnert Park to Santa Rosa: Golf Course Drive to Bellevue Avenue ; and

WHEREAS, construction of the two pathway segments will generate permanent impacts to riparian habitat; and

WHEREAS, regulatory construction permits require SMART to mitigate the riparian impacts by planting replacement riparian plantings and maintaining and monitoring the replacement plantings; and

WHEREAS, SMART received three (3) bids on October 31, 2022; and

WHEREAS, SMART determined that Triangle Properties, 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. EV-BB-22-004 with Triangle Properties, Inc., for a total contract amount of \$235,510.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 16th 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 16, 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 Triangle Properties, Inc., whose place of business is located at 3500 American River Drive, Sacramento, CA 95864 (hereinafter “Contractor”).

PATHWAY RIPARIAN ENHANCEMENT IMPLEMENTATION & MONITORING
CONTRACT # EV-BB-22-004

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

Section 4.01 Contract Time and Notice to Proceed.

Work may not begin until SMART issues a Notice to Proceed.

Project Implementation shall be completed by January 31, 2023.

Following the project implementation, Contractor shall maintain, monitor, and report on the installed project for a period of five (5) years.

The term of this Agreement shall remain in effect for five years following successful project implementation.

SMART reserves the right to modify or alter the Commencement Date of the Work. SMART may give a Notice to Proceed at any time within 60 Days after the Notice of Award.

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

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: \$235,510.00

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 (in addition to or to supplement those referred to in Section 5.2 of this Document 00 52 00) 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 Items	Contractor's License No.
Triangle Properties, Inc. (Prime) 3500 American River Drive Sacramento, CA 95864	Procurement, Installation, Maintenance, and Monitoring/Reporting (All Items 1 – 5.5)	1019754

Section 6.09 Contractor has designated **Barry Baba**, 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 has also designated **Michael Peterson**, Superintendent, to act as Contractor's Superintendent. 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: Barry Baba
Phone: (916) 480-5505
Email: bbaba@teichert.com

Superintendent: Michael Peterson
Phone: (916) 870-4183
Email: mpeterson@teichert.com

ARTICLE 7. CONTRACTOR DOCUMENTS.

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

IFB:	Invitation for Bid for Pathway Riparian Enhancement Implementation & Monitoring
Document 00 70 00:	General Conditions
General Requirements:	General Requirements
Technical Specifications:	Non-Motorized Pathway: Payran to Southpoint Mitigation and Monitoring Plan
Technical Specifications:	Riparian Enhancement Plan for Segments 1 & 2: Lakeville Street (MP 39.0) to Payran Street (MP 39.2) and Southpoint Boulevard (MP 40.4) to Main Street (MP 43.4)

Section 7.02 There are no Contract Documents other than those listed in Section 6.01. 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

Triangle Properties, Inc.

Agreement

EV-BB-22-004

injury and personal injury using an occurrence policy form, in an amount no less than \$2,000,000 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.

Section 8.03 Automobile Insurance. Automobile Liability insurance covering bodily injury and property damage in an amount no less than \$2,000,000 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 exclusions or limitations regarding damages or injury from existence, removal or abatement of lead paint. There shall be no insured vs. insured exclusion in the policy.

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.

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 01420 (References and Definitions) 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 00700 (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: TRIANGLE PROPERTIES, INC.

By: _____
Troy Reimche, Director of Teichert Property Holdings

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, Staging, Demobilization	1	LS	\$11,600.00
2	Site Preparation	1	LS	\$13,580.00
3	Planting	1	LS	\$35,250.00
4.1	Irrigation Maintenance – Year 1	1	LS	\$30,140.00
4.2	Irrigation Maintenance – Year 2	1	LS	\$13,200.00
4.3	Irrigation Maintenance – Year 3	1	LS	\$10,200.00
4.4	Maintenance – Year 1	1	LS	\$29,660.00
4.5	Maintenance – Year 2	1	LS	\$18,850.00
4.6	Maintenance – Year 3	1	LS	\$15,550.00
4.7	Maintenance – Year 4	1	LS	\$16,010.00
4.8	Maintenance – Year 5	1	LS	\$16,490.00
5.1	Monitoring and Reporting - Year 1	1	LS	\$5,690.00
5.2	Monitoring and Reporting - Year 2	1	LS	\$4,610.00
5.3	Monitoring and Reporting - Year 3	1	LS	\$4,750.00
5.4	Monitoring and Reporting - Year 4	1	LS	\$4,890.00
5.5	Monitoring and Reporting - Year 5	1	LS	\$5,040.00
TOTAL PRICE:				\$235,510.00

Notes

- LS = Lump Sum
- Prices are in United States Dollars
- The above costs include all labor, supervision, equipment, materials, supplies, insurance, overhead, profit, and all other direct and indirect costs associated with performing the work included in this Agreement.

Item Descriptions:

1.0 Mobilization and Demobilization: This item includes all of the necessary labor and materials to prepare for the Work as well as concluding the work which should include, but not be limited to: purchasing materials and plants, installing temporary provisions for the work, removing temporary elements at the end of the Project.

2.0 Site Preparation: This includes invasive plant removal and site preparation as described in sections 3.1 ,3.2, 3.4 of the Pathway Segments 1 & 2 Riparian Enhancement Plan.

3.0 Planting: This item includes all planting, installation of fencing or browse protection and the preparation of as-built drawings at each of the sites in accordance with Section 3.3 of the Pathway Segments 1 & 2 Riparian Enhancement Plan, and the planting plan in the Payran-Southpoint Riparian Enhancement Plan.

4.0 Irrigation and Maintenance: These items include all labor and material to implement the activities in Section 4.0 and 5.0 of the Pathway Segments 1 & 2 and Payran-Southpoint Plan, including, but not limited to: Irrigation of the sites, replacement planting, maintenance of fencing or browse protection, and weed management.

5.0 Monitoring and Reporting: These items cover all five years of annual monitoring and reporting as described in Sections 6.0 of the Segments 1 & 2 Pathway Riparian Enhancement Plan and the Payran-Southpoint Riparian Enhancement Plan.



November 16, 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: End of COVID-19 State of Emergency

Dear Board Members:

RECOMMENDATION: Discussion Item

SUMMARY:

On September 16, 2021, Governor Newsom signed AB-361. The legislation allowed but did not require local government bodies subject to the Brown Act to continue to use video and/or teleconferencing to conduct Board meetings.

Governor Newsom recently announced the COVID-19 State of Emergency will end on February 28, 2023. Since April 15, 2020, SMART has conducted virtual Board meetings with only SMART staff present on-site with all Board members and members of the public attending the meeting virtually.

With the COVID-19 State of Emergency ending, remote meetings pursuant to AB-361 will no longer be an option for the SMART Board of Directors after February 28, 2023. This discussion item is an opportunity for the Board to discuss considerations to include but not limited to in-person meeting implementation date, meeting frequency, and remote option for the public.

Very truly yours,

/s/
Eddy Cumins
General Manager