



**BOARD OF DIRECTORS
MEETING AGENDA
December 15, 2021 – 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, December 14, 2021 at <https://www.surveymonkey.com/r/SMARTBoardComments>

PUBLIC COMMENT DURING THE MEETING:

The SMART Board Chair will open the floor for public comment during the Public Comment 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 December 1, 2021 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 – November 2021

Regular Calendar

7. Authorize the General Manager to Award Contract No. IT-PS-21-002 to Golden Five, LLC to perform Microsoft Office 365 managed support and upgrade services with a not-to-exceed amount of \$194,600 for the initial three-year term - *Presented by Ken Hendricks*
8. Next Regular Meeting of the Board of Directors, January 5, 2022 – 1:30 PM
9. Adjournment

DISABLED ACCOMODATIONS:

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



**BOARD OF DIRECTORS
REGULAR MEETING MINUTES
December 1, 2021 - 1:30 PM**

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

MEMBERS OF THE PUBLIC MAY NOT ATTEND THIS MEETING IN PERSON

1. Call to Order

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

2. Approval of the November 17, 2021, Board Meeting Minutes

MOTION: Director Lucan moved approval of November 17, 2021 Board Meeting Minutes as presented. Director Garbarino second. The motion carried 10-0 (Director Gorin absent; Directors Arnold joined later).

3. Board Members Announcements

Chair Rabbitt recognized new General Manager Eddy Cumins; today is day three on the job and he looks forward to Mr. Cumins leadership at SMART.

4. General Manager's Report

General Manager Cumins stated that since the start of passenger service in August 2017, SMART has carried 2,133,278 passengers, 231,822 bicycles, and over 8,285 mobility devices.

Director Arnold joined at 1:34pm

General Manager Cumins stated that the SMART Holiday Express Toy Drive is coming for the sixth year in a row on Saturday, December 4th. SMART will host its annual Holiday Express Toy Drive at two locations – the first at the Santa Rosa Downtown train station from 10:00 AM – 1:00 PM, and the second at the Novato Hamilton train station from 2:00 PM – 4:00 PM. We will be partnering with organizations in Marin and Sonoma counties to collect unwrapped toys to help local families in need. Please join and donate a new, unwrapped toy at one of our drive-thru drop-off events and get a ticket for a free ride on the SMART train! Last year, , SMART collected over 1,500 toys and hopeful we will pass that number this year.

Director Fudge welcomed General Manager Cumins to SMART and his first board meeting.

Director Garbarino welcomed General Manager Cumins and stated it was great report.

General Manager Cumins stated that he appreciates the comments. SMART's staff have been wonderful and he is happy and excited to be here.

Lastly, Chair Rabbitt thanked staff for organizing the 6th Annual Holiday Express Toy Drive. It is a tradition within SMART and the North Bay is appreciative of the work and for putting this forward every year for the benefit of the Community.

5. Public Comment on Non-Agenda Items

Rick Luttman welcomed General Manager Cumins to SMART. He said he attended last night's webinar by Senator McGuire regarding the Great Redwood Trail. He said that more items need to be moved by rail because it is more efficient than highways, as we move into the era of climate change. The reduction of trucks miles traveled on the highway needs to be reduced. He suggested that the tracks to be refurbished to Willits, since it has been suggested to cover the tracks for a bicycle trail.

Richard Brand welcomed General Manager Cumins to SMART. He said that he has experienced the line in Salt Lake, Utah and it is an excellent service. SMART has a wonderful program and he is looking forward to Mr. Cumins leadership and? expanding it here. He said Mr. Luttman brought up a good point about freight business. When the track was rebuilt 5 years ago, there were spurs that were pulled out and not serviced. He said that the State has offered to pay 50% of the cost to connect a couple of customers in Rohnert Park and West of Santa Rosa. There are at least two Positive Train Control compatible switches in the warehouse at Airport that were not installed. The good news is that SMART wants to do things and it's going to be a financial benefit rather than this whole dark cloud that is being said.

Doug Kerr asked if freight service loses money, where does the money come from to cover that loss. It is not clear that SMART has financing available for freight.

Dani Sheehan welcomed General Manager Cumins to SMART. The Friends of SMART look forward in working with him and to his leadership.

Warren Wells welcome General Manager Cumins and congratulated him on his position with SMART. The Marin County Bicycle Coalition (MCBC) is excited to work with him you and the rest of your excellent staff toward completing this SMART pathway. He said that Senator McGuire presented the Great Redwood Trail last night at a Town Hall meeting. The SMART pathway will be a crucial part of the transportation network within our two County District and the gateway to one of the longest off street trails in the Nation. Hopefully will come with additional funding and resources, it magnifies the importance of SMART's work on the trail. MCBC looks forward to working with the Agency toward improving active transportation across North Coast.

Jonathan Frieman suggested that people speak slower, since those with hearing loss, rely upon the transcript almost exclusively. He stated that he emailed the Board last night addressing his concerns regarding labeling the photos of people on the tracks as trespassers in the monthly General Manager report.

Mike Pechner suggested including Alan Hemphill to any freight management and operations meetings. He said there are 21 customers between Cloverdale and Willits who want freight service, which makes the Cloverdale to Willits portion viable and profitable for freight service. He understands that Senator McGuire wants to do rail banking operations and does not think that is advisable, the right-of-way has enough space for the railroad and the trail.

Lastly, Chair Rabbitt asked General Manager Cumins for any comments on what was said today. General Manager Cumins responded that staff will be looking into these situations; Obviously, he is starting to understand where there are concerns and he is listening to the Citizens concerns. Chair Rabbitt clarified that the Board gave direction to staff to further analyze the business model giving the difference to in house operations, because the initial financial analysis indicated that would be more economical.

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

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

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

7. Fiscal Year 2021 Budget to Actual Comparison (*Information*)

Chief Financial Officer, Heather McKillop, stated that the item before you today is informational and, in the future, will be included on the Consent Agenda.

With the Fiscal Year 2021 actual revenues and expenditures being finalized we have prepared a reconciliation of Fiscal Year 21 Budget revenues and expenditures verses actual

revenues and expenditures. In the comments under the charts, we provide an explanation of why we were over or under in those expenditures. Highlights include:

Revenue

- Sales tax and fare revenue were 12% higher than the budget amounts.
- Fare revenues are still about \$3.4 million lower than pre-pandemic numbers.
- Federal Relief funds were received and expended.
- State and Federal funds were mainly lower due to the timing of the Windsor Extension.

Expenditure

- Funds had been budgeted to be able to restore service if circumstances allowed. Weekday and Saturday service was not restored until the end of May which was towards the very end of the fiscal year.
- Due to the refinancing of SMART's debt, the debt service for FY 21 was much lower than originally anticipated by approximately \$7 million.
- The contingency for capital infrastructure was not needed.

Overall SMART received slightly more revenue than what we anticipated and spent significantly less money than what we anticipated. As previously mentioned, those dollars will be needed in the future once the Windsor Extension Project construction starts again.

Fund Balance

We have included the reconciliation fund balance that the Board has set aside for reserves and where we expected to end up with year and fund balance for fiscal year 2020 which are reflected on page 40 of 292 of the Board packet. Highlights include:

- actual revenues and expenditures at year-end, the fund balance before reserves and carryforward is \$86,428,100.
- After deducting reserves, the subtotal fund balance is \$56,283,709.
- After deducting the estimated fund balance at year-end of \$37,466,206 and the rollforward of \$2,923,117, the available fund balance of \$15,894,386.

The amount of funds that is available for programming for operations or capital in future years. We will be discussing these funds in the context of updating the capital and operations budget in the Spring.

Comments

Director Lucan stated that Ms. McKillop mentioned that SMART had some savings due to not using as much fuel as anticipated, however what is happening with fuel in general, given the recent increase. Ms. McKillop responded that SMART fills up with fuel every day and Procurement Manager, Ken Hendricks, will provide more information. Mr. Hendricks said that the Rail Operations Center does not have any holding tanks underground and SMART heavily relies upon our third party contractor to do daily fuel deliveries into the train. SMART relies on the current price on the daily market and we factor into our bid the profit margin above that rate so it's constantly shifting on a day to day basis. When the fuel prices go up our prices go up and when the fuel prices go down our prices go down and SMART currently procures at the current market price. Director Lucan asked about the status of a

discussion that occurred a year or two ago regarding using renewable diesel pilot some of that being contingent upon the engine manufacturer. Mr. Hendricks responded that the evaluation is still in motion, and that the teams are working with the engine provider so we're waiting on their approval to continue.

8. Fiscal Year 2021 Year End Investment Report (*Information*)

Chief Financial Officer, Heather McKillop, stated that this report is required according to SMART's Investment Policy that was adopted as part of the annual budget. A large amount of funds are held with the Sonoma County Treasury Pool, they have active management which SMART does not have and less expenses. They follow the California requirements for investments. Funds that are needed for short-term are held with the Bank of Marin. A total investment earnings for fiscal year 2021 were \$628,728. This amount is significant just based on interest rates. SMART took advantage of savings when the Bonds were restructured.

Attached to the report is the year-end investment statement provided by the Sonoma County Treasury Pool which details the required investments.

Comments

Thomas Ells stated that is better for SMART to purchase fuel on the open market given the fact that SMART would have to mitigate storing the fuel at the Rail Operation Center.

9. Authorize the General Manager to Award Contract No. FN-PS-21-007 to PFM Financial Advisors, LLC to provide as-needed financial advisory services with a not-to-exceed amount of \$267,500 for the initial three-year term

Procurement Manager, Ken Hendricks stated that during SMART's day to day business, it is necessary to have a third-party financial advisory firm on contract to assist with developing strategies for future financing needs, preparing and maintaining financial models, performing rating agency updates and reviews, advising on various elements and opportunities with municipal securities or products.

The existing contract is set to expire December 31, 2021. In anticipation of the contract's expiration, SMART issued a Request for Proposal to procure the next Consultant. SMART received 4 responsive proposals from the following vendors:

1. KNN Public Finance, LLC
2. PFM Financial Advisors, LLC
3. Ridgeline Municipal Strategies, LLC
4. Wulff, Hansen & Co

The evaluation committee reviewed the proposals using the evaluation criteria identified in the Request for Proposal. The Selection Committee shortlisted two firms: KNN Public Finance, LLC and PFM Financial Advisors, LLC. After completing the reference checks and interviews with these two firms, the Selection Committee recommended to retain PFM Financial Advisors, LLC firm for the award of this contract.

The action before the Board today is to authorize the General Manager to award Contract No. FN-PS-21-007 to PFM Financial Advisors, LLC to provide as-needed financial advisory services with a not-to-exceed amount of \$267,500 for the initial three-year term.

MOTION: Vice Chair Pahre moved to Authorize the General Manager to Award Contract No. FN-PS-21-007 to PFM Financial Advisors, LLC to provide as-needed financial advisory services with a not-to-exceed amount of \$267,500 for the initial three-year term as presented. Director Rogers second. The motion carried 11-0 (Director Gorin absent)

10. Authorize the General Manager to Award Contract No. OP-SV-21-012 to W.J.C. Electric dba Hahn Automotive with an amount not-to-exceed \$123,000; and Contract No. OP-SV-21-016 to Oil Stop, LLC with an amount not to exceed \$27,000 to provide fleet vehicle maintenance services

Procurement Manager, Ken Hendricks, stated that SMART has a current fleet of thirty-six (36) vehicles consisting of sedans, sport utility vehicles, and maintenance trucks that employees across all departments use to perform daily business. Regular preventative maintenance and repair services are required to ensure these vehicles are safe and operable for our staff.

The existing contract is set to expire December 31, 2021. In anticipation of the contract's expiration, SMART issued a Request for Proposal. SMART received 4 responsive proposals from the following service providers:

1. Coogler's Auto Repair, LLC
2. Les Schwab Tire Centers of California, LLC
3. Oil Stop, LLC
4. W.J.C. Electric dba Hahn Automotive

SMART's evaluation committee reviewed the proposals using the evaluation criteria identified in the Request for Proposal. The Selection Committee recommended the award of two contracts. The two firms are W.J.C. Electric dba Hahn Automotive and Oil Stop, LLC. SMART has a large service area with fleet vehicles located at various facilities throughout Sonoma and Marin Counties. Contracting with two service providers who have locations throughout SMART's service area will help reduce staff travel and waiting time, as well as allow for more flexibility in scheduling services.

The action before the Board today is to authorize General Manager to award Contract No. OP-SV-21-012 to W.J.C. Electric dba Hahn Automotive with an amount not-to-exceed \$123,000 and Contract No. OP-SV-21-016 to Oil Stop, LLC with an amount not to exceed \$27,000 to provide fleet vehicle maintenance services.

MOTION: Director Arnold moved approval to Authorize the General Manager to Award Contract No. OP-SV-21-012 to W.J.C. Electric dba Hahn Automotive with an amount not-to-exceed \$123,000; and Contract No. OP-SV-21-016 to Oil Stop, LLC with an amount not to exceed \$27,000 to provide fleet vehicle maintenance services as presented. Director Lucan second. The motion carried 11-0 (Director Gorin absent)

11. Authorize the General Manager to Award Contract No. OP-SV-21-014 to RailWorks Track Services, Inc. in the amount of \$141,251.80 to perform surfacing, alignment, and ballast restoration services

Procurement Manager, Ken Hendricks, stated each year SMART contracts with a third-party consultant to perform track geometry measurement services to identify how the track is wearing over time. The Federal Railroad Administration (FRA) regulates the acceptable tolerance levels for track geometry for railroads. This year's track geometry test revealed the need for SMART to perform surfacing, alignment, and ballast restoration services at various locations along SMART's track in order to maintain ride quality and compliance with the FRA track geometry tolerances. This type of maintenance work requires the use of specialized railroad equipment that SMART does not own, as well as specially trained operators.

An Invitation for Bid was issued on October 8, 2021, and SMART received 3 responsive bids from the following contractors:

1. All American Track, Inc.
2. RailWorks Track Services, Inc.
3. Stacy and Witbeck, Inc.

RailWorks Track Services, Inc. submitted the lowest responsive and responsible bid for this work. The work is estimated to be completed by February 2022.

The action before the Board today is to authorize the General Manager to award Contract No. OP-SV-21-014 to RailWorks Track Services, Inc. in the amount of \$141,251.80 to perform the required surfacing, alignment, and ballast restoration services.

Comments

Vice Chair Pahre asked if these services are performed by Stacy and Witbeck at this time. Mr. Hendricks responded no since this is project by project related.

MOTION: Director Hillmer moved approval to Authorize the General Manager to Award Contract No. OP-SV-21-014 to RailWorks Track Services, Inc. in the amount of \$141,251.80 to perform surfacing, alignment, and ballast restoration services as presented. Director Rogers second. The motion carried 11-0 (Director Gorin absent)

12. Approve a Resolution Authorizing the General Manager to Execute Contract Amendment No. 5 to Contract No. EV-PS-18-002 with WRA, Inc. for Environmental Permitting Management, Technical Studies, Construction Compliance Monitoring, Mitigation Planning and Support Services to TASK 1 – Mira Monte Mitigation Site Monitoring for an amount of \$190,000 and increasing the overall total contract amount to \$1,185,800

Chief Engineer, Bill Gamlen, provided a brief overview of SMART's Marsh Restoration Site (Mira Monte Project) Highlights include:

SMART's Marsh Restoration Site Presentation

- Environmental Mitigation
 - SMART Project Mitigation Site
 - 56-acre Mira Monte Marina
 - SMART purchased in October 2013
 - Highlights:
 - Marin and Sonoma County line
 - Provides wetland restoration and preservation and habitat restoration
 - Significant taxpayer savings vs. mitigation bank purchases
 - Fully within project area -- keeps environmental restoration benefits local
- Oversight Agencies
 - U.S. Army Corps of Engineers
 - U.S. Fish & Wildlife Service
 - National Marine Fisheries
 - California Fish and Wildlife
 - Regional Water Quality Control Board
- Site Restoration Illustration Map
- Illustrations pictures of location before
- Illustration pictures of the location after

That concludes Mr. Gamlen's brief presentation and he moved into agenda item number twelve.

Chief Engineer Gamlen stated that the recommendation is to approve Resolution No. 2021-29 to authorize Contract Amendment No. 5 with WRA, Inc. to Contract No. EV-PS-18-002 for an amount of \$190,000 and increasing the overall total contract amount to \$1,185,800.

The work removes a portion of temporary access road that was used during maintenance as well as performing repair work to the main access road. The temporary road provided access to San Antonio Creek for the purposed of water quality sampling The main access road needs some repair as it has deteriorated over time. The repairs will consist of surfacing the road with gravel and removing temporary sandbags that were placed at the conclusion of the restoration to fortify the road while the site stabilized.

Staff recommends approving the Resolution authorizing the General Manager to execute Contract Amendment No. 5 with WRA, Inc. for Environmental Permitting Management, Technical Studies, Construction Compliance Monitoring, Mitigation Planning and Support Services to TASK 1 – Mira Monte Mitigation Site Monitoring for an amount of \$190,000.

Comments

Director Arnold asked if SMART will be able to use this as a mitigation as we move forward. Mr. Gamlen responded that SMART has fulfilled quite a few permit requirements for the rail and pathway construction. We have capacity that we are planning to use for other upcoming projects as well

Vice Chair Pahre asked if SMART had enough mitigated land to sell to others. Mr. Gamlen responded that SMART would use everything we have. The option was explored, and SMART would be establishing a mitigation bank, which is a tremendous amount of red tape, all the agencies must approve. By keeping it within a project mitigation bank, we can utilize it for our own projects.

Director Fudge stated that the project looks way better than she expected so soon. She thought it might take 10 years to get to this point. We were excited to purchase this property when it was presented to SMART from the Marin Audubon Society.

Chair Rabbitt asked at what point is SMART essentially done with spending dollars on this site? Will additional dollars be needed for additional environmental mitigation or monitoring. Mr. Gamlen responded that SMART would have some ongoing expenses; we've been doing annual maintenance and then also a monitoring report that is submitted to all the agencies every year, so we've done five of those today. SMART has hit our establishment criteria, so the big dollar expenses should be behind us, but there will be some ongoing maintenance, with the site.

Comments

Thomas Ells shared that George Ellman and Bill Kortum established the Sonoma County Transportation Land Use Coalition and were supporters of SMART.

MOTION: Director Arnold moved to Approve a Resolution Authorizing the General Manager to Execute Contract Amendment No. 5 to Contract No. EV-PS-18-002 with WRA, Inc. for Environmental Permitting Management, Technical Studies, Construction Compliance Monitoring, Mitigation Planning and Support Services to TASK 1 – Mira Monte Mitigation Site Monitoring for an amount of \$190,000 and increasing the overall total contract amount to \$1,185,800 as presented. Director Fudge second. The motion carried 11-0 (Director Gorin absent)

13 Next Regular Meeting of the Board of Directors, December 15, 2021 – 1:30 PM

14. Adjournment - Meeting adjourned at 2:27pm

Respectfully submitted,

Leticia Rosas-Mendoza
Clerk of the Board

Approved on: _____



December 15, 2021

David Rabbitt, Chair
Sonoma County Board of Supervisors

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

Judy Arnold
Marin County Board of Supervisors

Melanie Bagby
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Damon Connolly
Marin County Board of Supervisors

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Susan Gorin
Sonoma County Board of Supervisors

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Eddy Cumins
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: Monthly Ridership Report – November 2021

Dear Board Members:

RECOMMENDATIONS: Accept Monthly Ridership Report

SUMMARY:

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

As discussed in prior presentations to the Board, using both Onboard Counts and Fare collection counts of riders is necessary to track progress. Onboard Counts capture all riders, including the riders who are riding during the Free Fare Days or Free Fare Programs offered by 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 October 2021 is posted on the SMART Ridership website (<http://sonomamarintrain.org/RidershipReports>) and SMART's detailed November 2021 data will be posted once validated.

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

FISCAL IMPACT: None

REVIEWED BY: ☒ Finance ____/s____ ☒ Counsel ____/s/____

Very truly yours,

/s/
Emily Betts
Principal Planner

Attachment(s): Monthly Ridership Report – November 2021

NOVEMBER 2021 (COVID-19) SMART RIDERSHIP

SMART Ridership Report
Board of Directors,
December 15, 2021

SMART's November 2021 ridership was more than triple that of November 2020, which was heavily impacted by the COVID-19 shutdown. Average weekday ridership has risen steadily since February 2021, with November up 2% over October 2021. Throughout the region, automobile traffic levels have returned to pre-pandemic levels in some areas and transit agencies are seeing the gradual signs of ridership recovery. SMART has recovered to over 40% of pre-pandemic ridership levels. However, the COVID variants and ongoing remote-work trends continue to have a detrimental effect on transit ridership throughout the Bay Area.

As a reminder, SMART modified services in March 2020 due to the COVID-19 pandemic, with weekend service annulled starting March 21 & 22, 2020, and weekday service reduced first by 4 trips (down to 34) on March 23, 2020, then by another 18 trips, (down to 16), on April 6, 2020. Beginning on Monday, May 24, 2021, SMART added service to the weekday schedule with two new morning trips and three new afternoon trips, resulting in 26 weekday trips. Saturday service was also restored the last two weekends in May, with 3 morning and 3 afternoon round trips. Saturday ridership has been very strong, seeing approximately 65% of average weekday ridership levels on less than half the number of train trips.

The tables below present data from November 2020 and 2021, year-over-year, and comparing fiscal years to date (July – November).

FISCAL YEAR-TO-DATE (JUL-NOV)	Fiscal Year 2021	Fiscal Year 2022	% Change
Ridership (Onboard Counts)	45,036	129,563	188%
Paid Ridership (Clipper + App Only)	41,903	119,664	186%
Average Weekday Ridership (Onboard Counts)	425	1,091	157%
Average Weekday Paid Ridership (Clipper + App Only)	394	1,002	154%
Average Weekend/Holiday Ridership (Onboard Counts)	0	659	N/A
Average Weekend/Holiday Paid Ridership (Clipper + App)	0	558	N/A
Bicycles	9,422	20,572	118%
Mobility Devices	161	666	313%

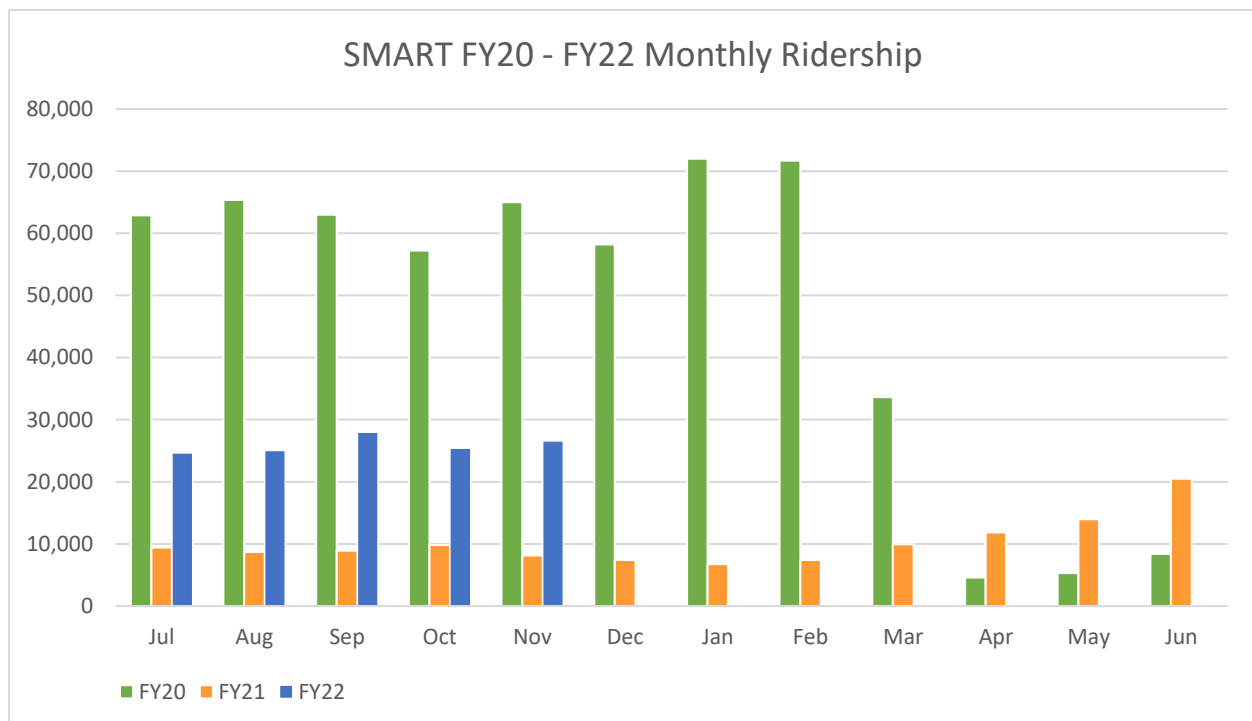
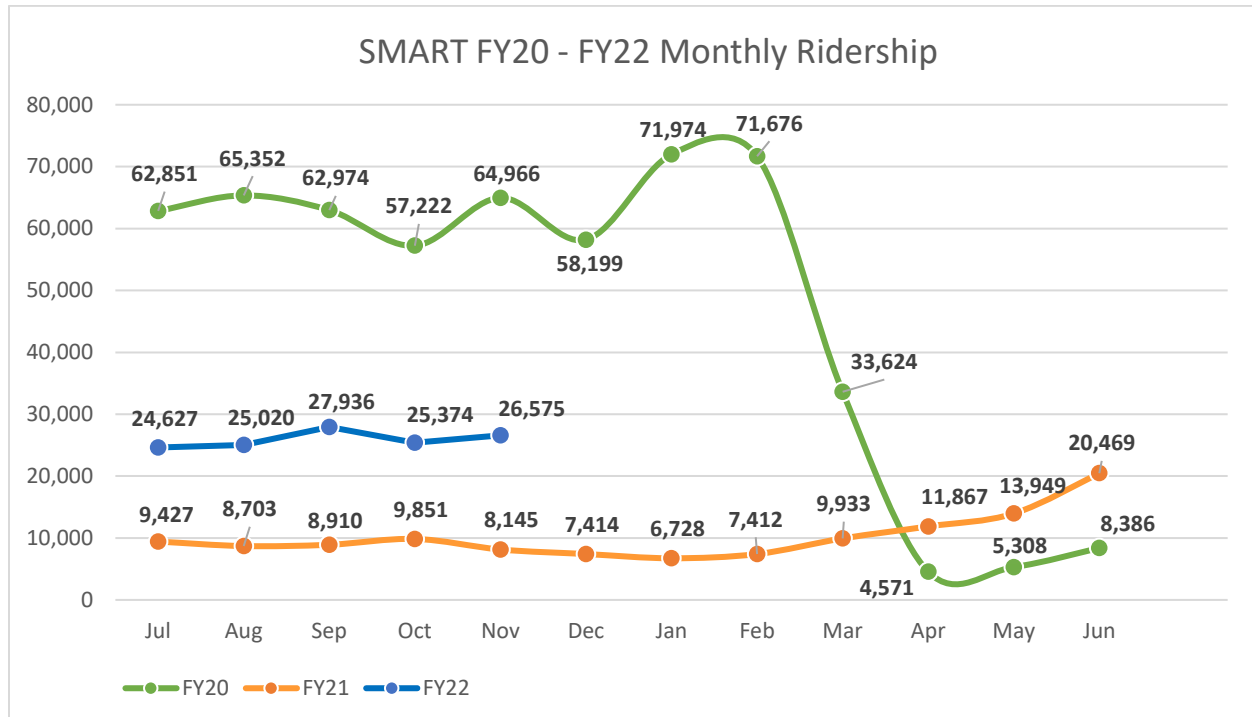
Youth ridership saw an increase with the start of school in mid-August, making up 13% of ridership by fare type in August, and 18% of paid-fare ridership in September and October. This trend continued in November; SMART carried 4,020 youth in November, based on the fare analysis, which captures daily paid trips.

MONTHLY TOTALS YEAR-OVER-YEAR	NOV 2020	NOV 2021	% Change
Ridership (Onboard Counts)	8,145	26,575	226%
Paid Ridership (Clipper + App Only)	7,675	24,140	215%
Average Weekday Ridership (Onboard Counts)	429	1,162	171%
Average Weekday Paid Ridership (Clipper + App Only)	402	1,063	164%
Average Weekend/Holiday Ridership (Onboard Counts)	0	663	N/A
Average Weekend/Holiday Paid Ridership (Clipper + App)	0	558	N/A
Bicycles	1,698	3,500	106%
Mobility Devices	22	112	409%

NOVEMBER 2021 (COVID-19) SMART RIDERSHIP

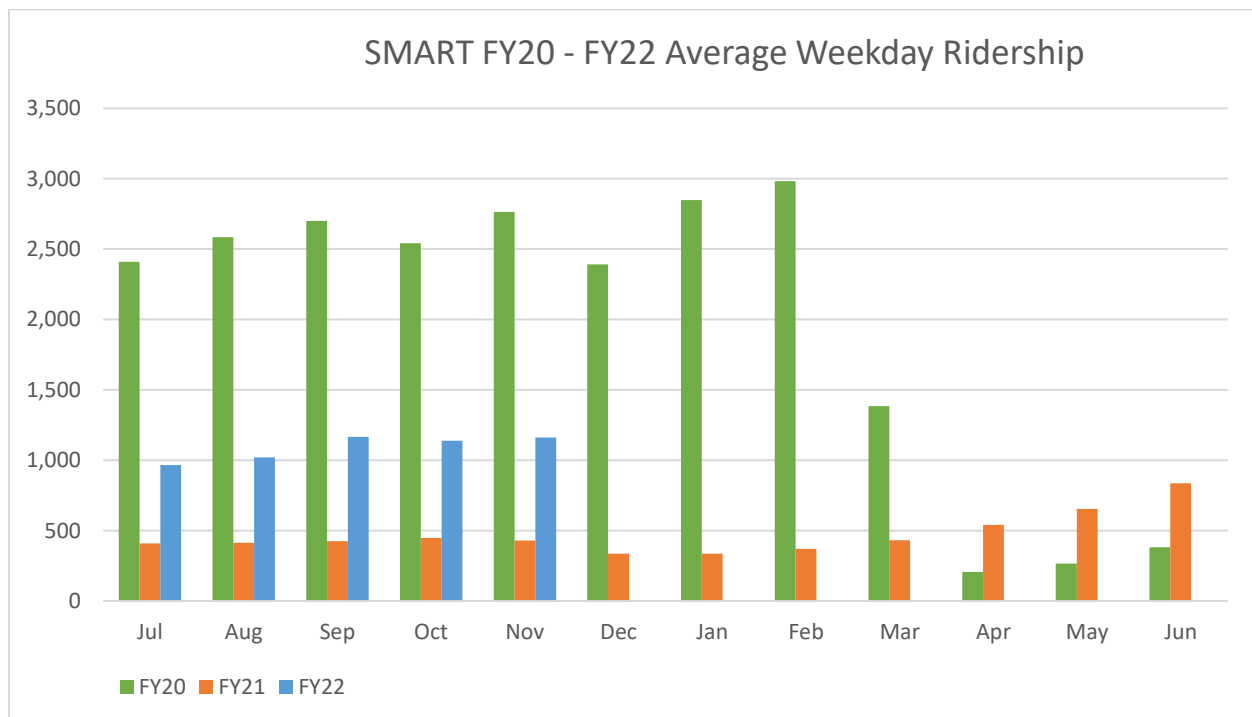
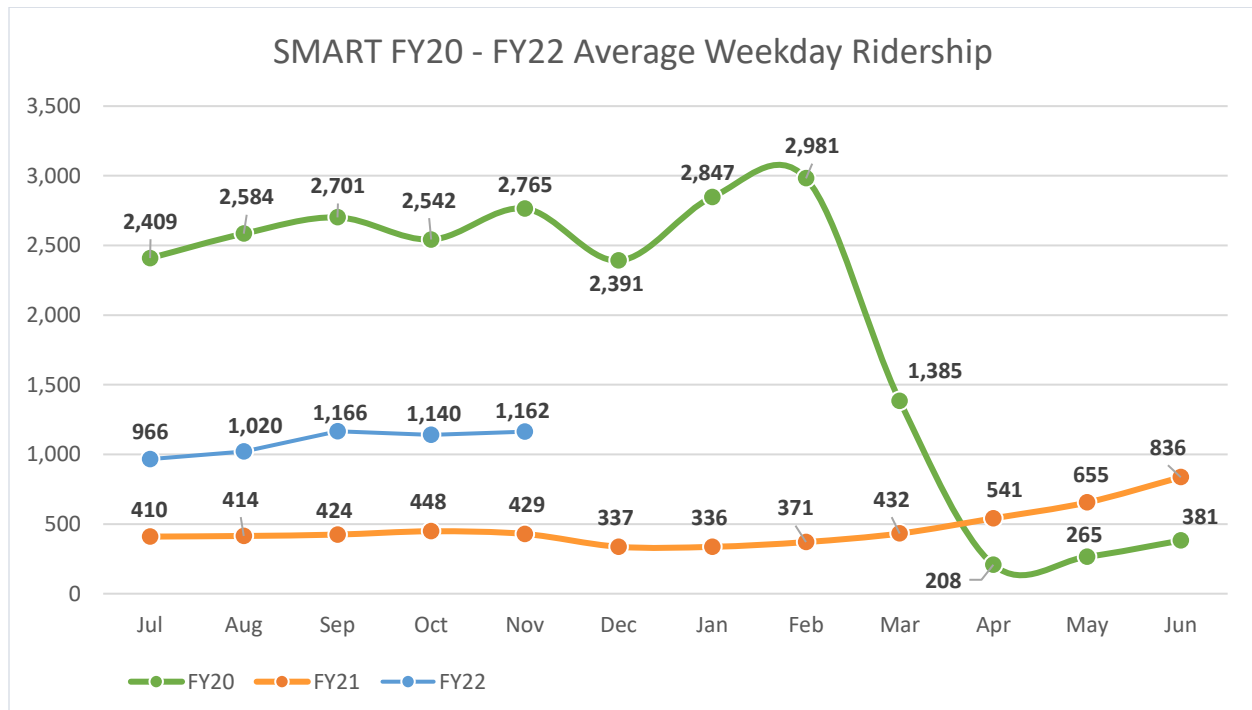
SMART Ridership Report
Board of Directors,
December 15, 2021

The following charts compare the monthly totals and average weekday ridership for FY20-FY22 to date and illustrate monthly and average weekday ridership trends.



NOVEMBER 2021 (COVID-19) SMART RIDERSHIP

SMART Ridership Report
Board of Directors,
December 15, 2021





December 15, 2021

David Rabbitt, Chair
Sonoma County Board of Supervisors

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Highway/Transportation District

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Eddy Cumins
General Manager

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SUBJECT: Authorize the General Manager to Award Contract No. IT-PS-21-002 to Golden Five, LLC to perform Microsoft Office 365 managed support and upgrade services

Dear Board Members:

RECOMMENDATION:

Authorize the General Manager to Award Contract No. IT-PS-21-002 to Golden Five, LLC to perform Microsoft Office 365 managed support and upgrade services with a not-to-exceed amount of \$194,600 for the initial three-year term.

SUMMARY:

The Microsoft 365 software suite includes Microsoft SharePoint, Microsoft Teams, and many other Microsoft applications such as Word, Excel, PowerPoint, and Outlook. These programs serve as SMART's critical business infrastructure providing a shared collaboration workplace, document management, file storage, and process control. Microsoft 365 provides staff with the office software necessary to conduct daily business. Maintaining and ensuring these software applications are functioning properly is critical to SMART's daily operation.

SMART contracts with a third-party consultant to perform monthly managed maintenance services and to provide on call support to ensure these software applications are updated, secure, and available at all times to SMART staff. In addition to these core maintenance services, SMART's IT team is planning to perform upgrades to the system over the next few years, including migrating the active directory to the cloud and implementing the software Microsoft Intune to serve as SMART's mobile device manager and mobile application manager.

The existing consultant's contract expires December 31, 2021. In anticipation of the contract expiration, SMART issued a Request for Proposal to procure a Consultant under Solicitation No. IT-PS-21-002.

SMART received a total of 4 proposals, of which only two were determined responsive based on the requirements of the Request for Proposal. The two responsive proposals were received from the following firms:

1. Golden Five, LLC
2. HexaCorp, LLC

SMART's evaluation committee reviewed each proposal using the evaluation criteria identified in the Request for Proposal. The criteria included: service approach and staffing plan, key personnel qualifications, demonstrated history of performing similar work, proposal organization and clarity, and pricing. In addition to evaluating the proposals, reference checks and interviews were conducted with both firms. The Selection Committee made the determination that Golden Five, LLC provides the overall best value to SMART and is recommending them for the award.

Staff recommends authorizing the General Manager to Award Contract No. IT-PS-21-002 to Golden Five, LLC to perform Microsoft Office 365 managed support and upgrade services with a not-to-exceed amount of \$194,600 for the initial three-year term. This contract has one two-year optional term to extend at SMART's discretion.

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

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

Very truly yours,

/s/

Ken Hendricks

Procurement Manager

Attachment(s): Golden Five, LLC Agreement No. IT-PS-21-002

SERVICE AGREEMENT

This agreement (“Agreement”), dated as of January 1, 2022 (“Effective Date”) is by and between the Sonoma-Marín Area Rail Transit District (hereinafter “SMART”), and Golden Five, LLC (hereinafter “Consultant”).

RECITALS

WHEREAS, Consultant represents that it is a duly qualified and experienced in Microsoft 365 managed services and related services; and

WHEREAS, in the judgment of the Board of Directors of SMART or District, it is necessary and desirable to employ the services of Consultant for Microsoft 365 managed services.

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

A G R E E M E N T

ARTICLE 1. RECITALS.

Section 1.01 The above Recitals are true and correct.

ARTICLE 2. LIST OF EXHIBITS.

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

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

ARTICLE 3. REQUEST FOR SERVICES.

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

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

ARTICLE 4. SCOPE OF SERVICES.

Section 4.01 Scope of Work. Consultant shall perform services within the timeframe outlined in **Exhibit A** (cumulatively referred to as the “Scope of Work”).

Section 4.02 Cooperation With SMART. Consultant shall cooperate with the SMART Manager in the performance of all work hereunder.

Section 4.03 Performance Standard. Consultant shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Consultant’s profession. If SMART determines that any of Consultant’s work is not in accordance with such level of competency and standard of care, SMART, in its sole discretion, shall have the right to do any or all of the following: (a) require Consultant to meet with SMART to review the quality of the work and resolve matters of concern; (b) require Consultant to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 7; or (d) pursue any and all other remedies at law or in equity.

Section 4.04 Assigned Personnel.

- (a) Consultant shall assign only competent personnel to perform work hereunder. In the event that at any time SMART, in its sole discretion, desires the removal of any person or persons assigned by Consultant to perform work hereunder, Consultant shall remove such person or persons immediately upon receiving written notice from SMART.
- (b) Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder on behalf of the Consultant are deemed by SMART to be key personnel whose services were a material inducement to SMART to enter into this Agreement, and without whose services SMART would not have entered into this Agreement. Consultant shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of SMART. Key personnel shall be as listed in the applicable Task Order.
- (c) In the event that any of Consultant’s personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness, or other factors outside of Consultant’s control, Consultant shall be responsible for timely provision of adequately qualified replacements.
- (d) Consultant shall assign the following key personnel for the term of this Agreement:

Edith Moore; Prabhat Nigam; Nitin Saxena; Rajnish Verma; Pradeep Sukhija;
Inderjeet Singh; Vikas Sukhija; Ajit Upadhyay; Robert Stoermer; Manpreet Sidhu;
Beth Melton; Pavan Kumar; Venkat Ramesh Raju.

ARTICLE 5. PAYMENT.

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

Section 5.01 Consultant shall invoice SMART on a monthly basis, detailing the tasks performed pursuant to the Scope of Work requested by the SMART Manager and the hours worked. SMART shall pay Consultant within 30 days after submission of the invoices.

Section 5.02 Consultant shall be paid in accordance with the rates established in **Exhibit B**; provided, however, that total payments to Consultant shall not exceed \$194,600.00 without the prior written approval of SMART. Consultant shall submit its invoices in arrears on a monthly basis in a form approved by the Chief Financial Officer. The invoices shall show or include: (i) the task(s) performed; (ii) the time in quarter hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. All reimbursable expenses must comply with SMART's Travel Guidelines and must receive prior approval. Consultant's reimbursement for materials/expenses shall not include items already included in Consultant's overhead as may be billed as a part of its labor rates set forth in **Exhibit B**. SMART does not reimburse Consultant for travel time.

Section 5.03 Consultant must submit all invoices on a timely basis, but no later than thirty (30) days from the date the services/charges were incurred. District shall not accept invoices submitted by Consultant after the end of such thirty (30) day period without District pre-approval. Time is of the essence with respect to submission of invoices and failure by Consultant to abide by these requirements may delay or prevent payment of invoices or cause such invoices to be returned to the Consultant unpaid.

ARTICLE 6. TERM OF AGREEMENT.

Section 6.01 The term of this Agreement shall remain in effect through December 31, 2024, with one (1) two-year option to extend at SMART's sole discretion thereafter unless terminated earlier in accordance with the provisions of **Article 7** below.

ARTICLE 7. TERMINATION.

Section 7.01 Termination Without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, SMART shall have the right, at its sole discretion, to terminate this Agreement by giving 30 days written notice to Consultant.

Section 7.02 Termination for Cause. Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, SMART may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

Section 7.03 Delivery of Work Product and Final Payment Upon Termination.

In the event of termination by either party, Consultant, within 14 days following the date of termination, shall deliver to SMART all materials and work product subject to **Section 12.08** and shall submit to SMART an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

Section 7.04 Payment Upon Termination. Upon termination of this Agreement

by SMART, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services are to be paid on an hourly or daily basis, then Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to termination times the applicable hourly or daily rate; provided further that if SMART terminates the Agreement for cause pursuant to **Section 7.02**, SMART shall deduct from such amount the amount of damage, if any, sustained by SMART by virtue of the breach of the Agreement by Consultant.

Section 7.05 Authority to Terminate. The Board of Directors has the authority

to terminate this Agreement on behalf of SMART. In addition, the General Manager, in consultation with SMART Counsel, shall have the authority to terminate this Agreement on behalf of SMART.

ARTICLE 8. INDEMNIFICATION

Consultant agrees to accept all responsibility for loss or damage to any person or entity, including SMART, and to indemnify, hold harmless, and release SMART, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Consultant, to the extent caused by the Consultant's negligence, recklessness or willful misconduct in its performance or obligations under this Agreement. Consultant agrees to provide a complete defense for any claim or action brought against SMART based upon a claim relating to Consultant's performance or obligations under this Agreement. Consultant's obligations under this Section 8 apply whether or not there is concurrent negligence on SMART's part, but to the extent required by law, excluding liability due to SMART's conduct. SMART shall have the right to select its legal counsel at Consultant's expense, subject to Consultant's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Consultant or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

ARTICLE 9. INSURANCE.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its Subcontractors, Consultants, and other agents to maintain, insurance as described below. If the Consultant maintains broader coverage and/or higher limits than the minimums shown below, SMART requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Consultant. Any available insurance proceeds in excess of

the specified minimum limits of insurance and coverage shall be available to SMART.

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

Section 9.02 General Liability Insurance. Commercial General Liability insurance covering products-completed and ongoing operations, property damage, bodily injury and personal injury using an occurrence policy form, in an amount no less than \$1,000,000 per occurrence, and \$2,000,000 aggregate.

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

Section 9.04 Professional Liability Insurance. Technology Professional Liability Errors and Omissions Insurance appropriate to the work hereunder, with limits not less than \$2,000,000 per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Vendor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, copyright, trademark, invasion of privacy violations, information theft, release of private information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

a. The Policy shall include or be endorsed to include ***property damage liability coverage*** for damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the Agency in the care, custody, or control of the Vendor. If not covered under the Vendor's liability policy, such "property" coverage of the Agency may be endorsed onto the Vendor's Cyber Liability Policy as covered property as follows:

b. Cyber Liability coverage in an amount sufficient to cover the full replacement value of damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the Agency that will be in the care, custody, or control of Vendor.

c. The Insurance obligations under this agreement shall be the greater of 1—all the Insurance coverage and limits carried by or available to the Vendor; or 2—the minimum Insurance requirements shown in this agreement. Any insurance proceeds in excess of the specified limits and coverage required, which are applicable to a given loss, shall be available to Agency. No representation is made that the minimum Insurance requirements of this agreement are sufficient to cover the indemnity or other obligations of the Vendor under this agreement.

Section 9.05 Endorsements. Prior to commencing work, Consultant shall file

Certificate(s) of Insurance with SMART evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. Said endorsements and Certificate(s) of Insurance shall stipulate:

- (a) SMART, its officers, and employees shall be named as additional insured on all policies listed above, with the exception of the workers compensation insurance policy and the professional services liability policy (if 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 Consultant is liable, up to and including the total limit of liability, without right of contribution from any other insurance effected or which may be effected by the Insureds.
- (c) Inclusion of the Insureds as additional insureds shall not in any way affect its rights either as respects any claim, demand, suit or judgment made, brought or recovered against Consultant. Said policy shall protect Consultant and the Insureds in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.
- (d) Consultant hereby grants to SMART a waiver of any right to subrogation which any insurer of said Consultant may acquire against SMART by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not SMART has received a waiver of subrogation endorsement from the insurer.
- (e) The insurance policy(ies) shall be written by an insurance company or companies acceptable to SMART. Such insurance company shall be authorized to transact business in the state of California.

SMART reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

Section 9.06 Deductibles and Retentions. Consultant shall be responsible for payment of any deductible or retention on Consultant's policies without right of contribution from SMART. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the name insured is not acceptable.

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

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

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

- (a) Properly executed Certificates of Insurance clearly evidencing all coverages and limits required above. Said Certificates shall be submitted prior to the execution of this Agreement. At SMART’s request, Consultant shall provide certified copies of the policies that correspond to the policies listed on the Certificates of Insurance. Consultant agrees to maintain current Certificates of Insurance evidencing the above-required coverages and limits on file with SMART for the duration of this Agreement.
- (b) Copies of properly executed endorsements required above for each policy. Said endorsement copies shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current endorsements evidencing the above-specified requirements on file with SMART for the duration of this Agreement.
- (c) 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 9.09 Policy Obligations. Consultant’s indemnity and other obligations shall not be limited by the foregoing insurance requirements.

Section 9.10 Material Breach. If Consultant, for any reason, fails to maintain insurance coverage, which is required pursuant to this Agreement, the same shall be deemed a material breach of this Agreement. SMART, in its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, SMART may purchase such required insurance coverage, and without further notice to Consultant, SMART may deduct from sums due to Consultant any premium costs advanced by SMART for such insurance. These remedies shall be in addition to any other remedies available to SMART.

ARTICLE 10. PROSECUTION OF WORK.

When work is requested of Consultant by SMART, all due diligence shall be exercised and the work accomplished without undue delay, within the performance time specified in the Task

Order. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, or wildfire, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

ARTICLE 11. EXTRA OR CHANGED WORK.

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

ARTICLE 12. REPRESENTATIONS OF CONSULTANT.

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

Section 12.02 Status of Consultant. The parties intend that Consultant, in performing the services specified herein, shall act as an independent Consultant and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of SMART and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits SMART provides its employees. In the event SMART exercises its right to terminate this Agreement pursuant to **Article 7**, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

Section 12.03 Taxes. Consultant agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including but not limited to state and federal income and FICA taxes. Consultant agrees to indemnify and hold SMART harmless from any liability which it may incur to the United States or to the State of California as a consequence of Consultant's failure to pay, when due, all such taxes and obligations. In case SMART is audited for compliance regarding any withholding or other applicable taxes, Consultant agrees to furnish SMART with proof of payment of taxes on these earnings.

Section 12.04 Records Maintenance. Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to SMART for inspection at any reasonable time. Consultant shall maintain such records for a period of four (4) years following completion of work hereunder. Consultant and Subconsultants shall permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by the State, for the purpose of any investigation to ascertain compliance with this document.

Section 12.05 Conflict of Interest. Consultant covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Consultant further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by SMART, Consultant shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with SMART disclosing Consultant's or such other person's financial interests.

Section 12.06 Nondiscrimination. Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, SMART's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference

Section 12.07 Assignment Of Rights. Consultant assigns to SMART all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Consultant in connection with this Agreement. Consultant agrees to take such actions as are necessary to protect the rights assigned to SMART in this Agreement, and to refrain from taking any action which would impair those rights. Consultant's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as SMART may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of SMART. Consultant shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of SMART.

Section 12.08 Ownership And Disclosure Of Work Product. All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant and other agents in connection with this Agreement shall be the property of SMART. SMART shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to SMART all such documents, which have not already been provided to SMART in such form or format, as SMART deems

appropriate. Such documents shall be and will remain the property of SMART without restriction or limitation. Consultant may retain copies of the above- described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of SMART.

ARTICLE 13. DEMAND FOR ASSURANCE.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this **Article 13** limits SMART's right to terminate this Agreement pursuant to **Article 7**.

ARTICLE 14. ASSIGNMENT AND DELEGATION.

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

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

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

If to SMART Project Manager:

Sonoma-Marín Area Rail Transit District
Attn: Bryan Crowley, SMART IS Manager
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954
bcrowley@sonomamarintrain.org
707-794-3083

If to SMART Billing:

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

If to Consultant:

Golden Five LLC
1379 West Park Western Dr., Suite 572
San Pedro, CA 90732
Prabhat Nigam,
Global Chief Technology Officer
prabhat.nigam@goldenfive.net
609-738-0728
Edith Moore, Relationship Executive
Edith.Moore@goldenfive.net
289-200-7212

When a notice, invoice or payment is given by a generally recognized overnight courier service, the notice, invoice or payment shall be deemed received on the next business day. When a copy of a notice, invoice or payment is sent by facsimile or email, the notice, invoice or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, invoice or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, invoices and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

ARTICLE 16. MISCELLANEOUS PROVISIONS.

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

Section 16.02 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and SMART acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and SMART acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and

preparation of this Agreement.

Section 16.03 Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

Section 16.04 No Third-Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

Section 16.05 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Venue for any action to enforce the terms of this Agreement or for the breach thereof shall be in the Superior Court of the State of California in the County of Marin.

Section 16.06 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

Section 16.07 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

Section 16.08 Acceptance of Electronic Signatures and Counterparts. The parties agree that this Contract, Agreements ancillary to this Contract, and related documents to be entered into this Contract will be considered executed when all parties have signed this Agreement. Signatures delivered by scanned image as an attachment to electronic mail or delivered electronically through the use of programs such as DocuSign must be treated in all respects as having the same effect as an original signature. Each party further agrees that this Contract may be executed in two or more counterparts, all of which constitute one and the same instrument.

Section 16.09 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

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

GOLDEN FIVE, LLC

By: _____
Dr. Sonia Clavero Villarrubia, Chief Executive Officer

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

SCOPE OF WORK & TIMELINE

I. Overview

SMART is contracting with Consultant to provide consultation, monitoring, ongoing management, and support services for SMART's SharePoint Online, Exchange Online, Active Directory Systems and Dell Data Protection Manager Systems.

II. Project Management

All work will be initiated by written task order, coordinated, and approved by the SMART Manager or designee.

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

III. Scope of Work

Consultant work is defined by the tasks listed below. Consultant shall have a weekly 30-minute remote meeting with SMART staff to track progress on all tasks. Monthly managed services support shall be available from 0700 – 2200 all days.

Response Times for Issue Resolution - Monthly Managed Services.

Response times requirements apply to the following tasks:

- Task 1A –SharePoint Online Managed Services
- Task 1B – Exchange Online Managed Services
- Task 1C – Active Directory Managed Services
- Task 1D – Dell Data Protection Manager (DPM) Monitoring and Support

If an issue is discovered and can be resolved within 30 minutes, Consultant shall resolve the issue and report the issue and its resolution on the Weekly Report. Consultant is not required to contact the SMART Manager at the time of discovery.

If an issue is discovered and remains unresolved for more than 30 minutes, Consultant shall immediately report the issue via email to SMART Manager. Consultant will cooperate with the SMART Manager to resolve the issue in a timely manner.

Issues may be discovered by either the Consultant's daily monitoring or by notification of the Consultant by the SMART Manager.

In cases where the SMART Manager notifies the Consultant of an issue, the Consultant shall acknowledge the notification within 1 hour of SMART contacting Consultant.

Responses may be remote or in person as needed. Routine issues shall be resolved in 1 week. Urgent issues shall be resolved in two days. Critical issues shall be resolved in 4 hours. Definitions of said issues are as follows:

ROUTINE – low to medium visibility, minimal client devices affected, few functions impaired, preventative maintenance, minimal loss of functionality

URGENT – moderate visibility, moderate to large numbers of users or devices affected, limited use of service, serious slow response times, continual and/or repetitive failures, serious loss of functionality

CRITICAL – high visibility, problem cannot be bypassed, major loss of functionality, large number of users or devices affected, no viable or productive work around available, affects online commitment.

Tasks 1A through E, Monthly Managed Services

A. SharePoint Online Managed Services

Consultant will perform daily monitoring of site health and usage and resolve any discovered issues in accordance with the Response Times for Issue Resolution.

Weekly Report on Site Health and Usage

Consultant shall provide a weekly report via email to the SMART Manager on the following items: Results of diagnostic logging configuration, monitoring, and support; and, issues discovered and status of issue resolution.

Monitor and Analyze SharePoint Online Systems

Consultant shall monitor and analyze SharePoint Online storage usage and report when storage will reach full capacity. Consultant shall recommend the best allocation strategy to ensure that SharePoint Online space does not fill up too quickly.

Consultant shall advise SMART on the configuration of SharePoint Admin Center and create rules for logging of failures.

Consultant will configure custom views per SMART'S requirements. Custom views will be reviewed and approved by the SMART Manager prior to deployment.

Creation of Reports on SharePoint Online system.

The SMART Manager may request additional reports, which may include, but are not limited to, the following:

- Administrative Reports, e.g., search reports.
- Information Management Policy usage reports.
- SharePoint system and service health reports.
- Web Analytics reports that include website traffic.
- SharePoint Search Query Reports.
- Custom Reports.

The details of each report will be determined at the time of SMART's request for the report. All reports will be reviewed and approved by the SMART Manager prior to deployment. Reports shall be submitted in PDF format via email to the SMART Manager. All reports shall be provided to the SMART Manager within two weeks of SMART's request.

Security Review

Twice per year, Consultant shall review the security configuration of SMART'S SharePoint Online system against best practices and recommend any needed improvements.

B. Exchange Online Managed Services

Consultant shall perform monitoring, management, and support for the SMART Exchange Online email system hosted through Microsoft 365.

These tasks shall include but are not limited to the following:

Daily Tasks

- Daily performance metrics of Exchange Server Online.
- Daily monitoring of mail transport and tracking failure report.
- Daily spam transaction monitoring.

- Shared mailbox and user mailbox growth monitoring and analysis.

Weekly Report

Consultant shall provide the SMART Manager with a weekly report via email on the daily tasks listed above.

As-needed Exchange Online tasks upon request of the SMART Manager

Consultant shall provide analysis and proactive troubleshooting based on Microsoft 365 Exchange email security reports. These reports are found in the Microsoft 365 Defender Admin Center.

Consultant shall provide message tracing as part of support and troubleshooting of email flow issues. Message tracing is completed through the Microsoft 365 Defender Admin Center.

Security Review

Twice per year, Consultant shall review the security configuration of SMART's Exchange Online system against best practices and recommend any needed improvements.

C. Active Directory Managed Services

Consultant shall perform monitoring, management, and support for the SMART Active Directory system. SMART has a hybrid active directory system in which the local active directory syncs with Azure Active Directory. These tasks shall include, but are not limited, to the following:

Daily Tasks

- Daily monitoring of directory replication.
- Monitoring syncing between local Active Directory and Azure AD.
- Troubleshooting assistance with DNS issues.

Weekly Tasks

- Weekly monitoring of Active Directory audit logs and alerts.
- Performance metrics for Active Directory server.

Weekly Report

Consultant shall provide the SMART Manager with a weekly report via email on the daily tasks listed above.

Security Review

Twice per year, Consultant shall review the security configuration of SMART's Active Directory system against best practices and recommend any needed improvements.

D. Dell Data Protection Manager (DPM) Monitoring and Support

Consultant shall perform monitoring, management, and support for the SMART owned Dell Data Protection Manager backup system. These tasks shall include but are not limited to the following:

- Daily monitoring of backup activities.
- Resolution of any backup issues discovered during daily monitoring.
- Management of weekly scheduled data protection activities.
- Monitoring of daily schedules and reports.
- Provide comprehensive information about alerts and job statuses.
- Weekly review of backup disc space.

E. System Usage Assessment/License Structure

Upon the request of the SMART Manager, Consultant shall provide an annual review and assessment of SMART's Microsoft 365 license structure as compared to SMART's user base and actual usage. From this analysis, Consultant shall provide the following information to SMART in a report:

- Determine if SMART has the proper license configuration for the needs of the agency.
- Determine if there is a more advantageous license structure that SMART could be using to effect possible cost savings.
- Given SMART's current license set, determine if there are there existing features within Microsoft 365 that SMART should be using or taking advantage of.

Consultant shall make every effort to assist SMART in maximizing the value of its investment in Microsoft 365 licensing.

Task 2 – On Call Support

Consultant may be requested to perform additional services above those listed elsewhere in this scope of work. These services will be issued by written task order and shall be on a time and materials basis at the rates specified in

Exhibit B. The following services may be requested under this section:

- Develop custom SharePoint solutions for SMART as business needs arise.
- Upgrade or reprogram to add new capabilities or functionality to supported products.
- Any additional work mutually agreed upon between SMART and Consultant.

Process for Requesting Task-Order Based On-Call Support Services

SMART's Project Manager or designee shall contact Consultant and provide a written request for services. This request will include a detailed scope of work and timeline for completion. Based on the scope and timeline, the consultant will produce a cost estimate for the work to be completed.

Consultant shall submit the cost estimate to SMART'S Project Manager within 5 business days of SMART's request for services. The cost estimate must be written in accordance with the time and materials rates established in Exhibit B.

The SMART Manager shall review the pricing and decide whether to proceed as written, cancel, or modify the scope requirements. Any scope modifications will require the Consultant to produce revised pricing for review.

If SMART decides to proceed with the work, SMART'S Project Manager will issue a written task order detailing the scope of work, timeline for completion, and the agreed upon not-to-exceed amount.

Optional Add on Projects

Optional Project 1 – Migration of hybrid on-premises Active Directory to Cloud Azure Active Directory

ASSESSMENT PHASE

Consultant shall review current hybrid on-premises Active Directory (AD) to assess its readiness for migrating to Cloud Azure AD.

Consultant shall inform SMART IT of any irregularities or issues that may be caused by current on premises AD or any of its dependencies.

Potential topics and tasks covered during the Assessment Phase include the following:

- Get the admin access id created in every technology which is part of this project;

- Provide servers requirement;
- Detailed requirement gathering;
- Assessment and documentation of client configurations, including identification of necessary changes from current configuration standards;
- Confirm readiness (hardware, servers, storage, network);
- Review SMART systems to capture information about the existing environment, including usage patterns and administrative practices;
- Identification of potential challenges in proposed solutions;
- Network, name services, and connectivity planning;
- User identity, access, provisioning, and licensing planning;
- Collect all inputs for the project and layout for the project design;
- Discuss, validate, and finalize the availability of the tenant name;
- Licensing requirement assessment & share cost;
- Online services planning;
- Services assessment and planning;
- Review and collect current version details;
- Tool assessments;
- Assess backup and monitoring requirements ;
- Compliance search;
- Bandwidth and connectivity assessment;
- Run any health check;
- Planning;
- Run any assessment and ID-Fix tool;
- Readiness of the migration/project;
- Assess 3rd party dependency;
- Network and security assessment;
- Change and ticket management assessment;
- Run health checks for the scoped applications;
- Assess the possibility to use Microsoft Fast Track Services;
- SMART readiness interviews to prepare admin training;
- Backup assessment and recommendation;
- Monitoring assessment and recommendation;
- Collect stakeholder's issues and concerns;
- Help SMART project team in writing the communication to the end-users;
- Discuss and define the responsibilities of every project team member;
- Ensure all the changes related to the project are in place and approved and otherwise help the team in completing the changes.

DESIGN PHASE

Consultant shall provide SMART IT with a plan and timeline for completing the migration.

IMPLEMENTATION PHASE

With SMART approval, Consultant shall complete the migration.

Implementation shall be in accordance with the approved plan provided in the design phase. The detailed project plan consists of dates, as well as tasks and persons responsible, with ties to other requirements in the project if necessary to ensure steps are followed in a specific order.

Consultant shall ensure the project is on time and track by holding weekly status meetings with SMART.

Once migration is complete, Consultant shall confirm all on premise AD functions have been successfully moved to Cloud Azure AD. Consultant shall perform functional testing of the new Azure Active Directory.

Consultant shall confirm that all Active Directory functions are routing to cloud Azure AD and verify connections to on premise AD are no longer active.

Once Consultant and SMART agree that all services are now running on Azure AD, Consultant shall assist SMART in decommissioning on premise Active Directory.

TRAINING PHASE

Consultant shall provide Admin training for newly implemented Azure AD. Training may be conducted in person or remote.

In addition to a “live” training session, consultant shall record the sessions and give documentation to ensure all is captured for SMART’s use.

Optional Project 2 – Implement Microsoft Intune for SMART

ASSESSMENT PHASE

Consultant shall investigate and research all SMART devices to be monitored, including smartphones, tablets, laptops, desktops, and any other devices associated with users Microsoft 365 accounts.

Potential topics and tasks covered during the Assessment Phase include the following:

- Get the admin access id created in every technology which is part of this project;
- Provide servers requirement;
- Detailed requirement gathering;

- Assessment and documentation of client configurations, including identification of necessary changes from current configuration standards;
- Confirm readiness (hardware, servers, storage, network);
- Review SMART systems to capture information about the existing environment, including usage patterns and administrative practices;
- Identification of potential challenges in proposed solutions;
- Network, name services, and connectivity planning;
- User identity, access, provisioning, and licensing planning;
- Collect all inputs for the project and layout for the project design;
- Discuss, validate, and finalize the availability of the tenant name;
- Licensing requirement assessment & share cost;
- Online services planning;
- Services assessment and planning;
- Review and collect current version details;
- Tool assessments;
- Assess backup and monitoring requirements;
- Compliance search;
- Bandwidth and connectivity assessment;
- Run any health check;
- Planning;
- Run any assessment and ID-Fix tool;
- Readiness of the migration/project;
- Assess 3rd party dependency;
- Network and security assessment;
- Change and ticket management assessment;
- Run health checks for the scoped applications;
- Assess the possibility to use Microsoft Fast Track Services;
- SMART readiness interviews to prepare admin training;
- Backup assessment and recommendation;
- Monitoring assessment and recommendation;
- Collect stakeholders' issues and concerns;
- Help SMART project team in writing the communication to the end users;
- Discuss and define the responsibilities of every project team member;
- Ensure all the changes related to the project are in place and approved, and otherwise help the team in completing the changes.

DESIGN PHASE

Consultant shall provide information on how devices will be implemented into Intune and timeline for doing so.

IMPLEMENTATION PHASE

Upon approval of SMART Manager, consultant shall execute the plan to implement Intune.

Implementation shall be in accordance with the approved plan provided in the design phase. The detailed project plan consists of dates, as well as tasks and persons responsible, with ties to other requirements in the project if necessary to ensure steps are followed in a specific order.

Consultant shall ensure the project is on time and track by holding weekly status meetings with SMART.

TRAINING PHASE

Consultant shall provide remote training to IT staff on the use of Intune once the system is up and running.

Consultant shall provide Admin training for newly implemented InTune. Training may be conducted in person or remote. In addition to a “live” training session, consultant shall record the sessions and give documentation to ensure all is captured for SMART’s use.

Once project is completed, Consultant will provide a written notice of project completion. SMART Manager will reply in writing accepting the completion notice.

POST GO LIVE SUPPORT

Consultant shall give assistance with troubleshooting issues as they arise for 30 days following implementation of Microsoft Intune.

IV. Acceptance Criteria

All work will be reviewed and approved by the SMART Manager prior to monthly invoice being paid to Consultant.

EXHIBIT B SCHEDULE OF RATES

Task 1 - Monthly Managed Services (Includes Tasks 1A-1E):

Initial Term (1/1/2022 – 12/31/2024)	
Task Description	Monthly Fixed Fee
Task 1 – Monthly Managed Services	\$3,600.00

Optional 2-Year Term (1/1/2025 – 12/31/2026)	
Task Description	Monthly Fixed Fee
Task 1 – Monthly Managed Services	\$4,000.00

Task 2 - On Call Support:

Initial Term (1/1/2022 – 12/31/2024)

Key Personnel	Hourly Fee
Enterprise Architect	\$150.00
Solutions Architect	\$150.00
Chief Architect	\$200.00
SharePoint Architect	\$155.00
Office 365 Architect	\$150.00
Teams & UM Architect	\$155.00
Active Directory Administrator	\$060.00
Azure Administrator	\$060.00
Systems Administrator	\$055.00
Relationship Executive	\$200.00
Project Manager	\$125.00
Office 365 Administrator	\$065.00
Cloud Architect	\$155.00
Data and Azure Architect	\$175.00
Security and Compliance Expert	\$200.00
Modern Workspace Architect	\$150.00

Upon completion of the initial contract term of three years and prior to the commencement of the two-year optional term, Consultant may, upon 60 days written notice to SMART, request an increase in the contracted hourly rates for Task 2, equal to the Consumer Price Index, San Francisco Area, as reported by the U.S. Bureau of Labor Statistics in April of the most recent year.

Please note that all replacement parts or equipment will be invoiced at cost and invoices shall include receipts for any parts charged to SMART.

Optional Add-On Projects:

OPTIONAL ADD-ON PROJECTS	
Project Description	Fixed Fee
Migration of hybrid on premises Active Directory to Cloud Azure Active Directory	\$ 10,000.00
Microsoft Intune Implementation	\$ 15,000.00

EXHIBIT C

FTA & DOT REQUIREMENTS

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

1. General.

In performance of its obligations pursuant to this Agreement or Purchase Order [Hereinafter “Agreement”], the Contractor, Seller, or Consultant [Hereinafter “Contractor”] agrees to comply with all applicable provisions of federal, state and local law, regulations, and FTA directives. The terms of the most recent amendment to any federal, state or local laws, regulations, FTA directives, and amendments to the grant or cooperative agreement providing funding for this Agreement that may be subsequently adopted, are applicable to the Agreement to the maximum extent feasible, unless the FTA provides otherwise in writing. The Federal or State regulations set forth in this Agreement to be observed in the performance of the Agreement are subject to change, and such changed requirements will apply to this Agreement as required. Contractor shall include in its subcontracts, and require its subcontractors of every tier to include in their respective subcontracts, provisions incorporating the requirements of this Attachment. Contractor’s failure to comply with these requirements shall constitute a material breach of this Agreement and may result in the withholding of progress payments to the Contractor, in addition to other remedies.

2. Fly America.

The Contractor agrees to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the U.S. General Services Administration’s regulations at 41 CFR §§301-10.131 – 301-10.143, which provide that recipients and subrecipients of Federal funds and their Contractors are required to use U.S. flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. If a foreign air carrier is used, the Contractor shall submit an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

3. **Energy Conservation.**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. §6321 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance required under FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. Part 622, subpart C.

4. **Clean Water.**

The Contractor agrees:

(a) to comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 - 1388, *et seq.* The Contractor agrees to report each violation to SMART and understands and agrees that SMART will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office; and

(b) to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

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

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

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

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

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

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

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

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

Date: _____

Company Name: _____

Print Name: _____

Title: _____

Signature: _____

6. Federal Changes.

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this Agreement. Contractor's failure to so comply shall constitute a material breach of this Agreement.

7. Clean Air.

The Contractor agrees to:

(a) comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 – 7671q, *et seq.* The Contractor agrees to report each violation to SMART and understands and agrees that SMART will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office; and

(b) include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

8. Recovered Materials and Solid Wastes.

The Contractor agrees to comply with all the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and

Recovery Act (RCRA). The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. Furthermore, Contractor will comply with Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

9. No Obligation by the Federal Government.

(a) SMART and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to SMART, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the Agreement.

(b) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

10. Program Fraud and False or Fraudulent Statements or Related Acts.

(a) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this project. Upon execution of the Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement or the FTA assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(b) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(c) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

11. Special Termination Provisions. In addition to the Termination provisions contained in the Agreement, the following Termination provisions apply.

(a) Termination for Convenience. SMART may terminate this Agreement, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including Agreement close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to SMART to be paid the Contractor. If the Contractor has any property in its possession belonging to SMART, the Contractor will account for the same, and dispose of it in the manner SMART directs.

(b) Termination for Default. If the Contractor does not deliver supplies in accordance with the Agreement delivery schedule, or, if the Agreement is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, SMART may terminate this Agreement for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the Agreement price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by SMART that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, then SMART, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

(c) Opportunity to Cure. SMART in its sole discretion may, in the case of a termination for breach or default, allow the Contractor up to ten (10) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to SMART's satisfaction the breach or default of any of the terms, covenants, or conditions of this Agreement within ten (10) days after receipt by Contractor of written notice from SMART setting forth the nature of said breach or default, SMART shall have the right to terminate the Agreement without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude SMART from also pursuing all available remedies against Contractor and its sureties for said breach or default.

(d) Waiver of Remedies for any Breach. In the event that SMART elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Agreement, such waiver by SMART shall not limit SMART's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Agreement.

(e) Termination for Convenience or Default (Architect and Engineering Contracts). SMART may terminate this Agreement in whole or in part, for SMART's convenience or because of the failure of the Contractor to fulfill the Agreement obligations. SMART shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to SMART all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Agreement, whether completed or in process.

If the termination is for the convenience of SMART, SMART shall make an equitable adjustment in the Agreement price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the Agreement obligations, SMART may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by SMART.

If, after termination for failure to fulfill Agreement obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of SMART.

12. Suspension and Debarment.

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

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

Suspension and Debarment Certificate

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

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

Company Name: _____

By: _____

Print Name: _____

Title: _____

Date: _____

13. Civil Rights.

The following requirements apply to the Agreement:

- (a) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with

Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

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

(1) Race, Color, Creed, National Origin, Sex In accordance with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60, *et seq.*, (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, national origin, sex, sexual orientation, gender identity, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

requirements FTA may issue.

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

14. Disputes.

Disputes arising in the performance of this Agreement which are not resolved by agreement of the parties shall be decided in writing by SMART's General Manager. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the General Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the General Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

15. Performance During Dispute.

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

16. Claims for Damages.

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

17. Remedies.

Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between SMART and the Contractor arising out of or relating to this Agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within California.

18. Rights and Remedies.

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

to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

19. Disadvantaged Business Enterprises.

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

(a) This Agreement is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 0.03%.

(b) The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

(c) The successful bidder/offer or will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

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

the contract.

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

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

20. Exclusionary or Discriminatory Specifications.

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

21. No Federal Government Obligations to Contractor and Third Parties

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

22. Geographic Restrictions

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

23. Access To Records and Reports.

Contractor shall comply with the following requirements:

- (a) **Record Retention.** Contractor shall, during the course of the Agreement and for three years after final payment, retain and maintain complete readily accessible records, documents, reports, contracts, and supporting materials relating to the Agreement as SMART may require.
- (b) **Access to Records.** Contractor shall permit SMART, the Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives, to inspect all project work, materials, payrolls, and other data, and to audit the books, records, and accounts of Contractor and its subcontractors pertaining to the Agreement. In accordance with 49 U.S.C. § 5325(g), Contractor shall require each subcontractor to permit SMART, the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that subcontractor agreement and to audit the books, records, and accounts involving that subcontractor agreement as it affects the Agreement.
- (c) **State Audit, Inspection, Access to Records and Retention of Records Requirements.** Contractor and its subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred costs by line item for the project. Contractor and its subcontractors' accounting systems shall conform to generally accepted accounting principles (GAAP) and all records shall provide a breakdown of total costs charged to the project, including properly executed payrolls, time records, invoices and vouchers as well as all accounting generated reports. Contractor and its subcontractors shall permit representatives of the State and State Auditor to inspect, examine, make excerpts or transcribe Contractor and its subcontractors' work, documents, papers, materials, payrolls, books, records, accounts, any and all data relevant to this Agreement at any reasonable time and to audit and verify statements, invoices or bills submitted by Contractor and its subcontractors pursuant to this Agreement, and shall provide copies thereof upon request and shall provide such assistance as may be reasonably required in the course of such audit or inspection.

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

manner whatsoever for three (3) years after final payment under this Agreement and all pending matters are closed.

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

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

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

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

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

24. ADA Access.

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

- (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (c) U.S. DOT regulations "Americans with Disabilities (DA) Accessibility

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

25. Fair Labor Standards Requirements.

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

26. Contract Work Hours and Safety Standards Act.

(40 U.S.C. §§ 3701 – 3708) Contractor shall comply with 40 U.S.C. § 3702 and § 3704, as supplemented by Department of Labor regulations (29 C.F.R. part 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer based on a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

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

Contractor shall comply with U.S. DOL regulations, “Recording and

Reporting Occupational Injuries and Illnesses,” 29 C.F.R. Part 1904; “Occupational Safety and Health Standards,” 29 C.F.R. Part 1910, and “Safety and Health Regulations for Construction,” 29 C.F.R. Part 1926.

27. State Fair Employment Practices.

In the performance of work under this Agreement, Contractor and its subcontractors will not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (including cancer), age (over 40), marital status and denial of family care leave. Contractor and its subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900 (a-f), set forth in chapters of Division 4 of Title 2 of the California Code of Regulations are incorporated into this agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

Contractor and its subcontractors shall include the nondiscrimination and compliance provisions of this clause in all subcontractor agreements to perform work under this agreement.

Contractor and its subcontractors will permit access to all records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by SMART for the purpose of investigation to ascertain compliance with this Fair Employment Practices Section.

28. Metric System.

To the extent required by U.S. DOT or FTA, Contractor shall use the metric system of measurement, as may be required by 49 U.S.C. §§ 205a *et seq.*; Executive Order No. 12770, “Metric Usage In Federal Government Programs,” 15 U.S.C. § 205a note; and other regulations, guidelines, and policies issued by U.S. DOT or FTA. To the extent practicable and feasible, Contractors shall accept products and services with dimensions expressed in the metric system of measurement.

29. Environmental Protection.

Contractor shall comply with the following requirements:

(a) Contractor shall comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 *et seq.* consistent with Executive Order. No. 11514, as amended, “Protection and Enhancement of Environmental Quality,” 42 U.S.C. § 4321 note; PTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 *et seq.*; and joint FHWA/FTA regulations, “Environmental impact and Related Procedures,” 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

(b) Contractor shall comply with all Federal transit laws, such as 49 U.S.C. §5323(c)(2) and 23 U.S.C. §139, as applicable.

(c) Contractor shall report and require each subcontractor at any tier to report any violation of these requirements resulting from any Contract activity of Contractor or subcontractor to FTA and the appropriate U.S. EPA Regional Office.

30. Privacy Act.

Contractor agrees to comply with, and assures the compliance of its employees with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C § 552. Contractor understands that the requirements of the Privacy Act, including civil and criminal penalties for violation of the Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

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

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

32. Rights in Data and Copyrights.

(a) The Contractor agrees to provide a license to its subject data to SMART and the Federal Government that is royalty-free, non-exclusive, and irrevocable. The license must permit SMART or the Federal Government to reproduce, publish, or otherwise use the subject data or permit other entities or individuals to use the subject data provided those actions are taken for SMART or the Federal Government purposes.

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

33. Patent Rights.

Contractor agrees that:

- (a) Depending on the nature of the Agreement, SMART and the Federal Government may acquire patent rights when the Contractor produces a patented or patentable invention, improvement, or discovery;
- (b) SMART’s and the Federal Government’s rights arise when the patent or patentable information is conceived or reduced to practice with federal assistance provided through the Agreement; or
- (c) When a patent is issued or patented information becomes available, the contractor shall notify SMART immediately and provide a detailed report satisfactory to SMART who will then notify the FTA as required.
- (d) Its rights and responsibilities in that federally assisted invention, improvement, or discovery will be determined as provided in applicable federal laws, regulations, requirements, and guidance, including any waiver thereof; and
- (e) Unless SMART or the Federal Government determines otherwise in writing,

irrespective of its status or the status of any Contractor as a large business, small business, state government, state instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, or individual, the Contractor will transmit the Federal Government's patent rights to the FTA, as specified in 35 U.S.C. §200 et seq., and the U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

34. Veterans Preference.

As provided in 49 U.S.C. §5325(k), the Contractor, to the extent practicable, agrees and assures that each subcontractor:

1. Will give a hiring preference to veterans, as defined in 5 U.S.C. §2108, who have the skills and abilities required to perform construction work required under Agreement in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53; and
2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

35. Safe Operation of Motor Vehicles.

- (a) Seat Belt Use. Contractor agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. §402 note, (62 Fed Reg. 19217), by:

Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles.

- (b) Distracted Driving, Including Text Messaging While Driving. Contractor agrees to comply with Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," 23 U.S.C. §402, U.S. DOT Order 3902.10, "Text Messaging While Driving", and U.S. DOT Special Provision pertaining to Distracted Driving:

- a. Safety. The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied

by an employer, and driving a vehicle the driver owns or rents, a vehicle the company owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Agreement, or when performing any work for or on behalf of SMART.

- b. Contractor agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

36. Alcohol Misuse and Prohibited Drug Use

Contractor and all Subcontractors shall comply with:

- a. Federal Transit Laws, specifically 49 U.S.C. §5331
- b. FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,” 49 C.F.R. Part 655
- c. Applicable provisions of U.S. DOT regulations, “Procedures for Transportation Workplace Drug and Alcohol Testing Programs,” 49 C.F.R. Part 40

37. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.

Contractor certifies and confirms that no services provided or supplies installed or utilized under this contract constitute telecommunications services, equipment or systems prohibited under Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (P.L. 115-232), and as may be implemented by 2 C.F.R. 200.216. If Contractor later learns that prohibited telecommunications services, equipment or systems have been supplied, installed, or utilized under this Contract, Contractor shall immediately inform SMART in writing. SMART may require the Contractor to promptly replace such prohibited service, equipment and systems at the Contractor's sole cost.

38. Domestic Preferences for Procurements

Contractor shall make every effort to provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). This section must be included in all subcontracts.

For the purposes of this section:

- 1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- 2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

39. Conformance with ITS National Architecture

National Intelligent Transportation Systems Architecture and Standards.
To the extent

applicable, the Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 et seq., January 8, 2001, and any subsequent further implementing directives, except to the extent FTA determines otherwise in writing.

40. Incorporation of Federal Transit Administration (FTA) Terms

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