AGENDA ITEM 06d

Sonoma-Marin Area Rail Transit
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GENERAL MANAGER
Eddy Cumins

November 18, 2026

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

SUBJECT: Authorize the General Manager to Award Agreement No. FN-PS-26-004 with Alliant Insurance Services, Inc. for Insurance Brokerage and Risk Management Services with a total not-to-exceed amount of $270,000 for the initial three-year term and $190,000 for the two (2) one-year optional terms thereafter.

Dear Board Members:

RECOMMENDATIONS: Authorize the General Manager to Award and execute Agreement No. FN-PS-26-004 with Alliant Insurance Services, Inc. (Alliant) for Insurance Brokerage and Risk Management services for the initial contract term and all option years, with a total not-to-exceed amount of $460,000. Alliant, as broker, acts as a procurement agent for SMART to place $4,384,475 in insurance coverage throughout the current fiscal year and similar amounts over the next four (4) years.

SUMMARY: SMART utilizes Alliant's insurance expertise to market SMART's insurance lines worldwide for the most advantageous coverages at the lowest price possible. SMART also utilizes Alliant's expertise for advising outside entities the appropriate coverage for work they are performing for and in behalf of SMART, or operating near SMART's assets. SMART's existing contract for this service is set to expire January 7, 2027.

SMART issued a Request for Proposals and solicited proposals for Insurance Brokerage and Risk Management Services and following a competitive evaluation process, the Evaluation Committee recommends award to Alliant.

BACKGROUND: SMART issued a Request for Proposals (RFP) for insurance brokerage and risk management consultation services under Solicitation No. FN-PS-26-004 on August 17, 2026. SMART received two responsive proposals by the proposal deadline of September 21, 2026.

An Evaluation Committee reviewed and evaluated all responsive proposals in accordance with the criteria established in the RFP, which included service approach, demonstrated history of performing similar work, key personnel qualifications, and pricing. The Evaluation Committee

determined that Alliant submitted the highest-scoring Proposal that provides the overall best value to SMART.

FISCAL IMPACT: Funding for this agreement is assumed in Fiscal Year 2027 and each subsequent fiscal year budget thereafter, subject to Board approval.

Sincerely,

/s/

Troy Bingham
Chief Financial Officer

Attachment: 1.) Alliant Insurance Services, Inc. Agreement No. FN-PS-26-004

AGREEMENT FOR CONSULTANT SERVICES

This agreement ("Agreement"), dated as of January 8, 2027 ("Effective Date") is by and between the Sonoma-Marin Area Rail Transit District (hereinafter "SMART"), and Alliant Insurance Services, Inc. (hereinafter "Consultant").

R E C I T A L S

WHEREAS, Consultant represents that it is duly qualified and experienced in the areas of insurance brokerage and risk management consultation services; and

WHEREAS, in the judgment of the Board of Directors of SMART or District, it is necessary and desirable to employ the services of Consultant to perform insurance brokerage and risk management consultation services; and

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, DOT, & FEMA Requirements

ARTICLE 3. REQUEST FOR SERVICES.

Section 3.01 Initiation Conference. SMART's Chief Financial Officer or designee (hereinafter "SMART Manager") will initiate all requests for services through an Initiation Conference, which may be in person, by telephone, or by email.

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

ARTICLE 4. SCOPE OF SERVICES.

Section 4.01 Scope of Work. Consultant shall perform services within the

timeframe outlined in **Exhibit A** (cumulatively referred to as the "Scope of Work").

Section 4.02 Cooperation With SMART. Consultant shall cooperate with the 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.

(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:

Seth Cole, Team Leader/Primary Account Manager
Dennis Mulqueeney, Peer Review
Karen Bartak, Liability Specialist
Brian White, Property Specialist
Linh Campero, Account Representative
Rachel Wrightson, Senior Casualty Claims Consultant

Robert Frey, National Claims Director/Property Claims
Elaine Tizon, Claims Advocate
Tim Leech, Safety and Loss Control Coordinator
Michele James-Godfrey, Cyber Broker
Lauren Onello, Environmental Liability

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 quarterly basis, detailing the tasks performed pursuant to the Scope of Work requested by the SMART Manager. SMART shall pay Consultant within 30 days after submission of the invoices. If invoices require correction, the 30-day payment period shall restart upon submission of the revised invoice.

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 $270,000.00, without written amendment to this Agreement. Consultant shall submit its invoices in arrears on a quarterly basis in a form approved by the Chief Financial Officer. The invoices shall show or include: (i) the task(s) performed; (ii) the corresponding rates for the tasks; (iii) for time and material tasks, the hourly rate or rates and the names and classifications 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 agrees that 48 CFR Part 31, Contract Cost Principles and Procedures and 2 CFR Part 200 shall be used to determine the allowability of individual terms of cost. Any costs for which payment has been made to the Consultant that are determined by subsequential audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the Consultant to SMART.

Section 5.04 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.

Section 5.05 Fee Credit. During this Agreement, Consultant shall disclose in writing, any Commissions received by Consultant in connection with any insurance placements on behalf of SMART ("SMART Placements"). The Fees for the operative program year shall be reduced by the amount of any Commissions received

by Consultant for SMART Placements made during that year. In the event such Commissions, plus Fees pre-paid by SMART exceed the total Fee for the program year, Consultant shall reimburse SMART for the excess payment it made. Alternatively, at SMART's request, any excess Fee paid by SMART during a program year may be carried forward and applied against any future Fee due to Consultant by SMART during any subsequent periods that this Agreement is in effect. However, any commissions for Notary Bonds and Vendor/Contractor Liability Programs are not included in the annual Fee or compensation, as coverage is provided to third party individuals.

Section 5.06 Transparency and Disclosure. Throughout the duration of this Agreement, Consultant will disclose any commissions received by Consultant or any affiliated company in connection with any insurance placements on behalf of SMART with its quarterly invoice submission. Consultant will conduct business in conformance with all applicable insurance regulations and in advancement of the best interests of SMART. In addition, Consultant shall not accept any form of broker incentives that would result in business being placed with carriers in conflict with the interests of Consultant and/or SMART.

Section 5.07 Surplus Lines Fees and Taxes. In certain circumstances, the placement of insurance made by Consultant on behalf of SMART, with the prior approval of SMART, may require the payment of surplus lines assessments, taxes, and/or fees to state regulators, boards, and associations. Such assessments, taxes, and/or fees will be charged to SMART and identified separately on invoices covering these placements. SMART shall be responsible for all such assessments, taxes, and fees. Consultant shall not be responsible for the payment of any such fees, taxes, or assessments, except to the extent such fees, taxes or assessments have already been collected from SMART.

Section 5.08 Third Party Brokers. Throughout the duration of the Agreement, Consultant may determine that it is necessary or appropriate to utilize third-party brokers (such as surplus lines brokers, underwriting managers, London market brokers, and reinsurance brokers) to assist in marketing the SMART insurance Programs. Subject to the provisions herein, these third-party brokers may be affiliates of Consultant (e.g., other companies of Consultant that provide these services other than those included within the Scope of Work of this Agreement), or may be unrelated third-party brokers. Compensation to such third-party brokers will be paid by the insurance company out of paid insurance premiums. Any such compensation to affiliates shall be disclosed in writing to SMART and is agreed to by SMART as part of the premium.

Section 5.09 Indirect Income. "Indirect Income" includes such items as insurance carrier contingency arrangements. Consultant will not accept these compensation incentives from insurers, including contingent commissions, market service Agreements (MSA), volume-based commissions, incentives and rebates on business placed on behalf of SMART within the Scope of Work of this Agreement.

ARTICLE 6. TERM OF AGREEMENT.

Section 6.01 The term of this Agreement shall remain in effect through January 7, 2030, with two (2) one-year options to extend at SMART's sole discretion, unless terminated earlier in accordance with the provisions of **Article 7** below.

ARTICLE 7. TERMINATION.

Section 7.01 Termination Without Cause. The District's obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the District for any payment may arise until funds are made available by the District for this contract and until the Contractor or Consultant receives notice of such availability, as such and notwithstanding any other provision of this Agreement, at any time and without cause, SMART shall have the right, at their sole discretion, to terminate this Agreement by giving 30 days written notice to the other party.

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

Section 7.03 Delivery of Work Product and Final Payment Upon Termination. In the event of termination by either party, Consultant, within 14 days following the date of termination, shall deliver to SMART all materials and work product subject to **Section 12.08** and shall submit to SMART an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

Section 7.04 Payment Upon Termination. Upon termination of this Agreement by SMART, Consultant shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Consultant bear to the total services otherwise required to be performed for such total payment; provided, however, that if services are to be paid on an hourly or daily basis, then Consultant shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to termination times the applicable hourly or daily rate; provided further that if SMART terminates the Agreement for cause pursuant to **Section 7.02**, SMART shall deduct from such amount the amount of damage, if any, sustained by SMART by virtue of the breach of the Agreement by Consultant.

Section 7.05 Authority to Terminate. The Board of Directors has the authority to terminate this Agreement on behalf of SMART. In addition, the General Manager, in consultation with SMART Counsel, shall have the authority to terminate this Agreement on behalf of SMART.

ARTICLE 8. INDEMNIFICATION

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

ARTICLE 9. INSURANCE.

With respect to performance of work under this Agreement, Consultant shall maintain and shall require all of its Subcontractors, Consultants, and other agents to maintain, insurance as described below. 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 $2,000,000 per occurrence, and $4,000,000 aggregate.

Section 9.03 Automobile Insurance. Automobile Liability insurance covering bodily injury and property damage in an amount no less than $2,000,000 combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles.

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

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) Except Professional Liability, 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) Except Professional Liability, Consultant hereby grants to SMART a waiver of any right to subrogation which any insurer of said Consultant may acquire against SMART by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not SMART has received a waiver of subrogation endorsement from the insurer.

(e) The insurance policy(ies) shall be written by an insurance company or companies acceptable to SMART. Such insurance company shall be authorized to transact business in the state of California.

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

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

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

(a) Ensure that the retroactive date is shown on the policy, and such date must be before the date of this Agreement or beginning of any work under this Agreement;

(b) Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and

(c) If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to Agreement effective date, Consultant shall purchase "extending reporting" coverage for a minimum of three (3) years after completion of the work.

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

(a) Properly executed Certificates of Insurance clearly evidencing all coverages and limits required above. Said Certificates shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current Certificates of Insurance evidencing the above-required coverages and limits on file with SMART for the duration of this Agreement.

(b) Copies of properly executed endorsements required above for each policy. Said endorsement copies shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current endorsements evidencing the above-specified requirements on file with SMART for the duration of this Agreement.

(c) 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.

Section 9.11 Notice of Cancellation. Each insurance policy required

above shall provide that coverage shall not be cancelled, except with notice 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 SMART 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 Contractor and shall control the work and the manner in which it is performed. Consultant is not to be considered an agent or employee of SMART and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits SMART provides its employees. In the event SMART exercises its right to terminate this Agreement pursuant to **Article 7**, above, Consultant expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to

employees.

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

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

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

Section 12.06 Nondiscrimination. Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition (including cancer), pregnancy, physical disability (including HIV and AIDS), mental disability, denial of family care leave, 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. Consultant shall also comply with the provisions of the Fair Employment and Housing Act (California Government Code, Section 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 et seq).

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 and work product, 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. Any and all work product resulting from this Agreement is commissioned by SMART as a work for hire. SMART shall be considered, for all purposes, the author of the work product and shall have all rights of authorship to the work, including, but not limited to, the exclusive right to use, publish, reproduce, copy and make derivative use of, the work product or otherwise grant others limited rights to use the work product. Notwithstanding the foregoing, SMART acknowledges that Consultant, in performing the services, may use patented and copyrighted materials, trade secrets, proprietary data, know-how, ideas, concepts, methodologies, practices, processes, procedures, techniques, and written materials of Consultant that existed prior to the commencement of the service, and SMART agrees that Consultant shall retain all right, title and interest in and to such items; provided, however, that Consultant hereby grants SMART a non-exclusive, non-assignable, perpetual, royalty-free license to use such items that are embedded in the work product and are required for SMART's own internal used of the work product. All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Consultant and other agents in connection with this Agreement shall be the property of SMART. SMART shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to SMART all such documents, which have not already been provided to SMART in such form or format, as SMART deems appropriate. Such documents shall be and will remain the property of SMART without restriction or limitation. Consultant may retain copies of the above- described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of SMART.

ARTICLE 13. DEMAND FOR ASSURANCE.

Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for

which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this **Article 13** limits SMART's right to terminate this Agreement pursuant to **Article 7**.

ARTICLE 14. ASSIGNMENT AND DELEGATION.

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

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

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

If to SMART Manager:	Sonoma-Marin Area Rail Transit District Attn: TBD 5401 Old Redwood Highway, Suite 200 Petaluma, CA 94954 *******@sonomamarintrain.org 707-794-3330
If to SMART Billing:	Sonoma-Marin 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:	Alliant Insurance Services Attn: Dennis Mulqueeney 333 Bush Street, Suite 2550 San Francisco, CA 94104 415-403-1400

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 Use of Recycled Paper. SMART requires that all printing jobs produced under this Agreement be printed on recycled content papers. Recycled-content papers are defined as papers containing a minimum of 30 percent postconsumer fiber by weight. All papers used in the performance of a print job for SMART shall be recycled-content paper. The recycle logo or "chasing arrows" cannot be used on printed material unless the paper contains a minimum of 30 percent postconsumer material. If paper meets the 30 percent requirement, ask that the recycling logo be printed on the project.

Section 16.02 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 16.03 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 16.04 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 16.05 Drug-Free Workplace. Consultant certifies that it will provide a drug-free workplace in compliance with Government Code §8350-§8357.

Section 16.06 Relationships of the Parties: No Intended Third-Party Beneficiaries. The Parties do not intend by this Agreement to create a partnership, joint venture, joint enterprise, or any other business relationship. There is no third person or entity who is an intended third-party beneficiary under this Agreement. No incidental beneficiary, whatever relationship such person may have with the Parties, shall have any right to bring an action or suit, or to assert any claim against the Parties under this Agreement. Nothing contained in this Agreement shall be construed to create and the Parties do not intend to create any rights in third parties.

Section 16.07 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 16.08 Use of SMART Name and Logo Restrictions. Consultant is prohibited from using SMART's name and logo unless expressly authorized herein or by written authorization from SMART's legal counsel.

Section 16.09 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 16.10 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 16.11 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 16.12 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

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

CONSULTANT: ALLIANT INSURANCE SERVICES, INC.

By: _____
Dennis Mulqueeney, Senior Vice President

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 and Contracts Manager

Date: _____

APPROVED AS TO FORM FOR SMART:

By: _____
District Counsel

Date: _____

EXHIBIT A
SCOPE OF WORK & TIMELINE

I. Overview

The Sonoma-Marin Area Rail Transit District (SMART) is contracting with Alliant Insurance Services, Inc. to provide insurance brokerage and risk management consultation, advisory, and support services.

A. Objectives:

1. Ensure SMART maintains sufficient insurance coverage at all times for the entity's activities.
2. Minimize SMART's overall risk exposure with cost effective solutions.
3. Regularly review SMART's insurance program and risk tolerance profile based on current market conditions and SMART's changing needs.
4. Ensure SMART's third-party contracts have the appropriate levels of insurance coverage based on the risks associated with the services being provided.
5. Have an expert that can represent SMART's best interests and advocate for SMART on claims, including the review and filing of claims.

B. Sensitive Security Information

Sensitive Security Information ("SSI") may be disclosed during the performance of work under this Agreement. The Consultant shall be required to sign SMART's Confidentiality and Non-Disclosure Agreement prior to the start of any work being performed under this Agreement.

II. Contract Management

All work shall be initiated, scheduled, and reviewed by the Troy Bingham or designee (hereinafter "SMART Manager").

Work may be initiated in writing or by teleconference.

III. Scope of Work

The scope of work is split into two categories under this Agreement:

- Insurance Brokerage & Risk Management Consulting, Advisory, and

Support Services

- Additional Services

A. Insurance Brokerage & Risk Management Consulting, Advisory, and Support Services

Consultant shall perform the following work under this service:

a. Insurance Policy Renewals

1. Review insured values and limits and stay up to date on SMART operations, equipment, construction, and property.

2. Perform market research and outreach to an extensive global market, canvass the insurance market for appropriate carriers or re-insurers and submit proper submissions for new carriers in connection with contract renewals. Prepare specifications, obtain multiple quotes with multiple options for premiums and limits and secure proposals, negotiate coverage terms and rates, and analyze proposals for the District's various programs in connection with the annual renewal process.

3. Present a written proposal to the District outlining and recommending multiple options for renewals including a summary of the underwriters' quotes, underwriting process and industry ratings.

4. Negotiate annual renewal terms and conditions and develop the most favorable renewal program on behalf of SMART.

5. Develop renewal proposals in conformity with the time frame specified by SMART staff.

6. Attend meetings with SMART staff to discuss renewal packages, marketing reports, explanation of coverages, if required, loss histories, and answer questions and provide advice as needed during the renewal process.

7. Review and be responsible for the accuracy and correctness, prior to delivery, of excess re-insurance coverage documents, pricing policies, all changes and endorsements and policy forms. Obtain corrections/amendments from insurers as necessary.

8. Annually develop renewal specifications and summaries for the incumbent and potential new carriers and respond to insurers' questions after their review of the specifications with assistance from the District.

9. Bind renewal program with insurance carriers and obtain insurers' signatures.

10. Provide summary binder of the year's renewals to SMART in paper and electronic format.

b. Insurance Program Administration

1. Issue certificates of insurance within three (3) business days following the date of request, in order to meet SMART's needs, in accordance with the standards and specifications set by SMART.

2. Provide assistance to SMART's staff responsible for the District's insurance program. Transmit all correspondence, including invoices, with appropriate written explanations.

c. Claims

1. Advocate for and assist SMART, as necessary, with filing and providing notice of claims on assigned insurance programs.

2. Promptly notify SMART of any losses or accidents reported to Broker and work with internal or outside claims adjustors as necessary.

3. Represent the interests of SMART in policy interpretation and other negotiations with insurance carriers.

4. Review third party property damage claims with SMART and its attorneys, as required.

d. Risk Management Consultation

1. Proactively evaluate current insurance programs and limits to determine if current policies provide reasonable protection against various exposures and identify gaps in coverage.

2. Review alternative risk financing techniques including premiums, and self-insurance retention, and develop cost-savings recommendations and projections of potential savings in connection with the annual renewal process.

3. Review SMART's third-party contracts prior to solicitation or execution and recommend appropriate insurance policy requirements, limits, and endorsements based on the scope of work and services being provided relative to the risks associated with the performance of those services. Recommendations should balance risk mitigation to SMART and current vendor market

conditions. Provide risk consultation to SMART when insurance waivers, reduced limits, and reduced requirements are requested by vendors. Two (2) business day turnaround is required for these services to ensure no delays in SMART operations.

4. Provide ongoing review and advice to SMART staff on market trends and pricing.

5. Be available throughout the year to advise and assist SMART staff regarding coverage and other risk management issues, including interpretation and clarification of specific coverage issues, as requested.

6. Identify and analyze major risks of accidental casualty and property loss to which SMART is exposed, and advise SMART in developing loss control programs, as requested.

7. Proactively evaluate and assist SMART with review of freight rail risk including review of agreements and risks associated with freight assets and operations.

8. Provide SMART staff with access to newsletters, webinars and other training materials to educate SMART in areas of risk management and occupational health and safety

9. Management of process for the selection of a third-party claims administration firm as needed by SMART.

10. Collaborate and assist SMART with effectively tracking third-party vendor contract certificates of insurance and associated endorsements. Provide SMART with access to a tracking system, if available.

11. Provide training opportunities to SMART staff on risk mitigation trends and best practices.

[Additional Information To Come From Proposal]

B. Additional Services

Consultant shall perform the following work under this service:

[Additional Information To Come From Proposal]

IV. Acceptance Criteria

Upon successful completion and acceptance of work, the SMART Manager shall provide written acceptance of the work and recommend submission of the

invoice for review. If defective work is identified, Consultant shall replace defective work immediately and at no additional cost to SMART.

EXHIBIT B
SCHEDULE OF RATES

I. Insurance Brokerage & Risk Management Consulting, Advisory, and Support Fees

BASE TERM				
Contract Year	**Contract Period**	**Firm Fixed Fee Per Quarter (A)**	**Quantity per Year (B)**	**Total Annual Amount (A X B)**
Year 1	1/8/2027 – 1/7/2028	$22,500	X 4	$90,000
Year 2	1/8/2028 – 1/7/2029	$22,500	X 4	$90,000
Year 3	1/8/2029 – 1/7/2030	$22,500	X 4	$90,000

OPTIONAL TERM EXTENSIONS				
Contract Year	**Contract Period**	**Firm Fixed Fee Per Quarter (A)**	**Quantity per Year (B)**	**Total Annual Amount (A X B)**
Year 4	1/8/2030 – 1/7/2031	$23,750	X 4	$95,000
Year 5	1/8/2031 – 1/7/2032	$23,750	X 4	$95,000

General Notes:

- Fees shall be paid on a fixed price per quarter basis in arrears.

- The firm fixed fees per quarter includes all direct costs, travel expenses, and indirect costs associated with providing the services identified in the Exhibit A Scope of Work, unless specifically noted otherwise.

- During this Agreement there may be situations in which it is to the advantage of both broker and SMART to allow the receipt of commissions by the broker. Consultant shall disclose in writing, any Commissions received by Consultant in connection with any insurance placements on behalf of SMART ("SMART Placements").

The Fees for the operative program year shall be reduced by the amount of any Commissions received by Consultant for SMART Placements made during that year.

In the event such Commissions, plus fees pre-paid by SMART exceed the total Fee for the program year, Consultant shall reimburse SMART for the excess payment it made.

However, any commissions for Notary Bonds and Vendor/Contractor Liability Programs are not included in the annual Fee or compensation, as coverage is provided to third-party individuals.

II. Additional Services

SMART is also interested in Loss Control Services and Insurance Appraisal Services. These services are not included in the "Insurance Brokerage & Risk Management Consulting, Advisory, and Support Fees" and will be on a time and materials basis.

If you provide these services, please submit a rate sheet reflecting fully burdened hourly rate(s) in the same format as below:

Name/Classification	Fully Burdened Hourly Rate
Loss Control	$175 - $300

Note: The "Fully Burdened Hourly Rate" includes base hourly rate, overhead, and profit.

Materials

Materials shall be invoiced at cost with receipt documentation submitted with the invoice.

Travel

Travel costs may be reimbursable, if prior written approval has been given by the SMART Manager, and the travel costs are per SMART's current Travel Guidelines for Contractors, which is updated annually.

EXHIBIT C
FTA, DOT, & FEMA REQUIREMENTS

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

1. **General**.

In performance of its obligations pursuant to this Agreement or Purchase Order [Hereinafter "Agreement"], the Contractor, Seller, Service Provider, or Consultant [Hereinafter "Contractor"] agrees to comply with all applicable provisions of federal, state and local law, regulations, FTA and FEMA directives. The terms of the most recent amendment to any federal, state or local laws, regulations, FTA or FEMA 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 or FEMA 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.

It is the responsibility of the Contractor and its subcontractors to ensure that all clauses included in this Exhibit applicable to the work specified within the Agreement are adhered to by the Contractor and its subcontractors.

2. **Access To Records and Reports**.

Applicability: All Contracts

Contractor shall comply with the following requirements:

(a) Record Retention. Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-Contracts, leases, subcontracts, arrangements, other third-party Contracts of any type, and supporting materials related to those records.

(b) Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. §200.333. The Contractor shall maintain all books, records, accounts and reports required under this

Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

(c) Access to Records. The Contractor agrees to provide access to SMART, FTA, FEMA, and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required. Contractor shall also 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.

(d) Access to the Site of Performance. The Contractor agrees to permit FTA, FEMA, and its contractors access to the sites of performance under this contract as reasonably may be required.

(e) 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.

3. **Changes to Federal Requirements.**

Applicability: All Contracts

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

Applicable changes to those federal requirements will apply to each Third-Party Agreement and parties thereto at any tier.

4. Civil Rights.

Applicability: All Contracts

The following Federal Civil Rights laws and regulations apply to the Agreement:

1. **Federal Equal Employment Opportunity (EEO) Requirements**. These include, but are not limited to:

   a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.

   b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, “Equal Employment Opportunity,” September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

2. **Nondiscrimination on the Basis of Sex**. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal 8 Financial Assistance,” 49 C.F.R. part 25 prohibit discrimination on the basis of sex.

3. **Nondiscrimination on the Basis of Age**. The “Age Discrimination Act of 1975,” as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

4. **Federal Protections for Individuals with Disabilities**. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

Civil Rights and Equal Opportunity

The Sonoma-Marin Area Rail Transit District is an Equal Opportunity Employer. As such, SMART agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, SMART agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA or FEMA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination**. In accordance with 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, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. **Race, Color, Religion, National Origin, Sex**. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., 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. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. 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, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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.

3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, 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 or FEMA may issue.

4. **Disabilities**. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

5. **Promoting Free Speech and Religious Liberty**. The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA or FEMA.

5. Clean Air Act and Federal Water Pollution Control Act

Applicability: All Contracts > $150,000

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Violations must be reported to FTA, FEMA, and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of $150,000:

Clean Air Act

a. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

b. 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 the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

c. The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FTA or FEMA.

Federal Water Pollution Control Act

(1) The contractor agrees to comply with all applicable standards, orders or

regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) 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 the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FTA or FEMA.

6. **Debarment and Suspension**

Applicability: All Contracts > $25,000

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of $25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

i. Debarred from participation in any federally assisted Award;
ii. Suspended from participation in any federally assisted Award;
iii. Proposed for debarment from participation in any federally assisted Award;
iv. Declared ineligible to participate in any federally assisted Award;
v. Voluntarily excluded from participation in any federally assisted Award; or
vi. Disqualified from participation in ay federally assisted Award.

By signing the Agreement, the Contractor certifies as follows:

The certification in this clause is a material representation of fact relied upon by SMART. If it is later determined by SMART 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 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, 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 provision requiring such compliance in its lower tier covered transactions.

7. **Energy Conservation**.

Applicability: All Contracts

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. The Contractor agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA or FEMA funds required under FTA regulations, "Requirements for Energy Assessments," 49 CFR part 622, subpart C or FEMA directives.

8. **Fly America.**

Applicability: All Contracts

a) Definitions. As used in this clause -

1) "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
2) "United States" means the 50 States, the District of Columbia, and outlying areas.
3) "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, SMART, and others to use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

<u>Statement of Unavailability of U.S.-Flag Air Carriers</u>
International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

e) Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract.

9. **Incorporation of Federal Transit Administration (FTA) Terms**.

Applicability: All Contracts

The provisions within include, in part, certain Standard Terms and Conditions required under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, detailed in 2 CFR § 200 or as amended by 2 CFR § 1201, or the most recent version of FTA Circular 4220.1 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

10. No Obligation by the Federal Government.

Applicability: All Contracts

The Sonoma-Marin Area Rail Transit District (SMART) and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA or FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

11. Notice to FTA and U.S. DOT Inspector General of Information Related to Fraud, Waste, Abuse, or Other Legal Matters.

Applicability: All Contracts > $25,000

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the SMART is located. The Contractor must include a similar notification requirement in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§

180.220 and 1200.220.

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

(3) SMART must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which SMART is located, if SMART has knowledge of potential fraud, waste, or abuse occurring on a Project or Service receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project or Service is subject to this Agreement or another agreement between SMART and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of SMART. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of SMART.

12. Patent Rights and Rights in Data and Copyrights Requirements.

Applicability: All Research Project Contracts

Intellectual Property Rights

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the Sonoma-Marin Area Rail Transit District intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT.

The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum,

include the following restrictions:

Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution.

For purposes of this Contract, the term “subject data” means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. 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 Contract.

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for “Federal Government Purposes,” any subject data or copyright described below. For “Federal Government Purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party.

    a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
    b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.

2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA’s license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction,

delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.

6. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

13. **Program Fraud and False or Fraudulent Statements and Related Acts**

Applicability: All Contracts

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 or Service. Upon execution of the underlying contract, 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 contract or the FTA assisted project for which this contract 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.

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. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.
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.

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

Applicability: All Contracts

a) SMART, Contractors, and Subcontractors are prohibited from obligating or expending loan or grant funds to:

1) Procure or obtain;
2) Extend or renew a contract to procure or obtain; or
3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(ii) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(iii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iv) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

c) See Public Law 115-232, section 889 for additional information.
d) See also § 200.471.

15. **Prompt Payment.**

Applicability: All Non-Public Works Contracts

The contractor shall promptly pay any and all subcontractor invoices by an instrument that guarantees availability of funds immediately upon deposit of said instrument. The Prime Contractor is required to pay subcontractors for satisfactory performance of their contracts no later than (30) thirty days from receipt of payment by SMART.

If the Contractor determines the work of the subcontractors to be unsatisfactory, the Contractor must immediately notify in writing the SMART project manager, with a separate notice to the DBELO if the subcontractor is a DBE and state the reasons. Failure by the Contractor to comply with this requirement will be construed to be a breach of the contract and may be subject to sanctions as specified in the contract.

SMART will not withhold retainage from the Prime Contractor and the Prime Contractor is prohibited from withholding retainage from the subcontractor.

Prime contractors shall provide proof of subcontractor payment to SMART for the previous payment period.

16. **Restrictions on Lobbying**

Applicability: All Contracts > $100,000

Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence 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 any of the following covered Federal actions: 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.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid

for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, whether that person has made or has agreed to make any payment to influence or attempt to influence 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 that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form if that person has made or has agreed to make any payment to influence or attempt to influence 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 that loan insurance or guarantee.

Certification and disclosure.

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

(1) Award of a Federal contract, grant, or cooperative agreement exceeding $100,000; or
(2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

(1) A Federal contract, grant, or cooperative agreement exceeding $100,000; or
(2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000, Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

(1) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
(3) A change in the officer(s), employee(s), or Member(s) contacted to

influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

(1) A subcontract exceeding $100,000 at any tier under a Federal contract;
(2) A subgrant, contract, or subcontract exceeding $100,000 at any tier under a Federal grant;
(3) A contract or subcontract exceeding $100,000 at any tier under a Federal loan exceeding $150,000; or,
(4) A contract or subcontract exceeding $100,000 at any tier under a Federal cooperative agreement, Shall file a certification, and a disclosure form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

17. **Safe Operation of Motor Vehicles.**

Applicability: All Contracts

Seat Belt Use

The Contractor is encouraged to adopt and promote 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. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or SMART.

Distracted Driving

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 Contactor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

18. **Simplified Acquisition Threshold**

Applicability: All Contracts > $350,000

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America's eligibility and process requirements apply to any procurement in excess of $150,000. 49 U.S.C. § 5323(j)(13).)

19. **Solid Wastes (Recovered Materials).**

Applicability: All Contracts > $10,000

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), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. The Contractor agrees to comply with the U.S. Environmental Protection Agency (US EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials", 40 CFR Part 247.

20. **Special DOL EEO Clause**

Applicability: All Construction Contracts > $10,000

The contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60- 741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime

contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

21. Termination.

Applicability: All Contracts > $10,000

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 SMART'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 [Breach or Cause]. 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 Contract 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) calendar 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) calendar 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 (Professional or Transit Service Contracts) SMART, by written notice, may terminate this contract, in whole or in part, when it is in SMART's best interest. If this contract is terminated, SMART shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

(f) Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, SMART may terminate this contract for default. SMART shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract 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.

22. Veterans Hiring Preference.

Applicability: All Construction Contracts

Veterans Employment - Construction contracts of Federal financial assistance shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would 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.

23. Violation and Breach of Contract.

Applicability: All Contracts

Rights and Remedies of SMART

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.

Rights and Remedies of Contractor
Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by SMART, the Contractor expressly agrees that no default, act or omission of SMART shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless SMART directs Contractor to do so) or to suspend or abandon performance.

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.

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.

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

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

24. **Conformance with National ITS Architecture**

Applicability: All ITS Contracts

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards pursuant to 23 CFR § 940. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the

transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

25. **Federal Tax Liability and Recent Felony Convictions**

Applicability: All Contracts

(1) The contractor certifies that it:

(a) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(b) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months. If the contractor cannot so certify, SMART will refer the matter to FTA or FEMA as applicable and not enter into any Third Party Agreement with the Third Party Participant without FTA's or FEMA's written approval.

(2) Flow-Down. The Contractor shall flow this requirement down to subcontractors at all lower tiers, without regard to the value of any subagreement.

26. **Severability**

Applicability: All Contracts

The Contractor agrees that if any provision of this Agreement or any amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.

27. **Trafficking in Persons**

Applicability: All Contracts

The contractor agrees that it and its employees that participate in this contract, may not:

(a) Engage in severe forms of trafficking in persons during the period of time that the contract is in effect;
(b) Procure a commercial sex act during the period of time that the contract is in effect; or
(c) Use forced labor in the performance of the contract or subagreements thereunder.

28. **Geographic Restrictions**.

Applicability: All Contracts

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

29. **Metric System**.

Applicability: All Contracts

To the extent required by U.S. DOT or FTA, Contractor shall use the metric system of measurement in its project activities pursuant to the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 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, SMART agrees to accept products and services with dimensions expressed in the metric system of measurement.

30. **Environmental Protection**.

Applicability: All Contracts

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, FEMA, and the appropriate U.S. EPA Regional Office.

31. **Privacy Act.**

Applicability: All Contracts

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. Among other things, the Contractor agrees to obtain

the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. Contractor understands that the requirements of the Privacy Act, including civil and criminal penalties for violation of the Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

32. **Rights to Inventions Made Under a Contract or Agreement.**

Applicability: All Research and Development Contracts

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

33. **Domestic Preferences for Procurements**

Applicability: All Contracts

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.

34. **DHS Seal, Logo, and Flags**.

Applicability: All Contracts

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FTA or FEMA pre-approval when applicable.

35. **Whistleblower Protections**

Applicability: All Contracts

An employee of the Contractor or Subcontractor must not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (a)(2) of 41 U.S.C. 4712 information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant. The Contractor and their subcontractors must inform their employees in writing of employee whistleblower rights and protections under 41 U.S.C. 4712. See statutory requirements for whistleblower protections at 10 U.S.C. 4701, 41 U.S.C. 4712, 41 U.S.C. 4304, and 10 U.S.C. 4310.

36. **Small and Minority Businesses, Women's Business Enterprises**

Applicability: All Contracts

Contractor shall take all necessary affirmative steps to assure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible in accordance with 2 C.F.R. § 200.321. Affirmative steps include:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- Assuring that such businesses are solicited whenever they are potential sources;
- Dividing total requirements into smaller tasks or quantities to permit maximum participation;
- Establishing delivery schedules to encourage participation;
- Using the services and assistance of organizations such as SBA and the Minority Business Development Agency.