



Sonoma-Marín Area Rail Transit
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Petaluma, CA 94954

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GENERAL MANAGER
Eddy Cumins

June 17, 2026

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

SUBJECT: Approval of Nossaman LLP Contract LG-PS-26-002

Dear Board Members:

RECOMMENDATIONS: Authorize the General Manager to execute Contract No. LG-PS-26-002 with Nossaman LLP, to provide as needed legal services with a not-to-exceed amount of \$400,000.

SUMMARY: Nossaman LLP has specialized expertise in a variety of rail transit and government agency matters, including litigation and advisory services on construction issues, regulatory, and railroad right-of way, as well as eminent domain and related proceedings. Staff anticipates the need for the firm's specialized expertise and litigation support.

Staff recommends approval of this contract to retain the services of Nossaman LLP for supplemental specialized legal support on an as-needed basis. This is a one-year contract with provisions for four (4) optional one-year extensions, for a not-to-exceed amount of \$400,000.

FISCAL IMPACT:
Funds are budgeted for the current fiscal year and included in the draft budget for fiscal year 2026/2027.

Sincerely,

/s/

Jessica Sutherland,
General Counsel

Attachment(s): Nossaman, LLP Contract No. LG-PS-26-002

AGREEMENT FOR LEGAL SERVICES

This agreement (“Agreement”), dated as of July 1, 2026 (“Effective Date”) is by and between the Sonoma-Marín Area Rail Transit District (hereinafter “SMART”), and Nossaman LLP (hereinafter “Attorneys”). This Agreement is required by Business and Professions Code section 6148 and is intended to fulfill its requirements.

RECITALS

WHEREAS, Attorneys represent that it is licensed in the State of California, qualified, and experienced in the areas of litigation, regulatory and rail transit issues related to public transit systems and freight railroad, railroad right-of-way, construction projects, public procurement regulations, eminent domain proceedings, and related services; and

WHEREAS, in the judgment of the Board of Directors of SMART or District, it is necessary and desirable to employ the services of Attorneys to perform various legal services regarding litigation, rail transit issues, railroad right-of-way, construction projects, procurement advisory support, eminent domain proceedings, and related services on an as-needed basis; and

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

AGREEMENT

ARTICLE 1. RECITALS.

Section 1.01 The above Recitals are true and correct.

ARTICLE 2. LIST OF EXHIBITS.

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

- (a) Exhibit A: Scope of Work & Timeline
- (b) Exhibit B: Schedule of Rates

ARTICLE 3. REQUEST FOR SERVICES.

Section 3.01 Initiation Conference. SMART’s General Counsel 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. Attorneys shall perform services within the timeframe outlined in **Exhibit A** (cumulatively referred to as the "Scope of Work").

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

Section 4.03 Performance Standard. Attorneys 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 Attorneys' profession. If SMART determines that any of Attorneys' 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 Attorneys to meet with SMART to review the quality of the work and resolve matters of concern; (b) require Attorneys 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) Attorneys 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 Attorneys to perform work hereunder, Attorneys 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 Attorneys 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. Attorneys 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 Attorneys' personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Attorneys' control, Attorneys shall be responsible for timely provision of adequately qualified replacements.
- (d) Attorneys shall assign the following key personnel for the term of this Agreement: Bradford B. Kuhn, Partner.

ARTICLE 5. PAYMENT.

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

Section 5.01 Attorneys shall invoice SMART on a monthly basis, detailing the tasks performed pursuant to the Scope of Work requested by the SMART Manager and the hours worked. SMART shall pay Attorneys 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 Attorneys shall be paid in accordance with the rates established in **Exhibit B**; provided, however, that total payments to Attorneys shall not exceed \$400,000.00, without written amendment to this Agreement. Attorneys shall submit its invoices in arrears on a monthly basis in a form approved by the Chief Financial Officer. The invoices shall show or include: (i) the task(s) performed; (ii) the time in tenths of an hours devoted to the task(s); (iii) the hourly rate or rates of the persons or classifications of 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. Attorneys' reimbursement for materials/expenses shall not include items already included in Attorneys' overhead as may be billed as a part of its labor rates set forth in **Exhibit B**. SMART does not reimburse Attorneys for travel time.

Section 5.03 Attorneys 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 Attorneys 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 Attorneys to abide by these requirements may delay or prevent payment of invoices or cause such invoices to be returned to the Attorneys unpaid.

ARTICLE 6. TERM OF AGREEMENT.

Section 6.01 The term of this Agreement shall remain in effect through June 30, 2027, with four (4) 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 Attorneys 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 Attorneys 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 Attorneys 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, Attorneys, 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, Attorneys 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 Attorneys 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 Attorneys 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 Attorneys.

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

Attorneys 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 Attorneys, to the extent caused by the Attorneys' negligence, recklessness or willful misconduct in its performance or obligations under this Agreement. Attorneys agree to provide a complete defense for any claim or action brought against SMART based upon a claim relating to Attorneys' performance or obligations under this Agreement. Attorneys' 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 Attorneys' expense, subject to Attorneys' 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 Attorneys 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, Attorneys shall maintain and shall require all of its Subcontractors, Attorneys, and other agents to maintain, insurance as described below. If the Attorneys 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 Attorneys. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to SMART.

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

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

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

Section 9.04 Professional Liability Insurance (Errors and Omissions). Professional Liability insurance with limit no less than \$5,000,000 per occurrence or claim.

Section 9.05 Endorsements. Prior to commencing work, Attorneys 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, employees, and volunteers shall be named as additional insured on all policies listed above, with the exception of the workers compensation insurance policy and the professional services liability policy (if applicable).
- (b) That the policy(ies) is Primary Insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim which Attorneys 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 Attorneys. Said policy shall protect Attorneys 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) Attorneys hereby grant to SMART a waiver of any right to subrogation which any insurer of said Attorneys may acquire against SMART by virtue of the payment of any loss under such insurance. Attorneys agree 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. Attorneys shall be responsible for payment of any deductible or retention on Attorneys' policies without right of contribution from SMART. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the name insured is not acceptable.

Section 9.07 Claims Made Coverage. If any insurance specified above is written on a claims-made coverage form, Attorneys 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, Attorneys shall purchase "extending reporting" coverage for a minimum of three (3) years after completion of the work.

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

- (a) Properly executed Certificates of Insurance clearly evidencing all coverages and limits required above. Said Certificates shall be submitted prior to the execution of this Agreement. At SMART's request, Attorneys shall provide certified copies of the policies that correspond to the policies listed on the Certificates of Insurance. Attorneys agree 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. Attorneys agree 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. Attorneys' indemnity and other obligations shall not be limited by the foregoing insurance requirements.

Section 9.10 Material Breach. If Attorneys, 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 Attorneys resulting from said breach. Alternatively, SMART may purchase such required insurance coverage, and without further notice to Attorneys, SMART may deduct from sums due to Attorneys 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 Attorneys 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 Attorneys' performance of this Agreement shall be extended by a number of days equal to the number of days Attorneys 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 Attorneys 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 Attorneys shall be entitled to no compensation whatsoever for the performance of such work. Attorneys further expressly waive 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 ATTORNEYS.

Section 12.01 Standard of Care. SMART has relied upon the professional ability and training of Attorneys as a material inducement to enter into this Agreement. Attorneys 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 Attorneys' work by SMART shall not operate as a waiver or release.

Section 12.02 Status of Attorneys. The parties intend that Attorneys, 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. Attorneys are 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, Attorneys 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. Attorneys agree 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. Attorneys agree 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 Attorneys' failure to pay, when due, all such taxes and obligations. In case SMART is audited for compliance regarding any withholding or other applicable taxes, Attorneys agree to furnish SMART with proof of payment of taxes on these earnings.

Section 12.04 Records Maintenance. Attorneys 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. Attorneys shall maintain such records for a period of four (4) years following completion of work hereunder. Attorneys and Subcontractors 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. Attorneys 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. Attorneys 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, Attorneys 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 Attorneys' or such other person's financial interests.

Section 12.06 Nondiscrimination. Attorneys 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. Attorneys 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. Attorneys assign 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 Attorneys in connection with this Agreement. Attorneys agree 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. Attorneys' 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. Attorneys 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. To the extent Attorneys incorporate into the work product any pre-existing work product owned by Attorneys, Attorneys hereby acknowledge and agree that ownership of such work product shall be transferred to SMART. All reports, original drawings, graphics, plans, studies, and other data or documents (“documents”), in whatever form or format, assembled or prepared by Attorneys 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, Attorneys 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. Attorneys 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-Marín Area Rail Transit District
Attn: Jessica Sutherland
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954
jsutherland@sonomamarintrain.org
707-285-8253

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

If to Attorneys: Nossaman LLP
Attn: Bradford B. Kuhn
18191 Von Karman Avenue, Suite 1800
Irvine, CA 92612
bkuhn@nossaman.com
949-477-7651

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. Attorneys 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. Attorneys 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. Attorneys certify 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. Attorneys are 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.

ATTORNEYS: NOSSAMAN LLP

By: _____
Bradford B. Kuhn, Partner

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-Marín Area Rail Transit District (SMART) is contracting with Nossaman LLP, whose place of business is located at 18191 Von Karman Avenue, Suite 1800, Irvine, CA 92612 (hereinafter “Attorneys”), to perform various legal services regarding litigation, rail transit issues, railroad right-of-way, construction projects, procurement advisory support, eminent domain proceedings, and related issues on an as-needed basis

II. Contract Management

All work shall be initiated, scheduled, and reviewed by SMART’s General Counsel, Jessica Sutherland (hereinafter “SMART Manager”), or designee.

Work may be initiated in writing or by teleconference.

III. Scope of Work

Attorneys shall perform the following work under this Agreement on an as-needed basis:

A. Provide Legal Consulting Services to SMART

- a. Perform legal counseling regarding litigation, rail transit issues, including railroad right-of-way, construction projects, procurement advisory support, eminent domain proceedings, and related issues.

B. Provide Legal Representation On Behalf of SMART in litigation for:

- a. *(Muelrath, et al., v. Sonoma-Marín Area Real Transit District, Sonoma County Superior Court, Case No. SCV-271787; Sonoma-Marín Area Real Transit District v. Muelrath, et al., Sonoma County Superior Court, Case No. 25-CV-06592; and Sonoma-Marín Area Real Transit District v. Ellen Pauli, Trustee of the Ellen Allegra Trust dated 1986, et al., Sonoma County Superior Court, Case No. 25-CV-06571)* and other rail transit matters, including railroad right of way, construction projects, eminent domain proceedings and related issues on an as needed basis.
 - i. Draft and file materials, as well as appear before state or federal courts. on behalf of SMART concerning litigation, rail transit issues, railroad right of way, construction projects, eminent domain proceedings and related issues.

- ii. Filings and letters to be sent on SMART's behalf to any state or federal court should be submitted electronically to the SMART Manager for final approval prior to filing.

Attorneys shall cooperate with SMART's Legal Department in the performance of the work hereunder.

Cooperation includes keeping SMART's Legal Department apprised of all legal strategies, deadlines, correspondence with state and federal agencies, including letters and filings.

IV. **Timelines**

A. Provide Legal Consulting Services to SMART

The SMART Manager and Attorneys will mutually agree upon timelines and deliverables in writing when work is requested under this Agreement.

B. Provide Legal Representation on Behalf of SMART.

The SMART Manager and Attorneys will mutually agree upon timelines and deliverables in writing when work is requested under this Agreement. The legal representation on the three existing matters [(1) *Muelrath, et al., v. Sonoma-Marin Area Real Transit District, Sonoma County Superior Court, Case No. SCV-271787*; (2) *Sonoma-Marin Area Real Transit District v. Muelrath, et al., Sonoma County Superior Court, Case No. 25-CV-06592*; (3) *Sonoma-Marin Area Real Transit District v. Ellen Pauli, Trustee of the Ellen Allegra Trust dated 1986, et al., Sonoma County Superior Court, Case No. 25-CV-06571*] shall end at the time of final resolution of those matters, including all appellate rights and remand orders, or as terminated earlier pursuant to the provisions of Article 6 or Article 7 of this Agreement.

V. **Acceptance Criteria**

The SMART Manager shall review all work performed under this Agreement.

Attorneys 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 Attorneys' profession.

If SMART determines that any of Attorney'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 Attorneys to meet with SMART to review the quality of the work and resolve matters of concern;
- b) Terminate this Agreement pursuant to the provisions of Article 7; or
- c) Pursue any and all other remedies at law or in equity.

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.

**EXHIBIT B
SCHEDULE OF RATES**

KEY PERSONNEL		
Employee Code	Name	Hourly Rate
DMN	Nowlin McMillin, Diana M.	\$275.00
JF1	Friess Leivas, Jillian	\$677.00
BBK	Kuhn, Bradford B.	\$677.00
BZR	Rubin, Benjamin Z.	\$677.00
RMC	Cole, Ryan	\$677.00
JHV	Vorhis, James H.	\$677.00
FC2	Castaneda, Fernando	\$275.00
SMS3	Silva, Steven M.	\$677.00
KAD1	Kevin Day.	\$677.00

ADDITIONAL STAFF	
Classification	Hourly Rate
Attorney	\$677.00
Paralegal	\$275.00

The hourly rates included in the table above are fully burdened and include all labor, supervision, insurance, taxes, fees, profit, and all other indirect costs associated with performing services under this Agreement. These rates include all administrative and overhead costs such as secretarial assistance, word processing, and computer assisted research cost and telephone charges.

Personnel Rates shall be fixed for the initial one-year term of the Agreement. If SMART chooses to extend the Agreement using an available option, the personnel rates shall be increased at each extension per the Consumer Price Index (CPI), San Francisco Area, as reported by the Bureau of Labor Statistics, U.S. Department of Labor rounded down to the nearest whole dollar, using the month of April for the most recent year. The maximum increase shall be 5%.

Other Direct Costs:

Copying charges: \$0.15 per Copy

Fax charges: (outgoing only): \$1.00 per Page

E-Discovery software hosting: \$588.80 per month

Materials, Supplies, Equipment: At Cost with receipt documentation submitted with invoices.

Travel Reimbursement: Travel Costs, if any, must be approved by the SMART Manager in advance and be in accordance with SMART's Travel Guidelines for SMART Contractors

Policy.

Litigation Expenses:

Litigation expenses, including Title Consultants and experts may be approved in writing by the SMART Manager. These expenses will be billed as a pass-through to SMART at cost with receipt documentation submitted with the invoice.