



Sonoma-Marín Area Rail Transit
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GENERAL MANAGER

Eddy Cumins

April 15, 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 Three (3) Agreements for the Supply and Delivery of Fuel and Diesel Exhaust Fluid

Dear Board Members:

RECOMMENDATIONS:

Authorize the General Manager to award three (3) Agreements for the supply and delivery of fuel and Diesel Exhaust Fluid (DEF), for an initial three-year term with two (2) additional one-year options exercisable at the General Manager's discretion, for a maximum potential term of five (5) years.

BACKGROUND:

Fuel and Diesel Exhaust Fluid (DEF) are mission critical commodities required on a continuous basis to support SMART's daily passenger revenue and freight operations. SMART operates an 18 car Nippon Sharyo Diesel Multiple Unit (DMU) fleet from the Rail Operations Center (ROC) in Santa Rosa and freight locomotives from the Schellville Freight Depot in Sonoma.

Historically, SMART has relied on a single vendor for fuel supply and fueling services. This approach has resulted in unacceptable operational risk due to recurring late or missed deliveries, often without advance notice. Any missed or significantly delayed delivery has an immediate and direct impact on SMART's ability to operate passenger and freight service and maintain on time performance.

These risks have been exacerbated by the increase in service levels associated with the Marin Sonoma Coordinated Transit Service (MASCOTS) schedule expansion. With increased train frequency, SMART has no operational buffer to absorb fueling failures. Reliable, on time delivery of fuel is essential to maintaining service continuity and protecting system reliability.

PROCUREMENT SUMMARY:

SMART issued a Request for Proposals (RFP) for the Supply and Delivery of Fuel and Diesel Exhaust Fluid on January 12, 2026, under Solicitation No. OP-SV-26-003. Six (6) proposals were received; five (5) were determined to be responsive.

A three-member Evaluation Committee evaluated the responsive proposals in accordance with the criteria published in the RFP, including:

- Service delivery approach
- Experience performing similar work
- Proposed measures to prevent missed or late deliveries
- Pricing

Following the initial evaluation, all five responsive proposers were invited to submit Best and Final Offers. Upon completion of the evaluation process, the Evaluation Committee recommends awarding agreements to the top three ranked proposers.

RECOMMENDED AWARD STRUCTURE

To mitigate fuel supply risk and ensure continuity of operations, staff recommends a tiered, three vendor award strategy rather than a single-vendor award. Under this structure, vendors are designated as Primary, Secondary, and Tertiary suppliers based on evaluation rankings.

This approach provides redundancy that SMART currently lacks and allows for immediate operational response if a supplier fails to perform. Each agreement includes liquidated damage provisions for missed fueling windows and train delays attributable to fueling failures. Liquidated damages may be assessed to the Service Provider holding the Primary designation at the time of the failure.

Primary: Tom Lopes Distributing, Inc., dba Western States Oil Company

Secondary: Ramos Oil Company

Tertiary: Pinnacle Petroleum, Inc

The Primary Supplier will be fully responsible and accountable for fuel and DEF supply and delivery. The Secondary and Tertiary Suppliers serve as immediate and next level backups and will be activated only if the Primary Supplier fails to perform.

FUEL TYPES

Under these agreements:

- Renewable Diesel (RD-99) will be the primary fuel supplied for passenger service operations at the Rail Operations Center, with Type 2-D Red Dyed Diesel maintained as a backup fuel source.
- Type 2-D Red Dyed Diesel will remain the primary fuel supplied at the Schellville Freight Depot.

COST

Staff has estimated a total expenditure of \$8,000,000 over the full five-year term, inclusive of anticipated market volatility for fuel and DEF.

Due to the tiered vendor structure, the following maximum contract amounts are recommended:

- \$8,000,000 – Tom Lopes Distributing, Inc., dba Western States Oil Company
- \$4,000,000 – Ramos Oil Company
- \$2,000,000 – Pinnacle Petroleum, Inc.

While the combined not-to-exceed amounts exceed \$8,000,000, only one vendor will provide services at any given time. At no point will total expenditures or encumbrances exceed \$8,000,000 without additional authorization from the Board of Directors. This structure provides SMART Operations with flexibility to transition between suppliers if performance issues arise.

AGREEMENTS

Staff recommends authorizing the General Manager to execute the following Agreements:

- Tom Lopes Distributing, Inc., dba Western States Oil Company (Agreement No. OP-SV-26-003)
- Ramos Oil Company (Agreement No. OP-SV-26-009)
- Pinnacle Petroleum, Inc (Agreement No. OP-SV-26-010)

Each Agreement will have an initial three-year term commencing June 1, 2026, and expiring May 31, 2029, with two (2) optional one-year extensions at the General Manager's discretion.

FISCAL IMPACT: Fuel and Diesel Exhaust Fluid expenditures are included in SMART's current annual operating budget and assumed in the budget for the future fiscal years.

Sincerely,

Jessie McDermott
Vehicle Maintenance Manager

Attachment(s):

1. Agreement No. OP-SV-26-003 with Tom Lopes Distributing, Inc. dba Western States Oil Company
2. Agreement No. OP-SV-26-009 with Ramos Oil Company
3. Agreement No. OP-SV-26-010 with Pinnacle Petroleum, Inc.

SERVICE AGREEMENT

This agreement (“Agreement”), dated as of June 1, 2026 (“Effective Date”) is by and between the Sonoma-Marín Area Rail Transit District (hereinafter “SMART”), and Tom Lopes Distributing, Inc. dba Western States Oil Company (hereinafter “Service Provider”).

RECITALS

WHEREAS, SMART issued a Request for Proposals for the Supply and Delivery of Fuel and Diesel Exhaust Fluid on January 12, 2026 to procure one or more Service Providers to supply and deliver fuel and Diesel Exhaust Fluid to SMART facilities; and

WHEREAS, Service Provider submitted a Proposal prior to the deadline for Proposals on February 13, 2026; and

WHEREAS, Service Provider represents that it is a duly qualified, licensed, and experienced in the areas of diesel, renewable diesel, diesel exhaust fluid supply, transportation, mobile fueling services, and related services; and

WHEREAS, in the judgment of the Board of Directors of SMART or District, it is necessary and desirable to employ the services of Service Provider to supply, deliver, and perform mobile fueling services of diesel, renewable diesel, and diesel exhaust fluid to SMART’s Rail Operation Center for its Diesel Multiple Units (“DMUs”) and equipment and the Schellville Freight Depot for its freight locomotives and equipment; and

WHEREAS, SMART has designated Service Provider as the Primary Service Provider for the supply and delivery of fuel and diesel exhaust fluid that holds the Primary Designation; 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
- (c) Exhibit C: FTA, DOT, & FEMA Requirements

ARTICLE 3. REQUEST FOR SERVICES.

Section 3.01 Initiation Conference. SMART's Vehicle Maintenance Manager, SMART's Freight Manager, or their designees (hereinafter "SMART Manager") will initiate all requests for services, 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 or fuel products under this Agreement. This is an indefinite quantity indefinite delivery (IDIQ) Agreement.

ARTICLE 4. SCOPE OF SERVICES.

Section 4.01 Scope of Work. Service Provider shall perform services within the timeframe outlined in **Exhibit A** (cumulatively referred to as the "Scope of Work").

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

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

Scott Gery, Account Manager
Robin Jackson, Back-Up Account Manager
Oscar Arellano, Director of Fleet Fueling Services

ARTICLE 5. PAYMENT.

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

Section 5.01 Service Provider 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 Service Provider 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 Service Provider shall be paid in accordance with the rates established in **Exhibit B**; provided, however, that total payments to Service Provider shall not exceed \$8,000,000.00, without written amendment to this Agreement. Service Provider shall submit its invoices in arrears on a *monthly basis* in a form approved by the Chief Financial Officer. Each invoice shall provide the following itemized information for each fueling service that took place in the previous month for each SMART location: (i) the name and location of delivery, (ii) the fuel/product supplied by location; (iii) the number of gallons delivered to each location, (iv) the daily OPIS rate, fixed-fee markup, and all applicable regulatory taxes and fees itemized for the Renewable Diesel RD99 and the Type 2-D Red Dyed Diesel, (v) the per gallon rate for Diesel Exhaust Fluid, and (vi) the time in quarter hours to perform the wet-hose fueling service and corresponding labor rate. SMART is exempt from the payment of Federal and State Excise and Transportation taxes. SMART does not reimburse Service Provider for travel time.

Section 5.03 Service Provider 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 Service Provider to SMART.

Section 5.04 Service Provider 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 Service Provider 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 Service Provider to abide by these requirements may delay or prevent payment of invoices or cause such invoices to be returned to the Service Provider unpaid.

ARTICLE 6. TERM OF AGREEMENT.

Section 6.01 The term of this Agreement shall remain in effect through May 31, 2029, with two (2) one-year options to extend thereafter 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. 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. 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, should Service Provider 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 Service Provider 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, Service Provider, 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, Service Provider 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 Service Provider 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 Service Provider 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 Service Provider.

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

Service Provider 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 Service Provider, to the extent caused by the Service Provider's negligence, recklessness or willful misconduct in its performance or obligations under this Agreement. Service Provider agrees to provide a complete defense for any claim or action brought against SMART based upon a claim relating to Service Provider's performance or obligations under this Agreement. Service Provider'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 Service Provider's expense, subject to Service Provider'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 Service Provider or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

ARTICLE 9. LIQUIDATED DAMAGES

Section 9.01 Time is of the essence. Execution of this Agreement by Service Provider shall constitute acknowledgement by Service Provider that Service Provider understands, has ascertained and agrees that SMART will actually sustain damages in the amount described in Article 9 when provision of services are delayed or not provided. Service Provider and SMART agree that specified measures of liquidated damages shall be presumed to be the damages actually sustained by SMART as defined below, and that because of the nature of the Service, it would be impracticable or extremely difficult to fix the actual damages.

Section 9.02 Liquidated damages may only be assessed on the Service Provider that currently holds the *primary designation*. Liquidated damages shall be considered not as a penalty but as agreed monetary damage sustained by SMART related to delayed or cancelled train operations because Service Provider failed to

perform and complete the required services within time agreed to in this Agreement.

Section 9.03 SMART may deduct from any money due or to become due to Service Provider subsequent to expiration of the Agreement, a sum representing then-accrued liquidated damages. Should money due or to become due to Service Provider be insufficient to cover aggregate liquidated damages due, then Service Provider forthwith shall pay the remainder of the assessed liquidated damages to SMART.

Section 9.04 Liquidated Damages are defined below:

9.04.1: \$1,491.00 per Missed Fueling Window

This Liquidated Damage will be assessed when Service Provider fails to appear or misses the "Passenger Fueling Window" or "Freight Fueling Window".

9.04.2: \$2,982.00 per Passenger Trip Delayed as a result of Service Provider's fueling failures.

This Liquidated Damage will be assessed for *each* scheduled train trip that is delayed as a result of Service Provider's non-supply and delivery or late supply and delivery of fuel and fuel products under this Agreement.

ARTICLE 10. INSURANCE.

With respect to performance of work under this Agreement, Service Provider shall maintain and shall require all of its Subcontractors, Service Providers, and other agents to maintain, insurance as described below. If the Service Provider 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 Service Provider. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to SMART.

Section 10.01 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 10.02 General Liability Insurance. Commercial General Liability insurance covering products-completed and ongoing operations, property damage, bodily injury and personal injury using an occurrence policy form, in an amount no less than \$5,000,000 per occurrence, and \$10,000,000 aggregate.

Said policy shall include a Railroads CG 24 17 endorsement removing the exclusion of coverage, if applicable, for bodily injury or property damage arising out of operations

within 50 feet of any railroad property and affecting any railroad bridge, trestle, tracks, roadbeds, tunnel, underpass or crossing.

Section 10.03 Automobile Insurance. Automobile Liability insurance covering bodily injury and property damage in an amount no less than \$5,000,000 combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles.

The Automobile Liability policy shall be endorsed to include Transportation Pollution Liability Insurance, covering materials to be transported by Service Provider pursuant to this Agreement. This coverage may also be provided in the Pollution Liability policy.

Said policy shall also include a CA 20 70 10 13 endorsement removing the exclusion of coverage for bodily injury or property damage arising out of operations within 50 feet of any railroad bridge, trestle, track, roadbeds, tunnel, underpass or crossing.

Section 10.04 Pollution Liability Insurance. Pollution Liability insurance in an amount no less than \$2,000,000 per incident. The Pollution Liability policy shall be written on an occurrence basis with coverage for bodily injury, property damage and environmental damage, including cleanup costs arising out of third-party claims, for pollution conditions, and including claims of environmental authorities, for the release of pollutants caused by activities related to the Contract. Coverage shall include the Service Provider as the named insured and shall include coverage for acts by others for whom the Service Provider is legally responsible. Coverage to be provided for bodily injury to or destruction of tangible property, including the resulting loss of use thereof, loss of use of tangible property that has been physically injured, and natural resource damage. There shall be no insured vs. insured exclusion in the policy.

Section 10.05 Endorsements. Prior to commencing work, Service Provider shall file Certificate(s) of Insurance with SMART evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. Said endorsements and Certificate(s) of Insurance shall stipulate:

- (a) SMART, its officers, and employees shall be named as additional insured on all policies listed above, with the exception of the workers compensation insurance policy and the professional services liability policy (if applicable).
- (b) That the policy(ies) is Primary Insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim which Service Provider 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 Service Provider. Said policy shall protect Service Provider 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) Service Provider hereby grants to SMART a waiver of any right to subrogation which any insurer of said Service Provider may acquire against SMART by virtue of the payment of any loss under such insurance. Service Provider 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 10.06 Deductibles and Retentions. Service Provider shall be responsible for payment of any deductible or retention on Service Provider's policies without right of contribution from SMART. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the name insured is not acceptable.

Section 10.07 Claims Made Coverage. If any insurance specified above is written on a claims-made coverage form, Service Provider 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, Service Provider shall purchase "extending reporting" coverage for a minimum of three (3) years after completion of the work.

Section 10.08 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, Service Provider shall provide certified

copies of the policies that correspond to the policies listed on the Certificates of Insurance. Service Provider 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. Service Provider 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 10.09 Policy Obligations. Service Provider's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

Section 10.10 Material Breach. If Service Provider, 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 Service Provider resulting from said breach. Alternatively, SMART may purchase such required insurance coverage, and without further notice to Service Provider, SMART may deduct from sums due to Service Provider any premium costs advanced by SMART for such insurance. These remedies shall be in addition to any other remedies available to SMART.

Section 10.11 Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice to SMART.

ARTICLE 11. PROSECUTION OF WORK.

When work is requested of Service Provider 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 Service Provider's performance of this Agreement shall be extended by a number of days equal to the number of days Service Provider has been delayed.

ARTICLE 12. 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 Service Provider 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 Service Provider shall be entitled to no compensation whatsoever for the performance of such work. Service Provider 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 13. REPRESENTATIONS OF SERVICE PROVIDER.

Section 13.01 Standard of Care. SMART has relied upon the professional ability and training of Service Provider as a material inducement to enter into this Agreement. Service Provider 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 Service Provider's work by SMART shall not operate as a waiver or release.

Section 13.02 Status of Service Provider. The parties intend that Service Provider, 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. Service Provider 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, Service Provider expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

Section 13.03 Taxes. Service Provider 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. Service Provider 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 Service Provider'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, Service Provider agrees to furnish SMART with proof of payment of taxes on these earnings.

Section 13.04 Records Maintenance. Service Provider 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.

Service Provider shall maintain such records for a period of four (4) years following completion of work hereunder. Service Provider 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 13.05 Conflict of Interest. Service Provider 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. Service Provider 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, Service Provider 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 Service Provider's or such other person's financial interests.

Section 13.06 Nondiscrimination. Service Provider 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. Service Provider 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 13.07 Assignment Of Rights. Service Provider assigns to SMART all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Service Provider in connection with this Agreement. Service Provider 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. Service Provider'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. Service Provider 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 13.08 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 Service Provider incorporates into the work product any pre-existing work product owned by Service Provider, Service Provider hereby acknowledges and agrees 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 Service Provider 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, Service Provider 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. Service Provider 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 14. 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 15. 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 16. 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's Vehicle Maintenance Manager: Sonoma-Marín Area Rail Transit District
Attn: Jessie McDermott
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954
jmcdermott@sonomamarintrain.org
707-981-1047

If to SMART's Freight Manager: Sonoma-Marín Area Rail Transit District
Attn: Jon Kerruish
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954
jkerruish@sonomamarintrain.org
415-717-2547

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 Service Provider: Tom Lopes Distributing, Inc. dba
Western States Oil Company
Attn: Gregory Michael
1790 S 10th Street
San Jose, CA 95112
gmichael@lubeoil.com
408-292-1041

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 17. MISCELLANEOUS PROVISIONS.

Section 17.01 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 17.02 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 17.03 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. Service Provider 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. Service Provider and SMART acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

Section 17.04 Licensing Laws. The Service Provider shall comply with the provisions of Chapter 9 Division 3 of the Business and Professions code concerning the licensing of contractors. All Service Providers shall be licensed in accordance with the laws of the State of California and any Service Provider not so licensed is subject to the penalties imposed by such laws. Prior to commencing any work under contract, all Service Providers and subcontractors must show that they hold appropriate and current Licenses in the State of California. The Service Provider shall provide such subcontractor information, including the class type, license, number, and expiration date to SMART.

Section 17.05 Drug-Free Workplace. Service Provider certifies that it will provide a drug-free workplace in compliance with Government Code §8350-§8357.

Section 17.06 Claims Made Against Service Provider. Service Provider shall provide SMART with copies of all correspondence and records relating to any claims made against the Service Provider while working on SMART’s property by SMART employees or third-party on a monthly basis.

Section 17.07 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 17.08 Relationships of the Parties: No Intended Third-Party Beneficiaries. The Parties intend by this Agreement to establish a cooperative funding relationship, and do not intend 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 17.09 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 17.10 Use of SMART Name and Logo Restrictions. Service Provider is prohibited from using SMART's name and logo unless expressly authorized herein or by written authorization from SMART's legal counsel.

Section 17.11 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 17.12 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 17.13 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 17.14 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.

SERVICE PROVIDER: TOM LOPES DISTRIBUTING, INC. DBA WESTERN STATES OIL COMPANY

By: _____
Gregory Michael, 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) has contracted with Tom Lopes Distributing, Inc. dba Western States Oil Company (hereinafter “Service Provider”) to provide uninterrupted fueling services to support safe, reliable, daily passenger rail operations and freight rail operations.

Service Provider shall supply and deliver the following fuel products to the following SMART facilities:

Rail Operation Center (Santa Rosa, CA)

- Renewable Diesel Type RD-99 Fuel (RD/Hydrotreated Vegetable Oil aka HVO) as the Primary Fuel Source for this location.
- Red Dyed No. 2 Diesel Fuel Type 2-D as the Back-Up/Emergency Fuel Source for this location when Renewable Diesel fuel is unavailable to ensure continued passenger operations.
- Diesel Exhaust Fluid (DEF)

Schellville Freight Depot (Sonoma, CA)

- Red Dyed No. 2 Diesel Fuel Type 2-D as the *Primary Fuel Source* for this location.

Delivery & Fueling Requirements

- SMART **DOES NOT** have fuel storage tanks at its properties.
- SMART has a fleet of eighteen (18) Diesel Multiple Units (“DMUs”) trains located at the Rail Operation Center that require the Service Provider to directly fuel the trains using the wet hose method on a **nightly basis** between the hours of **11:00pm and 3:00am (Pacific), 365 days per year (Holidays Included)**.

Service Provider’s delivery vehicles shall be equipped with a Snyder 1720 LF fuel nozzle (low flow 20-100 GPM) for all direct-to-DMU wet hose delivery. Service Provider shall supply all hoses used for such delivery.

- SMART **DOES** have one (1) 350-gallon above-ground storage tote and one (1) small 110-gallon mobile tote used to store Diesel Exhaust Fluid (DEF) at the Rail Operation Center. Service Provider shall

deliver and pump DEF into these totes.

The primary Service Provider awarded an Agreement shall utilize a “keep full” program on the (1) 350-gallon above ground tote by installing automatic sensor device(s) in the tote and monitor levels to ensure the tote does not fall below 30% of full capacity at any given time.”

- Service Provider shall directly fuel SMART’s freight locomotives located at the Schellville Freight Depot using the wet hose method **every other week** on **Mondays** between the hours of **7:00am – 9:00am (Pacific)**.
- Additional deliveries may be required at other SMART facilities or trackside locations as directed. These situations are expected to be infrequent and generally under emergency conditions.

A. Objectives:

a. **Objective 1: Nightly Supply, Delivery, and Fueling Services of Renewable Diesel Type RD-99 to the Rail Operation Center.**

Supply and deliver nightly via the wet-hose method, Renewable Diesel Type RD-99 (RD/HVO) compliant with EN 15940, ASTM D975 S15, CARB diesel regulations (Title 13 CCR §§2281–2282), and LCFS (Title 17 CCR §§95480–95490).

Fuel all eighteen (18) trains nightly between the hours of 11:00 PM and 3:00 AM (Pacific), 365 days per year, including weekends, Holidays, and emergency declaration events.

Fueling must be completed before the departure of the first scheduled train.

b. **Objective 2: Supply, Deliver, and Provide Fuel Services of Red Dyed No. 2 Diesel Fuel in Backup/Emergency Situations**

If directed by SMART, supply, deliver, and provide fueling services using the wet-hose method of conventional No. 2-D ULSD fuel compliant with ASTM D975 S15 and CARB diesel regulations into trains.

c. **Objective 3: Regular Supply, Delivery, and Fueling Services of Red Dyed No. 2 Diesel Fuel to SMART’s Schellville Freight Depot**

Provide regular supply, delivery, and fueling services of Red Dyed No. 2 Diesel Fuel to the Schellville Freight Facility.

d. Objective 4: Supply, Delivery, and Fueling Services of Diesel Exhaust Fluid (DEF) to the Rail Operation Center

Provide regular supply, delivery, and fueling services of diesel exhaust fluid (DEF) that meets ISO 22241 standards into SMART's DEF storage totes located at the Rail Operation Center. Service Provider shall use a keep-full program to ensure SMART's DEF tanks do not fall below 30%.

e. Objective 5: Supply, Delivery, and Fueling Services of Renewable Diesel Type RD-99 and Red Dyed No. 2 Diesel Fuel to Secondary Locations As Requested

Supply, deliver, and provide fueling services of Renewable Diesel Type RD-99 or Red Dyed No. 2 Diesel Fuel to other locations along SMART's mainline or freight tracks when requested. This is anticipated to be infrequent and generally under emergency conditions to preserve train passenger and freight operations.

Quality fuel and reliable fueling services are critical elements to SMART's ability to provide safe and reliable transportation to the North Bay community.

The absence of onsite storage tanks at SMART's facilities and the necessity for nightly wet-hosing fueling services in order to run trains the following day require a strong Service Provider who is committed to SMART's mission and can guarantee performance that is in strict compliance with the terms and conditions of this Agreement.

II. Contract Management

All work shall be initiated, scheduled, and reviewed by SMART's Vehicle Maintenance Manager (hereinafter "SMART Manager"), or designee for products and services for the Rail Operation Center.

All work shall be initiated, scheduled, and reviewed by SMART's Freight Manager (hereinafter "SMART Manager"), or designee for products and services for the Freight Depot.

Work may be initiated in writing or by teleconference.

To ensure uninterrupted fueling services, SMART has awarded three (3) Agreements with primary, secondary, and tertiary designations.

1. Primary Designation

The Service Provider responsible for performing all services identified

herein.

2. Secondary Designation

The Service Provider that shall serve as the immediate back-up Service Provider who will be contacted to perform services identified herein on an as-needed basis when the primary Service Provider is unable to perform.

3. Tertiary Designation

The Service Provider that shall serve as the second back-up Service Provider who will be contacted to perform services identified herein on an as-needed basis when the secondary Service Provider is unable to perform or during emergency situations.

Tom Lopes Distributing, Inc. dba Western States Oil Company holds the Primary Designation and serves as SMART's Primary Service Provider under this Agreement.

Service Provider Key Contacts

- | | |
|------------------------------------|---|
| 1. Primary Day-to-Day Contact: | Renee Peppers
Account Executive
rpeppers@lubeoil.com
925-997-7800 |
| 2. Back-Up Contact: | Oscar Arellano
Director of Fleet Fueling
oarellano@lubeoil.com
408-691-5453 |
| 3. Emergency/After-Hours Contacts: | Oscar Arellano
Director of Fleet Fueling
oarellano@lubeoil.com
408-691-5453

emergencycontacts@lubeoil.com
800-743-6950 |

III. Scope of Work

Service Provider shall perform the following services under this Agreement:

A. Supply, Deliver, and Perform Fueling Services to SMART for the following fuel products:

a. Task 1: Supply and Deliver Renewable Diesel (RD 99) - Hydrotreated Vegetable Oil (HVO) to the Rail Operation Center

- i. Service Provider shall supply, deliver, and fuel directly into SMART's trains via the wet-hose method the following fuel type: **Renewable Diesel, Hydrotreated Vegetable Oil**.
- ii. Service Provider shall supply, deliver, and fuel directly into provided portable fuel tank, ensuring it is topped off at each visit.
- iii. The fuel shall conform to the EN15940 standard. The fuel shall conform to California Code of Regulations (CCR) Title 4, Division 9, Chapter 6, Article 5, Section 4144. Diesel fuel shall also meet the requirements of the California Code of Regulation, Title 13, Division 3, Chapter 5, Article 2, Section 2281 (sulfur content) and section 2282 (aromatic hydrocarbon). Alternative diesel formulations must be certified by CARB. Evidence of such fact shall be available to SMART in the form of a letter certifying such compliance and signed by a responsible official of the Service Provider. The fuel shall meet the requirements of Low Carbon Fuel Standard (LCFS), Title 17, Division 3, Chapter 1, Subchapter 10, Article 4, Sub article 7, of California Code of regulations (CCR), Sections 95480 through 95490 (collectively referred to as "LCFS") applies to any transportation fuel, as defined in section 95481, that is sold, supplied, or offered for sale in California, and to any person who, as a "regulated party" defined in section 95481 and specified in section 95484(a), is responsible for a transportation fuel. LCFS regulation became effective on January 12, 2010.
- iv. **Primary delivery location:**

Rail Operations Center
3748 Regional Parkway
Santa Rosa, CA 95403

- v. Service Provider's delivery vehicles shall be capable of navigating within the Delivery Locations while delivering the quantity of fuel required.
- vi. Bill of Lading Requirement: A Bill of Lading will be provided to SMART's onsite personnel at each delivery. The Bill of Lading shall identify the supplier origin, the fuel type delivered, the number of gallons delivered, and the number of fueling labor hours in quarter hour increments.

b. Task 2 – Supply, Deliver, and Provide Fueling Services of Type 2-D (Red Dyed No. 2) Diesel Fuel to the Rail Operation Center as a back-up fuel supply when requested.

- i. Service Provider shall supply, deliver, and fuel directly into SMART's trains via the wet-hose method the following fuel type: **Diesel Fuel, Type 2-D (Red Dyed No. 2)**.
- ii. This Task only occurs on an as-needed basis when requested by the SMART Manager in writing for when Renewable Diesel fuel is unavailable or during an emergency condition to ensure continued operations.
- iii. The fuel shall conform to California Code of Regulations (CCR) Title 4, Division 9, Chapter 6, Article 5, Section 4144. Diesel fuel shall also meet the requirements of the California Code of Regulation, Title 13, Division 3, Chapter 5, Article 2, Section 2281 (sulfur content) and section 2282 (aromatic hydrocarbon). Alternative diesel formulations must be certified by CARB. Evidence of such fact shall be available to SMART in the form of a letter certifying such compliance and signed by a responsible official of the Service Provider. The fuel shall meet the requirements of Low Carbon Fuel Standard (LCFS), Title 17, Division 3, Chapter 1, Subchapter 10, Article 4, Sub article 7, of California Code of regulations (CCR), Sections 95480 through 95490 (collectively referred to as "LCFS") applies to any transportation fuel, as defined in section 95481, that is sold, supplied, or offered for sale in California, and to any person who, as a "regulated party" defined in section 95481 and specified in section 95484(a), is responsible for a transportation fuel. LCFS regulation became effective on January 12, 2010.
- iv. **Primary delivery location:**

Rail Operations Center
3748 Regional Parkway
Santa Rosa, CA 95403

- v. Service Provider's delivery vehicles shall be capable of navigating within the Delivery Locations while delivering the quantity of fuel required.
- vi. Bill of Lading Requirement: A Bill of Lading will be provided to SMART's onsite personnel at each delivery. The Bill of Lading shall identify the supplier origin, the fuel type delivered, the number of gallons delivered, and the number of fueling labor hours in quarter hour increments.

c. Task 3 – Supply, Deliver, and Providing Fueling Services of Type 2-D (Red Dyed No. 2) Diesel Fuel to the Schellville Freight Depot

- i. Service Provider shall supply, deliver, and fuel directly into SMART's freight locomotive(s) via the wet-hose method the following fuel type: **Diesel Fuel, Type 2-D (Red Dyed No. 2)**.
- ii. The fuel shall conform to California Code of Regulations (CCR) Title 4, Division 9, Chapter 6, Article 5, Section 4144. Diesel fuel shall also meet the requirements of the California Code of Regulation, Title 13, Division 3, Chapter 5, Article 2, Section 2281 (sulfur content) and section 2282 (aromatic hydrocarbon). Alternative diesel formulations must be certified by CARB. Evidence of such fact shall be available to SMART in the form of a letter certifying such compliance and signed by a responsible official of the Service Provider. The fuel shall meet the requirements of Low Carbon Fuel Standard (LCFS), Title 17, Division 3, Chapter 1, Subchapter 10, Article 4, Sub article 7, of California Code of regulations (CCR), Sections 95480 through 95490 (collectively referred to as "LCFS") applies to any transportation fuel, as defined in section 95481, that is sold, supplied, or offered for sale in California, and to any person who, as a "regulated party" defined in section 95481 and specified in section 95484(a), is responsible for a transportation fuel. LCFS regulation became effective on January 12, 2010.
- iii. **Primary delivery location:**

Schellville Freight Depot
1480 Highway 121
Sonoma, CA 95476
- iv. Service Provider's delivery vehicles shall be capable of navigating within the Delivery Locations while delivering the quantity of fuel required.

- v. Bill of Lading Requirement: A Bill of Lading will be provided to SMART's onsite personnel at each delivery. The Bill of

Lading shall identify the supplier origin, the fuel type delivered, the number of gallons delivered, and the number of fueling labor hours in quarter hour increments.

d. Task 4 – Supply, Deliver, and Provide Fueling Services of Diesel Exhaust Fluid (DEF) to the Rail Operation Center

- i. Service Provider shall supply and deliver Diesel Exhaust Fluid (DEF) to the Rail Operation Center to maintain supply of SMART’s one (1) 350-gallon above ground tote and one (1) 110-gallon mobile tote.

Diesel Exhaust Fluid (DEF) Specification Requirements:

Specification	Limits	Units
Urea	31.8 – 33.2	% by weight
Density/Specific Gravity (at 25°C / 77°F)	1.094 (approx. 9.2 lbs./gal.)	
Refractive Index (at 20°C / 68°F)	1.3814 – 1.3843	
Alkalinity as NH3	0.2 max.	% by weight
Biuret	0.3 max.	% by weight
Aldehyde	0.0005 max.	% by weight
Insolubles	0.002 max.	% by weight
Phosphate (PO4)	0.00005 max.	% by weight
Calcium	0.00005 max.	% by weight
Iron	0.00005 max.	% by weight
Copper	0.00002 max.	% by weight
Zinc	0.00002 max.	% by weight
Chromium	0.00002 max.	% by weight
Nickel	0.00002 max.	% by weight
Aluminum	0.00005 max.	% by weight
Magnesium	0.00005 max.	% by weight
Sodium	0.00005 max.	% by weight
Potassium	0.00005 max.	% by weight
Appearance	Colorless Clear Liquid	

- ii. Service Provider shall utilize a “keep-full” program by installing an automatic sensor device in SMART’s 350-gallon above ground storage tote to monitor tank levels remotely and ensure that tanks do not fall below 30%. Any change to this minimum threshold will require a written amendment to this Agreement.

These above ground totes are located at the ROC in Santa Rosa, CA. These automatic sensor devices would become SMART’s property at the end of the Agreement.

iii. Primary delivery location:

Rail Operations Center
3748 Regional Parkway
Santa Rosa, CA 95403

- iv. Service Provider's delivery vehicles shall be capable of navigating within the Delivery Locations while delivering the quantity of DEF required.
- v. Bill of Lading Requirement: A Bill of Lading will be provided to SMART's onsite personnel at each delivery. The Bill of Lading shall identify the supplier origin, the number of gallons delivered, and the number of fueling labor hours in quarter hour increments.

e. Task 5 - Supply, Deliver, and Provide Fueling Services of Renewable Diesel Type RD-99 and Red Dyed No. 2 Diesel Fuel to Secondary Locations or Provide Additional Fuel Deliveries As Requested

- i. During emergencies or planned system outages, fueling may be required at locations other than the two primary locations listed above in Tasks 1 through 4 or require additional daytime fueling deliveries. For planned system outages, these service requests will be made in writing by the SMART Manager. For emergency situations, the SMART Manager may request fueling services via phone call if written request is not feasible.
- ii. Service Provider shall respond to additional daytime fueling requests within 2 hours of notification by the SMART Manager.

B. Delivery and Fuel Service Requirements

- a) Service Provider's personnel shall wear the following personal protective equipment (Hard Hat, Safety Vest, Boots) while on SMART's property.
- b) Service Provider's personnel shall comply with all directions given by SMART staff, given that the work being performed occurs around an active railroad and safety is of utmost importance.
- c) Service Provider shall ensure that all trucks, railcars, and vessels used to transport the fuel products are drained, cleaned, and inspected prior to loading if the previous load contained other petroleum product(s) that would contaminate the diesel fuel.
- d) Service Provider's delivery vehicles shall be equipped with vapor recovery devices that are in compliance with all Federal, State, and

Local regulations and requirements. These devices shall be utilized during the delivery of fuel as required.

- e) Service Provider's delivery vehicles shall be equipped with a Snyder 1720 LF fuel nozzle (low flow 20-100 GPM) for all direct-to-DMU or direct-to-locomotive, wet hose delivery. Service Provider shall supply all hoses used for such delivery.
- f) The Rail Operation Center is a gated and secured facility. Service Provider will call the on-duty supervisor each night when enroute to the Rail Operations Center. The SMART Manager shall provide the contact number(s) for the on-duty supervisor in writing.
- g) All trains must be fueled nightly, unless otherwise directed by the SMART Manager or their on-site designated representative.
- h) The Service Provider's delivery driver will be solely responsible for fueling using the wet-hose method the trains and freight locomotives. SMART staff will not perform the fueling.
- i) During the duration of this Agreement, SMART may procure a mobile fueling solution. If SMART does procure a mobile fueling solution, ensure SMART's mobile fueling solution is filled to capacity each night will be included in this scope of work.
- j) Service Provider shall respond to daytime fueling calls within two (2) hours of notification. Daytime hours are between 8:00 am and 5:00 pm (Pacific).

C. Spills and Damage to Delivery Site

- a) Service Provider shall be responsible for all costs and remediation services resulting from any damage, contamination, or citations, which may be incurred as a result of any fuel spill during the delivery or fueling process.
- b) Drivers are to immediately report any spill on SMART's property to SMART's onsite personnel, the SMART Manager, and all local authorities as required by local, state, and federal law.

D. Quality Control Requirements

- a) Service Provider shall inspect and test fueling products according to the methods specified in active standards, ASTM D5453 for sulfur, D5186 for aromatics and other test methods specified in ASTM D975 prior to delivery.
- b) Fuel shall not deteriorate in ordinary storage and shall not form

excessive gum, resin, or deposits. Fuel shall be visually free of undissolved water, sediment, and suspended matter.

- c) Service Provider shall provide traceability on all shipments back to refinery within five business days upon request from SMART.
- d) SMART may, at any time, take a sample of the delivered fuel and conduct an independent test to determine quality of fuel. This sampling will be taken by SMART personnel or SMART Consultants with the cooperation of the Service Provider's delivery personnel. The sample will be tested by an independent third-party laboratory. If the test analysis shows that the fuel does not comply with this specification, the Service Provider shall be notified immediately, provided the lab report, and responsible for all cost related to the test analysis, including shipping and lab test(s).
- e) For each occurrence that the fuel testing reveals that non-compliant fuel was delivered to SMART, Service Provider shall, at its sole cost and expense, immediately replace the non-compliant fuel with fuel meeting the specifications stated in this Agreement, reimburse SMART for the non-compliant fuel delivered, and pay for subsequent independent testing to ensure the quality of the fuel. If SMART incurs a fine or any other cost or expense relating to the Service Provider's delivery of non-compliant fuel, Service Provider will reimburse SMART for the payment of the fine or other costs and expenses, including, but not limited to, costs associated with damage to the DMU's, or equipment related to delivery of non-compliant fuel.

E. Emergency Fueling Service

- a) SMART is considered an essential service and first response resource during emergency events. SMART must be available to assist in providing mutual aid to other jurisdictions (for example, by providing transportation of supplies and assisting with evacuations of people in emergency situations).
- b) Given this critical role, business continuity is essential, and Service Provider shall be expected to provide fuel and fueling services during emergency events.
- c) Service Provider agrees to serve SMART as the priority customer in the North Bay Area under emergency conditions.

IV. Timelines

A. Task 1: Supply and Deliver Renewable Diesel (RD 99) - Hydrotreated Vegetable Oil (HVO) to the Rail Operation Center

- a. Timelines:
 - i. Supply and deliver nightly between 11:00 pm and 3:00 am (Pacific), 7 days per week, including weekends and holidays,

unless notified otherwise in writing by the SMART Manager (“Passenger Fueling Window”)

B. Task 2: Supply, Deliver, and Provide Fueling Services of Type 2-D (Red Dyed No. 2) Diesel Fuel to the Rail Operation Center as a back-up fuel supply when requested.

a. Timelines:

- i. Supply and deliver conventional Type 2-D (Red Dyed No. 2) Diesel Fuel to the Rail Operation Center only as requested by the SMART Manager in writing when Renewable Diesel fuel is unavailable or in other emergency situations.
- ii. Supply and delivery shall occur between 11:00 pm and 3:00 am (Pacific), 7 days per week, including weekends and holidays, unless notified otherwise in writing by the SMART Manager (“Passenger Fueling Window”)

C. Task 3: Supply, Deliver, and Providing Fueling Services of Type 2-D (Red Dyed No. 2) Diesel Fuel to the Schellville Freight Depot

a. Timelines:

- i. Supply and deliver Type 2-D (Red Dyed No. 2) Diesel Fuel to the Schellville Freight Depot every other week on Mondays between 7:00 am and 9:00 am (Pacific), unless notified otherwise in writing by the SMART Manager (“Freight Fueling Window”).

D. Task 4: Supply, Deliver, and Provide Fueling Services of Diesel Exhaust Fluid (DEF) to the Rail Operation Center

a. Timelines:

- i. Supply and delivery of Diesel Exhaust Fluid (DEF) deliveries will be made between the hours of 11:00pm and 3:00am (Pacific).

E. Task 5: Supply, Deliver, and Provide Fueling Services of Renewable Diesel Type RD-99 and Red Dyed No. 2 Diesel Fuel to Secondary Locations or Provide Additional Fuel Deliveries As Requested

a. Timelines:

- i. As Requested

The “Passenger Fueling Window” and the “Freight Fueling Window” schedules defined herein are subject to change throughout the duration of the Agreement as operation needs require. Any change made to the “Passenger Fueling Window” and “Freight Fueling Window” shall require a formal written amendment to this Agreement.

V. **Performance Standards & Accountability**

Given that the Sonoma-Marín Area Rail Transit District (SMART) requires uninterrupted fueling services to support safe, reliable daily passenger rail operations and freight rail operations, SMART has awarded multiple contracts for the provision and delivery of fuel and Diesel Exhaust Fluid to serve as redundancy to ensure business operations continuity.

A. **Multiple Awarded Contracts**

SMART has awarded multiple contracts for the provision and delivery of fuel and Diesel Exhaust Fluid.

These contracts were ranked as Primary, Secondary, and Tertiary during the award process.

The Primary Contract will serve as SMART’s Primary Service Provider for the provision and delivery of fuel and diesel exhaust fluid.

The Secondary Contract will serve as the immediate back-up to the Primary Contract and will be called upon when the Primary Contract is unable to respond.

The Tertiary Contract will serve as the secondary back-up and will be called upon when the Secondary Contract is unable to respond.

B. **Adjustment of Ranking**

SMART may make adjustments to the ranking of these contracts when Service Providers have more than two (2) fueling failures in a rolling 90-day period.

Definition of Fueling Failure: Missing a scheduled fueling window, failure to deliver, failing to fuel all trains before the first train’s departure.

Adjustments made to rankings are in addition to liquidated damage assessments made.

SMART also reserves the right to terminate a contract in accordance with the terms of this Agreement for continued fueling failures.

VI. **Acceptance Criteria**

The SMART Manager or designee will inspect each fuel delivery to ensure that all work has been completed in conformance with the SMART Manager's directions and the requirements of this Agreement.

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**

RENEWABLE DIESEL FUEL: TYPE RD-99	
Delivery Location	Cents per-gallon (rounded to the nearest thousandths of a cent) firm fixed fee markup over the OPIS Renewable R99 ULR San Francisco, CA Gross Contract Average Daily Rack Rate
Rail Operation Center	\$0.2800
Schellville	\$0.3200

**The Oil Price Information Service (OPIS) rack average rate is based on the San Francisco, California area, specifically the Renewable R99 ULR San Francisco, CA Gross Contract Average Daily Rack Rate as published at 10:00am (Eastern).*

Price includes fuel and all direct and indirect costs associated with transportation of fuel to SMART's location. Price does not include applicable taxes and wet-hosing labor fees. Applicable taxes shall be added to the invoice. Note, SMART is exempt from Federal Excise Tax.

The firm fixed fee markup amount listed above shall remain the same for the duration of the Agreement.

DIESEL FUEL: TYPE 2-D (RED DYED # 2)	
Delivery Location	Cents per-gallon (rounded to the nearest thousandths of a cent) firm fixed fee markup over the OPIS Carb Ultra-Low Red Diesel, San Francisco Average with CAR Daily Rack Rate
Rail Operation Center	\$0.2800
Schellville Freight Depot	\$0.3200

**The Oil Price Information Service (OPIS) rack average rate is based on the San Francisco, California area, specifically the Gross Carb Ultra Low Sulfur Distillate Prices with CAR Cost for RD No. 2 as published at 10:00am (Eastern).*

Price includes fuel and all direct and indirect costs associated with transportation of fuel to SMART's location. Price does not include applicable taxes and wet-hosing labor fees. Applicable taxes shall be added to the invoice. Note, SMART is exempt from Federal Excise Tax.

The firm fixed fee markup amount listed above shall remain the same for the duration of the Agreement.

DIESEL EXHAUST FLUID (DEF)	
Delivery Location	Per Gallon Price

Rail Operation Center	\$2.35
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Price includes Diesel Exhaust Fluid (DEF) and all direct and indirect costs associated with transportation of Diesel Exhaust Fluid (DEF) to SMART's location. Price does not include applicable taxes and wet-hosing labor fees.

The price per gallon listed above shall be fixed for the initial three-year term of the Agreement. Upon completion of the initial three-year term, and prior to the commencement of each optional term of this Agreement, Service Provider may, upon 60 days written notice to the SMART Manager, request an increase in the rate equal to the percent change identified in the Producer Price Index for Synthetic Ammonia, Nitric Acid, Ammonia Compounds, and Urea, Not Seasonally Adjusted, as reported by the Bureau of Labor Statistics, U.S. Department of Labor, using the month of April of the most recent year over April of the previous year. If Service Provider does not submit a written request at least 60 days before the start of the succeeding Agreement year, Service Provider waives any increase for the optional term.

WET-HOSE FUELING LABOR COST	
Delivery Location	Per Hour
Rail Operation Center	\$75.00
Schellville Freight Depot	\$85.00

Price includes all labor, supervision and all other direct and indirect costs associated with performing actual wet-hose fueling services into SMART's Diesel Multiple Units (DMUs) and Freight trains.

Wet-Hose Fueling Labor Rates shall be fixed for the initial three-year term of the Agreement. Upon completion of the initial three-year term, and prior to the commencement of each optional term of this Agreement, Service Provider may, upon 60 days written notice to the SMART Manager, request an increase in the fee equal to the Consumer Price Index, San Francisco Area, as reported by the Bureau of Labor Statistics, U.S. Department of Labor, using the month of April for the most recent year. The maximum increase shall be 5%. If Service Provider does not submit a request at least 60 days before the start of the succeeding Agreement year, Service Provider waives any CPI increase for the optional term.

**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. **Buy America.**

Applicability: All Rollingstock Purchases, Materials and Supplies Contracts, and Construction Contracts >\$150,000.

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 and 2 CFR § 200.322. Domestic preferences for procurements, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7.

Construction materials used in the Project or Services are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA. The Contractor acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u) and 49 C.F.R. § 661.11.

The Contractor must submit to SMART the appropriate Buy America certification. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive. For more information, please see the FTA's Buy America webpage at: <https://www.transit.dot.gov/buyamerica>.

4. Cargo Preference Requirements.

Applicability: All Rolling Stock Purchases, Materials & Supplies, and Construction Contracts which require transportation by ocean vessels.

The Contractor agrees to:

(a) to use privately owned United States flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Agreement to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels;

(b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph, to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA or FEMA recipient (through the Contractor in the case of a subcontractor's bill-of-lading); and

(c) to include these requirements in all subcontracts issued pursuant to this Agreement when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

5. 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-Marine Area Rail Transit District and FTA, or the Sonoma-Marine 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.

6. 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 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.

7. 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.

8. Contract Work Hours and Safety Standards Act.

Applicability: All Operations Management, Rolling Stock Purchases, and Construction Contracts >\$100,000.

- a. Where applicable (see 40 U.S.C. § 3701 et seq), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II.
- b. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- c. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess

of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

- (2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

- (3) Withholding for unpaid wages and liquidated damages. SMART shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

9. 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 any 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.

10. 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.

11. 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:

Statement of Unavailability of U.S.-Flag Air Carriers

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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

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

20. 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).)

21. 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.

22. 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) If the termination is for the convenience of SMART, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

(c) 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.

(d) 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.

(e) 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. If, after serving a Notice of Termination for Default, SMART determines that the Contractor has an excusable reason for not performing, SMART, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

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. 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.

25. 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.

26. 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.

27. Geographic Restrictions.

Applicability: All Contracts

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

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

SERVICE AGREEMENT

This agreement (“Agreement”), dated as of June 1, 2026 (“Effective Date”) is by and between the Sonoma-Marín Area Rail Transit District (hereinafter “SMART”), and Ramos Oil Company (hereinafter “Service Provider”).

RECITALS

WHEREAS, SMART issued a Request for Proposals for the Supply and Delivery of Fuel and Diesel Exhaust Fluid on January 12, 2026 to procure one or more Service Providers to supply and deliver fuel and Diesel Exhaust Fluid to SMART facilities; and

WHEREAS, Service Provider submitted a Proposal prior to the deadline for Proposals on February 13, 2026; and

WHEREAS, Service Provider represents that it is a duly qualified, licensed, and experienced in the areas of diesel, renewable diesel, diesel exhaust fluid supply, transportation, mobile fueling services, and related services; and

WHEREAS, in the judgment of the Board of Directors of SMART or District, it is necessary and desirable to employ the services of Service Provider to supply, deliver, and perform mobile fueling services of diesel, renewable diesel, and diesel exhaust fluid to SMART’s Rail Operation Center for its Diesel Multiple Units (“DMUs”) and equipment and the Schellville Freight Depot for its freight locomotives and equipment; and

WHEREAS, SMART has designated Service Provider as the Secondary Service Provider for the supply and delivery of fuel and diesel exhaust fluid that holds the Secondary Designation; 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
- (c) Exhibit C: FTA, DOT, & FEMA Requirements

ARTICLE 3. REQUEST FOR SERVICES.

Section 3.01 Initiation Conference. SMART's Vehicle Maintenance Manager, SMART's Freight Manager, or their designees (hereinafter "SMART Manager") will initiate all requests for services, 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 or fuel products under this Agreement. This is an indefinite quantity indefinite delivery (IDIQ) Agreement.

ARTICLE 4. SCOPE OF SERVICES.

Section 4.01 Scope of Work. Service Provider shall perform services within the timeframe outlined in **Exhibit A** (cumulatively referred to as the "Scope of Work").

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

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

Chris Tate, Regional Account Executive
Alicia Zerga, Night Dispatcher
Nathan Gardiner, Director of Operations

ARTICLE 5. PAYMENT.

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

Section 5.01 Service Provider 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 Service Provider 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 Service Provider shall be paid in accordance with the rates established in **Exhibit B**; provided, however, that total payments to Service Provider shall not exceed \$4,000,000.00, without written amendment to this Agreement. Service Provider shall submit its invoices in arrears on a *monthly basis* in a form approved by the Chief Financial Officer. Each invoice shall provide the following itemized information for each fueling service that took place in the previous month for each SMART location: (i) the name and location of delivery, (ii) the fuel/product supplied by location; (iii) the number of gallons delivered to each location, (iv) the daily OPIS rate, fixed-fee markup, and all applicable regulatory taxes and fees itemized for the Renewable Diesel RD99 and the Type 2-D Red Dyed Diesel, (v) the per gallon rate for Diesel Exhaust Fluid, and (vi) the time in quarter hours to perform the wet-hose fueling service and corresponding labor rate. SMART is exempt from the payment of Federal and State Excise and Transportation taxes. SMART does not reimburse Service Provider for travel time.

Section 5.03 Service Provider 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 Service Provider to SMART.

Section 5.04 Service Provider 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 Service Provider 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 Service Provider to abide by these requirements may delay or prevent payment of invoices or cause such invoices to be returned to the Service Provider unpaid.

ARTICLE 6. TERM OF AGREEMENT.

Section 6.01 The term of this Agreement shall remain in effect through May 31, 2029, with two (2) one-year options to extend thereafter 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. 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. 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, should Service Provider 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 Service Provider 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, Service Provider, 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, Service Provider 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 Service Provider 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 Service Provider 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 Service Provider.

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

Service Provider 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 Service Provider, to the extent caused by the Service Provider's negligence, recklessness or willful misconduct in its performance or obligations under this Agreement. Service Provider agrees to provide a complete defense for any claim or action brought against SMART based upon a claim relating to Service Provider's performance or obligations under this Agreement. Service Provider'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 Service Provider's expense, subject to Service Provider'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 Service Provider or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

ARTICLE 9. LIQUIDATED DAMAGES

Section 9.01 Time is of the essence. Execution of this Agreement by Service Provider shall constitute acknowledgement by Service Provider that Service Provider understands, has ascertained and agrees that SMART will actually sustain damages in the amount described in Article 9 when provision of services are delayed or not provided. Service Provider and SMART agree that specified measures of liquidated damages shall be presumed to be the damages actually sustained by SMART as defined below, and that because of the nature of the Service, it would be impracticable or extremely difficult to fix the actual damages.

Section 9.02 Liquidated damages may only be assessed on the Service Provider that currently holds the *primary designation*. Liquidated damages shall be considered not as a penalty but as agreed monetary damage sustained by SMART related to delayed or cancelled train operations because Service Provider failed to perform and complete the required services within time agreed to in this Agreement.

Section 9.03 SMART may deduct from any money due or to become due to Service Provider subsequent to expiration of the Agreement, a sum representing then-accrued liquidated damages. Should money due or to become due to Service Provider be insufficient to cover aggregate liquidated damages due, then Service Provider forthwith shall pay the remainder of the assessed liquidated damages to SMART.

Section 9.04 Liquidated Damages are defined below:

9.04.1: \$1,491.00 per Missed Fueling Window

This Liquidated Damage will be assessed when Service Provider fails to appear or misses the "Passenger Fueling Window" or "Freight Fueling Window".

9.04.2: \$2,982.00 per Passenger Trip Delayed as a result of Service Provider's fueling failures.

This Liquidated Damage will be assessed for *each* scheduled train trip that is delayed as a result of Service Provider's non-supply and delivery or late supply and delivery of fuel and fuel products under this Agreement.

ARTICLE 10. INSURANCE.

With respect to performance of work under this Agreement, Service Provider shall maintain and shall require all of its Subcontractors, Service Providers, and other agents to maintain, insurance as described below. If the Service Provider 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 Service Provider. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to SMART.

Section 10.01 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 10.02 General Liability Insurance. Commercial General Liability insurance covering products-completed and ongoing operations, property damage, bodily injury and personal injury using an occurrence policy form, in an amount no less than \$5,000,000 per occurrence, and \$10,000,000 aggregate.

Said policy shall include a Railroads CG 24 17 endorsement removing the exclusion of coverage, if applicable, for bodily injury or property damage arising out of operations within 50 feet of any railroad property and affecting any railroad bridge, trestle, tracks, roadbeds, tunnel, underpass or crossing.

Section 10.03 Automobile Insurance. Automobile Liability insurance covering bodily injury and property damage in an amount no less than \$5,000,000 combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles.

The Automobile Liability policy shall be endorsed to include Transportation Pollution Liability Insurance, covering materials to be transported by Service Provider pursuant to this Agreement. This coverage may also be provided in the Pollution Liability policy.

Said policy shall also include a CA 20 70 10 13 endorsement removing the exclusion of coverage for bodily injury or property damage arising out of operations within 50 feet of any railroad bridge, trestle, track, roadbeds, tunnel, underpass or crossing.

Section 10.04 Pollution Liability Insurance. Pollution Liability insurance in an amount no less than \$2,000,000 per incident. The Pollution Liability policy shall be written on an occurrence basis with coverage for bodily injury, property damage and environmental damage, including cleanup costs arising out of third-party claims, for pollution conditions, and including claims of environmental authorities, for the release of pollutants caused by activities related to the Contract. Coverage shall include the Service Provider as the named insured and shall include coverage for acts by others for whom the Service Provider is legally responsible. Coverage to be provided for bodily injury to or destruction of tangible property, including the resulting loss of use thereof, loss of use of tangible property that has been physically injured, and natural resource damage. There shall be no insured vs. insured exclusion in the policy.

Section 10.05 Endorsements. Prior to commencing work, Service Provider shall file Certificate(s) of Insurance with SMART evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. Said endorsements and Certificate(s) of Insurance shall stipulate:

- (a) SMART, its officers, and employees shall be named as additional insured on all policies listed above, with the exception of the workers compensation insurance policy and the professional services liability policy (if applicable).
- (b) That the policy(ies) is Primary Insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim which Service Provider 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 Service Provider. Said policy shall protect Service Provider 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) Service Provider hereby grants to SMART a waiver of any right to subrogation which any insurer of said Service Provider may acquire against SMART by virtue of the payment of any loss under such insurance. Service Provider 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 10.06 Deductibles and Retentions. Service Provider shall be responsible for payment of any deductible or retention on Service Provider's policies without right of contribution from SMART. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the name insured is not acceptable.

Section 10.07 Claims Made Coverage. If any insurance specified above is written on a claims-made coverage form, Service Provider 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, Service Provider shall purchase "extending reporting" coverage for a minimum of three (3) years after completion of the work.

Section 10.08 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, Service Provider shall provide certified copies of the policies that correspond to the policies listed on the Certificates of Insurance. Service Provider 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. Service Provider 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 10.09 Policy Obligations. Service Provider's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

Section 10.10 Material Breach. If Service Provider, 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 Service Provider resulting from said breach. Alternatively, SMART may purchase such required insurance coverage, and without further notice to Service Provider, SMART may deduct from sums due to Service Provider any premium costs advanced by SMART for such insurance. These remedies shall be in addition to any other remedies available to SMART.

Section 10.11 Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice to SMART.

ARTICLE 11. PROSECUTION OF WORK.

When work is requested of Service Provider 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 Service Provider's performance of this Agreement shall be extended by a number of days equal to the number of days Service Provider has been delayed.

ARTICLE 12. 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 Service Provider 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 Service Provider shall be entitled to no compensation whatsoever for the performance of such work. Service Provider 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 13. REPRESENTATIONS OF SERVICE PROVIDER.

Section 13.01 Standard of Care. SMART has relied upon the professional ability and training of Service Provider as a material inducement to enter into this Agreement. Service Provider 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 Service Provider's work by SMART shall not operate as a waiver or release.

Section 13.02 Status of Service Provider. The parties intend that Service Provider, 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. Service Provider 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, Service Provider expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

Section 13.03 Taxes. Service Provider 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. Service Provider 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 Service Provider'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, Service Provider agrees to furnish SMART with proof of payment of taxes on these earnings.

Section 13.04 Records Maintenance. Service Provider 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. Service Provider shall maintain such records for a period of four (4) years following completion of work hereunder. Service Provider and SubService Providers 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 13.05 Conflict of Interest. Service Provider 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. Service Provider 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, Service Provider 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 Service Provider's or such other person's financial interests.

Section 13.06 Nondiscrimination. Service Provider 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. Service Provider 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 13.07 Assignment Of Rights. Service Provider assigns to SMART all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Service Provider in connection with this Agreement. Service Provider 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. Service Provider'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. Service Provider 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 13.08 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 Service Provider incorporates into the work product any pre-existing work product owned by Service Provider, Service Provider hereby acknowledges and agrees 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 Service Provider 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, Service Provider 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. Service Provider 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 14. 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 15. 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 16. 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's Vehicle Maintenance Manager: Sonoma-Marín Area Rail Transit District
Attn: Jessie McDermott
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954
jmcdermott@sonomamarintrain.org
707-981-1047

If to SMART's Freight Manager: Sonoma-Marín Area Rail Transit District
Attn: Jon Kerruish
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954
jkerruish@sonomamarintrain.org
415-717-2547

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 Service Provider: Ramos Oil Company
Attn: Chris Tate
1515 S. River Road
West Sacramento, CA 95691
christ@ramosoil.com
916-955-0287

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 17. MISCELLANEOUS PROVISIONS.

Section 17.01 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 17.02 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 17.03 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. Service Provider 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. Service Provider and SMART acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

Section 17.04 Licensing Laws. The Service Provider shall comply with the provisions of Chapter 9 Division 3 of the Business and Professions code concerning the licensing of contractors. All Service Providers shall be licensed in accordance with the laws of the State of California and any Service Provider not so licensed is subject to the penalties imposed by such laws. Prior to commencing any work under contract, all Service Providers and subcontractors must show that they hold appropriate and current Licenses in the State of California. The Service Provider shall provide such subcontractor information, including the class type, license, number, and expiration date to SMART.

Section 17.05 Drug-Free Workplace. Service Provider certifies that it will provide a drug-free workplace in compliance with Government Code §8350-§8357.

Section 17.06 Claims Made Against Service Provider. Service Provider shall provide SMART with copies of all correspondence and records relating to any claims made against the Service Provider while working on SMART’s property by SMART employees or third-party on a monthly basis.

Section 17.07 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 17.08 Relationships of the Parties: No Intended Third-Party Beneficiaries. The Parties intend by this Agreement to establish a cooperative funding relationship, and do not intend 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 17.09 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 17.10 Use of SMART Name and Logo Restrictions. Service Provider is prohibited from using SMART's name and logo unless expressly authorized herein or by written authorization from SMART's legal counsel.

Section 17.11 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 17.12 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 17.13 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 17.14 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.

SERVICE PROVIDER: RAMOS OIL COMPANY

By: _____
Chris Tate, Regional Account Executive

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) has contracted with Ramos Oil Company (hereinafter “Service Provider”) to provide uninterrupted fueling services to support safe, reliable, daily passenger rail operations and freight rail operations.

Service Provider shall supply and deliver the following fuel products to the following SMART facilities:

Rail Operation Center (Santa Rosa, CA)

- Renewable Diesel Type RD-99 Fuel (RD/Hydrotreated Vegetable Oil aka HVO) as the Primary Fuel Source for this location.
- Red Dyed No. 2 Diesel Fuel Type 2-D as the Back-Up/Emergency Fuel Source for this location when Renewable Diesel fuel is unavailable to ensure continued passenger operations.
- Diesel Exhaust Fluid (DEF)

Schellville Freight Depot (Sonoma, CA)

- Red Dyed No. 2 Diesel Fuel Type 2-D as the *Primary Fuel Source* for this location.

Delivery & Fueling Requirements

- SMART **DOES NOT** have fuel storage tanks at its properties.
- SMART has a fleet of eighteen (18) Diesel Multiple Units (“DMUs”) trains located at the Rail Operation Center that require the Service Provider to directly fuel the trains using the wet hose method on a **nightly basis** between the hours of **11:00pm and 3:00am (Pacific), 365 days per year (Holidays Included)**.

Service Provider’s delivery vehicles shall be equipped with a Snyder 1720 LF fuel nozzle (low flow 20-100 GPM) for all direct-to-DMU wet hose delivery. Service Provider shall supply all hoses used for such delivery.

- SMART **DOES** have one (1) 350-gallon above-ground storage tote and one (1) small 110-gallon mobile tote used to store Diesel Exhaust Fluid (DEF) at the Rail Operation Center. Service Provider shall deliver and

pump DEF into these totes.

The primary Service Provider awarded an Agreement shall utilize a “keep full” program on the (1) 350-gallon above ground tote by installing automatic sensor device(s) in the tote and monitor levels to ensure the tote does not fall below 30% of full capacity at any given time.”

- Service Provider shall directly fuel SMART’s freight locomotives located at the Schellville Freight Depot using the wet hose method **every other week** on **Mondays** between the hours of **7:00am – 9:00am (Pacific)**.
- Additional deliveries may be required at other SMART facilities or trackside locations as directed. These situations are expected to be infrequent and generally under emergency conditions.

A. **Objectives:**

a. **Objective 1: Nightly Supply, Delivery, and Fueling Services of Renewable Diesel Type RD-99 to the Rail Operation Center.**

Supply and deliver nightly via the wet-hose method, Renewable Diesel Type RD-99 (RD/HVO) compliant with EN 15940, ASTM D975 S15, CARB diesel regulations (Title 13 CCR §§2281–2282), and LCFS (Title 17 CCR §§95480–95490).

Fuel all eighteen (18) trains nightly between the hours of 11:00 PM and 3:00 AM (Pacific), 365 days per year, including weekends, Holidays, and emergency declaration events.

Fueling must be completed before the departure of the first scheduled train.

b. **Objective 2: Supply, Deliver, and Provide Fuel Services of Red Dyed No. 2 Diesel Fuel in Backup/Emergency Situations**

If directed by SMART, supply, deliver, and provide fueling services using the wet-hose method of conventional No. 2-D ULSD fuel compliant with ASTM D975 S15 and CARB diesel regulations into trains.

c. **Objective 3: Regular Supply, Delivery, and Fueling Services of Red Dyed No. 2 Diesel Fuel to SMART’s Schellville Freight Depot**

Provide regular supply, delivery, and fueling services of Red Dyed No. 2 Diesel Fuel to the Schellville Freight Facility.

d. Objective 4: Supply, Delivery, and Fueling Services of Diesel Exhaust Fluid (DEF) to the Rail Operation Center

Provide regular supply, delivery, and fueling services of diesel exhaust fluid (DEF) that meets ISO 22241 standards into SMART's DEF storage totes located at the Rail Operation Center. Service Provider shall use a keep-full program to ensure SMART's DEF tanks do not fall below 30%.

e. Objective 5: Supply, Delivery, and Fueling Services of Renewable Diesel Type RD-99 and Red Dyed No. 2 Diesel Fuel to Secondary Locations As Requested

Supply, deliver, and provide fueling services of Renewable Diesel Type RD-99 or Red Dyed No. 2 Diesel Fuel to other locations along SMART's mainline or freight tracks when requested. This is anticipated to be infrequent and generally under emergency conditions to preserve train passenger and freight operations.

Quality fuel and reliable fueling services are critical elements to SMART's ability to provide safe and reliable transportation to the North Bay community.

The absence of onsite storage tanks at SMART's facilities and the necessity for nightly wet-hosing fueling services in order to run trains the following day require a strong Service Provider who is committed to SMART's mission and can guarantee performance that is in strict compliance with the terms and conditions of this Agreement.

II. Contract Management

All work shall be initiated, scheduled, and reviewed by SMART's Vehicle Maintenance Manager (hereinafter "SMART Manager"), or designee for products and services for the Rail Operation Center.

All work shall be initiated, scheduled, and reviewed by SMART's Freight Manager (hereinafter "SMART Manager"), or designee for products and services for the Freight Depot.

Work may be initiated in writing or by teleconference.

To ensure uninterrupted fueling services, SMART has awarded three (3) Agreements with primary, secondary, and tertiary designations.

1. Primary Designation

The Service Provider responsible for performing all services identified

herein.

2. Secondary Designation

The Service Provider that shall serve as the immediate back-up Service Provider who will be contacted to perform services identified herein on an as-needed basis when the primary Service Provider is unable to perform.

3. Tertiary Designation

The Service Provider that shall serve as the second back-up Service Provider who will be contacted to perform services identified herein on an as-needed basis when the secondary Service Provider is unable to perform or during emergency situations.

Ramos Oil Company holds the Secondary Designation and serves as SMART's Secondary Service Provider under this Agreement.

Service Provider Key Contacts

- | | |
|------------------------------------|--|
| 1. Primary Day-to-Day Contact: | Chris Tate
Regional Account Executive
christ@ramosoil.com
916-955-0287 |
| 2. Back-Up Contact: | Alicia Zerga
Plant Manager / Dispatcher
aliciae@ramosoil.com
707-430-3420 |
| 3. Emergency/After-Hours Contacts: | Nathan Gardiner
Director of Operations
nathang@ramosoil.com
916-825-5054 |

III. **Scope of Work**

Service Provider shall perform the following services under this Agreement:

A. Supply, Deliver, and Perform Fueling Services to SMART for the

following fuel products:

a. Task 1: Supply and Deliver Renewable Diesel (RD 99) - Hydrotreated Vegetable Oil (HVO) to the Rail Operation Center

- i. Service Provider shall supply, deliver, and fuel directly into SMART's trains via the wet-hose method the following fuel type: **Renewable Diesel, Hydrotreated Vegetable Oil**.
- ii. Service Provider shall supply, deliver, and fuel directly into provided portable fuel tank, ensuring it is topped off at each visit.
- iii. The fuel shall conform to the EN15940 standard. The fuel shall conform to California Code of Regulations (CCR) Title 4, Division 9, Chapter 6, Article 5, Section 4144. Diesel fuel shall also meet the requirements of the California Code of Regulation, Title 13, Division 3, Chapter 5, Article 2, Section 2281 (sulfur content) and section 2282 (aromatic hydrocarbon). Alternative diesel formulations must be certified by CARB. Evidence of such fact shall be available to SMART in the form of a letter certifying such compliance and signed by a responsible official of the Service Provider. The fuel shall meet the requirements of Low Carbon Fuel Standard (LCFS), Title 17, Division 3, Chapter 1, Subchapter 10, Article 4, Sub article 7, of California Code of regulations (CCR), Sections 95480 through 95490 (collectively referred to as "LCFS") applies to any transportation fuel, as defined in section 95481, that is sold, supplied, or offered for sale in California, and to any person who, as a "regulated party" defined in section 95481 and specified in section 95484(a), is responsible for a transportation fuel. LCFS regulation became effective on January 12, 2010.

iv. Primary delivery location:

Rail Operations Center
3748 Regional Parkway
Santa Rosa, CA 95403

- v. Service Provider's delivery vehicles shall be capable of navigating within the Delivery Locations while delivering the quantity of fuel required.
- vi. **Bill of Lading Requirement:** A Bill of Lading will be provided to SMART's onsite personnel at each delivery. The Bill of Lading shall identify the supplier origin, the fuel type

delivered, the number of gallons delivered, and the number of fueling labor hours in quarter hour increments.

b. Task 2 – Supply, Deliver, and Provide Fueling Services of Type 2-D (Red Dyed No. 2) Diesel Fuel to the Rail Operation Center as a back-up fuel supply when requested.

- i. Service Provider shall supply, deliver, and fuel directly into SMART's trains via the wet-hose method the following fuel type: **Diesel Fuel, Type 2-D (Red Dyed No. 2)**.
- ii. This Task only occurs on an as-needed basis when requested by the SMART Manager in writing for when Renewable Diesel fuel is unavailable or during an emergency condition to ensure continued operations.
- iii. The fuel shall conform to California Code of Regulations (CCR) Title 4, Division 9, Chapter 6, Article 5, Section 4144. Diesel fuel shall also meet the requirements of the California Code of Regulation, Title 13, Division 3, Chapter 5, Article 2, Section 2281 (sulfur content) and section 2282 (aromatic hydrocarbon). Alternative diesel formulations must be certified by CARB. Evidence of such fact shall be available to SMART in the form of a letter certifying such compliance and signed by a responsible official of the Service Provider. The fuel shall meet the requirements of Low Carbon Fuel Standard (LCFS), Title 17, Division 3, Chapter 1, Subchapter 10, Article 4, Sub article 7, of California Code of regulations (CCR), Sections 95480 through 95490 (collectively referred to as "LCFS") applies to any transportation fuel, as defined in section 95481, that is sold, supplied, or offered for sale in California, and to any person who, as a "regulated party" defined in section 95481 and specified in section 95484(a), is responsible for a transportation fuel. LCFS regulation became effective on January 12, 2010.
- iv. **Primary delivery location:**

Rail Operations Center
3748 Regional Parkway
Santa Rosa, CA 95403
- v. Service Provider's delivery vehicles shall be capable of navigating within the Delivery Locations while delivering the quantity of fuel required.
- vi. **Bill of Lading Requirement:** A Bill of Lading will be provided to SMART's onsite personnel at each delivery. The Bill of Lading shall identify the supplier origin, the fuel type

delivered, the number of gallons delivered, and the number of fueling labor hours in quarter hour increments.

c. Task 3 – Supply, Deliver, and Providing Fueling Services of Type 2-D (Red Dyed No. 2) Diesel Fuel to the Schellville Freight Depot

- i. Service Provider shall supply, deliver, and fuel directly into SMART's freight locomotive(s) via the wet-hose method the following fuel type: **Diesel Fuel, Type 2-D (Red Dyed No. 2)**.
- ii. The fuel shall conform to California Code of Regulations (CCR) Title 4, Division 9, Chapter 6, Article 5, Section 4144. Diesel fuel shall also meet the requirements of the California Code of Regulation, Title 13, Division 3, Chapter 5, Article 2, Section 2281 (sulfur content) and section 2282 (aromatic hydrocarbon). Alternative diesel formulations must be certified by CARB. Evidence of such fact shall be available to SMART in the form of a letter certifying such compliance and signed by a responsible official of the Service Provider. The fuel shall meet the requirements of Low Carbon Fuel Standard (LCFS), Title 17, Division 3, Chapter 1, Subchapter 10, Article 4, Sub article 7, of California Code of regulations (CCR), Sections 95480 through 95490 (collectively referred to as "LCFS") applies to any transportation fuel, as defined in section 95481, that is sold, supplied, or offered for sale in California, and to any person who, as a "regulated party" defined in section 95481 and specified in section 95484(a), is responsible for a transportation fuel. LCFS regulation became effective on January 12, 2010.
- iii. **Primary delivery location:**

Schellville Freight Depot
1480 Highway 121
Sonoma, CA 95476
- iv. Service Provider's delivery vehicles shall be capable of navigating within the Delivery Locations while delivering the quantity of fuel required.
- v. **Bill of Lading Requirement:** A Bill of Lading will be provided to SMART's onsite personnel at each delivery. The Bill of Lading shall identify the supplier origin, the fuel type delivered, the number of gallons delivered, and the number of fueling labor hours in quarter hour increments.

d. Task 4 – Supply, Deliver, and Provide Fueling Services of Diesel Exhaust Fluid (DEF) to the Rail Operation Center

- i. Service Provider shall supply and deliver Diesel Exhaust Fluid (DEF) to the Rail Operation Center to maintain supply of SMART's one (1) 350-gallon above ground tote and one (1) 110-gallon mobile tote.

Diesel Exhaust Fluid (DEF) Specification Requirements:

Specification	Limits	Units
Urea	31.8 – 33.2	% by weight
Density/Specific Gravity (at 25°C / 77°F)	1.094 (approx. 9.2 lbs./gal.)	
Refractive Index (at 20°C / 68°F)	1.3814 – 1.3843	
Alkalinity as NH3	0.2 max.	% by weight
Biuret	0.3 max.	% by weight
Aldehyde	0.0005 max.	% by weight
Insolubles	0.002 max.	% by weight
Phosphate (PO4)	0.00005 max.	% by weight
Calcium	0.00005 max.	% by weight
Iron	0.00005 max.	% by weight
Copper	0.00002 max.	% by weight
Zinc	0.00002 max.	% by weight
Chromium	0.00002 max.	% by weight
Nickel	0.00002 max.	% by weight
Aluminum	0.00005 max.	% by weight
Magnesium	0.00005 max.	% by weight
Sodium	0.00005 max.	% by weight
Potassium	0.00005 max.	% by weight
Appearance	Colorless Clear Liquid	

- ii. The Service Provider that holds the *primary designation* shall utilize a “keep-full” program by installing an automatic sensor device in SMART's 350-gallon above ground storage tote to monitor tank levels remotely and ensure that tanks do not fall below 30%. Any change to this minimum threshold will require a written amendment to this Agreement.

These above-ground totes are located at the ROC in Santa Rosa, CA. These automatic sensor devices would become SMART's property at the end of the Agreement.

- iii. **Primary delivery location:**

Rail Operations Center
 3748 Regional Parkway
 Santa Rosa, CA 95403

- iv. Service Provider's delivery vehicles shall be capable of navigating within the Delivery Locations while delivering the quantity of DEF required.
- v. Bill of Lading Requirement: A Bill of Lading will be provided to SMART's onsite personnel at each delivery. The Bill of Lading shall identify the supplier origin, the number of gallons delivered, and the number of fueling labor hours in quarter hour increments.

e. Task 5 - Supply, Deliver, and Provide Fueling Services of Renewable Diesel Type RD-99 and Red Dyed No. 2 Diesel Fuel to Secondary Locations or Provide Additional Fuel Deliveries As Requested

- i. During emergencies or planned system outages, fueling may be required at locations other than the two primary locations listed above in Tasks 1 through 4 or require additional daytime fueling deliveries. For planned system outages, these service requests will be made in writing by the SMART Manager. For emergency situations, the SMART Manager may request fueling services via phone call if written request is not feasible.
- ii. Service Provider shall respond to additional daytime fueling requests within 2 hours of notification by the SMART Manager.

B. Delivery and Fuel Service Requirements

- a) Service Provider's personnel shall wear the following personal protective equipment (Hard Hat, Safety Vest, Boots) while on SMART's property.
- b) Service Provider's personnel shall comply with all directions given by SMART staff, given that the work being performed occurs around an active railroad and safety is of utmost importance.
- c) Service Provider shall ensure that all trucks, railcars, and vessels used to transport the fuel products are drained, cleaned, and inspected prior to loading if the previous load contained other petroleum product(s) that would contaminate the diesel fuel.
- d) Service Provider's delivery vehicles shall be equipped with vapor recovery devices that are in compliance with all Federal, State, and Local regulations and requirements. These devices shall be utilized during the delivery of fuel as required.
- e) Service Provider's delivery vehicles shall be equipped with a Snyder

1720 LF fuel nozzle (low flow 20-100 GPM) for all direct-to-DMU or direct-to-locomotive, wet hose delivery. Service Provider shall supply all hoses used for such delivery.

- f) The Rail Operation Center is a gated and secured facility. Service Provider will call the on-duty supervisor each night when enroute to the Rail Operations Center. The SMART Manager shall provide the contact number(s) for the on-duty supervisor in writing.
- g) All trains must be fueled nightly, unless otherwise directed by the SMART Manager or their on-site designated representative.
- h) The Service Provider's delivery driver will be solely responsible for fueling using the wet-hose method the trains and freight locomotives. SMART staff will not perform the fueling.
- i) During the duration of this Agreement, SMART may procure a mobile fueling solution. If SMART does procure a mobile fueling solution, ensure SMART's mobile fueling solution is filled to capacity each night will be included in this scope of work.
- j) Service Provider shall respond to daytime fueling calls within two (2) hours of notification. Daytime hours are between 8:00 am and 5:00 pm (Pacific).

C. Spills and Damage to Delivery Site

- a) Service Provider shall be responsible for all costs and remediation services resulting from any damage, contamination, or citations, which may be incurred as a result of any fuel spill during the delivery or fueling process.
- b) Drivers are to immediately report any spill on SMART's property to SMART's onsite personnel, the SMART Manager, and all local authorities as required by local, state, and federal law.

D. Quality Control Requirements

- a) Service Provider shall inspect and test fueling products according to the methods specified in active standards, ASTM D5453 for sulfur, D5186 for aromatics and other test methods specified in ASTM D975 prior to delivery.
- b) Fuel shall not deteriorate in ordinary storage and shall not form excessive gum, resin, or deposits. Fuel shall be visually free of undissolved water, sediment, and suspended matter.

- c) Service Provider shall provide traceability on all shipments back to refinery within five business days upon request from SMART.
- d) SMART may, at any time, take a sample of the delivered fuel and conduct an independent test to determine quality of fuel. This sampling will be taken by SMART personnel or SMART Consultants with the cooperation of the Service Provider's delivery personnel. The sample will be tested by an independent third-party laboratory. If the test analysis shows that the fuel does not comply with this specification, the Service Provider shall be notified immediately, provided the lab report, and responsible for all cost related to the test analysis, including shipping and lab test(s).
- e) For each occurrence that the fuel testing reveals that non-compliant fuel was delivered to SMART, Service Provider shall, at its sole cost and expense, immediately replace the non-compliant fuel with fuel meeting the specifications stated in this Agreement, reimburse SMART for the non-compliant fuel delivered, and pay for subsequent independent testing to ensure the quality of the fuel. If SMART incurs a fine or any other cost or expense relating to the Service Provider's delivery of non-compliant fuel, Service Provider will reimburse SMART for the payment of the fine or other costs and expenses, including, but not limited to, costs associated with damage to the DMU's, or equipment related to delivery of non-compliant fuel.

E. Emergency Fueling Service

- a) SMART is considered an essential service and first response resource during emergency events. SMART must be available to assist in providing mutual aid to other jurisdictions (for example, by providing transportation of supplies and assisting with evacuations of people in emergency situations).
- b) Given this critical role, business continuity is essential, and Service Provider shall be expected to provide fuel and fueling services during emergency events.
- c) Service Provider agrees that SMART deliveries will receive priority routing and resource allocation under emergency conditions.

IV. Timelines

A. Task 1: Supply and Deliver Renewable Diesel (RD 99) - Hydrotreated Vegetable Oil (HVO) to the Rail Operation Center

a. Timelines:

- i. Supply and deliver nightly between 11:00 pm and 3:00 am (Pacific), 7 days per week, including weekends and holidays, unless notified otherwise in writing by the SMART Manager ("Passenger Fueling Window")

B. Task 2: Supply, Deliver, and Provide Fueling Services of Type 2-D (Red Dyed No. 2) Diesel Fuel to the Rail Operation Center as a back-up fuel supply when requested.

a. Timelines:

- i. Supply and deliver conventional Type 2-D (Red Dyed No. 2) Diesel Fuel to the Rail Operation Center only as requested by the SMART Manager in writing when Renewable Diesel fuel is unavailable or in other emergency situations.
- ii. Supply and delivery shall occur between 11:00 pm and 3:00 am (Pacific), 7 days per week, including weekends and holidays, unless notified otherwise in writing by the SMART Manager (“Passenger Fueling Window”)

C. Task 3: Supply, Deliver, and Providing Fueling Services of Type 2-D (Red Dyed No. 2) Diesel Fuel to the Schellville Freight Depot

a. Timelines:

- i. Supply and deliver Type 2-D (Red Dyed No. 2) Diesel Fuel to the Schellville Freight Depot every other week on Mondays between 7:00 am and 9:00 am (Pacific), unless notified otherwise in writing by the SMART Manager (“Freight Fueling Window”).

D. Task 4: Supply, Deliver, and Provide Fueling Services of Diesel Exhaust Fluid (DEF) to the Rail Operation Center

a. Timelines:

- i. Supply and delivery of Diesel Exhaust Fluid (DEF) deliveries will be made between the hours of 11:00pm and 3:00am (Pacific).

E. Task 5: Supply, Deliver, and Provide Fueling Services of Renewable Diesel Type RD-99 and Red Dyed No. 2 Diesel Fuel to Secondary Locations or Provide Additional Fuel Deliveries As Requested

a. Timelines:

- i. As Requested

The “Passenger Fueling Window” and the “Freight Fueling Window” schedules defined herein are subject to change throughout the during of the Agreement as operation needs require. Any change made to the “Passenger Fueling Window” and “Freight Fueling Window” shall require a formal written amendment to this Agreement.

V. Performance Standards & Accountability

Given that the Sonoma-Marín Area Rail Transit District (SMART) requires uninterrupted fueling services to support safe, reliable daily passenger rail

operations and freight rail operations, SMART has awarded multiple contracts for the provision and delivery of fuel and Diesel Exhaust Fluid to serve as redundancy to ensure business operations continuity.

A. Multiple Awarded Contracts

SMART has awarded multiple contracts for the provision and delivery of fuel and Diesel Exhaust Fluid.

These contracts were ranked as Primary, Secondary, and Tertiary during the award process.

The Primary Contract will serve as SMART's Primary Service Provider for the provision and delivery of fuel and diesel exhaust fluid.

The Secondary Contract will serve as the immediate back-up to the Primary Contract and will be called upon when the Primary Contract is unable to respond.

The Tertiary Contract will serve as the secondary back-up and will be called upon when the Secondary Contract is unable to respond.

B. Adjustment of Ranking

SMART may make adjustments to the ranking of these contracts when Service Providers have more than two (2) fueling failures in a rolling 90-day period.

Definition of Fueling Failure: Missing a scheduled fueling window, failure to deliver, failing to fuel all trains before the first train's departure.

Adjustments made to rankings are in addition to liquidated damage assessments made.

SMART also reserves the right to terminate a contract in accordance with the terms of this Agreement for continued fueling failures.

VI. Acceptance Criteria

The SMART Manager or designee will inspect each fuel delivery to ensure that all work has been completed in conformance with the SMART Manager's directions and the requirements of this Agreement.

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**

RENEWABLE DIESEL FUEL: TYPE RD-99	
Delivery Location	Cents per-gallon (rounded to the nearest thousandths of a cent) firm fixed fee markup over the OPIS Renewable R99 ULR San Francisco, CA Gross Contract Average Daily Rack Rate
Rail Operation Center	\$0.4000
Schellville	\$0.4500

**The Oil Price Information Service (OPIS) rack average rate is based on the San Francisco, California area, specifically the Renewable R99 ULR San Francisco, CA Gross Contract Average Daily Rack Rate as published at 10:00am (Eastern).*

Price includes fuel and all direct and indirect costs associated with transportation of fuel to SMART's location. Price does not include applicable taxes and wet-hosing labor fees. Applicable taxes shall be added to the invoice. Note, SMART is exempt from Federal Excise Tax.

The firm fixed fee markup amount listed above shall remain the same for the duration of the Agreement.

DIESEL FUEL: TYPE 2-D (RED DYED # 2)	
Delivery Location	Cents per-gallon (rounded to the nearest thousandths of a cent) firm fixed fee markup over the OPIS Carb Ultra-Low Red Diesel, San Francisco Average with CAR Daily Rack Rate
Rail Operation Center	\$0.5000
Schellville Freight Depot	\$0.5500

**The Oil Price Information Service (OPIS) rack average rate is based on the San Francisco, California area, specifically the Gross Carb Ultra Low Sulfur Distillate Prices with CAR Cost for RD No. 2 as published at 10:00am (Eastern).*

Price includes fuel and all direct and indirect costs associated with transportation of fuel to SMART's location. Price does not include applicable taxes and wet-hosing labor fees. Applicable taxes shall be added to the invoice. Note, SMART is exempt from Federal Excise Tax.

The firm fixed fee markup amount listed above shall remain the same for the duration of the Agreement.

DIESEL EXHAUST FLUID (DEF)	
Delivery Location	Per Gallon Price

Rail Operation Center	\$3.95
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Price includes Diesel Exhaust Fluid (DEF) and all direct and indirect costs associated with transportation of Diesel Exhaust Fluid (DEF) to SMART's location. Price does not include applicable taxes and wet-hosing labor fees.

The price per gallon listed above shall be fixed for the initial three-year term of the Agreement. Upon completion of the initial three-year term, and prior to the commencement of each optional term of this Agreement, Service Provider may, upon 60 days written notice to the SMART Manager, request an increase in the rate equal to the percent change identified in the Producer Price Index for Synthetic Ammonia, Nitric Acid, Ammonia Compounds, and Urea, Not Seasonally Adjusted, as reported by the Bureau of Labor Statistics, U.S. Department of Labor, using the month of April of the most recent year over April of the previous year. If Service Provider does not submit a written request at least 60 days before the start of the succeeding Agreement year, Service Provider waives any increase for the optional term.

WET-HOSE FUELING LABOR COST	
Delivery Location	Per Hour
Rail Operation Center	\$99.00
Schellville Freight Depot	\$99.00

Price includes all labor, supervision and all other direct and indirect costs associated with performing actual wet-hose fueling services into SMART's Diesel Multiple Units (DMUs) and Freight trains.

Wet-Hose Fueling Labor Rates shall be fixed for the initial three-year term of the Agreement. Upon completion of the initial three-year term, and prior to the commencement of each optional term of this Agreement, Service Provider may, upon 60 days written notice to the SMART Manager, request an increase in the fee equal to the Consumer Price Index, San Francisco Area, as reported by the Bureau of Labor Statistics, U.S. Department of Labor, using the month of April for the most recent year. The maximum increase shall be 5%. If Service Provider does not submit a request at least 60 days before the start of the succeeding Agreement year, Service Provider waives any CPI increase for the optional term.

**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. **Buy America.**

Applicability: All Rollingstock Purchases, Materials and Supplies Contracts, and Construction Contracts >\$150,000.

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 and 2 CFR § 200.322. Domestic preferences for procurements, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7.

Construction materials used in the Project or Services are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA. The Contractor acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u) and 49 C.F.R. § 661.11.

The Contractor must submit to SMART the appropriate Buy America certification. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive. For more information, please see the FTA's Buy America webpage at: <https://www.transit.dot.gov/buyamerica>.

4. Cargo Preference Requirements.

Applicability: All Rolling Stock Purchases, Materials & Supplies, and Construction Contracts which require transportation by ocean vessels.

The Contractor agrees to:

(a) to use privately owned United States flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Agreement to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels;

(b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph, to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA or FEMA recipient (through the Contractor in the case of a subcontractor's bill-of-lading); and

(c) to include these requirements in all subcontracts issued pursuant to this Agreement when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

5. 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-Marine Area Rail Transit District and FTA, or the Sonoma-Marine 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.

6. 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 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.

7. 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.

8. Contract Work Hours and Safety Standards Act.

Applicability: All Operations Management, Rolling Stock Purchases, and Construction Contracts >\$100,000.

- a. Where applicable (see 40 U.S.C. § 3701 et seq), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II.
- b. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- c. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess

of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

- (2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

- (3) Withholding for unpaid wages and liquidated damages. SMART shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

9. 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 any 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.

10. 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.

11. 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:

Statement of Unavailability of U.S.-Flag Air Carriers

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.

12. 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.

13. No Obligation by the Federal Government.

Applicability: All Contracts

The Sonoma-Marín 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

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

20. 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).)

21. 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.

22. 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) If the termination is for the convenience of SMART, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

(c) 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.

(d) 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.

(e) 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. If, after serving a Notice of Termination for Default, SMART determines that the Contractor has an excusable reason for not performing, SMART, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

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. 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.

25. 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.

26. 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.

27. Geographic Restrictions.

Applicability: All Contracts

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

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

SERVICE AGREEMENT

This agreement (“Agreement”), dated as of June 1, 2026 (“Effective Date”) is by and between the Sonoma-Marín Area Rail Transit District (hereinafter “SMART”), and Pinnacle Petroleum, Inc. (hereinafter “Service Provider”).

RECITALS

WHEREAS, SMART issued a Request for Proposals for the Supply and Delivery of Fuel and Diesel Exhaust Fluid on January 12, 2026 to procure one or more Service Providers to supply and deliver fuel and Diesel Exhaust Fluid to SMART facilities; and

WHEREAS, Service Provider submitted a Proposal prior to the deadline for Proposals on February 13, 2026; and

WHEREAS, Service Provider represents that it is a duly qualified, licensed, and experienced in the areas of diesel, renewable diesel, diesel exhaust fluid supply, transportation, mobile fueling services, and related services; and

WHEREAS, in the judgment of the Board of Directors of SMART or District, it is necessary and desirable to employ the services of Service Provider to supply, deliver, and perform mobile fueling services of diesel, renewable diesel, and diesel exhaust fluid to SMART’s Rail Operation Center for its Diesel Multiple Units (“DMUs”) and equipment and the Schellville Freight Depot for its freight locomotives and equipment; and

WHEREAS, SMART has designated Service Provider as the Tertiary Service Provider for the supply and delivery of fuel and diesel exhaust fluid that holds the Tertiary Designation; 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
- (c) Exhibit C: FTA, DOT, & FEMA Requirements

ARTICLE 3. REQUEST FOR SERVICES.

Section 3.01 Initiation Conference. SMART's Vehicle Maintenance Manager, SMART's Freight Manager, or their designees (hereinafter "SMART Manager") will initiate all requests for services, 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 or fuel products under this Agreement. This is an indefinite quantity indefinite delivery (IDIQ) Agreement.

ARTICLE 4. SCOPE OF SERVICES.

Section 4.01 Scope of Work. Service Provider shall perform services within the timeframe outlined in **Exhibit A** (cumulatively referred to as the "Scope of Work").

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

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

Liz McKinley, President
Eileen Hill, Vice President
Jason Baker, Senior Supply Chain Manager
Kristen Tavares, Contract Manager
Alan Alatoree, Logistics Supervisor
Josie Yardrick, Billing Supervisor

ARTICLE 5. PAYMENT.

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

Section 5.01 Service Provider 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 Service Provider 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 Service Provider shall be paid in accordance with the rates established in **Exhibit B**; provided, however, that total payments to Service Provider shall not exceed \$2,000,000.00, without written amendment to this Agreement. Service Provider shall submit its invoices in arrears on a *monthly basis* in a form approved by the Chief Financial Officer. Each invoice shall provide the following itemized information for each fueling service that took place in the previous month for each SMART location: (i) the name and location of delivery, (ii) the fuel/product supplied by location; (iii) the number of gallons delivered to each location, (iv) the daily OPIS rate, fixed-fee markup, and all applicable regulatory taxes and fees itemized for the Renewable Diesel RD99 and the Type 2-D Red Dyed Diesel, (v) the per gallon rate for Diesel Exhaust Fluid, and (vi) the time in quarter hours to perform the wet-hose fueling service and corresponding labor rate. SMART is exempt from the payment of Federal and State Excise and Transportation taxes. SMART does not reimburse Service Provider for travel time.

Section 5.03 Service Provider 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 Service Provider to SMART.

Section 5.04 Service Provider 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 Service Provider 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 Service Provider to abide by these requirements may delay or prevent payment of invoices or cause such invoices to be returned to the Service Provider unpaid.

ARTICLE 6. TERM OF AGREEMENT.

Section 6.01 The term of this Agreement shall remain in effect through May 31, 2029, with two (2) one-year options to extend thereafter 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. 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. 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, should Service Provider 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 Service Provider 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, Service Provider, 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, Service Provider 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 Service Provider 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 Service Provider 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 Service Provider.

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

Service Provider 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 Service Provider, to the extent caused by the Service Provider's negligence, recklessness or willful misconduct in its performance or obligations under this Agreement. Service Provider agrees to provide a complete defense for any claim or action brought against SMART based upon a claim relating to Service Provider's performance or obligations under this Agreement. Service Provider'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 Service Provider's expense, subject to Service Provider'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 Service Provider or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

ARTICLE 9. LIQUIDATED DAMAGES

Section 9.01 Time is of the essence. Execution of this Agreement by Service Provider shall constitute acknowledgement by Service Provider that Service Provider understands, has ascertained and agrees that SMART will actually sustain damages in the amount described in Article 9 when provision of services are delayed or not provided. Service Provider and SMART agree that specified measures of liquidated damages shall be presumed to be the damages actually sustained by SMART as defined below, and that because of the nature of the Service, it would be impracticable or extremely difficult to fix the actual damages.

Section 9.02 Liquidated damages may only be assessed on the Service Provider that currently holds the *primary designation*. Liquidated damages shall be

considered not as a penalty but as agreed monetary damage sustained by SMART related to delayed or cancelled train operations because Service Provider failed to perform and complete the required services within time agreed to in this Agreement.

Section 9.03 SMART may deduct from any money due or to become due to Service Provider subsequent to expiration of the Agreement, a sum representing then-accrued liquidated damages. Should money due or to become due to Service Provider be insufficient to cover aggregate liquidated damages due, then Service Provider forthwith shall pay the remainder of the assessed liquidated damages to SMART.

Section 9.04 Liquidated Damages are defined below:

9.04.1: \$1,491.00 per Missed Fueling Window

This Liquidated Damage will be assessed when Service Provider fails to appear or misses the "Passenger Fueling Window" or "Freight Fueling Window".

9.04.2: \$2,982.00 per Passenger Trip Delayed as a result of Service Provider's fueling failures.

This Liquidated Damage will be assessed for *each* scheduled train trip that is delayed as a result of Service Provider's non-supply and delivery or late supply and delivery of fuel and fuel products under this Agreement.

ARTICLE 10. INSURANCE.

With respect to performance of work under this Agreement, Service Provider shall maintain and shall require all of its Subcontractors, Service Providers, and other agents to maintain, insurance as described below. If the Service Provider 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 Service Provider. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to SMART.

Section 10.01 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 10.02 General Liability Insurance. Commercial General Liability insurance covering products-completed and ongoing operations, property damage, bodily injury and personal injury using an occurrence policy form, in an amount no less than \$5,000,000 per occurrence, and \$10,000,000 aggregate.

Said policy shall include a Railroads CG 24 17 endorsement removing the exclusion of coverage, if applicable, for bodily injury or property damage arising out of operations within 50 feet of any railroad property and affecting any railroad bridge, trestle, tracks, roadbeds, tunnel, underpass or crossing.

Section 10.03 Automobile Insurance. Automobile Liability insurance covering bodily injury and property damage in an amount no less than \$5,000,000 combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles.

The Automobile Liability policy shall be endorsed to include Transportation Pollution Liability Insurance, covering materials to be transported by Service Provider pursuant to this Agreement. This coverage may also be provided in the Pollution Liability policy.

Said policy shall also include a CA 20 70 10 13 endorsement removing the exclusion of coverage for bodily injury or property damage arising out of operations within 50 feet of any railroad bridge, trestle, track, roadbeds, tunnel, underpass or crossing.

Section 10.04 Pollution Liability Insurance. Pollution Liability insurance in an amount no less than \$2,000,000 per incident. The Pollution Liability policy shall be written on an occurrence basis with coverage for bodily injury, property damage and environmental damage, including cleanup costs arising out of third-party claims, for pollution conditions, and including claims of environmental authorities, for the release of pollutants caused by activities related to the Contract. Coverage shall include the Service Provider as the named insured and shall include coverage for acts by others for whom the Service Provider is legally responsible. Coverage to be provided for bodily injury to or destruction of tangible property, including the resulting loss of use thereof, loss of use of tangible property that has been physically injured, and natural resource damage. There shall be no insured vs. insured exclusion in the policy.

Section 10.05 Endorsements. Prior to commencing work, Service Provider shall file Certificate(s) of Insurance with SMART evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. Said endorsements and Certificate(s) of Insurance shall stipulate:

- (a) SMART, its officers, and employees shall be named as additional insured on all policies listed above, with the exception of the workers compensation insurance policy and the professional services liability policy (if applicable).
- (b) That the policy(ies) is Primary Insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim which Service Provider 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 Service Provider. Said policy shall protect Service Provider 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) Service Provider hereby grants to SMART a waiver of any right to subrogation which any insurer of said Service Provider may acquire against SMART by virtue of the payment of any loss under such insurance. Service Provider 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 10.06 Deductibles and Retentions. Service Provider shall be responsible for payment of any deductible or retention on Service Provider's policies without right of contribution from SMART. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the name insured is not acceptable.

Section 10.07 Claims Made Coverage. If any insurance specified above is written on a claims-made coverage form, Service Provider 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, Service Provider shall purchase "extending reporting" coverage for a minimum of three (3) years after completion of the work.

Section 10.08 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, Service Provider shall provide certified copies of the policies that correspond to the policies listed on the Certificates of Insurance. Service Provider 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. Service Provider 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 10.09 Policy Obligations. Service Provider's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

Section 10.10 Material Breach. If Service Provider, 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 Service Provider resulting from said breach. Alternatively, SMART may purchase such required insurance coverage, and without further notice to Service Provider, SMART may deduct from sums due to Service Provider any premium costs advanced by SMART for such insurance. These remedies shall be in addition to any other remedies available to SMART.

Section 10.11 Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice to SMART.

ARTICLE 11. PROSECUTION OF WORK.

When work is requested of Service Provider 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 Service Provider's performance of

this Agreement shall be extended by a number of days equal to the number of days Service Provider has been delayed.

ARTICLE 12. 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 Service Provider 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 Service Provider shall be entitled to no compensation whatsoever for the performance of such work. Service Provider 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 13. REPRESENTATIONS OF SERVICE PROVIDER.

Section 13.01 Standard of Care. SMART has relied upon the professional ability and training of Service Provider as a material inducement to enter into this Agreement. Service Provider 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 Service Provider's work by SMART shall not operate as a waiver or release.

Section 13.02 Status of Service Provider. The parties intend that Service Provider, 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. Service Provider 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, Service Provider expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

Section 13.03 Taxes. Service Provider 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. Service Provider 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 Service Provider'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, Service Provider agrees to furnish SMART with proof of payment of taxes on these earnings.

Section 13.04 Records Maintenance. Service Provider 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. Service Provider shall maintain such records for a period of four (4) years following completion of work hereunder. Service Provider and SubService Providers 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 13.05 Conflict of Interest. Service Provider 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. Service Provider 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, Service Provider 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 Service Provider's or such other person's financial interests.

Section 13.06 Nondiscrimination. Service Provider 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. Service Provider 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 13.07 Assignment Of Rights. Service Provider assigns to SMART all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Service Provider in connection with this Agreement. Service Provider 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. Service Provider'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. Service Provider 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 13.08 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 Service Provider incorporates into the work product any pre-existing work product owned by Service Provider, Service Provider hereby acknowledges and agrees 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 Service Provider 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, Service Provider 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. Service Provider 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 14. 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 15. 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 16. 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's Vehicle Maintenance Manager: Sonoma-Marín Area Rail Transit District
Attn: Jessie McDermott
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954
jmcdermott@sonomamarintrain.org
707-981-1047

If to SMART's Freight Manager: Sonoma-Marín Area Rail Transit District
Attn: Jon Kerruish
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954
jkerruish@sonomamarintrain.org
415-717-2547

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 Service Provider: Pinnacle Petroleum, Inc.
Attn: Liz McKinley
16651 Gemini Lane
Huntington Beach, CA 92647
lmckinley@pinnaclepetroleum.com
714-841-8877

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 17. MISCELLANEOUS PROVISIONS.

Section 17.01 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 17.02 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 17.03 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. Service Provider 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. Service Provider and SMART acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

Section 17.04 Licensing Laws. The Service Provider shall comply with the provisions of Chapter 9 Division 3 of the Business and Professions code concerning the licensing of contractors. All Service Providers shall be licensed in accordance with the laws of the State of California and any Service Provider not so licensed is subject to the penalties imposed by such laws. Prior to commencing any work under contract, all Service Providers and subcontractors must show that they hold appropriate and current Licenses in the State of California. The Service Provider shall provide such subcontractor information, including the class type, license, number, and expiration date to SMART.

Section 17.05 Drug-Free Workplace. Service Provider certifies that it will provide a drug-free workplace in compliance with Government Code §8350-§8357.

Section 17.06 Claims Made Against Service Provider. Service Provider shall provide SMART with copies of all correspondence and records relating to any claims made against the Service Provider while working on SMART's property by SMART employees or third-party on a monthly basis.

Section 17.07 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 17.08 Relationships of the Parties: No Intended Third-Party Beneficiaries. The Parties intend by this Agreement to establish a cooperative funding relationship, and do not intend 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 17.09 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 17.10 Use of SMART Name and Logo Restrictions. Service Provider is prohibited from using SMART's name and logo unless expressly authorized herein or by written authorization from SMART's legal counsel.

Section 17.11 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 17.12 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 17.13 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 17.14 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.

SERVICE PROVIDER: PINNACLE PETROLEUM, INC.

By: _____
Liz McKinley, 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-Marín Area Rail Transit District (SMART) has contracted with Pinnacle Petroleum, Inc. (hereinafter “Service Provider”) to provide uninterrupted fueling services to support safe, reliable, daily passenger rail operations and freight rail operations.

Service Provider shall supply and deliver the following fuel products to the following SMART facilities:

Rail Operation Center (Santa Rosa, CA)

- Renewable Diesel Type RD-99 Fuel (RD/Hydrotreated Vegetable Oil aka HVO) as the *Primary Fuel Source* for this location.
- Red Dyed No. 2 Diesel Fuel Type 2-D as the *Back-Up/Emergency Fuel Source* for this location when Renewable Diesel fuel is unavailable to ensure continued passenger operations.
- Diesel Exhaust Fluid (DEF)

Schellville Freight Depot (Sonoma, CA)

- Red Dyed No. 2 Diesel Fuel Type 2-D as the *Primary Fuel Source* for this location.

Delivery & Fueling Requirements

- SMART **DOES NOT** have fuel storage tanks at its properties.
- SMART has a fleet of eighteen (18) Diesel Multiple Units (“DMUs”) trains located at the Rail Operation Center that require the Service Provider to directly fuel the trains using the wet hose method on a **nightly basis** between the hours of **11:00pm and 3:00am (Pacific), 365 days per year (Holidays Included)**.

Service Provider’s delivery vehicles shall be equipped with a Snyder 1720 LF fuel nozzle (low flow 20-100 GPM) for all direct-to-DMU wet hose delivery. Service Provider shall supply all hoses used for such delivery.

- SMART **DOES** have one (1) 350-gallon above-ground storage tote and

one (1) small 110-gallon mobile tote used to store Diesel Exhaust Fluid (DEF) at the Rail Operation Center. Service Provider shall deliver and pump DEF into these totes.

The primary Service Provider awarded an Agreement shall utilize a “keep full” program on the (1) 350-gallon above ground tote by installing automatic sensor device(s) in the tote and monitor levels to ensure the tote does not fall below 30% of full capacity at any given time.”

- Service Provider shall directly fuel SMART’s freight locomotives located at the Schellville Freight Depot using the wet hose method **every other week** on **Mondays** between the hours of **7:00am – 9:00am (Pacific)**.
- Additional deliveries may be required at other SMART facilities or trackside locations as directed. These situations are expected to be infrequent and generally under emergency conditions.

A. Objectives:

a. Objective 1: Nightly Supply, Delivery, and Fueling Services of Renewable Diesel Type RD-99 to the Rail Operation Center.

Supply and deliver nightly via the wet-hose method, Renewable Diesel Type RD-99 (RD/HVO) compliant with EN 15940, ASTM D975 S15, CARB diesel regulations (Title 13 CCR §§2281–2282), and LCFS (Title 17 CCR §§95480–95490).

Fuel all eighteen (18) trains nightly between the hours of 11:00 PM and 3:00 AM (Pacific), 365 days per year, including weekends, Holidays, and emergency declaration events.

Fueling must be completed before the departure of the first scheduled train.

b. Objective 2: Supply, Deliver, and Provide Fuel Services of Red Dyed No. 2 Diesel Fuel in Backup/Emergency Situations

If directed by SMART, supply, deliver, and provide fueling services using the wet-hose method of conventional No. 2-D ULSD fuel compliant with ASTM D975 S15 and CARB diesel regulations into trains.

c. Objective 3: Regular Supply, Delivery, and Fueling Services of Red Dyed No. 2 Diesel Fuel to SMART’s Schellville Freight Depot

Provide regular supply, delivery, and fueling services of Red Dyed No. 2 Diesel Fuel to the Schellville Freight Facility.

d. Objective 4: Supply, Delivery, and Fueling Services of Diesel Exhaust Fluid (DEF) to the Rail Operation Center

Provide regular supply, delivery, and fueling services of diesel exhaust fluid (DEF) that meets ISO 22241 standards into SMART's DEF storage totes located at the Rail Operation Center. Service Provider shall use a keep-full program to ensure SMART's DEF tanks do not fall below 30%.

e. Objective 5: Supply, Delivery, and Fueling Services of Renewable Diesel Type RD-99 and Red Dyed No. 2 Diesel Fuel to Secondary Locations As Requested

Supply, deliver, and provide fueling services of Renewable Diesel Type RD-99 or Red Dyed No. 2 Diesel Fuel to other locations along SMART's mainline or freight tracks when requested. This is anticipated to be infrequent and generally under emergency conditions to preserve train passenger and freight operations.

Quality fuel and reliable fueling services are critical elements to SMART's ability to provide safe and reliable transportation to the North Bay community.

The absence of onsite storage tanks at SMART's facilities and the necessity for nightly wet-hosing fueling services in order to run trains the following day require a strong Service Provider who is committed to SMART's mission and can guarantee performance that is in strict compliance with the terms and conditions of this Agreement.

II. Contract Management

All work shall be initiated, scheduled, and reviewed by SMART's Vehicle Maintenance Manager (hereinafter "SMART Manager"), or designee for products and services for the Rail Operation Center.

All work shall be initiated, scheduled, and reviewed by SMART's Freight Manager (hereinafter "SMART Manager"), or designee for products and services for the Freight Depot.

Work may be initiated in writing or by teleconference.

To ensure uninterrupted fueling services, SMART has awarded three (3) Agreements with primary, secondary, and tertiary designations.

1. Primary Designation

The Service Provider responsible for performing all services identified

herein.

2. Secondary Designation

The Service Provider that shall serve as the immediate back-up Service Provider who will be contacted to perform services identified herein on an as-needed basis when the primary Service Provider is unable to perform.

3. Tertiary Designation

The Service Provider that shall serve as the second back-up Service Provider who will be contacted to perform services identified herein on an as-needed basis when the secondary Service Provider is unable to perform or during emergency situations.

Pinnacle Petroleum, Inc. holds the Tertiary Designation and serves as SMART's second back-up Service Provider under this Agreement.

III. **Scope of Work**

Service Provider shall perform the following services under this Agreement:

A. Supply, Deliver, and Perform Fueling Services to SMART for the following fuel products:

a. Task 1: Supply and Deliver Renewable Diesel (RD 99) - Hydrotreated Vegetable Oil (HVO) to the Rail Operation Center

- i. Service Provider shall supply, deliver, and fuel directly into SMART's trains via the wet-hose method the following fuel type: **Renewable Diesel, Hydrotreated Vegetable Oil.**
- ii. Service Provider shall supply, deliver, and fuel directly into provided portable fuel tank, ensuring it is topped off at each visit.
- iii. The fuel shall conform to the EN15940 standard. The fuel shall conform to California Code of Regulations (CCR) Title 4, Division 9, Chapter 6, Article 5, Section 4144. Diesel fuel shall also meet the requirements of the California Code of Regulation, Title 13, Division 3, Chapter 5, Article 2, Section 2281 (sulfur content) and section 2282 (aromatic hydrocarbon). Alternative diesel formulations must be certified by CARB. Evidence of such fact shall be available to SMART in the form of a letter certifying such compliance and signed by a responsible official of the Service Provider. The fuel shall meet the requirements of Low Carbon Fuel

Standard (LCFS), Title 17, Division 3, Chapter 1, Subchapter 10, Article 4, Sub article 7, of California Code of regulations (CCR), Sections 95480 through 95490 (collectively referred to as “LCFS”) applies to any transportation fuel, as defined in section 95481, that is sold, supplied, or offered for sale in California, and to any person who, as a “regulated party” defined in section 95481 and specified in section 95484(a), is responsible for a transportation fuel. LCFS regulation became effective on January 12, 2010.

iv. **Primary delivery location:**

Rail Operations Center
3748 Regional Parkway
Santa Rosa, CA 95403

- v. Service Provider’s delivery vehicles shall be capable of navigating within the Delivery Locations while delivering the quantity of fuel required.
- vi. Bill of Lading Requirement: A Bill of Lading will be provided to SMART’s onsite personnel at each delivery. The Bill of Lading shall identify the supplier origin, the fuel type delivered, the number of gallons delivered, and the number of fueling labor hours in quarter hour increments.

b. Task 2 – Supply, Deliver, and Provide Fueling Services of Type 2-D (Red Dyed No. 2) Diesel Fuel to the Rail Operation Center as a back-up fuel supply when requested.

- i. Service Provider shall supply, deliver, and fuel directly into SMART’s trains via the wet-hose method the following fuel type: **Diesel Fuel, Type 2-D (Red Dyed No. 2)**.
- ii. This Task only occurs on an as-needed basis when requested by the SMART Manager in writing for when Renewable Diesel fuel is unavailable or during an emergency condition to ensure continued operations.
- iii. The fuel shall conform to California Code of Regulations (CCR) Title 4, Division 9, Chapter 6, Article 5, Section 4144. Diesel fuel shall also meet the requirements of the California Code of Regulation, Title 13, Division 3, Chapter 5, Article 2, Section 2281 (sulfur content) and section 2282 (aromatic hydrocarbon). Alternative diesel formulations must be certified by CARB. Evidence of such fact shall be available to SMART in the form of a letter certifying such compliance and signed by a responsible official of the Service Provider. The fuel shall meet the requirements of Low Carbon Fuel Standard (LCFS), Title 17, Division 3, Chapter 1, Subchapter

10, Article 4, Sub article 7, of California Code of regulations (CCR), Sections 95480 through 95490 (collectively referred to as "LCFS") applies to any transportation fuel, as defined in section 95481, that is sold, supplied, or offered for sale in California, and to any person who, as a "regulated party" defined in section 95481 and specified in section 95484(a), is responsible for a transportation fuel. LCFS regulation became effective on January 12, 2010.

iv. **Primary delivery location:**

Rail Operations Center
3748 Regional Parkway
Santa Rosa, CA 95403

- v. Service Provider's delivery vehicles shall be capable of navigating within the Delivery Locations while delivering the quantity of fuel required.
- vi. Bill of Lading Requirement: A Bill of Lading will be provided to SMART's onsite personnel at each delivery. The Bill of Lading shall identify the supplier origin, the fuel type delivered, the number of gallons delivered, and the number of fueling labor hours in quarter hour increments.

c. **Task 3 – Supply, Deliver, and Providing Fueling Services of Type 2-D (Red Dyed No. 2) Diesel Fuel to the Schellville Freight Depot**

- i. Service Provider shall supply, deliver, and fuel directly into SMART's freight locomotive(s) via the wet-hose method the following fuel type: **Diesel Fuel, Type 2-D (Red Dyed No. 2)**.
- ii. The fuel shall conform to California Code of Regulations (CCR) Title 4, Division 9, Chapter 6, Article 5, Section 4144. Diesel fuel shall also meet the requirements of the California Code of Regulation, Title 13, Division 3, Chapter 5, Article 2, Section 2281 (sulfur content) and section 2282 (aromatic hydrocarbon). Alternative diesel formulations must be certified by CARB. Evidence of such fact shall be available to SMART in the form of a letter certifying such compliance and signed by a responsible official of the Service Provider. The fuel shall meet the requirements of Low Carbon Fuel Standard (LCFS), Title 17, Division 3, Chapter 1, Subchapter

10, Article 4, Sub article 7, of California Code of regulations (CCR), Sections 95480 through 95490 (collectively referred to as “LCFS”) applies to any transportation fuel, as defined in section 95481, that is sold, supplied, or offered for sale in California, and to any person who, as a “regulated party” defined in section 95481 and specified in section 95484(a), is responsible for a transportation fuel. LCFS regulation became effective on January 12, 2010.

iii. **Primary delivery location:**

Schellville Freight Depot
 1480 Highway 121
 Sonoma, CA 95476

- iv. Service Provider’s delivery vehicles shall be capable of navigating within the Delivery Locations while delivering the quantity of fuel required.
- v. Bill of Lading Requirement: A Bill of Lading will be provided to SMART’s onsite personnel at each delivery. The Bill of Lading shall identify the supplier origin, the fuel type delivered, the number of gallons delivered, and the number of fueling labor hours in quarter hour increments.

d. Task 4 – Supply, Deliver, and Provide Fueling Services of Diesel Exhaust Fluid (DEF) to the Rail Operation Center

- i. Service Provider shall supply and deliver Diesel Exhaust Fluid (DEF) to the Rail Operation Center to maintain supply of SMART’s one (1) 350-gallon above ground tote and one (1) 110-gallon mobile tote.

Diesel Exhaust Fluid (DEF) Specification Requirements:

Specification	Limits	Units
Urea	31.8 – 33.2	% by weight
Density/Specific Gravity (at 25°C / 77°F)	1.094 (approx. 9.2 lbs./gal.)	
Refractive Index (at 20°C / 68°F)	1.3814 – 1.3843	
Alkalinity as NH3	0.2 max.	% by weight
Biuret	0.3 max.	% by weight
Aldehyde	0.0005 max.	% by weight
Insolubles	0.002 max.	% by weight
Phosphate (PO4)	0.00005 max.	% by weight
Calcium	0.00005 max.	% by weight

Iron	0.00005 max.	% by weight
Copper	0.00002 max.	% by weight
Zinc	0.00002 max.	% by weight
Chromium	0.00002 max.	% by weight
Nickel	0.00002 max.	% by weight
Aluminum	0.00005 max.	% by weight
Magnesium	0.00005 max.	% by weight
Sodium	0.00005 max.	% by weight
Potassium	0.00005 max.	% by weight
Appearance	Colorless Clear Liquid	

- ii. Service Provider that holds the primary designation shall utilize a “keep-full” program by installing an automatic sensor device in SMART’s 350-gallon above ground storage tote to monitor tank levels remotely and ensure that tanks do not fall below 30%. Any change to this minimum threshold will require a written amendment to this Agreement.

These above-ground totes are located at the ROC in Santa Rosa, CA. These automatic sensor devices would become SMART’s property at the end of the Agreement.

iii. **Primary delivery location:**

Rail Operations Center
3748 Regional Parkway
Santa Rosa, CA 95403

- iv. Service Provider’s delivery vehicles shall be capable of navigating within the Delivery Locations while delivering the quantity of DEF required.
- v. Bill of Lading Requirement: A Bill of Lading will be provided to SMART’s onsite personnel at each delivery. The Bill of Lading shall identify the supplier origin, the number of gallons delivered, and the number of fueling labor hours in quarter hour increments.

e. Task 5 - Supply, Deliver, and Provide Fueling Services of Renewable Diesel Type RD-99 and Red Dyed No. 2 Diesel Fuel to Secondary Locations or Provide Additional Fuel Deliveries As Requested

- i. During emergencies or planned system outages, fueling may be required at locations other than the two primary locations listed above in Tasks 1 through 4 or require additional daytime fueling deliveries. For planned system outages,

these service requests will be made in writing by the SMART Manager. For emergency situations, the SMART Manager may request fueling services via phone call if written request is not feasible.

- ii. Service Provider shall respond to additional daytime fueling requests within 2 hours of notification by the SMART Manager.

B. Delivery and Fuel Service Requirements

- a) Service Provider's personnel shall wear the following personal protective equipment (Hard Hat, Safety Vest, Boots) while on SMART's property.
- b) Service Provider's personnel shall comply with all directions given by SMART staff, given that the work being performed occurs around an active railroad and safety is of utmost importance.
- c) Service Provider shall ensure that all trucks, railcars, and vessels used to transport the fuel products are drained, cleaned, and inspected prior to loading if the previous load contained other petroleum product(s) that would contaminate the diesel fuel.
- d) Service Provider's delivery vehicles shall be equipped with vapor recovery devices that are in compliance with all Federal, State, and Local regulations and requirements. These devices shall be utilized during the delivery of fuel as required.
- e) Service Provider's delivery vehicles shall be equipped with a Snyder 1720 LF fuel nozzle (low flow 20-100 GPM) for all direct-to-DMU or direct-to-locomotive, wet hose delivery. Service Provider shall supply all hoses used for such delivery.
- f) The Rail Operation Center is a gated and secured facility. Service Provider will call the on-duty supervisor each night when enroute to the Rail Operations Center. The SMART Manager shall provide the contact number(s) for the on-duty supervisor in writing.
- g) All trains must be fueled nightly, unless otherwise directed by the SMART Manager or their on-site designated representative.
- h) The Service Provider's delivery driver will be solely responsible for fueling using the wet-hose method the trains and freight locomotives.

SMART staff will not perform the fueling.

- i) During the duration of this Agreement, SMART may procure a mobile fueling solution. If SMART does procure a mobile fueling solution, ensure SMART's mobile fueling solution is filled to capacity each night will be included in this scope of work.
- j) Service Provider shall respond to daytime fueling calls within two (2) hours of notification. Daytime hours are between 8:00 am and 5:00 pm (Pacific).

C. Spills and Damage to Delivery Site

- a) Service Provider shall be responsible for all costs and remediation services resulting from any damage, contamination, or citations, which may be incurred as a result of any fuel spill during the delivery or fueling process.
- b) Drivers are to immediately report any spill on SMART's property to SMART's onsite personnel, the SMART Manager, and all local authorities as required by local, state, and federal law.

D. Quality Control Requirements

- a) Service Provider shall inspect and test fueling products according to the methods specified in active standards, ASTM D5453 for sulfur, D5186 for aromatics and other test methods specified in ASTM D975 prior to delivery.
- b) Fuel shall not deteriorate in ordinary storage and shall not form excessive gum, resin, or deposits. Fuel shall be visually free of undissolved water, sediment, and suspended matter.
- c) Service Provider shall provide traceability on all shipments back to refinery within five business days upon request from SMART.
- d) SMART may, at any time, take a sample of the delivered fuel and conduct an independent test to determine quality of fuel. This sampling will be taken by SMART personnel or SMART Consultants with the cooperation of the Service Provider's delivery personnel. The sample will be tested by an independent third-party laboratory. If the test analysis shows that the fuel does not comply with this specification, the Service Provider shall be notified immediately, provided the lab report, and responsible for all cost related to the test analysis, including shipping and lab test(s).
- e) For each occurrence that the fuel testing reveals that non-compliant fuel was delivered to SMART, Service Provider shall, at its sole cost and expense, immediately replace the non-compliant fuel with fuel meeting the specifications stated in this Agreement, reimburse SMART

for the non-compliant fuel delivered, and pay for subsequent independent testing to ensure the quality of the fuel. If SMART incurs a fine or any other cost or expense relating to the Service Provider's delivery of non-compliant fuel, Service Provider will reimburse SMART for the payment of the fine or other costs and expenses, including, but not limited to, costs associated with damage to the DMU's, or equipment related to delivery of non-compliant fuel.

E. Emergency Fueling Service

- a) SMART is considered an essential service and first response resource during emergency events. SMART must be available to assist in providing mutual aid to other jurisdictions (for example, by providing transportation of supplies and assisting with evacuations of people in emergency situations).
- b) Given this critical role, business continuity is essential, and Service Provider shall be expected to provide fuel and fueling services during emergency events.
- c) Service Provider agrees to accept and priority emergency fueling requests from SMART at any time (24/7/365) and maintain SMART as a high-priority emergency account, ensuring that SMART receives a fair and proportional share of product during any government-declared shortage, consistent with applicable laws and regulations.

IV. Timelines

A. Task 1: Supply and Deliver Renewable Diesel (RD 99) - Hydrotreated Vegetable Oil (HVO) to the Rail Operation Center

- a. Timelines:
 - i. Supply and deliver nightly between 11:00 pm and 3:00 am (Pacific), 7 days per week, including weekends and holidays, unless notified otherwise in writing by the SMART Manager ("Passenger Fueling Window")

B. Task 2: Supply, Deliver, and Provide Fueling Services of Type 2-D (Red Dyed No. 2) Diesel Fuel to the Rail Operation Center as a back-up fuel supply when requested.

- a. Timelines:
 - i. Supply and deliver conventional Type 2-D (Red Dyed No. 2) Diesel Fuel to the Rail Operation Center only as requested by the SMART Manager in writing when Renewable Diesel fuel is unavailable or in other emergency situations.
 - ii. Supply and delivery shall occur between 11:00 pm and 3:00 am (Pacific), 7 days per week, including weekends and

holidays, unless notified otherwise in writing by the SMART Manager (“Passenger Fueling Window”)

C. Task 3: Supply, Deliver, and Providing Fueling Services of Type 2-D (Red Dyed No. 2) Diesel Fuel to the Schellville Freight Depot

a. Timelines:

- i. Supply and deliver Type 2-D (Red Dyed No. 2) Diesel Fuel to the Schellville Freight Depot every other week on Mondays between 7:00 am and 9:00 am (Pacific), unless notified otherwise in writing by the SMART Manager (“Freight Fueling Window”).

D. Task 4: Supply, Deliver, and Provide Fueling Services of Diesel Exhaust Fluid (DEF) to the Rail Operation Center

a. Timelines:

- i. Supply and delivery of Diesel Exhaust Fluid (DEF) deliveries will be made between the hours of 11:00pm and 3:00am (Pacific).

E. Task 5: Supply, Deliver, and Provide Fueling Services of Renewable Diesel Type RD-99 and Red Dyed No. 2 Diesel Fuel to Secondary Locations or Provide Additional Fuel Deliveries As Requested

a. Timelines:

- i. As Requested

The “Passenger Fueling Window” and the “Freight Fueling Window” schedules defined herein are subject to change throughout the duration of the Agreement as operation needs require. Any change made to the “Passenger Fueling Window” and “Freight Fueling Window” shall require a formal written amendment to this Agreement.

V. Performance Standards & Accountability

Given that the Sonoma-Marín Area Rail Transit District (SMART) requires uninterrupted fueling services to support safe, reliable daily passenger rail operations and freight rail operations, SMART has awarded multiple contracts for the provision and delivery of fuel and Diesel Exhaust Fluid to serve as redundancy to ensure business operations continuity.

A. Multiple Awarded Contracts

SMART has awarded multiple contracts for the provision and delivery of fuel and Diesel Exhaust Fluid.

These contracts were ranked as Primary, Secondary, and Tertiary during

the award process.

The Primary Contract will serve as SMART's Primary Service Provider for the provision and delivery of fuel and diesel exhaust fluid.

The Secondary Contract will serve as the immediate back-up to the Primary Contract and will be called upon when the Primary Contract is unable to respond.

The Tertiary Contract will serve as the secondary back-up and will be called upon when the Secondary Contract is unable to respond.

B. Adjustment of Ranking

SMART may make adjustments to the ranking of these contracts when Service Providers have more than two (2) fueling failures in a rolling 90-day period.

Definition of Fueling Failure: Missing a scheduled fueling window, failure to deliver, failing to fuel all trains before the first train's departure.

Adjustments made to rankings are in addition to liquidated damage assessments made.

SMART also reserves the right to terminate a contract in accordance with the terms of this Agreement for continued fueling failures.

VI. Acceptance Criteria

The SMART Manager or designee will inspect each fuel delivery to ensure that all work has been completed in conformance with the SMART Manager's directions and the requirements of this Agreement.

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**

RENEWABLE DIESEL FUEL: TYPE RD-99	
Delivery Location	Cents per-gallon (rounded to the nearest thousandths of a cent) firm fixed fee markup over the OPIS Renewable R99 ULR San Francisco, CA Gross Contract Average Daily Rack Rate
Rail Operation Center	\$0.4210
Schellville	\$0.5920

**The Oil Price Information Service (OPIS) rack average rate is based on the San Francisco, California area, specifically the Renewable R99 ULR San Francisco, CA Gross Contract Average Daily Rack Rate as published at 10:00am (Eastern).*

Price includes fuel and all direct and indirect costs associated with transportation of fuel to SMART's location. Price does not include applicable taxes and wet-hosing labor fees. Applicable taxes shall be added to the invoice. Note, SMART is exempt from Federal Excise Tax.

The firm fixed fee markup amount listed above shall remain the same for the duration of the Agreement.

DIESEL FUEL: TYPE 2-D (RED DYED # 2)	
Delivery Location	Cents per-gallon (rounded to the nearest thousandths of a cent) firm fixed fee markup over the OPIS Carb Ultra-Low Red Diesel, San Francisco Average with CAR Daily Rack Rate
Rail Operation Center	\$0.3580
Schellville Freight Depot	\$0.5800

**The Oil Price Information Service (OPIS) rack average rate is based on the San Francisco, California area, specifically the Gross Carb Ultra Low Sulfur Distillate Prices with CAR Cost for RD No. 2 as published at 10:00am (Eastern).*

Price includes fuel and all direct and indirect costs associated with transportation of fuel to SMART's location. Price does not include applicable taxes and wet-hosing labor fees. Applicable taxes shall be added to the invoice. Note, SMART is exempt from Federal Excise Tax.

The firm fixed fee markup amount listed above shall remain the same for the duration of the Agreement.

DIESEL EXHAUST FLUID (DEF)	
Delivery Location	Per Gallon Price

Rail Operation Center	\$2.676
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Price includes Diesel Exhaust Fluid (DEF) and all direct and indirect costs associated with transportation of Diesel Exhaust Fluid (DEF) to SMART's location. Price does not include applicable taxes and wet-hosing labor fees.

The price per gallon listed above shall be fixed for the initial three-year term of the Agreement. Upon completion of the initial three-year term, and prior to the commencement of each optional term of this Agreement, Service Provider may, upon 60 days written notice to the SMART Manager, request an increase in the rate equal to the percent change identified in the Producer Price Index for Synthetic Ammonia, Nitric Acid, Ammonia Compounds, and Urea, Not Seasonally Adjusted, as reported by the Bureau of Labor Statistics, U.S. Department of Labor, using the month of April of the most recent year over April of the previous year. If Service Provider does not submit a written request at least 60 days before the start of the succeeding Agreement year, Service Provider waives any increase for the optional term.

WET-HOSE FUELING LABOR COST	
Delivery Location	Per Hour
Rail Operation Center	\$90.00
Schellville Freight Depot	\$90.00

Price includes all labor, supervision and all other direct and indirect costs associated with performing actual wet-hose fueling services into SMART's Diesel Multiple Units (DMUs) and Freight trains.

Wet-Hose Fueling Labor Rates shall be fixed for the initial three-year term of the Agreement. Upon completion of the initial three-year term, and prior to the commencement of each optional term of this Agreement, Service Provider may, upon 60 days written notice to the SMART Manager, request an increase in the fee equal to the Consumer Price Index, San Francisco Area, as reported by the Bureau of Labor Statistics, U.S. Department of Labor, using the month of April for the most recent year. The maximum increase shall be 5%. If Service Provider does not submit a request at least 60 days before the start of the succeeding Agreement year, Service Provider waives any CPI increase for the optional term.

**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. **Buy America.**

Applicability: All Rollingstock Purchases, Materials and Supplies Contracts, and Construction Contracts >\$150,000.

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 and 2 CFR § 200.322. Domestic preferences for procurements, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7.

Construction materials used in the Project or Services are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA. The Contractor acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u) and 49 C.F.R. § 661.11.

The Contractor must submit to SMART the appropriate Buy America certification. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive. For more information, please see the FTA's Buy America webpage at: <https://www.transit.dot.gov/buyamerica>.

4. Cargo Preference Requirements.

Applicability: All Rolling Stock Purchases, Materials & Supplies, and Construction Contracts which require transportation by ocean vessels.

The Contractor agrees to:

(a) to use privately owned United States flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Agreement to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels;

(b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph, to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA or FEMA recipient (through the Contractor in the case of a subcontractor's bill-of-lading); and

(c) to include these requirements in all subcontracts issued pursuant to this Agreement when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

5. 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-Marine Area Rail Transit District and FTA, or the Sonoma-Marine 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.

6. 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 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.

7. 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.

8. Contract Work Hours and Safety Standards Act.

Applicability: All Operations Management, Rolling Stock Purchases, and Construction Contracts >\$100,000.

- a. Where applicable (see 40 U.S.C. § 3701 et seq), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II.
- b. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- c. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess

of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

- (2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

- (3) Withholding for unpaid wages and liquidated damages. SMART shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

9. 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 any 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.

10. 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.

11. 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:

Statement of Unavailability of U.S.-Flag Air Carriers

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.

12. 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.

13. No Obligation by the Federal Government.

Applicability: All Contracts

The Sonoma-Marine 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

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

20. 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).)

21. 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.

22. 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) If the termination is for the convenience of SMART, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

(c) 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.

(d) 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.

(e) 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. If, after serving a Notice of Termination for Default, SMART determines that the Contractor has an excusable reason for not performing, SMART, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

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. 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.

25. 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.

26. 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.

27. Geographic Restrictions.

Applicability: All Contracts

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

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.