



**BOARD OF DIRECTORS
REGULAR MEETING AGENDA
APRIL 15, 2026 - 1:30 PM**

Members of the public who wish to attend in person may do so at:
5401 Old Redwood Highway, 1st Floor
Petaluma, CA 94954

The SMART Board of Directors will facilitate using a dual format with listening and participation available through Zoom and in-person. SMART provides several remote methods for viewing the SMART Board Meetings and providing Public Comment.

HOW TO WATCH THE LIVE MEETING USING THE ZOOM

<https://sonomamarintrain-org.zoom.us/j/85410509881?pwd=pButHwakIVNRUQA9u5YBDy0fHXFD2h.1>
Webinar ID: 854 1050 9881; Passcode: 971474

TELECONFERENCE

Members of the public wishing to participate via teleconference can do so by dialing in the following number the day of the meeting: (669) 900-9128; Access Code: 854 1050 9881; Passcode: 971474.

WATCH THE BOARD MEETING VIA LIVESTREAM

View the live broadcasts of Board meetings online at: <https://www.sonomamarintrain.org/meetings>
To view the meeting, select "View Event" at the time of the meeting.

HOW TO PROVIDE COMMENTS ON AGENDA ITEMS

Prior To Meeting: Technology limitations may limit the ability to receive verbal public comments during the meeting. If you wish to make a comment you are strongly encouraged to please submit your comment to Board@SonomaMarinTrain.org by 5:00 PM on Tuesday, April 14, 2026

During the Meeting: The SMART Board Chair will open the floor for public comment during the Public Comment period on the agenda. Please check and test your computer settings so that your audio speaker and microphones are functioning. Speakers are asked to limit their comments to two (2) minutes. The amount of time allocated for comments during the meeting may vary at the Chairperson's discretion depending on the number of speakers and length of the agenda.



**BOARD OF DIRECTORS
REGULAR MEETING AGENDA
APRIL 15, 2026 – 1:30 PM**

Members of the public who wish to attend in person may do so at:

5401 Old Redwood Highway, 1st Floor
Petaluma, CA 94954

1. Call to Order
2. Approval of the February 18, 2026 Board Meeting Minutes
3. Board Member Announcements
4. General Manager's Report
5. Public Comment on Non-Agenda Items

Consent Calendar

- 6a. Accept Monthly Ridership Report – March 2026
- 6b. Approve Monthly Financial Status Report – February 2026
- 6c. Determine there is a continued need for emergency repairs to the Black Point Bridge and approve Contract No. FR-BB-25-002.

Regular Calendar

7. Adopt Resolution No. 2026-06 to make various changes to the Fiscal Year 2025/2026 Adopted Budget - Amendment #9 – *Presented by Chief Financial Officer, Heather McKillop*
8. Authorize the General Manager to Award Three (3) Agreements for the Supply and Delivery of Fuel and Diesel Exhaust Fluid, *presented by Vehicle Maintenance Manager, Jessie McDermott*
9. Authorize the General Manager to award Agreement No. IT-PS-25-003 with Portola Systems, Inc. for ongoing management and maintenance support of the SMART Station Network. *Presented by Information Systems Manager, Bryan Crowley*

Closed Session

10. Conference with Labor Negotiator Eddy Cumins, General Manager pursuant to California Government Code Section 54957.6

Agency Designated Representative: General Manager
Unrepresented employees

11. Conference with Legal Counsel regarding existing litigation pursuant to California Government Code Section 54956.9(a)

Number of cases: Four (4)

- 1) Dennis Muelrath, et al. v. Sonoma-Marín Area Rail Transit District (SMART) - Superior Court of California, County of Sonoma - SCV-271787
- 2) Behnam H. Arshi v. SMART -- Superior Court of California, County of Sonoma -- 25CV07566
- 3) SMART v. Dennis Muelrath - Superior Court of California, County of Sonoma -- 25CV06592
- 4) SMART v. Ellen Pauli et al. - Superior Court of California, County of Sonoma -- 25CV06571

12. Report Out Closed Session

13. Budget Workshop - Next Board of Directors Meeting, **May 6, 2026** – 1:30 PM – 5401 Old Redwood Highway, 1st Floor, Petaluma, CA 94954

14. Regular Meeting - Next Board of Directors Meeting, **May 20, 2026** – 1:30 PM – 5401 Old Redwood Highway, 1st Floor, Petaluma, CA 94954

15. Adjournment

ACCOMMODATIONS:

Public participation is solicited without regard to race, color, national origin, age, sex, gender identity, religion, disability or family status. Upon request, SMART will provide for written agenda materials in appropriate alternative formats, or make disability-related modification or other accommodation, to enable individuals to participate in and provide comments at/or related to public meetings. To request a modification, accommodation, service, or alternative format, please submit a request, including your name, phone number and/or email address, and a description of the modification, accommodation, service, or alternative format requested at least two (2) days before the meeting. Requests may be submitted to the Clerk of the Board by email at board@sonomamarintrain.org or by phone at (707) 794-3330. Requests can also be made by mail to SMART, 5401 Old Redwood Highway, Suite 200, Petaluma, CA 94954 (must be received at least two days before the meeting). Requests will be granted whenever possible and resolved in favor of accessibility.



**BOARD OF DIRECTORS
REGULAR MEETING MINUTES**

March 18, 2026 - 1:30 PM

5401 Old Redwood Highway, 1st Floor
Petaluma, CA 94954

1. Call to Order [00:08 Minutes Mark on the Video Recording]
Before calling roll Clerk introduced new Board member, Kevin Jacobs.
Chair Coursey called the meeting to order at 1:30pm. Directors Cader Thompson, Fleming, Garbarino, Jacobs, Kelley, Lucan, Paulson, Rabbit and Vice Chair Sackett were present. Directors Colin and Pahre were absent.
2. Approval of the February 18, 2026 Board Meeting Minutes [01:42 Minutes Mark on the Video Recording]
MOTION: Vice Chair Sackett moved approval of the February 18, 2026 Board Meeting Minutes as presented. Director Paulson seconded. The motion carried 9-0-2-1 Directors Colin, Pahre were absent and Director Jacobs abstained.
Public Comments:
None
3. Board Member Announcements [03:45Minutes Mark on the Video Recording] Directors Cader Thompson, Garbarino, Kelley and Vice Chair Sackett spoke.
4. General Manager's Report [07:28 Minutes Mark on the Video Recording]
General Manager Cumins provided a PowerPoint presentation, which is posted on SMART's website. Highlights include:
 - Contracts and Procurements
 - Ridership Report
 - New Bike Storage Area
 - Giants Season
 - Healdsburg Events
 - MASCOTS Service Update
 - Transit Appreciation Day
 - Highlight of the Month

Chair Coursey asked about bike storage and updated information on the MASCOTS webpage. Director Cader Thompon asked about bikes on trains and the limitations.

5. Public Comments on Non-Agenda Items [20:49 Minutes Mark on the Video Recording]

The following individual spoke under Public Comment:

- Warren Wells – technical difficulties prevented hearing comment
- Mitso Floor
- Mike Pecner

6. Consent Calendar [26:06 Minutes Mark on the Video Recording]

- a. Accept Monthly Ridership Report – January 2026
- b. Approve Monthly Financial Status Report – December 2025
- c. Determine there is a continued need for emergency repairs to the Black Point Bridge and approve Contract FR-BB-25-002.

MOTION: Director Rabbitt moved approval of Consent Agenda Items 6a thru 6c, as presented. Director Garbarino seconded. The motion carried 9-0-2-1. Directors Colin, Pahre were absent and Director Jacobs abstained.

Public Comments:

None

7. Adopt Resolution No. 2026-04 to make various changes to the Fiscal Year 2025/2026 Adopted Budget - Amendment #8 – Presented by Chief Financial Officer, Heather McKillop [27:00 Minutes Mark on the Video Recording]

Public Comments

None

MOTION: Vice Chair Sackett moved to Adopt Resolution No. 2026-04 to make various changes to the Fiscal Year 2025/2026 Adopted Budget - Amendment #8, as presented. Director Kelley seconded. The motion carried 10-0-2-0. Directors Pahre and Colin were absent

8. Accept SMART's Fiscal Year (FY) 2024/2025 Single Audit, presented by Chief Financial Officer, Heather McKillop [30:04 Minutes Mark on the Video Recording]

Board Comments [32:41 Minutes Mark on the Video Recording]

Chair Coursey spoke

Public Comments:

None

9. Receive the staff update on the changes to CEQA under SB 71, presented by Grants

and Legislative Affairs Manager, Joanne Parker [32:23 Minutes Mark on the Video Recording]

Board Comments [38:10 Minutes Mark on the Video Recording]

Director Kelley spoke

Grants and Legislative Affairs Manager, Joanne Parker responded to questions.

Public Comments

None

10. Adopt Resolution 2026-05 and approve Early Works Package Phase II Amendment, presented by Senior Engineer, Michael Wiltermood. [41:42Minutes Mark on the Video Recording]

Board Comments:

None

Public Comments

None

MOTION: Director Rabbitt moved to Adopt Resolution 2026-05 and approve Early Works Package Phase II Amendment, as presented. Director Lucan seconded. The motion carried 10-0-2-0. Directors Pahre and Colin were absent

11. Review the Fare-Free Program for Youth and Seniors for FY26-FY27 and provide direction to staff Presented by General Manager, Eddy Cumins [45:10 Minutes Mark on the Video Recording]

Board Comments [52:43 Minutes Mark on the Video Recording]

Directors Rabbit, Paulson, Garbarino, Cader Thompson, Fleming, Lucan, Kelley and Vice Chair Sackett spoke

General Manager Cumins responded to questions.

Public Comments

Dain Sheehan-Meyer

Closed Session [01:16:57Minutes Mark on the Video Recording]

12. Conference with Legal Counsel regarding existing litigation pursuant to California Government Code Section 54956.9(a), Number of Cases – three (3)
- 1) Dennis Muelrath, et al. v. Sonoma-Marin Area Rail Transit District (SMART) - Superior Court of California, County of Sonoma - SCV-271787
 - 2) SMART v. Dennis Muelrath - Superior Court of California, County of

Sonoma 25CV06592

- 3) SMART v. Ellen Pauli et al. - Superior Court of California, County of Sonoma – 25CV06571

Public Comments:

None

13. Report Out Closed Session [00:53:47Minutes Mark on the Video Recording]

District Counsel Sutherland reported out of Closed Session at 3:24 PM on the following:

Conference with Legal Counsel regarding existing litigation pursuant to California Government Code Section 54956.9(a), Number of Cases – three (3)

- 1) Dennis Muelrath, et al. v. Sonoma-Marin Area Rail Transit District (SMART) - Superior Court of California, County of Sonoma - SCV-271787
- 2) SMART v. Dennis Muelrath - Superior Court of California, County of Sonoma 25CV06592
- 3) SMART v. Ellen Pauli et al. - Superior Court of California, County of Sonoma

No reportable action

14. Next Board of Directors Meeting, April 15, 2026 – 1:30 PM – 5401 Old Redwood Highway, 1st Floor, Petaluma, CA 94954

15. Adjournment – Meeting adjourned at 3:25 PM

Respectfully submitted,

Kyreen Jorgensen
Clerk of the Board

Approved on: _____



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BOARD OF DIRECTORS

Chris Coursey, Chair
Sonoma County Board of Supervisors

Mary Sackett, Vice Chair
Marin County Board of Supervisors

Janice Cader Thompson
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Victoria Fleming
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Ariel Kelley
Sonoma County Mayors' and
Councilmembers Association

Eric Lucan
Marin County Board of Supervisors

Kevin Jacobs
Transportation Authority of Marin

Barbara Pahre
Golden Gate Bridge,
Highway/Transportation District

Gabe Paulson
Marin County Council of Mayors and
Councilmembers

David Rabbitt
Sonoma County Board of Supervisors

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: Monthly Ridership Report – March 2026

Dear Board Members:

RECOMMENDATIONS:

Receive the Monthly Ridership Report

SUMMARY:

We are presenting the monthly ridership report for activity for the month of March 2026. This report shows trends in ridership for SMART by tracking Total riders, Average Weekday riders, Average Saturday riders, Average Sunday/Holiday riders, as well as bicycles and mobility devices on board the trains. The report also includes total users counted on the SMART Pathway for the month, and total riders on the SMART Connect shuttles.

With the transition to the Automatic Passenger Counter (APC) in October 2022, SMART has a highly accurate method of tracking boardings and alightings at stations that does not depend on manual counts by the conductors. The APC system has been tested and validated at a 99% accuracy level and has been certified for passenger count use by the Federal Transit Administration (FTA); the system was revalidated and recertified by FTA in June 2025. Both APC-based ridership and fare-based collection rider counts are shown in the attached report to give a full picture of ridership. APC-based ridership captures all riders, including riders with passes who neglect to tag on or off, riders who fail to activate their mobile app tickets, as well as free-fare riders.

This report compares the most recent month to the same month during the prior year, as is standard industry practice for tracking trends over time. These reports also note relevant details associated with fare program discount usage and trends in riders bringing bicycles onboard as well as riders who use mobility devices.

SMART's ridership data through March 2026 is posted on the SMART website (<https://sonomamarintrain.org/RidershipReports>).

FISCAL IMPACT:

None.

Respectfully,

/s/
Zoe Unruh
Planning Manager

Attachment(s): Monthly Ridership Report – March 2026

MARCH 2026 SMART RIDERSHIP REPORT

SMART Ridership Report
Board of Directors,
April 15, 2026

March 2026 saw an increase in ridership from the previous month, with average weekday ridership at 4,642, up 12% from February and up 29% over March 2025. Average Saturday and Sunday ridership increased by 3% and 20%, respectively, from the previous month, and increased 27% and 40%, respectively, over March 2025. Total monthly ridership was 124,966 up 32% over March 2025 and 115% over March 2019 (pre-COVID).

As background, SMART modified services in March 2020 due to the COVID-19 pandemic, with weekend service annulled and weekday service reduced to 16 trips. In May 2021, SMART added back 10 weekday trips. Saturday service was restored in May 2021, and Sunday service in May 2022. In June 2022, SMART added 10 additional weekday trips, and in November 2022, SMART added 2 additional midday trips, for a schedule of 38 trips per weekday. In May 2023, SMART added two evening trips on Friday and Saturday, known as the Starlighter. In November 2023, SMART suspended the Starlighter service but increased weekend service, running 16 trips total on both Saturday and Sunday. In August 2024, SMART added two additional round trips for a total of 42 trips each weekday. In late May 2025, SMART began running service to Windsor Station.

The tables below present data for March 2025 and 2026 year-over-year, and the Fiscal Year to date (July-March). Ridership for the fiscal year to date is tracking 31% over the same time period in FY25.

MONTHLY TOTALS YEAR-OVER-YEAR	MARCH 2025	MARCH 2026	% Change
Ridership	94,916	124,966	32%
Fare-based Ridership (Clipper + App Only)	49,095	58,770	20%
Average Weekday Ridership	3,595	4,642	29%
Average Saturday Ridership	2,279	2,899	27%
Average Sunday Ridership	1,605	2,248	40%
Bicycles	11,288	16,127	43%
Mobility Devices	273	286	5%

¹ Due to the Clipper transition, it appears the fare-based ridership data from Clipper is underreported. We continue to work with Clipper to resolve ongoing issues.

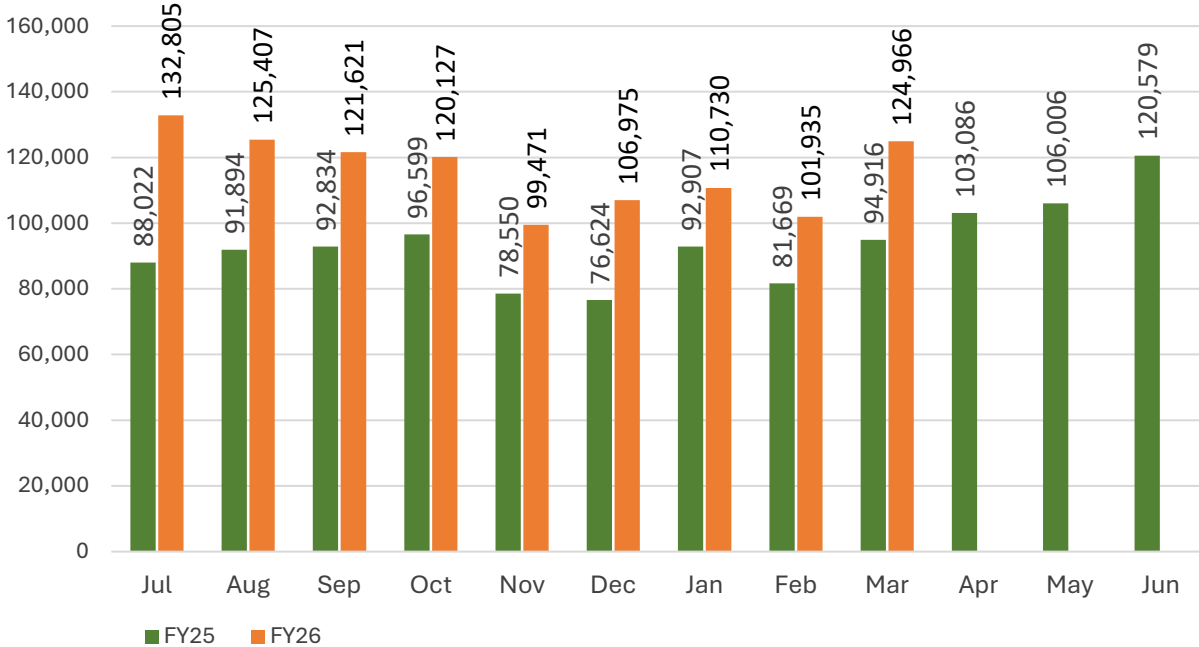
MARCH 2026 SMART RIDERSHIP REPORT

SMART Ridership Report
Board of Directors,
April 15, 2026

FISCAL YEAR (Jul - Mar)	Fiscal Year 2025	Fiscal Year 2026	% Change
Ridership	794,015	1,044,037	31%
Fare-based Ridership (Clipper + App Only)	420,786	507,565	21%
Average Weekday Ridership	3,446	4,490	30%
Average Saturday Ridership	1,998	2,666	33%
Average Sunday Ridership	1,715	2,232	30%
Bicycles	103,893	127,525	23%
Mobility Devices	1,946	2,779	43%

The following charts compare the average weekday ridership, average weekend ridership, and monthly totals for FY25-FY26.

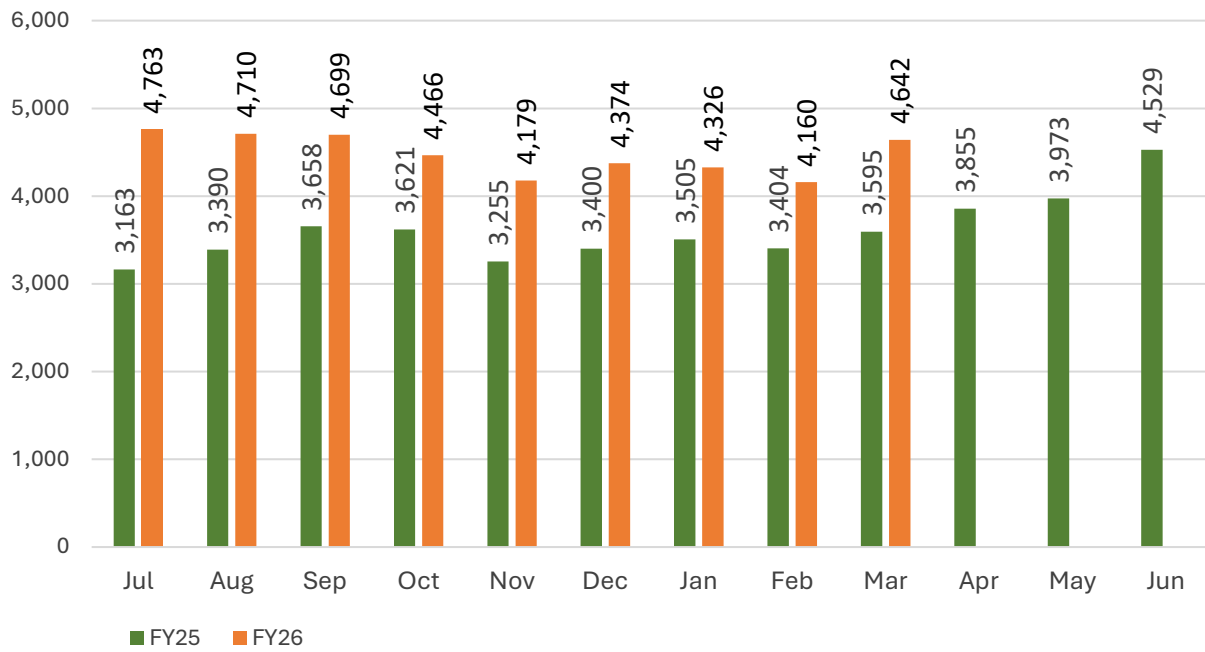
SMART Monthly Ridership (FY25 - FY26)



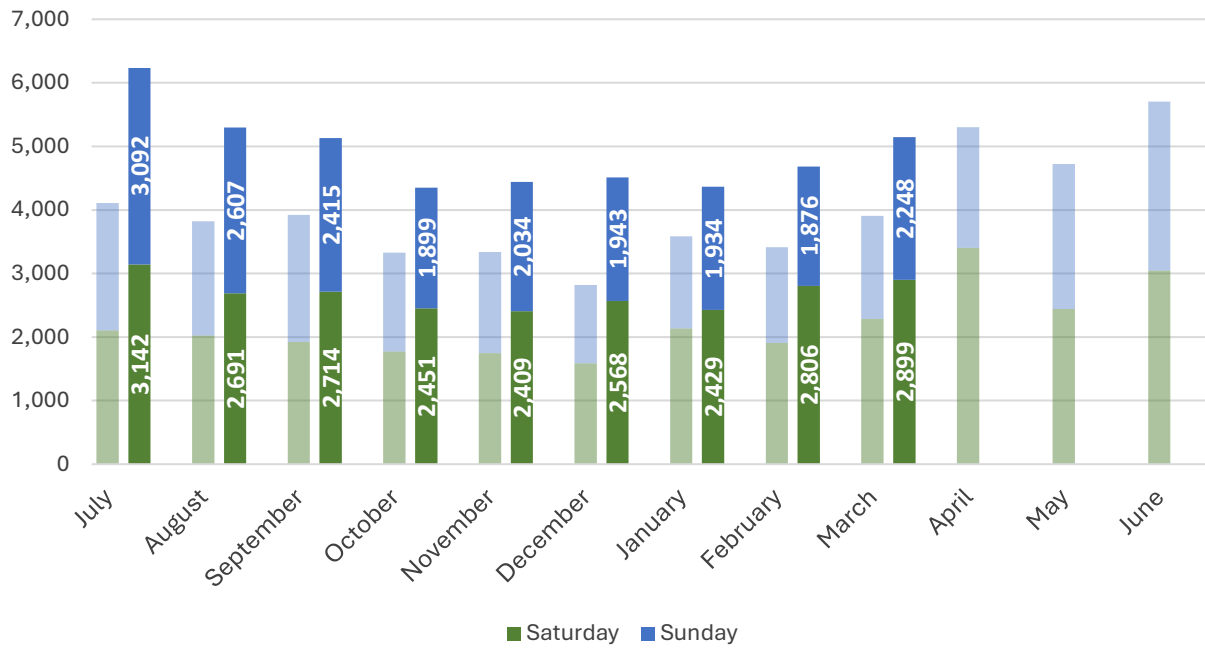
MARCH 2026 SMART RIDERSHIP REPORT

SMART Ridership Report
Board of Directors,
April 15, 2026

SMART Average Weekday Ridership (FY25 - FY26)



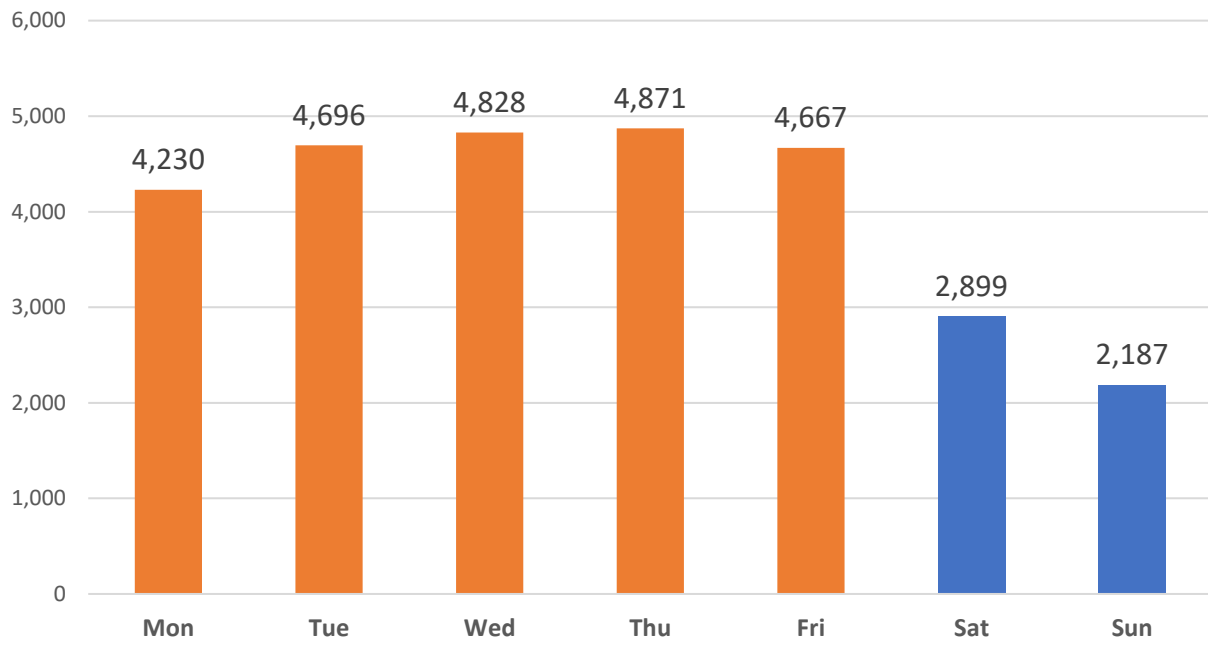
SMART Average Weekend Boardings (FY25 - FY26)



MARCH 2026 SMART RIDERSHIP REPORT

SMART Ridership Report
Board of Directors,
April 15, 2026

Average Boardings by Day of Week (March 2026)



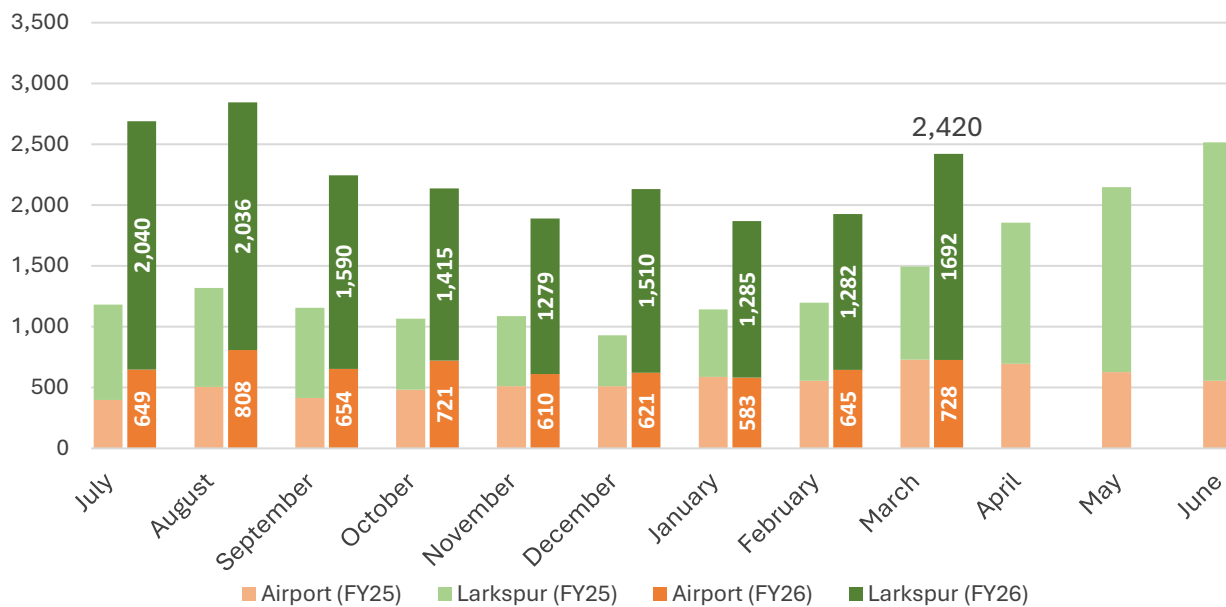
MARCH 2026 SMART RIDERSHIP REPORT

SMART Connect Program

SMART currently operates two on-demand shuttles, SMART Connect Airport and SMART Connect Larkspur. SMART Connect Airport, launched in June 2023, serves the SMART Sonoma County Airport station, the Charles M. Schultz Sonoma County Airport, and the surrounding area. SMART Connect Larkspur, launched in June 2024, serves the SMART Larkspur station, the Golden Gate Larkspur Ferry Terminal, and the surrounding Larkspur Landing area. The goal of the SMART Connect program is to facilitate first-and-last mile connections from SMART stations through the provision of a reliable on-demand shuttle that SMART riders can use for transit transfers, work and school commutes, and other destinations. SMART Connect uses microtransit software from The Routing Company called Ride Pingo, which allows users to pre-book trips or book a ride on-demand. Riders can also book by phone or walk-on, space available. In April 2025, Connect Shuttle service hours at Larkspur were expanded from 4 to 7 days per week; both shuttle locations now offer daily service.

Total March monthly ridership for the SMART Connect program was 2,420 riders.

SMART Connect Ridership (FY25-FY26)



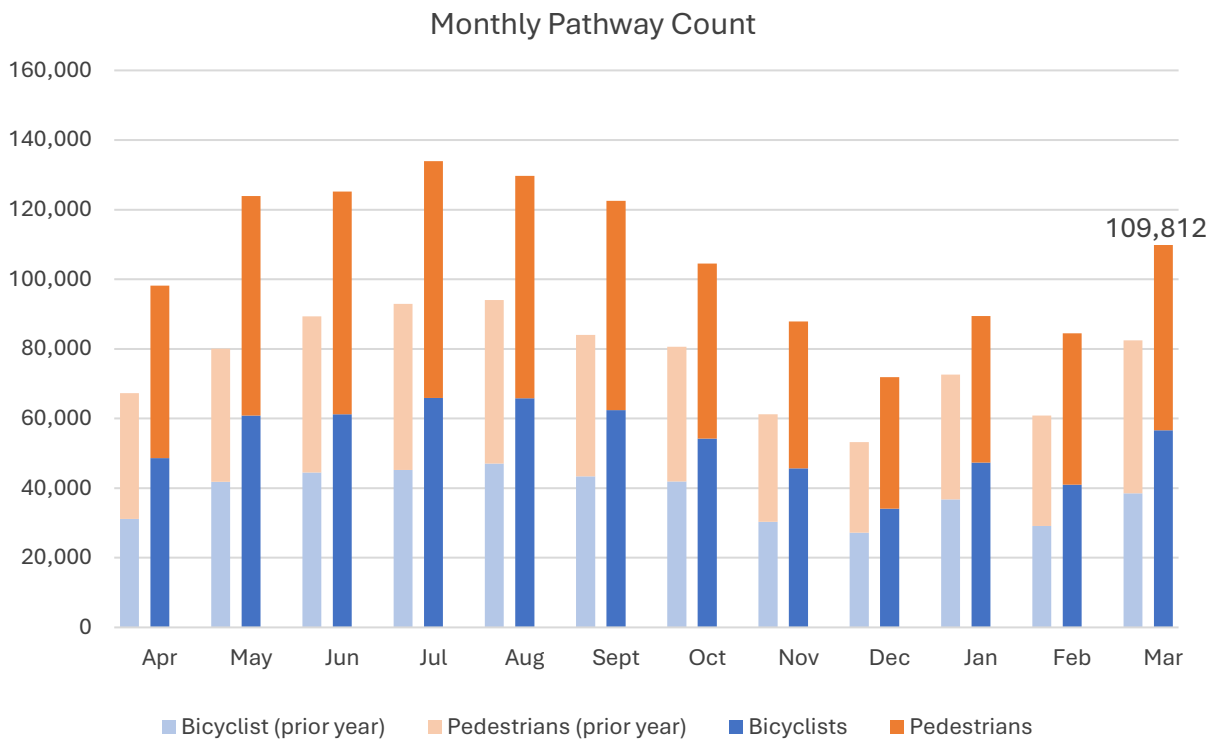
MARCH 2026 SMART RIDERSHIP REPORT

SMART Ridership Report
Board of Directors,
April 15, 2026

SMART Pathway

As of May 2025, SMART has installed 14 counters on the Pathway, with six in Marin County and eight in Sonoma County. The counters differentiate between bicycles and pedestrians, and track data by time of day and day of the week. The counters cannot distinguish between unique users but based on the estimated average trip length of 3 miles, and the average spacing between counters of 3.7 miles, the counts are considered an accurate estimate of monthly pathway usage. As additional pathway segments are constructed, counters will be placed on those segments to measure pathway usage. To date, count data has shown a fairly even split between pedestrians and bicyclists.

In March 2026, SMART counted 109,812 users on the pathway, an increase of 33% compared to the same month in the prior year. The increased counts are attributed to higher volumes of users on existing pathway segments as well as counts of users on newly opened pathway segments.





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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: Monthly Financial Report

Dear Board Members:

RECOMMENDATIONS:

Receive the Monthly Financial Status Report – February 2026

SUMMARY:

This report provides information for the first eight months of Fiscal Year (FY) 2026, including details on the Board Adopted Budget through Budget Amendment #7. Attached, you will find separate charts displaying both budgeted and actual revenues and expenses for passenger rail and freight. The "actual" columns reflect revenues and expenses for the first eight months of FY 2026 (July - February). Additionally, for passenger rail, we have included more detailed information on sales tax and fare revenues, presenting current data alongside comparative figures from FY 2022 to FY 2026.

The report further outlines the approved budget, actual expenses, and remaining budget balance. Please note that expenses may not occur evenly throughout the fiscal year; many significant costs are incurred at specific intervals. Additionally, we have included information on SMART's investments, detailing where our funds are held and the current amounts. Lastly, we present the current obligations, reserves, and fund balance requirements for FY 2026.

FISCAL IMPACT:

None

Sincerely,

/s/
Heather McKillop
Chief Financial Officer

Attachment(s): (1) Monthly Financial Report
(2) Contract Summary Report



MONTHLY FINANCIAL STATUS

February 2026

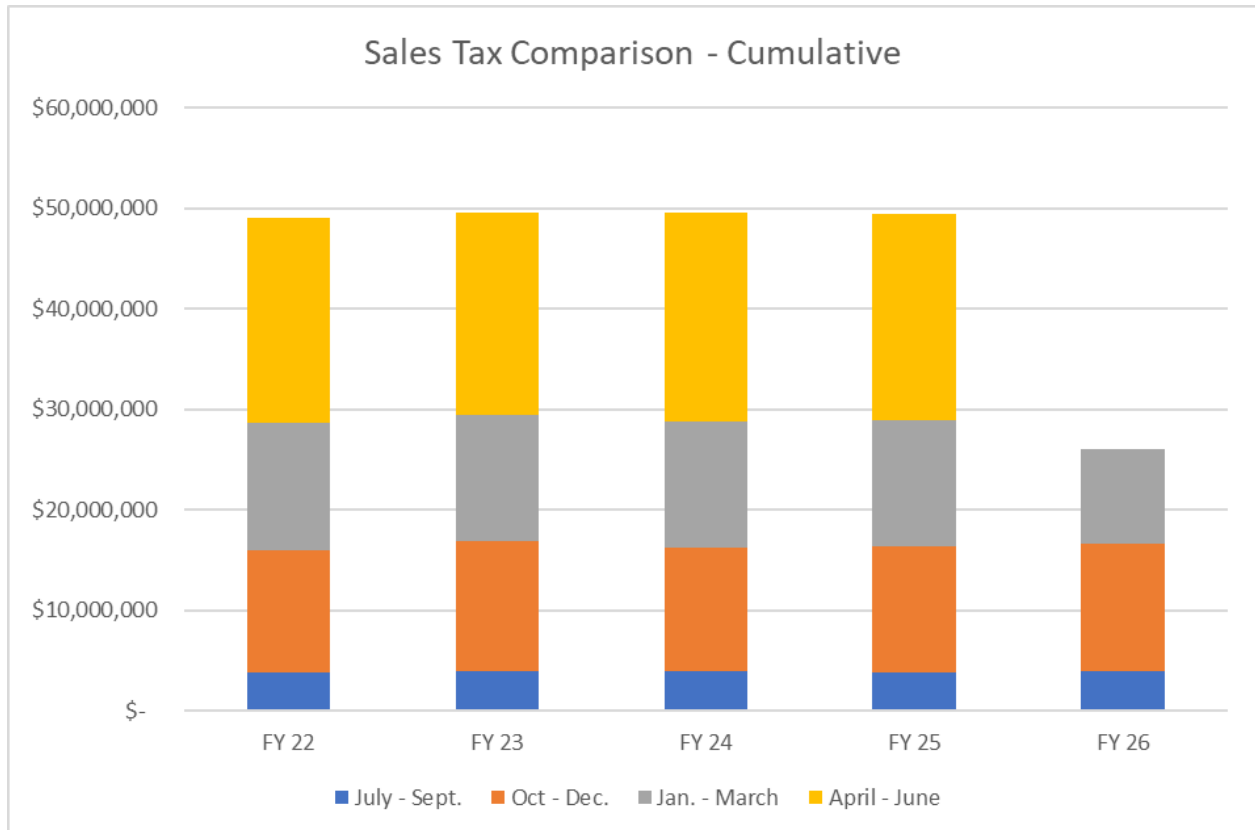
PASSENGER REVENUES

	FY 2026 Approved Budget and Amendments #1-#7	Actual	Amount Over/ (Under) Budget	% Over/(Under) Budget	% of FY Remaining
Sales & Use Tax	\$48,300,300	\$25,997,544	-\$22,302,756	-46%	33%
Sales Tax Collection Fees	-\$839,870	-\$419,940	\$419,930	-50%	33%
Federal Funds	\$7,349,744	\$2,946,910	-\$4,402,834	-60%	33%
State Grants	\$34,469,991	\$360,270	-\$34,109,721	-99%	33%
Passenger Fares	\$2,541,000	\$1,858,746	-\$682,254	-27%	33%
Shuttle Fares	\$8,000	\$7,585	-\$415	-5%	33%
Parking Fees	\$17,580	\$40,409	\$22,829	130%	33%
Interest & Lease Revenue	\$1,294,025	\$1,814,579	\$520,554	40%	33%
Misc./ Other Revenues	\$343,736	\$363,791	\$20,055	6%	33%
Other Governments	\$2,255,135	\$687,443	-\$1,567,692	-70%	33%
Total	\$95,739,641	\$33,657,337	-\$62,082,304	-65%	33%

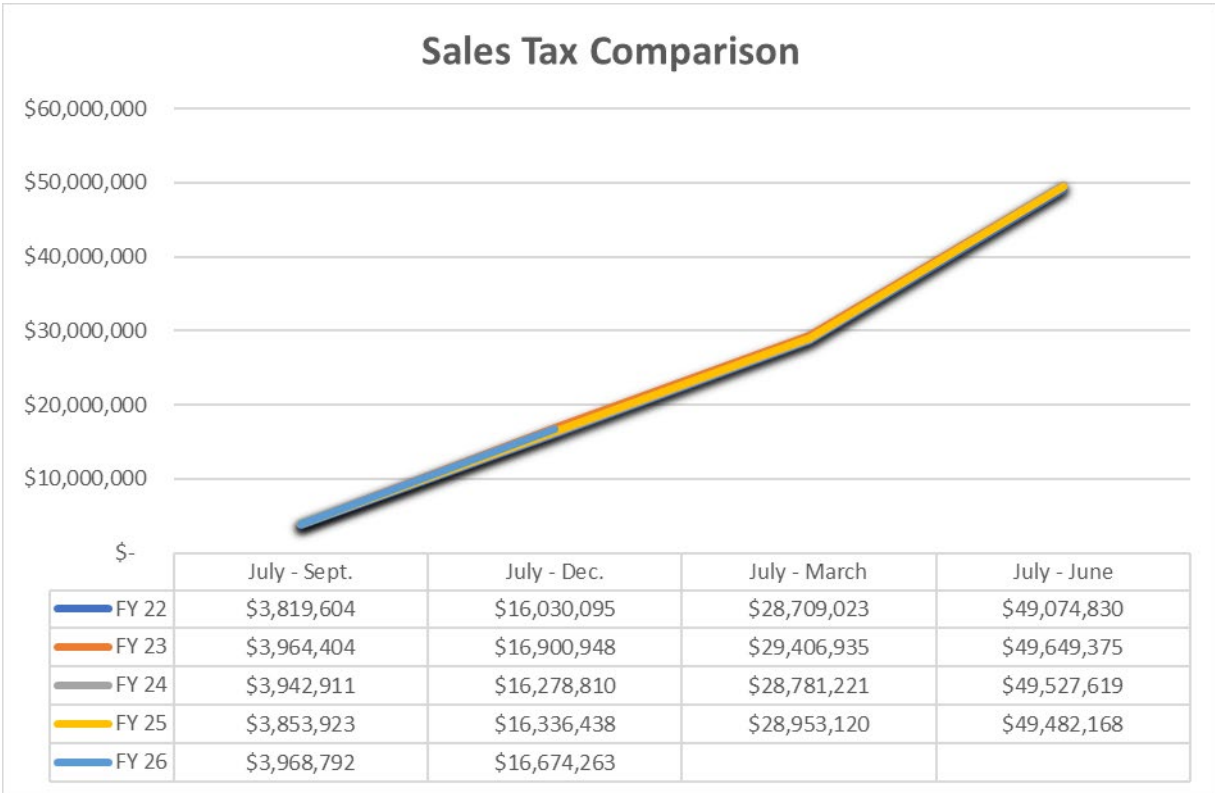
**Measure Q Sales Tax
Fiscal Year (FY) 2026**

Time Period	July – Sept	Oct - Dec	Jan - March	April - June
FY 26 Forecasted Sales Tax	\$3,864,024	\$12,075,075	\$12,558,078	\$19,803,123
Actual	\$3,968,792	\$12,705,075	\$9,323,677	\$0
Difference	\$104,768	\$630,000	-\$3,234,401	-\$19,803,123

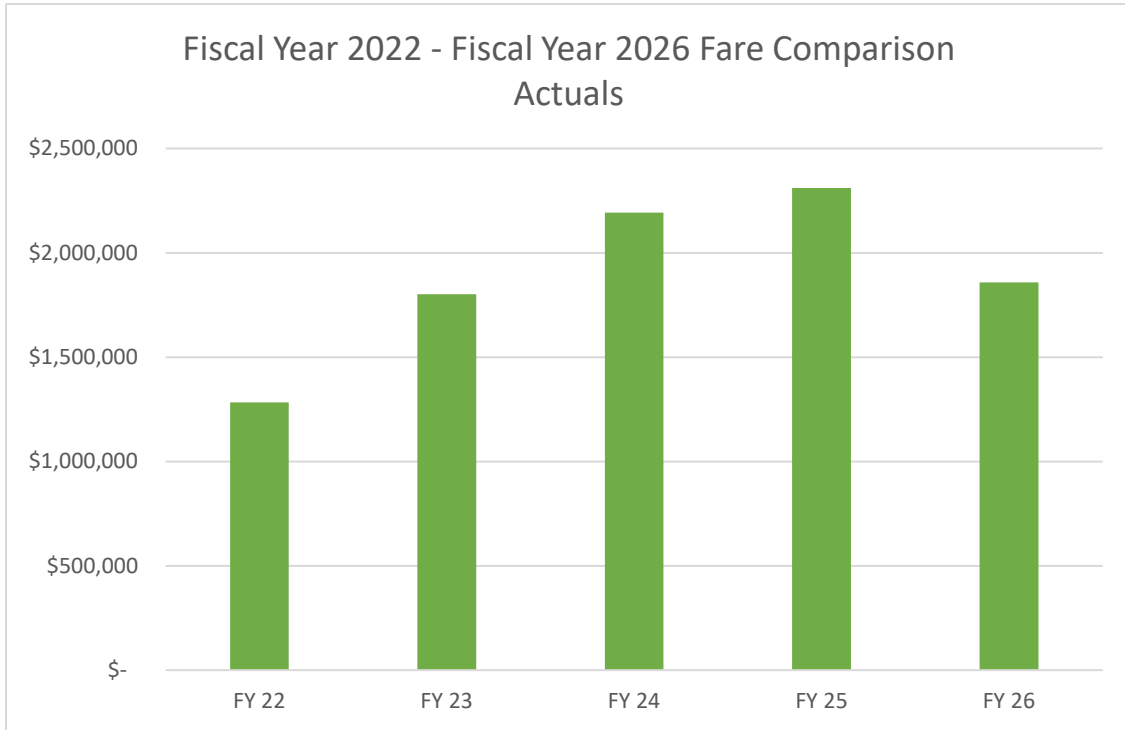
**Fiscal Year 2022-2026 Net Sales Tax Comparison
(by Quarter)**



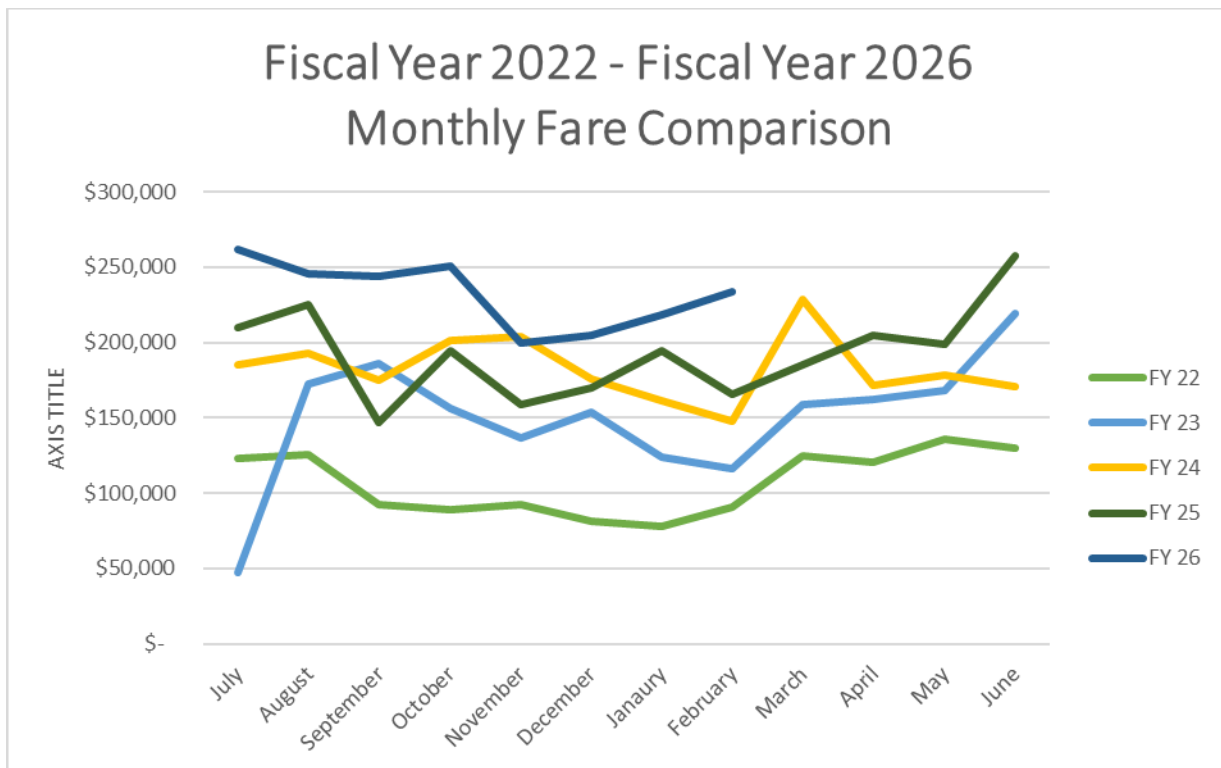
Fiscal Year 2022-2026 Cumulative Sales Tax Comparison



Fiscal Year 2022-2026 Fare Revenue Comparison



Fiscal Year 2021-2026 Monthly Fare Revenue Comparison



PASSENGER EXPENSES

	FY 2025-26 Approved Budget and Amendments #1-#7	Actual	Amount Over / (Under) Budget	% Over/(Under) Budget	% of FY Remaining
Administration					
Salaries & Benefits	\$7,521,481	\$4,633,792	-\$2,887,689	-38%	33%
Services & Supplies	\$12,844,183	\$5,790,065	-\$7,054,118	-55%	33%
Administration Total	\$20,365,664	\$10,423,857	-\$9,941,807	-49%	33%
Operations					
Salaries & Benefits	\$22,096,215	\$12,819,189	-\$9,277,026	-42%	33%
Services & Supplies	\$7,402,015	\$3,162,080	-\$4,239,935	-57%	33%
Operations Total	\$29,498,230	\$15,981,269	-\$13,516,961	-46%	33%
Engineering					
Salaries & Benefits	\$401,482	\$705,423	\$303,941	76%	33%
Services & Supplies	\$5,026,543	\$1,101,983	-\$3,924,560	-78%	33%
Engineering Total	\$5,428,025	\$1,807,406	-\$3,620,619	-67%	33%
Capitalized Expenses					
Facilities	\$26,063,007	\$5,542,937	-\$20,520,070	-79%	33%
Infrastructure	\$255,000	\$4,177	-\$250,823	-98%	33%
Equipment	\$3,515,948	\$328,993	-\$3,186,955	-91%	33%
Nonrevenue Vehicles	\$752,000	\$208,337	-\$543,663	-72%	33%
Capitalized Expenses Total	\$30,585,955	\$6,084,444	-\$24,501,511	-80%	33%
Total All Expenses	\$85,877,874	\$34,296,976	-\$51,580,898	-60%	33%

FREIGHT REVENUES

	FY 2026 Approved Budget and Amendments #1-#7	Actual	Amount Over/ (Under) Budget	% Over/(Under) Budget	% of FY Remaining
State Operating / Capital Grant	\$1,857,958	\$0	-\$1,857,958	-100%	33%
Caltrans SH 37	\$13,022	\$11,980	-\$1,042	-9%	33%
Caltrans Novato Creek Bridge Construction Support	\$12,500	\$0	-\$12,500	-100%	33%
State Shortline Grant	\$460,870	\$0	-\$460,870	-100%	33%
Freight Movement Fees	\$800,000	\$543,775	-\$256,225	-32%	33%
Leases	\$270,000	\$236,185	-\$33,815	-13%	33%
Freight Storage	\$40,000	\$0	-\$40,000	-100%	33%
45(g) Tax Credit & Misc.	\$261,000	\$261,970	\$970	0%	33%
FEMA/CalOES 2023 Disaster Recovery	\$175,977	\$175,977	\$0	0%	33%
Total	\$3,891,327	\$1,229,887	-\$2,661,440	-68%	33%

FREIGHT EXPENSES

	FY 2025-26 Approved Budget and Amendments #1-#7	Actual	Amount Over / (Under) Budget	% Over/(Under) Budget	% of FY Remaining
Operations					
Salaries & Benefits	\$1,068,089	\$675,476	-\$392,613	-37%	33%
Services & Supplies	\$1,572,317	\$696,373	-\$875,944	-56%	33%
Operations Total	\$2,640,406	\$1,371,849	-\$1,268,557	-48%	33%
Engineering					
Salaries & Benefits	\$19,500	\$20,487	\$987	5%	33%
Services & Supplies	\$1,231,420	\$357,525	-\$1,001,091	-71%	33%
Engineering Total	\$1,250,920	\$378,012	-\$1,013,602	-70%	33%
Total All Expenses	\$3,891,326	\$1,749,861	-\$2,141,465	-55%	33%

CAPITAL PROJECTS

Passenger/Pathway Projects	Total Project Budget	Expended in Prior Fiscal Years	Budgeted in FY26	Remaining Project Budget	Project Status
Development: Healdsburg Extension Progressive Design-Build	\$3,250,000	\$366,536	\$2,883,464	\$0	Work is ongoing.
Extension: Healdsburg Phase	\$265,058,000	\$0	\$25,259,000	\$239,799,000	Progressive Design-Build contract awarded; Phase I commenced.
Pathway: Design for 5 Segments in Marin County	\$2,222,537	\$2,172,537	\$50,000	\$0	Conducting engineering design and pursuing environmental permits to prepare segments for construction.
Pathway: Design for 7 Segments in Marin and Sonoma Counties	\$3,936,755	\$2,513,843	\$221,660	\$1,201,252	Conducting engineering design and pursuing environmental permits to prepare segments for construction.
Pathway: Guerneville Rd to Airport Blvd Pathway Permitting and Construction	\$14,212,729	\$18,095	\$20,000	\$14,174,634	In design, awaiting funding allocation. Pursuing NEPA clearance and environmental permitting.
Pathway: Hanna Ranch to Vintage	\$7,070,119	\$35,995	\$185,000	\$6,849,124	Awaiting funding allocation, pursuing NEPA revalidation and preparing

					contract documents.
Pathway: Joe Rodota Trail	\$1,531,749	\$56,108	\$0	\$1,475,641	Preparing contract documents
Pathway: Puerto Suello Tunnel	\$561,465	\$56,816	\$504,649	\$0	Design and environmental clearance work is underway.
State of Good Repair: St Vincent Culvert Repairs	\$250,000	\$0	\$250,000	\$0	In design.
Station: Civic Center Kiss-n-Ride Design	\$224,000	\$0	\$224,000	\$0	In design.
WFO: Joe Rodota to Third Street Traffic Signal (City of Santa Rosa)	\$985,658	\$122,719	\$31,136	\$831,804	Design work completed, construction will be packaged in combination with the Joe Rodota Trail project
WFO: Santa Rosa Downtown Station Access (Developer)	\$703,017	\$0	\$0	\$703,017	Will be packaged for construction in combination with Joe Rodota Trail project
Freight Projects					
State of Good Repair: Bridge Rehabilitation Phase II (3 Bridges)	\$745,424	\$65,765	\$679,659	\$0	Work began in December and is expected to be completed in March 2026

INVESTMENTS

Investments are guided by the SMART investment policy adopted each year with the budget. The policy outlines the guidelines and practices to be used in effectively managing SMART’s available cash and investment portfolio. District funds that are not required for immediate cash requirements are to be invested in compliance with the California Code Section 53600, et seq.

SMART uses the Bank of Marin for day-to-day cash requirements and for longer term investments the Sonoma County Treasury Pool is used. This chart reflects a point in time versus a projection of future fund availability.

Cash on Hand	
Bank of Marin	\$48,548,255
Sonoma County Investment Pool	\$49,978,119
Total Cash on Hand	\$98,526,374
Reserves	
Self-Insured Reserve	\$2,370,675
OPEB/CalPERS Reserve	\$6,574,676
Operating Reserve	\$12,959,990
Capital Reserve	\$13,625,000
Corridor Completion Reserve	\$5,500,000
Total Reserves	\$41,030,341
Cash Balance	\$57,496,033
Less: Current Encumbrances	-\$35,933,267
Balance	\$21,562,766
Less Estimated FY 26 Year-End Balance	-\$57,338,843
Remaining Balance	-\$35,776,077



Contract Summary

PASSENGER RAIL

Active contracts as of 2/28/2025

Contractor	Scope	FY 25/26 Encumbered	FY 25/26 Actuals
Afaf Translations LLC	Oral and Document Translation Services	\$ 2,000	\$ 1,246
Alcohol & Drug Testing Services, LLC	Administration of DOT-, FRA-, and SMART-Regulated Drug and Alcohol Program Services	\$ 45,000	\$ 23,172
Alex Ruiz Sr. dba North Bay Bottling	Water Delivery Service to Fulton Facility	\$ 3,000	\$ 2,493
Alliant Insurance Services, Inc.	Insurance Brokerage and Risk Management Consulting Services	\$ 50,000	\$ 18,804
American Rail Engineers Corporation	Railroad Bridge Inspections, Bridge Engineering, and Related Services	\$ 20,000	\$ 16,003
American Red Cross & Its Constituent Chapters and Branches	American Red Cross CPR/First Aid/ AED Training Certification Services and Cards	\$ 840	\$ 840
Asbury Environmental Services	Hazardous and Non-Hazardous Waste Removal, Disposal, and Related Services	\$ 2,400	\$ 801
Atlas Copco Compressors LLC	Air Compressor Maintenance Services	\$ 2,005	\$ 2,005
Bach-Simpson, A Division of Wabtec Canada, Inc	Event Recorder Overhaul and Maintenance Services	\$ 26,360	\$ 26,360
Barbier Security Group	Security Services at Cal Park Tunnel	\$ 11,436	\$ 8,577
Bender Rosenthal, Inc.	On Call Real Estate Advisory & Property Rights Acquisition Support Services	\$ 16,700	\$ 7,200
BKF Engineers	Design & Engineer Seven (7) Multi-Use Pathway Segments in Sonoma and Marin Counties	\$ 247,288	\$ 38,644
BKF Engineers	Design & Permitting of the Puerto Suello Non-Motorized Pathway	\$ 372,993	\$ 356,989
Bolt Staffing Service, Inc.	Temporary Staffing Services	\$ 40,000	\$ -
Cal Interpreting & Translations	Communication Access Realtime Translation (CART) Services	\$ 13,468	\$ 468
City Towel & Dust Services, Inc. DBA Sunset Linen & Uniform	Laundry and Pressing Services for SMART-Owned Uniforms	\$ 1,400	\$ 1,090
Clean Solutions Services, Inc.	Janitorial and Custodial Services for SMART Stations, Offices, and Parking Lots	\$ 115,831	\$ 100,027
Code3 Entertainment Services, LLC	Microtransit Operator Services	\$ 731,563	\$ 485,714
Construction Testing Services, Inc.	On Call Construction Materials Testing Services	\$ 2,746	\$ 2,746
Cooperative Personnel Services dba CPS HR Consulting	Employee Recruiting Services	\$ 30,000	\$ 7,000
County of Sonoma	Maintenance and Monitoring of Riparian Enhancement Project at Helen Putnam Regional Park	\$ 51,899	\$ 51,899
County of Sonoma	Maintenance and Monitoring of Riparian Enhancement Projects at Crane Creek Regional Park	\$ 36,712	\$ 36,712
County of Sonoma	Non-Revenue Fleet Maintenance and Repair Services	\$ 60,000	\$ 40,785
Courtney Robertson DBA CocoConsult LLC	Construction Alternate Project Delivery Advisor and Cost Estimation Services	\$ 500,000	\$ 284,401
CSW Stuber-Stroeh Engineering Group Inc.	Design & Engineer Five (5) Multi-Use Pathway Segments in Marin Counties	\$ 250,000	\$ 15,027
Data Ticket, Inc.	Citation Issuance and Administration for Illegal Parking at SMART's Facilities	\$ 1,950	\$ 600
DB E.C.O. North America Inc.	Perform Update to Dynamic Operations Simulation Modeling for the SMART Main Line	\$ 145,701	\$ -
Eco-Compteur Inc.	Pedestrian and Bicycle Pathway Counter Software Reporting Tools and Support	\$ 12,600	\$ 12,600
Eide Bailly LLP	Independent Auditor	\$ 59,690	\$ 32,278
eLock Technologies LLC	Ongoing Maintenance and Operation Support for Bicycle eLockers at SMART Stations	\$ 11,850	\$ 11,850
EMR LLC DBA Maxaccel	Software System for Managing and Reporting FRA Compliance	\$ 33,187	\$ 24,393
EMR LLC DBA Maxaccel	Learning Management System and Support Services	\$ 17,850	\$ 13,526
Fehr & Peers	Quality of Life and Economic Impact Assessment Study	\$ 137,267	\$ 115,101
FinQuery	LeaseQuery Accounting Software and Support Services	\$ 12,594	\$ 12,594
Foster & Foster Consulting Actuaries, Inc.	GASB 75 and GASB 68 Compliance and Actuarial Services	\$ 4,250	\$ 4,250
George Hills Company	Third-Party Administrator and Property and Liability Claims Adjusting Services	\$ 18,808	\$ 8,423
Golden Five LLC	Microsoft Office 365 Managed Services and Technical Support Services	\$ 97,455	\$ 77,725
Graymar Environmental Services, LLC	On Call Removal, Remediation, and Disposal of Hazardous and Biohazardous Materials	\$ 33,000	\$ 11,541
Hanford Applied Restoration & Conservation	San Rafael Creek Riparian Mitigation Implementation, Maintenance, and Monitoring Project	\$ 28,463	\$ 23,878
Hanford Applied Restoration & Conservation	Maintenance and Monitoring of the Las Gallinas Creek Watershed Riparian Enhancement Planting	\$ 16,535	\$ 10,107
Hanson Bridgett LLP	Labor and Employment Legal Services	\$ 140,000	\$ 90,682
HCI SYSTEMS, INC.	Fire Suppression System and Fire Extinguisher Inspection, Maintenance, and Certification	\$ 8,016	\$ 3,126
Holland LP	Track Geometry and Measurement Services	\$ 24,000	\$ 24,000
Hunt Oil of California	Supply and Deliver Valvoline Premium Blue 15W40 Motor Oil	\$ 18,446	\$ 16,609

Contractor	Scope	FY 25/26 Encumbered	FY 25/26 Actuals
Integrated Security Controls, Inc.	On Call Maintenance Support for SMART's Existing CCTV and Access Control Systems	\$ 37,186	\$ 6,029
Intelligent Technology Solutions, LLC	IBM Maximo Maintenance and Management System Software and Technical Support Services	\$ 286,650	\$ 221,887
Khouri Consulting, LLC	California State Legislative Advocacy Services	\$ 124,000	\$ 82,000
Knorr Brake Company LLC	Master Controller Overhaul and Upgrade Services	\$ 184,409	\$ 104,220
Knorr Brake Company LLC	Standard Brake System Overhaul Services	\$ 1,151,404	\$ -
Krauthamer & Associates LLC	Employee Recruiting Services	\$ 20,000	\$ -
Lance A. O'Connor	DOT & FRA Regulated Pre-Employment & Recertification Screenings	\$ 4,500	\$ 3,495
Leete Generators	Generator Inspection, Maintenance, and Repair Services	\$ 3,539	\$ 2,716
Masabi LLC	SMART's Mobile Ticketing Application and Technical Support Services	\$ 64,572	\$ 42,524
Mike Brown Electric Co.	9th Street Vehicle Detection Loop Replacement	\$ 16,110	\$ 16,110
Mission Linen Supply	Rental and Laundering of Uniforms	\$ 17,112	\$ 9,765
Modern Railway Systems	TDX & Communication System Monitoring and Maintenance	\$ 94,679	\$ 62,500
Modern Railway Systems	Passenger Information Display Real Time Signage, Software, and Ongoing Support	\$ 28,997	\$ 28,997
Modern Railway Systems	Design and Construction of the Windsor Extension Systems	\$ 103,322	\$ 103,321
Mountain F Enterprises, Inc.	On Call Tree Trimming, Removal, and Arborist Services.	\$ 9,960	\$ 6,540
MuniServices, LLC.	Sales and Use Tax Recovery Services	\$ 40,000	\$ 13,317
Nelson Connects	Temporary Staffing Services	\$ 50,866	\$ 36,178
Netspeed LLC	Avaya Phone System Support Services	\$ 14,400	\$ 10,800
Nick Barbieri Trucking, LLC	Supply and Delivery of Diesel Fuel and Diesel Exhaust Fluid	\$ 1,540,000	\$ 1,162,269
Nossaman LLP	Legal Services Regarding Rail Transit Issues	\$ 1,505,000	\$ 1,108,773
Occupational Health Centers of CA, A Medical Corp.	DOT & FRA Regulated Pre-Employment & Recertification Screenings	\$ 25,000	\$ 12,419
Olson Remcho LLP	Legal Advisory Services on Ordinances and Retail Sales and Use Tax	\$ 5,000	\$ 4,843
Parodi Investigative Solutions	Pre-Employment Investigation and Background Screening	\$ 25,000	\$ 18,300
Peterson Mechanical, Inc	Emergency Maintenance on HVAC Equipment at SMART HQ Server Room	\$ 2,880	\$ -
PFM Financial Advisors, LLC	Financial Advisory Services	\$ 5,000	\$ -
Pitney Bowes, Inc.	Lease of Postage Meter Machine and Postage Fees	\$ 5,800	\$ 5,338
Pivotal Vision	PivotalSenseAI System Software License and Maintenance Program	\$ 2,300	\$ 2,300
Portola Systems, Inc.	Management, Maintenance, and Configuration Support of the SMART Station Network.	\$ 315,240	\$ 235,855
Precision Wireless Service	Land Mobile Radio System Technical Support and Maintenance Services	\$ 31,500	\$ 12,988
Quality Sprayers, Inc.	On-track and Off-track Vegetation Control Services	\$ 93,184	\$ 88,365
Rail Industries Canada Inc.	Portable Digital Wheel Profilometer System, Training, and Technical Support Services	\$ 94,556	\$ -
RSE Corporation	On-Call Civil Engineering, Design, and Land Surveying Services	\$ 242,300	\$ 33,061
Ryan Dunnigan	Pre-Employment, Post Incident, and Return-to-Duty Psychological Evaluations	\$ 24,000	\$ 23,108
Sierra-Cedar, LLC	Oracle Enterprise Resources Planning Software Support Services	\$ 137,369	\$ 92,167
Sonic.net, LLC	Fiberoptic Backhaul Circuit between Rail Operation Center and Larkspur Station	\$ 10,299	\$ 10,299
Sonic.net, LLC	Emergency Phone Backhaul Internet Service for Rail Operation Center	\$ 9,451	\$ 6,935
Sperry Rail, Inc.	Rail Flaw Detection Services	\$ 8,877	\$ -
SPTJ Consulting	Administration Network Management, Monitoring, and Technical Support Services	\$ 218,781	\$ 147,933
Square Signs LLC dba Front Signs	SMART Pathway Wayfinding Sign Fabrication and Installation	\$ 50,660	\$ 50,660
Stacy and Witbeck/Herzog, A Joint Venture	Phase I Agreement: Preliminary Design and Engineering for the Healdsburg Extension	\$ 21,754,399	\$ 6,439,500
Stacy and Witbeck-Ghilotti Bros, A Joint Venture	Construction of Petaluma North Station, Grade Crossing Reconstruction, and Soco Pathway	\$ 72,923	\$ 72,923
Stephanie L. Van Houten	Substance Abuse Professional Services and Drug and Alcohol Counselor Services	\$ 3,334	\$ -
Sue R. Evans	Title Investigation Services	\$ 20,000	\$ 13,488
The Routing Company	Microtransit Software Application Design, Implementation, and Ongoing Support	\$ 17,332	\$ 12,947
Toshiba America Business Solutions	Lease and Maintenance Agreement of SMART Multi-Function Copy Machines	\$ 40,485	\$ 36,888
Triangle Land Restoration	Riparian Mitigation Implementation and Monitoring Project for Segments 1 & 2 of the SMART Pathway	\$ 28,915	\$ 21,896
Triangle Land Restoration	Riparian Mitigation Implementation and Maintenance Project at Windsor Creek	\$ 30,360	\$ 19,829
Triangle Land Restoration	Riparian Mitigation Implementation and Maintenance Project at Helen Putnam Regional Park	\$ 98,976	\$ 98,976
Triangle Land Restoration	Riparian Enhancement Project at Crane Creek Regional Park	\$ 384,680	\$ 384,369
Urban Transportation Associates, Inc.	Automatic Passenger Counter System and Ongoing Technical Support	\$ 12,860	\$ 12,380
Van Scoyoc Associates, Inc.	Federal Legislative Advocacy Services	\$ 60,000	\$ 35,000

Contractor	Scope	FY 25/26 Encumbered	FY 25/26 Actuals
Web Master Designs, LLC	As-Needed Website Support Services	\$ 6,152	\$ 2,241
WRA, Inc.	On-Call Environmental Consulting Support Services	\$ 2,245,316	\$ 1,029,206
	TOTAL	\$ 34,834,934	\$ 13,967,939

FREIGHT RAIL			
Contractor	Scope	FY 25/26	FY 25/26 Actuals
American Rail Engineers Corporation DBA Airshark	Railroad Bridge Inspections, Bridge Engineering, and Related Services	\$ 55,000	\$ 40,589
Asbury Environmental Services DBA World Oil Environmental Serv	Hazardous and Non-Hazardous Waste Removal, Disposal, and Related Services	\$ 25	\$ 25
County of Marin	Grandview Avenue Grade Crossing Paving Project	\$ 140,218	\$ 140,218
County of Sonoma	Non-Revenue Fleet Maintenance and Repair Services	\$ 9,544	\$ 6,247
Dida, Inc. dba Wine Country Sanitary	Portable Restroom Rental and Service for Freight Depot	\$ 2,400	\$ 1,772
Freight Tracking Software	Railcar Transportation Application Software and Support	\$ 6,000	\$ 3,290
GATX Rail Locomotive Group, LLC	Lease of Freight Locomotive 1501	\$ 53,905	\$ 46,073
Hue & Cry, Inc	Alarm Monitoring and Notification Services at Freight Depot	\$ 1,000	\$ 746
Lambertus J Verstegen DBA South West Locomotive Repair	As-Needed Freight Locomotive Maintenance and Repair Services	\$ 22,652	\$ 18,985
Mickco, Inc	45G Tax Credit Advisory and Assignment Services	\$ 15,718	\$ 15,718
Nick Barbieri Trucking, LLC	Supply and Delivery of Diesel Fuel and Diesel Exhaust Fluid	\$ 75,000	\$ 35,704
Quality Sprayers, Inc.	On-track and Off-track Vegetation Control Services	\$ 52,000	\$ 51,999
RailWorks Partners LP	Brazos Railroad Timber Bridge Repairs - Phase II Project	\$ 664,655	\$ 664,655
Stacy and Witbeck, Inc.	Emergency Hwy 37 At-Grade Crossing Panel Repair	\$ 100,000	\$ 14,193
Summit Signal, Inc.	Emergency Black Point Bridge Center Wedge Repair	\$ 135,141	\$ 45,966
Summit Signal, Inc.	Inspections, Testing, and Routine Maintenance services for Railroad Signal Equipment	\$ 100,230	\$ 73,425
Summit Signal, Inc.	Emergency Call-Out Maintenance Services for Signal Equipment	\$ 22,249	\$ 18,262
	TOTAL	\$ 1,455,738	\$ 1,177,868

Actuals-To-Date include invoices that have been matched to a Purchase Order but may not have been paid as of 2/28/2025



Sonoma-Marín Area Rail Transit
5401 Old Redwood Hwy, Suite 200
Petaluma, CA 94954

P: 707-794-3330
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W: www.SonomaMarinTrain.org

BOARD OF DIRECTORS

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Sonoma County Board of Supervisors

Mary Sackett, Vice Chair
Marin County Board of Supervisors

Janice Cader Thompson
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Victoria Fleming
Sonoma County Mayors' and
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Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Ariel Kelley
Sonoma County Mayors' and
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Marin County Board of Supervisors

Kevin Jacobs
Transportation Authority of Marin

Barbara Pahre
Golden Gate Bridge,
Highway/Transportation District

Gabe Paulson
Marin County Council of Mayors and
Councilmembers

David Rabbitt
Sonoma County Board of Supervisors

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: Contract No. FR-BB-25-002 for the Black Point Bridge

Dear Board Members:

RECOMMENDATIONS:

Determine there is a continued need for emergency action and continue to approve Contract #FR-BB-25-002 for emergency repairs to Black Point Bridge for a total contract amount not to exceed \$274,594.

SUMMARY:

This emergency item first came to the District's attention in October. The Black Point Bridge malfunctioned and was unable to be moved without causing further damage. The bridge is a critical link to the SMART main line and must be traveled over to serve freight customers in Petaluma. Given that this critical connection is required for SMART to fulfill its common carrier obligations, the emergency would not permit a delay resulting from a competitive solicitation for bids as immediate repairs to the bridge were necessary. Pursuant to delegated authority, the General Manager in coordination with the SMART Board of Directors Chair, declared an emergency and began the procurement process. On November 7, 2025, SMART executed a contract with Summit Signal to complete the repairs for a total contract amount not to exceed \$135,141.00. In March the Board approved an increase of \$139,453 for a total of \$274,594 to address additional repairs beyond those originally anticipated to be able to turn the bridge permit trains to proceed over it.

Pursuant to Public Contract Code §22050, the governing body shall initially review the emergency action at its next scheduled meeting after the action and at least at every regularly scheduled meeting thereafter until the action is terminated to determine that there is a need to continue the action, unless a person with authority has terminated that action.

The contractor has begun the repair process of Black Point Bridge. Removal of the damaged bridge components is underway, and replacement parts are being fabricated. As required by Public Contract Code §22050, Staff will update the Board of Director at the May 20, 2026, meeting, if required.

FISCAL IMPACT: Funding has been identified in the FY 2026 freight budget.

Very truly yours,

/s/
Eddy Cumins, General Manager



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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: Fiscal Year 2025/2026 Budget Amendment #9

Dear Board Members:

RECOMMENDATIONS:

Adopt Resolution No. 2026-06, amending Resolution No. 2025-19, the Fiscal Year 2025/2026 Adopted Budget to modify spending authority.

BACKGROUND:

In February, SMART and the City of Santa Rosa signed license and funding agreements for design and construction of the Jennings Avenue at-grade crossing. This action adds funding into the current fiscal year to initiate preliminary engineering design work in the amount of \$23,450, funded by the City of Santa Rosa.

The SMART Engineering team has identified a cantilever on the Freight Line at 8th Street in Schellville that requires replacement. The cantilever is located on the south side of the roadway and spans three lanes of traffic, including a left-turn lane. This is not the same cantilever that was previously removed from the Freight Budget and discussed at a prior Board meeting.

This proposed budget amendment adds \$44,000 to allow SMART to purchase the cantilever as owner furnished material, resulting in a lower overall cost for the future installation. The purchase will be offset using funds from the 2024 California Priority Legislative Budget Projects grant.

The Tie Replacement Project for the current fiscal year is nearing completion and requires additional funding to cover remaining labor and disposal costs associated with the removed ties. This action adds \$6,000 to complete the work.

These costs will be funded through the State Shortline Grant, with the required match coming from the Freight Fund. Because the Freight Fund is maintained at a zero-fund balance, additional funding from the 2024

California Priority Legislative Budget Projects grant will need to be budgeted to maintain the \$0 balance. However, the match required for the State Shortline Grant will be covered by freight fees that are already budgeted.

FISCAL IMPACT:

The increase in freight costs is fully offset by a corresponding increase in grant funding, resulting in no net impact to the fund balance. The passenger budget includes an additional \$23,450 in both expenses and funding, maintaining a fund balance of \$57,338,843.

Sincerely,

/s/

Heather McKillop
Chief Financial Officer

Attachments: 1.) Resolution No 2025-06 – FY 2025/2026 Budget Amendment #9
 2.) Revised Appendix A
 3.) Revised Appendix B

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT, STATE OF CALIFORNIA, AMENDING RESOLUTION NO. 2025-19, THE ANNUAL BUDGET FOR FISCAL YEAR 2025-2026 TO MODIFY SPENDING AUTHORITY

WHEREAS, as part of its approval of the Annual Budget for Fiscal Year 2025-2026, the Board of Directors considered the annual expenditures necessary for the Sonoma-Marín Area Rail Transit District; and

WHEREAS, the Board approved Budget Amendment #1 which modified expenditure authority and revised position authority; and

WHEREAS, the Board approved Budget Amendment #2 to modify expenditure authority for the rollforward of funds and acceptance of additional funding; and

WHEREAS, the Board approved Budget Amendment #3 to modify expenditure authority for Phase I of the Healdsburg Extension project and the Teamsters agreement, and to revise position authority; and

WHEREAS, the Board approved Budget Amendment #4 to modify expenditure authority to add grant funding and roll forward funds related to continuing projects; and

WHEREAS, the Board approved Budget Amendment #5 to add additional funding for passenger rail, as well as add and modify funding sources for freight rail; and

WHEREAS, the Board approved Budget Amendment #6 increasing expenditure authority for passenger and freight; and

WHEREAS, the Board approved Budget Amendment #7 modifying the expenditure authority for passenger and freight and amending the position authorization for freight; and

WHEREAS, the Board approved Budget Amendment #8 modifying the expenditure authority for freight and amending the position authorization for passenger; and

WHEREAS, the Board desires to amend the budget to increase expenditure authority for passenger and freight; and

NOW, THEREFORE, BE IT RESOLVED that expenditure authority in Resolution No. 2025-19, Fiscal Year 2025-2026 Adopted Budget Appendix A and Appendix B are hereby amended.

BE IT FURTHER RESOLVED except as specifically amended or supplemented by this Resolution, Resolution No. 2025-19, together with all supplements, amendments, and exhibits thereto is, and shall continue to be, in full force and effect as originally adopted, and otherwise contained herein shall, or shall be construed to, modify, invalidate, or otherwise affect and provision of Resolution No. 2025-19.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 15th day of April, 2026, by the following vote:

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

Chris Coursey, Chair, Board of Directors
Sonoma-Marín Area Rail Transit District

ATTEST:

Kyreen Jorgensen, Clerk of the Board of Directors
Sonoma-Marín Area Rail Transit District

Appendix A - Passenger Rail/Pathway/Shuttle Sources & Uses

FISCAL YEAR 2025-2026 BUDGET - SOURCES

	FY 26 Budget	Amendment #1	Amendment #2	Amendment #3	Amendment #4	Amendment #5	Amendment #6	Amendment #7	Amendment #9	Total
1 Beginning Fund Balance *	\$ 61,508,650									\$ 61,508,650
2 Revenues										
3 SMART S&U Tax										
4 Measure Q	\$ 48,300,300									\$ 48,300,300
5 Measure Q Cost of Collection	\$ (683,796)	\$ (156,074)								\$ (839,870)
6 Net Sales & Use Tax	\$ 47,616,504	\$ (156,074)								\$ 47,460,430
7 Measure Q Roll Forward	\$ 3,975,611		\$ 425,957		\$ 9,777					\$ 4,411,345
8 Transfer from Capital Fund	\$ -									\$ -
9 Transfer from Corridor Reserve	\$ 1,500,000									\$ 1,500,000
10 Subtotal	\$ 53,092,115	\$ (156,074)	\$ 425,957	\$ -	\$ 9,777	\$ -	\$ -	\$ -	\$ -	\$ 53,371,774
11 Federal Funds										
12 5307 - Urbanized Area Formula Funds (Preventative Maintenance)	\$ 4,246,710									\$ 4,246,710
13 5337 - Federal State of Good Repair Funds	\$ 4,937,716						\$ (3,451,826)			\$ 1,485,890
14 Discretionary Earmark	\$ 1,520,000		\$ 97,144							\$ 1,617,144
15 FTA / OBAG 2 - Hanna Ranch to Vintage Way	\$ 91,600						\$ (91,600)			\$ -
16 FTA/ OBAG 3 - Hanna Ranch to Vintage Way	\$ 171,750						\$ (171,750)			\$ -
17 Subtotal	\$ 10,967,776	\$ -	\$ 97,144	\$ -	\$ -	\$ -	\$ (3,715,176)	\$ -	\$ -	\$ 7,349,744
18 State Funds										
19 AHSC - Affordable Housing and Sustainable Communities	\$ 1,610,000						\$ (1,525,000)			\$ 85,000
20 ATP - Active Transportation Program	\$ -		\$ 99,429							\$ 99,429
21 Caltrans Sustainability Communities Competative Planning Grant	\$ 159,354									\$ 159,354
22 ITIP - Complete Streets	\$ 896,000						\$ (896,000)			\$ -
23 LCTOP - Low Carbon Transit Operating	\$ 760,918									\$ 760,918
24 LPP - Local Partnership Program	\$ 727,443	\$ 200,000			\$ 100,000		\$ (727,443)			\$ 300,000
25 SRA - State Rail Assistance	\$ 3,700,000									\$ 3,700,000
26 STA - State Transit Assistance (Population)	\$ 1,309,770		\$ (42,817)							\$ 1,266,953
27 STA - State Transit Assistance (Revenue)	\$ 2,094,129									\$ 2,094,129
28 STA - MASCOTS	\$ -		\$ 800,000							\$ 800,000
29 STA - SGR (State of Good Repair)	\$ 363,183									\$ 363,183
30 State Funds - Shuttle Service	\$ 250,000				\$ 65,705					\$ 315,705
31 TIRCP - Petaluma Station	\$ -		\$ 150,000				\$ (150,000)			\$ -
32 TIRCP - Windsor to Healdsburg Project Development	\$ 1,380,000		\$ (113,680)							\$ 1,266,320
33 TIRCP - Windsor to Healdsburg Phase I				\$ 33,359,000			\$ (10,100,000)			\$ 23,259,000
34 Subtotal	\$ 13,250,797	\$ 200,000	\$ 892,932	\$ 33,359,000	\$ 165,705	\$ -	\$ (13,398,443)	\$ -	\$ -	\$ 34,469,991
35 Regional Funds										
36 Regional Measure 3 (RM3)	\$ 1,048,400						\$ (824,400)			\$ 224,000
37 MTC - MASCOTS	\$ -	\$ 600,000	\$ (600,000)							\$ -
38 Measure M - Healdsburg					\$ 2,000,000					\$ 2,000,000
39 Subtotal	\$ 1,048,400	\$ 600,000	\$ (600,000)	\$ -	\$ 2,000,000	\$ -	\$ (824,400)	\$ -	\$ -	\$ 2,224,000
40 Other Sources										
41 Advertising	\$ 175,000									\$ 175,000
42 Charges for Services	\$ 112,851									\$ 112,851
43 Fare Revenues - Passenger Rail	\$ 2,541,000									\$ 2,541,000
44 Fare Revenues - Shuttle	\$ 8,000									\$ 8,000
45 Interest Earning	\$ 800,000									\$ 800,000
46 Misc.	\$ 55,885									\$ 55,885
47 Parking	\$ 17,580									\$ 17,580
48 Rent - Real Estate	\$ 494,025									\$ 494,025
49 Other Governments/Private Sector	\$ 1,534,821		\$ 31,136				\$ (1,534,821)	\$ 23,450	\$ 54,585	\$ 54,585
50 Subtotal	\$ 5,739,161	\$ -	\$ 31,136	\$ -	\$ -	\$ -	\$ (1,534,821)	\$ 23,450	\$ 54,585	\$ 4,258,926
51 Total Revenues	\$ 84,098,249	\$ 643,926	\$ 847,169	\$ 33,359,000	\$ 2,175,482	\$ -	\$ (19,472,840)	\$ 23,450	\$ 101,650,985	
52 Total Revenues + Fund Balance	\$ 145,606,899	\$ 643,926	\$ 847,169	\$ 33,359,000	\$ 2,175,482	\$ -	\$ (19,472,840)	\$ 23,450	\$ 163,183,085	

FISCAL YEAR 2025-2026 BUDGET - USES										
	FY 26 Budget	Amendment #1	Amendment #2	Amendment #3	Amendment #4	Amendment #5	Amendment #6	Amendment #7	Amendment #9	Total
53	Debt Service	\$ 16,996,844								\$ 16,996,844
54	Salaries & Benefits	\$ 30,549,100	\$ 1,046,346		\$ 87,417					\$ 31,682,864
55	Reduction for Salaries Charged to Projects	\$ (1,663,687)								\$ (1,663,687)
56	Reduction for Allocation of Salaries/ Services/ Supplies to Freight	\$ (34,944)								\$ (34,944)
57	Service & Supplies	\$ 18,382,301	\$ 221,819				\$ 700,000	\$ 73,563		\$ 19,377,683
58	Total Salaries, Benefits, Service, & Supplies	\$ 47,232,770	\$ 1,268,165	\$ -	\$ 87,417	\$ -	\$ 700,000	\$ 73,563	\$ -	\$ 49,361,915
59	Contribution to OPEB/ CalPERS Liability Fund	\$ 750,000								\$ 750,000
60	Contribution to Capital Sinking Fund	\$ 1,000,000								\$ 1,000,000
61	Operating Reserve	\$ 1,231,027								\$ 1,231,027
62	Total Reserve Contributions	\$ 2,981,027	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,981,027
63	Total Debt Service, Operating, Reserves	\$ 67,210,640	\$ 1,268,165	\$ -	\$ 87,417	\$ -	\$ 700,000	\$ 73,563	\$ -	\$ 69,339,786
64	Balance	\$ 78,396,259	\$ (624,239)	\$ 847,169	\$ 33,271,583	\$ 2,175,482	\$ (700,000)	\$ (19,399,277)	\$ 23,450	\$ 93,843,299
65	Non-Capital Projects	\$ 4,658,214		\$ 2,763,789				\$ (2,367,710)		\$ 5,054,293
66	Total Non-Capital Projects	\$ 4,658,214	\$ -	\$ 2,763,789	\$ -	\$ -	\$ -	\$ (2,367,710)	\$ -	\$ 5,054,293
67	State of Good Repair and Projects	\$ 8,831,723						\$ (5,475,355)		\$ 3,356,368
68	Total State of Good Repair	\$ 8,831,723	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (5,475,355)	\$ -	\$ 3,356,368
69	Capital Projects									
70	Equipment	\$ 2,576,151				\$ 109,777		\$ (1,465,300)		\$ 1,220,628
71	Facilities	\$ 6,683,886		\$ (2,123,803)	\$ 33,359,000	\$ 2,000,000	\$ 185,000	\$ (14,011,365)		\$ 26,092,718
72	Infrastructure	\$ -		\$ 50,000				\$ (45,000)	\$ 23,450	\$ 28,450
73	Non-Revenue Vehicles	\$ 346,000	\$ 276,000					\$ 130,000		\$ 752,000
74	Land Acquisition	\$ -								\$ -
75	Total Capital Expenditures	\$ 9,606,037	\$ 276,000	\$ (2,073,803)	\$ 33,359,000	\$ 2,109,777	\$ 185,000	\$ (15,391,665)	\$ 23,450	\$ 28,093,795
76	Ending Fund Balance	\$ 55,300,285	\$ (900,239)	\$ 157,183	\$ (87,417)	\$ 65,705	\$ (185,000)	\$ (700,000)	\$ 3,835,453	\$ 57,338,843



Sonoma-Marín Area Rail Transit
5401 Old Redwood Hwy, Suite 200
Petaluma, CA 94954

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W: www.SonomaMarinTrain.org

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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 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	\$0.2800
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-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.

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 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	\$0.4000
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
-----------------------	--------

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-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.

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-Marín 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.



Sonoma-Marín Area Rail Transit
5401 Old Redwood Hwy, Suite 200
Petaluma, CA 94954

P: 707-794-3330
F: 707-794-3037
W: www.SonomaMarinTrain.org

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Sonoma County Board of Supervisors

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Sonoma County Board of Supervisors

GENERAL MANAGER

Eddy Cumins

April 15, 2026

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

SUBJECT: Authorize the General Manager to award Agreement No. IT-PS-25-003 with Portola Systems, Inc. for ongoing management and maintenance support of the SMART Station Network.

Dear Board Members:

RECOMMENDATIONS:

Authorize the General Manager to award Agreement No. IT-PS-25-003 to Portola Systems, Inc. to provide ongoing management and maintenance support of the SMART Station Network with a not-to-exceed amount of \$920,306.99 for the initial three-year term and \$626,703.02 for the optional two-year term thereafter.

SUMMARY:

SMART relies on a complex station network infrastructure to support critical passenger facing and operational systems, including ticket vending machines, fare collection interfaces, security systems, public address systems, realtime information displays, and station WiFi. This infrastructure must be monitored and maintained 24 hours a day, seven days a week, to ensure safe and reliable rail operations.

BACKGROUND:

SMART's existing contract for management, maintenance, and configuration support of the SMART Station Network is set to expire on June 30, 2026. SMART issued a Request for Proposals (RFP) on December 1, 2025, to solicit qualified firms to provide ongoing management and maintenance support for the SMART Station Network for the next five years. SMART received four Proposals, two of which were determined to be responsive, by the Proposal deadline on January 20, 2026.

An evaluation committee reviewed and evaluated the responsive Proposals using the evaluation criteria published in the Request for Proposal, which included service approach, demonstrated history of performing similar work, key personnel qualifications, and pricing. Following the evaluation process, the evaluation committee made the determination that the Proposal submitted by Portola Systems, Inc. provided the best overall value to SMART and is recommending them for award.

Staff recommends authorizing the General Manager to award Agreement No. IT-PS-25-003 to Portola Systems, Inc. to provide ongoing management and maintenance support of the SMART Station Network with a not-to-exceed amount of \$920,306.99 for the initial three-year term and \$626,703.02 for the optional

two-year term thereafter to ensure continuity of station network operations and reliable support for critical passenger-facing and operational systems.

FISCAL IMPACT:

The agreement authorizes a total not-to-exceed amount of \$920,306.99 for the initial contract term (Fiscal Years 2027 – 2029) and \$626,703.02 (Fiscal Year 2030 – 2031). Funding for these services is assumed in future fiscal year operating budgets.

Sincerely,

/s/

Bryan Crowley
Information Systems Manager

Attachment(s): Agreement No. IT-PS-25-003

AGREEMENT FOR CONSULTANT SERVICES

This agreement (“Agreement”), dated as of July 1, 2026 (“Effective Date”) is by and between the Sonoma-Marín Area Rail Transit District (hereinafter “SMART”), and Portola Systems, Inc. (hereinafter “Consultant”).

RECITALS

WHEREAS, Consultant represents that it is duly qualified and experienced in the areas of information systems network configuration, maintenance, technical support services; and

WHEREAS, in the judgment of the Board of Directors of SMART or District, it is necessary and desirable to employ the services of Consultant to perform ongoing management and maintenance support for the SMART Station Network.

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

AGREEMENT

ARTICLE 1. RECITALS.

Section 1.01 The above Recitals are true and correct.

ARTICLE 2. LIST OF EXHIBITS.

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

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

ARTICLE 3. REQUEST FOR SERVICES.

Section 3.01 Initiation Conference. SMART’s Information Systems Manager or designee (hereinafter “SMART Manager”) will initiate all requests for services through the issuance of a Task Order.

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

ARTICLE 4. SCOPE OF SERVICES.

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

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

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

Section 4.04 Assigned Personnel.

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

Ryan Miller, Executive Vice President, Senior Network and Systems Architect
Rooein Nasiri, Senior Network Architect and Security Engineer
Juan Pulido, Senior Network Engineer
Rich Coibion, Senior Systems Engineer
Will Young, Network Engineer
Sue Haseltine, Purchasing Management
Brooke Mincey, Account Manager

ARTICLE 5. PAYMENT.

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

Section 5.01 Consultant shall invoice SMART on a monthly basis, detailing the tasks performed pursuant to the Scope of Work requested by SMART Manager and the hours worked. SMART shall pay Consultant within 30 days after submission of the invoices. If invoices require correction, the 30-day payment period shall restart upon submission of the revised invoice.

Section 5.02 Consultant shall be paid in accordance with the rates established in **Exhibit B**; provided, however, that total payments to Consultant shall not exceed \$920,306.99 without the prior written approval of SMART. Consultant shall submit its invoices in arrears on a monthly basis in a form approved by the Chief Financial Officer. The invoices shall show or include: (i) the task(s) performed; (ii) the rates corresponding to the service; (iii) for additional devices associated with Task 2, itemize the additional devices on the invoice accordingly; (iv) for time and materials tasks, list the time in quarter hours devoted to the task, the names and classifications of the persons performing the work, and the hourly rate or rates for those individuals; and (v) copies of receipts for reimbursable materials/expenses, if any. All reimbursable expenses must comply with SMART's Travel Guidelines and must receive prior approval. Consultant's reimbursement for materials/expenses shall not include items already included in Consultant's overhead as may be billed as a part of its labor rates set forth in **Exhibit B**. SMART does not reimburse Consultant for travel time.

Section 5.03 Consultant agrees that 48 CFR Part 31, Contract Cost Principles and Procedures and 2 CFR Part 200 shall be used to determine the allowability of individual terms of cost. Any costs for which payment has been made to the Consultant that are determined by subsequential audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the Consultant to SMART.

Section 5.04 Consultant must submit all invoices on a timely basis, but no later than thirty (30) days from the date the services/charges were incurred. District shall not accept invoices submitted by Consultant after the end of such thirty (30) day period without District pre-approval. Time is of the essence with respect to submission of invoices and failure by Consultant to abide by these requirements may delay or prevent payment of invoices or cause such invoices to be returned to the Consultant unpaid.

ARTICLE 6. TERM OF AGREEMENT.

Section 6.01 The term of this Agreement shall remain in effect through June 30, 2029, with one (1) two-year option to extend at SMART's sole discretion unless terminated earlier in accordance with the provisions of **Article 7** below.

ARTICLE 7. TERMINATION.

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

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

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

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

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

ARTICLE 8. INDEMNIFICATION

Consultant agrees to accept all responsibility for loss or damage to any person or entity, including SMART, and to indemnify, hold harmless, and release SMART, its officers, agents, and employees, from and against any actions, claims, damages,

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

ARTICLE 9. INSURANCE.

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

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

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

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

Section 9.04 Technology Professional Liability Errors and Omissions. Insurance shall be appropriate to the Consultant's profession and work hereunder, with limits not less than \$2,000,000 per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Consultant in this agreement and shall include, but not be limited to, claim involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and

alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.

- a. The Policy shall include, or be endorsed to include, **property damage liability coverage** for damage to, alteration of, loss of, or destruction of electronic data and/or information “property” of the Agency in the care, custody, or control of the Consultant.

Section 9.05 Cyber Liability Insurance. Cyber Liability Insurance with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Consultant in this Agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines, and penalties as well as credit monitoring expenses.

Section 9.06 Endorsements. Prior to commencing work, Consultant shall file Certificate(s) of Insurance with SMART evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. Said endorsements and Certificate(s) of Insurance shall stipulate:

- (a) SMART, its officers, and employees shall be named as additional insured on all policies listed above, with the exception of the workers compensation insurance policy and the professional services liability policy (if applicable).
- (b) That the policy(ies) is Primary Insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim which Consultant is liable, up to and including the total limit of liability, without right of contribution from any other insurance effected or which may be effected by the Insureds.
- (c) Inclusion of the Insureds as additional insureds shall not in any way affect its rights either as respects any claim, demand, suit or judgment made, brought or recovered against Consultant. Said policy shall protect Consultant and the Insureds in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company’s liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.
- (d) Consultant hereby grants to SMART a waiver of any right to subrogation which any insurer of said Consultant may acquire against SMART by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any

endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not SMART has received a waiver of subrogation endorsement from the insurer.

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

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

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

Section 9.07 Deductibles and Retentions. Consultant shall be responsible for payment of any deductible or retention on Consultant's policies without right of contribution from SMART. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the name insured is not acceptable.

Section 9.08 Claims Made Coverage. If any insurance specified above is written on a claims-made coverage form, Consultant shall:

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

Section 9.09 Documentation. The following documentation shall be submitted to SMART:

- (a) Properly executed Certificates of Insurance clearly evidencing all coverages and limits required above. Said Certificates shall be submitted prior to the execution of this Agreement. At SMART's request, Consultant shall provide certified copies

of the policies that correspond to the policies listed on the Certificates of Insurance. Consultant agrees to maintain current Certificates of Insurance evidencing the above-required coverages and limits on file with SMART for the duration of this Agreement.

- (b) Copies of properly executed endorsements required above for each policy. Said endorsement copies shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current endorsements evidencing the above-specified requirements on file with SMART for the duration of this Agreement.
- (c) After the Agreement has been signed, signed Certificates of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.

Please email all renewal certificates of insurance and corresponding policy documents to InsuranceRenewals@sonomamarintrain.org.

Section 9.10 Policy Obligations. Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

Section 9.11 Material Breach. If Consultant, for any reason, fails to maintain insurance coverage, which is required pursuant to this Agreement, the same shall be deemed a material breach of this Agreement. SMART, in its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, SMART may purchase such required insurance coverage, and without further notice to Consultant, SMART may deduct from sums due to Consultant any premium costs advanced by SMART for such insurance. These remedies shall be in addition to any other remedies available to SMART.

Section 9.12 Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice to SMART.

ARTICLE 10. PROSECUTION OF WORK.

When work is requested of Consultant by SMART, all due diligence shall be exercised and the work accomplished without undue delay, within the performance time specified in the Task Order. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, or wildfire, the time for Consultant's performance of this Agreement shall be extended by a number of days equal to the number of days Consultant has been delayed.

ARTICLE 11. EXTRA OR CHANGED WORK.

Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not increase the amount paid under the Agreement, and which do not

significantly change the scope of work or significantly lengthen time schedules may be executed by the SMART Manager in a form approved by SMART Counsel. The Board of Directors or General Manager must authorize all other extra or changed work. The parties expressly recognize that SMART personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Consultant to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Consultant shall be entitled to no compensation whatsoever for the performance of such work. Consultant further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of SMART.

ARTICLE 12. REPRESENTATIONS OF CONSULTANT.

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

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

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

Section 12.04 Records Maintenance. Consultant shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to SMART for inspection at any reasonable time. Consultant shall

maintain such records for a period of four (4) years following completion of work hereunder. Consultant and Subconsultants shall permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by the State, for the purpose of any investigation to ascertain compliance with this document.

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

Section 12.06 Nondiscrimination. Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition (including cancer), pregnancy, physical disability (including HIV and AIDS), mental disability, denial of family care leave, sexual orientation or other prohibited basis, including without limitation, SMART's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference. Consultant shall also comply with the provisions of the Fair Employment and Housing Act (California Government Code, Section 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 et seq).

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

Section 12.08 Ownership And Disclosure Of Work Product. Any and all work product resulting from this Agreement is commissioned by SMART as a work for hire. SMART shall be considered, for all purposes, the author of the work product and shall have all rights of authorship to the work, including, but not limited to, the exclusive

right to use, publish, reproduce, copy and make derivative use of, the work product or otherwise grant others limited rights to use the work product. To the extent Consultant incorporates into the work product any pre-existing work product owned by Consultant, Consultant 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 Consultant and other agents in connection with this Agreement shall be the property of SMART. SMART shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Consultant shall promptly deliver to SMART all such documents, which have not already been provided to SMART in such form or format, as SMART deems appropriate. Such documents shall be and will remain the property of SMART without restriction or limitation. Consultant may retain copies of the above-described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of SMART.

ARTICLE 13. DEMAND FOR ASSURANCE.

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

ARTICLE 14. ASSIGNMENT AND DELEGATION.

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

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

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

addressed as follows:

If to SMART Manager: Sonoma-Marín Area Rail Transit District
Attn: Bryan Crowley
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954
bcrowley@sonomamarintrain.org
707-794-3330

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 Consultant: Portola Systems, Inc.
Attn: Ryan Miller
327 O'Hair Court Suite B
Santa Rosa, CA
rmiller@portolasystems.net
(o) 707-824-8800
(c) 707-495-8878

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

ARTICLE 16. MISCELLANEOUS PROVISIONS.

Section 16.01 Use of Recycled Paper. SMART requires that all printing jobs produced under this Agreement be printed on recycled content papers. Recycled-content papers are defined as papers containing a minimum of 30 percent postconsumer fiber by weight. All papers used in the performance of a print job for SMART shall be recycled-content paper. The recycle logo or "chasing arrows" cannot be used on printed material unless the paper contains a minimum of 30 percent postconsumer material. If paper meets the 30 percent requirement, ask that the

recycling logo be printed on the project.

Section 16.02 No Waiver of Breach. The waiver by SMART of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

Section 16.03 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Consultant and SMART acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Consultant and SMART acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

Section 16.04 Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

Section 16.05 Licensing Laws. The consultant and all subcontractors shall comply with the provisions of Chapter 9 Division 3 of the Business and Professions code concerning the licensing of contractors. All Contractors shall be licensed in accordance with the laws of the State of California and any Contractor not so licensed is subject to the penalties imposed by such laws. Prior to commencing any work under contract, all Contractors and subcontractors must show that they hold appropriate and current Contractor Licenses in the State of California. The Contractor shall provide such subcontractor information, including the class type, license, number, and expiration date to SMART.

Section 16.06 Drug-Free Workplace. Consultant certifies that it will provide a drug-free workplace in compliance with Government Code §8350-§8357.

Section 16.07 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 16.08 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Venue for any action to enforce the terms of this Agreement or for the breach thereof shall be in the Superior Court of the State of California in the County of Marin.

Section 16.09 Use of SMART Name and Logo Restrictions. Consultant is prohibited from using SMART's name and logo unless expressly authorized herein or by written authorization from SMART's legal counsel.

Section 16.10 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

Section 16.11 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

Section 16.12 Acceptance of Electronic Signatures and Counterparts. The parties agree that this Contract, Agreements ancillary to this Contract, and related documents to be entered into this Contract will be considered executed when all parties have signed this Agreement. Signatures delivered by scanned image as an attachment to electronic mail or delivered electronically through the use of programs such as DocuSign must be treated in all respects as having the same effect as an original signature. Each party further agrees that this Contract may be executed in two or more counterparts, all of which constitute one and the same instrument.

Section 16.13 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

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

CONSULTANT: PORTOLA SYSTEMS, INC.

By: _____
Ryan Miller, Executive Vice President

Date: _____

SONOMA-MARIN AREA RAIL TRANSIT (SMART)

By: _____
Eddy Cumins, General Manager

Date: _____

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

By: _____
Ken Hendricks, Procurement and Contracts Manager

Date: _____

APPROVED AS TO FORM FOR SMART:

By: _____
District Counsel

Date: _____

EXHIBIT A SCOPE OF WORK & TIMELINE

I. Overview

The Sonoma-Marine Area Rail Transit District (SMART) is contracting with Portola Systems, Inc. to provide ongoing management and maintenance support for the SMART Station Network.

The SMART Station Network encompasses network equipment necessary to allow for data, voice, and video transmission from station devices to the SMART Data Center over SMART provided fiber optic backbone. Work shall include maintenance of point-to-point VPN connections from the SMART Data Center to Fare Collection Vendor facilities.

Station devices include, but are not limited to the following:

- Uninterruptible Power Supplies
- Ticket Vending Machines
- Security Cameras
- Station Wi-Fi
- Realtime Signs
- Public Address systems

Consultant will also be tasked with integrating new equipment or replacement equipment into SMART's Station Network.

As part of the management and monitoring of SMART's Station Network, Consultant will be responsible for managing the Cisco SmartNet licensing and contracts for the equipment.

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

II. Contract Management

All work shall be initiated, scheduled, and reviewed by the Information Systems Manager or designee (hereinafter "SMART Manager"). Work will be initiated through written task orders signed by both parties. It is the expectation that Task Orders be signed within two business days.

III. Scope of Work

A. Overview

Station Network Support Services performed by Consultant while under

Agreement are split into the following four tasks:

Task 1: Transition of Service from Incumbent

Task 2: Planned Station Network Management and Maintenance

Task 3: On-Call Support Services

Task 4: Cisco SmartNet Coverage

If work requires access to SMART's right-of-way, Consultant shall coordinate with SMART's Contract Manager to acquire a right-of-way Access Permit prior to any work being performed. SMART right of way access requires compliance with SMART safety rules and regulations.

SMART's Station Network primarily consists of the following types of devices:

Table. 1

Quantity	Type of Equipment
1	Monitoring Server
2	Firewalls in High Availability Pair
15	Uninterruptible Power Supply (UPS) units with Temperature Probes
15	UPS External Battery Pack
15	Switched Power Distribution Unit
50	Network Switches

SMART may incorporate and implement additional network hardware equipment into the SMART station network during the term of this Agreement.

This additional hardware will be covered by the services described below. The additional per device cost for the services described below will be in accordance with the agreement schedule of rates. All active and in service Cisco devices must be covered by an active SmartNet Subscription during the duration of this agreement.

B. Scope of Work Tasks

a. Task 1: Transition of Service from Incumbent

To ensure a smooth transition of network managed services from the incumbent contractor to Consultant, a structured transition will be developed and executed.

1. Consultant shall meet with SMART and the outgoing service provider to facilitate the transfer of all relevant documentation, system access credentials, and network configuration data.
2. The completed transition plan issued by Consultant will include a

full inventory of the existing infrastructure, confirmation of device inventories, and takeover of any exiting open support tickets.

3. Consultant shall complete the transition within 30 calendar days of contract execution unless otherwise agreed upon in writing by SMART.

A Task Order will be issued for this work.

b. Task 2: Planned Station Network Support Services

Consultant shall perform the following services to monitor and manage SMART's existing station network:

1. 24x7x365 monitoring of station network functionality using secure remote access.
2. Provide 24x7 on-call support subject to the terms described in Section IV – Timelines.
3. Installation of up to two software updates per year per device for the station network infrastructure hardware. Scheduling of these updates will need pre- approval from the Contract Manager.
4. Bi-weekly 30-minute check in phone meetings with SMART's Contract Manager to report on system issues, progress on system maintenance and upgrades, and future planning of SMART's station network.
5. Maintain updated network inventory of devices including port-level diagrams, device serial-numbers, MAC address tables, device host names, SmartNet contract numbers, and relevant equipment lifecycle details.
6. Perform network administration services and/or assist staff with network maintenance, management, and monitoring to ensure ongoing operation of critical infrastructure.
7. Conduct problem-solving, maintenance, and planning with SMART's other consultants and support hotlines to resolve problems with SMART's (station ticketing, surveillance cameras, and other integrated systems as needed).
8. Provide management of warranties and perform warranty repair and replacement work.
9. Install proactive security patching and system software version updates for all systems.
10. Perform system restarts as directed and required after normal business hours and on weekends. Timing of these system restarts will be coordinated with the SMART Contract Manager.
11. Conduct day-to-day administration of the SMART station

network.

A Task Order will be issued for this work.

c. Task 3: On-Call Support Services

Consultant may be requested to perform additional services above those listed in Tasks 1 and 2. These services will be issued by written task order and shall be on a time and materials basis.

The following services may be requested under this section:

1. Provisioning or installing of new and/or additional network hardware. This does not include construction activities requiring a contractor's license or affixing anything to real property requiring prevailing wages.
2. Upgrades or reprogramming to add new capabilities or functionality to supported product.
3. Emergency patching and updates as needed.
4. Any additional work mutually agreed upon between SMART and Consultant.

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

1. SMART's Contract Manager, or designee shall contact Consultant and provide a request for services. This request will include a detailed scope of work, timeline for completion, and any other information deemed necessary for Consultant to be able to produce a quote.
2. Consultant shall submit a quote and time estimate to SMART's Contract Manager within five business days. The quote must be written in accordance with the time and materials rates established in Exhibit B.
3. SMART's Contract Manager shall review the quote and decide whether to proceed as written, cancel, or modify the scope requirements. Any scope modifications will require the Consultant to produce a revised quote for review.
4. If SMART decides to proceed with the request, then SMART will issue a written task order detailing the scope of work, timeline for completion, and the agreed upon not-to-exceed amount.

A Task Order will be issued for this work.

d. Task 4: Cisco SmartNet Coverage

Consultant shall provide SMART with Cisco SmartNet coverage for hardware and software associated with the SMART Station Network. Consultant shall provide SMART with the following Cisco SmartNet services as part of this task order:

1. 24/7 access to Cisco Technical Assistance Center to resolve critical issues with all devices covered under Cisco SmartNet.
2. Replacement of covered devices when required will take place within a four (4) hour delivery window.
3. All updates and upgrades of operating system software are made available by Cisco for devices covered under Cisco SmartNet.
4. Security and Product alerts shall be provided for all covered devices to include:
 - a. Setting up an alert management workflow for determining which Cisco published product alerts and security advisories are relevant for the devices purchased.
5. Product lifecycle management for all covered devices to include:
 - a. Providing enhanced visibility into the installed base to quickly identify any Cisco products that are reaching end of life, end of sale, or end of support.
6. Service Coverage Management
 - a. Including installation of regular base collection and flexible reporting capabilities to efficiently manage the Cisco devices and service contracts.

Since the determination of pricing for Cisco SmartNet coverage is highly dependent upon the type of equipment, equipment serial numbers, software installed on the equipment and other factors, the Consultant shall provide the Cisco SmartNet coverage at cost as a pass-through in this Agreement with receipt documentation submitted with the invoice.

Call for Repair Process

Calls for repair are carried out by the Lead Engineer or by the Technical Account Manager. Any issue resulting in needed hardware replacement are addressed by Consultant submitting a Hardware Replacement Request directly to CISCO. Hardware will be shipped to Consultant and configuration files will be restored from Consultant backup configuration data. An engineer is dispatched according to the

severity level of the case and will work with all vendors impacted by the hardware outage to ensure a seamless restore of systems effected by the outage.

On-Hand Spare Equipment

Consultant commits to warehousing a spare IE5000 network switch, single mode SFP-LR network optics, and single-mode fiber patch cables to expedite calls- to-repair for SMART. Should a device fail, Consultant will dispatch with the necessary in-stock equipment to produce immediate results.

IV. Timeline for Each Requirement / Task

a. Task 1: Transition of Service from Incumbent

Transition of service from incumbent must be completed within 30 days from Task Order Issuance.

b. Task 2: Planned Station Network Management and Maintenance

Consultant shall continuously monitor the SMART Station Network. Any discovered issues with the network shall be addressed by the Consultant immediately upon discovery of those issues.

If Consultant discovers an issue where a feature of the Station Network will be unavailable for more than 30 minutes, Consultant shall notify the SMART Contract Manager by email or phone call.

Some issues with the Station Network may be reported to the Consultant by SMART personnel. In this case, Consultant shall acknowledge the request within 1-hour of SMART contacting a technician or submitting a support ticket.

c. Task 3: On-Call Support Services

All work issued under this task order shall be completed based upon a mutually agreed upon date and time identified in the Task Order.

Standard Hours of Operation

Service Provider shall maintain standard hours of operation from 7:00am – 5:00pm (Pacific), Monday through Friday.

Emergency On-Call Operations

Consultant shall maintain an On-Call Afterhours Schedule to fulfill 24x7x365

emergency support requests.

Response times are typically less than 25-minutes (and never longer than 60 minutes).

d. Task 4: Cisco SmartNet Coverage

Consultant shall notify SMART’s Contract Manager four (4) months ahead of any pending Cisco SmartNet contract expiration. Consultant shall provide the renewal date of these contracts, along with the costs associated with the renewal options. Consultant shall work with SMART’s Contract Manager to determine the options to co-term the Cisco SmartNet contract expiration dates of contracts wherever possible. SMART will provide direction with Consultant to determine which devices will require SmartNet renewal.

V. Response Times

The response time and time-to-resolution will be based on the priority of the issue or incident. The response times are listed below.

Table 2. Priority Definitions

Level Name	Description	Example Impact
1: Critical	This is an emergency that significantly restricts the use of an entire system or network, and a critical business function is offline as a result. The entire organization is impacted (including but not limited to safety implications, revenue collection, or passenger boarding).	System-wide network outage, total data loss, or a major security breach.
2: High	The reported issue severely restricts an application and is negatively impacting the organization (including but not limited to safety implications, revenue collection, or passenger boarding). The key functions of that system are impacted, but the overall Station Network is functioning.	Connectivity for one aspect of the Station Network is not available, or major performance issue.
3: Medium	The reported issue may restrict the use of one or more features of a single device, but operations, safety, and revenue	Minor software bug, intermittent connectivity issues for a single endpoint device on the Station Network, or a generic operational

	collection are not severely impacted.	issue.
4: Low	The reported issue or question is not significantly impacting productivity and little-to-no restrictions are impacting the features necessary for business functions.	Question about system functionality, a minor documentation error, or a low-priority enhancement request.

Table 3. Priority Service Level Agreement Times

Level Name	Response Time	Resolution Time
1: Critical	Up to 30 Minutes Immediate Response from Support Team	4 hours
2: High	Up to 1-hour	8 hours
3: Medium	Up to 6-hours	3 business days
4: Low	Up to 24-hours	10 business days

Escalation procedures will be defined in coordination with SMART during contract initiation and document here in the final agreement.

VI. Acceptance Criteria

SMART's Information Systems Manager or designee shall review all work performed by the CONSULTANT. If the work performed met requirements, SMART will issue a notice of acceptance and recommend CONSULTANT submit an invoice for review. If the work was not performed per requirements, the CONSULTANT shall be instructed to correct the defective work at the sole expense of CONSULTANT prior to recommending an invoice be submitted.

**EXHIBIT B
SCHEDULE OF RATES**

Task 1: Transition of Service from Incumbent

No transition fees required.

Task 2: Planned Station Network Management and Maintenance

Portola Systems, Inc. shall provide all services identified in this task for a fixed monthly fee of \$7,194.00.

Additional Per Device Rate

SMART may reserve the right to increase the number of devices over and above the quantities specified in the Scope of Work. Portola Systems will charge a per-device fee for added devices in increments of quantity one (1) Portola-Core-Care unit(s) per each one (1) network device added.

Services	Per Month Fixed Fee
Per Managed Device Core Care Per Month	\$65/Device

General Pricing Notes

- 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 the optional term of this Agreement, Consultant may, upon 60 days written notice to the SMART Manager, request an increase in the rates 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 Consultant does not submit a request at least 60 days before the start of the optional term, Consultant waives any CPI increase for the optional term.

Task 3: On-Call Support Services

Portola Systems, Inc. shall perform services under this task on a time and materials basis. Labor shall be invoiced based on the classification and hourly rates listed in the below table.

Classification	Hourly Rates
Partner / Executive Account Manager	\$250.00
Senior Engineer / Technical Account Manager	\$200.00
Mid-Tier Engineer	\$185.00
Staff Engineer / Help Desk Engineer	\$150.00
Administrative Support	\$85.00

General Pricing Notes

- Materials/Reimbursable Expenses shall be invoiced at cost with receipt documentation.
- Travel Costs, if any, must be pre-approved in writing and in accordance with SMART's current Travel Guidelines for Contractors.
- 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 the optional term of this Agreement, Consultant may, upon 60 days written notice to the SMART Manager, request an increase in the rates 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 Consultant does not submit a request at least 60 days before the start of the optional term, Consultant waives any CPI increase for the optional term.

Task 4: Cisco SmartNet Coverage

Portola Systems, Inc. shall provide the Cisco SmartNet coverage at cost as a pass-through in this Agreement. Receipt documentation and SMART Manager approval must be submitted with the invoice for verification. Cisco SmartNet renewals will be reported to SMART 90-120 days prior to expiration.