



**BOARD OF DIRECTORS  
REGULAR MEETING AGENDA**

**June 7, 2017 – 12:00 PM**

*(Please Note Early Start time)*

**Rail Operations Center**

3748 Regional Parkway

Santa Rosa, CA 95403

*(Please Note Change in Location)*

1. Call to Order
2. Approval of the May 17, 2017 Board Meeting Minutes
3. Public Comment on Non-agenda Items
4. Board Member Announcements
5. General Manager's Report
6. Consent
  - a. Approval of Top Dog Media, LLC. Contract Agreement
  - b. Approval of Alliant Insurance Services, Inc. Contract for Insurance Brokerage and Risk Management Consultation Services Contact Amendment No. 2
  - c. Approval of Utah Transit Authority Contract Amendment No. 1
7. Authorize the General Manager to Award a Contract for Engineering Design and Construction Support Services - Payran Street to Southpoint Boulevard Multi-Use Pathway with Biggs Cardosa and Associates, Inc. for an amount not-to-exceed \$325,000
8. Authorize the General Manager to Execute an Agreement with Ventek Transit, Inc. for Operations, Maintenance and Revenue Collection Services for an amount not-to-exceed \$706,528

9. Receive Operational Readiness Report (*Discussion and Provide Direction*)
10. Closed Session
  - a. Conference with the Chief of Police and General Manager regarding security of public services and public facilities pursuant to California Government Code Section 54957.
  - b. Conference with Labor Negotiator General Manager pursuant to California Government Code Section 54957.6  
Agency Designated Representative: General Manager  
Employees: All collective bargaining units
11. Report Out of Closed Session
12. Next Regular Meeting Board of Directors, June 21, 2017 – 1:30PM – 5401 Old Redwood Highway, 1<sup>st</sup> Floor, Petaluma, CA 94954
13. Adjournment

---

DISABLED ACCOMMODATION: If you have a disability that requires the agenda materials to be in an alternate format or that requires an interpreter or other person to assist you while attending this meeting, please contact SMART at least 72 hours prior to the meeting to ensure arrangements for accommodation. Please contact the Clerk of the Board at (707) 794-3072 or dial CRS 711 for more information.

DOCUMENTS: Documents distributed by SMART for its monthly Board meeting or committee meetings, and which are not otherwise privileged, may be inspected at SMART's office located at 5401 Old Redwood Highway, Suite 200, Petaluma, CA 94954 during regular business hours. Documents may also be viewed on SMART's website at: [www.sonomamarintrain.org](http://www.sonomamarintrain.org). Materials related to an item on this Agenda submitted to SMART after distribution of the agenda packet are available for public inspection at the SMART Office. For information about accessing SMART meetings by public transit, use the trip planner at [www.511.org](http://www.511.org)



**BOARD OF DIRECTORS  
REGULAR MEETING MINUTES**

**May 17, 2017 - 1:30 PM**

5401 Old Redwood Highway, 1<sup>st</sup> Floor  
Petaluma, CA 94954

1. Call to Order

Chair Fudge called the meeting to order at 1:30 PM. Directors Eddie, Hillmer, Lucan, Phillips, Russell, and Sears were present. Directors Mackenzie, Pahre and Rabbitt absent; Directors Arnold and Zane arrived later.

2. Approval of the May 3, 2017 Board Meeting Minutes

**MOTION:** Director Sears moved approval of May 3, 2017 minutes as presented. Director Russell second. The motion carries 7-0-0 (Directors Mackenzie, Pahre and Rabbitt absent; Directors Arnold and Zane arrived later).

3. Public Comment on Non-Agenda Items

Alisha O'Loughlin (Sonoma County Bicycle Coalition) urged the Board and SMART staff to provide valet bicycle parking at the start of passenger service. She would like staff to collaborate with the Marin County Bicycle Coalition and Sonoma County Bicycle Coalition to move this effort onward.

Chair Fudge stated that an email was sent to some of the Sonoma County Board members and asked Ms. O'Loughlin to communicate with SMART staff.

Director Arnold arrived at 1:33PM.

4. Board Member Announcements

Director Phillips announced that on Friday, May 12, 2017 Quiet Zones became effective in San Rafael and Novato areas. He thanked General Manager Mansourian for attending the Quiet Zone meetings that took place.

## 5. General Manager's Report

Mr. Mansourian stated that since the establishment of Quiet Zones in Marin County, City of San Rafael and City of Novato, SMART's Community Outreach Department has been conducting press releases, announcements on social media and updating the website to inform the public that the train horn will not sound at railroad crossings, unless the Engineer/Conductor sees and emergency situation. He mentioned that Redwood Landfill crossing is not included in the San Rafael Quiet Zone application.

The City of Petaluma (City) has revised their Quiet Zone application for various grade crossings in the City limits. The City informed SMART that the effective date of the new Quiet Zone will be May 24<sup>th</sup>. SMART's Community Outreach department will continue to inform the public about railroad safety at grade crossings.

He clarified the definition of "What's Quiet Zone". It really needs to be called "No Horn Zone," however, 1) the bells and whistle will still be heard; 2) if the Engineer/Conductor determines there is a safety reason to do so he/she can blow the horn and 3) if the gate crossings are not working properly, safety measures will be required.

Director Zane arrived at 1:38PM

Mr. Mansourian announced that SMART has started testing its regular schedule. There will be times when the public will see two trains passing each other at certain grade-crossings. Please be aware that gates at grade crossings will stay down a little longer for each train to pass.

### Directors' Comments

Director Zane asked how to best educate impatient drivers about railroad safety at grade-crossings. Mr. Mansourian responded that SMART continues to conduct outreach in many areas. The Chief of Police meets regularly with police departments to encourage them to assist in educating and enforcement of traffic laws at the grade-crossings will be upheld. She suggested staff conduct radio announcements.

Director Phillips said that it is incumbent upon each jurisdiction to provide for Quiet Zone outreach. Also, SMART is not conducting Quiet Zone outreach, but is informing the public with regards to its operations. SMART has provided some support, but the City of San Rafael believes it's not enough with regard to Quiet Zones.

Chair Fudge stated that she has received emails, AND social media post from SMART regarding Quiet Zones in the City of Petaluma, Marin County, City of San Rafael and City of Novato within the last week before they were established. There's never enough communication, however SMART is informing the public.

6. Consent
  - a. Approval of Monthly Financial Reports
  - b. Approval of James Flageollet Contract Amendment No. 4
  - c. Approve SMART's Policy for Events Impacting Passenger Service
  - d. Authorize the General Manager to Execute Concession Service Agreement with Becoming Independent

Chair Fudge asked for Board and public comments on the proposed Consent Agenda. Director Phillips had comments on Item 6a and Director Zane had comments on Item 6d.

Consent Item 6d: Authorize the General Manager to Execute Concession Service Agreement with Becoming Independent

Director Zane suggested that the contract have a clause that servers need to be 21-years and older to serve alcohol on the SMART train. Mr. Mansourian responded yes, and it's required by law.

**MOTION:** Director Hillmer moved approval of the Consent Agenda 6b – 6d as presented. Director Lucan second. The motion carried 9-0-0 (Directors Mackenzie, Pahre and Rabbitt absent)

Consent Item 6a: Approval of Monthly Financial Reports

Director Phillips asked for clarification on State Grants remaining revenue of \$2M, Federal FTA Funds remaining revenue of \$4.7M, Capital Machinery & Equipment remaining of \$20M and Capital Infrastructure remaining of \$12M. Ms. McGrath responded that the report represents funds as of April 2017, most of the funds will be used by end of June 2017 or shift toward next fiscal year's budget. The Capital Machinery & Equipment balance reflects the vehicle manufacturing payments; and Capital Infrastructure balance relates to unbuilt pathway segments and Larkspur Extension Project.

**MOTION:** Director Phillips moved approval of the Consent Agenda 6a as presented. Director Lucan second. The motion carried 9-0-0 (Directors Mackenzie, Pahre and Rabbitt absent)

7. Review Fiscal Year 2016-17 Year-End Financial Report, Proposed Preliminary Fiscal Year 2017-18 Budget

Chief Financial Officer Erin McGrath stated that page 43 of 62; Table 1 (Budget Report: Summary of all Revenues and Expenses) was revised to reflect accurate year-end actuals and estimates.

She acknowledged Fiscal Manager Katye Roa for her work on the budget.

Ms. McGrath provided a PowerPoint presentation and reviewed the two different financial reports: 1) The Fiscal Year 2016-2017 Year-End Report and 2) The Fiscal Year 2017-2018 proposed budget. She stated this is an opportunity to ask questions and provide feedback

before the Board adopts the budget in June. The budget is divided into three sections: 1) Administration, 2) Capital and 3) Operations. Highlights included in the report:

Fiscal Year 2016-17 Year-End Report:

- Projected Revenues were \$126.8M, final revenues are \$134.1M;
- Projected Expenditures are \$105M, year-end \$85M (the factors: 1) shifting of capital project cost; 2) decrease in anticipated Operations' expenditures, and 3) shift in Larkspur startup)

Proposed Fiscal Year 2017-18 Budget:

- Ongoing and New Capital Projects
- Passenger Operations
- SMART Administrative
- Total Revenues projected \$113M
- Total expenditures projected \$100M, which includes Administration \$42M, Capital Projects \$37M, and Operations \$21M

Capital Budget total expenditures of \$37M:

- Construction of four pathway segments
- Final Vehicle Acceptance Payments
- Construction of Jennings Crossing (Funded by City of Santa Rosa)
- Design of Payran to Southpoint Pathway Segment
- Design/Build Phase of Larkspur Extension Project
- Ongoing Permits and Mitigation Cost
- Additional four train cars

Administration Budget total expenditures of \$42M:

- Increase in insurance and retention for liabilities
- Increase in debt service
- Emergency Response Preparedness
- Investments in website, and ongoing marketing, and safety outreach
- Information technology services and monitoring
- Additional Staff: Code Compliance, Revenue Accounting, and District Management

Operations Budget total expenditures of \$21M:

- Full staffing, equipment, spare parts, communications and training
- Customer Service Contract
- Passenger-Facing Services: Fare Collection, Wi-Fi, Bus Connections
- Rail, signal, crossings, station's needs, including rail scrubber and pathway maintenance equipment
- Hiring SMART Ambassadors to assist riders

Fiscal Reserves for Fiscal Year 2017-18

- Operations' Contingency of \$600K
- Self-Insurance Retention of \$1M

- Operations Fund of \$17M
- Equipment Replacement Fund of \$525K
- Capital Reserve Fund \$10M

Directors Comments'

Director Lucan asked for clarification of the Senate Bill (SB) 1 funds. Ms. McGrath responded that SMART is anticipating receipt of funds in Fiscal Year 2017-18 starting at the beginning of January 2018.

Director Phillips stated it was an excellent report. He said that there are two aspects to Operations: 1) Capital Projects and 2) Operations. It would be helpful to have two separate statements since they are both unique. He suggested a pathway funding update.

Director Zane asked for clarification of Measure M funds of \$500K. Ms. McGrath stated that the funds are tied to the Sonoma Pathway Project – Payran to Southpoint design.

Director Sears stated that she appreciates the slide of Fiscal Reserves and it has very useful information.

Lastly, General Manager Mansourian stated that the final budget will be brought back to your Board in June for approval.

8. Presentation and Discussion of the Updated Draft Timetable Concepts for Inaugural SMART Service (*Review and Provide Direction*)

General Manager Mansourian acknowledged Joseph Rye, Petaluma Transit’s General Manager and Bryan Albee, Sonoma County Transit General Manager who are in the audience today. They have been working with SMART for over two years to coordinate transit service providers when passenger service begins. Highlights included:

- On March 2, 2016, your Board received presentations from our partners and colleague representing Golden Gate Transit, Marin Transit, Sonoma County Transit, Santa Rosa City Bus, and Petaluma Transit.
- The San Rafael Transit Center’s (Bettini Center) bus pulse is determining SMART’s operating concept schedule.
- On April 6, 2016, your Board received a presentation and discussed the draft timetable concept.

Mr. Mansourian distributed the final train schedule. Highlights included:

- 34 weekday daily trips (11 morning trips; 10 late morning/mid-morning trips and 13 afternoon/evening trips), which is four more than originally planned;
- Trips will run mostly on a 30 minute schedule along the 43-mile single track from north Santa Rosa to San Rafael;
- First southbound train departs Sonoma County Airport at 4:49am; the last southbound train departs Sonoma County Airport at 18:49;

- First northbound train departs Downtown San Rafael at 6:29am; the last northbound train departs Downtown San Rafael at 20:35;
- On weekends there are five southbound trips and five northbound trips, which includes 6 trips meeting the San Francisco Ferry schedule;
- Since the first draft timetable schedule, additional mid-day service has been added.
- Train #1: Departs Sonoma County Airport at 4:49am and arrives at Downtown San Rafael at 5:56am; departs at Downtown San Rafael at 6:29am and arrives at Sonoma County Airport at 7:36am.

He acknowledge and thanked Superintendent of Transportation Jon Kerruish, Operations Manager Duane Sayers, Grant Programming Manager Joanne Parker, and transit agency colleagues who have worked and, tested the new revised passenger service schedule. The schedule also mandates that the Engineers/Conductors not-to-exceed a 12-hours work day as required d by Federal Law.

Every train, bus, or ferry schedule leaves out somebody; there is a need to consider the bigger picture. The schedule will be revised once the Larkspur Extension Project is complete.

#### Directors Comments'

Director Hillmer asked if Downtown San Rafael will have train arrivals between 7:56AM and 8:26AM and departures between 17:29 and 17:59. Mr. Mansourian responded no. Director Hillmer stated that those are important commute times that should be considered in the schedule.

Chair Fudge stated that it's very difficult to satisfy every individual needs and SMART is looking at a global system with the pulse being at San Rafael Transit Center (Bettini Center). The schedule is a starting point, once the additional rail cars are delivered and the Larkspur Extension Project is complete the schedule will be re-evaluated at that time.

Mr. Mansourian stated that adjusting the schedule in any significant way would require major adjustments to the entire timeline, since it is all synced.

Director Hillmer asked why there's a huge gap between 7:30-9:00am southbound and 5:00-6:30pm northbound. Ms. Parker responded that single track schedules are challenging, and there will be four train sets deployed and they meet on the track at certain points.

Director Sears stated that the mid-day departure was added at the Sonoma County Airport with the assumption that it would attract more riders, however Mr. Hillmer raises a very important point of where the ridership will be.

Director Lucan stated that it's very difficult setting a schedule, when you don't know the ridership. He suggested lining up the train schedule with SMART's transit partners.



Director Phillips concurred with Director Hillmer saying those are the optimal times for arrival and departure. He suggested moving train #1 schedule by 30 minutes later to make the gap smaller. He also asked how much time the trains will stay at each station. Mr. Mansourian responded 30 seconds.

Director Zane stated that the schedule reflects commute patterns in the two counties.

Director Eddie stated that scheduling is difficult; however, SMART is offering 17 roundtrips daily. Also as people get used to the train schedule, they will work around it.

Director Hillmer asked who the user groups were that determined the schedule. Mr. Mansourian responded that SMART worked with the following transit partners: Golden Gate Transit, Marin Transit, Sonoma County Transit, Petaluma Transit and Santa Rosa Transit. Director Hillmer suggested SMART meet with large employers in San Rafael.

Chair Fudge asked when the final schedule will be tested. Mr. Mansourian responded that it's being tested now.

#### Public Comments

Steve Birdlebough stated there will be riders arriving during the 90-minute gap between train 4 and 5 of the current train schedule and they will be disappointed. He suggested having 60- minute service between 4:49am until 9:19am and again 15:49pm to 18:49pm and pick a few to meet the peak hours.

Duane Bellinger stated that the final train schedule works for him. He asked if the holiday schedule will be the same as weekend schedule. Mr. Mansourian responded yes. Mr. Bellinger asked if the Community of Penngrove is aware that the 4<sup>th</sup> of July Parade needs to be finished by 10:13am.

Dave Alden (Petaluma Transit Advisory Committee) stated that he shared Director Hillmer's concern about the 90-minute gap. He suggested moving train 4, 8, 12, 13, 21, 25, 29, 30 thirty minutes later could solve the problem.

Kevin Conway suggested having a public relations effort informing the public about the 3 hour gap between 11:00am and 2:00pm in Downtown San Rafael.

Jack Swearingen stated that this is a marvelous system with many constraints. He asked if SMART will have more flexibility once the Larkspur Extension Project is complete.

Jeff Rhodes stated that trains 4 and 5; 13 and 14; 21 and 22; and 30 and 31 could be problematic for a worker downtown. He asked if the gap problem will be solved when SMART receives additional trains.

Will Mast (Petaluma Resident) addressed his concerns about the 90-minute gap between trains 4 and 5. He suggested conducting passenger surveys.

Mr. Mansourian asked Director Hillmer to identify the gap areas of concern. Director Hillmer identified the gaps between trains 4 and 5 and 30 and 31 and suggested having consistent 30-minute arrivals northbound and southbound. Mr. Kerruish clarified that train #1 will become train #5 on the next round. He suggested that SMART check with large employers in San Rafael to determine if his observation is correct.

Director Lucan mentioned there is a difference between reaching out to potential riders vs. actual riders. Also, having the introductory fares and surveys will provide feedback to staff.

Mr. Mansourian stated that SMART needs to start passenger service with a schedule. However, once SMART receives public feedback, more staff is hired, and the additional trains are delivered, the schedule can be re-evaluated for minor changes.

Director Phillips was curious about the schedule's testing period. He suggested that the schedule be revised before passenger service begins.

Director Zane stated that it's better to make minor adjustments after the start of passenger service because it will determine what commute needs are necessary.

Chair Fudge announced that the next SMART Board of Director's meeting will be located at the Rail Operations Center (ROC) in Santa Rosa at Noon on Wednesday, June 7, 2017. Mr. Mansourian clarified that the public is welcome and will need to be escorted by security since it's a gated facility.

9. Next Regular Meeting Board of Directors, June 7, 2017 – 12:00PM – 3748 Regional Parkway, Santa Rosa, CA 95403 (*Note Time Change and Meeting Location*)
10. Adjournment – Meeting adjourned at 3:17PM

Respectfully submitted,

Leticia Rosas-Mendoza  
Clerk of the Board

Approved on: \_\_\_\_\_



**Debora Fudge, Chair**  
Sonoma County Mayors and  
Councilmembers Association

**Kathrin Sears, Vice Chair**  
Marin County Board of Supervisors

**Judy Arnold**  
Marin County Board of Supervisors

**Jim Eddie**  
Golden Gate Bridge,  
Highway/Transportation District

**Dan Hillmer**  
Marin Council of Mayors and  
Councilmembers

**Eric Lucan**  
Transportation Authority of Marin

**Jake Mackenzie**  
Sonoma Mayors and Councilmembers  
Association

**Barbara Pahre**  
Golden Gate Bridge,  
Highway/Transportation District

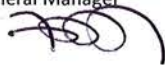
**Gary Phillips**  
Transportation Authority of Marin

**David Rabbitt**  
Sonoma County Board of Supervisors

**Carol Russell**  
Sonoma Mayors and Councilmembers  
Association

**Shirlee Zane**  
Sonoma County Board of Supervisors

**Farhad Mansourian**  
General Manager



5401 Old Redwood Highway  
Suite 200  
Petaluma, CA 94954  
Phone: 707-794-3330  
Fax: 707-794-3037  
www.sonomamarintrain.org

June 7, 2017

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

**SUBJECT:** Approval of Top Dog Media, LLC. Contract

Dear Board Members:

**RECOMMENDATION:**

Authorize the General Manager to execute a contract, at no cost to SMART, to assist the District in selling advertising space onboard SMART trains and at SMART stations. This is a revenue-generating contract, with SMART receiving a percentage of the net advertising sales. The initial term of the agreement is for three years with two one-year options to renew.

**SUMMARY:**

In March 2017, SMART conducted an open public procurement process for transit advertising services. Top Dog Media, LLC is recommended as the best candidate in terms of price and experience to assist SMART in selling revenue generating advertisements on the SMART train and SMART stations.

Top Dog Media, a San Rafael-based company with experience in Bay Area transit advertising sales, is being contracted to help solicit, install and maintain advertising to generate revenue for SMART. Top Dog Media, LLC currently partners with Golden Gate Transit providing transit advertising services for its ferry system. They have received positive reviews as a result of their work and have had their contract renewed multiple times.

Advertising sales on the SMART train, and other key SMART-owned locations, including SMART stations, is expected to be an ongoing source of revenue for the District. Top Dog Media, LLC will assist by developing rate sheets, creating advertising information kits, contracting potential advertisers and ad buyers, and managing advertising production and installation. Top Dog Media will be required to adhere to SMART’s Advertising Policy, previously adopted by your Board of Directors in May of 2015.

We recommend your Board approve the attached contract between SMART and Top Dog Media, LLC to provide assistance with advertising sales to maximize revenue opportunities for SMART.

**FISCAL IMPACT:** No cost to SMART. Revenue generated from the contract is currently unbudgeted and will depend on final negotiations with advertisers.

**REVIEWED BY:**       Finance        Administration \_\_\_\_\_  
                                  Counsel        Engineering \_\_\_\_\_  
                                  HR \_\_\_\_\_                       Other \_\_\_\_\_

Very truly yours,  
  
Jeanne Mariani-Beding  
Communications & Marketing Manager

Cc: Erin McGrath

Attachment(s): Top Dog Media Contract

## **AGREEMENT FOR PROFESSIONAL SERVICES**

This agreement (“Agreement”), dated as of \_\_\_\_\_, 2017 (“Effective Date”) is by and between the Sonoma-Marín Area Rail Transit District (hereinafter “SMART”), and TOPDOG Media, LLC (hereinafter “Consultant”).

### RECITALS

WHEREAS, in the judgment of the District, it is necessary and desirable to employ the services of Consultant to design, develop, and sell advertising for SMART.

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
- (b) Exhibit B: Advertising Rate Schedule

#### **ARTICLE 3. REQUEST FOR SERVICES.**

Section 3.01        Initiation Conference. SMART’s Communications & Marketing Manager, Jeanne Mariani-Belding, will initiate all requests for services through an Initiation Conference, which may be in person, by telephone, or by email. During the Initiation Conference, the Communications & Marketing Manager and Consultant will establish and agree on a specific task for the project.

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

#### **ARTICLE 4. SCOPE OF SERVICES.**

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

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

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

Section 4.04 Assigned Personnel.

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

Debbie Lawson, CEO and Managing Partner and Rodney Lawson, Managing Partner

---

---

**ARTICLE 5. REVENUE COMPENSATION PAYMENTS.**

For all services required hereunder, Consultant shall compensate SMART under the following conditions:

Section 5.01 Consultant shall make Net Revenue payments to SMART on a quarterly basis. Such quarterly payments shall be made to SMART by January 30, April 30, July 30, and October 30, thirty (30) days after the end of each payment period in which SMART's right to receive the corresponding Net Revenue accrued.

Section 5.02 Net Revenue is defined as gross sales from advertising on SMART media, less advertising agency commissions of 0%. In the event that the Consultant receives barter, or trade, or goodwill in lieu of revenue for advertising anywhere on SMART, the values received will be considered revenue, such revenue amount to be calculated based on the amount Consultant would normally receive for such advertisements.

Section 5.03 Consultant shall establish a schedule of rates applicable to the sale of advertising space for various advertising placements. The Consultant shall forward such rates to SMART within five (5) days of the issuance of the initial notice to proceed, and within fifteen (15) days of any changes during the course of this Agreement.

Section 5.04 Consultant shall provide SMART a copy of each contract entered into by Consultant for advertising space during the term of this Agreement. Terms and conditions of sales of advertising shall be at the sole discretion of Consultant, subject to the terms and conditions of this Agreement and the District's adopted advertising policy.

Section 5.05 Consultant shall also promptly pay to SMART all charges required pursuant to this Agreement, including but not limited to, reimbursement for costs incurred by SMART for providing monitors to ensure track safety when work is being performed by Consultant or their Sub-Consultants along SMART's right-of-way. Consultant will be notified by SMART in advance if the scope of their work will require a monitor and of associated costs.

Section 5.06 An accounting report and reconciliation will be prepared by Consultant once each calendar quarter. The report shall include information detailing the cash and values received monthly from the sales of SMART advertising, commissions, fees, production, and other charges. It shall be due within thirty (30) days of the last day of each quarter. An annual report shall be prepared within thirty (30) days of the last day of the fourth quarter by the Consultant's Chief Financial Officer, who shall consolidate the prior quarterly reports for each year of the Agreement. Detailed variance explanations shall be provided for any figures that are inconsistent with previously reported figures.

Section 5.07 In the event payment is overdue by more than ten (10) calendar days, a late charge of two percent (2%) shall be paid by the Consultant.

Section 5.08 All payments shall be made by check, payable to Sonoma-Marín Area Rail Transit District, referencing Contract No. OT-PS-17-002, and mailed or delivered as follows:

Contract No.OT-PS-17-002

Page 3

Sonoma-Marín Area Rail Transit District  
Attn: Finance Department  
5401 Old Redwood Highway, Suite 200  
Petaluma, CA 94954

## **ARTICLE 6. TERM OF AGREEMENT.**

Section 6.01 The term of this Agreement shall remain in effect until April 25, 2020 (three (3) year period with one-year renewal options) 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, both parties shall have the right, at their sole discretion, to terminate this Agreement by giving 60 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 Payment Upon Termination. Upon termination of this Agreement by SMART, Consultant shall compensate SMART for any unpaid Net Revenue accrued.

Section 7.04 Authority to Terminate. The Board of Directors has the authority to terminate this Agreement on behalf of SMART. In addition, the Communications & Marketing Manager or 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.

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

Section 9.02 General Liability Insurance. Commercial General Liability insurance covering products-completed and ongoing operations, property damage, bodily injury and personal injury using an occurrence policy form, in an amount no less than \$2,000,000 per occurrence. Said policy shall include a Railroads CG 24 17 endorsement removing the exclusion of coverage 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 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. 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 9.04 Professional Liability Insurance. Professional Liability insurance covering liability arising out of any negligent act, error or omission in performance of design or engineering services for the Project in an amount no less than \$2,000,000 per claim. If any Design Professional Services are furnished by a Subcontractor, the Subcontractor shall be required to provide professional liability coverage.

Section 9.05 Endorsements. Prior to commencing work, Consultant shall file Certificate(s) of Insurance with SMART evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. Said endorsements and Certificate(s) of Insurance shall stipulate:

- (a) SMART, its officers, and employees shall be named as additional insured on all policies listed above.
- (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

Licensee 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 Licensee. 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. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not SMART has received a waiver of subrogation endorsement from the insurer.
- (e) The insurance policy(ies) shall be written by an insurance company or companies acceptable to SMART. Such insurance company shall be authorized to transact business in the state of California.

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

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

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

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

Contract No.OT-PS-17-002

Page 6

- (a) Properly executed Certificates of Insurance clearly evidencing all coverages and limits required above. Said Certificates shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current Certificates of Insurance evidencing the above-required coverages and limits on file with SMART for the duration of this Agreement.
- (b) Copies of properly executed endorsements required above for each policy. Said endorsement copies shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current endorsements evidencing the above-specified requirements on file with SMART for the duration of this Agreement.
- (c) Upon SMART's written request, Consultant shall provide certified copies of the insurance policies to SMART. Said policy copies shall be submitted within thirty (30) days of SMART's request. 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.

Section 9.09 Policy Obligations. Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

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

## **ARTICLE 10. PROSECUTION OF WORK.**

When work is requested of Consultant by SMART, all due diligence shall be exercised and the work accomplished without undue delay, within the performance time specified in the Task Order. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God, 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 General Manager in a form approved by SMART Counsel. The Board of Directors, General Manager or Communications & Marketing 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

Contract No.OT-PS-17-002 Page 7

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.

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

person doing work under this Agreement to complete and file a “Statement of Economic Interest” with SMART disclosing Consultant’s or such other person’s financial interests.

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

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

Section 12.08 Ownership And Disclosure Of Work Product. All reports, original drawings, graphics, plans, studies, and other data or documents (“documents”), in whatever form or format, assembled or prepared by Consultant or Consultant’s subcontractors, consultants, 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 will reference Contract No. OT-PS-17-002, and shall be addressed as follows:

If to SMART:                   Sonoma-Marín Area Rail Transit District  
5401 Old Redwood Highway, Suite 200  
Petaluma, CA 94954  
[billing@sonomamarintrain.org](mailto:billing@sonomamarintrain.org)

If to Consultant:               Debbie Lawson, CEO & Managing Partner  
TOPDOG Media, LLC  
10 Thomas Court  
San Rafael, CA 94901

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

**ARTICLE 16. MISCELLANEOUS PROVISIONS.**

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

or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

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

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

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

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

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

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

Section 16.08 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.

**TOPDOG MEDIA, LLC**

By: \_\_\_\_\_

Its : \_\_\_\_\_

Date: \_\_\_\_\_

**SONOMA-MARIN AREA RAIL TRANSIT (SMART)**

By: \_\_\_\_\_  
Farhad Mansourian, General Manager

Date: \_\_\_\_\_

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

By: \_\_\_\_\_  
Katherine DiPasqua, Sr. Administrative Analyst

Date: \_\_\_\_\_

**APPROVED AS TO FORM FOR SMART:**

By: \_\_\_\_\_  
Tom Lyons, District Counsel

Date: \_\_\_\_\_



**EXHIBIT A – STATEMENT OF WORK**  
**REQUEST FOR PROPOSALS NO. OT-PS-17-002**  
**TRANSIT ADVERTISING SERVICES**

**1.0 GENERAL INFORMATION**

**1.1 Background**

1.1.1 In establishing this Agreement, the District intends to generate revenue from the available space located at its eleven (11) commuter rail station platforms: 1) Santa Rosa Airport; 2) Santa Rosa North; 3) Santa Rosa Downtown; 4) Cotati; 5) Rohnert Park; 6) Petaluma Downtown; 7) Novato Hamilton; 8) Novato San Marin; 9) Marin Civic Center; 10) San Rafael; and 11) Larkspur (2018 or 2019) and all other advertising accepted by the District to increase revenue at no cost to the District.

1.1.2 Consultant shall provide all labor and labor supervision, tools, equipment, transportation, and supplies necessary to successfully provide a turn-key advertising revenue program at no cost to the District. The turn-key program shall include advertising graphics production, account management, design, installation, and maintenance, as described herein.

1.1.3 Consultant shall conform to the District's Advertising Policy and Content Guidelines.

1.1.4 The District's purpose in allowing advertising is to raise revenue, and not create a public forum. Consultant shall limit advertisements to those advertisements that conform with District's Policy Content/Guidelines.

1.1.6. The successful Consultant will be responsible for soliciting advertisers to buy advertising in and around the District's commuter rail stations and onboard the District's Diesel Multiple Units (DMUs) as well as other advertising approved by SMART. The Consultant shall employ its best efforts to develop and make sales of advertising space and shall operate a fully staffed business office serving the Sonoma and Marin Counties including:

1.1.6.1 An experienced local ad sales force with the capability of acquiring national advertising accounts; and

1.1.6.2 An office facility and work force capable of assuring proper

installation, maintenance, and removal of advertising displays on revenue equipment.

## **2.0 SCOPE OF SERVICES**

Consultant shall perform various advertising tasks at all District rail station platform properties including, but not limited to:

### **2.1 Transit Advertising Revenue Program Services**

- 2.1.1 Marketing and selling advertising packages. Solicit advertising in an effort to completely sell all available space authorized by this Agreement.
- 2.1.2 Create high traffic advertising placement and create secure and aesthetically attractive advertisements and points of sale.
- 2.1.3 Production of banners, floor graphics, wallscapes (list not all inclusive).
- 2.1.4 Graphics design for all advertising programs.
- 2.1.5 Management services: oversee all necessary personnel, maintenance, and installation.
- 2.1.6 Portfolio management: manage all advertiser accounts.
- 2.1.7 Increase revenue
- 2.1.8 No less than five percent (5%) of available fixed advertising space at each station shall be reserved to exclusive use at the discretion of District.
- 2.1.9 If the District decides to use any such advertising space, Consultant agrees to install the District's advertisements at no charge within ten (10) days after receipt and to remove all advertising within three (3) days of the specified removal date.

### **2.2 Installation Services**

- 2.2.1 Install media enclosures and fixed signage in mutually agreed locations at no cost to the District, including but not limited to framed, mounted advertising panels, backlighting, billboards, digital signage, and banners.
- 2.2.2 Each ad placement shall be installed: 1) free from wrinkles, blisters, or similar defects; 2) displayed properly; and 3) present a sharp, clear, and clean appearance.
- 2.2.3 No advertisement/placement will be allowed to interfere with any safety devices, signs, lights, signals, identification numbers, or distinctive logos at the commuter rail stations. This includes, but is not limited to, reflective materials, side reflectors, and other features. In addition, advertisements cannot interfere with the normal utilization of vents, glazing, ladders, windows, doors, and other equipment that may require regular preventive maintenance.

2.2.4 Installation and removal of advertisements shall be done by Consultant at Consultant's sole expense. Installation and removal at the District-owned commuter rail station sites shall be performed by Consultant in coordination with Operations' schedule. Consultant shall be responsible for, at no cost to the District, any repairs required as a result of installation or removal of advertisements. This includes, but is not limited to, any paint damage, resulting from the removal of direct application advertisements.

### 2.3 Maintenance Services

2.3.1 Consultant shall maintain and repair, at its sole cost and expense, all equipment and advertising space provided by or on behalf of Consultant for the term of this Agreement in accordance with the provisions below.

2.3.2 Consultant shall maintain an attractive appearance for all of the advertisements onboard SMART's trains and at every station site or other advertising venue. Consultant shall maintain clean and not worn, tattered or defaced advertising displays. Each advertisement shall be free from wrinkles, blisters or similar defects and shall present a sharp and clear appearance.

2.3.3 If requested in writing by the District, an advertisement, shall be removed by Consultant within forty-eight (48) hours of receipt of written request at no cost to the District.

2.3.4 Consultant shall remove date sensitive advertisements within one (1) week after expiration. Failure to remove date sensitive advertisements within one (1) week after expiration may result in the District removing the advertisements and assessing the cost for removal to Consultant.

## 3.0 CONSULTANT OBLIGATIONS

### 3.1 Notifications and Response Time(s)

3.1.1 Consultant shall assume an appropriate level of advertising staffing and workforce capable of ensuring proper installation and removal of advertising material

3.1.2 An advertiser's placement, shall be removed by Consultant within 48 hours of receipt of written request from the District at no cost to the District.

3.1.3 Consultant and Consultant's subcontractors shall provide the District with 24-hour contact number(s) for Consultant's key personnel and an acceptable means of emergency "on-call" communication with the District's designated project manager.

3.1.4 Consultant's offices shall have voice, fax and e-mail capability.

3.1.5 The District's designated Project Manager shall be notified, in advance,

if Consultant and/or its subcontractors intend to be on or have employees on District-owned property at times other than regularly scheduled work times.

- 3.1.6 Consultant and/or its subcontractors are to immediately notify the District's designated project representative of any unsafe or questionable condition that exists on any District property. The designated District representative will then notify the necessary parties.

## 3.2 Reporting

- 3.2.1 The Consultant shall provide an accounting report and reconciliation once each calendar quarter. The report shall include information detailing the cash and values received monthly from the sales of District advertising, commissions, fees, production, and other charges. It shall be due within thirty (30) days of the last day of each quarter. An annual report shall be prepared within thirty (30) days of the last day of the fourth quarter by the Consultant's Chief Financial Officer, who shall consolidate the prior quarterly reports for each year of the Agreement. Detailed variance explanations shall be provided for any figures that are inconsistent with previously reported figures.

- 3.2.2 Upon request, Consultant shall furnish to the District a copy of each contract entered into by Consultant for advertising space during the term of this Agreement. Terms and conditions of sales of advertising shall be at the sole discretion of Consultant, subject to the terms and conditions of the Agreement and the District's adopted advertising policy.

- 3.3 The Consultant shall establish a schedule of rates applicable to the sale of advertising space for various advertising placements. The Consultant shall forward such rates to the designated District Project Manager within five (5) days of the issuance of the initial notice to proceed, and within fifteen (15) days of any changes during the course of this Agreement. Advertising Asset Inventory

### 3.3.1 Approval of Advertising Placements

The District shall approve **all** advertising placements, exhibit material, announcements, or any other display and their manner of presentation prior to placement of such ads. Accordingly, all advertising displays at any time placed on any District equipment by the Contractor shall be deemed acceptable to the District only by advance written approval by the designated District Project Manager. The District's determination to approve or disapprove advertising will be based on the guidelines set forth in this RFP, including the Advertising Policy/Guidelines (see Appendix H) adopted by the District.

### 3.3.2 Ownership and Title to Asset Inventory

Consultant shall retain title to all asset inventory it provides under the terms of the program pursuant to this Agreement until the Agreement expires or is terminated pursuant to the terms and conditions of the

Agreement. If the Agreement either expires or is terminated, the District may choose to: 1) elect to have all Consultant-provided inventory and associated equipment removed and all affected areas returned to a safe, finished condition to the District's satisfaction at the Consultant's expense; or 2) transfer title of the assets to the District at which time title to the assets shall transfer to the District free and clear of all encumbrances through negotiated purchase from the Consultant based on the depreciated or current market value of the asset inventory.

3.4 Program Review

Consultant and District may meet and confer annually, or as requested by either party, regarding the operation of the Program, including the status of existing, planned and prospective placements.

4.0 **COMPENSATION STRUCTURE**

4.1 Revenue Sharing

Consultant shall make Net Revenue payments to SMART on a quarterly basis.

4.2 The term Net Revenue is defined as gross sales from advertising on District media, less Consultant's commissions. In the event that the Consultant receives barter, or trade, or goodwill in lieu of revenue for advertising anywhere on District property, the values received will be considered revenue, such revenue amount to be calculated based on the amount Consultant would normally receive for such advertisements.

4.2.1 Net advertising revenue shall be calculated on an accrual basis, (i.e., amounts are pro-rated to the time periods which correlate to the time periods during which the advertising is displayed).

**End of Statement of Work**

**STATION LOCATIONS**

<b>Station Address – Marin County</b>	<b>Station Addresses – Sonoma County</b>
MP 14.9 Larkspur 600 Larkspur Landing Circle Larkspur, CA 94939	MP 38.5 Petaluma Downtown 220 Lakeville Street Petaluma, CA 94954
MP 19.7 Marin Civic Center 3801 Civic Center Drive San Rafael, CA 94903	MP 46.0 Cotati 980 East Cotati Avenue Cotati, CA 94931
MP 24.0 Novato Hamilton 10 Main Gate Road Novato, CA 94949	MP 47.4 Rohnert Park 900 Enterprise Drive Rohnert Park, CA 94928
MP 28.8 Novato San Marin 7700 Redwood Boulevard Novato, CA 94945	MP 53.8 Santa Rosa Downtown 7 Fourth (4 <sup>th</sup> ) Street Santa Rosa, CA 95401
	MP 55.2 Santa Rosa North 1500 Guerneville Road Santa Rosa, CA 95401
	MP 59.9 Sonoma County Airport 1130 Airport Boulevard Santa Rosa, CA 95403

## EXHIBIT B – ADVERTISING RATE SCHEDULE

### TRANSIT ADVERTISING SERVICES

Percentage of split gross revenue for each year.

	Year 2017	Year 2018	Year 2019
District	50 %	50 %	50 %
Consultant	50 %	50 %	50 %
Total	100%	100%	100%

#### OPTION YEARS

	Year 2020
District	50 %
Consultant	50 %
Total	100%

	Year 2021
District	50 %
Consultant	50 %
Total	100%

TOPDOG Media, LLC: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Print Name/Title: \_\_\_\_\_

Date: \_\_\_\_\_



**Debora Fudge, Chair**  
 Sonoma County Mayors and  
 Councilmembers Association

**Kathrin Sears, Vice Chair**  
 Marin County Board of Supervisors

**Judy Arnold**  
 Marin County Board of Supervisors

**Jim Eddie**  
 Golden Gate Bridge,  
 Highway/Transportation District

**Dan Hillmer**  
 Marin Council of Mayors and  
 Councilmembers

**Eric Lucan**  
 Transportation Authority of Marin

**Jake Mackenzie**  
 Sonoma Mayors and Councilmembers  
 Association

**Barbara Pahre**  
 Golden Gate Bridge,  
 Highway/Transportation District

**Gary Phillips**  
 Transportation Authority of Marin

**David Rabbitt**  
 Sonoma County Board of Supervisors

**Carol Russell**  
 Sonoma Mayors and Councilmembers  
 Association

**Shirlee Zane**  
 Sonoma County Board of Supervisors

**Farhad Mansourian**  
 General Manager

5401 Old Redwood Highway  
 Suite 200  
 Petaluma, CA 94954  
 Phone: 707-794-3330  
 Fax: 707-794-3037  
 www.sonomamarintrain.org

June 7, 2017

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

**SUBJECT:** Approval of Alliant Insurance Services, Inc. Contract for Insurance Brokerage and Risk Management Consultation Services Contract Amendment No. 2

Dear Board Members:

**RECOMMENDATION:**

Approve extension of contract for insurance brokerage and risk management consultation services to Alliant Insurance Services, Inc., for \$144,000 for two years.

**SUMMARY:**

In early 2013, we conducted an open public procurement process for our insurance brokerage and risk management consultation needs. At the time, we were only beginning to develop our comprehensive insurance program in advance of our growing infrastructure and operational risks. In that process, we selected the Alliant Insurance Service team as the best technical choice at the best price. Our Alliant team has significant experience both with public entities and with commuter rail insurance programs, including TriMet in Portland, North County Transit District in San Diego, and Valley Transit Authority in Santa Clara. The senior Alliant specialists proposed during the procurement have remained consistent throughout the length of the contract, and includes the added assistance of Bedford Falls Insurance Services, which is a Napa-based certified woman-owned small business entity.

Alliant has provided exemplary insurance placement and risk management consultation services. Our team designed a multi-year program with flat annual premiums to ensure a predictable and smooth budget process to take SMART from testing to operational status. They extensively marketed our account to domestic, Bermuda, and London markets, ensuring the best coverages and premiums, while also diversifying our risk geographically. They have also provided us with expert advice and guidance on issues such as mandatory federal liability limits, shared-use freight agreements and the growing complexity of our worker's compensation risk as we become fully operational.





**SECOND AMENDMENT TO AGREEMENT FOR CONSULTANT SERVICES  
BETWEEN THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT  
AND ALLIANT INSURANCE SERVICES, INC.**

This Second Amendment dated as of \_\_\_\_\_, 2017 (the "Second Amendment") to the Agreement for Consultant Services by and between the Sonoma-Marin Area Rail Transit District ("SMART") and Alliant Insurance Services, Inc. ("CONSULTANT"), dated as of March 6, 2013 (the "Original Agreement," and as amended by the First Amendment and now this Second Amendment, the "Agreement").

**RECITALS**

WHEREAS, SMART and CONSULTANT previously entered into the Original Agreement to provide insurance brokerage and risk management consulting services; and

WHEREAS, SMART desires to increase the not-to-exceed amount by \$144,000, for a total not-to-exceed amount of \$432,200, and to extend the term to June 30, 2019 by adding two more one year terms; and

NOW, THEREFORE, in consideration of the recitals set forth above and the covenants contained herein, it is mutually agreed by and between the parties that:

**AGREEMENT**

1. **"ARTICLE 4. PAYMENT"** Article 4 of the Agreement is amended as follows:

In addition to the not-to-exceed amount set forth in the Original Agreement, the contract amount shall be increased by an amount not-to-exceed \$144,000 for the provisions of services, for an aggregate not-to-exceed amount of \$432,200 for the Agreement.

2. **"ARTICLE 5. TERM OF AGREEMENT"** Article 5 of the Agreement is amended as follows:

**"ARTICLE 5. TERM OF AGREEMENT.** The term of this Agreement shall remain in effect until June 30, 2019 unless terminated earlier in accordance with the provisions of **Article 6** below."

3. **EXHIBITS.** The following exhibits are attached hereto and incorporated herein:

(b) EXHIBIT B: SCHEDULE OF RATES

Exhibit B of this Second Amendment shall replace Exhibit B of the Original Agreement.

4. Except to the extent the Agreement is specifically amended or supplemented hereby, the Agreement, together with all supplements, amendments and exhibits thereto is, and shall continue to be, in full force and effect as originally executed, and nothing contained herein shall, or shall be construed to, modify, invalidate, or otherwise affect any provision of the Agreement.

-----This Space Intentionally Left Blank-----

**IN WITNESS WHEREOF**, the parties hereto have executed this Second Amendment as set forth below.

**SONOMA-MARIN AREA RAIL TRANSIT DISTRICT**

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Farhad Mansourian, General Manager

**ALLIANT INSURANCE SERVICES, INC.**

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_

**APPROVED AS TO FORM:**

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Thomas F. Lyons, General Counsel

**EXHIBIT B**  
**SCHEDULE OF RATES**

Base Contract (3 Years)	Annual Fee
Year 1:	\$43,600
Year 2:	\$43,600
Year 3:	\$65,000
Total Contract Amount	\$152,200
Option 1	
Year 4:	\$67,000
Year 5:	\$69,000
Total of Option 1	\$136,000
2-Year Extension	
Year 6:	\$71,000
Year 7:	\$73,000
Total of 2-Year Extension	\$144,000
Grand Total	\$432,200



**Debora Fudge, Chair**  
Sonoma County Mayors and  
Councilmembers Association

**Kathrin Sears, Vice Chair**  
Marin County Board of Supervisors

**Judy Arnold**  
Marin County Board of Supervisors

**Jim Eddie**  
Golden Gate Bridge,  
Highway/Transportation District

**Dan Hillmer**  
Marin Council of Mayors and  
Councilmembers

**Eric Lucan**  
Transportation Authority of Marin

**Jake Mackenzie**  
Sonoma Mayors and Councilmembers  
Association

**Barbara Pahre**  
Golden Gate Bridge,  
Highway/Transportation District

**Gary Phillips**  
Transportation Authority of Marin

**David Rabbitt**  
Sonoma County Board of Supervisors

**Carol Russell**  
Sonoma Mayors and Councilmembers  
Association

**Shirlee Zane**  
Sonoma County Board of Supervisors

**Farhad Mansourian**  
General Manager

5401 Old Redwood Highway  
Suite 200  
Petaluma, CA 94954  
Phone: 707-794-3330  
Fax: 707-794-3037  
www.sonomamarintrain.org

June 7, 2017

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

**SUBJECT:** Approval of Utah Transit Authority Contract Amendment No. 1 for Wheel Truing Services.

Dear Board Members:

**RECOMMENDATION:**

Approve extension of the contract for wheel truing services with Utah Transit Authority until June 30, 2018 and establish a not-to-exceed amount of \$126,100 to the contract.

**SUMMARY:**

Wheel truing is a process by which a machine is used to reshape (true) the steel wheels of the Diesel Multiple Unit (DMU) so that they contact the rail smoothly and continuously. In November 2016, SMART established a partnership with Utah Transit Authority to perform wheel truing services for the specialized wheel profile on SMART’s vehicles. This partnership was the most cost-effective method of maintaining the wheel profile since Utah Transit Authority only required minor adjustments to their machinery to be able to handle SMART’s custom wheel profile.

SMART ships our DMU wheels and axels to Utah Transit Authority for the wheel-truing services. Utah Transit Authority provides pre-truing measurements, trues the wheels in accordance with our specialized APTA 220 profile, and provides post-truing measurements before shipping wheels back. This process helps SMART not only ensure that the wheels and axels meet standards, but assists SMART in understanding wear patterns and other potential issues resulting from daily operation.

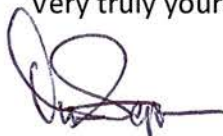
At this time, SMART currently does not own wheel truing equipment and machinery to handle this type of service internally and values the successful partnership we have formed with Utah Transit Authority. This fiscal year, Utah Transit Authority has provided wheel truing services for ten wheels and axels for SMART and SMART has successfully negotiated to keep the wheel truing costs the same for another year.

We recommend your Board approve the attached amendment for continued wheel truing services between SMART and Utah Transit Authority. This amendment will extend the term of the current contract until June 30, 2018 and will establish the not-to-exceed amount of \$126,100.

**FISCAL IMPACT:** Contract services are included in the Fiscal Year 2017-18 proposed budget.

**REVIEWED BY:**  Finance                       Administration                       
 Counsel                       Engineering                       
 HR                       Other                     

Very truly yours,



Duane Sayers  
Operations Manager

Cc: Erin McGrath

Attachment(s): Utah Transit Authority Amendment No. 1

**FIRST AMENDMENT TO AGREEMENT FOR CONSULTANT SERVICES  
BETWEEN THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT  
AND UTAH TRANSIT AUTHORITY.**

This First Amendment dated as of \_\_\_\_\_, 2017 (the “First Amendment”) to the Agreement for Consultant Services by and between the Sonoma-Marin Area Rail Transit District (“SMART”) and Utah Transit Authority. (“CONSULTANT”), dated as of November 1, 2016 (the “Original Agreement,” and as amended by this First Amendment, the “Agreement”).

**RECITALS**

WHEREAS, SMART and CONSULTANT previously entered into the Original Agreement to provide wheel-truing services for SMART’s rail vehicles; and

WHEREAS, SMART desires to amend the Agreement to extend the term to June 30, 2018 and establish a not-to-exceed amount of \$126,100 to the contract; and

NOW, THEREFORE, in consideration of the recitals set forth above and the covenants contained herein, it is mutually agreed by and between the parties that:

**AGREEMENT**

1. **“ARTICLE 5. COST AND PAYMENT FOR WORK”** of the Agreement is deleted in its entirety and replaced with the following:

“Payment for the work shall be made by SMART to Utah Transit Authority up to a total not-to-exceed amount of \$126,100:

Cost per Vehicle axle (2 wheels per axle): \$815.52

Upon delivery of each SMART Axle, UTA shall perform the Work. After completion of the work, UTA shall send an invoice for the number of completed axles along with the QA/QC documentation for each Wheel trued. Payment of the invoices shall be made within thirty (30) days of receipt.”

2. **“ARTICLE 9. TERM”** of the Agreement is amended as follows:

“The term of this Agreement shall remain in effect until June 30, 2018.”

3. Except to the extent the Agreement is specifically amended or supplemented hereby, the Agreement, together with all supplements, amendments and exhibits thereto is, and shall continue to be, in full force and effect as originally executed, and nothing contained herein shall, or shall be construed to, modify, invalidate, or otherwise affect any provision of the Agreement.

Utah Transit Authority  
First Amendment  
VS-SV-16-001



**IN WITNESS WHEREOF**, the parties hereto have executed this First Amendment as set forth below.

**SONOMA-MARIN AREA RAIL TRANSIT DISTRICT**

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Farhad Mansourian, General Manager

**UTAH TRANSIT AUTHORITY**

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_

**APPROVED AS TO FORM:**

Dated: \_\_\_\_\_

By \_\_\_\_\_  
District Counsel



**Debora Fudge, Chair**  
 Sonoma County Mayors and  
 Councilmembers Association

**Kathrin Sears, Vice Chair**  
 Marin County Board of Supervisors

**Judy Arnold**  
 Marin County Board of Supervisors

**Jim Eddie**  
 Golden Gate Bridge,  
 Highway/Transportation District

**Dan Hillmer**  
 Marin Council of Mayors and  
 Councilmembers

**Eric Lucan**  
 Transportation Authority of Marin

**Jake Mackenzie**  
 Sonoma Mayors and Councilmembers  
 Association

**Barbara Pahre**  
 Golden Gate Bridge,  
 Highway/Transportation District

**Gary Phillips**  
 Transportation Authority of Marin

**David Rabbitt**  
 Sonoma County Board of Supervisors

**Carol Russell**  
 Sonoma Mayors and Councilmembers  
 Association

**Shirlee Zane**  
 Sonoma County Board of Supervisors

**Farhad Mansourian**  
 General Manager

5401 Old Redwood Highway  
 Suite 200  
 Petaluma, CA 94954  
 Phone: 707-794-3330  
 Fax: 707-794-3037  
[www.sonomamarintrain.org](http://www.sonomamarintrain.org)

June 7, 2017

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

**SUBJECT:** Authority to Award Contract No. CV-PS-17-001  
 Pathway Design: Payran Street to Southpoint Boulevard

Dear Board Members:

**RECOMMENDATION:**

Authorize the General Manager to award a contract for Engineering Design and Construction Support Services, Payran Street to Southpoint Boulevard Multi-Use Pathway, with Biggs Cardosa and Associates, Inc. for an amount not-to-exceed \$325,000.

**SUMMARY:**

This professional services contract for engineering design will develop construction documents for the section of the SMART pathway from Payran Street to Southpoint Boulevard in Petaluma. This work is being funded with Sonoma County Transportation Authority (SCTA) Measure M sales tax revenue. The contract, with Biggs Cardosa and Associates is for \$325,000.



SMART issued a Request for Proposals on March 7, 2017, for Civil Engineering Design and optional Construction Support services for a 1.2-mile section of multi-use pathway in the City of Petaluma. This section of pathway will connect Payran Street on the west side of Highway 101 to Southpoint Boulevard on the east side of Highway 101. The pathway will be designed for construction within SMART’s existing Right-of-Way (ROW) on the west side of the existing rail tracks. It will include one (1) bridge of approximately 210 feet in length which will span across the upper Petaluma River parallel to the existing rail bridge of similar length.

Construction funding for this work has been secured and is programmed in 2019. When design is complete, we will work with the applicable resource agencies to acquire construction permits.

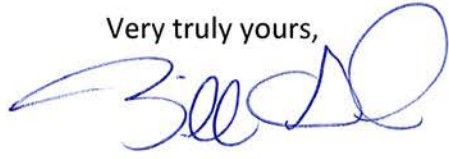
SMART received four (4) proposals on April 7, 2017 and rated them by a qualitative/descriptive (adjectival) method. Based on this rating we concluded that Biggs Cardosa Associates, Inc. was the highest-ranking proposer, with good previous team experience on SMART projects and an excellent demonstrated history of providing similar services locally.

This work will be funded using Sonoma County Transportation Authority (SCTA) Measure M revenue. Our negotiations with the proposer resulted in a mutually agreed upon price of \$325,000 for the work, which is in line with the Engineer's estimate for the work. We recommend authorizing the General Manager to award the attached contract with Biggs Cardosa Associates Inc., for the amount not to exceed \$325,000.

**FISCAL IMPACT:** Costs and corresponding grant revenue are included in the Fiscal Year 2017-18 proposed budget.

**REVIEWED BY:**  Finance        Administration \_\_\_\_\_  
 Counsel        Engineering \_\_\_\_\_  
 HR \_\_\_\_\_       Other \_\_\_\_\_

Very truly yours,



Bill Gamlen, P.E.  
Chief Engineer

Attachment(s): Contract CV-PS-17-001 with Biggs Cardosa Associates Inc.

## AGREEMENT FOR CONSULTANT SERVICES

### SMART Contract Number CV-PS-17-001

This agreement ("Agreement"), dated as of \_\_\_\_\_, 2017 ("Effective Date") is by and between the Sonoma-Marín Area Rail Transit District (hereinafter "SMART"), and Biggs Cardosa Associates, Inc. (hereinafter "Consultant").

#### RECITALS

WHEREAS, Consultant represents that it is a duly qualified design engineer, experienced in the areas of pathway design, construction, and related services; and

WHEREAS, in the judgment of the Board of Directors of SMART or District, it is necessary and desirable to employ the services of Consultant for Engineering Design & Construction Support Services Payran Street to Southpoint Boulevard Multi-Use Pathway.

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 ATTACHMENTS.**

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

- (a) **Attachment A:** Scope of Work
- (b) **Attachment B:** Fee and Schedule of Rates
- (c) **Attachment C:** United States DOT, FTA Requirements, California DOT Requirements
- (d) **Attachment D:** DBE Commitment and Utilization Form

##### **ARTICLE 3. REQUEST FOR SERVICES.**

Section 3.01 Initiation Conference. SMART's Chief Engineer, Bill Gamlen, will initiate all requests for services through an Initiation Conference, which may be in person, by telephone, or by email.

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

#### **ARTICLE 4. SCOPE OF SERVICES.**

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

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

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

Section 4.04 Assigned Personnel.

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

## ARTICLE 5. PAYMENT

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

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

Section 5.02 Consultant shall be paid, as full compensation for the satisfactory completion of the work described in the Scope of Work (**Exhibit A**) in accordance with the budget established in **Exhibit B**, provided, however, that Consultant agrees to perform all services described in the Scope of Work for the negotiated amount of **\$325,000**. The not-to-exceed (NTE) amount of **\$325,000** for this Agreement includes labor, supervision, applicable surcharges such as taxes, insurance and fringe benefits as well as indirect costs, overhead and profit allowance, equipment, materials and supplies; in no case shall Consultant be reimbursed for an amount in excess of the NTE amount without a formal written amendment to this Agreement. The hourly rates included herein are for SMART's evaluation, review and auditing purposes only. Consultant shall submit its invoices in arrears on a monthly basis in a form approved by the Chief Financial Officer. The invoices shall show or include: (i) the task(s) performed; (ii) the time in hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. 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**, and must be documented in accordance with, and fully comply with, all SMART's applicable policies for reimbursement, including, but not limited to, SMART's Travel Guidelines. SMART will not reimburse Consultant for travel time, unless authorized by Project Manager in writing.

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

## ARTICLE 6. TERM OF AGREEMENT.

Section 6.01 The term of this Agreement shall remain in effect until December 31, 2018 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, in its sole discretion, to terminate this Agreement by giving thirty (30) days' written notice to Consultant.

Section 7.02 Termination for Cause. Notwithstanding any other provision of this Agreement, should Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement,

SMART may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

Section 7.03 Delivery of Work Product and Final Payment Upon Termination. In the event of termination, Consultant, within 14 days following the date of termination, shall deliver to SMART all materials and work product subject to **Section 12.09** 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 applicable authorized task order(s) 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 SMART Board of Directors has the authority to terminate this Agreement on behalf of SMART. In addition, the Chief Engineer or 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.

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. 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 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. 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 9.04 Professional Liability Insurance. Professional Liability insurance covering liability arising out of any negligent act, error or omission in performance of design or engineering services for the Project in an amount no less than \$2,000,000 per claim. If any Design Professional Services are furnished by a Subcontractor, the Subcontractor shall be required to provide professional liability coverage.

Section 9.05 Endorsements. Prior to commencing work, Consultant shall file Certificate(s) of Insurance with SMART evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. Said endorsements and Certificate(s) of Insurance shall stipulate:

- (a) SMART, its officers, and employees shall be named as additional insured on all policies listed above.
- (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 Licensee 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 Licensee. 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. Contractor agrees to obtain any endorsement that may be



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

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

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

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

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

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

- (a) Properly executed Certificates of Insurance clearly evidencing all coverages and limits required above. Said Certificates shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current Certificates of Insurance evidencing the above-required coverages and limits on file with SMART for the duration of this Agreement.
- (b) Copies of properly executed endorsements required above for each policy. Said endorsement copies shall be submitted prior to the execution of this Agreement. Consultant agrees to maintain current endorsements evidencing the above-specified requirements on file with SMART for the duration of this Agreement.
- (c) Upon SMART's written request, Consultant shall provide certified copies of the insurance policies to SMART. Said policy copies shall be submitted within thirty (30) days of SMART's request. 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.

Section 9.09 Policy Obligations. Consultant's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

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

#### **ARTICLE 10. PROSECUTION OF WORK.**

When work is requested of Consultant by SMART, all due diligence shall be exercised and the work accomplished without undue delay, within the performance time specified in the Task Order. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God, 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 General Manager in a form approved by SMART Counsel. The Board of Directors, General Manager or Chief Engineer 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.

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

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

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

Section 12.08 Ownership And Disclosure Of Work Product. All reports, original drawings, graphics, plans, studies, and other data or documents (“documents”), in whatever form or format, assembled or prepared by Consultant or Consultant’s subcontractors, consultants, 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:                      Sonoma-Marin Area Rail Transit District  
5401 Old Redwood Highway, Suite 200  
Petaluma, CA 94954  
[billing@sonomamarintrain.org](mailto:billing@sonomamarintrain.org)

If to Consultant: Biggs Cardosa Associates, Inc.  
Attn: Mahvash Harms  
1111 Broadway  
Suite 1510  
Oakland, CA 94607  
  
[mharms@biggscardosa.com](mailto:mharms@biggscardosa.com)  
(510) 250-8118

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

#### **ARTICLE 16. MISCELLANEOUS PROVISIONS.**

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

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

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

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

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

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

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

Section 16.08 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

-----The rest of this page left intentionally blank-----

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

**CONSULTANT:** \_\_\_\_\_

By: \_\_\_\_\_

Its : \_\_\_\_\_

Date: \_\_\_\_\_

**SONOMA-MARIN AREA RAIL TRANSIT (SMART)**

By: \_\_\_\_\_  
Farhad Mansourian, General Manager

Date: \_\_\_\_\_

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

By: \_\_\_\_\_  
Katherine DiPasqua, Sr. Administrative Analyst

Date: \_\_\_\_\_

**APPROVED AS TO FORM FOR SMART:**

By: \_\_\_\_\_  
Tom Lyons, District Counsel

Date: \_\_\_\_\_

# EXHIBIT A

## SCOPE OF SERVICES

*Proposal for Engineering Design and Construction Support Services - Payran Street to Southpoint Boulevard Multi-Use Pathway*

### Assumptions and Approach

#### General Assumptions

- BCA team assumptions and scope of work is based on the prior pedestrian bridge and the trail **alignment concept developed by SMART** and double tracking is not desired and need not be considered.
- GO-88B application and coordination will not be required.
- Trail width can be smaller to accommodate the existing columns at the HWY 101 overhead. Retaining walls will not be required.
- The 2- 36" diameter **CMP pipes** can be extended to daylight and structural work and/or headwalls will not be required.
- BCA team will request mapping from **utility** owners and prepare a utility coordination report identifying conflicts and resolutions for inclusion in the design phase. Potholing may be required for the utility certification and we assume maximum of 2 locations will be sampled. Key known utilities in the area include the 33" aqueduct, 21" SS, 12" SS, 6" SSFM, FO, Gas, JT with IOS-1 (4-1.5", 2-2").
- Utility relocation (except raise MH's to grade) will not be required.
- BCA team assumes that **hydrology and hydraulics** studies will not be required.
- The surveying will entail performing limited **topographic mapping** to update the topographic survey ties that we have maintained for the SMART project since 2010. The topographic mapping tile for this area will be updated to show the new construction that was performed for the construction of the main line reconstruction project. We assume minimal effort for this task.
- BCA team will review the right of way to determine where the true **right of way** exists. The current right of way surveys were limited to the intersections at Southpoint Blvd and Payran Street; the balance of the existing information is based on record information.
- We assume that no TCE's/ROW acquisition will be required. If required we assume that SMART will perform this task or BCA team can perform it under optional task
- BCA team will have **50% PS&E, 100% PS&E and IFC** submittals. BCA team will hold a design workshop with SMART prior to the 50% design package development.
- The proposed HMA path width will be 8 feet wide with 2 foot gravel shoulders, except at the freeway undercrossing conflict points where reduced width may be required.
- Placement of pathway and bridge will have minimum impacts to environmentally sensitive areas.
- Design can meet the guidelines for exemption on the need for formal LID improvements (e.g. bioretention trenching, etc.). LID will be considered an LUP and drainage will be directed into vegetated areas to achieve exemption (or permeable surfacing utilized).



- Erosion control plans will be prepared and included in the construction documents as required for the CCGP permit.
- Landscape elements and plantings are not included but could be added at SMART's discretion and request as extra work.
- Pathway: in general, similar materials/methods from previous SMART pathway segments will be implemented.
- Assume that total design and required review duration will be up to 5 months.

### **Environmental Assumptions**

#### **Resource Agency Permitting**

Site Assessment - The biological technical reports and Jurisdictional Wetland Report were completed in 2013. It will be necessary to conduct a site assessment of the Pathway alignment to determine if changes have occurred to the physical environment. This scope assumes that conditions are the same as documented in 2013. During the site visit, opportunities for mitigation of impacts to seasonal wetlands also will be investigated. BCA team member, AWE will draft a brief memo summarizing the findings of the site assessment. If conditions have changed or a new alignment is proposed, such that additional biological surveys would be necessary to support the permitting applications, we will discuss alternatives with SMART and the potential need for additional work. Deliverable: Site Assessment Memo (PDF)

Although environmental permits have not yet been issued for the project, BCA team has made some assumptions based on our knowledge of the project site and permit conditions typically imposed on other SMART projects. The main emphasis of anticipated permit conditions would be protection of wetlands and water quality. We understand that SMART may be required to have biological construction monitors on site to ensure environmental permit compliance during construction activities.

Biological Construction Monitoring (NIC): Based on the results of the necessary state, federal, and local permits, **and upon SMART's request as extra work**, AWE will supply **biological construction monitors** in accordance with all permit conditions and avoidance and minimization measures. We anticipate assisting in implementing the following avoidance and minimization measures:

- Providing worker environmental awareness training to all construction personnel before they begin work. The program will summarize relevant laws and regulations that protect biological resources; and sensitive biological resources occurring on or near the project area will be monitored during work activities.
- Work within 50 feet of suitable aquatic habitat for the California red-legged frog will be limited to dry periods from May 15 through October 31.
- All proposed construction activities are scheduled for the dry season (i.e. June 15th to October 15th) to avoid listed species within tidally influenced waterways.

Coupled with an in-depth working knowledge of biological standards, guidelines, and regulatory compliance at the federal, state, and local level, our biological resources staff have an understanding of construction techniques and equipment and how they can be employed to develop projects while staying within biological constraints. BCA team member, AWE biologists utilize a "problem-solving" approach to construction monitoring that includes identifying future activities that have the potential to be conducted out of environmental scope, and work with construction crews, foremen, and designers to implement measures to minimize potential

problems. We understand the impact that non-compliance can have on project schedule and budget and our biological monitors work diligently to prevent costly delays.

**Cultural Resources Monitoring during Construction (NIC)- If requested by SMART and as extra work**, BCA team member, ICF, will provide cultural resources monitoring support for project-related ground disturbance in archaeologically sensitive areas, which we assume to be those areas located within 150 meters of channels or streams. This support will include coordinating with other team members including AWE to ensure that ICF is providing coverage at the correct locations and to obtain any relevant updates on the project's look-ahead schedule; monitoring project-related ground disturbance in accordance with SMART's Archaeological Monitoring Plan; treating any unanticipated archaeological discoveries in accordance with the overall project's unanticipated discovery protocol; collecting daily field notes, location information, and photographs; and participating in any required on-site safety meetings.

All daily field notes, location information, and photographs will be collected using a mobile tablet-based data collection program; which can be accessed by the client remotely if requested. The benefits of this data collection method are that it minimizes the risk of data loss and errors associated with transcribing field notes, downloading photographs, and GPS data; and that it allows the client to observe the daily progress of archaeological monitoring efforts.

Once all portions of the project that require cultural resources monitoring are complete, the methods and findings of the monitoring effort will be briefly summarized in a cultural resources technical memorandum. Following internal review by BCA team, a digital copy of the technical memorandum will be provided to SMART.

**Permitting Agency Pre-Application Meeting** – BCA team will contact the appropriate resource agencies to verify the type of permit needed and to discuss any concerns the agencies may have with regard to the Pathway project. Early consultation is important so that site-specific agency concerns can be identified and addressed during the design process. This, in turn, will provide the agency representatives the information needed to determine a realistic and efficient approach to permitting the project, prior to the standard submittal of application packages.

Deliverable: None

**Mitigation Plan** - The application packages will be deemed incomplete unless a Mitigation Plan for wetland and riparian impacts is included. We understand that there are no available compensatory mitigation credits within the project's watershed. Therefore, SMART will be required to provide compensatory mitigation in another form. BCA team assumes that resource agencies will be open to onsite mitigation and will assist SMART in identifying options and opportunities for onsite mitigation. BCA team will prepare a mitigation plan to support permit packages to the Corps, RWQCB, and CDFW. We assume and anticipate minimal site changes with the field assessment and the subsequent mitigation plan will be simple.

Deliverable: Draft Mitigation Plan (PDF); Final Mitigation (PDF)

**Prepare and Submit Permit Application Packages** - An Army Corps Section 404 permit will be required because the project involves the placement of fill in seasonal wetlands. It is anticipated that the project will qualify for a Nationwide 14 Linear Transportation Projects (fill cannot exceed 0.5 acre). The existing consultation letters and Jurisdictional Wetland Report will be used in support of the application.

A RWQCB Section 401 Certification will be required as part of the Army Corps permitting process and because the project will fill seasonal wetlands. The Jurisdictional Wetland Report will be used in support of the application.

A Streambed Alteration Agreement will be required for impacts to the bed, bank, or channel, including impacts to riparian vegetation, at the crossing of Petaluma River and the seasonal channel. The existing biological technical documents will be used in support of the application. If trees are to be removed as part of the project, information regarding the type and size of trees would be collected during the site assessment.



BCA team will prepare and submit draft application packages for review by SMART. Upon receipt of comments, BCA team will finalize the packages and submit to the agencies. This scope of work assumes SMART will pay all permit application fees directly to the agencies. Deliverable: Draft Application Packages (PDF); Final Application Packages (PDF and 1 Hard Copy)

Follow-up after Application Submittal – BCA and team members GHD and Area West have included up to 30 hours to respond to follow-up questions and requests for information made by the agencies. Any effort required beyond that will be the subject of an amendment to this scope of work.

#### **Other Environmental Scope Assumptions**

Our scope of work assumes the following:

- Physical environmental conditions have not changed since 2013; previously identified habitat and jurisdictional wetlands remain the same.
- The Pathway will be constructed within the existing right-of-way, as covered in the NES.
- The Petaluma Creek crossing will span the channel, avoiding any impacts below ordinary high water (US Army Corps jurisdiction) and the 100-year flood elevation (Regional Board jurisdiction).
- Existing biological reports do not need to be updated.
- The Corps will utilize the 2013 Jurisdictional Wetland Report to verify wetlands at the site and no modification to the maps will be necessary.
- Agency application fees will be paid for by SMART.
- On-site mitigation opportunities can be found.

#### **Geotechnical Assumptions**

BCA team member, GHD, will perform a geotechnical investigation, considering previous borings by others and the conditions encountered during construction to provide design-level geotechnical recommendations for the pathway, and the bridge. Field exploration will be performed by truck- and track-mounted drill rigs using auger and rotary-wash drilling techniques within the SMART right-of-way. Four borings will be drilled to depths of 10 to 50 feet along the alignment and drive samples will be obtained every five to ten feet. Our field personnel have the Employee in Charge (EIC)/Right-of-Way Worker Protection (RWP) training required to work in the right-of way. Drilling permits will be obtained from the County of Sonoma Permit & Resource Management Department and the borings will be backfilled with cement grout. Laboratory testing, including moisture/density, Atterberg Limits, sieve analysis, unconfined compressive strength, corrosion, and R-value will be performed on select samples.

Engineering analysis will be performed for pavement, and deep foundations. Conclusions and recommendations will be developed considering our field and laboratory information, analyses, and construction experience on the rail bridge and presented in a geotechnical report. The report will include: site characterization (with geology, seismicity, logs of borings, and laboratory test results), discussion of questionable soils (expansive, corrosive, liquefiable, expansive, compressive, resistant, etc.) and potential mitigation, earthwork and subgrade preparation, trench backfill, seismic design parameters, foundations (vertical and lateral capacity, settlement), and flexible pavement alternatives. One draft and one final electronic copy will be provided.

#### **Other Geotechnical Assumptions:**

- One bridge foundation type will be evaluated for design-level recommendations
- SMART provides access to the right-of way for our drilling subcontractor
- The drill spoils will be left on site
- Hazardous materials or contaminated soil or groundwater are not present
- Wet weather may delay the field schedule

#### **Structural**

This pedestrian bridge will be approximately 10'wide x 210' long and is required for a pedestrian trail crossing of the Petaluma River. The pedestrian bridge is proposed to be a prefabricated steel truss type bridge superstructure on concrete abutments and pile foundation. The pedestrian bridge is proposed to be a single span that will span over the width of the creek with abutments placed beyond the top of banks.

BCA team assumes that retaining walls will not be required.

**Structural Design Services** on this project will be limited to the design of the prefabricated bridge substructure/ foundations/ wingwalls and developing the performance specification for the bridge superstructure. Although the design calculations and working drawings of the superstructure is NOT included in the scope of this proposal, determination of the design requirements and code to which the superstructure shall be designed is included into the scope of services. The superstructure design requirements and code will be specified on the project plans for which the prefabricated bridge manufacturer will be required to develop structural calculations and working drawings. Coordination of the proposed superstructure design to the substructure design will be required and is included into the scope of services of this proposal.

**As an extra work request the Construction Support Services** on this project will include reviews of contractors' submittals, responding to RFIs during construction, and developing as-built drawings. Submittals will include reinforcing shop drawings, concrete and grout mix designs. BCA team will also review the prefabricated bridge manufacturer's superstructure structural design calculations and shop drawings that will be included in the Construction Documents.

**Other Structural Assumptions:**

- If requested by SMART, BCA team will perform the Inspection Services on this project. The structural inspection will be performed by ACI certified and experienced bridge inspectors. The inspection for the bridge construction that is required by code, will be specified on the project plans to ensure construction quality control. Inspection Services shall also be provided for pile installation, reinforcing, concrete, grout, and the superstructure erection. Other inspection services may include: horizontal and vertical layout of structure (construction staking), soil related inspections, remedial engineering design to determine corrective action required due to materials and/or contractor's operations not meeting contract requirements and source inspections of the bridge superstructure.
- The bridge superstructure is intended to be a prefabricated steel truss type structure (to be designed by manufacturer) and requirements and specifications will be incorporated as part of the construction documents.
- No utilities are required to be carried on the pedestrian bridge.

**Scope of Work:**

**GENERAL- PROJECT MANAGEMENT & QUALITY CONTROL**

Summary: Project Administration/ Budgeting/ Cost Accounting; Coordination Meetings, Field Review Meetings; Schedule; Quality Assurance

*Each category below describes work tasks which the Consultant will lead with SMART participating.*

- *Hold bi-monthly coordination meetings with the project staff to coordinate work activity, update SMART on the design progress, and establish work priorities.*
- *Identify key issues and major decisions and bring them to the attention of the SMART management for resolution and decision making.*
- *Make appropriate arrangements to satisfy SMART, local, state, and federal requirements for the following:*
  1. *Quality Assurance*
  2. *Safety and Security*
  3. *Affirmative Action*
  4. *Environmental Compliance*
- *If requested by SMART, coordinate with and provide information to SMART staff responsible for seeking project funding from federal agencies, state agencies, local communities and private developers.*

**ENGINEERING**

**1. STUDIES**

- a. **UTILITY COORDINATION:** Identify conflicts, Develop Resolution, Potholing



- *Utility Coordination – Identify conflicts, develop conflict resolutions and assume no relocations. This item will include potholing services at 2 locations*
  - *Deliverable: Electronic and 2 hard copies of utility coordination report identifying conflicts and resolutions.*
- b. SUPPLEMENTAL SURVEYING FOR BASE MAPPING:** Limited Topographic Survey, Utility Research and Mapping
- *Assume existing Topographical survey of the area is suitable for the proposed pathway route design. Survey to be coordinated with existing SMART topographical and utility mapping and coordinate basis*
  - *Deliverable: AutoCAD format copy of final topographical survey compatible with SMARTs existing base file system. The survey shall use SMARTs drawing standards (drawing entity layers, file naming and x-ref pathing, and coordinate basis) to match existing topographic base mapping.*
- c. GEOTECHNICAL STUDIES AND REPORT:** Field Reconnaissance and Exploration, Laboratory Testing, Engineering Analysis and Geotechnical Report Preparation
- *Geotechnical studies and report with recommendations for design and construction of pathway and bridge foundations*
  - *Deliverable: Electronic and 2 hard copies of a draft final geotechnical report. Consultant shall budget time for SMART to review and comment on the draft report.*
- d. HYDROLOGY AND HYDRAULICS STUDY:**
- *Assume hydrology and hydrologic study is not required.*

## **2. DESIGN DELIVERY**

- *Develop Class 1 pathway construction plan and specification package ready for construction. Pathway to be AC surface 8 feet wide with 2 foot gravel shoulders. In certain circumstances pathway width may be reduced to a minimum of 6 feet wide. Pathway shall be suitable for maintenance vehicle access.*
- *Pathway shall meet ADA criteria and shall provide full connectivity to existing sidewalks at Payran Street and Southpoint Boulevard, including track or roadway pedestrian crossings.*
- *Pathway shall be located on the west side of SMARTs ROW.*
- *Develop detailed engineering designs with sections, details and supporting calculations*
- *Develop structural design that utilizes standard prefabricated pedestrian H10 rated bridges matching existing SMART pedestrian bridges at Upper Petaluma River crossing (Cinnabar). Free span prefabricated bridge assumed.*
- *Prepare Technical Specifications and contract documents for bidding purposes to hire a contractor to construct the project.*
- *Prepare a construction cost estimate for the work. The estimate shall be based upon the construction documents and match the contract bid sheet.*

- a. **50% PLANS, SPECIFICATIONS, ESTIMATE:** 50% Design Calculations & Studies, Plans, Specifications, Quantities Calculations & Estimate, QC Review
    - *50% Design review package: Electronic copy, 4 half sized hard copies of PS&E, and 2 copies of preliminary or draft Studies;*
  - b. **100% PLANS, SPECIFICATIONS AND ESTIMATE:** Independent Bridge Design Check, 100% Design Calculations, 100% Plans, Specifications, Quantities Calculations and Estimate, 100% QC Review
    - *100% Design review package: Electronic copy, 4 half sized hard copies of PS&E, and 2 copies of Studies;*
  - c. **ISSUED FOR CONSTRUCTION DOCUMENTS (IFC); PLANS, SPECS, ESTIMATE:** IFC Plans, IFC Specifications, IFC Quantities Calculations and Estimate, IFC QC Review, Bid Documents
    - *Issued for Construction (IFC) package: Electronic copy, 4 half sized hard copies of PS&E, 2 full sized hard copies of plan, 2 final hard copies of Studies, 4 hard copies of Specifications, and 2 copies of Engineer's Cost Estimate. All IFC deliverables shall be signed and stamped, as appropriate, by the designer.*
- 3. RIGHT OF WAY ENGINEERING; PATHWAY EASEMENTS; RIGHT OF WAY ENGINEERING** (assume no ROW acquisition)
- *Pathway Easement: Provide easement meets and bounds description ready for recordation with the County of Sonoma for a local agency access easement over this pathway as designed and constructed.*
- 4. PERMITTING COORDINATION;** Site Assessment, Prepare Applications, and Prepare Mitigation plan, Follow-up / Support
- *Permitting Coordination: Identify necessary state, federal, and local permits required for the construction, and prepare permit application(s) for submittal by SMART. This is due with the 50% design submittal.*
  - *Prepare permit applications and develop an environmental mitigation plan that identifies all required mitigation with options for fulfilling them. Includes CEQA and NEPA required mitigation*
- 5. LOCAL AGENCY FUNDING COORDINATION AND ASSISTANCE;** DBE Goals for Construction, Assist in preparation of the Key Caltrans Local Assistance Forms: Revalidate/ Validate NEPA Clearance, Obtain PS&E, ROW & Utility Certificates.
- *Develop and provide SMART with DBE goals for the Pathway construction project as required by Caltrans Local Assistance funding requirements.*
  - *Assist in preparation of the key Caltrans Local Assistance forms: Recertify NEPA clearance, PS&E Certificate, Right-of-Way Certificate, & Utility Certificate.*

## **FOLLOWING TASKS ARE NOT INCLUDED IN THE FEE PROPOSAL:**

- 1. CONTRACT BIDDING and AWARD ASSISTANCE;** Pre-Bid Meeting, Responding to Bidder Inquiries, Clarification of Construction documents, Analysis of Bids

2. **CONSTRUCTION SUPPORT;** Attend Pre-Construction Meeting, Review Prefab. Bridge Design by manufactures, Review Shop Drawings, Answer Clarification Questions and Respond to Contractor RFI's, Perform Environmental Monitoring (TBD), Periodic Site Visits and Prepare Record Drawings.
  
3. **CONSTRUCTION INSPECTION;** At the direction of SMART the Consultant Team may assist with project implementation including construction monitoring, observation, inspection or independent testing.
  - *Tasks 7, 8 and 9 may be exercised after the design, dependent on the structure of the construction contract. It may include assisting SMART in developing responses to RFI's during bidding and construction, and to provide limited construction period inspection and testing to verify work is being conducted according to plan and specification (e.g. soil and AC compaction testing, rebar inspection or concrete testing at bridge abutments).*

**END SCOPE OF SERVICES**

**Proposed Project Timeline (to be modified)**

<b>Task/Milestone</b>	<b>Start</b>	<b>End</b>
Notice to Proceed	June 12, 2017	June 12, 2017
Studies, ROW, Permits, Coordination, Local Agency Funding Assistance and Support Tasks	June 12, 2017	Dec. 1, 2017
50% Design	June 26, 2017	August 11, 2017
SMART Review	August 14, 2017	August 25, 2017
100% PS&E	August 28, 2017	Oct. 13, 2017
SMART Review	Oct. 16, 2017	Oct. 27, 2017
Issued For Construction Documents- (IFC)	Oct. 30, 2017	Nov. 15, 2017
Bidding	Nov. 22, 2017	Dec.20, 2017
Construction Support (RFP states construction in 2019)	Dec.20, 2017	Dec. 20, 2018



**PAYRAN TO SOUTHPOINT (MP 39.25 to 40.40)**





## EXHIBIT B

### FEE AND SCHEDULE OF RATES

## SMART Multi-use Pathway Resource Allocation Matrix Summary

Engineering Design Services

Estimate of Labor Effort



17-May-17

NO.	TASK	FEE PER TASK
	<b>GENERAL- PROJECT MANAGEMENT &amp; QUALITY CONTROL</b>	\$44,609
	<b>ENGINEERING</b>	
<b>1</b>	<b>STUDIES</b>	
	UTILITY RESEARCH & COORDINATION	\$6,152
	SUPPLEMENTAL SURVEYING FOR BASE MAPPING & HYDRAULICS ANALYSIS	\$19,929
	GEOTECHNICAL STUDIES, FINAL MATERIALS AND FOUNDATIONS REPORT	\$11,903
	SCOUR DETERMINATION	\$2,523
<b>2</b>	<b>DESIGN</b>	
	50% PLANS, SPECIFICATIONS AND ESTIMATE	\$90,013
	100% PLANS, SPECIFICATIONS AND ESTIMATE	\$51,408
	ISSUED FOR CONSTRUCTION DOCUMENTS (IFC) - PLANS, SPECIFICATIONS, ESTIMATE	\$30,979
<b>3</b>	<b>RIGHT OF WAY ENGINEERING; PATHWAY EASMENTS</b>	\$0
<b>4</b>	<b>PERMITTING COORDINATION</b>	\$47,882
<b>5</b>	<b>LOCAL AGENCY FUNDING COORDINATION AND ASSISTANCE</b>	\$8,416
	<b>DIRECT EXPENCES</b>	\$11,185
	<b>TOTAL</b>	<b>\$325,000</b>

The following rates are for SMART's internal use only, Consultant agrees to perform the tasks outlined in **Attachment A** for the not-to-exceed amounts outlined above in this **Attachment B**.

SMART							
Payran Street to Southpoint Boulevard Multi-Use Pathway							
Biggs Cardosa Associates, Inc.							
Schedule of Costs and Fees - Effective 10/01/2016							
Name	Classification	Hourly Rate	Fringe Benefits (FB)	Overhead (OH)	General & Administrative (G&A)	Fee	Specific Rate of Compensation
			28.31%	0.00%	134.86%	10.00% <sup>(2)</sup>	
		(a)	(a) x FB = (b)	a) x OH = (c)	(a) x G&A = (d)	( a+b+c+d) x Fee = (e)	(a+b+c+d+e)
Mahvash Harms	PIC / Project Manager - Principal II	\$95.19	\$26.95	\$0.00	\$128.37	\$25.05	\$275.56
	Principal III	\$105.58	\$29.89	\$0.00	\$142.39	\$27.79	\$305.64
	Principal II	\$95.19	\$26.95	\$0.00	\$128.37	\$25.05	\$275.56
	Principal I	\$80.77	\$22.87	\$0.00	\$108.93	\$21.26	\$233.82
	Associate	\$66.64	\$18.87	\$0.00	\$89.87	\$17.54	\$192.91
	Engineering Manager	\$58.56	\$16.58	\$0.00	\$78.97	\$15.41	\$169.52
	Senior Engineer	\$49.33	\$13.97	\$0.00	\$66.53	\$12.98	\$142.80
	Project Engineer	\$47.16	\$13.35	\$0.00	\$63.60	\$12.41	\$136.52
	Staff Engineer	\$38.65	\$10.94	\$0.00	\$52.12	\$10.17	\$111.89
	Assistant Engineer	\$33.75	\$9.55	\$0.00	\$45.52	\$8.88	\$97.70
	Junior Engineer	\$30.00	\$8.49	\$0.00	\$40.46	\$7.90	\$86.85
	Sr. Computer Drafter	\$46.59	\$13.19	\$0.00	\$62.83	\$12.26	\$134.87
	Administration Services	\$34.33	\$9.72	\$0.00	\$46.30	\$9.03	\$99.38

Biggs Cardosa Associate anticipates a 5% increase in these rates after October 01, 2017.

Biggs Cardosa Associates, Inc.  
 Agreement  
 Contract No. CV-PS-17-001

EXHIBIT B

# GHD Rate Schedule

## SMART - Payran to Southpoint Boulevard MUP

4/7/2017

<b>Staff</b>	<b>Role</b>	<b>Rate</b>
Bill Silva	Principal Engineer	\$ 260
Matt Wargula	Pathway / Traffic Engineer	\$ 160
Steve Grupico	Civil Engineer	\$ 161
Nikki Tang	Staff Engineer	\$ 89
Colby Phelps	Senior CAD Designer	\$ 129
Eric Penn	Electrical Engineer	\$ 151
Elissa Overton	Proj Admin / Tech Editor	\$ 94
Raymond Wong	PM (Hydraulic Engineering)	\$ 202
Parastou Hooshialsadat	Project Engineer (H&H)	\$ 121
Dave Jermstad	Principal Geotech Engineer	\$ 183
Chris Trumbull	Senior Geotechnical Engineer	\$ 178
Kyle Jermstad	Staff Engineer	\$ 83
Ryan Crawford	Project Geologist	\$ 104
Venessay Eckerman	Admin	\$ 100
Marjorie Codioli	Word Processing	\$ 73
Kristine Gaspar	Senior Environmental Planner	\$ 133
Rebecca Batzel	Environmental Planner	\$ 69
Renee Remillard	GIS Specialist	\$ 101
Elissa Overton	Word Processing II	\$ 94



**Billing Rates  
2017**

<b>Personnel Classification</b>	<b>Hourly Rate</b>
Principal	\$155
Project Manager	\$135
CEQA/NEPA Specialist	\$130
Permit Specialist	\$140
Biological Resources Lead	\$120
Biologist 3	\$105
Biologist 2	\$95
Biologist 1/Biological Monitor	\$75
Daily Biological Monitoring Rate (includes direct expenses)	\$1,300
Environmental Scientist 3/Senior Scientist	\$135
Environmental Scientist 2	\$95
Environmental Scientist 1	\$80
Technician	\$65
Water Quality Specialist (QSD/QSP)	\$130
Water Quality Monitor	\$70
Planner 3/Senior Land Use Planner	\$125
Planner 2/Project Coordinator	\$110
Planner 1/Junior Planner	\$70
Archaeologist 3/Senior Cultural Resources Specialist	\$115
Archaeologist 2	\$95
Archaeologist 1	\$80
GIS/AutoCAD 2	\$85
GIS/AutoCAD 1	\$75
Senior Technical Writer	\$125
Editor	\$90
Admin. Assistant 2	\$75
Admin. Assistant 1	\$65
Project Accountant	\$90
<b>Direct Expenses</b>	
Vehicle charges	at established federal rate (per mile)
Copies	at cost
Per diem	at established federal rate
GPS/Laser Range Finder	\$150/day
Jon Boat - nonmotorized	\$40/day
Jon Boat - motorized	\$80/day

Outside services (e.g. services by associate firms, printing) postage, and insurance certificates (where client requires to be listed as an additional insured) are billed at cost plus 10%.

**Confidential Business Information**

Agreement  
Contract No. CV-PS-17-001

EXHIBIT B



▲ BOUNDARY ▲ TOPOGRAPHIC ▲ CONSTRUCTION ▲ INFRASTRUCTURE

CINQUINI & PASSARINO INC.  
LAND SURVEYING

**EXHIBIT C  
HOURLY FEE SCHEDULE  
MARCH 1, 2017 to FEBRUARY 28, 2018**

**OFFICE AND PROFESSIONAL**

Professional Land Surveyor (4 HOUR MINIMUM) EXPERT WITNESS, DEPOSITIONS & CONSULTATIONS	\$415.00 per hour
Professional Land Surveyor LEGAL RESEARCH & COURT EXHIBITS	\$225.00 per hour
Principal Professional Land Surveyor	\$180.00 per hour
Senior Professional Land Surveyor	\$170.00 per hour
Professional Land Surveyor	\$145.00 - \$155.00 per
Office Calculations and Field Crew Preparation	hour \$110.00 - \$125.00 per
CAD Drafting and Plotting	hour \$100.00 - \$120.00 per hour <i>(PLUS MATERIAL)</i>
Word Processing, Clerical and Deliveries	\$ 90.00 per hour

**FIELD CREWS**

THE FOLLOWING INCLUDES VEHICLES, EQUIPMENT, MILEAGE & MATERIAL

1 Person Field Party	\$175.00 per hour
1 Person GPS Party	\$200.00 per hour
2 Person Field Party FIELD CREW CONSISTS OF PARTY CHIEF & CHAINMAN	\$260.00 per hour
3 Person Field Party FIELD CREWS CONSIST OF PARTY CHIEF, 2 CHAINMEN OR CHAINMAN & FLAGPERSON.	\$360.00 per hour
4 - Person Field Party FIELD CREWS CONSIST OF PARTY CHIEF, 3 CHAINMEN OR CHAINMAN & 2 FLAGPERSONS.	\$410.00 per hour

**SUPPLEMENTAL ITEMS**

Outside Contract Work	Cost plus 15%
Overtime Work	1.2 x base rate
Over 8 Hours on Saturday, all day on Sundays or Holiday	1.4 x base crew rate
Travel Time for 2-Man Crew <i>(BEYOND 1 HOUR OF TRAVEL OUTSIDE AN 8 HOUR WORKDAY)</i>	\$110.00 per hour

Schedule 2017/2018

← 1360 No. Dutton Avenue, Suite 150 Santa Rosa, CA 95401 Phone (707) 542-6268 Fax (707) 542-2106 →

Biggs Cardosa Associates, Inc.  
Agreement  
Contract No. CV-PS-17-001

EXHIBIT B



**SCHEDULE OF FEES**

FULLY LOADED HOURLY CHARGES FOR PERSONNEL

Foreman .....	\$ 174.81
Technician .....	\$ 168.23
Project Coordinator .....	\$ 139.98
Estimator .....	\$ 63.05
Administrative Assistant .....	\$ 53.87

OTHER CHARGES

Arrow Board .....	\$ 155/day
Bobcat Loader .....	\$ 300/day
Core Drill .....	\$ 350/day
Electronic Detection Equipment .....	\$ 100/day
Ground Penetrating Radar (GPR) Equipment .....	\$ 269/day
Mini Excavator .....	\$ 350/day
Tamper Jumping Jack .....	\$ 100/day
Dump Truck .....	\$ 260/day
Full Size Truck .....	\$ 260/day
Pickup Truck .....	\$ 100/day
Vacuum Excavation Truck .....	\$ 688/day
Super Sucker Hydro Vacuum Truck .....	\$ 875/day
Mobilization .....	Project Based
Subsistence .....	\$ 90/night/person
Direct Project Expenses .....	Cost plus 15 %

NOTES (Field Services)

Overtime rates at 1.5 times the regular rates will be charged for work performed outside normal construction hours and all day on Saturdays. Rates at twice the regular rates will be charged for all work in excess of 12 hours in one day or on Sundays and holidays. Lead time for any requested service is 48 hours. Potholing rates are based on a 4-hour minimum for the first 4 hours and an 8-hour minimum for hours exceeding 4 hours. Field personnel are charged portal to portal.

TERMS AND CONDITIONS

The terms and conditions of providing our consulting services include our limitation of liability and indemnities as presented in Company Name's Work Authorization and Agreement.

*Utility Locating by Electronic Detection, GPR, Vacuum Excavation, Rebar Scanning, Cathodic Protection*

~ Delivering Excellence with a Sense of Urgency ~™



### Rates

Senior Archaeologist	\$175/h
Lead Archaeological Monitor	\$125/h
Archaeological Monitor	\$110/h

## EXHIBIT C

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

- 1. General.** In performance of its obligations pursuant to this Agreement, the Consultant agrees to comply with all applicable provisions of federal, state, and local law, regulations, and FTA directives. The terms of the most recent amendment to any federal, state or local laws, regulations, FTA directives, and amendments to the grant or cooperative agreement providing funding for this Agreement that may be subsequently adopted, are applicable to the Agreement to the maximum extent feasible, unless the FTA provides otherwise in writing. The Federal or State regulations set forth in this Agreement to be observed in the performance of the Agreement are subject to change, and such changed requirements will apply to this Agreement as required. Consultant 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. Consultant's failure to comply with these requirements shall constitute a material breach of this Agreement and may, in addition to other remedies, result in the withholding of progress payments to the Consultant.
- 2. Fly America.** The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their Contractors are required to use U.S. flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.
- 3. Buy America -** The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless 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, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.



A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

**Certification requirement for procurement of steel, iron, or manufactured products.**

*Certificate of Compliance with 49 U.S.C. 5323(j)(1)*

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

*Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

**Certification requirement for procurement of buses, other rolling stock and associated equipment.**

*Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).*

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

*Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

4. **Cargo Preference - Use of United States flag Vessels.** The Contractor agrees: (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 loading 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 to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA 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. **Seismic Safety.** The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations, 49 CFR Part 41, and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Agreement including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.
6. **Energy Conservation.** The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
7. **Clean Water.** The Contractor agrees (a) 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.* The Contractor agrees to report each violation to SMART and understands and agrees that SMART will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office; and (b) to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.
8. **Byrd Anti-Lobbying Amendment, as amended by the Lobbying Disclosure Act of 1995.** Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

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

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

9. **Federal Changes.** Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between SMART and FTA, as they may be amended or promulgated from time to time during the term of this Agreement. Contractor's failure to so comply shall constitute a material breach of this Agreement.
10. **Clean Air.** The Contractor agrees to (a) comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401, *et seq.* The Contractor agrees to report each violation to SMART and understands and agrees that SMART will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office; and (b) include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.
11. **Recovered Materials.** The Contractor agrees to comply with all the requirements of Section 6002 of 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.

## **12. No Obligation by the Federal Government.**

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

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

- (a) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this project. Upon execution of the Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement or the FTA assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- (b) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- (c) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## **14. Special Termination Provisions.** In addition to the Termination provisions contained in Article 7 of the Agreement, the following Termination provisions apply.

- (a) Termination for Convenience. SMART may terminate this Agreement, in whole or in part, at any time by written notice to the Contractor when it is in SMART's best interest. The Contractor shall be paid its costs, including Agreement close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to SMART to be paid the Contractor. If the Contractor has any property in its possession belonging to SMART, the Contractor will account for the same, and dispose of it in the manner SMART directs.
- (b) Termination for Default. If the Contractor does not deliver supplies in accordance with the Agreement delivery schedule, or, if the Agreement is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, SMART may terminate this Agreement for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the Agreement price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

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

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

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

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



(e) Termination for Convenience or Default (Architect and Engineering Contracts).

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

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

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

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

#### **15. Suspension and Debarment.**

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

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

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

include a provision requiring such compliance in its lower tier covered transactions.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

**16. Civil Rights.** The following requirements apply to the Agreement:

(a) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

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

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

training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

17. **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.
18. **Performance During Dispute.** Unless otherwise directed by SMART, Contractor shall continue performance under this Agreement while matters in dispute are being resolved.
19. **Claims for Damages.** Should either party to the Agreement suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.
20. **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.

21. **Rights and Remedies.** The duties and obligations imposed by the Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by SMART or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

22. **Disadvantaged Business Enterprises.** In addition to the requirements set forth in the Notice to Proposers Regarding Disadvantaged Business Enterprise (DBE) Information, the following requirements apply to this Agreement.

- (a) This Agreement is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is **3.99%**. A separate contract goal has not been established for this procurement.
- (b) The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as SMART deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

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

- (c) The Contractor is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than 30 days after the Contractor's receipt of payment for that work from SMART. In addition, Contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this Agreement is satisfactorily completed.
- (d) The Contractor must promptly notify SMART whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of SMART.

23. **Exclusionary or Discriminatory Specifications.** Apart from inconsistent requirements imposed by Federal statute or regulations, Consultant shall comply with the requirements of 49 U.S.C. § 5323(h)(2) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.
24. **No Federal Government Obligations to Consultant and Third Parties.** Absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to Consultant, or any other third party in connection with the performance of the Agreement. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, contract, or subagreement, the Federal Government continues to have no obligations or liabilities to any party, including the Consultant.
25. **Geographic Restrictions.** Consultant shall refrain from using state or local geographic preferences, except those expressly mandated or encouraged by Federal statute, and as permitted by SMART.
26. **Access To Records and Reports.** Consultant shall comply with the following requirements:
- (a) Record Retention. Consultant shall, during the course of the Agreement and for three years after final payment, maintain intact and readily accessible all data, documents, reports, records, contracts, and supporting materials relating to the Agreement as SMART may require.
  - (b) Access to Records. Consultant shall permit SMART, the Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives, to inspect all project work, materials, payrolls, and other data, and to audit the books, records, and accounts of Consultant and its subconsultants pertaining to the Agreement. In accordance with 49 U.S.C. § 5325(a), Consultant shall require each subconsultant 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 subconsultant agreement and to audit the books, records, and accounts involving that subconsultant agreement as it affects the Agreement.
  - (c) State Audit, Inspection, Access to Records and Retention of Records Requirements. Consultant and its subconsultants shall establish and maintain an accounting system and records that properly accumulate and segregate incurred costs by line item for the project. Consultant and its subconsultants' 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. Consultant and its subconsultants shall permit representatives of the State and State Auditor to inspect, examine, make excerpts or transcribe Consultant and its subconsultants' 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 Consultant and its subconsultants 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 Consultant and its subconsultants 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 Consultant and its subconsultants 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 Consultant and its subconsultants. Should Consultant and its subconsultants 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 Consultant and its subconsultants from any source.

The Consultant 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 Consultant 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 Consultant, 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 Consultant to SMART.

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

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

- (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (c) U.S. DOT regulations "Americans with Disabilities (DA) Accessibility Specifications for Transportation Vehicles," 49 C.F.R. Part 38;
- (d) U.S. DOT regulations, "Nondiscrimination on the basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (e) U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (f) U.S. General Services Administration (GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (g) U.S. Equal Employment Opportunity Commission, "Regulations to implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;
- (i) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (j) Any implementing requirements FTA may issue.

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

**29. Employee Protection Requirements.** Consultant shall comply with section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 327 through 332, and shall ensure that the wages of every mechanic and laborer will be computed on the basis of a standard work week of 40 hours, and that each worker will be compensated for work exceeding the standard work week at a rate of not less than 1.5 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Consultant shall comply with the determinations pertaining to these requirements that may be made in accordance with applicable U.S. Department of Labor (DOL) regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also

Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. Part 5.

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

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

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

32. **Support of Agreement Costs.** All costs charged to the Agreement shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of the charges. The Consultant shall permit the SMART’s authorized representatives to inspect all payrolls, records of personnel, invoices of materials and other relevant data and records, and to audit its books, records and accounts.

33. **Environmental Protection.** Consultant shall comply with the following requirements:

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

34. **Privacy Act.** Consultant 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. Consultant 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.

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

## EXHIBIT D

### DBE COMMITMENT AND UTILIZATION FORM

SMART has not established a DBE goal for this Agreement. However, proposers are encouraged to obtain DBE participation for this contract.

#### 1. TERMS AS USED IN THIS DOCUMENT

“*Disadvantaged Business Enterprise*” or “*DBE*” means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR).

“*SMART*” means the Sonoma-Marín Area Rail Transit District.

“*Small business*” is as defined in 49 CFR 26.65.

#### 2. AUTHORITY AND RESPONSIBILITY

A. DBEs and other small businesses are strongly encouraged to participate in the performance of Agreements financed in whole or in part with federal funds (See 49 CFR 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”). The Contractor should ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The bidder/proposer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

B. Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

#### 3. SUBMISSION OF DBE INFORMATION

A. If there is a DBE goal on the contract, a “Bidder/Proposer-DBE Commitment (Consultant Contract)” Form # DBE-01 shall be included in the Request for Proposal. In order for a proposer to be considered responsible and responsive, the proposer must make good faith efforts to meet the goal established for the contract. If the goal is not met, the proposer must document adequate good faith efforts. Information on showing good faith efforts is set forth in Section 7 below. Only DBE participation will be counted towards the contract goal; however, all DBE participation shall be collected and reported.

B. If there is no DBE goal on the contract, “Exhibit 10-O2 Consultant Contract DBE Commitment (rev. 7/23/2015) shall be completed and submitted with the executed contract. The purpose of the form is to collect all DBE data required under 49 CFR Part 26. For contracts with no goals, this form collects information on all DBEs. Even if no DBE participation will be reported, the successful bidder must execute and return the form.

#### **4. DBE PARTICIPATION GENERAL INFORMATION**

It is the proposer's responsibility to be fully informed regarding the requirements of 49 CFR Part 26, and the Department's DBE program developed pursuant to the regulations. Particular attention is directed to the following:

A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP), located online at <http://www.californiaucp.com/>.

B. A certified DBE may participate as a prime consultant, subconsultant, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.

C. A DBE bidder, not bidding as a joint venture with a non-DBE, will be required to document one or a combination of the following:

1. The proposer is a DBE and will meet the goal by performing work with its own forces.
2. The proposer will meet the goal through work performed by DBE subconsultants, subconsultants, suppliers or trucking companies.
3. The proposer made adequate good faith efforts (See Section 7 below) to meet the goal.

D. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.

E. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55; that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.

F. The Consultant shall list only one subconsultant for each portion of work as defined in their proposal and all DBE subconsultants should be listed in the cost proposal list of subconsultants.

G. A prime consultant who is a certified DBE is eligible to claim all of the work in the Agreement toward the DBE participation except that portion of the work to be performed by non-DBE subconsultants.

#### **5. RESOURCES**

A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP.

B. Access the CUCP database at: <http://www.dot.ca.gov/ucp/GetLicenseForm.do>.

- Searches can be performed by one or more criteria
- Follow instructions on the screen

**6. MATERIALS OR SUPPLIES PURCHASED FROM DBES COUNT TOWARDS DBE CREDIT UNDER THE FOLLOWING CONDITIONS:**

A. If the materials or supplies are obtained from a DBE manufacturer, count one hundred percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.

B. If the materials or supplies are purchased from a DBE regular dealer, count sixty percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not an ad hoc or Agreement-by -Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.

D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

*For DBE trucking companies: credit for DBEs will count towards DBE credit, and credit will count towards the DBE goal, under the following conditions:*

- A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular Agreement, and there cannot be a contrived arrangement for the purpose of meeting the DBE goal.
- B. The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the Agreement.
- C. The DBE receives credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.
- D. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.
- E. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.
- F. For the purposes of this Section 6, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

## **7. SHOWING GOOD FAITH EFFORTS FOR DBE UTILIZATION**

The following lists samples of things a bidder can do to show it made good faith efforts in obtaining Disadvantaged Business Enterprise (DBE) participation.

- Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

- Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
- A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
- Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
- In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

**EXHIBIT 10-02 CONSULTANT CONTRACT DBE COMMITMENT**

1. Local Agency: \_\_\_\_\_ 2. Contract DBE Goal: \_\_\_\_\_  
 3. Project Description: \_\_\_\_\_  
 4. Project Location: \_\_\_\_\_  
 5. Consultant's Name: \_\_\_\_\_ 6. Prime Certified DBE:  7. Total Contract Award Amount: \_\_\_\_\_  
 8. Total Dollar Amount for **ALL** Subconsultants: \_\_\_\_\_ 9. Total Number of **ALL** Subconsultants: \_\_\_\_\_

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
<b>Local Agency to Complete this Section</b>			\$
20. Local Agency Contract Number: _____ 21. Federal-Aid Project Number: _____ 22. Contract Execution Date: _____	<b>14. TOTAL CLAIMED DBE PARTICIPATION</b>		%
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			<b>IMPORTANT:</b> Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.
23. Local Agency Representative's Signature _____	24. Date _____	15. Preparer's Signature _____	16. Date _____
25. Local Agency Representative's Name _____	26. Phone _____	17. Preparer's Name _____	18. Phone _____
27. Local Agency Representative's Title _____		19. Preparer's Title _____	

**DISTRIBUTION:** 1. Original – Local Agency  
 2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract.

**ADA Notice:** For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

**INSTRUCTIONS – CONSULTANT CONTRACT DBE COMMITMENT**CONSULTANT SECTION

1. **Local Agency** - Enter the name of the local or regional agency that is funding the contract.
2. **Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
3. **Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc).
4. **Project Location** - Enter the project location as it appears on the project advertisement.
5. **Consultant's Name** - Enter the consultant's firm name.
6. **Prime Certified DBE** - Check box if prime contractor is a certified DBE.
7. **Total Contract Award Amount** - Enter the total contract award dollar amount for the prime consultant.
8. **Total Dollar Amount for ALL Subconsultants** - Enter the total dollar amount for all subcontracted consultants. SUM = (DBEs + all Non-DBEs). Do not include the prime consultant information in this count.
9. **Total number of ALL subconsultants** - Enter the total number of all subcontracted consultants. SUM = (DBEs + all Non-DBEs). Do not include the prime consultant information in this count.
10. **Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
11. **DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
12. **DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
13. **DBE Dollar Amount** - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
14. **Total Claimed DBE Participation - \$:** Enter the total dollar amounts entered in the "DBE Dollar Amount" column. **%:** Enter the total DBE participation claimed ("Total Participation Dollars Claimed" divided by item "Total Contract Award Amount"). If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
15. **Preparer's Signature** - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
16. **Date** - Enter the date the DBE commitment form is signed by the consultant's preparer.
17. **Preparer's Name** - Enter the name of the person preparing and signing the consultant's DBE commitment form.
18. **Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
19. **Preparer's Title** - Enter the position/title of the person signing the consultant's DBE commitment form.

LOCAL AGENCY SECTION

20. **Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
21. **Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
22. **Contract Execution Date** - Enter the date the contract was executed.
23. **Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
24. **Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
25. **Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
26. **Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
27. **Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.



**INSTRUCTIONS - PROPOSER DBE INFORMATION  
(CONSULTANT CONTRACTS)**

**SUCCESSFUL PROPOSER:**

The form requires specific information regarding the consultant contract: Location, Project Description, Federal Aid Project Number (assigned by SMART), Proposal Date, and Successful Proposer's Name.

The DBE should provide a certification number to the prime consultant. The form has a column for the Names of DBE certified consultants to perform the work (must be certified on the date the proposal is received and include DBE address and phone number). Enter DBE prime consultant's and subconsultants' certification numbers. The prime consultant shall indicate all work to be performed by DBEs including, if the prime consultant is a DBE, work performed by its own forces.

Enter the Total Claimed DBE Participation percentage of items of work in the total DBE Dollar Amount column. (If 100% of item is not to be performed by the DBE, describe the exact portion of time to be performed by the DBE.) See "Notice to Proposers Regarding Disadvantaged Business Enterprise (DBE) Information" above to determine how to count the participation of DBE firms.

This form must be signed and dated by the successful proposer at contract execution. Also list a phone number in the space provided and print the name of the person to contact.

For the successful proposer, SMART will complete the information under "Local Agency to Complete this Section" and verify that all information is complete and accurate before signing.



June 7, 2017

**Debora Fudge, Chair**  
 Sonoma County Mayors and  
 Councilmembers Association

**Kathrin Sears, Vice Chair**  
 Marin County Board of Supervisors

**Judy Arnold**  
 Marin County Board of Supervisors

**Jim Eddie**  
 Golden Gate Bridge,  
 Highway/Transportation District

**Dan Hillmer**  
 Marin Council of Mayors and  
 Councilmembers

**Eric Lucan**  
 Transportation Authority of Marin

**Jake Mackenzie**  
 Sonoma Mayors and Councilmembers  
 Association

**Barbara Pahre**  
 Golden Gate Bridge,  
 Highway/Transportation District

**Gary Phillips**  
 Transportation Authority of Marin

**David Rabbitt**  
 Sonoma County Board of Supervisors

**Carol Russell**  
 Sonoma Mayors and Councilmembers  
 Association

**Shirlee Zane**  
 Sonoma County Board of Supervisors

**Farhad Mansourian**  
 General Manager

5401 Old Redwood Highway  
 Suite 200  
 Petaluma, CA 94954  
 Phone: 707-794-3330  
 Fax: 707-794-3037  
[www.sonomamarintrain.org](http://www.sonomamarintrain.org)

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

**SUBJECT:** Approval of Agreement with Ventek Transit, Inc. for  
 Operations, Maintenance and Revenue Collection Services

Dear Board Members:

**RECOMMENDATION:**

Authorize the General Manager to execute an Agreement with Ventek  
 Transit Inc. for a not-to-exceed amount of \$706,528 over three years.

**SUMMARY:**

As part of our agreement with the Metropolitan Transportation  
 Commission (MTC) to implement the Clipper system as our primary  
 method of fare collection, MTC agreed to fund and manage the  
 procurement our Clipper fare vending machines. In 2015, MTC  
 conducted a procurement for the manufacture, installation and  
 servicing of SMART's Clipper Vending Machines. Ventek Transit Inc,  
 located here in Petaluma, was chosen to provide the new vending  
 machines, which are now installed on each SMART platform. As part of  
 the procurement, Ventek also provided a proposal to maintain and  
 service the machines once they are placed into service.

Because Ventek is most familiar with the specialized components,  
 maintenance requirements, and other important aspects of the  
 revenue collection machines, they are uniquely capable of providing  
 this service. They have performed this service for other entities,  
 including VTA, Caltrain and the San Francisco Airport.

The attached contract for services on our Clipper vending machines  
 would provide for ongoing maintenance and servicing of the Ventek-  
 built machines, including the manufacturers' required preventive  
 maintenance, troubleshooting, and contracted revenue collection  
 services until June 30, 2020, or three (3) years. The annual cost of work



## **AGREEMENT FOR OPERATIONS, MAINTENANCE AND REVENUE COLLECTION SERVICES**

This agreement (“Agreement”), dated as of \_\_\_\_\_, 2017 (“Effective Date”) is by and between the Sonoma-Marín Area Rail Transit District (hereinafter “SMART”), and VenTek Transit (hereinafter “Contractor”).

### **RECITALS**

WHEREAS, Contractor represents that it is a duly qualified and experienced provider of transit fare vending equipment operations, maintenance and related servicing; and

WHEREAS, in the judgment of the Board of Directors of SMART (or District), it is necessary and desirable to employ the services of Contractor for operations and maintenance of VenTek-manufactured fare vending machines installed on SMART property.

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 & Timelines
- (b) Exhibit B: Fees and Related Charges

#### **ARTICLE 3. SCOPE OF SERVICES.**

Section 3.01 Scope of Work. Contractor shall perform services within the timeframe outlined in **Exhibit A** (cumulatively referred to as the “Scope of Work”).

Section 3.02 Cooperation With SMART. Contractor shall cooperate with designated SMART personnel in the performance of all work hereunder. For financial matters, designated staff is the SMART Chief Financial Officer. For operational issues, the designated personnel is the Superintendent of Maintenance of Way.

Section 3.03 Performance Standard. Contractor 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 Contractor’s profession. If SMART determines that any of Contractor’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 Contractor to meet with SMART to review the quality of the work and resolve matters of concern; (b) require Contractor 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 3.04      Assigned Personnel.

- (a) Contractor 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 Contractor to perform work hereunder, Contractor 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 Contractor 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. Contractor shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of SMART. Key personnel shall be as listed in the applicable Task Order.
- (c) In the event that any of Contractor's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Contractor's control, Contractor shall be responsible for timely provision of adequately qualified replacements.
- (d) Contractor shall assign the key personnel for this Agreement through a written Communication Process as outlined in Section 1.4.1, *Field Support Process* in the Scope of Services (Exhibit A).

#### **ARTICLE 4. PAYMENT.**

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

Section 4.01 Contractor shall invoice SMART on a monthly basis based on costs and penalties outlined in **Exhibit B**. SMART shall pay Contractor within 30 days after submission of the invoices.

Section 4.02 Contractor shall be paid in accordance with **Exhibit B**; provided, however, that total payments to Contractor shall not exceed \$706,528. Contractor shall submit its invoices on a monthly basis in a form approved by the SMART Chief Financial Officer. The invoices shall be separated by Item Number. Any reimbursable costs per Section 1.3.2 of the Scope of Services must receive prior approval before costs are incurred. Contractor's reimbursement for materials/expenses shall not include items already included in Contractor's scope. SMART will not reimburse Contractor for travel time, unless authorized by Project Manager in writing.

Section 4.03 Contractor must submit all invoices on a timely basis, but no later than thirty (30) days from the date the services/charges were incurred. SMART shall not accept invoices submitted by Contractor after the end of such thirty (30) day period without SMART pre-approval. Time is of the essence with respect to submission of invoices and failure by Contractor to abide by these requirements may delay or prevent payment of invoices or cause such invoices to be returned to the Contractor unpaid.

#### **ARTICLE 5. TERM OF AGREEMENT.**

Section 5.01 The term of this Agreement shall remain in effect until June 30, 2020 unless terminated earlier in accordance with the provisions of **Article 6** below.

#### **ARTICLE 6. TERMINATION.**

Section 6.01 Termination Without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, both parties shall have the right, at their sole discretion, to terminate this Agreement by giving 30 days written notice to the other party.

Section 6.02 Termination for Cause. Notwithstanding any other provision of this Agreement, should Contractor 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 Contractor written notice of such termination, stating the reason for termination.

Section 6.03 Delivery of Work Product and Final Payment Upon Termination. In the event of termination by either party, Contractor, within 14 days following the date of termination, shall deliver to SMART all materials and work product subject to **Section 11.08** 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 6.04 Payment Upon Termination. Upon termination of this Agreement by SMART, Contractor 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 Contractor 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 Contractor 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 6.02**, SMART shall deduct from such amount the amount of damage, if any, sustained by SMART by virtue of the breach of the Agreement by Contractor.

Section 6.05 Authority to Terminate. The SMART Board of Directors has the authority to terminate this Agreement on behalf of SMART. In addition, the SMART Chief Financial Officer or SMART General Manager, in consultation with SMART Counsel, shall have the authority to terminate this Agreement on behalf of SMART.

## **ARTICLE 7. INDEMNIFICATION**

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

## **ARTICLE 8. INSURANCE.**

With respect to performance of work under this Agreement, Contractor shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described below.

Section 8.01 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 8.02 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. 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 8.03 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. 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 8.04 Professional Liability Insurance. Professional Liability insurance covering liability arising out of any negligent act, error or omission in performance of design or engineering services for the Project in an amount no less than \$2,000,000 per claim. If any Design Professional Services are furnished by a Subcontractor, the Subcontractor shall be required to provide professional liability coverage.

Section 8.05 Endorsements. Prior to commencing work, Contractor 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.
- (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 Licensee 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 Licensee. Said policy shall protect Contractor 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) Contractor hereby grants to SMART a waiver of any right to subrogation which any insurer of said Contractor may acquire against SMART by virtue of the payment of any loss under such insurance. Contractor 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 8.06 Deductibles and Retentions. Contractor shall be responsible for payment of any deductible or retention on Contractor'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 8.07 Claims Made Coverage. If any insurance specified above is written on a claims-made coverage form, Contractor 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, Contractor shall purchase "extending reporting" coverage for a minimum of three (3) years after completion of the work.

Section 8.08 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. Contractor 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. Contractor agrees to maintain current endorsements evidencing the above-specified requirements on file with SMART for the duration of this Agreement.
- (c) Upon SMART's written request, Contractor shall provide certified copies of the insurance policies to SMART. Said policy copies shall be submitted within thirty (30) days of SMART's request. 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.

Section 8.09 Policy Obligations. Contractor's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

Section 8.10 Material Breach. If Contractor, 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 Contractor resulting from said breach. Alternatively, SMART may purchase such required insurance coverage, and without further notice to Contractor, SMART may deduct from sums due to Contractor any premium costs advanced by SMART for such insurance. These remedies shall be in addition to any other remedies available to SMART.

## **ARTICLE 9. PROSECUTION OF WORK.**

When work is requested of Contractor 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, high water, or other Act of God, the time for Contractor's performance of this Agreement shall be extended by a number of days equal to the number of days Contractor has been delayed.

## **ARTICLE 10. 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 General Manager in a form approved by SMART Counsel. The SMART Board of Directors, General Manager or Chief Financial Officer 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 Contractor 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 Contractor shall be entitled to no compensation whatsoever for the performance of such work. Contractor 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 11. REPRESENTATIONS OF CONTRACTOR.**

Section 11.01 Standard of Care. SMART has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor 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 Contractor's work by SMART shall not operate as a waiver or release.

Section 11.02 Status of Contractor. The parties intend that Contractor, 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. Contractor 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, Contractor expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

Section 11.03 Taxes. Contractor 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. Contractor 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 Contractor'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, Contractor agrees to furnish SMART with proof of payment of taxes on these earnings.

Section 11.04 Records Maintenance. Contractor 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. Contractor shall maintain such records for a period of four (4) years following completion of work hereunder.

Section 11.05 Conflict of Interest. Contractor 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. Contractor 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, Contractor 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 Contractor's or such other person's financial interests.

Section 11.06 Nondiscrimination. Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, SMART's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference

Section 11.07 Assignment Of Rights. Contractor 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 Contractor in connection with this Agreement. Contractor 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. Contractor'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. Contractor 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 11.08 Ownership And Disclosure Of Work Product. All reports, original drawings, graphics, plans, studies, and other data or documents (“documents”), in whatever form or format, assembled or prepared by Contractor or Contractor’s subcontractors, consultants, 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, Contractor 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. Contractor 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 12. 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 6**.

## **ARTICLE 13. 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 14. 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: Sonoma-Marín Area Rail Transit District  
Attn: Chief Financial Officer  
5401 Old Redwood Highway, Suite 200  
Petaluma, CA 94954  
[billing@sonomamarintrain.org](mailto:billing@sonomamarintrain.org)

If to Contractor: VenTek Transit Inc.  
975 Transport Way  
Petaluma, CA 94954

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 15. MISCELLANEOUS PROVISIONS.**

Section 15.01 No Waiver of Breach. The waiver by SMART of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

Section 15.02 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Contractor 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. Contractor and SMART acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

Section 15.03 Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

Section 15.04 No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

Section 15.05 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Venue for any action to enforce the terms of this Agreement or for the breach thereof shall be in the Superior Court of the State of California in the County of Marin.

Section 15.06 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

Section 15.07 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

Section 15.08 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.

**CONTRACTOR:** \_\_\_\_\_

By: \_\_\_\_\_

Its : \_\_\_\_\_

Date: \_\_\_\_\_

**SONOMA-MARIN AREA RAIL TRANSIT (SMART)**

By: \_\_\_\_\_  
Farhad Mansourian, General Manager

Date: \_\_\_\_\_

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

By: \_\_\_\_\_  
Kenneth Hendricks, Contracts Analyst

Date: \_\_\_\_\_

**APPROVED AS TO FORM FOR SMART:**

By: \_\_\_\_\_  
Tom Lyons, District Counsel

Date: \_\_\_\_\_

## **Exhibit A: Scope of Services**

---





## Revision History

VERSION #	DATE	SECTION #	CHANGE DESCRIPTION
1.0	April 11, 2016	All	Initial Release
1.1	September 19, 2016	All	Modified per discussions
1.2	November 10, 2016	All	Modified per November 10, 2016 discussion
1.3	December 5, 2016	10	Modified per discussions
1.4	March 17, 2017	All	Updated Release for discussion
1.5	April 27, 2017	1,2 4,6 7,9, 10,11	Updated for release to SMART
1.6	April 28, 2017	All	SMART comments
1.7	May 2, 2017	All	Joint Review Revisions
1.8	May 12, 2017	All	Format and Revisions
1.9	June 1, 2017	All	Final edits

# Contents

---

Exhibit A: Scope of Services.....	i
1 Overview and Reference .....	8
1.1 Definitions .....	8
1.2 References .....	8
1.3 Scope of Work.....	8
1.3.1 Work Included .....	9
1.3.2 Work Excluded.....	9
1.4 CVM Locations .....	9
1.4.1 Field Support Process .....	10
1.4.2 Event Escalation .....	11
2 CVM Maintenance Services.....	12
2.1 On-site repair .....	12
2.2 Maintenance.....	15
2.2.1 On-site monthly .....	15
2.2.2 In-shop maintenance.....	15
2.2.3 Off-site repair.....	15
2.2.4 Site Access and Safety.....	16
3 Software and Central Computer (VCC) Support.....	17
3.1 VCC Hardware and System Support .....	17
3.1.1 VCC Backup, Archive and Retrieval, and Recovery.....	17
3.1.2 CVM System Software Support .....	17
3.1.3 Software Support Methods .....	18
4 Revenue and Consumables Service.....	20
4.1 Revenue Information .....	20
4.2 Consumables Replenishment.....	20
4.3 Removal and replacement of cash vaults.....	20
4.4 Restocking Clipper Cards and removal of rejected cards.....	21

4.5	Replenishment of Receipt Stock.....	21
5	Equipment and Maintenance Performance.....	22
5.1	Failure Definitions.....	22
5.1.1	Chargeable Failures .....	22
5.1.2	Non-Chargeable Failures .....	23
5.2	Performance Requirements.....	23
5.2.1	Key Performance Indicators .....	23
6	Spares .....	27
6.1	Revenue Service Spares.....	28
7	Software Escrow.....	29
8	Warranty.....	30
	Appendix 1 – Preventative Maintenance.....	31
	Exhibit B: Fees and Related Charges .....	35
	Key Performance Indicator Penalty Assessment.....	37
	Appendix 2 – MTC Pricing.....	38

## List of Figures

---

Figure 1 Field Reporting and Repair .....	14
---	----

## List of Tables

---

Table 1 CVM locations and quantity .....	10
Table 2 Escalation .....	11
Table 3 Recommended Spares .....	27
Table 4 Revenue Service Spares .....	28

# 1 Overview and Reference

---

This document provides the detailed activities to be performed by VenTek Transit (VenTek) with regard to SMART Card Vending Machine maintenance and repair, including revenue servicing.

Acronyms used in this document:

SMART	Sonoma-Marín Area Rail Transit
SMART Contract	CVM Design and Build Contract with MTC, November 2015
O & M Contract	SMART-Ventek Contract, June 2017
VenTek	VenTek Transit Inc.
LRU	Lowest Replaceable Unit
Tri-Reader	Clipper card read/write device supplied by Cubic
BNR	Bank note validator supplied by CPI
ROC	SMART Rail Operations Center, Sonoma County
CVM	Card Vending Machine
VCC	VenTek Central Controller
PA-DSS	Payment Application Data Security Standard
PCI	Payment Card Industry

## 1.1 Definitions

Active Units – Lowest Replaceable Units per Figure 3

TVM Accuracy – Audit Tickets – Reconciliation Report (Sales, Cash Balance, Net Cash) vs Sales Dependent Failures

## 1.2 References

The following documents apply to this Agreement and are held separately:

1. DESIGN-BUILD AGREEMENT between METROPOLITAN TRANSPORTATION COMMISSION and VENTEK TRANSIT INC. for SONOMA-MARIN AREA RAIL TRANSIT CLIPPER® CARD VENDING MACHINES FISCAL YEARS 2015-16 to 2019-2020
2. Technical Proposal for Clipper® Ticket Vending Machine for SMART, Statement of Work
3. SMART TVM Best and Final Offer Price Forms dated May 29, 2015
4. Repair Parts Cost Schedule

## 1.3 Scope of Work

This Agreement applies to the maintenance services required to be carried out by VenTek for thirteen (13) CVMs located at various locations as specified per Table 1.

### **1.3.1 Work Included**

- On-site Preventative Maintenance at station platforms
- Scheduled bench (depot) maintenance of components as recommended by the manufacturer
- Field Maintenance and Repair
- Bench (depot) repair or replacement of failed components
- Upgrade of component firmware as required by new currency
- Credit/Debit PA-DSS firmware updates
- Consumables purchase (excluding Clipper Cards)
- Consumables replenishment
- Cash Collection, deposit, and reconciliation services
- Equipment monitoring and reporting
- Repair or replacement of VenTek supplied servers.
- Software maintenance for servers and workstations utilizing VenTek software.
- On-call maintenance services

### **1.3.2 Work Excluded**

- Unauthorized modification and alteration of the system by SMART or third party.
- Bench (off-site) repair of the Cubic TR3 tri-reader
- Certification for PA-DSS and PCI Compliance.
- Repairs of any equipment damaged by vandalism, improper packaging and shipping, abuse or misuse by SMART or SMART managed 3<sup>rd</sup> party.
- Communications failures beyond the control of VenTek.
- Relocation of equipment after initial installation
- Third party equipment and services not under VenTek control.
- Dependent or secondary failures resulting from any of the above.

VenTek services provided for excluded work are subject to time and material charges as specified below:

Repair Activities: \$ 125.00/ hour round trip from VenTek and return and bench repairs.

Repair Material: Per Price Schedule

## **1.4 CVM Locations**

Maintenance will be performed on CVM's at the following locations:



<b>Location</b>	<b>Qty</b>
San Rafael Station	2
Rohnert Park Station	1
Hamilton Station	1
Civic Center Station	1
Atherton Station	1
Cotati Station	2
Petaluma Station	1
(Sonoma County) Airport Station	1
Santa Rosa Station North	1
Santa Rosa Downtown	1
SMART Maintenance Facility	1
Total	13

**Table 1 CVM locations and quantity**

### **1.4.1 Field Support Process**

VenTek will monitor the system (all CVMs and VCCs) in real time during SMART operating hours. SMART will also be able to monitor the system utilizing the Monitor Client installed in the Operations Center at the ROC.

Issues that involve CVM or VCC software (other than Clipper software) will be acted on by VenTek on a priority basis per Section 2.1. Clipper software issues will be referred to Cubic and coordinated by VenTek.

SMART and VenTek, in a separate written document shall agree within 10 days of execution of the contract, a designated Communication Process that will be used by SMART to inform VenTek of an issue and who VenTek should communicate with during the repair process.

## 1.4.2 Event Escalation

An escalation plan will be generated to provide personnel and phone/email contacts for issues exceeding response times listed in Section 2 or any critical events. The initial call will be received by VenTek maintenance staff assigned to SMART. The plan will provide contact information for the positions indicated in Table 2, below.

Priority Level per Section 2.1	Exceeds Response Time (2 <sup>nd</sup> Call)	Exceeds estimated repair time(s)	CVM is off-line for more than 4 hours
P1	VenTek Maintenance Supervisor	VenTek Maintenance Manager	VenTek Senior Management
P2	VenTek Maintenance Supervisor	VenTek Maintenance Supervisor	VenTek Maintenance Manager
P3	VenTek Maintenance Supervisor	VenTek Maintenance Supervisor	VenTek Maintenance Manager

**Table 2 Escalation**

## 2 CVM Maintenance Services

---

### 2.1 On-site repair

VenTek will perform corrective maintenance either on site or remotely, as required to return the CVM to full operation following a failure. All equipment and installations services supplied by others such as the communications infrastructure, station power, etc. are excluded from VenTek maintenance.

The CVMs perform continuous monitoring and the system will automatically notify VenTek and SMART when a failure occurs.

When a Failure does occur, the following process will be followed:

- (a) VenTek will note the issue or SMART will contact VenTek to report a problem.
- (b) VenTek will classify the issue as a level 1, 2, or 3:
  - 1 Level 1, means a Clipper card cannot be issued or reloaded through any process at the CVM; the CVM is shut down or operations cannot continue.
  - 2 Level 2 means the CVM cannot accept a particular type of payment or other reduced functionality that prevents normal operation (bill jam, coin jam, out of media, vaults full, etc.)
  - 3 Level 3 means a minor problem; for example where reports are still working, fares can be collected and the system is fundamentally operational but receipts cannot be issued.

VenTek will then assess the problem and contact the SMART representative with the level given to the problem, an indication of what the problem is, and when the problem is expected to be fixed as follows:

- (i) Level 1 will be responded to (problem received and acknowledged) within 1 hour, and
- (ii) Level 2 and level 3 will be responded to within 2 hours.

VenTek will respond directly to SMART personnel with the problem analysis and anticipated corrective action.

VenTek will resolve each level of failure within the following time frames:

- (i) Level 1 – corrective action will be taken within 4 hours of communication of the failure subject to the following: Problems reported after 6:00 pm will be corrected by 6:00 am the following day.

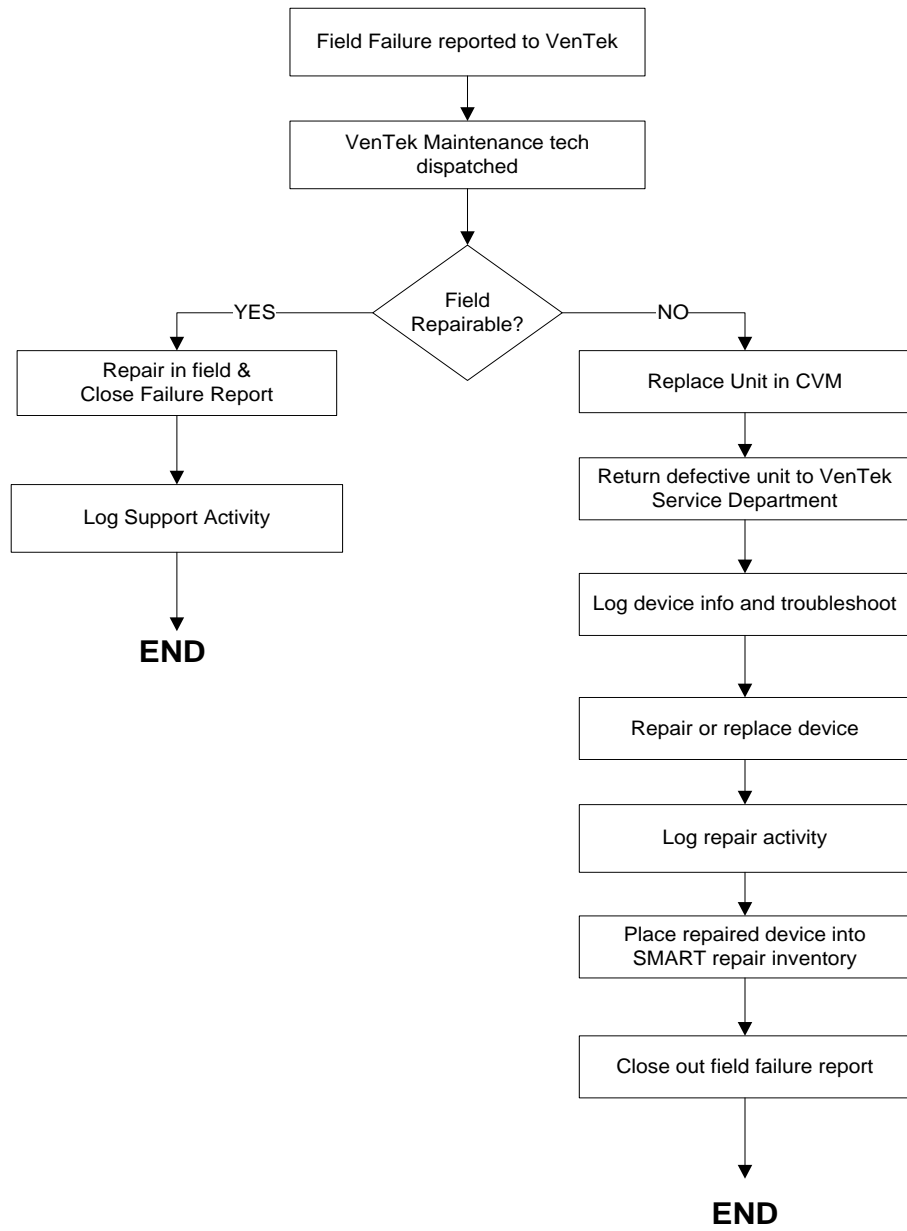
(ii) Level 2 – corrective action will be taken within 6 hours of communication of the failure subject to the following: Problems reported after 4:00 pm will be corrected by 6:00 am the following day.

(iii) Level 3 - corrective action will be taken within 3 calendar days of communication of the failure.

Response time is the time that an initial assessment is made and a call is made to SMART personnel. After a technical assessment is made, an estimate of the work, duration of work, and a VenTek categorization of the problem will be forwarded to a SMART representative. Once the work process is determined, work will proceed with a priority based on mutual assessment of the problem category. A report of the incident, the corrective measures, hours expended, and service cost if applicable will be included.

The response time listed above is applicable seven days a week during SMART operating hours. SMART operating hours are 5:00 AM thru 10:00 PM, 7 days per week and 365 days per year.

Field issue reporting and correction is depicted in the following diagram:



**Figure 1 Field Reporting and Repair**

## 2.2 Maintenance

The following on-site CVM maintenance activities will be performed:

### 2.2.1 On-site monthly

- BNR Bill Acceptor Level I maintenance in accordance with manufacturer requirements
- Thermal Printer cleaning
- Card Dispenser Preventative Maintenance (PM) per manufacturer specifications
- CVM interior and exterior cleaning, including removing any minor graffiti such as minor scratches and easily removable paint.
- Other preventative maintenance tasks as required including cleaning the display, credit card readers, fans and filters

### 2.2.2 In-shop maintenance

In accordance with manufacturers requirements, VenTek will remove the following modules from each CVM, replacing the modules with spares. The modules removed from the CVMs will be taken to VenTek facilities for scheduled preventative maintenance.

- BNR Bill Acceptor
- Thermal Printer
- Card Dispenser

A schedule for in-shop maintenance will be developed within six months of revenue service. Service activity is required to generate the schedule which is based on usage (cycles).

Preliminary Preventive Maintenance information is contained in Appendix 1.

### 2.2.3 Off-site repair

VenTek will replace damaged and non-working CVM components and replace them with working spare components. VenTek will transport the non-working items to VenTek's facility for repair. The repaired item will then be returned to stock as a spare. If an item cannot be repaired, VenTek will replace the item with a new item from the manufacturer. Spares will be maintained in a segregated inventory at VenTek's facilities in Petaluma, CA.

VenTek will return non-working Tri-readers to SMART/MTC. SMART/MTC will provide replacements to maintain adequate spares of readers.

## **2.2.4 Site Access and Safety**

When working on the CVMs, VenTek personnel will follow all safety rules and requirements set forth by SMART. All VenTek personnel will have attended any required safety or other site activity training and carry or wear any identification items required by SMART. VenTek will notify SMART when technicians are on site.

## **3 Software and Central Computer (VCC) Support**

---

### **3.1 VCC Hardware and System Support**

SMART System Controller (VCC) hardware consists of a primary and secondary server. The primary server is located at the SMART ROC and the secondary server is located at VenTek. Both systems will be configured and available 24/7 and connected to the main communications network at the ROC.

#### **3.1.1 VCC Backup, Archive and Retrieval, and Recovery**

The primary system will be on-line and connected to the station network. The secondary VCC will be updated each day with the operational data from the previous day. Operational data from each VCC will be backed up and archived to a cloud storage network. Data and system software will be downloaded weekly and stored on off-line storage media and retained by VenTek.

VCC Support functions:

- Hardware and Software Maintenance
- VCC Services
  - Daily Backup of VCC data
  - Weekly Backup of VCC System
  - Data Archive and Retrieval
  - Failure Recovery

In the event of a failure of the primary VCC, the secondary VCC will be placed on line to ensure continued on-line operations. During the period after SMART end of day operations, the secondary VCC will download the day's operational files from the CVM's. This will "sync" the CVM's and the VCC so that the secondary VCC is fully up to date. This will ensure that the previous day's data is available for reporting and analysis.

VenTek will contract with Dell for same day service of the VCC servers. Once a failed server is repaired it will be placed on line but not connected to the CVMs. During non-operating hours, both VCC's will be updated and synchronized. Once the primary VCC is available it will be utilized as the primary controller and the secondary controller will revert to a standby system with the previous day's information.

In the unlikely event that both servers are down or that communications are not available, the CVM's will operate autonomously until normal operations are restored. The CVM's can operate in this mode for a minimum of seven (7) days. When normal service is available, the CVM's will download all information that was not transmitted during the outage period.

If communications are interrupted to the credit/debit processing server, the CVM's will be placed in a reduced capacity mode with only cash accepted for card purchase or reload.

#### **3.1.2 CVM System Software Support**

SMART software consists of CVM software and system controller software as follows:



- Configuration files
- Executable software
- Third party commercially available software
- Data files
- Other applications developed specifically for the SMART system

### **3.1.3 Software Support Methods**

Software support is provided by the following:

- Local live Software Support
- Software Updates
- Custom Software

#### **3.1.3.1 Local (live system) Software Support**

The primary system controller (VCC) will be housed at SMART facilities (ROC) in Santa Rosa, CA. VenTek will document any access by VenTek personnel to the ROC VCC. VenTek access to the ROC VCC will be over a VPN configured by SMART or its contractors.

Any significant software modification that may affect system operation or stability will be developed, tested, and documented by VenTek. VenTek will provide documentation to SMART of the proposed release. The release may be a configuration modification, VCC executable or configuration file, or an update to the CVM control software.

New configuration or other CVM control software will be packaged into a release and prepared for delivery to the site CVM's. Software will be thoroughly tested and validated by VenTek prior to release. The first release may be to the SMART CVM(s) housed in the SMART maintenance facility for review by SMART personnel. Once approved the new release will be delivered to the SMART CVM's. The previous version will be available for rollback should any issues occur. This rollout will normally be generated and tested during non-peak hours.

#### **3.1.3.2 Software Updates**

During the maintenance period, VenTek may develop new software that will materially improve performance and/or efficiency of the SMART CVMs. These are generally performed as a result of system operational experience or requests from agencies (SMART) which are not critical to the daily operation of the equipment. These may also be required due to obsolescence of components used in the CVMs.

Scheduled Software/Firmware Updates will be provided after Release Notes have been reviewed by SMART and upgrade Terms and Conditions Agreed to. These may be optional and require additional costs. Costs will be quoted to SMART for their approval.

Software will be provided and implemented by VenTek after approval by SMART. Software is subject to the terms and conditions of the Software License Agreement.

### **3.1.3.3 Custom Software**

Customized software services will be provided for SMART requested modifications providing they do not alter the baseline system. These would include special reports, export/import of data, screen designs and flows, etc. These services will be limited to ten (10) hours per calendar quarter.

Custom software which will require modification of the base system and as such will render the software unique will be quoted as an added scope task. Provision of this type of modification may increase the support scope. If so, a support modification charge will be quoted as well. All programming changes must be documented and confirmed in writing by both SMART and VenTek.

## **4 Revenue and Consumables Service**

---

### **4.1 Revenue Information**

Ventek will provide SMART all necessary access to its ProVend software, with functionality that allows for reporting on all cash and credit card activities occurring at each CVM. This software will be fully accessible as needed by SMART with proper permission.

### **4.2 Consumables Replenishment**

The following revenue service activities will be performed by or subcontracted by VenTek:

1. Removal of and replacement of bill vaults and coin vaults when at or near capacity
2. Restocking of Clipper Cards and removal of any rejected cards
3. Restocking of receipt stock paper

VenTek will be responsible for maintaining adequate replenishment stock consistent with SMART operations. VenTek will maintain a minimum stock of one month's usage of Clipper cards. VenTek will request additional supply of Clipper cards from SMART when replenishment levels fall below the one month level. Cards will be supplied to VenTek by SMART or direct shipped to VenTek by Cubic at no cost to VenTek.

### **4.3 Removal and replacement of cash vaults**

The status of all bill and coin vaults will be reviewed daily for each CVM location. The CVMs will also be monitored and will report when bill or coin vaults are near capacity. Service of cash vaults is will be performed once per week.

Cash collection will be scheduled at a convenient time to minimize interruption of payment and traffic flow at the station. Collection will be during non-peakhours. Cash collection will be scheduled to minimize a full vault situation which would require taking coin or bill collection out of service.

Vaults will be exchanged utilizing armored cash collection services. The CVM vaults will be removed and replaced with empty vaults. Cash collection personnel will be provided with maintenance keys and vault removal keys. They will not be provided with vault access keys. Ventek and SMART will agree to written procedures for issuance, tracking and security of all keys. Removal of the vaults generates a cash report at the CVM and is included with the vault when transported.

Either or both vaults will be exchanged based on the vault status at the time of service. VenTek will attempt to optimize the process as station-by-station cash usage is generated. A cash

collection by CVM report will be available to SMART when cash collection occurs utilizing the Administrative Work Station.

Ventek will provide SMART its draft contract for collection services for its review and input prior to execution. All revenue service personnel will be trained by VenTek and bonded by their respective employers

Vaults will be transported to a counting facility. The cash for each vault will be counted and the cash collected will be reported. A summary of all cash counted will be generated any day cash collection occurs. A summary cash report will be generated and cash deposited. The cash collection provider will coordinate with SMART's merchant bank, Bank of Marin, for depositing of funds.

The cash collection vendor will keep the vaults for subsequent vault replacement. Additional spares will be provided to cash collection personnel in case of any on-site vault damage.

#### **4.4 Restocking Clipper Cards and removal of rejected cards**

The Clipper card dispenser has a low card sensor which will cause an alert when card stock is low. The VCC will also count all card issuance and maintain a count level as well. When card stock levels are depleted to established replenishment levels, card stock will be replaced.

Clipper cards will be provided by SMART for delivery to VenTek to maintain replacement stock. Cards will be held in a secure, segregated inventory location at VenTek. VenTek will request replenishment stock based on usage and max/min stock inventory policy.

Cards which failed to process will be removed from the card dispenser reject bin within the CVMs. These cards will be retained and shipped to SMART for disposition.

All bulk shipment of cards will be accounted for by card number and shipped via UPS or FEDEX and tracked to their destination.

Card stock replenishment may be performed along with preventative or field maintenance activities.

#### **4.5 Replenishment of Receipt Stock**

Replacement levels for CVMs will be established based on usage. When receipt stock reaches replenishment levels, the receipt stock roll will be removed and a full roll of stock will be replaced. VenTek will maintain replacement stock levels as required to ensure adequate supply for all CVMs.

Receipt stock replenishment may be performed along with preventative or field maintenance activities.

## 5 Equipment and Maintenance Performance

---

During the maintenance contract period, equipment and maintenance performance data will be generated, recorded, and reported. Key performance indicators will be utilized to measure equipment and maintenance performance.

### 5.1 Failure Definitions

Failures will be categorized as chargeable and non-chargeable.

#### 5.1.1 Chargeable Failures

A chargeable failure is a hardware or software malfunction where the delivered equipment or systems fail to perform in a way that does not meet the requirements of the contract.

Significant failures include, but are not limited to, the following:

- Any malfunction which prevents a CVM system component from performing its designated function, or from meeting the performance criteria, when used and operated under the expected environmental and operational conditions
- Any occurrence that does not cause the CVM system component to become entirely inoperable, but requires manual intervention to restore normal function;
- Any occurrence where data is not successfully transmitted between elements of the CVM system;
- Planned software updates or fixes that adversely affect the operation or performance of the CVM system; and
- Scheduled warranty / repair activities that adversely affect the operation or performance of the CVM system.

Specific Chargeable Failures:

- Software anomalies and bugs (every incident of a software anomaly or bug causing a malfunction will be considered a failure)
- Hardware failures that are not clearly a result of conditions outside the requirements of this specification
- Failures of mounting hardware
- Data storage failures, including those due to the disk space provided
- Partial or complete failure of a passenger display
- Failure to properly register and report any transactions
- Data download/upload failure
- Event or alarm transmission failure
- Unexpected shutdown of equipment or a system

- All maintenance requiring module replacements

### 5.1.2 Non-Chargeable Failures

Non-chargeable failures may include, but are not limited to:

- Mishandling of equipment or back office system components
- Failure due to a Clipper card malfunction
- Failure to accurately read and/or process a card related to card reader, reader library, or configuration data provided by Cubic
- Any failures caused by externally applied stress conditions outside of normal operating conditions and in excess of the contract requirements
- Failures caused by incorrectly exercised operating, maintenance or repair procedures by non-VenTek personnel
- Failure caused by vandalism
- Force Majeure
- Communications failures beyond the control of VenTek
- Downtime due to scheduled maintenance
- Dependent failures as a result of a non-chargeable failure

## 5.2 Performance Requirements

Equipment will be maintained to a level to achieve contracted reliability and performance.

### 5.2.1 Key Performance Indicators

Key performance metrics will be reported and penalties assessed as indicated in this section.

#### 5.2.1.1.1 CVM Reliability

CVM reliability will be calculated as an equipment failure rate:

$$\text{Equipment Reliability} = \frac{\# \text{ of Chargeable Failures}}{\# \text{ of Active Pieces of Equipment}}$$

Chargeable failures are defined in Section 6.1. Active pieces of equipment are defined as those deployed for customer and agency use in the production environment, and do not include spares or test equipment and are as defined in Section 7, Spares (excluding the Cubic readers).

Requirement	KPI
CVM Reliability	< 10%
Measurement Period	Calendar Month
Penalty Assessed	10%

### 5.2.1.2 CVM Accuracy

CVM accuracy will be based on comparing the quantity and value of transactions generated by the devices, as recorded within the device audit registers, to those received by the back office:

$$\text{Equipment Accuracy} = \frac{| \text{Equipment Audit Register Transaction Count} - \text{Back Office Transaction Count} |}{\text{Equipment Audit Register Transaction Count}}$$

Both the transaction count and value calculations must exceed the KPI requirement in order to pass. The Reconciliation Report will be utilized for reporting of this metric.

Requirement	KPI
CVM Accuracy	> 99.99%
Measurement Period	Calendar Month
Penalty Assessed	10%

### 5.2.1.3 CVM Availability

Equipment availability will be calculated based on the total out-of-service hours across the equipment installed in the production environment:

$$\text{Equipment Availability} = 1 - \frac{\text{Out of Service Hours for Installed Equipment}}{\text{Total Operating Hours for Installed Equipment}}$$

Out of service hours are defined as all hours during which a device is not in an operational state as the result of a chargeable failure, and includes all time necessary to respond and repair. A non-operational state exists when cards cannot be purchased and value cannot be added (i.e. cash and credit/debit card payments are disabled; add-value and card issuing readers are not operational, user interface is not available.). Scheduled maintenance hours are excluded from the calculation. Total operating hours are defined as the average number of hours in the service day for the agency where the equipment is installed multiplied by the number of days in the month of measurement and the quantity of devices deployed for customer and agency use in the production environment.

Requirement	KPI
CVM Availability	> 99.9%
Measurement Period	Calendar Month
Penalty Assessed	10%

### 5.2.1.4 Back Office Accuracy

Back office accuracy will be determined based on any incident where a device or back office-generated transaction is recorded incorrectly within the associated system.

Requirement	KPI
Back Office Accuracy	< 2 incidents
Measurement Period	Calendar Month
Penalty Assessed	10%

### 5.2.1.5 Back Office Availability

Back office availability will be calculated based on the total out of service hours for the associated system:

$$\text{Back Office Availability} = 1 - \frac{\text{Out of Service Hours for the Back Office System}}{\text{Total Operating Hours for the Back Office System}}$$

Out of service hours are defined as all hours during which the system is not in a fully operational state, and include all time necessary to respond and repair. Scheduled maintenance hours are excluded from the calculation. Total operating hours are defined as the number of hours in a day (24) multiplied by the number of days in the month of measurement.

Requirement	KPI
Back Office Availability	> 99%
Measurement Period	Calendar Month
Penalty Assessed	10%

### 5.2.1.6 Level 1 Maintenance Response Time

Maintenance response time will be determined based on the average time for a service person to arrive onsite for any level 1 maintenance incident reported by the SMART.

$$\begin{aligned} &\text{Maintenance Response Time} \\ &= \frac{\text{Total Time to Arrive for Reported Maintenance Incidents}}{\text{Number of Maintenance Incidents Requiring Onsite Attention}} \end{aligned}$$

Requirement	KPI
Maintenance Response Time	< 4 hours
Measurement Period	Calendar Month
Penalty Assessed	5%

### 5.2.1.7 Level 2 Maintenance Response Time

Maintenance response time will be determined based on the average time for a service person to arrive onsite for any level 2 maintenance incident reported by the SMART.

$$\begin{aligned} &\text{Maintenance Response Time} \\ &= \frac{\text{Total Time to Arrive for Reported Maintenance Incidents}}{\text{Number of Maintenance Incidents Requiring Onsite Attention}} \end{aligned}$$



<b>Requirement</b>	<b>KPI</b>
Maintenance Response Time	< 6 hours
Measurement Period	Calendar Month
Penalty Assessed	5%

## 6 Spares

---

VenTek will ensure that it holds and stores an amount of spare parts that are appropriate to maintain the Equipment's operational capability. The following is the recommended operational spares for the covered CVM's:

Spares Component	Qty
Door I/O *	1
System Controller *	1
LCD Display *	2
Bill Acceptor *	2
Coin Acceptor *	2
Bill Vault *	2
Coin Vault *	2
Coin Hopper *	2
Credit/Debit PIN Pad *	2
ADA Pin Pad *	2
Credit/Debit Reader *	2
Clipper Card Reader Assy **	8
Card Dispenser *	2
Security Module *	1
Cable Set	1
UPS *	1
VBUS Hub, Power Supply *	1
Button (each color/type) *	2
LED Light Bars (2) *	1
Receipt Printer *	2
Speaker *	2
Key Set	10
Door Alarm *	2
Door Wrench	2
Additional Clipper Readers**	58

**Table 3 Recommended Spares**

\*\* To be supplied and repaired by Cubic

\* Active components

## 6.1 Revenue Service Spares

The following spares are required for revenue service:

<b>Revenue Spares Item</b>	<b>Qty</b>
Coin Vault	13
Bill Vault	13
Coin Hopper	13

**Table 4 Revenue Service Spares**

## **7 Software Escrow**

---

VenTek will provide the source code directly to SMART subject to the VenTek Software License Agreement. This is the usual software security process utilized by VenTek with other transit agencies. Regular updates to the escrowed software will occur quarterly when there are significant modifications. Source code will be delivered on removeable media.

## 8 Warranty

---

Following Final Acceptance, VenTek will assume certain responsibilities under the warranty provisions Section 12 and in Article 23 of Reference 1, Warranty of Services.

VenTek warrants that all of the equipment, computer systems and software provided for the TVM system, including those components warranted by third-party suppliers, will be free from defects in operation, material, and workmanship under normal operating use. Remedial work to correct deficiencies shall include the repair or replacement of equipment, components, devices and/or materials.

For the duration of the warranty period (1 year) VenTek will provide the following Warranty services:

- Repair or replacement of all equipment or systems required as a result of an identified hardware defect;
- Software updates or re-writes required to repair all identified software defects or bugs, and application of all necessary software patches or security updates released by CONTRACTOR or third-party software providers throughout the term of the warranty; and
- All labor associated with hardware and software testing and deployment, both in the lab and field environments, needed to support warranty activities

The Warranty period is part of the initial three-year Operations and Maintenance contract and will be in effect during the first year of operation.

# Appendix 1 – Preventative Maintenance

## BNR Preventative Maintenance

Frequency	Every 2 month or 50k unit cycles, whichever comes first	Every 6 month or 20k loader cycles, whichever comes first
Type	cleaning	Cleaning
Location	Field	Field
Module		
Main Module	Air jet <sup>2</sup>	
Bundler	Air jet	Air jet
Cash Box	Air jet	
Loader	Air jet	Air jet Cleaning with IPA <sup>3</sup>
Recycler	Air jet	
Spine	Air jet	
Chassis (Interlock)	Air jet	

Every 12 month or 250k unit cycles , whichever comes first	Every 24 month or 500k unit cycles , whichever comes first
Overhaul	Overhaul
Service Center	Service Center
Clean all tires, rollers and belt (banknote path only, not the lateral belts) (IPA) Clean all light pipes and lateral belt (Air)	Clean all tires, rollers and belt (banknote path only, not the lateral belts) (IPA) Clean all light pipes, bill sensor and lateral belts (Air)
Dismantle and clean BU rollers, pulleys and bearings, gears, shafts and belts (IPA or ultrasonic bath), replace BU axle 7	Dismantle and clean BU rollers, pulleys and bearings, gears, shafts and belts (IPA or ultrasonic bath), replace BU axle 7 and use the BU maintenance kit
-	-
-	Clean all light pipes (air) and the rollers (IPA)
Clean RE tape (air) & roller (IPA) Clean all light pipes (air)	Clean RE tape (air) & roller (IPA) Clean all light pipes (air)
Clean belts & rollers (IPA) Clean all light pipes (air)	Clean belts & rollers (IPA) Clean all light pipes (air)
-	Clean all light pipes (air)

# Card Dispenser Preventative Maintenance

18/10/10 **SCD-2500 IC CARD DISPENSER / ENCODER** ISSUE: 12  
*TECHNICAL INFORMATION*

---

## 4.0 Maintenance

### 4.1 Important Safety Note

Persons carrying out maintenance or repairs on this product should be made aware that there are unprotected moving parts and that precautions should be taken to prevent personal injury.

### 4.2 General Guidelines

#### 4.2.1 Cleaning

- Every 5,000 cycles or 1 week (whichever comes first), carry out the Cleaning Procedure as detailed in section 4.3
- Every 1 month carry out the Checking Procedure as detailed in section 4.4

*NOTE: A single card dispense then eject/capture or a single card accept then eject/capture is classed as one cycle.*

#### 4.2.2 Scheduled Replaceable Items

After 400,000 cycles, the IC Card Connector Assembly should be replaced as detailed in section 4.5

#### 4.2.3 Replaceable Items

It may be necessary to replace items due to damage or failure during the product life cycle.

All items can be identified in the Exploded Assembly View in Appendix II

The relevant procedure for changing an item will be supplied with the replacement item.

## **BOCA Printer Preventative Maintenance**

Once a year the "opto eye" should be blown off with air. This interval will vary depending upon the environment and the quality of the ticket stock.

The print head should be cleaned periodically to prevent debris from building up on the print element. The required cleaning interval varies greatly depending on the quality of the ticket stock and the amount of dust entering the print area. Excessive dirt build up on the print head will result in reduced quality. Continuing to run the print head in a dirty condition will reduce its life expectancy, as it is unable to diffuse its heat properly.

The Platen (rubber drive roller) should be cleaned once a year to prevent paper dust from building up on the roller. (NOTE: The platen may require more frequent cleaning in dusty environments or when using inferior ticket stock.)

The BOCA cutter system is a fully integrated cutter knife mechanism powered by a stepper motor. The cutter requires no adjustments and is rated for approximately 750,000 cuts.

The interior of the printer should be cleaned whenever there is a visible accumulation of dust. Use a small vacuum for cleaning. Be careful not to jar any of the printer's parts loose.



## Preventive Maintenance Checklist - CVM

<b>Date:</b>		<b>Location:</b>		<b>CVM #</b>	
	Month 1 3 6 12		Month 1 3 6 12		
<b>CVM Interior</b>		<b>Coin acceptor:</b>		<b>Comments:</b>	
Vacuum	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Clean interior	NA NA <input type="checkbox"/> <input type="checkbox"/>		
Clean surfaces	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<b>Coin diverter:</b>			
Inspect modules/cables	NA <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Check function	NA NA <input type="checkbox"/> <input type="checkbox"/>		
Inspect mounting	NA <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<b>Coin chute:</b>			
Inspect door	NA <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Clean interior	NA NA NA <input type="checkbox"/>		
<b>CVM Exterior</b>		<b>Bank note system:</b>			
Clean surfaces	NA NA NA NA	Clean interior and ext.	NA <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		
<b>Light top:</b>		Check connections	NA <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		
Clean fixture / lens	NA <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Field PM	NA <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		
Check function	NA <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<b>Back-up UPS:</b>			
<b>Touch Screen:</b>		Check capacity	NA <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		
Clean surface	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<b>Receipt printer:</b>			
Check function/Calibrate	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Check connections	NA <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		
Check connections	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Check function	NA <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		
<b>Card reader:</b>		Inspect head	NA <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		
Clean ext./ glide path	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Inspect Cutter	NA <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		
Check connections	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<b>Speaker:</b>			
<b>Alarm:</b>		Check function	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		
Check function		<b>Card Dispenser:</b>			
Intrusion	NA <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Clean interior	NA <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		
Door switch	NA <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Check connections	NA <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		
Door lock	NA <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Field PM	NA <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		
<b>Computer:</b>					
Clean ext. & fan	NA NA <input type="checkbox"/> <input type="checkbox"/>				
Clean interior	NA NA <input type="checkbox"/> <input type="checkbox"/>				
Check interior & cables					
<b>Coin hoppers:</b>					
Clean ext. and int.	NA NA NA NA				
Check connections	NA NA NA NA				
<b>Technician:</b>					

## Exhibit B: Fees and Related Charges

Pricing for services is derived from the initial proposals received during the original procurement conducted by the Metropolitan Transportation Commission, in conjunction with SMART. That proposal is attached in Appendix 2, MTC Pricing.

In addition to inflation, prices have been escalated to account for an increase in time allowed in the original contract proposal price due to the expiration of the supplier's warranty. These are the primary items:

- Coin Acceptor and vault
- Bill acceptor and vault
- Touch screen display
- Credit/debit card acceptor and PIN pad
- ADA user numeric pad
- Audio amplifier
- Card dispenser
- Thermal printer
- CPU board
- Primary and Secondary VCC Server
- UPS
- VBUS Power Supply

Costs due to failures of these components which require purchase or repair of replacement items will be absorbed by VenTek and serviced per this agreement.

Charges will be billed on or about the 1<sup>st</sup> of each month and payable within thirty days of receipt. Maintenance billing will be at a fixed monthly rate plus costs that are excluded from the work items Section 1.3.2 and further adjusted for CVM system performance per Section 5.

Operations and Maintenance Pricing						
Services Section	Item	Description	Monthly Cost (per MTC Contract)	Monthly Cost Year 1 (Warranty)	Monthly Cost Year 2	Monthly Cost Year 3
2	1	CVM Level 1, 2, 3 Maintenance and Repair	6,318	6,318	6,318	6,318
3.1.2	2	TVM Software Maintenance	2,500	2,500	2,500	2,500
3.1.1	3	Back Office Services	2,750	2,750	2,750	2,750
3.1.1	4	Back Office Software Maintenance	500	500	500	500
4.1	5	Consumables Purchase and Replenishment (less Clipper Card Purchase)	780	0	780	780

		<i>Subtotal - Operations and Maintenance</i>	12,848	12,068	12,848	12,848
4.2	6	Weekly Revenue Service	6,500	6,500	6,500	6,500
	<i>Monthly</i>	<i>Total O &amp; M plus Revenue Service</i>	<i>19,348</i>	<i>18,568</i>	<i>19,348</i>	<i>19,348</i>
	<i>Annual</i>	<i>O &amp; M plus Revenue Service</i>	<i>232,176</i>	<i>222,816</i>	<i>232,176</i>	<i>232,176</i>

<p><b>Item 1 Services</b></p> <ul style="list-style-type: none"> <li>• On-site Preventative Maintenance at station platforms</li> <li>• Equipment monitoring and reporting</li> <li>• Repair or replacement of CVM components</li> <li>• On-call maintenance services</li> </ul> <p><b>Item 2 thru 4 Services</b></p> <ul style="list-style-type: none"> <li>• VCC Hosting Services (reduced pricing from MTC quote)</li> <li>• VCC Hardware and Software Maintenance</li> <li>• Maintenance of Clipper and Moneris interfaces</li> <li>• Component firmware maintenance</li> <li>• Daily Backup of VCC data</li> <li>• Weekly Backup of VCC System</li> <li>• Data Archive and Retrieval</li> <li>• Failure Recovery</li> </ul> <p><b>Item 5 Services</b></p> <ul style="list-style-type: none"> <li>• Field replenishment of printer paper and Clipper cards</li> <li>• Clipper cards to be supplied by SMART</li> </ul>						
--	--	--	--	--	--	--

**Figure 2. O & M Payment Schedule**

## **Key Performance Indicator Penalty Assessment**

Penalties will be assessed for a failure to meet any Key Performance Indicators (KPIs) identified as having an associated penalty (see Section 6.2) based on a three-month average. The average is reset each three-month period.

A failure will result in the percentage in the “Penalty Assessed” column being applied to the full amount of the operations payment (excludes cash collection and optional financial services) for the months of measurement.

A failure to meet the same KPI for two or more three-month periods in a row will constitute a persistent failure, and result in a multiplier being applied to the penalty percentage.

The penalty multiplier will increase by a factor of one for each period that a KPI is not met, up to the full value of the associated operations payment (e.g., if a KPI is not met two periods in a row, the penalty will be doubled in the second period; if a KPI is not met three periods in a row, the penalty will be tripled in the third period).

Successfully meeting a KPI in a period will end a persistent failure and reset the penalty multiplier.

The total penalty applied to an operations payment will not exceed the full amount of the operations payment in that period. Penalties will not be carried over from period to period.

VenTek shall be responsible for reporting on KPI penalties and will deduct penalties directly from any invoices submitted to the agency on a three-month basis.

## Appendix 2 – MTC Pricing

Metropolitan Transportation Commission  
 Clipper® Card Vending Machine Program  
 Operations & Maintenance Costs - 13 TVMs  
 (monthly through 11/30/2019)

Item Description	Quantity	Unit Price	Total
<b>Base Option - Maintenance Services</b>			
Back office hosting services	1	3,000.00	3,000.00
Back office software maintenance	1	500.00	500.00
TVM hardware maintenance	13	345.00	4,485.00
TVM software maintenance	1	2,500.00	2,500.00
TVM consumables	13	50.00	650.00
Transit agency help desk support			
<b>Enter on Price Summary Item 4</b>		<b>Monthly Total</b>	<b>11,135.00</b>

Item Description	Quantity	Unit Price	Total
<b>Option 1 - Maintenance Services for CVM which</b>			
Back office hosting services	1	0.00	0.00
Back office software maintenance	1	0.00	0.00
TVM hardware maintenance	13	155.00	2,015.00
TVM software maintenance	1	0.00	0.00
TVM consumables	13	60.00	780.00
Transit agency help desk support			
<b>Enter on Price Summary Item 4</b>		<b>Monthly Total</b>	<b>2,795.00</b>

Item Description	Quantity	Unit Price	Total
<b>Option 3 - Maintenance Services for CVM which Accepts Bills &amp; Coins and Provides Change</b>			
Revenue Service Fee - Once per week service			
Remove and replace Bill Vault; Remove and replace Dollar Hopper	13	500.00	6,500.00

Figure 3 Operations and Maintenance detailed pricing per BAFO Proposal

OPERATIONS & MAINTENANCE COSTS (monthly through 11/30/2019)	
<b>BASE OPTION</b>	
6 Maintenance Service *Annual extensions priced on detail sheets	\$11,135.00
<b>ADDITIONAL OPTIONS</b>	
7 Option 1 - Maintenance Services for Bills & Change *Annual extensions priced on detail sheets	\$2,795.00
8 Option 2 - Maintenance Services for Bills Only - No Change *Annual extensions priced on detail sheets	\$3,235.56
9 Option 3 - Revenue Service for Bills & Change *Annual extensions priced on detail sheets	\$6,825.00
10 Option 4 - Revenue Service for Bills Only - No Change *Annual extensions priced on detail sheets	\$6,319.95

Figure 4 Operations and Maintenance summary pricing per BAFO Proposal

Note: "Options" in these figures represent configuration options not contract item options.



June 7, 2017

**Debora Fudge, Chair**  
Sonoma County Mayors and  
Councilmembers Association

**Kathrin Sears, Vice Chair**  
Marin County Board of Supervisors

**Judy Arnold**  
Marin County Board of Supervisors

**Jim Eddie**  
Golden Gate Bridge,  
Highway/Transportation District

**Dan Hillmer**  
Marin Council of Mayors and  
Councilmembers

**Eric Lucan**  
Transportation Authority of Marin

**Jake Mackenzie**  
Sonoma Mayors and Councilmembers  
Association

**Barbara Pahre**  
Golden Gate Bridge,  
Highway/Transportation District

**Gary Phillips**  
Transportation Authority of Marin

**David Rabbitt**  
Sonoma County Board of Supervisors

**Carol Russell**  
Sonoma Mayors and Councilmembers  
Association

**Shirlee Zane**  
Sonoma County Board of Supervisors

**Farhad Mansourian**  
General Manager

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

**SUBJECT:** Operational Readiness Report

Dear Board Members:

**RECOMMENDATION:**  
Receive passenger readiness report and seek public input and provide direction to staff.

**SUMMARY:**  
Your staff, consultants and contractors have been working tirelessly to complete the construction and testing of our new Passenger Rail System so we can begin carrying passengers. We have finished construction and are almost finished with the testing.

I will provide you and members of public with the latest update and status of final preparation for commencement of Passenger Service.

Very truly yours,

Farhad Mansourian  
General Manager

5401 Old Redwood Highway  
Suite 200  
Petaluma, CA 94954  
Phone: 707-794-3330  
Fax: 707-794-3037  
www.sonomamarintrain.org