



**REQUEST FOR PROPOSALS**  
**FOR**  
**ON CALL ELECTRICIAN SERVICES**

**SOLICITATION NO. OP-PS-19-003**

Sonoma-Marín Area Rail Transit District (SMART)  
5401 Old Redwood Hwy., Ste. 200  
Petaluma, CA 94954  
Tel: (707) 794-3330

**Contact Person:**

Ken Hendricks – Procurement Coordinator  
khendricks@sonomamarintrain.org  
(707) 285-8256

**DATE ISSUED: APRIL 17, 2019**

**PROPOSALS DUE: MAY 10, 2019 BY 2:00 PM (Local Time)**

# TABLE OF CONTENTS

1. INTRODUCTION AND GENERAL INFORMATION.....	3
2. LEGAL, CONTRACTUAL AND FINANCIAL INFORMATION .....	5
3. INSTRUCTIONS TO PROPOSERS.....	7
PART A. LETTER OF TRANSMITTAL.....	8
PART B. PROJECT UNDERSTANDING .....	8
PART C. ORGANIZATION STRUCTURE.....	9
PART D. PRIOR EXPERIENCE.....	9
PART E. REQUIRED CERTIFICATES AND FORMS .....	9
PART F. SCHEDULE OF RATES.....	10
4. AGREEMENT FOR CONTRACTOR SERVICES.....	11
5. EVALUATION & SELECTION PROCESS .....	11
6. CONTRACT AWARD AND EXECUTION.....	14
7. THE DISTRICT’S RIGHTS AND DISCLAIMERS .....	14
ATTACHMENT A – AGREEMENT FOR CONTRACTOR SERVICES .....	17
ATTACHMENT B – RECEIPT OF ADDENDA .....	35

# 1. INTRODUCTION AND GENERAL INFORMATION

## 1.1 Overview

The Sonoma-Marín Area Rail Transit District (“SMART”), a public agency, is soliciting on-call electrician services for existing and expanding passenger rail service along approximately 70 miles of existing publicly-owned rail corridor from Cloverdale in Sonoma County to Larkspur in Marin County. The existing passenger service includes 10 rail stations, several passing sidings, two rail maintenance facilities, and numerous miscellaneous small facilities.

The term of this Agreement shall be for two (2) years with one (1) one-year option to renew thereafter.

## 1.2 Scope of Services

The Contractor may be requested to perform maintenance services on the following types of specialized rail equipment on an on-call and task-order basis using Journeyman technical level personnel:

- A. Electrical conduit and wiring
- B. Lighting systems and lighting controls
- C. Receptacles, switches, data and telephone wall jacks
- D. Emergency lighting equipment
- E. Power and conduit to other systems, such as HVAC, generators, Uninterrupted Power Supplies (UPS), outlets, circuits, and other electrical equipment.
- F. Conduit systems for communications and other electronic systems
- G. Existing subpanels, circuit breakers, fuses, motors, and other electrical equipment;
- H. Deteriorated commercial line drops at SMART’s crossings;
- I. Emergency generator equipment
- J. Review of electrical drawings and specifications

The above list is not all-encompassing and additional work can be requested by SMART, as long as it is mutually agreed upon in written task order by SMART and Contractor.

**Refer to the Attachment A – Agreement for Contractor Services for the detailed scope of work and contract requirements.**

## 1.3 General Qualifications

Proposers must have the following minimum qualifications and experience:

- Must have a current electrician’s C10 contractor’s license in the State of California and a minimum of 7 years of licensed commercial electrical work. (Public agency experience preferred, but not required)
- Must be registered with the Department of Industrial Relations (DIR) and in active status.

## **1.4 Prevailing Wages**

Pursuant to Labor Code sections 1720 and 1771, work performed under agreements developed from the list of qualified firms may be subject to prevailing wage obligations and compliance monitoring and enforcement by the California Department of Industrial Relations (DIR). To be eligible for an agreement subject to prevailing wage requirements, a firm submitting a proposal must be a DIR-registered contractor pursuant to Labor Code Section 1725.5 at the time of the proposal submittal and at the time of any agreement execution.

A proposal from any firm that is not a DIR-registered contractor at the time of the proposal submittal may be considered nonresponsive by SMART.

## **1.5 Designated Points of Contact**

All communication during the Proposal process with the District shall be with the District's Contact Person identified below. Proposers shall direct all questions, correspondence, e-mails, or facsimile inquiries regarding RFP to:

Sonoma-Marín Area Rail Transit District (SMART)  
Attn: Ken Hendricks, Procurement Coordinator  
5401 Old Redwood Highway, Suite 200  
Petaluma, CA 94954  
Telephone: 707-285-8256  
Email: khendricks@sonomamarintrain.org

The Proposer shall provide in its Proposal cover letter the name, address, phone number, and email address of its designated point of contact for the Proposal process.

## **1.6 Rules of Contact**

Proposers are advised that no correspondence or information from the District, or anyone representing the District or the proposal process regarding the RFP, shall have any effect unless it is officially issued as an addendum by the District's contact person. The following rules of contact shall apply during the RFP process:

- A. Proposers shall correspond or communicate with the District regarding this RFP only through the District's contact person and the Proposer's designated point of contact;
- B. Proposers shall not contact District employees or officials regarding the RFP, except through the process identified above;
- C. Proposers shall not contact any person serving on an evaluation team or selection committee regarding this RFP;
- D. Any communications from the Proposers determined to be improper, at the sole discretion of the District, may result in disqualification of the Proposer;

- E. The District will not be bound by any oral exchange or any other information or exchange that occurs outside the official process specified herein;
- F. Proposers are requested not to contact Stakeholders identified in this RFP

### **1.7 Proposer Questions and Responses to Questions**

Proposers shall direct all comments, questions, inquiries, requests for information, requests for clarification and other communications regarding the RFP in writing to the District's contact person. **Questions must be submitted in writing** and will reference the exact section of the RFP, Contract, or other document when submitting request. All questions must be submitted no later than the date specified in the "Tentative Procurement Schedule" reference in Section 3 "Instructions to Proposers".

The District may, in its sole discretion, choose whether or not to respond to questions received. If the District chooses to respond, it may respond by a written response to the Proposer, or by a written Addendum to the RFP Documents. **Any response that the District may choose to make will not alter the RFP unless it is incorporated into an Addendum.**

If a Proposer fails to notify the contact person at least seven (7) days prior to the date for submission of Proposals of a known error in the RFP, or an error that reasonably should have been known, the Proposer shall submit a Proposal at its own risk. SMART reserves the right not to consider requests for clarification. Any changes or modifications to the RFP within the timeframe will be issued as an Addenda.

### **1.8 Addenda**

The District reserves the right to issue Addenda at any time during the period of the procurement. Any such Addenda will be bound into and included as part of the awarded Contract, as appropriate. The District will post Addenda on its website. Proposers will be notified of Addenda by email as long as they are registered on SMART's website. Proposers shall be responsible for providing copies of any Addenda to their Subcontractors. Persons or firms that obtain the RFP from sources other than the District bear the sole responsibility for obtaining, from such sources any Addenda issued by the District for the RFP. The District will not be bound by any explanation, clarification, or interpretation, oral or written, regardless of who made it, that is not incorporated into the Contract Documents by an Addendum.

## **2. LEGAL, CONTRACTUAL AND FINANCIAL INFORMATION**

### **2.1 Proposal and Accompanying Documents**

- A. Addenda: Receipt of all Addenda (Attachment B) must be completed and submitted with proposal.
- B. Signing of Proposal: The Proposal shall be signed by all parties making up the Proposer. If the Proposer is a corporation, the Proposer shall be signed by an authorized officer of the corporation; if the Proposer is a partnership, the Proposal shall be signed by a general partner having the power to bind the partnership contractually; if the Proposer is a Joint Venture, the Proposal shall be signed by all equity members of the Joint Venture; or if the Proposal is signed by an attorney in fact for a corporation or partnership, a power of attorney shall be submitted with the Proposal. A Proposal not properly signed may be rejected as irregular and unauthorized.

## **2.2 Conflict of Interest**

Depending on the nature of the services performed, Consultants and Contractors are subject to the same conflict of interest prohibitions that apply to District employees. These include, but are not limited to, the requirements of California Law (including Government Code Sections 1090 et seq., and 87100 et seq., and Title 2, Division 6 of the California Code of Regulations). The District reserves the right to disqualify any Proposer under the RFP if the District, in its sole discretion, deems that the potential conflicts of interest is likely to impair or restrict the Proposer's ability to furnish services contemplated within the Scope of Services for the Contract.

At the time of submitting a Proposal, Proposers shall disclose to SMART any and all potential organizational conflicts of interest. SMART will evaluate potential conflicts on a case-by-case basis. A Proposer may be required to share its work product prepared under any task order issued under this contract with all other Proposers on future contracts related to the task, established a personnel firewall in the performance of future services, and/or take other measures it deems appropriate. By responding to this Proposal, Proposer agrees to facilitate SMART's efforts to share information, and agrees to comply with any other measures required by SMART to mitigate or eliminate conflicts of interest.

## **2.3 Confidentiality**

The issue of confidentiality will be stressed during the entire evaluation and selection process. The District recognizes that the integrity of any contracting process is critical to the fairness and the confidence that Proposers and the public have in a public agency. Therefore, to the extent consistent with the requirements of applicable law, the deliberations of the evaluation committee will be held in the strictest confidence, and all information provided by Proposers or generated by the evaluation will be safeguarded until the Notice of Intent to Award has been issued.

## **2.4 Insurance**

### **Minimum Insurance Limits:**

1. Workers' Compensation Insurance – As required by the State of California with Statutory Limits and Employer's Liability Insurance with a minimum limit of

\$1,000,000 per accident for bodily injury or disease.

2. Commercial General Liability Insurance - \$1,000,000 per occurrence and \$2,000,000 aggregate. Policy shall include a Railroad 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.
3. Automobile Insurance - \$1,000,000 combined single limit per occurrence covering bodily injury and property damage. 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
4. Professional Liability Insurance - \$2,000,000 per claim covering liability arising out of any negligent act, error or omission in performance of design or engineering services for the Project.

Refer to Attachment A "Agreement for Contractor Services" for specific insurance language required to be included and maintained by Contractor.

## 2.5 Public Disclosure

All written correspondence, exhibits, photographs, reports, printed material photographs, tapes, electronic disks, and other graphic and visual aids submitted to the District during this procurement process, including as part of the response to this RFP, are, upon their receipt by District, the property of the District and are subject to the California Public Records Act (Chapter 3.5, commencing with Section 6250, of Division 7 of Title I of the Government Code) (the "Act"). None of the aforementioned materials will be returned to the submitting parties. Respondents should familiarize themselves with the provisions of the Act. In no event shall District, or any of its agents, representatives, consultants, directors, officers, or employees be liable to any Proposer for the disclosure of all or a portion of a Proposal submitted under this RFP.

## 3. INSTRUCTIONS TO PROPOSERS

### 3.1 Proposal Submission Process

The **Due Date** for Proposals is **May 10, 2019 - 2:00 p.m. (Local Time)**. The Proposal due date is subject to change. If the Proposal Due Date is changed, an addendum will be issued and posted on SMART's website. **Proposals received after the deadline will be rejected and disallowed. Proposals submitted via fax or email will be rejected and disallowed.**

The District accepts proposals that are hand-delivered or mailed and received by the proposal deadline.

Proposals shall be prepared using the following format:

<b>Part</b>	<b>Contents</b>
A	Letter of Transmittal
B	Project Understanding
C	Organization Structure
D	Prior Experience
E	Required Certificates and Forms
F	Schedule of Rates

Proposals shall be limited to 15 single-side pages (8.5"x11" using 12-point Arial font), excluding forms to be completed as provided in this RFP in Part E, and shall not contain any unnecessary promotional materials. Ledger-size pages (11"x17") may be used if necessary to more clearly communicate graphics, etc., but will count as two pages. Additional material such as resumes, company brochures, case studies of representative experience, etc. may be included in an appendix not to exceed 10 pages. However, appended material will not necessarily be considered in evaluating the PROPOSAL. **Three (3) hard copies of the Proposals are required, along with one electronic copy on a USB stick in PDF format.**

#### **PART A. LETTER OF TRANSMITTAL**

The letter of transmittal, not exceeding two pages, shall be addressed to SMART's contact person, Ken Hendricks, Procurement Coordinator, at the address on the cover of this RFP, and should include:

- Designate a single Point-of-Contact for the Proposer. Include a telephone number, e-mail and mailing addresses.
- Provide a summary of the statement of qualifications, including highlights of experience.
- **A statement that, if selected, the Proposer accepts the terms and conditions of SMART's "Agreement for Contractor Services" included as Attachment A to this RFP.**
- Be signed by an officer who is duly authorized to obligate the firm and sign a contract that may result from this solicitation.

#### **PART B. PROJECT UNDERSTANDING**

This section shall include:

- A brief narrative demonstrating the Proposer's understanding of SMART's scope of work, task order structure, and potential challenges.

- Proposer’s management approach, as required, for effective project communications; task order development and execution; and the control of quality, costs, and schedule of work.
- The process and response time for same day emergency service requests.

### **PART C. ORGANIZATION STRUCTURE**

This section shall discuss:

- How the Proposer will organize, in a coordinated manner, with the SMART team and perform the services outlined in Exhibit A “Scope of Services” within Attachment A “Agreement for Contractor Services”.
- Key Personnel shall be identified in this section.
- Provide an organizational chart.
- Capsule Resumes shall be included for key personnel identified in Part C – Organization Structure. A more detailed resume may be included in the appendix. The capsule resume shall include:
  - Proposed role on this project.
  - Years of experience.
  - Years of experience in similar roles.
  - Education.
  - Current Licenses and Certifications (including States where registered)
  - Summary of relevant project experience, citing specific projects.

### **PART D. PRIOR EXPERIENCE**

This section will describe Proposer’s qualifications and prior experience with similar or related public or non-public transportation clients or public (city, county, state or special district) clients including:

- Descriptions of at least five (5) projects the Proposer completed in the past five years which demonstrate experience in successfully performing similar work. Descriptions shall identify specific roles in each project by the proposer and how that relates to services the proposer would perform on SMART’s project.
- Include client references, including current contact information (name, title, phone number and e-mail address) for each project listed.

### **PART E. REQUIRED CERTIFICATES AND FORMS**

- SMART Receipt of Addenda Form (Attachment B to this RFP)
- Copies of all current licenses and certifications for key personnel proposed
- Evidence of registration with the Department of Industrial Relations (DIR)
- W-9 (Company must be in good standing to be considered)

## **PART F. SCHEDULE OF RATES**

This section will define the rates for personnel proposed by classification. The Rate Sheet shall include rate information for “Standard Business Hours”, “Overtime”, “After-Hours”, “Weekend/Holiday Rates”, and “Same-Day Emergency Services Rates”.

Materials will be required to be billed to SMART “at cost” with receipts included in all invoices.

Labor rates must meet Prevailing Wage requirements.

### **3.2 Procurement Schedule**

The Procurement Schedule is listed below and is subject to change at the sole discretion of the District.

<b>Date</b>	<b>Event</b>
April 17, 2019	Issue Request for Proposals
April 30, 2019	Deadline for Proposer’s Questions
May 3, 2019	Final Addendum Issued by SMART
May 10, 2019	Proposals Due to SMART, 2:00 PM (Local Time)
May 13, 2019 – May 16, 2019	Evaluation of Proposals
May 17, 2019	Notice of Intent to Award a Contract
June 1, 2019	Award Contract

### **3.3 Conditions of Proposal**

By submitting a Proposal, the Proposer is agreeing to all terms and conditions of this RFP and is verifying that it has undertaken all necessary due diligence and is aware of and will comply with all Contract requirements. The Proposer shall be responsible for obtaining all necessary licenses, permits, qualifications, and other statutory and legal approvals for the performance of the Work.

### **3.4 Modifications to a Proposal prior to Due Date**

If a Proposer submitted a Proposal in advance of the Proposal Due Date, it may modify its Proposal in writing prior to the Proposal Due Date and time. The modification shall conform in all respects to the requirements for submittal of a Proposal. Modifications shall be clearly delineated as such on the face of the document to prevent confusion with the original Proposal and shall specifically state that the modification supersedes the previous Proposal and all previous modifications, if any. If multiple modifications are submitted, they shall be subsequently numbered so the District can accurately identify the final Proposal. The modification must contain complete Proposal sections, complete pages, or complete forms.

Line item changes will not be accepted. No telegraphic facsimile, email or other electronically transmitted modifications will be permitted.

### **3.5 Withdrawal of a Proposal**

A Proposer may withdraw its Proposal only by a written and signed request that is received by the District prior to the Proposal Due Date and time. Following withdrawal of its Proposal, the Proposer may submit a new Proposal, provided that it is received prior to the Proposal Due Date.

### **3.6 No Public Opening of Proposals**

Proposals will not be publicly opened. All Proposals and evaluations will be kept confidential throughout the evaluation, discussion and selection process by the District to the extent permitted by law. Only those persons authorized by the District, and its officials, employees and agents, having a legitimate interest will be provided access to the Proposals and evaluation results during this period.

### **3.7 Cost of Proposing**

The Proposer shall bear all costs and expenses whatsoever for the preparation, submittal, discussions, interviews, negotiations, and/or Contract execution related to the Proposal.

### **3.8 Multiple Proposals**

More than one Proposal from a Proposer will not be considered.

## **4. AGREEMENT FOR CONTRACTOR SERVICES**

The successful Proposer agrees to enter into a contract with SMART similar in form and in strict compliance with all material terms and conditions set forth in Attachment A.

## **5. EVALUATION & SELECTION PROCESS**

### **5.1 Source Selection Committee**

- A. The District will appoint a Selection Committee to evaluate Proposals
- B. The Selection Committee will be composed of District staff and other experts as deemed necessary and appropriate by SMART. Members of the Selection Committee will not be disclosed to Proposers.

### **5.2 Evaluation of Proposal Information**

- A. All Proposals received by the specified deadline will be reviewed by the SMART Evaluation Committee for content.
  
- B. The Selection Committee will evaluate Proposals using only the evaluation criteria, factors and subfactors set forth in this RFP. Proposal evaluation will be determined using a qualitative scoring system with the following criteria listed in order of importance:
  - i. Experience and expertise of staff proposed to perform required services;
  - ii. Demonstrated history of providing similar services;
  - iii. Quality of work as verified by references;
  - iv. Willingness to accept SMART's contract terms;
  - v. Contractor's approach to perform the services described;
  - vi. Cost of Work
  - vii. Any other factors the Evaluation Committee deems relevant.
  
- C. The District may request clarifications or additional information (including cost breakdown elements such as: Direct Labor, Direct Materials, Overhead, General & Administrative Overhead, and Profit) as part of the evaluation process. The Selection Committee reserves the right to communicate with any Proposer for the purpose of eliminating minor irregularities, informalities, or apparent mistakes in a Proposal, or for clarification of submitted information.
  
- D. SMART reserves the right to select the individuals or firms which in its sole judgment best meet the needs of SMART. All Proposers responding to this RFP will be notified of their selection or non-selection in writing after the Evaluation Committee has completed the selection process.
  
- E. Recommendation to General Manager: Following evaluation, the Selection Committee will finalize its report. Following receipt of the final report, the District's General Manager may either endorse the recommendation or remand the recommendation back to the Selection Committee for further consideration and then endorse the Selection Committee's further considered recommendation.
  
- F. If required, the General Manager will then bring the endorsed contract to SMART's Board of Directors for approval to award.

### **5.3 Rating of Proposals**

The Proposals will be rated by a qualitative/descriptive (adjectival) method. The following qualitative/descriptive ratings will be used in evaluation of each Quality Factor, and the rating of the overall Proposal:

EXCEPTIONAL. The Proposer has demonstrated an approach that is considered to significantly exceed stated criteria in a way that is beneficial to SMART. This rating

indicates a consistently outstanding level of quality, with very little or no risk that this Proposer would fail to meet the requirements of the solicitation. There are no weaknesses.

GOOD. The Proposer has demonstrated an approach that is considered to exceed stated criteria. This rating indicates a generally better than acceptable quality, with little risk that this Proposer would fail to meet the requirements of the solicitation. Weaknesses, if any, are very minor. Correction of the weaknesses would not be necessary before the Proposal would be considered further.

ACCEPTABLE. The Proposer has demonstrated an approach that is considered to meet the stated criteria. This rating indicates an acceptable level of quality. The Proposal demonstrates a reasonable probability of success. Weaknesses exist but can be readily corrected through requests for Clarification or Communications.

UNACCEPTABLE. The Proposer has demonstrated an approach that indicates significant weaknesses/deficiencies and/or unacceptable quality. The Proposal fails to meet the stated criteria and/or lacks essential information and is conflicting and/or unproductive. There is no reasonable likelihood of success; weaknesses/deficiencies are so major and/or extensive that a major revision to the Proposal would be necessary.

In assigning ratings SMART may assign a "+" or "-" (such as, "exceptional (-)," "good (+)," and "acceptable (+)") to the ratings to better differentiate within a rating in order to more clearly differentiate between the Proposals.

#### **5.4 Proposal Responsiveness and Responsibility**

The Proposer shall submit a Proposal that provides all of the information required by the RFP. The District will reject any Proposal that is late, that contains a provision reserving the right to accept or reject an award or to refuse to enter into Contract following award or that is submitted by a Proposer without a valid license required to perform the job. The District will evaluate each Proposal with respect to the Proposal's degree of responsiveness to the requirements of the RFP.

##### **Responsiveness Determination**

The District reserves the right, in its sole discretion, to determine that a Proposal is non-responsive based upon any of the following:

- A. The Proposal is not properly signed by an authorized party
- B. Failure to provide all required parts of the Proposal
- C. The Proposal is illegible or contains any omission, erasure, alteration, or item not called for in the RFP or contains unauthorized conditions or other irregularities of any kind, if the District determines that such conditions or irregularities make the Proposal incomplete, indefinite, or ambiguous as to its meaning.
- D. Requested information deemed material by the District is not provided.

- E. Failure to acknowledge and submit the Receipt of Addenda Form (Attachment B)
- F. More than one Proposal is received from a Proposer
- G. The Selection Committee is not able to confirm the accuracy of all technical data or other information provided in the Proposal.
- H. Due to an organizational conflict of interest, the Proposer has an unfair advantage, in the opinion of the District.
- I. Required licenses are invalid
- J. Company or Firm is on any suspension or debarment lists
- K. Department of Industrial Relations (DIR) registration is not up-to-date and active (if applicable)
- L. Any other reason for which the District determines that the Proposal is non-responsive.

## **6. CONTRACT AWARD AND EXECUTION**

### **6.1 No Obligation to Award**

The District shall be under no obligation to award the Contract should the District decide, in its sole discretion, that it is in its best interests not to award the Contract. At its discretion, the District may cancel the procurement in its entirety, and re-procure by any method at a later date.

### **6.2 Award of Contract**

The District intends to award the Contract to the responsible Proposer offering a responsive Proposal that provides the Best Value to the District. Any such award will be made pursuant to a Notice of Award issued by the District issued within 90 calendar days after the Proposal Due Date.

### **6.3 Execution of Contract**

The Proposer to whom an Award is made shall execute three copies of the Contract and furnish the required insurance certificates within 10 working days after being given notice of award unless the District, in its sole discretion, issues written notice that it will allow additional time for the submissions.

## **7. The DISTRICT'S RIGHTS AND DISCLAIMERS**

## 7.1 District's Reservation of Rights

In connection with this procurement, the District reserves to itself all rights (which rights shall be exercisable by the District in its sole discretion) available to it under the Public Contract Code and applicable law, including without limitation, the following, with or without cause and with or without notice:

- A. Reject any or all Proposals, or information submitted related to a Proposal;
- B. Issue a new RFP, or modify dates set or projected in the RFP;
- C. Cancel, modify, or withdraw the RFP, in whole or in part at any time prior to the execution of the Contract without incurring any cost obligations or liabilities;
- D. Issue Addenda, supplements and modifications to the RFP;
- E. Modify the RFP process;
- F. Appoint a Selection Committee and evaluation teams to review Proposals and to consider the advice and assistance of non-District experts in any subject matter in Proposal evaluation;
- G. Approve or disapprove the use of particular Subcontractors, substitutions of Subcontractors, and Key Personnel, and any other changes in Proposer's Qualifications Statement;
- H. Revise or modify, at any time before the Proposal Due Date, the evaluation criteria, factors, subfactors, weighting and/or guidelines that it will consider in evaluating Proposals and to otherwise revise or expand its evaluation methodology. If such revisions or modifications are made, the District shall issue an Addendum to the Proposer's setting forth the changes to the evaluation criteria or methodology. The District may extend the Proposal Due Date if such changes are deemed by the District, in its sole discretion, to be material and substantive;
- I. Hold meetings and conduct discussions and correspondence with a Proposer to seek an improved understanding and evaluation of the Proposal.
- J. Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the Proposals;
- K. Waive weaknesses, informalities, and minor irregularities in Proposals;
- L. Disqualify any Proposer that changes its organization (as represented in its Qualifications Statement) without District written approval;
- M. Hold the Total Price Proposals under consideration for up to 90 calendar days after the Proposal Due Date until the Award is made unless there is a mutual agreement to extend the 90-day time limit as provided in the RFP;

- N. Disclose information contained in the Proposals to the public as described herein;
- O. Not issue a Notice to Proceed after execution of the Contract;
- P. Refuse to consider a Proposal, once submitted, or reject a Proposal if such refusal or rejection is based upon, but not limited to, the following;
  - i. Failure on the part of a Principal Participant to pay, satisfactorily settle, or provide security for the payment of claims for labor, equipment, material, supplies, or services legally due on previous or ongoing contracts;
  - ii. Submitted by the Proposer of more than one Proposal for the same work under the Proposer's own name or under a different name;
  - iii. Evidence of collusion between a prospective Proposer (or any Principal Participant or Designer) and other Proposers (or Principal Participants or Designers).
  - iv. Uncompleted work or default on a contract in another jurisdiction for which the prospective Proposer or a Principal Participant is responsible which, in the judgement of the District, might reasonably be expected to hinder or prevent the prompt completion of additional work if awarded;
  - v. Existence of a notice of debarment or suspension in any jurisdiction;
  - vi. Failure to obtain required bonds or insurance;
- Q. Further negotiate pricing, or Contract terms and conditions, in advance of execution of the Contract;
- R. Exercise any other right reserved or afforded to the District under this RFP or under the Public Contract Code and applicable law; and/or
- S. Issue a single Notice to Proceed or multiple Notices to Proceed as specified in the Contract;
- T. The Proposer acknowledges that, by submitting a Proposal in response to this RFP, it agrees with these disclaimers and waives any right to legally challenge or protest any District's actions that exercise these disclaimers.

# ATTACHMENT A AGREEMENT FOR CONTRACTOR SERVICES

This Agreement (“Agreement”), dated as of \_\_\_\_\_, 2019 (“Effective Date”) is by and between the Sonoma-Marín Area Rail Transit District (hereinafter “SMART”), and \_\_\_\_\_ (hereinafter “Contractor”).

## RECITALS

WHEREAS, Contractor represents that it is duly qualified electrical contractor and experienced in the areas of electrical contracting and related services; and

WHEREAS, in the judgment of SMART, it is necessary and desirable to employ the services of Contractor for on-call electrical maintenance of specialized rail equipment and existing facilities infrastructure that requires a licensed electrical contractor.

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

## AGREEMENT

### Article 1.     **Recitals.**

Section 1.01           The above Recitals are true and correct.

### Article 2.     **List of Exhibits.**

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

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

### Article 3.     **Request for Services.**

Section 3.01           Initiation Conference. SMART’s Superintendent of Maintenance of Way, Marc Bader (“Superintendent”), will initiate all requests for

services through an Initiation Conference, which may be in person, by telephone, or by email. During the Initiation Conference, SMART's Superintendent and Contractor 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. Contractor shall perform services within the timeframe outlined in **Exhibit A** (cumulatively referred to as the "Scope of Work").

Section 4.02            Cooperation With SMART. Contractor shall cooperate with the SMART's Superintendent in the performance of all work hereunder.

Section 4.03            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 4.04            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 notification to SMART.
- (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 following key personnel for the term of this Agreement:
- 

## Article 5. Payment.

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

Section 5.01 Contractor shall invoice SMART on a task order basis, detailing the tasks performed pursuant to the Scope of Work requested by SMART's Representative, and the hours worked. SMART shall pay Contractor within 30 days after submission of the invoices.

Section 5.02 Contractor shall be paid on a time and material basis in accordance with **Exhibit B**; provided, however, that total payments to Contractor shall not exceed \$\_\_\_\_\_, without the prior written approval of SMART. Contractor shall submit its invoices upon completion of each task in a form approved by the Chief Financial Officer. The invoices shall show or include: (i) the task(s) performed; (ii) the time in quarter 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 materials, if any. Contractor's reimbursement for materials shall not include items already included in the Contractor's overhead as may be billed as part of its labor rates set for in Exhibit B. SMART does not reimburse Contractor for travel time without prior written approval from SMART's Superintendent of Maintenance of Way.

Section 5.03 Contractor must submit all invoices on a timely basis, but no later than thirty (30) days from the date the services/charges were incurred. District shall not accept invoices submitted by Contractor 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 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 6. **Term of Agreement.**

Section 6.01 The term of this Agreement shall remain in effect for two years with one (1) one-year option to renew thereafter at SMART's discretion unless terminated earlier in accordance with the provisions of **Article 7** below.

Article 7. **Termination.**

Section 7.01 Termination Without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, 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 7.02 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 7.03 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 12.08** and shall submit to SMART an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

Section 7.04 Payment Upon Termination. Upon termination of this Agreement by SMART, 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 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 Contractor.

Section 7.05 Authority to Terminate. The Board of Directors has the authority to terminate this Agreement on behalf of SMART. In addition, SMART's

HR Manager or General Manager, in consultation with SMART Counsel, shall have the authority to terminate this Agreement on behalf of SMART.

## Article 8. 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 9. 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 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 Automobile Liability 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 9.03 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. Policy shall

include a Railroad 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 9.04 Professional Liability Insurance. Professional liability insurance for all activities of Contractor arising out of or in connection with this Agreement in an amount no less than \$2,000,000 combined single limit for each claim.

Section 9.05 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 affected 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 9.06            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 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. 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 9.09 Policy Obligations. Contractor's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

Section 9.10 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. These remedies shall be in addition to any other remedies available to SMART.

#### Article 10. **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 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 SMART's Superintendent of Maintenance of Way 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 12. **Representations of Contractor.**

Section 12.01 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 12.02 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 12.03 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 12.04 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. Contractor and Subcontractors shall permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any agency of the State of California designated by the State, for the purpose of any investigation to ascertain compliance with this document.

Section 12.05 Conflict of Interest. 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 12.06 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 12.07 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 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 Contractor or Contractor's Subcontractors, Contractors, and other agents in connection with this Agreement shall be the property of SMART as allowed by law. SMART shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement subject to current law. 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 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-Marín Area Rail Transit District 5401 Old Redwood Highway, Suite 200 Petaluma, CA 94954 <a href="mailto:billing@sonomamarintrain.org">billing@sonomamarintrain.org</a>
--------------	--

If to Contractor:	[TO COME]
-------------------	-----------

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. 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 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. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, 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      Licensing Laws. The contractor shall comply with the provisions of Chapter 9 of Division 3 of the Business and Professions Code concerning the licensing of contractors. All contractors shall be licensed in accordance with the laws of the State of California and any Contractor not so licensed is subject to the penalties imposed by such laws. Prior to commencing any work under the Contract, all Subcontractors must show that they hold appropriate and current California contractor's Licenses. The Contractor shall provide such Subcontractor information, including the class type, license number and expiration date to the District.

Section 16.09      Prevailing Wages. Contractor and each Subcontractor shall pay to all workers employed on the Work not less than the prevailing rate of wages as determined in accordance with the Labor Code as indicated herein.

All contractors/vendors doing business with public agencies throughout the State of California (including SMART) shall comply with applicable labor compliance requirements including, but not limited to prevailing wages, SB 854, Labor Code Sections 1725.5, 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815. Public Works Contractor Registration Program, Electronic Certified Payroll Records submission to the State Labor Commissioner and other requirements described at <http://www.dir.ca.gov/Public-Works/Contractors.html>.

Applicable projects are subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

Section 16.10      Property Damage. The contractor shall be responsible for any damages to existing infrastructure and any adjacent property, resulting from Contractor's negligence. The Contractor shall reimburse SMART any and all costs to restore, repair, and replace all property, regardless of ownership, which is damaged or altered by the Contractor's or its Subcontractor's negligence.

Section 16.11      Payment Bond. Contractor shall be required to furnish a Payment Bond (Labor and Materials Bond) in an amount not less than 100 percent of the Contract price, excluding allowances. Payment bond shall be executed by an admitted surety insurer (California Civil Code Section 9554). An "admitted surety insurer" shall be defined as follows:

A corporate insurer or a reciprocal or interinsurance exchange to which the Insurance Commissioner has issued a certificate of authority to transact surety insurance in this

state, as defined in Section 105 of the Insurance Code (California Code of Civil Procedures Section 995.120).

Section 16.12      Disposal of Materials. Contractor shall be responsible for the proper disposal of all related materials and equipment in accordance with all state and local laws and regulations.

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

Section 16.09      Acceptance of Electronic Signatures and Counterparts. The parties agree that this Contract Agreements ancillary to this Contract, and related documents to be entered into this Contract will be considered executed when the signature of a party is delivered by scanned image as an attachment to electronic mail. Such scanned signature must be treated in all respects as having the same effect as an original signature. Each party further agrees that this Contract may be executed in two or more counterparts, all of which constitute one and the same instrument.

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: \_\_\_\_\_  
Erin McGrath, Chief Financial Officer

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

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

By: \_\_\_\_\_  
Ken Hendricks, Procurement Coordinator

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

**APPROVED AS TO FORM FOR SMART:**

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

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

## **EXHIBIT A SCOPE OF WORK AND TIMELINE**

### **General Objective**

SMART is contracting with \_\_\_\_\_ to provide on-call electrician services to assist SMART with existing and expanding passenger rail service along approximately 70 miles of existing publicly-owned rail corridor from Cloverdale in Sonoma County to Larkspur in Marin County.

### **Project Manager**

All work will be initiated in writing, coordinated, and approved by SMART's Superintendent of Maintenance of Way, Marc Bader ("Superintendent") or his designee.

### **Scope of Work**

The Contractor may be requested to perform maintenance services on the following types of specialized rail equipment on an on-call and task-order basis using Journeyman technical level personnel:

- A. Electrical conduit and wiring
- B. Lighting systems and lighting controls
- C. Receptacles, switches, data and telephone wall jacks
- D. Emergency lighting equipment
- E. Power and conduit to other systems, such as HVAC, generators, Uninterrupted Power Supplies (UPS), outlets, circuits, and other electrical equipment.
- F. Conduit systems for communications and other electronic systems
- G. Existing subpanels, circuit breakers, fuses, motors, and other electrical equipment;
- H. Deteriorated commercial line drops at SMART's crossings;
- I. Emergency generator equipment
- J. Review of electrical drawings and specifications

The above list is not all-encompassing and additional work can be requested by SMART, as long as it is mutually agreed upon in written task order by SMART and Contractor.

All work listed above includes labor, equipment, and any materials necessary to complete each task at the designated rates in Exhibit B.

## **Initiation of Work**

SMART's Superintendent of Maintenance of Way, shall initiate all work requests by written task order. Each task order shall include detailed scope requirements, deliverables, timeline for completion, and not-to-exceed amounts for each project.

The contractor shall provide an estimate in response within three (3) business days. The estimate shall include a timeline for completion and the associated time and materials cost estimate to perform the work requested. SMART's Superintendent of Maintenance of Way and Contractor shall come to an agreement regarding work requirements and SMART's Superintendent of Maintenance of Way shall provide a written notice to proceed.

## **Hours of Work**

All work is to be completed during standard business hours of Monday through Friday from 8:00am – 5:00pm (PST). Any after-hour, overtime, or holiday service requests must be approved in writing by SMART's Superintendent of Maintenance of Way. Contractor must be able to provide same-day emergency electrician services 24 hours a day, 7 days a week with a response time of within 3 hours.

## **Right-Of-Way Access**

Contractor may be required to obtain right-of-way track access permits prior to equipment and personnel being onsite. SMART's Superintendent of Maintenance of Way shall coordinate the right-of-way track access permits with SMART's Operation team prior to releasing the Notice to Proceed for each task.

## **Acceptance Criteria**

Upon completion of each task and project, SMART's Superintendent of Maintenance of Way or designee shall complete a final review of all services provided to ensure compliance with all requirements identified in each task order. A successful review shall result in a written notice of project acceptance by SMART's Superintendent of Maintenance of Way.

**EXHIBIT B  
SCHEDULE OF RATES**

**\*\*SCHEDULE OF RATES TO COME FROM PROPOSAL\*\***

# ATTACHMENT B – RECEIPT OF ADDENDA

## REQUEST FOR PROPOSALS (RFP)

CONTRACT NO. OP-PS-19-003

**Please submit this Receipt of Addenda when submitting your Proposal.**

I acknowledge receipt of the following Addenda to the

Addendum \_\_, dated \_\_\_\_\_, 2019  
Addendum \_\_, dated \_\_\_\_\_, 2019

Dated this \_\_\_\_ day of \_\_\_\_\_, 2019

By:

\_\_\_\_\_

Title:

\_\_\_\_\_