



## **REQUEST FOR QUALIFICATIONS**

### **ON-CALL LAND SURVEYING SERVICES**

**SOLICITATION CONTRACT NO. RE-PS-19-001**

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

Contact Person:

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

**REQUEST FOR QUALIFICATIONS ISSUED: APRIL 8, 2019**

**DEADLINE FOR STATEMENT OF QUALIFICATIONS: MAY 6, 2019  
BY 2:00 PM (LOCAL TIME)**

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# **1. INTRODUCTION AND GENERAL INFORMATION**

## **1.1 Overview**

The Sonoma-Marín Area Rail Transit District (“SMART”), a public agency, is soliciting on-call survey services for the existing and expanding passenger rail service along approximately 95 miles of existing publicly-owned rail corridor from Cloverdale in Sonoma County to Larkspur in Marin County, and to Schellville in Napa County. The existing passenger service includes 10 rail stations, several passing sidings, two rail maintenance facilities, and numerous miscellaneous small facilities. The existing railroad right-of-way (ROW) is a compilation of property from a number of prior owners over the past 180 years. Due to the linear nature of the ROW and the age of the records, many areas require research and survey to determine ownership and proper property boundaries. The system is expanding and there is a need to respond to requests from third parties who need accurate information about SMART’s ownership of the real estate.

The term of this Agreement is anticipated to be three (3) years with two (2) one-year options to renew thereafter.

Contractor shall comply with all prevailing wage requirements identified by the Department of Industrial Relations (DIR).

## **1.2 Scope of Services**

Consultant shall perform the following services on an on-call and task-order basis:

- A. Complete survey work and recording of documents, including plats and legals;
- B. Records research and interpretation;
- C. Survey locations and elevations of existing features for as-built information;
- D. Marking property lines in the field;
- E. Quality control and review of other surveyor work to ensure that the surveys fit into SMART’s datum;
- F. Monumentation, and;
- G. Recording any Records of Survey.

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

All surveying for the design and construction of the SMART project shall comply with Caltrans Survey Standards or better. Surveys shall, at a minimum, meet 3rd Order Caltrans Standards. All field notes and other survey data shall be made available to SMART as requested.

**Refer to the Attachment A – Agreement for Consultant Services for the detailed scope**

**of work and contract requirements.**

### **1.3 General Qualifications**

Proposers must have the following minimum qualifications and experience in the railroad bridge industry:

- Must have a current land surveyor's license in the State of California and 10 years of licensed survey work.
- Knowledge of railroad corridors is preferred, but not required.
- Proposer shall be familiar with and have experience implementing a variety of Program Management approaches.
- Strong interpersonal skills, including the ability to maintain relationships with individuals and agencies with different perspectives, including conflict management skills.

### **1.4 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 the Request for Qualifications (RFQ) 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](mailto:khendricks@sonomamarintrain.org)

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

### **1.5 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 RFQ, 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 RFQ process:

- A. Proposers shall correspond or communicate with the District regarding this RFQ 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 RFQ, except through the process identified above;
- C. Proposers shall not contact any person serving on an evaluation team or selection committee regarding this RFQ;
- 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 RFQ

## 1.6 Proposer Questions and Responses to Questions

Proposers shall direct all comments, questions, inquiries, requests for information, requests for clarification and other communications regarding the RFQ in writing to the District's contact person. **Questions shall be submitted in writing** and will reference the section of the RFQ, 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 RFQ Documents. **Any response that the District may choose to make will not alter the RFQ 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 the Statement of Qualifications of a known error in the RFQ, or an error that reasonably should have been known, the Proposer shall submit the Statement of Qualifications at its own risk. SMART reserves the right not to consider requests for clarification. Any changes or modifications to the RFQ within the timeframe will be issued as an Addenda.

## 1.7 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 Subconsultants. Persons or firms that obtain the RFQ from sources other than the District bear the sole responsibility

for obtaining, from such sources any Addenda issued by the District for the RFQ. 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 Statement of Qualifications and Accompanying Documents**

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

### **2.2 Conflict of Interest**

Depending on the nature of the services performed, District consultants and Consultants 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 RFQ 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 the Statement of Qualifications, 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 Request for Qualifications, 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 Consultant Services" for specific insurance language required to be included and maintained by Consultant.

## **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 RFQ, 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 the Statement of Qualifications submitted under this RFQ.

### 3. INSTRUCTIONS TO PROPOSERS

#### 3.1 Statement of Qualifications Submission Process

The Due Date for Statement of Qualifications to be submitted is May 6, 2019 by 2:00pm (Local Time). The Statement of Qualifications due date is subject to change. If the Statement of Qualifications Due Date is changed, an addendum will be issued and posted on SMART’s website. Statement of Qualifications received after 2:00 p.m. will be rejected and disallowed.

**Statement of Qualifications submitted via FAX or EMAIL will be rejected and disallowed.** The District accepts Statement of Qualifications that are hand-delivered or mailed and received by SMART no later than 2:00 p.m. (Local Time) on May 6, 2019.

Proposals shall be prepared using the following format:

Part	Contents
A	Letter of Transmittal
B	Project Understanding
C	Organization Structure
D	Prior Experience
E	Required Certificates and Forms
F	Rate Table ( <b>Provide in Sealed Envelope</b> )

Statement of Qualifications shall be limited to 20 single-side pages (8.5”x11” using 12-point Arial font), excluding forms to be completed as provided in this RFQ 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 Statement of Qualifications. **Five (5) hard copies of the Statement of Qualifications 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 RFQ, 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 selected highlights of experience.
- Include a statement that, if selected, the Proposer accepts the terms and conditions of SMART's "Agreement for Consultant Services" included as Attachment A to this RFQ.
- 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.

## **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 Consultant 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 on similar or related projects, including:

- Descriptions of up to three (3) 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 a client reference, including current contact information (name, title, phone number and e-mail address).

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

- SMART Receipt of Addenda Form (Attachment B to this RFQ)
- Copies of all current licenses and certifications for key personnel proposed
- W-9 (Company must be in good standing to be considered)

#### **PART G. RATE TABLE**

**In a separately sealed envelope marked “Confidential Rate Schedule”, include a personnel rate sheet.**

This section will define the rates for personnel proposed to fill the positions in “Part C – Organizational Structure”.

### 3.2 Procurement Schedule

The District's procurement schedule is subject to change at the sole discretion of the District and currently is as follows:

<u>Date</u>	<u>Event</u>
4/8/2019	Issue Request for Qualifications
4/24/2019	Deadline to Submit Questions
4/29/2019	Final Addendum Issued by SMART
5/6/2019	Statement of Qualifications Due to SMART by 2:00 PM (Local Time)
5/7/2019 – 5/9/2019	Evaluation of Statement of Qualifications
5/10/2019	Notice of Intent to Award
5/24/2019	Award Contract

### 3.3 Conditions of Statement of Qualifications

By submitting a Statement of Qualifications, the Proposer is agreeing to all terms and conditions of this RFQ 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 Statement of Qualifications prior to Due Date

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

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

new Statement of Qualifications, provided that it is received prior to the Statement of Qualifications Due Date.

### **3.6 No Public Opening of Statement of Qualifications**

Statement of Qualifications will not be publicly opened. All Statement of Qualifications 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 Statement of Qualifications 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 Statement of Qualifications.

### **3.8 Multiple Statement of Qualifications**

More than one Statement of Qualifications from a Proposer will not be considered.

## **4. AGREEMENT FOR CONSULTANT 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 – Agreement for Consultant Services.

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

### **5.1 Source Selection Committee**

- A. The District will appoint a Selection Committee to evaluate Statement of Qualifications
- 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 Statement of Qualification Information**

- A. All Statement of Qualifications received by the specified deadline will be reviewed by the SMART Evaluation Committee for content.
- B. The Selection Committee will evaluate and rank Statement of Qualifications using

only the evaluation criteria, factors and sub factors set forth in this RFQ.

### **Technical Analysis**

The Selection Committee will review the technical content of the Statement of Qualifications and use a qualitative scoring system with the following criteria listed in order of importance to rank each Proposer in terms of qualifications and competency:

- i. Experience and expertise of staff proposed to perform required services;
- ii. Demonstrated history of providing similar services;
- iii. Willingness to accept SMART's contract terms;
- iv. Quality of work as verified by references;
- v. Consultant's approach to perform the services described;
- vi. Any other factors the Evaluation Committee deems relevant

The Selection Committee will create a short list of the top ranked Proposers who meet the qualifications and technical skill required for the project.

The Selection Committee will then open and review the rate sheet provided in a separate sealed envelope marked "Confidential Rate Table" for the top ranked qualified company on the short list.

SMART reserves the right to open negotiations with the Proposer whose Statement of Qualifications is top ranked by the District. Negotiations may be conducted relative to scope of services, fee, and payment schedule. If an Agreement cannot be satisfactorily negotiated with the top-ranked firm, negotiations will be terminated and SMART will enter into negotiations with the second-ranked firm, and so on down the line until an Agreement is reached and a firm is selected.

- C. The District may request clarifications or additional information, including conducting interviews, 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 Statement of Qualifications, 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 RFQ 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 Statement of Qualifications**

The Statement of Qualifications 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 Statement of Qualifications:

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 Statement of Qualifications 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 Statement of Qualifications 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 Statement of Qualifications 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 Statement of Qualifications 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 Statement of Qualifications.

### **5.4 Statement of Qualifications Responsiveness and Responsibility**

The Proposer shall submit a Statement of Qualifications that provides all of the information required by the RFQ. The District will reject any Statement of

Qualifications 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 Consultant's license. The District will evaluate each Statement of Qualifications with respect to the Proposal's degree of responsiveness to the requirements of the RFQ.

### **Responsiveness Determination**

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

- A. The Statement of Qualifications is not properly signed by an authorized party
- B. Failure to provide all required parts of the Statement of Qualifications
- C. The Statement of Qualifications is illegible or contains any omission, erasure, alteration, or item not called for in the RFQ or contains unauthorized conditions or other irregularities of any kind, if the District determines that such conditions or irregularities make the Statement of Qualifications 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 Statement of Qualifications 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 Statement of Qualifications.
- H. Due to an organizational conflict of interest, the Proposer has an unfair advantage, in the option of the District.
- I. Any other reason for which the District determines that the Statement of Qualifications 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 Statement of Qualifications 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 Statement of Qualifications Due Date.

## **6.3 Execution of Contract**

The Proposer to whom an Award is made shall execute two 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. PROTEST PROCEDURES**

## **7.1 Content-Based Protest**

Protests based on the content of the request for qualifications shall be filed with the district within 10 calendar days after the request for qualifications is first advertised. The District shall issue a written decision on the protest prior to the opening of the statement of qualifications. A protest may be renewed by refileing the protest with the District within 15 calendar days after the mailing of the notice of the recommended award. Failure to file a timely protest based upon the content of the RFQ constitutes a waiver of such right.

## **7.2 Non-Content-Based Protest**

Any bidder may protest the recommended award on the grounds they are an adversely affected party not based upon the content of the request for proposals by filing a protest with the District within 15 calendar days after the mailing of the notice of the recommended award. To be considered adversely-affected, the Proposer must demonstrate that the District's short-listing determination (a) was arbitrary or capricious or (b) involved substantial violation of a provision in the RFQ or applicable procurement statute. Failure to file a timely protest based upon any grounds other than the content of the RFQ constitutes a waiver of such right.

## **7.3 Protest Requirements**

All protests shall contain a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest. The burden of proof shall be on the proposer to clearly and completely demonstrate the facts supporting the protest.

## **8. THE DISTRICT'S RIGHTS AND DISCLAIMERS**

### **8.1 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 applicable law, including without limitation, the following, with or without cause and with or without notice:

- A. Reject any or all Statement of Qualifications, or information submitted related to a Statement of Qualification;
- B. Issue a new RFQ, or modify dates set or projected in the RFQ;
- C. Cancel, modify, or withdraw the RFQ, 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 RFQ;
- E. Modify the RFQ process;
- F. Appoint a Selection Committee and evaluation teams to review Statement of Qualifications and to consider the advice and assistance of non-District experts in any subject matter in Statement of Qualification evaluation;
- G. Approve or disapprove the use of particular Subconsultants, substitutions of Subconsultants, and Key Personnel, and any other changes in Proposer's Qualifications Statement;
- H. Revise or modify, at any time before the Statement of Qualification Due Date, the evaluation criteria, factors, sub factors, weighting and/or guidelines that it will consider in evaluating Statement of Qualifications and to otherwise revise or expand its evaluation methodology. If such revisions or modifications are made, the District shall issue an Addendum to the Proposers setting forth the changes to the evaluation criteria or methodology. The District may extend the Statement of Qualification 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 Statement of Qualifications.
- J. Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the Statement of Qualifications;

- K. Waive weaknesses, informalities, and minor irregularities in Statement of Qualifications;
- L. Disqualify any Proposer that changes its organization (as represented in its Qualifications Statement) without District written approval;
- M. Disclose information contained in the Statement of Qualifications to the public as described herein;
- N. Not issue a Notice to Proceed after execution of the Contract;
- O. Refuse to consider a Statement of Qualification, once submitted, or reject a Statement of Qualification 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 Statement of Qualifications 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;
- P. Further negotiate pricing, or Contract terms and conditions, in advance of execution of the Contract;
- Q. Exercise any other right reserved or afforded to the District under this RFQ or under the Public Contract Code and applicable law; and/or
- R. Issue a single Notice to Proceed or multiple Notices to Proceed as specified in the Contract;

- S. The Proposer acknowledges that, by submitting a Statement of Qualifications in response to this RFQ, 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 CONSULTANT 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 “Consultant”).

RECITALS

WHEREAS, Consultant represents that it is a duly qualified land survey firm, experienced in the areas of land surveying, records research, monumentation and related services; and

WHEREAS, in the judgment of the District, it is necessary and desirable to employ the services of Consultant for right-of-way land surveying and related services.

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: Schedule of Rates

Article 3.      **REQUEST FOR SERVICES.**

Section 3.01                      Initiation Conference. SMART’s Real Estate Manager, Laura Giraud, or her designee, 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 Real Estate 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 Real Estate 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:

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## Article 5. Payment.

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

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

Section 5.02 Consultant shall be paid on a time and expense basis in accordance with **Exhibit B**; provided, however, that total payments to Consultant shall not exceed \$\_\_\_\_\_, without the prior written approval of SMART. Consultant shall submit its invoices in arrears on a monthly basis in a form approved by the Chief Financial Officer. The invoices shall show or include: (i) the task(s) performed; (ii) the 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 reimbursable materials/expenses, if any. All reimbursable expenses must comply with SMART's Travel Guidelines and must receive prior approval. Consultant's reimbursement for materials/expenses shall not include items already included in Consultant's overhead as may be billed as a part of its labor rates set forth in **Exhibit B**. SMART does not reimburse Consultant for travel time without the prior written approval from SMART's Real Estate Manager.

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 for three years with two options to renew for one (1) additional year each 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 Consultant fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, SMART may immediately terminate this Agreement by giving Consultant written notice of such termination, stating the reason for termination.

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

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

Section 7.05                    Authority to Terminate. The Board of Directors has the authority to terminate this Agreement on behalf of SMART. In addition, SMART's Representative 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 Sub consultants, 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. 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 9.03                    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 for all activities of Consultant 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, 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 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 Consultant and the Insureds in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.
- (d) Consultant hereby grants to SMART a waiver of any right to subrogation which any insurer of said Consultant may acquire against SMART by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not SMART has received a waiver of subrogation endorsement from the insurer.
- (e) The insurance policy(ies) shall be written by an insurance company or companies acceptable to SMART. Such insurance company shall be authorized to transact business in the state of California.

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

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, Consultant shall:

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

purchase “extending reporting” coverage for a minimum of three (3) years after completion of the work.

Section 9.08                      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 SMART's Representative 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 Consultant 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 Subconsultants, 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-Marín Area Rail Transit District  
5401 Old Redwood Highway, Suite 200  
Petaluma, CA 94954  
[billing@sonomamarintrain.org](mailto:billing@sonomamarintrain.org)  
(707) 794-3330

If to Consultant: [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. 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. 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            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.

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

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

**APPROVED AS TO FORM FOR SMART:**

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

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

# **EXHIBIT A**

## **SCOPE OF WORK**

### **1. Overview**

SMART is contracting with \_\_\_\_\_ to provide on-call land surveying services to assist SMART with existing and expanding passenger rail service along approximately 95 miles of existing publicly-owned rail corridor from Cloverdale in Sonoma County to Larkspur in Marin County, and to Schellville in Napa County.

### **2. Project Manager**

The primary contact will be SMART's Real Estate Manager, who will initiate all work and scope requirements for each project in writing.

### **3. Scope of Work**

Consultant shall perform the following services on an on-call and task-order basis:

- A. Complete survey work and recording of documents, including plats and legals;
- B. Records research and interpretation;
- C. Survey locations and elevations of existing features for as-built information;
- D. Marking property lines in the field;
- E. Quality control and review of other surveyor work to ensure that the surveys fit into SMART's datum;
- F. Monumentation, and;
- G. Recording any Records of Survey.

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

All surveying for the design and construction of the SMART project shall comply with Caltrans Survey Standards or better. Surveys shall, at a minimum, meet 3<sup>rd</sup> Order Caltrans Standards. All field notes and other survey data shall be made available to SMART as requested.

### **Initiation of Work**

SMART's Real Estate Manager, shall initiate all work requests in writing. The consultant 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 Real Estate Manager and Consultant shall come to an agreement regarding work requirements and SMART's Real Estate Manager 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 or overtime service requests must be approved in writing by SMART's Real Estate Manager.

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

Consultant is required to obtain right-of-way track access permits prior to equipment and personnel being onsite. SMART's Real Estate Manager shall coordinate the right-of-way track access permits with SMART's Operation team prior to releasing the Notice to Proceed for each task.

## **4. Acceptance Criteria**

Upon completion of the surveying services, SMART's Real Estate Manager or designee shall complete a final review of all documentation, reporting, and services provided to ensure compliance with all requirements. A successful review shall result in a written notice of project acceptance by SMART's Real Estate Manager.

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

**\*\*SCHEDULE OF RATES TO COME FROM RFQ RATE TABLE\*\***

**ATTACHMENT B – RECEIPT OF ADDENDA**

**ON-CALL LAND SURVEYING SERVICES**

**REQUEST FOR QUALIFICATIONS (RFQ)**

**CONTRACT NO. RE-PS-19-001**

**Please submit this Receipt of Addenda when submitting your Statement of Qualifications.**

I acknowledge receipt of the following Addenda to the “On-Call Land Surveying Services” Request for Qualifications (RFQ), initially issued on April 8, 2019.

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

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

By:

\_\_\_\_\_

Title:

\_\_\_\_\_