



REQUEST FOR PROPOSALS

FOR

**ON CALL TREE TRIMMING, TREE
REMOVAL, AND ARBORIST SERVICES**

SOLICITATION NO. OP-SV-20-001

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

Contact Person:

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

DATE ISSUED: February 7, 2020

PROPOSALS DUE: March 4, 2020 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 transit agency, is seeking proposals from qualified Contractors to provide on-call tree-trimming, tree removal, and arborist services along the SMART right-of-way and at District facilities located in Marin, Napa, and Sonoma Counties. All respondents to this Request for Proposals (“RFP”) shall be properly licensed in accordance with California law to perform the work.

Contractor must be able to respond to regular service requests within a twenty-four (24) hour period from the time first called to when the service is performed.

Contractor must be able to respond to and provide emergency tree services within two (2) hours of SMART’s initial call.

Contractor shall be required to provide all supervision, labor, materials, tools, equipment, and transportation for the work performed as part of this Agreement.

SMART intends to enter into an On-Call Service Agreement with one or more Contractors for a base period of two (2) years with three (3) one-year options to renew thereafter at SMART’s discretion.

The base term of the Agreement shall have a not-to-exceed amount of \$100,000. This Agreement does not have a minimum or maximum amount of work guaranteed.

SMART intends to award a contract to one or more qualified companies.

1.2 Scope of Services

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

1.3 General Qualifications

Proposers must have the following minimum qualifications and experience:

- Must be currently licensed to perform this scope of work in California.
- Arborists must hold an active International Society of Arboriculture (ISA) certification and license.

- Must be registered with the Department of Industrial Relations (DIR) and in active status.

1.4 Pre-Proposal Conference

There will not be a Pre-Proposal Conference for this Solicitation.

1.5 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.

1.6 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.

1.7 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

1.8 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 "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.

1.9 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 California Contractors License

Proposer shall be licensed as required by applicable state laws, rules, and regulations.

At the time of the Proposal Due Date, the Proposer shall possess a valid applicable State of California Contractor's License and be in good standing with the California Contractors' State License Board.

2.2 Proposal and Accompanying Documents

- A. Addenda: Receipt of all Addenda (Attachment B) must be completed and submitted with proposal. If there were no Addenda issued during the Solicitation, this form must still be signed and submitted.
- 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.

2.3 Conflict of Interest

Depending on the nature of the services performed, 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.

2.4 Labor Compliance Program

Special attention is directed to Division 2, Part 7, Chapter 1 Article 2 of the State Labor Code concerning wages. The Contractor and each Subcontractor shall pay to all workers employed on the Work not less than the prevailing rates of wages as determined by the Director of the California Department of Industrial Relations (DIR). Pursuant to Section 1773 of the State Labor Code, the District has obtained from the Director of the DIR the general prevailing wage rate of per diem wages and the general prevailing rate for holiday and overtime work in locality in which the Work is to be performed and has copies available upon request from SMART, 5401 Old Redwood Highway, Suite 200, Petaluma, CA 94954. For a craft or classification not shown on the general prevailing wage determinations, Contractor may be required to pay the wage rate of the most closely related craft or classification shown in such determinations for Contract Work or request a wage determination from the DIR for the craft or classification.

2.5 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.

2.6 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 - \$2,000,000 per occurrence, \$4,000,000 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.

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

2.7 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, Contractors, 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 **March 4, 2020 - 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:

Part	Contents
A	Letter of Transmittal
B	Project Understanding
C	Organization Structure
D	Prior Experience
E	Required Certificates and Forms
F	Equipment List
G	Cost Proposal

1 Original, (3) Hard copies of the Proposals are required, along with (1) electronic copy on a USB stick in PDF format.

PART A. LETTER OF TRANSMITTAL

Proposer to provide:

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.
- **A statement that, if selected, the Proposer accepts the terms and conditions of SMART’s “Sample 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

Proposer to provide:

- A brief description of how services will be provided, including the techniques and tools used.
- A brief narrative demonstrating the Proposer's understanding of SMART's scope of work, task order structure, and potential challenges.
- Proposer's management approach for effective communication, quality control, cost control, and ensuring service and deliverables are met in a timely manner.
- 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 "Sample Agreement for Contractor Services".
- The process and response time for emergency and non-emergency requests. Include the approximate length of time it will take to arrive to an on-call request in the following areas:
 - Larkspur, CA
 - Novato, CA
 - Petaluma, CA
 - Downtown Santa Rosa, CA
 - Windsor, CA
- OPTIONAL: Provide any recommendations for items that may have been overlooked or that will help clarify the work tasks.

PART C. ORGANIZATION STRUCTURE

Proposer to provide:

- An Organizational Chart of Key Personnel (e.g. Supervisor-in-Charge, Principal-in-Charge, Arborists, etc.)
- Include the following information for each Key Personnel:
 - Proposed role on this project.
 - Years of experience in similar roles.
 - Current Licenses and Certifications (including States where registered)
 - Summary of relevant project experience, citing specific projects.

- Arborists must hold an active International Society of Arboriculture (ISA) Certification.
- List the number of personnel and their classifications in a standard work crew.

PART D. PRIOR EXPERIENCE

Proposer to describe the qualifications and prior experience with similar public (city, county, state or local districts) clients including:

- Describe at least five (5) projects completed in the past five years which demonstrate experience in successfully performing similar work. Descriptions shall identify:
 - The specific role the company had in each project. **Client references must be provided for each project listed.**
 - Client Reference must include current contact information (name, title, phone number and e-mail address)
- Capsule Resumes for the Project Manager Proposed and the Arborists Proposed for this Agreement. The information must include the following:
 - Proposed role on this project.
 - Years of experience in similar roles.
 - Education and Certifications
 - Summary of relevant project experience, citing specific projects.

PART E. REQUIRED CERTIFICATES AND FORMS

- SMART Receipt of Addenda Form (Attachment B to this RFP)
- California Business License
- Department of Industrial Relations (DIR) Registration Number
- Copy of Contractor's License
- Arborist License and Certification for Arborists Proposed for this Agreement (ISA Certification)
- W-9 (Company must be in good standing to be considered)

PART F. EQUIPMENT LIST

Proposer to provide the following:

- Equipment List
 - Identify the type of equipment in the fleet
 - Identify the quantity of each equipment in the fleet

PART G. COST PROPOSAL

Proposer to provide a detailed cost proposal using the Attachment D “Cost Proposal Form”:

- Hourly rates for personnel by classification who will be assigned to the project.
- Unit prices for the following services: limb removal, tree removal, root pruning, stump removal.
 - All unit prices, shall include full compensation for all labor, materials, equipment, repair of any damage or other operating expense necessary to complete the work, maintenance of traffic controls and signs, and any other incidental work to complete the work in all places and no further compensation shall be made thereof.
- Other Expenses the contractor would charge in connection with the work, such as disposal fees, equipment/material/service costs (not already included in the Contractor’s overhead) that would be charged in connection with the work.

*Contractor is required to bill any materials/equipment charges at cost.

*SMART does not reimburse Contractor for travel time.

In the event that services are provided during a *declared State or Federal emergency*, in which immediate action is required to prevent or mitigate the loss or impairment of life, health, property, or essential services, **Contractor must follow Caltrans-approved rates for labor and equipment.** Those rates can be found at this link <https://dot.ca.gov/programs/construction/equipment-rental-rates-and-labor-surcharge>.

3.2 Procurement Schedule

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

<u>Date</u>	<u>Event</u>
February 7, 2020	Issue Request for Proposals
February 21, 2020	Deadline for Proposer's Questions
February 26, 2020	Final Addendum Issued by SMART
March 4, 2020	Proposals Due to SMART, 2:00 PM (Local Time)
March 4, 2020 – March 13, 2020	Evaluation of Proposals
March 13, 2020	Notice of Intent to Award a Contract
April 18, 2020	Board Approval (If applicable)
April 19, 2020	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. SAMPLE AGREEMENT FOR CONTRACTOR SERVICES

The successful Proposer(s) 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 Selection Committee for content.
- B. The Selection Committee will evaluate Proposals using only the evaluation criteria set forth in this RFP.

The Selection Committee will review the content of the Proposals submitted. The Selection Committee shall evaluate the Proposals based on the following criteria and weighting scale:

No.	Criteria Description	Weight
1	Experience and Expertise of Staff Proposed	20
2	Demonstrated history of providing similar services to comparable entities	20
3	Cost	20
4	Quality of work as verified by references	15
5	Response Time	15
6	Type of Equipment	10
TOTAL		100

- 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 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 Selection 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:

Point Value	Rating	Rating Description
0	Not Acceptable	Non-responsive, fails to meet RFP specifications. The approach has no probability of success.
1	Poor	Below average, falls short of expectations, is substandard to that which is the average or expected norm, has a low probability of success in achieving project objectives per RFP.
2	Fair	Has a reasonable probability of success; however, some objectives may not be met.
3	Average	Acceptable, achieves all objectives in a reasonable fashion per RFP specification. This will be the baseline score for each item with adjustments based on interpretation of proposal by Selection Committee members.
4	Above Average/Good	Very good probability of success, better than that which is average or expected as the norm. Achieves all objectives per RFP requirements and expectations.
5	Excellent/Exceptional	Exceeds expectations, very innovative, clearly superior to that which is average or expected as the norm. Excellent probability of success and in achieving all objectives and meeting RFP specification.

The Selection Committee Members shall use the adjectival ratings listed in the above table for each of the criteria. The adjectival ratings will be converted to the associated point value ("0-5") and multiplied by the weighting. A proposal with a high weighted total will be deemed of higher quality than a proposal with a lesser-weighted total.

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 contractor's 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 _____, 2020 ("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 and experienced in the areas of tree trimming, tree removal, arborist survey, and related services; and

WHEREAS, in the judgment of the Board of Directors of SMART or District, it is necessary and desirable to employ the services of Contractor for On-Call Tree Trimming, Tree Removal, Arborist Services, and other 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 & Timeline
- (b) Exhibit B: Fee Schedule
- (c) Exhibit C: Equipment List

Article 3. **REQUEST FOR SERVICES.**

Section 3.01 Initiation Conference. SMART's Superintendent Maintenance of Way, _____, 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 Maintenance of Way 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 Maintenance of Way 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 written consent of SMART. Key personnel shall be as listed in the applicable Task Order.
- (c) In the event that any of Contractor's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other

factors outside of Contractor's control, Contractor shall be responsible for timely provision of adequately qualified replacements.

- (d) Contractor shall assign the 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 project basis, detailing the tasks performed pursuant to the Scope of Work requested by SMART's Superintendent of Maintenance of Way, 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 expense basis in accordance with **Exhibit B**; provided, however, that total payments to Contractor shall not exceed **\$100,000**, without the prior written approval of SMART. Contractor shall submit its invoices in arrears on a project 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. Contractor's reimbursement for materials/expenses shall not include items already included in Contractor's overhead as may be billed as a part of its labor rates set forth in **Exhibit B**. SMART does not reimburse Contractor for travel time.

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 (2) years with three (3) one-year options to renew 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 Superintendent of Maintenance of Way 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, Contractors, and other agents to maintain, insurance as described below.

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

Section 9.02 General Liability Insurance. Commercial General Liability insurance covering products-completed and ongoing operations, property damage, bodily injury and personal injury using an occurrence policy form, in an amount no less than \$2,000,000 per occurrence, and \$4,000,000 aggregate. Said policy shall include a Railroads CG 24 17 endorsement removing the exclusion of coverage, if applicable, for bodily injury or property damage arising out of operations within 50 feet of any railroad property and affecting any railroad bridge, trestle, tracks, roadbeds, tunnel, underpass or crossing.

Section 9.03 Automobile Insurance. Automobile Liability insurance covering bodily injury and property damage in an amount no less than \$1,000,000 combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles. Said policy shall also include a CA 20 70 10 13 endorsement removing the exclusion of coverage for bodily injury or property damage arising out of operations within 50 feet of any railroad bridge, trestle, track, roadbeds, tunnel, underpass or crossing.

Section 9.04 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 9.05 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 of retention provision limiting payment to the name insured is not acceptable.

Section 9.06 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 9.07 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 9.08 Policy Obligations. Contractor’s indemnity and other obligations shall not be limited by the foregoing insurance requirements.

Section 9.09 Material Breach. If Contractor, for any reason, fails to maintain insurance coverage, which is required pursuant to this Agreement, the same shall be deemed a material breach of this Agreement. SMART, in its sole option, may

terminate this Agreement and obtain damages from Contractor resulting from said breach. Alternatively, SMART may purchase such required insurance coverage, and without further notice to Contractor, SMART may deduct from sums due to Contractor any premium costs advanced by SMART for such insurance. These remedies shall be in addition to any other remedies available to SMART.

Article 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.

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. SMART shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Contractor shall promptly deliver to SMART all such documents, which have not already been provided to SMART in such form or format, as SMART deems appropriate. Such documents shall be and will remain the property of SMART without restriction or limitation. Contractor may retain copies of the above- described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of SMART.

Article 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 Billing:	Sonoma-Marín Area Rail Transit District 5401 Old Redwood Highway, Suite 200 Petaluma, CA 94954 billing@sonomamarintrain.org 707-794-3330
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If to SMART Project Manager:	Sonoma-Marín Area Rail Transit District Attn: _____ 5401 Old Redwood Highway, Suite 200 Petaluma, CA 94954
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If to Contractor:	[To Come]
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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 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

Section 16.09 Prevailing Wage. 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 through 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 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: _____
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 & TIMELINE

1. General Objective

Contractor to provide on-call tree trimming, tree removal, stump grinding, arborist services, tree-related debris removal, and related services along SMART's right-of-way. The work shall be done on an as-needed basis and upon the request of SMART's project manager.

Contractor agrees to provide all supervision, labor, materials, tools, equipment, transportation, safety equipment, bonding, and insurance necessary to provide this service to SMART.

Contractor agrees to perform all work in strict compliance set forth by the American National Standards Institute ("A.N.S.I."), the International Society of Arboriculture (ISA) Western Chapter, and subject to the terms and conditions of the contract.

2. Project Managers

All work will be initiated, coordinated, and approved by Superintendent Maintenance of Way, _____, or his designee. Each request for work shall be issued to contractor in writing.

3. Procedures Before and After Performing Work

Project Manager shall contact contractor to initiate and schedule work to be performed.

Contractor shall provide a written estimate for the work to SMART Superintendent Maintenance of Way prior to the start of any job.

Estimate shall include type of service being performed, the location of the service, equipment and labor staff hours to complete the work, estimate start date, estimated completion date.

SMART shall issue a task order for the project to the Contractor. The Contractor shall sign the task order and return prior to any work commencing.

Contractor shall contact SMART Superintendent Maintenance of Way to schedule right-of-way access and to obtain a safety briefing prior to any work commencing.

4. Type of Work:

The following work tasks may be requested:

a. Tree Trimming

All tree trimming work to be at SMART's Superintendent Maintenance of Way's direction with input from Contractor's experienced staff and Certified Arborists.

All trimming shall provide adequate clearance for any obstructed signs, lights, buildings, or other requested standard.

b. Tree Removal

Contractor shall be expected to perform all tree removal services per current industry standards.

Contractor must have a Certified Arborist on onsite during the performance of work to supervise any tree removal.

Tree Removal shall include the removal of suckers and adjacent surface roots.

c. Stump Grinding

Grinding of Stumps must be thorough and complete by grinding at least 10 inches below ground level or at a depth specified by SMART's Superintendent Maintenance of Way.

Roots in the immediate area of the work site are to be removed either by grinding or digging out.

Underground Service Alert ("USA") is required prior to digging.

All depressions in the soil caused by stump or root removal shall be filled and compressed so as to leave the surface area, slightly raised (no more than three inches above surrounding grade).

d. Tree-Related Debris Removal

Contractor is responsible for removal of all wood, trimmings, and any debris caused by the work being performed.

SMART may request to have chipped waste material disposed of at a location of SMART's choice at the Contractor's expense.

If SMART does not request the chipped material to be disposed of at one of SMART's locations, Contractor shall properly remove and dispose of all wood, trimmings, chipped material, and debris after work is complete. The wood is not to be sold or given away while it is still on SMART's property.

SMART Superintendent Maintenance of Way or designee shall inspect the location the work was performed to ensure it was left in an orderly and clean state upon project completion. In the event that the location is not left in an acceptable state, Contractor at its sole expense will come back out to the site to correct.

5. Fire Safety

Contractor shall at all times maintain good housekeeping practices to reduce the risk of fire damage. All scrap materials, rubbish and trash shall be removed daily from in and about the work area and shall not be permitted to be scattered to adjacent property.

Contractor shall keep fire extinguishers on-site and readily available when performing work.

6. Equipment Requirements

The Sonoma-Marin Area Rail Transit District reserves the right to approve all equipment proposed for the work prior to use.

Contractor's equipment, including vehicles, shall be clean, in proper working order, well maintained, regularly checked for safety, and in compliance with all applicable laws and regulations.

Safety Equipment: Contractor shall provide and maintain all safety equipment and take all precautions to maintain safe vehicular and pedestrian traffic at each jobsite.

Site Examination: It shall be the responsibility of the Contractor to examine the trees that are to be serviced under this Agreement and to have full knowledge of the working conditions prior to providing SMART's Superintendent Maintenance of Way an estimate.

SMART shall not be responsible for loss or theft of Contractor's tools, equipment, and/or materials.

Contractor shall make his/her own arrangements for the storage of tools, materials, and equipment and shall assume all costs incurred therefrom.

7. Contractor's Responsibility

Contractor shall supply all supervision, labor, materials, and equipment to perform any work described herein and in each job request.

Contractor shall ensure all Arborists are certified by the International Society of Arboriculture (ISA).

Contractor shall furnish and post all work areas with warning signs/barricades and rope off the area as necessary, for pedestrian/vehicular safety and per industry standards.

While performing tree maintenance, Contractor shall inspect trees for unforeseen hazards and partner with SMART's Superintendent Maintenance of Way to receive authorization to perform any new work identified.

Contractor shall provide and use all means necessary to ensure the physical work to be performed is in accordance with all State of California, Local, and CAL-OSHA rules, regulations, and laws. Contractor shall conduct periodic safety meetings to ensure safe working practices and good judgement is used by personnel at all times. SMART's Superintendent Maintenance of Way has the authority to stop work if any unsafe practices are observed during the duration of this project.

8. Response Time

Regular maintenance service requests:

- Contractor shall respond within twenty-four (24) hours from the time first called to when the service is performed or at a time that is agreed upon by SMART's Superintendent Maintenance of Way.

Emergency response times are to be within two (2) hours.

- This means all labor, materials, and equipment are ready to go to start work.

Failure to respond within the required time as specified may result in the cancellation of this Agreement.

9. Damages to SMART and Private Property

Contractor shall ensure that no damage occurs to vehicles, landscape, structures or any other property.

In the event that Contractor causes damage to vehicles, landscape, structures or any other property, Contractor shall immediately notify SMART's Superintendent Maintenance of Way.

Contractor shall not make arrangements for third party contractors to repair any such damage without first receiving SMART's consent.

Any property damaged through the installation of temporary protection shall be replaced or repaired by the Contractor at Contractor's expense.

10. Acceptance Criteria

At the conclusion of each task order, SMART's Superintendent of Maintenance of Way, _____, or his designee shall walk the site and review the work performed. If the work performed met the requirements of the task order, SMART will issue a notice of project completion and recommend the contractor submit an invoice for review. If the work was not performed per the requirements of the task order, the contractor shall be instructed to correct the defective work at the sole expense of the contractor prior to recommending an invoice be submitted.

**EXHIBIT B
FEE SCHEDULE**

[To Come From Cost Proposal]

**EXHIBIT C
EQUIPMENT LIST**

[To Come From Proposal]

ATTACHMENT B – RECEIPT OF ADDENDA

ON CALL TREE TRIMMING, TREE REMOVAL, AND ARBORIST SERVICES

REQUEST FOR PROPOSALS (RFP)

CONTRACT NO. OP-SV-20-001

Please submit this Receipt of Addenda when submitting your Proposal.

I acknowledge receipt of the following Addenda to the “On-Call Tree Trimming, Tree Removal, and Arborist Services” Request for Proposals (RFP), initially issued on February 7, 2020.

Addendum __, dated _____, 2020
Addendum __, dated _____, 2020

Dated this ____ day of _____, 2020

By:

Title: _____

ATTACHMENT C SAMPLE TASK ORDER FORM



Sonoma-Marín Area Rail Transit On-Call Tree Trimming, Tree Removal, and Arborist Services Contract No. OP-SV-20-001

Budget/Cost Summary (Including Overhead, Fee, Travel Costs, ODC's):

Budget included covers all labor necessary for Task Order # _____. Labor rates to be used are as listed in Exhibit B of the contract. Total amounts not-to-exceed are as shown in the following table:

DETAILED DESCRIPTION OF TASK	Original Amount	Total
<ul style="list-style-type: none"> • Detailed Description of Task • Estimated # of Hours to Complete • Unit Cost Breakdown (per the Master Agreement Exhibit B Rate Schedule) 	\$ _____	\$ _____
Total Not-To-Exceed Amount		\$ _____

Contractor (Project Manager):	SMART Superintendent Maintenance of Way
Signature:	Signature:
Date:	Date:
	SMART Fiscal Manager
	Signature:
	Date:

ATTACHMENT D COST PROPOSAL FORM

SCHEDULED WORK		
GENERAL DESCRIPTION	UNIT TYPE	RATE
Pruning (per diameter inch under 24")	Per Inch	
Pruning (per diameter inch over 24")	Per Inch	
Tree Removals (per diameter inch under 24")	Per Inch	
Tree Removals (per diameter over 24")	Per Inch	
Stump Grinding	Per Stump	
UNSCHEDULED & EMERGENCY WORK		
GENERAL DESCRIPTION	UNIT TYPE	RATE
Emergency Call Out Crew (Please define the crew: how many people and their labor classifications)	Per Hour	
Supervisor	Per Hour	
Laborer	Per Hour	
Arborist	Per Hour	
Specialty Equipment Rental	Per Hour	(List on separate Sheet)

The hourly amounts listed above is the total amount quoted for the work specified, including the cost of license fees, permits, insurance, all applicable taxes and any other cost, direct or indirect, incidental to the contract.

Note: Other cost items may be negotiated with the Contracted awarded the work for as needed items not listed on this Cost Proposal and will be identified in the individual Task Order.

Annual Rate increases must be requested in writing no less than 30 days prior to the start of the following contracted year. The rate increase may not exceed the CPI-U (Consumer Price Index – All Urban Consumer) for San Francisco-Oakland-Hayward. SMART reserves the right to review and make a determination on all rate increases.

In the event that services are provided during a *declared State or Federal emergency*, in which immediate action is required to prevent or mitigate the loss or impairment of life, health, property, or essential services, **Contractor must follow Caltrans-approved rates for labor and equipment.** Those rates can be found at this link <https://dot.ca.gov/programs/construction/equipment-rental-rates-and-labor-surcharge>.