



BOARD OF DIRECTORS
REGULAR MEETING AGENDA
January 17, 2018 – 1:30 PM
5401 Old Redwood Highway, 1st Floor
Petaluma, CA 94954

1. Call to Order
2. Approval of the December 6, 2017 Board Meeting Minutes
3. Public Comment on Non-agenda Items
4. Board Member Announcements
5. General Manager's Report
6. Consent
 - a. Approval of Monthly Financial Reports
 - b. Approve a Resolution for the addition of (2) Full Time Engineer-Conductor Positions and (1) Part Time Bridge Tender Position
 - c. Approval of Masabi LLC Contract Amendment No. 1
7. Approve the Resolutions Designating SMART Authorized Agents and Other Required Documents for Senate Bill 1 State Rail Assistant Program Funds and State Transit Assistant State of Good Repair Program Funds
8. Authorize the General Manger to Execute Contract No. EV-PS-17-001 with Hanford ARC in an amount of \$183,689 for the Implementation and Monitoring of the Las Gallinas Creek Watershed Riparian Enhancement Plan
9. Approve and Authorize the Board Chair to Execute the Collective Bargaining Agreement between Sonoma-Marín Area Rail Transit District and International Brotherhood of Teamsters Local Union Number 665 for the period of January 15, 2018 to June 30, 2019

10. Closed Session
 - a. Conference with General Manager, Farhad Mansourian, pursuant to California Government Code Section 54956.8 regarding real estate property negotiations.
Property: Sonoma-Marín Area Rail Transit District
Santa Rosa property located at 2 W. 3rd St. and 34 W. 6th St.
APN #: 010-171-019, 010-166-003
Negotiating parties: Farhad Mansourian – ROEM
 - b. Conference with General Manager, Farhad Mansourian, pursuant to California Government Code Section 54956.8 regarding real estate property negotiations.
Property: APN(s): 007-131-003; 007-131-004 and 137-061-019
315 D Street and 890 N. McDowell Blvd., Petaluma
Negotiating Parties: Farhad Mansourian – Lomas Partners
 - c. Conference with the Chief of Police and General Manager regarding security of public services and public facilities pursuant to California Government Code Section 54957.
11. Report Out of Closed Session
12. Next Regular Meeting Board of Directors, February 7, 2018 – 1:30 PM – 5401 Old Redwood Highway, 1st Floor, Petaluma, CA 94954
13. Adjournment

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

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



**BOARD OF DIRECTORS
REGULAR MEETING MINUTES**

December 6, 2017 - 1:30 PM

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

1. Call to Order

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

2. Approval of the November 15, 2017 Board Meeting Minutes

MOTION: Director Mackenzie moved approval of November 15, 2017 minutes as presented. Director Lucan second. The motion carries 8-0-0. (Directors Arnold, Pahre, Phillips and Rabbitt absent)

3. Public Comment on Non-Agenda Items

Duane Bellinger stated that the Downtown Petaluma Station parking lot is always full. He suggested that SMART conducts a survey from riders before more funds are spent on additional parking structures in Petaluma.

Alisha O'Loughlin (Sonoma County Bicycle Coalition) thanked SMART staff for adding the third train car to accommodate cyclist and passengers. She acknowledged Outreach and Marketing Manager Jeanne Belding for reaching out to the Bicycle Coalitions in Sonoma and Marin Counties to research ways to accommodate the bicyclist and appreciates the collaborate spirit. She addressed her concerns regarding the Jennings Avenue Crossing. She urged SMART staff to begin construction of the at-grade crossing at Jennings Avenue as soon as possible. If SMART is not the responsible agency to move the project forward please inform the public and the Sonoma County Bicycle Coalition of the appropriate agency to move the project forward.

Bettina O'Brien stated that additional time to cross the street is needed for people with disabilities at pedestrian crossings. Chair Fudge stated that it will be helpful to also inform local cities.

Janet Borako voiced her concerns about the Jennings Avenue Crossing. She urged the Board members to direct SMART staff to begin construction at the Jennings Avenue Crossing since it's a very important at-grade crossing for the community.

Al Thomas (West End Farmers Market) thanked the Board and SMART staff for a successful start of passenger service in 2017. The weekend trains that arrive in Santa Rosa has helped local tourism. He encouraged SMART staff to continue researching ways to improve the time gaps.

Willard Richards (Santa Rosa Resident) voiced his concerns about the Jennings Avenue Crossing. There are safety issues regarding the Jennings Avenue Crossing and urged the Board to give the highest priority to begin the construction.

Steve Birdleough voiced his concerns about the Jennings Avenue Crossing. He illustrated safety visuals of the importance to begin construction. The City of Santa Rosa has agreed to fund the construction of the at-grade crossing and urged the Board to direct SMART Staff to begin construction.

Terry Shore (Greenbelt Alliance) stated she had a very enjoyable experience on the train. She urged the Board to prioritize the construction of the Jennings Avenue Crossing.

Johanna James stated that she has lived near the Jennings Avenue Crossing for over 40 years. She has supported SMART, not just for passenger service but for its commitment to promote pedestrian and bicycle pathways. The Jennings Avenue Crossing has been closed for over 2 years and many take the long detour. The safety provisions have been carefully designed, extensively reviewed and approved by the California Public Utility Commission (CPUC) over 1 year ago. Once completed it will become one of the safest Santa Rosa pedestrian crossings. She urged the Board to begin construction improvement for the Jennings Avenue Crossing.

James Duncan stated that he lives walking distance of the Jennings Avenue Crossing. At the September 20th Board meeting he expressed his concerns regarding the delay of the construction improvements of Jennings Avenue Crossing. He asked the Board to direct SMART staff to prepare a written summary for the public and community of all contracts, specific issues and projected construction dates related to the Jennings Avenue Crossing.

Chair Fudge asked General Manager Mansourian to discuss the current issues related to the Jennings Avenue Crossing in the General Manager's Report section.

4. Board Member Announcements

Director Mackenzie mentioned that he and Chair Fudge spoke at Sonoma State University students about their personal experiences as elected officials over the years. Also, the Metropolitan Transportation Commission (MTC) will hold a Regional Measure 3 (RM3)

workshop on December 20, 2017. The workshop will give an overview of the program and will provide an opportunity to address any concerns. Lastly, the old State Farm property has new owners. This area is a priority development section for the City of Rohnert Park and was also included in the Plan Bay Area 2040.

Director Zane mentioned that on December 5th the Sonoma County Board of Supervisors had a discussion on post fire recovery plans and how to continue to build for the future in order to house Sonoma County workforce. Now is the perfect opportunity to build around SMART stations, post fire disaster. Dir Zane also acknowledge there are a lot of seniors and renters that will have a hard time recovering from this disaster. Chair Fudge stated that the Town of Windsor is in the process of approving 4 level building units on the remaining lands.

Director Mackenzie stated that the Mayors and Councilmembers Association of Sonoma County will dedicate their 2018 meetings to discuss the fire recovery process and how to best coordinate efforts in the nine bay area cities.

5. General Manager's Report

General Manager Mansourian stated that SMART distributed all of the Business/Individual Relief Passes that were approved by the Board last month.

Mr. Mansourian clarified the State Rail Plan language. Your Board has directed the General Manager to continue the project going north (Windsor, Healdsburg and Cloverdale) to be the highest priority. The State Rail Plan suggested and recognized that SMART will complete the north project first and continue to pursue opportunities going east. Also, Chair Fudge clarified that SMART does not have a completion date for the North Segment Project (Windsor to Cloverdale), the State Rail Plan suggested a 2027 year.

Director Zane stated the citizens in the north have been very patient with SMART's project. SMART's first and highest priority is to complete the entire project.

Mr. Mansourian mentioned that ridership continues to increase. Weekend ridership has highs and lows. The third train car addition has received good feedback and SMART continues to research way to close the gap in the afternoon.

Mr. Mansourian responded to the Jennings Avenue Crossing public concerns. SMART has worked in various levels to resolve the issues. Chair Fudge and Director Zane have coordinated meetings and the City of Santa Rosa has cancelled. This is not a SMART project but a partnership project with the City of Santa Rosa. The CPUC requested SMART to install a fence at the request of the public safety concern. Director Zane stated that there have been various attempts to resolve the Jennings Avenue Crossing issues but the City of Santa Rosa does not want to participate. The public needs to pressure and contact the City of Santa Rosa representatives.

Director Mackenzie mentioned that there are legal matters that need to be resolved regarding Jennings Avenue Crossing.

Mr. Mansourian announced that the SMART Holiday Express Toy Drive is on Saturday, December 9, 2017. The train will stop at the following stations: Novato San Marin from 8:00am – 10:00am and Santa Rosa Downtown from 10:30am – 12:00pm. Additional drop off location: Cotati Station, Petaluma Downtown and San Rafael all from 12:00pm – 4:00pm. The local business partnering with SMART include Clover Sonoma, Minuteman Press in Petaluma, Signarama in Santa Rosa, FastSigns in Petaluma, Whistlestop in San Rafael and Petaluma Sephry Sportwear. This is very special since there are many kids in need of toys.

Director Zane mentioned that the County of Marin Human Resources Department made a beautiful banner and raised funds for gift card to distribute to Sonoma County families that lost their homes. The partnership between Marin and Sonoma County is very important and she thanked SMART for paving the Sonoma/Marin County relationship.

Director Mackenzie thanked staff for organizing the Toy Drive.

6. Consent
 - a. Approval of 2018 Monthly Board of Directors Meeting Calendar
 - b. Approve a Resolution Designating SMART Agent to Submit Applications for Disaster Assistance with the California Governor's Office of Emergency Services

Chair Fudge asked for Board and public comments on the proposed Consent Agenda.

MOTION: Director Mackenzie moved approval of the Consent Agenda as presented. Director Eddie second. The motion carries 8-0-0 (Director Arnold, Pahre, Phillips and Rabbitt absent).

7. Accept the Comprehensive Annual Financial Report Year 2016-17 and Memorandum of Internal Controls

Chief Financial Officer thanked Fiscal Manager Katye Roa for all her work on the report. Ms. McGrath gave an overview of the 2017 Comprehensive Annual Financial Report and Memorandum on Internal Controls documents by Maze & Associates. Maze & Associates is a new auditor this year as the result of a new procurement process completed earlier this year. The Comprehensive Annual Financial Report highlights include:

- SMART's net at the close of Fiscal Year was \$410 million
- Capital Assets were \$511.7 million
- Unrestricted Assets were \$57 million
- Sales Tax Revenue of \$36 million (3.7% higher than the prior year and higher than anticipated during the budget)

The Memorandum of Internal Control is also prepared by our auditors outlining their review of SMART's internal controls in accordance with auditing standards. We are pleased to report there were not findings of material weaknesses in SMART's financial statements.

Directors' Comments

Director Zane asked if SMART has a Fiscal Policy that addresses Sales Tax Revenue increase. Ms. McGrath responded that SMART does not have an adopted policy. However, any increase in sales tax revenue has been used towards the unexpected project expenses. Director Zane suggested that SMART have a fiscal policy which addresses sales tax revenue increases.

Director Eddie thanked Ms. McGrath and staff for an excellent report.

MOTION: Director Lucan moved approval to accept the Comprehensive Annual Financial Report Year 2016-17 and Memorandum of Internal Controls as presented. Director Sears second. The motion carries 8-0-0 (Directors Arnold, Pahre, Phillips and Rabbitt absent).

Chair Fudge adjourned the Board to closed session at 2:23 p.m. to discuss the following:

8. Closed Session - Conference with legal counsel regarding whether to initiate litigation pursuant to California Government Code Section 54956.9(d)(4); Number of possible cases: 1
9. Report Out of Closed Session

Chair Fudge reported out of closed session at 3:04 p.m. on the following:

Conference with legal counsel regarding whether to initiate litigation pursuant to California Government Code Section 54956.9(d)(4); Number of possible cases: 1

Report Out: The Board of directors gave direction given to staff

10. Next Regular Meeting Board of Directors, December 20, 2017 – 5401 Old Redwood Highway, 1st Floor, Petaluma, CA 94954
11. Adjournment – Meeting adjourned at: 3:05pm.

Respectfully submitted,

Leticia Rosas-Mendoza
Clerk of the Board

Approved on: _____



Debra Fudge, Chair
Sonoma County Mayors and
Councilmembers Association

January 17, 2018

Judy Arnold
Marin County Board of Supervisors

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

Damon Connolly
Marin County Board of Supervisors

Jim Eddie
Golden Gate Bridge,
Highway/Transportation District

SUBJECT: Monthly Financial Reports

Dan Hillmer
Marin Council of Mayors and
Councilmembers

Dear Board Members:

Eric Lucan
Transportation Authority of Marin

RECOMMENDATION: Information Item

Jake Mackenzie
Sonoma Mayors and Councilmembers
Association

SUMMARY:

As of December 31, SMART ended the month with a fund balance of \$40,167,075 and bond fund investments totaling \$25,313,884. Gross Sales Tax Revenue received through the month of December is \$13,155,939 and fare revenue is \$1,328,803. Spending is within overall budgetary authority as approved by the Board.

Barbara Pahre
Golden Gate Bridge,
Highway/Transportation District

Gary Phillips
Transportation Authority of Marin

David Rabbitt
Sonoma County Board of Supervisors

Very truly yours,

Carol Russell
Sonoma Mayors and Councilmembers
Association

Erin McGrath
Chief Financial Officer

Shirlee Zane
Sonoma County Board of Supervisors

Farhad Mansourian
General Manager

Attachment(s): Monthly Financial Reports
Contract Summary

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

SMART
Monthly Financial Report
As of December 2017

	FY 2017-18 Budget	YTD Actuals	Remaining Budget
Revenues			
Sales/Use Taxes	37,011,973	13,155,939	23,856,034
Interest Earnings	295,000	67,427	227,573
Rent - Real Estate	394,088	212,593	181,495
Other Governments	1,805,000	10,624	1,794,376
Measure M	285,000	119,251	165,749
MTC - RM2	4,073,222	2,420,654	1,652,567
Fare Revenue	2,950,000	1,328,803	1,621,197
Charges For Services	30,000	31,673	-
State Grants	4,321,096	-	4,321,096
Federal Funds	8,157,643	-	8,157,643
Miscellaneous Revenue	50,000	1,920,776	-
Revenue Total	59,373,023	19,267,740	41,977,731
Beginning Fund Balance	54,362,265		

Expenditures			
Administration			
Salaries & Benefits	5,309,286	2,007,975	3,301,311
Services & Supplies	7,154,019	1,899,048	5,254,971
Debt Service/ Other Charges	14,216,029	4,016,479	10,199,550
Depreciation	15,698,600	2,044,455	13,654,145
Machinery & Equipment	85,000	-	85,000
	42,462,935	9,967,957	32,494,977
Capital			
Salaries & Benefits	1,208,467	445,258	763,209
Services & Supplies	1,009,321	158,045	851,276
Other Charges	110,000	-	110,000
Land	2,839,000	2,019,000	820,000
Buildings & Capital Improvements	170,000	170,000	-
Machinery & Equipment	9,426,070	516,990	8,909,081
Infrastructure	26,894,030	8,589,233	18,304,797
Intangible Assets	-	-	-
	41,656,888	11,898,526	29,758,362
Operations			
Salaries & Benefits	12,766,695	5,121,486	7,645,209
Services & Supplies	7,670,769	1,905,230	5,765,539
Buildings & Capital Improvements	1,043,089	100,605	942,484
Appropriations for Contingencies	600,000	-	600,000
	22,080,553	7,127,321	14,953,232
Adjustments	(15,698,600)	(2,044,455)	(13,654,145)
Expenditure Total	90,501,776	26,949,348	63,552,427

Investment Report			
Bond Reserve Fund			
Sonoma County Treasury Pool		17,072,500	
Interest Fund			
Sonoma County Treasury Pool		2,683,709	
Project Fund			
Sonoma County Treasury Pool		372,535	
Principal Fund			
Sonoma County Treasury Pool		5,185,140	
SMART Fund Balance			
Bank of Marin		10,480,988	
Sonoma County Treasury Pool		29,686,087	
		65,480,959	

Capital Project Report			
	Budget	Actual	Remaining
Phase 1 Operating Segment			
Revenues	448,207,379	442,075,704	6,131,675
Expenditures	448,207,379	412,714,164	35,493,215
Additional Railcar Purchase			
Revenues	11,000,000	220,000	10,780,000
Expenditures	11,000,000	220,000	10,780,000
San Rafael to Larkspur Extension			
Revenues	55,435,059	3,125,000	52,310,059
Expenditures	55,435,059	10,136,766	45,298,294



Contract Summary

Active Contracts as of December 31, 2017

Contractor	Scope	Fiscal Year 17-18 Projected	Fiscal Year 17/18 Actuals-To-Date
A.J. Janitorial Service	SMART Station Janitorial and Related Services	\$75,550.00	\$33,550
A.J. Janitorial Service	Janitorial Services for the ROC, Fulton, and Roblar	\$25,000.00	\$8,878
Adobe Associates Inc.	Real Estate Property Support Services	\$12,000.00	\$7,392
ADS System Safety Consulting, LLC	Safety Program Development and Emergency Preparedness Consultation Services	\$39,912.00	\$0
Ahlborn Fence & Steel, Inc.	Fencing and Gate Installation Services at the ROC	\$2,815.00	\$2,815
Ahlborn Fence & Steel, Inc.	Claim-Based Fencing Repair Work	\$3,950.00	\$3,950
Alcohol & Drug Testing Services, LLC	DOT Drug and Alcohol Testing	\$35,000.00	\$3,036
Alliant Insurance Services	Insurance Brokerage & Risk Management Services	\$71,000.00	\$0
Amerikiwi, LLC	Container Lifting and Transporting Services	\$5,000.00	\$0
Aramark Uniform Services	Employee Uniform Provider and Cleaning Service	\$60,000.00	\$6,637
Area West Environmental, Inc	Environmental Compliance Support Services	\$44,491.00	\$0
Asbury Environmental Services (AES)	Recycling & Disposal Service for Used Oil, Fuel Filters, Rags, and Related Equipment	\$11,439.00	\$2,395
Barbier Security Group	Security Guard/Patrol Services	\$25,000.00	\$0
Becoming Independent	Emergency Bus Bridge Services	\$20,000.00	\$0
Bender Rosenthal, Inc.	Real Estate Support Services for Larkspur Extension	\$98,780.00	\$14,801
Bettin Investigations	Background Investigations	\$10,000.00	\$5,450
Big Cat Advertising	Digital Advertisement Services	\$18,000.00	\$9,000
Biggs Cardosa Associates, Inc.	Engineering Design and Construction Support for Payran to Southpoint Multi-Use Pathway	\$325,000.00	\$96,763
Bradford D. Andersen dba Andersen Window Tinting	Anti-Graffiti Film and Window Tinting Installation Services for Stations	\$1,850.00	\$1,850
Bullet Guard	Design and Installation of Safety Glass	\$10,804.03	\$0
Burke, Williams & Sorensen, LLP	Litigation Support Services	\$129,348.00	\$81,538
Cal Accessibility, Inc.	ADA Compliance Support Services	\$20,000.00	\$0
CALOPPS - City of Foster City	Internet Employment Website - CALOPPS	\$2,000.00	\$0
Cascade Training Center	AED Program Management	\$6,610.00	\$6,610
Certified Employment Group	Temporary Staffing Services	\$16,470.00	\$12,884
Cinquini & Passarino, Inc.	Land Surveying and Related Services	\$15,000.00	\$1,245
CMC Traffic Control Specialists	Flagging, Traffic Control, and Related Services	\$254,762.00	\$43,718
Coates Field Service, Inc.	Real Estate Acquisition and Relocation Services	\$20,000.00	\$1,360
David Rzepinski & Associates	Transit Market, Fare Analysis, Coordination	\$10,000.00	\$306
David Tattersall & Co.	Real Estate Appraisal Services	\$10,000.00	\$0
De Angelo Brothers, LLC (DBI Services)	Real Estate Appraisal Services for Larkspur Extension	\$10,000.00	\$0
Denno Enterprises	Vegetation Control Services	\$24,627.00	\$0
DGD Feeds (dba Frizelle Enos Feeds)	ROW Maintenance & Weed Abatement	\$89,420.00	\$58,915
Diego Truck Repair	Dust Suppression Services for Downtown Petaluma and Airport Blvd Park & Ride Lots	\$3,000.00	\$2,722
Dr. Mark Clementi	Towing, Recoveries, Demolition, and Related Services	\$1,000.00	\$1,000
eLock Technologies, LLC	Pre-Employment Psychological Evaluations	\$15,000.00	\$9,253
Empire Cleaners	Station Bike Lockers and Maintenance Services	\$10,500.00	\$0
Emtec Consulting Services, LLC	Uniform Dry-Cleaning, Laundering, and Related Services	\$41,873.00	\$3,103
ePath Learning, Inc.	Oracle Accounting System Support Services	\$65,000.00	\$3,638
Everbridge, Inc.	Cloud-Based Training / Learning Management Software	\$6,180.00	\$0
George Hills Company, Inc.	Nixle Computer Software (Cloud-based)	\$15,662.00	\$0
GHD, Inc.	Third Party Claims Administration Services	\$60,000.00	\$899
Golden Gate Bridge, Highway and Transportation District	SWPP Compliance, AutoCAD Management, Traffic and Hydraulic Analysis for CP4	\$182,373.00	\$10,133
Golden Gate Bridge, Highway and Transportation District	Customer Service Support Services	\$89,806.00	\$72,000
GP Crane & Hoist Services	Weekend Bus Service between San Rafael Transit Center and Larkspur Ferry	\$43,578.00	\$9,235
Granicus, Inc.	Cal/OSHA Crane Inspection Services	\$11,050.00	\$0
Heavy Equipment Transportation, Inc.	Media Streaming & Internet Broadcasting Services	\$8,500.00	\$3,930
Holland Company	Transportation Services for Heavy Machinery and Equipment	\$1,000.00	\$0
Hulcher Services, Inc.	Track Geometry and Measurement Services	\$30,000.00	\$0
ICF Jones & Stokes, Inc.	Derailment & Hazmat Services	\$40,000.00	\$0
Intelletrace, Inc.	Environmental Permitting Management and Support Services	\$360,320.00	\$80,509
Intelligent Technology Solutions, Inc.	Internet/Cellular Tower Maintenance Services	\$37,538.00	\$11,000
	Maximo MMS Implementation and Support Services	\$122,101.00	\$60,607

Contractor	Scope	Fiscal Year 17-18 Projected	Fiscal Year 17/18 Actuals-To-Date
James Flageollet	Legal Services	\$109,325.00	\$56,030
John Zanzi	Fire and Life Safety Planning	\$10,000.00	\$4,650
Krebs Construction Services, Inc	Project Cost Management Services	\$1,000.00	\$0
Leete Generators	Generator Maintenance	\$4,000.00	\$0
Lescure Company, Inc.	Fuel Reel Removal and Capping of Fueling Outlets	\$24,725.00	\$24,725
LTK Engineering Services	Vehicle and Systems Design and Construction Management Services	\$758,667.00	\$390,362
Managed Health Network	Employee Assistance Program (EAP) Services	\$4,500.00	\$2,191
MaxAccel	Compliance Management Software Design/Implementation/Asset Management	\$14,500.00	\$0
Maze & Associates	Financial Audit Services	\$40,540.00	\$34,704
MGrodrner, LLC	Project Management Services	\$99,575.00	\$18,045
Netspeed Solutions, Inc.	Avaya IP Office Support and Professional Services at Roblar	\$1,417.00	\$0
Netspeed Solutions, Inc.	Avaya IP Office Support and Professional Services at Petaluma, ROC, and MOW	\$5,800.00	\$0
Netwoven Inc.	Design Information Architecture for Document and Project Management Technology	\$46,050.00	\$12,758
North Bay SAP Services	Substance Abuse Professional Services	\$5,000.00	\$0
Nossaman LLP	Legal Services - Railroad Regulatory Issues & Transit D-B Projects	\$75,000.00	\$0
Occupational Health Centers of CA	Pre-Employment Evaluation Services	\$9,421.00	\$4,207
Oracle	Fusion Enterprise Resource Planning (ERP) Software & Hosting Services	\$42,707.00	\$21,353
Parks Electric	On-Call Electrical Contracting Services	\$10,000.00	\$6,085
Parodi Investigative Solutions	Pre-Employment Background Investigation Services	\$10,000.00	\$9,500
Paychex	Payroll Processing Services	\$31,000.00	\$13,216
Platinum Advisors, LLC	State Legislative Advocacy Services	\$120,000.00	\$50,000
Portola Systems, Inc.	SMART Station Network Configuration Services	\$185,006.00	\$36,900
Public Financial Management, Inc.	Arbitrage Rebate Compliance Services	\$2,000.00	\$0
Public Financial Management, Inc.	Financial Advisory Services	\$5,000.00	\$0
RailPros, Inc.	Professional Engineering Services for Larkspur Extension	\$180,000.00	\$141,159
Reyff Electric Company	On-Call Electrician Services	\$6,820.00	\$0
ServPro of Lake Mendocino and Sonoma County	Biohazard Clean-Up and Hazmat Services	\$24,360.00	\$0
Shimmick Construction Co, Inc.	D/B Construction of IOS2, Haystack, OMF, Station Finishes and Pathway	\$3,292,813.00	\$2,563,580
Sonoma County Fleet Operation Division	Non-Revenue Fleet Maintenance Services	\$75,000.00	\$0
Sonoma County Probation Department	Right-of-Way Vegetation Control, Brush and Debris Removal, and Homeless Camp Clean-up	\$42,160.00	\$6,541
SPTJ Consulting	Network Infrastructure, Security, Migration and Setup Services	\$133,416.00	\$51,570
Stacy and Witbeck/Herzog, JV	Design/Build Construction of Civil, Track & Structures Improvements of Larkspur Extension	\$11,000,000.00	\$5,501,732
Stacy and Witbeck/Herzog, JV	Design/Build Construction of Civil, Track & Structures Improvements of IOS-1	\$1,178,173.00	\$604,068
Stericycle, Inc.	Medical Waste Pick-Up and Disposal Services	\$1,918.00	\$0
Steve Taylor Excavation	Excavation, Asphalt, and Related Contracting Services	\$35,000.00	\$0
Stripe N Seal	Painting, Stenciling, and Asphalt Sealing Services	\$4,152.00	\$0
STV, Inc.	On-Call Railroad Bridge Inspection Services	\$50,000.00	\$0
Sumitomo Corporation	Manufacture & Delivery of Vehicles	\$8,978,318.00	\$3,088,446
Summit Signal, Inc.	Emergency Call-Out Services for Track and Signals	\$10,000.00	\$0
The GBS Group	Internet Connectivity (Wi-Fi) for SMART Trains	\$254,647.00	\$147,635
United Mechanical Incorporated	HVAC Maintenance Services at SMART Facilities	\$24,994.00	\$0
United Mechanical Incorporated	HVAC Installation Services for SMART Facilities	\$16,832.00	\$16,832
Utah Transit Authority	DMU Wheel Truing Services	\$90,000.00	\$0
Van Scoyoc Associates	Federal Legislative Advocacy Services	\$51,000.00	\$16,000
Ventek Transit Inc.	Fare Vending Machine Operations and Maintenance Services	\$225,000.00	\$54,772
Viewu	Cloud-Based Storage of Security Data	\$720.00	\$0
WBE	Design and Installation of Security Equipment	\$95,088.00	\$88,786
William Campagna	Disability Access Consultant Services	\$30,000.00	\$7,125
	Totals	\$30,063,953.03	\$13,644,094

*Actuals-To-Date includes invoices that have been approved as of December 31, 2017, but may not have been processed in SMART's Financial System.



Debora Fudge, Chair
Sonoma County Mayors' and
Councilmembers Association

Judy Arnold
Marin County Board of Supervisors

Damon Connolly
Marin County Board of Supervisors

Jim Eddie
Golden Gate Bridge,
Highway/Transportation District

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Jake Mackenzie
Sonoma County Mayors' and
Councilmembers Association

Barbara Pahre
Golden Gate Bridge,
Highway/Transportation District

Gary Phillips
Transportation Authority of Marin

David Rabbitt
Sonoma County Board of Supervisors

Carol Russell
Sonoma County Mayors' and
Councilmembers Association

Shirlee Zane
Sonoma County Board of Supervisors

Farhad Mansourian
General Manager

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

January 17, 2018

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

SUBJECT: Budget Amendment to SMART Personnel Allocations

Dear Board Members:

RECOMMENDATION:

Approve Resolution No. 2018-03 authorizing the addition of two (2) Full Time Equivalent (FTE) Engineer-Conductor positions and one (1) Part Time (0.5 FTE) Bridge Tender position in the Operations budgeted position authorizations.

SUMMARY:

On June 21, 2017, the Board adopted Resolution Number 2017-05 approving the annual budget for Fiscal Year 2017-2018, which considered the creation of employee positions and set the compensation and salary for those positions.



We currently have Twenty-Three (23) FTE Engineer-Conductor positions. The Engineer-Conductor position is responsible for the safe and reliable operation of SMART rail vehicles in revenue service, assisting passengers, and inspection of fares. We recommend that the approved position authorizations for Fiscal Year 2017-18 be amended to add two (2) Full Time (2.0 FTE) Engineer-Conductor positions and one (1) Part Time (0.5 FTE) Bridge Tender position to the Operations budget.

With the start of revenue service in August 2017, the District began running passenger trains seven days per week. SMART currently operates 34 train trips per day during the weekday commute service. Each train requires a crew of two Engineer-Conductors. In order for us to improve service and provide additional trips, we are seeking approval to add two additional Engineer-Conductors. The addition of two (2) FTE Engineer-Conductor positions would result in a total of twenty five (25) FTE Engineer-Conductors. These positions can also be filled by a lower level position of Conductor, however, no more than a combined total of 25 total FTE in either job class will be allowed.

Additional train trips place a higher need on monitoring and operation of the Haystack Bridge. Thus we request your approval of an additional Part Time (0.5 FTE) Bridge Tender position. The Bridge Tender is responsible for monitoring and directing marine and train traffic and safely operating the Haystack Bridge over the Petaluma River. Below are the changes that would be made to the Authorized positions in the Fiscal Year 2017-18 budget:

Position	FTE	Hourly Salary Range	
Engineer-Conductor	25 23	\$38.22	\$44.96
Bridge Tender	2.5 2	\$21.04	\$25.58

FISCAL IMPACT: The adoption of this resolution will result in an annual increase in salary and benefits costs of \$368,347. This cost will be offset in Fiscal Year 2017-18 by savings in the salary account from the vacant Deputy General Manager position. The attached resolution would revise the position authorizations in the Fiscal Year 2017-18 budget.

REVIEWED BY: [X] Finance  [X] Counsel 

Very truly yours,



Lisa Hansley
Human Resources Manager

Attachment(s): Resolution No. 2018-03 Amending the Position Authorizations for Fiscal Year 2017-18

**Resolution No. 2018-03
Sonoma-Marín Area Rail Transit District
January 17, 2018**

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT, STATE OF CALIFORNIA, AMENDING RESOLUTION NO. 2017-05 TO REVISE THE ANNUAL BUDGET FOR FISCAL YEAR 2017-18 TO PROVIDE FOR REVISED POSITION AUTHORITY

WHEREAS, as part of its approval of the Annual Budget for Fiscal Year 2017-18, the Board duly considered the annual expenditures necessary for the Sonoma-Marín Area Rail Transit District; and

WHEREAS, on June 21, 2017, the Board adopted Resolution No. 2017-05 approving the Annual Budget for Fiscal Year 2017-18; and

WHEREAS, Resolution No. 2017-05 considered the creation of employee positions and fixed the compensation and salary for those positions; and

WHEREAS, the Board desires to amend the Annual Budget to provide revised position authority and to increase appropriation authority for increased salary and benefit expenditures.

NOW, THEREFORE, BE IT RESOLVED that the Fiscal Year 2017-18 Budget for the Sonoma-Marín Area Rail Transit District attached as Exhibit A to Resolution No. 2017-05 is hereby amended to revise Table 4, Fiscal Year 2017-18 Proposed Position Authorizations, to reflect position revisions shown below:

POSITION	FTE	Annual		Hourly	
		Low	High	Low	High
Bridge Tender	2.5	\$43,763	\$53,206	\$21.04	\$25.58
Engineer-Conductor	25	\$79,498	\$93,517	\$38.22	\$44.96

BE IT FURTHER RESOLVED except as specifically amended or supplemented by this Resolution, Resolution No. 2017-05, together with all supplements, amendments and exhibits thereto is, and shall continue to be, in full force and effect as originally adopted, and nothing contained herein shall, or shall be construed to, modify, invalidate, or otherwise affect any provision of Resolution No. 2017-05.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 17th day of January, 2018, by the following vote:

DIRECTORS:

AYES:

NOES:

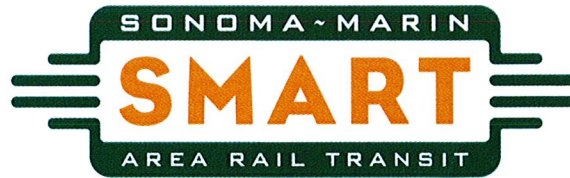
ABSENT:

ABSTAIN:

Debora Fudge, Chair, Board of Directors
Sonoma-Marín Area Rail Transit District

ATTEST:

Leticia Rosas-Mendoza, Clerk of the Board of Directors
Sonoma-Marín Area Rail Transit District



January 17, 2018

Debora Fudge, Chair
Sonoma County Mayors and
Councilmembers Association

Judy Arnold
Marin County Board of Supervisors

Damon Connolly
Marin County Board of Supervisors

Jim Eddie
Golden Gate Bridge,
Highway/Transportation District

Eric Lucan
Transportation Authority of Marin

Jake Mackenzie
Sonoma Mayors and Councilmembers
Association

Stephanie Moulton-Peters
Marin Council of Mayors and
Councilmembers

Barbara Pahre
Golden Gate Bridge,
Highway/Transportation District

Gary Phillips
Transportation Authority of Marin

David Rabbitt
Sonoma County Board of Supervisors

Carol Russell
Sonoma Mayors and Councilmembers
Association

Shirlee Zane
Sonoma County Board of Supervisors

Farhad Mansourian
General Manager

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SUBJECT: Approve Amendment No. 1 to Contract No. OT-PS-16-004 with Masabi LLC for SMART’s Mobile Ticketing Pilot Program

Dear Board Members:

RECOMMENDATION:

Authorize the General Manager to execute Amendment No. 1 with Masabi LLC to continue SMART’s Mobile Ticketing Pilot Program in the amount of \$51,600, for a total contract amount of \$186,600, and extend the term of the contract through June 2019.

SUMMARY:

In August 2016, your Board approved the implementation of a SMART Mobile Ticketing Pilot Program. After evaluating several mobile options and interviewing fellow transit agencies, SMART awarded a contract to Masabi LLC to design, implement, and provide backend support and reporting for SMART’s Mobile Ticketing Pilot Program.


The goal of SMART’s Mobile Ticketing Pilot Program is to enhance SMART’s Clipper fare collection system by providing an additional fare option for SMART customers, such as tourists or occasional riders who do not want to purchase a Clipper card. The Mobile App allows multiple tickets to be purchased at the same time, reduces lines at the Clipper vending machines, allows SMART to offer fare products and special event ticketing options that can’t be provided through the Clipper system.

The SMART Mobile App was launched in late August 2017 to coincide with the launch of SMART’s passenger service. The Mobile App offers one-way and round-trip tickets at either the regular adult rate or 50% discounted rates for seniors, youth, and persons with disabilities. Since its launch, SMART’s Mobile App has experienced steady usage. As of December 31, 2017, there have been 32,206 activations, equating to roughly 16% of SMART’s total fare collection program.

The contract with Masabi LLC was originally set to expire on December 31, 2017. Given that passenger service did not begin until August 2017, we are still in the process evaluating our fare product needs. In order to provide adequate time to monitor SMART's Mobile Ticketing Pilot Program, and to better align with the fiscal year, we are recommending a contract extension with Masabi LL through June 2019. This extension allows us to collect more data, determine which other products might need to be developed, and evaluate whether the new Clipper program will include a mobile interface.

We were able to successfully negotiate a rate reduction as part of this amendment, going from \$5,000 per month to \$4,900 per month beginning January 2018. As such, we recommend the approval of Amendment No. 1 to increase the contract amount by \$51,600, for a total not-to-exceed amount of \$186,600, and extend the term through June 2019.

FISCAL IMPACT: Funds for the contract extension are included in the Fiscal Year 2017-18 budget.

REVIEWED BY: [] Finance _____ [X] Counsel  _____

Very truly yours,



Erin McGrath
Chief Financial Officer

Attachment(s): Masabi LLC Contract Amendment No. 1

**FIRST AMENDMENT TO AGREEMENT FOR VENDOR SERVICES BETWEEN
THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
AND MASABI, LLC**

This First Amendment dated as of January 1, 2018 (the “First Amendment”) to the Agreement for Vendor Services by and between the Sonoma-Marín Area Rail Transit District (“SMART”) and Masabi, LLC (“VENDOR”), dated as of October 3, 2016 (the “Original Agreement,” and now as amended by this First Amendment, the “Agreement”).

RECITALS

WHEREAS, SMART and VENDOR previously entered into the Original Agreement to develop a mobile ticketing application and associated software solutions in the form of a Mobile Ticketing Pilot Project to enable passengers to purchase tickets to ride the SMART Train; and

WHEREAS, SMART desires to amend the Agreement to extend the term to June 30, 2019 and increase the not-to-exceed amount by \$51,600 for a total not-to-exceed amount of \$186,600; and

WHEREAS, SMART desires to amend the Agreement to change the monthly Ongoing Service and Support costs; and

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

AGREEMENT

1. **“ARTICLE 2. LIST OF EXHIBITS”**

“Section 2.01 The following exhibit is amended as follows:

(b) Exhibit B: Fee or Schedule of Hourly Rates – The Exhibit B remains as-is with the exception of the Ongoing Service and Support Fee Type which is amended to reduce the cost from \$5,000 per month to \$4,900 per month as evidenced in the attached Exhibit B.”

2. **“ARTICLE 5. PAYMENT”** Section 5.02 of the Agreement is replaced by the following:

“Section 5.02 Vendor shall be paid, as full compensation for the satisfactory completion of the work described in the Scope of Work (Exhibit A), in accordance with the budget established in Exhibit B, provided, however, that Vendor agrees to perform all services described in the Scope of Work for the

negotiated amount of \$186,600, regardless of whether it takes Vendor more time to complete or costs are more than anticipated. The not-to-exceed (NTE) amount of \$186,600 for this Agreement includes labor, travel, supervision, applicable surcharges such as taxes, insurance, and fringe benefits as well as indirect costs, overhead, and profit allowance, equipment, materials, and supplies; in no case shall Vendor be reimbursed for an amount in excess of the NTE amount without a formal written amendment to this Agreement.”

3. **“ARTICLE 6. TERM OF AGREEMENT”** Article 6 of the Agreement is amended as follows:

“Section 6.01 The term of this Agreement shall remain in effect until June 30, 2019 unless terminated earlier in accordance with the provisions of **Article 7** below.”

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

THIS SPACE INTENTIONALLY LEFT BLANK

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

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

Dated: _____

By _____
Farhad Mansourian, General Manager

MASABI, LLC

Dated: _____

By _____
Its _____

APPROVED AS TO FORM:

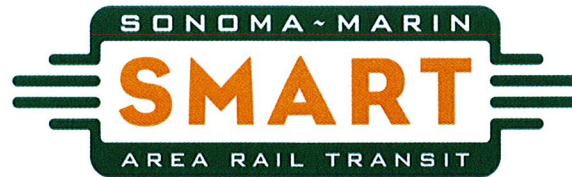
Dated: _____

By _____
District Counsel

**EXHIBIT B
FEE SCHEDULE**

Fee Structure

Fee Type	Cost	Notes
Ongoing Service and Support	\$5,000/month	Through December 2017
Ongoing Service and Support	\$4,900/month	Beginning January 2018



Debora Fudge, Chair
 Sonoma County Mayors and
 Councilmembers Association

January 17, 2018

Judy Arnold
 Marin County Board of Supervisors

Damon Connolly
 Marin County Board of Supervisors

Jim Eddie
 Golden Gate Bridge,
 Highway/Transportation District

Dan Hillmer
 Marin Council of Mayors and
 Councilmembers

Eric Lucan
 Transportation Authority of Marin

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SUBJECT: Designation of SMART Authorized Agents and Other Required Documents for Senate Bill 1 State Rail Assistance Program Funds and State Transit Assistance State of Good Repair Program Funds

Dear Board Members:

RECOMMENDATIONS:

1. Approve Resolution Number 2018-01 designating the General Manager as the Authorized Agent and approving necessary Certifications and Assurances to submit applications for State Rail Assistance Program Funds.
2. Approve Resolution Number 2018-02 designating the General Manager as the Authorized Agent and approving necessary Certifications and Assurances to submit applications for State Transit Assistance State of Good Repair Program Funds.

SUMMARY:

With the start of passenger revenue services, SMART becomes eligible to receive several State funding sources starting in Fiscal Year 2017/18. For some of these funds, Board resolutions authorizing submittal of all necessary application materials are required. Two of these funding sources are included in this staff report for your consideration and two will come before your Board at a future date. The two programs included here are funded through the passage of 2017 Road Repair and Accountability Act (Senate Bill 1). Each of these fund sources has been assumed in SMART's financial planning and Fiscal Year 2017/18 Annual Budget to support operating expenses.

State Rail Assistance Funds

The 2017 Road Repair and Accountability Act (Senate Bill 1) included several programs in support of transit and rail. The first program is the State Rail Assistance Program, which directs a .5% portion of new diesel sales tax revenue for allocation divided between the State's five Commuter Rail systems and three InterCity Rail systems. These funds can be used for operating or capital expenses. SMART's share of these funds is anticipated to provide \$2.5 million in 2017-18, \$3.9 million in 2018-19 and \$4.1 million in 2019-20. The California State Transportation Agency (CalSTA) is the administering agency for these funds and their guidelines allow rail operators to request the first three years of State Rail Assistance funds, for Fiscal Years 2017-18 through Fiscal Year 2019-20, at this time.

SMART was able to deploy additional levels of service than originally planned with the start of passenger rail services, in part due to the passage of SB1 and the creation of this State Rail Assistance Program. We deployed 34 weekday trips and 10 weekend trips, rather than the originally planned 30 weekday trips and 8 weekend trips, and anticipate further expansion of operating levels this fiscal year. The ability for SMART to achieve and maintain these operating service levels assumes that these State Rail Assistance funds are allocated to SMART for operations expenses for Fiscal Years 2017-18 through Fiscal Years 2019-20.

In order to receive this new funding, we recommend your Board approve the attached Board resolution authorizing the execution of the State Rail Assistance-funded project, titled SMART Commuter Rail Operations, and also authorize the execution of Certifications and Assurances and Authorized Agent Forms for the funds.



State Transit Assistance – State of Good Repair

The 2017 Road Repair and Accountability Act (Senate Bill 1) also added funding into the State Transit Assistance Program, but placed restrictions on the use of these new revenues. These funds can be used for transit capital projects or services to maintain or repair a transit operator’s existing fleet or transit facilities. SMART’s formula share of these funds is \$153,741 for Fiscal Year 2017-18.

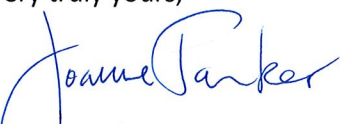
SMART’s current Fiscal Year 2017-18 Annual Budget anticipated these State of Good Repair funds are received and expended on eligible capital maintenance components of the operating budget, notably Capital Spare Parts for rail vehicles and signal equipment.

State Transit Assistance – State of Good Repair funds require a Board resolution which also authorizes the execution of Certifications and Assurances and Authorized Agent Forms. This is a one-time requirement to receive these funds that will need to be updated only when there are staff changes or if the program guidelines are updated. We recommend approval of this resolution in order to receive the funds allocated to SMART through the funding formula.

FISCAL IMPACT: SMART anticipated these fund sources as part of the Board-approved Fiscal Year 2017-18 budget.

REVIEWED BY: [x] Finance  [x] Counsel 

Very truly yours,


Joanne Parker
Programming and Grants Manager

Attachment(s):

- 1) Resolution Number 2018-01 for State Rail Assistance Funds
- 2) Certifications and Assurances and Authorized Agent Form for State Rail Assistance Funds
- 3) Resolution Number 2018-02 for STA State of Good Repair Fund
- 4) Certifications and Assurances and Authorized Agent Form for STA State of Good Repair Funds

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT AUTHORIZING THE EXECUTION OF THE CERTIFICATION AND ASSURANCES AND AUTHORIZED AGENT FORMS FOR STATE RAIL ASSISTANCE FUNDS AND AUTHORIZING THE EXECUTION OF THE STATE RAILASSISTANCE PROJECT, SMART COMMUTER RAIL OPERATIONS FOR FISCAL YEARS 2017/18, 2018/19 AND 2019/20 FOR AN ESTIMATED \$10,500,000

WHEREAS, the Sonoma-Marín Area Rail Transit District (SMART) is an eligible project sponsor and may receive funding from State Rail Assistance (SRA) for transit projects; and

WHEREAS, the statues related to state-funded transit project require implementing agencies to abide by various regulations; and

WHEREAS, Senate Bill 1 (2017) named the California State Transportation Agency (CalSTA) as the administering agency for the SRA; and

WHEREAS, CalSTA has developed guidelines for the purpose of administering and distributing SRA funds to eligible project sponsors (Agencies identified as eligible recipients of these funds); and

WHEREAS, SMART wishes to delegate authorization to execute these documents and any amendments thereto to SMART's General Manager, Farhad Mansourian; and

WHEREAS, SMART wishes to implement the SMART Commuter Rail Operations Project

NOW, THEREFORE, BE IT RESOLVED THAT THE Board of Directors of the SMART District hereby

1. Authorizes the submittal of the SMART Commuter Rail Operations Project for nomination and allocation request to CalSTA for State Rail Assistance funds for \$2.5 million in FY 2017-18, \$3.9 million in FY 2018-19, and \$4.1 million in FY 2019-20; and
2. Agrees to comply with all conditions and requirements set for in the Certifications and Assurances and Authorized Agent documents and applicable statutes, regulations and guidelines for all SRA funded transit projects; and
3. Designates SMART's General Manager, Farhad Mansourian, to be authorized to execute all required documents of the SRA program and any Amendments thereto with the California Transportation Agency which may be necessary for the completion of the aforementioned project.

**Resolution No. 2018-01
Sonoma-Marín Area Rail Transit District
January 17, 2018**

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 17th day of January, 2018, by the following vote:

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

Debora Fudge, Chair, Board of Directors
Sonoma-Marín Area Rail Transit District

ATTEST:

Leticia Rosas-Mendoza, Clerk of Board of Directors
Sonoma-Marín Area Rail Transit District

Lead Agency: Sonoma-Marin Area Rail Transit District (SMART)

Project Name: SMART Commuter Rail Operations

Prepared by: Joanne Parker

The California State Transportation Agency (CalSTA) has adopted the following Certifications and Assurances for State Rail Assistance (SRA). As a condition of the receipt of SRA funds, project lead must comply with these terms and conditions.

A. General

1. The project lead agrees to abide by the current SRA Guidelines and applicable legal requirements.
2. The project lead must submit to CalSTA a signed Authorized Agent form designating the representative who can submit documents on behalf of the project sponsor and a copy of the board resolution appointing the Authorized Agent.

B. Project Administration

1. **The project lead certifies that required environmental documentation is complete before requesting an allocation of SRA funds. The project lead assures that projects approved for SRA funding comply with Public Resources Code § 21100 and § 21150.**
2. The project lead certifies that a dedicated bank account for SRA funds only will be established within 30 days of receipt of SRA funds.
3. The project lead certifies that when SRA funds are used for a transit capital project, that the project will be completed and remain in operation for its useful life.
4. The project lead certifies that it has the legal, financial, and technical capacity to carry out the project, including the safety and security aspects of that project.
5. The project lead certifies that they will notify CalSTA of pending litigation, dispute, or negative audit findings related to the project, before receiving an allocation of funds.
6. The project lead must maintain satisfactory continuing control over the use of project equipment and facilities and will adequately maintain project equipment and facilities for the useful life of the
7. Any interest the project lead earns on SRA funds must be used only on approved SRA projects.
8. The project lead must notify CalSTA of any changes to the approved project with a Corrective Action Plan (CAP).
9. Under extraordinary circumstances, a project lead may terminate a project prior to completion. In the event the project lead terminates a project prior to completion, the project lead must (1) contact CalSTA in writing and follow-up with a phone call verifying receipt of such notice; (2) pursuant to verification, submit a final report indicating the reason for the termination and demonstrating the expended funds were used on the intended purpose; (3) submit a request to reassign the funds to a new project within 180 days of termination.
10. Funds must be encumbered and liquidated within the time allowed

C. Reporting

1. The project lead must submit the following SRA reports:
 - a. Semi-Annual Progress Reports by August 15th (starting 2018) and February 15th (starting 2019).
 - b. A Final Report within six months of project completion.

D. Cost Principles

1. The project lead agrees to comply with Title 2 of the Code of Federal Regulations 225 (2 CFR 225), Cost Principles for State and Local Government, and 2 CFR, Part 200, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
2. The project lead agrees, and will assure that its contractors and subcontractors will be obligated to agree, that:
 - a. Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allow ability of individual project cost items and
 - b. Those parties shall comply with Federal administrative procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Every sub-recipient receiving SRA funds as a contractor or sub-contractor shall comply with Federal administrative procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
3. Any project cost for which the project lead has received funds that are determined by subsequent audit to be unallowable under 2 CFR 225, 48 CFR, Chapter 1, Part 31 or 2 CFR, Part 200, are subject to repayment by the project lead to the State of California (State). All projects must reduce greenhouse gas emissions, as required under Public Resources Code section 75230, and any project that fails to reduce greenhouse gases shall also have its project costs submit to repayment by the project lead to the State. Should the project lead fail to reimburse moneys due to the State within thirty (30) days of demand, or within such other period as may be agreed in writing between the Parties hereto, the State is authorized to intercept and withhold future payments due the project lead from the State or any third-party source, including but not limited to, the State Treasurer and the State Controller.

A. Record Retention

1. The project lead agrees, and will assure that its contractors and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred project costs and matching funds by line item for the project. The accounting system of the project lead, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles (GAAP), and enable the determination of incurred costs at interim points of completion. All accounting records and other supporting papers of the project lead, its contractors and subcontractors connected with SRA funding shall be maintained for a minimum of three (3) years after the “Project Closeout” report, and shall be held open to inspection, copying, and audit by representatives of the State and the California State Auditor. Copies thereof will be furnished by the project lead, its contractors, and subcontractors upon receipt of any request made by the State or its agents. In conducting an audit of the costs claimed, the State will rely to the maximum extent possible on any prior audit of the project lead pursuant to the provisions of federal and State law. In the absence of such an audit, any acceptable audit work performed by the project lead’s external and internal auditors may be relied upon and used by the State when planning and conducting additional audits.

2. For the purpose of determining compliance with Title 21, California Code of Regulations, Section 2500 et seq., when applicable, and other matters connected with the performance of the project lead’s contracts with third parties pursuant to Government Code § 8546.7, the project sponsor, its contractors and subcontractors and the State shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such materials available at their respective offices at all reasonable times during the entire project period and for three (3) years from the date of final payment. The State, the California State Auditor, or any duly authorized representative of the State, shall each have access to any books, records, and documents that are pertinent to a project for audits, examinations, excerpts, and transactions, and the project lead shall furnish copies thereof if requested.

3. The project lead, its contractors and subcontractors will permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by the State, for the purpose of any investigation to ascertain compliance with this document.

F. Special Situations

CalSTA may perform an audit and/or request detailed project information of the project sponsor’s SRA funded projects at CalSTA’ discretion at any time prior to the **completion of the SRA funded project.**

I certify all of these conditions will be met.

Farhad Mansourian
(Print Authorized Agent)

General Manager
(Title)

(Signature)

(Date)



Authorized Agent (Attachment C)

2017-18 through 2019-20

AS THE Chair, Board of Directors
(Chief Executive Officer/Director/President/Secretary)

OF THE Sonoma-Marín Area Rail Transit District (SMART)
(Name of County/City Organization)

I hereby authorize the following individual(s) to execute for and on behalf of the named Regional Entity/Transit Operator, any actions necessary for the purpose of obtaining State Rail Assistance (SRA) funds provided by CalSTA. I understand that if there is a change in the authorized agent, the project sponsor must submit a new form. This form is required even when the authorized agent is the executive authority himself. I understand the Board must provide a resolution approving the Authorized Agent. The Board Resolution appointing the Authorized Agent is attached.

Farhad Mansourian, General Manager OR
(Name and Title of Authorized Agent)

Erin McGrath, Chief Financial Officer OR
(Name and Title of Authorized Agent)

(Name and Title of Authorized Agent)

Debora Fudge
(Print Name)

Chair, Board of Directors
(Title)

(Signature)

Approved this 17 day of January, 2018

Only needed if there is a change in the Authorized Agent(s).

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT AUTHORIZING THE EXECUTION OF THE CERTIFICATION AND ASSURANCES AND AUTHORIZED AGENT FORMS FOR STATE TRANSIT ASSISTANCE STATE OF GOOD REPAIR FUNDS

WHEREAS, the Sonoma-Marín Area Rail Transit District (SMART) is an eligible project sponsor and may receive State Transit Assistance funding from State of Good Repair Account (SGR) now or sometime in the future for transit projects; and

WHEREAS, the statues related to state-funded transit project require a local or regional implementing agency to abide by various regulations; and

WHEREAS, Senate Bill 1 (2017) named the Department of Transportation (Department) as the administering agency for the SGR; and

WHEREAS, the Department has developed guidelines for the purpose of administering and distributing SGR funds to eligible project sponsors (local agencies); and

WHEREAS, SMART wishes to delegate authorization to execute these documents and any amendments thereto to SMART's General Manager or his designee

NOW, THEREFORE, BE IT RESOLVED THAT THE Board of Directors of the SMART District hereby designates SMART's General Manager, Farhad Mansourian, be authorized to execute all required documents of the SGR program and any Amendments thereto with the California Department of Transportation.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 17th day of January, 2018, by the following vote:

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

Debora Fudge, Chair, Board of Directors
Sonoma-Marín Area Rail Transit District

ATTEST:

Leticia Rosas-Mendoza, Clerk of Board of Directors
Sonoma-Marín Area Rail Transit District

DRAFT State Transit Assistance State of Good Repair Program

Recipient Certifications and Assurances

Recipient: *Sonoma-Marín Area Rail Transit District (SMART)*

Effective Date: *January 17, 2018*.

In order to receive State of Good Repair Program (SGR) funds from the California Department of Transportation (Department), recipients must agree to following terms and conditions:

A. General

- (1) The recipient agrees to abide by the State of Good Repair Guidelines as may be updated from time to time.
- (2) The potential recipient must submit to the Department a State of Good Repair Program Project List annually, listing all projects proposed to be funded by the SGR program. The project list should include the estimated SGR share assigned to each project along with the total estimated cost of each project..
- (3) The recipient must submit a signed Authorized Agent form designating the representative who can submit documents on behalf of the recipient and a copy of the board resolution authorizing the agent.

B. Project Administration

- (1) The recipient certifies that required environmental documentation will be completed prior to expending SGR funds. The recipient assures that each project approved for SGR funding comply with Public Resources Code § 21100 and § 21150.
- (2) The recipient certifies that SGR funds will be used for transit purposes and SGR funded projects will be completed and remain in operation for the estimated useful lives of the assets or improvements.
- (3) The recipient certifies that it has the legal, financial, and technical capacity to deliver the projects, including the safety and security aspects of each project.

- (4) The recipient certifies that there is no pending litigation, dispute, or negative audit findings related to any SGR project at the time an SGR project is submitted in the annual list.
- (5) Recipient agrees to notify the Department immediately if litigation is filed or disputes arise after submission of the annual project list and to notify the Department of any negative audit findings related to any project using SGR funds.
- (6) The recipient must maintain satisfactory continuing control over the use of project equipment and/or facilities and will adequately maintain project equipment and/or facilities for the estimated useful life of each project.
- (7) Any and all interest the recipient earns on SGR funds must be reported to the Department and may only be used on approved SGR projects or returned to the Department.
- (8) The recipient must notify the Department of any proposed changes to an approved project list by submitting an amended project list.
- (9) Funds will be expended in a timely manner.

C. Reporting

- (1) Per Public Utilities Code § 99312.1 (e) and (f), the recipient must submit the following SGR reports:
 - a. Annual Expenditure Reports within six months of the close of the fiscal year (by December 31st) of each year.
 - b. The annual audit required under the Transportation Development Act (TDA), to verify receipt and appropriate expenditure of SGR funds. A copy of the audit report must be submitted to the Department within six months of the close of each fiscal year in which SGR funds have been received or expended.

D. Cost Principles

- (1) The recipient agrees to comply with Title 2 of the Code of Federal Regulations Part 200, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- (2) The recipient agrees, and will assure that its contractors and subcontractors will be obligated to agree, that (a) Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual project cost items and (b) those parties shall

comply with Federal administrative procedures in accordance with 2 CFR, Part 200, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

- (3) Any project cost for which the recipient has received payment that are determined by subsequent audit to be unallowable under 2 CFR, Part 200, are subject to repayment by the recipient to the State of California (State). Should the recipient fail to reimburse moneys due to the State within thirty (30) days of demand, or within such other period as may be agreed in writing between the Parties hereto, the State is authorized to intercept and withhold future payments due the recipient from the State or any third-party source, including but not limited to, the State Treasurer and the State Controller.

E. Record Retention

- (1) The recipient agrees, and will assure that its contractors and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred project costs and matching funds by line item for the project. The accounting system of the recipient, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices. All accounting records and other supporting papers of the recipient, its contractors and subcontractors connected with SGR funding shall be maintained for a minimum of three (3) years from the date of final payment and shall be held open to inspection, copying, and audit by representatives of the State and the California State Auditor. Copies thereof will be furnished by the recipient, its contractors, and subcontractors upon receipt of any request made by the State or its agents. In conducting an audit of the costs claimed, the State will rely to the maximum extent possible on any prior audit of the recipient pursuant to the provisions of federal and State law. In the absence of such an audit, any acceptable audit work performed by the recipient's external and internal auditors may be relied upon and used by the State when planning and conducting additional audits.
- (2) For the purpose of determining compliance with Title 21, California Code of Regulations, Section 2500 et seq., when applicable, and other matters connected with the performance of the recipient's contracts with third parties pursuant to Government Code § 8546.7, the recipient, its contractors and subcontractors and the Department shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such materials available at their respective offices at all reasonable times during the entire project period and for three (3) years from the date of final payment. The State, the California State Auditor, or any duly authorized representative of the State, shall each have access to any books, records, and documents that are pertinent to a

project for audits, examinations, excerpts, and transactions, and the recipient shall furnish copies thereof if requested.

- (3) The recipient, its contractors and subcontractors will permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by the State, for the purpose of any investigation to ascertain compliance with this document.

F. Special Situations

- (1) Recipient acknowledges that if a project list is not submitted timely, the recipient forfeits its apportionment for that fiscal year.
- (2) Recipients with delinquent expenditure reports may risk future eligibility for future SGR funding.
- (3) Recipient acknowledges that the Department shall have the right to perform an audit and/or request detailed project information of the recipient's SGR funded projects at the Department's discretion from SGR award through 3 years after the completion and final billing of any SGR funded project.. Recipient agrees to provide any requested project information.

I certify all of these conditions will be met.

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

BY: _____
Farhad Mansourian, General Manager

ATTACHMENT I

(INSERT Agency Board Resolution approving this document)



Authorized Agent

The following individual(s) are hereby authorized to execute for and on behalf of the named Regional Entity/Transit Operator, and to take any actions necessary for the purpose of obtaining State Transit Assistance State of Good Repair funds provided by the California Department of Transportation, Division of Rail and Mass Transportation. This form is valid at the beginning of Fiscal Year 2017-2018 until the end of the State of Good Repair Program. If there is a change in the authorized agent, the project sponsor must submit a new form. This form is required even when the authorized agent is the executive authority himself.

Farhad Mansourian, General Manager OR
 (Name and Title of Authorized Agent)

General Manager Designee OR
 (Name and Title of Authorized Agent)

 (Name and Title of Authorized Agent)

AS THE Chair, Board of Directors
 (Chief Executive Officer / Director / President / Secretary)

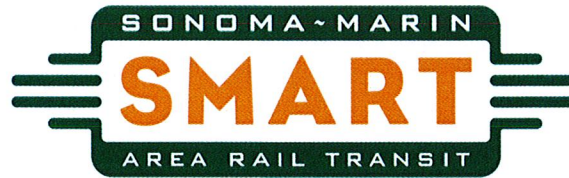
OF THE Sonoma-Marín Area Rail Transit District
 (Name of County/City Organization)

Debora Fudge
 (Print Name)

Chair, Board of Directors
 (Title)

 (Signature)

Approved this 17 day of January, 2018



Debora Fudge, Chair
 Sonoma County Mayors' and
 Councilmembers Association

Judy Arnold
 Marin County Board of Supervisors

Damon Connolly
 Marin County Board of Supervisors

Jim Eddie
 Golden Gate Bridge,
 Highway/Transportation District

Dan Hillmer
 Marin County Council of Mayors and
 Councilmembers

Eric Lucan
 Transportation Authority of Marin

Jake Mackenzie
 Sonoma County Mayors' and
 Councilmembers Association

Barbara Pahre
 Golden Gate Bridge,
 Highway/Transportation District

Gary Phillips
 Transportation Authority of Marin

David Rabbitt
 Sonoma County Board of Supervisors

Carol Russell
 Sonoma County Mayors' and
 Councilmembers Association

Shirlee Zane
 Sonoma County Board of Supervisors

Farhad Mansourian
 General Manager

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

January 17, 2018

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

SUBJECT: Approve Contract No. EV-PS-17-001 with Hanford ARC for the Implementation and Monitoring of the Las Gallinas Creek Watershed Riparian Enhancement Plan for \$183,689.

Dear Board Members:

RECOMMENDATION:

Approve Contract No. EV-PS-17-001 with Hanford ARC for the Implementation and Monitoring of the Las Gallinas Creek Watershed Riparian Enhancement Plan for \$183,689 which fulfills agency permit requirements to mitigate for the recently constructed 1-mile multiuse pathway between Civic Center Station to North San Pedro Road in San Rafael.

SUMMARY:

Construction has recently finished on a 1-mile multiuse pathway along SMART's rail line between North San Pedro Road and Marin Civic Center Station in San Rafael, referred to as Segment 1 Pathway. This construction directly impacts wildlife and riparian habitat and to mitigate for these impacts, SMART has designed a plan to restore and enhance a section of riparian area at Las Gallinas Creek in San Rafael adjacent to the Segment 1 Pathway. The enhancement plan includes preparing site, installing irrigation and native vegetation and maintaining, monitoring and reporting on the progress of the installed vegetation. This enhancement project has been approved by the City of San Rafael, California Fish and Wildlife, and the San Francisco Bay Regional Water Quality Control Board. SMART Staff initiated a contract with Hanford ARC to implement the enhancement project and recommends that your Board approve Contract No. EV-PS-17-001.

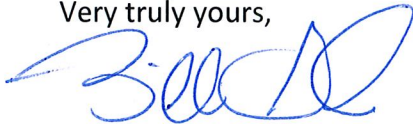
SMART staff opened an Informal Bid process pursuant to Public Contract Code §22030 et seq., for the Implementation of the Las Gallinas Creek Watershed Riparian Enhancement Plan on November 3, 2017. The bidding closed on December 1, 2017. Hanford ARC was deemed the lowest responsive and responsible bidder with a total not-to-exceed bid amount of \$183,689.00.

Staff therefore recommends that your Board approve Contract No. EV-PS-17-001 with Hanford ARC for the Implementation and Monitoring of the Las Gallinas Creek Watershed Riparian Enhancement Plan for the amount of \$183,689.00.

FISCAL IMPACT: This work was anticipated in the Fiscal Year 2017-18 budget.

REVIEWED BY: Finance  Counsel 

Very truly yours,



Bill Gamlen, P.E.
Chief Engineer

Attachment(s): Contract No. EV-PS-17-001 with Hanford ARC

**AGREEMENT FOR CONTRACTOR SERVICES
IMPLEMENTATION AND MONITORING OF THE LAS GALLINAS CREEK
WATERSHED RIPARIAN ENHANCEMENT PLAN**

This agreement (“Agreement”), dated as of _____, 2018 (“Effective Date”) is by and between the Sonoma-Marín Area Rail Transit District (hereinafter “SMART”), and Hanford Restoration & Conservation (hereinafter “Contractor”).

RECITALS

WHEREAS, Contractor represents that it is a duly qualified contractor, experienced in the areas of propagating and acquiring native plant material, installing and maintaining riparian projects, monitoring, reporting, and other related services; and

WHEREAS, in the judgment of the Board of Directors of SMART, it is necessary and desirable to employ the services of Contractor for implementing and monitoring the Las Gallinas Creek Watershed Riparian Enhancement Plan.

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: Location of Las Gallinas Creek Watershed Channels A and B

ARTICLE 3. REQUEST FOR SERVICES.

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

Will Johnson – Project Manager

Patrick Downs – Project Superintendent

Mark Kalnins – Restoration Ecologist (Consultant)

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

Section 5.02 Contractor shall be paid, as full compensation for the satisfactory completion of the work described in the Scope of Work (**Exhibit A**) on a Task basis in accordance with the budget established in **Exhibit B**, provided, however, that Contractor agrees to perform all services described in the Scope of Work for the negotiated amount of \$183,689.00, regardless of whether it takes Contractor more time to complete or costs are more than anticipated. The not-to-exceed (NTE) amount of \$183,689.00 for this Agreement includes labor, supervision, applicable surcharges such as taxes, insurance and fringe benefits as well as indirect costs, overhead and profit allowance, equipment, materials and supplies; in no case shall Contractor be reimbursed for an amount in excess of the NTE amount without a formal written amendment to this Agreement. The hourly rates included herein are for SMART's evaluation, review and auditing purposes only. Contractor shall submit its invoices in arrears on a monthly basis in a form approved by the Chief Financial Officer. The invoices shall show or include: (i) the task(s) performed; (ii) the time in hours devoted to the task(s); (iii) the hourly rate or rates of the persons performing the task(s); and (iv) copies of receipts for reimbursable materials/expenses, if any. 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**, and must be documented in accordance with, and fully comply with, all SMART's applicable policies for reimbursement, including, but not limited to, SMART's Travel Guidelines. SMART 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 until January 17, 2022 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, the Chief Engineer or General Manager, in consultation with SMART Counsel, shall have the authority to terminate this Agreement on behalf of SMART.

ARTICLE 8. INDEMNIFICATION

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 \$2,000,000 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 effected by the Insureds.
- (c) Inclusion of the Insureds as additional insureds shall not in any way affect its rights either as respects any claim, demand, suit or judgment made, brought or recovered against Licensee. Said policy shall protect Contractor and the Insureds in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.
- (d) Contractor hereby grants to SMART a waiver of any right to subrogation which any insurer of said Contractor may acquire against SMART by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not SMART has received a waiver of subrogation endorsement from the insurer.
- (e) The insurance policy(ies) shall be written by an insurance company or companies acceptable to SMART. Such insurance company shall be authorized to transact business in the state of California.

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

Section 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 or 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 Chief Engineer must authorize all other extra or changed work. The parties expressly recognize that SMART personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of 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: Sonoma-Marín Area Rail Transit District
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954
billing@sonomamarintrain.org

If to Contractor: Hanford Applied Restoration & Conservation
Attn: Will Johnson
596 First Street East
Sonoma, CA 95476
will@hanfordarc.com
(707) 766-4905

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. Venue for any action to enforce the terms of this Agreement or for the breach thereof shall be in the Superior Court of the State of California in the County of Marin.

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

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

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

Section 16.09 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 16.10 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 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 1771.1(a) and 1725.5, Public Works Contractor Registration Program, Electronic Certified Payroll Records submission to the State Labor Commissioner and other requirements described at www.dir.ca.gov/dise/PublicWorks.html. Applicable projects are subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

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

A corporate insurer or a reciprocal or interinsurance exchange to which the Insurance Commissioner has issued a certificate of authority to transact surety insurance in this state, as defined in Section 105 of the Insurance Code (California Code of Civil Procedures Section 995.120).

Section 16.12 Claims Made Against Contractor. Contractor shall provide SMART with copies of all correspondence and records relating to any claims made against the Contractor while working on SMART's property by SMART employees or third parties on a monthly basis.

Section 16.13 Contractor's Equipment. SMART will not be responsible for Contractor's equipment which are damaged by any means, vandalized, or stolen.

Section 16.14 Damage to Adjacent Properties. The Contractor shall be responsible for any damages to adjacent properties, public or private, resulting from Contractor's negligence. The Contractor shall, at its expense, restore, repair, replace and maintain all property, regardless of ownership, which is damaged or altered by the Contractors or its subcontractor's negligence.

Section 16.15 Material Disposal. Contractor is responsible for the proper disposal of all related materials and empty containers.

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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: _____
Katherine DiPasqua, Sr. Administrative Analyst

Date: _____

APPROVED AS TO FORM FOR SMART:

By: _____
District Counsel

Date: _____

EXHIBIT A
SCOPE OF WORK & TIMELINE

PROJECT OVERVIEW

The Sonoma-Marín Area Rail Transit District (SMART) is rehabilitating approximately 70 miles of the existing Northwest Pacific Railroad between Cloverdale in Sonoma County and Larkspur in Marin County to provide passenger trains and a system of non-motorized pathways in San Francisco's North Bay. Ongoing rail construction and current planned non-motorized pathway construction is located between Larkspur Landing in Marin County and Airport Boulevard in Sonoma County. Construction of these projects involves removal of riparian vegetation.

SMART has collaborated with a variety of stakeholders, including the City of San Rafael, the County of Marin, Point Blue Conservation Science, and the Gallinas Watershed Council, to identify a riparian mitigation project in the Las Gallinas Creek watershed, in the City of San Rafael. Hanford ARC is being contracted with to implement the October 2017 Las Gallinas Creek Watershed Riparian Enhancement Plan described below.

This mitigation project site was selected for its proximity to SMART project work and its potential ecological and community benefits to the Las Gallinas watershed. The mitigation project would enhance at least 0.12 acre and 565 linear feet of riparian habitat.



Las Gallinas Creek Watershed Riparian Enhancement Plan

Prepared for, and Revised October 2017 by:

Sonoma-Marín Area Rail Transit District (SMART)

5401 Old Redwood Highway, Petaluma, CA 94954

Contact: Bill Gamlen, Chief Engineer (707) 794-3330

Original Version Prepared by:

Point Blue Conservation Science

3820 Cypress Drive #11, Petaluma, CA 94954

Contact: John Parodi, STRAW Project Manager (707) 781-2555 ext 361

-and-

Prunuske Chatham, Inc. (PCI)

400 Morris Street, Suite G, Sebastopol, CA 95472

Contact: Harold C. Appleton, RPF, CPESC Phone (707) 824-4600

Version I prepared October 20, 2015

Revision 1 prepared July 31, 2017 for San Francisco Bay Water Board and California
Department of Fish and Wildlife

Revision 2 prepared October 20, 2017 for bidders

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INTRODUCTION

This Riparian Enhancement Plan provides an approach and specifications for implementing riparian enhancement along two channels that are tributary to Las Gallinas Creek in San Rafael, California. Successful implementation of this plan will provide compensatory mitigation for riparian habitat impacts incurred by Sonoma- Marin Area Rail Transit District (SMART) projects. This plan is proposed, in part, to satisfy condition 3.2 in Final Streambed Alteration Agreement 1600-2015-0266-R3.

MITIGATION SITE LOCATION AND SUMMARY

The following are observations and recommendations for riparian mitigation plantings along the Gallinas Creek channel and the adjacent connecting drainage channel located near 380 Merrydale Road, San Rafael, GPS midpoint location: 37.999595° - 122.538019° (Figure 1). The mitigation site was chosen for its proximity to SMART project work and mitigates for impacts to the Gallinas Watershed. This site is a priority location for the Gallinas Watershed Council, a local environmental organization, as mitigation efforts will restore degraded wetland/riparian areas.

Furthermore, the site has been approved by the San Francisco Bay Regional Water Quality Control Board (Water Board), the City of San Rafael, and the Marin County Flood Control Division. It is located within County Flood Control easements and is within the City of San Rafael's right of way.

CURRENT CONDITIONS AND ENHANCEMENT OPPORTUNITY

The banks along the channels consist of mostly non-native vegetation that provides minimal shade to the waterways. Additional site descriptions are included below. The ecological functions to be enhanced include providing improved water quality (shading and erosion control), wildlife habitat (native plant species diversity), air quality (carbon sequestration and net oxygen production), as well as aesthetics. The planting area has been divided into two zones. Zone A is the drainage channel along Merrydale Rd and Zone B is Gallinas Creek channel from Merrydale to 101 (Figure 1). Together these sites will provide at least 0.12 acre and 565 linear feet of riparian enhancement.

ZONE A: MERRYDALE ROAD DRAINAGE CHANNEL (LEFT BANK)

This portion of the proposed mitigation area is along the left (east, looking upstream) bank of the channel only (Figure 1, Zone A). The area is approximately 233 feet long and 10 feet wide from the edge of the dirt road to the toe or break of the slope for a total of approximately 0.05 acres. Soils are of mixed quality and are composed of fill, disturbed, or side-cast soil. Current vegetation is mostly exotic annual grasses (Italian rye grass and others), English ivy, and Himalayan blackberry with occasional native Coast Live Oak and Valley Oak seedlings (Figure 2). On the opposite side of the channel, a patch of invasive bamboo exists and is beginning to send runners across the channel in one area. The mitigation project will be responsible for controlling the Tier 1 invasive plant species, including bamboo, on the left bank only. "Tier 1 invasive plant species" refers to any invasive plant species identified by the most current version of the California Invasive Plant Inventory Database as having an overall rating of "High", which is defined by the California Invasive Plant Council as species that *"have severe ecological impacts on physical processes, plant and animal communities, and vegetation structure. Their reproductive biology and other attributes are conducive to moderate to high rates of dispersal and establishment."*

Note that the City of San Rafael, which owns the property on both sides of the channel, is scheduled to remove vegetation on this opposite channel bank in summer or fall of 2017 and may present an opportunity to increase the riparian planting zone and mitigation area approximately 0.05 acres.

Underground utilities exist in the area. The Underground Service Alert system (USA) must be contacted to delineate such utilities before any planting or irrigation installation proceeds. In addition, the overhead power lines will limit the planting palette to low- growing species (i.e., grasses and shrubs).

There are no existing on-site water connections for irrigation at either channel that SMART is aware of. The bidder shall be responsible for proposing their preferred irrigation method and provide relevant costs. Depending on the source and estimated use and cost for water SMART may choose to be responsible party on the account, or may require the consultant to be the responsible party and submit relevant billing invoices.

Other issues that are of concern to the long-term establishment and perpetuation of native vegetation include potential vandalism and the interface with construction and channel maintenance.

This location is owned by the City of San Rafael and will remain protected as a drainage feature. Riparian enhancement and mitigation within this Merrydale Road right of way was approved by the City of San Rafael as Resolution No. 14113 Resolution of the San Rafael City Council Authorizing the Sonoma Marin Area Rail Transit (SMART) Agency to Utilize a Portion of the Merrydale Road Right of Way (Adjacent to 380 Merrydale Road) for Riparian Restoration approved May 2, 2016.

REVEGETATION PROCEDURE OUTLINE:

1. Contractor will delineate exact work area with SMART and other stake-holders or landowners as directed by SMART, and contact USA.
2. SMART or their environmental consultant will mark existing native plants to be protected with pink flagging or other marker prior to site preparation.
3. Mow all non-native vegetation from top of bank down to channel edge and remove thatch.
4. Place one to two inches of clean, screened, certified compost into the top-of-bank area to within +/- two feet of the channel bottom or as demarcated by erosion control specialist. Rake to incorporate into native topsoil.
5. If installing any irrigation infrastructure such as drip lines, the main infrastructure including lateral lines and connections shall be installed and tested prior to any seeding or planting.
6. Broadcast seed the area with a native grass seed mix (see Table 1) and roll in seed with a hand-pushed (half - empty) lawn roller
7. Lightly sprinkle 1/2 inch of compost on top.
8. Install 110 native woody plants (see Table 1). Exact locations will be color-coded pin-flagged by the revegetation specialist prior to planting. For direct seed planting see Figure 3. Irrigate plants and direct seed plantings immediately after installation.
9. Install mulch around plantings, protection as needed (see Figure 4).
10. Immediately after installing woody plants, over-seed the area with half the original seed mix and lightly sprinkle ½ inch compost cover on top.
11. Install split-rail fence along the length of the project or similar low-impact aesthetic barrier or demarcation will be necessary to reduce accidental trespass and trampling.
12. Weed and water plantings for the duration of the establishment period (typically 3 to 5 years) as needed.

Table 1. Plant Palette for the Merrydale Road Drainage Channel, Gallinas Creek Zone A

Common Name	Scientific Name	Plant Size ^a	Plant Protector ^b	QTY
<i>Woody Plants</i>				
Blackberry (CA)	<i>Rubus ursinus</i>	Dee+	small	15
Blue elderberry	<i>Sambucus nigra</i> ssp. <i>cerulea</i>	Tree+	large	10
Buckeye(CA)	<i>Aesculus californica</i>	Direct seed	large	10
Coffeeberry	<i>Frangula californica</i>	Dee+	small	15
Coyote Brush	<i>Baccharis pilularis</i>	Dee+	small	15
Rose (CA)	<i>Rosa californica</i>	Dee+	small	15
Sagebrush (CA)	<i>Artemisia californica</i>	Dee+	small	15
Toyon	<i>Heteromeles arbutifolia</i>	Dee+	small	15
			Total to be planted	110
<i>Seed</i>				
Creeping wildrye	<i>Leymus triticoides</i>			2 lbs.
Molate Red Fescue	<i>Festuca rubra</i> (Molate)			2 lbs.
Purple Needle Grass	<i>Stipa pulchra</i>			2 lbs.
			Total seeds to be sowed in Zone A	6 lbs.

^a Dee+ : Deepot size or larger

^a Tree+ : Treepot size or larger

^b Plant Protector (small): Chicken wire cage/tube (1" mesh, 20 gauge) supported with 3 bamboo posts

^b Plant Protector (large): Welded wire cage/tube (1-1/4" mesh, 16 gauge) supported with 2 U-posts

ZONE B: GALLINAS CREEK CHANNEL FROM MERRYDALE RD TO 101 (LEFT BANK)

The proposed mitigation area is along the left (north, looking downstream) bank only (see Figure 1, Zone B). The area is approximately 330 feet long and 10 feet wide from the edge of the fence to the toe of the slope for a total of 0.07 acres. At the toe of the slope, vegetation is dominated by salt grass which grades into exotic annuals and shrubs immediately upslope (see Figure 2). A number of Coast Live Oak, Valley Oak, and Black Walnut seedlings can be found in the area, many of which have been broken or girdled by channel maintenance activities (notably weed-whips). The mitigation project will be responsible for controlling the Tier 1 invasive plant species on the left bank only.

Underground utilities exist in the area. The Underground Service Alert system (USA) must be contacted to delineate such utilities before any planting or irrigation installation activities commence.

REVEGETATION PROCEDURE OUTLINE:

1. Contractor will delineate exact work area with SMART and other stake-holders or landowners as directed by SMART, and contact USA.
2. SMART or their environmental consultant will mark existing native plants to be protected with pink flagging or other marker prior to site preparation,
3. Remove broom and exotic landscape shrubs
4. Mow area to be planted
5. If installing any irrigation infrastructure such as drip lines, the main infrastructure including lateral lines and connections shall be installed and tested prior to any seeding or planting. Exact locations of plants will be color-coded with pin-flags by the revegetation specialist.
6. Install 30 salt-tolerant native forbs on the lower bank (see Table 2). Exact locations of plants will be color-coded with pin-flags by the revegetation specialist.
7. Install 107 native trees and shrubs on the upper bank (see Table 2). Exact locations of plants will be color-coded with pin-flags by the revegetation specialist.
8. Install mulch, protection and drip irrigation around the 107 plantings on the upper banks only (see Figure 4). Irrigate plants and direct seed plantings immediately after installation.
9. Immediately after installing woody plants, seed areas of bare soil on the upper bank with the seed mix (see Table 2), rake in on contour, and broadcast a light (1/2-inch) screened compost cover.
10. Install split-rail fence along the length of the project or similar low-impact aesthetic barrier or demarcation will be necessary to reduce accidental trespass and trampling.
11. Weed and water plantings for the duration of the establishment period (typically 3 to 5 years) as needed.

Table 2. Plant Palette for Main Channel, Gallinas Creek Zone B

Common Name	Scientific Name	Plant Size ^a	Protector ^b	QTY
<i>UpperBank</i>				
Blue Elderberry	<i>Sambucus nigra ssp. cerulea</i>	Tree+	large	10
Buckeye(CA)	<i>Aesculus californica</i>	Direct seed	large	2
Coast Live Oak	<i>Quercus agrifolia</i>	Direct seed	large	10
Coffeeberry	<i>Frangula californica</i>	Dee+	small	15
Coyote Brush	<i>Baccharis pilularis</i>	Dee+	small	15
Rose (CA)	<i>Rosa californica</i>	Dee+	small	15
Sagebrush (CA)	<i>Artemisia californica</i>	Dee+	none	15
Toyon	<i>Heteromeles arbutifolia</i>	Dee+	small	15
Valley Oak	<i>Quercus lobata</i>	Direct seed	large	10
<i>LowerBank</i>				
Marsh Baccharis	<i>Baccharis glutinosa</i>	Dee+	none	15
Mugwort	<i>Artemisia douglasiana</i>	Dee+	none	15
			Total to be planted	137
<i>Seed</i>				
Creeping Wildrye	<i>Leymus triticoides</i>			1 lb.
Molate Red Fescue	<i>Festuca rubra (Molate)</i>			1 lb.
Purple Needle Grass	<i>Stipa pulchra</i>			1 lb.
			Total seeds to be sowed in Zone B	3 lbs.

^a Dee+ : Deepot size or larger

^a Tree+ : Treepot size or larger

^b Protector (small): Chicken wire (1" mesh, 20 gauge) supported with 3 bamboo posts

^b Protector (large): Welded wire (1-1/4" mesh, 16 gauge) supported with 2 U-posts

SCHEDULING

Proper timing is essential for the success of native plant establishment - both direct seeding and for container planting. Should circumstances beyond the control of contractor require a change in scheduling, contractor should reserve the right to delay the performance requirements by at least one year. The following is the general schedule required for success:

Year 1 - the year of installation

- November to January- Site preparation
- December
 - Initial compost installation
 - Install and test any irrigation infrastructure (you don't want to discover a large leak after you have planted)
 - Seed and top compost dressing
 - Plant installation
 - Install permanent area fence
- By April - Begin watering and weeding, depending on weather conditions
- October 1st (or as weather dictates) - Terminate irrigation for the year and
- October to November - perform canopy cover measurements, replant as needed

Year 2 and Year 3 - one and two years after installation

- October to November - perform canopy cover measurements, replant as needed
- November - submit monitoring report to SMART
- By April - Restart plant maintenance and irrigation (see above) for years 2 & 3

Year 4 and Year 5 – two and three years after installation

- By April – Evaluate plantings to determine if irrigation is required. At this time the native species should be established
- November - submit monitoring report to SMART

Year 7 and Year 10

- November - submit monitoring report to SMART

MONITORING METHODS AND PERFORMANCE CRITERIA

In late summer or fall of each monitoring year, contractor will have an experienced vegetation monitor (e.g., restoration ecologist or biologist) measure plant cover based on the line intercept methods described by Harris, et al 2005¹. Measurements will be taken along two parallel lines within the 10-foot wide planting strips, running parallel to the creek. The first tape-measure line will be placed 3 feet in from the upper bank edge of the project. The second tape-measure line will be placed 7 feet in from the upper bank edge of the project for the length of the project. Native grass, shrub, and tree species will be recorded as well as non-native Tier One invasive species as they intercept with the sampling lines. The length of the lines will be determined by the vegetation monitor to provide representative samples of the vegetation in the mitigation project area.

Should the following targets not be met in years 1 through 5, the contractor will confer with SMART regarding adjustments necessary to meet targets that would need to be made. Contractor will be held responsible if mortality occurs due to improper maintenance. In the event that improper maintenance and associated mortality is the cause for not achieving these targets, SMART may withhold payment of reasonable value.

Cover targets are as follows:

- Year 1: at least 20% native riparian cover, no more than 5% cover of Tier 1 invasive species
- Year 2: at least 40% native riparian cover, no more than 5% cover of Tier 1 invasive species
- Year 3: at least 50% native riparian cover, no more than 5% cover of Tier 1 invasive species
- Year 4: at least 60% native riparian cover, no more than 10% cover of Tier 1 invasive species
- Year 5: at least 70% native riparian cover, no more than 10% cover of Tier 1 invasive species
- Year 7: at least 75% native riparian cover, no more than 15% cover of Tier 1 invasive species
- Year 10: at least 80% native riparian cover, no more than 15% cover of Tier 1 invasive species

¹ Harris, R.R., S.D. Kocher, J.M. Gerstein and C. Olson. 2005. Monitoring the Effectiveness of Riparian Vegetation Restoration. University of California, Center for Forestry, Berkeley, CA. 33 pp.



Figure 1. Location of Las Gallinas Creek mitigation sites. Planting areas are indicated by Zones A and B.



Figure 2. Tier 1 Invasive Species identified and mapped.

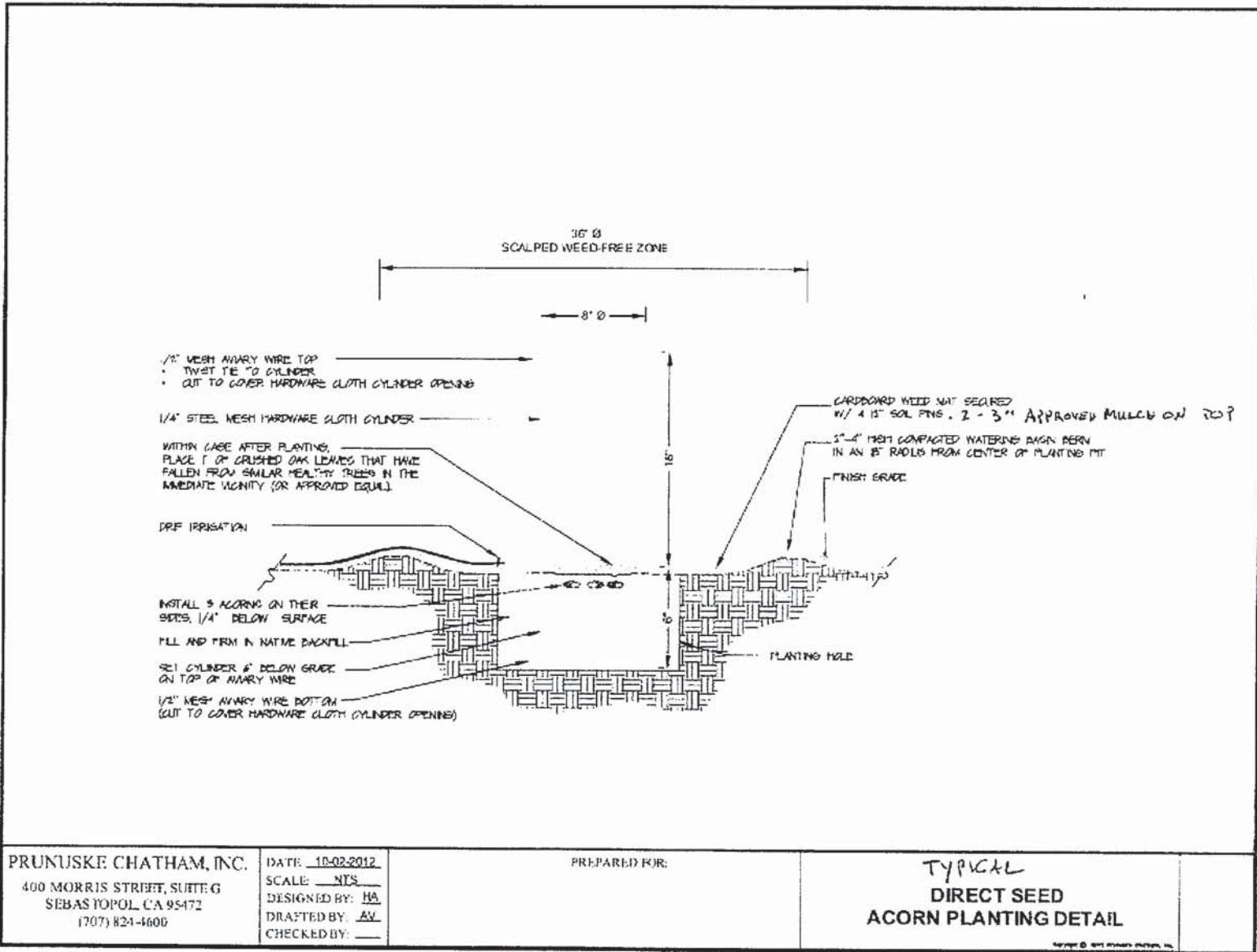


Figure 3. Typical Specification: Acorn Planting Detail.

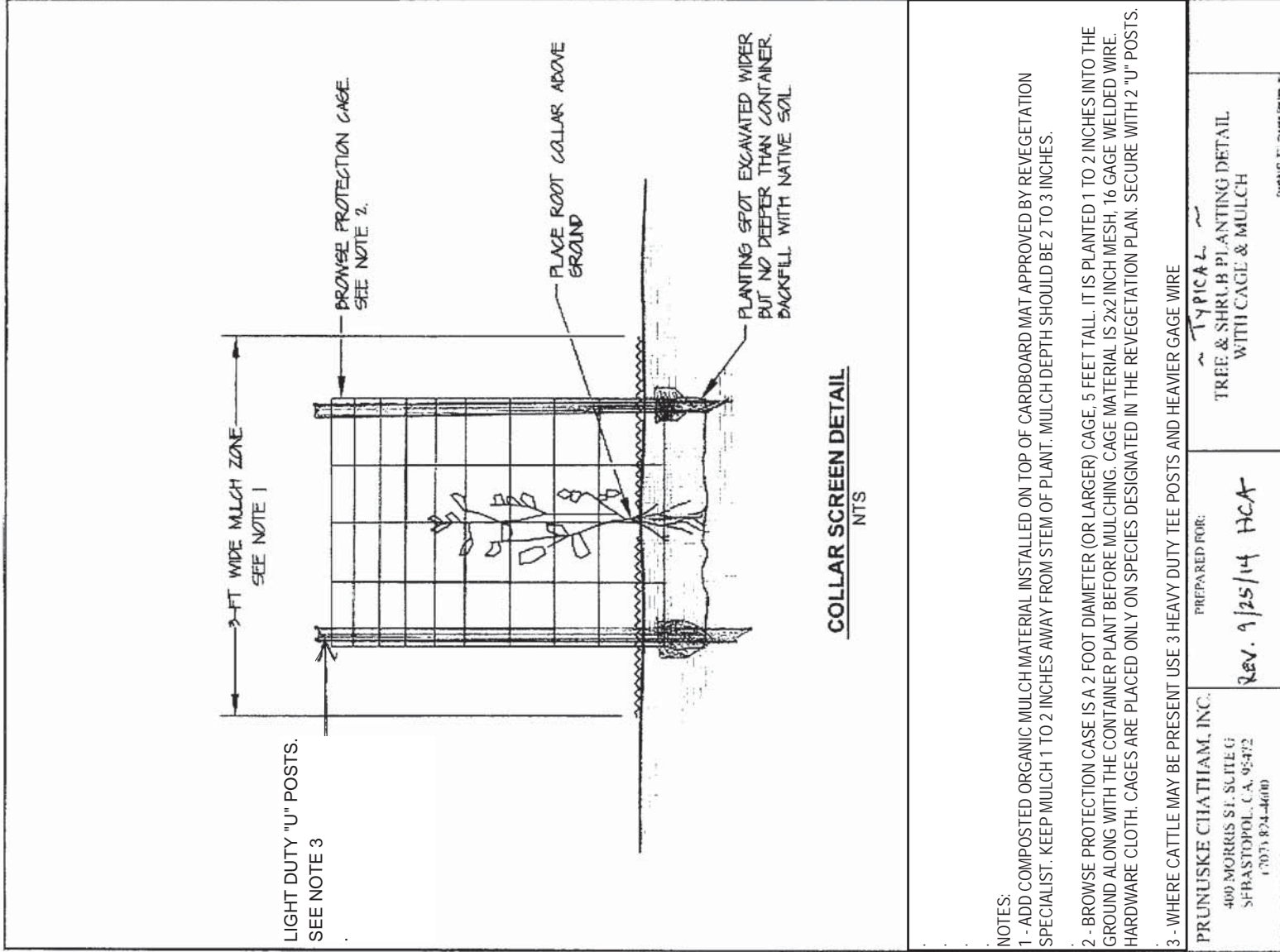


Figure 4. Typical Specification: Cage and Mulch.

**EXHIBIT B
FEE SCHEDULE**

Item #	Item Description	Bid Quantity	Bid Unit	Unit Price	Total
1	Procure Plants	See Tables 1 and 2	LS	\$5,030.00	\$5,030.00
2	Procure Seed mixes	See Tables 1 and 2	LS	\$619.00	\$619.00
3	Procure compost and mulch	See Tables	LS	\$3,990.00	\$3,990.00
4	Procure plant protection materials	See Tables 1 and 2	LS	\$8,540.00	\$8,540.00
5	Procure irrigation materials		LS	\$20,700.00	\$20,700.00
6	Procure site fencing materials	See Tables 1 and 2	LS	\$4,260.00	\$4,260.00
7	Mobilization and staging	1	LS	\$5,650.00	\$5,650.00
8	Site prep – invasive removal, weeding, mowing, clean up, etc.		Per Square Foot		\$8,620.00
9	Seeding and compost installation	One Time Cost	Per Square Foot		\$5,550.00
10	Irrigation installation and testing		LS	\$14,800.00	\$14,800.00
11	Plant and plant protector installation		LS	\$14,400.00	\$14,400.00
12	Install site fencing		LS	\$13,500.00	\$13,500.00
13	Year 1 Maintenance	1	Year	\$9,080.00	\$9,080.00
14	Year 1 Monitoring and Reporting	1	Year	\$5,910.00	\$5,910.00
15	Year 2 Maintenance	1	Year	\$9,080.00	\$9,080.00
16	Year 2 Monitoring and Reporting	1	Year	\$6,150.00	\$6,150.00

HANFORD APPLIED RESTORATION & CONSERVATION
AGREEMENT
EV-PS-17-001

EXHIBIT B

17	Year 3 Maintenance	1	Year	\$7,830.00	\$7,830.00
18	Year 3 Monitoring and Reporting	1	Year	\$6,150.00	\$6,150.00
19	Year 4 Maintenance	1	Year	\$6,570.00	\$6,570.00
20	Year 4 Monitoring and Reporting	1	Year	\$8,120.00	\$8,120.00
23	Removal of plant protectors	1	LS	\$7,740.00	\$7,740.00
24	Removal of irrigation materials	1	LS	\$11,400.00	\$11,400.00
	TOTAL:				\$183,689.00

*LS = Lump Sum Amount

*Maintenance, Monitoring and Reporting Bid items may be invoiced on a monthly basis (in arrears) by dividing the total for each year by 12 months.

*All other bid items may be invoiced each month (in arrears) based on percent complete for each task.

EXHIBIT C

LOCATION OF LAS GALLINAS CREEK WATERSHED CHANNELS A AND B



Path: K:\Projects_3\SMART\00602_13_Mira_Monte\mapdocs\Bio\Fig_1_Location_Las_Gallinas_Creek_20170808.mxd; User: 19402; Date: 8/8/2017



Figure 1
Location of Las Gallinas Creek Watershed
Riparian Enhancement Project Channels A and B



Debora Fudge, Chair
Sonoma County Mayors' and
Councilmembers Association

Judy Arnold
Marin County Board of Supervisors

Damon Connolly
Marin County Board of Supervisors

Jim Eddie
Golden Gate Bridge,
Highway/Transportation District

Dan Hillmer
Marin County Council of Mayors and
Councilmembers

Eric Lucan
Transportation Authority of Marin

Jake Mackenzie
Sonoma County Mayors' and
Councilmembers Association

Barbara Pahre
Golden Gate Bridge,
Highway/Transportation District

Gary Phillips
Transportation Authority of Marin

David Rabbitt
Sonoma County Board of Supervisors

Carol Russell
Sonoma County Mayors' and
Councilmembers Association

Shirlee Zane
Sonoma County Board of Supervisors

Farhad Mansourian
General Manager

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

January 17, 2018

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

SUBJECT: Approve agreement between the Sonoma-Marina Area Rail Transit District and the International Brotherhood of Teamsters, Local Union Number 665 and authorize the Board Chair to execute the agreement.

Dear Board Members:

RECOMMENDATION:

Approve Resolution No. 2018-04 and the eighteen-month collective bargaining agreement reached between the Sonoma-Marina Area Rail Transit District (SMART) and the International Brotherhood of Teamsters Local Union Number 665, (Teamsters) and authorize the Board Chair to execute the Collective Bargaining Agreement.

SUMMARY:

This agreement would be the first collective bargaining agreement between SMART and the Teamsters Union which represents the District's Signal Technicians (9 FTE), Track Maintainers (5 FTE) and Bridge Tenders (2.5 FTE). The total number of staff currently allocated to the three job classes is 16.5. The average wages for the above for Signal Technician and Track Maintainer job classes in local Rail Transit agencies are shown in the charts below. Data was not available for the Bridge Tender job class.

Signal Technician	
Agency	Top Hourly Wage
eBART	\$44.03
Santa Clara Valley Transit Authority	\$51.60
Sacramento Regional Transit District	\$43.12
CalTrain	\$43.11
Average	\$45.47

Track Maintainer

Agency	Top Hourly Wage
Santa Clara Valley Transit Authority	\$38.23
Burlington Northern Santa Fe (BNSF)	\$31.21
eBART	\$44.03
San Francisco Municipal Transit Agency	\$34.18
Average	\$36.91

The agreement retains the District’s current policies with modifications to salaries and benefits as indicated below.

The agreed upon terms include:

Term: January 15, 2018 – June 30, 2019

Salaries:

- Effective January 15, 2018, the rate of pay for all represented employees will be as shown in the table below.

Job Class	Hourly Wage
Bridge Tender	\$28.14
Signal Technician	\$48.43
Track Maintainer	\$36.92

Salaries:

- This wage represents a 10% increase above the current top hourly rate for each respective job class.
- There will be no additional salary increases, such as Cost of Living Adjustments, for the life of the agreement, which expires on June 30, 2019.

Standby Pay:

- An employee on standby status will be paid the equivalent of four (4) hours pay at the employee’s straight time rate for each twenty-four (24) hour period the employee is on standby status or for a period from the end of the employee’s work shift and the beginning of the next shift, if the assignment is less than 24 hours. Standby pay will be offset by any actual hours worked if called out to work.
- Standby pay does not count toward the calculation of overtime.

Benefits:


- Effective the pay period beginning January 15, 2018, the current cap on compensatory time will be increased from 40 hours to 80 hours.
- Effective in the 2018 calendar year beginning on January 1st, the Lincoln’s Birthday Holiday currently observed by the District will be deleted and replaced by a Floating Holiday.

FISCAL IMPACT: The agreement will require a Fiscal Year 2017-18 budget amendment of \$153,731 and a revision to the Position Authorizations (attached). This represents a budget increase of 1.24% over the approved Operations Salaries and Benefits budget and a 0.7% increase in the overall Operations department budget.

The detailed cost of the agreement is as follows:

Annual number of FTE impacted:	16.5
Annual Baseline Cost of Employees (current):	\$2,324,658
Increased Annual Cost of Agreement (salaries+ benefits):	\$262,732
18 Month Total Incremental Cost of Agreement:	\$394,098
Amount Budgeted FY 2017-18	\$2,017,196
Supplemental Budget Needed FY 2017-18	\$153,731

REVIEWED BY: Finance 

Counsel 

Very truly yours,



Lisa Hansley
Human Resources Manager

Attachment(s): 1) Resolution No. 2018-04
 2) Teamsters Collective Bargaining Agreement

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT, STATE OF CALIFORNIA, AMENDING RESOLUTION NO. 2017-05 TO REVISE THE ANNUAL BUDGET FOR FISCAL YEAR 2017-18 TO PROVIDE FOR REVISED POSITION AUTHORITY AND EXPENDITURES RELATED TO COLLECTIVE BARGAINING AGREEMENTS

WHEREAS, as part of its approval of the Annual Budget for Fiscal Year 2017-18, the Board duly considered the annual expenditures necessary for the Sonoma-Marín Area Rail Transit District; and

WHEREAS, on June 21, 2017, the Board adopted Resolution No. 2017-05 approving the Annual Budget for Fiscal Year 2017-18; and

WHEREAS, Resolution No. 2017-05 considered the creation of employee positions and fixed the compensation and salary for those positions; and

WHEREAS, the Board desires to amend the Annual Budget to provide revised position authority and to increase appropriation authority for increased salary and benefit expenditures related to collective bargaining agreements.

NOW, THEREFORE, BE IT RESOLVED that the Fiscal Year 2017-18 Budget for the Sonoma-Marín Area Rail Transit District attached as Exhibit A to Resolution No. 2017-05 is hereby amended to revise Table 4, Fiscal Year 2017-18 Proposed Position Authorizations, to reflect position revisions shown below:

POSITION	FTE	Annual		Hourly	
		Low	High	Low	High
Bridge Tender	2.5	-	\$58,531.20	-	\$28.14
Signal Technician	9	-	\$100,734.00	-	\$48.43
Track Maintainer	5	-	\$76,794.00	-	\$36.92

BE IT FURTHER RESOLVED that the Fiscal Year 2017-18 Annual Budget for the Sonoma-Marín Area Rail Transit District attached as Exhibit A to Resolution No. 2017-05 is hereby amended to include the following:

EXPENDITURES: Operations Salaries and benefits \$ 153,731.

BE IT FURTHER RESOLVED except as specifically amended or supplemented by this Resolution, **Resolution** No. 2017-05, together with all supplements, amendments and exhibits thereto is, and shall continue to be, in full force and effect as originally adopted, and nothing contained herein shall, or shall be construed to, modify, invalidate, or otherwise affect any provision of Resolution No. 2017-05.

**Resolution No. 2018-04
Sonoma-Marín Area Rail Transit District
January 17, 2018**

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 17th day of January, 2018, by the following vote:

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

Debora Fudge, Chair, Board of Directors
Sonoma-Marín Area Rail Transit District

ATTEST:

Leticia Rosas-Mendoza, Clerk of the Board of Directors
Sonoma-Marín Area Rail Transit District

MEMORANDUM OF UNDERSTANDING
BETWEEN
INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL NO. 665
AND
SONOMA MARIN AREA RAIL TRANSIT
MAINTENANCE OF WAY TECHNICIANS UNIT

JANUARY 15, 2018 – JUNE 30, 2019

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ARTICLE 1 RECOGNITION

1.1 The SONOMA MARIN AREA RAIL TRANSIT herein after referred to as (SMART) recognizes the INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL UNION NO. 665 herein after referred to as (UNION) as the formally recognized employee organization for the following job classes:

1.1.1 Maintenance of Way Technicians Unit: Track Maintainers, Signal Technicians, Bridge Tenders

1.2 SCOPE AND DEFINITIONS

1.2.1 This Memorandum of Understanding (MOU) will apply to the work performed by the employees specified herein and governs the rates of pay, hours of service, and working conditions of all such employees engaged in the duties of the job classes specified above in section 1.1.1.

1.2.2 SMART may not contract out work normally performed by an employee in a bargaining unit covered by this MOU without the agreement of the Union.

1.2.3 It is understood that the duties and responsibilities of employees in a bargaining unit covered by this MOU between the UNION and SMART will not be assigned to others except in emergencies and when required by temporary operational needs.

ARTICLE 2 UNION SECURITY

2.1 All employees covered by this Memorandum of Understanding who have been so employed for at least thirty (30) days prior to the ratification of this Memorandum of Understanding shall be or become members of the Union and shall remain members in good standing, or shall pay to the Union an organizational service fee in the amount of 93 percent (93%) of the regular initiation fee and 93 percent (93%) of the regular periodic dues and continue making payment of the organizational service fee to the Union at the times and in the manner hereinafter prescribed. Employees hired after the effective dates of this Memorandum of Understanding or who were hired prior to the effective date of this Memorandum of Understanding but had less than thirty (30) days of service with SMART on the effective date shall within thirty (30) days after employment be or become members of the Union and shall remain members in good standing, unless on or prior to said date the employee pays the organizational service fee described herein.

2.2 Membership in the Union or payment of the organizational service fee described in Paragraph 2.1 shall be a condition precedent to continued employment with SMART. The employee who is obligated to pay an organizational fee shall do so in the following manner:

2.2.1 If the employee payment is by payroll deduction authorization, the appropriate sum shall be deducted by SMART and paid to the Union in the same manner and times as such payments are deducted and paid by SMART to the Union in the case of Union members.

2.2.2 If the employee chooses not to authorize payroll deductions, payments of dues or fees shall be received by the Union not later than the following:

(a) For employees who have been employed by SMART for more than thirty (30) days upon the effective date of this Memorandum of Understanding, an appropriate initiation fee shall be paid to the Union no later than ten (10) days after notification of this provision by the Union. For employees with less than thirty (30) days of employment with SMART upon the effective date of this Memorandum of Understanding, an appropriate initiation fee shall be paid to the Union by the thirtieth (30th) day following the commencement of employment;

(b) Thereafter, dues or fees shall be paid to the Union in full on or before the first day of each calendar month; and
General assessments (relating to costs associated with negotiating collective bargaining agreements, administering same and adjusting grievances. Pursuant to said collective bargaining agreement(s) with SMART shall be paid to the Union in full on or before the date set by the Union at the time of Assessment, or if no date is set, within ten (10) days of the call of the assessment by the Union. The Union shall be responsible for promptly notifying non-Union members of such assessments.

2.2.3 Notwithstanding Paragraphs 2.1 and 2.2 of this section, any employee who demonstrates in a manner satisfactory to the Union that he/she is a member of a bona fide religion, body or sect which has historically held conscientious objections to joining or financially supporting employee organizations shall be excused from joining the Union or paying an organizational service fee to the Union, if such employee shall make a Qualified Charitable Contribution at the time and manner hereinafter prescribed:

(a) The Qualified Charitable Contribution shall be the payment of a sum equal to the initiation fee, organizational service fee, and general assessments and shall be paid in the amounts and at the times said fees and/or assessments would otherwise be due and payable if the employee were not exempt under this Paragraph 2.2.3.

- (b) The Qualified Charitable Contributions shall be paid to one or more of the following qualified charities so long as such charity remains exempt from taxation under Section 501(e)(3) of the Internal Revenue Code:
 - (i) American Cancer Society;
 - (ii) American Heart Association
 - (iii) Muscular Dystrophy Foundation; and
 - (iv) Arthritis Foundation.

- (c) Payment of Qualified Charitable Contributions by persons and at the times and manner described in this Paragraph 2.2.3, shall be a condition precedent to continued employment. The employee shall supply SMART and Union with an acknowledgment of receipt from the qualified charity or other satisfactory evidence on a monthly basis that the Qualified Charitable Contribution has been paid in a timely fashion.

Any dispute between the Union and an employee as to whether an employee meets the eligibility requirement for payment of Qualified Charitable Contributions shall, at the request of the Union or affected employee, be decided by final and binding arbitration under the rules of the American Arbitration Association. The employee and Union shall each bear one-half (1/2) of the cost of said arbitration, including: the fee of the American Arbitration Association and the arbitrator. The cost of a certified transcript of the proceedings shall be paid by the party requesting same.

2.2.4 In the event an employee fails to make payments as required by this section, the Union may give written notice of such fact to SMART and the employee. In the event such notice is given, a representative of the Union and the affected employee shall, within three (3) workdays of such notice (excluding Saturdays, Sundays and holidays), meet for the purpose of hearing the employee's position regarding non-payment, thoroughly explaining the circumstances to the employee and to work out a solution to any existing problems, satisfactory to the Union. If the employee has not paid the required dues or fees (including general assessments) or initiation fee and the matter is not resolved to the satisfaction of the Union, the Union shall request, in writing, that the employee's employment be terminated. Upon receipt of such request, SMART shall terminate said employee within twenty-four (24) hours of receipt of said notice. Terminations for violation of this section shall not be subject to any grievance procedure. The Union agrees to keep an adequate itemized record of its financial transactions. Within sixty (60) days after the end of its fiscal year, the Union will make available to SMART an operating statement in the form and manner prescribed by Government Code §3502.5, covering all periods during which the substantive provisions set forth above are in effect.

2.2.5 The Union and SMART acknowledge the provisions of §3502.5 of the California Government Code and agree that nothing contained in this section shall act to supersede or waive any of the employee's rights contained herein.

2.2.6 The Union agrees to indemnify and hold harmless SMART for any loss or damage sustained which arises from the operation of this section.

ARTICLE 3 DUES CHECKOFF

3.1 The Union will be granted permission by SMART to have regular dues of its member employees deducted from their paychecks, in accordance with the procedures prescribed by SMART.

3.2 Dues deductions shall be for a specified amount and shall be made only upon the voluntary written authorization of the Union member, which authorization meets all of the requirements for the assignment of wages as set forth in §300 of the California Labor Code. Dues deduction authorization may be revoked and the dues check-off payroll discontinued at any time by the Union member upon voluntary written notice to SMART.

3.3 The member employee's earnings must be regularly sufficient after legal and required deductions are made, to cover the amounts of the dues check off authorized. In the case of a member employee who is in a non-pay status during any part of the pay period and the salary is not sufficient to cover the whole withholding, no deductions shall be made. In this connection, all other legal and required deductions have priority over Union dues.

3.4 Neither the Union nor the member employees shall be charged a service fee for the deduction of regular Union dues as hereinabove provided for.

3.5 Dues withheld by SMART shall be transmitted to the officer designated in writing by the Union as the person authorized to receive such funds at the address specified. Funds may also be transmitted by Automatic Clearing House (ACH) or other accepted electronic banking process

3.6 The Union shall indemnify, defend and hold SMART harmless against any claim made and against any suit instituted against SMART on account of check-off of Union dues. In addition, the Union shall refund to SMART any amount paid to it in error upon presentation of supporting evidence.

ARTICLE 4 NON-DISCRIMINATION

4.1 SMART is an equal opportunity employer and makes employment decisions on the basis of merit. In accordance with applicable law, the District prohibits discrimination based on race, color, religion, creed, sex, marital status, age, national origin or ancestry, physical or mental disability, medical condition, genetic information, military or veteran status, sexual orientation, gender, gender identity, gender expression, or any other consideration protected by federal, state

or local laws. All such discrimination is unlawful. The District's commitment to equal opportunity employment applies to all persons involved in the operations of the District and prohibits unlawful discrimination by any employee of the District, including Supervisors and co-workers.

ARTICLE 5 MANAGEMENT RIGHTS

5.1 The exclusive rights of the District shall include, but not be limited to, the right to determine the organization of District, as well as its purpose and mission; to set standards of service to be offered to the public; and, through its management officials, to exercise control and discretion over its organization and operations; to establish and effect administrative regulations which are consistent with law and the specific provisions of any collective bargaining agreements that may exist; to direct its employees; to take disciplinary action; to lay off its employees; to determine whether District goods and services shall be made, purchased, or contracted for; to determine the methods, means, and personnel by which the District's services are to be provided, purchased, or contracted; to determine qualifications for employment; to schedule and assign work and overtime; and to otherwise act in the interest of efficient service to the public.

5.2 All matters pertaining to the management of operations, such as the type and kind of service rendered to the public, the equipment used, workload, the administration of discipline and efficiency, the standards of hire, promotion and transfer of employees, and their discipline and discharge for cause are within the discretion of SMART. SMART's rules, policies and procedures, as may be amended from time to time, are necessary for efficient operations and infraction of these rules shall constitute cause for disciplinary action, up to and including discharge. Depending on the facts and circumstances involved in each situation, SMART may choose to begin disciplinary action at any step up to and including termination.

ARTICLE 6 UNION STEWARDS

6.1 SMART agrees to recognize two (2) stewards: one (1) chief steward (Union Representative on Site) and one (1) alternate to represent employees in the bargaining unit covered by this MOU. The Union must inform SMART, in writing, of an employee's designation as a shop steward or alternate.

6.2 The shop steward, as much as possible, shall perform their duties as a shop steward when not scheduled to work. If the shop steward must perform any duties during regularly scheduled work hours, it shall be kept to a minimum and shall not interfere with normal operations. The shop steward must request time off in advance to perform his/her duties during regularly scheduled work hours. Absent an emergency, the request must be in writing and submitted at least forty-eight (48) hours in advance. The release of shop stewards from work to perform their duties will depend on SMART'S operational needs as determined by SMART.

6.3 SMART will not compensate the shop steward for performing any duties as a shop steward, except as otherwise provided for in this Memorandum of Understanding. The

shop steward shall be allowed time off during their normal working hours to handle grievances or meet with SMART representatives concerning matters affecting employees' working conditions without loss of pay, provided that such meetings shall not exceed one (1) hour unless mutually agreed upon by the parties.

6.4 A maximum of two (2) employees shall serve on the Union bargaining team. A maximum of one (1) employee shall be released from work by SMART to attend negotiations between the Union and SMART. However, the employee released by SMART will be paid their regular rate of pay for negotiations held during their regularly scheduled work hours.

ARTICLE 7 BULLETIN BOARDS

7.1 SMART agrees to supply and provide suitable space for the Union bulletin board at each work location where bargaining unit members are employed. Postings by the Union on such boards are to be confined to official business of the Union and on the Union's official letterhead. In each location, there shall be a covered bulletin board. Union stewards shall have a key for the Union bulletin boards. SMART shall not remove, tamper with, or alter any notice posted by the Union unless such notice is harmful to SMART. Any such notice removed by SMART shall be re-posted if the Union's position is sustained through the grievance procedure.

ARTICLE 8 UNION ACCESS TO WORK LOCATIONS

8.1 Within reasonable circumstances, a Union business representative shall have access to SMART premises at a mutually agreeable time to investigate or adjust grievances, or conduct other necessary Union business. Except for emergency circumstances, requests for access to the Rail Operations Center (ROC) and other SMART Operations facilities will be made 48 hours in advance.

ARTICLE 9 SENIORITY

9.1 SMART shall maintain a departmental seniority list for the employees in each bargaining unit covered by this agreement. Departmental seniority means the length of time an employee has been employed by SMART in their respective job class within a bargaining unit covered by this agreement. When more than one (1) employee has the same employment date, the employees' relative positions on the seniority list shall be determined by birth date.

9.2 An employee's seniority shall be terminated for the following reasons:

9.2.1 Resignation or termination of employment;

9.2.2 Layoff for a period of more than twelve (12) months;

9.2.3 Failure to respond within ten (10) days to a notice of recall during layoff or failure to return to work within fourteen (14) days after a recall notice;

9.2.4 Failure to return to work following an approved leave of absence.

ARTICLE 10 PERFORMANCE EVALUATIONS

10.1 An annual employee evaluation system shall be used for all probationary and regular employees.

10.2 SMART shall determine the use and significance, if any, of job performance evaluations in determinations regarding, but not limited, examinations, promotions, demotions, transfers, dismissals and suspensions.

10.3 Employees shall have access to their evaluations on file in Human Resources.

10.4 All employees will sign the evaluation indicating their receipt of the evaluation within ten (10) calendar days of receipt. An employee who is dissatisfied with his/her review may prepare and submit a written response within thirty (30) calendar days following receipt of the evaluation. The response will be submitted to the General Manager with a copy to the Human Resources Manager. The response will be placed with the evaluation in the employee's personnel file. The employee has no further means of challenging or appealing a performance evaluation. Performance evaluations are not grievable.

ARTICLE 11 PROBATIONARY PERIOD

11.1 The probationary period shall be a trial period during which SMART evaluates the employee's ability, competency, fitness and other qualifications to do the work for which they are employed.

11.2 All new employees shall be on probation for twelve (12) months immediately following their date of hire. If an employee is absent from work for good cause during the probationary period, probation may, be extended day for day by SMART to allow the employee to complete the full twelve (12) months. New probationary employees may be disciplined or discharged at the total discretion of SMART and such actions shall not be subject to review under any provision of this Memorandum of Understanding.

ARTICLE 12 PROMOTIONS, VACANCIES AND TRANSFERS

12.1 Employees who are transferred or promoted out of the bargaining unit, and who fail to successfully complete the probationary period of the new position (for a reason that does not disqualify them from employment in any classification), may elect to return to their original position, in their previous classification within the bargaining unit. Employees shall have a maximum of six (6) months during which they can return to their previous position. Employees shall have no right to return to the bargaining unit after six (6) months. An employee who returns

to an available position within the six- (6) month period shall retain his/her departmental seniority.

12.2 SMART shall notify the Union of all job openings within the bargaining units covered by this Memorandum of Understanding. The Union may refer qualified applicants for such openings. In interviewing and hiring of such job openings, SMART will not discriminate against any applicant referred by the Union. Applicants referred by the Union will participate in the competitive process as would any other applicant.

12.3 Applicants who meet the qualifications of the position descriptions will undergo a selection process as determined by SMART. This process may include, but is not limited to, screening of the most qualified applicant for job suitability and skills assessment, such as written, hands on, video or interview.

ARTICLE 13 TRAINING

13.1 SMART encourages employees to keep their job-related skills current and to look for opportunities to enhance those skills. The Division Superintendent or designee will meet with each employee in a bargaining unit covered by this agreement once a year through the performance evaluation process to assess individual training and career development needs.

13.2 When appropriate, SMART will provide employees the opportunity to attend job-related training, including, but not limited to, conferences and seminars. Voluntary training sessions attended after an employee's work hours are unpaid.

13.3 Upon approval by SMART, the employee will be reimbursed for expenses related to attending job-related, pre-approved training as allowed per SMART's travel policy, vehicle use guidelines and applicable state and federal law.

13.4 Employees in a bargaining unit covered by this agreement will be required to attend training classes and take examinations connected with their duties as required by Federal, State, Local and Agency regulations. Examinations may be written or oral and include physical examinations, geographical qualification examinations and service examinations as required by state and Federal Railroad Administration regulations.

ARTICLE 14 SAFETY

14.1 When an employee is injured at work so as to require that he/she be excused from work by an authorized representative of Management, he/she shall be paid for the balance of the shift (regular pay) on which the injury occurred. Subsequent physician's visits, if necessary, will be charged to sick leave if not scheduled outside of the employee's regular working hours. A copy of the accident report shall be given to the employee. Sick leave pay will not commence until the following day after the injury/illness.

14.2 In those cases where an employee receives worker's compensation benefits under the District's plan and is granted sick leave during a disability resulting from an on-the-job injury,

DISTRICT shall receive credit against any Workers' Compensation Insurance granted to him, until such leave is exhausted. Payments to the employee will not exceed 100% of regular base pay.

14.3 When, after the employee returns to work, there is a bona fide re-injury of the original injury on the job and an authorized representative of Management acting on the recommendation of a doctor excuses the employee from work, he/she shall be paid for the balance of the shift.

14.4 The employer and employee are required to comply with Cal-OSHA standards and Federal Railroad Administration Regulations.

ARTICLE 15 GRIEVANCE PROCEDURE

15.1 A grievance must be in writing, and is defined as a complaint that there has been noncompliance with or a misinterpretation or misapplication of this Memorandum of Understanding or a work rule or resolution of SMART. Grievances will be processed in accordance with SMART policy HRM-0011 Grievance Procedure as modified herein.

15.2 SCOPE

15.2.1. Selection appeals, disciplinary action, examination appeals, release from Probationary period, complaints of discrimination, the content of performance evaluations and reviews are not grievable hereunder.

15.2. 2. A grievance may be filed by an employee on his/her own behalf or by the Union.

15.2. 3. If it is asserted that the grievance is outside of the scope of procedures or definitions contained herein, such assertion will be evaluated and ruled upon at each step. Such claim will not halt the further processing of the grievance until Step 4 of the resolution process is reached, as defined below. At Step 4, the General Manager will evaluate the assertion, and make a ruling prior to hearing the grievance on its merits. If the General Manager rules that the matter is not grievable hereunder, the grievance will be dismissed and cannot be processed further.

15.2.4 Disputes concerning the applicability of the Grievance Procedure that persist beyond step 4 may be submitted to step 5, Arbitration, for determination. The Arbitrator will decide the grievability of the issue before taking evidence concerning the merits of the dismissed grievance. If the Arbitrator decides that the dispute is Grievable, the matter will be referred back to Step 4 for consideration of the merits.

15.2.5 For the purposes of this grievance procedure, "Working Days" shall be defined as those in a normal, five-day work week, Monday through Friday.

15.3 GRIEVANCE TIME LIMITS

- 15.3.1. Time limits specified in each step of the procedure shall be strictly observed and may only be extended by mutual agreement of the parties in writing.
- 15.3.2. Failure of a grievant to observe a time limit shall terminate the grievance. Failure of the party to whom the grievance is submitted to observe the time limits shall give the Union the right to move the grievance to the next level.

15.4 PROCEDURE

- 15.4.1. The District recognizes that disputes should be resolved at the lowest possible administrative level. The grievance procedure shall be followed in its entirety before further actions are taken to seek resolution to the dispute. When the grievance is filed by a bargaining unit employee, the grievant may be represented by the Union or a Union Steward throughout the grievance process.

15.5 INFORMAL GRIEVANCE - STEP 1

- 15.5.1. The employee will discuss the grievance with his/her immediate supervisor within ten (10) working days of the event giving rise to the grievance, or within ten (10) working days of when the employee knew of or could have reasonably discovered such action or occurrence. The supervisor shall give his/her decision to the employee within ten (10) working days following the discussion.
- 15.5.2. Presentation of an informal grievance will be a prerequisite to the institution of a formal grievance.

15.6 FORMAL GRIEVANCE

- 15.6.1. STEP 2 - Grievance Form: Within fifteen (15) working days, if the grievant is not satisfied with the informal response, or he/she has not received a response from the supervisor within the ten (10) working day limit specified above, the employee or the Union may initiate a formal grievance. A formal grievance shall be initiated by completing and filing a Grievance Form with the Human Resources Department with a copy to the supervisor and the Union. The form must contain:
 - i. Name(s) of grievant;
 - ii. Position title(s);
 - iii. Department(s);
 - iv. Mailing Address(es);
 - v. A clear statement of the nature of the grievance, citing applicable rule, regulation, policy or contract language;

- vi. The date upon which the event giving rise to the alleged grievance occurred;
- vii. The date upon which the informal discussion with the supervisor took place;
- viii. A proposed solution to the grievance;
- ix. The date of execution of the Grievance Form

15.6.2. Resolution Process: After filing the Grievance Form with Human Resources, the process for resolving the grievance is as follows:

- i. STEP 3: Within twenty (20) working days after a formal grievance is filed, the Department Manager will investigate the grievance, confer with the Union in an attempt to resolve the grievance and make a decision in writing.
- ii. STEP 4: If the grievance is not resolved in Step 3 to the satisfaction of the Union, within ten (10) working days of receipt of the Department Manager's decision, the Union may request consideration of the grievance by the General Manager, by notifying the Human Resources Department in writing.
 - 1) Within twenty (20) working days after such notification, the General Manager will investigate the grievance, conferring with person(s) affected to the extent he or she deems necessary, and will render a decision in writing.
 - 2) If the written decision of the General Manager resolves the grievance to the satisfaction of the Union, it will bind the Parties.
 - 3) If the Union is not satisfied with the decision of the General Manager or has not received a response within the time limits specified in Step 4, the Union may proceed to Step 5.
- iii. STEP 5 Arbitration: Should the matter remain unresolved in Step 4 above, a final consideration of the grievance to Step 5, arbitration, may be filed in writing with the Human Resources Department not more than fifteen (15) working days from receipt of the General Manager's decision.
 - 1) The grievance will be determined by an arbitrator, provided that the District and the grievant agree on the issues to be arbitrated.
 - 2) As soon as possible, but no later than twenty (20) working days, after receipt of the Step 4 request for arbitration, the District and the Union shall select an arbitrator. If the parties are unable to agree upon an

arbitrator, they shall request a list of five (5) names from the State Conciliation and Mediation Services and shall strike names until an arbitrator is selected.

- 3) Both parties will endeavor to submit the grievance to the arbitrator within twenty (20) working days after selection.
- 4) The Arbitrator(s) will neither add to, detract from, nor modify or ignore the existing language of any District rules, policies or regulations in considering any issue properly before them. If the arbitrator sustains the grievance, he/she shall fashion an appropriate remedy that does not conflict with any provisions contained in any District rule, policy or regulation.
- 5) The Arbitrator(s) will expressly confine themselves to the precise issues being raised by the grievance and submitted to them, and will have no authority to consider any other issue not so submitted.
- 6) Any monetary award in favor of the grievant is limited to lost wages or benefits suffered measured from the date of the grievance forward. In no event will the Arbitrator(s) award any other type of monetary award, including, but not limited to, attorney's fees.
- 7) The decision will be final and binding on all parties.

15.6.3 General Considerations

- i. The Human Resources Department will act as the central repository for all grievance records.
- ii. All expenses of arbitration will be shared equally by the District and the Union.
- iii. Failure on the part of the District or the grievant to appear in any case before an arbitrator, without good cause, will result in forfeiture of the case and responsibility for payment of all costs of arbitration.
- iv. The grievant's or Union designee's signature is required at each step of the grievance procedure.
- v. A copy of the grievance will be provided to the General Manager at each step of the grievance process.
- vi. There will be no amendments of a grievance without the approval of both parties in writing.
- vii. Mediation may be used by both parties to assist them in resolving grievances. The decision to utilize mediation will be voluntary. Mediation

may be held at any step prior to submission of the final appeal under Step 5 of the grievance procedure.

ARTICLE 16 DISCIPLINE

16.1 SMART has the right to discipline or discharge regular employees for just cause. SMART employs a progressive disciplinary program, which program may include, but is not limited to, counseling, verbal warning, written warning, suspension, and discharge. Disciplinary action may begin at any step in the program depending upon the seriousness of the infraction. The District will notify the employee and the Union by certified mail of the commencement of a disciplinary investigation within seven (7) calendar days of the District's knowledge of the act or occurrence.

16.2 The causes for which an employee may be disciplined or discharged shall include, but not be limited to, the following:

16.2.1 Dishonesty

16.2.2 Insubordination

16.2.3 Intoxication or use of alcoholic beverages or illegal drugs while on duty or on SMART property.

16.2.4 Sexual harassment or other harassment of fellow employees.

16.2.5 Violation of SMART rules or policies.

16.2.6 Violation or non-compliance with federal and state operating rules and regulations, including Federal Railroad Administration rules and regulations.

16.2.7 Violence and/or threats of violence in the workplace.

16.3 SMART will inform regular employees in writing as to the reasons for a discharge or suspension.

16.4 Regular employees (those who have completed the Probation Period) claiming that they were unjustly disciplined or discharged may challenge the discipline or discharge through the Discipline policy and procedures set forth in SMART's Discipline Policy, HRM-0018. HRM-0018 and any modifications thereto are incorporated into this Agreement and are binding on all parties. The Regular employee may be represented by the Union throughout the disciplinary process. Except as provided in paragraph 16.5, no employee in a bargaining unit covered by this agreement will be disciplined, suspended or dismissed from the service until a fair and impartial formal investigation has been conducted by an authorized Department Manager.

16.5 Except when a serious act or occurrence is involved, or as required by Federal Railroad Administration regulations, an employee in a bargaining unit covered by this agreement will not be held out of service in disciplinary matters before a formal investigation is conducted. A serious act or occurrence is defined in section 16.2 above.

16.5.1 If an employee in a bargaining unit covered by this agreement is held out of service before a formal investigation, the District may elect to put the employee on Administrative Leave of Absence with pay during the disciplinary process. Holding an employee out of service before a formal investigation or paying the employee for being out of service for less than a serious act or occurrence is not prejudging the employee.

16.6 The General Manager's or designee's decision shall only be appealed by the employee or by the Union on the employee's behalf to an Arbitrator selected by the Parties.

16.6.1 The request for arbitration may be filed in writing with the Human Resources Department not more than fifteen (15) working days from receipt of the General Manager's decision, or the right to appeal the decision is forfeited.

16.6.2 The decision will be resolved by an arbitrator, provided that the District and the Union agree on the issues to be arbitrated.

16.6.3 As soon as possible, but no later than twenty (20) working days, after receipt of the request for arbitration, the District and the Union shall select an arbitrator. If the parties are unable to agree upon an arbitrator, they shall request a list of five (5) names from the State Conciliation and Mediation Services and shall strike names until an arbitrator is selected.

16.6.4 Both parties will endeavor to submit the appeal to the arbitrator within twenty (20) working days after selection.

16.6.5 The decision of the arbitrator will be final and binding on all parties.

16.6.6 The Arbitrator(s) will neither add to, detract from nor modify or ignore the existing language of any District rules, policies or regulations in considering any issue properly before them. If the arbitrator sustains the decision, he/she shall fashion an appropriate remedy that does not conflict with any provisions contained in any District rule, policy or regulation.

16.6.7 The Arbitrator(s) will expressly confine themselves to the precise issues being raised by the appeal and submitted to them, and will have no authority to consider any other issue not so submitted.

16.6.8 Any monetary award in favor of the employee is limited to lost wages and benefits suffered measured from the date of the imposed discipline forward. In no event will the Arbitrator(s) award any other type of monetary award, including, but not limited to, attorney's fees.

16.6.9 All expenses of arbitration will be shared equally by the District and the employee.

- 16.6.10 Failure on the part of the District or the employee to appear in any matter before an arbitrator, without good cause, will result in forfeiture of the matter and responsibility for payment of all costs of arbitration.
- 16.6.11 Mediation may be used by both parties to assist them in resolving the disciplinary matter. The decision to utilize mediation will be voluntary. Mediation may be held at any step prior to submission of the final appeal to arbitration.

ARTICLE 17 LEAVES OF ABSENCE

17.1. All leave time, including Holiday, Sick and Vacation leave will be processed in accordance with District policy HRM-0022. Leaves, except as modified herein. From time to time it may be necessary to modify District leave policy as required by Local, State or Federal law. Should the District be required by law to modify a leave policy, the District will notify the UNION in writing of the required change. Any other proposed changes not required by law will be subject to the provisions of the Meyers-Milias Brown Act.

17.2. HOLIDAYS

17.2.1. The DISTRICT observes various District designated holidays each year. Regular and probationary full-time and part-time employees are eligible for paid District designated holidays. To be eligible for Holiday pay, employees must work or be in paid status on the employee’s regularly scheduled work days the day before and the day after the holiday.

17.2.2. Paid holidays are as follows:

- 1. New Year’s Day - January 1st
- 2. Martin Luther King, Jr.’s Birthday, third Monday in January.
- 3. President’s Day, the third Monday in February
- 4. Memorial Day, the last Monday in May.
- 5. Independence Day, July 4th.
- 6. Labor Day, the first Monday in September.
- 7. Veteran’s Day, November 11th.
- 8. Thanksgiving Day
- 9. The day following Thanksgiving Day
- 10. Christmas Day, December 25th.
- 11. Two (2) Floating Holidays
- 12. Each day appointed by the Governor of the State of California and formally recognized by the Board of Directors as a day of mourning or other special observance.

17.2.3. Floating Holidays. Effective January 1, 2018, two eight (8) hour days per year will be deemed as floating holidays, which may be taken at any time during the calendar year in which it is accrued provided a written request is made in advance and the supervisor approves such request in writing. Floating holiday pay will be pro-rated for part-time employees. Employees eligible for floating holidays are

regular, Probationary, and at-will. Temporary and contracted employees are not eligible for floating holiday pay. Floating holiday pay must be taken in increments of eight (8) hours. Floating holiday hours must be used in the year that they are accrued and will not carry over from one calendar year to the next. If an eligible employee does not use their floating holiday hours during the calendar year, one eight (8) hour day may be paid out as cash. Floating holiday hours are not eligible to be paid out upon separation of employment from the District. New hires hired prior to June 1st of each year will receive two floating holidays. New hires hired between June 1st and August 31st of each year will receive one (1) floating holiday. New hires on or after September 1st will not receive the floating holidays for that year. Supervisor approval is needed prior to scheduling a floating holiday.

17.3. VACATION ACCRUAL AND PAY

- 17.3.1 All regular and probationary full-time employees are eligible to accrue vacation leave based on hours worked on a maximum forty (40) hour workweek. Part-time employees who work a minimum of 20 hours per week shall accrue vacation on a pro-rata basis. Usage and accrual shall be governed by the same rules and regulations applicable to full time employees. Vacation accrual schedules can be found in District policy HRM-0022 – Leaves.
- 17.3.2 Vacation Buyback. Each represented employee may request once a calendar year to receive payment for up to eighty (80) hours of accrued vacation hours, provided that there is a minimum remaining balance of eighty (80) hours following payment. Such requests may be made bi-weekly during any pay period.
- 17.3.3 Vacation Bid - Employees shall bid for vacation leave once every 12 months according to seniority order in each respective job class. Employees will be given confirmation for bids submitted.
- 17.3.4 Additional Vacation Time – To allow for flexibility throughout the year, after the annual bid process been has completed, employees may request additional vacation or compensatory time off as needed. All such requests must be scheduled in advance and receive Supervisor approval. The District reserves the right to deny additional time off requests due to Operational needs.

17.4. SICK LEAVE ACCRUAL AND PAY

- 17.4.1 Regular and probationary full-time and part-time employees are eligible to receive sick pay. Each DISTRICT full-time employee will accrue up to 12 sick days (96 hours) per year, with no limit on accumulation. Regular part-time employees who work at least 20 hours per week are eligible to accrue paid sick leave on a pro-rata basis. In accordance with AB 1522, Article 1.5. Section 246 (b)(1), the minimum sick leave accrual rate for regular part-time employees who work at least 20 hours per week will be one hour per every 30 hours worked. Usage and accrual of said benefits shall be governed by the same rules and regulations applicable to full-time

employees. Use of sick leave will be consistent with District policy HRM-0022 Leaves, Section 3, Sick Time Accrual and Pay.

17.5. MEDICAL AND OTHER LEGALLY REQUIRED LEAVES OF ABSENCE

- 17.5.1 Leaves of Absence are periods of time in which an employee is permitted to be away from work without being terminated or considered to have voluntarily resigned. Completion of the Probationary Period is required, except where state or federal laws require otherwise. Examples of circumstances where a leave of absence is appropriate are work-related disabilities, military duty and medical disabilities, (including pregnancy). In instances where the leave occurs during the Probationary Period, the Probationary period is extended by the time an employee is out on a leave. Leaves are generally unpaid time off, unless the employee is eligible for and has accrued time under the sick or vacation plans.
- 17.5.2 The General Manager or designee, on a case-by-case basis, may grant a leave of absence (LOA), depending on the nature of the leave and the business needs at that time. It is the employee's responsibility to maintain contact by phone or in writing, with their supervisor and/or the Human Resources Department while he/she is on a LOA. The employee must provide documentation supporting the need for the leave (e.g., physician's visit certification) and keep it up-to-date. Any holidays that occur while an employee is on a LOA are not paid unless the use of accrued sick, compensatory and/or vacation time on the day prior to and after the District holiday is used. Vacation and sick time does not accrue during a leave if an employee is in unpaid leave status.
- 17.5.3 All legally required leaves will be administered according to SMART policy HRM-0022 – Leaves. SMART reserves the right to update this policy as required to comply with changes in State, Federal or local laws.

ARTICLE 18 HEALTH AND LIFE INSURANCE

18.1 SMART provides each employee with a comprehensive group insurance plan as outlined in District Policy HRM-0019 Employee Benefits.

18.2 New employees who work a minimum of 20 hours per week are eligible to participate in District health and welfare benefits on the first day of the month following their date of hire. Employer contributions toward benefit premiums for part-time employees will be pro-rated.

18.3 At appropriate normal open enrollment periods or other enrollment periods as arranged by the District for initial enrollment, the District's group insurance plans shall be made available to employees covered by this Agreement.

18.4 Coordination of Benefits. If an employee and their spouse or other qualified dependent both work for the District, benefits received under group policies will be coordinated with any other Employer-provided benefits an employee or dependent may have. This means an employee and their dependent(s) may not receive double coverage under any plan offered by the District.

ARTICLE 19 PENSION PLAN

19.1 CalPERS Retirement Plan

19.1.1 SMART and each employee, who is scheduled to work twenty (20) hours per week or who actually works one thousand (1,000) hours or more in a fiscal year, shall continue to contribute to the Public Employees' Retirement System in accordance with the applicable rules and regulations.

19.1.2 Employees hired after January 1, 2013 shall be covered by the terms of 2% @Age 62 retirement plan.

19.2 457 B Deferred Compensation

19.2.1 The DISTRICT has available to all employees a 457b Deferred Compensation Plan. This plan allows employees to make voluntary contributions, on a pre-tax basis, for their own retirement savings. For employees hired after June 1, 2012, the DISTRICT will match employee voluntary contributions up to a maximum of 2% of annual base salary.

ARTICLE 20 WAGES

Wages for this Unit of employees will be as shown below:

Job Class	Hourly Wage
Signal Technician	\$48.43
Track Maintainer	\$36.92
Bridge Tender	\$28.14

20.1 Wages will be effective on the first day of the first full pay period following ratification of the Agreement.

ARTICLE 21 TEMPORARY PROMOTION

21.1 When an incumbent in a position is on an extended leave or a position becomes vacant, the General Manager may choose to fill a position by temporarily promoting an existing SMART employee. In order to be considered for temporary promotion, the candidate must meet the

minimum qualifications of the higher job class. Only such vacancies expected to last for thirty (30) days or longer may be filled by temporary promotion.

21.2 When a regular employee is temporarily assigned to substantially fulfill the duties of a higher position for thirty (30) or more working days, the employee will be temporarily promoted, in writing, and given a temporary merit increase of *up to 5%* above the employee's current pay level in his/her regular position.

21.3 A single assignment performed in a higher classification does not qualify an employee for temporary promotion pay consideration. Further, when the work associated with a vacant position is redistributed to several employees, rather than given to one individual on an interim basis, no single individual will be deemed to be working in a higher class and eligible for temporary promotion.

21.4 When an employee is promoted to a position in which he or she has, immediately preceding the appointment, served in a temporary promotion capacity, the employee will be given time credit for the acting service. Credit shall begin on the effective date of the temporary appointment and will count toward the completion of the Probationary period in the new position.

21.5 When the incumbent of the higher level class returns to work or is replaced on a permanent basis by another individual from an employment list, the individual promoted on a temporary basis will be returned to his/her former job class and rate of pay.

ARTICLE 22 UNIFORMS

22.1 SMART will provide uniforms and laundering service for employees covered by this agreement. Uniforms are only to be worn at work or while going to and from the work site.

22.2 Uniforms should be clean, pressed, and in good repair and with attention to appropriate personal grooming and hygiene. Visible tattoos will be covered on employees whose jobs require them to interact directly with the public

22.3 All employees will wear a SMART provided identification card on the outer most clothing item at all times during working hours.

22.4 Employees may be required to wear safety equipment or clothing at certain times while performing specific job functions.

ARTICLE 23 TRANSIT VEHICLES

23.1 SMART will provide pool vehicles that will be available for use by employees as needed for the performance of their job functions.

23.2 Employees will be responsible for keeping the vehicles reasonably clean and inspected, per the District's Vehicle Use Guidelines but in no case are they responsible for normal wear and tear.

23.3 All vehicles will be equipped with an emergency kit.

23.4 It is each employee's responsibility to inform SMART if any emergency items are missing.

ARTICLE 24 CIVIC DUTY TIME OFF

24.1 SMART encourages employees to serve as jurors or witnesses when called. Full-time and part-time regular and probationary employees will receive full pay while serving on jury or witness duty. An employee must notify his/her Supervisor of the need for time off for jury or witness duty as soon as a notice or summons from the court or a subpoena is received. Proof of attendance shall be required when the employee returns to work.

24.2 An employee may retain such payment as may be allowed for travel but shall make payable to SMART any and all fees which the employee may receive in payment for service as a juror. Employees are required to provide written verification of having served from the court clerk. If work time remains after any day of jury or witness duty, the employee will be expected to return to work for the remainder of their work schedule.

24.3 For positions covered under the FRA Hours of Service law, the employee will not be required to perform any work during the 24 hour period in which the jury duty is served.

ARTICLE 25 OVERTIME AND WORK SCHEDULES

25.1 OVERTIME

25.1.1 Overtime compensation for non-exempt employees will be paid at the rate of one and one-half (1 ½) times the regular rate for all hours worked in excess of eight hours worked in a day or forty (40) hours worked in a workweek.

25.1.2 Hours spent attending Jury Duty, compensatory time off, sick leave and vacation leave do not count toward the number of hours needed before an employee is eligible for overtime compensation.

25.1.3 Any non-exempt employee in a bargaining unit covered by this agreement who works six (6) consecutive days in a workweek will be paid for work on the seventh (7th) consecutive day at the overtime rate of one and one-half times the regular rate of pay for the first eight hours worked and double the employee's regular rate for all hours worked in excess of eight (8) hours. Work week is defined as Monday through Sunday.

25.2 COMPENSATORY TIME

- 25.2.1 Non-exempt employees may elect compensatory time off for any overtime work performed. Compensatory time off is earned at time and one half. Employees may accumulate a maximum of eighty (80) hours of compensatory time off. Once the maximum number of hours has been accrued, the employee shall receive overtime pay as described in Paragraph 25.1. Employees may not elect additional compensatory time off in lieu of overtime until they fall below the maximum eighty (80) hour accumulation.
- 25.2.2 No employee shall take compensatory time off without the prior approval of the employee's supervisor.
- 25.2.3 Each employee who is separated from District service shall be entitled to payment for accrued compensatory time at the employee's base hourly rate of pay at the time of the employee's separation or as otherwise required by law.
- 25.3 All employees must submit a timesheet indicating hours worked.

25.4 MEAL AND REST PERIODS

- 25.4.1 Two (2) paid breaks are to be allowed during the regular shift, each of which shall be no more than ten (10) minutes. One off duty thirty (30) minutes meal period shall be allowed and shall be unpaid time. If, due to the nature of the work, employees may not be able to have a regularly scheduled meal period, one on duty thirty (30) minutes meal period shall be allowed and shall be paid time.

25.5 STANDBY PAY

- 25.5.1 An employee on standby status will be paid the equivalent of four (4) hours pay at the employee's straight time rate for each twenty four (24) hour period the employee is on standby status, or for a period from the end of the employee's work shift and the beginning of the employee's next shift, if the standby assignment is less than 24 hours. Standby pay does not count toward the calculation of overtime. Standby pay will be offset by any actual hours worked if called out to work. While on standby, the employee must be fit for duty.
- 25.5.2 Any employee who is on standby until the next shift or for a twenty four (24) hour period and is called out for work shall be paid at the applicable rate of pay for all actual hours worked. Overtime rates will apply to all hours actually worked in excess of eight (8) hours per day or forty (40) hours per week.

ARTICLE 26 SHIFT BIDDING AND EXTRA WORK

26.1 Employees shall bid shifts according to the seniority order in each respective job class. Assignments will be made to employees in seniority order from bids submitted prior to the close of the bid period every twelve (12) months. Employees will be given confirmation for bids submitted. SMART reserves the right to deny a bid if an employee does not have the required skills or training for the position. SMART will distribute shift schedules to be bid upon at least seven (7) days prior to the day on which the bid process will be held. Actual bidding will take place at least fourteen (14) calendar days prior to the day on which the bid will take effect.

26.2 Each employee will submit their bid on the date designated. If an employee is absent for their assigned bid day, the employee may bid by phone or give a proxy bid in writing to a shop steward to bid for the employee. If an employee does not bid on the assigned bid day or fails to submit a proxy bid, the employee will fall to the bottom of the list and bid in the last position. Final results will be posted within 24 hours of the close of the bid in the Rail Operations Center office.

26.3 Employees on a leave of absence who will not be able to work at least two (2) months of the bid period will not be permitted to bid, unless SMART and the Union mutually agree to permit the employee to bid. If the employee returns to work during the bid period, SMART will assign the employee to an open shift.

26.4 SMART reserves the right to determine staffing levels of daily assignments. If a shift becomes open between bidding cycles and SMART determines to cover all or part of that shift, the coverage of that shift will be filled based on:

- (a) Availability within the Hours of Service regulations; and
- (b) By seniority order.

26.5 An employee returning to duty after being absent less than 30 days by reason of sickness, temporary disability, suspension, leave of absence or vacation, will be returned to the current vacant assignment. Upon the next shift bid period, the employee may exercise their seniority to bid to a new assignment.

26.6 The Union shop steward will work with a SMART representative in processing the shift bids. All bids will be submitted in writing to the Division Superintendent or designee. The Superintendent will post copies of all bids submitted.

ARTICLE 27 FURLOUGH

27.1 For the purposes of this section, furlough or layoff, is defined as a reduction in force whereby the total number of budgeted position allocations in a job classification is reduced. A furlough may also include establishing unpaid days off to avoid the reduction of budgeted positions. When SMART determines it necessary to reduce the workforce, employees shall be furloughed in inverse seniority order within classification. A furlough is an involuntary separation and is not subject to the grievance and arbitration procedure.

27.2 SMART shall give fourteen (14) days' notice to employees that they will be furloughed. If SMART elects not to give fourteen (14) days' notice, SMART shall pay the employee their regular rate of pay for each day that notice was not given, up to a maximum of two (2) weeks' pay. The provisions for notice shall not apply if notice of furlough is prevented due to fire, storm, major breakdown, labor dispute or other cause beyond the control of SMART.

27.3 The DISTRICT will pay for two months of the employee's COBRA medical coverage provided the employee has completed one or more years of service. Note: Under CALPERS medical, the employee is eligible to receive an additional month of medical insurance coverage after separation from employment if the employee is able to pay their portion of the premium (15%) prior to the start of COBRA eligibility.

27.4 Employees on furlough will be recalled to work in seniority order within classification. Employees on furlough shall remain on the seniority list for purpose of recall for a period not to exceed twelve (12) months following furlough. Employees who are recalled within twelve (12) months will retain all seniority accrued in prior service. Benefits do not accrue during a furlough period. Employees will have vacation, compensatory and sick leave cashed out per District policies.

27.5 Any employee who rejects a recall offer, fails to respond to the notice of recall within ten (10) days of receipt of certified mail, or fails to return to work within fourteen (14) days after a recall notice shall be removed from the seniority list.

27.6 In a case of a reduction in force, SMART will meet and confer with the Union over the effects of the furlough.

27.7 As required per AB 2224, Section 150143, the District agrees that it will not contract out the performance of services performed by or fairly claimable by the employees of the bargaining unit without the agreement of the accredited representative of that bargaining unit's employees.

ARTICLE 28 EMPLOYEE ASSISTANCE PROGRAMS

28.1 The DISTRICT and UNION are committed to protecting the safety, health and well-being of all employees, the public and other individuals in the workplace. The District provides an Employee Assistance Program (EAP) to all Employees as part of its benefits program.

28.2 Substance Abuse: As required by District policy and Federal Railroad Administration Regulations, the District has developed a Drug and Alcohol Free Workplace Policy and 49 CFR Part 219 Compliance Plan (APPENDIX A). All Employees in the bargaining unit are covered under the provisions of this plan.

28.3 Employees in the bargaining unit are also eligible to seek help for substance abuse or mental health issues with the Teamsters Assistance Program (TAP). Employees are encouraged to seek assistance through the District's EAP or the TAP when needed.

ARTICLE 29 NO STRIKES, WORK STOPPAGES OR LOCKOUTS

29.1 The Union agrees that during the life of this Memorandum of Understanding there shall be no strikes, slowdowns, or any other form of work stoppage, including sympathy strikes and SMART agrees that there shall be no lockouts.

ARTICLE 30 ACCESS TO NEW HIRE INFORMATION

30.1 The DISTRICT will notify the UNION of all new hires at least one week prior to the new employee's start date. All new hires will receive a new employee orientation on their first day of employment. The DISTRICT agrees to allocate a thirty (30) minute timeframe during the new hire orientation schedule for UNION representatives to meet with the new employee(s). A UNION representative will contact a representative of the District's human resources department at least twenty four hours in advance of the new hire orientation date to arrange a time to meet with the new employee during the orientation process. If UNION does not wish to send a representative to the new hire orientation, they may provide written materials to the DISTRICT Human Resources Department which will be provided to the new employee.

30.2 The DISTRICT will provide the UNION with EMPLOYEE contact information within 30 days of the date of hire pursuant to AB 119, Section 3558 of the government code.

ARTICLE 31 TERM OF AGREEMENT

31.1 This Memorandum of Understanding shall become effective January 15, 2018 and remain in effect to and including June 30, 2019, and thereafter shall automatically be renewed from year to year unless either party shall give notice in writing to the other party at least sixty (60) days prior to the end of the initial term of a desire to amend, modify, or terminate this Memorandum of Understanding. If such notice or notices are not given, the Memorandum of Understanding shall be deemed to be renewed for the succeeding year.

IN WITNESS WHEREOF, the duly authorized representatives of the parties hereto, having met and conferred in good faith, have caused their names to be subscribed this _____ day of a _____. 2018.

FOR SMART

FORTHE UNION

APPROVED

RATIFIED

Debora Fudge
Chair, Board of Directors

Michael Yates
Business Representative

Attest
Leticia Rosas-Mendoza
Clerk of the Board of Directors

SMART NEGOTIATORS

TEAMSTERS NEGOTIATORS

Jessica Sutherland
Assistant General Counsel

Pedro Mendez
Business Representative

Lisa Hansley
SMART Human Resources

Glenroy George Jr
Employee Representative

APPENDIX A

FEDERAL RAILROAD ADMINISTRATION CONTROL OF ALCOHOL AND DRUG USE

(49 CFR PART 219)

**MODEL PART 219
RAILROAD COMPLIANCE PLAN**

Sonoma-Marín Area Rail Transit

June 12, 2017

Date of FRA Plan Approval: June 11, 2017

MODEL PART 219 RAILROAD COMPLIANCE PLAN

FRA's Model Part 219 Railroad Compliance Plan has been developed by FRA as a tool to assist railroads in complying with the requirements of Title 49, Code of Federal Regulations Part 219 with respect to submission and approval of random alcohol and drug testing and the required programs. This plan, although initially developed for the smaller railroads, may be used by all railroads regardless of class.

Only railroads that are required to comply with Part 219 are authorized to use Federal authority. Therefore, entities having less than 16 covered service employees (unless they operate on tracks of another railroad or otherwise engage in joint operations with another railroad except as necessary for purposes of interchange) are not authorized to utilize Federal authority to conduct Federal random or reasonable cause testing. In those instances, a railroad should use "Company Policy Testing" as their authority. All railroads subject to Part 219.3 would still be responsible for complying with Subpart C – Post-Accident testing requirements.

Simply signing and adopting this plan does not constitute compliance. The actions required by the regulation must be in accordance with regulatory requirements to achieve compliance. **In all cases where there is a difference between this plan and 49 CFR Part 219 or 49 CFR Part 40, the CFR takes precedence.**

NOTE: Title 49, CFR Part 40 requires employers to have a Designated Employer Representative (DER), defined in 40.3 as "An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of Part 40. Service agents cannot act as DERs." In the past, this person may have been referred to as the Program Administrator.

NOTE: Please make all entries, changes, or additions to this model plan in bold, italics, color, or other distinguishing manner in order to expedite review by the FRA Drug & Alcohol Program Specialist.

I. Policy Statement

Sonoma-Marín Area Rail Transit recognizes the problem of substance abuse in today's society. This problem poses particular concerns to an employer who is subject to governmental regulations and seeks to promote the safety of the general public. This railroad has a concern for the safety, health and well being of its employees as well as an obligation to comply with the United States Department of Transportation (DOT) and Federal Railroad Administration (FRA) regulations. This railroad will comply with all statutes and regulations administered by the FRA in implementing the required Part 219 Drug and Alcohol Program.

Programs have been established on this railroad which requires regulated employees to demonstrate their safety posture through complying with:

1. Urine screens to detect the presence of marijuana, cocaine, opioids, phencyclidine and amphetamines (See 49 CFR § 40.85 and 49 CFR § 40.87);
2. Breath alcohol tests to detect the unauthorized use of alcohol; and
3. Breath, urine, blood and tissue (fatality) testing after qualifying FRA post-accident events.

In accordance with the applicable Federal regulations, this railroad prohibits persons who perform work regulated by the Federal Hours of Service Laws (see 49 U.S.C. §§ 21101-21108) and/or performing duties as Maintenance-of-Way (MOW) workers as described in the definition of "Roadway Worker" in § 214.7 from being under the influence and/or possession of illegal substances and/or under the influence of alcohol while on duty or within four hours of reporting for regulated service. Additionally, illegal substance use is prohibited on or off duty, except as allowed in 49 CFR § 219.103.

II. Identifying Information.

Railroad:

Name: Sonoma-Marín Area Rail Transit

Address: 5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954

Phone: 707-794-3330

E-Mail: cday-flynn@sonomamarintrain.org

Designated Employer Representative:

Name: Colleen Day-Flynn Address: (If different from above)

Phone: 707-794-3326

E-Mail: cday-flynn@sonomamarintrain.org

Assistant Designated Employer Representative:

Name: Yasamin Mora Serrano Address: (If different from above)
Phone: 707-794-3080
E-Mail: ymserrano@sonomamarintrain.org

Medical Review Officer:

Name: Paul Teynor, MD
Address: 76 E 6790 S
Midvale, UT 84047
Phone: 815-486-5400

Testing Laboratory (must be on HHS list of certified labs):

Name: Clinical Reference Laboratory
Address: 8433 Quivira Road
Lenexa, KS 66215
Phone: 913-492-3652

Substance Abuse Professional (SAP):

Name: Lisa Wolper, SAP
Address: 825 College Ave
Santa Rosa, CA 95404
Phone: 707-524-8864

III. Scope

This policy applies to all railroad personnel (including contractors and volunteers) who perform regulated duties subject to either the Federal Hours of Service Laws “Covered Service” and/or performing Maintenance-of-Way (MOW) duties covered by the definition of “Roadway Worker” in § 214.7.

This railroad has a total of 54 regulated service employees (including volunteers and contractors) who perform “Hours of Service” functions.

This railroad has a total of 10 regulated service employees (including volunteers and contractors) who perform “Roadway Worker” functions.

The total number of all regulated employees (**include both covered service and roadway workers**) at the time of this submission is: 64.

(Include any contracted employees in the above counts.)

If applicable, identify the following for the contractor (**if you have multiple regulated service contractors please add appendix at the end of this document with the following information**):

Name of contractor: _____

Regulated Service performed for your railroad: _____

Address: _____

Contact Person: _____

Email address: _____

Phone: _____

Identify whether you operate on tracks of another railroad (or otherwise engage in joint operations with another railroad, except as necessary for purposes of interchange). If so, which railroad (s) and mileage: _____

Previous Employer Checks: This railroad is required to check on the drug and alcohol testing record of employees it is intending to use to perform regulated duties. This railroad will, after obtaining an employee’s written consent, request information from DOT-regulated employers who have employed the employee during any period during the two years before the date of the employee’s application or transfer into regulated service. **See 49 CFR 40.25.**

An employee must also be asked whether he or she tested positive (or refused to test) on any Federal pre-employment drug or alcohol test administered by a DOT employer to which the employee applied for, but did not obtain regulated service work during the past two years.

With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee’s successful completion of DOT return-to-duty requirements (including Federal follow-up tests) must be provided to this railroad.

IV. Testing Programs

There are numerous situations when Federal **drug and/or alcohol tests** must be administered for the railroad to be in compliance with 49 CFR Part 219. Personnel performing functions listed in Section III of this policy will be required to submit to a drug and/or alcohol test in the instances set forth, as follows:

- 1) **Pre-Employment Drug Testing** – (49 CFR 219.501) Applicants will be informed that all individuals this company will use for regulated service must be drug-free. Passing a Federal pre-employment drug test is a condition prior to performing regulated service duties. If an applicant refuses to submit to the drug test, or tests positive on the drug test, the applicant will not be considered qualified to perform regulated service and will not be offered a position in regulated service.

Federal Pre-Employment Alcohol Testing (Optional) – (49 CFR 219.502) Authorized but not required. This railroad chooses to conduct Federal alcohol pre-employment testing? Place an “X” in one of the following boxes:

Yes No

- 2) **Federal Reasonable Suspicion Testing** – (49 CFR 219.301)

Regulated service personnel will be required to submit to a Federal drug and/or alcohol test whenever a properly trained supervisory employee of this railroad has reasonable suspicion that a regulated employee is currently under the influence of or impaired by a controlled substance or alcohol. Reasonable suspicion must be based on specific, contemporaneous personal observations the supervisor can articulate concerning the employee’s appearance, behavior, speech, body odor, chronic effects or withdrawal effects.

Part 219.11(g) requires supervisory employees to have education and training on alcohol misuse and controlled substance use. The training will cover the physical, behavioral, speech and performance indicators of probable alcohol misuse and use of controlled substances. It will also prepare the supervisors to make the decisions necessary in reasonable suspicion and FRA post-accident situations (i.e., what is a qualifying event and who is to be tested).

The observation for alcohol must be made by at least one qualified supervisory employee who has received proper training in the signs and symptoms of alcohol use per 219.11(g). Documentation of this decision must be maintained, as required by Part 219 Subpart J.

The observation for drugs must be made by at least two qualified supervisory employees, one of which has received proper training in the signs and symptoms of drug use/misuse per 219.11(g). One qualified supervisor must be on-site, but the supervisor trained per 219.11(g), although preferred does not have to be the supervisor on-site. Documentation of this decision must be maintained, as required by Part 219 Subpart J.

If operating on tracks of another railroad, this railroad will coordinate with the host railroad and decide how the supervisor on the site will immediately communicate and coordinate decisions to test and who will administer the necessary testing. In all reasonable suspicion cases, the supervisor will ensure that the regulated service person is transported immediately to a collection site for a timely collection of a urine and/or breath specimen. If the regulated service person is deemed not fit to return to work, the supervisor will arrange transportation for the person. This is not a Federal requirement, but safety will be better assured if accomplished.

Supervisors must document their observations that led them to decide there was a “reasonable suspicion” to have the regulated service person subjected to Federal drug and/or alcohol testing.

- 3) **Federal Reasonable Cause Testing** – (49 CFR 219.401) **Authorized but not required.** **A railroad must choose whether or not to conduct Federal drug and alcohol Reasonable Cause testing.** If a railroad selects to conduct Federal (DOT) Reasonable Cause testing, then the railroad cannot perform company (non-DOT) testing for any event described in 219.403. If a railroad selects to conduct company (non-DOT) Reasonable Cause testing, then the railroad cannot perform DOT testing for any event described in 219.403.

This railroad chooses to conduct **Federal Reasonable Cause** drug and alcohol testing for all train accident/incidents and rule violations that meet the criteria of 49 CFR 219.403. Please check the appropriate box:

Place an “X” in one of the following boxes: Yes No

A Federal reasonable cause drug and/or alcohol test may be required (employer’s decision) when a regulated service employee:

- a. Was involved in a qualifying Train accident/incident per 219.403 (a) and a supervisor has a reasonable belief based on specific and articulable facts that the regulated service person’s acts or omissions contributed to the occurrence or severity of the accident/incident; or
- b. Committed a rule violation described in 219.403 (b).

If operating on tracks of another railroad, this railroad will coordinate with the host railroad and decide how the supervisor on the site will immediately communicate and coordinate decisions to test and who will administer the necessary testing. In all reasonable cause cases, the supervisor will ensure that the regulated service person is transported immediately to a collection site for a timely collection of a urine and/or breath specimen. If the regulated service person is deemed not fit to return to work, the supervisor will arrange transportation for the person. This is not a Federal requirement, but safety will be better assured if accomplished.

Supervisors must document their observations that led them to decide there was a “reasonable cause” to have the regulated service person subjected to Federal drug and/or alcohol testing.

4) **FRA Post-Accident Drug/Alcohol Testing** – (49 CFR 219.201)

FRA regulations require blood and urine specimens from all surviving **regulated service personnel** when they are directly involved in a qualifying accident or incident. Tissues are also collected, in addition to urine and blood from any fatality involving an on-duty railroad employee (**direct or “regulated service” contractual employee**). Events requiring FRA post-accident testing include (note regulatory exceptions will be followed):

1. **Major Train Accident** involving any rail equipment accident with reportable damages in excess of the current calendar year reporting threshold under 49 CFR Part 225 and one or more of the following:
 - a. A fatality (any fatality).
 - b. A release of hazardous materials from railroad “lading” that results in an evacuation or reportable injury caused by the hazmat release.
 - c. Damage to railroad property of **\$1.5 Million** or more.
2. **Impact Accident** involving reportable damage in excess of the current reporting threshold that results in:
 - a. A reportable injury; or
 - b. Damage to railroad property of \$150,000 or more.
3. **Fatal Train Incident** involving any on-duty railroad employee or regulated contractor employee where damages do not exceed the current reporting threshold.
4. **Passenger Train Accident** with a reportable injury to any person in a train accident involving damage in excess of the current reporting threshold that involves a passenger train.
5. **Human-Factor Highway-Rail Grade Crossing Accident/Incident** meeting one of the following criteria:
 - i. Regulated employee interfered with the normal functioning of a grade crossing signal system, in testing or otherwise, without first providing for the safety of highway traffic that depends on the normal functioning of such a system, as prohibited by § 234.209, is subject to testing.
 - ii. Train crewmember who was, or who should have been, flagging highway traffic to stop due to an activation failure of a grade crossing system, as provided § 234.105 (c)(3), is subject to testing.
 - iii. Regulated employee who was performing, or should have been performing, the duties of an appropriately equipped flagger (as defined in § 234.5), but who

failed to do so, due to an activation failure, partial activation, or false activation of the grade crossing signal system, as provided by § 234.105 (c)(1) and (2), 234.106, or 234.107 (c)(1)(i), is subject to testing.

- iv. If there is a fatality of any regulated service employee regardless of fault. (fatally injured regulated employee must be tested)
- v. If regulated employee violates an FRA regulation or railroad operating rules and whose actions may have played a role in the cause or severity of the accident/incident, is subject to testing.

Testing Decision: For an accident that meets the criteria for a Major Train Accident, all assigned **crew members of all involved trains and on-track equipment must be tested.** Test any other regulated service employees that had a possible role in the cause or severity of the accident.

For an Impact Accident, Fatal Train Incident, Passenger Train Accident or Human-Factor Highway-Rail Grade Crossing Accident/Incident, Test any other regulated service employees that had a possible role in the cause or severity of the accident. The railroad must exclude other regulated service employee if the responding railroad representative can immediately determine, on the basis of specific information, that the employee had no role in the cause(s) or severity of the accident/incident (considering any such information immediately available at the time).

For a fatal train incident, the fatally injured employee cannot be excluded from being tested.

If there is a fatality of any regulated service employee as result of a Highway-Rail Grade Crossing Accident/Incident, the fatally injured regulated employee must be tested regardless of fault.

Exceptions from Testing: No test may be required in the case of a collision between railroad rolling stock (including any on-track equipment) and a motor vehicle or other highway conveyance at a rail/highway grade crossing, unless it meets the criteria set forth above in Item 5 (i-v).

No test may be required in the case of an accident/incident the cause and severity of which are wholly attributable to a natural cause (e.g., flood, tornado, or other natural disaster) or to vandalism or trespasser(s), as determined on the basis of objective and documented facts by the railroad representative responding to the scene.

The railroad supervisor(s) on the scene will make timely determinations as to the event being a qualifying event and which regulated service employees (if any) are required to be tested according to the rule.

This railroad will identify the appropriate personnel who must be tested and then ensure that specimens are collected and shipped.

A. Random Drug and Alcohol Testing – (49 CFR 219.601)

The railroad is responsible for ensuring that the random program meets regulatory requirements and is approved by FRA (see Appendix A). The principles which are required in the FRA regulation for the plan to be in compliance are attached (see Appendix B). The selection process will ensure that each regulated service person has an equal chance of being selected at every random selection. The random plan shall ensure that testing is accomplished at the beginning and at the end of the duty period for alcohol. The minimum annual random percentage of alcohol testing at either end of the duty period is 10 percent over the course of the year.

Regulated Service (Covered Service)

Current employers must test at a minimum of **25 percent annual rate for drugs and 10 percent annual rate for alcohol** for employees who perform regulated duties subject to the Federal Hours of Service Laws “**Covered Service**”. A railroad is permitted to test at a higher rate than the minimum. You must identify if you are testing at a higher rate and if so, the rate(s):

Regulated Service (Roadway Worker)

Beginning June 12, 2017, Current employers must test at a minimum **50 percent annual rate for drugs and 25 percent annual rate for alcohol** for employees who perform regulated duties defined as “**Roadway Worker**” in **49CFR § 214.7**.

A railroad is permitted to test at a higher rate than the minimum. You must identify if you are testing at a higher rate and if so, the rate(s):

Random Testing Pools:

- a) Identify and maintain an up-to-date database or list of all personnel working in regulated service (at least once per quarter) and ensure they are all in the random pool(s). Identify how many random testing pools you have. For example, most short line railroads will have only one random pool, but larger railroads may have multiple pools (**FRA recommends Roadway Workers be placed in separate and stand-alone random pools. Railroads not normally required to submit MIS reports as required by 49 CFR Part 219.800 should contact Sam Noe to discuss the combining of random pools**): SMART and ADTS will maintain the following pools: (1) DOT/FRA Hours of Service Pool; and (1) MOW/Roadworker Pool (To be included in a ADTS consortium pool)
-

- b) Identify what regulated service employee crafts/functions are in each of the railroad’s random testing pool(s). For example, engineers, conductors, brakemen, switchmen, utility

employees, hostlers, mechanical employees performing hostling duties, train dispatchers, signal maintainers, roadway workers, etc.

 Hours of Service Pool: Engineer, Conductor, Engineer-Conductor, Controller Supervisor, Vehicle Maintenance Technician, Supervisor Vehicle Maintenance, Signal Technician, Signal Technician Supervisor, , Bridge Tenders, Facilities Maintenance Supervisor, Facilities Maintenance Technician, Track Maintenance Supervisor

MOW ADTS Consortium: Track Maintainer, Track Maintenance Supervisor

Random Selection and Testing Procedures:

1. There are only two acceptable methods of selection: computer program or random number table. The lottery style, e.g., drawing names out of a hat is no longer an acceptable method of selection. Identify your railroad’s method of selection: Computer Program coordinated by our TPA, ADTS, LLC
2. Identify whether your railroad is making selections by name, ID number, train number, job number, etc. : ID #
3. Random Pools are in a consortium or managed by a Third Party Administrator (TPA):
Yes No
4. If using C/TPA pools, please provide name of the C/TPA pool: SMART’s MOW pool will be in the ADTS DOT-MOW/Roadway Worker Consortium
5. If your railroad is using a consortium/third party administrator (C/TPA) to assist in random testing, identify the following information for the C/TPA:
Name of C/TPA: ADTS Alcohol and Drug Testing Services, LLC
Address: 2700 E. Sunset Road, Suite #7 Las Vegas, NV 89120
Contact Person: Jana Stephens Ghigo
Phone: 702-769-9871

Please mark the following services the C/TPA are performing for your railroad:

- None
- Random Pool Maintenance
- Random Pool Selections
- Collection Services - Drug
- Collection Services - Alcohol
- HHS Laboratory
- Medical Review Officer (MRO)
- Substance Abuse Professional (SAP)
- Employee Assistance Professional (EAP)

___ Drug and Alcohol Counselor (DAC)
___ Other: _____

6. Identify how often your railroad is making selections, e.g., monthly or quarterly:

Monthly

Note: If selecting quarterly in order to maintain the deterrent effect of random testing for very small railroads and contractors, FRA is requiring each individual random testing pool established under subpart G to select and randomly test at least one entry per quarter, even if fewer tests are needed to meet FRA’s minimum random testing rates.

Objective Procedure, if making quarterly selections:

7. Identify how you determine whether a selection is to be tested for drugs, for alcohol, or both:

TPA’s Random Selection results by Employee ID #

8. Identify your testing “window,” e.g., 30 days.

30 Days

Note that if you’re making monthly selections, the testing windows may not exceed 30 days and not past the end of the month. If you’re making quarterly selections, the testing window is 90 days but not past the end of the quarter.

9. Provide additional descriptions of your random testing selection procedure, as applicable:

10. This railroad will safeguard these selection records to ensure that information concerning collection dates and selections are not disclosed until necessary to arrange for collection or provide notifications.

11. These random testing records are required to be maintained for 2 years. This includes an electronic or hard copy “snapshot” of the random testing pool each time selections are made, a copy of the list of selected employees, a copy of the drug chain of custody form and/or alcohol testing form, and the reason for not testing any of the selected employees.

12. In the event that all or a clearly defined portion of the railroad is subject to an emergency such as a flood or severe ice storm, the ranking operations officer on duty is authorized to

declare an emergency by completing a memorandum setting forth the facts necessitating this action. If such an emergency determination is made, the date/time of the emergency and random drug/alcohol tests that were suspended must be entered into the DER's files. Random selections not administered because of the emergency are deemed void, and the selection numbers will be adjusted later to make the required percentage.

13. Only a substantiated medical emergency involving the selected person or an emergency involving an immediate family member (e.g., birth, death, or a medical emergency) provides the basis for excusing a regulated employee/person from being tested once notified. A medical emergency is defined as an acute medical condition requiring immediate emergency care. A person excluded under these criteria must provide substantiation from a credible outside professional (e.g., doctor, hospital, law enforcement officer, school authority, court official) which can be furnished prior to this release or within a reasonable period of time after the emergency has been resolved. Such excluded (excused) persons will not be tested based on this selection.
14. Once the regulated service person selection is made, the DER will arrange notification. No prior notification will be given. A selected person will only be tested during his/her tour of duty, extended only long enough to complete testing but not to exceed Federal hours of service law requirements. The person, once notified, must proceed to the selected testing facility IMMEDIATELY. Identify how your railroad will notify selected employees:
The employee's supervisor will notify the employee with a written notification indicating the type of testing (drug and / or alcohol)

15. The collection date and time during the selection period (testing window) will be varied by the DER to ensure that it cannot be anticipated. It is not necessary for the railroad to randomly select the "testing date."

V. Drug Testing Procedures

The designated collection agents will be qualified and follow the proper collection procedures as described in 49 CFR Part 40.

- a. The Medical Review Officer (MRO) will review drug test results as required in 49 CFR Part 40. All test results will be reported exclusively through the MRO.
- b. A laboratory certified by the Department of Health and Human Services/ Substance Abuse and Mental Health Service Administration (DHHS/ SAMHSA), under the Mandatory Guidelines for Federal Workplace Drug Testing Programs, will perform all drug testing.
- c. Test results will be reported from the laboratory only to the MRO for review and action consistent with 49 CFR Part 40.

- d. The name of the individual providing the specimen will remain confidential and will not be provided to the laboratory performing the test. The testing laboratory is only able to identify the specimen by the specimen ID number printed on the chain-of-custody form. The laboratory will only use a urine custody and control form consistent with the requirements of 49 CFR Part 40.
- e. The designated laboratory will only test for the drugs listed in 49 CFR 40.85.
- f. The MRO will verify the results and report (using procedures in 49 CFR Part 40) to the DER whether the test was positive or negative and the drugs for which there was a positive result.
- g. External blind performance testing of specimens is now only required for those employers or C/TPAs with an aggregate of 2,000 or more DOT-regulated employees per 49 CFR 40.103.

VI. Alcohol Testing Procedures

Breath alcohol testing will be performed by fully trained and certified Breath Alcohol Technicians (BAT) using the National Highway Traffic Safety Administration (NHTSA) approved testing devices. The results will be documented on an approved Federal Breath Alcohol Testing Form and will be signed by the employee and the BAT. At the time of the alcohol test, the employee will receive a copy of the test result, with an identical copy being sent to the railroad's DER.

- a. Negative results. The DER will be mailed a copy of the negative test results.
- b. Positive results. The BAT will immediately and directly notify the railroad's DER if the test results are positive (0.02 percent or higher) who will take appropriate action to remove or restrict the employee from regulated service as required by Part 219.

VII. Drug Test Results

For any FRA testing, the railroad should as a "best practice" notify the employee in writing of test results.

Positive or Otherwise Non-Negative Results. If the laboratory reports the drug test result as POSITIVE or otherwise non-negative, the following procedures will be followed:

- a. The MRO will immediately inform the regulated service person of the result and offer the person the opportunity for an interview to discuss the test result. If the MRO has difficulty reaching the employee, the procedures set forth in 49 CFR 40.131 will be followed.
- b. The MRO will complete and document the review as required by 49 CFR Part 40 Subpart G, determining if the external chain of custody was intact, if the person has a legitimate medical explanation for the presence of any controlled substance, and whether there is any

basis to question the scientific sufficiency of the test results. In the case of an opiate positive, the MRO will also make the special determinations required by the regulation.

- c. If the MRO verifies the test result as positive, the MRO will report the result to the railroad's DER. If the MRO determines that the result is non-negative and the non-negative result cannot be explained, the appropriate regulatory action will be pursued. The chart at Appendix D delineates the appropriate action. The MRO will report the verified test result in accordance with 49 CFR § 40.163. The MRO will not provide the DER with the quantitative test results unless the employee, as stipulated in the regulation, disputes the test.

Negative results. If the MRO has determined that the drug test is NEGATIVE, the MRO will accomplish the required administrative review and report the negative results to the railroad's DER in accordance with 49 CFR § 40.163.

Negative-dilute results. Unless the MRO directs a railroad to conduct a recollection under direct observation (for a result with creatinine from 2 to 5 mg/dL), per 40.197, a negative-dilute is considered a negative test, although a railroad may, but is not required to direct the employee to immediately take another test. Such recollections must not be collected under direct observation unless there is another basis to do so. A railroad must treat all regulated employees the same. For example, it must not retest some employees and not others. A railroad may establish different policies for different types of tests (e.g., conduct retests in pre-employment situations, but not in random test situations). **This railroad's policy for negative-dilutes is as follows:** SMART will conduct retests for pre-employment only.

VIII. Confidentiality

- a. Medical information a regulated person provides to the MRO during the verification process is treated as confidential by the MRO and is not communicated to the railroad except as provided in Part 40.
- b. Confidentiality of Federal drug or alcohol testing results will be maintained as required by the regulations. For example:
 - 1. The laboratory observes confidentiality requirements as provided in the regulations. This railroad does not advise the laboratory of the identity of persons submitting specimens. The laboratory performing the testing must keep all records pertaining to the drug test for a period of two years.
 - 2. All test results will remain exclusively in the secure files of the MRO. The MRO will observe strict confidentiality in accordance with the regulations and professional standards. The MRO will retain the reports of individual test results as required in Part 219 Subpart J.
 - 3. The DER will maintain all test results reported by the MRO, both positive and negative, in secure storage. The results will be retained as required in Part 219 Subpart J.

Other personnel will be informed of individual test results only in the case of positive tests and authorized only on a need-to-know basis.

IX. Regulated Service Personnel Training Program (49 CFR 219.11)

Each regulated service person will receive a copy of this policy and the other information requirements in 49 CFR Part 219.23 (e) which clearly states the prohibitions required by the regulation. In addition, each regulated person will be given information concerning the problems caused by alcohol or controlled substances and available methods of intervening when an alcohol or controlled substance problem is suspected, including confrontation, referral to an employee assistance program and/or referral to management.

X. Prescription Drugs (40 CFR 219.103)

The use of controlled substances (on Schedules II through V of the controlled substance list) is not prohibited as long as they are prescribed or authorized by a medical practitioner and used at the dosage prescribed or authorized. Either one treating medical professional or a railroad-designated physician should determine that use of the prescription(s) at the prescribed or authorized dosage is consistent with the safe performance of the employee's duties. Regulated service employees should also seek the advice of a medical professional whenever they are taking any over-the-counter drug that may adversely affect the safe performance of duties.

XI. Compliance with Testing Procedures

- a. All regulated service personnel/applicants requested to undergo a Federal drug and/or alcohol test are required to promptly comply with this request. This railroad expects all prospective and current regulated service personnel to exercise good faith and cooperation in complying with any procedures required under this policy. Refusal to submit to a Federal drug or alcohol test required under FRA rules, engaging in any conduct which jeopardizes the integrity of the specimen or the reliability of the test result, or any other violations of the prohibited conduct in 49 CFR 219.101 or 219.102 could subject the person to disciplinary action (up to and including termination), independent and regardless of any test result. This includes failure to show up on time for a drug/alcohol test, failing to remain at the testing site until the testing process is complete, etc. (see 40.191).
- b. All DOT Federal return-to-duty and follow-up urine specimens must be collected under direct observation (using the direct observation procedures in 40.67 (i)). Note that a SAP may also require return-to-duty and follow-up "drug" tests in addition to alcohol tests following an alcohol positive of 0.04 percent or greater.
- c. Direct Observation Urine Collection Procedures: The collector (or observer) must be the same gender as the employee. If the collector is not the observer, the collector must instruct the observer about the procedures for checking the employee for prosthetic or other devices designed to carry "clean" urine and urine substitutes AND for watching the employee urinate into the collection container. The observer will request the employee to raise his or her shirt, blouse or dress/skirt, as appropriate, above the waist, just above the navel; and lower clothing

and underpants to mid-thigh and show the observer, by turning around, that the employee does not have such a device.

- 1) If the employee has a device, the observer immediately notifies the collector; the collector stops the collection; and the collector thoroughly documents the circumstances surrounding the event in the remarks section of the testing form. The collector notifies the DER. This is a refusal to test.
 - 2) If the employee does not have a device, the employee is permitted to return his/her clothing to its proper position for the observed collection. The observer must watch the urine go from the employee's body into the collection container. The observer must watch as the employee takes the specimen to the collector. The collector then completes the collection process.
 - 3) Failure of the employee to permit any part of the direct observation procedure is a refusal to test.
- d. As a minimum, a regulated service person will be removed from FRA regulated service for a minimum of nine months if there is a finding of "refusal to test."

XII. Positive Test Results

- a. **Alcohol positive of 0.02 to 0.039:** Regulated service personnel should receive written notification of test results which are other than negative. A Federal positive drug test or a Federal alcohol test result of 0.02 percent or greater or a refusal to test will result in immediate removal from regulated service under FRA regulations. A positive alcohol test of at least 0.02 percent but less than 0.04 percent will result in the removal of the person from regulated service for at least eight hours. The railroad is not prohibited from taking further action under its own company policy.
- b. **Federal violation:** A regulated service person with an MRO verified positive drug test or a breath alcohol test result of 0.04 percent or greater (or a refusal) has violated Federal regulations and must be immediately removed from regulated service. Prior to or upon withdrawing the employee from regulated service, the railroad must provide notice to the employee of the reason for this action. If the employee denies that the test result is valid evidence of alcohol or drug use prohibited by 219.101 or 219.102, the employee may demand and must be provided an opportunity for a prompt post-suspension hearing. **See 219.104 (c) for the hearing provisions.**

Even if the railroad does not wish to keep the employee in its employment, it must provide the above hearing (if requested) and at a minimum provide the employee with a list of qualified Substance Abuse Professionals. Prior to returning to regulated service the employee will be required to undergo an evaluation by a qualified Substance Abuse Professional (SAP) that is railroad approved, to determine the need for treatment and/or education. The employee will

be required to participate and comply with the SAP-recommended treatment and any after-care or follow-up treatment that may be recommended or required.

After successful treatment, for a Federal positive drug test (or alcohol test result of 0.04 percent or greater), per the SAP's requirements, the person must provide a Federal return-to-duty urine specimen and/or breath specimen for testing (which is negative) prior to being allowed to return to regulated service. In addition, the person will be subject to additional unannounced Federal follow-up testing, as determined by the SAP, for a maximum period of 60 months, with a minimum of six tests being performed in the first twelve months (**engineers and conductors – SAP will require a minimum of 6 drug tests and 6 alcohol tests in the first 12 months**). Failure to comply with these provisions and remain alcohol and/or drug-free will result in subsequent removal from regulated service and could result in disciplinary action, up to and including termination. Note: Federal regulation does not guarantee the employee will maintain an employment relationship. This is determined via employer and employee negotiation. These Federal return-to-duty and follow-up drug tests must be collected under direct observation.

- c. Identify other employer sanctions (if applicable) for a Federal alcohol test result of at least 0.02 percent but less than 0.04 percent:

___ If the alcohol confirmation test is 0.02% - 0.039%, SMART employees will be removed from covered service until their next regularly scheduled duty, but for not less than 8 hours. They need not be evaluated by a SAP, nor are they required to comply with any other FRA requirements before returning to duty.

Identify other employer sanctions (if applicable) for a Federal alcohol test result of 0.04 percent or greater:

___ SMART will follow the FRA regulations in this instance. SMART will also invoke the following Company policy: Employees who violate the District's drug and alcohol policy with a 0.04 percent or greater alcohol test result will be removed from the workplace immediately. The employee will be subject to disciplinary action and may be required to enter rehabilitation at the cost of the employee. An employee required to enter rehabilitation who fails to successfully complete the program will be terminated from employment.

Identify other employer sanctions (if applicable) for a Federal positive drug test:

___ SMART will follow the FRA regulations in this in this instance. SMART will also invoke the following Company policy: Employees who violate the District's drug and alcohol policy with a positive drug test result will be removed from the workplace immediately. The employee will be subject to disciplinary action and may be required to enter rehabilitation at the cost of the employee. An employee required to enter rehabilitation who fails to successfully complete the program will be terminated from employment.

XIII. Self-referral, Co-worker referral, and Non-peer referral (optional) Policies

This railroad’s policy to comply with 49 CFR Part 219.1001 and 49 CFR Part 219.1003 is as follows:

Employment Relationship. As per 219.1003(b), a regulated employee who enters and follows the tenants of this program as discussed below, will maintain his or her position upon successful completion of an education, counseling, and treatment program as specified by a Drug and Alcohol Counselor (DAC). Before the employee is charged with conduct sufficient to warrant dismissal, the employee must seek assistance through the railroad for his or her alcohol or drug use problem or be referred for such assistance by another employee or by a representative of the employee’s collective bargaining unit.

Imminent Detection. An employee may not use the referral program for the purpose of avoiding the imminent and probable detection of a rule violation by a supervising employee. No employee may take advantage of self-referral after being notified of a testing event or while in imminent risk of being detected for possession of alcohol or controlled substances.

Reasonable Suspicion. In the case of a Co-worker referral or a Non-peer referral (optional), if the employee accepts the referral and has agreed to a Rule G waiver, there is no need for the railroad to perform a Federal reasonable suspicion test. If the Federal reasonable suspicion test occurs, the referral takes precedence and a written request shall be submitted to the FRA Drug and Alcohol Program Manager for permission for reclassification to non-DOT status. This will allow the employer to vacate the return-to-duty and follow-up (RTD/FU) requirements of the reasonable suspicion test violation. Thus, the co-worker referral will take precedence and all subsequent RTD/FU testing will be appropriately conducted under non-DOT/company authority as per Part 219 Subpart K. In this scenario, the reasonable suspicion positive test result(s) are not subject to 49 CFR Part 40.25 requests from any subsequent DOT-regulated employers.

In the case of a Co-worker referral or a Non-peer referral (optional), when the employee does not accept the referral and does not agree to a Rule G waiver, the railroad must properly observe the employee for signs and symptoms of alcohol and/or drug use/misuse. If signs and symptoms are observed, the railroad must perform a Federal reasonable suspicion testing. In this scenario, the reasonable suspicion positive test result(s) are subject to DOT-regulated RTD/FU testing and 49 CFR Part 40.25 requests from any subsequent DOT-regulated employers.

Referral Sources. The railroad must specify whether, and under what circumstances, its policy provides for the acceptance of referrals from other sources, including (at the option of the railroad) supervisory employees. Identify acceptable referral sources besides the affected regulated service employee:

This company accepts referrals from non-peer sources? Yes No

Examples of non-peer sources include friends and family, etc. that contact the railroad. A railroad representative will meet with the employee in person regarding the information and determine whether to the employee is unsafe to work with or in violation of 49 CFR Part 219. If the railroad representative determines that employee is unsafe, the employee may either accept or reject the referral.

If rejected, a railroad representative trained in signs and symptoms would perform a Rule G observation on the employee in question. If signs and symptoms are present, then the railroad representative would order reasonable suspicion testing of the on-duty employee.

General Conditions. If the employee accepts the referral they must contact the DAC within 3 days.

The employee must cooperate with the DAC in the recommended course of counseling or treatment. Locomotive engineers and conductors that do not cooperate with the DAC will be considered to have active substance abuse disorders as per 49 CFR Part 240.119 and 49 CFR Part 242.115 and would have their confidentiality waived.

Once an employee has contacted the DAC, the DAC's evaluation shall be completed within 10 working days. If more than one evaluation is required, the evaluations must be completed within 20 working days.

No follow-up treatment, care, or testing shall exceed 24 months unless it involved a Part 219 violation.

Confidentiality. The railroad treats the referral and subsequent handling, including counseling and treatment, as confidential. With respect to a certified locomotive engineer, conductor or a candidate for certification, the policy of confidentiality is waived (to the extent that the railroad shall receive from the Employee Assistance Professional (EAP) or DAC, official notice of the substance abuse disorder and shall suspend or revoke the certification, as appropriate) if the person at any time refuses to cooperate in a recommended course of counseling or treatment.

Any drug and/or alcohol testing conducted pursuant to this railroad's referral policy is non-Federal testing because a violation of Federal regulations has not occurred.

Leave of Absence. The railroad will grant a minimum leave of absence that the DAC recommends to complete a primary education, counseling, or treatment program and to establish control over the employee's drug or alcohol abuse problem. An employee with an active substance abuse disorder may not perform regulated service until the DAC reports that safety is no longer effected.

Return to Service. The employee will be returned to service on the recommendation of the DAC. The employee must be returned to service within five working days of the DAC's notification to the railroad that the employee is fit to return to regulated service and the receipt of a follow-up testing

plan as per Part 219.1003(h)(2). The railroad may condition the employee's return on a return-to-duty medical evaluation.

This railroad requires a return-to-duty medical evaluation? Yes No

Compensation. 49 CFR Part 219.1001(d)(1) does not require the railroad to compensate the employee for any period that the regulated employee is restricted from performing regulated service under the referral program. However, compensation at a nominal rate has been seen to markedly increase participation in the referral program to enhance safety at the railroad.

This railroad compensates employees while engaged in a referral program of education, counseling, and treatment? Yes No

Compensation is at _0% of regular pay while participating in a referral program.

Self-referral: Regulated employees may contact the DAC at the following telephone and/or email address and contact hours:

Drug and Alcohol Counselor (DAC):
Contact person: Lisa Wolper
Address: 825 College Ave
Santa Rosa, CA
Phone: 707-524-8864

Optional Provisions.

1. The policy may provide that it does not apply to an employee who has previously been assisted by the railroad under a policy or program substantially consistent with 49 CFR Part 219.1005(c) or who has previously elected to waive investigation under 49 CFR Part 219.1005 (co-worker report policy).

Adopts this option: Yes No

If you checked the above option "No", please identify how many times and/or at what intervals an employee may use the referral programs: An employee may only utilize this option once over the course of their employment with SMART.

2. A referral policy may provide that the rule of confidentiality is waived if the employee at any time refuses to cooperate in a DAC's recommended course of counseling or treatment;

and/or the employee is later determined, after investigation, to have been involved in an alcohol or drug related disciplinary offense growing out of subsequent conduct. Identify whether you adopt the first, second, or both options:

Adopts Both Options: Yes No

Adopts 1st Option only: Yes No

Adopts 2nd Option only: Yes No

3. The policy may provide that, in order to invoke its benefits, the employee must report to the contact designated by the railroad either during non-duty hours (i.e., at a time when the employee is off duty); or while unimpaired and otherwise in compliance with the railroad's alcohol and drug rules consistent with 219.1005(d). Identify whether you adopt this optional provision:

Adopts this option: Yes No

4. The policy may require successful completion of a return-to-service medical examination as a further condition on reinstatement in regulated service. Identify whether you adopt this optional provision:

Adopts this option: Yes No

5. Other Optional Provisions: _____

Co-worker referral General Conditions and Procedures.

1. The alleged violation must come to the attention of the railroad as a result of a report by a co-worker that the employee was apparently unsafe to work with or was, or appeared to be, in violation of Part 219 or the railroad's alcohol and drug rules.
2. If the railroad representative determines that the employee is in violation, the railroad will immediately remove the employee from service in accordance with its existing policies and procedures. The railroad must allow the employee the opportunity to accept the co-worker referral. If rejected, the railroad may proceed to reasonable suspicion testing based on signs and symptoms of prohibited alcohol or drug use as determined by a trained supervisor.

Alternate Programs.

The railroad may request FRA to consider the following alternate program to fulfill the requirements under 49 CFR Part 219.1001 with more favorable conditions to regulated employees troubled by drug or alcohol abuse problems. The alternate program must have the concurrence of the recognized representatives of the railroad employees as per 49 CFR Part 219.1007(b):

If applicable enter alternate program in this box.

This company requests FRA to consider an alternate program for consideration?

Yes

No

Submit to the FRA Drug and Alcohol Program Manager at:

U.S. Department of Transportation
Federal Railroad Administration, Office of Railroad Safety - RRS-19
1200 New Jersey Avenue SE
Washington DC 20590

##

APPENDIX A

Once the FRA has approved a Random drug and alcohol testing plan, the railroad will receive an approval letter, which includes these conditions.

STANDARD APPROVAL CONDITIONS FOR RANDOM TESTING PROGRAMS

1. **This approval is effective upon receipt with respect to all matters within its scope. FRA reserves administration jurisdiction over all approvals and may reopen review based upon experience gained during implementation (audits).**
2. **Approval of the subject random testing program does not constitute or imply the granting of a waiver or exemption from any provision of Federal law or regulation. Compliance with all applicable provisions of 49 CFR Parts 219 and 40 is required. All random program plans must be applied in accordance with the criteria listed in this Appendix A and Appendix B.**
3. **Approval is contingent upon the railroad making appropriate amendments to the program to conform to any pertinent regulatory amendments that may be issued hereafter. Any such program amendments that may be required shall be submitted to the Associate Administrator for Safety at FRA by the effective date of the subject regulatory amendments, or by the expiration of 30 days from publication of the regulatory amendments in the *Federal Register*, whichever is later.**
4. **Amendments to the program shall be submitted as required by 49 CFR 219.605 and 49 CFR 219.607 and 49 CFR 219.609 and shall not be implemented prior to approval. The following guidance is provided with respect to when a program is deemed to have been amended.**
 - A. Any change in the selection methodology, the criteria for scheduling collections, non-availability criteria, or other structural element is a program amendment. Any change in the organizational level at which a function is carried out is a program amendment.
 - B. Substitution of incumbents performing the same function at the same organizational level (persons or contractors/volunteers) is not deemed to amend the program. Notification of these changes would be appreciated to assist FRA in maintaining liaison, but is not required.
 - C. Any change in a program that is occasioned by an amendment of an applicable DOT/FRA regulation and that involves the exercise of discretion to choose between or among one or more courses of action is a program amendment required to be filed under item 3 above. Any non-discretionary change in a program that is required by amendment of an applicable DOT/FRA regulation is not considered a program amendment requiring approval; however, the Office of Safety, FRA, would appreciate receipt of an informational copy of the revised program document showing current compliance.
 - D. Any case not addressed above may be resolved by contacting the Office of Safety, Administrator for Safety or that individual's delegate.

APPENDIX B

CRITERIA FOR ASSESSING DEPARTMENT OF TRANSPORTATION (DOT)

RANDOM DRUG AND ALCOHOL TESTING PROGRAMS

Section I. Random Testing Pools

- A. Random pool(s) must accurately and completely include all regulated service personnel. Whoever is performing the safety-sensitive “regulated service”, regardless of job title or status, is subject to 49 CFR Part 219 requirements (supervisors, volunteers, contractors, etc.). Pool lists must be retained for a minimum of two years.
- B. An employer may not mix regulated service and non- regulated service personnel in the same pool.
- C. Multiple pools for an employer are acceptable.
- D. Employees do not need to be placed in separate pools for drug and alcohol testing selection.
- E. Employees from different DOT operating administrations can be included in the same pool. It is strongly recommended, however, that employers not mix groups of personnel subject to different drug or different alcohol testing rates (i.e., having some employees subject to a 50% rate for drugs and other employees subject to a 25% rate in the same pool). If they do, they must test the entire pool at the highest selection rate for any of the groups with personnel in the pool.
- F. Pools may not be diluted with regulated service personnel who rarely perform regulated service duties (i.e., less than once per quarter).
- G. Pools must be routinely updated (i.e., at least monthly for employers with either a changing workforce or seasonal employees; and quarterly for employers with a generally stable workforce).
- H. Besides individual employees, specific jobs (i.e., third shift main dispatcher at XYZ location) or operational units (i.e., trains) may also be pool entries. However, there may not be a significant difference in the size of the entries in the pool.
- I. Pool entries may not be constructed in a way which could result in a manager/supervisor having discretion as to who would be actually provide a sample (e.g., a specific job cannot be selected with multiple people working in it at the same time, but with only one to be tested).

Section II. Random Selections

- A. Everyone in a pool must have an equal chance of selection in each selection period.
 1. No individual, job, or operational unit may be removed from the pool if it is still actively performing regulated service. However, employees doing de minimus regulated service may be eliminated from the pool (see Section I.-F).
 2. There may be no selections without replacement (i.e., an individual cannot be removed

from the pool because he or she was previously tested).

3. No selection weightings are allowed which would increase or decrease the chance of any individual being selected.

B. The following selection options are acceptable. Note that manual selection using names or social security numbers drawn out of a hat (or equivalent) is no longer an acceptable practice:

1. Computer programs which randomly select entries from an employee list without apparent bias. The specific selection criteria used by the computer must be extensively detailed in writing, and each computer draw must be retained as a record for a minimum of two years; or

2. Manual selection from a list of employees using a random-number table. The specific criteria used to select from the table must be documented in writing, including detail on how the initial starting point in the table was determined. Each draw, as well as a copy of the table portion used, must be retained as a record for a minimum of two years. See Appendix C for Model Procedures to Conduct a FRA-Acceptable Random Testing Program Using a Random Number Table for Selections.

C. If the employee testing pool is so small that it does not allow testing each selection period, then the employer must have in place a mechanism to randomly determine which selection periods will have selections and which will not. The specific criteria used to make this determination must be detailed in writing and the determination itself must be retained as a record for a minimum of two years.

D. If required drug and alcohol testing rates are different (i.e., 25% for drugs and 10% for alcohol) and a single pool is being used, it is permissible to select one list of employees and designate a proportion for both drug and alcohol testing and a proportion for drug testing only. The specific criteria used to make this determination must be detailed in writing, and the master selection list with both sub-groups clearly identified must be retained as a record for a minimum of two years.

E. Employers should carefully monitor significant changes in its workforce in order to ensure that an appropriate number of tests will be conducted each year. Unless otherwise directed by the DOT Operating Administration, changes in the employee base of greater than 10% in a quarter should result in a recalculation of total tests required.

Section III. Implementation of Random Collections

A. Collections must be distributed unpredictably throughout the designated testing period, covering all operating days (including holidays) and shifts (24-hour clock). There is no expectation that day/night or shift collection distributions be equal but there has to be sufficient testing to establish deterrence by generally mirroring employer operations.

B. Collections must be unpredictable within a work shift (some collections must be conducted at the beginning, middle, and end). There is no expectation that “within-shift” collection distributions be equal. Sufficient testing must be conducted at the start, middle and end of shifts to provide deterrence. Both beginning of and ending of shift collections are particularly important. For alcohol testing, at least 10% of successful collections must fall within each period of the shift.

- C. No discretion is allowed with collection dates or collection times which would result in a subjective choice by a field manager/supervisor as to who was actually collected. That is, if a test time frame is permitted in the employer's program, a manager/supervisor with knowledge of specific personnel assignments may not have discretion in the selection of who will be tested.**
- D. Specific reasons for "no-tests" must be documented in writing by the employer, with records maintained for two years. Acceptable reasons for no-tests should relate to critical safety concerns, unforeseen or unpredictable significant adverse impact to operations, or employee illness or vacation.**

Section IV. Records

- A. All records which support the random testing program, including notes, memoranda, pool makeups, number tables, etc., must be retained for a minimum of two years.**