



**BOARD OF DIRECTORS  
REGULAR MEETING AGENDA  
AUGUST 7, 2019 – 1:30 PM**

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

1. Call to Order
2. Approval of the July 17, 2019 Board Minutes
3. Public Comment on Non-Agenda Items
4. Board Member Announcements
5. General Manager's Report
6. Approve a Resolution and Authorize the Board Chair to Execute the Agreement between the Sonoma-Marin Area Rail Transit District and the International Brotherhood of Teamsters, Local Union Number 665 for the period of July 1, 2019 to June 30, 2022
7. Discussion of 2019 Strategic Plan's Preliminary Financial and Projections (*Discussion Only*)
8. Next Regular Meeting Board of Directors, August 21, 2019 – 1:30 PM – 5401 Old Redwood Highway, 1<sup>st</sup> Floor, Petaluma, CA 94954
9. Adjournment

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**BOARD OF DIRECTORS  
REGULAR MEETING MINUTES**

**July 17, 2019 - 1:30 PM**

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

1. Call to Order

Chair Phillips called the meeting to order at 1:30pm. Directors Connolly Fudge, Hillmer, Lucan, Naujokas, Pahre, Rabbitt and Rogers were present. Directors Garbarino and Zane absent; Director Arnold arrived later.

2. Approval of the June 19, 2019 Board Minutes

**MOTION:** Director Rabbitt moved approval of the June 19, 2019 Board Minutes as presented, Director Lucan second. The motion carried 9-0 (Directors Garbarino and Zane absent; Director Arnold arrived later).

3. Public Comment

Director Arnold arrived 1:32pm

Steve Older (Machinists Bargaining Representative) stated that there are certain proposals that the District and Union have not reached an agreement on the remaining issues are 1) shift differential and 2) back pay.

Bob Roberts stated that he distributed copies addressing his concerns to Board Members and the public as they arrived to the meeting (copy with Clerk of the Board).

4. Board Members Announcements

Chair Phillips stated that ribbon cutting ceremony for the Francisco Boulevard West Multi-Use Pathway took place on July 16<sup>th</sup>. He also met with Golden Gate Bridge General Manager Mulligan to discuss SMART and other issues.

5. General Manager's Report

General Manager Mansourian stated that SMART has carried 1,334,000 passengers, 124,000 bicycles, and over 5,004 wheelchairs.

Comments:

Bob Roberts asked for clarification on how many passengers SMART has carried. Mr. Mansourian responded that since August 2017, SMART has carried 1,334,000 passengers.

6. Consent

- a. Approval of Hanson Bridgett, LLP Contract Amendment No. 7
- b. Authorize the General Manager to Issue a Purchase Order with Transit Sourcing Services, Inc. in the amount of \$113,940 for 60 Train Wheels

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

**MOTION:** Director Arnold moved approval of the Consent Agenda as presented. Director Rabbitt second. The motion carried 10-0. (Directors Garbarino and Zane absent).

7. Overview of SMART's Public Safety, Operations and Public Outreach Team Assessment Related to the Recent Incidents in Santa Rosa and Rohnert Park

General Manager Mansourian stated that due to the most recent incidents, he would like to take the opportunity to provide information to Board Members and the public. "It has been a very emotional week for the community, the families of the deceased, passengers and SMART's staff". This crisis requires a comprehensive community effort, and we must start a spearhead effort. He thanked the board and elected position in both counties for their leadership, this is the best quorums. Mr. Mansourian added that Director Zane, who is in Washington, DC has been in contact with him and is aware of all activities.

Mr. Mansourian said that as a community, we need to join together to commit funding and take necessary steps to ensure our neighbors who are having a mental health crisis are being taken care of. This is not a train crisis but a mental and public health crisis. Every mode of transportation (highway, railroad, bus transit, ferry, and local roads) has accidents and typically for railroads there are 3 types of accidents as follows: 1) Operator error; SMART has had zero accident as a result of the Operator error. We are a very safe train agency and we have built a rail system utilizing the most sophisticated and latest technology, and the Operation staff is among the best in the country. He acknowledged the Operations Department and staff whom during this difficult time, still come to work and provide excellent customer service to our passengers and our agency is operated by experienced railroad professionals; 2) Human behavior and distractions; After each incident, staff monitors and reviews to determine if anything is needed at the incident site that could prevent another; and 3) Suicides; It is critical to recognize that we have a mental health crisis and not a transportation mode crisis. We need to focus on strategies for how we deal with suicide, impulsiveness and homeless issues. This should not be a blaming game in the media; during difficult times we must rely on outside experts to assist with resources for this type of crisis.

Mr. Mansourian said he began contacting agencies and outside experts after the first suicide incident. He quickly learned that mental illness and homeless crisis is rising in the United States and the entire Bay Area. He was suggested that a group/taskforce be established to focus on mental health issues. It was suggested to us to establish a rapid taskforce to meet with mental health professionals to obtain available resources to provide to SMART agency, which we have.

Mr. Mansourian also starting contacting outside experts to understand how SMART can be part of a comprehensive solution to the rigorous public health challenge. SMART will be working with more than 30 organizations to come up with solutions and strategies to address this mental health crisis. The list of agencies includes (alphabetical): Buckelew Programs – Marin and Sonoma County, Catholic Charities, Central Marin Police Authority, Exchange Bank, Golden Gate Bridge District, Kaiser Permanente of Sonoma and Marin, KSRO/ Sonoma Media Group, Marin County Behavioral Health & Recovery Services, Marin County Crisis Continuum Services, Marin County Crisis Stabilization Unit, Marin County District Attorney's Office, Marin County Office of Education, Marin County Sheriff Department., Marin General Hospital, National Alliance on Mental Illness (NAMI) Marin County and Sonoma County, North Bay Suicide Hotline, Novato Fire Protection District, Novato Police Department, Petaluma Police Department, Press Democrat, Redwood Credit Union, San Rafael Fire Department, San Rafael Police Department, Santa Rosa Junior College, Santa Rosa Police Department, Santa Rosa VA Outpatient Clinic, Social Advocates for Youth, Sonoma County Deputy Sheriff's Association, Sonoma County District Attorney's Office, Sonoma County Fire District, Sonoma County Health Department, Sonoma County Office of Education, Sonoma County Sheriff Department, St. Joseph Health Sonoma County and Sutter Health. He encouraged any organization that can help please contact him.

Mr. Mansourian said there will be four guest speakers who are experts in the field, which will speak to your Board and the public.

Mr. Bill Carter, Director of Sonoma County Behavioral Health Division said that it's not SMART fault or issue and that suicide is a community concern and national suicide rates are rising. We are one of countless community who are dealing with these types of tragedies. The Department of Health Services and Behavior Health Division is fully committed in doing a community effort to address this issue. There are other cities, counties, states that have dealt with this issue specifically, with deaths around train systems. It is very important for us collect all the data, information, training, and media messaging.

Mr. Mansourian thanked Directors Rabbitt and Zane and the Sonoma County Administrator for assisting with contacting various County Departments to help and provide resources available to address the crisis.

Mr. Mansourian introduced Mary Frances-Walsh, Executive Director of National Alliance on Mental Illness (NAMI) Sonoma County who said that NAMI Sonoma County started 40 years ago by family's members that needed help. Today, NAMI is a leading voice in the

United States, which has 500 affiliations. The organization is dedicated to improving the lives of individuals affected by mental illness and their families, by providing mental health education, support and advocacy. They also collaborate with community partners to raise awareness and understanding of the challenges of living with mental illness. Nobody is born knowing what to do about mental health and we need to learn. Our mental health system is often fragmented, underfunded, and subject insurance companies' practices that don't pay equally for medical and mental health care. The County has faced budgetary adjustments and there is a shortage of psychiatrist, therapist, and various types of services. She said she needed Board support to bring community awareness of this public health issue. We need to express our voices at the Federal and State to continue to provide funding.

Mr. Mansourian introduced Chris Kughn, Chief Executive Officer of Buckelew Program who thanked everyone for the opportunity to speak today. He said that the Buckelew Suicide Prevention serves the North Bay with outreach, education, and a toll free 24/7 crisis hotline. There are various resources available for people who show signs of suicidal thoughts. Many people have distressed and challenging lives that lead them to suicide. Reducing the stigma and being able to provide access to services is very crucial. Partnering and collaborating together is a key component to provide mental health support.

Mr. Mansourian introduced Kara Conners, Community Outreach Coordinator for Suicide Prevention of Buckelew Program who thanked everyone for the opportunity to speak today. She stated that it is very important to understand that when people are in the state of crisis, they lack the ability to problem solve, they have tunnel vision, and black and white thinking. The community needs to break the stigma and to reach out and use any signs you see or hear that to help. Listening and validating an individual is need to help and providing them with resources is a key component. In addition, a partnership with the media can be helpful to build a safe community, which is suffering. As stories arise it can activate and retraumatize people in our community. She added that it's important to pay attention to the correct terminology, rather than saying someone committed suicide perhaps saying someone has died by suicide. We need to continue to emphasize that suicide rates are rising or falling, and suicides are preventable. Their agency is available for assistance in communication and outreach to collaborate with the community on suicide prevention.

Mr. Mansourian stated that the entire SMART organization is hurt and feeling the pain after each incident, "we are a committed transportation agency and want to provide help where experts say it's needed". He is extremely proud and grateful of all the agencies that have reached out to SMART the last few weeks to provide information and assistance. We are very committed in helping during this crisis.

#### Comments:

Chair Phillips thanked everyone who has assisted during this crisis. He thanked the General Manager Mansourian for all the work he has done during this difficult time. Chair Phillips commented that has developed a plan for the City of San Rafael that includes mental health outreach to the most susceptible populations of adolescent students and

the homeless, as well as a regional social media campaign to raise awareness about rail safety and suicide prevention. He hoped other municipalities along the rail line would consider using it in their communities.

Director Fudge stated that there is a definite pall over the rail agency. We're all thinking of the families of the people who are no longer with us. This is definitely a serious and sad situation. She was part of the bus bridge during the last incident and thanked the passengers for being gracious and understanding. She also thanked the Engineer-Conductors and staff for assisting and getting every passenger to their destination safely. She would like to repeat Ms. Conners comment, that it's really up to the community to be eyes and ears, Now, I am going to get the resources together to be able to share and prevent more deaths. This is very difficult on the Engineer-Conductors, First Responders and SMART's employees who are at the scene. She pleaded to the Media to turn the focus toward finding solutions for mental health and homeless in the community, to be a resource and stop sensualizing these incidents so they don't keep perpetuating.

Director Lucan stated that he is very much encouraged by the community response and thanked all the organizations present today. This has impacted the organization and staff has protocol for each incident, he asked if there anything that Board Members can assist to provide additional resources and help to staff who have been impacted by the incidents. Mr. Mansourian responded that staff members who are directly involved in an incident, receive assistance as long is needed.

Director Rogers stated that within the last week he has been researching the topic to understand and be able to assist the community. These incidents have occurred in Sonoma County and seemed to be clustered together with time and geography and more can be done to prevent. He suggested that changing the Nixle alert system to indicate a delay vs. pedestrian strike. Mr. Mansourian responded that first responders also provide Nixle alerts immediately and they use the same terminologies, however we will continue to research with professionals to get the correct wording.

Director Pahre suggested having a card with positive phrases and responses that can help during an incident.

Director Arnold stated that the Golden Gate Bridge has been a magnet for suicides. A Sacramento family after their son's death on the bridge was able to participate at every Board meeting and was able to get funds to provide a suicide net.

Director Naujokas acknowledged that this a community issue. This is an opportunity to become a volunteer to save lives.

Director Hillmer stated that he agrees and supports the comments expressed today. He thanked everyone who is in attendance and also read the letter that Bob Roberts provided.

Director Connolly thanked SMART's staff and the speakers. This is going to be a broad discussion for the community. He commented on the media provided analogy of SMART vs. BART, which are two completely different systems. He asked if SMART has conducted research with other similar agencies that are dealing with the same issues. Mr. Mansourian responded that BART has its own system and does not have 63 at-grade crossings. SMART's staff continues to work with other rail agencies to get more information, however this is not a SMART issue, it's a national issue. Director Connolly asked for the status of safety enhancements, outreach, education, and staffing levels. He thanked various agencies for their assistance.

Director Rabbitt thanked General Manager Mansourian, staff, Ms. Robinson, Director of Health Services, Mr. Carter, and Mr. Kughn. He said the Senators McGuire and Dodd would help in any way they can and sincere condolences to the families who have lost love ones. He acknowledge that first responders and SMART's crew get first images that stay with you for a while. You can have the best health insurance and you still have to wait a long time to get mental help, since there is a huge shortage in therapist. He stated that the media needs to get better in covering the SMART line, like the coverage of the Golden Gate Bridge.

General Manager Mansourian stated that we have now talked about suicides, but another component of the incidents are people not paying attention. In November 2018, staff presented to your Board videos that showed people were not paying attention near the tracks, even with all the warning devices functioning. All these incidents may not be intentional; however, they have the same consequences. SMART areas of expertise are the three "E" principles; 1) Engineering; 2) Education; and 3) Enforcement. The Chief Engineer will present the Engineering Principle; Communication and Marking Manager will present the Education Principle; and Chief of Police will present the Enforcement Principle.

**Engineering Principle:**

Chief Engineer, Bill Gamlen stated that after an incident the General Manager assigns a task force to conduct a review of that specific incident. After the fatality that occurred at the Rohnert Park Crossing last summer a team of experts evaluated the entire SMART's right-of-way and 63 at-grade crossings, which 30 of them have a path of travel. At the time the team made two recommendations: 1) place a stencil on the sidewalk; and 2) fencing channelization (Z gates), a barrier that requires you to navigate. In May 2019, SMART's Board approved the first phase of enhanced pedestrian safety measures to 17 crossings in Santa Rosa, Petaluma and Rohnert Park. On the agenda today is a request to approve the second phase to enhance the 13 pedestrian locations in San Rafael, Novato, Cotati and Rohnert Park.

Mr. Mansourian emphasized that SMART is constructing barriers on sidewalks near the tracks to prevent people going onto the tracks. Despite all the warning devices people are still not paying attention.

Director Rabbitt asked if encroachment permits need to be obtained from local jurisdictions to install the “Z” gates. Mr. Gamlen responded that anytime you alter a grade crossing, the California Public Utility Commission needs to approve.

**Education Principle:**

Communications and Marketing Manager, Jeanne Belding gave an overview of SMART’s safety outreach. Highlights as follows:

- Railroad Safety is our top priority – the heart of all SMART’s outreach programs
  - Operation Lifesaver training – Every outreach team has been trained
  - SMART participated in more than 100 presentations and events this year
  - SMART has presented to more than 38,000 students in both Sonoma and Marin Counties
  - SMART has a dedicated rail safety website which provides rail safety tips, information and resources ([www.BeTrackSMART.org](http://www.BeTrackSMART.org))
- Safety Education Programs
  - School Safety Outreach Programs – SMART on-campus rail safety education program
  - Safe Routes to School – Focuses on bicycle safety in both counties
- Education Programs
  - Safety “pop-up” events at all stations
  - On-platform safety education – provided for field trips, school events, passengers with disabilities and large groups
  - Youth Safety Monitors – encouraging youths to share SMART safety measures with family and friends
- Digital Programs
  - SMART uses social media platforms including Facebook, Twitter, Instagram, YouTube, and regular e-newsletters
- Rail Safety Awareness
  - SMART runs rail safety ads in both Spanish and English
- Expanding Safety Outreach
  - Canvassing to maximize engagement
  - Safety mailer to connect with people
  - Video safety projects across all platforms
  - Expanding safety partnerships to include law enforcement officials and others
  - Partnerships with suicide prevention and mental health organization
- Safety Alerts and Updates
  - E-newsletter
  - Nixle – Text the word SMART to 888777

**Comments:**

Director Phillips asked if there is a list of schools that have received presentation. Ms. Belding responded that the comprehensive list can be found on [www.BeTrackSMART.org](http://www.BeTrackSMART.org) along with map.



**Enforcement Principle:**

Chief of Police Jennifer McGill gave an overview of Enforcement. Highlights as follows:

- Enforcement
  - Code Compliance works varying shift to address trespassing and encampments; SMART currently has one full time employee of 2.5 FTE and this position is very difficult to fulfill
  - Working with outside agencies for assistance – comes down to resources
  - Enforcement of traffic laws; cars on tracks, cyclist wrong way, pedestrian offences – issues that SMART does not have jurisdiction, it will be helpful that each municipal police department assist
  - Exploring grant opportunities with partner agencies – Special enforcement and saturation patrols
  - Actively working with outside resources for enforcement contract
- Enforcement Partnerships
  - Prior to opening SMART partnered with Marin and Sonoma Health and Human Services and signs were posted along the right-of-way
- Illustrated an video of the City of Petaluma Police Department, which was funded by an outreach and enforcement grant; the video can be found at [www.BeTrackSMART.org](http://www.BeTrackSMART.org)
- Illustrated a video of a bicyclist at Golf Course Drive crossing not obeying the traffic laws; the video can be found at [www.BeTrackSMART.org](http://www.BeTrackSMART.org)

Lastly, Chief of Police McGill stated that despite the two deaths at the same location, safety enhancements, Rohnert Park Police enforcement, marked vehicle and uniformed personnel on site, people are still not obeying the traffic laws. There is a need for a community wide approach in all of the jurisdictions along SMART's right-of-way.

**Comments:**

Director Rogers asked if there is any data that can be provided where near misses and violation have been occurring consistently. This information will be helpful to assist on the local level to get special enforcement districts. Chief McGill responded that SMART has limited data that is reported from the Code Compliance Officer and Engineer-Conductors. SMART's staff will be focusing on Office Traffic Safety Grants to assist with enforcement.

Felix Huerta Jr. stated that Operating Engineers Local Union No. 3 (OE3) has won the elections and has a 16-day waiting period from July 9, 2019. He said that since negotiations started, they have raised the safety issue of operators. He distributed the draft proposal dated May 16, 2019 (copy with Clerk of the Board).

Tracy Weitzenberg, Manager of the Communications and Public Relations at Redwood Credit Union (RCU) stated that they would like to partner with SMART on the comprehensive strategy. This is a critical issue that the community is facing, RCU support this effort and hopes that the partnership could have a meaningful impact.

Steve Birdlebough stated that he has been following the development of Vision Zero (increasing safe, healthy and equitable mobility for all). Sonoma County will start staffing this grant in October 2019.

Thomas Ells stated that he would like to assist in any possible way. He said that there are a variety of reasons for which people commit suicide. He suggested creating workforce housing and having Bike Police patrol.

Richard Brand gave his support to General Manager Mansourian and SMART's staff. He stated that this is a community issue and they need to get together along the rail to discuss and find an approach.

Bob Roberts voiced his concern about who is responsible for the fatalities on the tracks. He suggested that top management patrols the tracks and the Board Members give management 30 days to clear the entire right-of-way and be held accountable.

Jack Swearingen stated that these incidents are a nationwide issue. The cost to save lives becomes enormous.

Duane Bellinger stated that suicide in this country is rising. Homeless is rising and the SMART organization has to deal with it.

Pat Kerrigan (KSRO) stated that this is a community issue and a huge concern. She suggested that she would like management to be accessible to address critical issues at her radio station. She would like to be educated in order for her to be able to help when needed.

Willard Richards stated that SMART inherited a system with pedestrian crossing without warning devices. He is delighted that there have been improvements at some of the pedestrian crossings.

General Manager Mansourian suggested a break.

Break at 3:42pm

Meeting Resume at 3:57pm

8. Approve Resolution Authorizing the General Manager to Execute Contract Amendment No. 1 to Contract No. CV-BB-19-001 with Ghilotti Bros., Inc. in the amount of \$249,175 and Extending the Contract to October 31, 2019

Chief Engineer, Bill Gamlen, stated that the item for Board approval today is Resolution No. 2019-10 in amount of \$249,175 for a total contract amount not-to-exceed \$498,455 for the Enhanced Pedestrian Safety Improvements Project. This contract will enhance 13 locations in San Rafael, Novato, Cotati and Rohnert Park.

On May 15, 2019 the Board awarded the contract for the first 17 of 30 crossings in Petaluma, Rohnert Park and Santa Rosa that were identified with the highest priority and had the least challenges associated with completing the work.

Comments:

Chair Phillips asked for clarification of the status of the current crossing enhancements. Mr. Gamlen responded that every location and issues are different on SMART's right-of-way and the first 17 have been completed.

Director Rabbitt asked the status of Washington Street crossing. Mr. Gamlen responded that additional work was needed to complete the crossing.

Director Naujokas asked for clarification on the process. Mr. Gamlen responded that each crossing requires review and approval from the California Public Utility Commission. Also, encroachment permits could be required.

**MOTION:** Director Pahre moved to Approve Resolution Authorizing the General Manager to Execute Contract Amendment No. 1 to Contract No. CV-BB-19-001 with Ghilotti Bros., Inc. in the amount of \$249,175 and Extending the Contract to October 31, 2019 as presented. Director Lucan second. The motion carried 10-0. (Directors Garbarino and Zane absent).

9. Authorize the General Manager to Award Contract No. OP-SV-19-001 to A.J. Janitorial Services in an amount of \$301,000 to Perform Janitorial service at SMART's Stations and Facilities

Procurement Coordinator, Ken Hendricks, stated that the item for Board approval today is to authorize the General Manager to Award Contract to A.J. Janitorial Services to perform janitorial service at SMART's stations, park and rides and facilities. This contract is for a base term of three years with two one-year options to extend.

A formal Request for Proposal was issued on May 9, 2019 to procure a janitorial service provider. SMART received a total of three responsive proposals from the following companies: 1) ABM Business & Industry; 2) A.J. Janitorial Service and 3) Northbay Maintenance, Inc. The evaluation committee reviewed the three proposals using the evaluation criteria and identified A.J. Janitorial Service's proposal to be the most advantageous to the District.

Therefore, staff recommends authorizing the General Manager Award Contract No. OP-SV-19-001 to A.J. Janitorial Services in an amount of \$301,000.

**MOTION:** Director Arnold moved to Authorize the General Manager to Award Contract No. OP-SV-19-001 to A.J. Janitorial Services in an amount of \$301,000 to Perform Janitorial service at SMART's Stations and Facilities as presented. Director Hillmer second. The motion carried 10-0. (Directors Garbarino and Zane absent).

10. SMART's Expenditure Plan Principles for Considerations (*Discussion Only*)

General Manager Mansourian stated that in preparation for the reauthorization of the sales tax, your Board needs to approve an expenditure plan that outlines the appropriate uses for the Sales Tax Measure in the future. Today we are recommending four organizing principles for your consideration in order to get feedback. The principals are as follows: 1) Provide for ongoing Operation and Maintenance of the Current System; 2) Provide for ongoing additional Safety and Security Enhancements; 3) Provide for Capital Investment; and 4) The Board of Directors may review and propose amendments to these principles and the Expenditure Plan, to account for unexpected revenues and to accommodate any unforeseen circumstances.

Comments:

Director Rogers stated that it will be helpful to see actual and verifiable data and numbers. There was a comment from a Board Member at a previous meeting stating that they knew that the Measure was not going to be enough to deliver the promised project. He wants to make it clear that the new Expenditure Plan needs to have real dollars where the public can trust what is being delivered.

Director Naujokas stated that there is an element of providing the last mile connection, which is the biggest barrier of using the service. He suggested including an investment for the last mile connection. Mr. Mansourian responded that under Principal No. 3 (Capital Investment) suggestions can be added. Also, it is very critical to learn from the previous plan, and promise what we can deliver, and hard decisions will need to be made.

Director Fudge clarified Director Rogers comment regarding a Board Member at a previous meeting stating that they knew that the Measure was not going to be enough to deliver the promised project. She stated that in early 2008 before the vote, they knew it was going to be close to complete the project. SMART at the time had only 20% Engineering Design cost; however, eleven months after the voters approved the Measure the recession happen, then at that time the Board Members knew that the project will not be delivered since both counties would be collecting less sales tax.

Chair Phillips asked for the new Expenditure Plan time period. Mr. Mansourian responded that it has not been discussed. Once, the financial projections are presented a decision can be made on the percentage and time period.

Director Lucan asked for a timeline. Mr. Mansourian responded that in order to meet the March 3, 2020 Election the following steps will need to take place: 1) Review Draft Expenditure Plan Principles (July 2019); 2) Citizens Oversight Committee Reviews Strategic Plan (August 2019); 3) Board Reviews Draft Ordinance and Expenditure Plan (September 2019); 4) Board Approves Strategic Plan (October 2019); and 5) Board Approving Ballot Measure – Ordinance and Expenditure Plan (November 2019). Director Lucan stated that is very important to get the Measure passed and emphasize that right now is the time to discuss items before it's too late.

Doug Kerr said that the 2008 Sales Tax that funded SMART was advertised to construct a 70-mile system from Larkspur to Cloverdale. He asked that SMART provide dates as to when SMART expects to complete the Healdsburg to Cloverdale segment in order to get the North Bay voters to approve the reauthorization.

Steve Birdleough stated that recession that occurred after the approved measure was very severe. Also, SMART needs to be very cautious, since another recession can occur in the next 3-5 years. When you have a local and secure cash flow, you can be eligible for Federal and State funding.

Duane Bellinger stated that the residents East Petaluma would like an additional station like the City of Novato that has three stations. Mr. Mansourian clarified that the City of Novato fully paid for the Downtown Novato Station (3<sup>rd</sup> Station).

Director Naujokas stated that we have to recognize that the earlier Measure was more a of a visionary, now we have it in place. It's very important to engage the voters of East Petaluma, West Santa Rosa, Healdsburg and Cloverdale. He suggested finding a way to address the issue.

Director Lucan suggested that SMART continue to partner with transit agencies for the first and last mile connections.

Director Rogers stated that the connection going East and the primary purpose and SMART will continue to look for connectivity opportunities and funding sources, however SMART has a commitment to voters that needs to be met in the extension. Chair Phillips said that SMART has secured approximately \$300M in grant funds. SMART will have to make difficult and challenging decision.

Director Rabbitt stated that has been a great discussion and every suggestion can fit in any of the four principles presented.

**MOTION:** Director Rabbitt moved to Accept SMART's Expenditure Plan Principles for Considerations as presented. Director Rogers second. The motion carried 10-0. (Directors Garbarino and Zane absent).

Chair Phillips adjourned the Board to closed session at 4:30pm on the following:

11. Closed Session
  - a. Conference with Labor Negotiator Farhad Mansourian, General Manager pursuant to California Government Code Section 54957.6  
Agency Designated Representative: General Manager  
Represented employees: Operating Engineers Local 3/SECA, IAMAW Local Lodge No. 1414, Teamsters Local 665; and Unrepresented Employees

- b. Conference with Legal Counsel regarding existing litigation pursuant to California Government Code Section 54956.9(a); Lomas Partners, LLC. v. Sonoma-Marín Area Rail Transit District – Case No. SCV-262331
- 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

12. Report Out of Closed Session

Chair Phillips reported out of Closed Session at 5:57pm on the following:

- a. Conference with Labor Negotiator Farhad Mansourian, General Manager pursuant to California Government Code Section 54957.6

Agency Designated Representative: General Manager

Represented employees: Operating Engineers Local 3/SECA, IAMAW Local Lodge No. 1414, Teamsters Local 665; and Unrepresented Employees

Report Out: *No action taken; direction given to staff.*

- b. Conference with Legal Counsel regarding existing litigation pursuant to California Government Code Section 54956.9(a); Lomas Partners, LLC. v. Sonoma-Marín Area Rail Transit District – Case No. SCV-262331

Report Out: *Direction given to Counsel.*

- 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.

Report Out: *Nothing to report.*

13. Next Regular Meeting Board of Directors, August 7, 2019 – 1:30 PM – 5401 Old Redwood Highway, 1<sup>st</sup> Floor, Petaluma, CA 94954

14. Adjournment – Meeting adjourned at 5:59pm.

Respectfully submitted,

Leticia Rosas-Mendoza  
Clerk of the Board

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



August 7, 2019

**Gary Phillips, Chair**  
Transportation Authority of Marin

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

**Judy Arnold**  
Marin County Board of Supervisors

**Damon Connolly**  
Marin County Board of Supervisors

**Debora Fudge**  
Sonoma County Mayors' and  
Councilmembers Association

**Patty Garbarino**  
Golden Gate Bridge,  
Highway/Transportation District

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

**Eric Lucan**  
Transportation Authority of Marin

**Joe Naujokas**  
Sonoma County Mayors' and  
Councilmembers Association

**David Rabbitt**  
Sonoma County Board of Supervisors

**Chris Rogers**  
Sonoma County Mayors' and  
Councilmembers Association

**Shirlee Zane**  
Sonoma County Board of Supervisors

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

**SUBJECT:** Approve a Resolution and Authorize the Board Chair to Execute an Agreement between the Sonoma-Marín Area Rail Transit District and the International Brotherhood of Teamsters, Local Union Number 665

Dear Board Members:

**RECOMMENDATION:**

Approve Resolution No. 2019-11 and Authorize the Board Chair to Execute the three-year Collective Bargaining Agreement reached between the Sonoma-Marín Area Rail Transit District (SMART) and the International Brotherhood of Teamsters Local Union Number 665, (Teamsters).

**SUMMARY:**

This agreement would be the second collective bargaining agreement between SMART and the Teamsters Union which represents the District's Signal Technicians (9 FTE), Track Maintainer I (4 FTE), Track Maintainer II (1 FTE) and Bridge Tenders (2.5 FTE). The total number of staff currently allocated to the three job classes is sixteen (16.5).

The agreement retains the District's current policies with modifications as indicated below.

The agreed upon terms include:

Term: July 1, 2019 – June 30, 2022

Salaries:

- Wage increases in the first year will be retroactive to July 1, 2019.
- Wage increases include cost of living adjustments as well as equity increases to keep District salaries competitive with the local market.

The current average wages for the above for Signal Technician and Track Maintainer job classes in local Rail Transit agencies are shown in the charts below. Very limited data was available for the Bridge Tender job class, as few transit agencies in the region utilize this position.

**Farhad Mansourian**  
General Manager

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



Bridge Tender		
Agency	Job Title	Wage
Alameda County	Bridge Tender	\$30.77
		<b>SMART Hourly \$28.14</b>

Signal Technician		
Agency	Job Title	Wage
BART	Train Control Electronic Tech	\$44.12
Sacramento Regional Transit District (SRTD)	Lineworker Technician	\$44.41
Santa Clara Valley Transit Authority (VTA)	Light Rail Signal Maintainer	\$53.15
SF Municipal Transit Agency	Electronic Maint Technician	\$58.31
		<b>Average \$50.00</b>
		<b>SMART Hourly \$48.43</b>

Track Maintainer		
Agency	Job Title	Wage
BART	Track Worker	\$37.47
Santa Clara Valley Transit Authority (VTA)	Track Worker	\$38.23
SF Municipal Transit Agency	Track Maintenance Worker	\$35.20
		<b>Average \$36.97</b>
		<b>SMART Hourly \$36.92</b>

Cost of living adjustments are also recommended for each year of the contract. The recommended amounts are based on the Bureau of Labor Statistics (BLS) Consumer Price Index (CPI) as well as a survey of other public and transit agencies in the region. In 2018, the BLS revised its survey areas. Sonoma County was moved from the San Francisco-Oakland-Hayward region into the Western Region. The CPI for the Western Region in June 2019 was 2.7%, a decrease of 0.2% from the previous month and a decline of 0.9% from June 2018. The CPI for the San Francisco-Oakland-Hayward region, of which Marin County is a part, was 3.2% in June 2019, a decline of 0.8% from April 2019 and a decline of 0.7% from June 2018.

A survey of collective bargaining agreements for other local transit and public agencies, including Golden Gate Transit, eBART, VTA, Sacramento Regional Transit District, City of San Rafael, City of Santa Rosa and County of Sonoma found that agencies were offering Cost of Living Adjustments of between 2% and 3% per year over the lives of the contracts, which varied from two to four years.

Based on this information, we are recommending equity adjustments as shown in the table below for the respective job classes.

Job Class	Hourly		Hourly		Hourly	
	July 1, 2019 - June 30, 2020	Wage Y1	July 1, 2020 - June 30, 2021	Wage Y2	July 1, 2021- June 30, 2022	Wage Y3
Bridge Tender	Equity 3% + 2.7% COLA	\$29.74	Equity 2% + 3% COLA	\$31.23	Equity 2% + 3% COLA	\$32.79
Signal Technician	Equity 3% + 2.7% COLA	\$51.19	3% COLA	\$52.73	3% COLA	\$54.31
Track Maintainer I	Equity 1% + 2.7% COLA	\$38.29	3% COLA	\$39.43	3% COLA	\$40.62
Track Maintainer II	Equity 1% + 2.7% COLA	\$42.11	3% COLA	\$43.38	3% COLA	\$44.68



Call Back Pay:

- Employees who are called back to work after the completion of their work day and departure from work will receive a payment equal to one hour of pay at the employee's base hourly rate.
- This one hour of pay is not considered an hour worked for the purposes of calculating overtime.
- Call back pay does not apply to employees who are called in to work when on standby status.

Shift Bidding:

- Employees will bid shifts once every six (6) months according to seniority order. The former contract which expired on June 30<sup>th</sup> allowed for shift bidding once every 12 months.

Vacation Bidding:

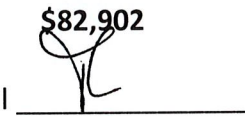
- Employees will bid for vacation leave once every twelve months in July for the following year. The former contract which expired on June 30<sup>th</sup> did not specify the month in which vacation bidding would take place.

**FISCAL IMPACT:** The agreement will require a Fiscal Year 2019-20 budget amendment of \$82,902 that is attached. This represents a budget increase of 0.5% over the approved Operations Salaries and Benefits budget.

The detailed cost of the agreement is as follows:

Annual number of FTE impacted:	16.5
Annual Baseline Cost of Employees (current):	\$1,950,965
Increased Annual Cost of Agreement (salaries+ benefits):	\$112,787
3 Year Total Incremental Cost of Agreement:	\$338,362
Amount Budgeted FY 2019-20	\$1,989,984
<b>Supplemental Budget Needed FY 2019-20</b>	<b>\$82,902</b>

REVIEWED BY: [ x ] Finance 

[ x ] Counsel 

Very truly yours,



Lisa Hansley

Human Resources Manager

Attachments: 1) Resolution No. 2019-11  
2) Teamsters Collective Bargaining Agreement

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT AMENDING RESOLUTION NO. 2019-08 TO REVISE THE ANNUAL BUDGET FOR FISCAL YEAR 2019-20 TO PROVIDE FOR REVISED POSITION AND EXPENDITURE AUTHORITY**

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**WHEREAS**, as part of its approval of the Annual Budget for Fiscal Year 2019-20, the Board duly considered the annual expenditures necessary for the Sonoma-Marín Area Rail Transit District; and

**WHEREAS**, on June 5, 2019, the Board adopted Resolution No. 2019-08 approving the annual budget for Fiscal Year 2019-20; and

**WHEREAS**, Resolution No. 2019-08 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 the revised position authority for increased salary and benefit expenditures.

**NOW, THEREFORE, BE IT RESOLVED THAT THE** Fiscal Year 2019-20 Budget for the Sonoma-Marín Area Rail Transit District attached as Exhibit A to Resolution No. 2019-08 is hereby amended to revise Table 5, Fiscal Year 2019-20 Proposed Position Authorizations, to reflect position revisions as shown below.

Position	FTE	Salary Range Annual		Salary Range: Hourly	
		Low	High	Low	High
Bridge Tender	2.5	-	\$ 61,859	-	\$ 29.74
Signal Technician	9	-	\$ 106,475	-	\$ 51.19
Track Maintainer I	4	-	\$ 79,643	-	\$ 38.29
Track Maintainer II	1	-	\$ 87,589	-	\$ 42.11

**BE IT FURTHER RESOLVED** that the Fiscal Year 2019-20 Annual Budget for the Sonoma-Marín Area Rail Transit District attached as Exhibit A to Resolution No. 2019-08 is hereby amended to include the following:

**EXPENDITURES:**

Operations Salaries and benefits \$82,902

**BE IT FURTHER RESOLVED** except as specifically amended or supplemented by this Resolution, Resolution No. 2019-08, 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. 2019-08.

**Resolution No. 2019-11**  
**Sonoma-Marín Area Rail Transit District**  
**August 7, 2019**

**PASSED AND ADOPTED** at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 7<sup>th</sup> Day of August, by the following vote:

**DIRECTORS:**

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Gary Phillips, Chair, Board of Directors  
Sonoma-Marín Area Rail Transit District

ATTEST:

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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**

July 1, 2019 – JUNE 30, 2022

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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 MEMBERSHIP**

2.1     Pursuant to Government Code Sections 1150-1157 (SB 866) and Janus v. American Federation of State, County and Municipal Employees, Council 31, et al. 585, 138 S. Ct. 2448 (June 27, 2018) all employees working in positions covered by this agreement have the right to become members of the Union and shall remain members in good standing until such time as they notify the Union they no longer wish to be dues paying members.

2.2     The District will rely on a written certification from the Union requesting that the District deduct from employees' wages an amount equal to the Union's monthly dues or fees authorized by the Union Bylaws. The Union has and will obtain and maintain signed employee authorizations for said wage deductions and will represent to the District that each bargaining unit employee is affirmatively consenting to the dues deductions consistent with federal law. After providing the required certification, the Union will not be required to provide a copy of individual authorizations to the District unless a dispute arises about the existence or terms of the authorization. The Union will, however, each month provide the District with a list of all active Union members and non-members in the bargaining unit.

- 2.3 Based on the certification from the Union described above, the District will deduct, monthly, the amount of Union regular and periodic dues and fees and any special membership assessments as may be specified by the Union under the authority of an authorization card signed by the employee. Dues deduction for employees will only be made upon the written certification from the Union. It is the Union's responsibility to provide timely notice of dues deduction authorizations to the District. The District requires ten (10) working days' notice of dues deduction authorization for an employee prior to the date the first deduction is to take effect
- 2.4 Employees wishing to discontinue membership for reasons other than separation from employment shall give notice to the Union that they wish to discontinue dues deductions. It is the Union's responsibility to provide timely notice of dues deduction revocations to the District. Once notification has been received by the District to stop dues deductions for an employee, the change will be implemented at the beginning of the first pay period following the date that the District received notice.
- 2.5 If the employee authorizes dues payment by payroll deduction, the appropriate sum shall be deducted by SMART and paid to the Union on a monthly basis after collection of dues. The amount of dues deductions are determined by the Union and shall be provided in writing to the District on a quarterly basis at minimum or more frequently if changes in membership occur. The District will continue to honor deduction authorizations as specified by the Union until new authorization lists or revocations are provided by the Union.
- 2.6 If the employee joins the Union but chooses not to authorize payroll deductions, payments of dues 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 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 Union members of such assessments.

- 2.7 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.
- 2.8 The Union agrees to indemnify and hold harmless SMART for any loss or damage sustained which arises from the operation of this section.
- 2.9 In the event there is a change in the law whereby any provision hereof becomes invalid or if for any reason any provision of this Agreement is rendered unlawful by decision of a court of competent jurisdiction, this Agreement shall be either forthwith deemed amended to comply with the change or decision in question and those provisions not affected by the change in law shall remain in full force and effect. If this occurs, at the election of either party this provision may be reopened for further negotiations.

### **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.
- 4.2 All references in this Collective Bargaining Agreement that refer specifically to the male or female gender shall be construed to apply equally to the opposite.
- 4.3 The Union agrees it will represent the interests of all employees in the represented job classes equally and fairly, regardless of Union membership status.

#### **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.
- 14.5 Employees instructed to perform work that they believe they cannot perform safely should raise such concern with their supervisor at the time of the assignment of the work. If the employee feels the work is in violation of FRA regulations, they should make a "Good Faith Challenge" by submitting a Good Faith Challenge Form to their supervisor. Employees making a good faith challenge will not be required to perform the work in question until the challenge has been resolved but shall perform other work as directed by their supervisor.

## **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 full-time and part-time employees are eligible for paid District designated holidays. To be eligible for Holiday pay, employees must work or be on a pre-approved paid absence 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 4<sup>th</sup>.
6. Labor Day, the first Monday in September.
7. Veteran's Day, November 11<sup>th</sup>.
8. Thanksgiving Day
9. The day following Thanksgiving Day
10. Christmas Day, December 25<sup>th</sup>.
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 at the straight time rate following the end of the calendar year. 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 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. The bid period shall run from July 1 – 15<sup>th</sup> for the following calendar year according to seniority order in each respective job class. Employees will be given confirmation for bids submitted by July 31st.
- 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 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 prorated.
- 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 457 b 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	July 1, 2019 - June 30, 2020	Hourly Wage Y1	July 1, 2020 - June 30, 2021	Hourly Wage Y2	July 1, 2021- June 30, 2022	Hourly Wage Y3
Bridge Tender	Equity 3% + 2.7% COLA	\$29.74	Equity 2% + 3% COLA	\$31.23	Equity 2% + 3% COLA	\$32.79
Signal Technician	Equity 3% + 2.7% COLA	\$51.19	3% COLA	\$52.73	3% COLA	\$54.31
Track Maintainer I	Equity 1% + 2.7% COLA	\$38.29	3% COLA	\$39.43	3% COLA	\$40.62
Track Maintainer II	Equity 1% + 2.7% COLA	\$42.11	3% COLA	\$43.38	3% COLA	\$44.68

20.1 Wages will be effective retroactive to July 1, 2019 following ratification of the Agreement. Subsequent wage increases will be effective on July 1<sup>st</sup> of each year through the life of the contract.

**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 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. If the employee is not required to report for jury duty on a given day during the summons week, they will be expected to report for their regularly scheduled shift.

## **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, holiday 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. Employees in the job class of Bridge Tender, due to the nature of the work, may not be able to have a regularly scheduled meal period, thus one on duty thirty (30) minutes meal period shall be

allowed and shall be paid time. If an unpaid meal period is interrupted due to operational concerns by more than 15 minutes, a new thirty-minute meal period will begin as soon as possible.

## 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.

## 25.6 STANDARD WORK WEEK AND SCHEDULE CHANGES

25.6.1 With the exception of "Relief" or "Floater" positions, the regular work week for a full-time employee shall consist of five (5) consecutive days of eight (8) hours of work unless otherwise specified per an alternative work schedule agreement. The District work week begins on Monday and ends on Sunday. Alternative work schedules, (i.e. 4/10) may be discussed and implemented at the discretion of the District if required by operational need. Employees working an alternative work schedule will not be eligible for overtime until the employee has worked more than ten (10) hours in a day or forty hours in a work week. Subsequent cessation of an alternative work schedule is not subject to the grievance procedure.

25.6.2 If, due to operational needs, an employee's regular schedule is changed such that the employee does not work a full eight hours on the day the schedule change takes effect, the employee will receive a minimum of eight hours pay at the basic straight time rate.

## 25.7 CALL BACK PAY

25.7.1 Employees who are called back to their work locations following the completion of their work day and departure from their place of employment, shall be granted one (1) hour of pay at the employee's base hourly rate. This one hour of pay is not considered an hour worked for the purposes of calculating overtime. This

section shall not apply to employees who are called in to work when on standby status.

## **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 six (6) months, in April and October. 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 each facility where bargaining unit members report for work.
- 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.
  - (c) If no staff volunteer to take the vacant shift that the District determines to cover, the shift may be force assigned, in reverse seniority order.
- 26.5 An employee returning to duty after being absent more 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 July 1, 2019 and remain in effect to and including June 30, 2022, 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 \_\_\_\_\_. 2019.

FOR SMART

FORTHE UNION

APPROVED

RATIFIED

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Gary Phillips  
Chair, Board of Directors

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Tom Woods  
Business Representative

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Attest  
Leticia Rosas-Mendoza, Clerk of the  
Board

SMART NEGOTIATORS

TEAMSTERS NEGOTIATORS

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Diane O'Malley  
Chief Negotiator

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Chris Lawson  
Employee Representative

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Lisa Hansley  
SMART Human Resources

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Nicholas Derenzi  
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):

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**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):

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**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

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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)  

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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.

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## 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.

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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.

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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.

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**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**

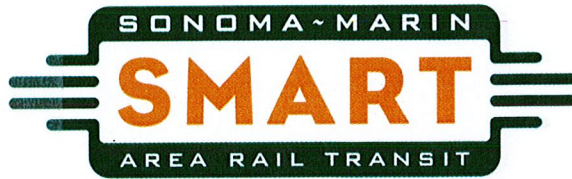
**A. Collections must be distributed unpredictably throughout the designated testing period, covering all operating days (including holidays) and shifts (24-hour clock). There is no expectation that day/night or shift collection distributions be equal but there has to be sufficient testing to establish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



August 7, 2019

**Gary Phillips, Chair**  
Transportation Authority of Marin

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

**Judy Arnold**  
Marin County Board of Supervisors

**Damon Connolly**  
Marin County Board of Supervisors

**Debora Fudge**  
Sonoma County Mayors' and  
Councilmembers Association

**Patty Garbarino**  
Golden Gate Bridge,  
Highway/Transportation District

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

**Eric Lucan**  
Transportation Authority of Marin

**Joe Naujokas**  
Sonoma County Mayors' and  
Councilmembers Association

**David Rabbitt**  
Sonoma County Board of Supervisors

**Chris Rogers**  
Sonoma County Mayors' and  
Councilmembers Association

**Shirlee Zane**  
Sonoma County Board of Supervisors

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

**SUBJECT:** Discussion of 2019 Strategic Plan's Preliminary Financial Projections

Dear Board Members:

**RECOMMENDATION:** Discussion Only.

**SUMMARY:**

During the month of August, SMART staff will be meeting with the Citizens Oversight Committee in order to review the draft Strategic Plan. As part of that effort we will be reviewing financial projections related to the sales tax renewal. In advance of that Citizens Oversight process, we wanted to preview with your Board the financial projections and to receive any input you may have. All financial models for the future will be informed by current costs and revenues and then utilize assumptions for the future of those sources and uses.

At the meeting we will provide information on the financial projections and focus on two different main scenarios.

1. No early sales tax extension: This projection will discuss SMART's financial future if the Board does not place a measure on the ballot in 2020 or if the voters do not approve the tax.
2. Early Sales Tax extension: This scenario will show future SMART operations costs and revenues if the tax extension is placed on the ballot and approved.

Any feedback your Board provides will be incorporated into the Strategic Plan discussions with the Citizens Oversight Committee before it comes back to the Board for review.

Very truly yours,

  
Erin McGrath  
Chief Financial Officer

**Farhad Mansourian**  
General Manager



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

Attachment(s): March 3, 2020 Election Timeline



## March 3, 2020 ELECTION

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November 6, 2019:	Final Board Action Approving Ballot Measure (Ordinance and Expenditure Plan)
October 2 and 16, 2019:	Board Discussion and Approval of Strategic Plan
September 19, 2019:	Board Reviews Draft Ordinance and Expenditure Plan
September 4, 2019:	Board Reviews Draft Ordinance and Expenditure Plan
August 15 and 29, 2019:	Citizens Oversight Committee Review of Strategic Plan
July 17, 2019:	Board Reviews Draft Expenditure Plan Principles



**SMART** || SONOMA~MARIN AREA RAIL TRANSIT

5401 Old Redwood Highway, Suite 200, Petaluma, CA 94954  
Tel: 707.794.3330/Fax: 707.794.3037