

MEMORANDUM OF UNDERSTANDING AGREEMENT

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT AND SONOMA COUNTY REGIONAL PARKS CRANE CREEK RIPARIAN MITIGATION

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into as of _____, 20__, by and between the **SONOMA-MARIN AREA RAIL TRANSIT DISTRICT** (hereinafter SMART), a public entity duly established under the laws of California, and **COUNTY OF SONOMA**, a political subdivision of the State of California, by and through the Department of Regional Parks (County).

Recitals

- A. The SMART rail corridor, historically known as the Northwestern Pacific Railroad Authority (NWPRA), generally parallels Highway 101 running north - south in Sonoma and Marin Counties. The corridor owned by the SMART District includes the corridor from Milepost (MP) 89.9 in Cloverdale southward to MP 11.4 in Corte Madera.
- B. SMART has completed California Environmental Quality Act (CEQA) review and designed and constructed a passenger rail service, stations and accompanying multi use path along an approximately 45-mile existing rail corridor which will eventually extended to 70-miles from Cloverdale in Sonoma County, California, to Larkspur, Marin County, California (the “SMART Rail and Pathway Project”).
- C. SMART is implementing sections of pathway including a segment between Golf Course Drive in Rohnert Park and Bellevue Avenue in Santa Rosa and another between West Steel Lane and Airport Boulevard in Santa Rosa. As part of the planned pathway construction, it has been determined that environmental impacts will occur. Both the California Department of Fish and Wildlife and the California Regional Water Quality Control Board have conditioned the project with riparian mitigation requirements.
- D. SMART is seeking locations to construct Riparian Enhancements to comply with permits from the Environmental Permitting agencies.
- E. SMART has identified riparian enhancement opportunities to fulfill permit mitigation requirements in the Sonoma County Crane Creek Regional Park in Rohnert Park which is in the same watershed as the pathway projects.
- F. County owns Crane Creek Regional Park.
- G. SMART is interested in constructing Riparian Enhancements in Crane Creek Regional Park (Project).
- H. The parties desire to enter into this MOU to provide for the construction, maintenance and establishment of the Project.
- I. SMART, through this MOU, has agreed to pay all costs associated with the design, permitting, and construction of the Project.

- J. County has agreed to allow the Project to be constructed on County property and to provide maintenance, monitoring, and reporting for the Project.
- K. SMART, through this MOU, has agreed to reimburse County for its effort for riparian maintenance, monitoring, and reporting, up to \$439,843 over the term of this agreement.

MOU

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, County and SMART agree as follows:

1. RECITALS

- A. The above recitals are true and correct and are hereby incorporated in and expressly form a part of this MOU.

2. COORDINATION

- A. SMART's and County's Representative for purposes of this MOU shall be:

SMART

Bill Gamlen
Chief Engineer
Sonoma - Marin Area Rail Transit (SMART)
5401 Old Redwood Highway, Suite 200
Petaluma, California 94954
Phone: 707.794.3330
Email: bgamlen@sonomamarintrain.org

COUNTY

Melanie Parker
Deputy Director
2300 County Center Drive
Suite A120
Santa Rosa, CA 95403
Phone: 707.565.2041
Email: Melanie.parker@sonoma-county.org

3. SCOPE OF WORK

- A. Design, construction, maintenance, and monitoring of riparian enhancements in the Crane Creek Regional Park near Rohnert Park according to the permits from the California Regional Water Quality Control Board (Exhibit E) and California Department of Fish and Wildlife (Exhibit F). A concept mitigation plan depicting the improvements is included as Exhibit A. The Project will include design and construction of irrigation, invasive removals, and planting. The Mitigation area comprises two drainages. The construction of the Poppy drainage mitigation is anticipated to begin in the summer of 2025, while the Fiddleneck drainage mitigation will start in the summer of 2026.
- B. The activities covered in this agreement include the maintenance and monitoring of the Project. After SMART installs the plantings and irrigation system, the County will maintain the improvements as the plantings establish themselves in the natural environment and become part of the Crane Creek Regional Park native ecosystem, and prepare an annual monitoring report documenting the establishment of the improvement. At the conclusion of the term of this agreement, the proposed improvements will become the property of the County.

4. **SMART'S RESPONSIBILITIES**

SMART agrees to perform the following:

A. Management:

- i. SMART shall be responsible for the management of the implementation of the Project, which includes preparing design and construction documents for the Project.
- ii. SMART shall manage the installation and construction of Project.

B. Design: SMART shall submit design and construction documents to the County for review and approval, which shall not be unreasonably withheld, and approval authority is delegated to an appropriate professional, such as landscape architects, ecological restoration specialist, or similar.

C. Environmental Permits: SMART shall be responsible for securing environmental permits, including but not limited to, the costs associated with any environmental clearance, analysis, compliance documentation, permits or other entitlements as may be required.

- i. SMART will prepare and submit the year 1 as-built report.

D. Construction. SMART shall be responsible for procurement of all materials, installation, and construction work for the Project, at its own expense. Upon completion of construction, SMART shall provide County with written notice of its determination that construction pursuant to the approved designs has been complete. If County determines that the Project has not been completed pursuant to approved designed and permits, County shall notify SMART within 21 calendar days after SMART's written notice of determination of Project completion of any needed corrections. SMART shall respond to any concerns raised by County by correcting any defects or responding in writing to the County's objections within 21 days thereafter. If no objections are made by County, or SMART corrects or fully responds to any issues identified by County, construction shall be deemed complete and applicable guarantee periods shall commence.

E. Payment: SMART shall reimburse the County for the maintenance, monitoring, and reporting of the Project in accordance with the terms in Section 7.

F. Review: SMART shall promptly review all monitoring reports prepared by County and will have 14 calendar days to review and respond to submittals from the County related to the Project. If no comments are received within 14 calendar days, the documents will be deemed approved, and the County will send final monitoring reports to SMART for submission to the permitting agencies.

5. COUNTY'S RESPONSIBILITIES

County agrees to perform the following:

- A. Design Review: The County shall promptly review SMART's design and construction documents for the Project and will have 14 calendar days to review and respond to submittals from SMART related to the Project. If no comments are received within 14 calendar days, the documents and designs details will be deemed approved.
- B. Plant Source: The County has an existing contract for collection of local seeds and propagation of native plants. The County shall mobilize to collect and grow plants that are genetically adapted to local park conditions. The propagated plants can be used to replace trees and vegetation that have failed. If local seed source is not collected, locally sourced native plants should be identified for the project.
- C. Construction: The County may consult with SMART in overseeing the construction of the improvements but may not direct SMART's contractor.
- D. Maintenance, Monitoring, and Reporting: After construction is complete, pursuant to Section 4 (d), and plants are out of the contractors' guarantee period, the County shall perform all maintenance, monitoring, and reporting for the project.
 - i. County shall assume maintenance and monitoring responsibilities after construction is deemed complete. County shall be responsible for irrigation, preventing the return of invasive plant species that were removed as part of the Project, removing trash, installing and maintaining any protective fencing, replacing plantings that have died or been removed, and other activities as necessary to maintain the original intent of the Project improvements as identified in Exhibit A.
 - ii. New planting projects typically require the most maintenance and attention in the first few years. This work consists of irrigation maintenance, weed removal, and in some cases replacement of plantings that don't take hold. Once the plants are established, irrigation, and weeding tapers off to a point where the plantings have assimilated into the natural environment and do not require any support. Therefore, it is anticipated that the level of effort will be greatest in the first few years and be reduced near the end of the term of this agreement.
 - iii. SMART is required to submit monitoring reports to the permitting agencies to document the establishment of the Proposed Improvements. The County shall prepare monitoring reports for Poppy drainage restoration site and Fiddleneck drainage restoration site for years 2,3,4 and 5.
 - a. Draft Reports shall be submitted to SMART no later than November 1st of all reporting years. County shall promptly respond and address comments to maintain the Final Reports schedule.

- b. Final Reports shall be submitted to SMART no later than December 31st of the same year.

- iv. The County shall inform SMART, in a timely manner, when there are concerns about the success of the Project.

- v. If regular inspections or annual monitoring reveal that the mitigation is not on track to meet performance standards after appropriate implementation of recommended maintenance activities, an assessment will be made to determine the cause and develop potential solutions following the recommendations of section 8.0 Adaptive Management of the Riparian Mitigation and Monitoring Plan. SMART will be responsible for funding remedial actions that are beyond typical maintenance, and Regional Parks will be responsible for implementing remedial actions that are within the capabilities of their existing staff and equipment.

- vi. Once the Project has been deemed complete and this MOU has expired, the County shall maintain the property as it sees fit, and have no further obligation to SMART for the maintenance or success of the improvements install by SMART hereunder.

6. TERM

The term of this MOU is until January 31st, 2032.

7. PAYMENT

SMART shall pay the County for work performed by the County pursuant to this Agreement and under the terms of Section 5. Payment for the work shall not exceed \$439,843 without prior consent by the parties to exceed such sum. Payment shall be made based upon the yearly expenditure schedule outlined in Exhibit C and County meeting responsibilities outlined in Section 5. County shall invoice SMART, on an annual basis, for work that will be completed in the upcoming year. If the reasonable completion of any task for which County has responsibility hereunder cannot be completed within the not-to-exceed amount set forth by the section 7, then County shall have no obligation to complete such work until such time as the not-to-exceed amount has been adjusted to reflect the actual cost to County for the completion of the task.

8. ADDITIONAL REQUIREMENTS

A. Amendments to MOU

This MOU may be amended only by the mutual written consent of both parties.

B. Indemnification

- i. SMART shall indemnify, defend, protect, hold harmless, and release County, its officers, agents, and employees, from and against any and all

claims, loss, proceedings, damages, causes of action, liability, costs, or expense (including attorneys' fees and witness costs) arising from or in connection with, or caused by any act, omission, or negligence of such indemnifying party. This indemnification obligation shall not be limited in any way by any limitation of the amount or type of acts, disability benefit acts, or other employee benefits.

- ii. County shall indemnify, defend, protect, hold harmless and release SMART, its officers, agents, and employees, from and against any and all claims, loss, proceedings, damages, causes of action, liability costs, or expense (including attorney's fees and witness costs) arising from or in connection with, or caused by any act, omission, or negligence of such indemnifying party. This indemnification obligation shall not be limited in any way by any limitation of the amount or type of acts, disability benefit acts, or other employee benefits.

C. Insurance

- i. SMART shall require its contractors to maintain in force, during the construction of the project, a policy of general liability insurance, including coverage of bodily injury liability and property damage liability, naming the County, its officers, agents, and employees as the additional insured in an amount of \$1 million per occurrence and \$2 million in aggregate. Coverage shall be evidenced by certificate of insurance in form satisfactory to the County that shall be delivered to the County prior to commencement of the work.
- ii. County its agents and contractors shall maintain in force, during the maintenance, monitoring and reporting period of the project, a policy of general liability insurance, including coverage of bodily injury liability and property damage liability, naming the SMART, its officers, agents, and employees as the additional insured in an amount of \$1 million per occurrence and \$2 million in aggregate. Coverage shall be evidence by a certificate of insurance in a form satisfactory to the SMART that shall be delivered to SMART, after the construction project is complete, but prior to commencement of the County's maintenance, monitoring and reporting responsibilities.

D. Termination

Either party may terminate this MOU by giving 30-days prior written notice to the other party, in the manner described in Section 8 of this MOU of its intent to terminate. SMART shall pay the County for all expenses associated with the proportion of work completed as of the termination date. Should the MOU be terminated, the County shall allow SMART and/or contractor to take over maintenance and monitoring responsibilities of the Planned Improvement at no cost. County shall provide whatever access and permits are necessary at no cost to SMART and may confer but shall not interfere with the maintenance, monitoring and reporting obligations. At the completion of the establishment period or when the permitting agencies determine that SMART has fulfilled its riparian mitigation obligations, the Planned Improvements will become the property of the County.

E. Notice

Unless otherwise requested by a party, all notices, demands, requests, consents, or other communications which may be or are required to be given by either party to the other shall be in writing and shall be deemed effective upon service. Notices shall be deemed to have been properly given when served on the party to whom the same is to be given by hand delivery or by deposit in the United States mail addressed to the party as follows:

SMART: Bill Gamlen, P.E
 Chief Engineer
 Sonoma-Marin Area Rail Transit District
 5401 Old Redwood Highway
 Petaluma, CA 94954

County: Melanie Parker
 Deputy Director, Regional Parks
 2300 County Center Drive
 Suite A120
 Santa Rosa, CA 95403

When a notice is given by a generally recognized overnight courier service, the notice, invoice, or payment shall be deemed received on the next business day. When a notice or payment is sent via United States Mail, it shall be deemed received seventy-two (72) hours after deposit in the United States Mail, registered or certified, return receipt requested, with the postage thereon fully prepaid. In all other instances, notices, and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

F. Governing Law

This MOU shall be governed by and construed in accordance with the laws of the State of California. Venue shall be the County of Sonoma.

G. Entire MOU

This instrument contains the entire MOU between the parties, and no statement, promise, or inducement made by either party or agents of the parties that is not contained in this written contract shall be valid or binding; and this contract may not be enlarged, modified, or altered except in writing signed by the parties.

H. Authority of County

The undersigned hereby represents and warrants that he or she has authority to execute and deliver this MOU on behalf of County.

I. No Waiver of Breach

The waiver by any of the Parties of any breach of any term or promise contained in this MOU shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this MOU.

J. Time of Essence

Time is and shall be of the essence of this MOU and every provision hereof.

K. Construction

To the fullest extent allowed by law, the provisions of this MOU shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this MOU is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. County and SMART acknowledge that they have each contributed to the making of this MOU and that, in the event of a dispute over the interpretation of this MOU, the language of the MOU will not be construed against one party in favor of the other. County and SMART acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this MOU.

L. Consent

Wherever in this MOU the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

M. Relationship of the Parties:

The Parties do not intend to create a partnership, joint venture, joint enterprise, agency, or employee-employer relationship. The Parties intend by this agreement to establish only relationship of an independent Contractor (County) in performing the service specify herein, County shall control the work and the manner in which it is performed. County is not to be considered an agent or employee of SMART and is not entitled to participate in any pension plan, worker's compensation plan, insurance bonus, or similar benefits SMART provides its employees. In the event SMART exercises its right to terminate this Agreement, County expressly agrees that it shall have no resource or right of appeal under rules, regulations, ordinances, or laws applicable to SMART employees.

N. No Intended Third-Party Beneficiaries:

There is no third person or entity who is an intended third-party beneficiary under this agreement. No incidental beneficiary, whatever relationship such person may have with the Parties, shall have any right to bring an action or suit, or to assert any claim against the Parties under this agreement. Nothing contained in this agreement shall be constructed to create and the Parties do not intend to create any rights in third parties.

O. Captions

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

P. Acceptance of Electronic Signatures and Counterparts

The parties agree that this MOU, including the Exhibits hereto, will be considered executed when all parties have signed this MOU. Signatures delivered by scanned image as an attachment to electronic mail or delivered electronically through the use of programs such as DocuSign must be treated in all respects as having the same effect as an original signature. Each party further agrees that this Contract may be executed in two or more counterparts, all of which constitute one and the same instrument.

IN WITNESS WHEREOF, the District and the County have executed this MOU as of the date first above written.

COUNTY OF SONOMA:

SONOMA-MARIN AREA RAIL TRANSIT
DISTRICT:

By: _____
Bert Whitaker
Director, Regional Parks

By: _____
Eddy Cumins, General Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM FOR DISTRICT:

By: _____
Deputy County Counsel

By: _____
Jessica Sutherland,
SMART General Counsel