



BOARD OF DIRECTORS REGULAR MEETING AGENDA AUGUST 21, 2024 - 1:30 PM

Members of the public who wish to attend in person may do so at:

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

The SMART Board of Directors will facilitate using a dual format with listening and participation available through Zoom and in-person. SMART provides several remote methods for viewing the SMART Board Meetings and providing Public Comment.

HOW TO WATCH THE LIVE MEETING USING THE ZOOM

<https://sonomamarintrain-org.zoom.us/j/88227285065?pwd=SWQ4eDBMcTIHZUgvVndiYlhtZjJPUT09>

Webinar ID: 882 2728 5065

Passcode: 019592

TELECONFERENCE

Members of the public wishing to participate via teleconference can do so by dialing in the following number the day of the meeting: (669) 900-9128; Access Code: 882 2728 5065; Passcode: 019592.

WATCH THE BOARD MEETING VIA LIVESTREAM

You are able to view live broadcasts of Board meetings online here: <https://www.sonomamarintrain.org/meetings> To view the meeting, select "View Event" at the time of the meeting.

HOW TO PROVIDE COMMENTS ON AGENDA ITEMS

Prior To Meeting: Technology limitations may limit the ability to receive verbal public comments during the meeting. If you wish to make a comment you are strongly encouraged to please submit your comment to Board@SonomaMarinTrain.org by 5:00 PM on Tuesday, August 20, 2024.

During the Meeting: The SMART Board Chair will open the floor for public comment during the Public Comment period on the agenda. Please check and test your computer settings so that your audio speaker and microphones are functioning. Speakers are asked to limit their comments to two (2) minutes. The amount of time allocated for comments during the meeting may vary at the Chairperson's discretion depending on the number of speakers and length of the agenda.



BOARD OF DIRECTORS REGULAR MEETING AGENDA AUGUST 21, 2024 – 1:30 PM

Members of the public who wish to attend in person may do so at:

5401 Old Redwood Highway, 1st Floor

Petaluma, CA 94954

1. Call to Order
2. Approval of the July 17, 2024 Board Meeting Minutes
3. Board Member Announcements
4. General Manager's Report
5. Public Comment on Non-Agenda Items

Consent Calendar

6. Accept Monthly Ridership Report – July 2024

Regular Calendar

7. Authorize the General Manager to Execute a License Agreement for the Marin-Sonoma Bike Share Pilot Program between SMART and Drop Mobility – *Presented by Planning Manager, Emily Betts*
8. Adopt a Resolution Authorizing the General Manager to Award Contract No. PL-PS-24-001 with Modern Railway Systems to furnish, install, and support Real-Time Information Displays at SMART stations in the amount of \$537,755.26: and additional approval authority of up-to \$43,165.75 for project contingency for a total project cost not-to-exceed \$580,921.01 – *Presented by Planning Manager, Emily Betts*
9. Adopt a Resolution Authorizing the General Manager to Execute Contract No. EV-BB-24-002 with Triangle Properties, Inc. for implementation and maintenance of Helen Putnam Riparian enhancement in Petaluma in the amount of \$523,270 – *Presented by Chief Engineer, Bill Gamlen*
10. Adopt a Resolution to Amend the Fiscal Year 2025 Adopted Budget to roll forward additional funds from Fiscal Year 2024 to Fiscal Year 2025, increase appropriations by \$3,535,043, and modify Appendix C - Position Authorization – *Presented by Chief Financial Officer, Heather McKillop*

Closed Session

11. Conference with General Manager Cumins, pursuant to California Government Code Section 54956.8 regarding real estate property negotiations
Property: APN 137-061-019
890 North McDowell Boulevard, Petaluma, California
Negotiating Parties: General Manager Cumins – various (City of Petaluma; Petaluma Corona Station LP; Century Housing Corp.); Under Negotiation price and terms of payment
12. Report Out Closed Session
13. Next Board of Directors Meeting, September 18, 2024 – 1:30 PM – 5401 Old Redwood Highway, 1st Floor, Petaluma, CA 94954
14. Adjournment

ACCOMODATIONS:

Public participation is solicited without regard to race, color, national origin, age, sex, gender identity, religion, disability or family status. Upon request, SMART will provide for written agenda materials in appropriate alternative formats, disability-related modification or other accommodation, to enable individuals to participate in and provide comments at/related to public meetings. Please submit a request, including your name, phone number and/or email address, and a description of the modification, accommodation, service, or alternative format requested at least two (2) days before the meeting. Requests should be emailed to *Leticia Rosas, Clerk of the Board* at lrosas@sonomamarintrain.org or submitted by phone at (707) 794-3072. Requests made by mail SMART's, 5401 Old Redwood Highway, Suite 200, Petaluma, CA 94954 must be received at least two days before the meeting. Requests will be granted whenever possible and resolved in favor of accessibility.



**BOARD OF DIRECTORS
REGULAR MEETING MINUTES**

July 17, 2024 – 1:30 PM
5401 Old Redwood Highway, 1st Floor
Petaluma, CA 94954

1. Call to Order

Chair Lucan called the meeting to order at 1:30pm. Directors Colin, Coursey, Farac, Fudge, Pahre, Paulson, Rabbitt, and Sackett were present; Directors Garbarino and Rogers absent; Vice Chair Bagby arrived later.

Vice Chair Bagby arrived at 1:32pm

Director Paulson was unable to attend in person due to a verified "*Just Cause*" and requested to participate remotely via Zoom. A roll call vote was held to approve Director Paulson remote attendance. **MOTION:** The motion carried 10-0 (Directors Garbarino and Rogers absent)

2. Approval of the June 18, 2024 Board Meeting

MOTION: Director Rabbitt moved approval of the June 18, 2024 Board Meeting Minutes as presented. Director Sackett second. The motion carried 10-0 (Directors Garbarino and Rogers absent)

3. Board Members Announcements
None

4. General Manager's Report

General Manager Cumins provided an overview on the following:

- Contracts/Procurements over \$100k
- Ridership Update
- Marin County Fair Service
- Construction Update
- Petaluma Bike Fix-It Station
- Marin Sonoma Transit Coordination

- Larkspur Shuttle Ribbon Cutting
- August Service Changes
- Questions

Contracts/Procurements over \$100k

EMR, LLC dba Max Accel Contract Agreement No. IT-PS-24-001 is to provide Operations Regulatory Compliance Reporting Tracking Software. this contract agreement has a not-to-exceed amount of \$175,000.

Ridership Update/Highlights

- June Average Weekday ridership: 3,130; 23% over June 2023
- July Average Weekday ridership: 3220; 27% over July 2023)
- June 2024 ridership 80,034; 20% higher than June 2023
- Average daily ridership in FY24 set records for Weekday, Saturday, and Sunday boardings
- Carried nearly 115,000 bicycles in fiscal year 2024; 13% of passengers brought a bicycle on board (*All Time Record!*)
- Fiscal Year 2024 tracking 33% higher than Fiscal Year 2023; 19% higher than Fiscal Year 2019; and 18.4 M passenger miles
- Fiscal Year 2025 Goal is 950,000; 11.7% higher than Fiscal Year 2024

Marin County Fair Service

- Partnered with the County to run three additional trips post-fireworks in support of Marin County Fair on July 3-7, 2024; Ran 3-car train service during the day to support heavy loads
- Carried over 1,700 riders post fireworks; 77% higher than last year.
- Served over 6,000 trips total to Marin Civic Center over 5 days; 30% higher than last year.
- Set a new record for weekday ridership on Wednesday, July 3: 4,311

Construction Update

Petaluma North Station

- Penngrove Pathway: Survey Layout
- Pathway: Sheet pile installations for drainage pipes

Windsor Extension

- Placing concrete for the pedestrian undercrossing
- Pathway grading

Petaluma Bike Fix-It Station

- Partnered with City of Petaluma to install a bike fix-it station at the Downtown Petaluma Station; City will oversee the maintenance of the Fix-It Station
- Equipped with all tools necessary to perform basic bike repairs and maintenance, from changing a flat to adjusting brakes
- This partnership supports first-last mile access to the station

Marin Sonoma Transit Coordination – July 2024 Update

- June kick-off of MASCOTS service planning effort with goal of optimizing transit service on the 101 corridor; MASCOTS multi-operator planning group leading effort with consultant support; and \$100,000 in joint funding from MTC and transit operators

- Monthly meetings of General Manager's and Executive Directors'; Recent discussions of Transit Priority, Bus Bridge Service, and Transit 2050+
- Finance Subcommittee meeting monthly to discuss funding distribution scenarios

Larkspur Shuttle Ribbon Cutting

General Manager Cumins stated that on June 20th the Larkspur Shuttle Ceremony was in Larkspur. SMART partnered with Golden Gate Transit and Transportation Authority of Marin to provide last mile connection to the ferry. He thanked the following speakers: Eric Lucan, Brian Colbert, Gabe Paulson, and David Rabbitt.

Larkspur Shuttle – SMART Connect

- SMART Connect shuttle is now operating at the Larkspur Station
- Service **four days** per week:
 - Thursday – Friday: 7:00 AM – 12:30 PM and 1:30 PM – 6:00 PM
 - Saturday – Sunday: 8:30 AM – 11:30 AM and 12:30 – 7:30 PM
 - **Fares:** \$1.50/adults, \$0.75 disabled; youth & seniors ride FREE
 - Riders can book ahead (by app or phone) or just walk-on the shuttle if space available
- Shuttle meets every train and ferry within 5 minutes
- On the weekends, the van serves The Village and Town Center malls in Corte Madera

August Service Changes

- On August 12, SMART will be adding two weekdays round trips:
 - 5:34am Southbound / 7:12am Northbound
 - 10:54am Southbound / 12:47pm Northbound
- These trips are designed to:
 - Connect with the busiest morning ferry into SF (7:20am)
 - Provide a convenient option for students traveling northbound to school in the morning
 - Offer additional midday service, responding to community request for more midday service
- Golden Gate Transit and Marin Transit are also making coordinated service changes to better connect with SMART, particularly from the Route 101 and 580.

Comments

Director Farac asked if staff is doing marketing to schools. General Manager Cumins responded that staff is preparing an outreach/marketing plan.

Director Coursey asked if the increase in ridership had to do with school being out. General Manager Cumins stated that it depends on how many weekdays are in the month as that can make a difference in ridership.

Vice Chair Bagby stated that she knows a family that their son takes the SMART train to get from/to school and other activities. She also thanked staff for being very responsive to public inquiries and request.

Director Paulson thanked the General Manager Cumins and the Board for the programs that increase ridership. He asked if staff had youth and senior data counts. General Manager Cumins responded that in August staff will provide a detail and trends ridership report. Also, the farebox has decreased but ridership increase has been huge. Director Paulson asked if staff is working with

Marin Transit to coordinate bus meeting times. General Manager Cumins responded that staff continues to coordinate to improve connections.

Director Sackett thanked the Operations department for working on the holiday and Marin County Fair dates.

Director Rabbitt stated that there a lot of cars lined up at the Petaluma Downtown station dropping/picking up teens for them to get on the SMART train. He asked for pathway data of the most popular segments.

5. Public Comment on Non-Agenda Items

Mathew Hartzell thanked SMART staff for operating extra train service during the Marin County Fair. He said that it was a very tight connection after the fireworks and suggested adding additional time in the future. General Manager Cumins stated that it is an operational challenge due to northbound and southbound trains.

Rick Luttmann asked for the of the Jennings Avenue Crossing. If the Jennings Avenue crossing is not built, Santa Rosa residents will not support the ballot measure.

6. Consent

- a. Accept Monthly Ridership Report – June 2024
- b. Approval of Monthly Financial Reports – May 2024
- c. Authorize the General Manager to Execute Contract Amendment No. 4 with Nossaman for an amount of \$200,000 to provide specialized legal support on an as-needed basis
- d. Adopt a Resolution to accept the Revised Policy HRM-007, Drug and Alcohol-free Workplace Policy, effective July 17, 2014

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

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

7. Adopt a Resolution Authorizing the General Manager to Award Contract No. PL-BB-24-001 with Square Signs LLC dba Front Signs to Furnish and Install System-Wide Pathway Wayfinding Signage for an amount of \$599,446.99; and for project contingency for a total project cost not-to-exceed \$736,638.09 - *Presented by Planning Manager, Emily Betts*

Planning Manager, Emily Betts introduces Senior Planner Zoe Unruh who provided a presentation which is located on SMART's website. Highlights include:

Quality of Life and Economic Impact Assessment Contract Award

- Project Timeline
 - **April 2023** – SMART initiated the Pathway Wayfinding Plan effort in response to requests from the public for signage along the Pathway
 - **December 2023** – SMART Board of Directors Approved Final Design
 - **June 2024** – SMART received 2 bids with the lowest responsive responsible bidder being

- Square Signs, LLC dba Front Signs.
 - **December 2024** – Anticipated Completion Date
- Purpose
 - To *familiarize* people with the Pathway
 - To help users *Orient* themselves within the Pathway, SMART system, and the neighborhoods the Pathway travels through
 - To *Facilitate Connections* between the Pathway and SMART Rail, local and regional trails, and the surrounding communities
- Project Scope
 - Base Bids
 - Additive Alternatives
- Today's Recommendations
- Next Steps
 - Upon Board Approval, Staff will work to finalize our agreement with the contractor and issue a Notice to Proceed
 - Staff will continue conversations with local jurisdictions to secure approval and permits for installation outside SMART's ROW
 - Staff will keep the Board apprised project updates and progress

Comments

Director Rabbitt asked if an engineering estimate was provided. Procurement and Contracts Manager, Ken Hendricks, responded yes and it's a very aggressive timeline schedule to complete the work.

Director Coursey asked how many sign locations. Ms. Unruh responded that there are 28 miles of existing pathway and 9 additional miles under construction and have approximately 600 sign panels (not individual signs).

Director Fudge stated that the Town of Windsor is getting excited about the arrival of passenger service. She sent this board item to a marketing professional who expressed interest.

Vice Chair Bagby asked if signs include the San Francisco Ferry milepost Zero (0). Ms. Unruh responded that the signs will not include milepost, however the San Francisco Ferry is milepost zero

Rick Luttmann stated that he is glad that SMART is including the Great Redwood Trail.

MOTION: Director Fudge moved to Adopt a Resolution Authorizing the General Manager to Award Contract No. PL-BB-24-001 with Square Signs LLC dba Front Signs to Furnish and Install System-Wide Pathway Wayfinding Signage for an amount of \$599,446.99; and for project contingency for a total project cost not-to-exceed \$736,638.09 as presented. Director Pahre second. The motion carried 10-0 (Directors Garbarino and Rogers absent).

8. Authorize the General Manager to Award Contract no. OP-SV-24-008 with Cleaning Solution Services, Inc. for an amount of \$440,116 to perform janitorial services at SMART's stations, park, and ride lots, and facilities– to *Presented by Maintenance of Way Manager, Michael Spurlock*

Chief Operating Officer, Marc Bader, stated that Contract No. OP-PS-21-002 with Cleaning Solution Services is to perform janitorial services at SMART's stations, park, and ride lots, and facilities. The services are broken up into daily, weekly, and monthly tasks to assist SMART with providing a safe and clean operation for its riders and employees. Services at passenger facilities include daily trash and debris collection, sweeping and leaf blowing, steam cleaning the concrete platforms, cleaning of all fixtures, benches, signage, shelter glass, and card vending machines. General janitorial services at four staff office facilities include restroom cleaning, wiping down surfaces, dusting, emptying garbage, and sweeping. Other services are included on an as-requested basis for window and blind cleaning, and floor stripping, waxing, and buffing.

SMART's existing contract for janitorial services expires on July 31, 2024. In anticipation of this, SMART issued a Request for Proposal (RFP) on May 17, 2024, to procure janitorial services for SMART's stations, park, and ride lots, and facilities. SMART received a total of four responsive proposals. The Evaluation Committee ("Committee") reviewed these four proposals and identified Clean Solution Services, Inc. as offering the best value for SMART.

Staff recommends authorizing the General Manager to Award Contract No. OP-SV-24-008 to Clean Solution Services, Inc. for an initial term of three years with a not-to-exceed amount of \$440,116. Additionally, authorize the General Manager the approval authority of up to \$325,111 to extend the Agreement for an additional two years.

Comments

Chair Lucan stated that SMART has carried passengers for the last seven (7) years and commended SMART staff for providing very high level of standards.

MOTION: Director Pahre moved to Authorize the General Manager to Award Contract no. OP-SV-24-008 with Cleaning Solution Services, Inc. for an amount of \$440,116 to perform janitorial services at SMART's stations, park, and ride lots, and facilities as presented. Director Paulson second. The motion carried 10-0 (Directors Garbarino and Rogers absent).

Chair Lucan adjourned the Board to Closed Session at 2:16pm on the following:

9. Closed Session – Conference with Legal Counsel regarding existing litigation pursuant to California Government Code Sections 54956.9(a); Number of cases: (1) *SMART V. Cross Link, Inc, dba Westar Marin Services, et al*: Marin County Superior Court Case No. CV0001710

10. Report Out Closed Session

District Counsel Lyons reported out of Closed Session at 2:42pm on the following:

Conference with Legal Counsel regarding existing litigation pursuant to California Government Code Sections 54956.9(a); Number of cases: (1) *SMART V. Cross Link, Inc, dba Westar Marin Services, et al*: Marin County Superior Court Case No. CV0001710

Report Out: Direction given to District Counsel

11. Next Regular Meeting Board of Directors, August 21, 2024 – 1:30 PM – 5401 Old Redwood Highway, 1st Floor, Petaluma, CA 94954

12. Adjournment – Meeting adjourned at 2:45pm

Respectfully submitted,

Leticia Rosas
Clerk of the Board

Approved on: _____



August 21, 2024

Eric Lucan, Chair
Marin County Board of Supervisors

Melanie Bagby, Vice Chair
Sonoma County Mayors' and
Councilmembers Association

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

SUBJECT: Monthly Ridership Report – July 2024

Kate Colin
Transportation Authority of Marin

Dear Board Members:

Chris Coursey
Sonoma County Board of Supervisors

RECOMMENDATIONS: Information Item

Rachel Farac
Transportation Authority of Marin

SUMMARY:

We are presenting the monthly ridership report for activity for the month of July 2024. This report shows trends in ridership for SMART by tracking Totals, Average Weekday riders, and Average Saturday riders, Average Sunday/Holiday riders, as well as bicycles and mobility devices.

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Barbara Pahre
Golden Gate Bridge,
Highway/Transportation District

Gabe Paulson
Marin County Council of Mayors and
Councilmembers

David Rabbitt
Sonoma County Board of Supervisors

With the transition to the Automatic Passenger Counter (APC) in October 2022, SMART has a highly accurate method of tracking boardings and alightings at stations that does not depend on manual counts by the conductors. The APC system has been tested and validated at a 99% accuracy level, and has been certified for passenger count use by the Federal Transit Administration (FTA). Both APC-based ridership and fare-based collection rider counts are shown in the attached report to give a full picture of ridership. APC-based ridership captures all riders, including riders with passes who neglect to tag on or off, riders who fail to activate their mobile app tickets, as well as categories of riders such as children under five years old.

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

This report compares the most recent month to the same month during the prior year, as is standard industry practice for tracking trends over time. These reports also note relevant details associated with fare program discount usage and trends in riders bringing bicycles onboard as well as riders who use mobility devices.

Mary Sackett
Marin County Board of Supervisors

SMART's ridership data through July 2024 is posted on the SMART website (<https://sonomamarintrain.org/RidershipReports>).

Eddy Cumins
General Manager

FISCAL IMPACT: None

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

REVIEWED BY: [x] Finance /s/ [x] Counsel /s/

Respectfully,

/s/
Emily Betts
Planning Manager

Attachment(s): Monthly Ridership Report – July 2024

JULY 2024 SMART RIDERSHIP REPORT

SMART Ridership Report
August 21, 2024
Page 1 of 3

July 2024 saw continued strong ridership, with average weekday ridership at 3,163, up 1% from June. Average Saturday and Sunday ridership increased by 18% and 15%, respectively, from the previous month. Total monthly ridership was 88,022, a 34% increase over last July, and 40% over July 2019 (pre-COVID); this marks a new monthly ridership record for SMART. Average Saturday and Sunday ridership for July 2024 reached 42% and 55%, respectively, over July 2023.

As a reminder, SMART modified services in March 2020 due to the COVID-19 pandemic, with weekend service annulled and weekday service reduced to 16 trips. In May 2021, SMART added back 10 weekday trips. Saturday service was restored in May 2021, and Sunday service in May 2022. In June 2022, SMART added 10 additional weekday trips, and in October 2022, SMART added 2 additional midday trips, for the current schedule of 38 trips per weekday. In May 2023, SMART added two evening trips on Friday and Saturday, known as the Starlighter. On October 2nd, SMART suspended the Starlighter service but increased weekend service, running 16 trips total on both Saturday and Sunday. On August 12, 2024, SMART added two additional round trips for a total of 42 trips each weekday.

The tables below present data for July 2023 and 2024. Year-over-year data is not presented this month due to the start of a new fiscal year.

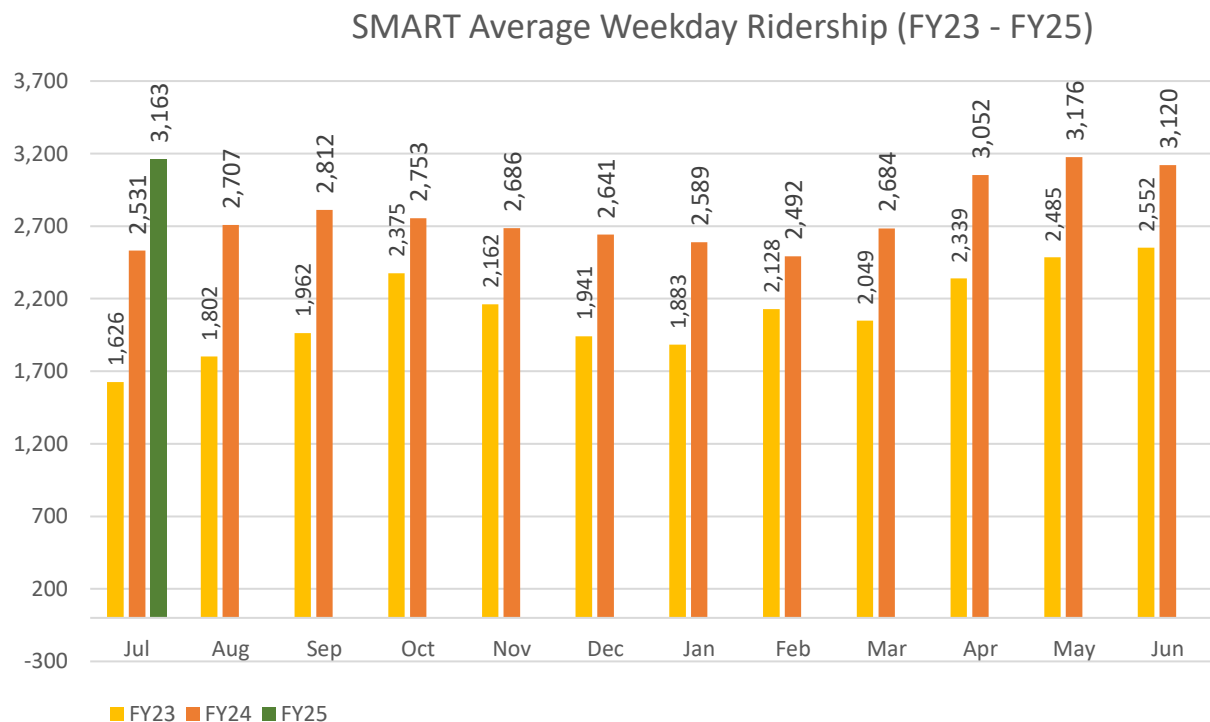
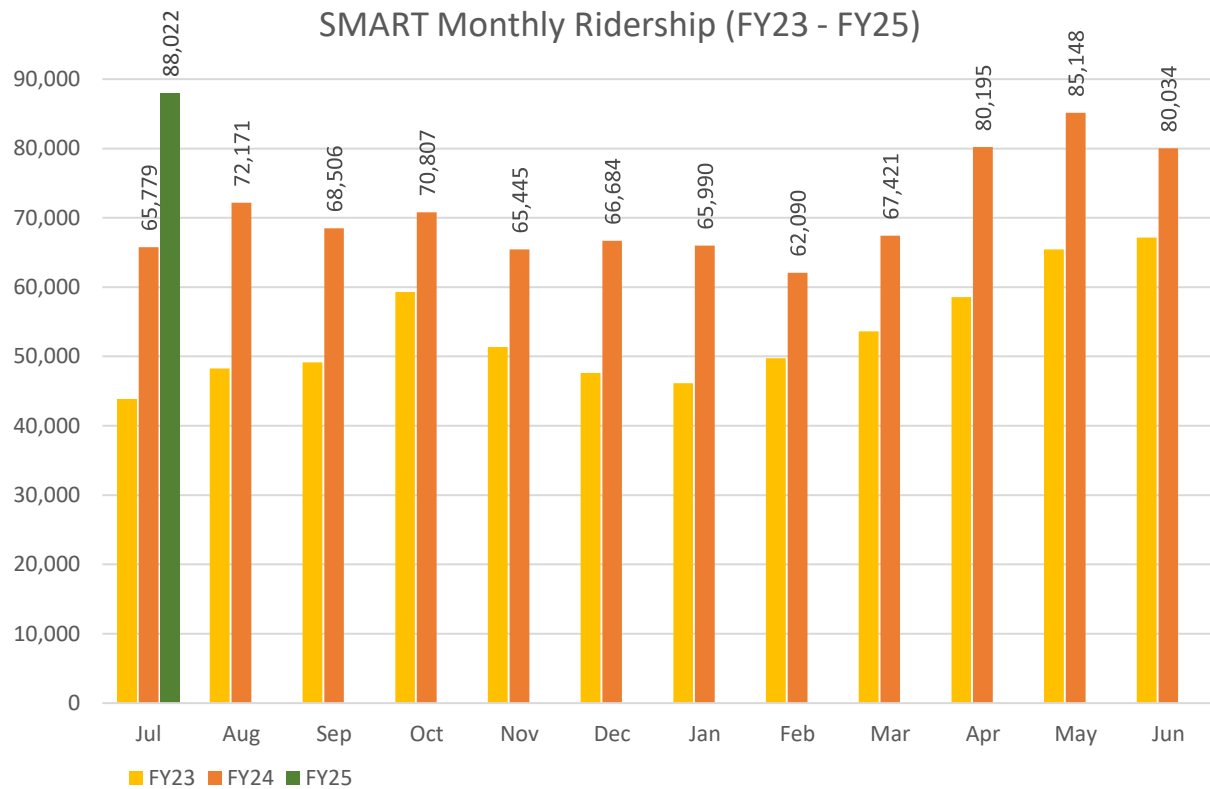
MONTHLY TOTALS YEAR-OVER-YEAR	JULY 2023	JULY 2024	% Change
Ridership	65,779	88,022	34%
Fare Payments (Clipper + App Only)	47,322	47,523	0%*
Average Weekday Ridership	2,531	3,163	25%
Average Saturday Ridership	1,478	2,106	42%
Average Sunday Ridership	1,293	2,004	55%
Bicycles	9,575	10,953	14%
Mobility Devices	197	217	10%

**Discrepancy between total ridership change and fare payments change due to launch of Free Fare program for youth and seniors on April 1.*

JULY 2024 SMART RIDERSHIP REPORT

SMART Ridership Report
August 21, 2024
Page 2 of 3

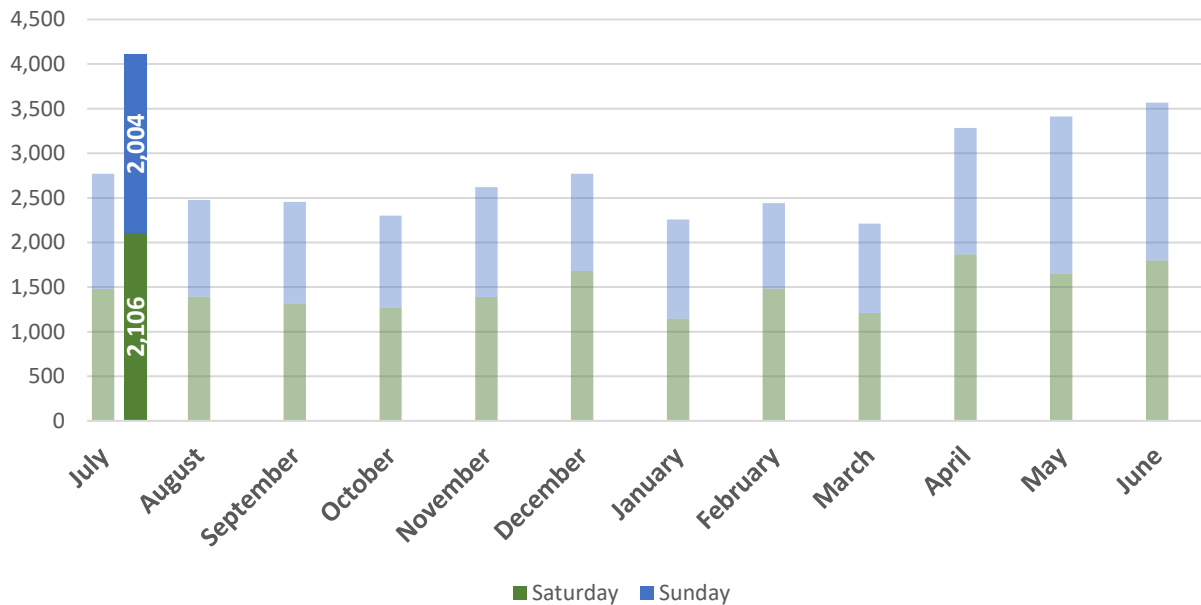
The following charts compare the average weekday ridership, average weekend ridership, boardings by day of week, and monthly totals for FY23-FY25.



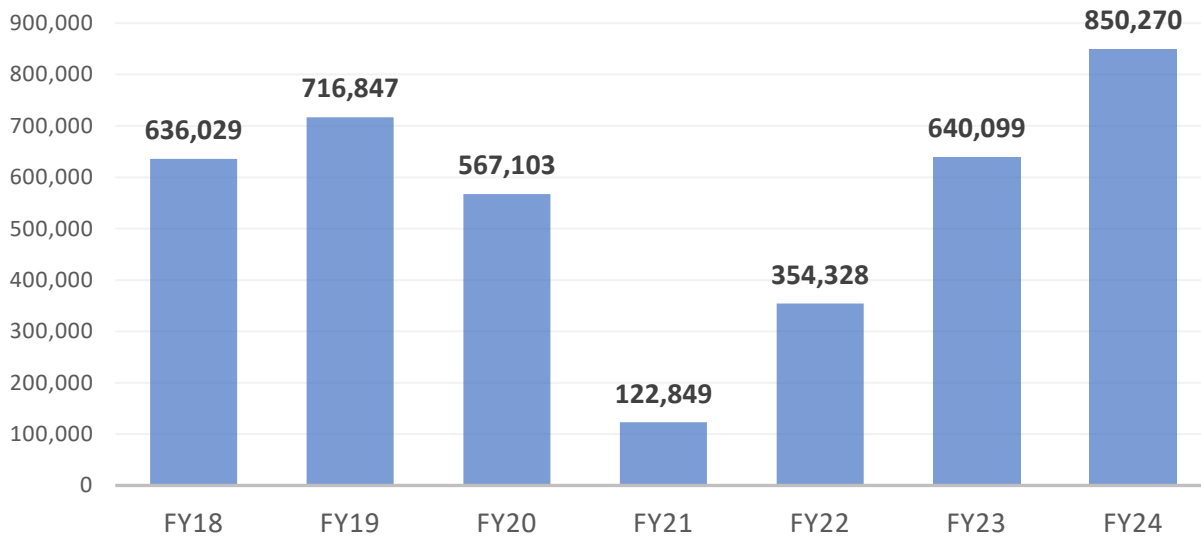
JULY 2024 SMART RIDERSHIP REPORT

SMART Ridership Report
August 21, 2024
Page 3 of 3

Average Weekend Boardings (FY24 v FY25)



SMART Annual Ridership





August 21, 2024

Eric Lucan, Chair
Marin County Board of Supervisors

Melanie Bagby, Vice Chair
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Chris Coursey
Sonoma County Board of Supervisors

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Eddy Cumins
General Manager

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Sonoma-Marin Area Rail Transit Board of Directors
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SUBJECT: Marin-Sonoma Bike Share Program License Agreement between
SMART and Drop Mobility

Dear Board Members:

RECOMMENDATION:

Authorize the General Manager to sign the License Agreement for the Marin-Sonoma Bike Share Pilot Program between SMART and Drop Mobility

SUMMARY

In August 2018, the Metropolitan Transportation Commission (MTC) awarded Sonoma County Transportation Authority (SCTA) and Transportation Authority of Marin (TAM) an \$826,000 Bike Share Capital Program grant for the Marin-Sonoma Bike Share Program along the SMART corridor. The goals of the program include addressing the first/last mile connections for SMART riders and many of the bike share facilities will be located at or near SMART stations. The program also supports the goals of many of the local jurisdictions to reduce greenhouse gas emissions and support public health benefits.

SCTA is acting as the fiscal agent, while SCTA and TAM cooperatively manage the program. Participating jurisdictions include the Cities of Larkspur, San Rafael, Novato, Petaluma, Cotati, Rohnert Park, Santa Rosa, Golden Gate Bridge Highway and Transportation District, and SMART. Each participating agency must confirm their participation through a local approval process and site permits.

BACKGROUND

In April 2020, a Program Agreement was signed by SCTA with Gotcha Mobility LLC as the vendor of the Marin-Sonoma Bike Share Program. The Program Agreement was subsequently reassigned to Bolt Mobility after their acquisition of Gotcha Mobility LLC. In June 2021, your Board approved Resolution No. 2021-15 authorizing the General Manager to negotiate final terms and sign the Draft Coordination Agreement for the Marin-Sonoma Bike Share Pilot Program as a participating agency and to authorize the Marin-Sonoma Bike Share Pilot Program operator, Bolt Mobility, the right to operate shared electric bicycles within SMART's jurisdiction.

In summer 2022, Bolt ceased communications with SCTA staff and discontinued operations. SCTA subsequently terminated its agreement with Bolt.

While SCTA was in contract with Bolt, staff from SCTA and TAM made progress on several elements of program development that may be transferred to a new operator agreement, including convening monthly working group meetings with all participating agencies develop the program, collection of input through a public survey, review of technical demand analysis, coordination of station siting and permitting, and review of other program details. In June 2023, SCTA staff began the new procurement process with the release of a revised Request for Proposals. Four proposals were received in August 2023 and considered in the evaluation. The panel made a unanimous decision to recommend Drop as the top ranked firm.

PROGRAM SUMMARY

The Bike Share Pilot Program includes planning, procurement, launch, and two years of operations of a system of 300 shared electric-assist bicycles (Class I e-bikes) and approximately 75 parking hubs with wayfinding and signage. The initial system network includes modular bicycle parking racks for shared bicycles. In addition to the agency partners, other entities, including Santa Rosa Junior College, Sonoma State University, and various private properties, may partner with Drop for additional parking hubs. Specific locations are being confirmed through the planning process.

Bike Share facilities are proposed for eleven of the twelve existing SMART stations; bike share was not proposed for SMART Sonoma County Airport Station. Tentative hub locations include the Larkspur Ferry Terminal, Santa Rosa Transit Mall, and Coddington Transit Hub, helping facilitate first/last mile connections between those locations and their respective SMART stations. The number of bikes at each hub ranges from 5 to 20. Drop Mobility staff will redistribute the bikes to hubs daily, and adjust inventory based on demand. Additional bike share hubs may be added by SCTA in the future, funding permitting. The system is expected to launch in September 2024 and the operating period in the agreement is two years.

FISCAL IMPACT: No fiscal impact to SMART.

REVIEWED BY: ☒ Finance /s/

☐ Counsel /s/

Respectfully,

 /s/

Emily Betts
Planning Manager

Attachment(s): Drop Mobility Property License Agreement

SMART REAL PROPERTY LICENSE AGREEMENT

SMART LICENSE AGREEMENT No. 2024-LIC-017
RE: Drop Mobility Bikeshare License Agreement
LICENSEE: Drop Mobility
At/Between Milepost(s) **14.80 – 55.23**

SMART LICENSE AGREEMENT No. 2024- LIC- 017

This Non-Exclusive Revocable License Agreement (this “**Agreement**”) is entered as of the _____ day of _____, 2024 (“Effective Date”) between the SONOMA-MARIN AREA RAIL TRANSIT DISTRICT, a California public agency (hereinafter “**SMART**”, “**Licensors**” or “**Permitter**”) and Drop Mobility California LLC D/B/A: Drop Mobility, with its place of business at 548 Market Street, PMB 64073, San Francisco, CA, 94104-5401 (hereinafter “**Drop Mobility**”, “**Licensee**” or “**Permittee**”), and all together referred to as the “**Parties**”.

RECITALS

- A. WHEREAS**, SMART is the owner of Railroad corridor right-of-way (“**Right-of-Way**” or “**ROW**”), and specifically that certain real property located in Marin and Sonoma Counties (“**SMART’s Property**” or “**Property**”) as shown on **Exhibit A** (“**Description of Premises**”), and attached hereto and incorporated herein by this reference.
- B. WHEREAS**, SMART recognizes the ongoing need to facilitate multiple first-and last-mile transportation options connecting passengers to SMART’s rail stations and services.
- C. WHEREAS**, in August 2018, the Metropolitan Transportation Commission (“**MTC**”) awarded the Sonoma County Transportation Authority (“**SCTA**”) and Transportation Authority of Marin (“**TAM**”), an \$826,000.00 Bike Share Capital Program grant for the Marin-Sonoma Bike Share Program, a pilot program to provide electric assist bikes and hubs for bike share parking throughout the participating jurisdictions.
- D. WHEREAS**, SMART along with the Cities of Santa Rosa, Rohnert Park, Cotati, Petaluma, Novato, San Rafael, Larkspur and the Golden Gate Bridge Highway and Transportation District (“**Participating Agencies**”) have been working with SCTA and TAM to implement the Marin-Sonoma Bike Share Program in their respective jurisdictions.
- E. WHEREAS**, through a qualifications-based procurement process, SCTA and TAM selected Licensee to install and operate the Marin-Sonoma Bike Share Program utilizing grant funding and at no direct cost to SCTA, TAM and Participating Agencies, including SMART.
- F. WHEREAS**, as part of the Marin-Sonoma Bike Share Program, Licensee entered into an Agreement with SCTA to install and operate the Marin-Sonoma Bike Share Program, and Licensee has requested and desires to use SMART’s Property for use installing, maintaining and operating shared electric bikes and bicycle outlets, referred to at times as Bike Share Facilities or Hubs (hereinafter “**Bike Share Facilities**” or the “**Facilities**”)
- G. WHEREAS**, SMART has policies regulating and governing the use of its Property, including a licensing process requiring a fully executed License Agreement to enable such use.

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- H. WHEREAS**, Licensee now desires to obtain a Property License from SMART for the purposes of installing, leaving, maintaining and operating “Bike Share Facilities” within SMART’s Property as shown on **Exhibit B (“Description of Work”)**; located on those certain portions of SMART’s Property to be utilized by Licensee under this Agreement are referred to as the “**License Areas**” or “**License Area**”, all of which are also depicted on the previously attached **Exhibit A**. Exhibits A and B are attached hereto and incorporated by reference.
- I. WHEREAS**, Licensee desires to and/or has obtained a **Right of Entry Permit** from Licensor to enter upon SMART’s Property for the purposes of undertaking certain work (“Work”), as shown in **Exhibit D**, the Right of Entry Permit (“**ROE**”), attached hereto and incorporated herein by this reference, which shall run concurrently with this Agreement’s term and any extensions thereafter, per **Section 4** of said ROE. Such work shall consist of constructing and/or installing the Bike Share Facilities within the “License Areas” as shown on **Exhibit B (“Description of Work”)**, as attached hereto and incorporated herein by this reference.
- J. WHEREAS**, Licensee’s Bike Share Facilities are expected to increase ridership and facilitate first and last mile transportation options connecting passengers to SMART’s rail stations and service.
- K. WHEREAS**, Licensee is willing to continue to assume any development, installation, construction or re-construction (“**Construction Activities**”) in furtherance of the Facilities, where permission is requested of and approved by Licensor, along with the operation, maintenance and repair of the Facilities under this License Agreement.
- L. WHEREAS**, Licensee is willing to meet the Insurance Requirements of this Agreement, including but not limited to the additional coverages for Construction Activities, per **Section 10** and **Exhibit C (“Insurance Requirements”)**, a copy of which **Exhibit C** is attached hereto and incorporated herein by this reference.
- M. WHEREAS**, until such time as SMART needs the property for any purpose or use, SMART is willing to permit the Licensee to construct, use and maintain the Bike Share Facilities within the License Areas.
- N. WHEREAS**, Licensee agrees that said Right of Entry Permit, as referenced in **Paragraph I** of these **Recitals**, is to be, or has been, applied for independently of this License Agreement, approval of which shall not be unreasonably withheld by Licensor, and any future needs for access, shall be included as part of this License Agreement running concurrently herewith, as permitted under **Paragraph 4 (“Term”)** of the Right of Entry Agreement previously attached on **Exhibit D**.
- O. WHEREAS**, Licensor is willing to issue a License to Licensee on the terms and conditions set forth herein.

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NOW THEREFORE, in consideration of the foregoing Recitals which are incorporated into and as part of this License Agreement, and for good and valuable consideration paid to Licensor by Licensee, the adequacy and receipt of which are hereby acknowledged, Licensor and Licensee hereto mutually agree as follows:

1. **License.** Licensor issues Licensee a personal, revocable, non-exclusive license for the purposes of installing, leaving, maintaining, constructing, reconstructing and operating Bike Share Facilities as described in the **Recitals** above, subject to the conditions, covenants and restrictions of this License Agreement and together with the right of ingress and egress over Licensor property, per the Right of Entry Permit referenced in **Paragraph I** of the **Recitals** and attached as **Exhibit D**, for those purposes, in the License Area shown on **Exhibit A**. Any development, construction, re-construction, installation, maintenance, or operation concerning the Facility shall be without any cost or expense whatsoever to Licensor.
2. **Assignment and/or Shared Use.** This License is personal and for the use of the Licensee only. Licensee shall not assign nor sublet nor share, in whole or in part, any rights covered by this Agreement, or permit any other person, firm or corporation to use, in whole or in part, any of the rights or privileges licensed pursuant to this Agreement, without first obtaining the written consent of Licensor, which consent may be denied or given at Licensor's sole and absolute discretion. Notwithstanding the foregoing, the Parties acknowledge that the purpose of this License is to help facilitate multiple first- and last-mile transportation options connecting passengers to SMART's rail stations and services, with shared bicycle options, and agree that members of the public may visit and use the Facilities, subject to Licensee's compliance with the requirements of this License.
3. **Limitations on Use & Prior Rights.**
 - a. **Limits on Use Defined by License Agreement.** This License is limited to the specific improvements and purposes described in the **Recitals** above, and to the specific Location(s) and Facility shown on **Exhibit A** and **Exhibit B**, respectively, by Licensee subject to the terms of this Agreement. Breach of any of these items shall be grounds for immediate termination of this License, including termination of Licensee's right of access under the previously referenced Right of Entry Permit(s).
 - b. **Authority of Licensee is Non-Exclusive.** This License is non-exclusive. The Licensee shall respect the rights and property of Licensor and other authorized users of the Property, including but not limited to easements, power poles, streetlight poles, vaults, and conduits.
 - c. **Prior Rights.** This License is subject and subordinate to the prior right of Licensor, its successors and assigns, to use all Licensor property in the performance of its operations. This license is also subject to all previous licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title which may affect the property. There is reserved unto

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Licensors, its successors and assigns, the right to construct, reconstruct, maintain and use existing and future facilities and appurtenances in, upon, over, under, across and along the Property. This license is subordinate and made subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title that may affect the Property and shall not be construed as a covenant against the existence of any of these prior interests.

- d. Public Purpose.** Licensee acknowledges that the Property is used in connection with, including but not limited to, Licensors' public purpose, goals, planning determinations and other services to the public ("**Functions**"), and agrees that such uses by Licensors are superior in all respects to all uses by Licensee. Licensee's use of the License Area must not in any way interfere with Licensors' ability to carry out its Functions, as determined by Licensors in its sole and absolute discretion. Licensors shall have the right to access the Property as needed by Licensors in its sole determination, and without further liability to Licensee, Licensors shall have the right to terminate this Agreement in order to carry out its Functions, accordingly, or simply for Convenience pursuant to **Section 5** herein.
 - e. Government Laws, Regulations and/or Rules.** Per **Section 8** herein, Licensee shall comply with all applicable laws, rules and regulations of the Federal, State, County, local governments and all administrative agencies thereof which may have jurisdiction over Licensee's use of the License Area and the use, construction, installation, operation and maintenance of the Facility, including but not limited to the provisions of this Agreement relating to the Americans with Disabilities Act contained in Section 9 herein.
- 4. Annual License Fee Rate.** There is no Annual License Fee as it has been waived in agreement with Participating Agencies and approved by SMART's Board of Directors as a 3 year pilot program.
 - 5. License Term, Termination & Relocation.**

 - a.** This Annual License shall commence upon the Effective Date of this Agreement, and shall continue with automatic Annual Renewals on the annual anniversary of the Effective Date of this Agreement for a total of three (3) years ("Initial Term") or until this License is terminated as set forth herein:

 - (i)** By either party giving the other no less than thirty (30) days' advance written notice, except in the occurrence of the events stipulated in Section 5. a. (ii) through (v) of this Agreement, in which case either party can terminate this Agreement immediately by providing written notice to the other party. If written notice has already been provided with a deadline which has expired, then termination shall be effective at the expiration of said deadline without the need for additional notice;
 - (ii)** Failure of Licensee to use the Facility for one continuous year;
 - (iii)** Abandonment or removal of the Facility from Licensors' property, said removal only as permitted herein under **Section 5.d**;

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- (iv) Failure of Licensee to correct a default of any covenant or condition of this Agreement within thirty (30) days after receipt of a notice of said default from Licensor, or if the default is such that it cannot be cured within thirty (30) days, such other reasonable amount of time as agreed to by the Parties; or
 - (v) By order of a state or federal governing entity having proper jurisdiction, per the timeframe provided by said entity.
- b. **Extension Term: Renewal of Initial Term.** At the end of the Initial Term, this License shall continue with automatic Annual Renewals (“**Extension Term**”) on the annual anniversary of the Effective Date of this Agreement
- c. **Suspension of License.** Licensor may immediately suspend the License by notice to Licensee if Licensee defaults with respect to any covenant or condition of this Agreement and Licensee fails to correct the default within 30 days after receipt of notice from Licensor. Upon suspension of the License, Licensee shall immediately secure the Property in a manner which ensures that the public refrains from entering onto the Property until the default is remedied to the satisfaction of Licensor and the License is reinstated in writing by Licensor.
- d. **Termination for Convenience.** Notwithstanding any other section or provision of this License Agreement, either Party may terminate this Agreement for convenience by providing thirty (30) days written notice.
- e. **Removal & Restoration.** Upon termination of this License, Licensee shall, at its sole cost and within thirty (30) days after the date of the notice of termination, remove any Structures from the SMART property and restore the SMART property to the condition that it was in immediately prior to installation of any Structures, including but not limited to the patching of all holes in a finished condition, pictures of said condition are depicted on **Exhibit F (“Condition of Premises”)**, as attached hereto and incorporated herein by this reference. If Licensee fails to do so, SMART may perform the work at Licensee’s expense, which expense Licensee agrees to pay SMART upon demand for all costs and damages so incurred.
- f. **Relocation.**
 - (i) **No Obligation on Licensor to Relocate Licensee.** Upon termination of this Agreement, Licensor shall have no further obligations to relocate the Facility, in whole or in part, or provide for an alternate location to Licensee.
 - (ii) **Relocation Costs.** In the event that Licensor, in its sole and absolute discretion, is able to provide Licensee with an alternate location on Licensor’s Property, Licensor shall not be responsible for any costs or expenses whatsoever involved in relocating and/or constructing, reconstructing or installing the Facility, in the event the Facility must be relocated or for any other cost or inconvenience to Licensee.

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(iii) **Rack Reduction and/or Relocation in Lieu of Rack Reduction.** Where SMART, in its sole and absolute judgement, determines that a reduction of the number of racks at an individual hub will be required, Licensee shall comply with said request within thirty (30) days' of written notice sent from SMART. SMART may also offer Licensee, at its sole discretion, the option to relocate some or all racks at Licensee's sole cost and expense in lieu of a reduction in racks, which Licensee, at its sole discretion, may choose to accept or not accept.

g. **Waiver of Claims: Termination.** In addition to Licensee's assumption of all risks and waiver of all claims, per **Section 12** of this License Agreement, Licensee further acknowledges and agrees that this License is freely revocable by Licensor in its sole and absolute discretion and in view of such fact, Licensee expressly assumes the risk of making any expenditure in connection with this License, even if such expenditures are substantial. Without limiting any indemnification obligations of Licensee or other waivers contained in this License Agreement and as a material part of the consideration for this License, Licensee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, Indemnitees under any present or future laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under law or equity, in the event that Licensor exercises its right to revoke or terminate this License.

6. Cost & Maintenance.

a. **Cost.** Licensee shall bear all costs of placing, installing, constructing, owning, operating, maintaining, repairing and where requested by Licensor in writing, removing and/or relocating the Facilities on the Property. Licensee shall not permit any mechanic's or materialman's lien of any kind to be enforced against Licensor property for any work done or materials furnished for the Structures on Licensor property.

b. **Maintenance.**

(i) **Maintenance and Repair of Property & Facilities.** Licensee agrees to keep the Property and the Facilities in good and safe condition, free from waste, so far as affected by Licensee's operations to the reasonable satisfaction of Licensor.

(a) **Licensee Responsibility.** Licensee assumes all responsibility for maintaining, repairing, and inspecting the bike racks. Licensee shall, at Licensee's sole cost and expense, use Licensee's best efforts to diligently and adequately maintain and repair the bike racks. Licensee shall promptly perform or caused to be performed any and all maintenance and repairs to the bike racks, including graffiti abatement, when notified by SMART that such maintenance or repairs are necessary within thirty (30) days after receiving such notice in writing. Licensee shall conduct graffiti abatement within five (5) days of receiving such notice in writing.

(b) **Failure to Maintain and/or Repair.** If, after installation of the Facilities, Licensee fails to keep the Property and the Facility in good and safe condition, free from waste

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and/or graffiti, Licensors may suspend or terminate the License per **Section 5** herein and/or perform the necessary work at the expense of Licensee, which expense Licensee agrees to pay to Licensors upon demand.

(ii) **Designated Parking Location(s).** The “Designated Parking Location(s)” (“DPL”) for Licensee’s bicycles are located at and limited to the installed Facilities and specifically where bicycles attach to said Facilities within the License Areas depicted on **Exhibits A and B** of this License Agreement. Parking bicycles outside of the designated parking location is not permissible under this License and is expressly limited to the designated parking location only. It is the responsibility of Licensee to ensure the bicycles are parked at the designated parking locations at SMART facilities or those of other Participating Agencies, where Facilities are located on adjacent properties owned by Participating Agencies.

(iii) **Bicycle Retrieval Process.**

(a) **Licensee Duty to Monitor & Act in Ordinary Course of Business.**

1) **Redistribution of Excess Bicycles** Licensee is responsible for relocating and redistributing bicycles if the parking of bicycles exceeds the design capacity at and/or within any location. The design capacity, as of the date of the Effective Date of this Agreement is no more than 2 bikes parked per ring.

2) **Parking Outside of Designated Parking Locations.**

a) **24 Hour Rule.** When bicycles are parked outside a Designated Parking Location, Licensee is required to remove said bicycles within twenty (24) hours. Although SMART, at its sole option, may notify Licensee that bicycles must be collected and removed, it is ultimately the responsibility of the Licensee to monitor and enforce bicycle parking on SMART Property and the adjacent property of other Participating Agencies containing Facilities used under the Marin-Sonoma Bike Share Program.

b) **90 Minute Rule.** When bicycles are parked in locations that SMART in its sole discretion deems affect the use of a SMART facility or that creates an obstruction or safety hazard, SMART has the right to move the bicycle. SMART may notify Licensee that such bicycles must be collected and moved if not already moved by SMART. Licensee must collect and remove assets within 90 minutes of being notified by SMART. If Licensee is unable to meet the 90-minute requirement, SMART may move/remove the bicycles at its discretion. Instances when bicycles will be considered an obstruction or safety hazard include but are not limited to:

(1) Bicycles parked at any SMART Property that affects the free

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movement of passengers within or about the SMART Property;

- (2) Bicycles located within automobile parking spaces;
- (3) Bicycles located in a place which Lessor, in its sole and absolute discretion, determines to have created a public safety concern;
- (4) Bicycles blocking the legally required accessible path of travel within the Pedestrian Right-of-Way, or within any SMART station Property; and
- (5) Bicycles located on SMART's railroad right of way. Only authorized SMART personnel can enter SMART's railroad right of way property to remove it.

3) Retrieval Costs. When Licensee fails to collect and remove a bicycle within 90 minutes of SMART notifying Licensee of such need as set forth above ("90 Minute Rule"), SMART shall be entitled to all costs and remedies, including time and expense, with respect to removing the bicycles ("Removals"). To cover these costs, SMART will assess a flat fee of seventy dollars (**\$70.00**) per occurrence for all such instances in excess of five (5) per month. This fee does not apply to occurrences where SMART staff move bicycles as needed as part of routine code compliance or maintenance of way activities. The first 5 occurrences per month without charge applies to all hubs collectively and in total, not per hub individually. It is understood that it is not the intent of this Paragraph 6. (iii) (a) 3) for SMART, its Agents and/or its employees to be used for bicycle removal in lieu of Licensee's responsibility for removal. Parties agree to review semi-annually and, if requested by SMART, revise this Paragraph 6. (iii) (a) 3) to reflect any increased costs to SMART and/or the number of Removals permitted without charge.

7. Construction Work.

- a. Construction Work Standard.** Any work performed or caused to be performed by Licensee on the License Area shall be performed:
 - (i) At Licensee's sole cost and expense;
 - (ii) In accordance with any and all applicable government laws, rules requirements and regulations (including Licensor's ordinances, rules, regulations and requirements);
 - (iii) In a manner that is satisfactory to Licensor; and
 - (iv) Which meets or exceeds the then applicable standards of the industry for such work.

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- b. Conditions Precedent to Starting Construction Work.** Before beginning any work on, across or within Licensors property, Licensee shall:
- (i) Sign this License Agreement along with Licensors so that this Agreement is properly executed and effective;
 - (ii) Be in receipt of all Licenses and permits required by Licensors and/or any other governing entities prior to commencement of Work;
 - (iii) Ensure compliance with environmental clearances, if any.
 - (iv) Submit for approval by Licensors, in its sole and absolute discretion, drawings and plans for each work location, indicating the nature of the facilities to be installed the method and timing of installation and construction activities, and all other information required by Licensors to ensure that such activities will not interfere with Licensors's railroad operations. Licensors may approve or disapprove any work or provision in such documents and/or require such changes or impose such conditions as Licensors, in its sole and absolute discretion, deems necessary or appropriate, however in approving or conditioning the Work, Licensors does not make any determination as to the safety, suitability or fitness for any particular use, which shall remain the sole responsibility of Licensee. If Licensors fails to approve or disapprove any drawings or plans within thirty (30) days of submission by Licensee, such plans and drawings shall be deemed approved;
 - (v) Submit a **Certificate of Insurance** in the coverage amounts provided by Licensors, per **Exhibit C** of this License Agreement, as attached hereto;
 - (vi) Provide Licensors, and all holders of underground utility facilities located within the License Area, with no less than ten (10) days' written notice prior to commencement of any work in, on and/or within the License Area; and
 - (vii) Obtain all required rights of entry, Licenses and permits required by Licensors and/or any other governing entities prior to commencement of such work.
- c. Work Under Emergency.** In the event of an emergency, Licensee shall notify Licensors personally or by telephone prior to commencing any work. Upon completion of any work, Licensee shall restore the License Area to its condition immediately preceding the commencement of the work. For the purposes of this Agreement, "Emergency" means a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare, as defined in California Government Code Section 11342.542 (See Ca. Gov. Code § 11342.545).
- d. Construction Safety.** All work by Licensee shall be performed in a safe, workman-like manner per applicable industry and/or governing government standards.

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- e. **Licensor Assumes No Liability: Review, Inspection & Approval of Documents.** No review, comments, requirements, or inspection by Licensor shall relieve Licensee or Licensee's engineers, contractors, subcontractors, or consultants from the entire responsibility for the errors or omissions in the drawings, specifications, sediment control or environmental plans and/or documents, construction documents, or for the quality or adequacy of any of the aforementioned including the Work.
- f. **Storm Water Pollution Prevention & Sediment Control.** Licensee further acknowledges and agrees to comply with all erosion and sediment control requirements Licensee is subject to in any and all construction, reconstruction, installation, operation and/or maintenance of the Facility.
- 8. **Government Laws, Regulations and/or Rules.** Licensee shall comply with all applicable laws, rules and regulations of the Federal, State, County, local governments and all administrative agencies thereof which may have jurisdiction over Licensee's use of the License Area and the use, construction, re-construction, installation, operation and maintenance of the Facility, and shall furnish proof of such compliance to Licensor upon request.
- 9. **Americans with Disabilities Act (“ADA”)**
 - a. **Compliance with ADA.** Licensee covenants and agrees that nothing shall be done by Licensee on the License Area in violation of the Americans with Disabilities Act (“ADA”), and that Licensee shall maintain, repair, and use the Premises and all improvements, fixtures and personal property therein and thereon, and conduct its business within the Premises, in accordance with the requirements of the ADA.
 - b. **Responsibility for Costs Associated with ADA Compliance.** In the event that any improvements, alterations or repairs to the License Area are required by governmental authority under the ADA or its implementing regulations or guidelines, Licensee shall be solely responsible for all items due to Licensee's use of the License Area. Licensee covenants and agrees to pay all costs and expenses as Licensee's sole responsibility. Accordingly, Licensee hereby indemnifies and Licensor from any liability relating to noncompliance with the ADA.
- 10. **Insurance.** Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement, Insurance of the type, nature, amounts and with the limits, all as described in **Exhibit C** to this Agreement. At each annual renewal of this License, Licensee shall provide updated insurance coverages in its new Certificate of Insurance, of the type, nature, amounts and limits required by Licensor at the time of said renewal(s). Such insurance type, nature, amounts and limits are subject to change by Licensor at its sole and absolute discretion. At a minimum, Commercial General Liability, Workers' Compensation, Employer's Liability and Automobile Liability Insurances shall be required any time construction activities are to occur on the Property in the amount determined by Licensor in its sole and absolute discretion and pursuant to the terms and conditions as set forth in the then-existing Right of Entry Permit, a current example of which is attached hereto and shown on **Exhibit D**. Additional insurance coverages and amounts may

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also be required in the types and amounts determined by Licensors in its sole and absolute discretion.

11. **Fiber Optics Systems.** The rights licensed by this Agreement are subject to the rights of Licensors (or anyone acting with the permission of Licensors) to construct, reconstruct, maintain and operate fiber optic and other telecommunications systems (“Systems”) in, upon, along, across and beneath the Right-of-Way, including the Property upon which the Work shall be conducted. Licensee agrees to reimburse Licensors and/or the owner of the systems for all expenses which would not have been incurred except by reason of the use of the Property by Licensee, its agents, employees or invitees, including relocation costs or any damages incurred by such owner due to injury to the Systems.
12. **Assumption of Risk/Waiver of Claims.** Licensee further agrees as follows:
- a. **Licensee Assumes All Risks.** Licensee shall assume all risk of damage to any and all improvements constructed or installed by Licensee as part of the Work and appurtenances and to any property of Licensee, or any property under the control or custody of Licensee while upon or near Licensors’ Property incident to the performance of the Work, caused by or contributed to in any way by the construction, operation, maintenance or presence of Licensors’ operations at Licensors’ Property and Licensors shall not be liable therefor.
 - b. **Licensee Waives All Claims.** Licensee hereby releases Licensors from any liability, including any claims for damages or extra compensation:
 - (i) arising from construction delays due to work by Licensors forces or Licensors operations,
 - (ii) as the result of the failure or inability of Licensors to provide necessary flaggers or inspectors,
 - (iii) due to the presence of Hazardous Materials on the Property,
 - (iv) any failure by Licensors to investigate or identify the presence of such materials,
 - (v) for work done by Licensors forces, or
 - (vi) for Licensors operations.
13. **Notices.** All notices shall be given in writing and shall be delivered personally or by certified U.S. mail. Such notices or payments shall be addressed as follows:

If to Licensors: Sonoma-Marine Area Rail Transit District
5401 Old Redwood Highway, Suite 200
Petaluma, California 94954

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Attention: Randy Friedland, Real Estate Manager
(707) 794-3069
rfriedland@sonomamarintrain.org

If to Licensee: Drop Mobility California LLC D/B/A: Drop Mobility
548 Market Street, PMB 64073
San Francisco, CA, 94104-5401
Attention: Geoff Coats, Director, Special Projects & Launches
(504) 782-0098
geoff@dropmobility.com

14. Indemnification.

- a. **Indemnity Provision.** Licensee shall release, defend (with counsel reasonably satisfactory to Licensors) and indemnify Licensors from and against all liability, cost and expense for loss of or damage to Property and for injuries to or death of any person (including, but not limited to, the property and employees of each party) when arising or resulting from this Agreement, or the use of the Property by Licensee, its agents, employees, facility users, contractors, subcontractors or invitees, or Licensee's breach of these provisions. The duty of Licensee to indemnify and save harmless includes the duties to defend as set forth in **Section 2778 of the California Civil Code**. It is the express intent of the parties that Licensee will indemnify and hold harmless Licensors, its directors, officers, employees and agents from any and all claims, suits or actions arising from any cause whatsoever as set forth above, regardless of the existence or degree of fault or negligence on the part of Licensors, Licensee, or any subcontractor or employee of any of these, other than the gross negligence, willful misconduct or criminal acts of Licensors, its directors, officers, employees and agents. Licensee waives any and all rights to any type of express or implied indemnity against Licensors, its directors, officer or employees. The term "Licensors" as used here includes, in addition to Licensors, any railroad company operating upon Licensors's tracks.
- b. **Severability of Indemnity Provision.** Should any term of this indemnity provision be found to be void or unenforceable, the remainder of the provision shall remain in full force and effect.
- c. **Survival of Indemnity Provision.** The indemnity provided for in this License Agreement shall survive the termination of this Agreement.

15. Hazardous Materials.

- a. **Hazardous Materials Prohibited.** Licensee shall not use, create, store or allow any hazardous materials, as defined under applicable federal, state and local laws, or waste on the Property, except Hazardous Materials contained in or used in connection with construction equipment

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necessary for the operation of such equipment or vehicle being used for work which is authorized on the Property under this License.

- b. No Underground Storage Tanks.** Licensee shall not install or use any underground storage tanks in the License Area.
- c. Compliance with Environmental Laws.** In conducting its operations on the Property, and in arranging for the handling, transport and disposal of any materials known (whether or not hazardous), Licensee shall at all times comply with all applicable laws, statutes, ordinances, rules, regulations or orders of whatever kind or nature and pay all costs of such compliance.
- d. Removal & Disposal.** In the event that a Licensee or its Agents or Invitees cause a release of Hazardous Materials, Licensee shall, without cost to Licensors and in accordance with all laws and regulations, return the Property to the condition immediately prior to the release. Any expense of required compliance with federal, state or local environmental regulations incurred by Licensors or Licensee as a result of any such leakage or breach of this section, shall be borne by Licensee, including any fines and judgments levied against Licensors or the Property.
- e. Hold Harmless.** Licensee shall indemnify, hold harmless and defend with counsel reasonably satisfactory to licensors, the Licensors, its successors and assigns, any railroad company operating on the right-of-way, and their respective directors, officers, employees and agents, against any and all liability, cost and expense, including, without limitation, any fines, penalties, judgments, litigation costs, attorney' fees, and consulting, engineering and construction costs, incurred by licensors as a result of Licensee's breach of this section, or as a result of any such leakage as described above, regardless of whether such liability, cost or expense arises during or after the term of this License. This indemnity shall survive termination of this License.

16. Endangered and/or Protected Species. Under no circumstances shall Licensee damage, harm or take any rare, threatened or endangered species on or about the Property. In the event such event(s) occur, Licensee is required to immediately halt all activities on the property and immediately notify the appropriate governing entity along with Licensors.

17. Acceptance of License Area & Waiver of California Civil Code Section 1542.

- a. As-Is Condition.** Licensee accepts the License Area in its present physical "AS-IS" condition, and agrees to make no demands upon Licensors for any improvements or alterations. By signing this Agreement, Licensee represents and warrants that Licensee has independently inspected the License Area and the area immediately surrounding and made all investigations, tests, and observations necessary to satisfy Licensee as to the condition of the License Area, zoning and land use laws, regulations, and ordinances affecting the License Area, and all of the conditions, restrictions, encumbrances, and other matters of record relating to the License Area. Licensee agrees that Licensee is relying solely on Licensee's independent inspection and that Licensors has made no warranty or

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representation with regard to the License Area. Licensors shall not be responsible for any latent defect or change in condition in the License Area and Licensee's obligations under this Agreement shall not be diminished on account of any defect in the License Area, any change of condition, or any damages occurring on the License Area. In case of the eviction of Licensee by anyone owning or claiming title to or any interest in the License Area, Licensors shall not be liable to Licensee for any damage of any nature whatsoever or to refund any moneys paid hereunder.

- b. **Waiver of Rights Under California Civil Code Section 1542.** Licensee hereby releases Licensors from all future claims, actions, or demands that Licensee may have or may hereinafter have, known and unknown, in any way relating to the quality, fitness, or condition of the License Area, and Licensee specifically waives all rights under **California Civil Code Section 1542**.

18. **General Provisions**. Notwithstanding other mention in separate Sections of this License Agreement, where applicable below, Licensee agrees as follows:

- a. **No Implied Waiver.** No waiver of any default or breach of any covenant of this Agreement by either party shall be implied from any omission by either party to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver, and then the waiver shall be operative only for the time and to the extent stated. Waivers of any covenant, term or condition by either party shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by either party to or of any act by either party requiring further consent or approval shall not be deemed to waive or render unnecessary their consent or approval to or of any subsequent similar acts.
- b. **Time of Essence.** Time is of the essence for each and every provision of this Agreement.
- c. **Binding Agreement.** This License Agreement shall be binding on and inure to the benefit of the parties and their successors and assigns, except as may otherwise be provided in this Agreement.
- d. **Severability.** Each provision of this Agreement is intended to be severable. If any term of provision shall be determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such provision shall be severed from this Agreement and shall not affect the validity of the remainder of this Agreement.
- e. **Survivorship.** All protections afforded Licensors under this License Agreement, including but not limited to Hazardous Materials, Environmental Protection, Endangered Species Act, Indemnity, Assumption of Risk/Waiver of Claims, Costs to Licensee, Relocation of Licensee, Termination of this License Agreement and relating to any other activities and/or actions deemed appropriate by Licensors in its sole and absolute discretion, shall survive

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Termination of this Agreement.

- f. Compliance with Laws.** Notwithstanding other mention in separate sections of this License Agreement, Licensee shall comply, at Licensee's expense, with all applicable laws, regulations, rules and orders with respect to the use of the Property, regardless of when they become or became effective, including, without limitation, those relating to The Americans with Disabilities Act ("ADA"), construction, grading, signage, health, safety, noise, environmental protection, protected and/or endangered species, hazardous materials, waste disposal and water and air quality, and furnish satisfactory evidence of such compliance upon request of Licensors. Before beginning work on the Property, Licensee shall also obtain, at Licensee's expense, any and all permits, licenses and approvals required for construction and operation of the Work and shall provide Licensors with copies of such approvals.
- g. Default.** In the event that Licensee fails to perform any obligation under this Agreement, after notice and thirty (30) days in which to cure the default, Licensee shall pay all costs and expenses incurred by Licensors in obtaining performance of such obligations, including costs of suit and reasonable attorney's fees. If Licensee uses the ROW or Property for any purpose not expressly authorized by this Agreement or fails to act strictly in accordance with the terms and conditions of this Agreement, and if such default is not corrected within thirty (30) days' notice from Licensors to Licensee, Licensors may terminate this Agreement and prevent Licensee from using or remaining upon Licensors' Property. If Licensors determine that any default by Licensee does or has the potential to cause a danger to the Property or railroad operations, Licensors may immediately and without prior notice to Licensee terminate this Agreement and prevent Licensee from using or remaining upon the Property, with or without process of law.
- h. Condemnation.** In the event all or any portion of the Property is condemned for public use, Licensee shall receive compensation only in the amount awarded for the taking and damaging of Licensee's Facilities. Any compensation for damages for taking the Property or Licensee's permit interest thereon awarded to Licensee shall be assigned to Licensors.
- i. Governing Law & Venue.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a court of proper jurisdiction situated in the County of Sonoma.
- j. Attorneys' Fees.** If any legal proceeding should be instituted by either of the Parties to enforce the terms of this Agreement or to determine the rights of the Parties under this Agreement, the prevailing Party in the proceeding shall receive reasonable attorneys' fees, in addition to all court costs.
- k. No Third-Party Beneficiaries.** Nothing contained in this License Agreement shall be construed to create and the Parties do not intend to create any rights in third parties.

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- l. Relationship of Parties.** The Parties intend by this Agreement to establish the relationship of Licensor and Licensee only, and do not intend to create a partnership, joint venture, joint enterprise, or any business relationship other than that of Licensor and Licensee.
- m. Integration Clause: Entire Agreement & Modification.** This License Agreement constitutes the complete expression of the agreement between Licensor and Licensee with regard to the subject matter hereof, and supersedes all prior agreements, oral or written, proposals, and all other communications between Licensor and Licensee related to the subject matter hereof, which are not fully expressed in this Agreement. The parties intend this Agreement to be an integrated agreement. Any modification of or addition to this Agreement must be in writing signed by both Parties.
- n. Public Document.** Licensee acknowledges and accepts that this License Agreement and all documents relating hereto are “public records” (as defined in Section 7920.000 of the California Government Code), except for any documents relating to Licensee’s financial condition provided to Licensor from Licensee as a requirement of this License Agreement, or otherwise exempt from such status pursuant to law, and that public records, with limited exemptions, are subject to public disclosure pursuant to the provisions of California Government Code, commencing with Section 7920.000.
- o. Interpretation.** The language of this Agreement shall be construed simply according to its plain meaning and shall not be construed for or against either Party.
- p. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original but both of which shall constitute one and the same agreement.

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[SIGNATURE PAGE TO FOLLOW]

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IN WITNESS HEREOF, Licensors and Licensee have executed this Agreement by their undersigned officials and officers lawfully authorized to do so.

Licensors:

Sonoma-Marín Area Rail Transit District
a public agency

Licensee:

Drop Mobility California LLC D/B/A: Drop
Mobility
a California corporation

By: _____

Print Name: Eddy Cumins

Its: General Manager

Date: _____

By: _____

Print Name: Dipesh Dar

Its: Chief Operating Officer

Date: _____

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EXHIBIT A - Description of Premises

2024-ROE-030 Exhibit D1-A, Pages 1 through 8 of the Right of Entry Permit contained on Exhibit D of this License Agreement (2024-LIC-017) is hereby referenced and incorporated into this License Agreement's **Exhibit A ("Description of Premises")** as the Description of Premises for this License Agreement.

EXHIBIT B - Description of Work

2024-ROE-030 Exhibit D1-B, Page 1 of 2 of the Right of Entry Permit contained on Exhibit D of this License Agreement (2024-LIC-017) is hereby referenced and incorporated into this License Agreement's **Exhibit B ("Description of Work")** as the Description of Work for this License Agreement.

EXHIBIT C - Insurance Requirements

2024-ROE-030 Section 12 of the Right of Entry Permit contained on Exhibit D of this License Agreement (2024-LIC-017) is hereby referenced and incorporated into this License Agreement's **Exhibit C ("Insurance Requirements")** as the Insurance Requirements for this License Agreement.

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EXHIBIT D - Right of Entry Permit

DATE:

This Right-of-Entry Permit ("Permit") is entered into as of _____ ("Effective Date") by and between SONOMA-MARIN AREA RAIL TRANSIT DISTRICT ("Permittor") and Drop Mobility California LLC, a Delaware corporation doing business as ("d/b/a") Drop Mobility, with its place of business at 548 Market Street, PMB 64073, San Francisco, CA, 94104-5401 ("Permittee").

1. Permit. Permittor hereby permits Permittee to enter upon Permittor's property located at/between SMART Railroad Mileposts 14.80 and 55.23, in the Counties of Marin and Sonoma, as described in the attached **Exhibit D1-A** ("Description of Premises"), which is incorporated by this reference, subject to all existing agreements, licenses, easements, encumbrances, and claims of title affecting Premises and upon the terms and conditions contained herein. No work shall commence on Premises until Permittee accepts this Permit. The doing of any work under this Permit shall constitute acceptance of these Permit provisions.
2. Exclusive Use. This Permit is for Permittee's exclusive use and is not assignable without the prior consent of Permittor.
3. Purpose. The permitted purpose of Permit shall be solely for entry upon Premises for the installation, construction, reconstruction, operation and/or maintenance of Facility and maintenance of the License Area on the Property, as described in the attached **Exhibit D1-B**, including bringing all necessary personnel and equipment onto Premises as necessary for the permitted purpose ("Project") and allowing the general public to utilize the Facility as a recreation area.
4. Term. This Permit shall be effective at of the Effective Date and shall automatically terminate one year from the effective date above unless extended by a License Agreement executed by Permittor and Permittee.

Permittor reserves the right to revoke or modify this Permit at any time.

If Permittee requires use of Premises prior or subsequent to the foregoing dates, then Permittee shall request approval from Permittor at least seventy-two (72) hours prior to the time requested. Project work hours shall be determined by Permittee.

5. Permit Shall Remain Available. A copy of this Permit must be kept on the site of Premises, at all times during the term of this Permit and shall be shown to any representative of Permittor upon demand. Project may be suspended if this Permit is not at Premises.
6. Permit Fees and Costs. Waived by Permittor.

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7. **Project Plan.** Project shall be performed in accordance with a plan identifying the sequence of operations, schedules and locations for said Project. The plan shall be submitted to Permittor in advance of any work for Permittor's approval and such work shall be subject to monitoring and inspection by Permittor.
8. **Cost of Work, Protection of Traffic, Access Requirements, and Working Procedures.** All costs related to Permittee's operations upon Premises shall be at Permittee's expense. All work upon or in connection with the use of Premises shall be done at such times and in such manner as not to interfere with the current or future use of Premises. Permittee shall be responsible for the provision of barriers, directions, signage, and other forms of notice to the general public to assure the safe, smooth, and uninterrupted flow of traffic around Project site and on and about Premises. Permittee shall keep Permittor's Premises in a reasonably neat and safe condition failing which Permittor, after seventy-two (72) hours prior notice to Permittee, may do so at Permittee's expense.

Permittee shall comply with the regulations of the instructions of Permittor's representatives relating to the proper manner of protecting the tracks, pipelines, wire lines, signals, and all other property at said location, the traffic moving on such tracks, and the removal of tools, equipment, and materials.

Not less than 72 hours prior to entering the Premises, Permittee shall submit a Right of Entry Access Permit approved by Permittor. The Permittor's current Right of Entry Access form is attached hereto as **Exhibit D1-C**. As a condition of access, Permittor may require any combination of the following safety measures:

- a) Completion of Railroad Workplace Safety training mandated by the Federal Railroad Administration (49 C.F.R. Part 214). Permittee shall ensure that all Permittee's employees, contractors and subcontractors who will access the Premises complete the necessary on-line training and shall submit documentation of the completion of such training by each such employee, contractor and subcontractor, in the form of a Certificate of Completion, to Permittor with the Right of Entry Access Permit.
- b) Hiring a railroad approved Employee In Charge (EIC) contractor, at Permittee's expense, for the duration of the work in SMART's right of way. Permittee may choose from any contractor on Permittor's approved list or submit an alternate EIC contractor for consideration. Permittor will reserve the right to approve or deny any alternate EIC contractor submissions. The EIC must be onsite during all work on the railroad right of way. Depending on the work, one or more flaggers may also be required at Permittee's expense.

All work by Permittee upon Premises shall be performed in a good and worker-like manner satisfactory to Permittor. Since there is the possibility of the existence of pipelines or other structures beneath Premises, if Permittee should excavate or drill, then Permittee's forces shall explore such structures with hand tools to a depth of at least eight feet (8') below the surface of the ground or, at Permittee's option, use suitable detection equipment prior to drilling or excavating

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with mechanized equipment. Absence of markers does not constitute a warranty by Permitter of no subsurface installations. It shall be Permittee's responsibility to determine the existence of any underground facilities and Permittee shall call Underground Service Alert at 1 (800) 642-2444 prior to beginning any work on the property.

Fiber optic cable systems may be buried on the Permitter's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. It shall be Permittee's responsibility to call Union Pacific's "Call before you Dig" hotline at 1 (800) 336-9193 to determine if fiber optic cable is buried anywhere on the Permitter's property. This number can be used during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except for holidays) and is also a 24-hour, 7-day number for emergency calls.

Any open holes shall be satisfactorily covered at all times when Permittee's forces are not physically working in the actual vicinity. Upon completion of work, all holes will be filled in to meet the surrounding ground level with clean, compacted, earthen material and the property left in a neat and safe condition reasonably satisfactory to Permitter.

Permittee agrees to reimburse Permitter for the cost and expense to Permitter of furnishing any materials or performing any labor in connection with the use of Premises, including, but not limited to, the installation and removal of such false work and other protection beneath or along the railroad tracks, and the furnishing of such security persons, flaggers, and inspectors as Permitter deems necessary. Prior to incurring any cost or expense, Permitter shall reasonably notify Permittee of the same. Said reimbursement shall be paid by Permittee to Permitter within thirty (30) days after presentation of a bill.

Permittee shall fully pay for all materials joined or affixed to Premises, and shall pay in full all persons who perform labor on Premises. As Permitter is a public entity, its property is not subject to mechanics' or materialmen's liens, and nothing in this Permit shall be construed to make its property subject to such liens. However, if any such liens are filed, Permittee shall immediately remove them at Permittee's own expense, and shall pay any judgment which may be entered. Should Permittee fail, neglect, or refuse to do so, Permitter, after 48 hours prior notice to Permittee, shall have the right to pay any amount required to release any such liens, or to defend any action brought, and to pay any judgment entered. Permittee shall be liable to Permitter for all costs, damages, reasonable fees, and any amounts expended in defending any proceedings or in the payment of any of said liens or any judgment. Permitter may post and maintain upon Premises notices of non-responsibility as provided by law.

Permittee shall cooperate with Permitter in making any tests Permitter requires of any installation or condition which in Permitter's reasonable judgment may have an adverse effect on any of the facilities of Permitter. All costs incurred by the tests, or any corrections required as a result of such tests, shall be borne by Permittee.

Permittee shall take protective measures necessary to keep Permitter's facilities, including track

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ballast, free of sand or debris resulting from its use of Premises. Should any damage occur to Permitter's facilities as a result of Permittee's use of Premises, Permittee shall immediately notify Permitter. Permitter may require Permittee to contact the operator of any rail service on the rail line to make arrangements to ensure the safe performance of any work and agrees to give Permitter ten (10) calendar days of written notice prior to commencement of the work in the event such arrangements need to be made. Any damage to Permitter's facilities resulting from Permittee's use of Premises will be repaired or replaced by Permitter at Permittee's sole cost and expense, which Permittee shall pay to Permitter promptly upon demand.

9. No Crossing of Tracks. Permittee shall not be permitted to cross Permitter's tracks located near Premises but shall gain access to and from Premises only by use of designated public streets.
10. No Hazardous Materials. No hazardous materials shall be handled at any time upon Premises.
11. Mechanized Equipment. Under no condition shall Permittee be permitted to place or store any mechanized equipment, tools or other materials within twenty-five feet (25') of the center line of Permitter's nearest railroad tracks.
12. Indemnity and Insurance. Permittee shall release, defend (with counsel reasonably satisfactory to Permitter) and indemnify Permitter, its successors and assigns, any railroad company operating on Premises, and their respective directors, officers, employees, and agents (collectively, "Indemnitees") from and against all liability, cost, and expense for loss of, or damage to, property and for injuries to, or death of, any person (including, but not limited to, the property and employees of each party) when arising or resulting from the use of Premises by Permittee, its agents, employees, contractors, subcontractors, or invitees; or Permittee's breach of these provisions. The duty of Permittee to indemnify and save harmless the Indemnitees includes the duties to defend as set forth in Section 2778 of the Civil Code. It is the express intent of the parties under this Section 12, that Permittee will indemnify and hold harmless the Indemnitees from any and all claims, suits, or actions arising from any cause whatsoever as set forth above, other than the active negligence, willful misconduct, or criminal acts of the Indemnitees. Permittee waives any and all rights to any type of express or implied indemnity against the Indemnitees arising out of Permittee's use of or activities on Premises. This indemnity shall survive termination of this Permit. It is the intention of the parties that should any term of this indemnity provision be found to be void or unenforceable, the remainder of the provision shall remain in full force and effect.

All personal property of Permittee, including, but not limited to fixtures, equipment, or related materials upon the Property, will be at the risk of OWNER only, and Permitter will not be liable for any damage thereto or theft thereof, whether or not due in whole or in part to the negligence of Permitter.

- a. Coverages for Operation, Maintenance & Repair Activities. Prior to entry upon the Property and commencement of Operation and/or Maintenance activities, Permittee shall provide Permitter with satisfactory evidence, in the form of a Certificate of Insurance, that Permittee is insured in accordance with the following. Said insurance shall remain in effect throughout

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the term of this Permit for Operation, Maintenance and/or Repair activities as follows:

(1) Commercial General Liability

Commercial General Liability insurance covering products-completed and ongoing operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit. Said policy shall include a Railroads CG 24 17 endorsement removing the exclusion of coverage, if applicable, for bodily injury or property damage arising out of operations within 50 feet of any railroad property and affecting any railroad bridge, trestle, tracks, roadbeds, tunnel, underpass or crossing.

(2) Automobile Liability

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

(3) Workers' Compensation and Employers' Liability

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

- b. Coverages for Installation, Construction & Re-Construction Activities. Prior to entry upon the Property and commencement of Installation, Construction and/or Re-Construction activities, Permittee shall provide Permitter with satisfactory evidence, in the form of a Certificate of Insurance, that Permittee is insured in accordance with the following. Said insurance shall remain in effect throughout the term of this Permit for Installation, Construction and/or Re-Construction activities and include all coverages provided above in Section 12 b for Operation, Maintenance and Repair activities **and** also include the following additional coverages:

(1) Professional Liability

Permittee shall procure and maintain Professional Liability insurance covering liability arising out of any negligent act, error or omission in performance of design or engineering services for the Project in an amount no less than \$2,000,000 per claim. If any Design Professional Services are furnished by a Subcontractor, the Subcontractor shall be required to provide professional liability coverage.

(2) Contractors Pollution Liability

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Contractors Pollution Liability insurance in an amount no less than \$2,000,000 per incident. The Contractor's Pollution Liability policy shall be written on an occurrence basis with coverage for bodily injury, property damage and environmental damage, including cleanup costs arising out of third-party claims, for pollution conditions, and including claims of environmental authorities, for the release of pollutants caused by construction activities related to the Permit. Coverage shall include the Permittee as the named insured and shall include coverage for acts by others for whom the Permittee is legally responsible. Coverage to be provided for bodily injury to or destruction of tangible property, including the resulting loss of use thereof, loss of use of tangible property that has been physically injured, and natural resource damage. There shall be no exclusions or limitations regarding damages or injury from existence, removal or abatement of lead paint. There shall be no insured vs. insured exclusion in the policy.

(3) Railroad Protective Liability

Prior to commencement of construction activities, Permittee shall procure and maintain Railroad Protective Liability insurance, in Permitter's name, with limits of liability of no less than \$5,000,000 per occurrence, for losses arising out of injury to or death of all persons, and for physical loss or damage to or destruction of property, including the loss of use thereof. The additional named insureds shall be the Sonoma-Marín Area Rail District and shall cover all other railroads operating on the right-of-way.

- c. Stipulations in Endorsements and Certificates. Prior to commencing work, Contractor shall file Certificate(s) of Insurance with SMART evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. Said endorsements and Certificate(s) of Insurance shall stipulate:

- (1) SMART, its officers, and employees shall be named as an additional insured with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations
- (2) That the policy(ies) is Primary Insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim which Licensee is liable, up to and including the total limit of liability, without right of contribution from any other insurance effected or which may be effected by the Insureds.
- (3) Inclusion of the Insureds as additional insureds shall not in any way affect its rights either as respects any claim, demand, suit or judgment made, brought or recovered against Licensee. Said policy shall protect Contractor and the Insureds in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount

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or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

(4) Contractor hereby grants to SMART a waiver of any right to subrogation which any insurer of said Consultant may acquire against SMART by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not SMART has received a waiver of subrogation endorsement from the insurer.

(5) The insurance policy(ies) shall be written by an insurance company or companies acceptable to SMART. Such insurance company shall be authorized to transact business in the state of California.

d. Right to Modify Requirements.

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

e. Deductibles and Retentions

Permittee shall be responsible for payment of any deductible or retention on Permittee's policies without right of contribution from Permitter. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the name insured is not acceptable.

f. Self-Insurance

Permittee's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to Permitter.

g. Claims Made Coverage

If any insurance specified above is written on a claims-made coverage form, Permittee shall:

- (1) Ensure that the retroactive date is shown on the policy, and such date must be before the date of this Permit or beginning of any work under this Permit;
- (2) Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and
- (3) If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to Permit effective date, Permittee shall purchase "extending reporting" coverage for a minimum of three (3) years after completion of the work.

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13. Permits from Other Agencies; Hazardous Materials. Permittee shall comply, at Permittee's expense, with all applicable laws, regulations, rules and orders with respect to the use of Premises, and shall obtain all required licenses, permits or other approvals in connection with Permittee's use of Premises. Permittee shall furnish satisfactory evidence of such compliance upon request of Permittor.

Should any discharge, leakage, spillage, emission or pollution of any type occur upon or from Premises due to Permittee's use and occupancy thereof, Permittee, at Permittee's expense, shall clean all affected property to the satisfaction of Permittor and any governmental body having jurisdiction.

Permittee shall indemnify, hold harmless and defend the Indemnitees against all liability, cost, and expense (including, without limitation, any fines, penalties, judgments, litigation costs, reasonable attorneys' fees and consulting, engineering and construction costs) incurred by Permittor as a result of Permittee's breach of this section or as a result of any such discharge, leakage, spillage, emission, or pollution by Permittee, regardless of whether such liability, cost, or expense arises during or after the term of this Permit.

14. Assumption of Risk. Permittee shall assume all risk of damage to any and all other property of Permittee, or any property under the control or custody of Permittee while upon or near Premises of Permittor incident to the use of Premises; provided, however, such assumption by Permittee shall not include any damage caused by the active negligence and/or willful misconduct of Permittor. Permittee releases Permittor from any liability, including claims for damages or extra compensation, arising from construction delays due to transportation activities by Permittor or transportation operations by any agency as authorized by Permittor.
15. Subcontractors. Any person, firm or corporation Permittee authorizes to work upon Premises, shall be deemed to be Permittee's agent and shall be subject to all the applicable terms hereof.
16. Restoration of Premises. Upon termination of this Permit, Permittee, at its own expense, shall remove from Premises all property it owns or controls, all debris and other materials, and restore Premises to its condition prior to entry or to a condition reasonably satisfactory to Permittor. Upon Permittee's failure to do this, Permittor, upon forty-eight (48) hours prior notice to Permittee, may perform such work at Permittee's expense.
17. Severability. If any provision of this Permit shall be for any reason unenforceable, in any respect, such unenforceability shall not affect the other provisions of this Permit.
18. Attorneys' Fees. If any legal proceeding should be instituted by either of the parties to enforce the terms of this Permit or to determine the rights of the parties under this Permit, the prevailing party in the proceeding shall receive, in addition to all costs, reasonable attorneys' and expert fees.

SMART REAL PROPERTY LICENSE AGREEMENT

SMART LICENSE AGREEMENT No. 2024-LIC-017

RE: Drop Mobility Bikeshare License Agreement

LICENSEE: Drop Mobility

At/Between Milepost(s) **14.80 – 55.23**

19. **Time of Essence.** Time is and shall be of the essence of this Permit and of each and every provision contained in this Permit.
20. **No Third-Party Beneficiaries.** Nothing contained in this Permit shall be construed to create and the parties do not intend to create any rights in third parties.
21. **Construction of Agreement.** The provisions in this Permit shall be construed and given effect in a manner that avoids any violation of statute, regulation or law. Permitter and Permittee agree that in the event any provision in this Permit is held to be invalid or void by any court of competent jurisdiction, the invalidity of any such provision shall in no way affect any other provision in this Permit. Permitter and Permittee acknowledge that they have each contributed to the making of this Permit and that, in the event of a dispute over the interpretation of this Permit, the language of the Permit will not be construed against one party in favor of the other. Permitter and Permittee further acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Permit.
22. **Relationship.** The parties intend by this Permit to establish the relationship of Permitter and Permittee only, and do not intend to create a partnership, joint venture, joint enterprise, or any business relationship other than that of Permitter and permittee.
23. **Captions.** The captions in this Permit are for convenience only and are not a part of this Permit. The captions do not in any way limit or amplify the provisions hereof, and shall have no effect upon the construction or interpretation of any part hereof.

If the endorsed copy of this Permit is not received within fifteen (15) days from the date of this Permit, then this Permit shall be null and void.

[THIS SPACE INTENTIONALLY LEFT BLANK]
[SIGNATURE PAGE TO FOLLOW]

SMART REAL PROPERTY LICENSE AGREEMENT

SMART LICENSE AGREEMENT No. 2024-LIC-017
RE: Drop Mobility Bikeshare License Agreement
LICENSEE: Drop Mobility
At/Between Milepost(s) **14.80 – 55.23**

IN WITNESS WHEREOF, the parties have executed this Permit as of the Effective Date by their duly authorized representatives.

PERMITTOR:
SONOMA-MARIN AREA RAIL
TRANSIT DISTRICT

PERMITTEE:
Drop Mobility California LLC

By:

By:

Randy Friedland
Real Estate Manager

Name:
Title:

Date:

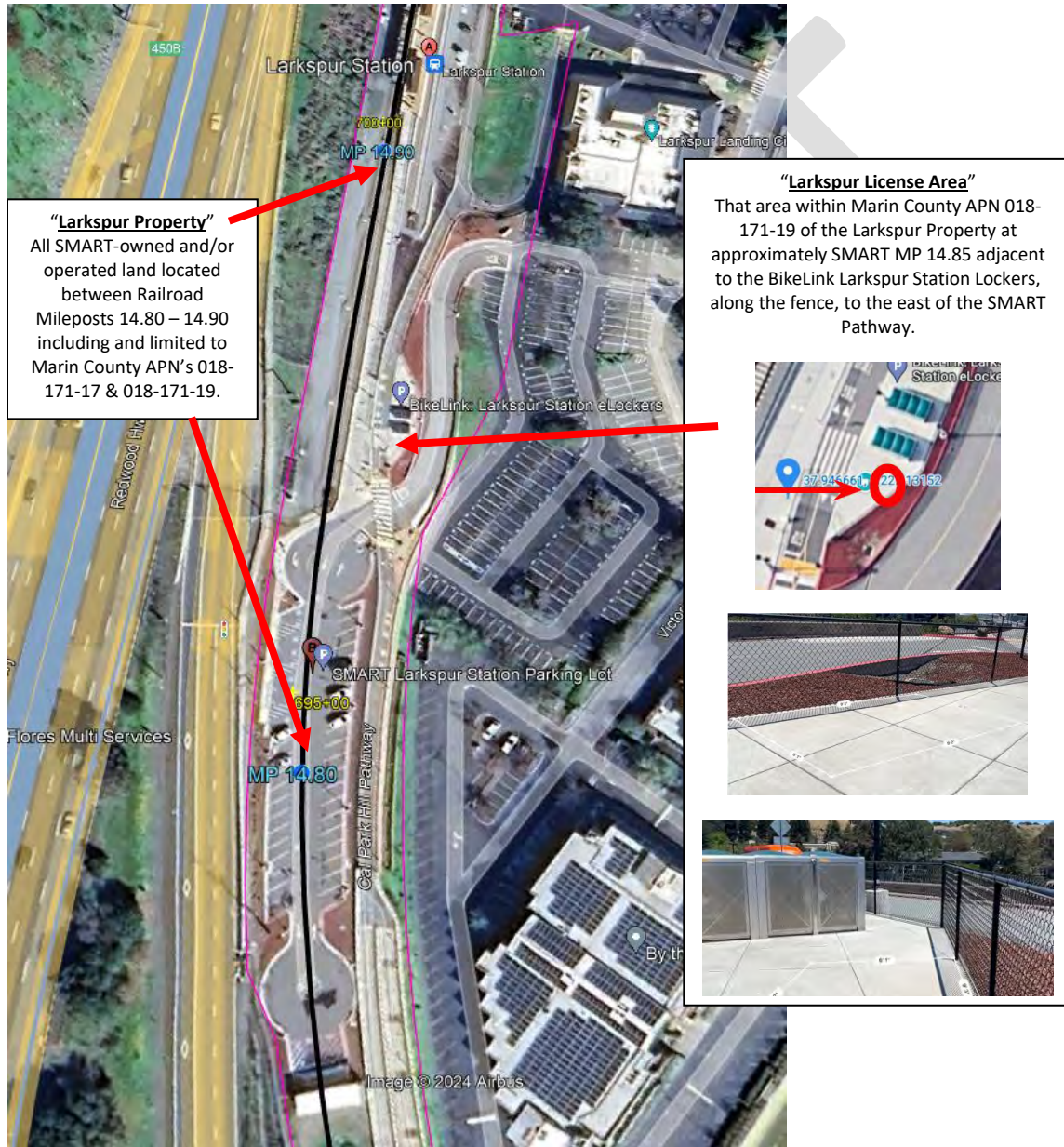
Date:

SMART REAL PROPERTY LICENSE AGREEMENT

SMART LICENSE AGREEMENT No. 2024-LIC-017
RE: Drop Mobility Bikeshare License Agreement
LICENSEE: Drop Mobility
At/Between Milepost(s) **14.80 – 55.23**

EXHIBIT D1-A, Page 1 of 8

Right of Entry Permit Description of Premises (Smart's Larkspur "Property" containing Larkspur "License Area")

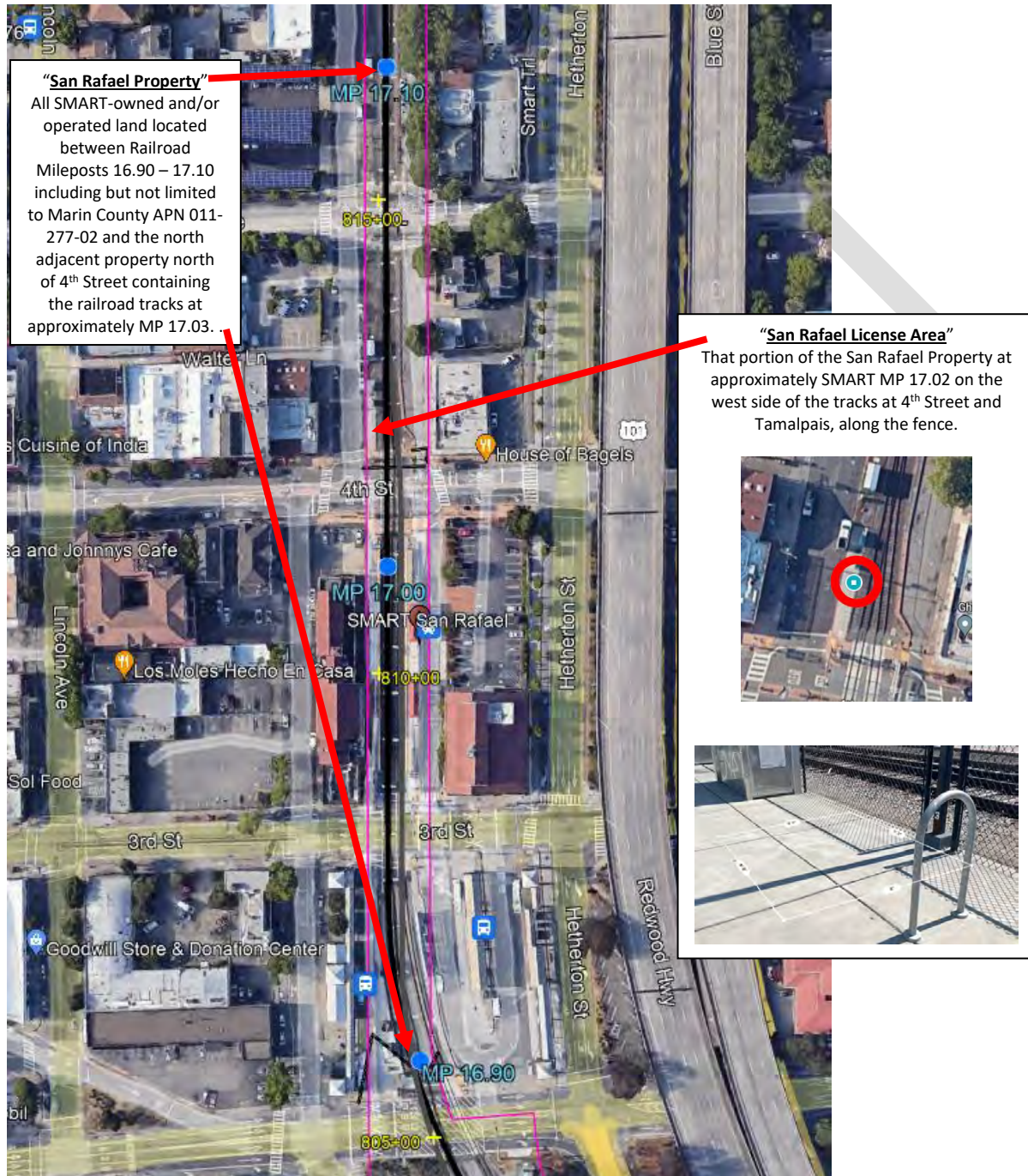


SMART REAL PROPERTY LICENSE AGREEMENT

SMART LICENSE AGREEMENT No. 2024-LIC-017
RE: Drop Mobility Bikeshare License Agreement
LICENSEE: Drop Mobility
At/Between Milepost(s) **14.80 – 55.23**

EXHIBIT D1-A, Page 2 of 8

Right of Entry Permit Description of Premises (Smart's San Rafael "Property" containing San Rafael "License Area")

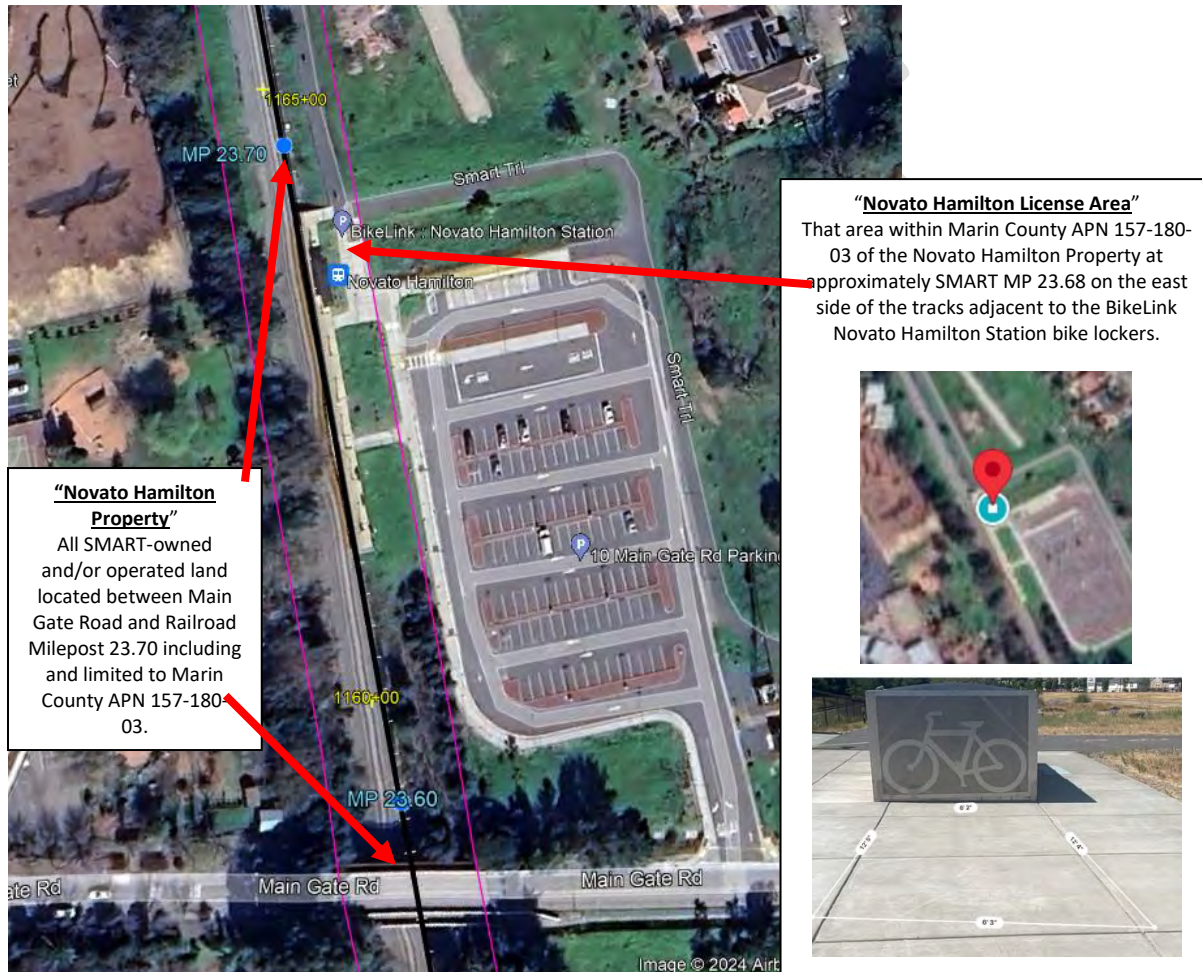


SMART REAL PROPERTY LICENSE AGREEMENT

SMART LICENSE AGREEMENT No. 2024-LIC-017
RE: Drop Mobility Bikeshare License Agreement
LICENSEE: Drop Mobility
At/Between Milepost(s) **14.80 – 55.23**

EXHIBIT D1-A, Page 3 of 8

Right of Entry Permit Description of Premises (Smart's Novato Hamilton "Property" containing Novato Hamilton "License Area")

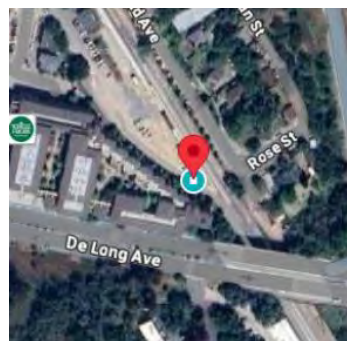


SMART REAL PROPERTY LICENSE AGREEMENT

SMART LICENSE AGREEMENT No. 2024-LIC-017
RE: Drop Mobility Bikeshare License Agreement
LICENSEE: Drop Mobility
At/Between Milepost(s) **14.80 – 55.23**

EXHIBIT D1-A, Page 4 of 8

Right of Entry Permit Description of Premises (Smart's Novato Downtown "Property" containing Novato Downtown "License Area")

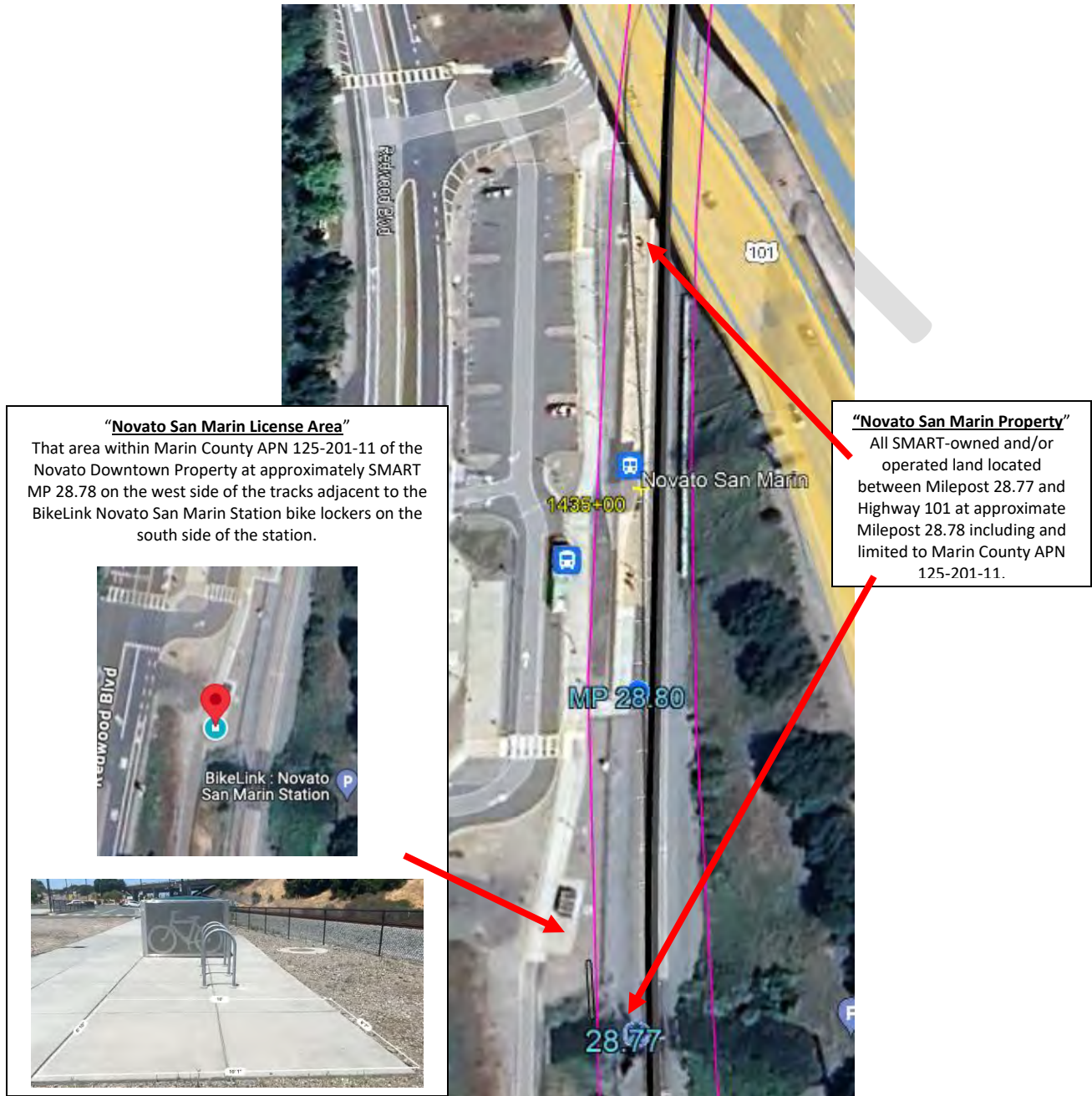


SMART REAL PROPERTY LICENSE AGREEMENT

SMART LICENSE AGREEMENT No. 2024-LIC-017
RE: Drop Mobility Bikeshare License Agreement
LICENSEE: Drop Mobility
At/Between Milepost(s) **14.80 – 55.23**

EXHIBIT D1-A, Page 5 of 8

Right of Entry Permit Description of Premises (Smart's Novato San Marin "Property" containing Novato San Marin "License Area")



SMART REAL PROPERTY LICENSE AGREEMENT

SMART LICENSE AGREEMENT No. 2024-LIC-017
RE: Drop Mobility Bikeshare License Agreement
LICENSEE: Drop Mobility
At/Between Milepost(s) **14.80 – 55.23**

EXHIBIT D1-A, Page 6 of 8

Right of Entry Permit Description of Premises (Smart's Downtown Petaluma "Property" containing Downtown Petaluma "License Area")



SMART REAL PROPERTY LICENSE AGREEMENT

SMART LICENSE AGREEMENT No. 2024-LIC-017
RE: Drop Mobility Bikeshare License Agreement
LICENSEE: Drop Mobility
At/Between Milepost(s) 14.80 – 55.23

EXHIBIT D1-A, Page 7 of 8

Right of Entry Permit Description of Premises (Smart's Rohnert Park "Property" containing Rohnert Park "License Area")



"Rohnert Park Property"

All SMART-owned and/or operated land located approximately between Mileposts 47.20 – 47.30 including and limited to Sonoma County APN's 143-051-091 and 143-051-075 in Rohnert Park.

"Rohnert Park License Area"

That area within Sonoma County APN's 143-051-091 and 143-051-075 of the Rohnert Park Property at approximately SMART MP 47.23 on the west side of the tracks adjacent to the BikeLink Rohnert Park Station bike lockers on the south side of the station.

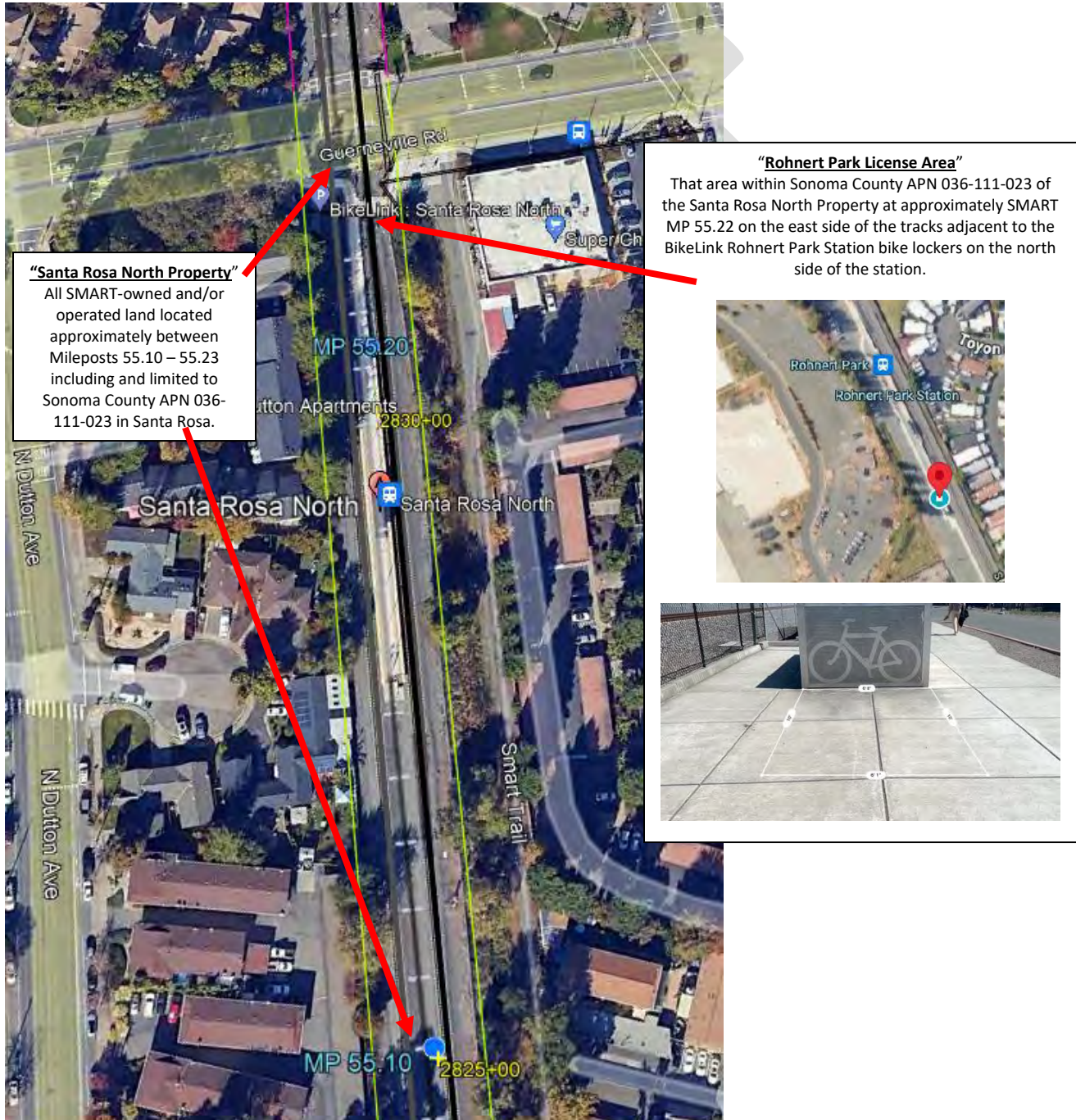


SMART REAL PROPERTY LICENSE AGREEMENT

SMART LICENSE AGREEMENT No. 2024-LIC-017
RE: Drop Mobility Bikeshare License Agreement
LICENSEE: Drop Mobility
At/Between Milepost(s) **14.80 – 55.23**

EXHIBIT D1-A, Page 8 of 8

Right of Entry Permit Description of Premises (Smart's Santa Rosa North "Property" containing Santa Rosa North "License Area")



SMART REAL PROPERTY LICENSE AGREEMENT

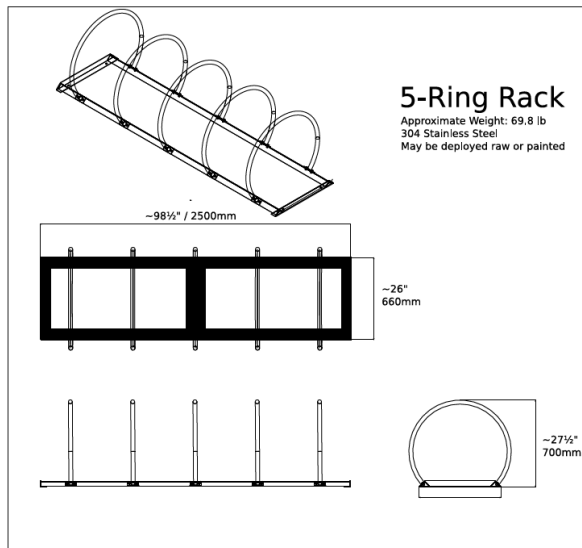
SMART LICENSE AGREEMENT No. 2024-LIC-017
RE: Drop Mobility Bikeshare License Agreement
LICENSEE: Drop Mobility
At/Between Milepost(s) **14.80 – 55.23**

EXHIBIT D1-B, Page 1 of 2

Right of Entry Permit Description of Work

Licensee to position the rack and sign frame where desired within the License Area, mark the hole positions, use a cordless hammer drill to drill the holes deeper than four (4) inches, brush away the dust and debris, insert the concrete bolts through the rack and into the holes, pound in place with a hammer, tighten the nuts to expand the sleeve on the concrete bolt and clean-up all debris and materials from the process. The entire process from arrival and start through clean up shall take no longer than thirty (30) minutes per location.

The Facility at each location to be substantially similar as follows:



SMART REAL PROPERTY LICENSE AGREEMENT

SMART LICENSE AGREEMENT No. 2024-LIC-017
RE: Drop Mobility Bikeshare License Agreement
LICENSEE: Drop Mobility
At/Between Milepost(s) **14.80 – 55.23**

EXHIBIT D1-B, Page 1 of 2

Right of Entry Permit Description of Work

Additional Work details are provided as follows:

SMART Station Location	Surface	Rack Style	Sign Style	Maximum # of Drop Mobility Bike Parking Spaces	# of Racks	# of Rings per Rack	Bollards
Larkspur	Concrete	Anchored	Anchored Wayfinder	20	2	5	No
San Rafael	Concrete	Anchored	Anchored Wayfinder	8	1	4	No
Novato Hamilton	Concrete	Anchored	Anchored Wayfinder	20	2	5	No
Novato Downtown	Concrete	Anchored	Anchored Wayfinder	10	1	5	No
Novato San Marin	Concrete	Anchored	Anchored Wayfinder	10	1	5	No
Petaluma Downtown	Concrete	Anchored	Anchored Wayfinder	20	2	5	No
Rohnert Park	Concrete	Anchored	Anchored Wayfinder	20	2	5	No
Santa Rosa North	Concrete	Anchored	Anchored Wayfinder	10	1	5	No

SMART REAL PROPERTY LICENSE AGREEMENT


SMART LICENSE AGREEMENT No. 2024-LIC-017
RE: Drop Mobility Bikeshare License Agreement
LICENSEE: Drop Mobility
At/Between Milepost(s) **14.80 – 55.23**

EXHIBIT D1-C, Page 1 of 1

Right of Entry Permit Right of Way Access Permit

EXHIBIT C

Must be Signed for Approval

 RIGHT OF WAY ACCESS PERMIT Safety Certification Badges must be attached to this form. This form must be kept onsite by the contractor at all times. If you decide not to use your approved permit for the date requested, contact Dispatch and cancel the request.		One permit must be submitted for each calendar day of work.	Permit Number
		Submit permit requests to the Right of Way Access Coordinator at least 72 hours in advance.	ROE Permit 2024-ROE-030
CONTRACTOR INFORMATION Company Name: Drop Mobility, LLC Applicant Name: Phone: Email: Project ID#:		Date of Work:	
		Start Time:	
SUPERVISOR ON SITE Supervisor Name: Cell Phone:		Finish Time:	
		Crew Size:	
EXACT WORK LIMITS From MP/Location: 14.85, 17.02, 23.68, To MP/Location: 27.78, 28.77, 38.59, Other: 47.23, 55.22		TERRITORY X SMART Mainline (MP 14.78 TO 89.0) Brazos Branch (MP B-25.8 TO B-49.8) Inactive:	
Always expect a train or on track equipment. Trains may travel in either direction on any track at any time.			
The Supervisor shall: **Be on site at all times and reachable by Dispatch** **Call OCC by phone to <u>activate</u> the Permit before the works starts, then call OCC by phone to <u>deactivate</u> the Permit after the works is done and crews and equipment are cleared. OPERATIONS CONTROL CENTER (OCC) Phone 707-890-8600			
Cancellations: **All Cancellations must be done a minimum of 24 hrs. advance notice prior to scheduled start time or you will be billed \$285 late cancellation fee.			
DESCRIPTION OF WORK Installation & Maintenance of Drop Mobility Bicycle Hubs at the Mileposts named under Exact Work Limits herein.			
By activating permit marked BILLABLE, Permittee agrees to reimburse SMART for flagging expenses associated with the project.		Billable	
		Not Billable	Deposit
WORK CONDITIONS Work crew may be fouling tracks Heavy equipment within Right of Way Right of Entry Outside of fouling zone			
LEVEL OF ON TRACK SAFETY Watchman Lookout Track Out of Service Track & Time Approved Flagger Track Warrant None Required EIC: Cell:			
SMART TRACK ACCESS COORDINATION: EMAIL COMPLETED FORM(S) TO: ROWACCESSpermit@sonomamarintrain.org			
FOR CONTROL OFFICE USE		Permit Approval:	Date:
Active Time:	Controller Signature:		ID#
Clear Time:	Controller Signature:		ID#

SMART REV 10/2022

SMART RIGHT OF WAY ACCESS PERMIT

SMART REAL PROPERTY LICENSE AGREEMENT

SMART LICENSE AGREEMENT No. 2024-LIC-017
RE: Drop Mobility Bikeshare License Agreement
LICENSEE: Drop Mobility
At/Between Milepost(s) **14.80 – 55.23**

EXHIBIT E – Condition of Premises

Page 1 of 2

Larkspur Station



San Rafael Station



Novato Hamilton Station



Novato Downtown Station



SMART REAL PROPERTY LICENSE AGREEMENT

SMART LICENSE AGREEMENT No. 2024-LIC-017
RE: Drop Mobility Bikeshare License Agreement
LICENSEE: Drop Mobility
At/Between Milepost(s) **14.80 – 55.23**

EXHIBIT E – Condition of Premises

Page 2 of 2

Novato San Marin Station



Petaluma Downtown Station



Rohnert Park Station



Santa Rosa North Station





Eric Lucan, Chair
Marin County Board of Supervisors

Melanie Bagby, Vice Chair
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Chris Coursey
Sonoma County Board of Supervisors

Rachel Farac
Transportation Authority of Marin

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Barbara Pahre
Golden Gate Bridge,
Highway/Transportation District

Gabe Paulson
Marin County Council of Mayors and
Councilmembers

David Rabbitt
Sonoma County Board of Supervisors

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Mary Sackett
Marin County Board of Supervisors

Eddy Cumins
General Manager

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

August 21, 2024

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

SUBJECT: Authorize the General Manager to Award a Contract with Modern Railway Systems to Furnish, Install, and Support Real-Time Information Displays at SMART stations.

Dear Board Members:

RECOMMENDATION

Adopt Resolution No. 2024-25 Authorizing the General Manager to award Contract No. PL-PS-24-001 with Modern Railway Systems to furnish, install, and support Real-Time Information Displays at SMART stations in the amount of \$537,755.26, and additional approval authority of up-to \$43,165.75 for project contingency for a total project cost of up to \$580,921.01.

SUMMARY

SMART issued an Invitation for Bid (IFB) for Passenger Information Displays Procurement, Installation and Support (Solicitation No. PL-PS-24-001) on May 29, 2024. The solicitation included procurement and installation of real-time signs, procurement, and installation of ADA-compliant text-to-speech buttons, licensing of Content Management System (CMS) software, and ongoing technical service and support.

SMART received two bids on July 8, 2024, by the bid deadline. Bids were submitted by Modern Railway Systems and Way Sine LLC, with the lowest responsive bid being submitted by Modern Railway Systems with a total bid price of \$537,755.26. This bid price is in-line with the engineer's estimate for the project.

The bid price includes procurement, installation, testing, and configuration of twenty-two (22) real-time passenger information display signs and ADA-compliant text-to-speech buttons to be installed across all SMART station platforms (including Petaluma North and Windsor), as well as procurement of two (2) additional spare signs. The bid price also includes five years of licensing for the Content Management System (CMS) software, a five-year material warranty on the signs, and ongoing hardware and software technical support services for two years.

BACKGROUND

Real-Time signage emerged as a rider priority for SMART through the public listening sessions. The goal of the real-time signage program is to enhance the rider experience through the provision of up-to-the-minute information including real-time train arrivals, service alerts, transit connections at transfer stations, and more. The signage particularly improves access to live information for riders without a smartphone. Real-time signage will be valuable during major service disruptions, where information on train annulments and bus bridge information can be shown at respective platforms.

In October 2023, SMART successfully secured \$1,000,000 in grant funds through the Clean CA Grant Program to support this project, as well as the Pathway Wayfinding Signage installation project. Based on customer needs, industry standards, and external feedback, SMART decided to proceed with 32-inch electronic “electronic paper” displays for installations in SMART shelters. These signs are high-resolution, high contrast, and backlit for night visibility. Each sign will feature an ADA-compliant text-to-speech button and speaker functionality for visually impaired users.

Approval of Resolution No. 2024-25 will allow SMART to implement the Real-Time Signage program and support the successful drawdown of the Clean CA grant funding.

FISCAL IMPACT: The fiscal impact of the contract award is up to \$580,921.01, which is budgeted in Fiscal Year 2025 with state funding from the Clean California Grant Program and Measure Q.

REVIEWED BY: [x] Finance /s/

[x] Counsel /s/

Respectfully,

/s/

Emily Betts
Planning Manager

Attachment(s):

1. Resolution No. 2024-25
2. Modern Railway Systems Agreement No. PL-BB-24-001

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
APPROVING CONTRACT NO. PL-PS-24-001 WITH MODERN RAILWAY SYSTEMS FOR THE
PROCUREMENT, INSTALLATION, AND SUPPORT OF REAL-TIME SIGNAGE AT SMART STATIONS**

WHEREAS, the Sonoma-Marín Area Rail Transit District (SMART) prepared plans, goals, and specifications for procurement, installation, and ongoing support of real-time information displays; and

WHEREAS, SMART issued a formal Invitation for Bid for Contract No. PL-PS-24-001 on May 29, 2024, which included advertising the opportunity in local newspapers, trade journals, the SMART website, and other outreach outlets; and

WHEREAS, SMART received two bids on July 8, 2024; and

WHEREAS, SMART has made the determination that Modern Railway Systems submitted the lowest responsive and responsible bid; and

NOW, THEREFORE, BE IT RESOLVED that Board of Directors OF SMART HEREBY FINDS, DETERMINES, DECLARES, AND ORDERS AS FOLLOWS:

1. The General Manager is authorized to execute Contract No. PL-PS-24-001 with Modern Railway Systems in the amount of \$537,755.26.
2. The General Manager is authorized to approve up to \$43,165.75 for project contingency for a total project cost of up to \$580,921.01.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 21st day of August 2024, by the following vote:

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

Eric Lucan, Chair, Board of Directors
Sonoma-Marín Area Rail Transit District

ATTEST:

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

DOCUMENT 00 52 00
AGREEMENT FOR CONTRACTOR SERVICES

This agreement (“Agreement”), dated as of August 21, 2024 (“Effective Date”) is by and between the Sonoma-Marín Area Rail Transit District, a Special District of the State of California (hereinafter “SMART”), and Modern Railway Systems, whose place of business is located at 8201 SouthPark Lane, Ste 200 (hereinafter “Contractor”).

**PASSENGER INFORMATION DISPLAYS
PROCUREMENT, INSTALLATION, & SUPPORT
CONTRACT # PL-PS-24-001**

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set for, Contractor and SMART agree as follows:

A G R E E M E N T

ARTICLE 1. LIST OF EXHIBITS

Section 1.01 The following exhibits are attached hereto and incorporated herein:

- (a) Exhibit A: Schedule of Rates
- (b) Exhibit B: FTA, DOT, & Grant Requirements
- (c) Exhibit C: Federal Wage Determination

ARTICLE 2. WORK.

Section 2.01 Contractor shall complete all work specified in the Contract Documents, in accordance with the Specifications, Drawings, and all other terms and conditions of the Contract Documents.

ARTICLE 3. NOTICES TO SMART.

Section 3.01 SMART has designated Judy King, Project Manager, to act as SMART’s Representative(s), who will represent SMART in performing SMART’s duties and responsibilities and exercising SMART’s rights and authorities in Contract Documents. SMART may change the individual(s) acting as SMART’s Representative(s), or delegate one or more specific functions to one or more specific SMART’s Representatives, including without limitation engineering, architectural, inspection and general administrative functions, at any time with written notice and without liability to Contractor. Each SMART Representative is the beneficiary of all Contractor obligations to SMART, including without limitation, all releases and indemnities.

Section 3.02 All notices or demands to SMART under the Contract Documents shall be to SMART's Representative at: **5401 Old Redwood Hwy Suite 200, Petaluma, CA, 94954** or to such other person(s) and address(es) as SMART shall provide to Contractor.

Project Manager: Judy King
Phone: 707-285-8258
Email: jking@sonomamarintrain.org

ARTICLE 4. CONTRACT TIME

Section 4.01 Notice to Proceed.

SMART may give a Notice to Proceed at any time within 60 Days after the Notice of Award. Contractor shall not do any Work at the Site prior to the date on which the Contract Time commences to run.

Section 4.02 Project Implementation Timeline

Delivery of the Real-Time Passenger Information Displays, installation and configuration of Real-Time Passenger Information Displays, Content Management Software (CMS) set-up, configuration, and training shall be completed no later than November 30, 2024 per the requirements of the grant.

Section 4.03 Term of Agreement.

The Term Agreement shall remain in effect for five years following SMART's acceptance of project implementation, unless terminated earlier in accordance with the provisions included in the General Conditions.

ARTICLE 5. CONTRACT SUM.

Section 5.01 SMART shall pay Contractor the Contract Sum for completion of Work in accordance with the Contract Documents as follows:

Total Contract Sum: \$537,755.26

The Contract Sum includes all allowances (if any).

Contractor agrees that 48 CFR Part 31, Contract Cost Principles and Procedures and 2 CFR Part 200 shall be used to determine the allowability of individual terms of cost. Any costs for which payment has been made to the Contractor that are determined by subsequential audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the Contractor to SMART.

ARTICLE 6. CONTRACTOR REPRESENTATIONS.

In order to induce SMART to enter into this Agreement, Contractor makes the following representations and warranties:

Section 6.01 Contractor has visited the Site and has examined thoroughly and understood the nature and extent of the Contract Documents, Work, Site, locality, actual conditions, as-built conditions, all local conditions, and all federal, state and local laws and

regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.

Section 6.02 Contractor has examined thoroughly and understood all reports of exploration and tests of subsurface conditions, as-built drawings, drawings, products specifications or reports, available for Bidding purposes, of physical conditions, including Underground Facilities, or which may appear in the Drawings. Contractor accepts the determination set forth in these Documents and Document 00 70 00 - General Conditions of the limited extent of the information contained in such materials upon which Contractor may be entitled to rely. Contractor agrees that, except for the information so identified, Contractor does not and shall not rely on any other information contained in such reports and drawings.

Section 6.03 Contractor has conducted or obtained and has understood all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in Section 5.2 of this Document 00 52 00 - Agreement) that pertain to the subsurface conditions, as-built conditions, Underground Facilities and all other physical conditions at or contiguous to the Site or otherwise that may affect the cost, progress, performance or furnishing of Work, as Contractor considers necessary for the performance or furnishing of Work at the Contract Sum, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Document 00 70 00 - General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such purposes.

Section 6.04 Contractor has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

Section 6.05 Contractor has given SMART prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered in or among the Contract Documents and as-built drawings and actual conditions and the written resolution thereof through Addenda issued by SMART is acceptable to Contractor.

Section 6.06 Contractor is duly organized, existing and in good standing under applicable state law, and is duly qualified to conduct business in the State of California.

Section 6.07 Contractor has duly authorized the execution, delivery and performance of this Agreement, the other Contract Documents and the Work to be performed herein. The Contract Documents do not violate or create a default under any instrument, agreement, order or decree binding on Contractor.

Section 6.08 Contractor has listed the following Subcontractors pursuant to the Subcontractor Listing Law, California Public Contract Code §4100 *et seq.*:

Name of Subcontractor and Location of Mill or Shop	Description of Work: Reference To Items	Subcontractor's License No.
Connectpoint, Inc.	Furnish all signs, POE injectors and PTT Buttons, Cloud-Based CMS Software and Licensing, Software Technical Support & Training, Hardware technical support.	N/A
Junker Engineering Group	Shelter structural calculations as specified in Section 01 34 00	N/A

Section 6.09 Contractor has designated **Colby Phillips, Project Manager**, to act as Contractor's Representative(s), who will represent Contractor in performing Contractor's duties and responsibilities and exercising Contractor's rights and authorities in Contract Documents. Contractor has also designated **Justin Snell, Superintendent**, to act as Contractor's Superintendent. Contractor may change the individual(s) acting as Contractor's Representative(s), or delegate one or more specific functions to one or more specific Contractor's Representatives, at any time upon prior written notice and approval and without liability to SMART, but Contractor is limited to two representatives.

Project Manager: Colby Phillips	Superintendent: Justin Snell
Phone: (530)-510-2337	Phone: (254) 485-9139
Email: cphillips@modrailsystems.com	Email: jsnell@modrailsystems.com

ARTICLE 7. CONTRACTOR DOCUMENTS.

Section 7.01 Contract Documents consist of the following documents incorporated by reference, including all changes, Addenda, and Modifications thereto:

Document 00 52 00:	This Agreement
IFB:	Invitation for Bid
Document 00 70 00:	General Conditions
General Requirements:	General Requirements
Technical Specifications:	Technical Specifications
Technical Specifications:	Shelter As-Built
Technical Specifications:	Station As-Built

Section 7.02 There are no Contract Documents other than those listed in Section 7.01. The Contract Documents may only be amended, modified or supplemented as provided in Document 00 70 00 - General Conditions.

ARTICLE 8. INSURANCE.

Contractor shall procure and maintain for the duration of the Agreement insurance against all claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees, or subcontractors with limits and deductibles specified below:

Section 8.01 Workers' Compensation Insurance. Workers' Compensation as required by the State of California, with Statutory Limits, and Employer's Liability insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

Section 8.02 General Liability Insurance. Commercial General Liability insurance covering products-completed and ongoing operations, property damage, bodily injury and personal injury using an occurrence policy form, in an amount no less than \$1,000,000 per occurrence and \$2,000,000 aggregate. Said insurance shall remain in effect for five (5) years after Final Completion and acceptance of the final payment for the Work, contractual liability, and coverage for explosion, collapse, and underground hazards.

Said policy shall include a Railroads CG 24 17 endorsement removing the exclusion of coverage, if applicable, for bodily injury or property damage arising out of operations within 50 feet of any railroad property and affecting any railroad bridge, trestle, tracks, roadbeds, tunnel, underpass or crossing.

Section 8.03 Automobile Insurance. Automobile Liability insurance covering bodily injury and property damage in an amount no less than \$2,000,000 combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles.

Said policy shall also include a CA 20 70 10 13 endorsement removing the exclusion of coverage for bodily injury or property damage arising out of operations within 50 feet of any railroad bridge, trestle, track, roadbeds, tunnel, underpass or crossing.

Section 8.04 Professional Liability Insurance (Errors and Omissions). Professional Liability insurance with limit no less than \$1,000,000 per occurrence or claim.

Section 8.05 Endorsements. Prior to commencing work, Contractor shall file Certificate(s) of Insurance with SMART evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. Said endorsements and Certificate(s) of Insurance shall stipulate:

- (a) SMART, its officers, and employees shall be named as additional insured on all policies listed above, with the exception of the workers compensation insurance policy (as applicable).
- (b) That the policy(ies) is Primary Insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim which Contractor is liable, up to and including the total limit of liability, without right of contribution from any other insurance effected or which may be effected by the Insureds.
- (c) Inclusion of the Insureds as additional insureds shall not in any way affect its rights either as respects any claim, demand, suit or judgment made, brought or recovered against Contractor. Said policy shall protect Contractor and the Insureds in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.
- (d) Contractor hereby grants to SMART a waiver of any right to subrogation which any insurer of said Contractor may acquire against SMART by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless

of whether or not SMART has received a waiver of subrogation endorsement from the insurer.

- (e) The insurance policy(ies) shall be written by an insurance company or companies acceptable to SMART. The insurance underwriter(s) for all insurance policies except Workers' Compensation shall have an A.M. Best Company rating of A VII or better. Such insurance company shall be authorized to transact business in the state of California. Required minimum amounts of insurance may be increased should conditions of Work, in opinion of SMART, warrant such increase. Contractor shall increase required insurance amounts upon direction by SMART.

Section 8.06 Deductibles and Retentions. Contractor shall be responsible for payment of any insurance premiums, including any charges for required waivers of subrogation or the endorsement of additional insured. Contractor shall also be responsible for the payment of all deductibles or retention on Contractor's policies without right of contribution from SMART.

Section 8.07 Injuries. If injury occurs to any employee of Contractor, Subcontractor or sub-subcontractor for which the employee, or the employee's dependents in the event of employee's death, is entitled to compensation from SMART under provisions of the Workers' Compensation Insurance and Safety Act, as amended, or for which compensation is claimed from SMART, SMART may retain out of sums due Contractor under Contract Documents, amount sufficient to cover such compensation, as fixed by the Act, as amended, until such compensation is paid, or until it is determined that no compensation is due. If SMART is compelled to pay compensation, SMART may, in its discretion, either deduct and retain from the Contract Sum the amount so paid, or require Contractor to reimburse SMART.

Section 8.08 Subcontractor Responsibility. Contractor shall require and verify that subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure SMART is named additional insured on insurance required from subcontractors.

Section 8.09 Claims Made Coverage. If any insurance specified above is written on a claims-made coverage form, Contractor shall:

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

Section 8.10 Documentation. The following documentation shall be submitted to SMART:

- (a) Properly executed Certificates of Insurance clearly evidencing all coverages and limits required above. Said Certificates shall be submitted prior to the execution of

this Agreement. At SMART's request, Contractor shall provide certified copies of the policies that correspond to the policies listed on the Certificates of Insurance. Contractor agrees to maintain current Certificates of Insurance evidencing the above-required coverages and limits on file with SMART for the duration of this Agreement.

- (b) Copies of properly executed endorsements required above for each policy. Said endorsement copies shall be submitted prior to the execution of this Agreement. Contractor agrees to maintain current endorsements evidencing the above-specified requirements on file with SMART for the duration of this Agreement.
- (c) After the Agreement has been signed, signed Certificates of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.

Please email all renewal certificates of insurance and corresponding policy documents to InsuranceRenewals@sonomamarintrain.org.

Section 8.11 Policy Obligations. Contractor's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

Section 8.12 Material Breach. If Contractor, for any reason, fails to maintain insurance coverage, which is required pursuant to this Agreement, the same shall be deemed a material breach of this Agreement. SMART, in its sole option, may terminate this Agreement and obtain damages from Contractor resulting from said breach. Alternatively, SMART may purchase such required insurance coverage, and without further notice to Contractor, SMART may deduct from sums due to Contractor any premium costs advanced by SMART for such insurance. These remedies shall be in addition to any other remedies available to SMART.

Section 8.13 Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice to SMART.

ARTICLE 9. MISCELLANEOUS.

Section 9.01 Terms and Abbreviations. Terms and abbreviations used in this Agreement are defined in Document 00 70 00 - General Conditions and Section 01420 (References and Definitions) and will have the meaning indicated therein.

Section 9.02 Use of Recycled Paper. SMART requires that all printing jobs produced under this Agreement be printed on recycled content papers. Recycled-content papers are defined as papers containing a minimum of 30 percent postconsumer fiber by weight. All papers used in the performance of a print job for SMART shall be recycled-content paper. If paper meets the 30 percent requirement, the recycling logo should be printed on the project.

Section 9.03 Signers of this Agreement. It is understood and agreed that in no instance are the persons signing this Agreement for or on behalf of SMART or acting as an employee, agent, or representative of SMART, liable on this Agreement or any of the Contract Documents, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of the SMART is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.

Section 9.04 No Assignment of Contract. Contractor shall not assign any portion of the Contract Documents, and may subcontract portions of the Contract Documents only in compliance with the Subcontractor Listing Law, California Public Contract Code §4100 *et seq.*

Section 9.05 Assignment of Rights to Awarding Body. In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Contractor or Subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time SMART tenders final payment to Contractor, without further acknowledgment by the parties.

Section 9.06 Prevailing Wages. Contractor and all Subcontractors shall pay to all workers employed not less than the prevailing rate of wages as determined in accordance with the Labor Code as indicated herein.

All Contractors, contractors, and subcontractors doing business with public agencies through the State of California (including SMART) shall comply with applicable labor compliance requirements including, but not limited to prevailing wages, SB 854, Labor Code Sections 1725.5, 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815. Public Works Contractor Registration Programs, Electronic Certified Payroll Records submission to the State Labor Commissioner and other requirements, described at <http://www.dir.ca.gov/Public-Works/Contractors.html>.

Applicable projects are subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are deemed included in the Contract Documents and shall be made available to any interested party on request.

Pursuant to Section 1861 of the Labor Code, Contractor represents that it is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor shall comply with such provisions before commencing the performance of the Work of the Contract Documents.

This project is subject to the Federal Wage determination. Whenever the Federal Wage determination and the California Prevailing Wage determinations conflict, the higher rate shall be paid.

Section 9.07 Licensing Laws. The Contractor and all subcontractors shall comply with the provisions of Chapter 9 Division 3 of the Business and Professions code concerning the licensing of contractors. All Contractors shall be licensed in accordance with the laws of the State of California and any Contractor not so licensed is subject to the penalties imposed by such laws. Prior to commencing any work under contract, all Contractors and subcontractors must show that they hold appropriate and current Contractor Licenses in the State of California. The Contractor shall provide such subcontractor

information, including the class type, license, number, and expiration date to SMART.

Section 9.08 Payment Bond. Contractor shall be required to furnish a Payment Bond (Labor and Materials Bond) in an amount not less than 100 percent of the Contract Price, excluding allowances. Payment bond shall be executed by an admitted surety insurer (California Civil Code Section 9554). An “admitted surety insurer” shall be defined as follows: A corporate insurer or reciprocal or interinsurance exchange to which the Insurance Commissioner has issued a certificate of authority to transact surety insurance in this state, as defined in Section 105 of the Insurance Code (California Code of Civil Procedures Section 995.120).

Section 9.09 Performance Bond. Contractor shall be required to furnish a Performance Bond in an amount not less than 100 percent of the Contract Price, excluding allowances. Performance Bond shall be executed by an admitted surety insurer (California Civil Code Section 9554). An “admitted surety insurer” shall be defined as follows: A corporate insurer or reciprocal or interinsurance exchange to which the Insurance Commissioner has issued a certificate of authority to transact surety insurance in this state, as defined in Section 105 of the Insurance Code (California Code of Civil Procedures Section 995.120).

Section 9.10 California Air Resources Board (“CARB”) In-Use Off-Road Diesel-Fueled Fleets Certification of Compliance. Contractor shall comply, and shall ensure all subcontractors comply, with all applicable requirements of the most current version of the regulations imposed by California Air Resources Board (“CARB”) including, without limitation, all applicable terms of Title 13, California Code of Regulations Division 3, Chapter 9 and all pending amendments (“Regulation”). Throughout this agreement, and for three (3) years thereafter, Contractor shall make available for inspection and copying any and all documents or information associated with Contractor’s and its subcontractors’ fleets including, without limitation, the Certificates of Reported Compliance (“CRCs”), fuel/refueling records, maintenance records, emissions records, and any other information the Contractor is required to produce, keep, or maintain pursuant to the Regulation upon two (2) calendar days’ notice from SMART. Contractor shall be solely liable for any and all costs associated with compliance with the Regulation as well as for any and all penalties, fines, damages, or costs associated with any and all violations, or failures to comply with the Regulation.

Section 9.11 Drug-Free Workplace. Contractor certifies that it will provide a drug-free workplace in compliance with Government Code §8350-§8357.

Section 9.12 Continuation of Work. Should any part, term or provision of this Agreement or any of the Contract Documents, or any document required herein or therein to be executed or delivered, be declared invalid, void or unenforceable, all remaining parts, terms and provisions shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby. If the provisions of any law causing such invalidity, illegality or unenforceability may be waived, they are hereby waived to the end that this Agreement and the Contract Documents may be deemed valid and binding agreements, enforceable in accordance with their terms to the greatest extent permitted by applicable law. In the event any provision not otherwise included in the Contract Documents is required to be included by any applicable law, that provision is deemed included herein by this reference (or, if such provision is required to be included in any particular portion of the Contract Documents, that provision is deemed included in that portion).

Section 9.13 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Venue for any action to enforce the terms of this Agreement or for the breach thereof shall be in the Superior Court of the State of California in the County of Marin.

Section 9.14 Claims Procedures. Contractor accepts the claims procedure established by Article 12 of Document 00 70 00 - General Conditions, as established under Section 930.2 of the California Government Code.

Section 9.15 Relationships of the Parties: No Intended Third-Party Beneficiaries. The Parties intend by this Agreement to establish a cooperative funding relationship, and do not intend to create a partnership, joint, venture, joint enterprise, or any other business relationship. 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 construed to create and the Parties do not intend to create any rights in third parties.

Section 9.16 No Waiver of Breach. The waiver by SMART of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

Section 9.17 Acceptance of Electronic Signatures and Counterparts. The parties agree that this Contract, Agreements ancillary to this Contract, and related documents to be entered into this Contract will be considered executed when all parties have signed this Agreement. 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.

Section 9.18 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

CONTRACTOR: MODERN RAILWAY SYSTEMS

By: _____
Paul Rieger, President

Date: _____

SONOMA-MARIN AREA RAIL TRANSIT (SMART)

By: _____
Eddy Cumins, General Manager

Date: _____

**CERTIFICATES OF INSURANCE ON FILE WITH AND
APPROVED AS TO SUBSTANCE FOR SMART:**

By: _____
Ken Hendricks, Procurement and Contracts Manager

Date: _____

APPROVED AS TO FORM FOR SMART:

By: _____
District Counsel

Date: _____

**EXHIBIT A
SCHEDULE OF RATES**

BID TABLE 1					
Item #	Description	QTY	UOM	Per Unit Price	Total Item Price
1	Mobilization	1	LS	\$21,299.93	\$21,299.93
2	Shelter Structural Calculation	1	LS	\$6,028.28	\$6,028.28
3	Real-Time Passenger Information Displays (Includes Enclosures and Brackets)	24	EA	\$12,932.79	\$310,386.91
4	Real-Time Passenger Information Displays Power per Station	14	EA	\$476.18	\$6,666.53
5	System Connection per Station	14	EA	\$5,116.48	\$71,630.74
6	Testing	1	LS	\$15,645.05	\$15,645.05
7a	Content Management Software (Year 1)	1	LS	\$21,219.56	\$21,219.56
7b	Content Management Software (Year 2)	1	LS	\$21,219.56	\$21,219.56
7c	Content Management Software (Year 3)	1	LS	\$21,219.56	\$21,219.56
7d	Content Management Software (Year 4)	1	LS	\$21,219.56	\$21,219.56
7e	Content Management Software (Year 5)	1	LS	\$21,219.56	\$21,219.56
8a	Year 1 - Software Technical Ongoing Support and Training: Real-Time Signage Content Management System (Per Month)	12	EA	Included in Price of Real-Time Passenger Information Displays	Included in Price of Real-Time Passenger Information Displays
8b	Year 2 - Software Technical Ongoing Support and Training: Real-Time Signage Content Management System (Per Month)	12	EA	Included in Price of Real-Time Passenger Information Displays	Included in Price of Real-Time Passenger Information Displays
9a	Year 1 - Hardware Technical Support (Per Month)	12	EA	Included in Price of Real-Time Passenger Information Displays	Included in Price of Real-Time Passenger Information Displays
9b	Year 2 - Hardware Technical Support (Per Month)	12	EA	Included in Price of Real-Time Passenger Information Displays	Included in Price of Real-Time Passenger Information Displays

GENERAL INFORMATION

EA = Each
LS = Lump Sum
Costs are in United States Dollars

The above costs include all labor, supervision, equipment, materials, supplies, insurance, overhead, profit, and all other direct and indirect costs associated with performing the work included in this Agreement.

WARRANTY

A 5-Year Material Warranty for the Real-Time Passenger Information Displays is included in the price above.

ITEM DESCRIPTIONS:

Item 1: Mobilization

Mobilization - Mobilization will be paid for at the contract LUMP SUM (LS) price, which price shall constitute full compensation for all such work. The scope of work for mobilization shall include, but not limited to, obtaining all bonds, insurance and permits, mobilization of crew and equipment to the site, and obtaining submittal approvals. Final payment for mobilization shall occur following demobilization and final cleanup when all required items per the Contract are fulfilled and the site is free of equipment and clean and ready for use by the public, all in accordance with the requirements of the Contract Documents and no additional compensation will be made therefor.

Item 2: Shelter Structural Calculation

Shelter Structural Calculation - Shelter Structural Calculation will be paid for at the contract LUMP SUM (LS) which shall constitute full compensation for all such work. The scope of work includes utilizing the existing structural calculations and shop drawings to determine an appropriate mounting location and signage mounting details to adequately support the signs on each shelter, preparing calculations to demonstrate structural adequacy, and presenting the calculations and mounting details in a memorandum.

Item 3: Real-Time Passenger Information Displays (Includes Enclosures and Brackets)

Connectpoint Model CP-32-AC (32-inch ePaper display manufactured by Connectpoint, Landscape) Real-Time Passenger Information Displays. Real-Time Passenger Information Displays shall be paid for at the contract price per EACH (EA) for Real-Time Passenger Information Display which shall include full compensation for furnishing all labor, materials, tools, equipment for Real-Time Passenger Information Displays, including but not limited to procuring/furnishing real time signs, fabrication/procurement of metal brackets, firmware updates for 5-years, fabrication/procurement of ADA-compliant text-to-speech functionality and button assembly (CPFALCON-NS Model 4000), all in accordance with the requirements of the Contract Documents and no additional compensation will be made therefor.

Item 4: Real-Time Passenger Information Displays Power per Station

Real-Time Passenger Information Displays Power per Station shall be paid for at the contract price per EACH (EA) station to supply power to the Real-Time Passenger Information Displays which shall include full compensation for furnishing all labor, materials, tools, equipment for power including but not limited to procuring, furnishing, and installing POE injectors within the station communication case or CIL all in accordance with the requirements of the Contract Documents and no additional compensation will be made therefor.

Item 5: System Connect per Station

System Connect per Station shall be paid for at the contract price per EACH (EA) station to connect the Real-Time Passenger Information Displays to SMART's station communication case or Station CIL and power to the Real-Time Passenger Information

Displays which shall include full compensation for furnishing all labor, materials, hardware, tools, and equipment for System Connect per Station, including but not limited to procuring, furnishing, and installing ethernet and LAN from the source to the real time signs and mounting Real Time Signs to the shelters all in accordance with the requirements of the Contract Documents and no additional compensation will be made therefor.

Item 6: Testing

Testing will be paid for at the contract LUMP SUM (LS), which price shall constitute full compensation for furnishing all labor, materials, and software including but limit to, testing real time signage all in accordance with the requirements of the Contract Documents and no additional compensation will be made therefor.

Item 7a: Content Management Software (Year 1)

Real-Time Passenger Information Display Content Management Software licensing for Year 1. This software is for 1 year, billed in advance, which price shall constitute full compensation for furnishing all labor, materials, and software including but not limited to, software, updates to software, 1 year worth of licensing of software, and user logins, as described below, all in accordance with the requirements of the Contract Documents and no additional compensation will be made therefor.

Software shall be a cloud-based content management system for monitoring of Real-Time Passenger Information Displays and management of Real-Time Passenger Information Display content. Contractor shall provide SMART with two administrative logins, as well as, unlimited general user logins. Shared logins will not be allowed. The Content Management Software shall route GTFS static and GTFS-Real-Time feeds from SMART, including GTFS-RT rider alerts. The Content Management Software will need to read 511 GTFS feeds, available with a 511 API token. SMART would prefer for the Content Management Software to be able to display GBFS bikeshare information to show available bikes at a particular station for the upcoming Sonoma-Marín Bikeshare system. The Content Management System should contain the functionality to assign or program the Real-Time Passenger Information Displays by GTFS stop ID such that GTFS Rider Alerts by Stop ID are sent to the appropriate sign.

Item 7b: Content Management Software (Year 2)

Real-Time Passenger Information Display Content Management Software licensing for Year 2. This software is for 1 year, billed in advance, which price shall constitute full compensation for furnishing all labor, materials, and software including but not limited to, software, updates to software, 1 year worth of licensing of software, and user logins, as described below, all in accordance with the requirements of the Contract Documents and no additional compensation will be made therefor.

Software shall be a cloud-based content management system for monitoring of Real-Time Passenger Information Displays and management of Real-Time Passenger Information Display content. Contractor shall provide SMART with two administrative logins, as well as, unlimited general user logins. Shared logins will not be allowed. The Content Management Software shall route GTFS static and GTFS-Real-Time feeds from SMART, including GTFS-RT rider alerts. The Content Management Software will need to read 511 GTFS feeds, available with a 511 API token. SMART would prefer for the Content Management Software to be able to display GBFS bikeshare information to

show available bikes at a particular station for the upcoming Sonoma-Marín Bikeshare system. The Content Management System should contain the functionality to assign or program the Real-Time Passenger Information Displays by GTFS stop ID such that GTFS Rider Alerts by Stop ID are sent to the appropriate sign.

Item 7c: Content Management Software (Year 3)

Real-Time Signage Content Management Software licensing for Year 3. This software is for 1 year, billed in advance, which price shall constitute full compensation for furnishing all labor, materials, and software including but not limited to, software, updates to software, 1 year worth of licensing of software, and user logins, as described below, all in accordance with the requirements of the Contract Documents and no additional compensation will be made therefor.

Software shall be a cloud-based content management system for monitoring of Real-Time Passenger Information Displays and management of Real-Time Passenger Information Display content. Contractor shall provide SMART with two administrative logins, as well as, unlimited general user logins. Shared logins will not be allowed. The Content Management Software shall route GTFS static and GTFS-Real-Time feeds from SMART, including GTFS-RT rider alerts. The Content Management Software will need to read 511 GTFS feeds, available with a 511 API token. SMART would prefer for the Content Management Software to be able to display GBFS bikeshare information to show available bikes at a particular station for the upcoming Sonoma-Marín Bikeshare system. The Content Management System should contain the functionality to assign or program the Real-Time Passenger Information Displays by GTFS stop ID such that GTFS Rider Alerts by Stop ID are sent to the appropriate sign.

Item 7d: Content Management Software (Year 4)

Real-Time Signage Content Management Software licensing for Year 4. This software is for 1 year, billed in advance, which price shall constitute full compensation for furnishing all labor, materials, and software including but not limited to, software, updates to software, 1 year worth of licensing of software, and user logins, as described below, all in accordance with the requirements of the Contract Documents and no additional compensation will be made therefor.

Software shall be a cloud-based content management system for monitoring of Real-Time Passenger Information Displays and management of Real-Time Passenger Information Display content. Contractor shall provide SMART with two administrative logins, as well as, unlimited general user logins. Shared logins will not be allowed. The Content Management Software shall route GTFS static and GTFS-Real-Time feeds from SMART, including GTFS-RT rider alerts. The Content Management Software will need to read 511 GTFS feeds, available with a 511 API token. SMART would prefer for the Content Management Software to be able to display GBFS bikeshare information to show available bikes at a particular station for the upcoming Sonoma-Marín Bikeshare system. The Content Management System should contain the functionality to assign or program the Real-Time Passenger Information Displays by GTFS stop ID such that GTFS Rider Alerts by Stop ID are sent to the appropriate sign.

Item 7e: Content Management Software (Year 5)

Real-Time Signage Content Management Software licensing for Year 5. This software is for 1 year, billed in advance, which price shall constitute full compensation for furnishing all labor, materials, and software including but not limited to, software, updates to software, 1 year worth of licensing of software, and user logins, as described below, all in accordance with the requirements of the Contract Documents and no additional compensation will be made therefor.

Software shall be a cloud-based content management system for monitoring of Real-Time Passenger Information Displays and management of Real-Time Passenger Information Display content. Contractor shall provide SMART with two administrative logins, as well as, unlimited general user logins. Shared logins will not be allowed. The Content Management Software shall route GTFS static and GTFS-Real-Time feeds from SMART, including GTFS-RT rider alerts. The Content Management Software will need to read 511 GTFS feeds, available with a 511 API token. SMART would prefer for the Content Management Software to be able to display GBFS bikeshare information to show available bikes at a particular station for the upcoming Sonoma-Marín Bikeshare system. The Content Management System should contain the functionality to assign or program the Real-Time Passenger Information Displays by GTFS stop ID such that GTFS Rider Alerts by Stop ID are sent to the appropriate sign.

Item 8a: Year 1 - Software Technical Ongoing Support and Training: Real-Time Passenger Information Display Content Management System (Per Month)

Software Technical Ongoing Support and Training: Real-Time Passenger Information Displays Content Management System Software for Year 1 – Software Technical Support and Training will be paid for at the contract (EA), billed monthly in arrears, which price shall constitute full compensation for all such work including labor, materials, equipment, including, but not limited to, at least one live in-person or remote Content Management Software training for SMART staff, provision of training videos and knowledge base articles on the proper usage of the Content Management System, and Content Management System technical support for one (1) year and price shall constitute full compensation for all such work all in accordance with the requirements of the Contract Documents and no additional compensation will be made therefor.

Content Management System Technical Response Times shall be as follows:

- Critical – loss of access to content management system or loss of functionality of 4 or more signs: Contractor shall respond to issue within 2 hours. Resolution time shall be 1 day or less.
- Urgent – Partial loss of functionality affecting no more than three signs: Contractor shall respond to issue within 8 hours. Resolution time shall be 1 week or less.
- Routine – Minor issues with little impact on functionality: Contractor shall respond to issue within 2 business days. Resolution time shall be 1 month or less.

Item 8b: Year 2 - Technical Support and Training: Real-Time Passenger Information Display Content Management System Software (Per Month)

Software Technical Ongoing Support and Training: Real-Time Passenger Information Displays Content Management System Software for Year 2 – Software Technical Support and Training will be paid for at the contract (EA), billed monthly in arrears, which price shall constitute full compensation for all such work including labor, materials, equipment, including, but not limited to, at least one live in-person or remote Content Management Software training for SMART staff, provision of training videos and knowledge base articles on the proper usage of the Content Management System, and Content Management System technical support for one (1) year and price shall constitute full compensation for all such work all in accordance with the requirements of the Contract Documents and no additional compensation will be made therefor.

Content Management System Technical Response Times shall be as follows:

- Critical – loss of access to content management system or loss of functionality of 4 or more signs: Contractor shall respond to issue within 2 hours. Resolution time shall be 1 day or less.
- Urgent – Partial loss of functionality affecting no more than three signs: Contractor shall respond to issue within 8 hours. Resolution time shall be 1 week or less.
- Routine – Minor issues with little impact on functionality: Contractor shall respond to issue within 2 business days. Resolution time shall be 1 month or less.

Item 9a: Year 1 – Hardware Technical Support

Technical Support for Real-Time Passenger Information Displays for one (1) year will be paid for at the contract (EA), billed monthly in arrears, which price shall constitute full compensation for all such work including labor, materials, and equipment. Hardware Technical Support will include field visits to the Real-Time Passenger Information Display sites in the event of a sign malfunction for which remote technical support and power cycling via POE is insufficient. Contractor will perform requisite troubleshooting onsite and, if necessary, detach Real-Time Passenger Information Display from SMART shelter and install spare. Contractor will be responsible for handling warranty claims to sign manufacturer and for sending replacement hardware to SMART to backfill spares, all in accordance with the requirements of the Contract Documents and no additional compensation will be made therefor.

Item 9b: Year 2 – Hardware Technical Support

Technical Support for Real-Time Passenger Information Displays for one (1) year will be paid for at the contract (EA), billed monthly in arrears, which price shall constitute full compensation for all such work including labor, materials, and equipment. Hardware Technical Support will include field visits to the Real-Time Passenger Information Display sites in the event of a sign malfunction for which remote technical support and power cycling via POE is insufficient. Contractor will perform requisite troubleshooting onsite and, if necessary, detach Real-Time Passenger Information Display from SMART shelter and install spare. Contractor will be responsible for handling warranty claims to

sign manufacturer and for sending replacement hardware to SMART to backfill spares, all in accordance with the requirements of the Contract Documents and no additional compensation will be made therefor.

EXHIBIT C
FTA, DOT, AND GRANT REQUIREMENTS

**UNITED STATES DEPARTMENT OF TRANSPORTATION (DOT),
FEDERAL TRANSIT ADMINISTRATION (FTA) AND
CALIFORNIA DEPARTMENT OF TRANSPORTATION REQUIREMENTS**

1. General.

In performance of its obligations pursuant to this Agreement or Purchase Order [Hereinafter “Agreement”], the Contractor, Seller, or Consultant [Hereinafter “Contractor”] agrees to comply with all applicable provisions of federal, state and local law, regulations, FTA and Caltrans directives. The terms of the most recent amendment to any federal, state or local laws, regulations, Caltrans or FTA directives, and amendments to the grant or cooperative agreements providing funding for this Agreement that may be subsequently adopted, are applicable to the Agreement to the maximum extent feasible, unless the FTA or Caltrans provides otherwise in writing. The Federal or State regulations set forth in this Agreement to be observed in the performance of the Agreement are subject to change, and such changed requirements will apply to this Agreement as required. Contractor shall include in its subcontracts, and require its subcontractors of every tier to include in their respective subcontracts, provisions incorporating the requirements of this Attachment. Contractor’s failure to comply with these requirements shall constitute a material breach of this Agreement and may result in the withholding of progress payments to the Contractor, in addition to other remedies.

It is the responsibility of the Contractor and its subcontractors to ensure that all clauses included in this Exhibit applicable to the work specified within the Agreement are adhered to by the Contractor and its subcontractors.

2. Access To Records and Reports.

Applicability: All Contracts

Contractor shall comply with the following requirements:

(a) Record Retention. Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-Contracts, leases, subcontracts, arrangements, other third-party Contracts of any type, and supporting materials related to those records.

(b) Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. §200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

(c) Access to Records. The Contractor agrees to provide access to SMART, FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required. Contractor shall also permit SMART, the

Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives, to inspect all project work, materials, payrolls, and other data, and to audit the books, records, and accounts of Contractor and its subcontractors pertaining to the Agreement. In accordance with 49 U.S.C. § 5325(g), Contractor shall require each subcontractor to permit SMART, the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that subcontractor agreement and to audit the books, records, and accounts involving that subcontractor agreement as it affects the Agreement.

(d) Access to the Site of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

(e) State Audit, Inspection, Access to Records and Retention of Records Requirements. Contractor and its subcontractors agree to comply with Title 2, Code of Federal Regulations (CFR), Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

Contractor and its subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred Project costs and matching funds by line. The accounting system of the Contractor and all subcontractors shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices. All accounting records and other supporting papers of Contractor and its subcontractors connected with Project performance under this Agreement shall be maintained for a minimum of three (3) years from the date of final payment to SMART and shall be held open to inspection, copying, and audit by representatives of SMART, Caltrans, the California State Auditor, and auditors representing the federal government. Copies thereof will be furnished by Contractor and its subcontractors upon receipt of any request made by SMART, Caltrans, or its agents. In conducting an audit of the costs and match credits claimed under this Agreement, Caltrans will rely to the maximum extent possible on any prior audit of Contractor pursuant to the provisions of State and SMART law. In the absence of such an audit, any acceptable audit work performed by SMART's external and internal auditors may be relied upon and used by Caltrans when planning and conducting additional audits.

For the purpose of determining compliance with applicable State law and SMART policy in connection with the performance of SMART's contracts with third parties pursuant to Government Code Section 8546.7, SMART, the Contractor, its subcontractors, and Caltrans, shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such materials available at their respective offices at all reasonable times during the entire Project period and for three (3) years from the date of final payment to SMART under this Agreement. Caltrans, the California State Auditor, or any duly authorized representative of Caltrans or the United States Department of Transportation, shall each have access to any books, records, and documents that are pertinent to a Project for audits, examinations, excerpts, and transactions, and Contractor and its subcontractors shall furnish copies thereof if requested.

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

The Contractor agrees that the Contract Cost Principles and Procedures at least as restrictive as 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 *et seq.*, shall be used to determine the allowability of individual items of costs.

The Contractor agrees to comply with Federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Any costs for which payments have been made to the Contractor, which are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 *et seq.*, or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, are subject to repayment by Contractor to SMART.

Any subcontract entered into as a result of this Agreement shall contain all the provisions of this section.

3. ADA Access

Applicability: All Construction, Architecture & Engineering, Operations Management, and Rolling Stock Contracts

The contractor agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by Caltrans, the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project or Services.

4. Buy America.

Applicability: All Rollingstock Purchases, Materials and Supplies Contracts, and Construction Contracts >\$150,000.

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 and 2 CFR § 200.322. Domestic preferences for procurements, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7.

Construction materials used in the Project or Services are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget, the U.S. Department of Transportation, and FTA. The Contractor acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u) and 49 C.F.R. § 661.11.

The Contractor must submit to SMART the appropriate Buy America certification. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive. For more information, please see the FTA's Buy America webpage at: <https://www.transit.dot.gov/buyamerica>.

5. Cargo Preference Requirements.

Applicability: All Rolling Stock Purchases, Materials & Supplies, and Construction Contracts which require transportation by ocean vessels.

The Contractor agrees to:

(a) to use privately owned United States flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Agreement to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels;

(b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph, to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Contractor in the case of a subcontractor's bill-of-lading); and

(c) to include these requirements in all subcontracts issued pursuant to this Agreement when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

6. Changes to Federal Requirements.

Applicability: All Contracts

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the Sonoma-Marín Area Rail Transit District and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Applicable changes to those federal requirements will apply to each Third-Party Agreement and parties thereto at any tier.

7. Civil Rights.

Applicability: All Contracts

The following Federal Civil Rights laws and regulations apply to the Agreement:

1. **Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:
 - a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.
 - b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, “Equal Employment Opportunity,” September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.
2. **Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. part 25 prohibit discrimination on the basis of sex.
3. **Nondiscrimination on the Basis of Age.** The “Age Discrimination Act of 1975,” as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.
4. **Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

Civil Rights and Equal Opportunity

The Sonoma-Marin Area Rail Transit District is an Equal Opportunity Employer. As such, SMART agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, SMART agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

Additionally, the Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age

in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any Implementing requirements FTA may issue.

4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
5. **Promoting Free Speech and Religious Liberty.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.
6. **Fair Employment and Housing Act Requirements.** Contractor and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code Sections 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code Sections 11135-11139.5), and the regulations or standards adopted by Caltrans to implement such article.

Contractor and its subcontractors shall permit access by representatives of the Department of Fair Employment and Housing and Caltrans upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours’ notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Caltrans shall require to ascertain compliance with this clause.

Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA and Caltrans.

8. Clean Air Act and Federal Water Pollution Control Act

Applicability: All Contracts > \$150,000

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401-7671(q) et seq. The Contractor agrees to report each violation to SMART, the FTA, and the Regional Office of the Environmental Protection Agency.

The Contractor also agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the FTA.

9. Clean Water Act

Applicability: All Contracts > \$150,000

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Violations must be reported to FTA and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of \$150,000:

Clean Air Act

- a. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- b. The contractor agrees to report each violation to SMART and understands and agrees that SMART will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

Federal Water Pollution Control Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to SMART and understands and agrees that SMART will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

10. Contract Work Hours and Safety Standards Act.

Applicability: All Operations Management, Rolling Stock Purchases, and Construction Contracts >\$100,000.

- a. Where applicable (see 40 U.S.C. § 3701 et seq), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II.

- b. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- c. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. SMART shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

11. Davis Bacon Act and Copeland Anti-Kickback Act

Applicability: All Construction Contracts > \$2,000

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

12. Debarment and Suspension

Applicability: All Contracts > \$25,000

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- i. Debarred from participation in any federally assisted Award;
- ii. Suspended from participation in any federally assisted Award;
- iii. Proposed for debarment from participation in any federally assisted Award;
- iv. Declared ineligible to participate in any federally assisted Award;
- v. Voluntarily excluded from participation in any federally assisted Award; or
- vi. Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by SMART. If it is later determined by SMART that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to SMART, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2

C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

13. Disadvantaged Business Enterprise (DBE)

Applicability: All Contracts

It is the policy of SMART and the United States Department of Transportation (“DOT”) that Disadvantaged Business Enterprises (“DBE’s”), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as SMART deems appropriate, which may include, but is not limited to:

- a. Withholding monthly progress payments;
- b. Assessing sanctions;
- c. Liquidated damages; and/or
- d. Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment SMART makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, the contractor shall utilize the specific DBEs listed unless the contractor obtains SMART’s written consent; and that, unless SMART’s consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

14. Energy Conservation.

Applicability: All Contracts

The Consultant agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act. The consultant agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA funds required under FTA regulations, “Requirements for Energy Assessments,” 49 CFR part 622, subpart C.

15. Fly America.

Applicability: All Contracts

a) Definitions. As used in this clause -

- 1) "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
- 2) "United States" means the 50 States, the District of Columbia, and outlying areas.
- 3) "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, SMART, and others to use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

e) Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract

16. Incorporation of Federal Transit Administration (FTA) Terms.

Applicability: All Contracts

The provisions within include, in part, certain Standard Terms and Conditions required under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, detailed in 2 CFR § 200 or as amended by 2 CFR § 1201, or the most recent version of FTA Circular 4220.1 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any

act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

17. No Obligation by the Federal Government.

Applicability: All Contracts

The Sonoma-Marina Area Rail Transit District (SMART) and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

18. Notice to FTA and U.S. DOT Inspector General of Information Related to Fraud, Waste, Abuse, or Other Legal Matters.

Applicability: All Contracts > \$25,000

If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the SMART is located. The Contractor must include a similar notification requirement in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

- (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
- (3) SMART must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which SMART is located, if SMART has knowledge of potential fraud, waste, or abuse occurring on a Project or Service receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project or Service is subject to this Agreement or another agreement between SMART and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of SMART. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other

credible information in the possession of SMART.

19. Patent Rights and Rights in Data and Copyrights Requirements (Federal Requirements)

Applicability: All Research Project Contracts

Intellectual Property Rights

This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the Sonoma-Marín Area Rail Transit District intellectual property access and licenses deemed necessary for the work performed under this Contract and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT.

The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Contract and shall, at a minimum, include the following restrictions:

Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution.

For purposes of this Contract, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

1. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
 - a. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
 - b. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
2. Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to

permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

3. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
4. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
5. Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.
6. The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

20. Rights to Inventions Made Under a Contract or Agreement / Intellectual Property Provisions (State of CA Provisions)

Applicability: All Research and Development Contracts

Contractor agrees to comply with the requirements of 37 C.F.R. §401.2(a), "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts and Cooperative Agreements" and any implementing regulations issued by SMART.

Inventors are any idea, methodologies, design, concept, technique, invention, discovery, improvement or development regardless of patentability made solely by SMART, Contractor, and all subcontracts or jointly with SMART, Contractor, and all subcontractors during the term of this Agreement and in performance of any work under this Agreement, provided that either the conception or reduction to practice thereof occurs during the term of the Agreement and in performance of work issued under this Agreement.

Caltrans will have Government Purpose Rights to any inventions created as a result of the Project. "Government Purpose Rights" are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights, and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose any said invention. "Government Purpose Rights" also include the right to release or disclose said invention(s) outside Caltrans for any State government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the invention(s) for any State government purpose. "Government Purpose Rights" do not include any rights to use, modify, reproduce, perform, release, create derivative works from, or disclose the invention(s) for any commercial purpose.

If additional uses are reasonably determined to be needed by Caltrans for public outreach purposes, Contractor and SMART shall obtain rights and grant Caltrans and its agents said additional rights for use of the "Before" and "After" project photos, Artwork created or produced for Project under this Agreement, and educational programming created or produced for Project under this Agreement. The grant will be an irrevocable, non-exclusive, perpetual, royalty-free, sublicensable, unlimited, worldwide license.

If Contractor or Subcontractors become aware of any possible infringement regarding intellectual property rights in the course of performing any work under this Agreement, Contractor and subcontractors shall immediately notify SMART in writing.

21. Program Fraud and False or Fraudulent Statements and Related Acts

Applicability: All Contracts

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project or Service. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

22. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.

Applicability: All Contracts

- a) SMART, Contractors, and Subcontractors are prohibited from obligating or expending loan or grant funds to:
 - 1) Procure or obtain;
 - 2) Extend or renew a contract to procure or obtain; or
 - 3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- (ii) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- (iii) Telecommunications or video surveillance services provided by such entities or using such equipment.
- (iv) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- c) See Public Law 115-232, section 889 for additional information.
- d) See also § 200.471.

23. Prompt Payment.

Applicability: All Contracts

The contractor shall promptly pay any and all subcontractors by an instrument that guarantees availability of funds immediately upon deposit of said instrument. The contractor shall include, in its monthly invoice submission to SMART, amounts to pay for all subcontractors' acceptable invoices, no later than 30 days after receipt of such

invoices. Unless otherwise approved in writing by SMART, the contractor shall, within ten (10) days after receipt of the payment made by SMART, pay to each of its immediate subcontractors for satisfactory performance of its contract, the amounts to which they are entitled, after deducting any prior payments and any amount due and payable to the contractor by those subcontractors. Any delay or postponement of such payment may take place only for good cause and with SMART's prior written approval. If the contractor determines the work of the subcontractors to be unsatisfactory, the contractor must immediately notify in writing SMART (with a separate notice to the Liaison Officer if the subcontractor is a DBE) and state the reasons. Failure by the contractor to comply with this requirement will be construed to be breach of contract and may be subject to sanctions as specified in the contract.

Should SMART make incremental inspections and, upon approval of the contractor's work at various stages of the contract, pay a portion of the retainage, the contractor shall promptly, within 30 days after SMART has made such payment, pay to the subcontractor who has satisfactorily completed all of its work and whose work is covered by SMART's inspection and approval, all retainage owed to the subcontractor. SMART's incremental inspections, approval or release of a portion of the retainage under this section shall not constitute acceptance."

For the purposes of this section, a subcontractor's work is satisfactorily completed when the prime contractor certifies to SMART that all the tasks called for in the subcontract have been accomplished.

24. Restrictions on Lobbying

Applicability: All Contracts > \$100,000

Conditions on use of funds.

- (a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.
- (c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.
- (d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, whether that person has made or has agreed to make any payment to influence or

attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

- (e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

Certification and disclosure.

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

- (1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or
- (2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

- (1) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or
- (2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000, Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

- (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
- (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
- (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

- (1) A subcontract exceeding \$100,000 at any tier under a Federal contract;
- (2) A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;
- (3) A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or,
- (4) A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement, Shall file a certification, and a disclosure form, if

required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

25. Safe Operation of Motor Vehicles.

Applicability: All Contracts

Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or SMART.

Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

26. Seismic Safety.

Applicability: All A&E and Construction Contracts

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Updated February 2024 Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation.

The contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

27. Simplified Acquisition Threshold

Applicability: All Contracts > \$250,000

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America’s eligibility and process requirements apply to any procurement in excess of \$150,000. 49 U.S.C. § 5323(j)(13).)

28. Solid Wastes (Recovered Materials).

Applicability: All Contracts > \$10,000

The Contractor agrees to comply with all the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. The Contractor agrees to comply with the U.S. Environmental Protection Agency (US EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials”, 40 CFR Part 247.

29. Special DOL EEO Clause

Applicability: All Construction Contracts > \$10,000

The contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60- 741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

30. Veterans Hiring Preference.

Applicability: All Construction Contracts

Veterans Employment - Construction contracts of Federal financial assistance shall

ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

31. Assumption of Risk and Indemnification Regarding Exposure to Environmental Health Hazards

In addition to, and not a limitation of, Contractor's indemnification obligations contained elsewhere in this Agreement, Contractor hereby assumes all risks of the consequences of exposure of Contractor's employees, agents, subcontractors, subcontractor's employees, and any other person, firm, or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, to any and all environmental health hazards, local and otherwise, in connection with the performance of this Agreement. Such hazards include, but are not limited to, bodily injury and/or death resulting in whole or in part from exposure to infectious agents and/or pathogens of any type, kind, or origin. Contractor also agrees to take all appropriate safety precautions to prevent any such exposure to Contractor's employees, agents, subcontractors, subcontractor's employees, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement. Contractor also agrees to indemnify and hold harmless Caltrans, the State of California, and each and all of their officers, agents, and employees, from any and all claims and/or losses accruing or resulting from such exposure. Except as provided by law, Contractor also agrees that the provisions of this paragraph shall apply regardless of the existence or degree of negligence or fault on the part of Caltrans, the State of California, and/or any of their officers, agents, and/or employees.

32. Mandatory Organic Waste Recycling

It is understood and agreed that pursuant to Public Resources Code Sections 42649.8 et seq., if Contractor generates two (2) cubic yards or more of organic waste or commercial solid waste per week, Contractor shall arrange for organic waste or commercial waste recycling services that separate/source organic waste for organic waste recycling. Contractor shall provide proof of compliance, i.e., organic waste recycling services or commercial waste recycling services that separate/source organic waste recycling, upon request from Caltrans District Partnership Liaison.

33. Conformance with National ITS Architecture

Applicability: All ITS Contracts

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards pursuant to 23 CFR § 940. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

34. Federal Tax Liability and Recent Felony Convictions

Applicability: All Contracts

(1) The contractor certifies that it:

- (a) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
- (b) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months. If the contractor cannot so certify, SMART will refer the matter to FTA and not enter into any Third Party Agreement with the Third Party Participant without FTA's written approval.

(2) Flow-Down. The Contractor shall flow this requirement down to subcontractors at all lower tiers, without regard to the value of any subagreement.

35. Severability

Applicability: All Contracts

The Contractor agrees that if any provision of this Agreement or any amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.

36. Trafficking in Persons

Applicability: All Contracts

The contractor agrees that it and its employees that participate in this contract, may not:

- (a) Engage in severe forms of trafficking in persons during the period of time that the contract is in effect;
- (b) Procure a commercial sex act during the period of time that the contract is in effect;
or
- (c) Use forced labor in the performance of the contract or subagreements thereunder.

37. Geographic Restrictions.

Applicability: All Contracts

Contractor shall refrain from using state or local geographic preferences, except those expressly mandated or encouraged by Federal statute.

38. Metric System.

Applicability: All Contracts

To the extent required by U.S. DOT or FTA, Contractor shall use the metric system of

measurement in its project activities pursuant to the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. 205a et seq.; Executive Order No 12770 “Metric Usage in Federal Government Programs, 15 U.S.C. § 205a note; and other regulations, guidelines, and policies issued by U.S. DOT or FTA. To the extent practicable and feasible, SMART agrees to accept products and services with dimensions expressed in the metric system of measurement.

39. Environmental Protection.

Applicability: All Contracts

Contractor shall comply with the following requirements:

(a) Contractor shall comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 *et seq.* consistent with Executive Order. No. 11514, as amended, “Protection and Enhancement of Environmental Quality,” 42 U.S.C. § 4321 note; PTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 *et seq.*; and joint FHWA/FTA regulations, “Environmental impact and Related Procedures,” 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

(b) Contractor shall comply with all Federal transit laws, such as 49 U.S.C. §5323(c)(2) and 23 U.S.C. §139, as applicable.

(c) Contractor shall report and require each subcontractor at any tier to report any violation of these requirements resulting from any Contract activity of Contractor or subcontractor to FTA and the appropriate U.S. EPA Regional Office.

40. Privacy Act.

Applicability: All Contracts

Contractor agrees to comply with and assures the compliance of its employees with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C § 552. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. Contractor understands that the requirements of the Privacy Act, including civil and criminal penalties for violation of the Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

41. Rights to Inventions Made Under a Contract or Agreement.

Applicability: All Research and Development Contracts

Contractor agrees to comply with the requirements of 37 C.F.R. §401.2(a), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts and Cooperative Agreements” and any implementing regulations issued by SMART.

42. Domestic Preferences for Procurements

Applicability: All Contracts

Contractor shall make every effort to provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). This section must be included in all subcontracts.

For the purposes of this section:

- 1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- 2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

43. DHS Seal, Logo, and Flags.

Applicability: All Contracts

The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FTA pre-approval.



EXHIBIT C

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

FEDERAL WAGE DETERMINATION

**PASSENGER INFORMATION DISPLAYS
PROCUREMENT, INSTALLATION & SUPPORT**

CONTRACT NO. PL-PS-24-001

**EXHIBIT C IS ON FILE WITH THE BOARD CLERK
AND AVAILABLE UPON REQUEST**



INVITATION FOR BID

FOR

**PASSENGER INFORMATION DISPLAYS
PROCUREMENT, INSTALLATION & SUPPORT**

SOLICITATION NO. PL-PS-24-001

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

Issue Date: May 29, 2024

Deadline for Bids: July 8, 2024 at 2:00pm (Pacific)

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The following Attachments and Forms are incorporated into this Invitation for Bid:

ATTACHMENTS

Attachment A:	Document 00 52 00 - Sample Agreement	
Attachment B:	Document 00 70 00 – General Conditions	
Attachment C:	General Requirements	
Attachment D:	Technical Specifications	
Attachment E:	Shelter As-Builts	
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	• FORM BF:	Bid Form
	• FORM QF:	Questionnaire and Financial Statement
	• FORM BB:	Bidder's Bond
	• Document 00 63 25:	Substitution Request
	• Document 00 61 13.16:	Payment Bond
	• Document 00 61 13.13:	Performance Bond
	• FORM EA:	Escrow Agreement for Security Deposits in Lieu of Retention

1. NOTICE INVITING BIDS

Pursuant to Public Contracts Code Section 22000, the Sonoma-Marín Area Rail Transit District (hereinafter “SMART” or “District”) has elected to participate in the Uniform Construction Cost Accounting sealed Bidding procedures process.

NOTICE IS HEREBY GIVEN that SMART will receive sealed bids for the following project:

PASSENGER INFORMATION DISPLAYS PROCUREMENT, INSTALLATION & SUPPORT

Solicitation No. PL-PS-24-001

The Sealed Bids are subject to the terms, conditions, specifications, and provisions, set forth herein.

Bid Documents will be made available on SMART’s Procurement Portal located at <https://sonomamarintrain.bonfirehub.com> and can be downloaded at no cost.

1.1 Overview

The Sonoma-Marín Area Rail Transit District (SMART) is a Special District within the State of California that owns, maintains, and operates passenger rail service in Sonoma County and Marin County.

SMART is seeking sealed bids from qualified, experienced, and licensed contractors to implement a Passenger Information Display system across SMART’s Stations. The project consists of the following:

1. Furnish twenty-four (24) Passenger Information Displays (PIDs)
2. Install, configure, and support twenty-two (22) Passenger Information Displays across SMART’s fourteen (14) stations.

Contractor shall provide and/or fabricate the brackets needed to mount the displays. Contractor shall perform the structural calculations to ensure shelters are capable of carrying the weight of the signs.

3. Furnish, configure, and support a cloud-based Content Management System for monitoring and creating real-time sign display content. The Content Management System shall include at a minimum:

- a. Two (2) administrative logins, as well as, twenty (20) general user licenses. Unique log-ins are required. Shared log-ins are not acceptable.
 - b. The ability to display GTFS static and GTFS-Realtime feeds from SMART, including GTFS-RT rider alerts, as well as, other messages such as transit and first/last mile connections.
 - c. The ability to display GBFS bikeshare information to be able to show available bikes at a particular station.
 - d. The ability to program unique content and GTFS parameters by signs, as well as, send alerts to one individual sign or platform.
4. Provide staff training on how to use the Content Management System
 5. Provide ongoing licensing and support for five years.

Engineer's Estimate

The engineer's estimate for the base bid is \$443,000.00.

Funding

Project implementation is funded by the State of California Clean California Local Grant and Local funds. Ongoing maintenance and support may be funded using Federal funds.

Completion Timeline Requirements

Delivery of Real-Time Passenger Information Displays, installation and configuration of Real-Time Passenger Information Displays, Content Management Software (CMS) set-up, configuration, and training must all be completed by November 30, 2024 per the requirements of SMART's Grant.

Qualified Product List Approval Process

This solicitation will include a product review process, which will result in SMART issuing an Approved Products List prior to the bid deadline.

Interested Bidders will submit real-time sign product specifications for SMART review.

SMART will review the submittals based on the minimum specification requirements identified in Section 1.3. SMART will issue an Approved

Products List identifying the real-time signs that meet the minimum requirements.

Bidders must bid this project using one of the real-time signs that is listed on the Approved Products List.

Roadworker Protection Training

Work will be performed within an active railroad right-of-way. Contractor's employees and subcontractor's employees who will be working onsite must complete the railroad operations and safety training before being permitted to work within the railroad right-of-way. The cost of the online training is approximately \$30.00 per person. SMART will provide a link to the training program upon execution of the contract.

DBE Participation

SMART is committed to ensuring full and open competition and equitable treatment of all potential proposers. SMART has established a Disadvantaged Business Enterprises (DBE) policy in accordance with 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all contracts and to create a level playing field on which DBE firms can compete fairly for contracts and subcontracts relating to SMART's contracting activities. Although this contracting opportunity does not have a contract-specific DBE goal, Bidders are strongly encouraged to obtain DBE participation.

SMART conducts its solicitation and procurement process electronically through a dedicated Procurement Portal located at <https://sonomamarintrain.bonfirehub.com>. Please be sure to register your company in order to obtain all bid documents, communicate with SMART, access addenda, receive notifications, and submit your proposal.

The lowest responsive responsible bidder will be awarded the agreement. The lowest bid will be determined by the "Total Bid Price" as indicated on the FORM BF – Bid Form.

1.2 Minimum Contractor Requirements

The following are the minimum requirements a Bidder must meet in order to be considered:

- A. A valid Contractor State License Board ("CSLB") "A-General Engineering Contractor's License", or "C-10 Electrical Contractor's License", or "C-45 Sign Contractor's License".

B. Active Registration with the California Department of Industrial Relations (“DIR”)

1.3 Minimum Product Specifications

A. Real-Time Signs

Below are the minimum specifications for the real-time signs:

Screen Type:	Electronic Paper or Electronic Ink
Screen Size:	32" Diagonal Total device size (with enclosure) cannot exceed footprint of shelter canopy
Exterior Color:	Black
Screen Orientation:	Landscape
Screen Resolution:	1440p or better
Viewing Angle:	At Least 160 Degrees
Color Requirements:	16-Level / 4-Bit Grey Output
Illumination Requirements:	Front light for night illumination with automatic day/night function
Water Resistance Rating:	IP65 or Better Water Resistance Rating
Power and Connectivity:	Power-over-Ethernet (POE) to power and connect the real-time signs.
Operating Temperature:	0F – 140F Logic to preemptively shut-down in the event of an unsafe temperature preferred.
Impact Rating:	IK04 or Better Impact Rating
Accessibility Features:	a) The outermost screen and viewing area must meet ADA non-glare standards. b) Text-to-Speech: Each sign must be equipped with an ADA-compliant button to actuate a text-to-speech functionality that

	<p>reads audible train arrival times for visually impaired riders.</p> <p>c) Loud-speaker system: Each sign must contain a loudspeaker system with volume control that is able to <u>clearly</u> announce the train arrival times. A robotic voice that is hard to understand is not acceptable.</p> <p>d) Devices must meet all federal and state accessibility requirements, including but not limited to Chapter 11B of the California Building Code, the Americans with Disabilities Act, and Section 508 of the Rehabilitation Act, as Amended. This applies to hardware, software, and installation.</p>
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B. Sign Enclosure & Mount Requirements

Below are the minimum specifications for the real-time sign *enclosures* and *mounts*:

Low Profile:	Enclosure and Brackets shall be low-profile in design, must be able to be affixed to existing shelters with minimal drilling into the metal shelter assemblies.
Exterior Color:	Black
Tamperproof Requirement:	Screen assembly must be enclosed in a tamper proof and vandalism-proof enclosure.
Anti-Graffiti Coating:	Vandalism-proofing must include sacrificial anti-graffiti coating on outermost screen/viewing area.
Accessibility Features:	The ADA-compliant button to actuate a text-to-speech functionality must be mounted in accordance with ADA regulations. Wires must be concealed and button must be tamperproof.

C. Content Management Software (CMS)

Below are the minimum specifications for the Content Management Software System:

System Type:	Cloud-Based
User Log-Ins Required:	(2) Administrative Logins (20) General user licenses. Unique log-ins are required. Shared log-ins are not acceptable.
Content Requirements:	a) The ability to display GTFS static and GTFS-Realtime feeds from SMART, including GTFS-RT rider alerts, as well as, other messages such as transit and first/last mile connections. b) The ability to assign individual signs to SMART GTFS Stop IDs and display GTFS-RT rider alerts by Stop ID to the respective sign. c) The ability to display GBFS bikeshare information to be able to show available bikes at a particular station is <u>preferred</u> .
Language Requirements:	Software must be able to display and transmit both English and Spanish.
Accessibility Features:	Software must have the ability for text-to-speech functionality. Software must meet all federal and state accessibility requirements, including but not limited to Chapter 11B of the California Building Code, the Americans with Disabilities Act, and Section 508 of the Rehabilitation Act, as Amended.

D. Warranty Requirements

Below are the minimum Product Warranty Requirements:

Minimum Product Warranty:	2 Years <i>Options to extend thereafter preferred</i>
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1.4 Product Specification Submission Process

All Bidders that submit a Bid must bid using real-time signs that are included on SMART'S Approved Product List that will be issued prior to the bid deadline.

To be included on the Approved Product List, Bidders shall submit product specifications for review to khendricks@sonomamarintrain.org no later than the deadline identified in the Procurement Schedule (Section 1.12).

SMART will evaluate the submitted product specifications to ensure they meet or exceed the minimum specifications as set forth in Section 1.3 A. All products that meet or exceed the minimum specifications will be approved and eligible for bidding during the bid submission process.

Product Specifications submitted after the deadline will not be reviewed and subsequently rejected at the time of bid.

Product Specification Submission Requirements:

Clearly identify the Proposed Real-Time Signs:

1. Brand Name
2. Make or Model Number
3. Provide Technical Specifications and Part Illustrations to clearly demonstrate that the product meets all minimum specifications identified in Section 1.3 A.
4. Pictures

SMART shall be the sole judge as to the suitability of the proposed product.

1.5 Prevailing Wage Requirements

This work is subject to compliance monitoring and enforcement by the Department of Industrial Relations. The successful Bidder must comply with all prevailing wage laws applicable to the scope of services and

related requirements contained in the Agreement.

All Bidders and any Subcontractors listed, must be currently registered and qualified to perform public work pursuant to Labor Code section 1725.5. SMART requires proof of current registration by Contractor and all listed Subcontractors as a condition to be awarded a contract, subject only to the allowances of Labor Code section 1771.1.

Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates in the county, or counties, in which the work is to be done have been determined by the Director of the California Department of Industrial Relations ("DIR"). Copies of the general prevailing wage rates and per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the Department of Industrial Relations, are located at <http://www.dir.ca.gov/DLSR/PWD/index.htm> and are deemed included in this Solicitation. The prevailing wage rates may also be reviewed at the District's offices.

Contractor shall post the applicable prevailing wage rates at the Site, in addition to all other job site notices prescribed by regulation.

Federal Prevailing Wage Requirements

Pursuant to Title 23, Chapter 1, Section 113 and Title 29 of the United States Code, Contractor shall pay no less than the prevailing wage rates as determined by the Secretary of Labor. Contractor shall be expected to comply with all Federal prevailing wage requirements for the work being performed under this Agreement.

The Federal wage determination is incorporated into the "Document 00 52 00 - Sample Agreement" included in this Solicitation.

In the event that the State of California's prevailing wage rates are higher than the federal prevailing wage rates, the Contractor is required to pay the higher rates.

1.6 Department of Industrial Relations ("DIR") Registration

In order to bid and perform public works on this project, all tiers of subcontractors, including trucking/hauling firms that are subcontracted to perform services, must be registered with the California Department of Industrial Relations (DIR), pursuant to Senate Bill 854, at the time bids are due and throughout the duration of the project. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the DIR pursuant to Labor Code Section 1725.5

[with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

1.7 California Air Resources Board (“CARB”) Requirements

The California Air Resources Board (“CARB”) implemented amendments to the In-Use Off-Road Diesel-Fueled Fleets Regulations (“Regulation”) which are effective on January 1, 2024 and apply broadly to all self-propelled off road diesel vehicles 25 horsepower or greater and other forms of equipment used in California. A copy of the Regulation is available at <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/off-road-diesel/appa-1.pdf>. Bidders are required to comply with all CARB and Regulation requirements, including, without limitation, all applicable sections of the Regulation, as codified in Title 13 of the California Code of Regulations section 2449 et seq. throughout the duration of the Project. Bidders must provide, with their Bid, copies of Bidder’s and all listed subcontractors’ most recent, valid Certificate of Reported Compliance (“CRC”) issued by CARB. Failure to provide valid CRCs as required herein may render the Bid non-responsive.

SMART is a Public Works Awarding Body, as defined under Title 13 California Code of Regulations section 2449(c)(46). Accordingly, Bidders must submit, with their Bids, valid Certificates of Reported Compliance (“CRC”) for the Bidder’s fleet and for the fleet(s) of its listed subcontractors (including any applicable leased equipment or vehicles). Bidder must additionally complete and submit the Fleet Compliance Certification, included in the Bid Documents. Failure to provide a CRC for the Bidder, and for all listed subcontractors, or failure to complete the Fleet Compliance Certification, may render the Bid non-responsive.

1.8 Bid Guaranty

Each bid must be accompanied by a Bid Guaranty in the form of a Certificate of Deposit, Certified or Cashier’s Check, or Bid Bond, in an amount equal to at least ten percent (10%) of the Bidder’s Grand Total Bid Price. The Bid Guaranty will be retained by the District and applied to any and all damages sustained by the District in the event that the successful Bidder fails or refuses to enter into the Contract awarded to it and to furnish all required bonds and Certificates of Insurance.

Bidder must submit their bid guaranty no later than the date and time of the bid deadline. The Bid Guaranty must be received at the following location prior to the bid deadline:

Sonoma-Marín Area Rail Transit District
Attn: Procurement Department
5401 Old Redwood Hwy, Suite 200
Petaluma, CA 94954
Solicitation # PL-PS-24-001
Passenger Information Displays
Procurement, Installation, and Support
(Name and Address of Bidder)

Retaining of Bid Guaranty: SMART may retain the Bid Guaranty of other than the Apparent Low Bidder for a period of sixty (60) calendar days after the award or until full execution of the Contract, whichever first occurs. Upon full execution of the Contract, SMART shall return to the respective unsuccessful Bidders their Bid Guaranty.

1.9 Contract Bonds

A. General Information

All alterations, extension of time, extra and additional work, and other changes authorized by the Contract Documents may be made without securing the consent of the surety or sureties on the Contract Bonds.

B. Payment Bond (Required if Award is Greater than \$25,000)

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

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

Bidder shall submit the Payment Bond on Document 00 61 13.16 "Payment Bond" or another form approved by SMART.

C. Performance Bond (Required if Award is Greater than \$25,000)

Contractor shall be required to furnish a Performance Bond in an amount not less than 100 percent of the Contract price, excluding allowances. Performance bond shall be executed by an admitted surety insurer (California Civil Code Section 9554). An "admitted

surety insurer” shall be defined as follows:

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

Bidder shall submit the Performance Bond on Document 00 61 13.13 “Performance Bond” or another form approved by SMART.

1.10 Retention

Retention of each progress payment will be in effect in the amount of 5%.

Pursuant to Public Contract Code Section 22300, the successful Bidder may submit certain securities in lieu of SMART withholding retention of payments during the Project. Please reference FORM EA for the Escrow Agreement for Security Deposits in Lieu of Retention.

1.11 Insurance Requirements

SMART is an active railroad and the insurance requirements for this Agreement may require special railroad endorsements and/or railroad protective insurance. Please carefully review the requirements identified in the “Document 00 52 00 Sample Agreement”. Contractor is required to obtain and maintain the insurance policies listed.

1.12 Equal Employment Opportunity

In connection with the performance of the resulting Agreement, Contractor shall be in full compliance with all applicable federal, state, and local laws, rules, and regulations in regard to Equal Employment, and more specifically, nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical conditions, disability, or any other reason.

Furthermore, Contractor shall be in full compliance with all applicable Federal, State, and Local safety and health standards, laws, and regulations.

1.13 Procurement Schedule

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

<u>Date</u>	<u>Event</u>
May 29, 2024	Issue Invitation for Bid
June 7, 2024	Pre-Bid Meeting (Virtual), 10:00am (Pacific)
June 18, 2024	Deadline for Product Specification Submission, 2:00pm (Pacific)
June 24, 2024	Approved Product List Issuance
June 28, 2024	Deadline for Questions, 5:00 PM (Pacific)
July 1, 2024	Final Addendum Issued by SMART
July 8, 2024	Bids Due to SMART, 2:00 PM (Pacific)
July 8, 2024	Public Bid Opening, 2:30 PM (Pacific)
July 8, 2024	Notice of Apparent Low Bidder Issued
July 8, 2024 – July 12, 2024	Evaluation of Bids
July 12, 2024	Notice of Intent to Award Issued
August 14, 2024	Board of Director Review (As Required)
August 15, 2024	Award Agreement

1.14 Pre-Bid Meeting

SMART will host a virtual Pre-Bid Meeting at 10:00 AM on Friday, June 7, 2024 via Zoom Teleconference.

Registration for the Pre-Bid Meeting is required in order to attend. Register at:

https://sonomamarintrain-org.zoom.us/meeting/register/tZErcumqrT8pEtHK7PWH5_2nMsNV5F1C0AVP

Bidders are highly encouraged to attend the Pre-Bid Meeting. The Pre-Bid Meeting is expected to last approximately 1 hour.

1.15 Public Bid Opening Information

Public Bid Opening to take place at 2:30 p.m. (Pacific) at 5401 Old Redwood Hwy, First Floor, Petaluma, CA 94954 on the day of the bid deadline. Electronically sealed bids received will be read out loud and tabulated. *Attendance is NOT mandatory in order to win the award.*

Bid results will be made public and posted to SMART's procurement portal following the opening. SMART's procurement team will determine the Apparent Low Bidder at this public bid opening. Bids will not be made

available for public inspection at the bid opening in order for the District to thoroughly review all submittals.

1.16 Bidder Questions and Clarification Requests

All questions, inquiries, requests for information, requests for clarification and other communications regarding the Invitation for Bids must be submitted using the District's Procurement Portal located at <https://sonomamarintrain.bonfirehub.com> by clicking on the Vendor Discussions tab of the message section located on the project page.

The questions submitted should reference the exact section of the Invitation for Bid, Contract, or other document when submitting the request. Requests will only be reviewed if submitted by the date specified in the Procurement Schedule.

The District may, in its sole discretion, choose whether or not to respond to questions received. If the District chooses to respond, it may respond by a written Addendum to the Invitation for Bid Documents. Any response that the District may choose to make will not alter the Invitation for Bid unless it is incorporated into an Addendum. It is the Bidder's responsibility to check the District's Procurement Portal regularly for updates to the solicitation.

If a Bidder fails to notify SMART at least seven (7) days prior to the date for submission of Bids of a known error in the Invitation for Bid, or an error that reasonably should have been known, the Bidder shall submit a Bid at its own risk. SMART reserves the right not to consider requests for clarification. Any changes or modifications to the Invitation for Bid within the timeframe will be issued as an Addenda.

Rules of Contact

- a. Bidders shall only correspond or communicate with the District regarding this Invitation for Bid through the District's Procurement Portal Vendor Discussions tab;
- b. Bidders are prohibited from contacting SMART employees or officials regarding the Invitation for Bid, except through the process identified above;
- c. Bidders shall not contact any person serving on the evaluation regarding this Invitation for Bid;
- d. Any communications from the Bidders determined to be improper, at the sole discretion of the District, may result in disqualification of the

Bidder;

- e. The District will not be bound by any oral exchange or any other information or exchange that occurs outside the official process specified herein;

1.17 Brand or Approved Equal Substitutions

- a. It is understood that specifying a brand name or specific types of components and/or equipment in these solicitation documents shall not relieve the bidder from its responsibility to furnish the end product in accordance with the warranty and contractual requirements. The bidder is responsible for notifying the District of any inappropriate brand names, or types of components and/or equipment that may be called for in these solicitation documents, and to propose a suitable substitute for consideration. If the phrase “or approved equal” is inadvertently omitted, it is implied after any brand name.
- b. Unless otherwise specifically provided in the solicitation documents, reference to any equipment, material, article or patented process by trade name, make, or catalog number shall be regarded as establishing a standard of quality and shall not be construed as limiting competition; and a bidder may, at its option, use any equipment, material, article, or process which, in the judgement of the District, is equal to that designated. To do so a bidder shall furnish, at its own expense, all test results, technical data, and background information required by the District in making the determination as to whether the proposed equipment, material or article or process, in the judgement of the District, is equal to that designated.
- c. The District shall be the sole judge as to the comparative quality and suitability of alternative equipment, articles, material or process, and its decision shall be final.
- d. Requests for Approved Equals must be in writing on SMART’s “Document 00 63 25 - Substitution Request Form” and submitted using the District’s Procurement Portal located at <https://sonomamarintrain.bonfirehub.com> by clicking on the Vendor Discussions tab of the message section located on the project page. Bidders must submit the request by the Deadline for Questions identified in the “Procurement Schedule”. After that date, SMART will not accept “or equal” substitution requests. To assess “or equal” acceptability of product or system, the Bidder shall provide all information and documentation required for SMART to be able to make a determination. Insufficient information will be grounds for rejection of substitution. SMART shall issue in writing its decision as to whether the proposed substitute item is an Equal item via the issuance of an Addendum.

1.18 Addenda

The District reserves the right to issue Addenda at any time during the period of the procurement. Any such Addenda will be bound into and included as part of the awarded Agreement, as appropriate. The District will post Addenda on the project tab at <https://sonomamarintrain.bonfirehub.com>. It is the Bidder's responsibility to check the District's Procurement Portal regularly for updates to the solicitation. Bidders shall be responsible for providing copies of any Addenda to their Subcontractors.

Persons or firms that obtain the Invitation for Bid from sources other than the District bear the sole responsibility for obtaining, from such sources any Addenda issued by the District for the Invitation for Bid. The District will not be bound by any explanation, clarification, or interpretation, oral or written, regardless of who made it, that is not incorporated into the Invitation for Bid by an Addendum.

2. INSTRUCTIONS TO BIDDERS

2.1 Bid Submission Process

Bidders shall submit one electronic Bid. The Bid shall be uploaded at <https://sonomamarintrain.bonfirehub.com> within the project page for this solicitation by the bid deadline identified in the Procurement Schedule. **Hardcopy bids, bids submitted by email, and faxed bids will not be considered.** SMART is not responsible for submissions delayed for any reason. The online submission system will not allow for any submission to be accepted after the stated date and time.

Bids shall be prepared using the following format:

Part	Contents
A	Bid Form
B	Product Specifications
C	Questionnaire and Financial Statement
D	Required Certificates and Forms

PART A. BID FORM

- a) FORM BF - SMART's Bid Form

PART B. PRODUCT SPECIFICATIONS

- a) Submit the Brand, Model, and product specifications for the Real-Time Signs that are being bid.

Must be included on the Approved Products List issued by SMART.

- b) Submit specifications on the Content Management System (CMS) that are being bid.

Must meet the minimum requirements for Content Management System identified in Section 1.3 C.

PART C. QUESTIONNAIRE & FINANCIAL STATEMENT

- a) FORM QF - Questionnaire & Financial Statement

PART D. REQUIRED CERTIFICATES AND FORMS

- a) W-9 Tax Form or Equivalent
- b) Certificates of Reported Compliance (“CRC”) for the Bidder’s fleet and for the fleet(s) of its listed subcontractors (including any applicable leased equipment or vehicles) and any other supporting documentation that is required by the Fleet Compliance Certification included in the FORM BF.
- c) Disadvantaged Business Enterprise (DBE) and/or Small Business Enterprise (SBE) certification document(s) –Required if you stated yes on SMART Bid Form (Form BF)

2.2 Conditions of Bid

By submitting a Bid, the Bidder is agreeing that it has undertaken all necessary due diligence and accepts all of the terms and conditions included in this Invitation for Bid and SMART’s Sample Agreement.

2.3 Modifications to a Bid prior to Due Date

In the event a Bidder submits a Bid and needs to make revisions or withdraw their Bid prior to the Bid Deadline, instructions for doing so can be found here: <https://vendorsupport.gobonfire.com/hc/en-us/articles/6848514343447-Can-I-revise-my-submission>. Once the Submission Deadline has passed, revisions are not permitted.

2.4 Cost of Bidding

The Bidder shall bear all costs and expenses whatsoever for the preparation, submittal, discussions, interviews, and negotiations related to the Bid.

2.5 Bid Irregularities and Discrepancies

Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between written words and figures will be resolved in favor of the words.

Symbols such as commas and dollar signs will be ignored and have no mathematical significance in establishing any unit price or item total or lump sums. Written unit prices, item totals and lump sums will be interpreted according to the number of digits and, if applicable, decimal placement. Cents symbols also have no significance in establishing any unit price or item total since all figures are assumed to be expressed in United States dollars and/or decimal fractions of a dollar.

2.6 Multiple Bids

More than one Bid from a Bidder will not be considered.

2.7 Relief of Bidders

Pursuant to Public Contract Code sections 5100 to 5107, inclusive, concerning relief of bidders and in particular to the requirement therein, that if the bidder claims a mistake was made in the bid presented, the bidder shall give the District written notice within five (5) working days after the opening of the bid of alleged mistake, specifying in the notice detail how the mistake occurred.

2.8 General Bid Information

- A. Bids shall be submitted as described in the Invitation for Bid documents and shall be on the forms provided.
- B. All blank spaces in the Bid Forms must be completed as required.
- C. All price information shall be shown clearly legible, in figures, where required. No changes may be made on the Bid Forms.

- D. The successful bidder may be required to prepare a Schedule of Values based on the bid items on the Bid Form submitted to provide additional detail which will be used in conjunction with payment.

2.9 Warranty of Title

By submitting a bid, Bidder warrants to SMART that the title to the material, supplies or equipment covered by the Agreement or Purchase Order, when delivered to SMART is free from all liens and encumbrances.

2.10 Warranty of Fitness

By submitting a bid, Bidder warrants to SMART that all materials furnished meet the requirements and conditions required by SMART under this Solicitation; are fit for the purpose intended and fulfills its design functions; are free of all patent and latent defects in design, materials, and workmanship; and perform satisfactorily.

2.11 Non-Collusion Certification

By submitting a bid, the Bidder represents and warrants that such bid is genuine and not sham or collusive in the interest or in behalf of any person not therein named, and that the bidder has not, directly or indirectly, induced or solicited any other bidder to put in a sham bid, or any other person, firm, or corporation to refrain from bidding, and that the bidder has not in any manner sought by collusion to secure to the bidder an advantage over any other bidder.

3. BID EVALUATION

Following the Public Bid Opening, SMART's procurement staff will review and evaluate the bids for responsiveness and responsibility prior to issuing the Notice of Intent to Award.

3.1 Responsiveness Evaluation

Responsiveness is determined by responding to all the mandatory bidding requirements.

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

- a) The Bid is not properly signed by an authorized party.
- b) Failure to provide all required parts of the Bid.

- c) The Bid is illegible or contains omissions, erasure, alteration, or items not called for in the Invitation for Bid.
- d) The Bid contains unauthorized conditions or other irregularities of any kind, if the District determines that such conditions or irregularities make the Bid incomplete, indefinite, or ambiguous as to its meaning.
- e) Any alterations of forms, without prior approval of the District.
- f) Requested information deemed material by the District is not provided.
- g) Failure to acknowledge receipt of all Addenda.
- h) More than one Bid is received from a Bidder.
- i) The Evaluation Committee is not able to confirm the accuracy of all technical data, qualifications, or other information provided in the Bid.
- j) Due to an organizational conflict of interest, the Bidder has an unfair advantage, in the opinion of the District.
- k) Any other reason for which the District determines that the Bid is non-responsive.

3.2 Responsibility Evaluation

As a pre-requisite to an award of a Contract, the District will determine whether the low bidder meets the definition of a “responsible bidder” as set forth in Public Contract Code Section 1103: “a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the work.”

Additionally, the District will ensure the bidder meets the definition of “responsible contractors” as stated in 49 U.S.C. 5325 and 2 CFR Part 200.318 (h).

In order to evaluate Bidder’s ability to perform and provide the work to SMART’s satisfaction, SMART may conduct reasonable investigations and reference checks of Bidder, proposed Subcontractors, suppliers and other persons and organizations as SMART deems necessary to assist in the evaluation of any Bid. Submission of a Bid constitutes Bidder’s consent to the foregoing. SMART shall have the right to consider information provided by sources other than Bidder. SMART shall also have the right to communicate directly with the Bidder’s surety regarding the Bidder’s Bonds.

Additionally, the District may review any information about the bidder, including information submitted with FORM QF “Questionnaire & Financial Statement”, evidence of good standing with the California Secretary of State, registration status with the System for Award Management (“SAM”) at www.sam.gov, licensing agencies, regulatory agencies, and any other source deemed applicable by SMART.

Failure to so demonstrate responsibility may result in the rejection or disqualification of the low-bidder. In such event, the second lowest bidder may be issued a Notice of Award.

3.3 Single Bid Response

In the event of a single-bid response, SMART reserves the right to conduct a price and/or cost analysis of the bid to verify that the bid price is fair and reasonable. The Bidder will be expected to cooperate in this process and to submit cost and pricing data to verify that the bid price is fair and reasonable. The right of examination will extend to all documents necessary to permit adequate evaluation of the cost of the product(s) and the prices quoted. Failure to submit the data as requested by SMART may result in the Bidder being declared non-responsive.

4. AWARD

4.1 No Obligation to Award

The District shall be under no obligation to award an Agreement should the District decide, in its sole discretion, that it is in its best interests not to award the Agreement. At its discretion, the District may cancel the procurement in its entirety, and re-procure by any method at a later date.

4.2 Award

The District intends to award the Agreement to the lowest responsive responsible bidder whose bid complies with the specifications in a manner satisfactory to SMART's best interests, as determined by SMART.

Except as permitted by applicable law, no Bidder may withdraw its bid for a period of ninety (90) calendar days after the date of bid opening. Each Bidder will be notified of any award of the Contract by the District.

4.3 Execution of Contract

The successful Bidder shall execute and submit the following documents to SMART within five (5) Business Days following the issuance of the Notice of Award:

- a. Agreement
- b. Insurance Certificates and Required Endorsements
- c. Contract Bonds (Payment Bond, Performance Bond, etc.)

4.4 Failure to Execute Contract

Failure of the winning bidder to promptly and properly execute the Contract or furnish acceptable Contract bonds, or certificates of insurance, shall be just cause for the cancellation of the award, the forfeiture of such bidder's Bid Guaranty (If Required), and debarment from bidding on future SMART opportunities.

4.5 Notice to Proceed

After the execution of the Contract and submission of the required Contractor's Bonds and Certificates of Insurance, SMART will issue a Notice to Proceed, Limited Notice to Proceed, or multiple Notices to Proceed with respect to specific tasks, indicating the Work may commence on the date indicated.

4.6 Release of Information

Awardee must receive prior permission from SMART before releasing any reports, information or promotional materials prepared in connection with this Invitation for Bid and subsequent contract award. The Awardee shall not use the District's logo or any other proprietary material without the prior written permission of the District. The awardee shall provide a copy or copies of any such material to SMART for first review.

5. PROTEST PROCEDURES

The Sonoma-Marin Area Rail Transit District (SMART) maintains written procurement protest procedures that must be followed for all protests. SMART's Procurement Protest Procedures may be downloaded at <https://sonomamarintrain.org/business>. Copies of these protest procedures are also available at SMART's Headquarters Office located at 5401 Old Redwood Hwy, Suite 200, Petaluma, CA 94954. Failure to comply with the rules and procedures specified in SMART's Procurement Protest Procedures will render a protest untimely and/or inadequate and shall result in its rejection.

6. LEGAL, CONTRACTUAL, AND FINANCIAL INFORMATION

6.1 Bid and Accompanying Documents

Signing of Bid: The Bid shall be signed by all parties making up the Bidder. If the Bidder is a corporation, the Bidder shall be signed by an authorized officer of the corporation; if the Bidder is a partnership, the Bidder shall be signed by a general partner having the power to bind the partnership contractually; if the Bidder is a Joint Venture, the Bidder shall be signed by all equity members of the Joint Venture; or if the Bidder is signed by an attorney in fact for a corporation or partnership, a power of attorney shall be submitted with the Bid. A Bid not properly signed may be rejected as irregular and unauthorized.

6.2 Diversity Program

The District, a recipient of federal financial assistance from the Federal Transit Administration (FTA), the Federal Highway Administration (FHWA), and the Federal Railroad Administration (FRA), is committed to and has adopted a Diversity Program in accordance with Federal Regulation 49 C.F.R. Part 26, issued by the U.S. Department of Transportation (U.S. DOT).

It is the policy of the District to ensure nondiscrimination in the award and administration of all contracts and to create a level playing field on which Disadvantaged Business Enterprises (DBEs) can compete fairly for contracts and subcontracts relating to the District's construction, procurement and professional services activities. To this end, the District has developed procedures to remove barriers to DBE participation in the bidding and award process and to assist DBEs to develop and compete successfully outside the Diversity Program. Bidders will cooperate with the District in meeting these commitments and objectives in connection with this Solicitation.

Pursuant to 49 C.F.R. §26.13 and as a material term of any agreement with the District, the awarded bidder will be required to make the following assurance and agree to include this assurance in any agreements it makes with subcontractors in the performance of a contract awarded in connection with this Solicitation:

The Contractor/Consultant will not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The

Contractor/Consultant will carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of U.S. DOT-assisted contracts. Further, the Contractor/Consultant agrees to comply with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21. The Contractor/Consultant will obtain the same assurances from its joint venture partners, subcontractors, and subconsultants by including this assurance in all subcontracts entered into under this Contract. Failure by the Contractor/Consultant to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract.

By submitting a bid, the bidder is deemed to have made the foregoing assurance and agrees to be bound by its terms.

6.3 Conflict of Interest

Depending on the nature of the equipment or product being furnished, Vendors and Subcontractors are subject to the same conflict of interest prohibitions that apply to District employees. These include, but are not limited to, the requirements of California Law (including Government Code Sections 1090 et seq., and 87100 et seq., and Title 2, Division 6 of the California Code of Regulations). The District reserves the right to disqualify any Bidder under the Invitation for Bid if the District, in its sole discretion, deems that the potential conflicts of interest is likely to impair or restrict the Bidder's ability to furnish services contemplated within the Agreement.

At the time of submitting a Bid, Bidders shall disclose to SMART any and all potential organizational conflicts of interest. SMART will evaluate potential conflicts on a case-by-case basis. By responding to this Bid, Bidder agrees to facilitate SMART's efforts to share information, and agrees to comply with any other measures required by SMART to mitigate or eliminate conflicts of interest.

6.4 Economic Sanctions

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the

U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. As a recipient of state and federal funds, the District is prohibited from contracting with individuals or entities that are determined to be a target of Economic Sanctions. By submitting a bid, Bidder represents that it is not a target of Economic Sanctions. Should the District determine Bidder is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for rejection of the Bid any time prior to contract execution, or if determined after contract execution, shall be grounds for termination by the District.

6.5 Confidentiality

The issue of confidentiality will be stressed during the entire evaluation and selection process. The District recognizes that the integrity of any contracting process is critical to the fairness and the confidence that Bidders and the public have in a public agency. Therefore, to the extent consistent with the requirements of applicable law, the deliberations of the evaluation committee will be held in the strictest confidence, and all information provided by Bidders or generated by the evaluation will be safeguarded until the Notice of Intent to Award has been issued.

6.6 Public Disclosure

The California Public Records Act (CPRA) (Government Code Sections 7920.000, et seq.) mandates public access to public records not exempt from disclosure under the CPRA. All written correspondence, exhibits, photographs, reports, printed material photographs, tapes, electronic disks, and other graphic and visual aids submitted to the District during this procurement process, including as part of the response to this Solicitation, are, upon their receipt by District, the property of the District and are subject to the California Public Records Act (Chapter 1, commencing with section 7920.000, of Division 10 of Title 1 of the Government Code) (the "Act"). None of the aforementioned materials will be returned to the submitting parties. Respondents should familiarize themselves with the provisions of the Act.

By submitting a bid, a bidder (i) consents to the release of its bid, in the form submitted to SMART and without any redactions, and (ii) waives all claims against SMART, its directors, officers, employees, and agents, for the disclosure of all or a portion of a Bid submitted under this Invitation for Bid. In no event shall District, or any of its agents, representatives, Contractors, directors, officers, or employees be liable to any Bidder for the disclosure of all or a portion of a Bid submitted under this Solicitation.

7. EXISTING SITE CONDITIONS

This section applies to all supplied existing conditions information and all other information supplied regarding existing conditions either above ground or below ground. This section also sets forth the terms and conditions under which Bidder may review, study, use, or rely upon existing conditions information, including geotechnical data if applicable, concerning existing conditions at or contiguous to the Site. This section, the available geotechnical data, and the supplied existing conditions information are not considered Contract Documents.

7.1 General Information

Bidders may examine any available existing conditions information (e.g., record documents, specifications, studies, drawings of previous work, geotechnical data) by giving SMART reasonable advance notice.

7.2 Reports and Information

- A. Existence of Reports. SMART, its consultants, and prior contractors may have collected documents providing a general description of the Site and conditions of the Work. These documents may consist of geotechnical reports for and around the Site, contracts, contract specifications, tenant improvement contracts, as-built drawings, utility drawings, and information regarding Underground Facilities. These reports, documents and other information are not part of the Contract Documents.
- B. Inspection of Reports. Bidders may inspect reports and information regarding existing conditions, if available, at SMART's main office, and may obtain copies upon Bidder's payment for the costs of reproduction and handling. These reports, documents and other information, are not part of the Contract Documents. Nevertheless, by submitting a Bid, Bidder accepts full responsibility for reviewing, knowing and understanding the contents of all of these materials.
- C. Inclusion in Project Manual. Geotechnical reports and information regarding existing conditions may also be included in the Project Manual, if available, but neither shall be considered part of the Contract Documents.

7.3 Use of Information on Existing Conditions

- A. Aboveground Existing Conditions. Under no circumstances shall SMART be deemed to make a warranty or representation of existing aboveground conditions, as-built conditions, or other aboveground actual conditions verifiable by reasonable independent investigation. These conditions are verifiable by Bidder by the performance of its own independent investigation that Bidder must perform prior to bidding and Bidder must not rely on the information supplied by SMART regarding existing conditions. Bidder represents and agrees that in submitting its Bid, it is not relying on any information regarding existing conditions supplied by SMART.
- B. Underground Facilities. Information supplied regarding existing Underground Facilities at or contiguous to the Site is based on information furnished to SMART by others (e.g., the builders of such Underground Facilities or others). Except as expressly identified within the Invitation for Bid Documents, SMART does not assume responsibility for the accuracy, completeness or thoroughness of this information, and Bidder is solely responsible for any interpretation or conclusion drawn from this information. Except as expressly identified within the Invitation for Bid Documents, SMART will be responsible only for the general accuracy of information regarding its own Underground Facilities. This express assumption of responsibility applies only if Bidder has conducted the independent investigation required of it and discrepancies were not apparent.

7.4 Limited Reliance Permitted on Certain Information

- A. Geotechnical Data. Except as expressly identified within the Invitation for Bid Documents, SMART does not warrant, and makes no representation regarding, the accuracy or thoroughness of any geotechnical data. Bidder represents and agrees that in submitting its Bid, it is not relying on any geotechnical data supplied by SMART, except as specifically set forth herein.
- B. Technical Data. Bidder may rely upon the general accuracy of the “technical data” contained in the geotechnical reports and existing conditions information identified above, but only insofar as it relates to subsurface conditions, provided Bidder has conducted the independent investigation required of it and discrepancies were not apparent. The term “technical data” in the referenced reports and drawings shall be limited as follows:
 - 1) The term “technical data” shall include actual reported depths, reported quantities, reported soil types, reported soil conditions, and reported material, equipment, or structures that were encountered during subsurface exploration.

- 2) The term “technical data” does not include, and Bidder may not rely upon, any other data, interpretations, opinions or information shown or indicated in such drawings or reports that otherwise relate to subsurface conditions or described structures.
- 3) The term “technical data” shall not include the location of Underground Facilities.
- 4) Bidder may not rely on the completeness of reports and drawings for the purposes of bidding or construction. Bidder may rely upon the general accuracy of the “technical data” contained in such reports or drawings.
- 5) Bidder is solely responsible for any interpretation or conclusion drawn from any “technical data” or any other data, interpretations, opinions, or information contained in supplied existing conditions information.

7.5 Investigations

- A. Before submitting a Bid, each Bidder shall be responsible to obtain such additional or supplementary examinations, investigations, explorations, studies and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site or otherwise, which may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Bidder and safety precautions and programs incident thereto or which Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price and other terms and conditions of Contract Documents.
- B. SMART has provided time in the period prior to bidding for Bidder to ask questions.
- C. Notwithstanding the foregoing, Potential contaminates may be encountered along the SMART right-of-way during Contract work that were not included in the contract documents. If hazardous materials are encountered, the Contractor shall immediately notify SMART and determine the limits of the hazardous materials. SMART will retain the risk for costs that arise due to the discovery of unanticipated hazardous materials during the performance of the work. SMART shall have no responsibility or liability for any hazardous materials generated by the Contractor or its subcontractors. The Contractor shall be responsible to arrange the necessary resources to be able to remove

and dispose of such materials in a timely manner and in accordance with all applicable requirements.

8. DISTRICT'S RESERVATION OF RIGHTS

In connection with this procurement, the District reserves to itself all rights (which rights shall be exercisable by the District in its sole discretion) available to it under the Public Contract Code and applicable law, including without limitation, the following, with or without cause and with or without notice:

- a) Reject any or all Bids, or information submitted related to a Bid;
- b) Issue a new Invitation for Bid, or modify dates set or projected in the Invitation for Bid;
- c) Cancel, modify, or withdraw the Invitation for Bid, in whole or in part at any time prior to the execution of the Agreement without incurring any cost obligations or liabilities;
- d) Issue Addenda, supplements and modifications to the Invitation for Bid;
- e) Modify the Invitation for Bid process;
- f) Appoint an Evaluation Committee to review Bids and to consider the advice and assistance of non-District experts in any subject matter in Bid evaluation;
- g) Hold meetings and conduct discussions and correspondence with a Bidder to seek an improved understanding and evaluation of the Bid;
- h) Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the Bid;
- i) Waive weaknesses, informalities, and minor irregularities in Bids;
- j) Disqualify any Bidder that changes its organization (as represented in its Bid) without District written approval;
- k) Hold the price of bids under consideration for up to 90 calendar days after the bid deadline until the Award is made unless there is a mutual agreement to extend the 90-day time limit as provided in the Invitation for Bid;
- l) Disclose information contained in the Bids to the public as described herein;

- m) Refuse to consider a Bid, once submitted, or reject a Bid if such refusal or rejection is based upon, but not limited to, the following;
- n) Failure on the part of a Principal Participant to pay, satisfactorily settle, or provide security for the payment of claims for labor, equipment, material, supplies, or services legally due on previous or ongoing contracts;
- o) More than one bid submitted by the same bidder for the same work under the Bidder's own name or under a different name;
- p) Evidence of collusion between a prospective Bidder (or any Principal Participant or Designer) and other Bidders (or Principal Participants or Designers);
- q) Further negotiate pricing, or terms and conditions, in advance of issuing an Agreement (If Allowable);
- r) Exercise any other right reserved or afforded to the District under this Invitation for Bid or under the Public Contract Code and applicable law; and/or
- s) SMART may require the apparent low bidder to submit cost data in sufficient detail to permit analysis of the cost elements that comprise the bid prices. In such instances, the apparent low bid may, at the discretion of SMART, be subject to audit.
- t) The Bidder acknowledges that, by submitting a Bid in response to this Invitation for Bid, it agrees with these disclaimers and waives any right to legally challenge or protest any District's actions that exercise these disclaimers.



ATTACHMENT B

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

00 70 00

GENERAL CONDITIONS

**PASSENGER INFORMATION DISPLAYS PROCUREMENT,
INSTALLATION & SUPPORT**

CONTRACT NO. PL-PS-24-001

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1 INTERPRETATION OF CONTRACT

1.1 Defined Terms

All abbreviations and definitions of terms used and not otherwise defined in this Document 00 70 00 are set forth in Section 01 42 19 (References Standards). This Document 00 70 00 subdivides at first level into Articles, and then into paragraphs.

1.2 Contract Documents

- 1.2.A Contract Documents are complementary; what is called for by one is as binding as if called for by all. Contract Documents shall not be construed to create a contractual relationship of any kind between (i) Architect, Engineer or any SMART's Representative and Contractor; (ii) SMART and/or its representatives and a Subcontractor, sub-Subcontractor, or supplier of any Project labor, materials, or equipment; or (iii) between any persons or entities other than SMART and Contractor.

1.3 Precedence Of Documents

- 1.3.A In the case of discrepancy or ambiguity in the Contract Documents, the following order of precedence shall prevail:
 - 1.3.A.1 Modifications in inverse chronological order (i.e., most recent first), and in the same order as specific portions they are modifying;
 - 1.3.A.2 Document 00 52 00 (Agreement), and terms and conditions referenced therein;
 - 1.3.A.3 Supplementary Conditions;
 - 1.3.A.4 General Conditions);
 - 1.3.A.5 Division 1 Specifications;
 - 1.3.A.6 Drawings and Division 2 through 17 Specifications;
 - 1.3.A.7 Written numbers over figures, unless obviously incorrect (i.e. [six] over [6]);
 - 1.3.A.8 Figured dimensions over scaled dimensions;
 - 1.3.A.9 Large-scale Drawings over small-scale Drawings.
- 1.3.B Any conflict between Drawings and Division 2 through 17 Specifications will be resolved in favor of the document of the latest date (i.e., the most recent document), and if the dates are the same or not determinable, then in favor of Specifications.
- 1.3.C Any conflict between a bill or list of materials shown in the Contract Documents and the actual quantities required to complete Work required by Contract Documents, will be resolved in favor of the actual quantities.

2 BID PERIOD INVESTIGATIONS AND SUBCONTRACTING

2.1 Investigation Prior To Bidding

- 2.1.A Prior to bidding, Contractor must investigate fully the Work of the Contract. Contractor must visit the Site, examine thoroughly, and understand fully the nature and extent of the Contract Documents, Work, Site, locality, actual conditions and as-built conditions, and all other information made available for bidding. Contractor's investigation shall include, but is not limited to, a thorough

examination of all reports of exploration and tests of subsurface conditions, as-built drawings, drawings, product specification(s) or reports, available for Bidding purposes, of physical conditions, including Underground Facilities and information identified in the bidding documents and/or Hazardous Materials Surveys (if used), or which may appear in the Contract Documents, and all local conditions, and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto. Contractor shall completely and thoroughly correlate all such information and consider such information fully, prior to and as a condition of submitting its Bid. Contractor shall make inquiry as required in the bidding documents.

- 2.1.B Prior to submitting its Bid, Contractor shall take care to note the existence and potential existence of Underground Facilities, in particular, above and below grade structures, drainage lines, storm drains, sewers, water, gas, electrical, chemical, hot water, and other similar items and utilities. Contractor shall carefully consider all supplied information, request additional information Contractor may deem necessary, and visually inspect the Site for above ground indications of Underground Facilities (such as, for example not by way of limitation, the existence of existing service laterals, appurtenances or other types of utilities, indicated by the presence of an underground transmission main or other visible facilities, such as buildings, new asphalt, meters and junction boxes, on or adjacent to the Site).
- 2.1.C Prior to submitting its Bid, Contractor must correlate its experience, knowledge, and the results of its required investigation with the terms and conditions of the Contract Documents and must give SMART prompt written notice of all conflicts, errors, ambiguities, or discrepancies of any type, that it may discover in or among the Contract Documents, as-built drawings (if any) and/or actual conditions. Contractor shall give this notice during the Bid period and submission of a Bid indicates Contractor's agreement that SMART responded to the notice through Addenda issued by SMART which is acceptable to Contractor.
- 2.1.D Prior to submitting its Bid, Contractor must consider fully the fact that information supplied regarding existing Underground Facilities at or contiguous to the Site is in many cases based on information furnished to SMART by others (e.g., the builders of such Underground Facilities or others), and that due to their age or their chain of custody since preparation, may not meet current industry standards for accuracy. Contractor must also consider local underground conditions and typical practices for Underground Facilities, either through its own direct knowledge or through its subcontractors, and fully consider this knowledge in assessing the existing information and the reasonableness of its reliance.
- 2.1.E Prior to submitting its Bid, as required, Contractor shall conduct (or request that SMART have conducted) any such additional or supplementary examinations,

investigations, explorations, tests, studies and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site or otherwise, which may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto or which Contractor deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price and other terms and conditions of Contract Documents.

- 2.1.F Prior to submitting its Bid, Contractor may rely on SMART supplied information regarding existing conditions only where such conditions are underground and not subject to reasonable verification. If existing information supplied by SMART indicates a discrepancy or a substantial risk of inaccuracy or omission, then Contractor must request specific additional information.
- 2.1.G Contractor shall advise SMART in writing during the Bid period of any questions, suppositions, inferences, or deductions Contractor may have, for SMART's review and response by Addenda, and may not assert any such matters later that were not brought forth during the Bid period.
- 2.1.H During performance of the Contract, Contractor will be charged with knowledge of all information that it should have learned in performing this required pre-Bid investigation and shall not be entitled to change orders (time or compensation) due to information or conditions that Contractor should have known as a part of this pre-Bid investigation.

2.2 Supplied Information on Underground Existing Conditions

- 2.2.A Regarding Underground Facilities shown in the Contract Documents or supplied in the bidding documents, SMART has compiled this information in good faith, relying on its records and third-party records. Because of the nature and location of SMART and the Project, the existence of Underground Facilities is deemed inherent in the Work of the Contract, as is the fact that Underground Facilities are not always accurately shown or completely shown on as-built records, both as to their depth and location. In Article 14 of this Document 00 70 00, this Contract establishes a heightened standard for claims involving Underground Facilities. Contractor shall consider this fact in its bidding and in its planning and execution of the Work involving Underground Facilities.
- 2.2.B Regarding subsurface conditions other than Underground Facilities, shown on the Contract Documents or supplied in the bidding documents, Contractor may rely only upon the general accuracy of actual reported depths, actual reported character of materials, actual reported soil types, actual reported water conditions, or actual obstructions shown or indicated in the Contract Documents. SMART is not responsible for the completeness of any subsurface condition information for bidding or construction, Contractor's conclusions or opinions drawn from any subsurface condition information, or subsurface conditions that are not specifically shown. (For example, SMART is not

responsible for soil conditions in areas contiguous to areas where a subsurface condition is shown.)

2.3 Supplied Information on Above-Ground Existing Conditions

- 2.3.A Regarding aboveground and as-built conditions shown on the Contract Documents or supplied in the bidding documents, such information has been compiled in good faith, however, Contractor must independently verify such information. SMART does not expressly or impliedly warrant or represent that information as to aboveground conditions or as-built conditions indicated, is correctly shown or indicated, or otherwise complete for construction purposes.
- 2.3.B As a condition to bidding, Contractor shall verify by independent investigation all such aboveground and as-built conditions and bring any discrepancies to SMART's attention through written question. In submitting its Bid, Contractor shall rely on the results of its own independent investigation and shall not rely on SMART-supplied information regarding aboveground conditions and as-built conditions, and Contractor shall accept full responsibility for its verification work sufficient to complete the Work as intended.

2.4 Subcontractors

- 2.4.A Consistent with Public Contract Code Sections 4101 et seq., Contractor shall not substitute any other person or firm in place of any Subcontractor listed in the Bid. Subcontractors shall not assign or transfer their subcontracts or permit them to be performed by any other contractor without SMART's written approval. At SMART's request, Contractor shall provide SMART with a complete copy of all executed subcontracts or final commercial agreements with Subcontractors and/or suppliers.
- 2.4.B Subcontract agreements shall preserve and protect the rights of SMART under the Contract Documents so that subcontracting will not prejudice such rights. To the extent of the Work to be performed by a Subcontractor, Contractor shall require the Subcontractor's written agreement (1) to be bound to the terms of Contract Documents and (2) to assume vis-à-vis Contractor all the obligations and responsibilities that Contractor assumes toward SMART under the Contract Documents. (These agreements include for example, and not by way of limitation, all warranties, claims procedures and rules governing submittals of all types to which Contractor is subject under the Contract Documents.)
- 2.4.C Contractor shall provide for the assignment to SMART of all rights any Subcontractor may have against any manufacturer, supplier, or distributor for breach of warranties and guarantees relating to the Work performed by the Subcontractor under the Contract Documents.
- 2.4.D SMART shall be deemed to be an intended third-party beneficiary of all Subcontracts (of any tier) for the provision of labor, services, supplies or material to the Project, and each such agreement shall so provide.

3 CONTRACT AWARD AND COMMENCEMENT OF THE WORK

3.1 Time Allowances for Performance of Contract Documents

- 3.1.A SMART will make the Award of Contract by issuing a Notice of Award. As a condition to SMART signing Document 00 52 00 (Agreement), however, Contractor shall deliver to SMART the executed agreements, forms, bonds, and insurance documents required by the bidding documents in the required quantities and within the required times.
- 3.1.B The Contract Time will commence to run on the date indicated in the Notice to Proceed (Commencement Date). The Notice to Proceed will be specified as NTP.
- 3.1.C The total number of Days for completion of the Work shall be as described in the bid solicitation documents.
- 3.1.D Contract Time commences on the date established in Notice to Proceed. SMART reserves the right to modify or alter the Commencement Date of the Work. SMART may give a Notice to Proceed at any time within 60 Days after the Notice of Award. Contractor shall not do any Work at the Site prior to the date on which the Contract Time commences to run.

3.2 Commencement Of Work

- 3.2.A Contractor shall commence work on the Site on the Commencement Date issued in NTP. Contractor shall not do any Work at the Site prior to that date.

4 INDEMNIFICATION

4.1 Indemnification

- 4.1.A SMART and each of its officers, employees, consultants and agents including, but not limited to the Board, Architect, Engineer and each SMART's Representative, shall not be liable or accountable in any manner for loss or damage that may happen to any part of the Work; loss or damage to materials or other things used or employed in performing the Work; injury, sickness, disease, or death of any person; or damage to property resulting from any cause whatsoever except their sole negligence, willful misconduct or active negligence, attributable to performance or character of the Work, and Contractor releases all of the foregoing persons and entities from any and all such claims.
- 4.1.B To the furthest extent permitted by law (including without limitation California Civil Code Section 2782), Contractor shall assume defense of, and indemnify and hold harmless, SMART and each of its officers, employees, consultants and agents, including but not limited to the Board, Architect, Engineer and each SMART's Representative, from claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to claims and fines of regulatory agencies and attorney's fees and consultant's fees, directly or indirectly arising out of, connected with or resulting from performance of the Work, failure to perform the Work, or condition of the Work which is caused in whole or part by any act or omission of Contractor, Subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of

them may be liable, regardless of whether it is caused in part by the negligence of SMART or by any person or entity required to be indemnified hereunder.

- 4.1.C With respect to third-party claims against Contractor, Contractor waives any and all rights to any type of express or implied indemnity against SMART and each of its officers, employees, consultants, and agents including, but not limited to SMART, the Board, Architect, Engineer and each SMART's Representative.
- 4.1.D Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its Subcontractors of any tier, or the officers or agents of any of them.
- 4.1.E To the furthest extent permitted by law (including, without limitation, Civil Code Section 2782), the indemnities, releases of liability and limitations of liability, claims procedures, and limitations of remedy expressed throughout Contract Documents shall apply even in the event of breach of Contract, negligence (active or passive), fault or strict liability of the party(ies) indemnified, released, or limited in liability, and shall survive the termination, rescission, breach, abandonment, or completion of the Work or the terms of the Contract Documents. If Contractor fails to perform any of these defense or indemnity obligations, SMART may in its discretion back charge Contractor for SMART's costs and damages resulting therefrom and withhold such sums from progress payments or other Contract moneys which may become due.
- 4.1.F The indemnities in the Contract Documents shall not apply to any indemnified party to the extent of its sole negligence or willful misconduct; nor shall they apply to SMART or other indemnified party to the extent of its active negligence.
- 4.1.G Contractor's obligations under this paragraph 4.1 shall survive completion of the Work or termination of the Contract Documents for any reason whatsoever.

5 DRAWINGS AND SPECIFICATIONS

5.1 Intent

- 5.1.A Drawings and Specifications are intended to describe a functionally complete and operable Project (and all parts thereof) to be constructed in accordance with the requirements of Contract Documents. Contractor shall perform any work, provide services and furnish any materials or equipment that may reasonably be inferred from the requirements of Contract Documents or from prevailing custom or trade usage as being required to produce this intended result. Contractor shall interpret words or phrases used to describe Work (including services), materials, or equipment that have well-known technical or construction industry or trade meaning in accordance with that meaning. Drawings' intent specifically includes the intent to depict construction that complies with all applicable laws, codes, and standards.
- 5.1.B As part of the "Work," Contractor shall provide all labor, materials, equipment, machinery, tools, facilities, services, employee training and testing, hoisting facilities, Shop Drawings, storage, testing, security, transportation, disposal, the securing of all necessary or required field dimensions, the cutting or patching of existing materials, notices, permits, documents, reports, agreements and any

other items required or necessary to timely and fully complete Work described and the results intended by Contract Documents and, in particular, Drawings and Specifications. Divisions and Specification Sections and the identification on any Drawings shall not control Contractor in dividing Work among Subcontractors or suppliers or delineating the Work to be performed by any specific trade.

- 5.1.C Contractor shall perform reasonably implied parts of Work as “incidental work” although absent from Drawings and Specifications. Incidental work includes any work not shown on Drawings or described in Specifications that is necessary or normally or customarily required as a part of the Work shown on Drawings or described in Specifications. Incidental work includes any work necessary or required to make each installation satisfactory, legally operable, functional, and consistent with the intent of Drawings and Specifications or the requirements of Contract Documents including required tasks to be performed under Division 1 of Specifications. Contractor shall perform incidental work without extra cost to SMART. Incidental work shall be treated as if fully described in Specifications and shown on Drawings, and the expense of incidental work shall be included in price Bid and Contract Sum.

5.2 Drawing Details

- 5.2.A A typical or representative detail on Drawings shall constitute the standard for workmanship and material throughout corresponding parts of Work. Where necessary, and where reasonably inferable from Drawings, Contractor shall adapt such representative detail for application to such corresponding parts of Work. The details of such adaptation shall be subject to prior approval by SMART. Repetitive features shown in outline on Drawings shall be in exact accordance with corresponding features completely shown.

5.3 Interpretation Of Drawings And Specifications

- 5.3.A Should any discrepancy appear, or any misunderstanding arise as to the import of anything contained in Drawings and Specifications, or should Contractor have any questions or requests relating to Drawings or Specifications, Contractor shall refer the matter to SMART, in writing, in accordance with Section 01 25 00 (Clarification and Modification Procedures). SMART will issue with reasonable promptness written responses, clarifications or interpretations as SMART may determine necessary, which shall be consistent with the intent of and be reasonably inferable from Contract Documents. Such written clarifications or interpretations shall be binding upon Contractor. If Contractor believes that a written response, clarification, or interpretation justifies an adjustment in the Contract Sum or Contract Time, Contractor shall give SMART prompt written notice as provided in Section 01 25 00 (Clarification and Modification Procedures). If the parties are unable to agree to the amount or extent of the adjustment, if any, then Contractor shall perform the Work in conformance with SMART’s response, clarification, or interpretation and may make a written claim for the adjustment as provided in Article 12 of this Document 00 70 00.

5.4 Checking Of Drawings

- 5.4.A Before undertaking each part of Work, Contractor shall carefully study and compare Contract Documents and check and verify pertinent information shown in the Contract Documents and all applicable field conditions and measurements. Contractor shall be responsible for any errors that might have been avoided by such comparison. Contractor shall promptly report to SMART, in writing, any conflict, error, ambiguity or discrepancy that Contractor may discover. Contractor shall obtain a written interpretation or clarification from SMART before proceeding with any Work affected thereby. Dimensions shown on Drawings shall be followed; Contractor shall not scale Drawings.

5.5 Standards To Apply Where Specifications Are Not Furnished

- 5.5.A The following general specifications shall apply wherever in the Specifications, or in any directions given by SMART in accordance with or supplementing Specifications, it is provided that Contractor shall furnish materials or manufactured articles or shall do Work for which no detailed specifications are shown. Materials or manufactured articles shall be of the best grade, in quality and workmanship, obtainable in the market from firms of established good reputation. If not ordinarily carried in stock, the materials or manufactured articles shall conform to industry standards for first class materials or articles of the kind required, with due consideration of the use to which they are to be put. Work shall conform to the usual standards or codes, such as those cited in Section 01 42 19 (References and Definitions), for first class work of the kind required. Contractor shall specify in writing to SMART the materials to be used or Work to be performed under this paragraph 5.5 fourteen (14) Days prior to furnishing such materials or performing such Work.

5.6 Deviation from Specifications and Drawings

- 5.6.A Contractor shall perform Work in accordance with Drawings and Specifications. Contractor shall not deviate from Drawings, or the dimensions given in the Drawings or the Specifications without SMART's advance written approval of the proposed deviation.
- 5.6.B If SMART elects to change the Work, all changes in the Contract Documents will be made as set forth in Article 14 of this Document 00 70 00.

5.7 Ownership And Use Of Drawings, Specifications And Contract Documents

- 5.7.A Drawings, Specifications, and other Contract Documents were prepared for use for Work of Contract Documents only. No part of Contract Documents shall be used for any other construction or for any other purpose except with the written consent of SMART. Any unauthorized use of Contract Documents is prohibited and at the sole liability of the user.

6 CONSTRUCTION BY SMART OR BY SEPARATE CONTRACTORS

6.1 SMART's Right To Perform Construction And To Award Separate Contracts

- 6.1.A SMART may perform, with its own forces, construction or operations related to the Project. SMART may also award separate contracts in connection with other portions of the Project or other construction or operations, on the Site or areas contiguous to the Site, under conditions similar to these Contract Documents, or may have utility owners perform other work. When separate contracts are awarded for different portions of the Project or other construction or operations on the Site, the term "Contractor" in these Contract Documents shall mean the Contractor herein.

6.2 Mutual Responsibility

- 6.2.A Contractor shall afford all other contractors, utility owners, and SMART (if SMART is performing work with its own forces), proper and safe access to the Site, and reasonable opportunity for the installation and storage of their materials. Contractor shall ensure that the execution of its Work properly connects and coordinates with others' work and shall cooperate with them to facilitate the progress of the Work.
- 6.2.B Contractor shall coordinate its Work with the work of other contractors, SMART, local jurisdiction, County, and utility owners. Contractor shall hold coordination meetings with other contractors, SMART and its representatives, and utility owners as required by Section 01 31 19 (Project Meetings).
- 6.2.C Unless otherwise provided in the Contract Documents, Contractor shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Contractor shall not endanger any work of other contractors, SMART or utility owners by cutting, excavating, or otherwise altering the work of others and will only cut or alter the work of others with the written consent of SMART and the others whose work will be affected.
- 6.2.D Contractor's duties and responsibilities under paragraph 6.2.A of this Document 00 70 00 are for the benefit of SMART and also for the benefit of such other contractors and utility owners working at the Site to the extent that there are comparable provisions for the benefit of Contractor in the direct contracts between SMART and such other contractors and utility owners.
- 6.2.E To the extent that any part of Contractor's Work is to interface with work performed or installed by other contractors, SMART, or utility owners, Contractor shall inspect and measure the in-place work. Contractor shall promptly report to SMART in writing any defect in in-place work that will impede or increase the cost of Contractor's interface unless corrected. SMART will require the entity responsible for the Defective Work to make corrections so as to conform to its contract requirements, or, if the defect is the result of an error or omission in the Contract Documents, issue a Change Order. If Contractor fails to measure, inspect and/or report to SMART in writing defects that are reasonably discoverable, Contractor shall bear all costs of accomplishing the

interface acceptable to SMART. This provision shall be included in any and all other contracts or subcontracts for Work to be performed where such a conflict could exist.

6.3 SMART's Authority Over Coordination

- 6.3.A SMART will have authority over coordination of the activities of multiple contractors in cases where SMART performs work with its own forces or contracts with others for the performance of other work on the Project, or utilities work on the Site. SMART may at any time and in its sole discretion, designate a person or entity other than SMART to have authority over the coordination of the activities among the various contractors. SMART's authority with respect to coordination of the activities of multiple contractors and utility owners shall not relieve Contractor of its obligation to other contractors and utility owners to coordinate its Work with other contractors and utility owners as specified in paragraph 6.2 of this Document 00 70 00. Contractor shall promptly notify SMART in writing when another contractor on the Project fails to coordinate its work with the Work of Contract Documents.
- 6.3.B Contractor shall suspend any part of the Work or carry on the same in such manner as directed by SMART when such suspension or prosecution is necessary to facilitate the work of other contractors or workers. No damages or claims by Contractor will be allowed if the suspension or Work change is due in whole or in part to Contractor's failure to perform its obligation to coordinate its Work with other contractors, SMART, and utility owners. Damages or claims will be allowed only to the extent of fault by SMART if the suspension or Work change is due in whole or in part to another contractor's failure to coordinate its work with Contractor, other contractors, SMART, local jurisdictions, County, and utility owners. SMART reserves the right to back charge Contractor for any damages or claims incurred by other contractors as a result of Contractor's failure to perform its obligations to coordinate with other contractors, SMART, and utility owners. SMART may deposit the funds retained with a Court of competent jurisdiction pursuant to applicable interpleader procedures and Contractor releases SMART of further liability regarding such funds.

7 PAYMENT BY SMART

7.1 Receipt And Processing Of Applications For Payment

- 7.1.A As required by Section 01 20 00 (Price and Payment Procedures), Contractor shall prepare the schedules, submit Applications for Payment, and warrant title to all Work covered by each Application for Payment. SMART will review Contractor's Applications for Payment and make payment thereon, and Contractor shall make payments to Subcontractors, suppliers, and others, as required by Section 01 20 00 (Price and Payment Procedures).

8 CONTROL OF THE WORK

8.1 Subcontractors

- 8.1.A Contractor is fully responsible for Contractor's own acts and omissions. Contractor is responsible for all acts and omissions of its Subcontractors, suppliers, and other persons and organizations performing or furnishing any of the Work, labor, materials, or equipment under a direct or indirect contract with Contractor. The Contractor may not assign any portion, or any rights hereunder, of the Contract Documents without the SMART's express written consent or, where applicable, compliance with the Subcontractor Listing Law.

8.2 Supervision Of Work By Contractor

- 8.2.A Contractor shall supervise, inspect, and direct Work competently and efficiently, devoting the attention and applying such personal skills and expertise as may be required and necessary to perform Work in accordance with Contract Documents. Contractor shall be solely responsible for and have control and charge of construction means, methods, techniques, sequences and procedures, safety precautions and programs in connection with the Work. Contractor shall be responsible to see that the completed Work complies accurately with Contract Documents.
- 8.2.B Contractor shall keep on the Site at all times during Work progress a competent resident Superintendent in conformance with paragraph 10.3.A.

8.3 Observation Of Work By SMART

- 8.3.A SMART's Representatives: SMART's Representative(s) will have limited authority to act on behalf of SMART as set forth in the Contract Documents. Except as otherwise provided in these Contract Documents or subsequently identified in writing by SMART, SMART will issue all communications to Contractor through SMART's Representative, and Contractor shall issue all communications to SMART through SMART's Representative in a written document delivered to SMART. Should any direct communications between Contractor and SMART's consultants, architects or engineers not identified in Article 2 of Document 00 52 00 (Agreement) occur during field visits or by telephone, Contractor shall immediately confirm them in a written document copied to SMART's Representative.
- 8.3.B Means and methods of Construction: Subject to those rights specifically reserved in the Contract Documents, SMART will not supervise, or direct, or have control over, or be responsible for, Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or Contractor's failure to comply with laws and regulations applicable to the furnishing or performance of Work. SMART will not be responsible for Contractor's failure to perform or furnish the Work in accordance with Contract Documents.
- 8.3.C In exercising its responsibilities and authorities under the Contract Documents, SMART does not assume any duties or responsibilities to any Subcontractor or supplier and does not assume any duty of care to Contractor, Contractor's

Subcontractors, or suppliers. Except as expressly set forth in the Contract Documents, in exercising their respective responsibilities and authorities under the Contract Documents, neither Architect, Engineer nor any SMART's Representative assumes any duties or responsibilities to any Subcontractor, sub-Subcontractor or supplier nor assumes any duty of care to Contractor or any Subcontractor, sub-Subcontractor or suppliers.

- 8.3.D Work shall be performed under SMART's general observation and administration. Contractor shall comply with SMART's directions and instructions in accordance with the terms of Contract Documents, but nothing contained in these General Conditions shall be taken to relieve Contractor of any obligations or liabilities under the Contract Documents. SMART's failure to review or, upon review, failure to object to any aspect of Work reviewed, shall not be deemed a waiver or approval of any non-conforming aspect of Work.
- 8.3.E SMART may engage an independent consultant or architect (collectively for purposes of this paragraph 8.3, "Consultant") to assist in administering the Work. If so engaged, Consultant will advise and consult with SMART, but will have authority to act on behalf of SMART only to extent provided in the Contract Documents or as set forth in writing by SMART. Consultant will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with Work. Consultant will not be responsible for or have control over the acts or omissions of Contractor, Subcontractors or their agents or employees, or any other persons performing Work.
- 8.3.F Consultant may review Contractor's Submittals, such as Shop Drawings, Product Data, and Samples, but only for conformance with design concept of Work and with information given in the Contract Documents.
- 8.3.G SMART's Consultant and/or representative may visit the Site at intervals appropriate to stage of construction to become familiar generally with the progress and quality of Work and to determine in general if Work is proceeding in accordance with Contract Documents. Based on its observations, SMART's Consultant and/or representative may recommend that it disapprove or reject Work that SMART's Consultant and/or representative believes to be defective or will not produce a complete Project that conforms to Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by Contract Documents. SMART will also have authority to require special inspection or testing of Work, whether or not the Work is fabricated, installed, or completed.
- 8.3.H SMART's Consultant and/or representative may conduct inspections to recommend to SMART the dates that Contractor has achieved Substantial Completion and when the Final Inspection Report can be issued and will receive and forward to SMART for review written warranties and related documents required by Contract Documents.

8.4 Access To Work

- 8.4.A During performance of Work, SMART and its agents, consultants, and employees may at any time enter upon Work, shops, or studios where any part of the Work may be in preparation, or factories where any materials for use in Work are being or are to be manufactured, and Contractor shall provide proper and safe facilities for this purpose and shall make arrangements with manufacturers to facilitate inspection of their processes and products to such extent as SMART's interests may require. Other contractors, SMART workers or utility owners performing work for SMART may also enter upon Work for all purposes required by their respective contracts. Subject to the rights reserved in the Contract Documents, Contractor shall have sole care, custody, and control of the Site and its Work areas.
- 8.4.B SMART may, at any time, and from time to time, during the performance of the Work, enter the Work Site for the for the purpose of installing any necessary work by SMART labor or other contracts, and for any other purpose in connection with the installation of facilities. In doing so, SMART shall endeavor not to interfere with Contractor and Contractor shall not interfere with other work being done by or on behalf of SMART.
- 8.4.C If, prior to completion and final acceptance of all the Work, SMART takes possession of any structure or facility (whether completed or otherwise) comprising a portion of the Work with the intent to retain possession thereof (as distinguished from temporary possession contemplating return to Contractor), then, while SMART is in possession of the same, Contractor shall be relieved of liability for loss or damage to such structure other than that resulting from Contractor's fault or negligence. Such taking of possession by SMART shall not relieve Contractor from any provisions of the Contract respecting such structure, other than to the extent specified in the preceding sentence, nor constitute a final acceptance of such structure or facility. See also Section 01 11 00 (Summary).
- 8.4.D If, following installation of any equipment or facilities furnished by Contractor, defects requiring correction by Contractor are found, SMART shall have the right to operate such unsatisfactory equipment or facilities and make reasonable use thereof until the equipment or facilities can be shut down for correction of defects without injury to SMART.

9 WARRANTY, GUARANTY, AND INSPECTION OF WORK

9.1 Warranty And Guaranty

- 9.1.A General Representations and Warranties: Contractor represents and warrants that it is and will be at all times fully qualified and capable of performing every Phase of the Work and completing Work in accordance with the terms of Contract Documents. Contractor warrants that all construction services shall be performed in accordance with generally accepted professional standards of good and sound construction practices and all requirements of Contract Documents. Contractor warrants that Work, including but not limited to each

item of materials and equipment incorporated therein, shall be new, of suitable grade of its respective kind for its intended use, and free from defects in design, architecture and/or engineering, materials, construction and workmanship. Contractor warrants that Work shall conform in all respects with all applicable requirements of federal, state and local laws, applicable construction codes and standards, licenses and permits, Drawings and Specifications and all descriptions set forth therein, and all other requirements of Contract Documents. Contractor shall not be responsible, however, for the negligence of others in the specification of specific equipment, materials, design parameters and means or methods of construction where that is specifically shown and expressly required by Contract Documents.

- 9.1.B Extended Guarantees: Any guaranty exceeding one year provided by the supplier or manufacturer of any equipment or materials used in the Project shall be extended for such term. Contractor expressly agrees to act as co-guarantor of such equipment and materials and shall supply SMART with all warranty and guaranty documents relative to equipment and materials incorporated in the Project and guaranteed by their suppliers or manufacturers.
- 9.1.C Environmental and Toxics Warranty: The covenants, warranties and representations contained in this paragraph 9.1.C. are effective continuously during Contractor's Work on the Project and following cessation of for any reason including, but not limited to, Project completion. Contractor covenants, warrants, and represents to SMART that:
- 9.1.C.1 To Contractor's knowledge after due inquiry, no lead or Asbestos-containing materials were installed or discovered in the Project at any time during Contractor's construction thereof. If any lead or Asbestos-containing materials were discovered, Contractor made immediate written disclosure to SMART.
- 9.1.C.2 To Contractor's knowledge after due inquiry, no electrical transformers, light fixtures with ballasts or other equipment containing PCBs are or were located on the Project at any time during Contractor's construction thereof.
- 9.1.C.3 To Contractor's knowledge after due inquiry, no storage tanks for gasoline or any other toxic substance are or were located on the Project at any time during Contractor's construction thereof. If any such materials were discovered, Contractor made immediate written disclosure to SMART.
- 9.1.C.4 Contractor's operations concerning the Project are and were not in violation of any applicable environmental federal, state, or local statute, law or regulation dealing with hazardous materials substances or toxic substances and no notice from any governmental body has been served upon Contractor claiming any violation of any such law, ordinance, code or regulation, or requiring or calling attention to the need for any Work, repairs, construction, alteration, or installation on or in connection with the Project in order to comply

with any such laws, ordinances, codes, or regulations, with which Contractor has not complied. If there are any such notices with which Contractor has complied, Contractor shall provide SMART with copies thereof.

9.2 Inspection Of Work

- 9.2.A All materials, equipment, and workmanship used in Work shall be subject to inspection and testing at all times during construction and/or manufacture in accordance with the terms of Contract Documents. Work and materials, and manufacture and preparation of materials, from beginning of construction until Final Completion and acceptance of Work, shall be subject to inspection and rejection by SMART, its agents, representatives, or independent contractors retained by SMART to perform inspection services, or governmental agencies with jurisdictional interests. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's Site safety procedures and program so that they may comply therewith as applicable. Upon request or where specified, SMART shall be afforded access for inspection at the source of supply, manufacture, or assembly of any item of material or equipment, with reasonable accommodations supplied for making such inspections.
- 9.2.B Contractor shall give SMART timely notice of readiness of Work for all required inspections, tests, or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests. Contractor shall also coordinate, schedule, and give adequate notice to the appropriate inspection personnel of any Work that can only be inspected as it is placed or assembled (for example, concrete or masonry work), to enable the constant presence of such inspection personnel during such Work.
- 9.2.C If applicable laws or regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, and furnish SMART with the required certificates of inspection, or approval. SMART will pay the cost of initial testing and Contractor shall pay all costs in connection with any follow-up or additional testing. Contractor shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for the acceptance of materials or equipment to be incorporated in the Work, or of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Additionally, in the event that a scheduled inspection is canceled in less than 24 hours' notice by Contractor and SMART incurs costs associated with the cancellation, Contractor will reimburse SMART for the actual costs of the canceled inspections. The amount will be deducted from payment owed Contractor.

- 9.2.D If Contractor covers any Work, or the work of others, prior to any required inspection, test or approval without written approval of SMART, Contractor shall uncover the Work at SMART's request. Contractor shall bear the expense of uncovering Work and replacing Work.
- 9.2.E In any case where Contractor covers Work contrary to SMART's request, Contractor shall uncover Work for SMART's observation or inspection at SMART's request. Contractor shall bear the cost of uncovering and re-covering the Work.
- 9.2.F Whenever required by SMART, Contractor shall furnish tools, labor, and materials necessary to make examination of Work that may be completed or in progress, even to extent of uncovering or taking down portions of finished Work. Should Work be found unsatisfactory, cost of making examination and of reconstruction shall be borne by Contractor. If Work is found to be satisfactory, SMART, in manner herein prescribed for paying for alterations, Modifications, and extra Work, except as otherwise herein specified, will pay for examination.
- 9.2.G Inspection of the Work by or on behalf of SMART, or SMART's failure to do so, shall not under any circumstances be deemed a waiver or approval of any non-conforming aspect of the Work. Contractor shall have an absolute duty, in the absence of a written Change Order signed by SMART, to perform Work in conformance with the Contract Documents.
- 9.2.H Any inspection, evaluation, or test performed by or on behalf of SMART relating to the Work is solely for the benefit of SMART and shall not be relied upon by Contractor. Contractor shall not be relieved of the obligation to perform Work in accordance with the Contract Documents, nor relieved of any guaranty, warranty, or other obligation, as a result of any inspections, evaluations, or tests performed by SMART, whether or not such inspections, evaluations, or tests are permitted or required under the Contract Documents. Contractor shall be solely responsible for testing and inspecting Work already performed to determine whether such Work is in proper condition to receive later Work.

9.3 Correction Of Defective Work

- 9.3.A If Contractor fails to supply sufficient skilled workers, suitable materials or equipment, or to furnish or perform the Work in such a way that the completed Work will conform to Contract Documents, SMART may order Contractor to replace any Defective Work, or stop any portion of Work to permit SMART (at Contractor's expense) to replace such Defective Work. These SMART rights are entirely discretionary on the part of the SMART and shall not give rise to any duty on the part of SMART to exercise the rights for the benefit of Contractor or any other party.
- 9.3.B SMART may direct Contractor to correct any Defective Work or remove it from the Site and replace it with Work that is not Defective and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting from the correction or removal. Contractor shall be responsible for any and all claims, costs, losses and damages caused by or resulting from such correction or

removal. When necessary, a deductive Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, SMART may decide the proper amount or, in its discretion may elect to leave the Contract Sum unchanged and deduct from moneys due Contractor, all such claims, costs, losses and damages caused by or resulting from the correction or removal. If Contractor disagrees with SMART's calculations, it may make a claim as provided in Article 12 of this Document 00 70 00. SMART's rights under this paragraph 9.3.B shall be entirely discretionary and, like all other SMART rights and remedies under the Contract, in addition to any other rights it may have under the Contract Documents or by law.

9.3.C Correction Period:

9.3.C.1 With respect to equipment and machinery supplied by Contractor and incorporated into the Work, if within one year after the date of Substantial Completion of the portion of the Work incorporating the equipment and/or machinery (or, to the extent expressed by Change Order or Certificate of Substantial Completion, one year after SMART's written acceptance of such equipment), or such longer period of time as may be prescribed by laws or regulations, or by the terms of Contract Documents (including extended warranties), any equipment or machinery is found to be Defective, Contractor shall promptly, without cost to SMART and in accordance with SMART's written instructions, correct such Defective Work.

9.3.C.2 With respect to structures within the Scope of Work, if within one year after the date of Substantial Completion of the Work, or such longer period of time as may be prescribed by laws or regulations, or by the terms of Contract Documents, any Work is found to be defective, Contractor shall promptly, without cost to SMART and in accordance with SMART's written instructions, correct such Defective Work.

9.3.D Contractor shall remove any Defective Work rejected by SMART and replace it with Work that is not Defective, and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If Contractor fails to promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, SMART may have the Defective Work corrected or the rejected Work removed and replaced.

9.3.E Contractor shall pay for all claims, costs, losses, and damages caused by or resulting from such removal and replacement. Where Contractor fails to correct Defective Work, or defects are discovered outside the correction period, SMART shall have all rights and remedies granted by law.

9.3.F Additionally, in special circumstances where a part of the Work is occupied or a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that part of Work or that

item may start to run from an earlier date if so, provided by Change Order or Certificate of Substantial Completion.

- 9.3.G Where Defective Work or rejected Work (and damage to other Work resulting therefrom) has been corrected, removed, or replaced under this provision after the commencement of the correction period, the correction period hereunder with respect to such Work shall be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- 9.3.H If following installation of any Work furnished by Contractor, defects requiring correction by Contractor are found, SMART shall have the right to operate such Work and make reasonable use thereof until it can be shut down for correction of defects without causing injury to SMART.

9.4 Acceptance And Correction Of Defective Work By SMART

- 9.4.A SMART may accept Defective Work. Contractor shall pay all claims, costs, losses, and damages (including but not limited to staff and Consultant time) attributable to SMART's evaluation of and determination to accept such Defective Work. If SMART accepts any Defective Work prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, SMART may deduct from moneys due Contractor, all claims, costs, losses, damages, expenses, and liabilities attributable to the Defective Work. If Contractor disagrees with SMART's calculations, Contractor may make a claim as provided in Article 12 of this Document 00 70 00. If SMART accepts any Defective Work after final payment, Contractor shall pay to SMART, an appropriate amount as determined by SMART.
- 9.4.B SMART may correct and remedy deficiency if, after five Days' written notice to Contractor, Contractor fails to correct Defective Work or to remove and replace rejected Work in accordance with paragraph 9.3.B of this Document 00 70 00; or provide a plan for correction of Defective Work acceptable to SMART; or perform Work in accordance with Contract Documents. In connection with such corrective and remedial action, SMART may exclude Contractor from all or part of the Site; take possession of all or part of Work and suspend Contractor's Work related thereto; take possession of all or part of Contractor's tools, appliances, construction equipment and machinery at the Site; and incorporate in Work any materials and equipment stored at the Site or for which SMART has paid Contractor but which are stored elsewhere. Contractor shall allow SMART, its representatives, agents, employees, and other contractors and Architect's consultants' access to the Site to enable SMART to exercise the rights and remedies under this paragraph 9.4.B. Contractor shall be responsible for all claims, costs, losses, damages, expenses, and liabilities incurred or sustained by SMART in exercising such rights and remedies. A Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to

Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, SMART may deduct from moneys due Contractor, all claims, costs, losses, and damages caused by or resulting from the correction or removal. If Contractor disagrees with SMART's calculations, Contractor may make a claim as provided in Article 12 of this Document 00 70 00.

9.5 Rights Upon Inspection or Correction

- 9.5.A Contractor shall not be allowed an extension of Contract Time because of any delay in the performance of Work attributable to the exercise by SMART of its rights and remedies under this Article 9. Where SMART exercises its rights under this Article 9, it retains all other rights it has by law or under the Contract Documents including, but not limited to, the right to terminate for default Contractor's right to proceed with the Work under the Contract Documents and/or make a claim or back charge where a Change Order cannot be agreed upon.
- 9.5.B Inspection by SMART shall not relieve Contractor of its obligation to have furnished material and workmanship in accordance with Contract Documents. Payment for Work completed through periodic progress payments or otherwise shall not operate to waive SMART's right to require full compliance with Contract Documents and shall in no way be deemed as acceptance of the Work paid, therefore. Contractor's obligation to complete the Work in accordance with Contract Documents shall be absolute unless SMART agrees otherwise in writing. Contractor shall immediately correct defective Work upon Contractor's knowledge of the defective Work, regardless of SMART's issuance of a correction notice or otherwise identifying the defective Work.

9.6 Samples and Tests Of Materials And Work

- 9.6.A Contractor shall furnish, in such quantities and sizes as may be required for proper examination and tests, Samples or test specimens of all materials to be used or offered for use in connection with Work. Contractor shall prepare Samples or test specimens at its expense and furnish them to SMART. Contractor shall submit all Samples in ample time to enable SMART to make any necessary tests, examinations, or analyses before the time it is desired to incorporate the material into the Work.

9.7 Proof of Compliance Of Contract Provisions

- 9.7.A In order that SMART may determine whether Contractor has complied or is complying with requirements of Contract Documents not readily enforceable through inspection and tests of Work and materials, Contractor shall at any time, when requested, submit to SMART properly authenticated documents or other satisfactory proofs of compliance with all applicable requirements.

9.8 Acceptance

- 9.8.A Inspection by SMART or its authorized agents or representatives, any order or certificate for the payment of money, any payment, acceptance of the whole or

any part of Work by SMART, any extension of time, any verbal statements on behalf of SMART or its authorized agents or representatives shall not operate as a waiver or modification of any provision of the Contract Documents, or of any power reserved to SMART herein or therein or any right to damages provided in the Contract Documents. Any waiver of any breach of the Contract Documents shall not be held to be a waiver of any other subsequent breach. Upon completion of Final Inspection and approval by SMART or its authorized agents or representatives, SMART may issue the Notice of Final Acceptance.

10 CONTRACTOR'S ORGANIZATION AND EQUIPMENT

10.1 Contractor's Legal Address

10.1.A Address and facsimile number given in Contractor's Bid are hereby designated as Contractor's legal address and facsimile number. Contractor may change its legal address and facsimile number by notice in writing, delivered to SMART, which in conspicuous language advises SMART of a change in legal address or facsimile number, and which SMART accepts in writing. Delivery of any drawings, notice, letter, or other communication to Contractor's legal address or depositing in any post office or post office box regularly maintained by the United States Postal Service, in a wrapper with postage affixed, directed to Contractor at legal address shall be deemed legal and sufficient service thereof upon Contractor. Facsimile to Contractor's designated facsimile number of any letter, memorandum, or other communication on standard or legal sized paper, with proof of facsimile transmission, shall be deemed legal and sufficient service thereof upon Contractor.

10.2 Contractor Documents At The Work Site

10.2.A Contractor shall maintain a copy of the current project plans, specifications and Contractor's markup copy (As-Built) while on site. As needed, the Contractor shall also maintain copies of project specific permits and SWPPP documentation while on site. All documents shall be available to SMART for on-site review, or for regulatory agency on site review as required in project permit conditions.

10.3 Contractor's Superintendents Or Forepersons

10.3.A Contractor shall at all times while Work is being performed at site, be represented on Site by a competent resident Superintendent authorized and competent to receive and carry out any instructions that SMART may give and shall be liable for faithful observance of instructions delivered to Contractor. Said Superintendent shall not be replaced without SMART's express written consent. The Superintendent shall be Contractor's representative at the Site and shall have complete authority to act on behalf of Contractor. All communications to and from the Superintendent shall be as binding as if given to or by Contractor. Communications, instructions, or Drawings given to Contractor's representative shall be deemed to have been given to Contractor.

10.3.B In the event that the designated Superintendent is unable to be present at the site, Contractor shall designate a substitute Superintendent, subject to SMART's

approval, and shall obtain SMART's consent as to time and duration of any such substitution.

10.4 Proficiency in English

10.4.A Supervisors, security guards, safety personnel and employees who have unescorted access to the Site shall possess proficiency in the English language in order to understand, receive and carry out oral and written communications or instructions relating to their job functions, including safety and security requirements.

10.5 Contractor's and Subcontractors' Employees

10.5.A Contractor shall employ, and shall permit its Subcontractors to employ, only competent and skillful personnel to do Work. If SMART notifies Contractor that any of its employees, or any of its Subcontractors' employees on Work is incompetent, unfaithful, disorderly or profane, or fails to observe customary standards of conduct or refuses to carry out any provision of the Contract Documents, or uses harassing, threatening or abusive language at the site to any person representing SMART or to any member of the public, or violates sanitary rules, or is otherwise unsatisfactory, and if SMART requests that such person be discharged from Work, then Contractor or its Subcontractor shall immediately discharge such person from Work and the discharged person shall not be re-employed on the Work except with consent of SMART.

10.6 Contractor's Use Of The Site

10.6.A Contractor shall not make any arrangements with any person to permit occupancy or use of any land, structure or building within the limits of the Work, for any purpose whatsoever, either with or without compensation, in conflict with any agreement between SMART and any owner, former owner or tenant of such land, structure or buildings. Contractor may not occupy SMART-owned property outside the limit of the Work as indicated on the Drawings unless it obtains prior approval from SMART.

11 PROSECUTION AND PROGRESS OF THE WORK

11.1 Schedules And Examinations Of Contract Documents

11.1.A Contractor shall submit schedules, reports, and submittals in the appropriate quantity and within the required time, arrange conferences and meetings and proceed with the Work in accordance with Contract Documents, including Sections 01 31 19 (Project Meetings), 01 32 16 (Progress Schedules and Reports), and 01 33 00 (Submittal Procedures).

11.1.B Contractor shall submit to SMART for review and discussion:

11.1.B.1 At the Preconstruction Conference described in Section 01 31 19 (Project Meetings), Progress Schedules, and Reports as required by Sections 01 32 16 (Progress Schedules and Reports) and 01 33 00 (Submittal Procedures). Contractor shall utilize Progress Schedule in planning, scheduling, coordinating, performing and controlling Work

(including all activities of Subcontractors, assigned contractors, equipment vendors and suppliers). Contractor shall update Progress Schedule on a monthly basis to depict accurately the actual progress of Work and for evaluating and preparing Contractor's monthly progress payments. Contractor's failure to submit and maintain an acceptable Progress Schedule may, in SMART's discretion, and without limiting the materiality of Contractor's other obligations under the Contract Documents, constitute grounds to declare Contractor in material breach of the Contract Documents.

11.1.B.2 As required, a preliminary Schedule of Values conforming to Section 01 20 00 (Payment Procedures) paragraph 1.6.C. shall be submitted to SMART. See Section 01 20 00 (Price and Payment Procedures) for further requirements regarding the Schedule of Values.

11.1.C Unless otherwise provided in the Contract Documents, SMART will review for acceptability the schedules submitted in accordance with paragraph 11.1.B of this Document 00 70 00. Contractor shall make corrections and adjustments to complete and resubmit the schedules and shall secure SMART's written acceptance prior to submitting first payment request. Schedules shall be updated and completed as required by Sections 01 20 00 (Price and Payment Procedures), 01 32 16 (Progress Schedules and Reports) and 01 33 00 (Submittal Procedures). No progress or mobilization payment shall be due or owing to Contractor until the schedules are submitted to and acceptable to SMART as meeting the requirements of the Contract Documents, including Sections 01 20 00 (Price and Payment Procedures), 01 32 16 (Progress Schedules and Reports) and 01 33 00 (Submittal Procedures). SMART's acceptance of Contractor's schedules will not create any duty of care or impose on SMART any responsibility for the sequencing, scheduling or progress of Work nor will it interfere with or relieve Contractor from Contractor's full responsibility, therefore.

11.2 Commencement of Work Notification

11.2.A Before commencing any portion of Work, Contractor shall inform SMART in writing as to time and place at which Contractor wishes to commence Work, and nature of Work to be done, in order that proper provision for inspection of Work may occur, and to assure measurements necessary for record and payment. Information shall be given to SMART in a reasonable time in advance of time at which Contractor proposes to begin Work, so that SMART may complete necessary preliminary work without inconvenience or delay to Contractor.

11.3 Submittals

11.3.A Contractor shall submit Submittals to SMART for review in strict accordance with Section 01 33 00 (Submittal Procedures). Submission of a Submittal shall constitute Contractor's representation that all requirements of Section 01 33 00 (Submittal Procedures) have been complied with. All Submittals will be identified as SMART may require and in the number of copies specified in Section 01 33 00 (Submittal Procedures).

- 11.3.B Contractor shall not perform Work that requires submission of a Submittal prior to submission and favorable review of the Submittal. Where a Submittal is required by Contract Documents or the final Schedule of Submittals (if required) accepted by SMART, any related Work performed prior to SMART's approval of the pertinent Submittal shall be at the sole expense, responsibility, and risk of Contractor.

11.4 Contractor To Supply Sufficient Workers And Materials

- 11.4.A Unless otherwise required by SMART under the terms of Contract Documents, Contractor shall at all times keep on the Site materials and employ qualified workers sufficient to prosecute Work at a rate and in a sequence and manner necessary to complete Work within the Contract Time. This obligation shall remain in full force and effect notwithstanding disputes or claims of any type.
- 11.4.B At any time during progress of Work should Contractor directly or indirectly (through Subcontractors) refuse, neglect, or be unable to supply sufficient materials or employ qualified workers to prosecute the Work as required, then SMART may issue a written notice to Contractor, requiring Contractor to accelerate the Work and/or furnish additional qualified workers or materials as SMART may consider necessary, at no cost to SMART. If Contractor does not comply with the notice within five (5) Days of date of service thereof, SMART shall have the right (but not a duty) to provide materials and qualified workers to finish the Work or any affected portion of Work, as SMART may elect. SMART may, at its discretion, exclude Contractor from the Site, or portions of the Site or separate Work elements during the time period that SMART exercises this right. SMART will deduct from moneys due, or which may thereafter become due under the Contract Documents, the sums necessary to meet expenses thereby incurred and paid to persons supplying materials and doing Work. SMART will deduct from funds or appropriations set aside for purposes of Contract Documents the amount of such payments and charge them to Contractor as if paid to Contractor. Contractor shall remain liable for resulting delay, including liquidated damages and indemnification of SMART from claims of others.
- 11.4.C Exercise by SMART of the rights conferred upon SMART in paragraph 11.4.B of this Document 00 70 00, is entirely discretionary on the part of SMART. SMART shall have no duty or obligation to exercise the rights referred to in paragraph 11.4.B of this Document 00 70 00 and its failure to exercise such rights shall not be deemed an approval of existing Work progress or a waiver or limitation of SMART's right to exercise such rights in other concurrent or future similar circumstances. The rights conferred upon SMART under paragraph 11.4.B of this Document 00 70 00 are cumulative to SMART's other rights under any provision of the Contract Documents.
- 11.4.D SMART may, if it deems necessary for reasons other than those described in Paragraph 10.6.B, direct Contractor to accelerate the Work by increasing crew sizes, working overtime (as permitted by law) and/or performing shift work. If directed to perform overtime and/or shift work, Contractor will work said

overtime and/or shift work, and the SMART shall pay Contractor solely for the additional premium wages paid, plus taxes imposed by law on such additional wages. Unless otherwise directed by the SMART, accelerated work shall be performed utilizing the most cost-effective available method. For example, the SMART shall not be responsible to pay the premium for overtime work if the same work could have been performed on second shift utilizing a lower premium.

11.5 Contractor's Project Data

- 11.5.A Contractor shall maintain full and correct information as to the number of workers employed in connection with each subdivision of Work, the classification and rate of pay of each worker in form of certified payrolls, the cost to Contractor of each class of materials, tools and appliances used by Contractor in Work, and the amount of each class of materials used in each subdivision of Work. Contractor shall provide SMART with monthly summaries of this information. If Contractor maintains or is capable of generating summaries or reports comparing actual Project costs with Bid estimates or budgets, Contractor shall provide SMART with a copy of such report upon SMART's request and whenever it is generated.
- 11.5.B Contractor shall maintain daily job reports recording all significant activity on the job, including the number of workers on Site, Work activities, problems encountered and delays. Contractor shall provide SMART with copies for each Day Contractor works on the Project, to be delivered to SMART either the same Day or the following morning before starting Work at the Site. Contractor shall take monthly progress photographs of all areas of the Work. Contractor shall maintain copies of all correspondence with Subcontractors and records of meetings with Subcontractors.
- 11.5.C SMART shall have the right to audit and copy Contractor's books and records of any type, nature or description relating to the Project (including but not limited to financial records reflecting in any way costs claimed on the Project), and to inspect the Site, including Contractor's trailer, or other job Site office, and this requirement shall be contained in the subcontracts of Subcontractors working on Site. By way of example, SMART shall have the right to inspect and obtain copies of all Contract Documents, planning and design documents, Bid proposal and negotiation documents (subject to Document 00670 [Escrow Bid Documents] if required by the Contract Documents), cost records and job cost variance reports, design modification proposals, value engineering or other cost reduction proposals, revisions made to the original design, job Progress Reports, photographs, and as-built drawings maintained by Contractor. SMART and any other applicable governmental entity shall have the right to inspect all information and documents maintained under this paragraph 11.5 at any time during the Project and for a period of five years following Substantial Completion. This right of inspection shall not relieve Contractor of its duties and obligations under the Contract Documents. This right of inspection shall be

specifically enforceable in a court of law, either independently or in conjunction with enforcement of any other rights in the Contract Documents.

- 11.5.D Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Contract Modifications, Change Orders, Construction Change Directives, Force Account orders, and written interpretations and clarifications in good order and annotated to show all changes made during construction. These Project Record Documents, together with all approved Samples and a counterpart of all approved Shop Drawings, shall be maintained and available to SMART for reference. Upon completion of the Work, Contractor shall deliver to SMART, the Project Record Documents.

12 CLAIMS BY CONTRACTOR/NON-JUDICIAL SETTLEMENT PROCEDURE

12.1 Scope

- 12.1.A The claim notice and documentation procedure described in this Article 12 applies to all claims and disputes arising under the Contract Documents, including without limitation any claim or dispute by any Subcontractor or material supplier, and any claims arising under tort law as well as contract law. All Subcontractors and supplier claims of any type shall be brought only through Contractor as provided in this Article 12. Under no circumstances shall any Subcontractor or supplier make any direct claim against SMART.
- 12.1.B "Claim" means a written demand or written assertion by Contractor seeking, as a matter of right, the payment of money, the adjustment or interpretation of Contract Documents terms, or other relief arising under or relating to Contract Documents. In order to qualify as a "claim," the written demand must state that it is a claim submitted under this Article 12. A voucher, invoice, proposed change, Application for Payment, cost proposal, RFI, change order request, or other routine or authorized form of request for payment is not a claim under the Contract Documents. If such request is disputed as to liability or amount, then the disputed portion of the submission may be converted to a claim under the Contract Documents by submitting a separate notice and claim in compliance with claim submission requirements herein.
- 12.1.C The provisions of this Article 12 constitute a non-judicial claim settlement procedure, and also step one of a two-step claim presentment procedure by agreement under Section 930.2 of the California Government Code. Specifically, step one is compliance with this contract claims procedure and filing/administering timely contract claims in accordance with the Contract Documents. Step two is filing a timely Government Code Section 910 claim in accordance with the California Government Code. Any Government Code Section 910 claims shall be presented in accordance with the Government Code and shall affirmatively indicate Contractor's prior compliance with the claims procedure herein and previous dispositions under this Article.
- 12.1.D The provisions of this Article 12 shall survive termination, breach, or completion of the Contract Documents. Contractor shall bear all costs incurred in the preparation and submission of a claim.

12.2 Procedure

- 12.2.A Disputed Work. Should any clarification, determination, action, or inaction by SMART or Architect/Engineer, Work, third party, or any other event whatsoever, in the opinion of Contractor, exceed the requirements of or not comply with Contract Documents in any way, or otherwise result in Contractor seeking additional compensation in time or money or damages for any reason (collectively "Disputed Work"), then Contractor shall so notify SMART. Contractor and SMART shall make good faith attempts to resolve informally any and all such issues, claims and/or disputes.
- 12.2.B Duty to Work During Disputes. Notwithstanding any dispute or Disputed Work, Contractor shall continue to prosecute the Work and the Disputed Work in accordance with the determinations of SMART. Contractor's sole remedy for Disputed Work is to pursue the remedies in this Article 12 and follow the determinations of SMART.
- 12.2.C Timely Notice of Disputed Work Required. Before commencing any Disputed Work, or within ten (10) Days after Contractor's first knowledge of the Disputed Work, whichever is earlier, Contractor shall file a written notice and preliminary cost proposal for the Disputed Work with SMART stating clearly and in detail its objection and reasons for contending the Disputed Work is outside or in breach of the requirements of Contract Documents. The written notice must identify the subcontractors, vendors, suppliers effected, if any, sufficient for SMART to visit the site to inspect the work and/or conduct a telephonic interview of the persons involved, and/or to photograph the work in question; and Contractor is encouraged to supply digital photographs by email if possible. The preliminary cost proposal must provide a good faith preliminary estimate of the labor (workers, crews), equipment and/or materials involved, and a corresponding good faith preliminary estimate of cost. If a written notice and preliminary cost proposal for Disputed Work is not issued within this time period, or if Contractor proceeds with the Disputed Work without first having given the notice of the Disputed Work, Contractor shall waive its rights to further claim on the specific issue.
- 12.2.D Timely Notice of Potential Claims Required. SMART will review Contractor's timely notice and preliminary cost proposal for Disputed Work and provide a decision. If, after receiving the decision, Contractor disagrees with it or still considers the Work required of it to be outside of the requirements of Contract Documents, then Contractor shall so notify SMART, in writing, within ten (10) Days after receiving the decision, by submitting a notice of potential claim, stating that a formal claim will be issued. (If SMART should fail to provide a decision on a notice and preliminary cost proposal within thirty (30) days, then Contractor shall submit a notice of potential claim within ten days following the thirtieth (30th) day, i.e., or by the 40th day following the notice and preliminary cost proposal.) Contractor shall continue to prosecute the Disputed Work to completion.

- 12.2.E Quarterly Claims Required. At the end of each calendar year quarter (March 31, June 30, September 30, and December 31) of each year, for each and every notice of potential claim that Contractor may have submitted in that quarter, Contractor shall submit a formal claim in the form specified herein. Contractor may file a single consolidated claim each quarter, or may file separate claims each quarter, as Contractor sees fit, provided Contractor complies with the requirements below. (Contractor may defer until the next reporting period the filing of a formal claim for any notices of potential claim timely issued within the last 15 days of the prior quarter.) The formal claim(s) shall include all arguments, justification, cost or estimates, schedule analysis, and detailed documentation supporting Contractor's position, for each notice of potential claim that Contractor intends to pursue as a formal claim (further described below).
- 12.2.F Claim Updates Required. If Disputed Work persists longer than a single calendar quarter, then Contractor shall, every quarter until the Disputed Work ceases, submit to SMART a document titled "Claim Update" that shall update and quantify all elements of the claim as completely as possible. Contractor's failure to submit a Claim Update or to quantify costs every quarter shall result in waiver of the claim for that period. Claims or Claim Updates stating that damages, total damages (direct and indirect), schedule impact and/or any time extension will be determined at a later date shall not comply with this subparagraph and shall result in Contractor waiving its claim(s). Contractor shall also maintain a continuing "claims log" that shall list all outstanding claims and their value and provide such log to SMART quarterly.
- 12.2.G Claim Negotiations required. Upon receipt of Contractor's formal claim(s) including all arguments, justifications, cost or estimates, schedule analysis, and documentation supporting its position as required herein, SMART or its designee will review the issue and render a final determination. Contractor and SMART may mutually agree upon a claims resolution protocol, a neutral facilitator or mediator, or other alternative dispute resolution procedures, as appropriate. SMART may in its discretion conduct an administrative hearing on Contractor's claim, in which case Contractor shall appear, participate, answer questions and inquiries, and present any further document, schedules or analysis requested by SMART to evaluate and decide Contractor's claim.

12.3 Claim Format

- 12.3.A Contractor shall submit the formal claim(s) with a cover letter and certification of the accuracy of the formal claim.
- 12.3.B The formal claim(s) shall list separately each notice of potential claim that Contractor intends to pursue as a formal claim(s), and for each such item separately, Contractor shall provide the following:
- 12.3.B.1 Summary of the claim, including underlying facts, entitlement, schedule analysis, quantum calculations, contract provisions supporting relief;

- 12.3.B.2 List of documents relating to claim including Specifications, Drawings, clarifications/requests for information, schedules, notices of delay, and any others;
- 12.3.B.3 Chronology of events and correspondence;
- 12.3.B.4 Analysis of claim merit;
- 12.3.B.5 Analysis of claim cost; and
- 12.3.B.6 Attach supporting cost and schedule documents as required in this Article and elsewhere in the Contract Documents (e.g., Section 01 32 16).
- 12.3.C For each notice of potential claim that Contractor intends to pursue as a formal claim, Contractor shall establish in the formal claim a direct causal link between the separate item of cost/time requested, the separate notices of potential claim timely issued, and the specific changed Work asserted. Total cost claims shall not be allowed.
- 12.3.D Claims shall be calculated in the same manner as Change Orders per Section 01 25 00 (Clarification and Modification Procedures). EXCEPT WHERE PROVIDED BY LAW, OR ELSEWHERE IN THESE CONTRACT DOCUMENTS (IF APPLICABLE), SMART SHALL NOT BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES, AND CONTRACTOR SHALL NOT INCLUDE THEM IN ITS CLAIMS. CONTRACTOR SHALL BE LIMITED IN ITS RECOVERY ON CLAIMS TO THE CHANGE ORDER CALCULATIONS SET FORTH IN SECTION 01 25 00 (CLARIFICATION AND MODIFICATION PROCEDURES).

12.4 Mediation

- 12.4.A If Contractor's claims submitted in accordance with this Article 12 at Project completion total less than \$375,000, then claims resolution shall first proceed in the manner prescribed by Article 1.5, Chapter 1, Part 3 of Division 2 of the California Public Contract Code, found in Section 01 41 00 (Regulatory Requirements).
- 12.4.B If Contractor's claims submitted in accordance with this Article 12 at Project completion exceed \$375,000, then, as a condition precedent to litigation (or if otherwise permitted by the Contract Documents, arbitration) thereon, such claims must first be mediated. Mediation shall be non-binding and utilize the services of a mediator mutually acceptable to the parties and, if the parties cannot agree, a mediator selected by the American Arbitration Association from its panel of approved mediators trained in construction industry mediation, having a minimum of twenty (20) years' experience in the construction industry. All statutes of limitation shall be tolled from the date of the demand for mediation until a date two weeks following the mediation's conclusion. All unresolved Contractor claims shall be submitted to the same mediator. The cost of mediation shall be equally shared.

12.5 Subcontractor Claims

- 12.5.A Contractor shall present as its claims all Subcontractor, sub-Subcontractor and supplier claims of any type, and prove them under the terms of the Contract

Documents. SMART shall not be directly liable to any Subcontractor, any supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages or extra costs of any type arising out of or resulting from the Project.

12.6 Waiver

- 12.6.A If Contractor fails to comply with this Article 12 as to any claim, then Contractor shall waive its rights to such claim.
- 12.6.B All claim(s), Disputed Work items or issue(s) not raised in a timely notice, timely notice of potential claim and then timely claim submitted under this Article 12, may not be asserted in any subsequent Government Code section 910 claim, litigation, or legal action.
- 12.6.C Contractor may request an extension of time to comply with the claims procedure herein but must do so in advance of time periods expiring and SMART must give its approval in writing (which approval may be withheld in SMART discretion.) As to any other feature of the claim procedure herein (and its claims waiver feature), it may not be waived or altered absent a written change order signed by both parties and approved as to form by their legal counsel.
- 12.6.D SMART shall not be deemed to waive or alter any provision under this Article 12, if at SMART's sole discretion, a claim is administered in a manner not in accord with this Article 12.

13 LEGAL AND MISCELLANEOUS

13.1 Laws and Regulations

- 13.1.A Contractor shall keep fully informed of and shall comply with all laws, ordinances, regulations and orders of any properly constituted authority affecting the Contract Documents, Work and persons connected with Work, and shall protect and indemnify SMART and its officers, employees, consultants and agents against any claim or liability, including attorney's fees, arising from or based on violation of law, ordinance, regulation or order, whether by Contractor or by Subcontractors, employees or agents. Authorized persons may at any time enter upon any part of Work to ascertain compliance of all applicable laws, ordinances, regulations, and orders.
- 13.1.B Whenever Drawings and Specifications require higher standards than are required by any applicable law, ordinance, regulation or order, Drawings and Specifications shall govern. Whenever Drawings and Specifications require something that will violate such laws, ordinances, regulations, or orders, then such laws, ordinances, regulations or orders shall govern.
- 13.1.C Contractor shall comply with applicable portions of Title 8 (Industrial Relations), Title 19 (Public Safety), Title 22 (Social Security, Division of Health) and Title 24 (California Building Standards Code), California Code of Regulations (Uniform Building Code) (most recent edition), Public Contract Code. Whenever Contract Documents require larger sizes or higher standards than are required by any applicable law, ordinance, regulation or order, Contract Documents shall govern.

Whenever Contract Documents require something that will violate such laws, ordinances, regulations, or orders, then such laws, ordinances, regulations or orders shall govern.

13.2 Permits and Taxes

13.2.A SMART will pay applicable building permits, school, sanitation, and water demand fees, except as otherwise provided in Section 01 11 00 (Summary of Work). Unless otherwise noted in Section 01 11 00 (Summary of Work), Contractor shall procure all permits and licenses applicable to the Work (including environmental matters to the extent applicable); pay all charges and fees, including fees for street opening permits; comply with, implement and acknowledge effectiveness of all permits; initiate and cooperate in securing all required notifications or approvals therefore; and give all notices necessary and incident to due and lawful prosecution of Work. Contractor shall pay all fees related to deferred submittals such as, but not limited to, fire sprinkler system, underground utilities, fuel storage tank and fire alarm system. Contractor shall pay all sales and/or use taxes levied on materials, supplies, or equipment purchased and used on or incorporated into Work, and all other taxes properly assessed against equipment or other property used in connection with Work, without any increase in the Contract Sum. Contractor shall make necessary arrangements with proper authorities having jurisdiction over roads, streets, pipelines, navigable waterways, railroads, and other works in advance of operations, even where SMART may have already obtained permits for the Work.

13.3 Suspension of Work

13.3.A SMART may, without cause, order Contractor in writing to suspend, delay or interrupt Work in whole or in part for such period of time as SMART may determine. An adjustment shall be made for increases in cost of performance of Work of the Contract Documents caused by any such suspension, delay or interruption, calculated using the measures set forth in Section 01 25 00 (Clarification and Modification Procedures). No adjustment shall be made to extent that:

- 13.3.A.1 Performance is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor is responsible; or
- 13.3.A.2 An equitable adjustment is made or denied under any other provision of Contract Documents; or
- 13.3.A.3 The suspension of Work was the direct or indirect result of Contractor's failure to perform any of its obligations hereunder. Adjustments made in cost of performance may have a mutually agreed fixed or percentage fee; if the parties cannot agree, Contractor may file a claim under Article 12 of this Document 00 70 00.

13.4 Termination of Contract For Cause

13.4.A SMART may declare Contractor in default of Contract Documents and SMART may terminate Contractor's right to proceed under the Contract Documents for cause:

13.4.A.1 Should Contractor make an assignment for the benefit of creditors; admit in writing its inability to pay its debts as they become due; file a voluntary petition in bankruptcy; be adjudged as bankrupt or insolvent; be the subject of an involuntary petition in bankruptcy which is not dismissed within 60 Days; file a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation; file any answer admitting or not contesting the material allegations of a petition filed against Contractor in any such proceeding; or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian or liquidator of Contractor or of all or any substantial part of its properties or if Contractor, its directors or shareholders, take action to dissolve or liquidate Contractor; or

13.4.A.2 Should Contractor commit a material breach of the Contract Documents. If SMART declares Contractor in default due to material breach, however, SMART must allow Contractor an opportunity to cure such breach within 10 Days of the date of notice from SMART to Contractor providing notice of the default; or, if such breach is curable but not curable within such 10-Day period, within such period of time as is reasonably necessary to accomplish such cure; or

13.4.A.3 Should Contractor violate or allow (by a Subcontractor or other person or entity for which Contractor is responsible) a violation of any valid law, statute, regulation, rule, ordinance, permit, license or order of any governmental agency applicable to the Project or Work and does not cure (or cause to be cured) such violation within 10 Days of the date of the notice from SMART to Contractor demanding such cure; or, if such violation is curable but not curable within such 10-Day period, within such period of time as is reasonably necessary to accomplish such cure.

13.4.B In order for Contractor to avail itself of a time period in excess of 10 Days, pursuant to subsections 13.4.A.2 and 13.4.A.2, Contractor must provide SMART within the 10-Day period with a written plan acceptable to SMART to cure said breach or violation which includes, for example, evidence of necessary resources, Subcontractor commitments, schedules and recovery schedules meeting Contract Document requirements and showing a realistic and achievable plan to cure the breach or violation. Contractor must then diligently commence and continue such cure according to the written plan.

13.4.C If SMART at any time reasonably believes that Contractor is or may be in default under the Contract Documents as provided in paragraph 13.4.A of this Document

00 70 00, SMART may in its sole discretion notify Contractor of this fact and request written assurances from Contractor of performance of Contract Documents and a written plan from Contractor to remedy any default under the terms of Contract Documents which SMART may advise Contractor of in writing. Contractor shall, within 10 Days of SMART's request, deliver a written cure plan which meets the requirements of the written plan deliverable under paragraph 13.4.A.2 of this Document 00 70 00. Failure of Contractor to provide such written assurances of performance and the required written plan, within 10 Days of request, will constitute a material breach of Contract Documents sufficient to justify termination for cause.

- 13.4.D In event of termination for cause, SMART will immediately serve written notice thereof upon Surety, if a Construction Performance Bond was required under contract, and Contractor. Surety shall have the rights and obligations set forth in Document 00 61 13.13 (Performance Bond). Subject to the Surety's rights under the Performance Bond (which rights are waived upon a default thereunder), SMART may take over the Work and prosecute it to completion by contract or by any other methods it may deem advisable.
- 13.4.E In the event of termination by SMART as provided in paragraph 13.4.A of this Document 00 70 00 for cause:

13.4.E.1 SMART will compensate Contractor for the value of the Work delivered to SMART upon termination as determined in accordance with the Contract Documents, subject to all rights of offset and back charges, and provided that Contractor provides SMART with updated as-builts and Project Record Documents showing the Work performed up to the date of termination. However, SMART will not compensate Contractor for its costs in terminating the Work or any cancellation charges owed to third parties.

13.4.E.2 Contractor shall deliver to SMART possession of the Work in its then condition including, but not limited to, all designs, engineering, Project records, Project Record Documents, cost data of all types, Drawings and Specifications and contracts with vendors and Subcontractors, all other documentation associated with the Project, and all construction supplies and aids dedicated solely to performing the Work which, in the normal course of construction, would be consumed or only have salvage value at the end of the construction period. Contractor shall remain fully liable for the failure of any Work completed and materials and equipment provided through the date of such termination to comply with the provisions of the Contract Documents. The provisions of this paragraph 13.4.E shall not be interpreted to diminish any right which SMART may have to claim and recover damages for any breach of Contract Documents or otherwise, but rather, Contractor shall compensate SMART for all loss, cost, damage, expense, and/or liability suffered by SMART as a

result of such termination and failure to comply with Contract Documents.

- 13.4.F SMART's rights under paragraph 13.4.E.2 shall be specifically enforceable to the greatest extent permitted by law. SMART shall, to the extent applicable, have all other rights and remedies set forth in any Contract Document.
- 13.4.G SMART may terminate portions or parts of the Work for cause, provided these portions or parts (i) have separate geographic areas from parts or portions of the Work not terminated or (ii) are limited to the Work of one or more specific trades or Subcontractors. In such case, Contractor shall cooperate with other contractors as required under Article 6 of this Document 00 70 00.
- 13.4.H In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and Contractor shall have no greater rights than it would have had following a termination for convenience. Any Contractor claim arising out of a termination for cause shall be made in accordance with Article 12 of this document and calculated in accordance with the provisions of the Contract Documents on Change Orders and claims. No other loss cost, damage, expense, or liability may be claimed, requested, or recovered by Contractor.

13.5 Termination of Contract For Convenience

- 13.5.A SMART may terminate performance of the Work under the Contract Documents in accordance with this clause in whole, or from time to time in part, whenever SMART shall determine that termination is in SMART's best interest. Termination shall be effected by SMART delivering to Contractor notice of termination specifying the extent to which performance of the Work under the Contract Documents is terminated and the effective date of the termination.
- 13.5.B After receiving a notice of termination under paragraph 13.5.A of this Document 00 70 00, and except as otherwise directed by SMART, Contractor shall:
 - 13.5.B.1 Stop Work under the Contract Documents on date and to extent specified in notice of termination;
 - 13.5.B.2 Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete portion of Work under the Contract Documents which is not terminated;
 - 13.5.B.3 Terminate all orders and subcontracts to extent that they relate to performance of Work terminated by the notice of termination;
 - 13.5.B.4 Assign to SMART in manner, at times, and to extent directed by SMART, all right, title, and interest of Contractor under orders and subcontracts so terminated. SMART shall have the right, in its sole discretion, to settle or pay any or all claims arising out of termination of orders and subcontracts;
 - 13.5.B.5 Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with approval or ratification of SMART to extent SMART may require. SMART's approval or ratification shall be final for purposes of this paragraph 13.5;

- 13.5.B.6 Transfer title to SMART, and deliver in the manner, at the times, and to the extent, if any, directed by SMART, all fabricated or unfabricated parts, Work in process, completed Work, supplies, and all other material produced as part of, or acquired in connection with performance of, Work terminated by the notice of termination, and completed or partially completed drawings, drawings, specifications, information, and other property which, if the Project had been completed, would have been required to be furnished to SMART;
 - 13.5.B.7 Use its best efforts to sell, in manner, at times, to extent, and at price or prices that SMART directs or authorizes, any property of types referred to in paragraph 13.5.B.6 of this Document 00 70 00, but Contractor shall not be required to extend credit to any purchaser and may acquire any such property under conditions prescribed and at price or prices approved by SMART. Proceeds of transfer or disposition shall be applied to reduce payments to be made by SMART to Contractor under the Contract Documents or shall otherwise be credited to the price or cost of Work covered by Contract Documents or paid in such other manner as SMART may direct;
 - 13.5.B.8 Complete performance of the part of the Work which was not terminated by the notice of termination; and
 - 13.5.B.9 Take such action as may be necessary, or as SMART may direct, to protect and preserve all property related to Contract Documents which is in Contractor's possession and in which SMART has or may acquire interest.
- 13.5.C After receipt of a notice of termination under paragraph 13.5.A of this Document 00 70 00, Contractor shall submit to SMART its termination claim, in form and with all certifications required by Article 12 of this Document 00 70 00. Contractor's termination claim shall be submitted promptly, but in no event later than 6 months from effective date of the termination. Contractor and SMART may agree upon the whole or part of the amount or amounts to be paid to Contractor because of a total or partial termination of Work under this paragraph 13.5. If Contractor and SMART fail to agree on the whole amount to be paid to Contractor because of the termination of the Work under this paragraph 13.5, SMART's total liability to Contractor by reason of the termination shall be the total (without duplication of any items) of:
- 13.5.C.1 The reasonable cost to Contractor, without profit, for all Work performed prior to the effective date of the termination, including Work done to secure the Project for termination. Reasonable cost may not exceed the applicable percentage completion values derived from the Progress Schedule and the schedule of values. Deductions shall be made for cost of materials to be retained by Contractor, cost of Work defectively performed, amounts realized by sale of materials, and for other appropriate credits against cost of Work.

Reasonable cost will include reasonable allowance for Project overhead and general administrative overhead not to exceed a total of ten percent of direct costs of such Work. When, in SMART's opinion, the cost of any item of Work is excessively high due to costs incurred to remedy or replace Defective or rejected Work, reasonable cost to be allowed will be the estimated reasonable cost of performing the Work in compliance with requirements of Contract Documents and excessive actual cost shall be disallowed.

- 13.5.C.2 A reasonable allowance for profit on cost of Work performed as determined under paragraph 13.5.C.1 of this Document 00 70 00, provided that Contractor establishes to SMART's satisfaction that Contractor would have made a profit had the Project been completed and provided further that the profit allowed shall not exceed 5 percent of cost.
- 13.5.C.3 Reasonable costs to Contractor of handling material returned to vendors, delivered to SMART or otherwise disposed of as directed by SMART.
- 13.5.C.4 A reasonable allowance for Contractor's internal administrative costs in preparing termination claim.
- 13.5.D Except as provided in this paragraph 13.5.C of this Document 00 70 00, SMART shall not be liable for costs incurred by Contractor or Subcontractors after receipt of a notice of termination. Such non-recoverable costs include, but are not limited to, anticipated profits on Work not performed as of the date of termination, post-termination employee salaries, post-termination general administrative expenses, post-termination overhead or unabsorbed overhead, costs of preparing and submitting Contractor's Bid, attorney's fees of any type, and all costs relating to prosecution of claim or lawsuit.
- 13.5.E SMART shall have no obligation to pay Contractor under this paragraph 13.5 unless and until Contractor provides SMART with updated and acceptable as-builts and Project Record Documents for Work completed prior to termination.
- 13.5.F In arriving at the amount due Contractor under this clause, there shall be deducted:
 - 13.5.F.1 All unliquidated advances or other payments on account previously made to Contractor which are applicable to the terminated portion of Contract Documents;
 - 13.5.F.2 Any claim which SMART may have against Contractor in connection with Contract Documents; and
 - 13.5.F.3 The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by Contractor or sold under provisions of this paragraph 13.5, and not otherwise recovered by or credited to SMART.

13.6 Contingent Assignment of Subcontracts

13.6.A Contractor hereby assigns to SMART each Subcontract for a portion of the Work, provided that:

- 13.6.A.1 The assignment is effective only after SMART's termination of Contractor's right to proceed under the Contract Documents (or portion thereof relating to that Subcontract) pursuant to paragraphs 13.4 or 13.5 of this Document 00 70 00;
- 13.6.A.2 The assignment is effective only for the Subcontracts which SMART expressly accepts by notifying the Subcontractor in writing;
- 13.6.A.3 The assignment is subject to the prior rights, if any, of the Surety, obligated by Document 00 61 13.13 (Construction Performance Bond) provided under the Contract Documents, where the Surety exercises its rights to complete the Contract;
- 13.6.A.4 After the effectiveness of an assignment, Contractor shall, at its sole cost and expense (except as otherwise provided in paragraphs 13.4 or 13.5 of this Document 00 70 00), sign all instruments, and take all actions reasonably requested by SMART to evidence and confirm the effectiveness of the assignment in SMART; and
- 13.6.A.5 Nothing in this paragraph 13.6 shall modify or limit any of Contractor's obligations to SMART arising from acts or omissions occurring before the effectiveness of any Subcontract assignment, including but not limited to all defense, indemnity and hold-harmless obligations arising from or related to the assigned Subcontract.

13.7 Remedies and Contract Integration

13.7.A Subject to Contract Documents provisions regarding Contractor claims, claim review, and claim resolution, and subject to the limitations therein, the exclusive jurisdiction and venue for resolving all claims, counter claims, disputes, and other matters in question between SMART and Contractor arising out of or relating to Contract Documents, any breach thereof or the Project shall be the applicable court of competent jurisdiction located in the State of California, County of Sonoma. All SMART remedies provided in the Contract Documents shall be taken and construed as cumulative and not exclusive; that is, in addition to each and every other remedy herein provided; and in all instances SMART shall have any and all other equitable and legal rights and remedies which it would have according to law.

13.7.B The Contract Documents, any Contract Modifications, and Change Orders shall represent the entire and integrated agreement between SMART and Contractor regarding the subject matters hereof and thereof and shall constitute the exclusive statement of the terms of the parties' agreement. The Contract Documents, and any Contract Modifications and Change Orders, shall supersede any and all prior negotiations, representations, or agreements, written or oral, express or implied, that relate in any way to the subject matter of the Contract Documents or written Modifications. SMART and Contractor represent and

agree that, except as otherwise expressly provided in the Contract Documents, they are entering into the Contract Documents and any subsequent written Modification in sole reliance upon the information set forth or referenced in the Contract Documents or Contract Modifications and the parties are not and will not rely on any other information.

13.7.C In any proceeding to enforce the Contract Documents, Contractor and SMART agree that the finder of fact shall receive detailed instructions on the meaning and operation of the Contract Documents, including their conditions, limitations of liability and remedies clauses, claims procedures and any other provisions impacting major defenses and theories of liability of the parties. Detailed findings of fact shall be requested, to verify Contract enforcement.

13.7.D Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions, or other provisions of the Contract Documents at any time shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition, or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.

13.8 Patents

13.8.A Fees or claims for any patented invention, article or arrangement that may be used upon or in any manner connected with performance of the Work or any part thereof shall be included in the Bid price for doing the Work. Contractor shall defend, indemnify and hold harmless SMART and each of its officers, employees, consultants and agents, including, but not limited to, the Board and each SMART's Representative, from all damages, claims for damages, costs or expenses in law or equity, including attorney's fees, arising from or relating to any claim that any article supplied or to be supplied under the Contract Documents infringes on the patent rights, copyright, trade name, trademark, service mark, trade secret or other intellectual property right of any person or persons or that the person or entity supplying the article does not have a lawful right to sell the same. Such costs or expenses for which Contractor agrees to indemnify and hold harmless the above indemnities include but are not limited to any and all license fees, whether such fees are agreed by any indemnitee or ordered by a court or administrative body of any competent jurisdiction.

13.9 Substitution for Patented And Specified Articles

13.9.A Except as noted specifically in Specifications, whenever in Specifications, material or process is designated by patent or proprietary name or by name of manufacturer, such designation shall be deemed to be used for purpose of facilitating description of material and process desired, and shall be deemed to be followed by the words "or Approved Equal" and Contractor may offer any substitute material or process that Contractor considers "equal" in every respect to that so designated and if material or process offered by Contractor is, in opinion of SMART, Equal in every respect to that so designated, its use will be approved. However, Contractor may utilize this right only by timely submitting

Document 00 63 25 (Substitution Request Form) if provided in the bid solicitation documents. A substitution will be approved only if it is a true Equal item in every aspect of its design and quality, including but not limited to its dimensions, weights, service requirements, durability, functioning, impact on contiguous construction elements, overall schedule, and design.

13.10 Interest of Public Officers

13.10.A No representative, officer, or employee of SMART, no member of the governing body of the locality in which the Project is situated, no member of the locality in which SMART was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project, during the tenure of the official or for one year thereafter, shall, as principal, agent, attorney or otherwise, be directly or indirectly interested, in the Contract Documents or the proceeds thereof.

13.11 Limit of Liability

13.11.A Smart, and each of its officers, board members, employees, consultants, and agents including, but not limited to, architect and each other smart representative, shall have no liability to contractor for special, consequential, or incidental damages, except to the limited extent that these contract documents or applicable public contracting statutes may specify their recovery.

13.12 Severability

13.12.A Any provisions or portions thereof of Contract Documents that are prohibited by, unlawful, or unenforceable under any applicable law of any jurisdiction shall as to such jurisdiction be ineffective without affecting other provisions or portions thereof in the Contract Documents.

14 MODIFICATIONS OF CONTRACT DOCUMENTS

14.1 Alterations, Modifications and Force Account Work

14.1.A No modification or deviation from the Drawings and Specifications will be permitted except by written Contract Modification.

14.1.B SMART may, without notice to the sureties, make alterations, deviations, additions to, or deletions from Contract Documents; increase or decrease the quantity of any item or portion of the Work; expand, contract, or otherwise change the Contract Time; delete any item or portion of the Work; and/or require extra Work. Contractor shall perform such Work under applicable provisions of the Contract Documents, unless specifically provided otherwise at the time the change is ordered. In the case of any ordered extra Work, SMART reserves the right to furnish all or portions of associated labor, material, and equipment, which Contractor shall accept and use without payment for costs, markup, profit, or otherwise for such SMART-furnished labor, materials, and equipment.

14.1.C If changes ordered in design, workmanship or materials are of such a nature as to increase or decrease the cost of any part of the Work, the price fixed in the

Contract Documents shall be increased or decreased as set forth in a written Change Order by the amount that Contractor and SMART may agree upon as a reasonable and proper allowance for the cost increase or decrease. If an agreement cannot be reached, then SMART will reach a determination, which shall be final, subject to Contractor's rights under Article 12 of this Document 00 70 00. In all cases Contractor shall perform the changed Work as directed by SMART subject to Contractor's rights under Article 12 of this Document 00 70 00.

- 14.1.D A Change Order will become effective when signed by SMART. If SMART exercises its right to decide disputed issues pertaining to changed Work as set forth in Articles 12 and 14 of this Document 00 70 00, then the resulting Change Order shall be effective when signed by SMART, notwithstanding that Contractor has not signed it.
- 14.1.E Changes not affecting the Contract Time or Contract Sum of the Work, in SMART's discretion, may be set forth in a written RFI-Reply executed by SMART or Architect's Supplemental Instruction (ASI). Execution of such an RFI-Reply or ASI constitutes Contractor's agreement to make the specified change without change to the Contract Sum or the Contract Time.
- 14.1.F Changes or deviations from Contract Documents affecting the Contract Time or Contract Sum of the Work shall not be made without the authority of an effective Change Order or Construction Change Directive as provided in Section 01 25 00 (Clarification and Modification Procedures), except in cases of emergency discussed in Article 15 of this Document 00 70 00.
- 14.1.G Changes in the Work made pursuant to this Article 14 and extensions of Contract Time necessary by reason thereof shall not in any way release the guarantees and warranties given by Contractor pursuant to provisions of the Contract Documents, nor shall such changes in the Work relieve or release the Sureties of bonds executed pursuant to said provisions. The Sureties, in executing such bonds, shall be deemed to have expressly agreed to any such change in the Work and to any extension of time made by reason thereof.
- 14.1.H Procedures for Modifications of Contract Documents and for calculating the cost of extra Work are given in Section 01 25 00 (Clarification and Modification Procedures). Regarding delay and impact costs of any nature, Contractor may not seek delay compensation for on-Site or off-Site costs based on formulas, e.g., "Eichlay" or other formula. Rather, Contractor shall prove actual costs resulting from such delays. If Contractor requests compensation for delay to the construction, then Contractor shall prove and document actual costs plus markup per the cost categories and procedures in Section 01 25 00 (Clarification and Modification Procedures) in order to request, claim or prove compensation for delay.

14.2 Time Allowances

- 14.2.A The Contract Time may only be changed by Change Order or by Contract Modification, and all-time limits stated in the Contract Documents are of the essence of Contract Documents.

- 14.2.B The Contract Time will be adjusted in an amount equal to the time lost or added due to:
- 14.2.B.1 Changes in the Work ordered by SMART;
 - 14.2.B.2 Acts or neglect by SMART, Architect, any SMART's Representative, utility owners or other contractors performing other work, provided that Contractor has fully and completely performed its responsibilities under the Contract Documents; or
 - 14.2.B.3 Fires, floods, epidemics, abnormal weather conditions beyond the parameters otherwise described or referenced in paragraph 14.4 below, earthquakes, civil or labor disturbances, strikes or acts of God, provided damages resulting therefrom are not the result of Contractor's failure to protect the Work as required by Contract Documents.
- 14.2.C The Contract Time shall not be extended for any cause identified in paragraph 14.2.B above, however, unless:
- 14.2.C.1 Contractor actually has been prevented from completing any part of the Work within the Contract Time due to delay that is beyond Contractor's control and due to reasons for which Contractor is not responsible (delays attributable to and within the control of a Subcontractor, or its subcontractors, or supplier shall be deemed to be delays within the control of Contractor);
 - 14.2.C.2 A claim for delay is made as provided herein; and
 - 14.2.C.3 Contractor submits a Time Impact Evaluation as required under Section 01 32 16 (Progress Schedules and Reports) that demonstrates actual delay to critical Work activities that actually delay the progress of the Work in the amount of time requested.

14.3 Notice of Delay

- 14.3.A Within seven (7) Days of the beginning of any delay, Contractor shall notify SMART in writing, by submitting a notice of potential claim, of all anticipated delays resulting from the delay event in question. Any request for extension of time shall be accompanied by Contractor's written statement that the adjustment claimed is the entire adjustment to which the claimant is entitled as a result of the occurrence of said event and shall include a written schedule document that demonstrates delay to the critical path using a Time Impact Evaluation as specified in Section 01 32 16 (Progress Schedules and Reports). SMART will determine all claims and adjustments in the Contract Time. No claim for an adjustment in the Contract Time will be valid and such claim will be waived if not submitted in accordance with the requirements of this paragraph 14.3.A.

14.4 Non-Compensable Time Extensions; Adverse Weather Parameters

- 14.4.A Where Contractor is prevented from completing any part of the Work within the Contract Time due to delay beyond the reasonable control of Contractor and SMART, e.g., adverse weather conditions exceeding Contract Documents parameters, earthquakes, Acts of God and epidemics, and acts of other

contractors or utilities. In such cases, an extension of Contract Time, in an amount equal to the time lost due to such delay (without compensation), shall be Contractor's sole and exclusive remedy for such delay. The adverse weather contingency for this Contract is provided in Document 00 73 00 (Supplementary Conditions).

- 14.4.B Delays due to abnormal or adverse weather conditions will not be allowed for weather conditions that fall within the Contract's adverse weather contingency, nor will Contractor be entitled to any extension of Contract Time for any such delays. Contractor shall be entitled to an extension of Contract Time for adverse weather only (i) if the number of workdays of adverse weather, recognize as provided in this paragraph 14.4, exceeds these parameters (ii) Contractor proves that adverse weather actually caused delays to Work that is on the critical path, and (iii) Contractor satisfies the other requirements of this paragraph 14.4.
- 14.4.C In order to qualify as an adverse weather day with respect to the foregoing parameters, daily rainfall must exceed 0.1 of an inch or more at the National Oceanic & Atmospheric Administration weather station identified in Document 00 73 00 (Supplementary Conditions), and Contractor must give SMART written notice of its intent to claim an adverse weather day within one Day of the adverse weather day occurring. Contractor shall at all times employ all available mitigation measures to enable Work to continue.
- 14.4.D Contractor shall include the foregoing rain parameters as in its Progress Schedule as required in Section 01 32 16 (Progress Schedules and Reports). As Work on the critical path is affected by rain, Contractor shall notify SMART and request that the days be moved to the affected activities. Any adverse weather days remaining shall be considered Project float.
- 14.4.E Subject to the other requirements of this paragraph, adverse weather days shall be recognized for the actual number of days Contractor proves it was delayed by adverse weather. For example, and not by way of limitation, if rain exceeding the amount described in paragraph 14.4.C does not in fact delay Contractor's progress on the critical path, then no adverse weather days shall be recognized. Conversely, if Contractor proves that rain exceeding the amount described in paragraph 14.4.C causes delay to Contractor for a period longer than the number of rain days incurred (e.g., if it rains during grading Work), then all such days shall be recognized as adverse weather days.
- 14.4.F Contractor shall take reasonable steps to mitigate potential weather delays, such as dewatering the Site, lime treatment, and covering Work and material that could be affected adversely by weather. Failure to do so shall be cause for SMART to not recognize adverse weather days, where Contractor could have avoided or mitigated the potential delay by exercising reasonable care.

14.5 Compensable Time Extensions

- 14.5.A Contractor may receive a time extension and be compensated for delays caused directly and solely by SMART. Provided Contractor provides proper notice and documentation under Section 01 32 16, such compensation may include

extended field or home office overhead, field supervision, escalation charges, acceleration costs and extended subcontractor costs.

- 14.5.B Contractor shall not be entitled to any time extension or compensation for any delays caused in whole or in part by Contractor's failure to perform its obligations under the Contract Documents, or during periods of delay concurrently caused by Contractor and either SMART or others.
- 14.5.C Contractor shall not be entitled to damages for delay to the Work caused by the following reasons:
 - 14.5.C.1 SMART's right to sequence the Work in a manner which would avoid disruption to SMART's contractors and their subcontractors and SMART's employees, exercised as a result of Contractor's failure to perform its cooperation and coordination responsibilities required by Contract Documents; SMART's enforcement of any government act or regulation; or the provisions of the Contract Documents; and
 - 14.5.C.2 Extensive requests for clarifications to Contract Documents or Contract Modifications thereto, provided such clarifications or Contract Modifications are processed by SMART or its consultants in a reasonable time commensurate with Contract Documents requirements.

14.6 NOT USED

14.7 Differing Site Conditions

- 14.7.A If Contractor encounters underground conditions that exceed the scope of the Work, Contractor shall promptly give SMART written notice of the condition, and shall give such notice before the conditions are disturbed, to include: (i) material that Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law, and is not within the scope of Work ("hazardous waste"); (ii) subsurface or latent physical conditions at the site differing from those indicated by information about the Site made available to Bidders prior to the deadline for submitting Bids, that Contractor did not and could not have known about by performing its required pre-Bid investigations; or (iii) unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for the Contract, that Contractor did not and could not have known about by performing its required pre-Bid investigations.
- 14.7.B SMART shall promptly investigate the underground conditions, and if it finds that (i) the conditions do materially so differ in a manner Contractor did not anticipate and could not have anticipated, or do involve hazardous waste outside the scope of the Work, and (ii) cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, then (iii) SMART shall initiate a change order under the procedures described in the

contract, including but not limited to, issuing either a Request for Proposal or a Construction Change Directive under the procedures described in the Contract Documents, including without limitation Section 01 25 00 (Clarification and Modification Procedures).

- 14.7.C If SMART determines that underground conditions at the Site do not materially so differ in a manner Contractor did not anticipate and could not have anticipated, or do not involve hazardous waste outside the scope of the Work, or do not cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, or for any other reason that that no change in terms of the Contract Documents is justified, SMART will so notify Contractor in writing, stating reasons.
- 14.7.D In the event that a dispute arises between SMART and Contractor whether the conditions do materially so differ, or involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, Contractor shall not be excused from any scheduled completion date provided for by the Contract but shall proceed with all Work to be performed under the Contract. Contractor shall retain any and all rights provided either by the Contract or by law which pertain to the resolution of disputes and protests between contracting parties.
- 14.7.E Contractor shall not be entitled to any adjustment in the Contract Sum or Contract Time regarding claimed hazardous waste or materials, claimed Latent or materially different Site conditions (whether above or below grade) if:
 - 14.7.E.1 Contractor knew of the existence of such conditions at the time Contractor submitted its Bid; or
 - 14.7.E.2 Contractor should have known of the existence of such conditions at the time Contractor submitted its Bid, or should have learned of such conditions and mitigated their impact, as a result of having complied with the requirements of Contract Documents, including without limitation, the investigation requirements herein at Articles 2 and 10 of Document 00 70 00;
 - 14.7.E.3 The information or conditions claimed by Contractor to be Latent or materially different consist of information, conclusions, opinions, or deductions made from underground conditions reports, of the kind that this Document 00 70 00 precludes reliance upon; or
 - 14.7.E.4 Contractor was required to give written notice and failed to do so within the time required.
- 14.7.F If, because of a differing site condition as defined herein, Contractor does not agree to continue with Work based on a reasonable belief that it is unsafe, or does not agree to resume Work under special conditions, SMART may order the disputed portion of Work deleted from the Work, or performed by others, or SMART may invoke its right to terminate Contractor's right to proceed under the Contract Documents in whole or in part, for convenience or for cause as the facts may warrant. If Contractor does not agree with SMART's determination of any

adjustment in the Contract Sum or Contract Time as a result, Contractor may make a claim as provided in Article 12 of this Document 00 70 00.

14.8 Change Orders Related to Underground Facilities

- 14.8.A If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated in the materials supplied by SMART or in information on file at USA or is not otherwise reasonably known to Contractor by performing its obligations in Articles 2 and 10 of this Document 00 70 00, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby (and in no event later than seven Days), and prior to performing any Work in connection therewith (except in an emergency as required by Article 15 of this Document 00 70 00), identify the owner of such Underground Facility and give written notice to that owner and to SMART. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- 14.8.B Contractor shall be allowed an increase in the Contract Sum or an extension of the Contract Time, or both, for Underground Facilities either not shown or inaccurately shown in the Contract Documents, the information supplied pursuant to the bidding documents or in information on file at USA, only where the inaccuracy was (i) material and outside of the normal experience on projects of this nature, (ii) was not reasonably inferable from existing information, and (iii) directly results in a material, justifiable and actual increase in the cost of Contractor's work. For example, if surface conditions such as pavement repairs, valve covers, or other markings, indicate the presence of an Underground Facility, or if the Underground Facility could be determined or its cost impact mitigated by performing the obligations in Articles 2 and/or 10 of this Document 00 70 00, then an increase in the Contract Price or an extension of the Contract Time will not be due, even if the Underground Facility was not indicated or was shown at a different place or a different elevation in the Contract Documents, in the information supplied to Contractor pursuant to the bidding documents, or in information on file at USA.
- 14.8.C Main Line and Trunk Line Utilities (Government Code Section 4215). Consistent with Government Code Section 4215, as between SMART and Contractor, SMART will be responsible for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Site only if such utilities are not identified in the Contract Documents or bidding documents. SMART will compensate for the cost of locating and repairing damage not due to Contractor's failure to exercise reasonable care, removing and relocating such main or trunk line utility facilities not indicated in the Contract Documents or bidding documents with reasonable accuracy, and equipment on the Project necessarily idled during such work.

14.9 Value Engineering

- 14.9.A The contractor is encouraged to develop, prepare, and submit value engineering change proposals voluntarily. SMART shall share any approved value engineering proposals at a rate of 50% of realized savings to the contractor.

15 WORKING CONDITIONS AND PREVAILING WAGES

15.1 Use Of Site/Sanitary Rules

- 15.1.A All portions of the Work shall be maintained at all times in neat, clean and sanitary condition. Contractor shall furnish toilets for use of Contractor's and Subcontractors' employees on the Site where needed, and their use shall be strictly enforced. All toilets shall be properly secluded from public observation, and shall be located, constructed, and maintained subject to SMART's approval.
- 15.1.B Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Site and land areas identified in and permitted by Contract Documents and other land and areas permitted by applicable laws and regulations, rights of way, permits and easements or as designated by SMART, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, any improvement located thereon, or to the SMART or occupant thereof resulting from the performance of Work.
- 15.1.C During the progress of the Work, Contractor shall keep the Site and the Project free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, Contractor shall remove all waste materials, rubbish, and debris from and about the Site as well as all tools, appliances, construction equipment and machinery and surplus materials. Contractor shall leave the premises clean and ready for occupancy by SMART at Substantial Completion of Work. Contractor shall restore to original condition all property not designated for alteration by Contract Documents.
- 15.1.D Contractor shall not load nor permit any part of any structure or pavement to be loaded in any manner that will endanger the structure or pavement, nor shall Contractor subject any part of Work or adjacent property to stresses or pressures that will endanger it. Contractor shall conduct all necessary existing conditions investigation regarding structural, mechanical, electrical or any other system existing, shall perform Work consistent with such existing conditions, and shall have full responsibility for insufficiencies or damage resulting from insufficiencies of existing systems, equipment, or structures to accommodate performing the Work.

15.2 Protection Of Work, Persons, And Property

- 15.2.A Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with Work. Contractor shall comply with all safety requirements specified in any safety program established by SMART, or required by state, federal or local laws and ordinances. Contractor shall be responsible for all damage to Work, property or structures, and all

injuries to persons, arising from the performance of Work of the Contract Documents.

- 15.2.B Contractor shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- 15.2.C Contractor shall remedy all damage, injury or loss to any property referred to in paragraph 15.2.A of this Document 00 70 00, caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, supplier, or any other person or organization directly or indirectly employed by any of them to perform or furnish any Work or anyone for whose acts any of them may be liable. Contractor's duties and responsibility for safety and for protection of Work shall continue until such time as all the Work is completed and Final Acceptance of the Work. SMART and its agents do not assume any responsibility for collecting any indemnity from any person or persons causing damage to Contractor's Work.
- 15.2.D Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.
- 15.2.E SMART may, at its option, retain such moneys due under the Contract Documents as SMART deems necessary until any and all suits or claims against Contractor for injury to persons or property shall be settled and SMART receives satisfactory evidence to that effect.

15.3 Responsibility For Safety And Health

- 15.3.A Contractor shall ensure that its and each tier of Subcontractors' employees, agents and invitees comply with applicable health and safety laws while at the Site. These laws include the Occupational Safety and Health Act of 1970 and rules and regulations issued pursuant thereto, and SMART's safety regulations as amended from time to time. Contractor shall comply with all SMART directions regarding protective clothing and gear.
- 15.3.B Contractor shall be fully responsible for the safety of its and its Subcontractors' employees, agents and invitees on the Site. Contractor shall notify SMART, in writing, of the existence of hazardous conditions, property or equipment at the Site that are not under Contractor's control. Contractor shall be responsible for taking all the necessary precautions against injury to persons or damage to the property of Contractor, Subcontractors, or persons from recognized hazards until the responsible party corrects the hazard.
- 15.3.C Contractor shall confine all persons acting on its or its Subcontractors' behalf to that portion of the Site where Work under the Contract Documents is to be performed, SMART-designated routes for ingress and egress thereto, and any

other SMART-designated area. Except those routes for ingress and egress over which Contractor has no right of control, within such areas, Contractor shall provide safe means of access to all places at which persons may at any time have occasion to be present.

15.4 Emergencies

15.4.A In emergencies affecting the safety or protection of persons or Work or property at the Site or adjacent thereto, Contractor, without special instruction or authorization from SMART, is obligated to act to prevent threat and damage, injury or loss, until directed otherwise by SMART. Contractor shall give SMART prompt written notice if Contractor believes that any significant changes in Work or variations from Contract Documents have been caused thereby. If SMART determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Change Order or Construction Change Directive will be issued to document the consequences of such action.

15.5 Use of Roadways And Walkways

15.5.A Contractor shall not unnecessarily interfere with use of any roadway, walkway, or other facility for vehicular or pedestrian traffic. Before beginning any interference and only with SMART's prior concurrence, Contractor may provide detour, traffic control, or temporary bridge for traffic to pass around or over the interference, which Contractor shall maintain in satisfactory condition as long as interference continues. Unless otherwise provided in the Contract Documents, Contractor shall bear the cost of these temporary facilities.

15.6 Nondiscrimination

15.6.A No person or entity shall discriminate in the employment of persons upon public works because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sexual preference, or gender of such persons, except as provided in Section 12940 of the Government Code. Every contractor for public works violating the provisions of Section 1735 of the Labor Code is subject to all the penalties imposed for a violation of Chapter 1, Part 7, Division 2 of the Labor Code.

15.7 Prevailing Wages

15.7.A Contractor shall pay to persons performing labor in and about Work provided for in the Contract Documents an amount equal to or more than the general prevailing rate of per diem wages for (i) work of a similar character in the locality in which the Work is performed and (ii) legal holiday and overtime work in said locality. The per diem wages shall be an amount equal to or more than the stipulated rates contained in a schedule that has been ascertained and determined by the Director of the State Department of Industrial Relations and SMART to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this Contract. Contractor shall also cause a copy of this determination of the prevailing rate of per diem wages to be

posted at each Site, in addition to all other job site notices prescribed by regulation. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are available at SMART's Headquarters Office and are deemed included in the Bidding Documents. Upon request, SMART will make copies available to any interested party. Contractor shall post the applicable prevailing wage rates at the Site.

If this project is funded using Federal dollars and there is a discrepancy between the Federal Wage Determination and the California Prevailing Wage determinations, Contractor shall pay the higher rate.

- 15.7.B Contractor shall forfeit, as a penalty to SMART, Fifty Dollars (\$50.00) for each laborer, workman, or mechanic employed in performing labor in and about the Work provided for in the Contract Documents for each Day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any Work done under the Contract Documents by him or her or by any Subcontractor under him or her, in violation of Articles 1 and 2 of Chapter 1 of Part 7 of Division II of the California Labor Code. The sums and amounts which shall be forfeited pursuant to this paragraph 15.7.B and the terms of the Labor Code shall be withheld and retained from payments due to Contractor under the Contract Documents, pursuant to this Document 00 70 00 and the Labor Code, but no sum shall be so withheld, retained, or forfeited except from the final payment without a full investigation by either the State Department of Industrial Relations or by SMART. The Labor Commissioner pursuant to Labor Code Section 1775 shall determine the final amount of forfeiture.
- 15.7.C Contractor shall insert in every subcontract or other arrangement which Contractor may make for performance of Work or labor on Work provided for in the Contract, provision that Subcontractor shall pay persons performing labor or rendering service under subcontract or other arrangement not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed in the Labor Code.
- 15.7.D Where either the Prime Agreement or the subagreement exceeds thirty thousand dollars (\$30,000), the Contractor and all subcontractors under him or her shall comply with all applicable requirements of Labor Code 1777.5, 1777.6, and 1777.7 in the employment of apprentices. Contractors are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, Contractor and subcontractors are advised to contact the Department of Industrial Relations (DIR) Division of Apprenticeship standards website at <https://www.dir.ca.gov/das/> for additional information regarding the employment of apprentices and for the specific journey-to-apprentice ratios for the Work. Contractor is responsible for their compliance and all their subcontractor's compliance with these requirements. Failure to

comply will subject the Contractor and subcontractors to the penalties specified in Labor Code §1777.7.

- 15.7.E Contractor stipulates that it shall comply with all applicable wage and hour laws, including without limitation California Labor Code Sections 1725.5, 1776, 1777, and 1810-1815. Failure to so comply shall constitute a default under this Contract.
- 15.7.F Contractor and Subcontractors must keep accurate payroll records, showing the name, address, social security number, Work classification, straight time and overtime hours worked each Day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the Work of the Contract documents. Each payroll record shall contain or be verified by a written declaration as required by Labor Code Section 1776.
- 15.7.G The payroll records enumerated above must be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor as required by Labor Code Section 1776.
- 15.7.H Contractor shall inform SMART of the location of records enumerated above, including the street address, city and SMART, and shall, within five working Days, provide a notice of a change of location and address.
- 15.7.I Contractor or Subcontractor has 10 Days in which to comply subsequent to receipt of a written notice requesting the records enumerated above. In the event that Contractor or Subcontractor fails to comply with the ten-Day period, he or she shall, as a penalty to SMART on whose behalf the contract is made or awarded, forfeit \$25.00 for each calendar Day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. Contractor is not subject to a penalty assessment pursuant to this subparagraph due to the failure of a Subcontractor to comply with this subparagraph.
- 15.7.J This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractor shall require all subcontractors to furnish the records specified in Labor Code section 1776 (e.g., electronic certified payroll records) directly to the Labor Commissioner in a format prescribed by the Labor Commissioner at least monthly.
- 15.7.K Contractor and all Subcontractors shall be registered and qualified to perform public work pursuant to Labor Code section 1725.5 as a condition to engage in the performance of any Work hereunder.
- 15.7.L Contractor shall also deliver certified payrolls to SMART with each Application for Payment as described in Section 01 20 00 (Price and Payment Procedures).

15.8 Environmental Controls

- 15.8.A Contractor shall comply with all rules, regulations, ordinances, and statutes that apply to any Work performed under the Contract Documents including, without

limitation, any toxic, water, and soil pollution controls and air pollution controls specified in Government Code Section 11017. Contractor shall be responsible for insuring that Contractor's Employees, Subcontractors, and the public are protected from exposure to airborne hazards or contaminated water, soil, or other toxic materials used during or generated by activities on the Site or associated with the Project.

15.9 Shoring Safety Plan

- 15.9.A At least five Days in advance of excavating any trench five feet or more in depth, Contractor shall submit to SMART a detailed plan showing the shoring, bracing and sloping design and other provisions to be made for worker protection from the hazard of caving ground during the excavation, as required by Labor Code Section 6705. A civil or structural engineer registered in California shall prepare and sign any plan that varies from the shoring system standards established by the State Construction Safety Orders.
- 15.9.B During the course of Work, Contractor shall be responsible for determining where sloping, shoring, and/or bracing is necessary and the adequacy of the design, installation, and maintenance of all shoring and bracing for all excavation, including any excavation less than five feet in depth. Contractor will be solely responsible for any damage or injuries that may result from excavating or trenching. SMART's acceptance of any drawings showing the shoring or bracing design or work schedule shall not relieve Contractor of its responsibilities under this subparagraph.
- 15.9.C Cal/OSHA Permit. Contractor shall comply with Labor Code 6500 and shall obtain, as applicable, a permit as required by Cal/OSHA for each of the following:
- 15.9.D Construction of trenches or excavations that are five feet or more in depth and into which a person is required to descend.
- 15.9.E Construction or demolition of any building, structure, or scaffolding for falsework more than three stories high, or the equivalent height (36 feet).
- 15.9.F Erection or dismantling of vertical shoring systems more than three stories high, or the equivalent height (36 feet).
- 15.9.G The underground use of diesel engines in mines or tunnels.

END OF DOCUMENT



ATTACHMENT C

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

GENERAL REQUIREMENTS

PASSENGER INFORMATION DISPLAYS
PROCUREMENT, INSTALLATION & SUPPORT

CONTRACT NO. PL-PS-24-001

**ATTACHMENT C IS ON FILE WITH THE BOARD CLERK
AND AVAILABLE UPON REQUEST**



ATTACHMENT D

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

TECHNICAL SPECIFICATIONS

PASSENGER INFORMATION DISPLAYS
PROCUREMENT, INSTALLATION & SUPPORT

CONTRACT NO. PL-PS-24-001

**ATTACHMENT D IS ON FILE WITH THE BOARD CLERK
AND AVAILABLE UPON REQUEST**



ATTACHMENT E

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

SHELTER AS-BUILTS

PASSENGER INFORMATION DISPLAYS PROCUREMENT,
INSTALLATION & SUPPORT

CONTRACT NO. PL-PS-24-001

**ATTACHMENT E IS ON FILE WITH THE BOARD CLERK
AND AVAILABLE UPON REQUEST**



ATTACHMENT F

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

STATION AS-BUILTS

PASSENGER INFORMATION DISPLAYS PROCUREMENT,
INSTALLATION & SUPPORT

CONTRACT NO. PL-PS-24-001

**ATTACHMENT F IS ON FILE WITH THE BOARD CLERK
AND AVAILABLE UPON REQUEST**



Eric Lucan, Chair
Marin County Board of Supervisors

Melanie Bagby, Vice Chair
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Chris Coursey
Sonoma County Board of Supervisors

Rachel Farac
Transportation Authority of Marin

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Barbara Pahre
Golden Gate Bridge,
Highway/Transportation District

Gabe Paulson
Marin County Council of Mayors and
Councilmembers

David Rabbitt
Sonoma County Board of Supervisors

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Mary Sackett
Marin County Board of Supervisors

Eddy Cumins
General Manager

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

August 21, 2024

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

SUBJECT: Authorizing the General Manager to Execute Construction Contract No. EV-BB-24-002 with Triangle Properties, Inc. in the amount of \$523,270.00

Dear Board Members:

RECOMMENDATION:

Adopt Resolution No. 2024-24 Authorizing the General Manager to execute Construction Contract No. EV-BB-24-002 with Triangle Properties, Inc. in the amount of \$523,270. This contract fulfills agency permit requirements by providing mitigation for impacts resulting from the construction of the SMART McInnis Parkway to Smith Ranch Road Pathway project.

SUMMARY:

SMART is currently constructing a bicycle and pedestrian pathway between McInnis Parkway and Smith Ranch Road in San Rafael. This environmental enhancement project includes the planting of native trees to restore riparian vegetation that was impacted by constructing the pathway. Additionally, the project features comprehensive weed management, erosion repair, and channel improvements aimed at enhancing the restoration site conditions to accommodate the replacement riparian tree plantings. This enhancement project is a mandated permit condition and has received approval from the California Department of Fish and Wildlife (CDFW) and California Water Resources Control Board.

A formal Invitation for Bid was issued on June 5, 2024, to hire a contractor to construct and maintain the Riparian Mitigation. A Pre-Bid meeting and site walk was held on June 24th, 2024. On July 11th, 2024, SMART held a public bid opening.

SMART received a total of 4 sealed bids from the following contractors:

Contractor	Bid Amount
Bortolussi & Watkin Inc.	\$541,189.00
Hanford Applied Restoration & Conservation	\$1,124,425.50
Landscape Pros ML dba Construction Pros ML	\$661,000.00
Triangle Properties, Inc.	\$523,270.00

The Engineer's Estimate for the work was \$540,000. The Invitation for Bid procedures require SMART to award this construction contract to the lowest responsive, responsible bidder. Following evaluations of each bid, SMART deemed Triangle Properties, Inc, to have submitted the lowest responsive and responsible bid for the Implementation and Maintenance of the Helen Putnam Riparian Enhancement Project (Solicitation No. EV-BB-24-002).

Staff recommend approving Resolution No. 2024-24 authorizing the General Manager to execute Contract No. EV-BB-24-002 with Triangle Properties, Inc. in the amount of \$523,270. for implementation and maintenance of Helen Putnam Riparian enhancement in Petaluma.

FISCAL IMPACT: Expenditure authority and funding are included in the Fiscal Year 2025 budget.

REVIEWED BY: [x] Finance /s/

[x] Counsel /s/

Very truly yours,

/s/

Bill Gamlen, P.E.

Chief Engineer

Attachment(s):

1. Resolution No. 2024-24
2. Triangle Properties Inc. Agreement No. EV-BB-24-002

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
APPROVING CONTRACT NO. EV-BB-24-002 WITH TRIANGLE PROPERTIES, INC. FOR THE IMPLEMENTATION AND
MAINTENANCE OF THE HELEN PUTNAM RIPARIAN ENHANCEMENT IN PETALUMA**

WHEREAS, The Sonoma-Marin Area Rail Transit District (SMART) prepared construction documents for a Riparian Mitigation Project at Helen Putnam Regional Park; and

WHEREAS, SMART initiated a formal Invitation for Bid for Contract No. EV-BB-24-002 on June 5, 2024 which included advertising the opportunity in local newspapers, trade journals, the SMART website and other related outreach outlets; and

WHEREAS, SMART conducted a pre-bid site walk for interested contractors on June 24, 2024; and

WHEREAS, SMART received four bids on July 11, 2024 and conducted a public bid opening; and

WHEREAS, Triangle Properties, Inc. submitted the lowest bid for the work of \$523,270.00; and

WHEREAS, SMART determined that Triangle Properties, Inc. submitted the lowest responsive and responsible bid; and

NOW, THEREFORE, BE IT RESOLVED THAT THE BOARD OF DIRECTORS OF SMART HEREBY FINDS, DETERMINES, DECLARES, AND ORDERS AS FOLLOWS:

1. The foregoing Recitals are true and correct and are incorporated herein and form a part of this Resolution.
2. The General Manager is authorized to execute Contract No. EV-BB-24-002 with Triangle Properties, Inc. in the amount of \$523,270.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marin Area Rail Transit District held on the 21st day of August 2024, by the following vote:

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

Eric Lucan, Chair, Board of Directors
Sonoma-Marin Area Rail Transit District

ATTEST:

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

DOCUMENT 00 52 00
AGREEMENT FOR CONTRACTOR SERVICES

This agreement (“Agreement”), dated as of August 21, 2024 (“Effective Date”) is by and between the Sonoma-Marín Area Rail Transit District, a Special District of the State of California (hereinafter “SMART”), and Triangle Properties, Inc., whose place of business is located at 3500 American River Drive, Sacramento, CA 95864 (hereinafter “Contractor”).

RIPARIAN MITIGATION AT HELEN PUTNAM REGIONAL PARK
CONTRACT # EV-BB-24-002

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set for, Contractor and SMART agree as follows:

A G R E E M E N T

ARTICLE 1. LIST OF EXHIBITS

Section 1.01 The following exhibits are attached hereto and incorporated herein:

- (a) Exhibit A: Schedule of Rates

ARTICLE 2. WORK.

Section 2.01 Contractor shall complete all work specified in the Contract Documents, in accordance with the Specifications, Drawings, and all other terms and conditions of the Contract Documents.

ARTICLE 3. NOTICES TO SMART.

Section 3.01 SMART has designated **Negin Saghaee, Project Manager**, to act as SMART’s Representative(s), who will represent SMART in performing SMART’s duties and responsibilities and exercising SMART’s rights and authorities in Contract Documents. SMART may change the individual(s) acting as SMART’s Representative(s), or delegate one or more specific functions to one or more specific SMART’s Representatives, including without limitation engineering, architectural, inspection and general administrative functions, at any time with written notice and without liability to Contractor. Each SMART Representative is the beneficiary of all Contractor obligations to SMART, including without limitation, all releases and indemnities.

Section 3.02 All notices or demands to SMART under the Contract Documents shall be to SMART’s Representative at: **5401 Old Redwood Hwy Suite 200, Petaluma, CA, 94954** or to such other person(s) and address(es) as SMART shall provide to Contractor.

Project Manager: Negin Saghaee
Phone: 707-285-8183
Email: nsaghaee@sonomamarintrain.org

ARTICLE 4. CONTRACT TIME.

Section 4.01 Contract Time and Notice to Proceed. Project Implementation shall be completed no later than December 31, 2024.

The project shall commence on the date established in the Notice to Proceed. SMART may give a Notice to Proceed at any time within 60 Days after the Notice of Award. Contractor shall not do any Work at the Site prior to the date authorized by the Notice to Proceed.

Contractor shall perform one (1) year of maintenance at the site following SMART's acceptance of the Project Implementation.

Contractor shall complete the Work so that a Final Inspection Report can be issued in accordance with Section 01770 (Contract Closeout).

ARTICLE 5. CONTRACT SUM.

Section 5.01 SMART shall pay Contractor the Contract Sum for completion of Work in accordance with the Contract Documents as follows:

Total Contract Sum: \$523,270.00

The Contract Sum includes all allowances (if any).

ARTICLE 6. CONTRACTOR REPRESENTATIONS.

In order to induce SMART to enter into this Agreement, Contractor makes the following representations and warranties:

Section 6.01 Contractor has visited the Site and has examined thoroughly and understood the nature and extent of the Contract Documents, Work, Site, locality, actual conditions, as-built conditions, all local conditions, and all federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.

Section 6.02 Contractor has examined thoroughly and understood all reports of exploration and tests of subsurface conditions, as-built drawings, drawings, products specifications or reports, available for Bidding purposes, of physical conditions, including Underground Facilities, or which may appear in the Drawings. Contractor accepts the determination set forth in these Documents and Document 00 70 00 - General Conditions of the limited extent of the information contained in such materials upon which Contractor may be entitled to rely. Contractor agrees that, except for the information so identified, Contractor does not and shall not rely on any other information contained in such reports and drawings.

Section 6.03 Contractor has conducted or obtained and has understood all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in Section 5.2 of this Document 00 52 00 - Agreement) that

pertain to the subsurface conditions, as-built conditions, Underground Facilities and all other physical conditions at or contiguous to the Site or otherwise that may affect the cost, progress, performance or furnishing of Work, as Contractor considers necessary for the performance or furnishing of Work at the Contract Sum, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of Document 00 70 00 - General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such purposes.

Section 6.04 Contractor has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

Section 6.05 Contractor has given SMART prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered in or among the Contract Documents and as-built drawings and actual conditions and the written resolution thereof through Addenda issued by SMART is acceptable to Contractor.

Section 6.06 Contractor is duly organized, existing and in good standing under applicable state law, and is duly qualified to conduct business in the State of California.

Section 6.07 Contractor has duly authorized the execution, delivery and performance of this Agreement, the other Contract Documents and the Work to be performed herein. The Contract Documents do not violate or create a default under any instrument, agreement, order or decree binding on Contractor.

Section 6.08 Contractor has listed the following Subcontractors pursuant to the Subcontractor Listing Law, California Public Contract Code §4100 *et seq.*:

Name of Subcontractor and Location of Mill or Shop	Description of Work: Reference To Bid Items	Subcontractor's License No.
N/A – No Subcontractors	N/A	N/A

Section 6.09 Contractor has designated **Barry Baba, Project Manager**, to act as Contractor's Representative(s), who will represent Contractor in performing Contractor's duties and responsibilities and exercising Contractor's rights and authorities in Contract Documents. Contractor has also designated **Michael Peterson, Superintendent**, to act as Contractor's Superintendent. Contractor may change the individual(s) acting as Contractor's Representative(s), or delegate one or more specific functions to one or more specific Contractor's Representatives, at any time upon prior written notice and approval and without liability to SMART, but Contractor is limited to two representatives.

Project Manager: Barry Baba
Phone: (916) 417-6778
Email: bbaba@teichert.com

Superintendent: Michael Peterson
Phone: (916) 870-4183
Email: mpeterson@teichert.com

ARTICLE 7. CONTRACTOR DOCUMENTS.

Section 7.01 Contract Documents consist of the following documents incorporated by reference, including all changes, Addenda, and Modifications thereto:

Document 00 52 00:	This Agreement
IFB:	Invitation for Bid
Document 00 70 00:	General Conditions
General Requirements:	General Requirements
Technical Specifications:	Technical Specifications
Technical Specifications:	Riparian Mitigation and Monitoring Plan

Section 7.02 There are no Contract Documents other than those listed in Section 7.01. The Contract Documents may only be amended, modified or supplemented as provided in Document 00 70 00 - General Conditions.

ARTICLE 8. INSURANCE.

Contractor shall procure and maintain for the duration of the Agreement insurance against all claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees, or subcontractors with limits and deductibles specified below:

Section 8.01 Workers' Compensation Insurance. Workers' Compensation as required by the State of California, with Statutory Limits, and Employer's Liability insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

Section 8.02 General Liability Insurance. Commercial General Liability insurance covering products-completed and ongoing operations, property damage, bodily injury and personal injury using an occurrence policy form, in an amount no less than \$5,000,000 per occurrence, \$10,000,000 aggregate. Said insurance shall remain in effect for five (5) years after Final Completion and acceptance of the final payment for the Work, contractual liability, and coverage for explosion, collapse, and underground hazards.

Section 8.03 Automobile Insurance. Automobile Liability insurance covering bodily injury and property damage in an amount no less than \$5,000,000 combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles.

Section 8.04 Contractor's Pollution Liability Insurance. Contractor's Pollution Liability Insurance in an amount no less than \$2,000,000 per occurrence or claim. The Contractor's Pollution Liability policy shall be written on an occurrence basis with coverage for bodily injury, property damage and environmental damage, including cleanup costs arising out of third-party claims, for pollution conditions, and including claims of environmental authorities, for the release of pollutants caused by construction activities related to the Contract. Coverage shall include the Contractor as the named insured and shall include coverage for acts by others for whom the Contractor is legally responsible.

Coverage to be provided for bodily injury to or destruction of tangible property, including the resulting loss of use thereof, loss of use of tangible property that has been physically injured,

and natural resource damage. There shall be no exclusions or limitations regarding damages or injury from existence, removal or abatement of lead paint. There shall be no insured vs. insured exclusion in the policy.

Section 8.05 Endorsements. Prior to commencing work, Contractor shall file Certificate(s) of Insurance with SMART evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. Said endorsements and Certificate(s) of Insurance shall stipulate:

- (a) “SMART, its officers, and employees” and the “County of Sonoma, its officers, agents, and employees” shall be named as additional insured on all policies listed above, with the exception of the workers compensation insurance policy (as applicable).
- (b) That the policy(ies) is Primary Insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim which Contractor is liable, up to and including the total limit of liability, without right of contribution from any other insurance effected or which may be effected by the Insureds.
- (c) Inclusion of the Insureds as additional insureds shall not in any way affect its rights either as respects any claim, demand, suit or judgment made, brought or recovered against Contractor. Said policy shall protect Contractor and the Insureds in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company’s liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.
- (d) Contractor hereby grants to SMART a waiver of any right to subrogation which any insurer of said Contractor may acquire against SMART by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not SMART has received a waiver of subrogation endorsement from the insurer.
- (e) The insurance policy(ies) shall be written by an insurance company or companies acceptable to SMART. The insurance underwriter(s) for all insurance policies except Workers’ Compensation shall have an A.M. Best Company rating of A VII or better. Such insurance company shall be authorized to transact business in the state of California. Required minimum amounts of insurance may be increased should conditions of Work, in opinion of SMART, warrant such increase. Contractor shall increase required insurance amounts upon direction by SMART.

Section 8.06 Deductibles and Retentions. Contractor shall be responsible for payment of any insurance premiums, including any charges for required waivers of subrogation or the endorsement of additional insured. Contractor shall also be responsible for the payment of all deductibles or retention on Contractor’s policies without right of contribution from SMART.

Section 8.07 Injuries. If injury occurs to any employee of Contractor, Subcontractor or sub-subcontractor for which the employee, or the employee's dependents in the event of employee's death, is entitled to compensation from SMART under provisions of the Workers' Compensation Insurance and Safety Act, as amended, or for which compensation is claimed from SMART, SMART may retain out of sums due Contractor under Contract Documents, amount sufficient to cover such compensation, as fixed by the Act, as amended, until such compensation is paid, or until it is determined that no compensation is due. If SMART is compelled to pay compensation, SMART may, in its discretion, either deduct and retain from the Contract Sum the amount so paid, or require Contractor to reimburse SMART.

Section 8.08 Subcontractor Responsibility. Contractor shall require and verify that subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure SMART is named additional insured on insurance required from subcontractors.

Section 8.09 Claims Made Coverage. If any insurance specified above is written on a claims-made coverage form, Contractor shall:

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

Section 8.10 Documentation. The following documentation shall be submitted to SMART:

- (a) Properly executed Certificates of Insurance clearly evidencing all coverages and limits required above. Said Certificates shall be submitted prior to the execution of this Agreement. At SMART's request, Contractor shall provide certified copies of the policies that correspond to the policies listed on the Certificates of Insurance. Contractor agrees to maintain current Certificates of Insurance evidencing the above-required coverages and limits on file with SMART for the duration of this Agreement.
- (b) Copies of properly executed endorsements required above for each policy. Said endorsement copies shall be submitted prior to the execution of this Agreement. Contractor agrees to maintain current endorsements evidencing the above-specified requirements on file with SMART for the duration of this Agreement.
- (c) After the Agreement has been signed, signed Certificates of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.

Please email all renewal certificates of insurance and corresponding policy documents to InsuranceRenewals@sonomamarintrain.org.

Section 8.11 Policy Obligations. Contractor's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

Section 8.12 Material Breach. If Contractor, for any reason, fails to maintain insurance coverage, which is required pursuant to this Agreement, the same shall be deemed a material breach of this Agreement. SMART, in its sole option, may terminate this Agreement and obtain damages from Contractor resulting from said breach. Alternatively, SMART may purchase such required insurance coverage, and without further notice to Contractor, SMART may deduct from sums due to Contractor any premium costs advanced by SMART for such insurance. These remedies shall be in addition to any other remedies available to SMART.

Section 8.13 Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice to SMART.

ARTICLE 9. MISCELLANEOUS.

Section 9.01 Terms and Abbreviations. Terms and abbreviations used in this Agreement are defined in Document 00 70 00 - General Conditions and Section 01420 (References and Definitions) and will have the meaning indicated therein.

Section 9.02 Use of Recycled Paper. SMART requires that all printing jobs produced under this Agreement be printed on recycled content papers. Recycled-content papers are defined as papers containing a minimum of 30 percent postconsumer fiber by weight. All papers used in the performance of a print job for SMART shall be recycled-content paper. If paper meets the 30 percent requirement, the recycling logo should be printed on the project.

Section 9.03 Signers of this Agreement. It is understood and agreed that in no instance are the persons signing this Agreement for or on behalf of SMART or acting as an employee, agent, or representative of SMART, liable on this Agreement or any of the Contract Documents, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of the SMART is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.

Section 9.04 No Assignment of Contract. Contractor shall not assign any portion of the Contract Documents, and may subcontract portions of the Contract Documents only in compliance with the Subcontractor Listing Law, California Public Contract Code §4100 *et seq.*

Section 9.05 Assignment of Rights to Awarding Body. In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Contractor or Subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works

contract or the subcontract. This assignment shall be made and become effective at the time SMART tenders final payment to Contractor, without further acknowledgment by the parties.

Section 9.06 Prevailing Wages. Contractor and all Subcontractors shall pay to all workers employed not less than the prevailing rate of wages as determined in accordance with the Labor Code as indicated herein.

All Contractors, contractors, and subcontractors doing business with public agencies through the State of California (including SMART) shall comply with applicable labor compliance requirements including, but not limited to prevailing wages, SB 854, Labor Code Sections 1725.5, 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815. Public Works Contractor Registration Programs, Electronic Certified Payroll Records submission to the State Labor Commissioner and other requirements, described at <http://www.dir.ca.gov/Public-Works/Contractors.html>.

Applicable projects are subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are deemed included in the Contract Documents and shall be made available to any interested party on request.

Pursuant to Section 1861 of the Labor Code, Contractor represents that it is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor shall comply with such provisions before commencing the performance of the Work of the Contract Documents.

Section 9.07 Licensing Laws. The Contractor and all subcontractors shall comply with the provisions of Chapter 9 Division 3 of the Business and Professions code concerning the licensing of contractors. All Contractors shall be licensed in accordance with the laws of the State of California and any Contractor not so licensed is subject to the penalties imposed by such laws. Prior to commencing any work under contract, all Contractors and subcontractors must show that they hold appropriate and current Contractor Licenses in the State of California. The Contractor shall provide such subcontractor information, including the class type, license, number, and expiration date to SMART.

Section 9.08 California Air Resources Board ("CARB") In-Use Off-Road Diesel-Fueled Fleets Certification of Compliance. Contractor shall comply, and shall ensure all subcontractors comply, with all applicable requirements of the most current version of the regulations imposed by California Air Resources Board ("CARB") including, without limitation, all applicable terms of Title 13, California Code of Regulations Division 3, Chapter 9 and all pending amendments ("Regulation"). Throughout this agreement, and for three (3) years thereafter, Contractor shall make available for inspection and copying any and all documents or information associated with Contractor's and its subcontractors' fleets including, without limitation, the Certificates of Reported Compliance ("CRCs"), fuel/refueling records, maintenance records, emissions records, and any other information the Contractor is required to produce, keep, or maintain pursuant to the Regulation upon two (2) calendar days' notice from SMART. Contractor shall be solely liable for any and all costs

associated with compliance with the Regulation as well as for any and all penalties, fines, damages, or costs associated with any and all violations, or failures to comply with the Regulation.

Section 9.09 Drug-Free Workplace. Contractor certifies that it will provide a drug-free workplace in compliance with Government Code §8350-§8357.

Section 9.10 Continuation of Work. Should any part, term or provision of this Agreement or any of the Contract Documents, or any document required herein or therein to be executed or delivered, be declared invalid, void or unenforceable, all remaining parts, terms and provisions shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby. If the provisions of any law causing such invalidity, illegality or unenforceability may be waived, they are hereby waived to the end that this Agreement and the Contract Documents may be deemed valid and binding agreements, enforceable in accordance with their terms to the greatest extent permitted by applicable law. In the event any provision not otherwise included in the Contract Documents is required to be included by any applicable law, that provision is deemed included herein by this reference (or, if such provision is required to be included in any particular portion of the Contract Documents, that provision is deemed included in that portion).

Section 9.11 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Venue for any action to enforce the terms of this Agreement or for the breach thereof shall be in the Superior Court of the State of California in the County of Marin.

Section 9.12 Claims Procedures. Contractor accepts the claims procedure established by Article 12 of Document 00 70 00 - General Conditions, as established under Section 930.2 of the California Government Code.

Section 9.13 Relationships of the Parties: No Intended Third-Party Beneficiaries. The Parties intend by this Agreement to establish a cooperative funding relationship, and do not intend to create a partnership, joint, venture, joint enterprise, or any other business relationship. 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 construed to create and the Parties do not intend to create any rights in third parties.

Section 9.14 No Waiver of Breach. The waiver by SMART of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

Section 9.15 Acceptance of Electronic Signatures and Counterparts. The parties agree that this Contract, Agreements ancillary to this Contract, and related documents to be entered into this Contract will be considered executed when all parties have signed this Agreement. 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.

Section 9.16 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

CONTRACTOR: TRIANGLE PROPERTIES, INC.

By: _____
Troy Reimche, Director of Teichert Property Holdings

Date: _____

SONOMA-MARIN AREA RAIL TRANSIT (SMART)

By: _____
Eddy Cumins, General Manager

Date: _____

**CERTIFICATES OF INSURANCE ON FILE WITH AND
APPROVED AS TO SUBSTANCE FOR SMART:**

By: _____
Ken Hendricks, Procurement and Contracts Manager

Date: _____

APPROVED AS TO FORM FOR SMART:

By: _____
District Counsel

Date: _____

EXHIBIT A
SCHEDULE OF RATES

ITEM	ITEM DESCRIPTION	QTY	UNIT	TOTAL ITEM COST
1	Mobilization and Demobilization	1	LS	\$30,760.00
2	SWPPP (Plan, Annual Reports, and Monitoring)	1	LS	\$16,190.00
3	Clearing, Grubbing, Invasive Plant and Tree Removal and Disposal	1	LS	\$11,850.00
4	Temporary Construction Fencing	1,910	LF	\$11,700.00
5	Topsoil Stripping and Stockpile	583	CY	\$18,700.00
6	Excavation and Temporary Stockpile	526	CY	\$21,890.00
7	Rock Purchase and Installation	400	TON	\$39,110.00
8	Topsoil Placement	583	CY	\$24,490.00
9	Excess Native Material Distribution	114	CY	\$4,380.00
10	Riparian Seed Mix	0.80	AC	\$4,650.00
11	Channel Bottom Seed Mix	0.47	AC	\$3,450.00
12	Erosion Control Fabric	4,000	SY	\$9,790.00
13	Riparian Trees and Shrubs - Deepot 40	680	EACH	\$36,380.00
14	Riparian Herbaceous Plants - Deepot 16	2,250	EACH	\$71,070.00
15	Native Willow Poles for Biostabilization	450	EACH	\$14,620.00
16	Foliage Protection Cages (Trees)	118	EACH	\$7,340.00
17	Foliage Protection Cages (Shrubs)	562	EACH	\$34,360.00
18	Irrigation - Drip System	1	LS	\$31,690.00
19	Irrigation - Tank	1	LS	\$10,830.00
20	Irrigation – Solar Panels, Booster Pump, Airgap Tank	1	LS	\$14,530.00
21	Irrigation - Mainline (Aboveground)	3,520	LF	\$17,670.00

22	Irrigation – Mainline (Trenched)	210	LF	\$3,900.00
23	Irrigation – Sleeve	50	LF	\$1,950.00
24	Chain Link Fence and Gate	1	LS	\$2,800.00
25	One Year Maintenance	12	MO	\$73,070.00
26	As- built Documentation	1	LS	\$6,100.00
TOTAL PROJECT COST:				\$523,270.00

GENERAL INFORMATION:

LS = Lump Sum
 CY = Cubic Yard
 LF = Linear Feet
 TON = Ton
 SY = Square Yard
 AC = Acre
 MO = Month

Prices are in United States Dollars

The above costs include all labor, supervision, equipment, materials, supplies, travel, insurance, overhead, profit, and all other direct and indirect costs associated with performing the work included in this Agreement.

ITEM DESCRIPTIONS:

Item 1: Mobilization and Demobilization

Mobilization and Demobilization will be paid for at the contract price, which price shall constitute full compensation for all such work. The scope of work for mobilization shall include, but not limited to, furnishing all labor, materials, tools, equipment; moving all equipment and materials onto the site; and work and incidentals for the establishment of all facilities necessary for the implementation of the Project. This includes establishing the construction staging area, providing security for on-site storage of equipment and materials; providing sanitary facilities for workers; and all other work and operations that must be performed or costs incurred prior to beginning work on the various Contract items on the Project Site. This Item shall also include demobilization of contractor's equipment and excess materials from the site. Contractor shall leave the site in a clean manner free of loose material and debris as determined by SMART's Project Manager. Final payment for mobilization shall occur following demobilization and final cleanup when all required items per the Contract are fulfilled and the site is free of equipment and clean and ready for use by the public, all in accordance with the requirements of the Contract Documents and no additional compensation will be made.

Item 2: SWPPP Preparation (Plan, Report, and Monitoring)

SWPPP Preparation shall be paid for at the contract price, which shall include full compensation for all labor, materials, tools, equipment, and all incidental work required for the preparation, and submittal of the approved site specific Storm Water Pollution Prevention Plan (SWPPP Plan) by a Qualified SWPPP Developer for a Risk Level 2 site, including providing updates to the Plan as necessary, preparing report, providing SWPPP Monitoring as required, and all other related work items shown in the Contract Drawings and Specifications and as directed by SMART's Project Manager.

Item 3: Clearing, Grubbing, Invasive Plant and Tree Removal and Disposal

This payment item shall include full compensation for all labor, materials, tools, equipment, and all incidental work required for site clearing and grubbing of trees, stumps, undergrowth, brush, trash, grass, weeds, roots, rubbish and also removal of the invasive plants and non-native trees shown on the Contract Drawings, including preparation of a removal and treatment plan, mechanical removal, herbicide treatment where applicable, disposal costs, and any related work items as shown in the Contract Documents and as directed by SMART's Project Manager. This Item also includes preparation of a Site Clearing Plan as shown in the Specifications for approval by SMART'S Project manager before to start work.

Item 4: Temporary Construction Fencing:

Payment for Temporary Construction Fencing shall be paid at the contract price, which shall include full compensation for furnishing all labor, materials, tools, and equipment for Temporary Construction Fencing, including but not limited to furnishing and installing fence materials, site preparation, disposal of unused materials, maintenance of the fence during the construction period, and removal of the fence and all accessories following the completion of construction, all in accordance with the requirements of the Contract Documents and no additional compensation will be made therefor.

Item 5: Topsoil Stripping and Stockpile

Payment for Topsoil Stripping and Stockpile shall be paid at the contract price, for all labor, materials, tools, equipment, and all incidental work required for the excavation of the near surface layers of soil (topsoil) after clearing of the work area, and temporary stockpiling the topsoil, as shown on the Contract Documents. This payment item also includes preparing a Topsoil Stockpile Management and Salvage Work Plan and all other related Work items as shown in the Contract Documents and as directed by SMART's Project Manager.

Item 6: Excavation and Temporary Stockpile

Payment for Excavation and Temporary Stockpile shall be paid for at the contract price, for all labor, materials, tools, equipment, and all incidental work required for excavating the native channel bed to the elevations and contours shown on the

Contract Documents; hauling the excavated material to the soil reuse area; discing the surfaces in preparation for revegetation activities; and all other related work items as shown in the Contract Documents and as directed by SMART's Project Manager.

Item 7: Rock Purchase and Installation

Payment for Rock Purchase and Installation shall be paid for at the contract price which include full compensation for purchasing rock for all labor, materials, tools, equipment, and all incidental work required for the purchase and installation of rock for the upstream and downstream aprons and sills throughout the channel and all other related Work items as shown on the Contract Documents and as directed by SMART's Project Manager.

Item 8: Topsoil Placement

Payment for Topsoil Placement shall be paid at the contract price, which include full compensation for all labor, materials, tools, equipment, and all incidental work required for the movement of topsoil from the temporary stockpile area and placement within the soil reuse area; and the finish grading of the surface of the areas that receive topsoil, and all other related Work items as shown on the Contract Documents and as directed by the SMART's Project Manager.

Item 9: Excess Native Material Distribution

Payment for Excess Native Material Distribution which shall be paid at the contract price, for all labor, materials, tools equipment, and all incidental Work required for hauling the excess excavated material to the native soil distribution area; spreading the soil evenly within the distribution area; and all other related work items as shown in the Contract Documents and as directed by SMART's Project Manager.

Item 10: Riparian Seed Mix

Payment for Riparian Seed Mix shall be paid for at the contract price for all labor, materials, tools, equipment, and all incidental work required for seeding of the new riparian seeding areas, including site preparation, furnishing and distributing seed, maintaining seeded areas until acceptance by SMART's Project Manager, and all other related work items as shown in the Contract Documents and as directed by the SMART's Project Manager.

Item 11: Channel Bottom Seed Mix

Payment for Channel Bottom Seed Mix shall be paid at the contract price for all labor, materials, tools, equipment, and all incidental work required for seeding of the new channel bottom, including site preparation, furnishing and distributing seed, maintaining seeded areas until acceptance by SMART's Project Manager, and all other related work items as shown in the Contract Documents and as directed by SMART's Project Manager.

Item 12: Erosion Control Fabrication

Payment for Erosion Control Fabrication shall be paid at the contract price for all labor, materials, tools, equipment, and all incidental work required for furnishing, installing and maintaining erosion control fabric and all other related work items as shown in the Contract Documents and as directed by SMART's Project Manager.

Item 13: Riparian Trees and Shrubs - Deepot 40

Payment for Riparian Trees and Shrubs shall be paid at the contract price for all labor, materials, tools, equipment, and all incidental work required for furnishing and installing the Deepot 40 container plants as shown in the Contract Documents and as directed by SMART's Project Manager.

Item 14: Riparian Herbaceous Plants - Deepot 16

Payment for Riparian Herbaceous Plants shall be paid at the contract price for all labor, materials, tools, equipment, and all incidental work required for furnishing and installing Deepot 16 container plants as shown in the Contract Documents and as directed by SMART's Project Manager.

Item 15: Native Willow Poles for Biostabilization

Payment for Native Willow Poles for Biostabilization shall be paid at the contract price for all labor, materials, tools, equipment, and all incidental work required for harvesting and installing native willow poles at the locations and in the manner shown in the Contract Documents and as directed by SMART's Project Manager.

Item 16: Foliage Protection Cages (Trees)

Payment for Foliage Protection Cages shall be paid at the contract price for all labor, materials, tools, equipment, and all incidental work required for furnishing and installing foliage protection cages (made from welded wire and secured with T-posts) around newly planted trees at the locations and in the manner shown in the Contract Documents and as directed by SMART's Project Manager.

Item 17: Foliage Protection Cages (Shrubs)

Payment for Foliage Protection Cages shall be paid at the contract price for all labor, materials, tools, equipment, and all incidental work required for furnishing and installing foliage protection cages (made from chicken wire and secured with T-posts) around newly planted shrubs at the locations and in the manner shown in the Contract Documents and as directed by SMART's Project Manager.

Item 18: Irrigation - Drip System

Payment for Drip Irrigation System shall be paid at the contract price for all labor, materials, tools, equipment, and all incidental work required for furnishing and installing all lateral lines, hose, valves, emitters, and other irrigation components not

described in other items at the locations and in the manner shown in the Contract Documents and as directed by SMART's Project Manager.

Item 19: Irrigation – Tank

Payment for Irrigation - Tank shall be paid for at the contract price for all labor, materials, tools, equipment, and all incidental work required for installing a water tank and other related materials (including gravel and a retaining ring) for irrigation at the Upper Pond Drainage site as shown in the Contract Documents and as directed by SMART's Project Manager.

Item 20: Irrigation – Solar Panels, Booster Pump, and Airgap Tank

Payment for Irrigation – Solar Panels, Booster Pump, and Airgap Tank shall be paid for at the contract price for all labor, materials, tools, equipment, and all incidental work required for furnishing and installing solar panels, a booster pump, and airgap tank and all other related work at the Windsor Drive Drainage Site as shown in the Contract Documents and as directed by SMART's Project Manager. The Contractor shall submit the specifications and a detailed layout plan for the system for approval by SMART's Project Manager prior to installation.

Item 21: Irrigation - Mainline (Aboveground)

Payment for Irrigation – Mainline (Aboveground) shall be paid at the contract price for all labor, materials, tools, equipment, and all incidental work required for furnishing and installing the aboveground mainline and all other related work items as shown in the Contract Documents and as directed by SMART's Project Manager.

Item 22: Irrigation – Mainline (Trenched)

Payment for Irrigation - Mainline (Trenched) shall be paid at the contract price for all labor, materials, tools, equipment, and all incidental work required for furnishing and installing the irrigation mainline; this includes trenching and backfilling for the mainline pipe and all other related work items as shown in the Contract Documents and as directed by SMART's Project Manager.

Item 23: Irrigation – Sleeve

Payment for Irrigation - Sleeve shall be paid at the contract price for all labor, materials, tools, equipment, and all incidental work required for furnishing and installing the irrigation sleeve and mainline, this includes trenching and backfilling for the sleeve and all other related work items as shown in the Contract Documents and as directed by SMART's Project Manager.

Item 24: Chain Link Fence and Gate

Payment for Chain Link Fence – Chain link fence and gate shall be paid at the contract price for all labor, materials, tools, equipment, and all incidental work required for

furnishing and installing the chain link fence and gate around the solar panels, booster pump, and airgap tank and all other related work items as shown in the Contract Documents and as directed by SMART's Project Manager.

Item 25: One Year Maintenance

Payment for One Year Maintenance shall be paid for at the contract price on a per month basis paid in arrears for all labor, materials, tools, equipment, and all incidental work necessary for maintenance of the irrigation system and plantings, and all other related work items after completion of earthwork, install erosion control, irrigation installation and planting within the one-year maintenance period. This includes filling the water tank as required, manually watering the herbaceous plantings as required, adjusting the irrigation schedule to ensure adequate watering, and providing maintenance and making repairs to the irrigation system as needed. This also includes removal of invasive, non-native plants, weed removal within planting basins, maintaining the foliage protection cages and mulch, and replacing any dead plantings at the discretion of SMART's Project Manager at the end of the one-year maintenance period. This bid item includes the aforementioned and all other related work items shown in the Contract Documents and as directed by SMART's Project Manager.

Item 26: As- Built Documentation

Payment for As-Built Documentation shall be paid for at the contract price for preparing as-built documentation of invasive plant removal areas, extent of grading and rock placement, planting and irrigation installation locations and details and other relevant information consistent with the Contract Documents in manner that facilitates annual monitoring and reporting (e.g., CAD or GIS-based drawings.).



INVITATION FOR BID

FOR

**RIPARIAN MITIGATION AT
HELEN PUTNAM REGIONAL PARK**

SOLICITATION NO. EV-BB-24-002

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

Issue Date: June 5, 2024

Deadline for Bids: July 11, 2024 at 2:00pm (Pacific)

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The following Attachments and Forms are incorporated into this Invitation for Bid:

ATTACHMENTS

Attachment A:	Document 00 52 00 - Sample Agreement
Attachment B:	Document 00 70 00 – General Conditions
Attachment C:	General Requirements
Attachment D:	Technical Specifications
Attachment E:	Riparian Mitigation and Monitoring Plan
Attachment F:	Bid Forms
	<ul style="list-style-type: none"> • FORM BF: Bid Form • FORM QF: Questionnaire and Financial Statement • FORM BB: Bidder's Bond • Document 00 63 25: Substitution Request • Document 00 61 13.16: Payment Bond • Document 00 61 13.13: Performance Bond • FORM EA: Escrow Agreement for Security Deposits in Lieu of Retention

1. NOTICE INVITING BIDS

Pursuant to Public Contracts Code Section 22000, the Sonoma-Marín Area Rail Transit District (hereinafter “SMART” or “District”) has elected to participate in the Uniform Construction Cost Accounting sealed Bidding procedures process.

NOTICE IS HEREBY GIVEN that SMART will receive sealed bids for the following project:

RIPARIAN ENHANCEMENT PROJECT AT
HELEN PUTNAM REGIONAL PARK
Solicitation No. EV-BB-24-002

The Sealed Bids are subject to the terms, conditions, specifications, and provisions, set forth herein.

Bid Documents will be made available on SMART’s Procurement Portal located at <https://sonomamarintrain.bonfirehub.com> and can be downloaded at no cost.

1.1 Overview

The Sonoma-Marín Area Rail Transit District (SMART) is a Special District within the State of California that owns, maintains, and operates passenger rail service in Sonoma County and Marin County. In addition to passenger rail service, SMART is a common carrier that owns and operates freight rail services within Sonoma County, Marin County, and Napa County.

SMART is seeking sealed bids from qualified and experienced contractors to implement the Riparian Mitigation Project at the Helen Putnam Regional Park located in Petaluma, CA and perform one (1) year of maintenance.

The purpose of the project is to provide mitigation for riparian habitat impacts resulting from the SMART McInnis Parkway to Smith Ranch Road Pathway project. The Riparian Mitigation and Monitoring project provides for planting of native trees to replace riparian vegetation that removed during construction of the project. The project also provides extensive weed management, erosion repair and channel improvements, to improve the condition of the restoration site to create space for the replacement riparian tree plantings. The details of the work are specified in the Attachment E “Riparian Mitigation and Monitoring Plan” and the Attachment D “Technical Specification”.

Work Sequence include:

1. Provide site preparation, earthwork, channel grading, erosion repair, seeding, and treatment of weed management.
2. Install temporary drip irrigation systems at both Upper Pond and Windsor Drive Drainage sites to provide supplemental water to the tree and shrub plantings in the dry summer months and as required during the winter months until the plants are established.
3. After completion of earthwork, site preparation and Install irrigation, Implement the plants as specified in the Table 6 of Riparian Mitigation and Monitoring plan.
4. After completion of earthwork, site preparation, irrigation installation, implementation, and approval of the installation by SMART's Project Manager the contractor to provide one year of maintenance. This includes filling the water tank as required, and providing maintenance and making repairs to the irrigation system as needed also includes removal of invasive, non-native plants, weed removal within planting basins, maintaining the foliage protection cages and mulch, and replacing any dead plantings.
5. After completion the implementation activities, the contractor should prepare As-Built documentation of erosion repair location and dimension, planted species, container size and location according to the guidance set forth in the Riparian Monitoring and Reporting Plans.
6. After SMART provides acceptance of the project implementation, Contractor shall perform one (1) year of maintenance.

Location of Project and Property Ownership:

Riparian mitigation will be implemented at Helen Putnam Regional Park, located at the western limits of the City of Petaluma, Sonoma County. Within this park unit, two separate drainages or creek corridors have been identified for habitat enhancement. For the purposes of the mitigation design and development of this Riparian Mitigation Project, these drainages are referred to herein as Upper Pond Drainage and Windsor Drive Drainage. The County of Sonoma owns the property and Sonoma Regional Parks operates Helen Putnam Regional Park.

Project Implementation Timeline

The project begins with site preparation include installation of fencing, clearing and grubbing of work area as needed and treatment of invasive

species, grading, headcut repairs, and channel regarding as well as protecting existing native plants and promoting the natural recruitment and establishment of native plants.

The timing of planting shall accommodate site-specific conditions. All plants will be installed between October 15 and December 31, after irrigation installation has occurred. Please see Overall schedule table in the Attachment E “Riparian Mitigation and Monitoring Plan” for specific details.

As-built Documentation

After completion of all the implementation activities including invasive plant removal area, extend of grading and rock placement, planting, and irrigation installation locations the Contractor shall prepare as-built documentation of invasive plant treatment, erosion repair and plant installation in a format that facilitates annual monitoring are reporting in a format of CAD or GIS drawing shows of invasive plant treatment, planted species, container sizes, location, etc. SMART will provide the CAD files to the contractor. The final as-built report should be in the PDF format.

Pre-Construction Surveys

SMART is responsible for the pre-construction biologist surveys identified in the Riparian Mitigation and Monitoring Plan.

Engineer's Estimate

The Engineer's Estimate for this project is \$540,000.00.

Funding

This Agreement may be funded using State or Local Funds. Contractor shall comply with all applicable laws and regulations while performing work under the Agreement.

General Information

The Sonoma-Marín Area Rail Transit District (SMART) conducts its solicitation and procurement process electronically through a dedicated Procurement Portal located at <https://sonomamarintrain.bonfirehub.com>. Please be sure to register your company in order to obtain all bid documents, communicate with SMART, access addenda, receive notifications, and submit your proposal.

The lowest responsive responsible bidder will be awarded the agreement. The lowest bid will be determined by the “Total Bid Price” as indicated on the FORM BF – Bid Form.

1.2 Completion Timeline

Project implementation shall be complete no later than December 31, 2024. The one (1) year of maintenance will begin following SMART's acceptance of the project implementation.

1.3 Minimum Requirements

The following are the minimum requirements a Bidder must meet in order to be considered:

- A. A valid Contractor State License Board ("CSLB") Type A – General Engineering Contractor's License **or** C-27 – Landscaping Contractor.
- B. Licensed, Certified, and a Qualified Applicator according to the California Department of Pesticide Regulation
- C. Active Registration with the California Department of Industrial Relations ("DIR")
- D. Project Manager must have a minimum of five (5) years of experience performing similar environmental mitigation work.

1.4 Prevailing Wage Requirements

This work is subject to compliance monitoring and enforcement by the Department of Industrial Relations. The successful Bidder must comply with all prevailing wage laws applicable to the scope of services and related requirements contained in the Agreement.

All Bidders and any Subcontractors listed, must be currently registered and qualified to perform public work pursuant to Labor Code section 1725.5. SMART requires proof of current registration by Contractor and all listed Subcontractors as a condition to be awarded a contract, subject only to the allowances of Labor Code section 1771.1.

Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates in the county, or counties, in which the work is to be done have been determined by the Director of the California Department of Industrial Relations ("DIR"). Copies of the general prevailing wage rates and per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the Department of Industrial Relations, are located at <http://www.dir.ca.gov/DLSR/PWD/index.htm> and are deemed included in this Solicitation. The prevailing wage rates may also be reviewed at the District's offices.

Contractor shall post the applicable prevailing wage rates at the Site, in addition to all other job site notices prescribed by regulation.

1.5 Department of Industrial Relations (“DIR”) Registration

In order to bid and perform public works on this project, all tiers of subcontractors, including trucking/hauling firms that are subcontracted to perform services, must be registered with the California Department of Industrial Relations (DIR), pursuant to Senate Bill 854, at the time bids are due and throughout the duration of the project. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the DIR pursuant to Labor Code Section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

1.6 California Air Resources Board (“CARB”) Requirements

The California Air Resources Board (“CARB”) implemented amendments to the In-Use Off-Road Diesel-Fueled Fleets Regulations (“Regulation”) which are effective on January 1, 2024 and apply broadly to all self-propelled off road diesel vehicles 25 horsepower or greater and other forms of equipment used in California. A copy of the Regulation is available at <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2022/off-road-diesel/appa-1.pdf>. Bidders are required to comply with all CARB and Regulation requirements, including, without limitation, all applicable sections of the Regulation, as codified in Title 13 of the California Code of Regulations section 2449 et seq. throughout the duration of the Project. Bidders must provide, with their Bid, copies of Bidder’s and all listed subcontractors’ most recent, valid Certificate of Reported Compliance (“CRC”) issued by CARB. Failure to provide valid CRCs as required herein may render the Bid non-responsive.

SMART is a Public Works Awarding Body, as defined under Title 13 California Code of Regulations section 2449(c)(46). Accordingly, Bidders must submit, with their Bids, valid Certificates of Reported Compliance (“CRC”) for the Bidder’s fleet and for the fleet(s) of its listed subcontractors (including any applicable leased equipment or vehicles). Bidder must additionally complete and submit the Fleet Compliance Certification, included in the Bid Documents. Failure to provide a CRC for the Bidder, and for all listed subcontractors, or failure to complete the Fleet Compliance Certification, may render the Bid non-responsive.

1.7 Bid Guaranty

Each bid must be accompanied by a Bid Guaranty in the form of a Certificate of Deposit, Certified or Cashier's Check, or Bid Bond, in an amount equal to at least ten percent (10%) of the Bidder's Grand Total Bid Price. The Bid Guaranty will be retained by the District and applied to any and all damages sustained by the District in the event that the successful Bidder fails or refuses to enter into the Contract awarded to it and to furnish all required bonds and Certificates of Insurance.

Bid Guaranty: Bid Guaranty must be received by SMART at the following address by the bid deadline. Please submit the bid guaranty in a sealed envelope addressed as follows:

Sonoma-Marín Area Rail Transit District
Attn: Procurement Department
5401 Old Redwood Hwy, Suite 200
Petaluma, CA 94954
Solicitation # EV-BB-24-002
Riparian Mitigation at Helen Putnam Regional Park
(Name and Address of Bidder)

Retaining of Bid Guaranty: SMART may retain the Bid Guaranty of other than the Apparent Low Bidder for a period of sixty (60) calendar days after the award or until full execution of the Contract, whichever first occurs. Upon full execution of the Contract, SMART shall inform the respective unsuccessful Bidders that their Bid Guaranty has been released.

1.8 Contract Bonds

A. General Information

All alterations, extension of time, extra and additional work, and other changes authorized by the Contract Documents may be made without securing the consent of the surety or sureties on the Contract Bonds.

B. Payment Bond (Required if Award is Greater than \$25,000)

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

A corporate insurer or a reciprocal or interinsurance exchange to which the Insurance Commissioner has issued a certificate of authority

to transact surety insurance in this state, as defined in Section 105 of the Insurance Code (California Code of Civil Procedures Section 995.120).

Bidder shall submit the Payment Bond on Document 00 61 13.16 "Payment Bond" or another form approved by SMART.

C. Performance Bond (Required if Award is Greater than \$25,000)

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

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

Bidder shall submit the Performance Bond on Document 00 61 13.13 "Performance Bond" or another form approved by SMART.

1.9 Retention

Retention of each progress payment will be in effect in the amount of 5%.

Pursuant to Public Contract Code Section 22300, the successful Bidder may submit certain securities in lieu of SMART withholding retention of payments during the Project. Please reference FORM EA for the Escrow Agreement for Security Deposits in Lieu of Retention.

1.10 Insurance Requirements

SMART is an active railroad and the insurance requirements for this Agreement may require special railroad endorsements and/or railroad protective insurance. Please carefully review the requirements identified in the "Document 00 52 00 Sample Agreement". Contractor is required to obtain and maintain the insurance policies listed.

1.11 Equal Employment Opportunity

In connection with the performance of the resulting Agreement, Contractor shall be in full compliance with all applicable federal, state, and local laws,

rules, and regulations in regard to Equal Employment, and more specifically, nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical conditions, disability, or any other reason.

Furthermore, Contractor shall be in full compliance with all applicable Federal, State, and Local safety and health standards, laws, and regulations.

1.12 Procurement Schedule

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

<u>Date</u>	<u>Event</u>
June 5, 2024	Issue Invitation for Bid
June 24, 2024	Pre-Bid Meeting & Site Visit, 10:00am
June 27, 2024	Deadline for Questions, 2:00 PM (Pacific)
July 1, 2024	Final Addendum Issued by SMART
July 11, 2024	Bids Due to SMART, 2:00 PM (Pacific)
July 11, 2024	Public Bid Opening, 2:30 PM (Pacific)
July 11, 2024	Notice of Apparent Low Bidder Issued
July 11, 2024 – July 19, 2024	Evaluation of Bids
July 19, 2024	Notice of Intent to Award Issued
August 21, 2024	Board of Director Review (As Required)
August 22, 2024	Award Agreement

1.13 Pre-Bid Meeting & Site Visit Information

SMART will host a Pre-Bid Meeting and Site Visit at 10:00 AM on Monday, June 24, 2024, at the project site. The Pre-Bid Site Walk is expected to last approximately 2-3 hour(s).

Submit your RSVP for the Pre-Bid Meeting and Site Visit by June 21, 2024 at 5:00pm by clicking on the Vendor Discussions tab of the message section located on the project page.

RSVP shall include the following information:

- Name of the Firm
- First and Last Name of the Representatives Attending
- Phone Number
- Email Address

Attendees will meet at Helen Putnam's Windsor Drive Parking Lot located at: 373 Windsor Dr, Petaluma, Ca 94952. See below map.



Attendees are required to bring and wear the following Personal Protective Equipment ("PPE"):

- Safety Vest
- Boots

Failure to bring and wear the PPE may result in not being able to join the site tour.

Bidders are not required to attend the Pre-Bid Meeting as a condition to bidding.

1.14 Public Bid Opening Information

Public Bid Opening to take place at 2:30 p.m. (Pacific) at 5401 Old Redwood Hwy, First Floor, Petaluma, CA 94954 on the day of the bid deadline. Electronically sealed bids received will be read out loud and tabulated. *Attendance is NOT mandatory in order to win the award.*

Bid results will be made public and posted to SMART's procurement portal following the opening. SMART's procurement team will determine the Apparent Low Bidder at this public bid opening. Bids will not be made available for public inspection at the bid opening in order for the District to thoroughly review all submittals.

1.15 Bidder Questions and Clarification Requests

All questions, inquiries, requests for information, requests for clarification and other communications regarding the Invitation for Bids must be submitted using the District's Procurement Portal located at <https://sonomamarintrain.bonfirehub.com> by clicking on the Vendor Discussions tab of the message section located on the project page.

The questions submitted must reference the exact section of the Invitation for Bid, Contract, or other document when submitting the request. Requests will only be reviewed if submitted by the date specified in the Procurement Schedule.

The District may, in its sole discretion, choose whether or not to respond to questions received. If the District chooses to respond, it may respond by a written Addendum to the Invitation for Bid Documents. Any response that the District may choose to make will not alter the Invitation for Bid unless it is incorporated into an Addendum. It is the Bidder's responsibility to check the District's Procurement Portal regularly for updates to the solicitation.

If a Bidder fails to notify SMART at least seven (7) days prior to the date for submission of Bids of a known error in the Invitation for Bid, or an error that reasonably should have been known, the Bidder shall submit a Bid at its own risk. SMART reserves the right not to consider requests for clarification. Any changes or modifications to the Invitation for Bid within the timeframe will be issued as an Addenda.

Rules of Contact

- a. Bidders shall only correspond or communicate with the District regarding this Invitation for Bid through the District's Procurement Portal Vendor Discussions tab;
- b. Bidders are prohibited from contacting SMART employees or officials regarding the Invitation for Bid, except through the process identified above;
- c. Bidders shall not contact any person serving on the evaluation

regarding this Invitation for Bid;

- d. Any communications from the Bidders determined to be improper, at the sole discretion of the District, may result in disqualification of the Bidder;
- e. The District will not be bound by any oral exchange or any other information or exchange that occurs outside the official process specified herein;
- f. Bidders are prohibited from contacting or including in their bid the following Stakeholders:
 - Sonoma County Regional Parks
 - Stantec
 - WRA, Inc.

1.16 Brand or Approved Equal Substitutions

- a. It is understood that specifying a brand name or specific types of components and/or equipment in these solicitation documents shall not relieve the bidder from its responsibility to furnish the end product in accordance with the warranty and contractual requirements. The bidder is responsible for notifying the District of any inappropriate brand names, or types of components and/or equipment that may be called for in these solicitation documents, and to propose a suitable substitute for consideration. If the phrase “or approved equal” is inadvertently omitted, it is implied after any brand name.
- b. Unless otherwise specifically provided in the solicitation documents, reference to any equipment, material, article or patented process by trade name, make, or catalog number shall be regarded as establishing a standard of quality and shall not be construed as limiting competition; and a bidder may, at its option, use any equipment, material, article, or process which, in the judgement of the District, is equal to that designated. To do so a bidder shall furnish, at its own expense, all test results, technical data, and background information required by the District in making the determination as to whether the proposed equipment, material or article or process, in the judgement of the District, is equal to that designated.
- c. The District shall be the sole judge as to the comparative quality and suitability of alternative equipment, articles, material or process, and its decision shall be final.

- d. Requests for Approved Equals must be in writing on SMART's "Document 00 63 25 - Substitution Request Form" and submitted using the District's Procurement Portal located at <https://sonomamarintrain.bonfirehub.com> by clicking on the Vendor Discussions tab of the message section located on the project page. Bidders must submit the request by the Deadline for Questions identified in the "Procurement Schedule". After that date, SMART will not accept "or equal" substitution requests. To assess "or equal" acceptability of product or system, the Bidder shall provide all information and documentation required for SMART to be able to make a determination. Insufficient information will be grounds for rejection of substitution. SMART shall issue in writing its decision as to whether the proposed substitute item is an Equal item via the issuance of an Addendum.

1.17 Addenda

The District reserves the right to issue Addenda at any time during the period of the procurement. Any such Addenda will be bound into and included as part of the awarded Agreement, as appropriate. The District will post Addenda on the project tab at <https://sonomamarintrain.bonfirehub.com>. It is the Bidder's responsibility to check the District's Procurement Portal regularly for updates to the solicitation. Bidders shall be responsible for providing copies of any Addenda to their Subcontractors.

Persons or firms that obtain the Invitation for Bid from sources other than the District bear the sole responsibility for obtaining, from such sources any Addenda issued by the District for the Invitation for Bid. The District will not be bound by any explanation, clarification, or interpretation, oral or written, regardless of who made it, that is not incorporated into the Invitation for Bid by an Addendum.

2. INSTRUCTIONS TO BIDDERS

2.1 Bid Submission Process

Bidders shall submit one electronic Bid. The Bid shall be uploaded at <https://sonomamarintrain.bonfirehub.com> within the project page for this solicitation by the bid deadline identified in the Procurement Schedule. **Hardcopy bids, bids submitted by email, and faxed bids will not be considered.** SMART is not responsible for submissions delayed for any reason. The online submission system will not allow for any submission to be accepted after the stated date and time.

Bids shall be prepared using the following format:

Part	Contents
A	Bid Form
B	Questionnaire and Financial Statement
C	Required Certificates and Forms

PART A. BID FORM

- a) FORM BF - SMART's Bid Form

PART B. QUESTIONNAIRE & FINANCIAL STATEMENT

- a) FORM QF - Questionnaire & Financial Statement

PART C. REQUIRED CERTIFICATES AND FORMS

- a) W-9 Tax Form or Equivalent
- b) Project Manager Resume
- c) Certificates of Reported Compliance ("CRC") for the Bidder's fleet and for the fleet(s) of its listed subcontractors (including any applicable leased equipment or vehicles).
- d) Disadvantaged Business Enterprise (DBE) and/or Small Business Enterprise (SBE) certification document(s) – Required if you stated yes on SMART Bid Form (Form BF)

2.2 Conditions of Bid

By submitting a Bid, the Bidder is agreeing that it has undertaken all necessary due diligence and accepts all of the terms and conditions included in this Invitation for Bid and SMART's Sample Agreement.

2.3 Modifications to a Bid prior to Due Date

In the event a Bidder submits a Bid and needs to make revisions or withdraw their Bid prior to the Bid Deadline, instructions for doing so can be found here: <https://vendorsupport.gobonfire.com/hc/en-us/articles/6848514343447-Can-I-revise-my-submission>. Once the Submission Deadline has passed, revisions are not permitted.

2.4 Cost of Bidding

The Bidder shall bear all costs and expenses whatsoever for the preparation, submittal, discussions, interviews, and negotiations related to the Bid.

2.5 Bid Irregularities and Discrepancies

Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between written words and figures will be resolved in favor of the words.

Symbols such as commas and dollar signs will be ignored and have no mathematical significance in establishing any unit price or item total or lump sums. Written unit prices, item totals and lump sums will be interpreted according to the number of digits and, if applicable, decimal placement. Cents symbols also have no significance in establishing any unit price or item total since all figures are assumed to be expressed in United States dollars and/or decimal fractions of a dollar.

2.6 Multiple Bids

More than one Bid from a Bidder will not be considered.

2.7 Relief of Bidders

Pursuant to Public Contract Code sections 5100 to 5107, inclusive, concerning relief of bidders and in particular to the requirement therein, that if the bidder claims a mistake was made in the bid presented, the bidder shall give the District written notice within five (5) working days after the opening of the bid of alleged mistake, specifying in the notice detail how the mistake occurred.

2.8 General Bid Information

- A. Bids shall be submitted as described in the Invitation for Bid documents and shall be on the forms provided.
- B. All blank spaces in the Bid Forms must be completed as required.
- C. All price information shall be shown clearly legible, in figures, where required. No changes may be made on the Bid Forms.
- D. The successful bidder may be required to prepare a Schedule of Values based on the bid items on the Bid Form submitted to provide additional detail which will be used in conjunction with payment.

2.9 Warranty of Title

By submitting a bid, Bidder warrants to SMART that the title to the material, supplies or equipment covered by the Agreement or Purchase Order, when delivered to SMART is free from all liens and encumbrances.

2.10 Warranty of Fitness

By submitting a bid, Bidder warrants to SMART that all materials furnished meet the requirements and conditions required by SMART under this Solicitation; are fit for the purpose intended and fulfills its design functions; are free of all patent and latent defects in design, materials, and workmanship; and perform satisfactorily.

2.11 Non-Collusion Certification

By submitting a bid, the Bidder represents and warrants that such bid is genuine and not sham or collusive in the interest or in behalf of any person not therein named, and that the bidder has not, directly or indirectly, induced or solicited any other bidder to put in a sham bid, or any other person, firm, or corporation to refrain from bidding, and that the bidder has not in any manner sought by collusion to secure to the bidder an advantage over any other bidder.

3. BID EVALUATION

Following the Public Bid Opening, SMART's procurement staff will review and evaluate the bids for responsiveness and responsibility prior to issuing the Notice of Intent to Award.

3.1 Responsiveness Evaluation

Responsiveness is determined by responding to all the mandatory bidding requirements.

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

- a) The Bid is not properly signed by an authorized party.
- b) Failure to provide all required parts of the Bid.
- c) The Bid is illegible or contains omissions, erasure, alteration, or items not called for in the Invitation for Bid.

- d) The Bid contains unauthorized conditions or other irregularities of any kind, if the District determines that such conditions or irregularities make the Bid incomplete, indefinite, or ambiguous as to its meaning.
- e) Any alterations of forms, without prior approval of the District.
- f) Requested information deemed material by the District is not provided.
- g) Failure to acknowledge receipt of all Addenda.
- h) More than one Bid is received from a Bidder.
- i) The Evaluation Committee is not able to confirm the accuracy of all technical data, qualifications, or other information provided in the Bid.
- j) Due to an organizational conflict of interest, the Bidder has an unfair advantage, in the opinion of the District.
- k) Any other reason for which the District determines that the Bid is non-responsive.

3.2 Responsibility Evaluation

As a pre-requisite to an award of a Contract, the District will determine whether the low bidder meets the definition of a “responsible bidder” as set forth in Public Contract Code Section 1103: “a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the work.”

Additionally, the District will ensure the bidder meets the definition of “responsible contractors” as stated in 49 U.S.C. 5325 and 2 CFR Part 200.318 (h).

In order to evaluate Bidder’s ability to perform and provide the work to SMART’s satisfaction, SMART may conduct reasonable investigations and reference checks of Bidder, proposed Subcontractors, suppliers and other persons and organizations as SMART deems necessary to assist in the evaluation of any Bid. Submission of a Bid constitutes Bidder’s consent to the foregoing. SMART shall have the right to consider information provided by sources other than Bidder. SMART shall also have the right to communicate directly with the Bidder’s surety regarding the Bidder’s Bonds.

Additionally, the District may review any information about the bidder, including information submitted with FORM QF “Questionnaire & Financial Statement”, evidence of good standing with the California Secretary of State, registration status with the System for Award Management (“SAM”) at www.sam.gov, licensing agencies, regulatory agencies, and any other source deemed applicable by SMART.

Failure to so demonstrate responsibility may result in the rejection or disqualification of the low-bidder. In such event, the second lowest bidder may be issued a Notice of Award.

3.3 Single Bid Response

In the event of a single-bid response, SMART reserves the right to conduct a price and/or cost analysis of the bid to verify that the bid price is fair and reasonable. The Bidder will be expected to cooperate in this process and to submit cost and pricing data to verify that the bid price is fair and reasonable. The right of examination will extend to all documents necessary to permit adequate evaluation of the cost of the product(s) and the prices quoted. Failure to submit the data as requested by SMART may result in the Bidder being declared non-responsive.

4. AWARD

4.1 No Obligation to Award

The District shall be under no obligation to award an Agreement should the District decide, in its sole discretion, that it is in its best interests not to award the Agreement. At its discretion, the District may cancel the procurement in its entirety, and re-procure by any method at a later date.

4.2 Award

The District intends to award the Agreement to the lowest responsive responsible bidder whose bid complies with the specifications in a manner satisfactory to SMART's best interests, as determined by SMART.

Except as permitted by applicable law, no Bidder may withdraw its bid for a period of ninety (90) calendar days after the date of bid opening. Each Bidder will be notified of any award of the Contract by the District.

4.3 Execution of Contract

The successful Bidder shall execute and submit the following documents to SMART within five (5) Business Days following the issuance of the Notice of Award:

- a. Agreement
- b. Insurance Certificates and Required Endorsements
- c. Contract Bonds (Payment Bond, Performance Bond, etc.)

4.4 Failure to Execute Contract

Failure of the winning bidder to promptly and properly execute the

Contract or furnish acceptable Contract bonds, or certificates of insurance, shall be just cause for the cancellation of the award, the forfeiture of such bidder's Bid Guaranty (If Required), and debarment from bidding on future SMART opportunities.

4.5 Notice to Proceed

After the execution of the Contract and submission of the required Contractor's Bonds and Certificates of Insurance, SMART will issue a Notice to Proceed, Limited Notice to Proceed, or multiple Notices to Proceed with respect to specific tasks, indicating the Work may commence on the date indicated.

4.6 Release of Information

Awardee must receive prior permission from SMART before releasing any reports, information or promotional materials prepared in connection with this Invitation for Bid and subsequent contract award. The Awardee shall not use the District's logo or any other proprietary material without the prior written permission of the District. The awardee shall provide a copy or copies of any such material to SMART for first review.

5. PROTEST PROCEDURES

The Sonoma-Marín Area Rail Transit District (SMART) maintains written procurement protest procedures that must be followed for all protests. SMART's Procurement Protest Procedures may be downloaded at <https://sonomamarintrain.org/business>. Copies of these protest procedures are also available at SMART's Headquarters Office located at 5401 Old Redwood Hwy, Suite 200, Petaluma, CA 94954. Failure to comply with the rules and procedures specified in SMART's Procurement Protest Procedures will render a protest untimely and/or inadequate and shall result in its rejection.

6. LEGAL, CONTRACTUAL, AND FINANCIAL INFORMATION

6.1 Bid and Accompanying Documents

Signing of Bid: The Bid shall be signed by all parties making up the Bidder. If the Bidder is a corporation, the Bidder shall be signed by an authorized officer of the corporation; if the Bidder is a partnership, the Bidder shall be signed by a general partner having the power to bind the partnership contractually; if the Bidder is a Joint Venture, the Bidder shall

be signed by all equity members of the Joint Venture; or if the Bidder is signed by an attorney in fact for a corporation or partnership, a power of attorney shall be submitted with the Bid. A Bid not properly signed may be rejected as irregular and unauthorized.

6.2 Conflict of Interest

Depending on the nature of the equipment or product being furnished, Vendors and Subcontractors are subject to the same conflict of interest prohibitions that apply to District employees. These include, but are not limited to, the requirements of California Law (including Government Code Sections 1090 et seq., and 87100 et seq., and Title 2, Division 6 of the California Code of Regulations). The District reserves the right to disqualify any Bidder under the Invitation for Bid if the District, in its sole discretion, deems that the potential conflicts of interest is likely to impair or restrict the Bidder's ability to furnish services contemplated within the Agreement.

At the time of submitting a Bid, Bidders shall disclose to SMART any and all potential organizational conflicts of interest. SMART will evaluate potential conflicts on a case-by-case basis. By responding to this Bid, Bidder agrees to facilitate SMART's efforts to share information, and agrees to comply with any other measures required by SMART to mitigate or eliminate conflicts of interest.

6.3 Economic Sanctions

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. As a recipient of state and federal funds, the District is prohibited from contracting with individuals or entities that are determined to be a target of Economic Sanctions. By submitting a bid, Bidder represents that it is not a target of Economic Sanctions. Should the District determine Bidder is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for rejection of the Bid any time prior to contract execution, or if determined after contract execution, shall be grounds for termination by the District.

6.4 Confidentiality

The issue of confidentiality will be stressed during the entire evaluation and selection process. The District recognizes that the integrity of any contracting process is critical to the fairness and the confidence that

Bidders and the public have in a public agency. Therefore, to the extent consistent with the requirements of applicable law, the deliberations of the evaluation committee will be held in the strictest confidence, and all information provided by Bidders or generated by the evaluation will be safeguarded until the Notice of Intent to Award has been issued.

6.5 Public Disclosure

The California Public Records Act (CPRA) (Government Code Sections 6250, et seq.) mandates public access to public records not exempt from disclosure under the CPRA. All written correspondence, exhibits, photographs, reports, printed material photographs, tapes, electronic disks, and other graphic and visual aids submitted to the District during this procurement process, including as part of the response to this Solicitation, are, upon their receipt by District, the property of the District and are subject to the California Public Records Act (Chapter 1, commencing with section 7920.000, of Division 10 of Title 1 of the Government Code) (the "Act"). None of the aforementioned materials will be returned to the submitting parties. Respondents should familiarize themselves with the provisions of the Act.

By submitting a bid, a bidder (i) consents to the release of its bid, in the form submitted to SMART and without any redactions, and (ii) waives all claims against SMART, its directors, officers, employees, and agents, for the disclosure of all or a portion of a Bid submitted under this Invitation for Bid. In no event shall District, or any of its agents, representatives, Contractors, directors, officers, or employees be liable to any Bidder for the disclosure of all or a portion of a Bid submitted under this Solicitation.

7. EXISTING SITE CONDITIONS

This section applies to all supplied existing conditions information and all other information supplied regarding existing conditions either above ground or below ground. This section also sets forth the terms and conditions under which Bidder may review, study, use, or rely upon existing conditions information, including geotechnical data if applicable, concerning existing conditions at or contiguous to the Site. This section, the available geotechnical data, and the supplied existing conditions information are not considered Contract Documents.

7.1 General Information

Bidders may examine any available existing conditions information (e.g., record documents, specifications, studies, drawings of previous work, geotechnical data) by giving SMART reasonable advance notice.

7.2 Reports and Information

- A. Existence of Reports. SMART, its consultants, and prior contractors may have collected documents providing a general description of the Site and conditions of the Work. These documents may consist of geotechnical reports for and around the Site, contracts, contract specifications, tenant improvement contracts, as-built drawings, utility drawings, and information regarding Underground Facilities. These reports, documents and other information are not part of the Contract Documents.
- B. Inspection of Reports. Bidders may inspect reports and information regarding existing conditions, if available, at SMART's main office, and may obtain copies upon Bidder's payment for the costs of reproduction and handling. These reports, documents and other information, are not part of the Contract Documents. Nevertheless, by submitting a Bid, Bidder accepts full responsibility for reviewing, knowing and understanding the contents of all of these materials.
- C. Inclusion in Project Manual. Geotechnical reports and information regarding existing conditions may also be included in the Project Manual, if available, but neither shall be considered part of the Contract Documents.

7.3 Use of Information on Existing Conditions

- A. Aboveground Existing Conditions. Under no circumstances shall SMART be deemed to make a warranty or representation of existing aboveground conditions, as-built conditions, or other aboveground actual conditions verifiable by reasonable independent investigation. These conditions are verifiable by Bidder by the performance of its own independent investigation that Bidder must perform prior to bidding and Bidder must not rely on the information supplied by SMART regarding existing conditions. Bidder represents and agrees that in submitting its Bid, it is not relying on any information regarding existing conditions supplied by SMART.
- B. Underground Facilities. Information supplied regarding existing Underground Facilities at or contiguous to the Site is based on information furnished to SMART by others (e.g., the builders of such Underground Facilities or others). Except as expressly identified within the Invitation for Bid Documents, SMART does not assume responsibility for the accuracy, completeness or thoroughness of this information, and Bidder is solely responsible for any interpretation or conclusion drawn from this information. Except as expressly identified

within the Invitation for Bid Documents, SMART will be responsible only for the general accuracy of information regarding its own Underground Facilities. This express assumption of responsibility applies only if Bidder has conducted the independent investigation required of it and discrepancies were not apparent.

7.4 Limited Reliance Permitted on Certain Information

- A. Geotechnical Data. Except as expressly identified within the Invitation for Bid Documents, SMART does not warrant, and makes no representation regarding, the accuracy or thoroughness of any geotechnical data. Bidder represents and agrees that in submitting its Bid, it is not relying on any geotechnical data supplied by SMART, except as specifically set forth herein.
- B. Technical Data. Bidder may rely upon the general accuracy of the “technical data” contained in the geotechnical reports and existing conditions information identified above, but only insofar as it relates to subsurface conditions, provided Bidder has conducted the independent investigation required of it and discrepancies were not apparent. The term “technical data” in the referenced reports and drawings shall be limited as follows:
 - 1) The term “technical data” shall include actual reported depths, reported quantities, reported soil types, reported soil conditions, and reported material, equipment, or structures that were encountered during subsurface exploration.
 - 2) The term “technical data” does not include, and Bidder may not rely upon, any other data, interpretations, opinions or information shown or indicated in such drawings or reports that otherwise relate to subsurface conditions or described structures.
 - 3) The term “technical data” shall not include the location of Underground Facilities.
 - 4) Bidder may not rely on the completeness of reports and drawings for the purposes of bidding or construction. Bidder may rely upon the general accuracy of the “technical data” contained in such reports or drawings.
 - 5) Bidder is solely responsible for any interpretation or conclusion drawn from any “technical data” or any other data, interpretations, opinions, or information contained in supplied existing conditions information.

7.5 Investigations

- A. Before submitting a Bid, each Bidder shall be responsible to obtain such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site or otherwise, which may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Bidder and safety precautions and programs incident thereto or which Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price and other terms and conditions of Contract Documents.
- B. SMART has provided time in the period prior to bidding for Bidder to perform these investigations and to ask questions.
- C. Notwithstanding the foregoing, Potential contaminates may be encountered along the SMART right-of-way during Contract work that were not included in the contract documents. If hazardous materials are encountered, the Contractor shall immediately notify SMART and determine the limits of the hazardous materials. SMART will retain the risk for costs that arise due to the discovery of unanticipated hazardous materials during the performance of the work. SMART shall have no responsibility or liability for any hazardous materials generated by the Contractor or its subcontractors. The Contractor shall be responsible to arrange the necessary resources to be able to remove and dispose of such materials in a timely manner and in accordance with all applicable requirements.

8. DISTRICT'S RESERVATION OF RIGHTS

In connection with this procurement, the District reserves to itself all rights (which rights shall be exercisable by the District in its sole discretion) available to it under the Public Contract Code and applicable law, including without limitation, the following, with or without cause and with or without notice:

- a) Reject any or all Bids, or information submitted related to a Bid;
- b) Issue a new Invitation for Bid, or modify dates set or projected in the Invitation for Bid;
- c) Cancel, modify, or withdraw the Invitation for Bid, in whole or in part at any time prior to the execution of the Agreement without incurring any cost obligations or liabilities;

- d) Issue Addenda, supplements and modifications to the Invitation for Bid;
- e) Modify the Invitation for Bid process;
- f) Appoint an Evaluation Committee to review Bids and to consider the advice and assistance of non-District experts in any subject matter in Bid evaluation;
- g) Hold meetings and conduct discussions and correspondence with a Bidder to seek an improved understanding and evaluation of the Bid;
- h) Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the Bid;
- i) Waive weaknesses, informalities, and minor irregularities in Bids;
- j) Disqualify any Bidder that changes its organization (as represented in its Bid) without District written approval;
- k) Hold the price of bids under consideration for up to 90 calendar days after the bid deadline until the Award is made unless there is a mutual agreement to extend the 90-day time limit as provided in the Invitation for Bid;
- l) Disclose information contained in the Bids to the public as described herein;
- m) Refuse to consider a Bid, once submitted, or reject a Bid if such refusal or rejection is based upon, but not limited to, the following;
- n) Failure on the part of a Principal Participant to pay, satisfactorily settle, or provide security for the payment of claims for labor, equipment, material, supplies, or services legally due on previous or ongoing contracts;
- o) More than one bid submitted by the same bidder for the same work under the Bidder's own name or under a different name;
- p) Evidence of collusion between a prospective Bidder (or any Principal Participant or Designer) and other Bidders (or Principal Participants or Designers);
- q) Further negotiate pricing, or terms and conditions, in advance of issuing an Agreement (If Allowable);
- r) Exercise any other right reserved or afforded to the District under this

Invitation for Bid or under the Public Contract Code and applicable law;
and/or

- s) SMART may require the apparent low bidder to submit cost data in sufficient detail to permit analysis of the cost elements that comprise the bid prices. In such instances, the apparent low bid may, at the discretion of SMART, be subject to audit.
- t) The Bidder acknowledges that, by submitting a Bid in response to this Invitation for Bid, it agrees with these disclaimers and waives any right to legally challenge or protest any District's actions that exercise these disclaimers.



SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

ATTACHMENT B

00 70 00

GENERAL CONDITIONS

RIPARIAN MITIGATION AT
HELEN PUTNAM REGIONAL PARK

CONTRACT NO. EV-BB-24-002

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1 INTERPRETATION OF CONTRACT

1.1 Defined Terms

All abbreviations and definitions of terms used and not otherwise defined in this Document 00 70 00 are set forth in Section 01 42 19 (References Standards). This Document 00 70 00 subdivides at first level into Articles, and then into paragraphs.

1.2 Contract Documents

- 1.2.A Contract Documents are complementary; what is called for by one is as binding as if called for by all. Contract Documents shall not be construed to create a contractual relationship of any kind between (i) Architect, Engineer or any SMART's Representative and Contractor; (ii) SMART and/or its representatives and a Subcontractor, sub-Subcontractor, or supplier of any Project labor, materials, or equipment; or (iii) between any persons or entities other than SMART and Contractor.

1.3 Precedence Of Documents

- 1.3.A In the case of discrepancy or ambiguity in the Contract Documents, the following order of precedence shall prevail:
 - 1.3.A.1 Modifications in inverse chronological order (i.e., most recent first), and in the same order as specific portions they are modifying;
 - 1.3.A.2 Document 00 52 00 (Agreement), and terms and conditions referenced therein;
 - 1.3.A.3 Supplementary Conditions;
 - 1.3.A.4 General Conditions);
 - 1.3.A.5 Division 1 Specifications;
 - 1.3.A.6 Drawings and Division 2 through 17 Specifications;
 - 1.3.A.7 Written numbers over figures, unless obviously incorrect (i.e. [six] over [6]);
 - 1.3.A.8 Figured dimensions over scaled dimensions;
 - 1.3.A.9 Large-scale Drawings over small-scale Drawings.
- 1.3.B Any conflict between Drawings and Division 2 through 17 Specifications will be resolved in favor of the document of the latest date (i.e., the most recent document), and if the dates are the same or not determinable, then in favor of Specifications.
- 1.3.C Any conflict between a bill or list of materials shown in the Contract Documents and the actual quantities required to complete Work required by Contract Documents, will be resolved in favor of the actual quantities.

2 BID PERIOD INVESTIGATIONS AND SUBCONTRACTING

2.1 Investigation Prior To Bidding

- 2.1.A Prior to bidding, Contractor must investigate fully the Work of the Contract. Contractor must visit the Site, examine thoroughly, and understand fully the nature and extent of the Contract Documents, Work, Site, locality, actual conditions and as-built conditions, and all other information made available for bidding. Contractor's investigation shall include, but is not limited to, a thorough examination of all reports of exploration and tests of subsurface conditions, as-built drawings, drawings, product specification(s) or reports, available for Bidding purposes, of physical conditions, including Underground Facilities and information identified in the bidding documents and/or Hazardous Materials Surveys (if used), or which may appear in the Contract Documents, and all local conditions, and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto. Contractor shall completely and thoroughly correlate all such information and consider such information fully, prior to and as a condition of submitting its Bid. Contractor shall make inquiry as required in the bidding documents.
- 2.1.B Prior to submitting its Bid, Contractor shall take care to note the existence and potential existence of Underground Facilities, in particular, above and below grade structures, drainage lines, storm drains, sewers, water, gas, electrical, chemical, hot water, and other similar items and utilities. Contractor shall carefully consider all supplied information, request additional information Contractor may deem necessary, and visually inspect the Site for above ground indications of Underground Facilities (such as, for example not by way of limitation, the existence of existing service laterals, appurtenances or other types of utilities, indicated by the presence of an underground transmission main or other visible facilities, such as buildings, new asphalt, meters and junction boxes, on or adjacent to the Site).
- 2.1.C Prior to submitting its Bid, Contractor must correlate its experience, knowledge, and the results of its required investigation with the terms and conditions of the Contract Documents and must give SMART prompt written notice of all conflicts, errors, ambiguities, or discrepancies of any type, that it may discover in or among the Contract Documents, as-built drawings (if any) and/or actual conditions. Contractor shall give this notice during the Bid period and submission of a Bid indicates Contractor's agreement that SMART responded to the notice through Addenda issued by SMART which is acceptable to Contractor.
- 2.1.D Prior to submitting its Bid, Contractor must consider fully the fact that information supplied regarding existing Underground Facilities at or contiguous to the Site is in many cases based on information furnished to SMART by others (e.g., the builders of such Underground Facilities or others), and that due to their age or their chain of custody since preparation, may not meet current industry

standards for accuracy. Contractor must also consider local underground conditions and typical practices for Underground Facilities, either through its own direct knowledge or through its subcontractors, and fully consider this knowledge in assessing the existing information and the reasonableness of its reliance.

- 2.1.E Prior to submitting its Bid, as required, Contractor shall conduct (or request that SMART have conducted) any such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site or otherwise, which may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto or which Contractor deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price and other terms and conditions of Contract Documents.
- 2.1.F Prior to submitting its Bid, Contractor may rely on SMART supplied information regarding existing conditions only where such conditions are underground and not subject to reasonable verification. If existing information supplied by SMART indicates a discrepancy or a substantial risk of inaccuracy or omission, then Contractor must request specific additional information.
- 2.1.G Contractor shall advise SMART in writing during the Bid period of any questions, suppositions, inferences, or deductions Contractor may have, for SMART's review and response by Addenda, and may not assert any such matters later that were not brought forth during the Bid period.
- 2.1.H During performance of the Contract, Contractor will be charged with knowledge of all information that it should have learned in performing this required pre-Bid investigation and shall not be entitled to change orders (time or compensation) due to information or conditions that Contractor should have known as a part of this pre-Bid investigation.

2.2 Supplied Information on Underground Existing Conditions

- 2.2.A Regarding Underground Facilities shown in the Contract Documents or supplied in the bidding documents, SMART has compiled this information in good faith, relying on its records and third-party records. Because of the nature and location of SMART and the Project, the existence of Underground Facilities is deemed inherent in the Work of the Contract, as is the fact that Underground Facilities are not always accurately shown or completely shown on as-built records, both as to their depth and location. In Article 14 of this Document 00 70 00, this Contract establishes a heightened standard for claims involving Underground Facilities. Contractor shall consider this fact in its bidding and in its planning and execution of the Work involving Underground Facilities.
- 2.2.B Regarding subsurface conditions other than Underground Facilities, shown on the Contract Documents or supplied in the bidding documents, Contractor may rely only upon the general accuracy of actual reported depths, actual reported character of materials, actual reported soil types, actual reported water

conditions, or actual obstructions shown or indicated in the Contract Documents. SMART is not responsible for the completeness of any subsurface condition information for bidding or construction, Contractor's conclusions or opinions drawn from any subsurface condition information, or subsurface conditions that are not specifically shown. (For example, SMART is not responsible for soil conditions in areas contiguous to areas where a subsurface condition is shown.)

2.3 Supplied Information on Above-Ground Existing Conditions

- 2.3.A Regarding aboveground and as-built conditions shown on the Contract Documents or supplied in the bidding documents, such information has been compiled in good faith, however, Contractor must independently verify such information. SMART does not expressly or impliedly warrant or represent that information as to aboveground conditions or as-built conditions indicated, is correctly shown or indicated, or otherwise complete for construction purposes.
- 2.3.B As a condition to bidding, Contractor shall verify by independent investigation all such aboveground and as-built conditions, and bring any discrepancies to SMART's attention through written question. In submitting its Bid, Contractor shall rely on the results of its own independent investigation and shall not rely on SMART-supplied information regarding aboveground conditions and as-built conditions, and Contractor shall accept full responsibility for its verification work sufficient to complete the Work as intended.

2.4 Subcontractors

- 2.4.A Consistent with Public Contract Code Sections 4101 et seq., Contractor shall not substitute any other person or firm in place of any Subcontractor listed in the Bid. Subcontractors shall not assign or transfer their subcontracts or permit them to be performed by any other contractor without SMART's written approval. At SMART's request, Contractor shall provide SMART with a complete copy of all executed subcontracts or final commercial agreements with Subcontractors and/or suppliers.
- 2.4.B Subcontract agreements shall preserve and protect the rights of SMART under the Contract Documents so that subcontracting will not prejudice such rights. To the extent of the Work to be performed by a Subcontractor, Contractor shall require the Subcontractor's written agreement (1) to be bound to the terms of Contract Documents and (2) to assume vis-à-vis Contractor all the obligations and responsibilities that Contractor assumes toward SMART under the Contract Documents. (These agreements include for example, and not by way of limitation, all warranties, claims procedures and rules governing submittals of all types to which Contractor is subject under the Contract Documents.)
- 2.4.C Contractor shall provide for the assignment to SMART of all rights any Subcontractor may have against any manufacturer, supplier, or distributor for breach of warranties and guarantees relating to the Work performed by the Subcontractor under the Contract Documents.

- 2.4.D SMART shall be deemed to be an intended third-party beneficiary of all Subcontracts (of any tier) for the provision of labor, services, supplies or material to the Project, and each such agreement shall so provide.

3 CONTRACT AWARD AND COMMENCEMENT OF THE WORK

3.1 Time Allowances for Performance of Contract Documents

- 3.1.A SMART will make the Award of Contract by issuing a Notice of Award. As a condition to SMART signing Document 00 52 00 (Agreement), however, Contractor shall deliver to SMART the executed agreements, forms, bonds, and insurance documents required by the bidding documents in the required quantities and within the required times.
- 3.1.B The Contract Time will commence to run on the date indicated in the Notice to Proceed (Commencement Date). The Notice to Proceed will be specified as NTP.
- 3.1.C The total number of Days for completion of the Work shall be as described in the bid solicitation documents.
- 3.1.D Contract Time commences on the date established in Notice to Proceed. SMART reserves the right to modify or alter the Commencement Date of the Work. SMART may give a Notice to Proceed at any time within 60 Days after the Notice of Award. Contractor shall not do any Work at the Site prior to the date on which the Contract Time commences to run.

3.2 Commencement Of Work

- 3.2.A Contractor shall commence work on the Site on the Commencement Date issued in NTP. Contractor shall not do any Work at the Site prior to that date.

4 INDEMNIFICATION

4.1 Indemnification

- 4.1.A SMART and each of its officers, employees, consultants and agents including, but not limited to the Board, Architect, Engineer and each SMART's Representative, shall not be liable or accountable in any manner for loss or damage that may happen to any part of the Work; loss or damage to materials or other things used or employed in performing the Work; injury, sickness, disease, or death of any person; or damage to property resulting from any cause whatsoever except their sole negligence, willful misconduct or active negligence, attributable to performance or character of the Work, and Contractor releases all of the foregoing persons and entities from any and all such claims.
- 4.1.B Contractor shall indemnify, defend, protect, hold harmless, and release the County of Sonoma, 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.

- 4.1.C To the furthest extent permitted by law (including without limitation California Civil Code Section 2782), Contractor shall assume defense of, and indemnify and hold harmless, SMART and each of its officers, employees, consultants and agents, including but not limited to the Board, Architect, Engineer and each SMART's Representative, from claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to claims and fines of regulatory agencies and attorney's fees and consultant's fees, directly or indirectly arising out of, connected with or resulting from performance of the Work, failure to perform the Work, or condition of the Work which is caused in whole or part by any act or omission of Contractor, Subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether it is caused in part by the negligence of SMART or by any person or entity required to be indemnified hereunder.
- 4.1.D With respect to third-party claims against Contractor, Contractor waives any and all rights to any type of express or implied indemnity against SMART and each of its officers, employees, consultants, and agents including, but not limited to SMART, the Board, Architect, Engineer and each SMART's Representative.
- 4.1.E Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its Subcontractors of any tier, or the officers or agents of any of them.
- 4.1.F To the furthest extent permitted by law (including, without limitation, Civil Code Section 2782), the indemnities, releases of liability and limitations of liability, claims procedures, and limitations of remedy expressed throughout Contract Documents shall apply even in the event of breach of Contract, negligence (active or passive), fault or strict liability of the party(ies) indemnified, released, or limited in liability, and shall survive the termination, rescission, breach, abandonment, or completion of the Work or the terms of the Contract Documents. If Contractor fails to perform any of these defense or indemnity obligations, SMART may in its discretion back charge Contractor for SMART's costs and damages resulting therefrom and withhold such sums from progress payments or other Contract moneys which may become due.
- 4.1.G The indemnities in the Contract Documents shall not apply to any indemnified party to the extent of its sole negligence or willful misconduct; nor shall they apply to SMART or other indemnified party to the extent of its active negligence.
- 4.1.H Contractor's obligations under this paragraph 4.1 shall survive completion of the Work or termination of the Contract Documents for any reason whatsoever.

5 DRAWINGS AND SPECIFICATIONS

5.1 Intent

- 5.1.A Drawings and Specifications are intended to describe a functionally complete and operable Project (and all parts thereof) to be constructed in accordance with the requirements of Contract Documents. Contractor shall perform any work,

provide services and furnish any materials or equipment that may reasonably be inferred from the requirements of Contract Documents or from prevailing custom or trade usage as being required to produce this intended result. Contractor shall interpret words or phrases used to describe Work (including services), materials, or equipment that have well-known technical or construction industry or trade meaning in accordance with that meaning. Drawings' intent specifically includes the intent to depict construction that complies with all applicable laws, codes, and standards.

- 5.1.B As part of the "Work," Contractor shall provide all labor, materials, equipment, machinery, tools, facilities, services, employee training and testing, hoisting facilities, Shop Drawings, storage, testing, security, transportation, disposal, the securing of all necessary or required field dimensions, the cutting or patching of existing materials, notices, permits, documents, reports, agreements and any other items required or necessary to timely and fully complete Work described and the results intended by Contract Documents and, in particular, Drawings and Specifications. Divisions and Specification Sections and the identification on any Drawings shall not control Contractor in dividing Work among Subcontractors or suppliers or delineating the Work to be performed by any specific trade.
- 5.1.C Contractor shall perform reasonably implied parts of Work as "incidental work" although absent from Drawings and Specifications. Incidental work includes any work not shown on Drawings or described in Specifications that is necessary or normally or customarily required as a part of the Work shown on Drawings or described in Specifications. Incidental work includes any work necessary or required to make each installation satisfactory, legally operable, functional, and consistent with the intent of Drawings and Specifications or the requirements of Contract Documents including required tasks to be performed under Division 1 of Specifications. Contractor shall perform incidental work without extra cost to SMART. Incidental work shall be treated as if fully described in Specifications and shown on Drawings, and the expense of incidental work shall be included in price Bid and Contract Sum.

5.2 Drawing Details

- 5.2.A A typical or representative detail on Drawings shall constitute the standard for workmanship and material throughout corresponding parts of Work. Where necessary, and where reasonably inferable from Drawings, Contractor shall adapt such representative detail for application to such corresponding parts of Work. The details of such adaptation shall be subject to prior approval by SMART. Repetitive features shown in outline on Drawings shall be in exact accordance with corresponding features completely shown.

5.3 Interpretation Of Drawings And Specifications

- 5.3.A Should any discrepancy appear, or any misunderstanding arise as to the import of anything contained in Drawings and Specifications, or should Contractor have any questions or requests relating to Drawings or Specifications, Contractor shall refer the matter to SMART, in writing, in accordance with Section 01 25 00

(Clarification and Modification Procedures). SMART will issue with reasonable promptness written responses, clarifications or interpretations as SMART may determine necessary, which shall be consistent with the intent of and be reasonably inferable from Contract Documents. Such written clarifications or interpretations shall be binding upon Contractor. If Contractor believes that a written response, clarification, or interpretation justifies an adjustment in the Contract Sum or Contract Time, Contractor shall give SMART prompt written notice as provided in Section 01 25 00 (Clarification and Modification Procedures). If the parties are unable to agree to the amount or extent of the adjustment, if any, then Contractor shall perform the Work in conformance with SMART's response, clarification, or interpretation and may make a written claim for the adjustment as provided in Article 12 of this Document 00 70 00.

5.4 Checking Of Drawings

- 5.4.A Before undertaking each part of Work, Contractor shall carefully study and compare Contract Documents and check and verify pertinent information shown in the Contract Documents and all applicable field conditions and measurements. Contractor shall be responsible for any errors that might have been avoided by such comparison. Contractor shall promptly report to SMART, in writing, any conflict, error, ambiguity or discrepancy that Contractor may discover. Contractor shall obtain a written interpretation or clarification from SMART before proceeding with any Work affected thereby. Dimensions shown on Drawings shall be followed; Contractor shall not scale Drawings.

5.5 Standards To Apply Where Specifications Are Not Furnished

- 5.5.A The following general specifications shall apply wherever in the Specifications, or in any directions given by SMART in accordance with or supplementing Specifications, it is provided that Contractor shall furnish materials or manufactured articles or shall do Work for which no detailed specifications are shown. Materials or manufactured articles shall be of the best grade, in quality and workmanship, obtainable in the market from firms of established good reputation. If not ordinarily carried in stock, the materials or manufactured articles shall conform to industry standards for first class materials or articles of the kind required, with due consideration of the use to which they are to be put. Work shall conform to the usual standards or codes, such as those cited in Section 01 42 19 (References and Definitions), for first class work of the kind required. Contractor shall specify in writing to SMART the materials to be used or Work to be performed under this paragraph 5.5 fourteen (14) Days prior to furnishing such materials or performing such Work.

5.6 Deviation from Specifications and Drawings

- 5.6.A Contractor shall perform Work in accordance with Drawings and Specifications. Contractor shall not deviate from Drawings, or the dimensions given in the Drawings or the Specifications without SMART's advance written approval of the proposed deviation.

- 5.6.B If SMART elects to change the Work, all changes in the Contract Documents will be made as set forth in Article 14 of this Document 00 70 00.

5.7 Ownership And Use Of Drawings, Specifications And Contract Documents

- 5.7.A Drawings, Specifications, and other Contract Documents were prepared for use for Work of Contract Documents only. No part of Contract Documents shall be used for any other construction or for any other purpose except with the written consent of SMART. Any unauthorized use of Contract Documents is prohibited and at the sole liability of the user.

6 CONSTRUCTION BY SMART OR BY SEPARATE CONTRACTORS

6.1 SMART's Right To Perform Construction And To Award Separate Contracts

- 6.1.A SMART may perform, with its own forces, construction or operations related to the Project. SMART may also award separate contracts in connection with other portions of the Project or other construction or operations, on the Site or areas contiguous to the Site, under conditions similar to these Contract Documents, or may have utility owners perform other work. When separate contracts are awarded for different portions of the Project or other construction or operations on the Site, the term "Contractor" in these Contract Documents shall mean the Contractor herein.

6.2 Mutual Responsibility

- 6.2.A Contractor shall afford all other contractors, utility owners, and SMART (if SMART is performing work with its own forces), proper and safe access to the Site, and reasonable opportunity for the installation and storage of their materials. Contractor shall ensure that the execution of its Work properly connects and coordinates with others' work and shall cooperate with them to facilitate the progress of the Work.
- 6.2.B Contractor shall coordinate its Work with the work of other contractors, SMART, local jurisdiction, County, and utility owners. Contractor shall hold coordination meetings with other contractors, SMART and its representatives, and utility owners as required by Section 01 31 19 (Project Meetings).
- 6.2.C Unless otherwise provided in the Contract Documents, Contractor shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Contractor shall not endanger any work of other contractors, SMART or utility owners by cutting, excavating, or otherwise altering the work of others and will only cut or alter the work of others with the written consent of SMART and the others whose work will be affected.
- 6.2.D Contractor's duties and responsibilities under paragraph 6.2.A of this Document 00 70 00 are for the benefit of SMART and also for the benefit of such other contractors and utility owners working at the Site to the extent that there are

comparable provisions for the benefit of Contractor in the direct contracts between SMART and such other contractors and utility owners.

- 6.2.E To the extent that any part of Contractor's Work is to interface with work performed or installed by other contractors, SMART, or utility owners, Contractor shall inspect and measure the in-place work. Contractor shall promptly report to SMART in writing any defect in in-place work that will impede or increase the cost of Contractor's interface unless corrected. SMART will require the entity responsible for the Defective Work to make corrections so as to conform to its contract requirements, or, if the defect is the result of an error or omission in the Contract Documents, issue a Change Order. If Contractor fails to measure, inspect and/or report to SMART in writing defects that are reasonably discoverable, Contractor shall bear all costs of accomplishing the interface acceptable to SMART. This provision shall be included in any and all other contracts or subcontracts for Work to be performed where such a conflict could exist.

6.3 SMART's Authority Over Coordination

- 6.3.A SMART will have authority over coordination of the activities of multiple contractors in cases where SMART performs work with its own forces or contracts with others for the performance of other work on the Project, or utilities work on the Site. SMART may at any time and in its sole discretion, designate a person or entity other than SMART to have authority over the coordination of the activities among the various contractors. SMART's authority with respect to coordination of the activities of multiple contractors and utility owners shall not relieve Contractor of its obligation to other contractors and utility owners to coordinate its Work with other contractors and utility owners as specified in paragraph 6.2 of this Document 00 70 00. Contractor shall promptly notify SMART in writing when another contractor on the Project fails to coordinate its work with the Work of Contract Documents.
- 6.3.B Contractor shall suspend any part of the Work or carry on the same in such manner as directed by SMART when such suspension or prosecution is necessary to facilitate the work of other contractors or workers. No damages or claims by Contractor will be allowed if the suspension or Work change is due in whole or in part to Contractor's failure to perform its obligation to coordinate its Work with other contractors, SMART, and utility owners. Damages or claims will be allowed only to the extent of fault by SMART if the suspension or Work change is due in whole or in part to another contractor's failure to coordinate its work with Contractor, other contractors, SMART, local jurisdictions, County, and utility owners. SMART reserves the right to back charge Contractor for any damages or claims incurred by other contractors as a result of Contractor's failure to perform its obligations to coordinate with other contractors, SMART, and utility owners. SMART may deposit the funds retained with a Court of competent jurisdiction pursuant to applicable interpleader procedures and Contractor releases SMART of further liability regarding such funds.

7 PAYMENT BY SMART

7.1 Receipt And Processing Of Applications For Payment

- 7.1.A As required by Section 01 20 00 (Price and Payment Procedures), Contractor shall prepare the schedules, submit Applications for Payment, and warrant title to all Work covered by each Application for Payment. SMART will review Contractor's Applications for Payment and make payment thereon, and Contractor shall make payments to Subcontractors, suppliers, and others, as required by Section 01 20 00 (Price and Payment Procedures).

8 CONTROL OF THE WORK

8.1 Subcontractors

- 8.1.A Contractor is fully responsible for Contractor's own acts and omissions. Contractor is responsible for all acts and omissions of its Subcontractors, suppliers, and other persons and organizations performing or furnishing any of the Work, labor, materials, or equipment under a direct or indirect contract with Contractor. The Contractor may not assign any portion, or any rights hereunder, of the Contract Documents without the SMART's express written consent or, where applicable, compliance with the Subcontractor Listing Law.

8.2 Supervision Of Work By Contractor

- 8.2.A Contractor shall supervise, inspect, and direct Work competently and efficiently, devoting the attention and applying such personal skills and expertise as may be required and necessary to perform Work in accordance with Contract Documents. Contractor shall be solely responsible for and have control and charge of construction means, methods, techniques, sequences and procedures, safety precautions and programs in connection with the Work. Contractor shall be responsible to see that the completed Work complies accurately with Contract Documents.
- 8.2.B Contractor shall keep on the Site at all times during Work progress a competent resident Superintendent in conformance with paragraph 10.3.A.

8.3 Observation Of Work By SMART

- 8.3.A SMART's Representatives: SMART's Representative(s) will have limited authority to act on behalf of SMART as set forth in the Contract Documents. Except as otherwise provided in these Contract Documents or subsequently identified in writing by SMART, SMART will issue all communications to Contractor through SMART's Representative, and Contractor shall issue all communications to SMART through SMART's Representative in a written document delivered to SMART. Should any direct communications between Contractor and SMART's consultants, architects or engineers not identified in Article 2 of Document 00 52 00 (Agreement) occur during field visits or by telephone, Contractor shall immediately confirm them in a written document copied to SMART's Representative.

- 8.3.B Means and methods of Construction: Subject to those rights specifically reserved in the Contract Documents, SMART will not supervise, or direct, or have control over, or be responsible for, Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or Contractor's failure to comply with laws and regulations applicable to the furnishing or performance of Work. SMART will not be responsible for Contractor's failure to perform or furnish the Work in accordance with Contract Documents.
- 8.3.C In exercising its responsibilities and authorities under the Contract Documents, SMART does not assume any duties or responsibilities to any Subcontractor or supplier and does not assume any duty of care to Contractor, Contractor's Subcontractors, or suppliers. Except as expressly set forth in the Contract Documents, in exercising their respective responsibilities and authorities under the Contract Documents, neither Architect, Engineer nor any SMART's Representative assumes any duties or responsibilities to any Subcontractor, sub-Subcontractor or supplier nor assumes any duty of care to Contractor or any Subcontractor, sub-Subcontractor or suppliers.
- 8.3.D Work shall be performed under SMART's general observation and administration. Contractor shall comply with SMART's directions and instructions in accordance with the terms of Contract Documents, but nothing contained in these General Conditions shall be taken to relieve Contractor of any obligations or liabilities under the Contract Documents. SMART's failure to review or, upon review, failure to object to any aspect of Work reviewed, shall not be deemed a waiver or approval of any non-conforming aspect of Work.
- 8.3.E SMART may engage an independent consultant or architect (collectively for purposes of this paragraph 8.3, "Consultant") to assist in administering the Work. If so engaged, Consultant will advise and consult with SMART, but will have authority to act on behalf of SMART only to extent provided in the Contract Documents or as set forth in writing by SMART. Consultant will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with Work. Consultant will not be responsible for or have control over the acts or omissions of Contractor, Subcontractors or their agents or employees, or any other persons performing Work.
- 8.3.F Consultant may review Contractor's Submittals, such as Shop Drawings, Product Data, and Samples, but only for conformance with design concept of Work and with information given in the Contract Documents.
- 8.3.G SMART's Consultant and/or representative may visit the Site at intervals appropriate to stage of construction to become familiar generally with the progress and quality of Work and to determine in general if Work is proceeding in accordance with Contract Documents. Based on its observations, SMART's Consultant and/or representative may recommend that it disapprove or reject Work that SMART's Consultant and/or representative believes to be defective or will not produce a complete Project that conforms to Contract Documents or will

prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by Contract Documents. SMART will also have authority to require special inspection or testing of Work, whether or not the Work is fabricated, installed, or completed.

- 8.3.H SMART's Consultant and/or representative may conduct inspections to recommend to SMART the dates that Contractor has achieved Substantial Completion and when the Final Inspection Report can be issued, and will receive and forward to SMART for review written warranties and related documents required by Contract Documents.

8.4 Access To Work

- 8.4.A During performance of Work, SMART and its agents, consultants, and employees may at any time enter upon Work, shops, or studios where any part of the Work may be in preparation, or factories where any materials for use in Work are being or are to be manufactured, and Contractor shall provide proper and safe facilities for this purpose and shall make arrangements with manufacturers to facilitate inspection of their processes and products to such extent as SMART's interests may require. Other contractors, SMART workers or utility owners performing work for SMART may also enter upon Work for all purposes required by their respective contracts. Subject to the rights reserved in the Contract Documents, Contractor shall have sole care, custody, and control of the Site and its Work areas.
- 8.4.B SMART may, at any time, and from time to time, during the performance of the Work, enter the Work Site for the for the purpose of installing any necessary work by SMART labor or other contracts, and for any other purpose in connection with the installation of facilities. In doing so, SMART shall endeavor not to interfere with Contractor and Contractor shall not interfere with other work being done by or on behalf of SMART.
- 8.4.C If, prior to completion and final acceptance of all the Work, SMART takes possession of any structure or facility (whether completed or otherwise) comprising a portion of the Work with the intent to retain possession thereof (as distinguished from temporary possession contemplating return to Contractor), then, while SMART is in possession of the same, Contractor shall be relieved of liability for loss or damage to such structure other than that resulting from Contractor's fault or negligence. Such taking of possession by SMART shall not relieve Contractor from any provisions of the Contract respecting such structure, other than to the extent specified in the preceding sentence, nor constitute a final acceptance of such structure or facility. See also Section 01 11 00 (Summary).
- 8.4.D If, following installation of any equipment or facilities furnished by Contractor, defects requiring correction by Contractor are found, SMART shall have the right to operate such unsatisfactory equipment or facilities and make reasonable use thereof until the equipment or facilities can be shut down for correction of defects without injury to SMART.

9 WARRANTY, GUARANTY, AND INSPECTION OF WORK

9.1 Warranty And Guaranty

- 9.1.A General Representations and Warranties: Contractor represents and warrants that it is and will be at all times fully qualified and capable of performing every Phase of the Work and completing Work in accordance with the terms of Contract Documents. Contractor warrants that all construction services shall be performed in accordance with generally accepted professional standards of good and sound construction practices and all requirements of Contract Documents. Contractor warrants that Work, including but not limited to each item of materials and equipment incorporated therein, shall be new, of suitable grade of its respective kind for its intended use, and free from defects in design, architecture and/or engineering, materials, construction and workmanship. Contractor warrants that Work shall conform in all respects with all applicable requirements of federal, state and local laws, applicable construction codes and standards, licenses and permits, Drawings and Specifications and all descriptions set forth therein, and all other requirements of Contract Documents. Contractor shall not be responsible, however, for the negligence of others in the specification of specific equipment, materials, design parameters and means or methods of construction where that is specifically shown and expressly required by Contract Documents.
- 9.1.B Extended Guarantees: Any guaranty exceeding one year provided by the supplier or manufacturer of any equipment or materials used in the Project shall be extended for such term. Contractor expressly agrees to act as co-guarantor of such equipment and materials and shall supply SMART with all warranty and guaranty documents relative to equipment and materials incorporated in the Project and guaranteed by their suppliers or manufacturers.
- 9.1.C Environmental and Toxics Warranty: The covenants, warranties and representations contained in this paragraph 9.1.C. are effective continuously during Contractor's Work on the Project and following cessation of labor for any reason including, but not limited to, Project completion. Contractor covenants, warrants, and represents to SMART that:
- 9.1.C.1 To Contractor's knowledge after due inquiry, no lead or Asbestos-containing materials were installed or discovered in the Project at any time during Contractor's construction thereof. If any lead or Asbestos-containing materials were discovered, Contractor made immediate written disclosure to SMART.
- 9.1.C.2 To Contractor's knowledge after due inquiry, no electrical transformers, light fixtures with ballasts or other equipment containing PCBs are or were located on the Project at any time during Contractor's construction thereof.
- 9.1.C.3 To Contractor's knowledge after due inquiry, no storage tanks for gasoline or any other toxic substance are or were located on the Project at any time during Contractor's construction thereof. If any such

materials were discovered, Contractor made immediate written disclosure to SMART.

9.1.C.4 Contractor's operations concerning the Project are and were not in violation of any applicable environmental federal, state, or local statute, law or regulation dealing with hazardous materials substances or toxic substances and no notice from any governmental body has been served upon Contractor claiming any violation of any such law, ordinance, code or regulation, or requiring or calling attention to the need for any Work, repairs, construction, alteration, or installation on or in connection with the Project in order to comply with any such laws, ordinances, codes, or regulations, with which Contractor has not complied. If there are any such notices with which Contractor has complied, Contractor shall provide SMART with copies thereof.

9.2 Inspection Of Work

- 9.2.A All materials, equipment, and workmanship used in Work shall be subject to inspection and testing at all times during construction and/or manufacture in accordance with the terms of Contract Documents. Work and materials, and manufacture and preparation of materials, from beginning of construction until Final Completion and acceptance of Work, shall be subject to inspection and rejection by SMART, its agents, representatives, or independent contractors retained by SMART to perform inspection services, or governmental agencies with jurisdictional interests. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's Site safety procedures and program so that they may comply therewith as applicable. Upon request or where specified, SMART shall be afforded access for inspection at the source of supply, manufacture, or assembly of any item of material or equipment, with reasonable accommodations supplied for making such inspections.
- 9.2.B Contractor shall give SMART timely notice of readiness of Work for all required inspections, tests, or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests. Contractor shall also coordinate, schedule, and give adequate notice to the appropriate inspection personnel of any Work that can only be inspected as it is placed or assembled (for example, concrete or masonry work), to enable the constant presence of such inspection personnel during such Work.
- 9.2.C If applicable laws or regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, and furnish SMART with the required certificates of inspection, or approval. SMART will pay the cost of initial testing and Contractor shall pay all costs in connection with any follow-up or additional testing. Contractor shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for the acceptance of materials or

equipment to be incorporated in the Work, or of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Additionally, in the event that a scheduled inspection is canceled in less than 24 hours' notice by Contractor and SMART incurs costs associated with the cancellation, Contractor will reimburse SMART for the actual costs of the canceled inspections. The amount will be deducted from payment owed Contractor.

- 9.2.D If Contractor covers any Work, or the work of others, prior to any required inspection, test or approval without written approval of SMART, Contractor shall uncover the Work at SMART's request. Contractor shall bear the expense of uncovering Work and replacing Work.
- 9.2.E In any case where Contractor covers Work contrary to SMART's request, Contractor shall uncover Work for SMART's observation or inspection at SMART's request. Contractor shall bear the cost of uncovering and re-covering the Work.
- 9.2.F Whenever required by SMART, Contractor shall furnish tools, labor, and materials necessary to make examination of Work that may be completed or in progress, even to extent of uncovering or taking down portions of finished Work. Should Work be found unsatisfactory, cost of making examination and of reconstruction shall be borne by Contractor. If Work is found to be satisfactory, SMART, in manner herein prescribed for paying for alterations, Modifications, and extra Work, except as otherwise herein specified, will pay for examination.
- 9.2.G Inspection of the Work by or on behalf of SMART, or SMART's failure to do so, shall not under any circumstances be deemed a waiver or approval of any non-conforming aspect of the Work. Contractor shall have an absolute duty, in the absence of a written Change Order signed by SMART, to perform Work in conformance with the Contract Documents.
- 9.2.H Any inspection, evaluation, or test performed by or on behalf of SMART relating to the Work is solely for the benefit of SMART and shall not be relied upon by Contractor. Contractor shall not be relieved of the obligation to perform Work in accordance with the Contract Documents, nor relieved of any guaranty, warranty, or other obligation, as a result of any inspections, evaluations, or tests performed by SMART, whether or not such inspections, evaluations, or tests are permitted or required under the Contract Documents. Contractor shall be solely responsible for testing and inspecting Work already performed to determine whether such Work is in proper condition to receive later Work.

9.3 Correction Of Defective Work

- 9.3.A If Contractor fails to supply sufficient skilled workers, suitable materials or equipment, or to furnish or perform the Work in such a way that the completed Work will conform to Contract Documents, SMART may order Contractor to replace any Defective Work, or stop any portion of Work to permit SMART (at Contractor's expense) to replace such Defective Work. These SMART rights are entirely discretionary on the part of the SMART and shall not give rise to any duty

on the part of SMART to exercise the rights for the benefit of Contractor or any other party.

- 9.3.B SMART may direct Contractor to correct any Defective Work or remove it from the Site and replace it with Work that is not Defective and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting from the correction or removal. Contractor shall be responsible for any and all claims, costs, losses and damages caused by or resulting from such correction or removal. When necessary, a deductive Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, SMART may decide the proper amount or, in its discretion may elect to leave the Contract Sum unchanged and deduct from moneys due Contractor, all such claims, costs, losses and damages caused by or resulting from the correction or removal. If Contractor disagrees with SMART's calculations, it may make a claim as provided in Article 12 of this Document 00 70 00. SMART's rights under this paragraph 9.3.B shall be entirely discretionary and, like all other SMART rights and remedies under the Contract, in addition to any other rights it may have under the Contract Documents or by law.

9.3.C Correction Period:

9.3.C.1 With respect to equipment and machinery supplied by Contractor and incorporated into the Work, if within one year after the date of Substantial Completion of the portion of the Work incorporating the equipment and/or machinery (or, to the extent expressed by Change Order or Certificate of Substantial Completion, one year after SMART's written acceptance of such equipment), or such longer period of time as may be prescribed by laws or regulations, or by the terms of Contract Documents (including extended warranties), any equipment or machinery is found to be Defective, Contractor shall promptly, without cost to SMART and in accordance with SMART's written instructions, correct such Defective Work.

9.3.C.2 With respect to structures within the Scope of Work, if within one year after the date of Substantial Completion of the Work, or such longer period of time as may be prescribed by laws or regulations, or by the terms of Contract Documents, any Work is found to be defective, Contractor shall promptly, without cost to SMART and in accordance with SMART's written instructions, correct such Defective Work.

- 9.3.D Contractor shall remove any Defective Work rejected by SMART and replace it with Work that is not Defective, and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If Contractor fails to promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, SMART may have the Defective Work corrected or the rejected Work removed and replaced.

- 9.3.E Contractor shall pay for all claims, costs, losses, and damages caused by or resulting from such removal and replacement. Where Contractor fails to correct Defective Work, or defects are discovered outside the correction period, SMART shall have all rights and remedies granted by law.
- 9.3.F Additionally, in special circumstances where a part of the Work is occupied or a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that part of Work or that item may start to run from an earlier date if so, provided by Change Order or Certificate of Substantial Completion.
- 9.3.G Where Defective Work or rejected Work (and damage to other Work resulting therefrom) has been corrected, removed, or replaced under this provision after the commencement of the correction period, the correction period hereunder with respect to such Work shall be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- 9.3.H If following installation of any Work furnished by Contractor, defects requiring correction by Contractor are found, SMART shall have the right to operate such Work and make reasonable use thereof until it can be shut down for correction of defects without causing injury to SMART.

9.4 Acceptance And Correction Of Defective Work By SMART

- 9.4.A SMART may accept Defective Work. Contractor shall pay all claims, costs, losses, and damages (including but not limited to staff and Consultant time) attributable to SMART's evaluation of and determination to accept such Defective Work. If SMART accepts any Defective Work prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, SMART may deduct from moneys due Contractor, all claims, costs, losses, damages, expenses, and liabilities attributable to the Defective Work. If Contractor disagrees with SMART's calculations, Contractor may make a claim as provided in Article 12 of this Document 00 70 00. If SMART accepts any Defective Work after final payment, Contractor shall pay to SMART, an appropriate amount as determined by SMART.
- 9.4.B SMART may correct and remedy deficiency if, after five Days' written notice to Contractor, Contractor fails to correct Defective Work or to remove and replace rejected Work in accordance with paragraph 9.3.B of this Document 00 70 00; or provide a plan for correction of Defective Work acceptable to SMART; or perform Work in accordance with Contract Documents. In connection with such corrective and remedial action, SMART may exclude Contractor from all or part of the Site; take possession of all or part of Work and suspend Contractor's Work related thereto; take possession of all or part of Contractor's tools, appliances, construction equipment and machinery at the Site; and incorporate in Work any materials and equipment stored at the Site or for which SMART has paid

Contractor but which are stored elsewhere. Contractor shall allow SMART, its representatives, agents, employees, and other contractors and Architect's consultants' access to the Site to enable SMART to exercise the rights and remedies under this paragraph 9.4.B. Contractor shall be responsible for all claims, costs, losses, damages, expenses, and liabilities incurred or sustained by SMART in exercising such rights and remedies. A Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, SMART may deduct from moneys due Contractor, all claims, costs, losses, and damages caused by or resulting from the correction or removal. If Contractor disagrees with SMART's calculations, Contractor may make a claim as provided in Article 12 of this Document 00 70 00.

9.5 Rights Upon Inspection or Correction

- 9.5.A Contractor shall not be allowed an extension of Contract Time because of any delay in the performance of Work attributable to the exercise by SMART of its rights and remedies under this Article 9. Where SMART exercises its rights under this Article 9, it retains all other rights it has by law or under the Contract Documents including, but not limited to, the right to terminate for default Contractor's right to proceed with the Work under the Contract Documents and/or make a claim or back charge where a Change Order cannot be agreed upon.
- 9.5.B Inspection by SMART shall not relieve Contractor of its obligation to have furnished material and workmanship in accordance with Contract Documents. Payment for Work completed through periodic progress payments or otherwise shall not operate to waive SMART's right to require full compliance with Contract Documents and shall in no way be deemed as acceptance of the Work paid, therefore. Contractor's obligation to complete the Work in accordance with Contract Documents shall be absolute unless SMART agrees otherwise in writing. Contractor shall immediately correct defective Work upon Contractor's knowledge of the defective Work, regardless of SMART's issuance of a correction notice or otherwise identifying the defective Work.

9.6 Samples and Tests Of Materials And Work

- 9.6.A Contractor shall furnish, in such quantities and sizes as may be required for proper examination and tests, Samples or test specimens of all materials to be used or offered for use in connection with Work. Contractor shall prepare Samples or test specimens at its expense and furnish them to SMART. Contractor shall submit all Samples in ample time to enable SMART to make any necessary tests, examinations, or analyses before the time it is desired to incorporate the material into the Work.

9.7 Proof of Compliance Of Contract Provisions

- 9.7.A In order that SMART may determine whether Contractor has complied or is complying with requirements of Contract Documents not readily enforceable

through inspection and tests of Work and materials, Contractor shall at any time, when requested, submit to SMART properly authenticated documents or other satisfactory proofs of compliance with all applicable requirements.

9.8 Acceptance

9.8.A Inspection by SMART or its authorized agents or representatives, any order or certificate for the payment of money, any payment, acceptance of the whole or any part of Work by SMART, any extension of time, any verbal statements on behalf of SMART or its authorized agents or representatives shall not operate as a waiver or modification of any provision of the Contract Documents, or of any power reserved to SMART herein or therein or any right to damages provided in the Contract Documents. Any waiver of any breach of the Contract Documents shall not be held to be a waiver of any other subsequent breach. Upon completion of Final Inspection and approval by SMART or its authorized agents or representatives, SMART may issue the Notice of Final Acceptance.

10 CONTRACTOR'S ORGANIZATION AND EQUIPMENT

10.1 Contractor's Legal Address

10.1.A Address and facsimile number given in Contractor's Bid are hereby designated as Contractor's legal address and facsimile number. Contractor may change its legal address and facsimile number by notice in writing, delivered to SMART, which in conspicuous language advises SMART of a change in legal address or facsimile number, and which SMART accepts in writing. Delivery of any drawings, notice, letter, or other communication to Contractor's legal address or depositing in any post office or post office box regularly maintained by the United States Postal Service, in a wrapper with postage affixed, directed to Contractor at legal address shall be deemed legal and sufficient service thereof upon Contractor. Facsimile to Contractor's designated facsimile number of any letter, memorandum, or other communication on standard or legal sized paper, with proof of facsimile transmission, shall be deemed legal and sufficient service thereof upon Contractor.

10.2 Contractor Documents At The Work Site

10.2.A Contractor shall maintain a copy of the current project plans, specifications and Contractor's markup copy (As-Built) while on site. As needed, the Contractor shall also maintain copies of project specific permits and SWPPP documentation while on site. All documents shall be available to SMART for on-site review, or for regulatory agency on site review as required in project permit conditions.

10.3 Contractor's Superintendents Or Forepersons

10.3.A Contractor shall at all times while Work is being performed at site, be represented on Site by a competent resident Superintendent authorized and competent to receive and carry out any instructions that SMART may give and shall be liable for faithful observance of instructions delivered to Contractor. Said Superintendent shall not be replaced without SMART's express written consent. The

Superintendent shall be Contractor's representative at the Site and shall have complete authority to act on behalf of Contractor. All communications to and from the Superintendent shall be as binding as if given to or by Contractor. Communications, instructions, or Drawings given to Contractor's representative shall be deemed to have been given to Contractor.

10.3.B In the event that the designated Superintendent is unable to be present at the site, Contractor shall designate a substitute Superintendent, subject to SMART's approval, and shall obtain SMART's consent as to time and duration of any such substitution.

10.4 Proficiency in English

10.4.A Supervisors, security guards, safety personnel and employees who have unescorted access to the Site shall possess proficiency in the English language in order to understand, receive and carry out oral and written communications or instructions relating to their job functions, including safety and security requirements.

10.5 Contractor's and Subcontractors' Employees

10.5.A Contractor shall employ, and shall permit its Subcontractors to employ, only competent and skillful personnel to do Work. If SMART notifies Contractor that any of its employees, or any of its Subcontractors' employees on Work is incompetent, unfaithful, disorderly or profane, or fails to observe customary standards of conduct or refuses to carry out any provision of the Contract Documents, or uses harassing, threatening or abusive language at the site to any person representing SMART or to any member of the public, or violates sanitary rules, or is otherwise unsatisfactory, and if SMART requests that such person be discharged from Work, then Contractor or its Subcontractor shall immediately discharge such person from Work and the discharged person shall not be re-employed on the Work except with consent of SMART.

10.6 Contractor's Use Of The Site

10.6.A Contractor shall not make any arrangements with any person to permit occupancy or use of any land, structure or building within the limits of the Work, for any purpose whatsoever, either with or without compensation, in conflict with any agreement between SMART and any owner, former owner or tenant of such land, structure or buildings. Contractor may not occupy SMART-owned property outside the limit of the Work as indicated on the Drawings unless it obtains prior approval from SMART.

11 PROSECUTION AND PROGRESS OF THE WORK

11.1 Schedules And Examinations Of Contract Documents

11.1.A Contractor shall submit schedules, reports, and submittals in the appropriate quantity and within the required time, arrange conferences and meetings and proceed with the Work in accordance with Contract Documents, including

Sections 01 31 19 (Project Meetings), 01 32 16 (Progress Schedules and Reports), and 01 33 00 (Submittal Procedures).

11.1.B Contractor shall submit to SMART for review and discussion:

11.1.B.1 At the Preconstruction Conference described in Section 01 31 19 (Project Meetings), Progress Schedules, and Reports as required by Sections 01 32 16 (Progress Schedules and Reports) and 01 33 00 (Submittal Procedures). Contractor shall utilize Progress Schedule in planning, scheduling, coordinating, performing and controlling Work (including all activities of Subcontractors, assigned contractors, equipment vendors and suppliers). Contractor shall update Progress Schedule on a monthly basis to depict accurately the actual progress of Work and for evaluating and preparing Contractor's monthly progress payments. Contractor's failure to submit and maintain an acceptable Progress Schedule may, in SMART's discretion, and without limiting the materiality of Contractor's other obligations under the Contract Documents, constitute grounds to declare Contractor in material breach of the Contract Documents.

11.1.B.2 As required, a preliminary Schedule of Values conforming to Section 01 20 00 (Payment Procedures) paragraph 1.6.C. shall be submitted to SMART. See Section 01 20 00 (Price and Payment Procedures) for further requirements regarding the Schedule of Values.

11.1.C Unless otherwise provided in the Contract Documents, SMART will review for acceptability the schedules submitted in accordance with paragraph 11.1.B of this Document 00 70 00. Contractor shall make corrections and adjustments to complete and resubmit the schedules and shall secure SMART's written acceptance prior to submitting first payment request. Schedules shall be updated and completed as required by Sections 01 20 00 (Price and Payment Procedures), 01 32 16 (Progress Schedules and Reports) and 01 33 00 (Submittal Procedures). No progress or mobilization payment shall be due or owing to Contractor until the schedules are submitted to and acceptable to SMART as meeting the requirements of the Contract Documents, including Sections 01 20 00 (Price and Payment Procedures), 01 32 16 (Progress Schedules and Reports) and 01 33 00 (Submittal Procedures). SMART's acceptance of Contractor's schedules will not create any duty of care or impose on SMART any responsibility for the sequencing, scheduling or progress of Work nor will it interfere with or relieve Contractor from Contractor's full responsibility, therefore.

11.2 Commencement of Work Notification

11.2.A Before commencing any portion of Work, Contractor shall inform SMART in writing as to time and place at which Contractor wishes to commence Work, and nature of Work to be done, in order that proper provision for inspection of Work may occur, and to assure measurements necessary for record and payment. Information shall be given to SMART in a reasonable time in advance of time at

which Contractor proposes to begin Work, so that SMART may complete necessary preliminary work without inconvenience or delay to Contractor.

11.3 Submittals

- 11.3.A Contractor shall submit Submittals to SMART for review in strict accordance with Section 01 33 00 (Submittal Procedures). Submission of a Submittal shall constitute Contractor's representation that all requirements of Section 01 33 00 (Submittal Procedures) have been complied with. All Submittals will be identified as SMART may require and in the number of copies specified in Section 01 33 00 (Submittal Procedures).
- 11.3.B Contractor shall not perform Work that requires submission of a Submittal prior to submission and favorable review of the Submittal. Where a Submittal is required by Contract Documents or the final Schedule of Submittals (if required) accepted by SMART, any related Work performed prior to SMART's approval of the pertinent Submittal shall be at the sole expense, responsibility, and risk of Contractor.

11.4 Contractor To Supply Sufficient Workers and Materials

- 11.4.A Unless otherwise required by SMART under the terms of Contract Documents, Contractor shall at all times keep on the Site materials and employ qualified workers sufficient to prosecute Work at a rate and in a sequence and manner necessary to complete Work within the Contract Time. This obligation shall remain in full force and effect notwithstanding disputes or claims of any type.
- 11.4.B At any time during progress of Work should Contractor directly or indirectly (through Subcontractors) refuse, neglect, or be unable to supply sufficient materials or employ qualified workers to prosecute the Work as required, then SMART may issue a written notice to Contractor, requiring Contractor to accelerate the Work and/or furnish additional qualified workers or materials as SMART may consider necessary, at no cost to SMART. If Contractor does not comply with the notice within five (5) Days of date of service thereof, SMART shall have the right (but not a duty) to provide materials and qualified workers to finish the Work or any affected portion of Work, as SMART may elect. SMART may, at its discretion, exclude Contractor from the Site, or portions of the Site or separate Work elements during the time period that SMART exercises this right. SMART will deduct from moneys due or which may thereafter become due under the Contract Documents, the sums necessary to meet expenses thereby incurred and paid to persons supplying materials and doing Work. SMART will deduct from funds or appropriations set aside for purposes of Contract Documents the amount of such payments and charge them to Contractor as if paid to Contractor. Contractor shall remain liable for resulting delay, including liquidated damages and indemnification of SMART from claims of others.
- 11.4.C Exercise by SMART of the rights conferred upon SMART in paragraph 11.4.B of this Document 00 70 00, is entirely discretionary on the part of SMART. SMART shall have no duty or obligation to exercise the rights referred to in paragraph 11.4.B of this Document 00 70 00 and its failure to exercise such rights shall not

be deemed an approval of existing Work progress or a waiver or limitation of SMART's right to exercise such rights in other concurrent or future similar circumstances. The rights conferred upon SMART under paragraph 11.4.B of this Document 00 70 00 are cumulative to SMART's other rights under any provision of the Contract Documents.

- 11.4.D The SMART may, if it deems necessary for reasons other than those described in Paragraph 10.6.B, direct Contractor to accelerate the Work by increasing crew sizes, working overtime (as permitted by law) and/or performing shift work. If directed to perform overtime and/or shift work, Contractor will work said overtime and/or shift work, and the SMART shall pay Contractor solely for the additional premium wages paid, plus taxes imposed by law on such additional wages. Unless otherwise directed by the SMART, accelerated work shall be performed utilizing the most cost-effective available method. For example, the SMART shall not be responsible to pay the premium for overtime work if the same work could have been performed on second shift utilizing a lower premium.

11.5 Contractor's Project Data

- 11.5.A Contractor shall maintain full and correct information as to the number of workers employed in connection with each subdivision of Work, the classification and rate of pay of each worker in form of certified payrolls, the cost to Contractor of each class of materials, tools and appliances used by Contractor in Work, and the amount of each class of materials used in each subdivision of Work. Contractor shall provide SMART with monthly summaries of this information. If Contractor maintains or is capable of generating summaries or reports comparing actual Project costs with Bid estimates or budgets, Contractor shall provide SMART with a copy of such report upon SMART's request and whenever it is generated.
- 11.5.B Contractor shall maintain daily job reports recording all significant activity on the job, including the number of workers on Site, Work activities, problems encountered and delays. Contractor shall provide SMART with copies for each Day Contractor works on the Project, to be delivered to SMART either the same Day or the following morning before starting Work at the Site. Contractor shall take monthly progress photographs of all areas of the Work. Contractor shall maintain copies of all correspondence with Subcontractors and records of meetings with Subcontractors.
- 11.5.C SMART shall have the right to audit and copy Contractor's books and records of any type, nature or description relating to the Project (including but not limited to financial records reflecting in any way costs claimed on the Project), and to inspect the Site, including Contractor's trailer, or other job Site office, and this requirement shall be contained in the subcontracts of Subcontractors working on Site. By way of example, SMART shall have the right to inspect and obtain copies of all Contract Documents, planning and design documents, Bid proposal and negotiation documents (subject to Document 00670 [Escrow Bid Documents] if required by the Contract Documents), cost records and job cost variance reports,

design modification proposals, value engineering or other cost reduction proposals, revisions made to the original design, job Progress Reports, photographs, and as-built drawings maintained by Contractor. SMART and any other applicable governmental entity shall have the right to inspect all information and documents maintained under this paragraph 11.5 at any time during the Project and for a period of five years following Substantial Completion. This right of inspection shall not relieve Contractor of its duties and obligations under the Contract Documents. This right of inspection shall be specifically enforceable in a court of law, either independently or in conjunction with enforcement of any other rights in the Contract Documents.

- 11.5.D Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Contract Modifications, Change Orders, Construction Change Directives, Force Account orders, and written interpretations and clarifications in good order and annotated to show all changes made during construction. These Project Record Documents, together with all approved Samples and a counterpart of all approved Shop Drawings, shall be maintained and available to SMART for reference. Upon completion of the Work, Contractor shall deliver to SMART, the Project Record Documents.

12 CLAIMS BY CONTRACTOR/NON-JUDICIAL SETTLEMENT PROCEDURE

12.1 Scope

- 12.1.A The claim notice and documentation procedure described in this Article 12 applies to all claims and disputes arising under the Contract Documents, including without limitation any claim or dispute by any Subcontractor or material supplier, and any claims arising under tort law as well as contract law. All Subcontractors and supplier claims of any type shall be brought only through Contractor as provided in this Article 12. Under no circumstances shall any Subcontractor or supplier make any direct claim against SMART.
- 12.1.B "Claim" means a written demand or written assertion by Contractor seeking, as a matter of right, the payment of money, the adjustment or interpretation of Contract Documents terms, or other relief arising under or relating to Contract Documents. In order to qualify as a "claim," the written demand must state that it is a claim submitted under this Article 12. A voucher, invoice, proposed change, Application for Payment, cost proposal, RFI, change order request, or other routine or authorized form of request for payment is not a claim under the Contract Documents. If such request is disputed as to liability or amount, then the disputed portion of the submission may be converted to a claim under the Contract Documents by submitting a separate notice and claim in compliance with claim submission requirements herein.
- 12.1.C The provisions of this Article 12 constitute a non-judicial claim settlement procedure, and also step one of a two-step claim presentment procedure by agreement under Section 930.2 of the California Government Code. Specifically, step one is compliance with this contract claims procedure and filing/administering timely contract claims in accordance with the Contract

Documents. Step two is filing a timely Government Code Section 910 claim in accordance with the California Government Code. Any Government Code Section 910 claims shall be presented in accordance with the Government Code and shall affirmatively indicate Contractor's prior compliance with the claims procedure herein and previous dispositions under this Article.

- 12.1.D The provisions of this Article 12 shall survive termination, breach, or completion of the Contract Documents. Contractor shall bear all costs incurred in the preparation and submission of a claim.

12.2 Procedure

- 12.2.A Disputed Work. Should any clarification, determination, action, or inaction by SMART or Architect/Engineer, Work, third party, or any other event whatsoever, in the opinion of Contractor, exceed the requirements of or not comply with Contract Documents in any way, or otherwise result in Contractor seeking additional compensation in time or money or damages for any reason (collectively "Disputed Work"), then Contractor shall so notify SMART. Contractor and SMART shall make good faith attempts to resolve informally any and all such issues, claims and/or disputes.
- 12.2.B Duty to Work During Disputes. Notwithstanding any dispute or Disputed Work, Contractor shall continue to prosecute the Work and the Disputed Work in accordance with the determinations of SMART. Contractor's sole remedy for Disputed Work is to pursue the remedies in this Article 12 and follow the determinations of SMART.
- 12.2.C Timely Notice of Disputed Work Required. Before commencing any Disputed Work, or within ten (10) Days after Contractor's first knowledge of the Disputed Work, whichever is earlier, Contractor shall file a written notice and preliminary cost proposal for the Disputed Work with SMART stating clearly and in detail its objection and reasons for contending the Disputed Work is outside or in breach of the requirements of Contract Documents. The written notice must identify the subcontractors, vendors, suppliers effected, if any, sufficient for SMART to visit the site to inspect the work and/or conduct a telephonic interview of the persons involved, and/or to photograph the work in question; and Contractor is encouraged to supply digital photographs by email if possible. The preliminary cost proposal must provide a good faith preliminary estimate of the labor (workers, crews), equipment and/or materials involved, and a corresponding good faith preliminary estimate of cost. If a written notice and preliminary cost proposal for Disputed Work is not issued within this time period, or if Contractor proceeds with the Disputed Work without first having given the notice of the Disputed Work, Contractor shall waive its rights to further claim on the specific issue.
- 12.2.D Timely Notice of Potential Claims Required. SMART will review Contractor's timely notice and preliminary cost proposal for Disputed Work and provide a decision. If, after receiving the decision, Contractor disagrees with it or still considers the Work required of it to be outside of the requirements of Contract

Documents, then Contractor shall so notify SMART, in writing, within ten (10) Days after receiving the decision, by submitting a notice of potential claim, stating that a formal claim will be issued. (If SMART should fail to provide a decision on a notice and preliminary cost proposal within thirty (30) days, then Contractor shall submit a notice of potential claim within ten days following the thirtieth (30th) day, i.e., or by the 40th day following the notice and preliminary cost proposal.) Contractor shall continue to prosecute the Disputed Work to completion.

- 12.2.E Quarterly Claims Required. At the end of each calendar year quarter (March 31, June 30, September 30, and December 31) of each year, for each and every notice of potential claim that Contractor may have submitted in that quarter, Contractor shall submit a formal claim in the form specified herein. Contractor may file a single consolidated claim each quarter, or may file separate claims each quarter, as Contractor sees fit, provided Contractor complies with the requirements below. (Contractor may defer until the next reporting period the filing of a formal claim for any notices of potential claim timely issued within the last 15 days of the prior quarter.) The formal claim(s) shall include all arguments, justification, cost or estimates, schedule analysis, and detailed documentation supporting Contractor's position, for each notice of potential claim that Contractor intends to pursue as a formal claim (further described below).
- 12.2.F Claim Updates Required. If Disputed Work persists longer than a single calendar quarter, then Contractor shall, every quarter until the Disputed Work ceases, submit to SMART a document titled "Claim Update" that shall update and quantify all elements of the claim as completely as possible. Contractor's failure to submit a Claim Update or to quantify costs every quarter shall result in waiver of the claim for that period. Claims or Claim Updates stating that damages, total damages (direct and indirect), schedule impact and/or any time extension will be determined at a later date shall not comply with this subparagraph and shall result in Contractor waiving its claim(s). Contractor shall also maintain a continuing "claims log" that shall list all outstanding claims and their value and provide such log to SMART quarterly.
- 12.2.G Claim Negotiations required. Upon receipt of Contractor's formal claim(s) including all arguments, justifications, cost or estimates, schedule analysis, and documentation supporting its position as required herein, SMART or its designee will review the issue and render a final determination. Contractor and SMART may mutually agree upon a claims resolution protocol, a neutral facilitator or mediator, or other alternative dispute resolution procedures, as appropriate. SMART may in its discretion conduct an administrative hearing on Contractor's claim, in which case Contractor shall appear, participate, answer questions and inquiries, and present any further document, schedules or analysis requested by SMART to evaluate and decide Contractor's claim.

12.3 Claim Format

- 12.3.A Contractor shall submit the formal claim(s) with a cover letter and certification of the accuracy of the formal claim.
- 12.3.B The formal claim(s) shall list separately each notice of potential claim that Contractor intends to pursue as a formal claim(s), and for each such item separately, Contractor shall provide the following:
 - 12.3.B.1 Summary of the claim, including underlying facts, entitlement, schedule analysis, quantum calculations, contract provisions supporting relief;
 - 12.3.B.2 List of documents relating to claim including Specifications, Drawings, clarifications/requests for information, schedules, notices of delay, and any others;
 - 12.3.B.3 Chronology of events and correspondence;
 - 12.3.B.4 Analysis of claim merit;
 - 12.3.B.5 Analysis of claim cost; and
 - 12.3.B.6 Attach supporting cost and schedule documents as required in this Article and elsewhere in the Contract Documents (e.g., Section 01 32 16).
- 12.3.C For each notice of potential claim that Contractor intends to pursue as a formal claim, Contractor shall establish in the formal claim a direct causal link between the separate item of cost/time requested, the separate notices of potential claim timely issued, and the specific changed Work asserted. Total cost claims shall not be allowed.
- 12.3.D Claims shall be calculated in the same manner as Change Orders per Section 01 25 00 (Clarification and Modification Procedures). EXCEPT WHERE PROVIDED BY LAW, OR ELSEWHERE IN THESE CONTRACT DOCUMENTS (IF APPLICABLE), SMART SHALL NOT BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES, AND CONTRACTOR SHALL NOT INCLUDE THEM IN ITS CLAIMS. CONTRACTOR SHALL BE LIMITED IN ITS RECOVERY ON CLAIMS TO THE CHANGE ORDER CALCULATIONS SET FORTH IN SECTION 01 25 00 (CLARIFICATION AND MODIFICATION PROCEDURES).

12.4 Mediation

- 12.4.A If Contractor's claims submitted in accordance with this Article 12 at Project completion total less than \$375,000, then claims resolution shall first proceed in the manner prescribed by Article 1.5, Chapter 1, Part 3 of Division 2 of the California Public Contract Code, found in Section 01 41 00 (Regulatory Requirements).
- 12.4.B If Contractor's claims submitted in accordance with this Article 12 at Project completion exceed \$375,000, then, as a condition precedent to litigation (or if otherwise permitted by the Contract Documents, arbitration) thereon, such claims must first be mediated. Mediation shall be non-binding and utilize the services of a mediator mutually acceptable to the parties and, if the parties cannot agree, a mediator selected by the American Arbitration Association from

its panel of approved mediators trained in construction industry mediation, having a minimum of twenty (20) years' experience in the construction industry. All statutes of limitation shall be tolled from the date of the demand for mediation until a date two weeks following the mediation's conclusion. All unresolved Contractor claims shall be submitted to the same mediator. The cost of mediation shall be equally shared.

12.5 Subcontractor Claims

12.5.A Contractor shall present as its claims all Subcontractor, sub-Subcontractor and supplier claims of any type, and prove them under the terms of the Contract Documents. SMART shall not be directly liable to any Subcontractor, any supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages or extra costs of any type arising out of or resulting from the Project.

12.6 Waiver

12.6.A If Contractor fails to comply with this Article 12 as to any claim, then Contractor shall waive its rights to such claim.

12.6.B All claim(s), Disputed Work items or issue(s) not raised in a timely notice, timely notice of potential claim and then timely claim submitted under this Article 12, may not be asserted in any subsequent Government Code section 910 claim, litigation, or legal action.

12.6.C Contractor may request an extension of time to comply with the claims procedure herein but must do so in advance of time periods expiring and SMART must give its approval in writing (which approval may be withheld in SMART discretion.) As to any other feature of the claim procedure herein (and its claims waiver feature), it may not be waived or altered absent a written change order signed by both parties and approved as to form by their legal counsel.

12.6.D SMART shall not be deemed to waive or alter any provision under this Article 12, if at SMART's sole discretion, a claim is administered in a manner not in accord with this Article 12.

13 LEGAL AND MISCELLANEOUS

13.1 Laws and Regulations

13.1.A Contractor shall keep fully informed of and shall comply with all laws, ordinances, regulations and orders of any properly constituted authority affecting the Contract Documents, Work and persons connected with Work, and shall protect and indemnify SMART and its officers, employees, consultants and agents against any claim or liability, including attorney's fees, arising from or based on violation of law, ordinance, regulation or order, whether by Contractor or by Subcontractors, employees or agents. Authorized persons may at any time enter upon any part of Work to ascertain compliance of all applicable laws, ordinances, regulations, and orders.

13.1.B Whenever Drawings and Specifications require higher standards than are required by any applicable law, ordinance, regulation or order, Drawings and

Specifications shall govern. Whenever Drawings and Specifications require something that will violate such laws, ordinances, regulations, or orders, then such laws, ordinances, regulations or orders shall govern.

- 13.1.C Contractor shall comply with applicable portions of Title 8 (Industrial Relations), Title 19 (Public Safety), Title 22 (Social Security, Division of Health) and Title 24 (California Building Standards Code), California Code of Regulations (Uniform Building Code) (most recent edition), Public Contract Code. Whenever Contract Documents require larger sizes or higher standards than are required by any applicable law, ordinance, regulation or order, Contract Documents shall govern. Whenever Contract Documents require something that will violate such laws, ordinances, regulations, or orders, then such laws, ordinances, regulations or orders shall govern.

13.2 Permits and Taxes

- 13.2.A SMART will pay applicable building permits, school, sanitation, and water demand fees, except as otherwise provided in Section 01 11 00 (Summary of Work). Unless otherwise noted in Section 01 11 00 (Summary of Work), Contractor shall procure all permits and licenses applicable to the Work (including environmental matters to the extent applicable); pay all charges and fees, including fees for street opening permits; comply with, implement and acknowledge effectiveness of all permits; initiate and cooperate in securing all required notifications or approvals therefore; and give all notices necessary and incident to due and lawful prosecution of Work. Contractor shall pay all fees related to deferred submittals such as, but not limited to, fire sprinkler system, underground utilities, fuel storage tank and fire alarm system. Contractor shall pay all sales and/or use taxes levied on materials, supplies, or equipment purchased and used on or incorporated into Work, and all other taxes properly assessed against equipment or other property used in connection with Work, without any increase in the Contract Sum. Contractor shall make necessary arrangements with proper authorities having jurisdiction over roads, streets, pipelines, navigable waterways, railroads, and other works in advance of operations, even where SMART may have already obtained permits for the Work.

13.3 Suspension of Work

- 13.3.A SMART may, without cause, order Contractor in writing to suspend, delay or interrupt Work in whole or in part for such period of time as SMART may determine. An adjustment shall be made for increases in cost of performance of Work of the Contract Documents caused by any such suspension, delay or interruption, calculated using the measures set forth in Section 01 25 00 (Clarification and Modification Procedures). No adjustment shall be made to extent that:
- 13.3.A.1 Performance is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor is responsible; or
- 13.3.A.2 An equitable adjustment is made or denied under any other provision of Contract Documents; or

13.3.A.3 The suspension of Work was the direct or indirect result of Contractor's failure to perform any of its obligations hereunder. Adjustments made in cost of performance may have a mutually agreed fixed or percentage fee; if the parties cannot agree, Contractor may file a claim under Article 12 of this Document 00 70 00.

13.4 Termination of Contract For Cause

13.4.A SMART may declare Contractor in default of Contract Documents and SMART may terminate Contractor's right to proceed under the Contract Documents for cause:

13.4.A.1 Should Contractor make an assignment for the benefit of creditors; admit in writing its inability to pay its debts as they become due; file a voluntary petition in bankruptcy; be adjudged as bankrupt or insolvent; be the subject of an involuntary petition in bankruptcy which is not dismissed within 60 Days; file a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation; file any answer admitting or not contesting the material allegations of a petition filed against Contractor in any such proceeding; or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian or liquidator of Contractor or of all or any substantial part of its properties or if Contractor, its directors or shareholders, take action to dissolve or liquidate Contractor; or

13.4.A.2 Should Contractor commit a material breach of the Contract Documents. If SMART declares Contractor in default due to material breach, however, SMART must allow Contractor an opportunity to cure such breach within 10 Days of the date of notice from SMART to Contractor providing notice of the default; or, if such breach is curable but not curable within such 10-Day period, within such period of time as is reasonably necessary to accomplish such cure; or

13.4.A.3 Should Contractor violate or allow (by a Subcontractor or other person or entity for which Contractor is responsible) a violation of any valid law, statute, regulation, rule, ordinance, permit, license or order of any governmental agency applicable to the Project or Work and does not cure (or cause to be cured) such violation within 10 Days of the date of the notice from SMART to Contractor demanding such cure; or, if such violation is curable but not curable within such 10-Day period, within such period of time as is reasonably necessary to accomplish such cure.

13.4.B In order for Contractor to avail itself of a time period in excess of 10 Days, pursuant to subsections 13.4.A.2 and 13.4.A.2, Contractor must provide SMART within the 10-Day period with a written plan acceptable to SMART to cure said breach or violation which includes, for example, evidence of necessary resources, Subcontractor commitments, schedules and recovery schedules meeting Contract Document requirements and showing a realistic and achievable plan to

cure the breach or violation. Contractor must then diligently commence and continue such cure according to the written plan.

- 13.4.C If SMART at any time reasonably believes that Contractor is or may be in default under the Contract Documents as provided in paragraph 13.4.A of this Document 00 70 00, SMART may in its sole discretion notify Contractor of this fact and request written assurances from Contractor of performance of Contract Documents and a written plan from Contractor to remedy any default under the terms of Contract Documents which SMART may advise Contractor of in writing. Contractor shall, within 10 Days of SMART's request, deliver a written cure plan which meets the requirements of the written plan deliverable under paragraph 13.4.A.2 of this Document 00 70 00. Failure of Contractor to provide such written assurances of performance and the required written plan, within 10 Days of request, will constitute a material breach of Contract Documents sufficient to justify termination for cause.
- 13.4.D In event of termination for cause, SMART will immediately serve written notice thereof upon Surety, if a Construction Performance Bond was required under contract, and Contractor. Surety shall have the rights and obligations set forth in Document 00 61 13.13 (Performance Bond). Subject to the Surety's rights under the Performance Bond (which rights are waived upon a default thereunder), SMART may take over the Work and prosecute it to completion by contract or by any other methods it may deem advisable.
- 13.4.E In the event of termination by SMART as provided in paragraph 13.4.A of this Document 00 70 00 for cause:
- 13.4.E.1 SMART will compensate Contractor for the value of the Work delivered to SMART upon termination as determined in accordance with the Contract Documents, subject to all rights of offset and back charges, and provided that Contractor provides SMART with updated as-builts and Project Record Documents showing the Work performed up to the date of termination. However, SMART will not compensate Contractor for its costs in terminating the Work or any cancellation charges owed to third parties.
- 13.4.E.2 Contractor shall deliver to SMART possession of the Work in its then condition including, but not limited to, all designs, engineering, Project records, Project Record Documents, cost data of all types, Drawings and Specifications and contracts with vendors and Subcontractors, all other documentation associated with the Project, and all construction supplies and aids dedicated solely to performing the Work which, in the normal course of construction, would be consumed or only have salvage value at the end of the construction period. Contractor shall remain fully liable for the failure of any Work completed and materials and equipment provided through the date of such termination to comply with the provisions of the Contract Documents. The provisions of this paragraph 13.4.E shall not be interpreted to diminish any right which SMART may have to claim and recover damages

for any breach of Contract Documents or otherwise, but rather, Contractor shall compensate SMART for all loss, cost, damage, expense, and/or liability suffered by SMART as a result of such termination and failure to comply with Contract Documents.

- 13.4.F SMART's rights under paragraph 13.4.E.2 shall be specifically enforceable to the greatest extent permitted by law. SMART shall, to the extent applicable, have all other rights and remedies set forth in any Contract Document.
- 13.4.G SMART may terminate portions or parts of the Work for cause, provided these portions or parts (i) have separate geographic areas from parts or portions of the Work not terminated or (ii) are limited to the Work of one or more specific trades or Subcontractors. In such case, Contractor shall cooperate with other contractors as required under Article 6 of this Document 00 70 00.
- 13.4.H In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and Contractor shall have no greater rights than it would have had following a termination for convenience. Any Contractor claim arising out of a termination for cause shall be made in accordance with Article 12 of this document and calculated in accordance with the provisions of the Contract Documents on Change Orders and claims. No other loss cost, damage, expense, or liability may be claimed, requested, or recovered by Contractor.

13.5 Termination of Contract For Convenience

- 13.5.A SMART may terminate performance of the Work under the Contract Documents in accordance with this clause in whole, or from time to time in part, whenever SMART shall determine that termination is in SMART's best interest. Termination shall be effected by SMART delivering to Contractor notice of termination specifying the extent to which performance of the Work under the Contract Documents is terminated and the effective date of the termination.
- 13.5.B After receiving a notice of termination under paragraph 13.5.A of this Document 00 70 00, and except as otherwise directed by SMART, Contractor shall:
 - 13.5.B.1 Stop Work under the Contract Documents on date and to extent specified in notice of termination;
 - 13.5.B.2 Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete portion of Work under the Contract Documents which is not terminated;
 - 13.5.B.3 Terminate all orders and subcontracts to extent that they relate to performance of Work terminated by the notice of termination;
 - 13.5.B.4 Assign to SMART in manner, at times, and to extent directed by SMART, all right, title, and interest of Contractor under orders and subcontracts so terminated. SMART shall have the right, in its sole discretion, to settle or pay any or all claims arising out of termination of orders and subcontracts;
 - 13.5.B.5 Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with approval or ratification of

SMART to extent SMART may require. SMART's approval or ratification shall be final for purposes of this paragraph 13.5;

13.5.B.6 Transfer title to SMART, and deliver in the manner, at the times, and to the extent, if any, directed by SMART, all fabricated or unfabricated parts, Work in process, completed Work, supplies, and all other material produced as part of, or acquired in connection with performance of, Work terminated by the notice of termination, and completed or partially completed drawings, drawings, specifications, information, and other property which, if the Project had been completed, would have been required to be furnished to SMART;

13.5.B.7 Use its best efforts to sell, in manner, at times, to extent, and at price or prices that SMART directs or authorizes, any property of types referred to in paragraph 13.5.B.6 of this Document 00 70 00, but Contractor shall not be required to extend credit to any purchaser and may acquire any such property under conditions prescribed and at price or prices approved by SMART. Proceeds of transfer or disposition shall be applied to reduce payments to be made by SMART to Contractor under the Contract Documents or shall otherwise be credited to the price or cost of Work covered by Contract Documents or paid in such other manner as SMART may direct;

13.5.B.8 Complete performance of the part of the Work which was not terminated by the notice of termination; and

13.5.B.9 Take such action as may be necessary, or as SMART may direct, to protect and preserve all property related to Contract Documents which is in Contractor's possession and in which SMART has or may acquire interest.

13.5.C After receipt of a notice of termination under paragraph 13.5.A of this Document 00 70 00, Contractor shall submit to SMART its termination claim, in form and with all certifications required by Article 12 of this Document 00 70 00. Contractor's termination claim shall be submitted promptly, but in no event later than 6 months from effective date of the termination. Contractor and SMART may agree upon the whole or part of the amount or amounts to be paid to Contractor because of a total or partial termination of Work under this paragraph 13.5. If Contractor and SMART fail to agree on the whole amount to be paid to Contractor because of the termination of the Work under this paragraph 13.5, SMART's total liability to Contractor by reason of the termination shall be the total (without duplication of any items) of:

13.5.C.1 The reasonable cost to Contractor, without profit, for all Work performed prior to the effective date of the termination, including Work done to secure the Project for termination. Reasonable cost may not exceed the applicable percentage completion values derived from the Progress Schedule and the schedule of values. Deductions shall be made for cost of materials to be retained by Contractor, cost of Work defectively performed, amounts realized by sale of materials, and for

other appropriate credits against cost of Work. Reasonable cost will include reasonable allowance for Project overhead and general administrative overhead not to exceed a total of ten percent of direct costs of such Work. When, in SMART's opinion, the cost of any item of Work is excessively high due to costs incurred to remedy or replace Defective or rejected Work, reasonable cost to be allowed will be the estimated reasonable cost of performing the Work in compliance with requirements of Contract Documents and excessive actual cost shall be disallowed.

13.5.C.2 A reasonable allowance for profit on cost of Work performed as determined under paragraph 13.5.C.1 of this Document 00 70 00, provided that Contractor establishes to SMART's satisfaction that Contractor would have made a profit had the Project been completed and provided further that the profit allowed shall not exceed 5 percent of cost.

13.5.C.3 Reasonable costs to Contractor of handling material returned to vendors, delivered to SMART or otherwise disposed of as directed by SMART.

13.5.C.4 A reasonable allowance for Contractor's internal administrative costs in preparing termination claim.

13.5.D Except as provided in this paragraph 13.5.C of this Document 00 70 00, SMART shall not be liable for costs incurred by Contractor or Subcontractors after receipt of a notice of termination. Such non-recoverable costs include, but are not limited to, anticipated profits on Work not performed as of the date of termination, post-termination employee salaries, post-termination general administrative expenses, post-termination overhead or unabsorbed overhead, costs of preparing and submitting Contractor's Bid, attorney's fees of any type, and all costs relating to prosecution of claim or lawsuit.

13.5.E SMART shall have no obligation to pay Contractor under this paragraph 13.5 unless and until Contractor provides SMART with updated and acceptable as-builts and Project Record Documents for Work completed prior to termination.

13.5.F In arriving at the amount due Contractor under this clause, there shall be deducted:

13.5.F.1 All unliquidated advances or other payments on account previously made to Contractor which are applicable to the terminated portion of Contract Documents;

13.5.F.2 Any claim which SMART may have against Contractor in connection with Contract Documents; and

13.5.F.3 The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by Contractor or sold under provisions of this paragraph 13.5, and not otherwise recovered by or credited to SMART.

13.6 Contingent Assignment of Subcontracts

13.6.A Contractor hereby assigns to SMART each Subcontract for a portion of the Work, provided that:

13.6.A.1 The assignment is effective only after SMART's termination of Contractor's right to proceed under the Contract Documents (or portion thereof relating to that Subcontract) pursuant to paragraphs 13.4 or 13.5 of this Document 00 70 00;

13.6.A.2 The assignment is effective only for the Subcontracts which SMART expressly accepts by notifying the Subcontractor in writing;

13.6.A.3 The assignment is subject to the prior rights, if any, of the Surety, obligated by Document 00 61 13.13 (Construction Performance Bond) provided under the Contract Documents, where the Surety exercises its rights to complete the Contract;

13.6.A.4 After the effectiveness of an assignment, Contractor shall, at its sole cost and expense (except as otherwise provided in paragraphs 13.4 or 13.5 of this Document 00 70 00), sign all instruments, and take all actions reasonably requested by SMART to evidence and confirm the effectiveness of the assignment in SMART; and

13.6.A.5 Nothing in this paragraph 13.6 shall modify or limit any of Contractor's obligations to SMART arising from acts or omissions occurring before the effectiveness of any Subcontract assignment, including but not limited to all defense, indemnity and hold-harmless obligations arising from or related to the assigned Subcontract.

13.7 Remedies and Contract Integration

13.7.A Subject to Contract Documents provisions regarding Contractor claims, claim review, and claim resolution, and subject to the limitations therein, the exclusive jurisdiction and venue for resolving all claims, counter claims, disputes, and other matters in question between SMART and Contractor arising out of or relating to Contract Documents, any breach thereof or the Project shall be the applicable court of competent jurisdiction located in the State of California, County of Sonoma. All SMART remedies provided in the Contract Documents shall be taken and construed as cumulative and not exclusive; that is, in addition to each and every other remedy herein provided; and in all instances SMART shall have any and all other equitable and legal rights and remedies which it would have according to law.

13.7.B The Contract Documents, any Contract Modifications, and Change Orders shall represent the entire and integrated agreement between SMART and Contractor regarding the subject matters hereof and thereof and shall constitute the exclusive statement of the terms of the parties' agreement. The Contract Documents, and any Contract Modifications and Change Orders, shall supersede any and all prior negotiations, representations, or agreements, written or oral, express or implied, that relate in any way to the subject matter of the Contract Documents or written Modifications. SMART and Contractor represent and agree

that, except as otherwise expressly provided in the Contract Documents, they are entering into the Contract Documents and any subsequent written Modification in sole reliance upon the information set forth or referenced in the Contract Documents or Contract Modifications and the parties are not and will not rely on any other information.

13.7.C In any proceeding to enforce the Contract Documents, Contractor and SMART agree that the finder of fact shall receive detailed instructions on the meaning and operation of the Contract Documents, including their conditions, limitations of liability and remedies clauses, claims procedures and any other provisions impacting major defenses and theories of liability of the parties. Detailed findings of fact shall be requested, to verify Contract enforcement.

13.7.D Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions, or other provisions of the Contract Documents at any time shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition, or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.

13.8 Patents

13.8.A Fees or claims for any patented invention, article or arrangement that may be used upon or in any manner connected with performance of the Work or any part thereof shall be included in the Bid price for doing the Work. Contractor shall defend, indemnify and hold harmless SMART and each of its officers, employees, consultants and agents, including, but not limited to, the Board and each SMART's Representative, from all damages, claims for damages, costs or expenses in law or equity, including attorney's fees, arising from or relating to any claim that any article supplied or to be supplied under the Contract Documents infringes on the patent rights, copyright, trade name, trademark, service mark, trade secret or other intellectual property right of any person or persons or that the person or entity supplying the article does not have a lawful right to sell the same. Such costs or expenses for which Contractor agrees to indemnify and hold harmless the above indemnities include but are not limited to any and all license fees, whether such fees are agreed by any indemnitee or ordered by a court or administrative body of any competent jurisdiction.

13.9 Substitution for Patented And Specified Articles

13.9.A Except as noted specifically in Specifications, whenever in Specifications, material or process is designated by patent or proprietary name or by name of manufacturer, such designation shall be deemed to be used for purpose of facilitating description of material and process desired, and shall be deemed to be followed by the words "or Approved Equal" and Contractor may offer any substitute material or process that Contractor considers "equal" in every respect to that so designated and if material or process offered by Contractor is, in opinion of SMART, Equal in every respect to that so designated, its use will be approved. However, Contractor may utilize this right only by timely submitting

Document 00 63 25 (Substitution Request Form) if provided in the bid solicitation documents. A substitution will be approved only if it is a true Equal item in every aspect of its design and quality, including but not limited to its dimensions, weights, service requirements, durability, functioning, impact on contiguous construction elements, overall schedule, and design.

13.10 Interest of Public Officers

13.10.A No representative, officer, or employee of SMART, no member of the governing body of the locality in which the Project is situated, no member of the locality in which SMART was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project, during the tenure of the official or for one year thereafter, shall, as principal, agent, attorney or otherwise, be directly or indirectly interested, in the Contract Documents or the proceeds thereof.

13.11 Limit of Liability

13.11.A Smart, and each of its officers, board members, employees, consultants, and agents including, but not limited to, architect and each other smart representative, shall have no liability to contractor for special, consequential, or incidental damages, except to the limited extent that these contract documents or applicable public contracting statutes may specify their recovery.

13.12 Severability

13.12.A Any provisions or portions thereof of Contract Documents that are prohibited by, unlawful, or unenforceable under any applicable law of any jurisdiction shall as to such jurisdiction be ineffective without affecting other provisions or portions thereof in the Contract Documents.

14 MODIFICATIONS OF CONTRACT DOCUMENTS

14.1 Alterations, Modifications and Force Account Work

14.1.A No modification or deviation from the Drawings and Specifications will be permitted except by written Contract Modification.

14.1.B SMART may, without notice to the sureties, make alterations, deviations, additions to, or deletions from Contract Documents; increase or decrease the quantity of any item or portion of the Work; expand, contract, or otherwise change the Contract Time; delete any item or portion of the Work; and/or require extra Work. Contractor shall perform such Work under applicable provisions of the Contract Documents, unless specifically provided otherwise at the time the change is ordered. In the case of any ordered extra Work, SMART reserves the right to furnish all or portions of associated labor, material, and equipment, which Contractor shall accept and use without payment for costs, markup, profit, or otherwise for such SMART-furnished labor, materials, and equipment.

14.1.C If changes ordered in design, workmanship or materials are of such a nature as to increase or decrease the cost of any part of the Work, the price fixed in the Contract Documents shall be increased or decreased as set forth in a written

Change Order by the amount that Contractor and SMART may agree upon as a reasonable and proper allowance for the cost increase or decrease. If an agreement cannot be reached, then SMART will reach a determination, which shall be final, subject to Contractor's rights under Article 12 of this Document 00 70 00. In all cases Contractor shall perform the changed Work as directed by SMART subject to Contractor's rights under Article 12 of this Document 00 70 00.

- 14.1.D A Change Order will become effective when signed by SMART. If SMART exercises its right to decide disputed issues pertaining to changed Work as set forth in Articles 12 and 14 of this Document 00 70 00, then the resulting Change Order shall be effective when signed by SMART, notwithstanding that Contractor has not signed it.
- 14.1.E Changes not affecting the Contract Time or Contract Sum of the Work, in SMART's discretion, may be set forth in a written RFI-Reply executed by SMART or Architect's Supplemental Instruction (ASI). Execution of such an RFI-Reply or ASI constitutes Contractor's agreement to make the specified change without change to the Contract Sum or the Contract Time.
- 14.1.F Changes or deviations from Contract Documents affecting the Contract Time or Contract Sum of the Work shall not be made without the authority of an effective Change Order or Construction Change Directive as provided in Section 01 25 00 (Clarification and Modification Procedures), except in cases of emergency discussed in Article 15 of this Document 00 70 00.
- 14.1.G Changes in the Work made pursuant to this Article 14 and extensions of Contract Time necessary by reason thereof shall not in any way release the guarantees and warranties given by Contractor pursuant to provisions of the Contract Documents, nor shall such changes in the Work relieve or release the Sureties of bonds executed pursuant to said provisions. The Sureties, in executing such bonds, shall be deemed to have expressly agreed to any such change in the Work and to any extension of time made by reason thereof.
- 14.1.H Procedures for Modifications of Contract Documents and for calculating the cost of extra Work are given in Section 01 25 00 (Clarification and Modification Procedures). Regarding delay and impact costs of any nature, Contractor may not seek delay compensation for on-Site or off-Site costs based on formulas, e.g., "Eichlay" or other formula. Rather, Contractor shall prove actual costs resulting from such delays. If Contractor requests compensation for delay to the construction, then Contractor shall prove and document actual costs plus markup per the cost categories and procedures in Section 01 25 00 (Clarification and Modification Procedures) in order to request, claim or prove compensation for delay.

14.2 Time Allowances

- 14.2.A The Contract Time may only be changed by Change Order or by Contract Modification, and all-time limits stated in the Contract Documents are of the essence of Contract Documents.

- 14.2.B The Contract Time will be adjusted in an amount equal to the time lost or added due to:
- 14.2.B.1 Changes in the Work ordered by SMART;
 - 14.2.B.2 Acts or neglect by SMART, Architect, any SMART's Representative, utility owners or other contractors performing other work, provided that Contractor has fully and completely performed its responsibilities under the Contract Documents; or
 - 14.2.B.3 Fires, floods, epidemics, abnormal weather conditions beyond the parameters otherwise described or referenced in paragraph 14.4 below, earthquakes, civil or labor disturbances, strikes or acts of God, provided damages resulting therefrom are not the result of Contractor's failure to protect the Work as required by Contract Documents.
- 14.2.C The Contract Time shall not be extended for any cause identified in paragraph 14.2.B above, however, unless:
- 14.2.C.1 Contractor actually has been prevented from completing any part of the Work within the Contract Time due to delay that is beyond Contractor's control and due to reasons for which Contractor is not responsible (delays attributable to and within the control of a Subcontractor, or its subcontractors, or supplier shall be deemed to be delays within the control of Contractor);
 - 14.2.C.2 A claim for delay is made as provided herein; and
 - 14.2.C.3 Contractor submits a Time Impact Evaluation as required under Section 01 32 16 (Progress Schedules and Reports) that demonstrates actual delay to critical Work activities that actually delay the progress of the Work in the amount of time requested.

14.3 Notice of Delay

- 14.3.A Within seven (7) Days of the beginning of any delay, Contractor shall notify SMART in writing, by submitting a notice of potential claim, of all anticipated delays resulting from the delay event in question. Any request for extension of time shall be accompanied by Contractor's written statement that the adjustment claimed is the entire adjustment to which the claimant is entitled as a result of the occurrence of said event and shall include a written schedule document that demonstrates delay to the critical path using a Time Impact Evaluation as specified in Section 01 32 16 (Progress Schedules and Reports). SMART will determine all claims and adjustments in the Contract Time. No claim for an adjustment in the Contract Time will be valid and such claim will be waived if not submitted in accordance with the requirements of this paragraph 14.3.A.

14.4 Non-Compensable Time Extensions; Adverse Weather Parameters

- 14.4.A Where Contractor is prevented from completing any part of the Work within the Contract Time due to delay beyond the reasonable control of Contractor and SMART, e.g., adverse weather conditions exceeding Contract Documents parameters, earthquakes, Acts of God and epidemics, and acts of other contractors or utilities. In such cases, an extension of Contract Time, in an

amount equal to the time lost due to such delay (without compensation), shall be Contractor's sole and exclusive remedy for such delay. The adverse weather contingency for this Contract is provided in Document 00 73 00 (Supplementary Conditions).

- 14.4.B Delays due to abnormal or adverse weather conditions will not be allowed for weather conditions that fall within the Contract's adverse weather contingency, nor will Contractor be entitled to any extension of Contract Time for any such delays. Contractor shall be entitled to an extension of Contract Time for adverse weather only (i) if the number of workdays of adverse weather, recognize as provided in this paragraph 14.4, exceeds these parameters (ii) Contractor proves that adverse weather actually caused delays to Work that is on the critical path, and (iii) Contractor satisfies the other requirements of this paragraph 14.4.
- 14.4.C In order to qualify as an adverse weather day with respect to the foregoing parameters, daily rainfall must exceed 0.1 of an inch or more at the National Oceanic & Atmospheric Administration weather station identified in Document 00 73 00 (Supplementary Conditions), and Contractor must give SMART written notice of its intent to claim an adverse weather day within one Day of the adverse weather day occurring. Contractor shall at all times employ all available mitigation measures to enable Work to continue.
- 14.4.D Contractor shall include the foregoing rain parameters as in its Progress Schedule as required in Section 01 32 16 (Progress Schedules and Reports). As Work on the critical path is affected by rain, Contractor shall notify SMART and request that the days be moved to the affected activities. Any adverse weather days remaining shall be considered Project float.
- 14.4.E Subject to the other requirements of this paragraph, adverse weather days shall be recognized for the actual number of days Contractor proves it was delayed by adverse weather. For example, and not by way of limitation, if rain exceeding the amount described in paragraph 14.4.C does not in fact delay Contractor's progress on the critical path, then no adverse weather days shall be recognized. Conversely, if Contractor proves that rain exceeding the amount described in paragraph 14.4.C causes delay to Contractor for a period longer than the number of rain days incurred (e.g., if it rains during grading Work), then all such days shall be recognized as adverse weather days.
- 14.4.F Contractor shall take reasonable steps to mitigate potential weather delays, such as dewatering the Site, lime treatment, and covering Work and material that could be affected adversely by weather. Failure to do so shall be cause for SMART to not recognize adverse weather days, where Contractor could have avoided or mitigated the potential delay by exercising reasonable care.

14.5 Compensable Time Extensions

- 14.5.A Contractor may receive a time extension and be compensated for delays caused directly and solely by SMART. Provided Contractor provides proper notice and documentation under Section 01 32 16, such compensation may include

extended field or home office overhead, field supervision, escalation charges, acceleration costs and extended subcontractor costs.

14.5.B Contractor shall not be entitled to any time extension or compensation for any delays caused in whole or in part by Contractor's failure to perform its obligations under the Contract Documents, or during periods of delay concurrently caused by Contractor and either SMART or others.

14.5.C Contractor shall not be entitled to damages for delay to the Work caused by the following reasons:

14.5.C.1 SMART's right to sequence the Work in a manner which would avoid disruption to SMART's contractors and their subcontractors and SMART's employees, exercised as a result of Contractor's failure to perform its cooperation and coordination responsibilities required by Contract Documents; SMART's enforcement of any government act or regulation; or the provisions of the Contract Documents; and

14.5.C.2 Extensive requests for clarifications to Contract Documents or Contract Modifications thereto, provided such clarifications or Contract Modifications are processed by SMART or its consultants in a reasonable time commensurate with Contract Documents requirements.

14.6 Not-Used

14.7 Differing Site Conditions

14.7.A If Contractor encounters underground conditions that exceed the scope of the Work, Contractor shall promptly give SMART written notice of the condition, and shall give such notice before the conditions are disturbed, to include: (i) material that Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law, and is not within the scope of Work ("hazardous waste"); (ii) subsurface or latent physical conditions at the site differing from those indicated by information about the Site made available to Bidders prior to the deadline for submitting Bids, that Contractor did not and could not have known about by performing its required pre-Bid investigations; or (iii) unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for the Contract, that Contractor did not and could not have known about by performing its required pre-Bid investigations.

14.7.B SMART shall promptly investigate the underground conditions, and if it finds that (i) the conditions do materially so differ in a manner Contractor did not anticipate and could not have anticipated, or do involve hazardous waste outside the scope of the Work, and (ii) cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, then (iii) SMART shall initiate a change order under the procedures described in the contract, including but not limited to, issuing either a Request for Proposal or a Construction Change

Directive under the procedures described in the Contract Documents, including without limitation Section 01 25 00 (Clarification and Modification Procedures).

- 14.7.C If SMART determines that underground conditions at the Site do not materially so differ in a manner Contractor did not anticipate and could not have anticipated, or do not involve hazardous waste outside the scope of the Work, or do not cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, or for any other reason that that no change in terms of the Contract Documents is justified, SMART will so notify Contractor in writing, stating reasons.
- 14.7.D In the event that a dispute arises between SMART and Contractor whether the conditions do materially so differ, or involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, Contractor shall not be excused from any scheduled completion date provided for by the Contract but shall proceed with all Work to be performed under the Contract. Contractor shall retain any and all rights provided either by the Contract or by law which pertain to the resolution of disputes and protests between contracting parties.
- 14.7.E Contractor shall not be entitled to any adjustment in the Contract Sum or Contract Time regarding claimed hazardous waste or materials, claimed Latent or materially different Site conditions (whether above or below grade) if:
- 14.7.E.1 Contractor knew of the existence of such conditions at the time Contractor submitted its Bid; or
- 14.7.E.2 Contractor should have known of the existence of such conditions at the time Contractor submitted its Bid, or should have learned of such conditions and mitigated their impact, as a result of having complied with the requirements of Contract Documents, including without limitation, the investigation requirements herein at Articles 2 and 10 of Document 00 70 00;
- 14.7.E.3 The information or conditions claimed by Contractor to be Latent or materially different consist of information, conclusions, opinions, or deductions made from underground conditions reports, of the kind that this Document 00 70 00 precludes reliance upon; or
- 14.7.E.4 Contractor was required to give written notice and failed to do so within the time required.
- 14.7.F If, because of a differing site condition as defined herein, Contractor does not agree to continue with Work based on a reasonable belief that it is unsafe, or does not agree to resume Work under special conditions, SMART may order the disputed portion of Work deleted from the Work, or performed by others, or SMART may invoke its right to terminate Contractor's right to proceed under the Contract Documents in whole or in part, for convenience or for cause as the facts may warrant. If Contractor does not agree with SMART's determination of any adjustment in the Contract Sum or Contract Time as a result, Contractor may make a claim as provided in Article 12 of this Document 00 70 00.

14.8 Change Orders Related to Underground Facilities

- 14.8.A If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated in the materials supplied by SMART or in information on file at USA or is not otherwise reasonably known to Contractor by performing its obligations in Articles 2 and 10 of this Document 00 70 00, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby (and in no event later than seven Days), and prior to performing any Work in connection therewith (except in an emergency as required by Article 15 of this Document 00 70 00), identify the owner of such Underground Facility and give written notice to that owner and to SMART. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- 14.8.B Contractor shall be allowed an increase in the Contract Sum or an extension of the Contract Time, or both, for Underground Facilities either not shown or inaccurately shown in the Contract Documents, the information supplied pursuant to the bidding documents or in information on file at USA, only where the inaccuracy was (i) material and outside of the normal experience on projects of this nature, (ii) was not reasonably inferable from existing information, and (iii) directly results in a material, justifiable and actual increase in the cost of Contractor's work. For example, if surface conditions such as pavement repairs, valve covers, or other markings, indicate the presence of an Underground Facility, or if the Underground Facility could be determined or its cost impact mitigated by performing the obligations in Articles 2 and/or 10 of this Document 00 70 00, then an increase in the Contract Price or an extension of the Contract Time will not be due, even if the Underground Facility was not indicated or was shown at a different place or a different elevation in the Contract Documents, in the information supplied to Contractor pursuant to the bidding documents, or in information on file at USA.
- 14.8.C Main Line and Trunk Line Utilities (Government Code Section 4215). Consistent with Government Code Section 4215, as between SMART and Contractor, SMART will be responsible for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Site only if such utilities are not identified in the Contract Documents or bidding documents. SMART will compensate for the cost of locating and repairing damage not due to Contractor's failure to exercise reasonable care, removing and relocating such main or trunk line utility facilities not indicated in the Contract Documents or bidding documents with reasonable accuracy, and equipment on the Project necessarily idled during such work.

14.9 Value Engineering

- 14.9.A The contractor is encouraged to develop, prepare, and submit value engineering change proposals voluntarily. SMART shall share any approved value engineering proposals at a rate of 50% of realized savings to the contractor.

15 WORKING CONDITIONS AND PREVAILING WAGES

15.1 Use Of Site/Sanitary Rules

- 15.1.A All portions of the Work shall be maintained at all times in neat, clean and sanitary condition. Contractor shall furnish toilets for use of Contractor's and Subcontractors' employees on the Site where needed, and their use shall be strictly enforced. All toilets shall be properly secluded from public observation, and shall be located, constructed, and maintained subject to SMART's approval.
- 15.1.B Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Site and land areas identified in and permitted by Contract Documents and other land and areas permitted by applicable laws and regulations, rights of way, permits and easements or as designated by SMART, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, any improvement located thereon, or to the SMART or occupant thereof resulting from the performance of Work.
- 15.1.C During the progress of the Work, Contractor shall keep the Site and the Project free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, Contractor shall remove all waste materials, rubbish, and debris from and about the Site as well as all tools, appliances, construction equipment and machinery and surplus materials. Contractor shall leave the premises clean and ready for occupancy by SMART at Substantial Completion of Work. Contractor shall restore to original condition all property not designated for alteration by Contract Documents.
- 15.1.D Contractor shall not load nor permit any part of any structure or pavement to be loaded in any manner that will endanger the structure or pavement, nor shall Contractor subject any part of Work or adjacent property to stresses or pressures that will endanger it. Contractor shall conduct all necessary existing conditions investigation regarding structural, mechanical, electrical or any other system existing, shall perform Work consistent with such existing conditions, and shall have full responsibility for insufficiencies or damage resulting from insufficiencies of existing systems, equipment, or structures to accommodate performing the Work.

15.2 Protection Of Work, Persons, And Property

- 15.2.A Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with Work. Contractor shall comply with all safety requirements specified in any safety program established by SMART, or required by state, federal or local laws and ordinances. Contractor shall be responsible for all damage to Work, property or structures, and all injuries to persons, arising from the performance of Work of the Contract Documents.
- 15.2.B Contractor shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property or to protect them from

damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

- 15.2.C Contractor shall remedy all damage, injury or loss to any property referred to in paragraph 15.2.A of this Document 00 70 00, caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, supplier, or any other person or organization directly or indirectly employed by any of them to perform or furnish any Work or anyone for whose acts any of them may be liable. Contractor's duties and responsibility for safety and for protection of Work shall continue until such time as all the Work is completed and Final Acceptance of the Work. SMART and its agents do not assume any responsibility for collecting any indemnity from any person or persons causing damage to Contractor's Work.
- 15.2.D Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.
- 15.2.E SMART may, at its option, retain such moneys due under the Contract Documents as SMART deems necessary until any and all suits or claims against Contractor for injury to persons or property shall be settled and SMART receives satisfactory evidence to that effect.

15.3 Responsibility For Safety And Health

- 15.3.A Contractor shall ensure that its and each tier of Subcontractors' employees, agents and invitees comply with applicable health and safety laws while at the Site. These laws include the Occupational Safety and Health Act of 1970 and rules and regulations issued pursuant thereto, and SMART's safety regulations as amended from time to time. Contractor shall comply with all SMART directions regarding protective clothing and gear.
- 15.3.B Contractor shall be fully responsible for the safety of its and its Subcontractors' employees, agents and invitees on the Site. Contractor shall notify SMART, in writing, of the existence of hazardous conditions, property or equipment at the Site that are not under Contractor's control. Contractor shall be responsible for taking all the necessary precautions against injury to persons or damage to the property of Contractor, Subcontractors, or persons from recognized hazards until the responsible party corrects the hazard.
- 15.3.C Contractor shall confine all persons acting on its or its Subcontractors' behalf to that portion of the Site where Work under the Contract Documents is to be performed, SMART-designated routes for ingress and egress thereto, and any other SMART-designated area. Except those routes for ingress and egress over which Contractor has no right of control, within such areas, Contractor shall provide safe means of access to all places at which persons may at any time have occasion to be present.

15.4 Emergencies

15.4.A In emergencies affecting the safety or protection of persons or Work or property at the Site or adjacent thereto, Contractor, without special instruction or authorization from SMART, is obligated to act to prevent threat and damage, injury or loss, until directed otherwise by SMART. Contractor shall give SMART prompt written notice if Contractor believes that any significant changes in Work or variations from Contract Documents have been caused thereby. If SMART determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Change Order or Construction Change Directive will be issued to document the consequences of such action.

15.5 Use of Roadways And Walkways

15.5.A Contractor shall not unnecessarily interfere with use of any roadway, walkway, or other facility for vehicular or pedestrian traffic. Before beginning any interference and only with SMART's prior concurrence, Contractor may provide detour, traffic control, or temporary bridge for traffic to pass around or over the interference, which Contractor shall maintain in satisfactory condition as long as interference continues. Unless otherwise provided in the Contract Documents, Contractor shall bear the cost of these temporary facilities.

15.6 Nondiscrimination

15.6.A No person or entity shall discriminate in the employment of persons upon public works because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sexual preference, or gender of such persons, except as provided in Section 12940 of the Government Code. Every contractor for public works violating the provisions of Section 1735 of the Labor Code is subject to all the penalties imposed for a violation of Chapter 1, Part 7, Division 2 of the Labor Code.

15.7 Prevailing Wages

15.7.A Contractor shall pay to persons performing labor in and about Work provided for in the Contract Documents an amount equal to or more than the general prevailing rate of per diem wages for (i) work of a similar character in the locality in which the Work is performed and (ii) legal holiday and overtime work in said locality. The per diem wages shall be an amount equal to or more than the stipulated rates contained in a schedule that has been ascertained and determined by the Director of the State Department of Industrial Relations and SMART to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this Contract. Contractor shall also cause a copy of this determination of the prevailing rate of per diem wages to be posted at each Site, in addition to all other job site notices prescribed by regulation. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial

Relations, are available at SMART's Headquarters Office and are deemed included in the Bidding Documents. Upon request, SMART will make copies available to any interested party. Contractor shall post the applicable prevailing wage rates at the Site.

If this project is funded using Federal dollars and there is a discrepancy between the Federal Wage Determination and the California Prevailing Wage determinations, Contractor shall pay the higher rate.

- 15.7.B Contractor shall forfeit, as a penalty to SMART, Fifty Dollars (\$50.00) for each laborer, workman, or mechanic employed in performing labor in and about the Work provided for in the Contract Documents for each Day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any Work done under the Contract Documents by him or her or by any Subcontractor under him or her, in violation of Articles 1 and 2 of Chapter 1 of Part 7 of Division II of the California Labor Code. The sums and amounts which shall be forfeited pursuant to this paragraph 15.7.B and the terms of the Labor Code shall be withheld and retained from payments due to Contractor under the Contract Documents, pursuant to this Document 00 70 00 and the Labor Code, but no sum shall be so withheld, retained, or forfeited except from the final payment without a full investigation by either the State Department of Industrial Relations or by SMART. The Labor Commissioner pursuant to Labor Code Section 1775 shall determine the final amount of forfeiture.
- 15.7.C Contractor shall insert in every subcontract or other arrangement which Contractor may make for performance of Work or labor on Work provided for in the Contract, provision that Subcontractor shall pay persons performing labor or rendering service under subcontract or other arrangement not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed in the Labor Code.
- 15.7.D Where either the Prime Agreement or the sub agreement exceeds thirty thousand dollars (\$30,000), the Contractor and all subcontractors under him or her shall comply with all applicable requirements of Labor Code 1777.5, 1777.6, and 1777.7 in the employment of apprentices. Contractors are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, Contractor and subcontractors are advised to contact the Department of Industrial Relations (DIR) Division of Apprenticeship standards website at <https://www.dir.ca.gov/das/> for additional information regarding the employment of apprentices and for the specific journey-to-apprentice ratios for the Work. Contractor is responsible for their compliance and all their subcontractor's compliance with these requirements. Failure to comply will subject the Contractor and subcontractors to the penalties specified in Labor Code §1777.7.

- 15.7.E Contractor stipulates that it shall comply with all applicable wage and hour laws, including without limitation California Labor Code Sections 1725.5, 1776, 1777, and 1810-1815. Failure to so comply shall constitute a default under this Contract.
- 15.7.F Contractor and Subcontractors must keep accurate payroll records, showing the name, address, social security number, Work classification, straight time and overtime hours worked each Day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the Work of the Contract documents. Each payroll record shall contain or be verified by a written declaration as required by Labor Code Section 1776.
- 15.7.G The payroll records enumerated above must be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor as required by Labor Code Section 1776.
- 15.7.H Contractor shall inform SMART of the location of records enumerated above, including the street address, city and SMART, and shall, within five working Days, provide a notice of a change of location and address.
- 15.7.I Contractor or Subcontractor has 10 Days in which to comply subsequent to receipt of a written notice requesting the records enumerated above. In the event that Contractor or Subcontractor fails to comply with the ten-Day period, he or she shall, as a penalty to SMART on whose behalf the contract is made or awarded, forfeit \$25.00 for each calendar Day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. Contractor is not subject to a penalty assessment pursuant to this subparagraph due to the failure of a Subcontractor to comply with this subparagraph.
- 15.7.J This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractor shall require all subcontractors to furnish the records specified in Labor Code section 1776 (e.g. electronic certified payroll records) directly to the Labor Commissioner in a format prescribed by the Labor Commissioner at least monthly.
- 15.7.K Contractor and all Subcontractors shall be registered and qualified to perform public work pursuant to Labor Code section 1725.5 as a condition to engage in the performance of any Work hereunder.
- 15.7.L Contractor shall also deliver certified payrolls to SMART with each Application for Payment as described in Section 01 20 00 (Price and Payment Procedures).

15.8 Environmental Controls

- 15.8.A Contractor shall comply with all rules, regulations, ordinances, and statutes that apply to any Work performed under the Contract Documents including, without limitation, any toxic, water, and soil pollution controls and air pollution controls specified in Government Code Section 11017. Contractor shall be responsible for insuring that Contractor's Employees, Subcontractors, and the public are

protected from exposure to airborne hazards or contaminated water, soil, or other toxic materials used during or generated by activities on the Site or associated with the Project.

15.9 Shoring Safety Plan

- 15.9.A At least five Days in advance of excavating any trench five feet or more in depth, Contractor shall submit to SMART a detailed plan showing the shoring, bracing and sloping design and other provisions to be made for worker protection from the hazard of caving ground during the excavation, as required by Labor Code Section 6705. A civil or structural engineer registered in California shall prepare and sign any plan that varies from the shoring system standards established by the State Construction Safety Orders.
- 15.9.B During the course of Work, Contractor shall be responsible for determining where sloping, shoring, and/or bracing is necessary and the adequacy of the design, installation, and maintenance of all shoring and bracing for all excavation, including any excavation less than five feet in depth. Contractor will be solely responsible for any damage or injuries that may result from excavating or trenching. SMART's acceptance of any drawings showing the shoring or bracing design or work schedule shall not relieve Contractor of its responsibilities under this subparagraph.
- 15.9.C Cal/OSHA Permit. Contractor shall comply with Labor Code 6500 and shall obtain, as applicable, a permit as required by Cal/OSHA for each of the following:
- 15.9.D Construction of trenches or excavations that are five feet or more in depth and into which a person is required to descend.
- 15.9.E Construction or demolition of any building, structure, or scaffolding for falsework more than three stories high, or the equivalent height (36 feet).
- 15.9.F Erection or dismantling of vertical shoring systems more than three stories high, or the equivalent height (36 feet).
- 15.9.G The underground use of diesel engines in mines or tunnels.

END OF DOCUMENT



SONOMA - MARIN AREA RAIL TRANSIT DISTRICT

ATTACHMENT C

GENERAL REQUIREMENTS

RIPARIAN MITIGATION AT
HELEN PUTNAM REGIONAL PARK

CONTRACT NO. EV-BB-24-002

**ATTACHMENT C IS ON FILE WITH THE BOARD
CLERK AND AVAILABLE ON REQUEST**



SONOMA - MARIN AREA RAIL TRANSIT DISTRICT

ATTACHMENT D

TECHNICAL SPECIFICATIONS

RIPARIAN MITIGATION AT
HELEN PUTNAM REGIONAL PARK

CONTRACT NO. EV-BB-24-002

**ATTACHMENT D IS ON FILE WITH THE BOARD
CLERK AND AVAILABLE ON REQUEST**

ATTACHMENT E



SMART Non-Motorized Pathway Segment 3: McInnis Parkway (MP 20.1) to Smith Ranch Road (MP 21.0) Riparian Mitigation at Helen Putnam Regional Park

Riparian Mitigation and Monitoring Plan

Petaluma, Sonoma County, California



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February 2024

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List of Acronyms and Abbreviations

BMPs	best management practices
Cal-IPC	California Invasive Plant Council
CDFW	California Department of Fish and Wildlife
cfs	cubic feet per second
CRLF	California Red-legged Frog
Helen Putnam	Helen Putnam Regional Park
IPM	Integrated Pest Management
psf	pounds per square foot
Regional Parks	Sonoma County Regional Parks
RMMP	Riparian Mitigation and Monitoring Plan
SMART	Sonoma-Marín Area Rail Transit
Water Board	San Francisco Bay Regional Water Quality Control Board
WRA	WRA, Inc.



1.0 INTRODUCTION

WRA, Inc. (WRA) has prepared this Riparian Mitigation and Monitoring Plan (RMMP) outlining the off-site riparian habitat mitigation approach proposed by the Sonoma-Marin Area Rail Transit District (SMART) and approved by regulatory agencies as aquatic habitat mitigation for impacts that would result from SMART's Non-Motorized Pathway Segment 3 (previously called Segment 1) McInnis Parkway (MP 20.1) to Smith Ranch Road (MP 21.0) project. The proposed Non-Motorized Pathway Segment 3 is approximately one mile long and is located between McInnis Parkway and Smith Ranch Road in the City of San Rafael in Marin County. After incorporation of extensive avoidance and minimization efforts in the project design and schedule, construction of the Non-Motorized Pathway will result in some unavoidable impacts to riparian habitat and other transition zone habitats along a tidal creek and a freshwater wetland ditch. Implementation of this RMMP will provide habitat compensation for those impacts (impact and mitigation quantities and ratios are detailed in Section 3, below).

The habitat enhancements at the proposed mitigation site were developed in cooperation between the permittee (SMART) and the landowner, Sonoma County Regional Parks. By partnering together, these two public agencies hope to contribute jointly to environmental improvements in the North Bay by enhancing riparian habitat conditions at an existing public park and constructing a new public pathway to facilitate non-motorized transportation.

This RMMP outlines the following: (i) plans for a weed management and planting program; (ii) plans for erosion repair and channel improvements; (iii) performance monitoring methods; (iv) success criteria; (v) maintenance activities and adaptive management approach; and (vi) reporting requirements for a 10-year period. Because California red-legged frog (*Rana draytonii*; CRLF) is known to occur in the watershed where riparian mitigation is proposed, this RMMP also includes measures to protect this special-status species during implementation of restoration and maintenance activities.

Implementation of this RMMP satisfies specific compensatory mitigation requirements of the following permits or authorizations issued to SMART's Non-Motorized Pathway Segment 3 project. Agency staff names and contact information at the time these permits were issued are also provided.

Agency	California Department of Fish and Wildlife	San Francisco Bay Regional Water Quality Control Board
Permit ID	EPIMS-MAN-34600-R3	Place ID 883815 WDID# 2 CW449618
Date issued	August 25, 2023	July 20, 2023
Agency Contact	Alex Single, Environmental Scientist (707) 799-4210 Alexander.Single@wildlife.ca.gov R3LSA@wildlife.ca.gov	Holly Garber, Environmental Scientist (510) 622-2357 holly.garber@waterboards.ca.gov

SMART is submitting a Notification of Lake or Streambed Alteration to the California Department of Fish and Wildlife (CDFW) specifically pertaining to this riparian mitigation project. CDFW



contact information specific to that Notification and anticipated project approval may differ from the information listed above.

2.0 MITIGATION SITE DESCRIPTION

2.1 Site Locations and Names

Riparian mitigation will be implemented at Helen Putnam Regional Park, located at the western limits of the City of Petaluma, Sonoma County, and approximately 16 miles north/northwest of the Non-Motorized Pathway Segment 3 project (Figure 1, Appendix A). Within this park unit, two separate drainages or creek corridors have been identified for habitat enhancement. For the purposes of the mitigation design and development of this RMMP, these drainages are referred to herein as Upper Pond Drainage and Windsor Drive Drainage (Figure 2, Appendix A). These site names are not designated on any official park maps. Each mitigation site is described below.

2.2 Property Ownership

The County of Sonoma owns the property and Sonoma County Regional Parks (Regional Parks) operates Helen Putnam Regional Park (Helen Putnam). Prior to becoming West Petaluma Regional Park in the 1970s, the main park property was zoned for agriculture and was operated as a cattle ranch. This is the part of the park where the Pond Drainage is located. The natural resources management plan prepared in 1983 was updated in the year 2000 as the Helen Putnam Regional Park Management Plan, which currently guides operation and maintenance of the property as a County Park. The newer part of Helen Putnam, where the Windsor Drive Drainage is located, became a conservation property in 2004 as part of a housing development. The conservation easement certifies the parcel “...as permanent natural open space to be maintained for its conservation values and preserved in perpetuity without development except as indicated on the Final Map and Improvements Plans...” The property was transferred to the Golden State Land Conservancy, who then transferred the parcel to Regional Parks to add to Helen Putnam in 2014. A conservation easement protecting the conservation values of the property in perpetuity continues with this parcel.

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2.3 Pre-Project Conditions

2.3.1 Upper Pond Drainage

The Upper Pond Drainage feature is an unnamed, freshwater stream that supports intermittent or seasonal flow and drains southward to Cattail Pond, a publicly accessible fishing pond located near the southeastern park boundary. The Upper Pond Drainage is located between the Yarrow Trail to the west and the Ridge Trail to the east. Downstream portions of the drainage closest to the pond are characterized by a mature riparian canopy consisting of native trees such as coast live oak (*Quercus agrifolia*) and buckeye (*Aesculus californica*), but the upstream portion of the drainage is mostly devoid of native overstory vegetation. Non-native invasive plant species present in this drainage include an approximately 0.04-acre infestation of Himalayan blackberry (*Rubus armeniacus*) and sparse distribution of Fuller’s teasel (*Dipsacus sativus*) within the



blackberry patches. A single headcut occurs within the densely vegetated area of the drainage. Existing conditions at this drainage are visible on Figure 3 (Appendix A) and in attached site photographs (Appendix B).

2.3.2 Windsor Drive Drainage

The Windsor Drive Drainage is an incised channel that supports ephemeral flow and drains to a culvert underneath Windsor Drive, east of the West Wind Trail at the northmost park boundary. This drainage currently supports minimal native riparian vegetation cover within and around the channel. A large Himalayan blackberry (*Rubus armeniacus*) infestation occupies approximately 0.07 acre within this drainage. The headwaters of this drainage originate within a native oak savanna woodland community that is dominated by coast live oak and California bay (*Umbellularia californica*). In addition to channel incision throughout the drainage, two head cuts and a large area of bank erosion occur here. Repairing erosion on the creek banks and in the channel would ensure greater stability of the planting area. Existing conditions at this drainage are visible on Figure 4 (Appendix A) and in attached site photographs (Appendix B).

3.0 MITIGATION APPROACH AND CALCULATIONS

At SMART's Non-Motorized Pathway Segment 3 project site, the extents of the two State agencies' (CDFW and the San Francisco Bay Regional Water Quality Control Board [Water Board]) jurisdictions over impacts are not identical. Details regarding the sources and extent of impacts triggering the need for riparian mitigation were provided to the agencies during their permit negotiations with SMART, and both agencies reviewed a concept-level mitigation proposal for the enhancement of these two drainages. As disclosed to the agencies in the mitigation concept proposal, enhancement of the Upper Pond Drainage will be allocated to satisfy the riparian mitigation requirements of both CDFW and the Water Board, and enhancement of the Windsor Drive Drainage will be allocated to satisfy the riparian mitigation requirements of the Water Board only. Habitat enhancements at the Upper Pond Drainage, in the form of erosion repair, invasive plant removal, and planting, will encompass approximately 0.34 acre over 700 linear feet of stream. Habitat enhancements at the Windsor Drive Drainage, in the form of erosion repair and channel re-grading, invasive plant removal, and planting, will encompass approximately 1 acre over 880 linear feet of stream. A summary of each agency's permitted impacts and required minimum riparian mitigation quantities is provided in Tables 1 and 2.

Table 1. Required Ratio and Quantities for CDFW Mitigation at Upper Pond Drainage Site

AGENCY	PERMITTED RIPARIAN IMPACTS ¹	MINIMUM MITIGATION RATIO (MITIGATION TO IMPACT)	MINIMUM MITIGATION QUANTITY	MITIGATION OFFERED BY THIS DESIGN	DESIGNED MITIGATION RATIO (MITIGATION TO IMPACT)
CDFW	0.065 acre	5:1	0.325 acre	0.34 acre	~5:1
	135 linear feet		675 linear feet	700 linear feet	~5:1
¹ Per impacts identified in Final Agreement: 2,930 square feet + 780 square feet shading = 0.085 acre; minus 0.020-acre tidal marsh impacts = 0.065 acre and 135 linear feet of permanent non-tidal impacts.					



Table 2. Required Quantities for Water Board Mitigation at Upper Pond Drainage and Windsor Drive Drainage Sites

AGENCY	PERMITTED RIPARIAN IMPACTS ¹	MINIMUM MITIGATION RATIO (MITIGATION TO IMPACT)	MINIMUM MITIGATION QUANTITY	MITIGATION OFFERED BY THIS DESIGN	DESIGNED MITIGATION RATIO (MITIGATION TO IMPACT)
Water Board	0.109 acre	Not indicated in permit	1.37 acre	1.37 acre ²	>12:1
	(255 linear feet)		Not indicated in permit	1,580 linear feet ³	>6:1

¹ Per impacts identified in permit: 0.091-acre riparian canopy removal + 0.018-acre shading = 0.109 acre. WRA's records indicate that the length of these impacts is 245 linear feet + 10 linear feet = 255 linear feet.

² 0.341 acre at Upper Pond Drainage + 1.030 acre at Windsor Drive Drainage

³ 700 feet at Upper Pond Drainage + 880 feet at Windsor Drive Drainage

4.0 BASIS OF DESIGN SUMMARY

4.1 Upper Pond Drainage

No grading or channel reconfiguration is proposed at the Upper Pond Drainage. A headcut will be repaired and stabilized using biotechnical measures, described in Section 5.4.1, below.

4.2 Windsor Drive Drainage

The proposed improvements are intended to arrest existing areas of erosional degradation along the Windsor Drive Drainage. Improvements will maintain a vegetated channel with appropriately placed, buried grade control elements. Due to an existing steep valley slope, the rehabilitation effort focuses on a conveyance approach that distributes flow laterally to maintain minimal shear stress and subsequent excessive erosion potential during major (100-year recurrence interval) storm runoff events. While some incision may occur after project implementation, the objective is to preclude major blow outs or a reversion to conditions that exist today.

The intent of the buried grade control structures is to discourage flow from concentrating within the limits of the vegetated channel. These structures will be oriented perpendicular to flow so that if they become exposed, they will encourage flow to spread out laterally. The design approach aims to convey runoff at as low a depth as possible to reduce shear potential given the very steep slope of the existing valley. The design emphasis of the proposed grade control structures is for them to serve as structural safety mechanisms that will not be visible unless they become exposed.

On site observations by WRA's restoration designers provided context and evidence that substantiate the assumption of a previously existing grassed ephemeral swale with no defined active, unvegetated thalweg. Currently, an actively eroding incised channel exists with multiple propagating headcuts. The basis of our design assumed that active erosion is a result of a single downstream culvert that has induced concentrated flow and subsequent channel instability. The design approach considers upstream and downstream conditions. An approach structure proposed at the downstream end is intended to provide a transitional zone for water to concentrate as it is forced into the existing culvert. At the upstream end, where the valley



transitions from confined to unconfined, another structure is proposed to provide a spreading/baffle effect to encourage flows to spread out and not concentrate.

Given the low width-to-depth ratio of the proposed channel, sediment transport capacity will be minimal. Considering this is a first order stream near the top of the contributing watershed with very little active small-particle erosion taking place, the risk of inadequate sediment transport capacity resulting in excessive aggradation is considered low.

4.2.1 Hydrology

Caltrans Regional Flood-Frequency Equations were used for initial runoff estimates at the Windsor Drive culvert (18.9-acre drainage area). An additional estimate was made at the upstream end of the grading boundary (10-acre drainage area) of 9 cubic feet per second (cfs) for the 100-year. A summary of the results at Windsor Drive Drainage is provided in Table 3.

Table 3. Flood-Frequency Estimates at Windsor Drive

RECURRENCE INTERVAL	FLOW (CFS)
2-year	2
5-year	6
10-year	8
25-year	11
50-year	14
100-year	16

4.2.2 Hydraulics

Channel material stability calculations were calculated based on Manning's formula for open channel flow at the existing constricted channel and at the proposed channel grades. The 10-year anticipated shear stresses, flow depths, and velocities were analyzed over the 100-year peak flow based off the Sonoma County Flood Protection Guidance for drainage areas less than 1 square mile (Sonoma County, 2020). The manning's roughness was estimated to be 0.033 for a weedy channel (Chow, 1959). Calculations were performed iteratively to reach a channel width with shear stresses near 1.5 pounds per square foot (psf) based on the design channel slopes. This shear stress value was chosen based on guidance from Fischenich, 2001 for allowable shear stresses of long native grasses. Design calculations and 2D model results are included with this report as Appendix D. The reason for proposing grasses, rushes, and sedges, as opposed to woody vegetation, along the channel bottom is to discourage flow concentration. If woody vegetation were to establish in the topographic bottom, it could redistribute and concentrate flow, increasing depth, shear stresses and subsequently, erosion potential.

5.0 IMPLEMENTATION PLAN

The steps involved in implementing this RMMP are detailed below and depicted in the attached plans and specifications (Appendix C). Where appropriate, the information is presented separately for the two drainages.

5.1 California Red-legged Frog Protection Measures

CRLF is known to occur in the watersheds of Helen Putnam Regional Park. Cattail Pond and the lower reach of Upper Pond Drainage are included in critical habitat designated by U.S. Fish and



Wildlife Service for CRLF. Thus, this RMMP includes the following measures to protect this special-status species during implementation of restoration and maintenance activities at both the Upper Pond Drainage and Windsor Drive Drainage. SMART and Regional Parks will ensure that contractors or staff involved in the implementation of the mitigation activities comply with these measures.

5.1.1 Biologist Qualifications

No later than 14 days prior to the start of mitigation implementation, SMART shall submit to CDFW, for review and approval, the qualifications of the biologist(s) who shall oversee the implementation of the CRLF protection measures described herein. Biologist qualifications may be submitted using CDFW's Biologist Resume Form (available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=202869>) or another format containing the same information.

- A Qualified Biologist is an individual who holds a bachelor's degree from an accredited university and: 1) is knowledgeable in relevant species' life histories and ecology, 2) can correctly identify relevant species, 3) has conducted field surveys for relevant species, 4) is familiar with relevant survey protocols, and 5) is knowledgeable of state and federal laws regarding the protection of sensitive species.
- A Biological Monitor is an individual who shall have academic and professional experience in biological sciences and related resource management activities as it pertains to this riparian mitigation project, has experience with construction-level biological monitoring, is able to recognize species that may be present within the project area, and is familiar with the habitats and behavior of those species.

5.1.2 Pre-construction Surveys

No more than two days prior to the commencement of ground-disturbing activities, the mitigation project area and nearby vicinity shall be surveyed for the presence of CRLF by a Qualified Biologist. The biologist will search cavities under rocks, shallow pools that might be present (the channels are expected to be dry at the time of implementation), within and underneath clumped vegetation such as sedges, rushes, or bunch grasses, and beneath undercut banks. If CRLF is/are encountered, CDFW must be notified immediately, and work may not commence within that area until the frog leaves the area of its own volition. Pre-construction surveys must be repeated until no CRLF are present in the work areas. Results of the survey(s) will be summarized in a brief memorandum or letter report and provided to CDFW as soon as possible.

5.1.3 Training Session for Personnel

SMART shall ensure that all persons employed on the project receive an education program prior to performing riparian mitigation project activities. Instruction shall consist of a presentation that includes a discussion of the biology and general behavior of CRLF, how they may be encountered within the work area, and procedures to follow when they are encountered. The federal and state protection status of CRLF, including legal protection, penalties for violations, and project-specific protective measures provided in this RMMP shall be discussed. The same instruction shall be provided for any new workers prior to their on-site work related to the riparian mitigation project implementation or maintenance. A wallet-sized card or a factsheet handout containing this information for workers to carry on-site, in both English and Spanish will be distributed. Upon



completion of the program, all personnel shall sign an affidavit stating they attended the program and understand all protection measures. These forms shall be filed at SMART and Regional Parks offices and shall be available to CDFW upon request.

5.1.4 On-site Biological Monitoring

In areas within approximately 300 feet of inundated aquatic habitat, a Qualified Biologist or Biological Monitor will be on site to monitor/observe initial ground disturbance and/or vegetation removal. Work areas shall be inspected for the presence of CRLF during these activities and for their duration. If CRLF is/are encountered during any activities, all work shall cease and CDFW shall immediately be notified. Work shall not proceed until the frog is out of harm's way and CDFW has provided permission to proceed with riparian mitigation project activities.

5.2 Site Preparation, Access, and Staging

Site preparation, access and staging are addressed on sheets C-1.1 and C-1.2 (Appendix C).

5.2.1 Site Preparation

Site preparation will include installation of fencing or flagging to demarcate all work areas and access routes, clearing, and grubbing of work areas as needed, and installing preliminary erosion and sediment control measures where ground disturbance work will occur. Staging and stockpile areas will be located outside of sensitive habitat and jurisdictional waters, and appropriate perimeter controls will be installed.

5.2.2 Upper Pond Drainage Access and Staging

Access to the Upper Pond Drainage site will occur via the Chileno Valley Road parking lot. From the parking lot, the project site can be accessed by an existing paved road often used by Park maintenance staff. Only light duty trucks and hand powered tools are necessary for the treatments so access and staging logistics would likely not substantially impact daily operations of the Park. Hand-operated pneumatic tools utilizing compressed air may be used and may increase background noise in the area. This proposed access scenario will be confirmed and may be adjusted once Regional Parks meets with the future contractor.

5.2.3 Windsor Drive Drainage Access and Staging

Access to the Windsor Drive Drainage project site will primarily be from where the drainage meets Windsor Drive. Construction vehicles can stage alongside the existing rock apron and access the site by driving up the drainage swale and avoid impacting the trails. This proposed access scenario will be confirmed and may be adjusted once Regional Parks meets with the future contractor.

5.3 Weed Management

Approximately 0.04-acre and 0.07-acre of Himalayan blackberry infestations occur along the Upper Pond Drainage and Windsor Drive Drainage, respectively. These infestations are located within areas mapped as potential riparian planting zones in Figures 3 and 4. Himalayan blackberry is included in the California Invasive Plant Council's (Cal-IPC) invasive plant inventory with a rating of "High;" a species with the potential to spread rapidly and displace native plants (Cal-IPC 2006). Invasive plant treatment is also depicted on sheets C-1.1 and C-1.2 (Appendix C).



To prepare planting zones for new native plantings, the Himalayan blackberry infestations will be cleared by mechanical removal. Additionally, Fuller's teasel (Cal-IPC rated Moderate) occurring within the blackberry infestation within the Upper Pond Drainage will be managed by mechanical removal to the extent feasible. All non-native vegetation that is cut will either be masticated on site or legally disposed at a green waste facility.

Because the Upper Pond Drainage overlaps with CRLF critical habitat, herbicides will not be utilized anywhere in the Upper Pond Drainage mitigation site and all weed management will be performed mechanically or by hand. In Upper Pond Drainage, mechanical removal of weeds would likely consist of using hand tools, such as pick axes, loppers, and chainsaws.

In Windsor Drive Drainage, mechanical removal could be accomplished by any grading equipment already in use for erosion repair, or with hand tools such as those described above. In Windsor Drive Drainage, limited spot application of herbicide may be applied to cut stems of Himalayan blackberry. Several small non-native *Prunus* sp. trees that occur at Windsor Drainage will be removed. These trees will be removed using chainsaws and other tools as needed. Removed material will be transported to disposal areas using backhoes or dump trucks or may be chipped and scattered on site. If cut stumps remain following removal, they may be spot-treated with herbicide to inhibit regrowth.

Any contractor or Regional Parks staff involved in herbicide application in Windsor Drive Drainage will adhere to guidance in the Sonoma County Regional Parks Integrated Pest Management (IPM) Plan and applicable direction from the County Board of Supervisors, which require (i) using the least toxic option that will be effective for the target weed species, (ii) monthly reporting to the Sonoma County Agricultural Commissioner, and (iii) annual reporting to the Board of Supervisors. A copy of the County's 2019 IPM Plan is provided as Appendix E.

Any contractor or Regional Parks staff involved in herbicide application will be licensed in the state of California and will select appropriate chemicals that are effective on the target plant species and approved for application in aquatic settings. Because of the potential for amphibians to be present in the Park, precautions must be taken to limit the use of herbicides in these riparian settings and to utilize herbicides that are least impactful to amphibians and other aquatic wildlife. Examples of such commercially available products for the treatment of Himalayan blackberry include Rodeo or Aquamaster (The Nature Conservancy 2004).

In addition to the directives above, any contractor or Regional Parks staff involved in herbicide application in the Windsor Drive Drainage mitigation area will observe the following best management practices (BMPs), as requested by CDFW and the Water Board.

- Broadcast application will not be used. Spot-treatment of cut stems and trunks would be "painted" on with a wick-applicator.
- The most effective/least toxic herbicide would be used.
- Herbicide will be applied only when no rain is forecast for 48 consecutive hours.
- A spill prevention and containment plan will be prepared and employed, to prevent aquatic herbicide spills and for spill containment in the event of a spill.



- Only the appropriate rate of application consistent with product label requirements will be applied for the targeted weeds.
- Within 25 feet of any water of the State (i.e., ephemeral stream channel within the mitigation area), only formulations approved by EPA and the California Department of Pesticide Regulation for aquatic use will be applied by a licensed applicator.
- Treat only the minimum area necessary for effective control.
- The licensed applicator must ensure that legal, appropriate, and effective chemicals are used with appropriate methodologies and adhere to standard protection measures for application.
- The licensed applicator will receive Environmental Awareness Training for the project so that they are aware of special-status species and habitats present at the project site.
- The licensed applicator should keep a record of all plants/areas treated, amounts and types of herbicides used, and dates of application.

5.4 Earthwork and Biostabilization

5.4.1 Upper Pond Drainage

An approximately five-foot tall head cut within the Upper Pond Drainage will be stabilized using a willow wall, willow trenches, and willow stakes to reduce erosive forces and allow for sediment to accumulate in the Upper Pond Drainage. No earthwork will occur in this drainage to minimize damage to the existing riparian vegetation. Headcut repair plans and details are depicted on sheets C-4.0 and L-1.1 (Appendix C). The application of live willow structures in this case is intended to emphasize channel stability by adding biomass belowground, rather than augmentation of riparian canopy aboveground. However, to encourage belowground and aboveground growth of the installed willow structures, some limbs of the existing overhanging oaks will be trimmed at the time of implementation to ensure that sunlight reaches the living structures to be installed in the channel. Results of the hydraulic assessment indicate that large storms occurring prior to the establishment of mature willows at the willow wall headcut stabilization structures may cause damage, given the size of the watershed (Marin Resource Conservation District 1987). Reinstallation and replanting of these structures may be necessary during the establishment and monitoring period (see Section 6.3.3 Channel Stability and Section 8.0 Adaptive Management).

5.4.2 Windsor Drive Drainage

Earthwork in the Windsor Drive Drainage will focus on removing erosional features that have caused a series of headcuts and slumping banks that appear to have lowered the water table, resulting in degradation of habitat. The area will be graded to create a naturalistic swale that will allow overland and shallow subsurface flow to slowly move through the area, intercepting groundwater for an improved hydrograph. The slope of the restored swale feature will vary. Topsoil will be harvested and stockpiled for later re-use within this restored area. Erosion repair and grading plans are provided on sheets C-2.0, C-3.1, C-3.2, and C-4.0 (Appendix C).



5.5 Erosion Control and Seeding

5.5.1 Windsor Drive Drainage

After earthwork activities in the Windsor Drive Drainage, the seed mixes presented in Tables 4 and 5 will be applied to disturbed ground, and permanent erosion control treatments such as erosion control blankets and/or fiber rolls made of biodegradable materials will be installed to help stabilize and revegetate the disturbed streambanks and channel bottom.

The species and seeding rates of native herbaceous plants to be installed within the disturbed areas of the streambanks and channel bottom are listed in Tables 4 and 5 respectively, and the seeding areas are identified on sheets L-1.0 and L-1.1 (Appendix C). Seeds will be sourced from a Northern California seed supplier. Seeding will occur between September 15 and October 15 as feasible, prior to installing the erosion control treatments.

Table 4. Riparian Seed Mix

SCIENTIFIC NAME	COMMON NAME	PURE LIVE SEED (LBS/ACRE)
<i>Achillea millefolium</i>	yarrow	0.5
<i>Bromus carinatus</i>	California brome	8
<i>Elymus glaucus</i>	blue wildrye	8
<i>Eschscholzia californica</i>	California poppy	2
<i>Festuca microstachys</i>	small fescue	8
<i>Hordeum brachyantherum</i>	meadow barley	8
<i>Lupinus bicolor</i>	bicolored lupine	4
<i>Scrophularia californica</i>	bee plant	2
<i>Stipa pulchra</i>	purple needlegrass	5
TOTAL:		45.5

Table 5. Channel Bottom Seed Mix (Windsor Drive Drainage)

SCIENTIFIC NAME	COMMON NAME	PURE LIVE SEED (LBS/ACRE)
<i>Artemisia douglasiana</i>	mugwort	0.5
<i>Carex praegracilis</i>	clustered field sedge	1
<i>Cyperus eragrostis</i>	tall flatsedge	2
<i>Deschampsia cespitosa</i>	tufted hairgrass	8
<i>Elymus triticoides</i>	creeping wildrye	8
<i>Hordeum brachyantherum</i>	meadow barley	10
<i>Juncus patens</i>	common rush	1
TOTAL:		30.5



5.6 Irrigation

A temporary drip irrigation system will be installed at both the Upper Pond and Windsor Drive Drainage sites to provide supplemental water to the tree and shrub plantings in the dry summer months and as required during the winter months until the plants are established, approximately two to five years after installation. Excessive watering of these drought-resistant species will be avoided because it may encourage root rot or excessive aboveground growth without deep roots.

A water tank will be installed at the top of the Upper Pond Drainage to hold water for the irrigation systems (see sheet L-2.2 in Appendix C). Water will be delivered via water truck to the tank. At the Windsor Drive Drainage site, water from a City-owned water main at the Windsor Drive parking lot (see sheet L2.1) will be piped to the irrigation system. Supplemental irrigation water may be provided manually by a hose to the herbaceous plantings within the vegetated channel bottom at the Windsor Drive Drainage if needed.

5.7 Planting

Table 6 identifies the proposed species and quantities of native riparian trees and shrubs to be grown in containers and installed within the planting areas at both the Upper Pond Drainage and Windsor Drive Drainage, as shown on the Planting Plans (Appendix C). Table 7 identifies the proposed species and quantities of herbaceous plants that will be planted in the newly graded channel bottom at Windsor Drive Drainage. If these exact quantities or sizes by species are not available at the time of project implementation, the contractor responsible for implementing the planting will coordinate with Regional Parks to select suitable substitutions, and such deviations from the plans would be noted in the as-built documentation (see Section 5.8).

To the greatest extent feasible, plants will be propagated using materials collected at Helen Putnam Regional Park. Using local propagules, the plantings will be grown at nurseries that can demonstrate they are implementing best management practices to avoid and minimize the spread of *Phytophthora* and/or other plant pathogens. Regional Parks is already working with the Laguna de Santa Rosa Foundation to propagate plants that can be used in this riparian enhancement effort. This Foundation is certified by the Accreditation to Improve Restoration and Native Plant Nursery Stock Cleanliness (AIR); AIR requirements and the Foundation's best management practices (BMPs) for preventing the spread of plant pathogens are available upon request. If Regional Parks or a restoration contractor involved in implementation of this project need to procure additional plant material, SMART will ensure that their contract obligates them to procure the plant materials from a facility that meets the California Native Nursery Network's current Phytosanitary BMPs and Guidelines to minimize *Phytophthora* pathogens in restoration and fieldwork (<https://www.suddenoakdeath.org/welcome-to-calphytos-org-phytophthoras-in-native-habitats/resources/>),

All plants will be installed between October 15 and December 31, after irrigation installation has occurred (see Section 10 Anticipated Schedule). Planting holes for the trees and shrubs will be dug to a width of twice the diameter of the planting container. Plantings will be placed within holes such that the root ball extends one inch above the finished grade. Three inches of wood bark mulch shall be placed within the tree and shrub planting basins. The tree plantings and some shrub species as required will be protected from wildlife browsing by installing foliage protection cages around them. The protective cages will be made from welded wire or chicken wire and secured with T-posts or other materials as approved by Regional Parks.



Table 6. Riparian Planting Palette

SCIENTIFIC NAME	COMMON NAME	CONTAINER SIZE	SPACING (FEET)	QUANTITY
UPPER POND DRAINAGE				
TREES				
<i>Aesculus californica</i>	California buckeye	Deepot 40	20	10
<i>Quercus agrifolia</i>	coast live oak	Deepot 40	20	12
<i>Quercus kelloggii</i>	black oak	Deepot 40	20	9
<i>Quercus lobata</i>	valley oak	Deepot 40	20	8
TOTAL:				39
SHRUBS				
<i>Baccharis pilularis</i>	coyote brush	Deepot 40	8	14
<i>Frangula californica</i>	coffeeberry	Deepot 40	8	19
<i>Heteromeles arbutifolia</i>	toyon	Deepot 40	8	19
<i>Rosa californica</i>	California rose	Deepot 40	8	19
<i>Rubus ursinus</i>	California blackberry	Deepot 40	6	17
TOTAL:				88
HERBACEOUS PLANTS				
<i>Achellia millefolium</i>	yarrow	Deepot 16	3	17
<i>Symphyotrichum chilense</i>	Pacific aster	Deepot 16	4	10
<i>Artemisia douglasiana</i>	mugwort	Deepot 16	4	19
<i>Carex barbarae</i>	valley sedge	Deepot 16	2	38
<i>Elymus triticoides</i>	creeping wild rye	Deepot 16	2	38
<i>Juncus patens</i>	common rush	Deepot 16	2	38
<i>Scrophularia californica</i>	bee plant	Deepot 16	2	38
TOTAL:				198
WINDSOR DRIVE DRAINAGE				
TREES				
<i>Aesculus californica</i>	California buckeye	Deepot 40	20	21
<i>Quercus agrifolia</i>	coast live oak	Deepot 40	20	23
<i>Quercus kelloggii</i>	black oak	Deepot 40	20	15
<i>Quercus lobata</i>	valley oak	Deepot 40	20	18
TOTAL:				77
SHRUBS				
<i>Baccharis pilularis</i>	coyote brush	Deepot 40	8	70
<i>Frangula californica</i>	coffeeberry	Deepot 40	8	77
<i>Heteromeles arbutifolia</i>	toyon	Deepot 40	8	84
<i>Rosa californica</i>	California rose	Deepot 40	8	119
<i>Rubus ursinus</i>	California blackberry	Deepot 40	6	124
TOTAL:				474



Table 7. Channel Bottom Planting Palette for Windsor Drive Drainage

SCIENTIFIC NAME	COMMON NAME	CONTAINER SIZE	SPACING (FEET)	QUANTITY
HERBACEOUS PLANTS				
<i>Artemisia douglasiana</i>	Mugwort	Deepot 16	4	338
<i>Carex barbarae</i>	Valley sedge	Deepot 16	3	457
<i>Elymus triticoides</i>	creeping wild rye	Deepot 16	3	457
<i>Juncus patens</i>	common rush	Deepot 16	3	772
TOTAL:				2,024

5.8 As-built Documentation

After completion of the implementation activities described above, and no later than December 31 of Year 0 (see Section 10 Anticipated Schedule) the restoration contractor will prepare as-built documentation of invasive plant treatment, erosion repair, and plant, live pole, or acorn installation in a format that facilitates annual monitoring and reporting (e.g., CAD or GIS-based drawings depicting erosion repair locations/dimensions, planted species, container sizes, locations, etc.). During this same period, Regional Parks staff will establish permanent photo point locations (at least five per drainage) from which as-built photographs will be taken of representative views of the mitigation areas. The photo point locations will be mapped using GPS technology so that they can be revisited each year of performance monitoring. The as-built documentation and photos will be included in the as-built report discussed in Section 9.1, below.

6.0 PERFORMANCE MONITORING

6.1 Monitoring Period

Monitoring of the riparian mitigation areas will be conducted for a minimum 10-year period by biologists or restoration specialists experienced in the identification and ecology of locally native riparian plants as well as invasive plants common to Northern California. Year 0 is when plant propagation, weed management, erosion repair, and acorn or other seed application is prescribed. See Section 10 for the anticipated overall schedule and monitoring frequency.

6.2 Performance Standards

Performance standards over the 10-year monitoring period have been developed to satisfy certain permit measures and to reflect expected conditions that would be suitable to the individual drainages at Helen Putnam Regional Park. These performance standards are intended to document an increasing extent of healthy native riparian vegetation cover, sustained suppression of re-infestation by highly invasive plant species, and relatively stable drainage configurations over the 10-year period. Complete eradication of invasive plant species is not expected or proposed. A comparison to reference sites is not necessary or proposed.



Table 8. Vegetation Performance Standards for Upper Pond Drainage

PARAMETER	Vegetation		
RELEVANT AREA	Riparian Planting Areas [see Sheet L-1.1 in Appendix C]		
SUCCESS CRITERIA	Native riparian vegetation is well-established and reproducing naturally, and active infestations by target invasive plant species are minimal.		
PERFORMANCE STANDARDS	BY YEAR 3³	YEARS 4-6 AND 8	YEAR 10
Native Tree and Shrub Planting Survival	90%	85%	80%
Native Tree and Shrub Cover ¹	70% relative cover	73% relative cover	75% relative cover
Invasive Plant Cover ²	≤10% relative cover	≤10% relative cover	≤10% relative cover
¹ Including any natural recruits. ² Species rated by Cal-IPC as High or Moderate, excluding grasses. ³ Monitoring will also occur in Years 1 and 2 and progress toward meeting the Year 3 standards by Year 3 will be assessed and reported.			

Table 9. Channel Stability Performance Standards for Upper Pond Drainage

PARAMETER	Channel Stability
RELEVANT AREA	Single headcut repaired with biotechnical treatments (willow wall, willow pole clusters, and willow trenches) [see Sheet C-4.0 in Appendix C]
SUCCESS CRITERIA	Biotechnical treatments are present and stable, and the channel and banks immediately upstream and downstream of the repair are not eroding around these structures to a degree that is visibly threatening the stability of the repair or surrounding vegetation.
PERFORMANCE STANDARDS¹	<p>Years 1-3:</p> <ul style="list-style-type: none"> i. Willow wall is present and stable, with 100% of structure intact compared to as-built conditions. ii. At least 90% of willow poles above and below the headcut are alive and developing leaves. iii. Within 50 feet upstream and downstream of the repaired headcut, new erosion is absent or minimal and is not threatening stability of installed willows or other native vegetation. <p>Years 4-6, 8 and 10:</p> <ul style="list-style-type: none"> i. Willow wall is present and stable, with at least 80% of structure intact compared to as-built conditions. ii. At least 50% of willow poles above and below the headcut are alive, and expansion of foliar coverage within the channel compared to as-built conditions is visibly obvious and documented in photos. iii. Within 50 feet upstream and downstream of the repaired headcut, new erosion is absent or minimal and is not threatening stability of installed willows or other native vegetation.
¹ If standards are not met, see Section 8.0 Adaptive Management	



Table 10. Vegetation Performance Standards for Windsor Drive Drainage

PARAMETER	Vegetation		
RELEVANT AREA	Riparian Planting Areas [see Sheet L-1.0 in Appendix C]		
SUCCESS CRITERIA	Native riparian vegetation is well-established and reproducing naturally, and active infestations by target invasive plant species are minimal.		
PERFORMANCE STANDARDS	BY YEAR 3³	YEARS 4-6 AND 8	YEAR 10
Native Tree and Shrub Planting Survival	90%	85%	80%
Native Tree and Shrub Cover ¹	70% relative cover	73% relative cover	75% relative cover
Invasive Plant Cover ²	≤10% relative cover	≤10% relative cover	≤10% relative cover
¹ Including any natural recruits. ² Species rated by Cal-IPC as High or Moderate, excluding grasses. ³ Monitoring will also occur in Years 1 and 2 and progress toward meeting the Year 3 standards by Year 3 will be assessed and reported.			

Table 11. Channel Stability Performance Standards for Windsor Drive Drainage

PARAMETER	Channel Stability		
RELEVANT AREA	Channel Bottom Planting Area [see Sheet L-1.0 in Appendix C]		
SUCCESS CRITERIA	The constructed swale is stable and extensively vegetated. Bed erosion is minimal with no secondary single-thread flow channel establishing along the swale bottom. Minor erosion may occur but not in a manner that destabilizes riparian canopy establishment adjacent to the swale.		
PERFORMANCE STANDARDS¹	BY YEAR 3³	YEARS 4-6 AND 8	YEAR 10
Absolute vegetation cover	50%	75%	85%
Bare ground resulting from erosion ²	No more than 2,200 SF (0.05 acre)	No more than 2,200 SF (0.05 acre)	No more than 2,200 SF (0.05 acre)
Headcuts (or other signs of incision forming)	None exceeding a height or depth of 6 inches	None exceeding a height or depth of 6 inches	None exceeding a height or depth of 6 inches
¹ If standards are not met, see Section 8.0 Adaptive Management. ² Not from animal or human activities. ³ Monitoring will also occur in Years 1 and 2 and progress toward meeting the Year 3 standards by Year 3 will be assessed and reported.			

6.3 Monitoring Methods

6.3.1 Seasonal Inspections

Periodic seasonal inspections of the mitigation areas will be conducted to assess and anticipate the need for and timing of upcoming monitoring, maintenance, or other corrective actions. Results of these inspections will inform maintenance actions and frequency.



6.3.2 Photo Documentation and General Site Conditions

The permanent photo points established for as-built documentation will be re-visited each summer that monitoring occurs and photographs will be collected to document the year's conditions. Notes will be collected to inform narrative summaries of the overall mitigation site performance, to be included in annual reports.

6.3.3 Channel Stability

UPPER POND DRAINAGE

Monitors will inspect the repaired headcut and will inspect the channel within 50 feet upstream and downstream of the repaired headcut to determine and document if conditions are on track to meet performance standards. As described previously, the success of this repair emphasizes channel stability over willow growth or vegetation canopy augmentation. If the permanent photo points are not able to capture occurrences of erosion worthy of assessment or repair, additional photos will be collected to document channel stability or erosion.

WINDSOR DRIVE DRAINAGE

Monitors will inspect the restored channel bottom for erosion or other failures, primarily looking for evidence of new headcuts or incision. Absolute vegetation cover (all species and strata) within the Channel Bottom (e.g., constructed swale, see sheet L-1.0) will be estimated relative to the as-built size of the Channel Bottom. The emphasis of this metric is on channel stability from vegetation establishment, rather than species composition or survival. The rock apron at the upstream end of the channel will help maintain stability by discouraging concentrated flow and reducing velocities and shear stress where the channel geometry transitions to less confined condition. The downstream rock apron will provide shear resistance as flow becomes concentrated to transition into the culvert under Windsor Drive. Patches of bare ground resulting from erosion (as opposed to animal burrowing or foot traffic) will be measured and summed across the Channel Bottom. The height or depth of any headcuts or incisions will be measured. If the permanent photo points are not able to capture occurrences of erosion worthy of assessment or repair, additional photos will be collected to document channel stability or erosion.

6.3.4 Vegetation

Vegetation monitoring will occur in the Riparian Planting Areas (see Appendix C) to document plant establishment and success in meeting performance standards. Monitoring shall occur in June, when plants have put on most of their annual growth and are most identifiable. During each monitoring event, a biologist shall document conditions in each planting area following the methods outlined below. The total size or area (in square feet and/or acres) of each planting or revegetation zone will be documented by the as-built maps, and any plant cover estimates will be quantified relative to those areas/sizes. Results will be presented separately for the two mitigation sites (Upper Pond Drainage and Windsor Drainage).

SPECIES COMPOSITION

The monitors will locate the Riparian Planting Areas using the as-built maps and will walk through and around these areas to create a list of all easily observable native tree, shrub, and herbaceous species present. Grasses may be included in this list, which will be provided in annual reports. There are no performance standards associated with species composition;



however, the data may prove useful for qualitative analysis and making recommendations regarding weed management or replacement planting.

NATIVE TREE AND SHRUB PLANTING SURVIVAL

Tree and shrub plantings will be located using as-built maps, and inspected for survival. Live and dead plantings will be tallied by species, and the precise locations of dead plantings will be documented (to facilitate replacement, if recommended or required). The tally of live plantings will be converted to percent survival by site (Upper Pond Drainage and Windsor Drive Drainage) based on all plantings originally installed at each. As the monitoring period progresses past Year 6, if it becomes infeasible to distinguish between planted and naturally recruited plants, the monitors may propose to the regulatory agencies that the survival criterion be abandoned in favor of vegetation cover measurements described below.

NATIVE TREE AND SHRUB COVER

Relative percent cover occupied by the woody parts and foliage of planted native trees and shrubs (collectively, not by individual species) throughout each revegetation area will be visually estimated by walking through or around each planting area. Additionally, relative cover occupied collectively by all native trees, shrubs, and herbaceous plants (planted and naturally recruited) will be estimated and recorded. As the monitoring period progresses, if it becomes infeasible to distinguish between the cover of planted and naturally recruited plants, monitoring and reporting will focus on all native vegetation observed.

INVASIVE PLANT SPECIES COVER

Because project implementation is designed to remove and treat existing infestations of Himalayan blackberry and Fuller's teasel, cover by invasive plants species is expected to remain low following project implementation and with three to five years of maintenance-level weed management. Monitors will inspect all mitigation areas (planting zones and erosion repair sites) for the presence of invasive plant species that are rated High or Moderate by Cal-IPC, excluding grasses. If found, the size of the infestation will be measured, and the relative cover of such target invasive species will be estimated for each site (Upper Pond Drainage and Windsor Drive Drainage).

7.0 MAINTENANCE DURING MONITORING PERIOD

Maintenance during the monitoring period will be conducted by Regional Parks staff and/or a restoration contractor with demonstrated experience in installing and maintaining California native plantings as well as in treating and managing invasive plant species common to riparian settings in Northern California. Herbicide application, if utilized, will be conducted by a professional currently licensed by the state of California. Descriptions of anticipated maintenance activities are provided below.

7.1 CRLF Protection Measures

If implementation of any of the maintenance activities described below involves ground disturbance or clearing of vegetation with mechanized equipment within approximately 300 feet of inundated aquatic habitat, the CRLF protection measures outlined in Section 5.1 above shall be implemented.



7.2 Irrigation

The goal of irrigation is to develop a robust and self-sustaining vegetation community with deep-rooted plants that are resilient enough to withstand the long, dry summers common in the region. This will be accomplished through regular, deep watering during the dry, summer season to encourage deep rooting during the first two to three years following plant installation. Irrigation will be used in the winter months if necessary to sustain the plantings during drought or lower than normal rainfall conditions. The irrigation schedule will be guided by weather conditions and if the restoration areas are meeting the performance standards. Irrigation will be operated for at least three growing seasons and discontinued as soon as possible, as determined by the restoration monitor. The restoration contractor will maintain and make repairs to the irrigation system as needed until it is discontinued.

7.3 Replacement Plantings

If annual monitoring determines that survival of the native riparian tree and shrub plantings are not meeting the performance standards identified in Tables 8 and 10, replacement plantings will be recommended. The restoration contractor and monitor will determine how many replacement plantings are needed, which species is/are most appropriate, and will assess if the replacement plantings should be installed at the same or a more suitable planting location within the riparian enhancement area.

7.4 Browse Protection

Browse protection devices installed around tree and shrub plantings will be inspected and repaired as needed. If the type of devices installed continue failing, alternative methods may be proposed. The restoration contractor and monitors will collaborate with Regional Parks to determine when removal of browse protection is recommended.

7.5 Weed Management

After the initial weed management effort described in Section 5.3, above, maintenance-level management and re-treatment of target invasive plant species will be implemented on an as-needed basis for the first three to five years of the monitoring period, up to three times per year, during the time of year most effective for managing the target species. Adjustments to the weed management approach can be made based on the professional judgement of the restoration contractor and/or monitors; however, weed management should cease for at least two consecutive years before Year 10 performance criteria can be considered achieved.

Maintenance-level weed management involving the use of herbicides in Windsor Drive Drainage will adhere to guidelines and BMPs identified in Section 5.3 and Appendix E.

7.6 Grazing Accommodations

Regional Parks collaborates with local livestock producers to implement sheep grazing as a vegetation management tool at Helen Putnam Regional Park. This RMMP does not provide a grazing plan or grazing prescriptions; however, the riparian revegetation areas should be able to accommodate limited, seasonal grazing by sheep. WRA's recommendation is to exclude grazing livestock from the revegetation areas for at least two growing seasons after planting. When Regional Parks and SMART determine that the mitigation plantings have become established



enough to tolerate and survive limited grazing, Regional Parks will be responsible for managing that process and associated activities. The riparian mitigation/restoration contractor is not responsible for managing on-site grazing.

8.0 ADAPTIVE MANAGEMENT

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 consistent with the mitigation requirements. Some potential causes or sources of underperformance include:

- Drought or excessive rain (flooding)
- High intensity rainfall immediately following installation of biostabilization elements
- Excessive erosion
- Fire
- Excessive herbivory
- Failure of irrigation system
- Competition from invasive weeds

Remedial measures will be developed and selected in cooperation between Regional Parks and SMART. 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. Examples of remedial actions that Regional Parks may implement include, but are not limited to:

- Stabilizing erosion using hand tools, seeding, planting, or placement of rock and woody debris;
- Reinstallation and replanting of the Upper Pond Drainage willow wall headcut stabilization structures including willow walls, willow trenches and willow stakes;
- Altering the irrigation methods, water source, or frequency;
- Altering the grazing regime; or
- Applying innovative weed management techniques.

In situations where the stressors are occurring regionally or globally, Regional Parks, SMART, and regulatory agencies may agree to modify performance standards to align with current regional or global conditions. Additionally, if any of the performance standards are repeatedly not being met but the mitigation is successful in terms of area, appearance, and function, Regional Parks, SMART, and regulatory agencies may agree to modify performance standards accordingly.

9.0 REPORTING

9.1 As-Built Report

By January 31 of the year following completion of the restoration work described in this RMMP, a letter report outlining the as-built conditions will be prepared and submitted to CDFW and the San Francisco Bay Regional Water Quality Control Board (see contact information provided in Section 1, above). The as-built report will include the as-built documentation (including photographs) described in Section 5.8.



9.2 Annual Reports

A monitoring report will be prepared each year that monitoring is conducted, according to the schedule outlined in Section 10. The report will be prepared by Regional Parks staff and/or a restoration contractor and/or environmental consultants who are participating in monitoring and maintenance activities. At a minimum, the reports will include the following information.

- Permit ID numbers associated with SMART's Non-motorized Pathway Segment 3 project.
- Dates of all surveys and site inspections conducted.
- Photographs of current and past years' conditions.
- Quantitative results of native tree and shrub planting survival monitoring.
- Quantitative results of native tree and shrub cover.
- Qualitative descriptions of the health, vigor, and expansion/establishment of native riparian vegetation within the mitigation revegetation areas.
- Quantitative results of target invasive plant cover.
- Qualitative descriptions of the conditions/status of target invasive plant infestations.
- Quantitative and qualitative descriptions of channel stability monitoring.
- List of report preparers.

Reports will be submitted to the following agencies:

Agency	California Department of Fish and Wildlife	San Francisco Bay Regional Water Quality Control Board
Permit ID	EPIMS-MAN-34600-R3	Place ID 883815 WDID# 2 CW449618
Email Address	R3LSA@wildlife.ca.gov	rb2-401reports@waterboards.ca.gov

Copies of the report will be provided to the following parties:

- **Sonoma County Regional Parks**
Attn: Hattie Brown, *Natural Resources Manager*
Email address: Hattie.Brown@sonoma-county.org
- **Sonoma-Marin Area Rail Transit**
Attn: Bill Gamlen, *Chief Engineer*
Email address: BGamlen@SonomaMarinTrain.org



10.0 ANTICIPATED SCHEDULE

YEAR	TIMING	ACTIVITY (RESPONSIBLE PARTY)
Year 0	September-December 2023	Collect native plant materials from within Helen Putnam Regional Park and initiate plant propagation (A)
	July-August 2024	Establish permanent photo monitoring points, document pre-enhancement conditions (A)
	August-September 2024	Implement channel grading/re-contouring (Windsor Drive Drainage Only) and treatment of weed infestations at both drainages (B)
	September-October 2024	Install erosion control and irrigation systems at Windsor Drive Drainage (B)
	November-December 2024	Harvest willow poles, repair headcut, and install irrigation systems at Upper Pond Drainage (B) At both drainages, install container plants/plugs/stakes; plant acorns; initiate irrigation depending on precipitation conditions (B)
	By December 31, 2024	Prepare as-built report (B)
	By January 31, 2025	Submit as-built report to agencies (C)
Year 1	Spring and Summer 2025	Conduct general site inspections for weed infestations, acorn germination, planting health, irrigation, and other maintenance needs (B)
	Spring/Summer and/or Fall 2025	Conduct maintenance-level weed management; provide irrigation as needed (B)
	Summer 2025	Conduct performance monitoring (plant survival and cover, channel stability, photo points) and communicate maintenance recommendations to Contractor (A)
	Summer/Fall 2025	Conduct recommended maintenance activities (replanting, browse control, erosion repair) (B)
	By December 31, 2025	Prepare Year 1 report (A)
	By January 31, 2026	Submit Year 1 report to agencies (C)
Year 2	Spring and Summer 2026	Conduct general site inspections for weed infestations, planting health, irrigation, and other maintenance needs (A)
	Spring/Summer and/or Fall 2026	Conduct maintenance-level weed management; provide irrigation as needed (A)



YEAR	TIMING	ACTIVITY (RESPONSIBLE PARTY)
	Summer 2026	Conduct performance monitoring (plant survival and cover, channel stability, photo points) and communicate maintenance recommendations to staff (A)
	Summer/Fall 2026	Conduct recommended maintenance activities (replanting, browse control, erosion repair) (A)
	By December 31, 2026	Prepare Year 2 report (A)
	By January 31, 2027	Submit Year 2 report to agencies (C)
Year 3	Spring and Summer 2027	Conduct general site inspections for weed infestations, planting health, irrigation, and other maintenance needs (A)
	Spring/Summer and/or Fall 2027	Conduct maintenance-level weed management; provide irrigation as needed (A)
	Summer 2027	Conduct performance monitoring (plant survival and cover, channel stability, photo points) and communicate maintenance recommendations to staff (A)
	Summer/Fall 2027	Conduct recommended maintenance activities (replanting, browse control, erosion repair) (A)
	By December 31, 2027	Prepare Year 3 report (A)
	By January 31, 2028	Submit Year 3 report to agencies (C)
Year 4	Spring and Summer 2028	Conduct general site inspections for weed infestations, planting health, irrigation, and other maintenance needs (A)
	Spring/Summer and/or Fall 2028	Conduct maintenance-level weed management; provide irrigation as needed (A)
	Summer 2028	Conduct performance monitoring (plant survival and cover, channel stability, photo points) and communicate maintenance recommendations to staff (A)
	Summer/Fall 2028	Conduct recommended maintenance activities (replanting, browse control, erosion repair) (A)
	By December 31, 2028	Prepare Year 4 report (A)
	By January 31, 2029	Submit Year 4 report to agencies (C)
Year 5	Spring and Summer 2029	Conduct general site inspections for weed infestations, planting health, irrigation, and other maintenance needs (A)
	Spring/Summer and/or Fall 2029	Conduct maintenance-level weed management; provide irrigation as needed (A)



YEAR	TIMING	ACTIVITY (RESPONSIBLE PARTY)
	Summer 2029	Conduct performance monitoring (plant survival and cover, channel stability, photo points) and communicate maintenance recommendations to staff (A)
	Summer/Fall 2029	Conduct recommended maintenance activities (replanting, browse control, erosion repair) (A)
	By December 31, 2029	Prepare Year 5 report (A)
	By January 31, 2030	Submit Year 5 report to agencies (C)
Year 6	Spring 2030	Conduct general site inspection for potential issues related to plant health, weed infestations, and erosion (A)
	Summer 2030	Conduct performance monitoring (plant survival and cover, channel stability, photo points) (A)
	By December 31, 2030	Prepare Year 6 report (A)
	By January 31, 2031	Submit Year 6 report to agencies (C)
Year 8	Spring 2032	Conduct general site inspection for potential issues related to plant health, weed infestations, and erosion (A)
	Summer 2032	Conduct performance monitoring (plant survival and cover, channel stability, photo points) (A)
	By December 31, 2032	Prepare Year 8 report (A)
	By January 31, 2033	Submit Year 8 report to agencies (C)
Year 10	Spring 2034	Conduct general site inspection for potential issues related to plant health, weed infestations, and erosion (A)
	Summer 2034	Conduct performance monitoring (plant survival and cover, channel stability, photo points) (A)
	By December 31, 2034	Prepare Year 10 report (A)
	By January 31, 2035	Submit Year 10 report to agencies (C)
RESPONSIBLE PARTIES: A: Sonoma County Regional Parks B: SMART's Contractor/Consultants C: SMART		

11.0 FUNDING MECHANISMS

SMART is responsible for ensuring that sufficient funds are provided to cover the costs associated with implementation, monitoring, and maintenance activities identified in this RMMP, as well as future adaptive management actions. SMART will utilize local sales tax revenue to fund these activities.



12.0 REFERENCES

- Cal-IPC 2006** California Invasive Plant Council (Cal-IPC). 2006. California Invasive Plant Inventory: Cal-IPC Publication 2006-2. California Invasive Plant Council, Berkeley, CA. Available online: <http://www.cal-ipc.org/ip/inventory/index.php>. Accessed: February 2023.
- Chow 1959** Chow. (1959). *Open Channel Hydraulics*. New York: McGraw-Hill.
- Fischenich 2001** Fischenich, C. (2001). Stability Thresholds for Stream Restoration Materials. *EMMRP Technical Notes Collection*.
- Marin Resource Conservation District 1987** Marin Resource Conservation District. (1987). *Groundwork: A Handbook for Small-Scale Erosion Control in Coastal California*. 2nd Edition. Marin County Stormwater Pollution Prevention Program.
- Sonoma County 2020** Sonoma County Water Agency. (2020). *Flood Management Design Manual*. Horizon Water and Environment, LLC
- The Nature Conservancy 2004** Controlling Himalayan Blackberry in the Pacific Northwest. March 2004. Available online: <https://www.invasive.org/gist/moredocs/rubarm01.pdf>



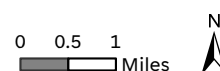
APPENDIX A. FIGURES



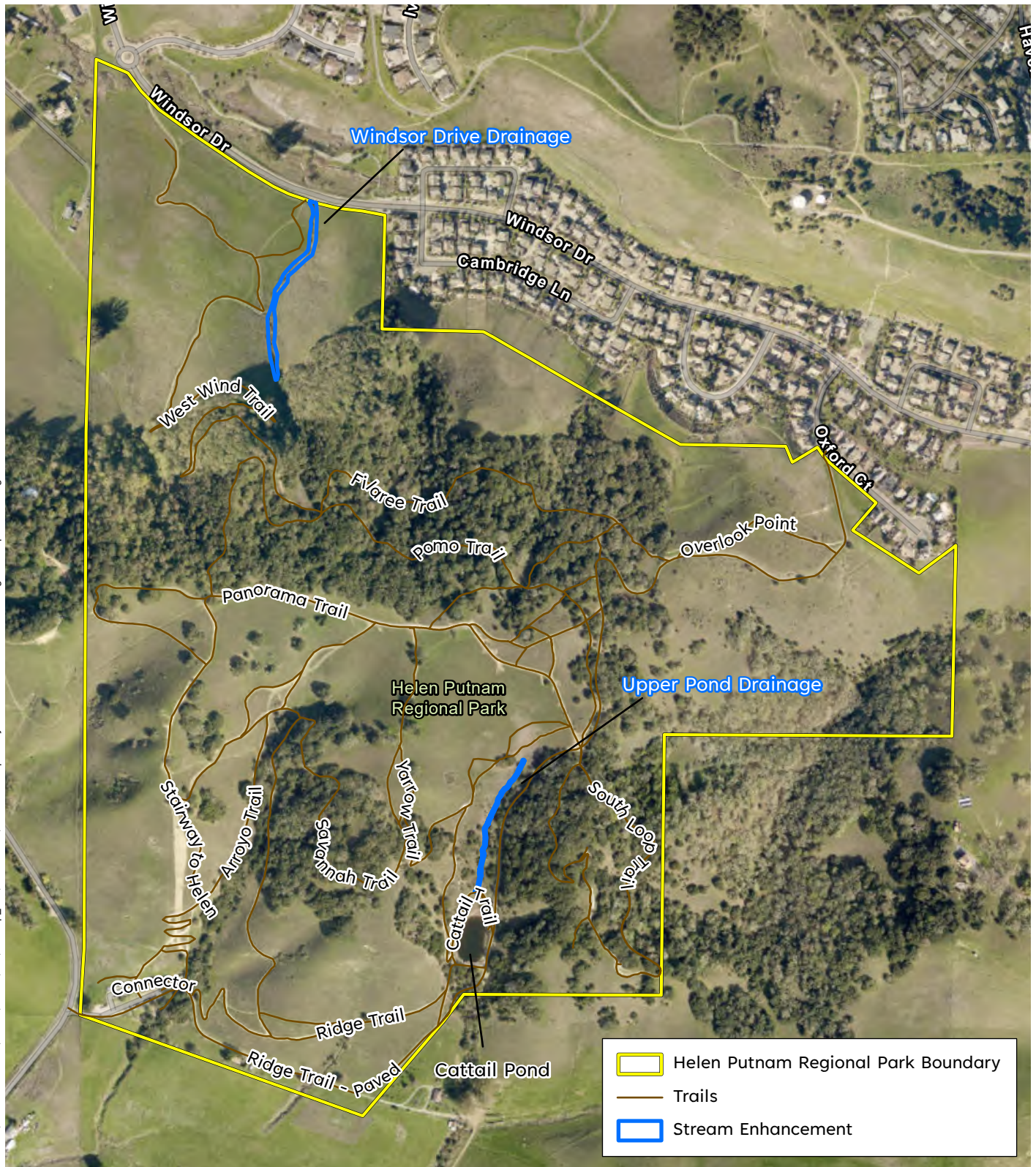


Figure 1. Off-site Riparian Mitigation Project Location

SMART Non-Motorized Pathway
 Segment 3 – McInnis Parkway (MP 20.1)
 to Smith Ranch Road (MP 21.0)
 San Rafael, Marin County, California



Path: L:\Acad 2000 Files\31000\31368\GIS\ArcMap_Pro\31368Base.aprx Layout Name: Helen Putnam Figure 2 Riparian Mitigation Sites



Sources: USDA NAIP Imagery 2020, WRA | Prepared By: kobylarz, 8/30/2023

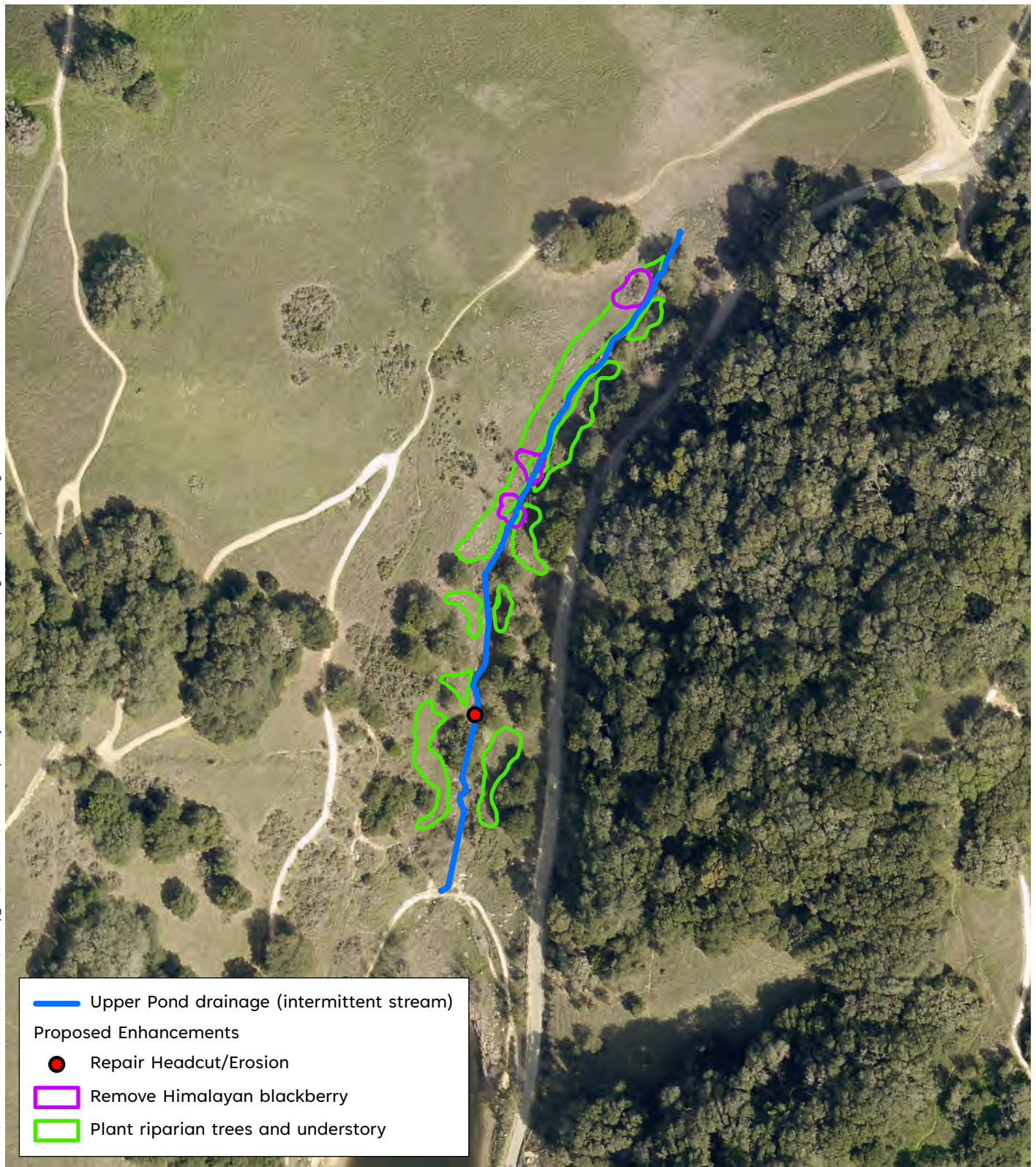
Figure 2. Riparian Mitigation Sites

SMART Non-Motorized Pathway
Segment 3 – McInnis Parkway (MP 20.1)
to Smith Ranch Road (MP 21.0)
San Rafael, Marin County, California

0 500 1,000
Feet



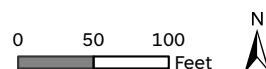
Path: L:\Acad 2000 Files\31000\31368\GIS\ArcMap_Pro\31368Base.aprx Layout Name: Helen Putnam Figure 2 Proposed Mitigation

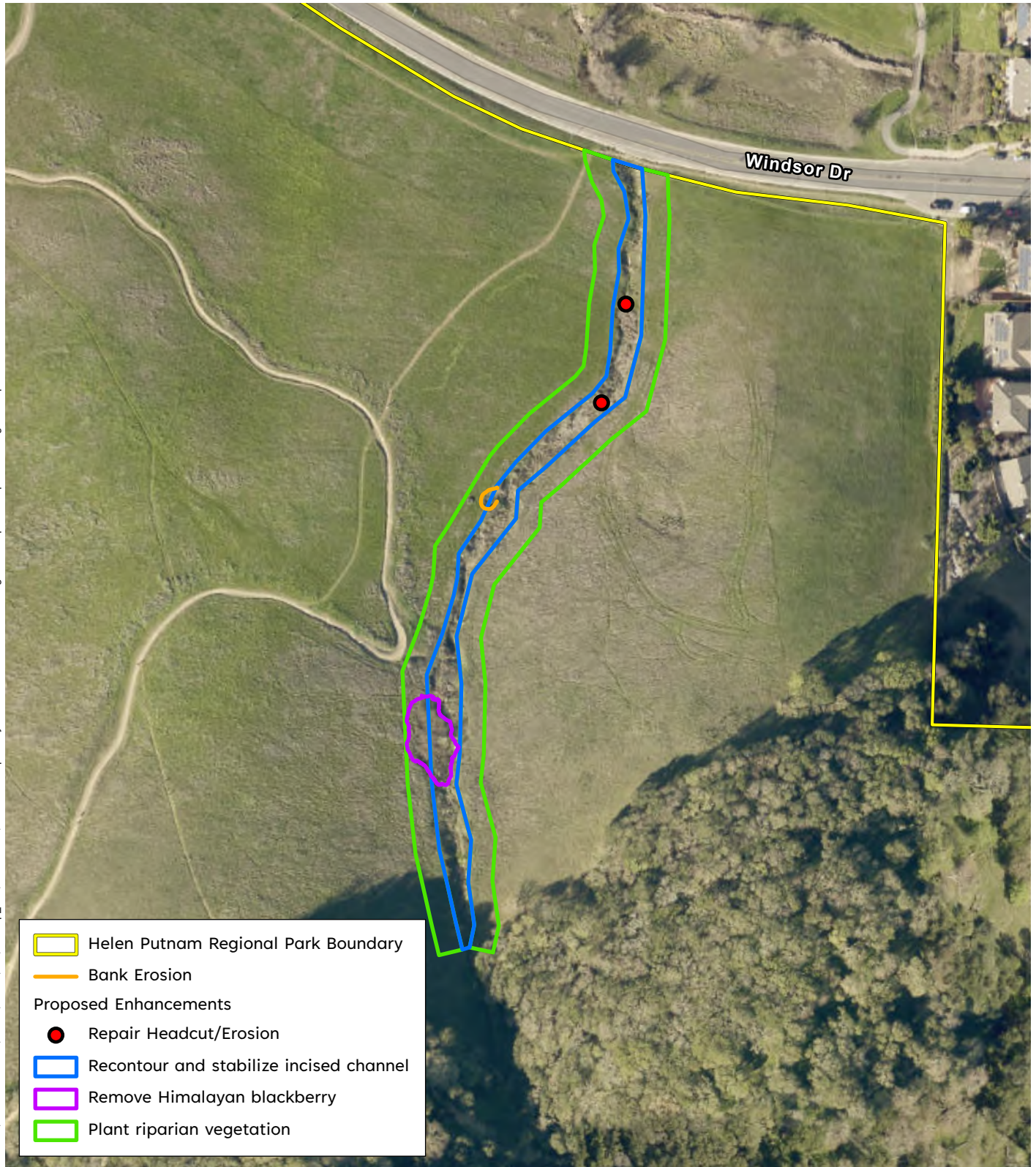


Sources: USDA NAIP Imagery 2020, WRA | Prepared By: kobylarz, 8/29/2023

Figure 3. Proposed Riparian Habitat Enhancement at Upper Pond Drainage, Helen Putnam Regional Park

SMART Non-Motorized Pathway
Segment 3 – McInnis Parkway (MP 20.1)
to Smith Ranch Road (MP 21.0)
San Rafael, Marin County, California

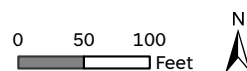




Sources: USDA NAIP Imagery 2020, WRA | Prepared By: kobylarz, 8/30/2023

Figure 4. Proposed Riparian Habitat Enhancement at Windsor Drive Drainage Helen Putnam Regional Park

SMART Non-Motorized Pathway
Segment 3 – McInnis Parkway (MP 20.1)
to Smith Ranch Road (MP 21.0)
San Rafael, Marin County, California



APPENDIX B. PRE-PROJECT PHOTOGRAPHS





Photo 1: View of Cattail Pond, looking north upslope toward Upper Pond Drainage. Photo taken on February 21, 2023.



Photo 2: View of typical vegetation cover at Upper Pond Drainage. Native coyote brush grows along the channel. Photo taken on February 21, 2023.



Photo 3: View of headcut in the Upper Pond Drainage. Photo taken on February 21, 2023.



Photo 4: View of proposed riparian planting area surrounding the upper reach of Upper Pond Drainage. In the northern reach of the drainage, canopy cover thins to a wet meadow environment. Photo taken on February 21, 2023.



Photo 5: View facing northeast of bank failure in Windsor Drive Drainage. Photo taken on February 21, 2023.



Photo 6: View facing south toward downstream reach of Windsor Drive Drainage, showing native rushes (*Juncus* sp.) established within the stream channel. Photo taken on February 21, 2023.



Photo 7: View of a headcut in the Windsor Drive Drainage. Photo taken on February 21, 2023.



Photo 8: View of Himalayan blackberry (*Rubus armeniacus*) infestation growing within Windsor Drive Drainage. Photo taken on February 21, 2023.

APPENDIX C. RIPARIAN MITIGATION DESIGN PLANS (100%)



SMART NON-MOTORIZED PATHWAY - SEGMENT 3
MCINNIS PARKWAY TO SMITH RANCH ROAD
RIPARIAN MITIGATION
HELEN PUTNAM REGIONAL PARK
PETALUMA, CALIFORNIA

SMART
NON- MOTORIZED
PATHWAY SEGMENT 3 -
MCINNIS PARKWAY TO
SMITH RANCH ROAD
RIPARIAN MITIGATION

HELEN PUTNAM
REGIONAL PARK

PETALUMA, CALIFORNIA



SHEET INDEX

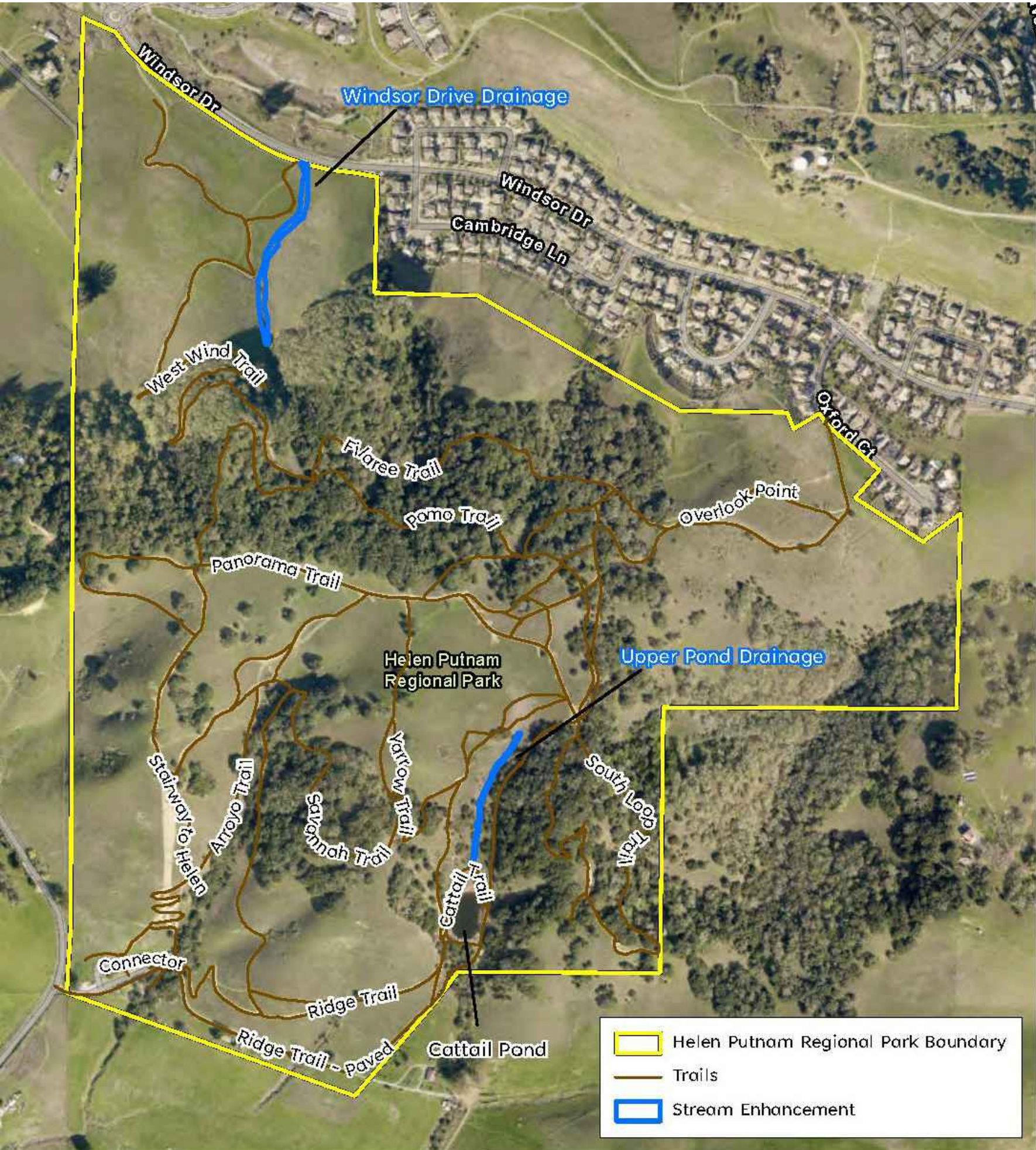
- 1. C-1.0 COVER SHEET
- 2. C-1.1 SITE PREPARATION AND ACCESS PLAN - WINDSOR DRIVE DRAINAGE
- 3. C-1.2 SITE PREPARATION AND ACCESS PLAN - UPPER POND DRAINAGE
- 4. C-2.0 GRADING PLAN AND PROFILE - WINDSOR DRIVE DRAINAGE
- 5. C-3.1 CROSS SECTIONS - WINDSOR DRIVE DRAINAGE
- 6. C-3.2 CROSS SECTIONS - WINDSOR DRIVE DRAINAGE
- 7. C-4.0 DRAINAGE STABILIZATION DETAILS
- 8. EC-1.0 EROSION CONTROL DETAILS - WINDSOR DRIVE DRAINAGE
- 9. L-1.0 PLANTING AND SEEDING PLAN - WINDSOR DRIVE DRAINAGE
- 10. L-1.1 PLANTING, SEEDING, AND BIOSTABILIZATION PLAN - UPPER POND DRAINAGE
- 11. L-1.2 TYPICAL PLANTING LAYOUTS
- 12. L-1.3 PLANTING DETAILS AND NOTES
- 13. L-2.0 IRRIGATION LEGEND AND NOTES
- 14. L-2.1 IRRIGATION PLAN -WINDSOR DRIVE DRAINAGE
- 15. L-2.2 IRRIGATION PLAN -UPPER POND DRAINAGE
- 16. L-2.3 IRRIGATION DETAILS

GENERAL NOTES

- 1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING EXISTING UTILITIES AND OTHER INFRASTRUCTURE IN THE PROJECT AREA.
- 2. EXISTING TOPOGRAPHIC DATA OF WINDSOR DRAINAGE AND UPPER POND HEADCUT AREA IS BASED UPON A FIELD SURVEY PERFORMED BY BKF ENGINEERS IN JULY, 2023.
- 3. EXISTING TOPOGRAPHIC DATA OF UPPER POND DRAINAGE FROM NOAA 2013.
- 4. THE HORIZONTAL DATUM OF EXISTING TOPOGRAPHIC DATA PREPARED BY BKF ENGINEERS IS THE CALIFORNIA STATE PLANE COORDINATE SYSTEM, NORTH AMERICAN DATUM OF 1983 (NAD83), ZONE 2, EPOCH 2023.25, PER CONNECTION TO THE LEICA SMART NET REAL-TIME GNSS NETWORK.
- 5. THE VERTICAL DATUM OF EXISTING TOPOGRAPHIC DATA PREPARED BY BKF ENGINEERS IS THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAV88) PER CONNECTION TO THE LEICA SMART NET REAL-TIME GNSS NETWORK REFERENCED TO GEOID 18.



1 VICINITY MAP
NOT TO SCALE



2 SITE MAP
NOT TO SCALE

Applicable Specifications (CALTRANS)	
72	Slope Protection

Applicable Specifications (SMART)	
31 11 00	Site Clearing (Clearing and Grubbing)
31 20 00	Earthwork
31 23 19	Dewatering
31 60 00	Soil Erosion, Sediment Control, Topsoiling and Seeding

SURVEY CONTROL POINTS				
ID	NORTHING	EASTING	ELEVATION	DESCRIPTION
CP-1000	1764780.2170'	6408612.9930'	12.26'	MAG NAIL
CP-1001	1764742.5360'	6408627.8710'	10.74'	STREET MONUMENT RCE 16429
CP-1002	1764638.1120'	6408530.1630'	10.67'	PK NAIL

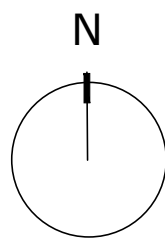
Earthwork Quantities		
Cut (Cu.Yd)	Fill (Cu. Yd)	Est. Export (Cu. Yd.)
1109	995	114

NOTE: NEAT LINE QUANTITIES - DOES NOT ACCOUNT FOR EXPANSION OR COMPACTION.

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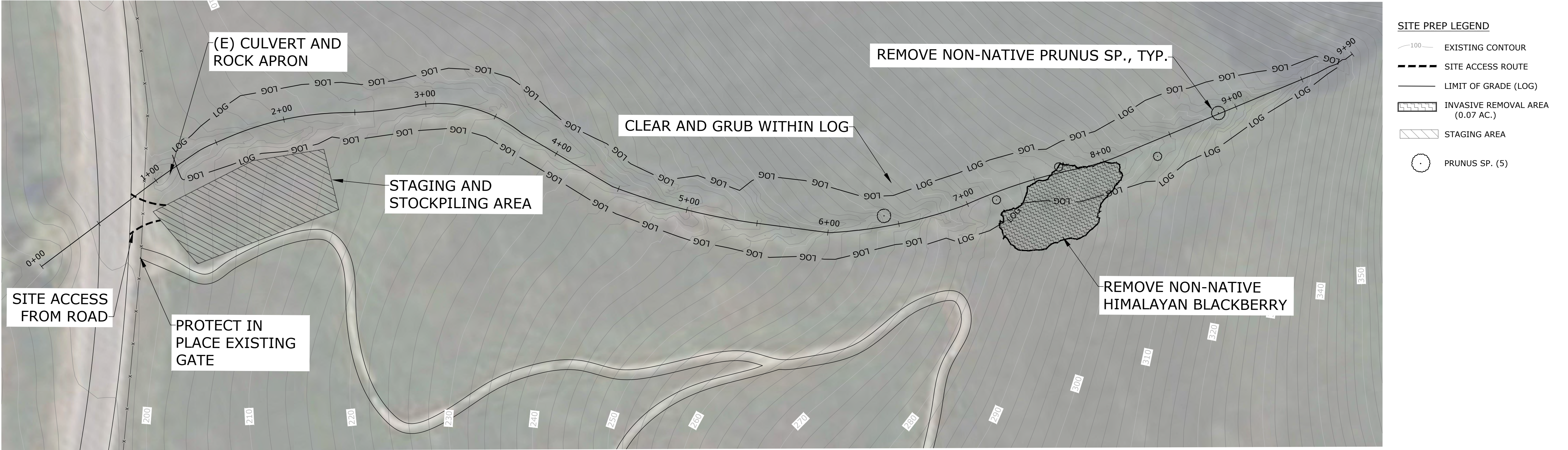
PROJECT #31368
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CHECKED BY: ACS, ICM
ORIGINAL DRAWING SIZE: 22 X 34

SCALE: AS INDICATED

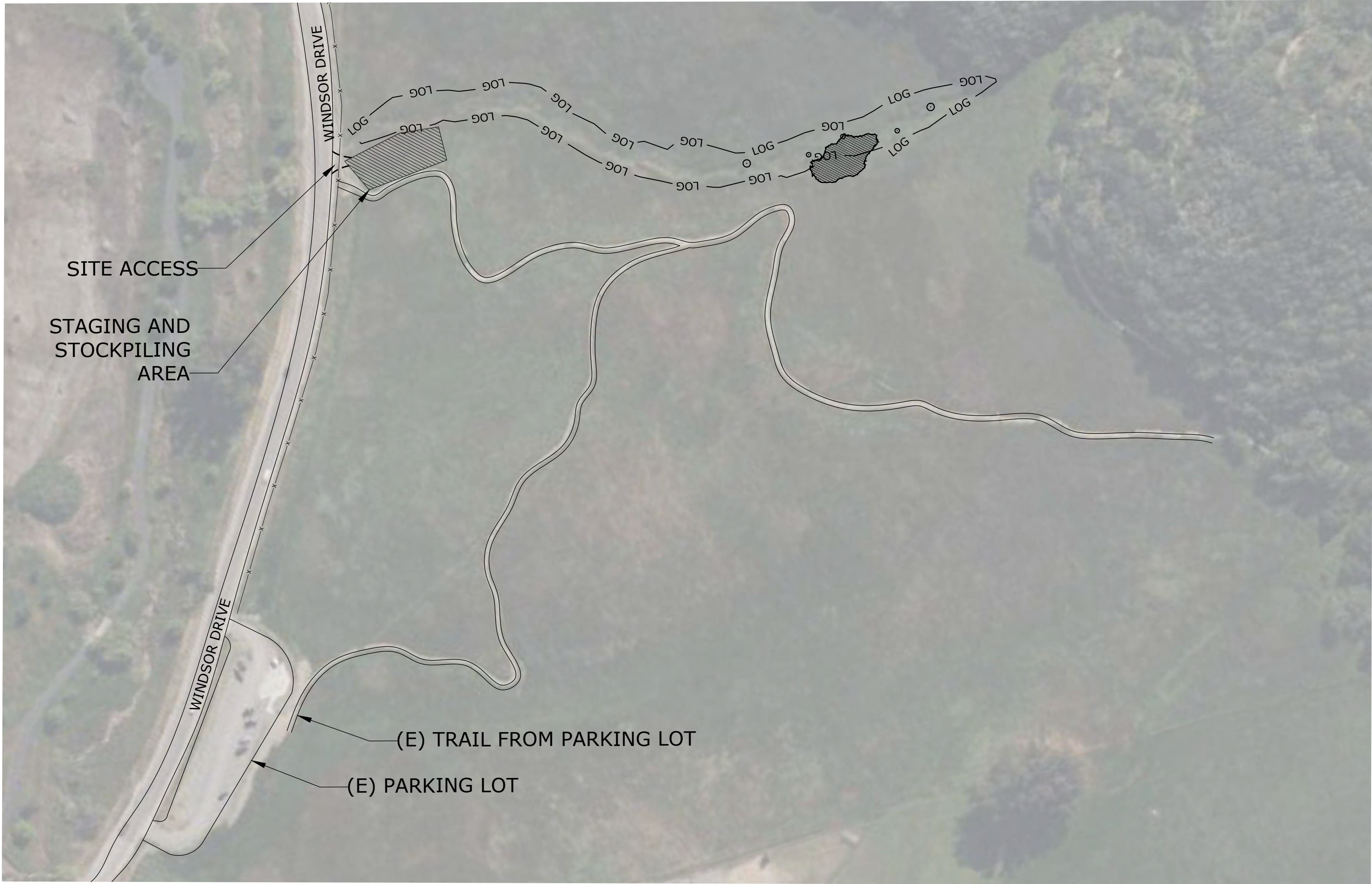


COVER SHEET
Sheet 1 of 16

C-1.0



A SITE PREPARATION PLAN - WINDSOR DRIVE DRAINAGE
PLAN VIEW



B SITE ACCESS PLAN - WINDSOR DRIVE DRAINAGE
PLAN VIEW

WINDSOR DRIVE DRAINAGE SITE PREPARATION NOTES

1. THE CONTRACTOR SHALL SUBMIT A SITE CLEARING PLAN PER THE SPECIFICATIONS FOR APPROVAL BY SMART'S PROJECT MANAGER PRIOR TO COMMENCING WORK.
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL SENSITIVE HABITATS AS REQUIRED. ORANGE CONSTRUCTION FENCING SHALL BE INSTALLED AROUND THE LIMIT OF DISTURBANCE WHERE EARTHWORK WILL OCCUR.
3. THE CONTRACTOR SHALL LAY OUT CONSTRUCTION ENTRANCES/EXITS, HAUL ROUTES, STAGING AREAS, AND CONSTRUCTION FENCE FOR APPROVAL PRIOR TO ANY EARTH DISTURBING ACTIVITIES. A TEMPORARY CHAINLINK FENCE WILL BE INSTALLED AROUND THE STAGING AREA.
4. CONTRACTOR SHALL CUT EXISTING FENCE IN COORDINATION WITH REGIONAL PARKS TO ACCESS THE SITE.
5. INVASIVE NON-NATIVE HIMALAYAN BLACKBERRY AND THE NON-NATIVE *PRUNUS* SP. TREES SHALL BE REMOVED PRIOR TO EARTHWORK ACTIVITIES. IN ADDITION, THE AREA WITHIN THE LIMIT OF GRADE SHALL BE CLEARED AND GRUBBED.
 - 5.1.1. THE CONTRACTOR SHALL SUBMIT A NON-NATIVE PLANT REMOVAL PLAN, INCLUDING METHODS FOR HIMALAYAN BLACKBERRY AND *PRUNUS* SP. REMOVAL, TO THE SMART'S PROJECT MANAGER FOR APPROVAL.
 - 5.1.2. HIMALAYAN BLACKBERRY REMOVAL SHALL BE DONE BY MECHANICAL METHODS SUCH AS CUTTING DURING INITIAL REMOVAL ACTIVITIES. FOLLOWING CUTTING, AN HERBICIDE MAY BE APPLIED TO THE CUT STEMS. THE MOST EFFECTIVE AND LEAST TOXIC HERBICIDE SHALL BE USED.
 - 5.1.3. HERBICIDE APPLICATION SHALL ADHERE TO THE SONOMA COUNTY REGIONAL PARKS INTEGRATED PEST MANAGEMENT PLAN AND APPLICABLE GUIDANCE FROM THE SONOMA COUNTY BOARD OF SUPERVISORS, CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE, AND THE REGIONAL WATER QUALITY CONTROL BOARD. THE INVASIVE PLANT REMOVAL PLAN SHALL INCLUDE THE RELEVANT GUIDELINES AND BEST MANAGEMENT PRACTICES FROM THESE ENTITIES.
 - 5.1.4. THE *PRUNUS* TREES SHALL BE REMOVED USING CHAINSAWS AND OTHER TOOLS AS REQUIRED. REMOVED MATERIAL MAY BE CHIPPED AND SCATTERED ON SITE OR TRANSPORTED TO A GREEN WASTE FACILITY.
 - 5.1.5. BIOMASS DEBRIS FROM THE INVASIVE NON-NATIVE PLANT REMOVAL ACTIVITIES SHALL BE REMOVED AND PROPERLY DISPOSED OF AT A GREEN WASTE FACILITY.
6. CONTRACTOR SHALL MOW AND/OR TRIM EXISTING GRASSES AND VEGETATION IN PLANTING AREAS OUTSIDE OF THE LIMIT OF GRADE PRIOR TO IRRIGATION AND PLANT INSTALLATION.

**SMART
NON- MOTORIZED
PATHWAY SEGMENT 3 -
MCINNIS PARKWAY TO
SMITH RANCH ROAD
RIPARIAN MITIGATION**

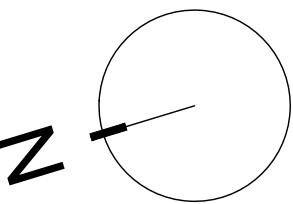
**HELEN PUTNAM
REGIONAL PARK**

PETALUMA, CALIFORNIA



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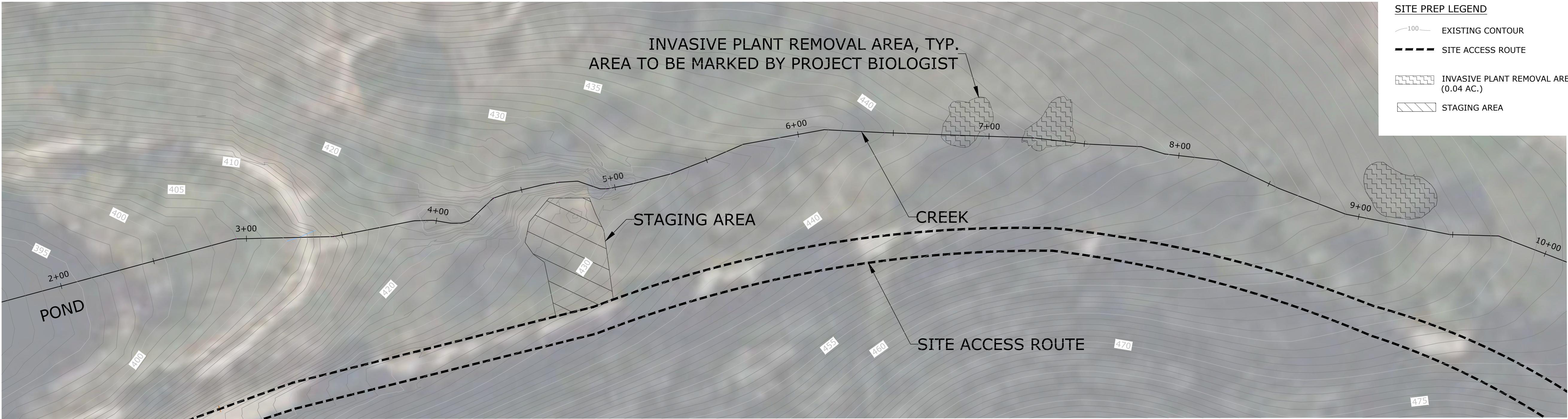
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**SITE PREPARATION AND
ACCESS PLAN - WINDSOR
DRIVE DRAINAGE**

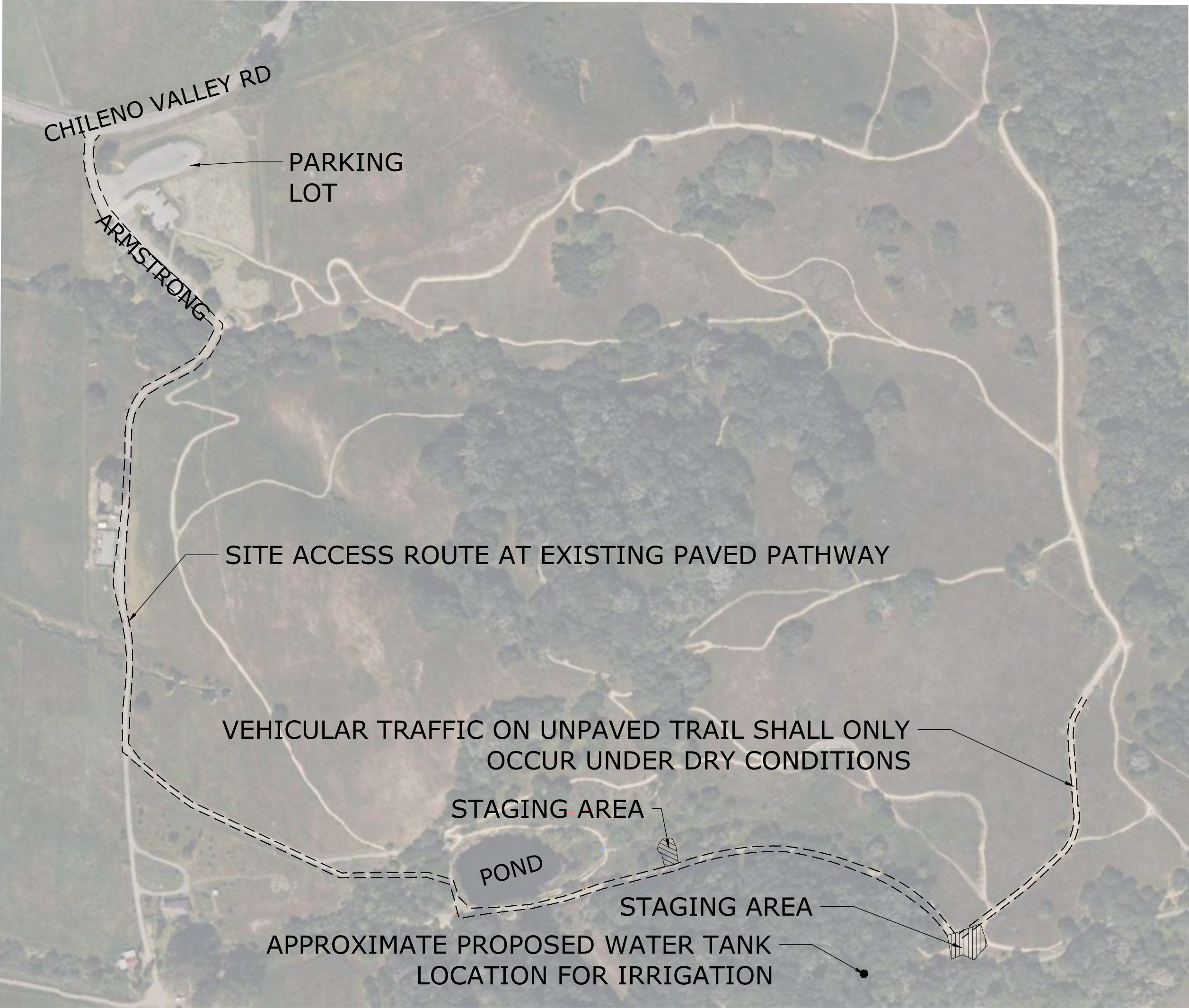
Sheet 2 of 16

C-1.1



1 SITE PREPARATION PLAN - UPPER POND DRAINAGE
PLAN VIEW

0 30
SCALE: 1" = 30'



2 UPPER POND DRAINAGE - SITE ACCESS PLAN
PLAN VIEW

0 200
SCALE: 1" = 200'

UPPER POND DRAINAGE SITE PREPARATION NOTES

1. THE CONTRACTOR SHALL SUBMIT A SITE CLEARING PLAN PER THE SPECIFICATIONS FOR APPROVAL BY THE SMART'S PROJECT MANAGER PRIOR TO COMMENCING WORK.
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL SENSITIVE HABITATS AS REQUIRED. ORANGE CONSTRUCTION FENCING SHALL BE INSTALLED AROUND WORK AREAS AS NEEDED.
3. THE CONTRACTOR SHALL LAY OUT CONSTRUCTION ENTRANCES/EXITS, HAUL ROUTES, STAGING AREAS, AND CONSTRUCTION FENCE FOR APPROVAL PRIOR TO ANY EARTH DISTURBING ACTIVITIES. A TEMPORARY CHAINLINK FENCE SHALL BE INSTALLED AROUND THE STAGING AREA IF REQUIRED BY SMART'S PROJECT MANAGER.
4. INVASIVE NON-NATIVE HIMALAYAN BLACKBERRY AND FULLER'S TEASEL SHALL BE REMOVED PRIOR TO IRRIGATION AND PLANT INSTALLATION.
 - 4.1.1 THE CONTRACTOR SHALL SUBMIT A NON-NATIVE PLANT REMOVAL PLAN, INCLUDING METHODS FOR HIMALAYAN BLACKBERRY AND FULLER'S TEASEL REMOVAL, TO SMART'S PROJECT MANAGER FOR APPROVAL.
 - 4.1.2 HIMALAYAN BLACKBERRY AND FULLER'S TEASEL REMOVAL SHALL BE DONE BY MECHANICAL METHODS SUCH AS CUTTING.
 - 4.1.3 HERBICIDES SHALL NOT BE USED AT THE UPPER POND DRAINAGE SITE BECAUSE CALIFORNIA RED-LEGGED FROG CRITICAL HABITAT OCCURS HERE.
 - 4.1.4 BIOMASS DEBRIS FROM THE INVASIVE NON-NATIVE PLANT REMOVAL ACTIVITIES SHALL BE REMOVED AND PROPERLY DISPOSED OF AT A GREEN WASTE FACILITY.
5. CONTRACTOR SHALL MOW AND/OR TRIM EXISTING GRASSES AND VEGETATION IN PLANTING AREAS PRIOR TO IRRIGATION AND PLANT INSTALLATION.

**SMART
NON- MOTORIZED
PATHWAY SEGMENT 3 -
MCINNIS PARKWAY TO
SMITH RANCH ROAD
RIPARIAN MITIGATION**

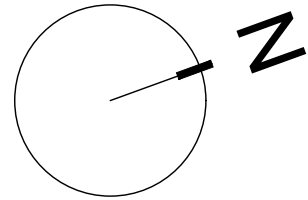
**HELEN PUTNAM
REGIONAL PARK**

PETALUMA, CALIFORNIA



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**SITE PREPARATION,
ACCESS PLAN -
UPPER POND DRAINAGE**

Sheet 3 of 16

C-1.2

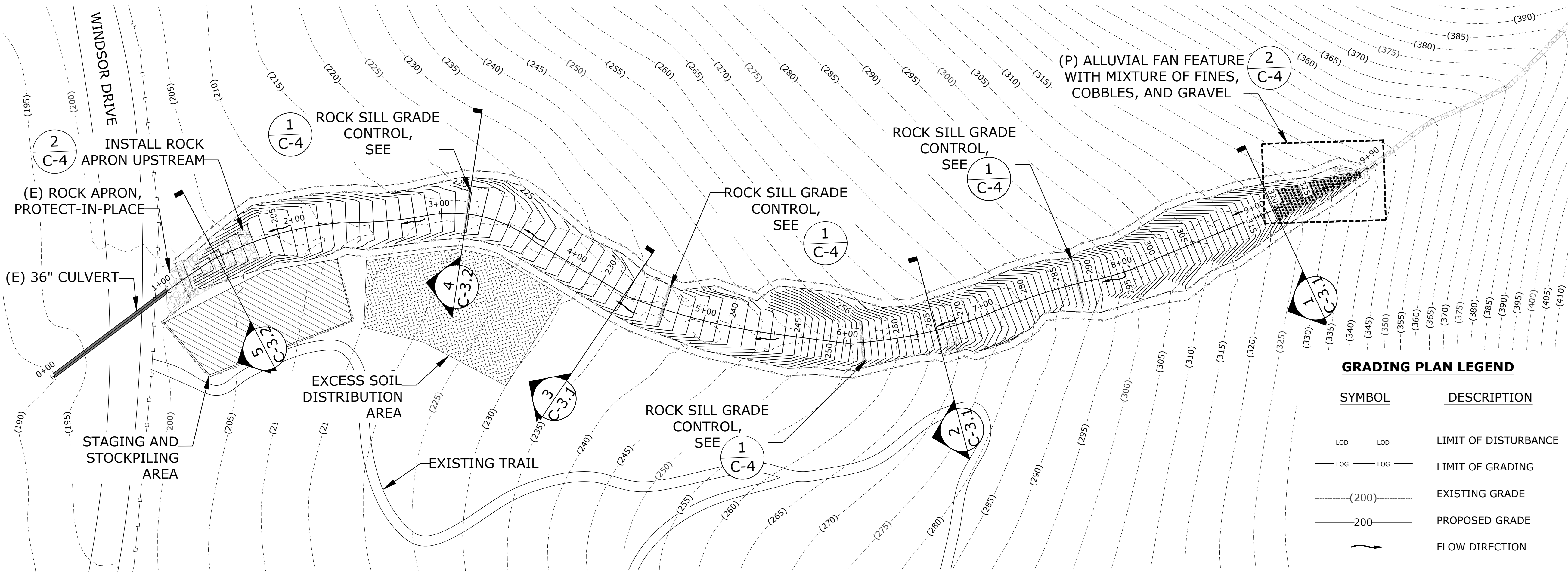


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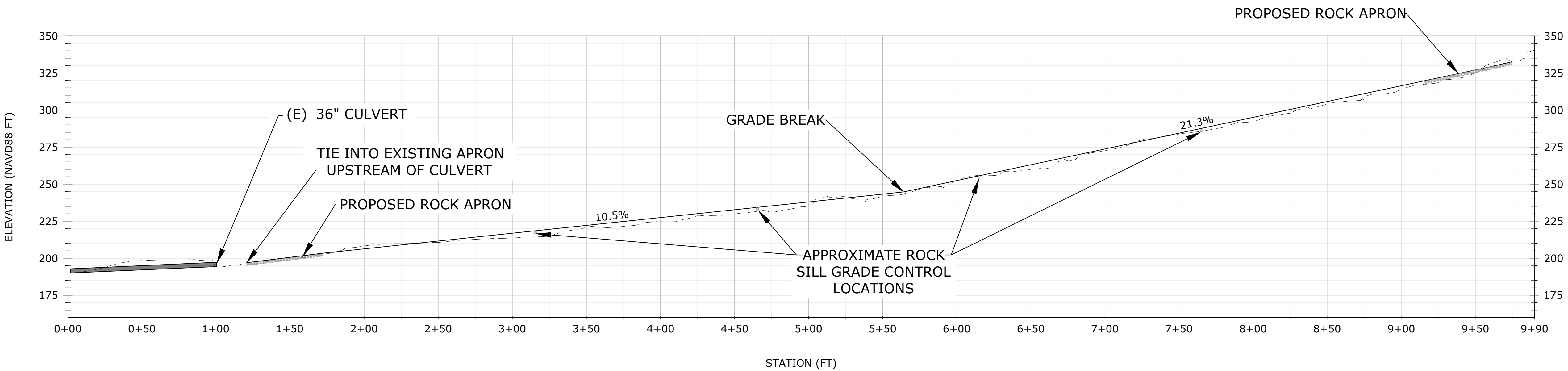
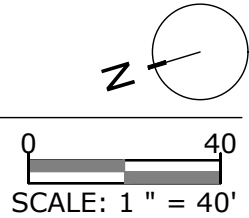
**SMART
NON- MOTORIZED
PATHWAY SEGMENT 3 -
MCINNIS PARKWAY TO
SMITH RANCH ROAD
RIPARIAN MITIGATION**

**HELEN PUTNAM
REGIONAL PARK**

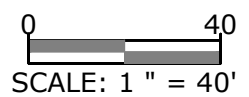
PETALUMA, CALIFORNIA



1 GRADING PLAN - WINDSOR DRIVE DRAINAGE



2 PROFILE VIEW



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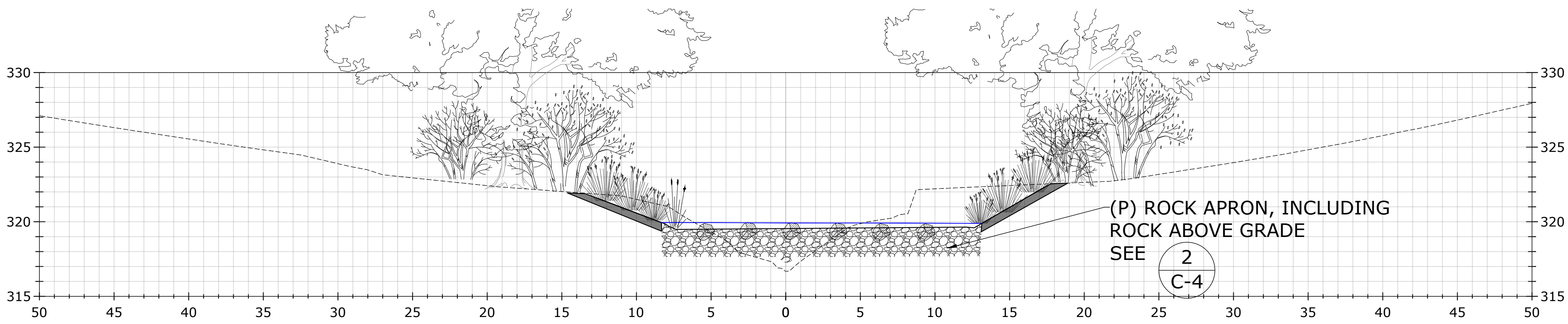
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SCALE: AS INDICATED

**GRADING PLAN &
PROFILE - WINDSOR
DRIVE DRAINAGE**

Sheet 4 of 16

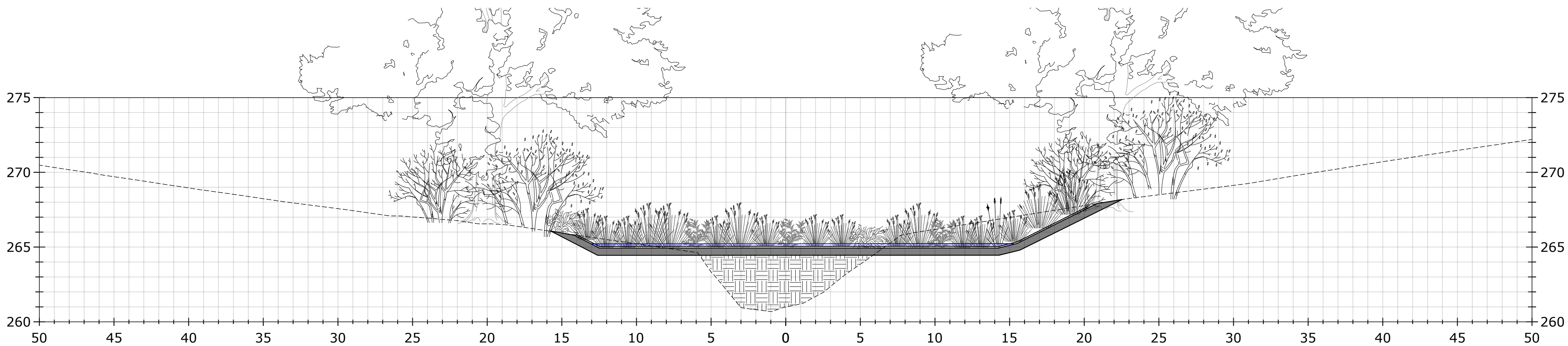
C-2.0



1
C-2

STATION 09+00 - TYPICAL UPSTREAM APRON

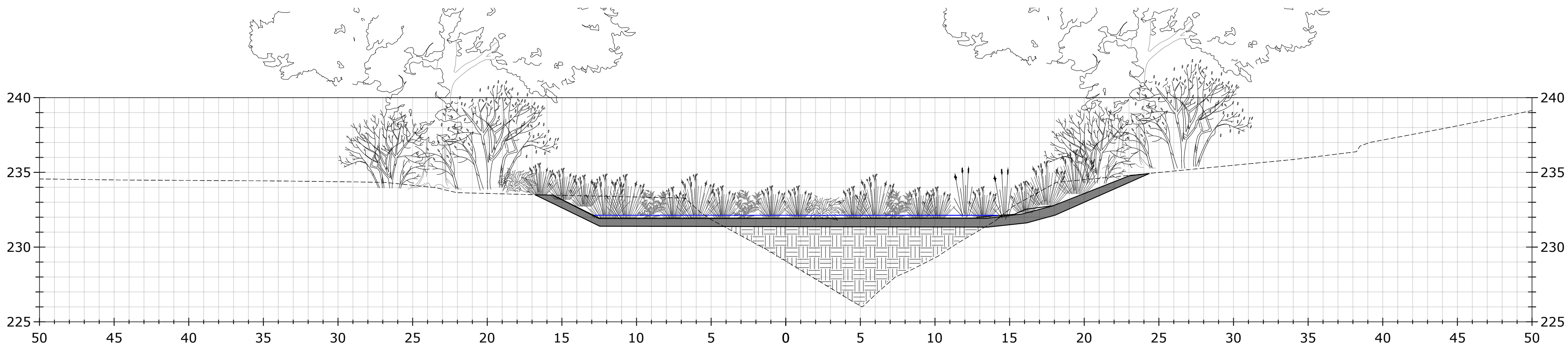
SCALE: 1" = 5'



2
C-2

STATION 06+50- UPSTREAM REACH

SCALE: 1" = 5'



3
C-2

STATION 04+50 - TRANSITION REACH

SCALE: 1" = 5'

LEGEND

- (E) GRADE
- (P) GRADE
- (P) 10-YR WATER
- SURFACE ELEVATION
- (P) RIPRAP SILL
- (P) SUBGRADE FILL
- (P) TOPSOIL

- NOTES:
- SEE SHEET C-4 FOR DETAILS ON GRADE CONTROL
 - SECTIONS SHOW PROPOSED PLANTING WITHIN LIMIT OF GRADE. SEE PLANTING SHEETS FOR MORE DETAIL.

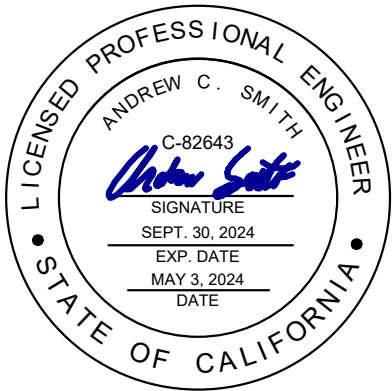


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SMART
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RIPARIAN MITIGATION

HELEN PUTNAM
REGIONAL PARK

PETALUMA, CALIFORNIA



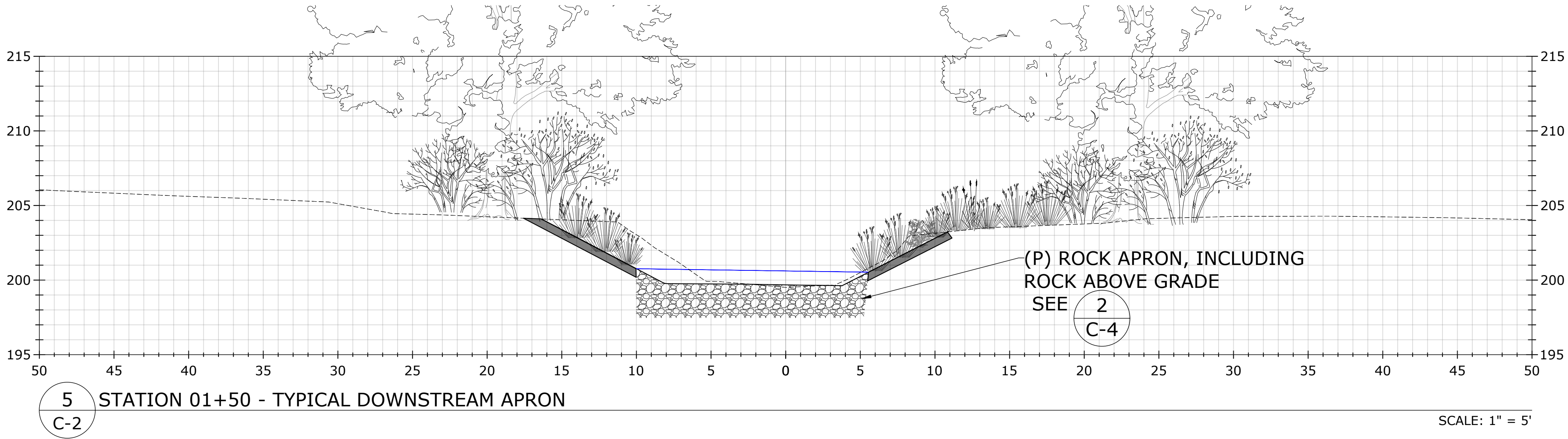
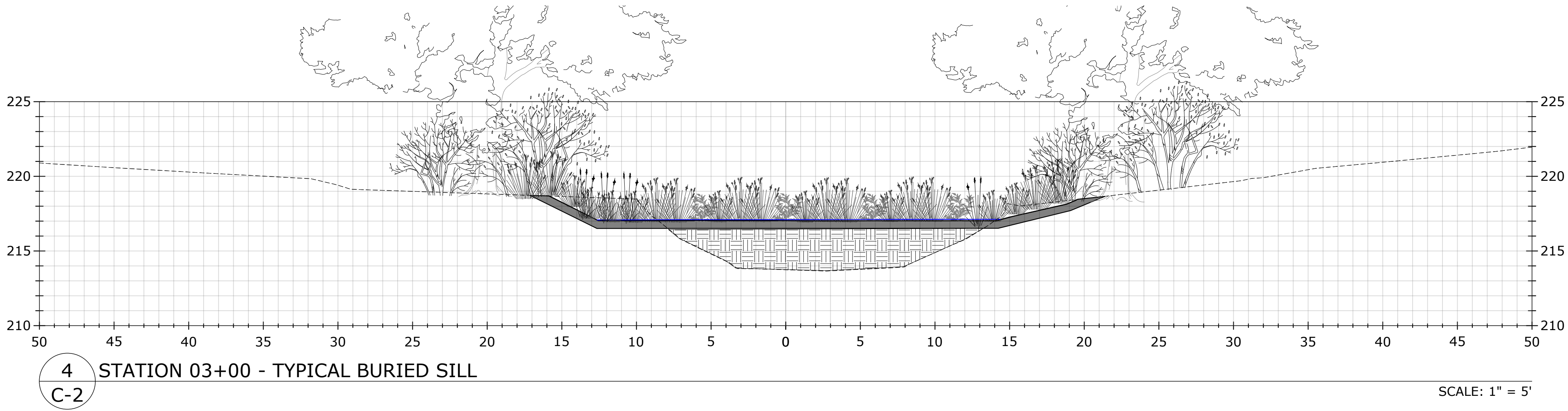
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CROSS SECTIONS -
WINDSOR DRIVE
DRAINAGE

Sheet 5 of 16

C-3.1



LEGEND

- (E) GRADE
- (P) GRADE
- (P) 10-YR WATER SURFACE ELEVATION
- (P) SUBGRADE FILL
- (P) TOPSOIL

- NOTES:
- SECTIONS SHOW PROPOSED PLANTING WITHIN THE LIMIT OF GRADE. SEE PLANTING SHEETS FOR MORE DETAIL.

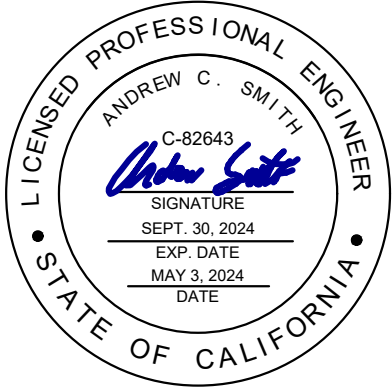


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SMART
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RIPARIAN MITIGATION

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REGIONAL PARK

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CROSS SECTIONS -
WINDSOR DRIVE
DRAINAGE

Sheet 6 of 16

C-3.2

**SMART
NON- MOTORIZED
PATHWAY SEGMENT 3 -
MCINNIS PARKWAY TO
SMITH RANCH ROAD
RIPARIAN MITIGATION**

**HELEN PUTNAM
REGIONAL PARK**

PETALUMA, CALIFORNIA



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Date	Issues And Revisions	No.

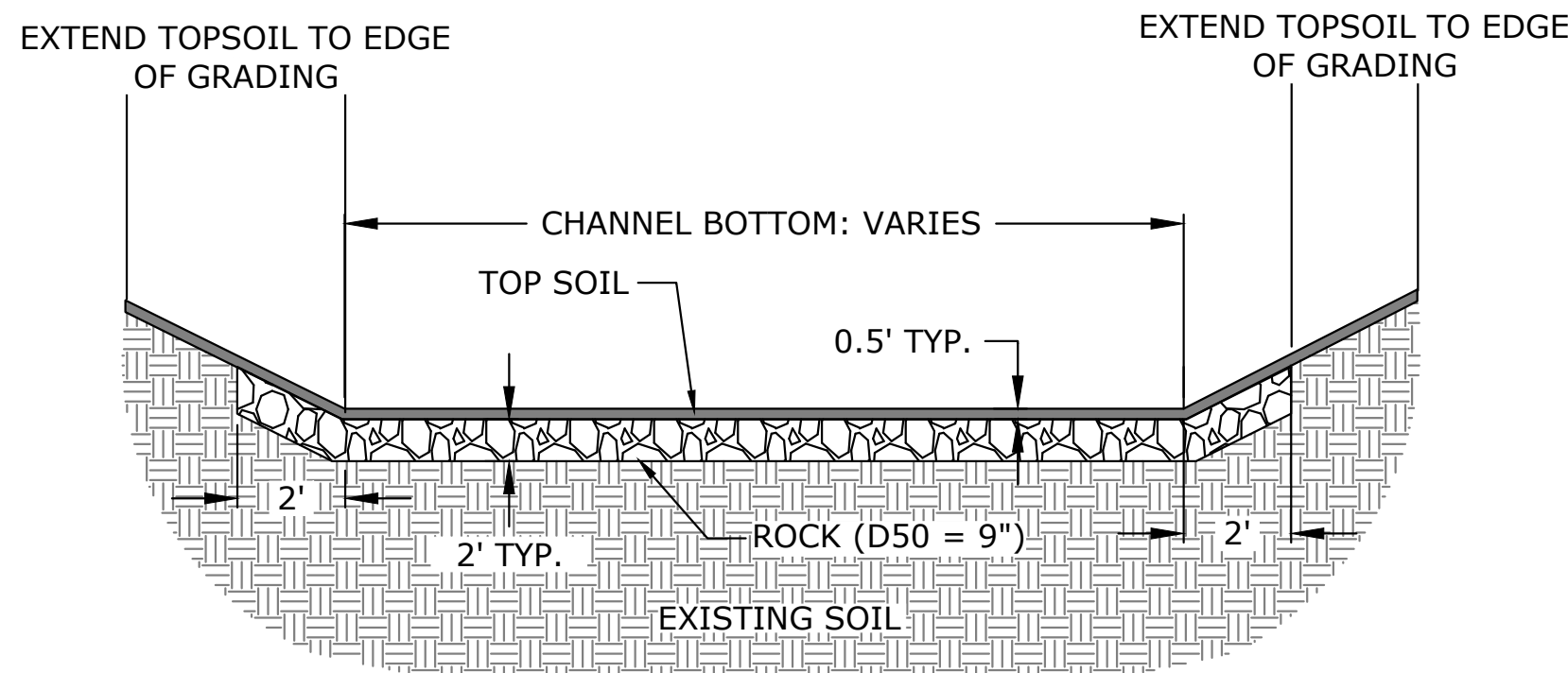
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SCALE: AS INDICATED

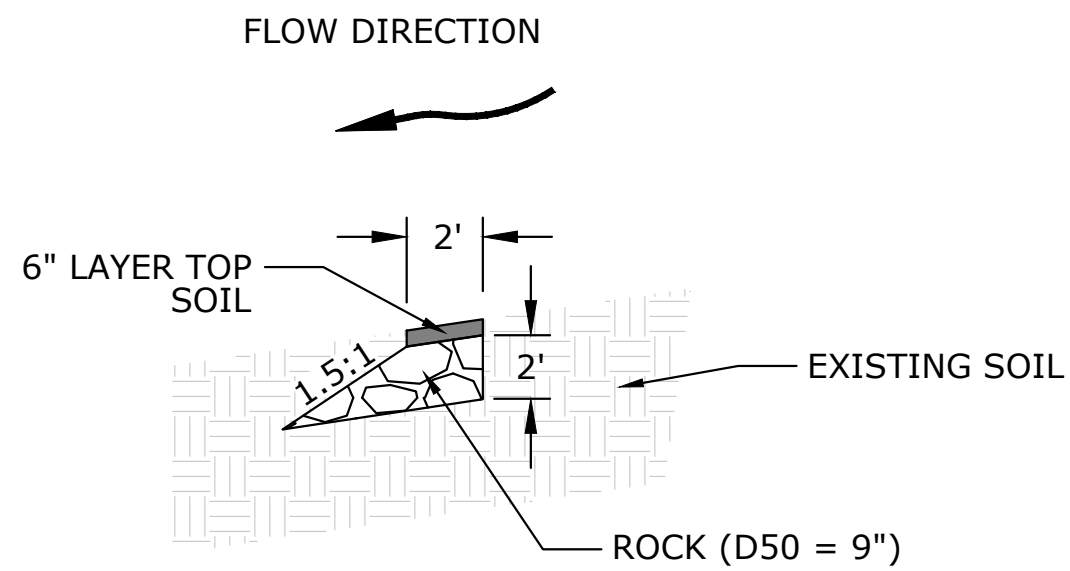
**DRAINAGE STABILIZATION
DETAILS**

Sheet 7 of 16

C-4.0



TYPICAL SECTION

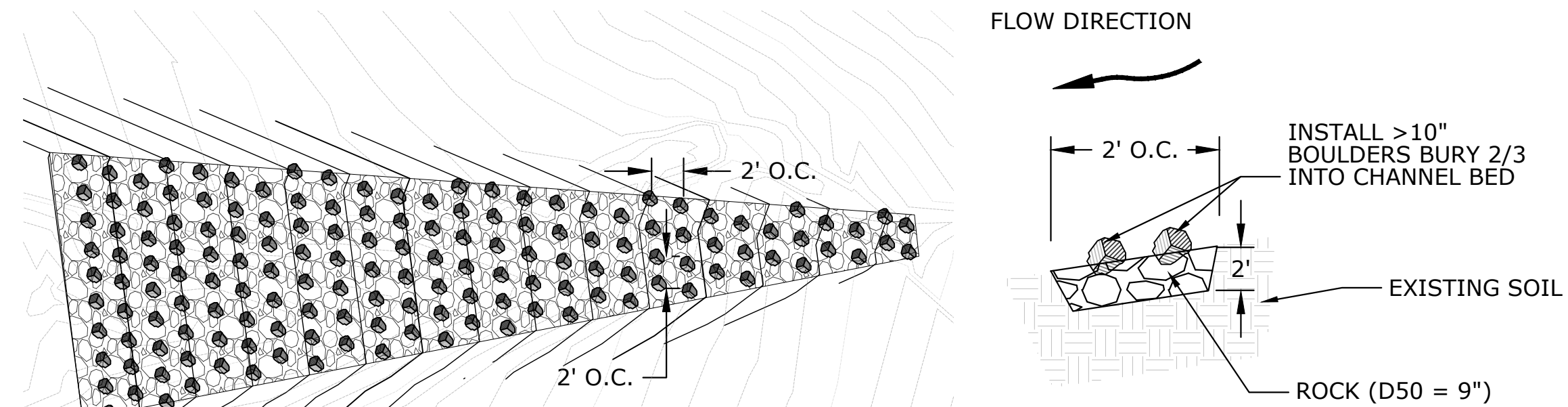


TYPICAL PROFILE (SILL)

1 BURIED ROCK SILL DETAILS - WINDSOR DRIVE DRAINAGE

C-2

NOT TO SCALE



TYPICAL PLAN VIEW

TYPICAL PROFILE (APRON)

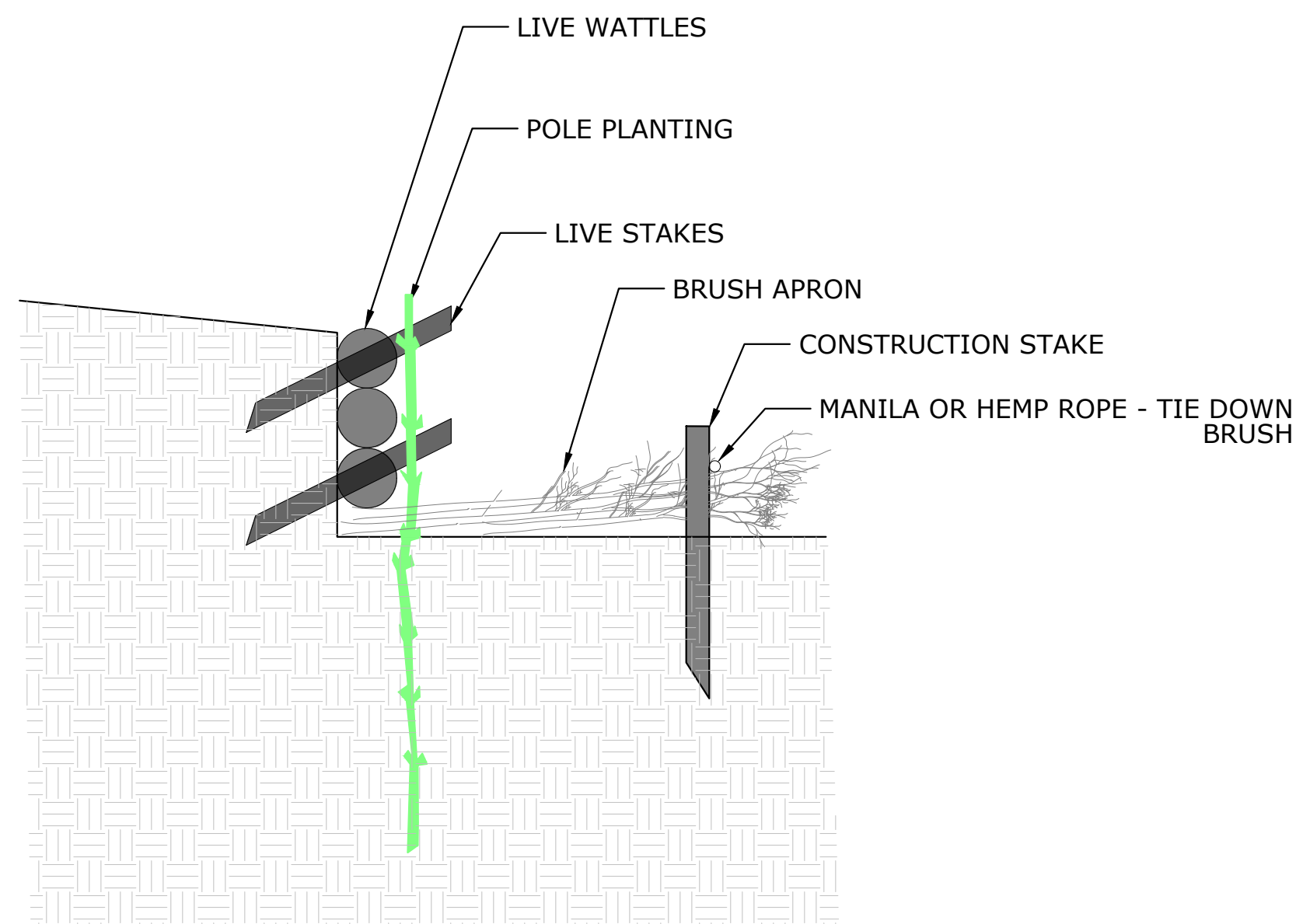
2 APRON DETAILS - WINDSOR DRIVE DRAINAGE

C-2

NOT TO SCALE

NOTES:

1. WILLOW CUTTING INSTALLATION SHALL OCCUR BETWEEN DECEMBER 1ST AND DECEMBER 31ST OR AS APPROVED BY SMART'S PROJECT MANAGER.
2. WILLOW CUTTINGS WILL BE COLLECTED ON-SITE OR AS APPROVED BY SMART'S PROJECT MANAGER.
3. IN AN ATTEMPT TO INCREASE THE POSSIBILITY THAT WILLOW POLES ARE COLLECTED FROM BOTH MALE AND FEMALE PLANTS, WILLOW POLES SHALL BE COLLECTED FROM A MINIMUM OF 5 INDIVIDUAL TREES.
4. WILLOW POLES SHALL BE CUT FROM ONE-YEAR-OLD BRANCHES. WILLOW POLES SHALL HAVE A MINIMUM LENGTH OF THREE (3) FEET LONG AND A MAXIMUM LENGTH OF FOUR (4) FEET FOR THE WILLOW TRENCHES AND INDIVIDUAL INSTALLATION UPSTREAM OF THE HEADCUT. WILLOW POLES SHALL HAVE A MINIMUM CUT-END DISTAL DIAMETER OF $\frac{3}{4}$ " AND A MAXIMUM CUT-END BASAL DIAMETER OF 1 1/2". WILLOW POLES USED FOR THE HEADCUT STABILIZATION FEATURE SHALL BE SIZED AS NEEDED PER DETAIL 2. WILLOW POLES SHALL HAVE CONTINUOUS BARK AND STEMS THAT ARE NOT SPLIT, AS SOLELY DETERMINED BY SMART'S PROJECT MANAGER.
5. WILLOW POLES SHALL BE HARVESTED FROM A MAXIMUM 30% OF EACH DONOR PLANT AND THE PLANT SHALL BE LEFT IN A HEALTHY, VIGOROUS, AND VISUALLY APPEALING STATE.
6. UNLESS IMMEDIATELY SOAKED AND INSTALLED, WILLOW POLES SHALL BE WRAPPED IN WET BURLAP. POLES MAY BE BUNDLED PRIOR TO BEING WRAPPED WITH A MAXIMUM OF TEN POLES PER BUNDLE. BUNDLES SHALL BE KEPT SHADED, COVERED, COOL, MOIST, AND OUT OF WIND OR SUN AT ALL TIMES UNTIL INSTALLATION OF THE POLES. POLES SHALL BE KEPT FROM FREEZING.
7. SOAK EACH WILLOW POLE IN WATER PRIOR TO PLANTING. THE BASAL END OF EACH WILLOW POLE SHALL BE SOAKED IN A BUCKET OF WATER, TO A MINIMUM DEPTH OF 24", FOR A MINIMUM OF 10 DAYS, IMMEDIATELY PRECEDING PLANTING. POLES SHALL BE INSTALLED WITHIN 14 DAYS FOLLOWING HARVESTING.
8. SMART'S PROJECT MANAGE SHALL ACCEPT PLANT MATERIAL BEFORE THE START OF PLANTING.
9. WILLOW POLES SHALL BE IN INSTALLED IN THE WILLOW PLANTING AREAS SHOWN IN THE PLANS. THE CONTRACTOR SHALL STAKE OR MARK THE OUTER LIMITS OF THE PLANTING AREAS FOR APPROVAL BY SMART'S PROJECT MANAGER PRIOR TO INSTALLATION.
10. DIG PLANTING HOLES A MINIMUM DIAMETER OF 9" AND DEPTH OF 36" OR 75% TOTAL LENGTH OF WILLOW POLE.
11. INSTALL WILLOW POLE 36" DEEP OR 75% TOTAL LENGTH OF WILLOW POLE.

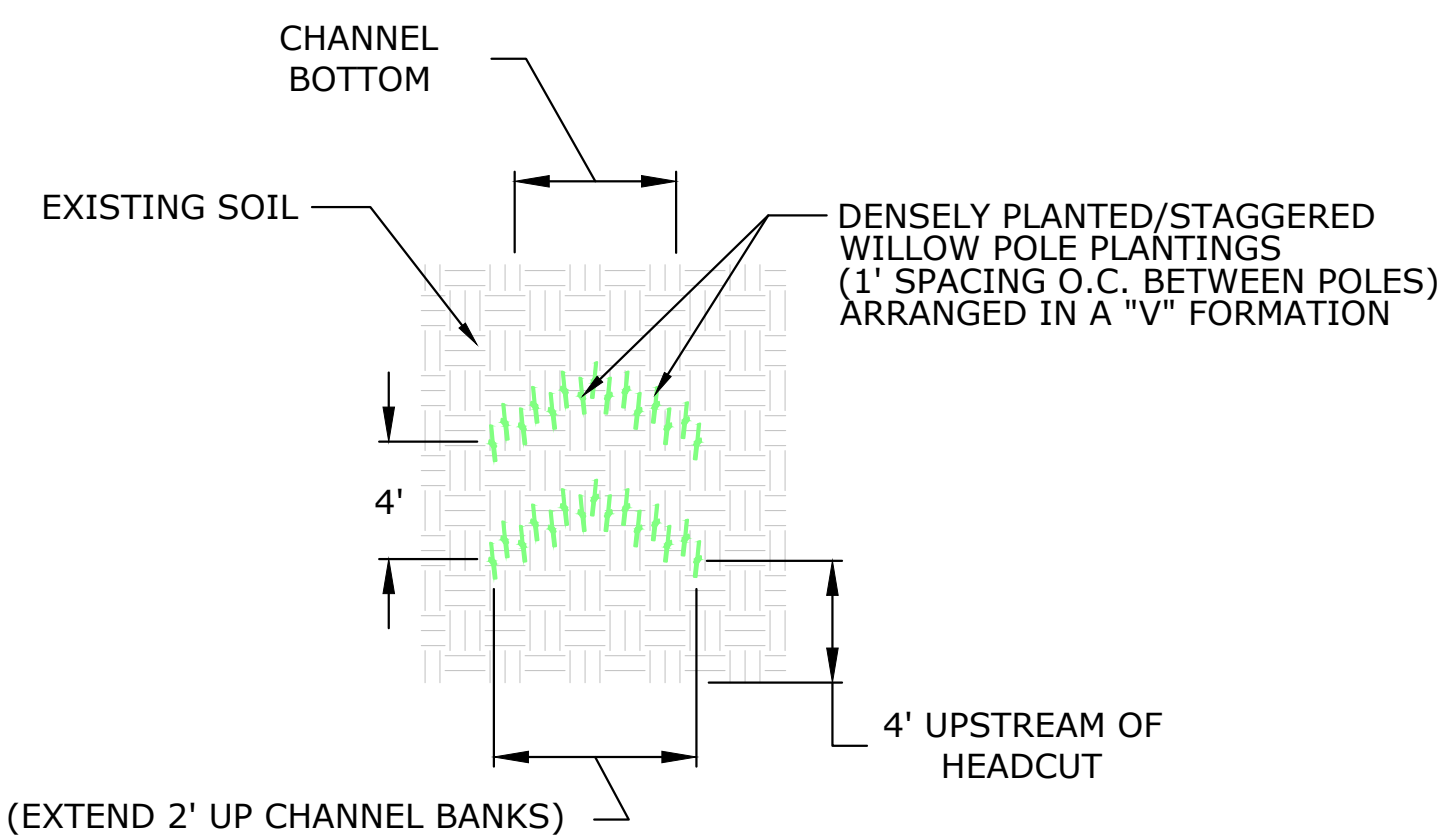


3 WILLOW WALL HEADCUT STABILIZATION DETAIL - UPPER POND DRAINAGE

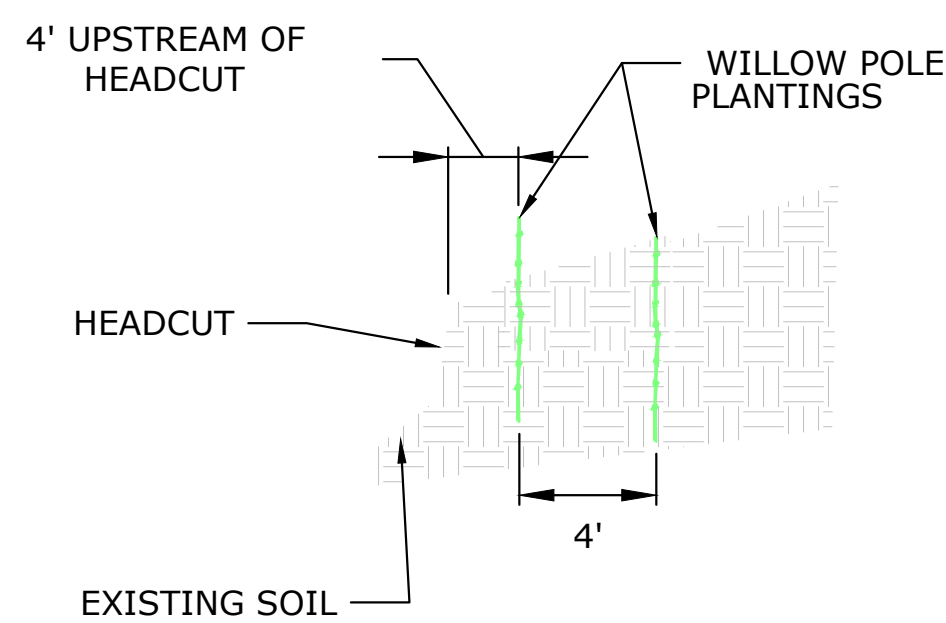
L-1.1

PROFILE VIEW

NOT TO SCALE



PLAN



PROFILE

4 WILLOW TRENCH DETAIL - UPPER POND DRAINAGE

L-1.1

NOT TO SCALE

**SMART
NON- MOTORIZED
PATHWAY SEGMENT 3 -
MCINNIS PARKWAY TO
SMITH RANCH ROAD
RIPARIAN MITIGATION**

**HELEN PUTNAM
REGIONAL PARK**

PETALUMA, CALIFORNIA



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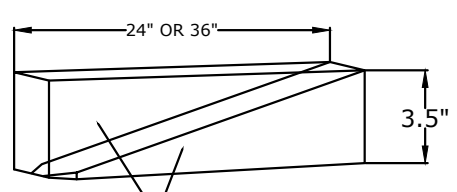
PROJECT #31368
DRAWN BY: BMM, JRK, CCF, CHL
CHECKED BY: ACS, ICM
ORIGINAL DRAWING SIZE: 22 X 34

SCALE: AS INDICATED

**EROSION CONTROL
DETAILS - WINDSOR
DRIVE DRAINAGE**

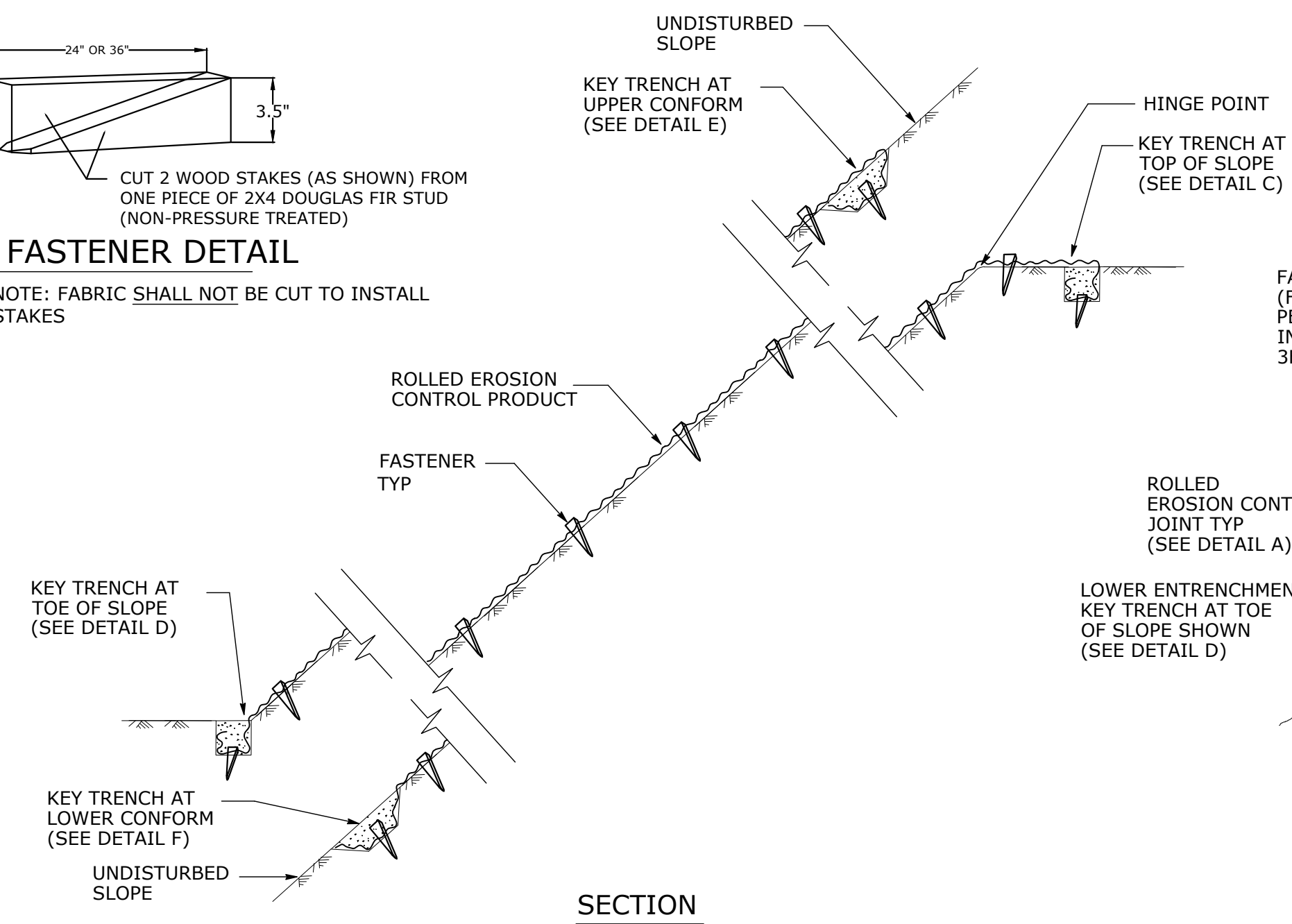
Sheet 8 of 16

EC-1.0



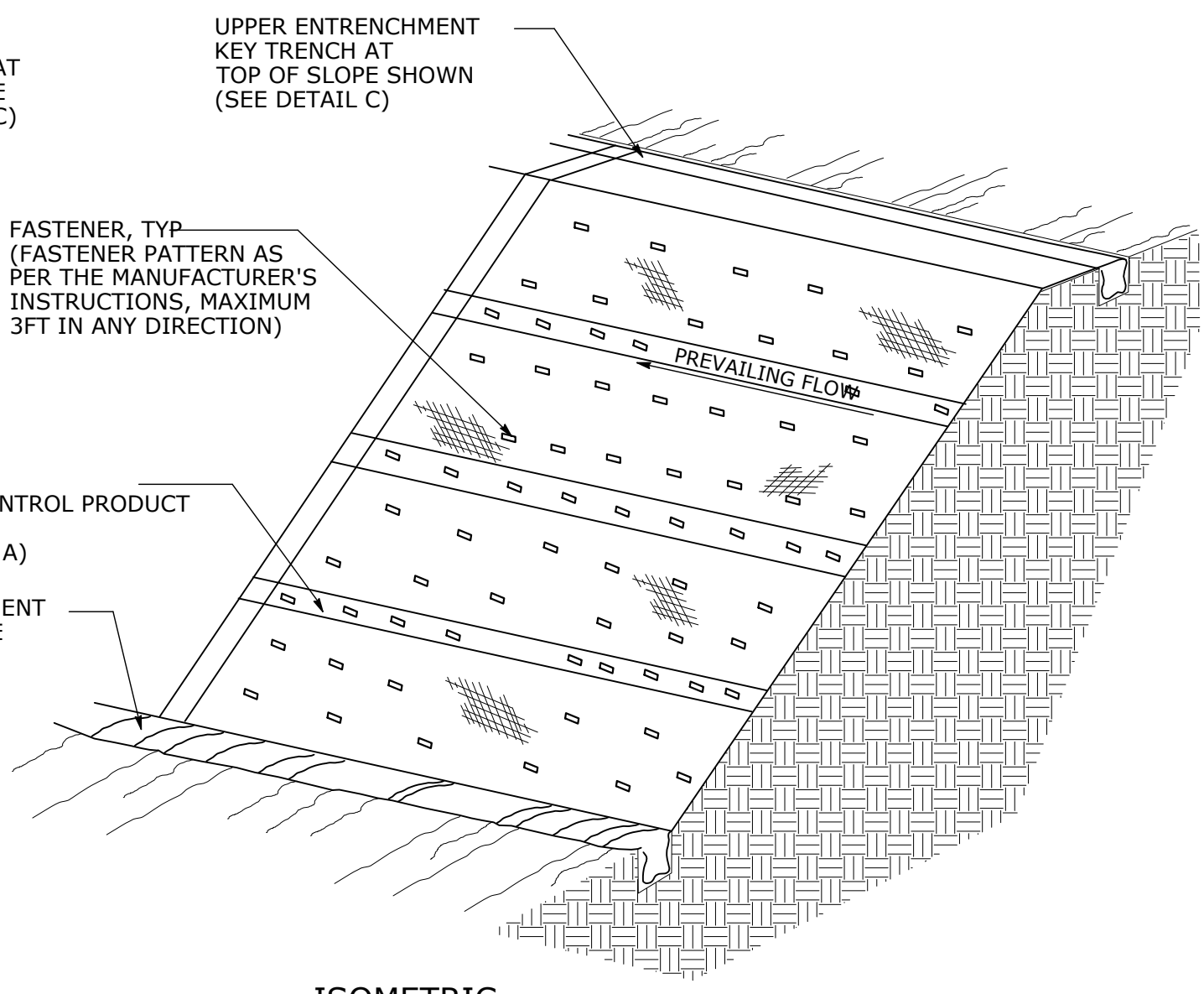
FASTENER DETAIL

NOTE: FABRIC SHALL NOT BE CUT TO INSTALL STAKES



SECTION

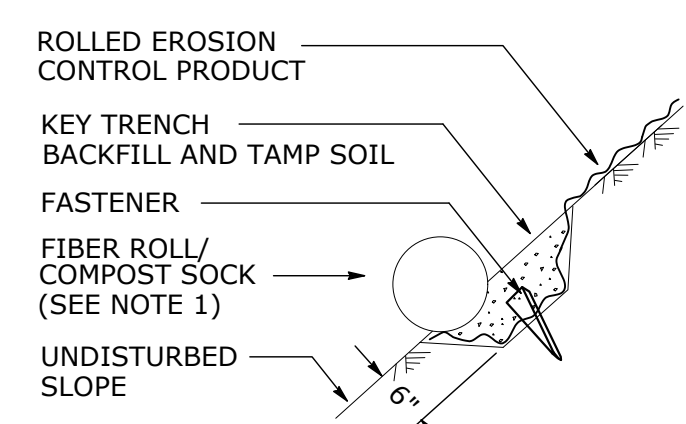
**ROLLED EROSION CONTROL PRODUCT
ON SLOPE WITH VARIOUS KEY ENTRENCHMENTS**



ISOMETRIC

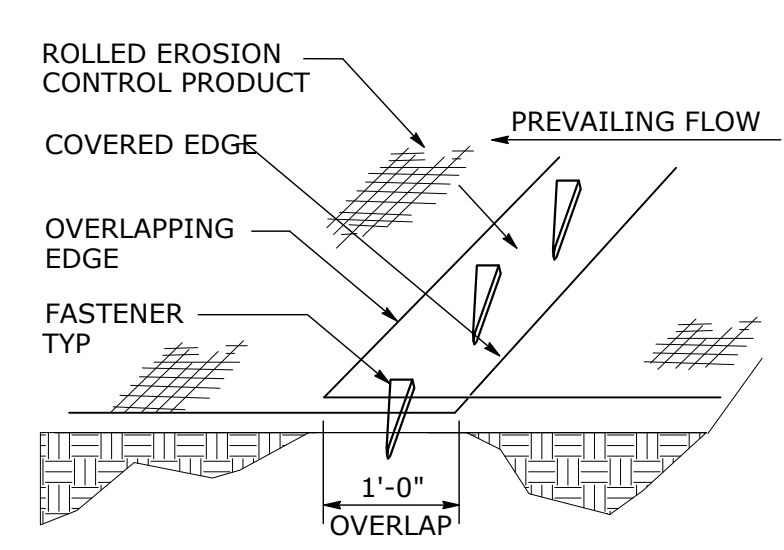
**ROLLED EROSION CONTROL PRODUCT
ON SLOPE**

- NOTE:
- 1.TRENCHED FIBER ROLL/COMPOST SOCK SHOWN FOR REFERENCE PURPOSES ONLY.
 2. IF TRANSVERSE ROLLED EROSION CONTROL PRODUCT JOINTS ARE REQUIRED ON SLOPES, SEE DETAIL B.
 3. EROSION CONTROL FABRIC AND FIBER ROLLS SHALL BE COMPOSED OF BIODEGRADABLE MATERIALS. SEE SMART SPECIFICATIONS 36 00 00.
 4. EROSION CONTROL FABRIC SHALL BE PLACED WITHIN THE LIMIT OF GRADE.
 5. EROSION CONTROL FABRIC STAKES SHALL BE WOOD OR OTHER BIODEGRADABLE MATERIAL APPROVED BY SMART'S PROJECT MANAGER.



SECTION

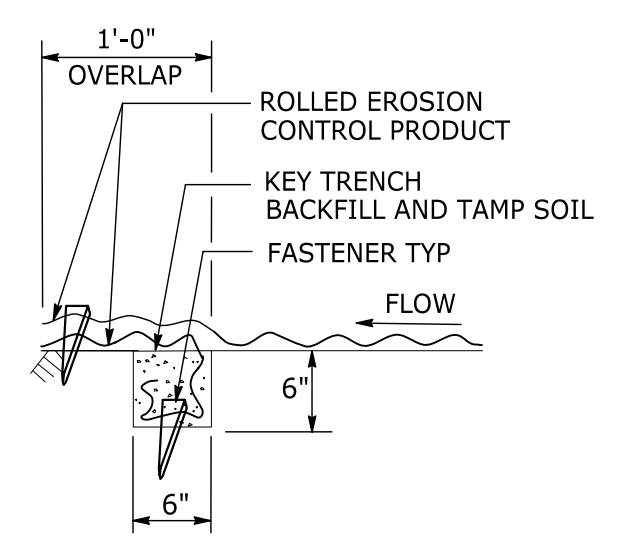
**DETAIL F
KEY TRENCH AT
LOWER CONFORM**



PERSPECTIVE

DETAIL A

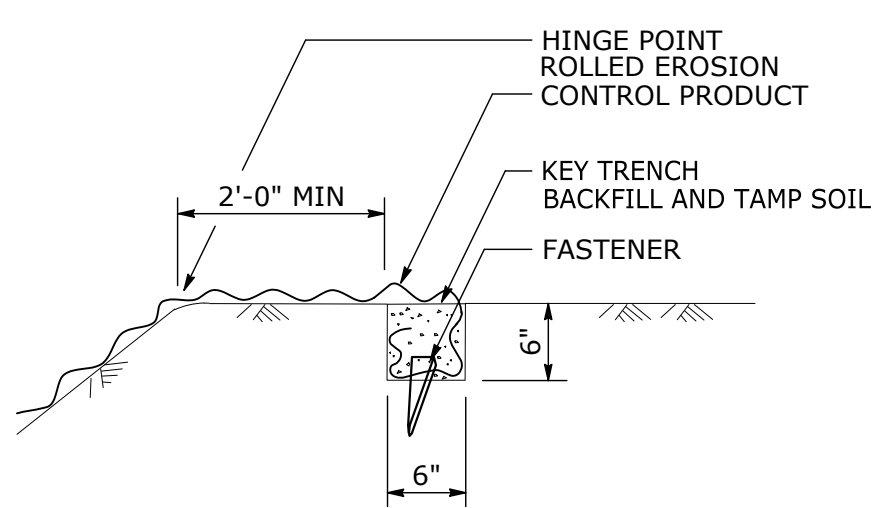
**LONGITUDINAL ROLLED EROSION
CONTROL PRODUCT JOINT**



SECTION

DETAIL B

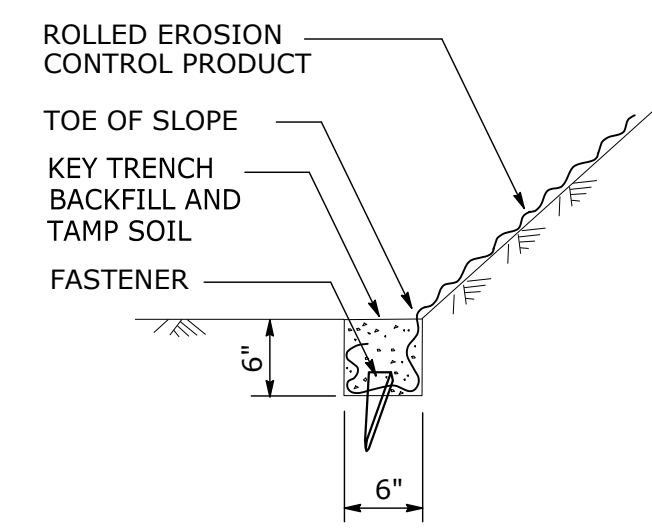
**TRANSVERSE ROLLED EROSION
CONTROL PRODUCT JOINT**



SECTION

DETAIL C

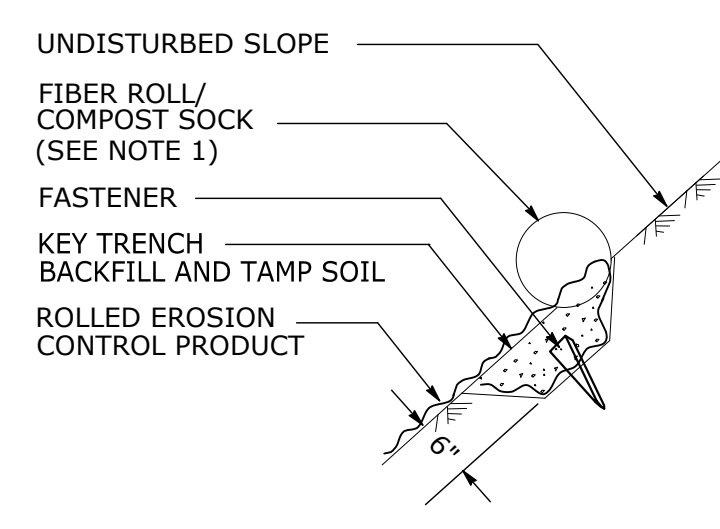
**KEY TRENCH AT
TOP OF SLOPE**



SECTION

DETAIL D

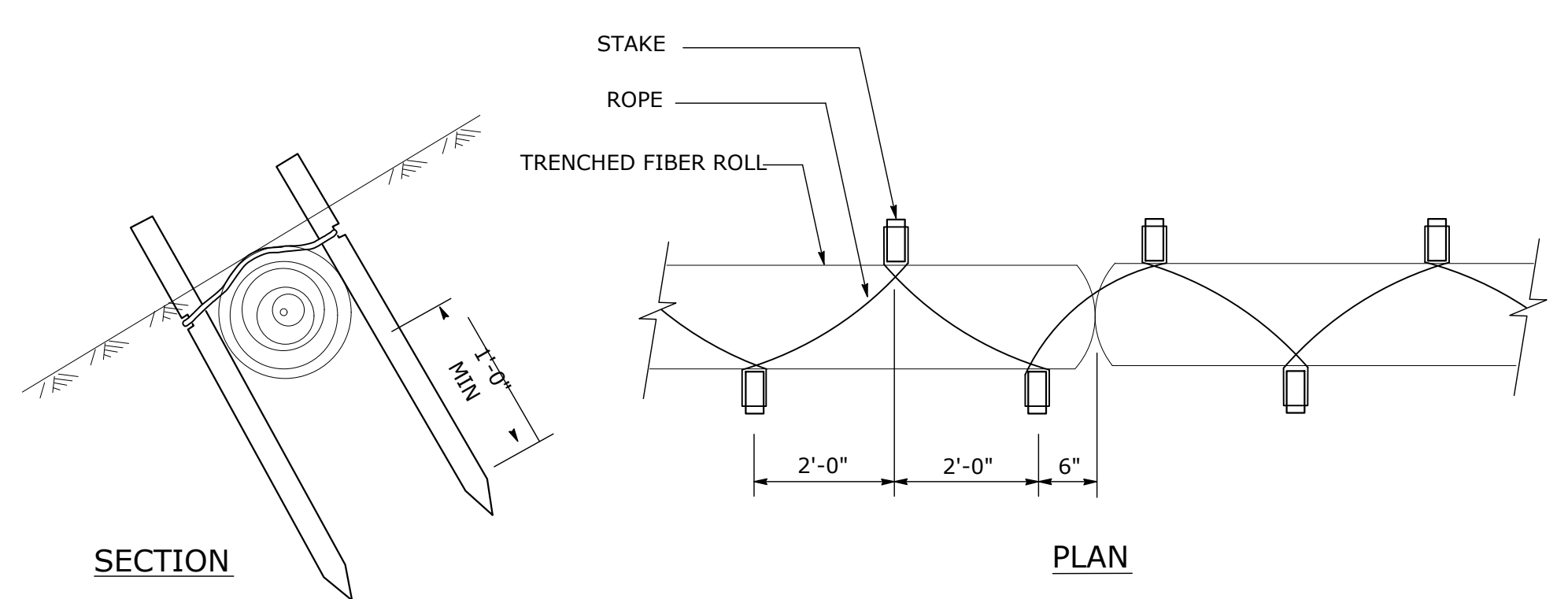
**KEY TRENCH AT
TOE OF SLOPE**



SECTION

DETAIL E

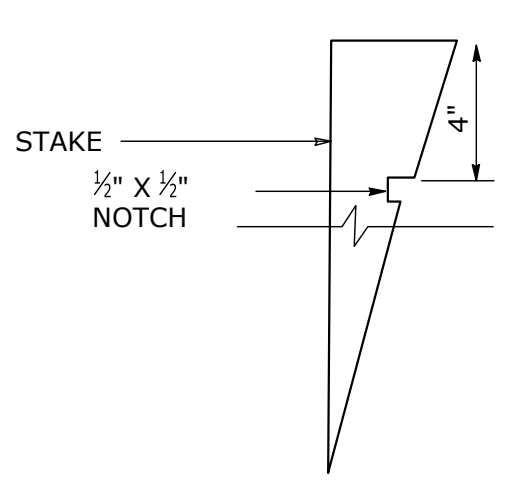
**KEY TRENCH AT
UPPER CONFORM**



SECTION

**ENTRENCHED FIBER ROLL
(TYPE 2)**

PLAN

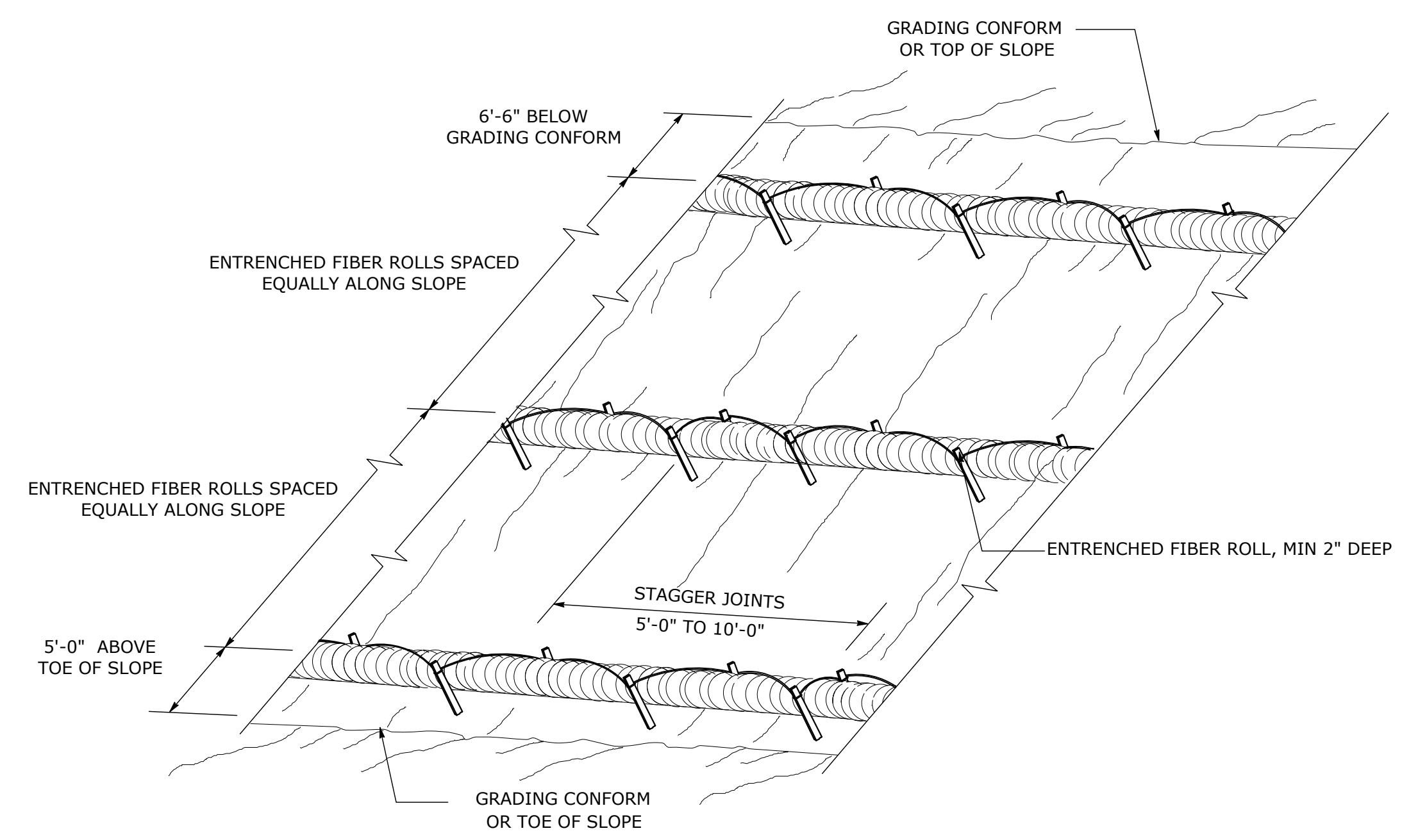


ELEVATION

STAKE NOTCH DETAIL

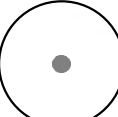
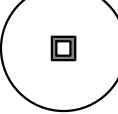
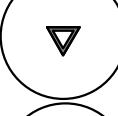
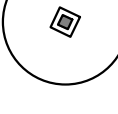
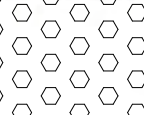
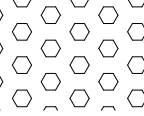

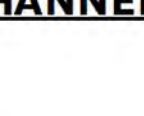
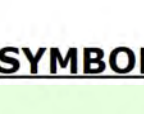
NOTES:

1. FIBER ROLL SPACING VARIES DEPENDING UPON SLOPE INCLINATION.
2. INSTALLATIONS SHOWN IN THE PERSPECTIVES ARE FOR SLOPE INCLINATION OF 10:1 AND STEEPER.

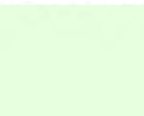



WINDSOR DRIVE DRAINAGE - PLANTING SCHEDULE





RIPARIAN PLANTING AREA (1.03 ACRES)

RIPARIAN TREES					
SYMBOL	SCIENTIFIC NAME	COMMON NAME	ON-CENTER SPACING(FT)	CONTAINER SIZE	ESTIMATED QUANTITY
	AESCULUS CALIFORNICA	CALIFORNIA BUCKEYE	20	DEEPOT 40	21
	QUERCUS AGRIFOLIA	COAST LIVE OAK	20	DEEPOT 40	23
	QUERCUS KELLOGGII	BLACK OAK	20	DEEPOT 40	15
	QUERCUS LOBATA	VALLEY OAK	20	DEEPOT 40	20
RIPARIAN SHRUBS					
SYMBOL	SCIENTIFIC NAME	COMMON NAME	ON-CENTER SPACING(FT)	CONTAINER SIZE	ESTIMATED QUANTITY
	BACCHARIS PILULARIS	COYOTE BRUSH	8	DEEPOT 40	70
	FRANGULA CALIFORNICA	COFFEEBERRY	8	DEEPOT 40	77
	HETEROMELES ARBUTIFOLIA	TOYON	8	DEEPOT 40	84
	ROSA CALIFORNICA	CALIFORNIA ROSE	8	DEEPOT 40	119
	RUBUS URSINUS	CALIFORNIA BLACKBERRY	6	DEEPOT 40	124

CHANNEL BOTTOM PLANTING AREA (0.47 ACRE)


HERBS, FORBS, AND GRASSES					
SYMBOL	SCIENTIFIC NAME	COMMON NAME	ON-CENTER SPACING(FT)	CONTAINER SIZE	ESTIMATED QUANTITY
	ARTEMISIA DOUGLASIANA	MUGWORT	4	DEEPOT 16	338
	CAREX BARBARAE	VALLEY SEDGE	3	DEEPOT 16	457
	ELYMUS TRITICOIDES	CREEPING WILD RYE	3	DEEPOT 16	457
	JUNCUS PATENS	COMMON RUSH	3	DEEPOT 16	772

LEGEND









-  EXISTING CONTOUR
-  PROPOSED GRADE
-  LOG
-  LIMIT OF GRADE

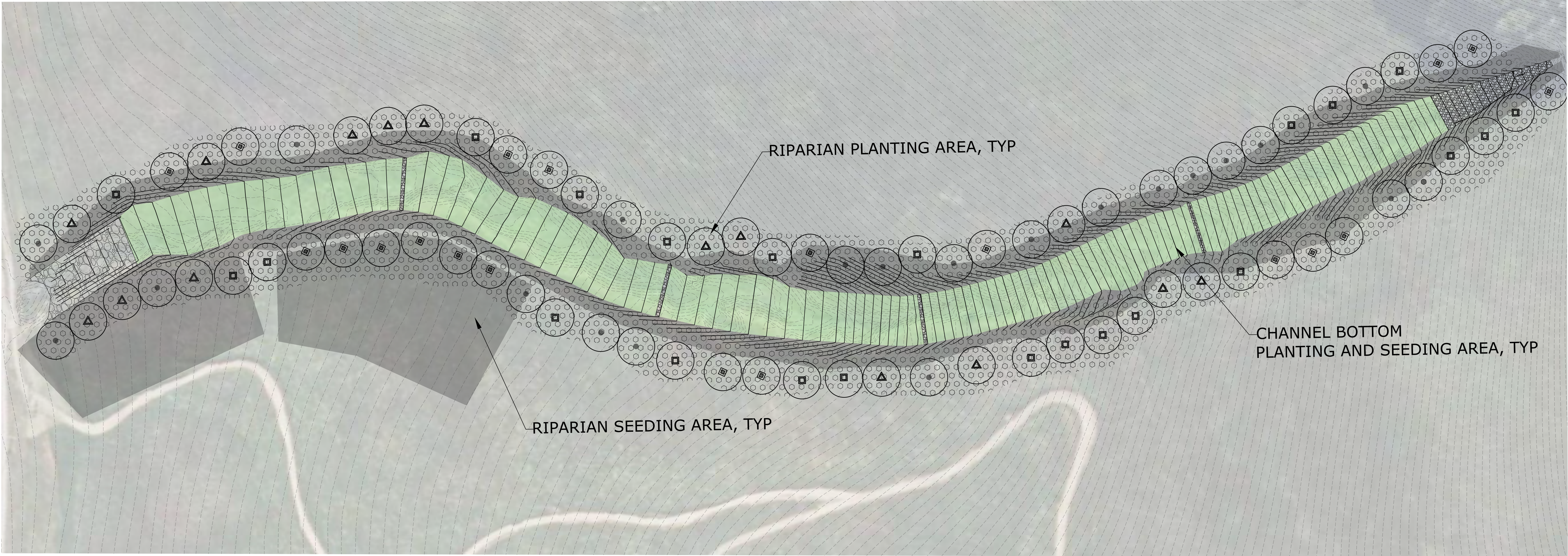
WINDSOR DRIVE DRAINAGE - SEEDING SCHEDULE

RIPARIAN SEED MIX (0.8 ACRE)

SYMBOL	SCIENTIFIC NAME	COMMON NAME	PURE LIVE SEED LBS/ ACRE	ESTIMATED LBS PURE LIVE SEED
	ACHILLEA MILLEFOLIUM	YARROW	0.5	0.4
	BROMUS CARINATUS	CALIFORNIA BROME	8	6.4
	ELYMUS GLAUCUS	BLUE WILDRYE	8	6.4
	ESCHSCHLOZIA CALIFORNICA	CALIFORNIA POPPY	2	1.6
	FESTUCA MICROSTACHYS	SMALL FESCUE	8	6.4
	HORDEUM BRACHYANTHERUM	MEADOW BARLEY	8	6.4
	LUPINUS BICOLOR	BICOLORED LUPINE	4	3.2
	SCROPHULARIA CALIFORNICA	BEE PLANT	2	1.6
	STIPA PULCHRA	PURPLE NEEDLEGRASS	5	4.0
	TOTAL		45.5	36.4

CHANNEL BOTTOM SEED MIX (0.47 ACRE)

SYMBOL	SCIENTIFIC NAME	COMMON NAME	PURE LIVE SEED LBS/ ACRE	ESTIMATED LBS PURE LIVE SEED
	ARTEMISIA DOUGLASIANA	MUGWORT	0.5	0.2
	CAREX PRAEGRACILIS	CLUSTERED FIELD SEDGE	1	0.5
	CYPERUS ERAGROSTIS	TALL FLATSEDGE	2	0.9
	DESCHAMPSIA CESPITOSA	TUFTED HAIRGRASS	8	3.7
	ELYMUS TRITICOIDES	CREEPING WILD RYE	8	3.7
	HORDEUM BRACHYANTHERUM	MEADOW BARLEY	10	4.7
	JUNCUS PATENS	COMMON RUSH	1	0.5
	TOTAL		30.5	14.2



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SMART
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MCINNIS PARKWAY TO
SMITH RANCH ROAD
RIPARIAN MITIGATION

HELEN PUTNAM
REGIONAL PARK

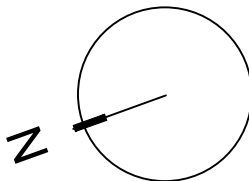
PETALUMA, CALIFORNIA



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Date Issues And Revisions No.

PROJECT #31368
DRAWN BY: BMM, JRK, CCF, CHL
CHECKED BY: ACS, ICM
ORIGINAL DRAWING SIZE: 22 X 34

0 30
SCALE: 1" = 30'

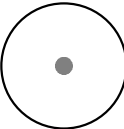
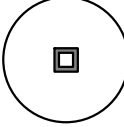
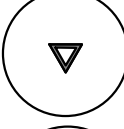
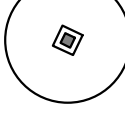


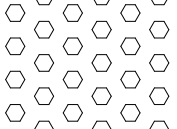
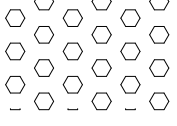

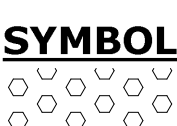
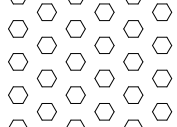
PLANTING AND SEEDING
PLAN - WINDSOR DRIVE
DRAINAGE

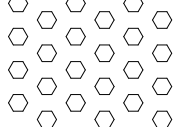
Sheet 9 of 16

UPPER POND DRAINAGE - PLANTING SCHEDULE

RIPARIAN PLANTING AREA (0.34 ACRE)

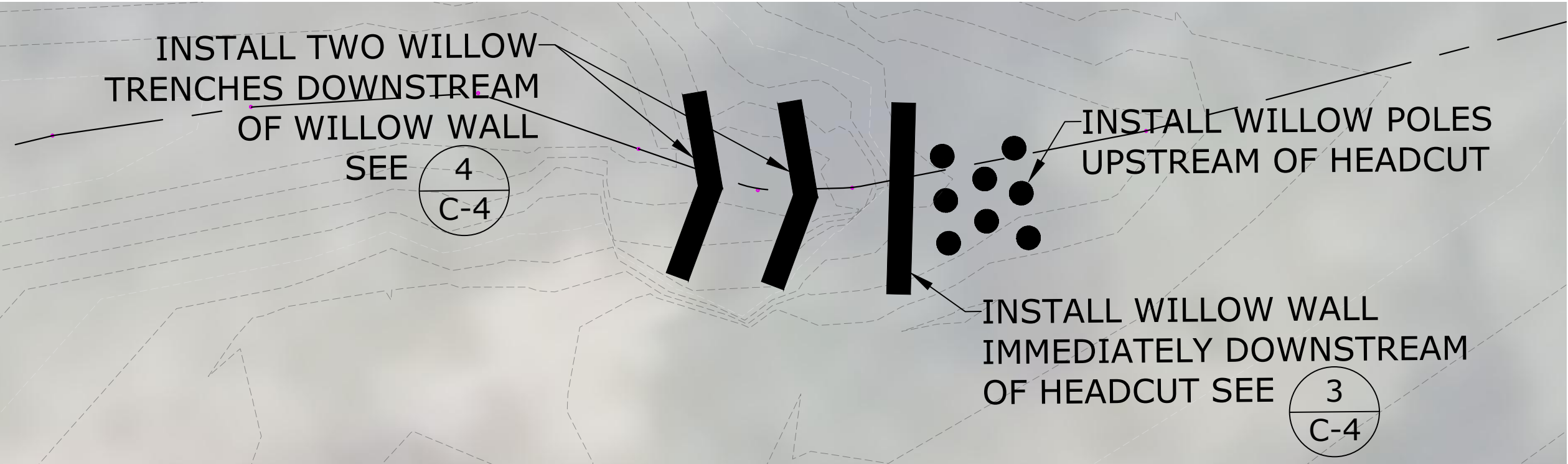
RIPARIAN TREES					
SYMBOL	SCIENTIFIC NAME	COMMON NAME	ON-CENTER SPACING(FT)	CONTAINER SIZE	ESTIMATED QUANTITY
	AESCULUS CALIFORNICA	CALIFORNIA BUCKEYE	20	DEEPOT 40	10
	QUERCUS AGRIFOLIA	COAST LIVE OAK	20	DEEPOT 40	12
	QUERCUS KELLOGGII	BLACK OAK	20	DEEPOT 40	9
	QUERCUS LOBATA	VALLEY OAK	20	DEEPOT 40	8

RIPARIAN SHRUBS					
SYMBOL	SCIENTIFIC NAME	COMMON NAME	ON-CENTER SPACING(FT)	CONTAINER SIZE	ESTIMATED QUANTITY
	BACCHARIS PILULARIS	COYOTE BRUSH	8	DEEPOT 40	14
	FRANGULA CALIFORNICA	COFFEEBERRY	8	DEEPOT 40	19
	HETEROMELES ARBUTIFOLIA	TOYON	8	DEEPOT 40	19
	ROSA CALIFORNICA	CALIFORNIA ROSE	8	DEEPOT 40	19
	RUBUS URSINUS	CALIFORNIA BLACKBERRY	6	DEEPOT 40	17

HERBS, FORBS, AND GRASSES					
SYMBOL	SCIENTIFIC NAME	COMMON NAME	ON-CENTER SPACING(FT)	CONTAINER SIZE	ESTIMATED QUANTITY
	ACHILLEA MILLEFOLIUM	YARROW	3	DEEPOT 16	17
	ARTEMISIA DOUGLASIANA	MUGWORT	4	DEEPOT 16	19
	CAREX BARBARAE	VALLEY SEDGE	2	DEEPOT 16	38
	ELYMUS TRITICOIDES	CREEPING WILD RYE	2	DEEPOT 16	38
	JUNCUS PATENS	COMMON RUSH	2	DEEPOT 16	38
	SCROPHULARIA CALIFORNICA	BEE PLANT	2	DEEPOT 16	38
	SYMPHYOTRICHUM CHILENSE	PACIFIC ASTER	3	DEEPOT 16	38

QUANTITY ESTIMATES FOR UPPER POND PLANTING AREAS

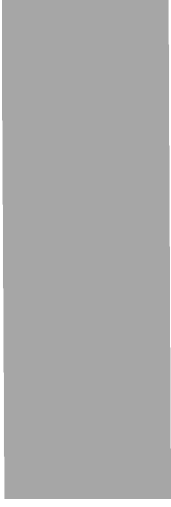
SIZE		SIZE	TREES					SHRUBS					HERBACEOUS								PLANT	
SYMBOL	ACRE	SQ. FT.	AES CAL	QUE AGR	QUE KEL	QUE LOB	TOTAL	BAC PIL	FRA CAL	HET ARB	ROS CAL	RUB URS	TOTAL	ACH MIL	ANA MAR	ART DOU	CAR BAR	FLY TRI	JUN PAT	SCR CAL	TOTAL	TOTAL
UP-1	0.15	6,355	5	5	4	0	14	6	8	8	8	7	37	7	4	8	16	16	16	16	83	134
UP-2	0.01	620	0	2	0	0	2	1	1	1	1	1	5	1	0	1	2	2	3	2	11	18
UP-3	0.01	417	0	1	0	0	1	0	1	1	1	0	3	0	1	1	2	2	2	1	9	13
UP-4	0.04	1,879	3	0	0	3	6	2	2	2	2	2	10	2	1	2	3	4	0	5	17	33
UP-5	0.01	538	0	0	2	0	2	1	1	1	1	1	5	1	0	1	3	1	3	1	10	17
UP-6	0.04	1,949	0	0	3	3	6	2	2	2	2	2	10	2	1	2	4	5	8	5	27	43
UP-7	0.02	1,071	2	1	0	0	3	1	1	1	1	1	5	1	1	1	3	3	3	3	15	23
UP-8	0.01	451	0	0	0	2	2	0	1	1	1	1	4	1	1	1	1	1	3	1	9	15
UP-9	0.04	1,588	0	3	0	0	3	1	2	2	2	2	9	2	1	2	4	4	0	4	17	29
TOTAL	0.34	14,869	10	12	9	8	39	14	19	19	19	17	88	17	10	19	38	38	38	38	198	325



1 UPPER POND DRAINAGE - BIOSTABILIZATION PLAN AT HEADCUT



RIPARIAN SEED MIX (0.04 ACRE)

SYMBOL	SCIENTIFIC NAME	COMMON NAME	PURE LIVE SEED LBS/ ACRE	ESTIMATED LBS PURE LIVE SEED
	ACHILLEA MILLEFOLIUM	YARROW	0.5	0.1
	BROMUS CARINATUS	CALIFORNIA BROME	8	0.3
	ELYMUS GLAUCUS	BLUE WILD RYE	8	0.3
	ESCHSCHLOZIA CALIFORNICA	CALIFORNIA POPPY	2	0.1
	FESTUCA MICROSTACHYS	SMALL FESCUE	8	0.3
	HORDEUM BRACHYANTHERUM	MEADOW BARLEY	8	0.3
	LUPINUS BICOLOR	BICOLORED LUPINE	4	0.2
	SCROPHULARIA CALIFORNICA	BEE PLANT	2	0.1
	STIPA PULCHRA	PURPLE NEEDLEGRASS	5	0.2
	TOTAL		45.5	1.9



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SMART
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PATHWAY SEGMENT 3 -
MCINNIS PARKWAY TO
SMITH RANCH ROAD
RIPARIAN MITIGATION

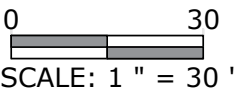
HELEN PUTNAM
REGIONAL PARK

PETALUMA, CALIFORNIA



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PLANTING, SEEDING, AND
BIOSTABILIZATION PLAN -
UPPER POND DRAINAGE

Sheet 10 of 16

L-1.1

2 PLANTING PLAN - UPPER POND DRAINAGE

SCALE: 1"=30'

**SMART
NON- MOTORIZED
PATHWAY SEGMENT 3 -
MCINNIS PARKWAY TO
SMITH RANCH ROAD
RIPARIAN MITIGATION**

**HELEN PUTNAM
REGIONAL PARK**

PETALUMA, CALIFORNIA



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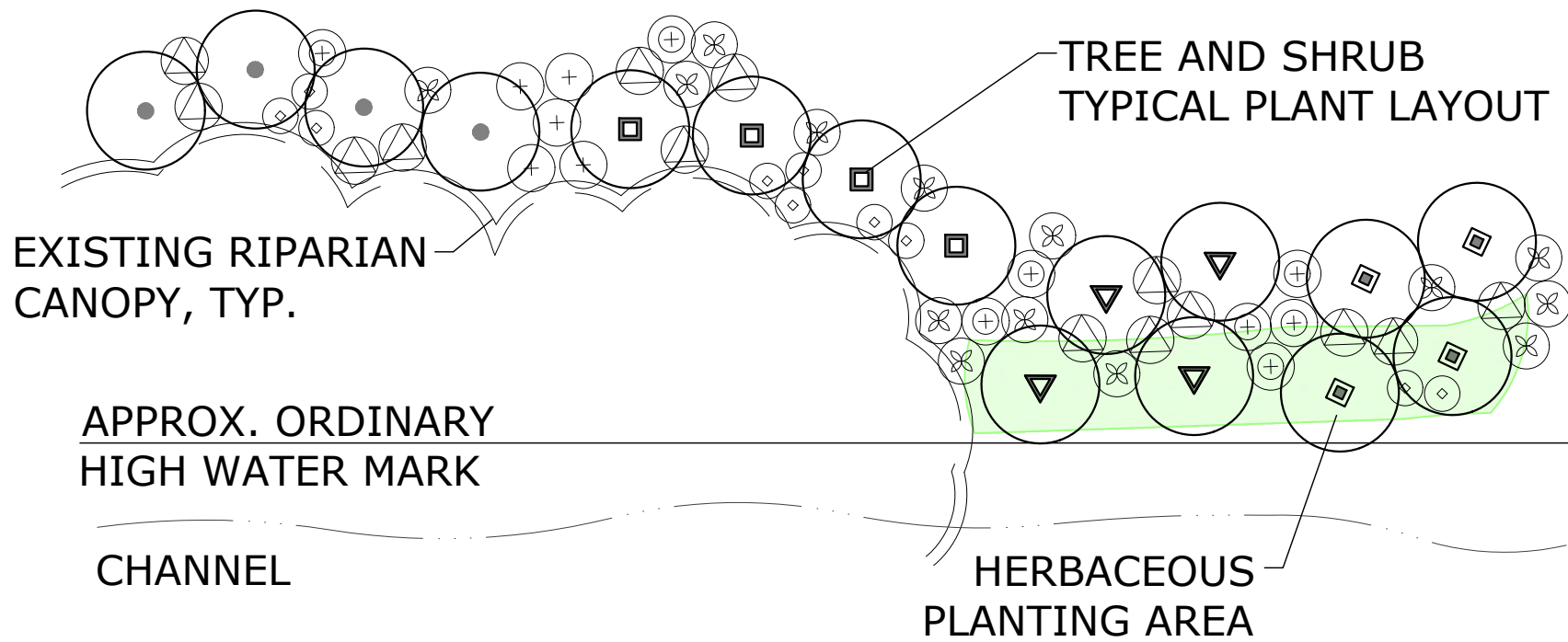
**TYPICAL PLANTING
LAYOUTS**

Sheet 11 of 16

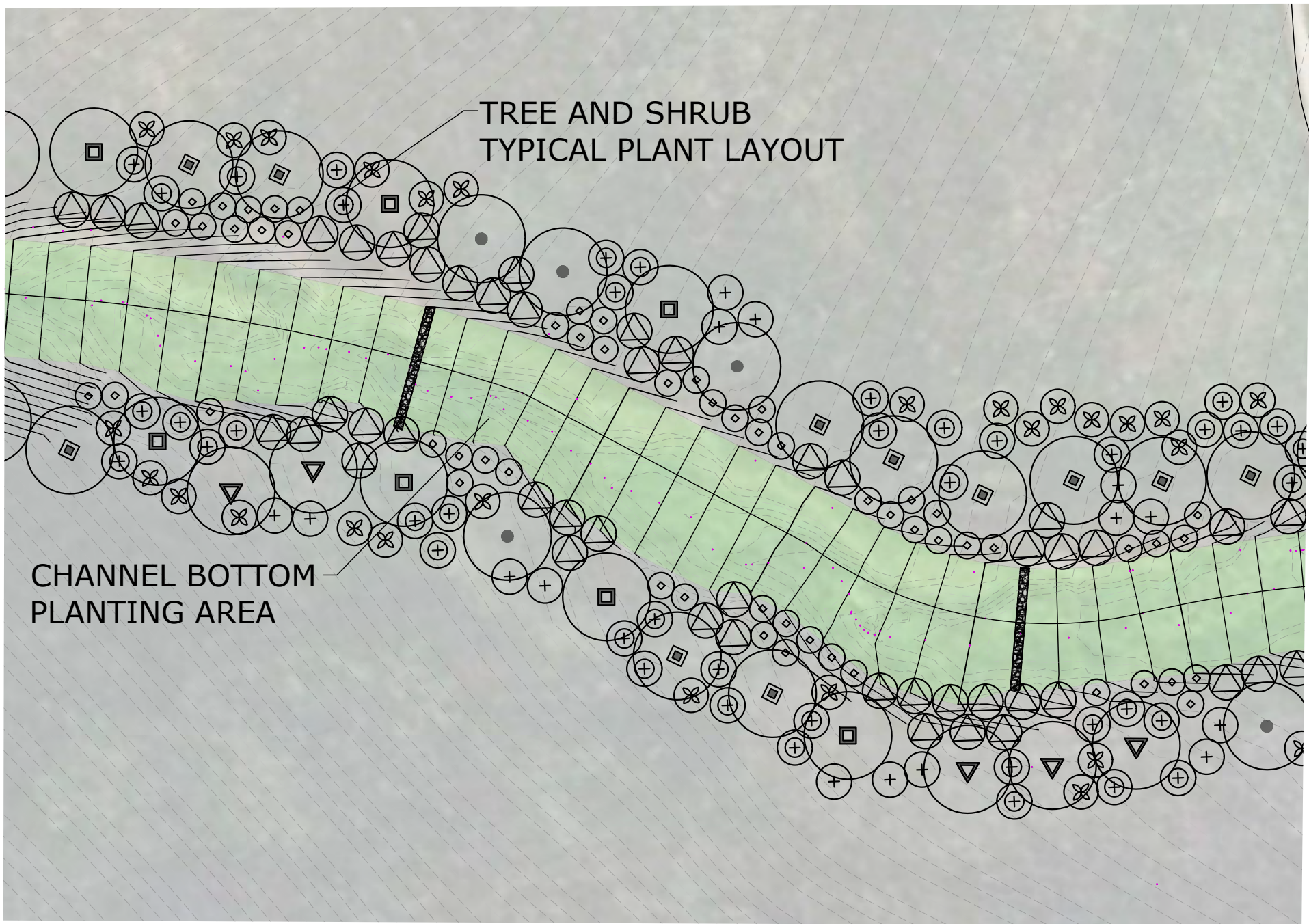
L-1.2

PLANT LEGEND

	SCIENTIFIC NAME	COMMON NAME	ON-CENTER SPACING (FT)
	<i>AESCULUS CALIFORNICA</i>	CALIFORNIA BUCKEYE	20
	<i>QUERCUS AGRIFOLIA</i>	COAST LIVE OAK	20
	<i>QUERCUS KELLOGGII</i>	BLACK OAK	20
	<i>QUERCUS LOBATA</i>	VALLEY OAK	20
	<i>BACCHARIS PILULARIS</i>	COYOTE BRUSH	8
	<i>FRANGULA CALIFORNICA</i>	COFFEEBERRY	8
	<i>HETEROMELES ARBUTIFOLIA</i>	TOYON	8
	<i>ROSA CALIFORNICA</i>	CALIFORNIA ROSE	8
	<i>RUBUS URSINUS</i>	CALIFORNIA BLACKBERRY	6
	<i>ACHILLEA MILLEFOLIUM</i>	YARROW	3
	<i>ARTEMISIA DOUGLASIANA</i>	MUGWORT	4
	<i>CAREX BARBARAE</i>	VALLEY SEDGE	2
	<i>ELYMUS TRITICOIDES</i>	CREEPING WILD RYE	2
	<i>JUNCUS PATENS</i>	COMMON RUSH	2
	<i>SCROPHULARIA CALIFORNICA</i>	BEE PLANT	2
	<i>SYMPHYOTRICHUM CHILENSE</i>	PACIFIC ASTER	3



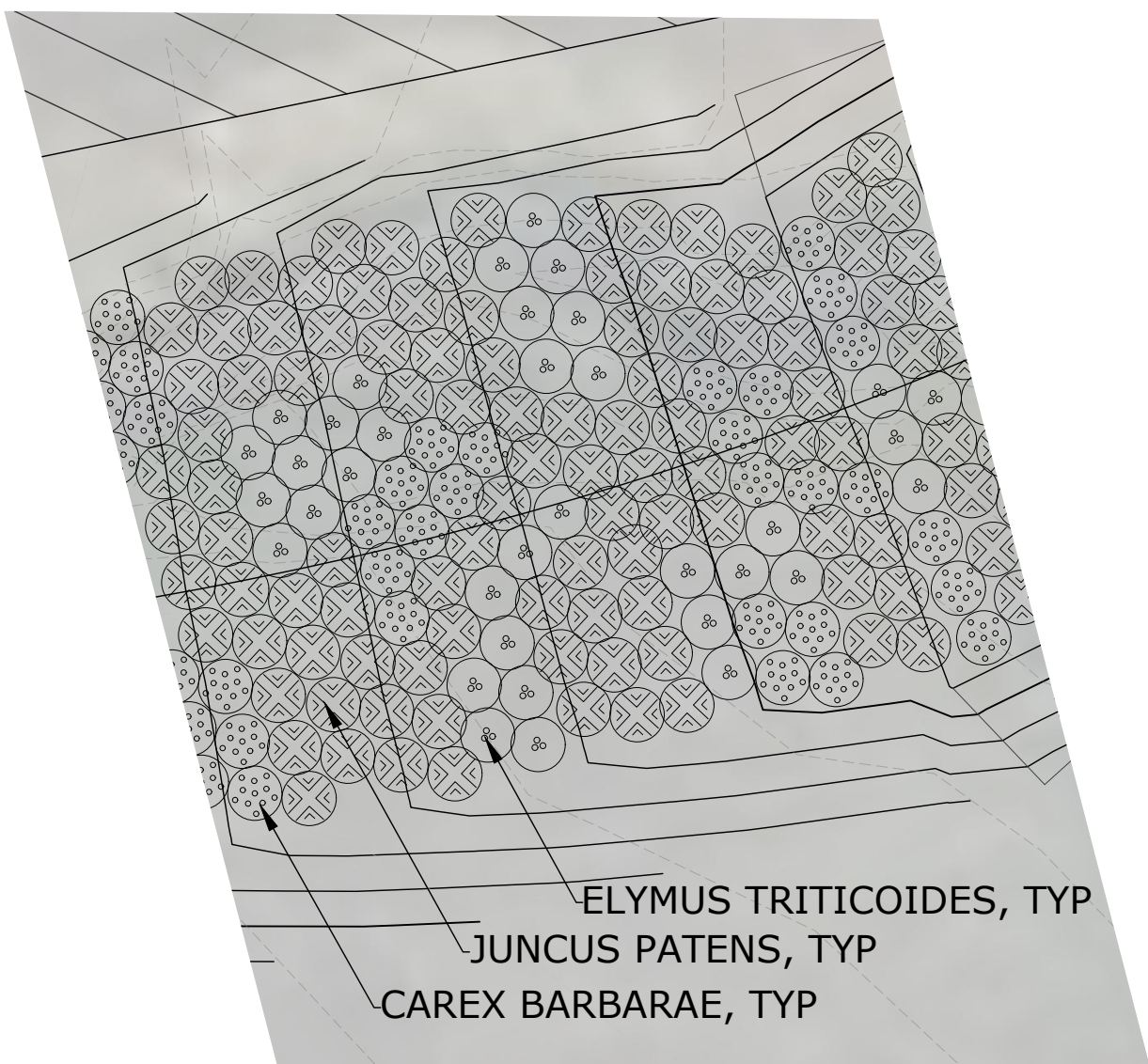
1 UPPER POND DRAINAGE - TYPICAL PLANT LAYOUT
SCALE: 1"=30'



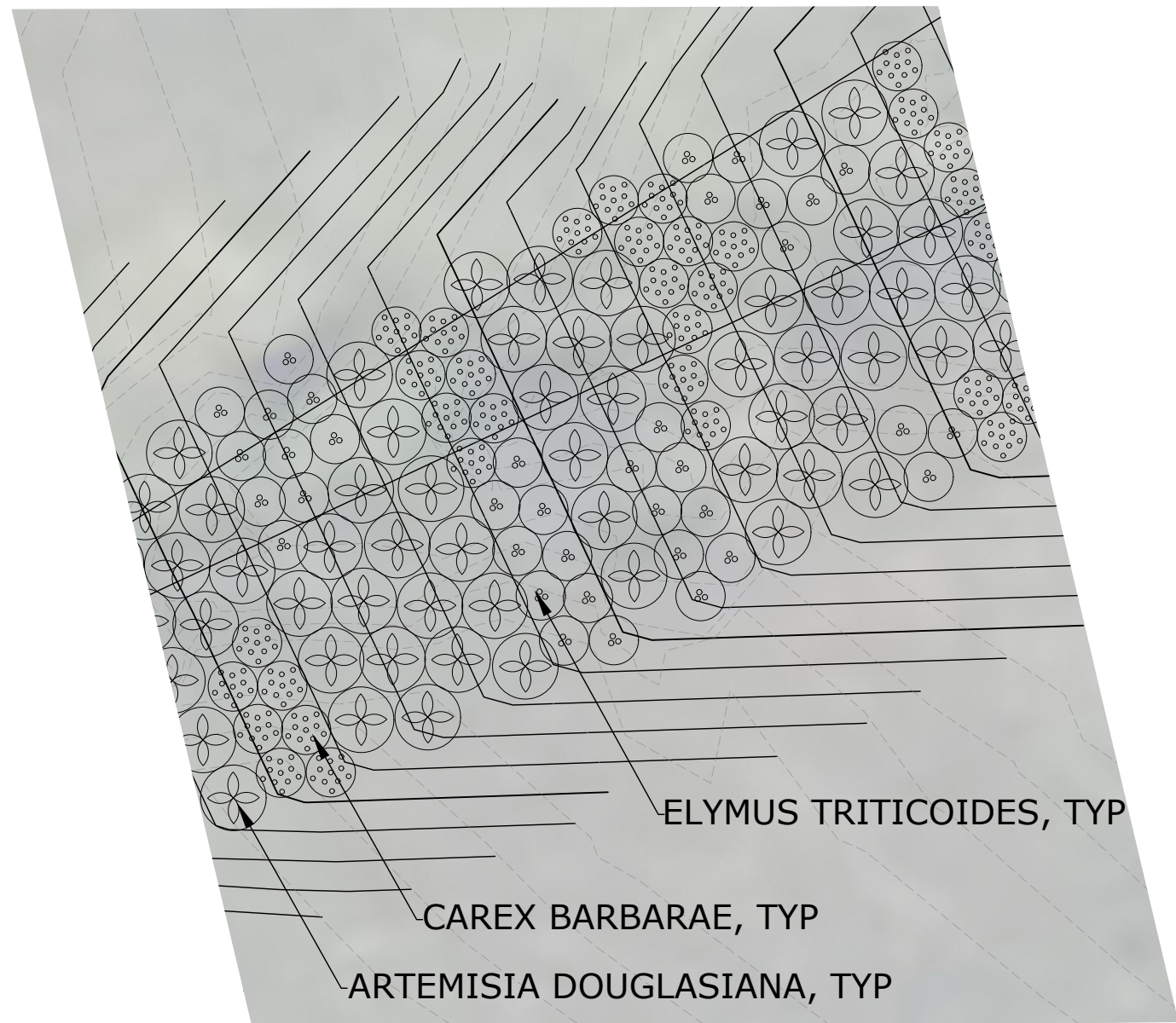
2 WINDSOR DRIVE DRAINAGE - TYPICAL RIPARIAN PLANT LAYOUT
SCALE: 1"=30'

CHANNEL BOTTOM PLANT LEGEND - WINDSOR DRIVE

	SCIENTIFIC NAME	COMMON NAME	ON-CENTER SPACING (FT)
	<i>ARTEMISIA DOUGLASIANA</i>	MUGWORT	4
	<i>CAREX BARBARAE</i>	VALLEY SEDGE	3
	<i>ELYMUS TRITICOIDES</i>	CREEPING WILD RYE	3
	<i>JUNCUS PATENS</i>	COMMON RUSH	3



**3 WINDSOR DRIVE DRAINAGE
TYPICAL CHANNEL PLANT LAYOUT STA 1+60 TO STA 5+60**
SCALE: 1"=10'



**4 WINDSOR DRIVE DRAINAGE
TYPICAL CHANNEL PLANT LAYOUT - STA 5+60 TO 9+00**
SCALE: 1"=10'

**SMART
NON- MOTORIZED
PATHWAY SEGMENT 3 -
MCINNIS PARKWAY TO
SMITH RANCH ROAD
RIPARIAN MITIGATION**

**HELEN PUTNAM
REGIONAL PARK**

PETALUMA, CALIFORNIA



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**PLANTING DETAILS
AND NOTES**

Sheet 12 of 16

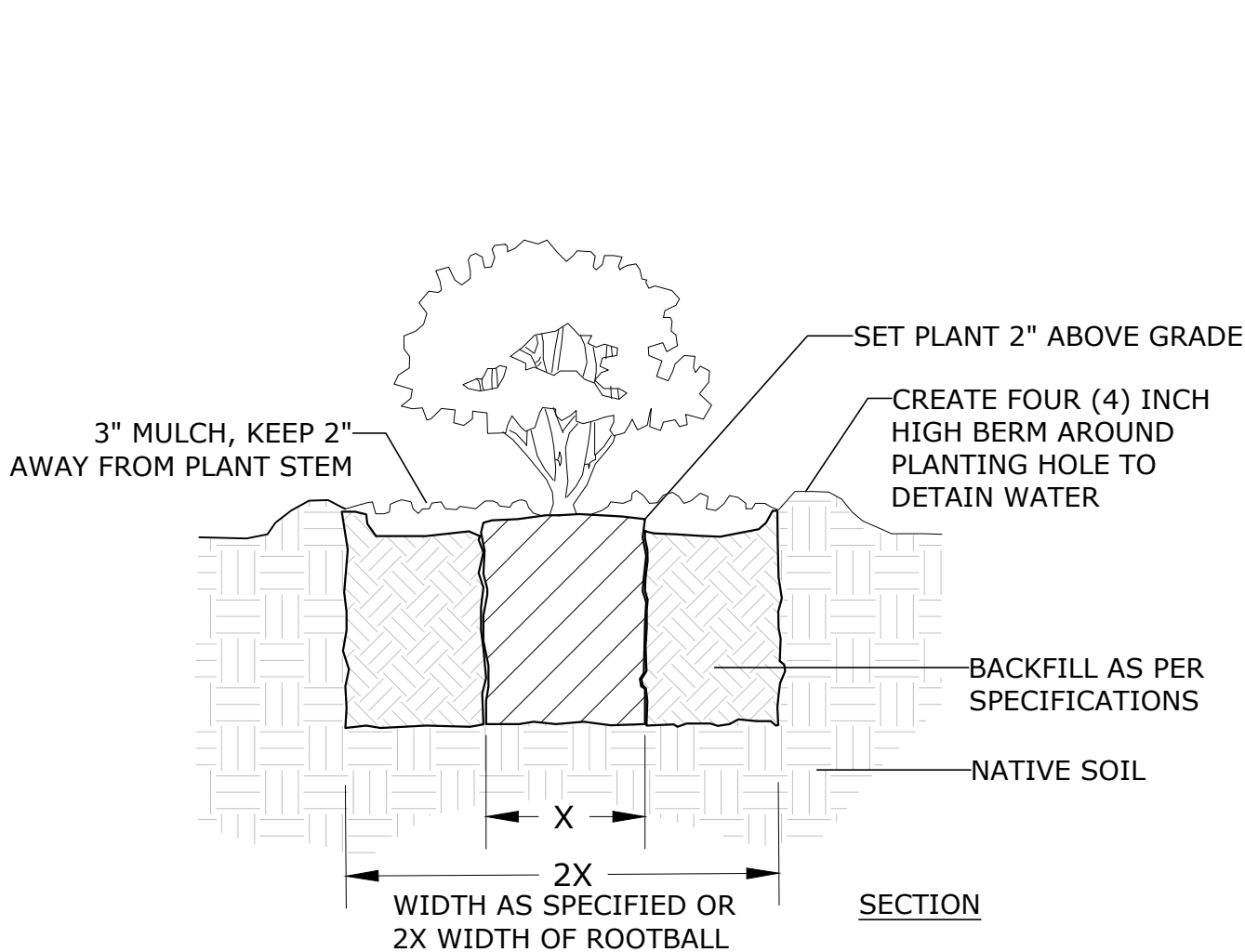
L-1.3

SEEDING NOTES

- SEED PROCUREMENT: SEED SHALL BE PROVIDED BY THE CONTRACTOR ON THE BASIS OF PURE LIVE SEED (PLS). THE SEED SEED TAGS SHALL BE SUBMITTED TO SMART'S PROJECT MANAGER FOR APPROVAL PRIOR TO APPLICATION.
- SEEDING SCHEDULE: SEEDING SHALL OCCUR BETWEEN SEPTEMBER 15TH AND OCTOBER 15TH UNLESS OTHERWISE APPROVED BY SMART'S PROJECT MANAGER.
- SEEDING AREAS SHALL BE MARKED PRIOR TO SEED APPLICATION AND APPROVED BY SMART'S PROJECT MANAGER.
- SOIL WILL BE PREPARED FOR SEED INSTALLATION BY HAND RAKING OR DISKING.
- THE SEED MIXES SHALL BE MANUALLY BROADCASTED.
- THE BROADCAST SEED MIX SHALL INCLUDE THE FOLLOWING COMPONENTS:
 - SEED
 - STRAW: STRAW SHALL BE 100% RICE STRAW.
 - SAND: SAND SHALL BE FINE (0.1 - 0.25 MILLIMETER DIAMETER), MEDIUM (0.25 - 0.5 MILLIMETER DIAMETER), OR COARSE (0.5 - 1.0 MILLIMETER DIAMETER) CLASS SAND, AS SPECIFIED. THE SAND SHALL CONTAIN NO GERMINATION, GROWTH-INHIBITING PROPERTIES, OR ELEMENTS OR COMPOUNDS AT CONCENTRATIONS THAT WILL BE PHYTOTOXIC.
 - THE CONTRACTOR SHALL PROVIDE SUBMITTALS OF THE COMPONENTS TO SMART'S PROJECT MANAGER FOR APPROVAL.
- BROADCAST SEEDING SHALL OCCUR AS FOLLOWS:
 - RAKING OR TILLING: AREAS DESIGNATED BY SMART'S PROJECT MANAGER SHALL BE RAKED OR TILLED TO A MINIMUM DEPTH OF FOUR (4) INCHES.
 - INERT MATERIALS: AFTER RECEIVING APPROVAL FOR THE SEED, THE SEED SHALL BE THOROUGHLY AND COMPLETELY BLENDED WITH INERT MATERIAL. THE MIXING OF THE SEED MIX WITH INERT MATERIAL SHALL BE BY VOLUME AS SPECIFIED: ONE PART SEED MIX / THREE PARTS MEDIUM SAND.
 - THE SEED/INERT MATERIAL MIXTURE SHALL BE UNIFORMLY AND EVENLY BROADCAST OVER THE DESIGNATED AREAS. BROADCASTING MAY BE DONE BY HAND-HELD SPREADER, GRAVITY DROP SEEDER, CYCLONE SPREADER, OR ANOTHER TYPE OF EQUIPMENT OR METHOD, AS APPROVED BY SMART'S PROJECT MANAGER.
 - THE SEED SHALL BE INCORPORATED INTO THE SOIL TO A MINIMUM DEPTH OF ONE-QUARTER (1/4) INCH AND A MAXIMUM DEPTH OF ONE-HALF (1/2) INCH. THE INCORPORATION MAY OCCUR BY HAND-RAKING OR THE USE OF A CHAIN HARROW OR TINE HARROW, SUBJECT TO APPROVAL BY SMART'S PROJECT MANAGER.
 - STRAW: FOLLOWING SEEDING, RICE STRAW SHALL BE APPLIED TO ALL AREAS OF NATIVE SOIL THAT WERE SEEDED UNLESS OTHERWISE DIRECTED BY SMART'S PROJECT MANAGER. STRAW SHALL BE APPLIED AT A RATE OF 3,000 POUNDS PER ACRE.

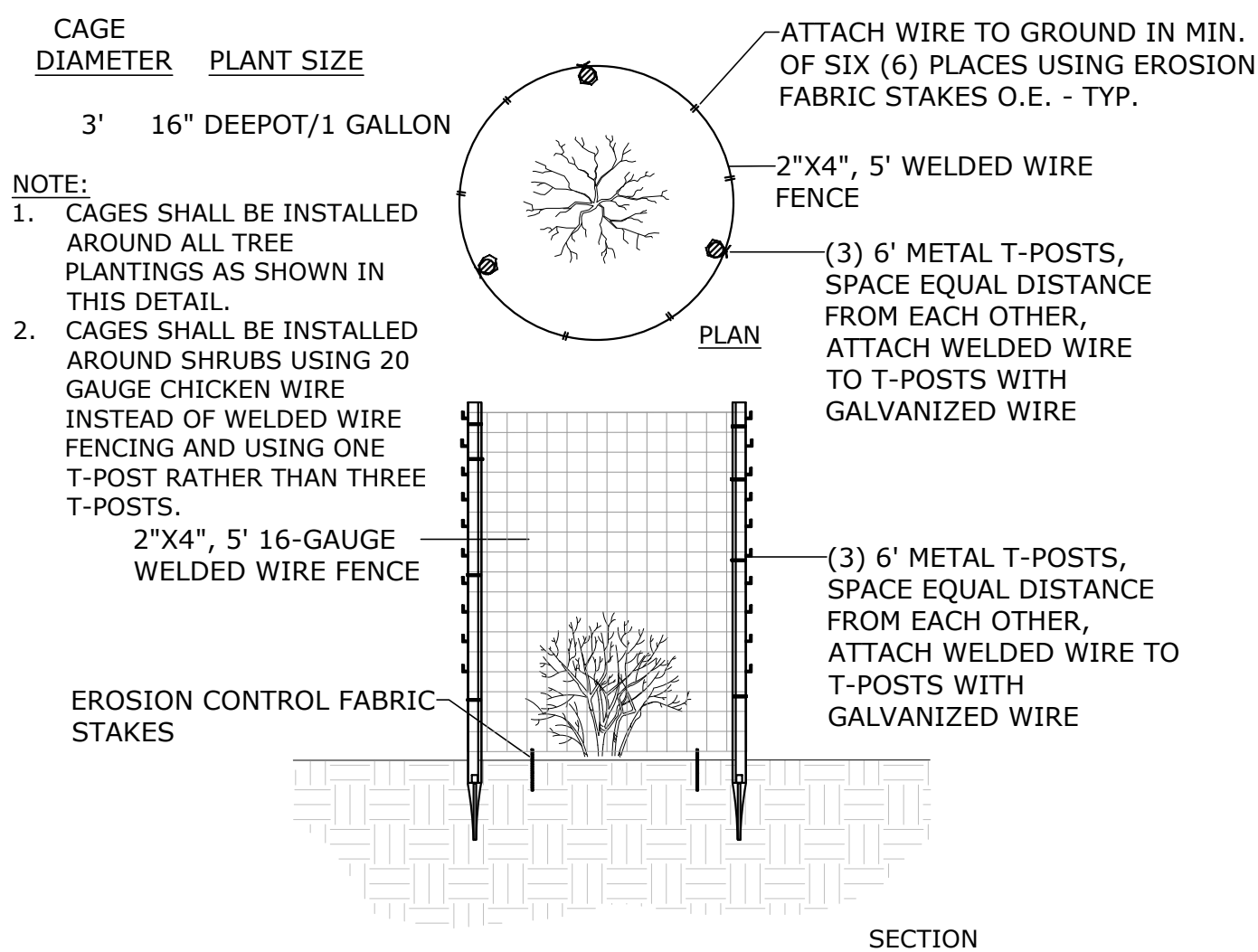
PLANTING NOTES

- PLANT PROCUREMENT: CONTRACTOR SHALL WORK WITH SMART'S PROJECT MANAGER TO PROCURE THE PLANTS FROM A NURSERY RECOMMENDED BY REGIONAL PARKS. THE PLANTS SHALL BE DELIVERED TO THE PROJECT SITE BY THE OWNER OR NURSERY AND APPROVED BY SMART'S PROJECT MANAGER AND CONTRACTOR.
- PLANTING SCHEDULE: PLANTINGS SHALL BE INSTALLED IN FALL OR EARLY WINTER (OCTOBER 15TH - DECEMBER 31) TO ALLOW PLANTS TO ESTABLISH DURING THE WINTER RAINY SEASON, UNLESS OTHERWISE APPROVED BY SMART'S PROJECT MANAGER. THE IRRIGATION SYSTEM SHALL BE INSTALLED PRIOR TO PLANTING.
- PLANTING LAYOUT FOR TREES, SHRUBS, AND HERBACEOUS PLANTINGS (EXCLUDING THE WINDSOR DRIVE DRAINAGE CHANNEL BOTTOM AREA): THE CONTRACTOR SHALL USE PIN FLAGS OR OTHER IDENTIFIERS TO MARK THE LOCATION OF THE PLANTS AT THE PROJECT SITE FOR REVIEW BY SMART'S PROJECT MANAGER PRIOR TO THE INSTALLATION OF THE DRIP EMITTERS, TUBING AND PLANTINGS. PIN FLAGS SHALL HAVE A UNIQUE COLOR AND/OR IDENTIFYING MARK FOR EACH PLANT SPECIES.
- PLANTING LAYOUT FOR THE WINDSOR DRIVE DRAINAGE CHANNEL BOTTOM PLANTING AREA: THE EXTENT OF PLANTING AND TYPICAL PLANTING LAYOUTS SHALL BE MARKED BY THE CONTRACTOR AS SHOWN ON SHEET L1.1 AND L1.2 FOR APPROVAL BY SMART'S PROJECT MANAGER PRIOR TO PLANT INSTALLATION.
- PLANTING HOLES: PLANTING HOLES SHALL BE DUG ACCORDING TO THE DIMENSIONS SHOWN IN THE PLANTING DETAIL.
- PLANT FERTILIZER: CONTRACTOR SHALL INSTALL '1-YEAR NUTRI-PAK TREES, SHRUBS & EVERGREENS' ONE-YEAR TIME RELEASE FERTILIZER PACKETS BY NUTRI-PAK OR EQUIVALENT SLOW RELEASE FERTILIZER AS APPROVED BY SMART'S PROJECT MANAGER. THE FERTILIZER SHALL HAVE THE FOLLOWING RATIO OF NITROGEN, PHOSPHOROUS, AND POTASSIUM: 16-8-8. THE FERTILIZER SPECIFICATIONS SHALL BE SUBMITTED TO SMART'S PROJECT MANAGER FOR APPROVAL. INSTALL ONE FERTILIZER PACK AT THE BOTTOM OF THE PLANTING HOLE PRIOR TO PLANTING THE TREE/SHRUBS.
- MULCH: THE CONTRACTOR SHALL INSTALL A 3-INCH LAYER OF WOOD BARK MULCH AROUND ALL TREES AND SHRUBS AS SHOWN ON THE PLANTING DETAILS. MULCH SHALL BE ORGANIC AND WEED-FREE WITH A ONE-HALF INCH MINIMUM AND A THREE INCH MAXIMUM PARTICLE SIZE. CONTRACTOR SHALL PROVIDE A SUBMITTAL OF THE MULCH TO SMART'S PROJECT MANAGER FOR APPROVAL.
- FOLIAGE PROTECTION CAGES: THE CONTRACTOR SHALL INSTALL FOLIAGE PROTECTION CAGES FOLLOWING THE COMPLETION OF PLANT INSTALLATION AROUND THE PLANTS IDENTIFIED IN THE PLANT LEGEND AND IN ACCORDANCE WITH THE DETAIL ON SHEET L-1.3.
- WATERING: NEWLY PLANTED TREES AND SHRUBS SHALL BE WATERED REGULARLY TO PREVENT PLANT MATERIAL FROM WILTING. PLANTINGS SHALL BE INSTALLED AFTER THE AUTOMATIC IRRIGATION SYSTEM HAS BEEN INSTALLED AND TESTED. IN THE CASE THAT THIS IS NOT POSSIBLE, PLANTINGS SHALL BE MANUALLY WATERED FROM THE TIME THAT THEY ARE PLANTED UNTIL THE TIME THAT THE AUTOMATIC IRRIGATION SYSTEM IS IN OPERATION.
- WARRANTY: THE CONTRACTOR SHALL GUARANTEE THE SURVIVAL OF ALL OF THE PLANTS FOR THE DURATION OF THE ONE-YEAR MAINTENANCE PERIOD. THE MAINTENANCE PERIOD SHALL BE 1 YEAR AFTER COMPLETION OF THE PLANTING AND APPROVAL OF THE INSTALLATION BY SMART'S PROJECT MANAGER. AT THE END OF THE GUARANTEE PERIOD, THE CONTRACTOR SHALL REPLACE, AT NO ADDITIONAL COST TO THE OWNER, PLANT MATERIAL THAT IS DETERMINED TO BE EITHER DEAD OR IN POOR HEALTH.



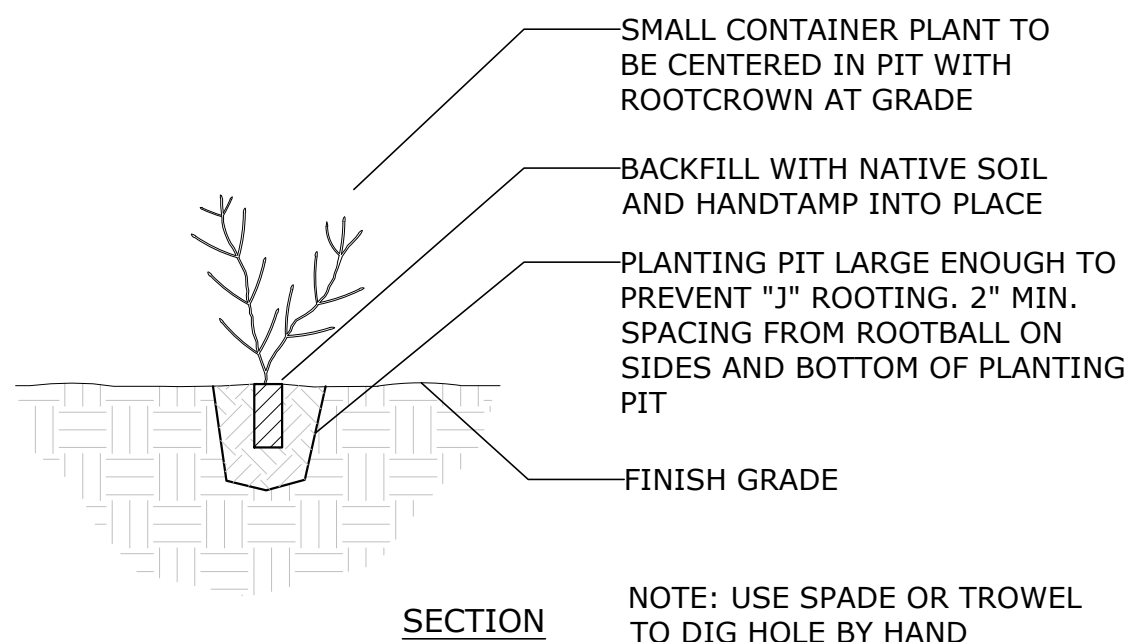
1 TREE & SHRUB PLANTING DETAIL

NOT TO SCALE



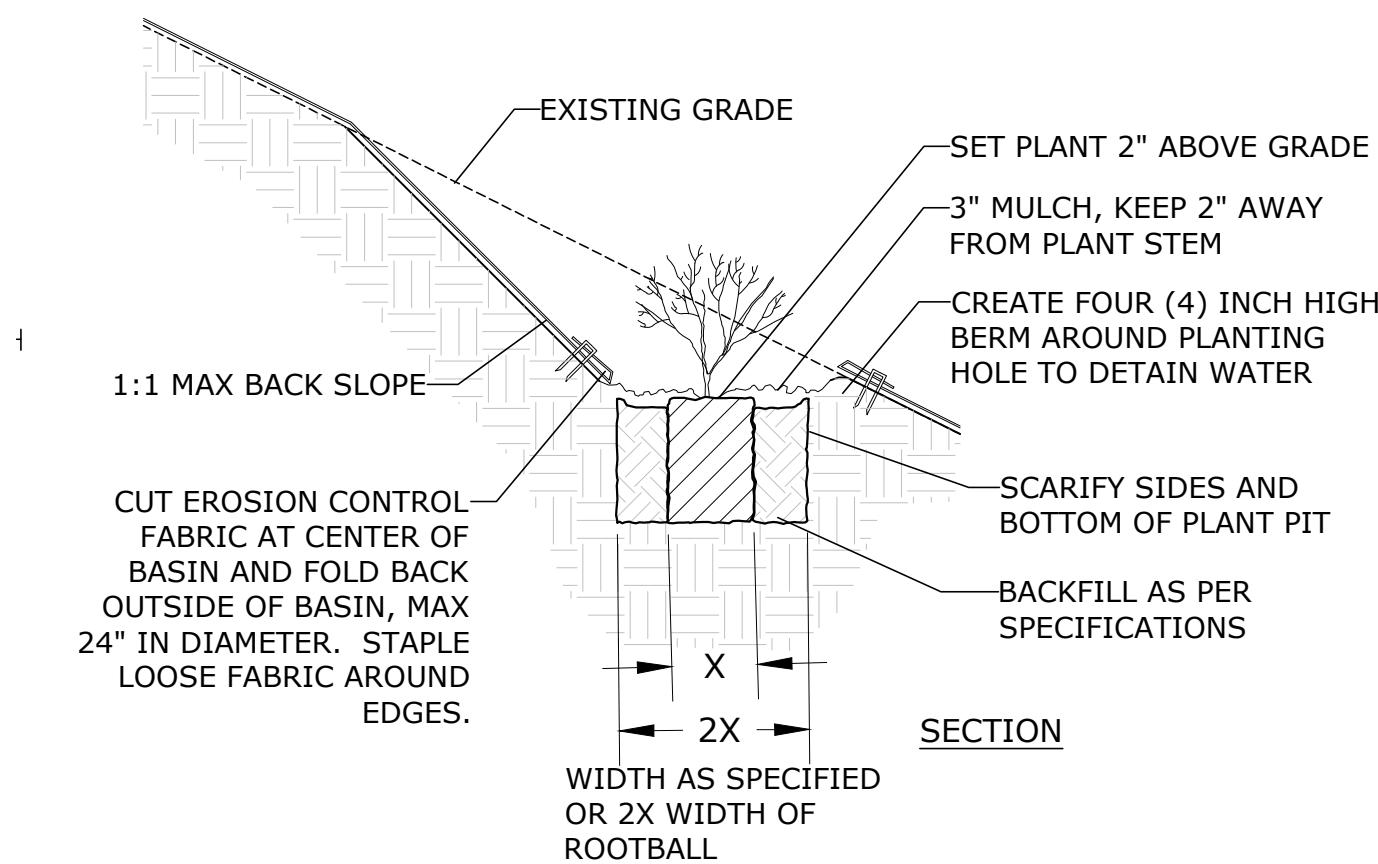
2 FOLIAGE PROTECTION CAGE

NOT TO SCALE



3 HERBACEOUS PLANTING DETAIL



















NOT TO SCALE



4 TREE & SHRUB PLANTING, ON SLOPE

NOT TO SCALE

IRRIGATION LEGEND

SYMBOL	NAME
	5,000 GAL. POLY TANK, DARK GREEN
	IRRIGATION POINT OF CONNECTION
	WATER METER PROVIDED BY OTHERS
	BACK FLOW PREVENTION DEVICE PROVIDED BY OTHERS
	MASTER VALVE: HUNTER ICV-201G-FS-DC; HUNTER NODE-BT-100 BATTERY-OPERATED CONTROLLER OR APPROVED EQUAL, INSTALL IN VALVE BOX
	GATE VALVE. NIBCO T-113 GATE VALVE, SIZE THE SAME SIZE AS THE LARGEST PIPE CONNECTED TO GATE VALVE, INSTALL IN VALVE BOX.
	REMOTE CONTROL VALVE. HUNTER "DRIP KIT" ICZ-101-25-LF; OPERATING PRESSURE: UP TO 120 PSI HUNTER NODE-BT-100 BATTERY-OPERATED CONTROLLER OR APPROVED EQUAL, INSTALL IN VALVE BOX.
	AIR VACUUM RELIEF VALVE (AVRV). HUNTER AVR-075 AIR/VACUUM RELIEF VALVE OR APPROVED EQUAL. INSTALL IN SAME BOX WITH REMOTE CONTROL VALVE.
	QUICK COUPLING VALVE. HUNTER HQ44-LRC, 1" INLET, 2-PIECE BODY, 2 SLOTS QUICK COUPLING VALVE WITH LOCKING COVER, ACME KEY OR APPROVED EQUAL. OPERATING PRESSURE: UP TO 150 PSI
	EMITTER FLUSH VALVE ASSEMBLY
	PRESSURE REDUCING VALVE AND PRESSURE GAUGE. WILKINS MODEL 600-L-SC OR APPROVED EQUAL. SIZED TO FIT
	MAINLINE PIPE - ABOVEGROUND: HDPE 4710 SDR 9 PIPE OR APPROVED EQUAL, 1 1/2"
	MAINLINE PIPE - TRENCHED: HDPE 4710 SDR 9 PIPE, 1 1/2"
	IRRIGATION SLEEVE: PVC SCHEDULE 80 PIPE, SIZED TO FIT
	LATERAL LINE PIPE: SALCO NON-RIGID PVC, PVC TYPE IPS, OR APPROVED EQUAL. SIZED TO FIT
	CONTROLLER STATION #
	APPROXIMATE FLOW (GPM)
	REMOTE CONTROL VALVE SIZE

SUPPLY TUBING AND DRIP EMITTER LEGEND

LOCATION DESCRIPTION	MODEL NUMBER	MODEL DESCRIPTION
ALL DRIP IRRIGATION AREAS	TWPE-700 - 1K	HUNTER 1/2" POLYETHYLENE SUPPLY TUBING
1-GALLON TREE OR SHRUB	HE-050-B	TWO (2) 0.5 GPH HUNTER SINGLE OUTLET POINT SOURCE EMITTERS WITH SELF-PIERCING BARB, BLUE

IRRIGATION NOTES

GENERAL

1. THESE IRRIGATION DRAWINGS ARE DIAGRAMMATIC AND INDICATIVE OF THE WORK TO BE INSTALLED. ALL PIPING, VALVES, ETC. SHOWN WITHIN PAVED AREAS ARE FOR GRAPHIC CLARITY ONLY AND ARE TO BE INSTALLED WITHIN PLANTING AREAS WHERE POSSIBLE. DUE TO THE SCALE OF THE DRAWINGS, IT IS NOT POSSIBLE TO INDICATE ALL OFFSETS, FITTINGS, SLEEVES, ETC., WHICH MAY BE REQUIRED. THE CONTRACTOR IS REQUIRED TO INVESTIGATE THE STRUCTURAL AND FINISHED CONDITIONS AFFECTING ALL OF THE CONTRACT WORK, INCLUDING OBSTRUCTIONS, GRADE DIFFERENCES OR AREA DIMENSIONAL DIFFERENCES WHICH MAY NOT HAVE BEEN CONSIDERED IN THE ENGINEERING. IN THE EVENT OF FIELD DIFFERENCES, THE CONTRACTOR IS REQUIRED TO PLAN THE INSTALLATION WORK ACCORDINGLY BY NOTIFICATION AND APPROVAL OF SMART'S PROJECT MANAGER. THE CONTRACTOR IS ALSO REQUIRED TO NOTIFY AND COORDINATE IRRIGATION CONTRACT WORK WITH ALL APPLICABLE CONTRACTORS FOR THE LOCATION AND INSTALLATION OF PIPE, CONDUIT OR SLEEVES THROUGH, OVER, OR UNDER WALLS, ROADWAYS, DECOMPOSED GRANITE SHOULDERS, PAVING, STRUCTURE, ETC., BEFORE CONSTRUCTION. IN THE EVENT THESE NOTIFICATIONS ARE NOT PERFORMED, THE CONTRACTOR SHALL ASSUME FULL RESPONSIBILITY FOR ALL REQUIRED REVISIONS.

2. THE CONTRACTOR SHALL PROVIDE SUBMITTALS FOR ALL IRRIGATION COMPONENTS TO SMART'S PROJECT MANAGER FOR APPROVAL PRIOR TO PURCHASE OR INSTALLATION.

3. THE INTENT OF THIS IRRIGATION SYSTEM IS TO PROVIDE THE MINIMUM AMOUNT OF WATER REQUIRED TO SUSTAIN GOOD PLANT HEALTH.

WATER TANK AT UPPER POND DRAINAGE

4. THE WATER TANK SHALL BE 5,000 GALLON POLY TANK (140" DIAMETER x 91" TALL) DARK GREEN IN COLOR.

5. THE BASE OF THE TANK SHALL CONSIST OF 4 TO 6 INCHES OF PEA GRAVEL IN A 14 GAUGE STEEL RETAINING RING.

6. THE WATER TANK SHALL BE A MINIMUM OF 50 VERTICAL FEET ABOVE THE IRRIGATION REMOTE CONTROL VALVES. THE CONTRACTOR SHALL VERIFY THE LOCATION OF THE TANK WITH SMART'S PROJECT MANAGER PRIOR TO INSTALLATION.

7. THE BASE OF THE TANK SHALL CONSIST OF 4 TO 6 INCHES OF PEA GRAVEL IN A 14 GAUGE STEEL RETAINING RING.

8. CONTRACTOR SHALL PARK WATER TRUCK ON RIDGE TRAIL (THE PAVED SERVICE ROAD) AND USE A HOSE TO CONVEY WATER FROM THE TRUCK TO THE WATER TANK. THE TRAIL (SOUTH LOOP TRAIL) FROM THE PAVED SERVICE ROAD TO THE WATER TANK IS NOT ACCESSIBLE BY A WATER TRUCK.

FLOW AND PRESSURE REQUIREMENTS

9. THE CONTRACTOR SHALL VERIFY MINIMUM STATIC PRESSURES AND A MINIMUM FLOW RATES AT THE POINTS OF CONNECTION AS NOTED ON THE DRAWINGS AND REPORT ANY DISCREPANCIES TO SMART'S PROJECT MANAGER.

10. THE CONTRACTOR SHALL VERIFY THAT ALL IRRIGATION COMPONENTS OPERATE AT THE OPERATION PRESSURE STATED IN THE MANUFACTURER'S SPECIFICATIONS. REPORT ANY DISCREPANCIES TO SMART'S PROJECT MANAGER.

11. A SOLAR-POWERED BOOSTER PUMP PRESSURE SYSTEM SHALL BE INSTALLED AT THE WINDSOR DRIVE DRAINAGE SITE IN ORDER TO PROVIDE ADEQUATE PRESSURE FOR THE IRRIGATION SYSTEM AS SHOWN IN THE DRAWINGS. THE CONTRACTOR SHALL WORK WITH A PUMP SPECIALIST TO INSTALL THE SOLAR-POWERED BOOSTER PUMP PRESSURE SYSTEM, INCLUDING AN AIR-GAP TANK, BOOSTER PUMP, SOLAR ARRAY, AND OTHER REQUIRED COMPONENTS AND ENSURE THAT IT MEETS CITY REQUIREMENTS. THE CONTRACTOR SHALL SUBMIT THE SPECIFICATIONS AND A DETAILED LAYOUT PLAN FOR THE SYSTEM FOR APPROVAL BY SMART'S PROJECT MANAGER PRIOR TO INSTALLATION. CONTRACTOR SHALL ADJUST PRESSURE TO OPERATE IRRIGATION SYSTEM.

12. CONTRACTOR SHALL SHALL SUBMIT THE SPECIFICATIONS AND A DETAILED LAYOUT PLAN FOR THE CHAIN LINK FENCE AND GATE FOR APPROVAL BY SMART'S PROJECT MANAGER PRIOR TO INSTALLATION.

PIPE AND VALVE INSTALLATION

13. THE ABOVEGROUND MAINLINE SHALL SIT ON TOP OF EXISTING GRADE. INSTALL U-SHAPED STAPLES AT 20-FT. INTERVALS OR AS NEEDED TO SECURE MAINLINE IN PLACE.

14. THE TRENCHED MAINLINE SHALL BE INSTALLED AS SHOWN NEAR THE PARKING LOT AT THE WINDSOR DRIVE DRAINAGE SITE AND UNDER TRAILS AND PATHWAYS. THE CONTRACTOR SHALL SUBMIT A SHOP DRAWING OF THE TRENCHED TO ABOVEGROUND MAINLINE TRANSITION FOR APPROVAL BY SMART'S PROJECT MANAGER.

15. THE CONTRACTOR SHALL ROUTE THE MAINLINE AS SHOWN ON THE PLANS. THE CONTRACTOR SHALL FLAG THE MAINLINE AND VALVE LOCATIONS FOR SMART'S PROJECT MANAGER'S REVIEW AND APPROVAL PRIOR TO GROUND DISTURBANCE.

16. LATERAL LINES AND DRIP SUPPLY TUBING SHALL BE AT GRADE, EXCEPT AT PATHS, CHANNELS, OR ROAD CROSSINGS. THE CONTRACTOR SHALL SLEEVE ALL LATERALS AND MAINLINES PASSING UNDERNEATH PAVEMENT, ROADS, TRAILS, OR OVER DRAINAGE CHANNELS.

17. THE CONTRACTOR SHALL AVOID INSTALLING TRENCHES OR PERFORMING GROUND DISTURBING ACTIVITIES UNDER THE DRIPLINE OF TREES UNLESS APPROVED BY THE SMART'S PROJECT MANAGER.

18. THE CONTRACTOR SHALL PERFORM A PRESSURE TEST OF THE MAINLINES AT 125 PSI AND THE LATERAL LINES AT 100 PSI FOR FOUR HOURS FOR APPROVAL BY SMART'S PROJECT MANAGER.

19. PRESSURE REDUCERS SHALL BE INSTALLED IN LATERAL LINES AS REQUIRED FOR DRIP EMITTER OPERATION. CONTRACTOR SHALL NOTIFY AND SUBMIT SPECIFICATIONS TO SMART'S PROJECT MANAGER FOR APPROVAL PRIOR TO INSTALLATION.

20. QUICK COUPLERS SHALL BE INSTALLED TO ALLOW FOR HAND WATERING OF HERBACEOUS PLANTINGS.

21. THE CONTRACTOR SHALL OPTIMIZE THE VALVE BOX LAYOUT TO MINIMIZE THE TOTAL NUMBER OF VALVE BOXES REQUIRED.

22. THE CONTRACTOR SHALL LOCK ALL VALVE BOXES UNLESS OTHERWISE SPECIFIED IN WRITING BY THE OWNER'S REPRESENTATIVE. THE CONTRACTOR SHALL TURN OVER 3 SETS OF KEYS TO THE VALVE BOXES TO SMART'S PROJECT MANAGER.

OPERATION, MAINTENANCE, AND REPORTING

23. IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO PROGRAM THE IRRIGATION CONTROLLERS TO PROVIDE THE MINIMUM AMOUNT OF WATER NEEDED TO SUSTAIN GOOD PLANT HEALTH. THIS INCLUDES MAKING ADJUSTMENTS TO THE PROGRAM FOR SEASONAL WEATHER CHANGES, PLANT MATERIAL, WATER REQUIREMENTS, MOUNDS AND SLOPES, SUN, SHADE, AND WIND EXPOSURES.

24. THE CONTRACTOR SHALL SEND THE IRRIGATION SCHEDULE BY VALVE TO SMART'S PROJECT MANAGER FOR APPROVAL PRIOR TO OPERATION.

25. THE CONTRACTOR SHALL PREPARE AN OPERATION AND MAINTENANCE MANUAL OF THE IRRIGATION SYSTEMS WHICH WILL INCLUDE THE CONTRACTOR'S NAME AND CONTACT INFORMATION, AND INFORMATION ON EACH IRRIGATION COMPONENT, INCLUDING THE MANUFACTURER'S NAME, MAKE AND MODEL NUMBER, NAME AND ADDRESS OF LOCAL MANUFACTURER'S REPRESENTATIVE, AND DETAILED OPERATING AND MAINTENANCE INSTRUCTIONS AS PER MANUFACTURER.

26. MAINTENANCE STAFF TRAINING: THE CONTRACTOR SHALL PERFORM A FULL INSTRUCTION SESSION IN THE PRESENCE OF THE DESIGNATED MAINTENANCE PERSONNEL DEMONSTRATING THE IRRIGATION CONTROLLER SYSTEM, SYSTEM TESTING, TROUBLE-SHOOTING, ETC. INCLUDE INSTRUCTIONS ON HOW TO TURN OFF THE SYSTEM IN CASE OF EMERGENCY.

27. THE CONTRACTOR SHALL MAINTAIN THE IRRIGATION SYSTEM, REPLACE ANY BROKEN OR DEFECTIVE PARTS, AND ENSURE THE IRRIGATION SCHEDULE IS ADEQUATE TO SUSTAIN THE HEALTH OF THE PLANTS FOR A 1-YEAR MAINTENANCE PERIOD.

28. THE CONTRACTOR SHALL INSPECT THE IRRIGATION SYSTEM AND REPORT TO THE OWNER'S REPRESENTATIVE HOW THE PLANTS AND IRRIGATION SYSTEM ARE PERFORMING DURING THE 1-YEAR MAINTENANCE PERIOD.



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SMART
NON- MOTORIZED
PATHWAY SEGMENT 3 -
MCINNIS PARKWAY TO
SMITH RANCH ROAD
RIPARIAN MITIGATION

HELEN PUTNAM
REGIONAL PARK

PETALUMA, CALIFORNIA



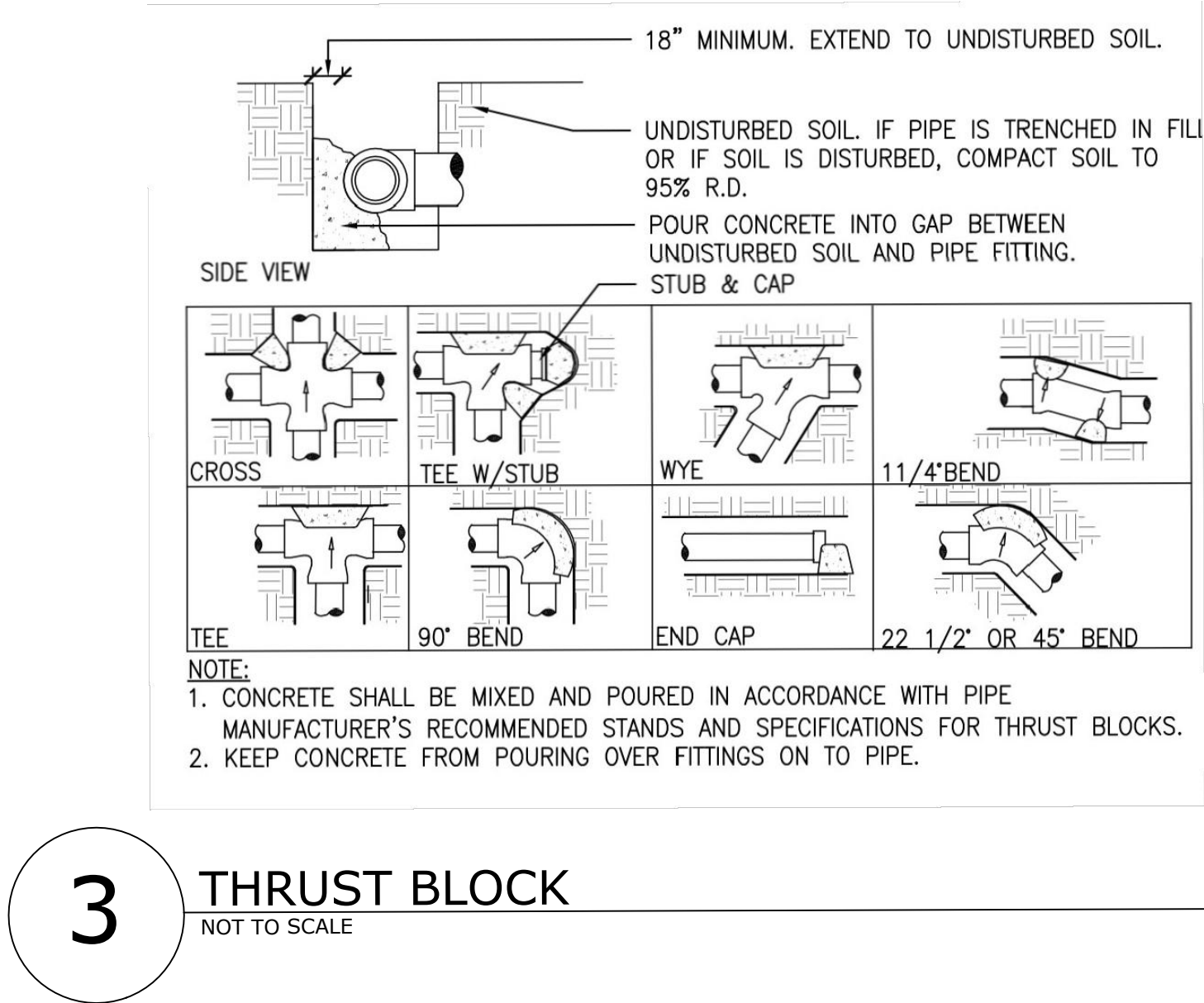
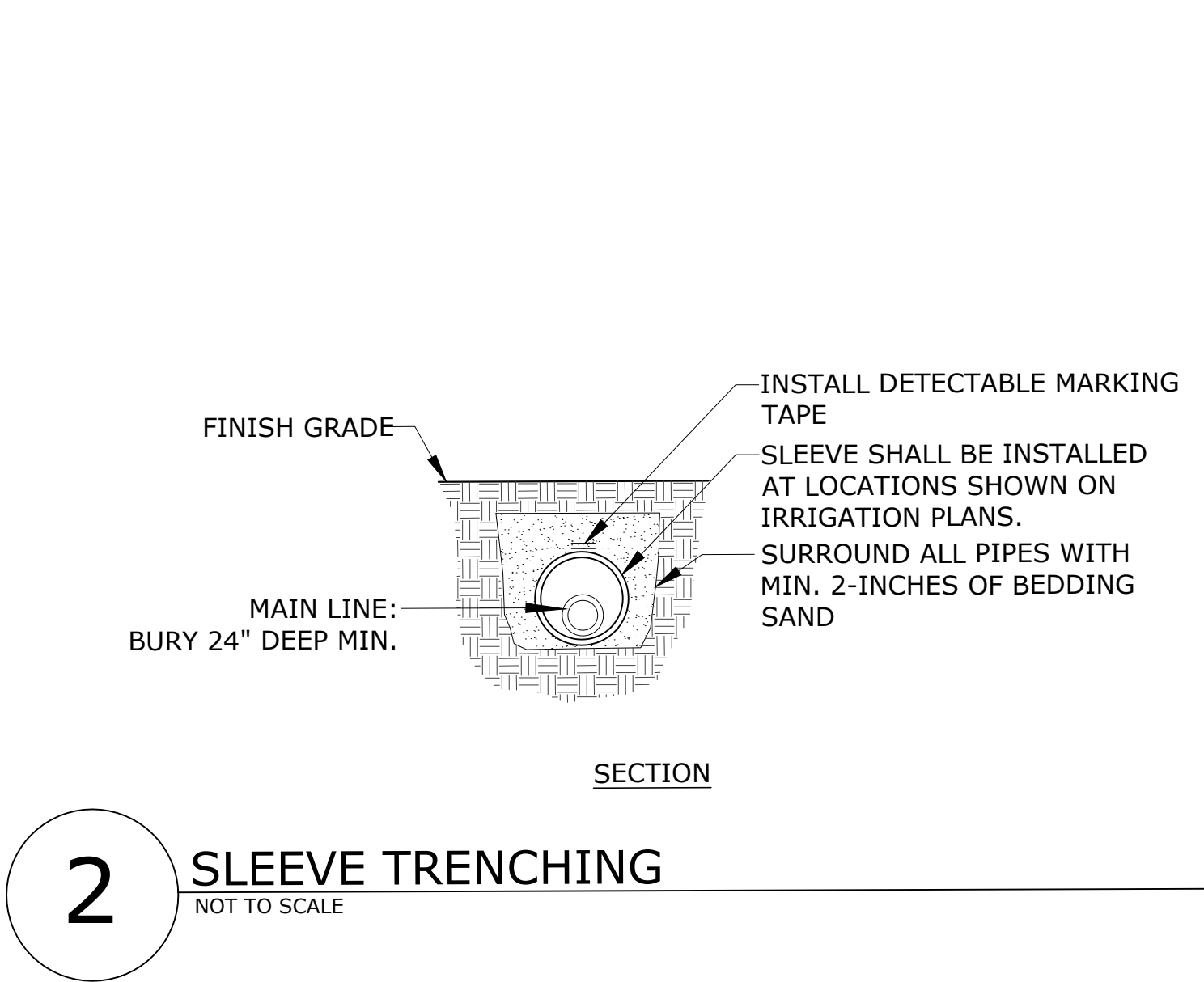
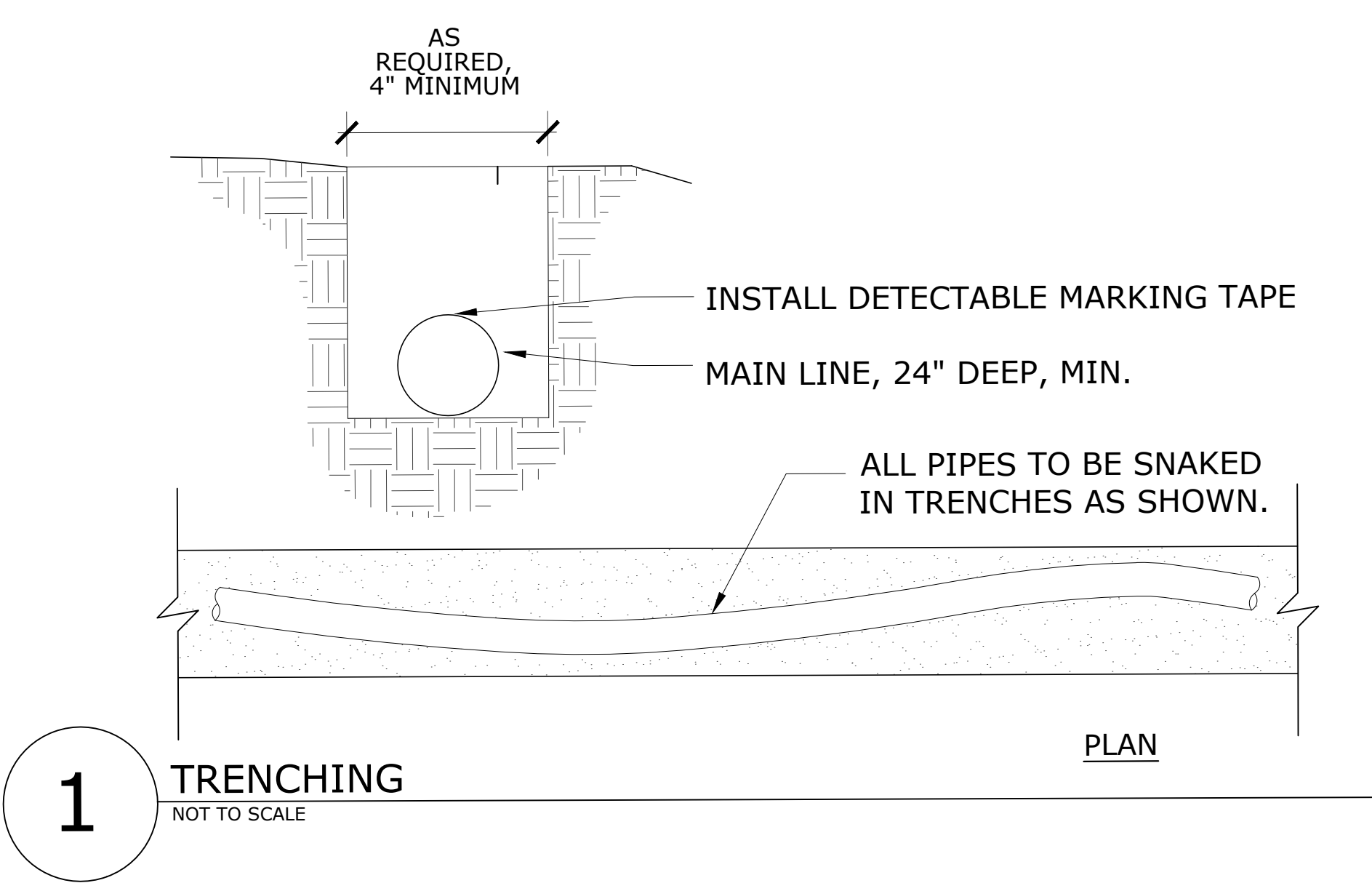
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Date	Issues And Revisions	No.	

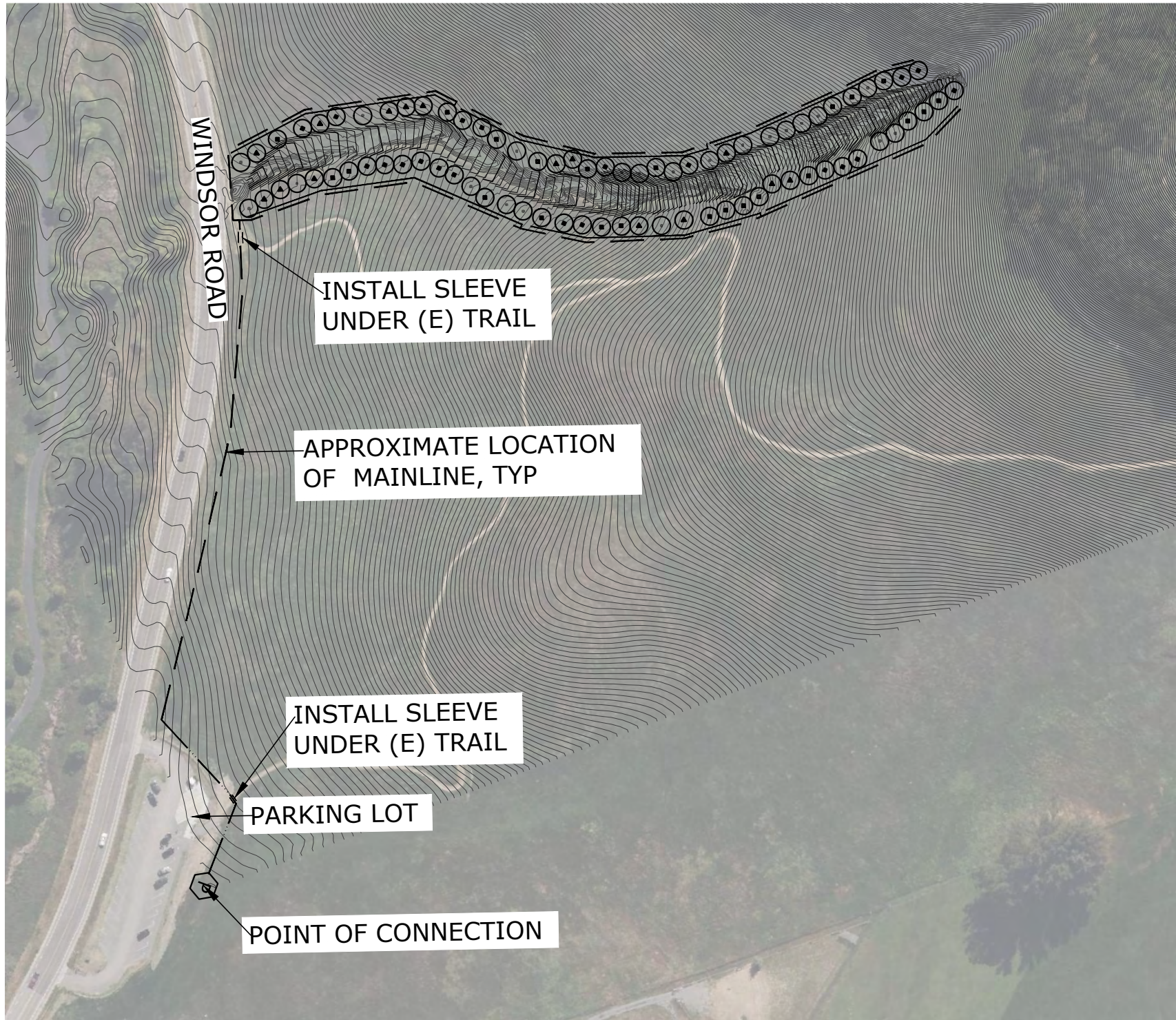
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CHECKED BY: ACS, ICM
ORIGINAL DRAWING SIZE: 22 X 34

IRRIGATION LEGEND,
NOTES AND DETAILS

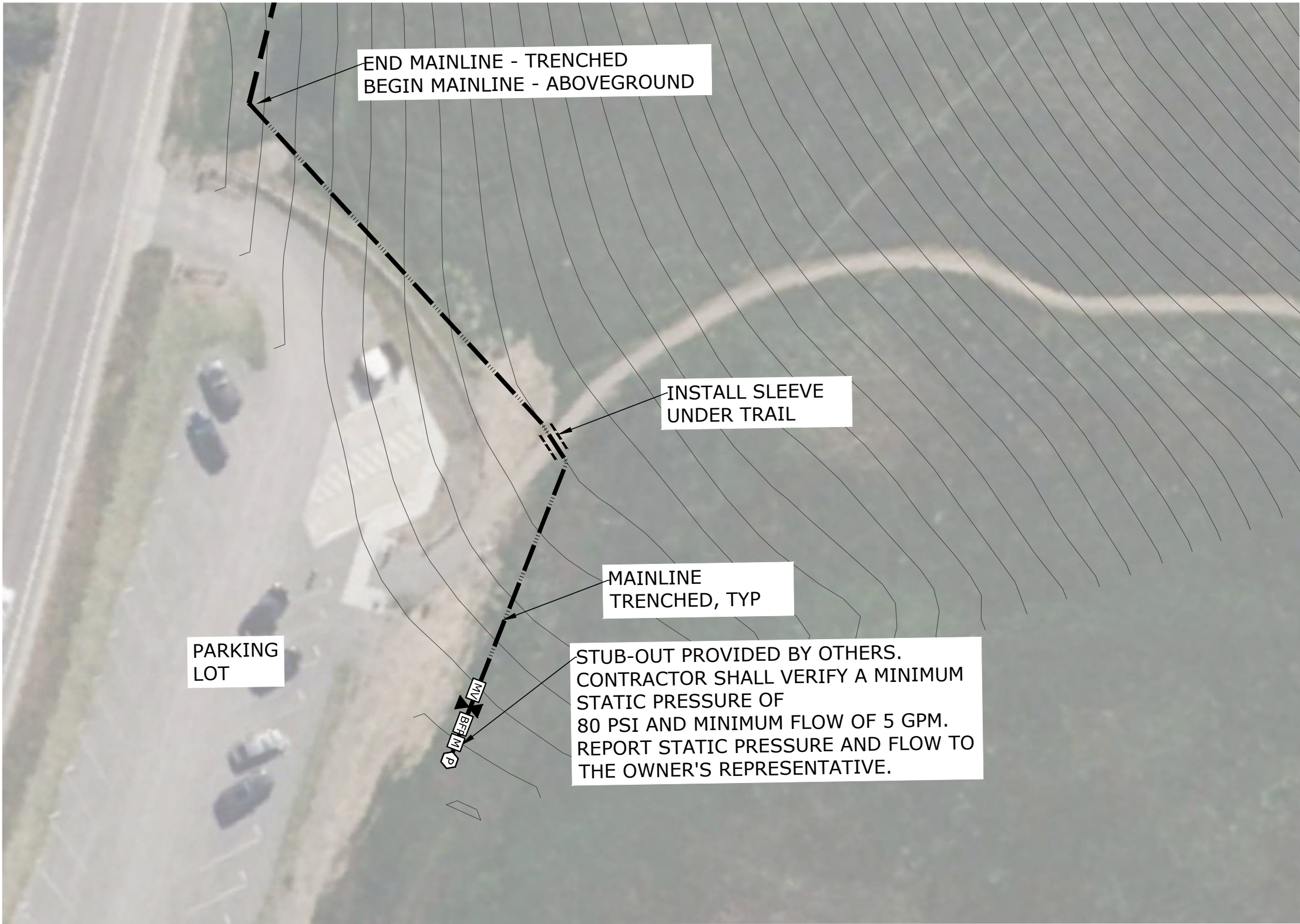
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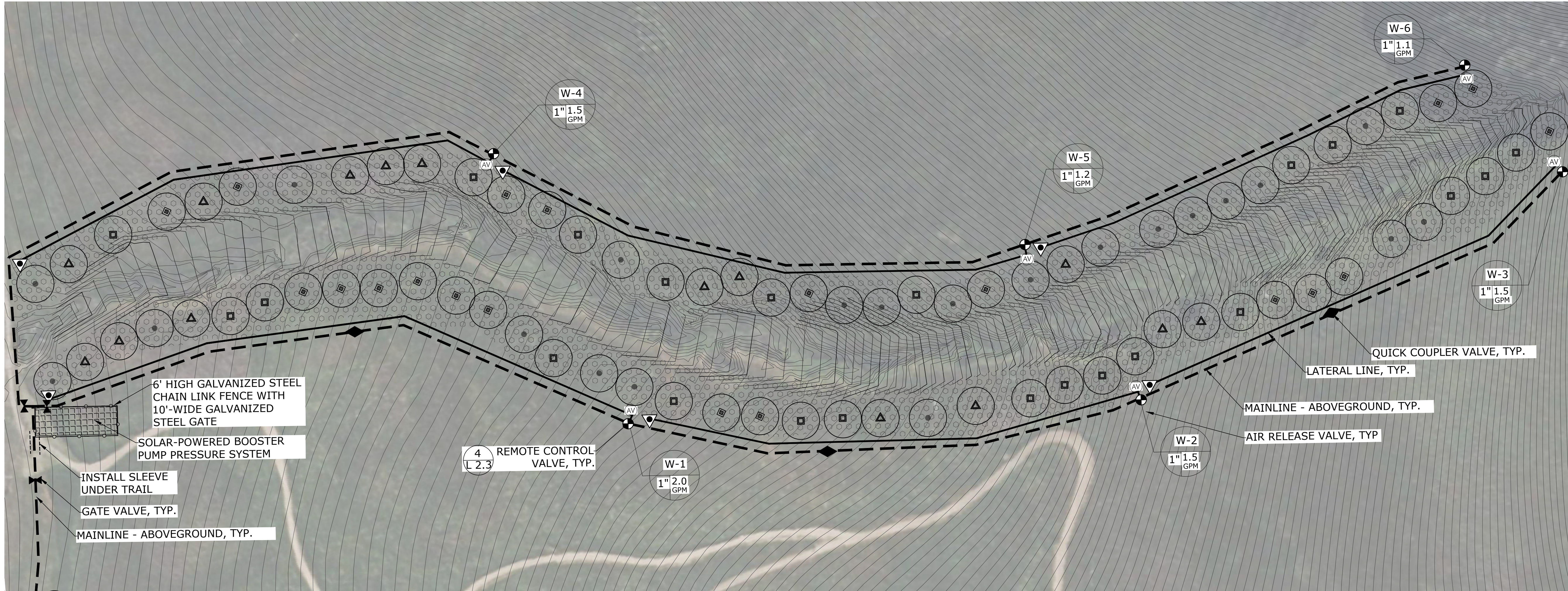




1 IRRIGATION MAINLINE FROM POINT OF CONNECTION TO VALVES
SCALE: 1"=150'



2 IRRIGATION POINT OF CONNECTION
SCALE: 1"=30'



3 IRRIGATION PLAN - WINDSOR DRIVE DRAINAGE
SCALE: 1"=30'

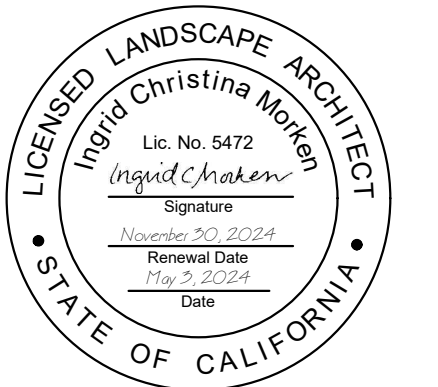


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**SMART
NON- MOTORIZED
PATHWAY SEGMENT 3 -
MCINNIS PARKWAY TO
SMITH RANCH ROAD
RIPARIAN MITIGATION**

**HELEN PUTNAM
REGIONAL PARK**

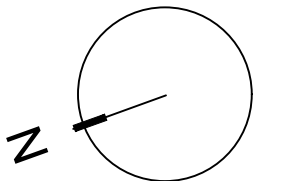
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ORIGINAL DRAWING SIZE: 22 X 34

0 30
SCALE: 1" = 30'



**IRRIGATION PLAN -
WINDSOR DRIVE
DRAINAGE**

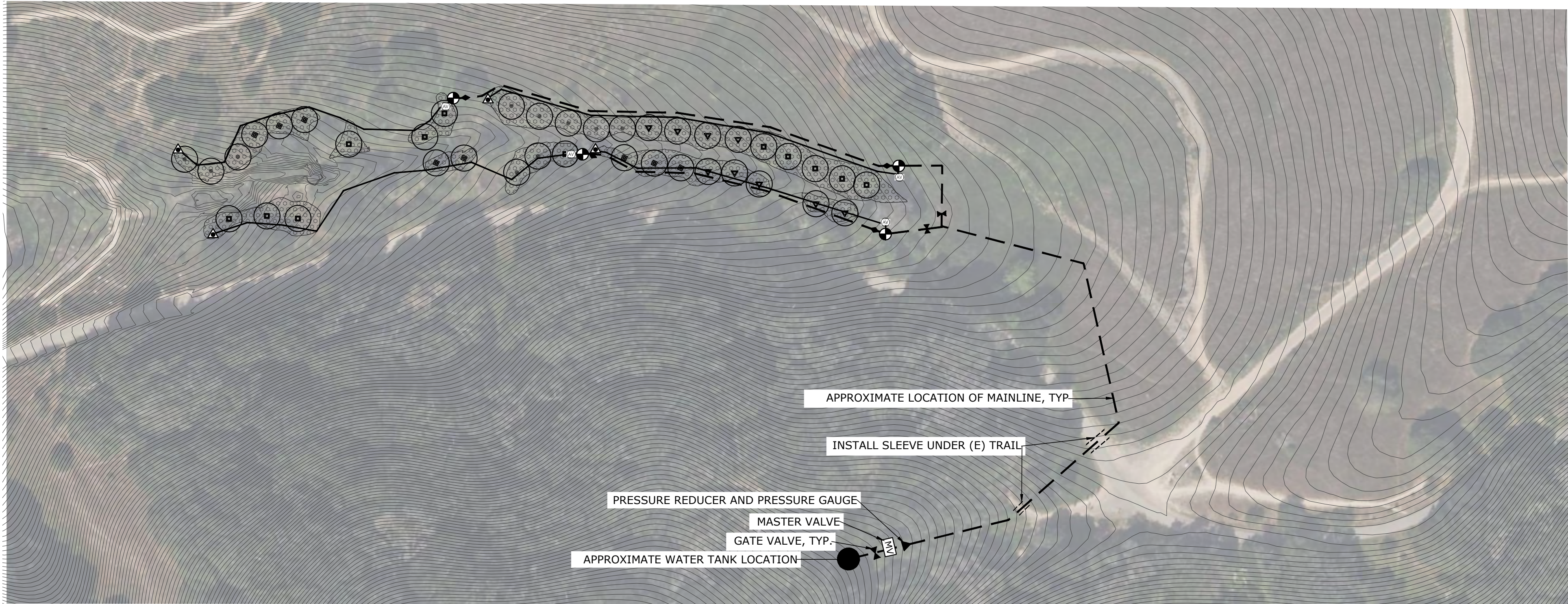
Sheet 14 of 16

L-2.1

**SMART
NON- MOTORIZED
PATHWAY SEGMENT 3 -
MCINNIS PARKWAY TO
SMITH RANCH ROAD
RIPARIAN MITIGATION**

**HELEN PUTNAM
REGIONAL PARK**

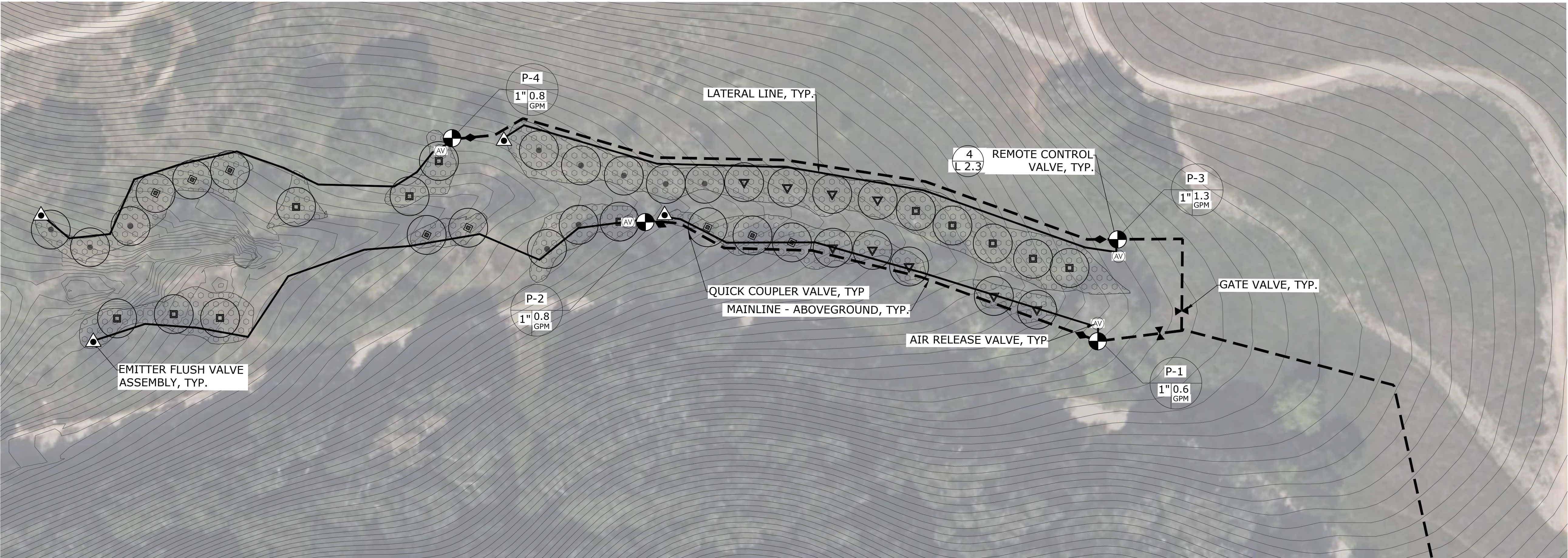
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1 IRRIGATION PLAN - MAINLINE FROM POINT OF CONNECTION TO VALVES

SCALE: 1"=60'

0 60
SCALE: 1" = 60'



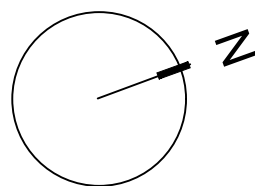
2 IRRIGATION PLAN - UPPER POND DRAINAGE

SCALE: 1"=30'

05/03/24 100% FINAL DESIGN
Date Issues And Revisions No.

PROJECT #31368
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CHECKED BY: ACS, ICM
ORIGINAL DRAWING SIZE: 22 X 34

0 30
SCALE: 1" = 30'



**IRRIGATION PLAN -
UPPER POND DRAINAGE**

Sheet 15 of 16

L-2.2

**SMART
NON- MOTORIZED
PATHWAY SEGMENT 3 -
MCINNIS PARKWAY TO
SMITH RANCH ROAD
RIPARIAN MITIGATION**

**HELEN PUTNAM
REGIONAL PARK**

PETALUMA, CALIFORNIA



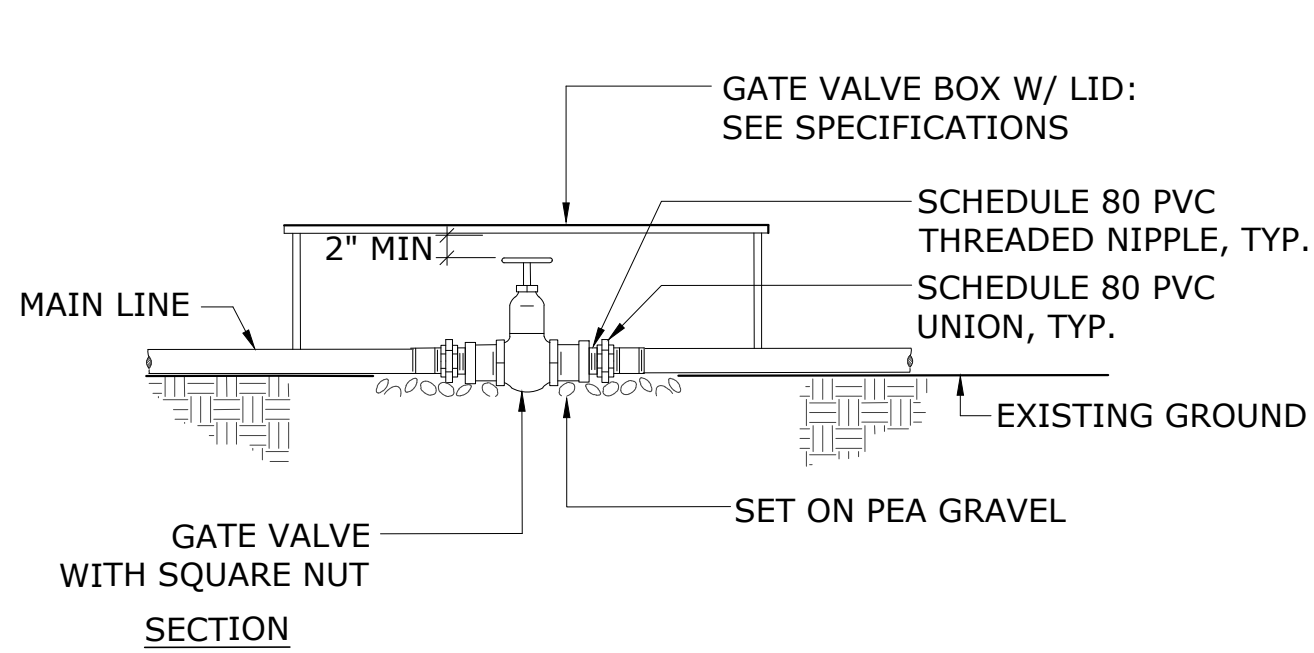
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CHECKED BY: ACS, ICM
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IRRIGATION DETAILS

Sheet 16 of 16

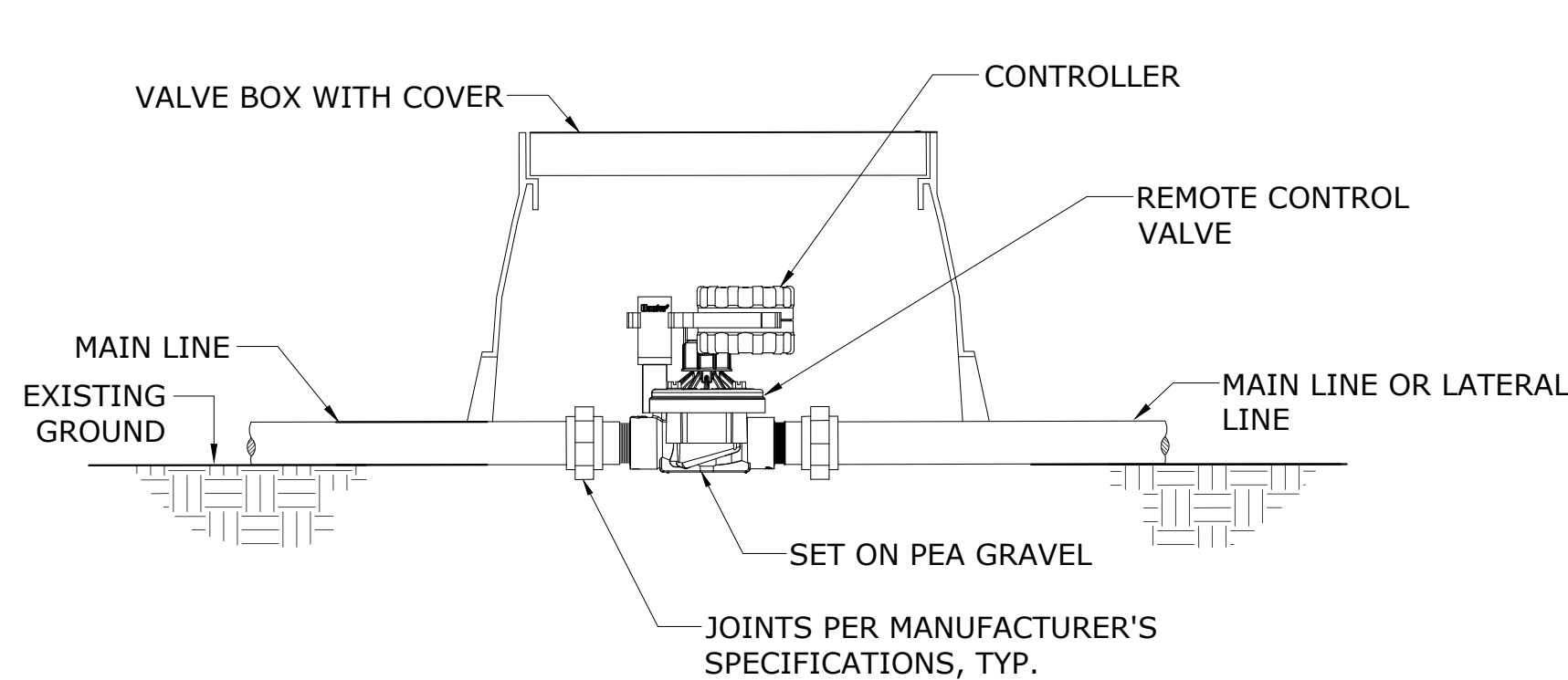
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1

GATE VALVE ASSEMBLY

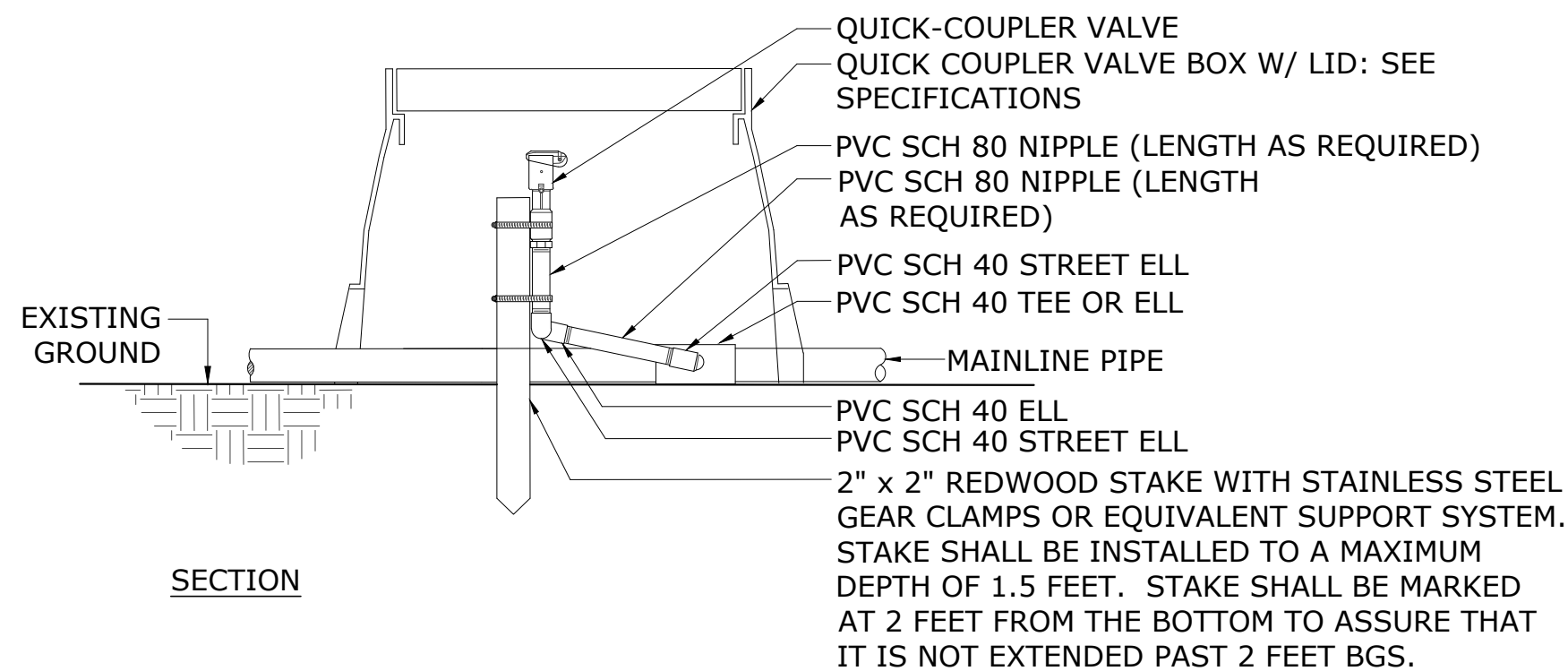
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2

MASTER VALVE AND REMOTE CONTROL VALVE

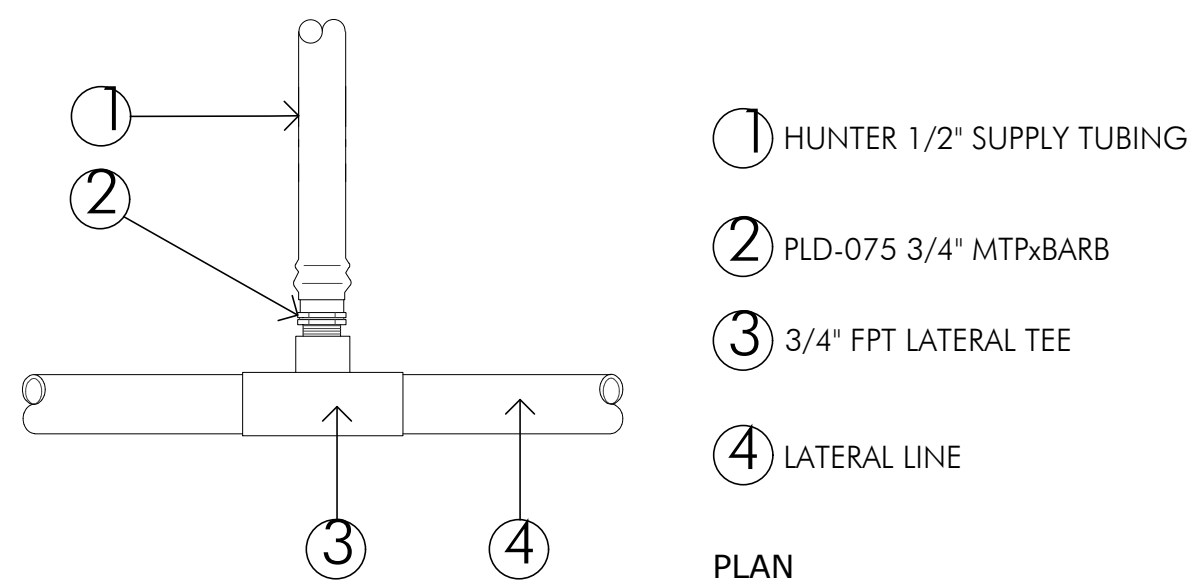
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3

QUICK COUPLING VALVE

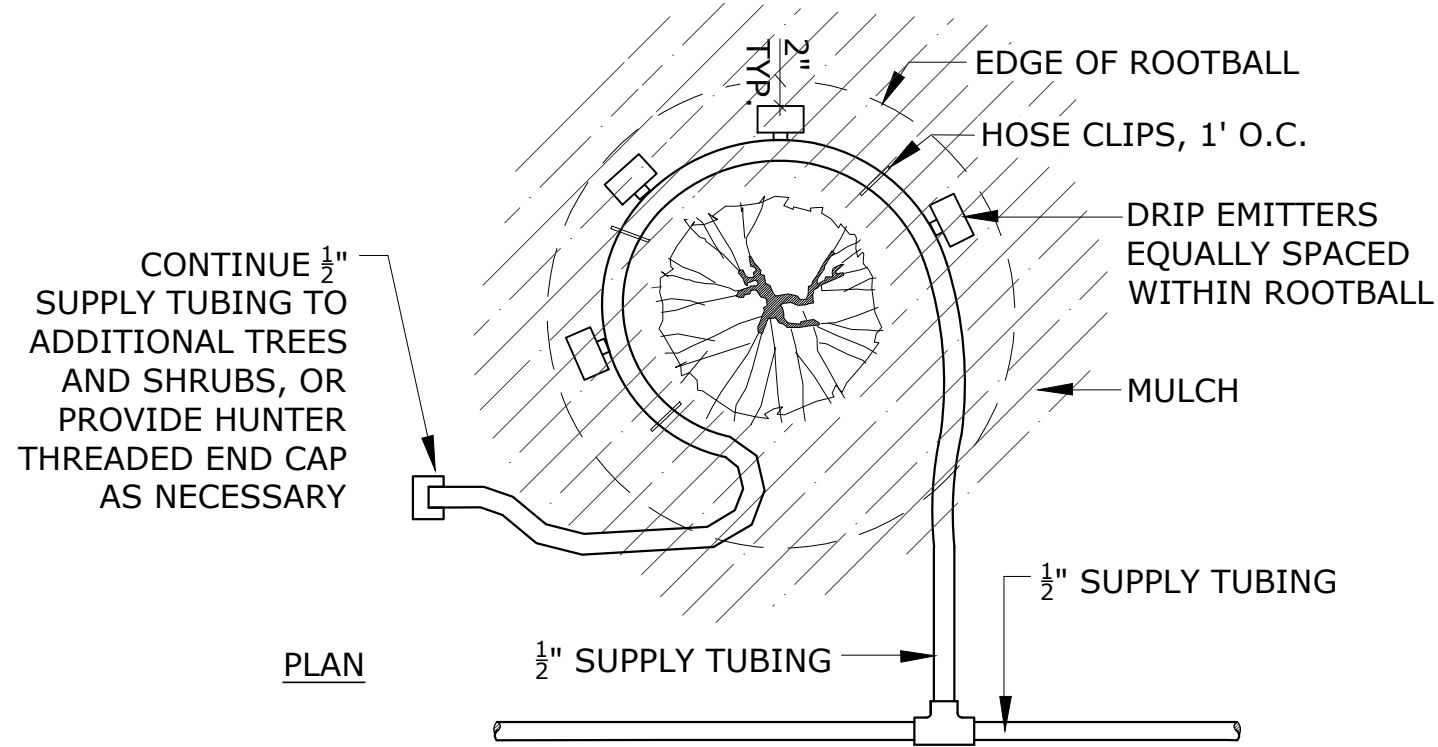
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4

LATERAL LINE TO AT-GRADE SUPPLY TUBING CONNECTION

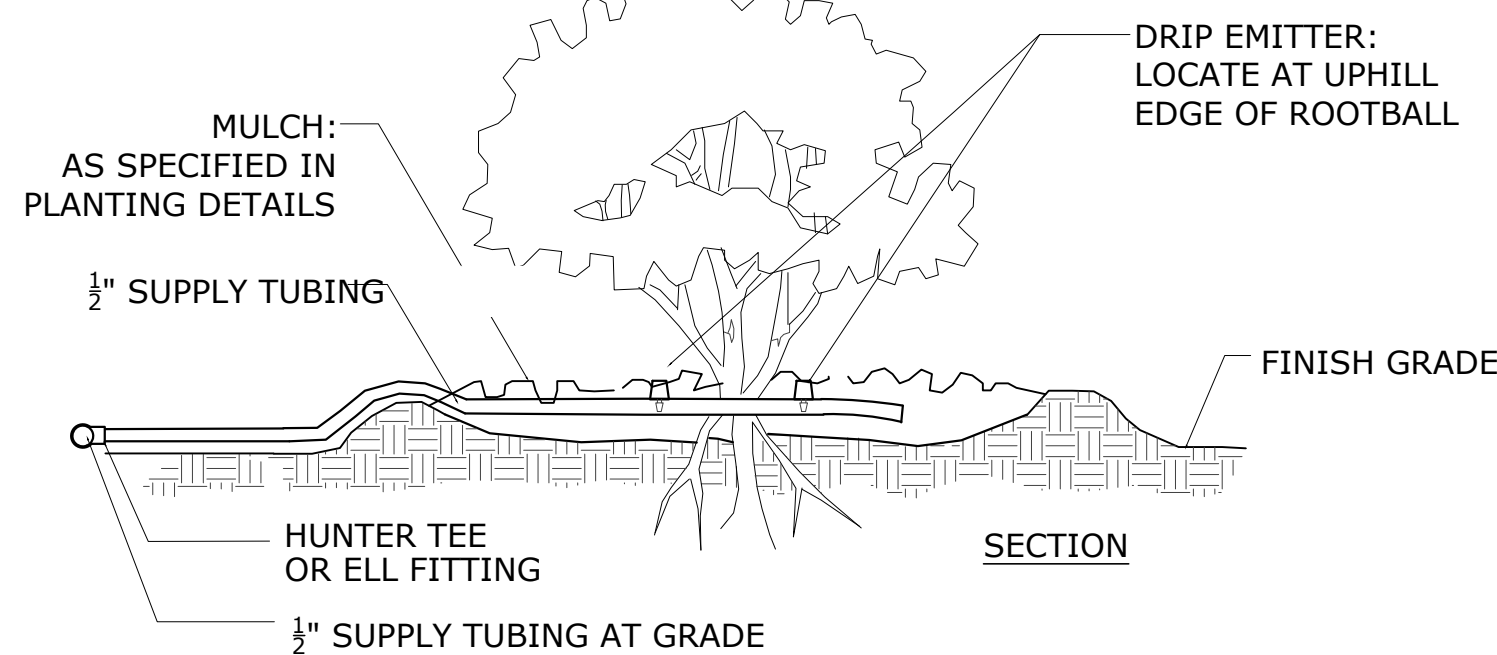
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5

DRIP EMITTERS WITH SUPPLY TUBING

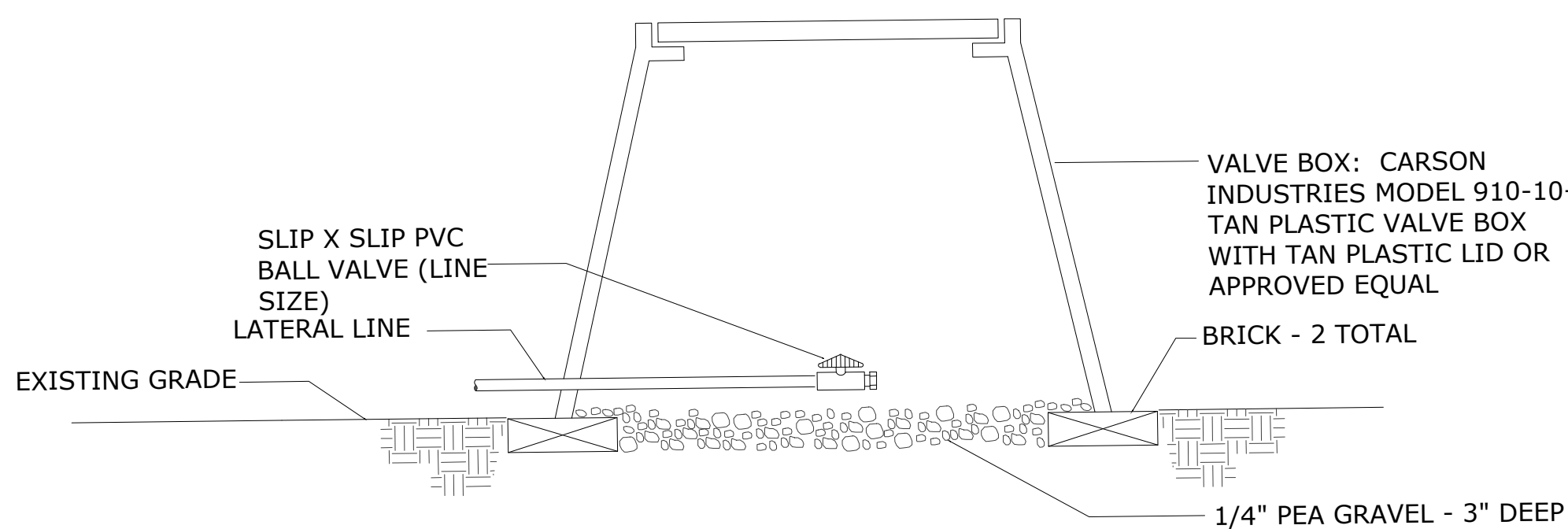
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6

EMITTER LINE FLUSH ASSEMBLY

NOT TO SCALE



APPENDIX D. WINDSOR DRIVE DRAINAGE HYDROLOGY CALCULATIONS AND 2D MODEL RESULTS



Calculation Sheet – Upstream of Project Extent

Equations:

$$v = \left(\frac{k_n}{n}\right) R_h^{2/3} S^{1/2}$$

$$v = \text{Velocity} \frac{ft}{sec}$$

$$k_n = 1.486$$

$$n = \text{Manning's coefficient of roughness}$$

$$R_h = \text{hydraulic radius} = \frac{A}{P_w}$$

$$A = \text{cross sectional area of flow (ft}^2\text{)}$$

$$P_w = \text{wetted perimeter (ft)}$$

$$S = \text{slope (ft/ft)}$$

$$Q = Av = A \left(\frac{k_n}{n}\right) R_h^{2/3} S^{1/2}$$

$$Q = \text{Volumetric Flow (cfs)}$$

$$\tau = \gamma RS$$

$$\tau = \text{Shear Stress} \frac{lb}{ft^2}$$

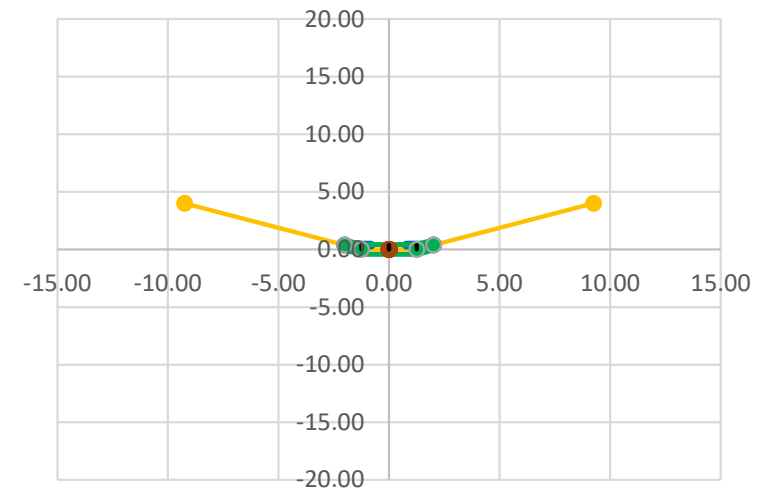
$$\gamma = \text{unit volume weight of water} = 62.4 \frac{lb}{ft^3}$$

Input and Calculated Values:

Input Parameter:	Enter:	
Channel Bottom Width	2.5	
Channel Bottom Cross Slope	0	
Channel Depth	4	
Channel Side Slopes	2	
Water Depth	0.38	
Energy Gradient	0.213	
n (Manning's roughness coefficient)	0.0330	
Calculated Parameters:	Result:	Target:
Cross-sectional area (Flood + Ha)	1.24	
Wetted perimeter (Flood + Habita)	4.20	
Average Depth	0.30	
Width to Depth Ratio	13.26	
Hydraulic radius	0.29	
Q (cfs)	9.01	9.0
Velocity (ft/sec)	7.27	
Shear (psf)	4.03	

Cross Section:

Channel Configuration



Calculation Sheet – Upstream Grading (Reach 4-5)

Equations:

$$v = \left(\frac{k_n}{n}\right) R_h^{2/3} S^{1/2}$$

$$v = \text{Velocity} \frac{ft}{sec}$$

$$k_n = 1.486$$

$$n = \text{Manning's coefficient of roughness}$$

$$R_h = \text{hydraulic radius} = \frac{A}{P_w}$$

$$A = \text{cross sectional area of flow (ft}^2\text{)}$$

$$P_w = \text{wetted perimeter (ft)}$$

$$S = \text{slope (ft/ft)}$$

$$Q = Av = A \left(\frac{k_n}{n}\right) R_h^{2/3} S^{1/2}$$

$$Q = \text{Volumetric Flow (cfs)}$$

$$\tau = \gamma RS$$

$$\tau = \text{Shear Stress} \frac{lb}{ft^2}$$

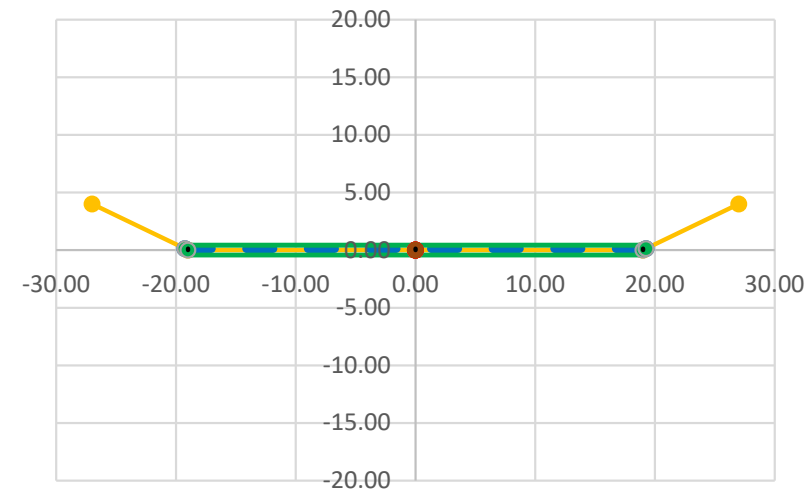
$$\gamma = \text{unit volume weight of water} = 62.4 \frac{lb}{ft^3}$$

Input and Calculated Values:

Input Parameter:	Enter:	
Channel Bottom Width	38	
Channel Bottom Cross Slope	0	
Channel Depth	4	
Channel Side Slopes	2	
Water Depth	0.125	
Energy Gradient	0.2222	
n (Manning's roughness coefficient)	0.0330	
Calculated Parameters:	Result:	Target:
Cross-sectional area (Flood + Hat)	4.78	
Wetted perimeter (Flood + Habitat)	38.56	
Average Depth	0.12	
Width to Depth Ratio	310.25	
Hydraulic radius	0.12	
Q (cfs)	16.80	16.0
Velocity (ft/sec)	3.51	
Shear (psf)	1.72	

Cross Section:

Channel Configuration



Calculation Sheet – Downstream Grading (Reach 2-3)

Equations:

$$v = \left(\frac{k_n}{n}\right) R_h^{2/3} S^{1/2}$$

$$v = \text{Velocity} \frac{\text{ft}}{\text{sec}}$$

$$k_n = 1.486$$

$$n = \text{Manning's coefficient of roughness}$$

$$R_h = \text{hydraulic radius} = \frac{A}{P_w}$$

$$A = \text{cross sectional area of flow (ft}^2\text{)}$$

$$P_w = \text{wetted perimeter (ft)}$$

$$S = \text{slope (ft/ft)}$$

$$Q = Av = A \left(\frac{k_n}{n}\right) R_h^{2/3} S^{1/2}$$

$$Q = \text{Volumetric Flow (cfs)}$$

$$\tau = \gamma RS$$

$$\tau = \text{Shear Stress} \frac{\text{lb}}{\text{ft}^2}$$

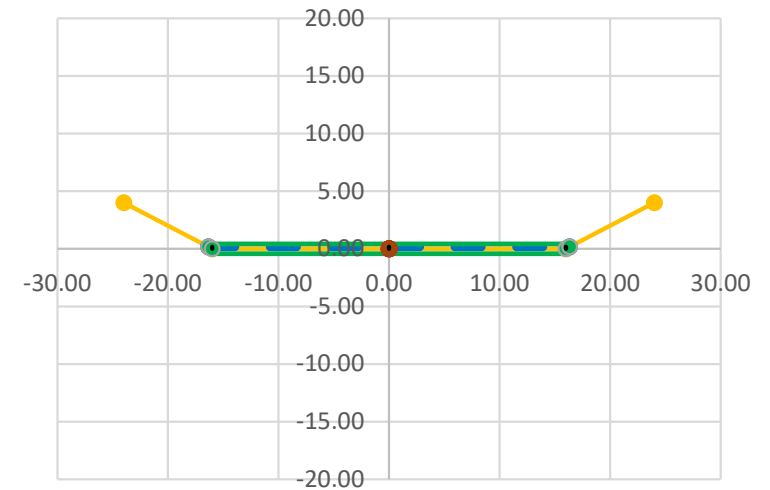
$$\gamma = \text{unit volume weight of water} = 62.4 \frac{\text{lb}}{\text{ft}^3}$$

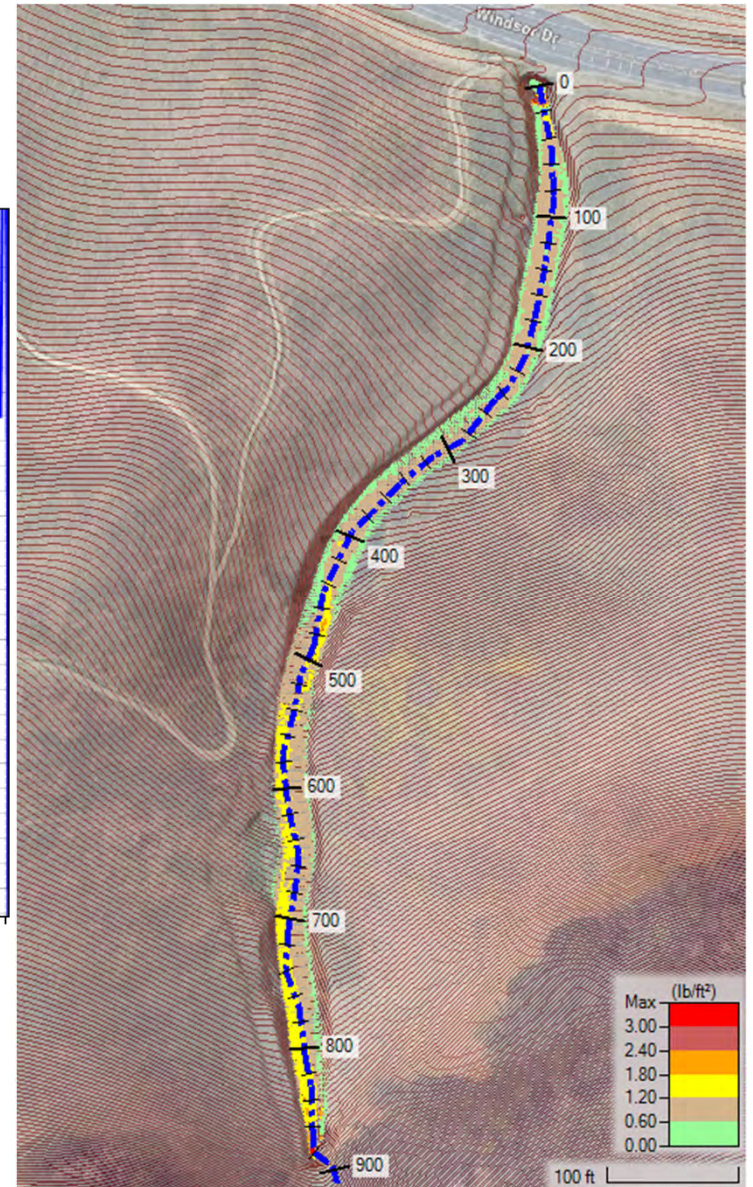
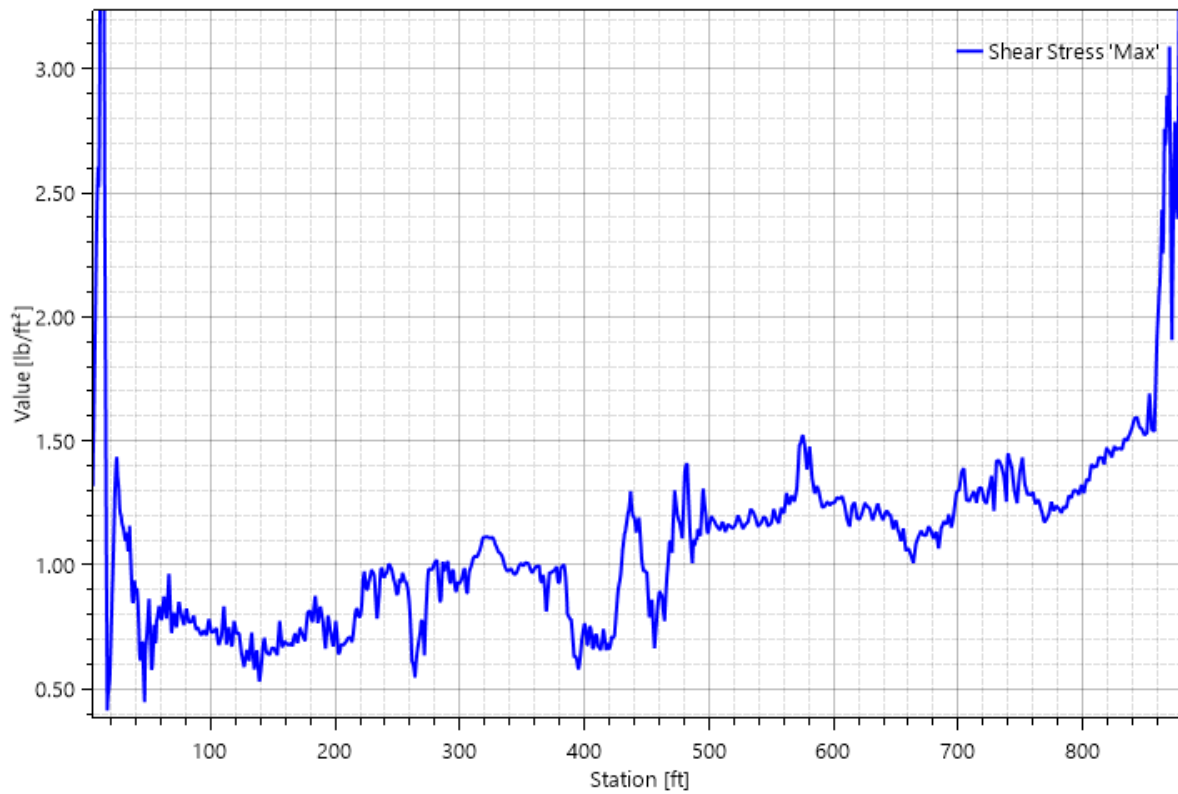
Input and Calculated Values:

Input Parameter:	Enter:	
Channel Bottom Width	32	
Channel Bottom Cross Slope	0	
Channel Depth	4	
Channel Side Slopes	2	
Water Depth	0.1667	
Energy Gradient	0.1161	
n (Manning's roughness coefficient)	0.0330	
Calculated Parameters:	Result:	Target:
Cross-sectional area (Flood + Ha)	5.39	
Wetted perimeter (Flood + Habita)	32.75	
Average Depth	0.16	
Width to Depth Ratio	198.22	
Hydraulic radius	0.16	
Q (cfs)	16.59	16.0
Velocity (ft/sec)	3.08	
Shear (psf)	1.19	

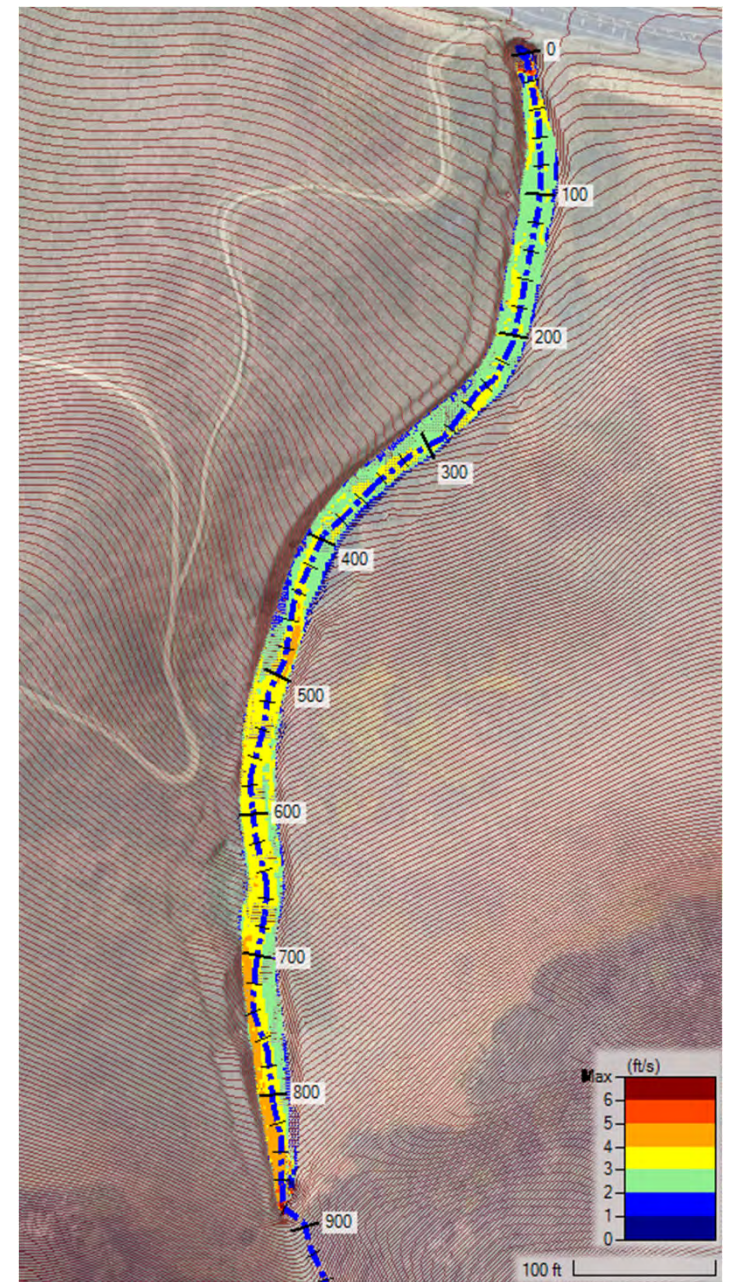
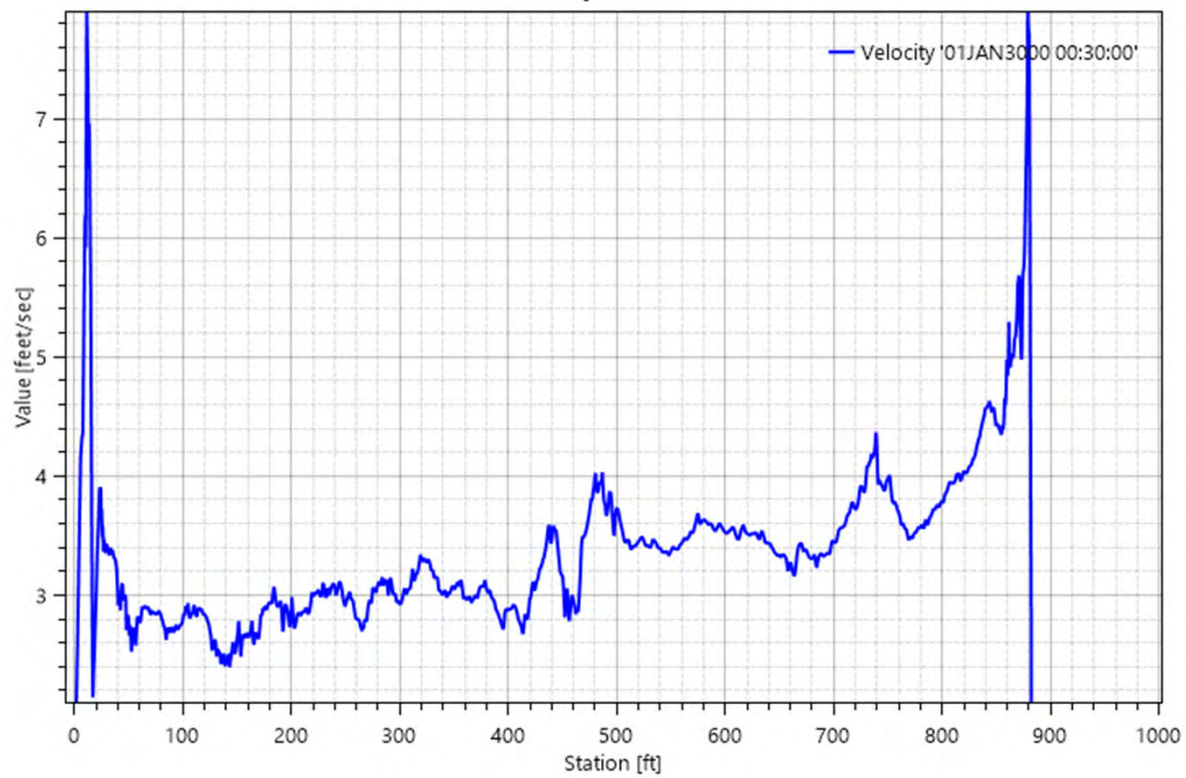
Cross Section:

Channel Configuration

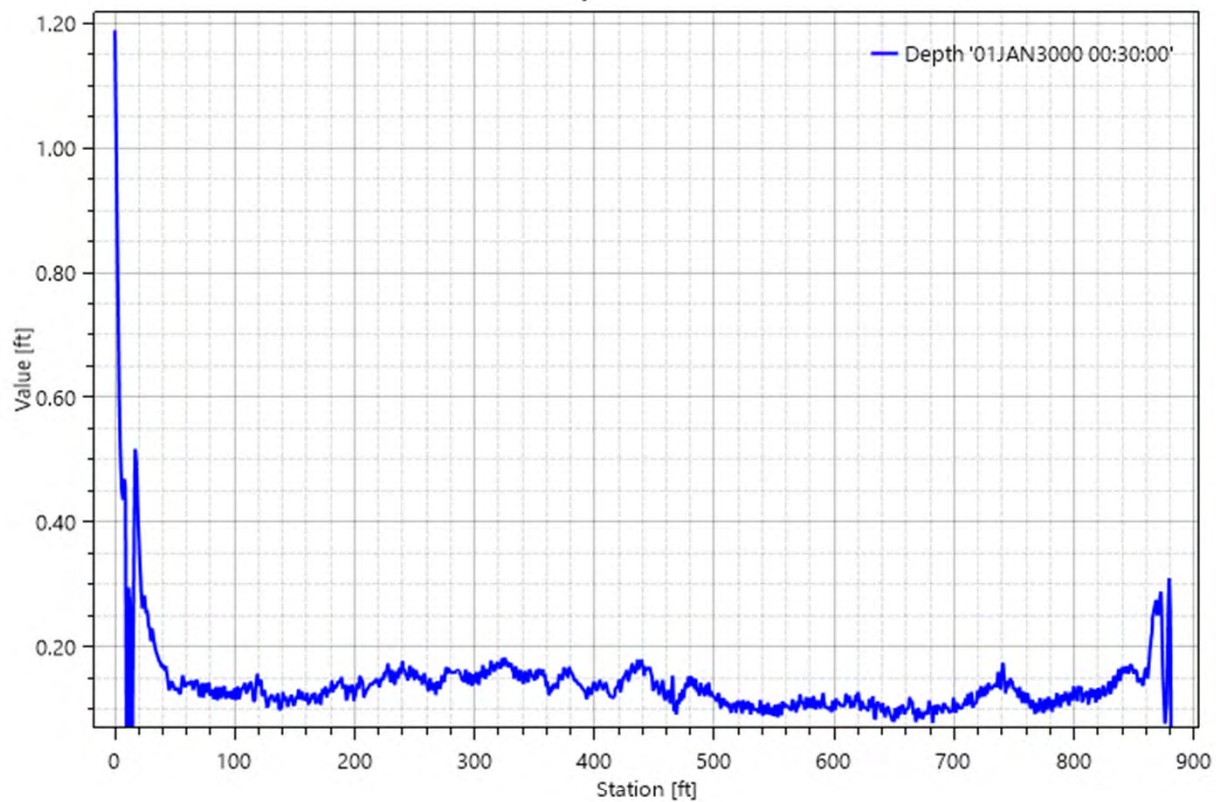




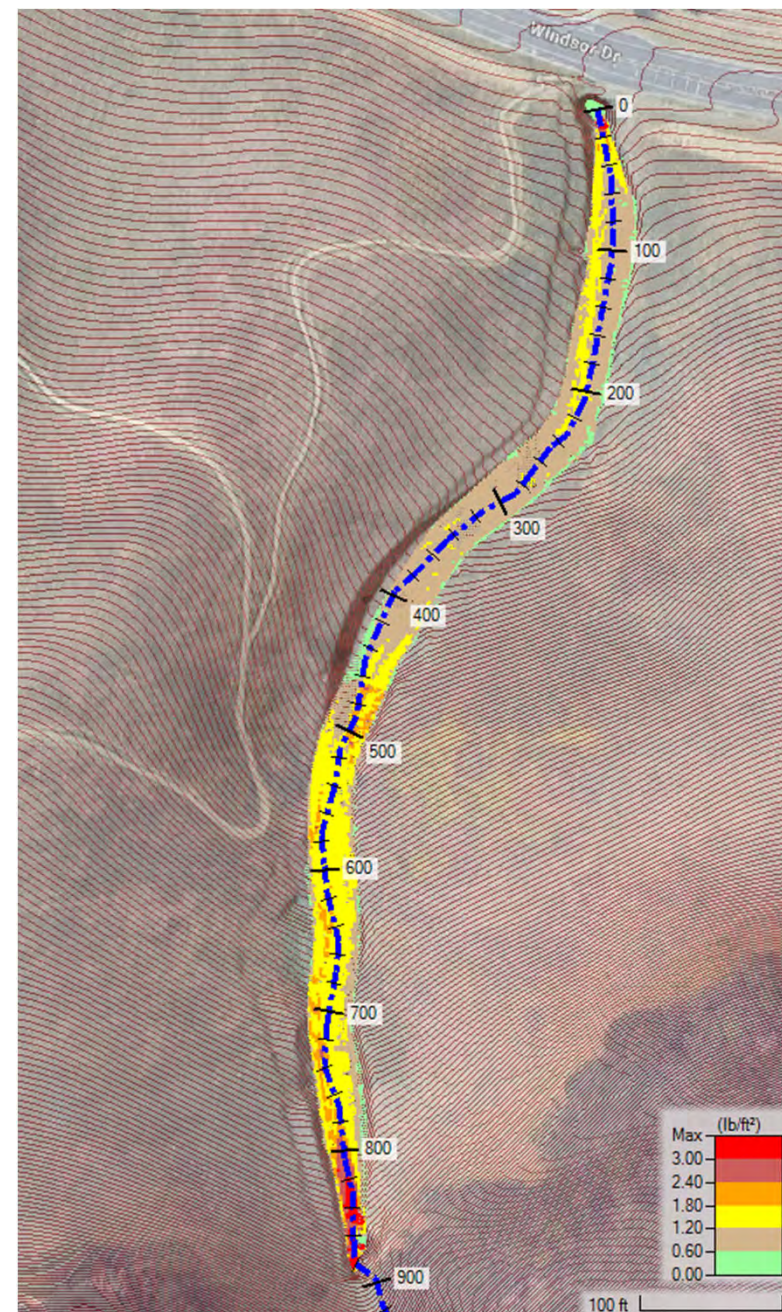
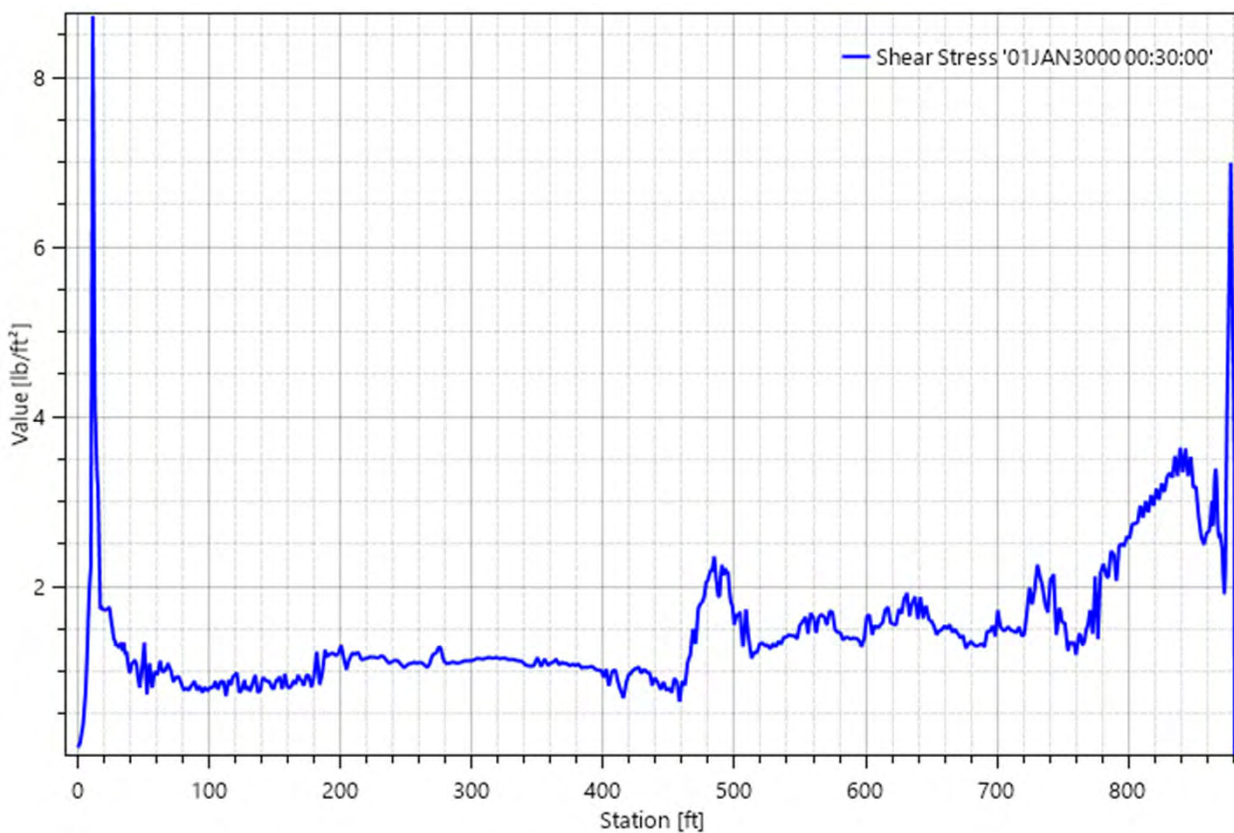
10-Year Shear Stress Plan and Profile



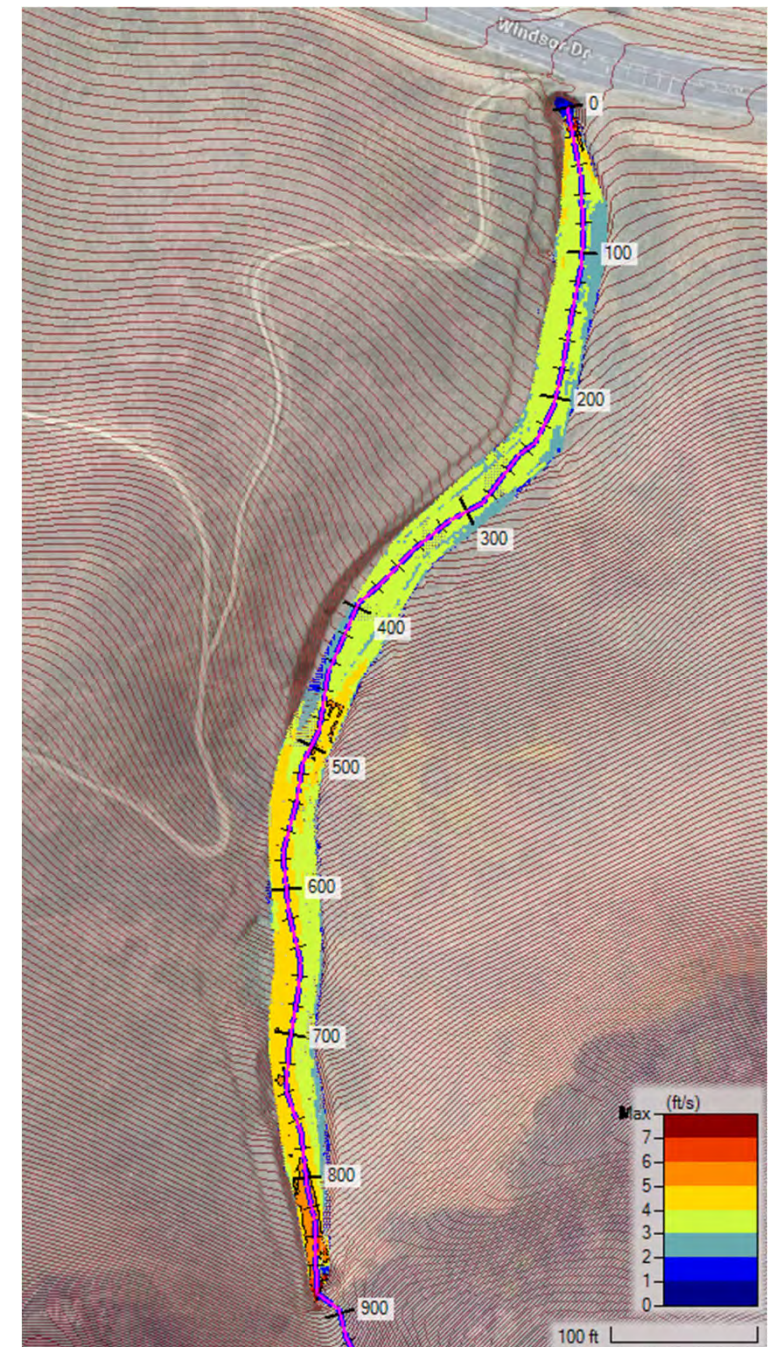
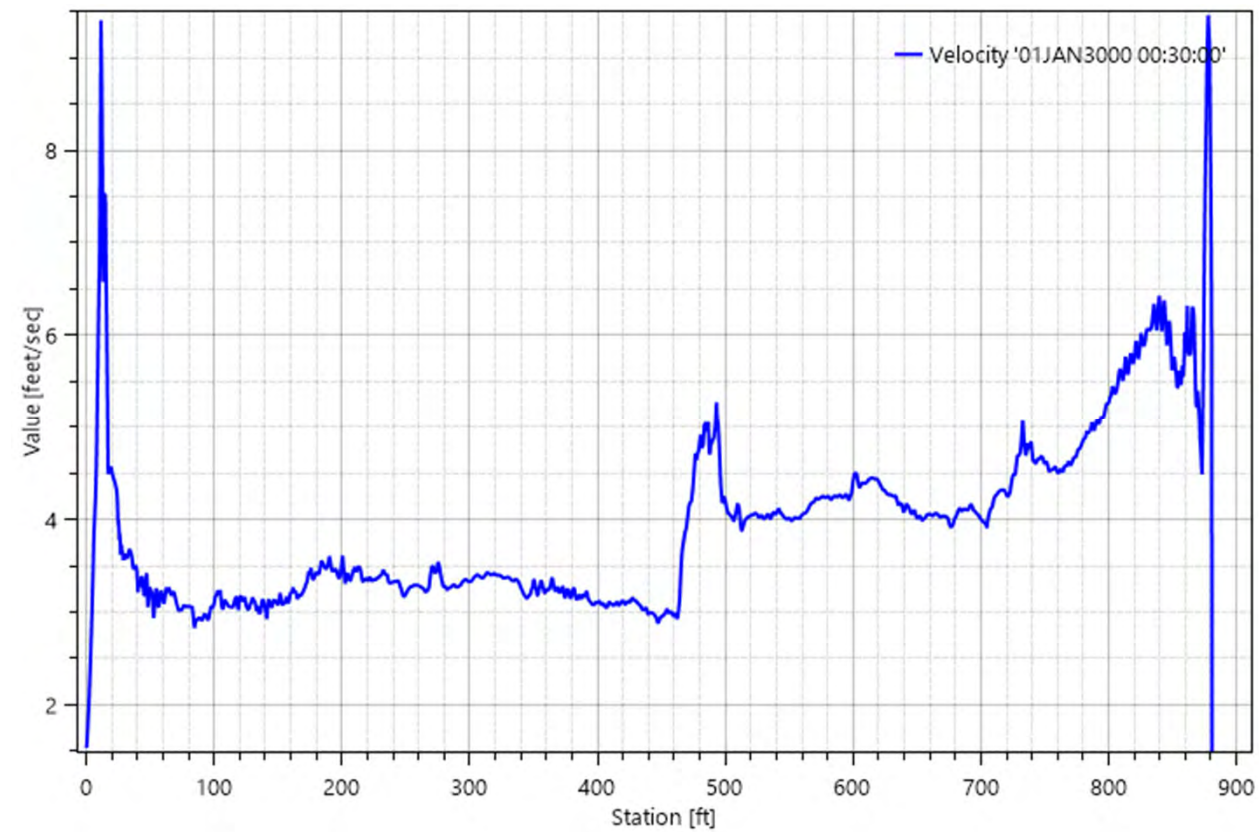
10-Year Velocity Plan and Profile



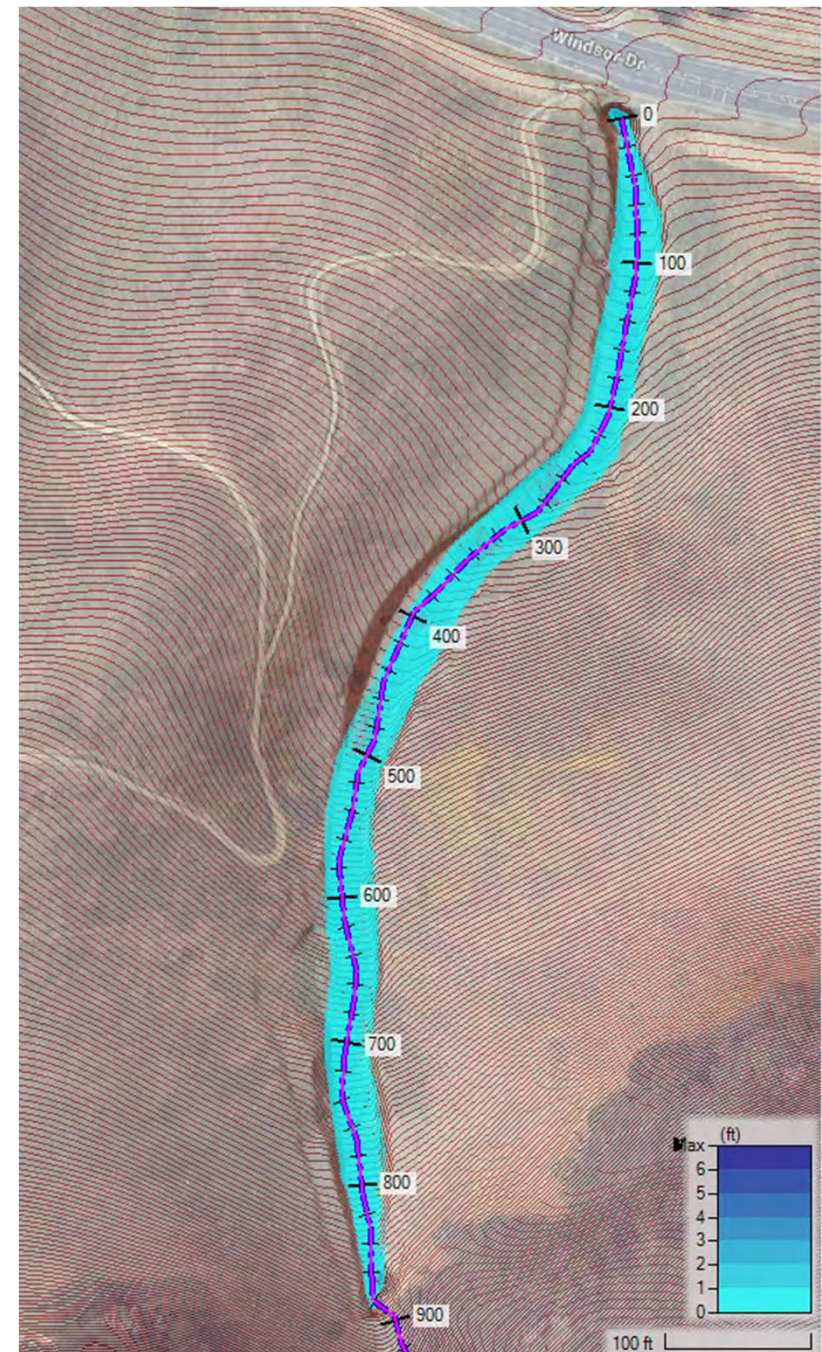
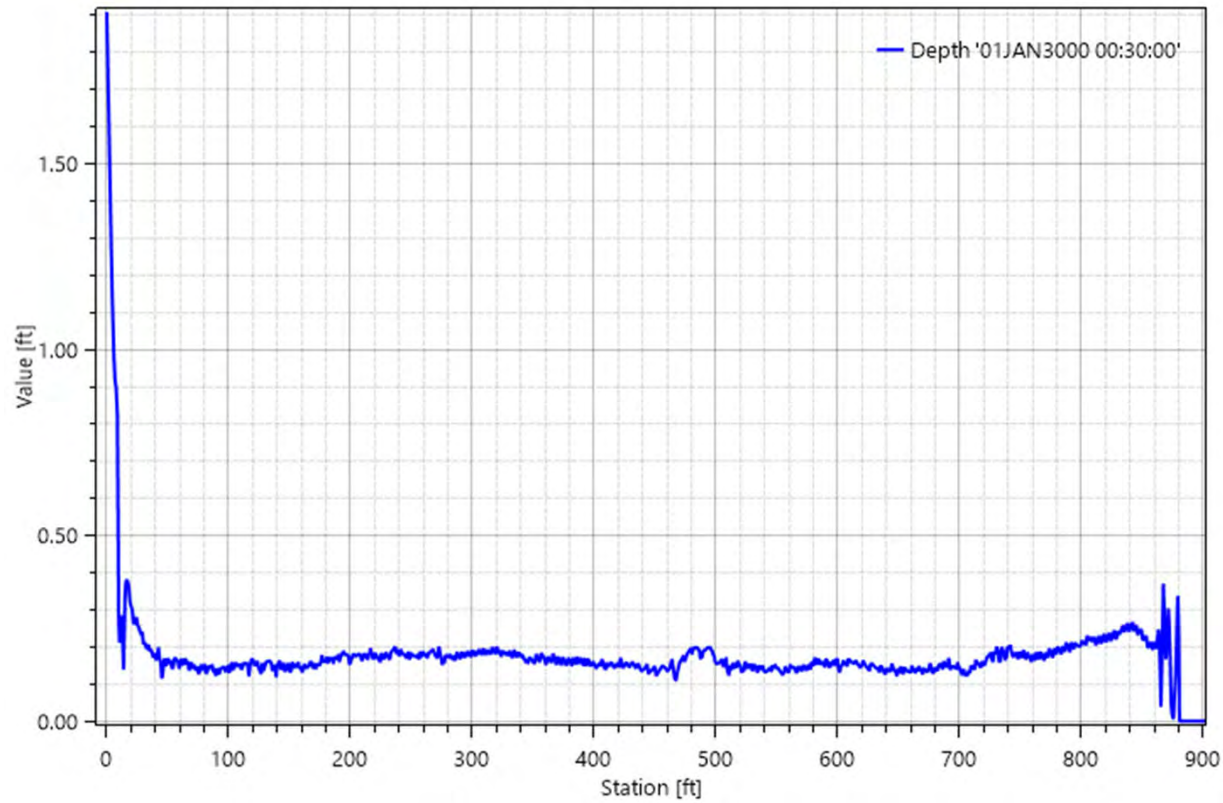
10-Year Depth Plan and Profile



100-Year Shear Stress Plan and Profile



100-Year Velocity Plan and Profile



100-Year Depth Plan and Profile

APPENDIX E. SONOMA COUNTY REGIONAL PARKS INTEGRATED PEST MANAGEMENT PLAN





Integrated Pest Management Plan

Sonoma County Regional Parks

August 2019

2300 County Center Drive, Suite 100A
Santa Rosa, CA 95403
parks.sonomacounty.ca.gov



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Introduction

The Sonoma County Regional Parks Department owns and/or manages a broad spectrum of facilities throughout Sonoma County for natural resource protection and recreation. The mission of the Sonoma County Regional Parks Department (Regional Parks) is to create healthy communities and contribute to the economic vitality of Sonoma County by acquiring, developing, managing, and maintaining parks and trails countywide. Regional Parks preserves irreplaceable natural and cultural resources, and offers opportunities for recreation and education to enhance the quality of life and well-being of residents and visitors to Sonoma County. As a part of this mission, Regional Parks has adopted this Integrated Pest Management Plan to guide management decision making to support biodiversity, habitat quality, public safety and recreation.

Integrated Pest Management (IPM) is a pest management strategy that focuses on long-term prevention or suppression of pest problems with minimum impact on human health, the environment and non-target organisms. These strategies require the selection, integration and implementation of various pest control techniques considering the various economic, ecological and sociological consequences.

Implementing an IPM Plan requires a thorough understanding of pests, their life cycles, environmental requirements and natural enemies as well as the establishment of a regular, systematic program for surveying pests and their damage. Regional Parks endeavors to implement the least toxic method available to address pest management while meeting the goals of this plan and the department's mission. In an IPM program, pesticides are used as a last resort when careful monitoring indicates they are needed according to action thresholds established herein. Development of specific pest management practices shall be done utilizing contemporary and applicable IPM research, IPM literature and through consultation with qualified pest management professionals.

IPM Guidelines

Plan Purpose

The purpose of this plan is to provide procedural guidelines for the management of various pest species in areas maintained by Regional Parks. This plan encompasses thresholds of action to control pests, methods used for control of pests, legal compliance, safety & training, public notification, monitoring and reporting, and techniques for implementation based on the unique facilities owned and/or managed by Regional Parks. This IPM Plan is intended to be updated every ten years to reflect current best management practices and available science.

Goals

Regional Parks IPM goals:

1. Preserve and enhance biodiversity on lands owned and/or managed by Regional Parks
2. Eliminate the use of synthetic pesticides for routine, ongoing maintenance
3. Protect and/or enhance habitat quality
4. Protect and/or enhance water quantity and quality
5. Reduce fire hazard and increase public safety through fire fuel management
6. Reduce human contact with synthetic herbicides, insecticides, and fungicides through the reduction of application and use in public spaces
7. Eliminate the use of synthetic herbicides or insecticides on playing fields, plazas, playgrounds, picnic areas, and campgrounds
8. Where chemical treatment methods become the only effective tool to manage a pest, select the least toxic pesticide that will result in pest control
9. Comply with Resolution of the Sonoma County Board of Supervisors establishing Integrated Pest Management Policies and prohibiting the use of synthetic pesticides, including herbicides, insecticides, and fungicides, in sensitive areas

Recognizing that pest management is an on-going and evolving discipline, these practices shall be subject to adaptation as needed to reflect new laws, information, techniques, equipment and materials.

IPM Plan

Action Thresholds

An action threshold is an observable condition or set of conditions that must be present before a pest control method can be initiated. Action thresholds are designed to initiate a control method or combination of methods when it will be effective in meeting the goals of this plan and keeping a pest below the defined action threshold. The action threshold should take into account the pest's natural population fluctuations, natural enemies, time needed for control measures to take effect, and other available information. Action thresholds for specific pests are listed in the Pest Management Implementation section of this plan.

Control Methods

The following IPM techniques-referred to as Control Methods-shall be utilized for treatment of a pest once an Action Threshold has been met. In an IPM approach, a combination of control methods are used to reach the desired outcome. Non-chemical control methods shall always be considered before chemical control methods are applied.

Biological Control

Biological Control involves the use of beneficial organisms such as insects or ungulates. Examples include:

- Use of cattle, sheep, goats, or other grazing animals
- Maintenance of existing beneficial organism populations, including native species and habitat areas
- Encouraging plant diversity to provide food and habitat for beneficial species
- Supplementation of beneficial organism populations through releases in partnership or at the request of the California Department of Food and Agriculture

Cultural Control

Cultural control involves the use of horticultural or other practices that provide for optimum plant health and thereby reduce vulnerability to pests. Examples include:

- Selection of plant materials suited to the site
- Insuring proper soil fertility through mulching, compost, or appropriate fertilizer application, avoiding nutrient deficiencies and excesses
- Modification of the environment to disrupt the pest cycle such as alteration of irrigation, pruning, and adjustments to mowing heights
- Removal of plant debris that harbors insects and plant pathogens

Manual or Mechanical Control

Manual or mechanical control employs tools and machinery to control pest levels.

Examples include:

- Use of shovels, hoes, mowers, or string weed trimmers to remove the target pest
- Removal of infested plants or plant parts
- Removal of host plants for target pest
- Use of traps

Physical Control

Physical control involves activities that manipulate the environment. Examples include:

- Physical barriers such as mulch, weed cloth, screens or wire mesh to exclude entry of pest
- Removal of attractants such as food or nesting materials
- Solarizing/tarping to treat seedbank
- Controlled burning

Chemical Control

Chemical control involves chemical pesticides including naturally occurring substances such as neem or clove oil as well as synthetic pesticides. When synthetic chemical control methods become necessary, Regional Parks utilizes the least toxic option that will be effective in controlling the target weed. Pesticides for use in California carry a signal word to indicate toxicity to humans. These words are “Caution,” “Warning,” and “Danger” in order of increasing toxicity. Regional Parks endeavors to only use products that carry the “Caution” level designation. Synthetic chemical controls will generally be reserved for targeted pest management and will not be employed as a tool for routine maintenance of park facilities. Examples include:

- Use of least toxic and smallest quantity of pesticide required to produce desired outcomes for pest management; i.e. spot spraying target weeds for which non-chemical control is ineffective
- Proper timing of pesticide application for optimum pest control and applicator/public safety

Laws, Rules & Regulations

All Federal, State, and County laws, rules and regulations pertaining to the handling and use of pesticides will be followed.

Contractors

Regional Parks may solicit the services of a private pest control firm when appropriate, such as pesticide application in an aquatic system when other control methods have proved ineffective. All contractors performing pest control work for the Regional Parks Department will be required to follow sound IPM practices and all Federal, State, and County laws, rules and regulations.

Safety & Training

Staff Training

The success of any IPM program is dependent on the skills and knowledge of those involved with its implementation. Information and training is to be provided for Regional Parks staff and will include:

- Principles and components of IPM
- Management strategies regarding common pests
- Management strategies regarding area-specific pests
- Non-chemical pest control techniques
- Safe application of pesticides

Applicator Training

All personnel involved in pesticide handling and application will have the following training:

- Annual training on the safe and proper handling, application, and disposal of pesticides
- Supervisorial staff will maintain Qualified Applicator Certificates or Licenses, which require annual continuing education in the areas of laws and regulations and pest control methods.

Notification

Notification signs shall be posted to inform staff and the public when a pesticide application is scheduled to occur, the name of the chemical, and associated restrictions on entering the application area. The following parameters shall be used for notification signs:

Specifications

- 8 1/2" x 11" in dimension
- Be printed in black lettering on a white background
- Be printed in English and Spanish
- Include the following information:
 - Date and time of planned application
 - Location within the site to be treated
 - The pest(s)
 - The brand name of pesticide(s) used and active ingredient
 - Warning to stay out of treated areas for a specific time
 - A departmental phone number to call for more information
 - Date and time of sign posting

Posting Duration

Signs shall be posted a minimum of 48 hours prior to the start of the pesticide application and will remain posted for a minimum of 48 hours after the application unless the pesticide label specifies a longer interval.

Posting Locations

Signs shall be posted at all sidewalks and paths that normally enter the site or treated area within the site, at any other location where people would normally enter the site or treated area, and any other logical location that would provide adequate warning to people entering the site or treated area.

Restricted Entry

Entry to treated areas will be restricted when circumstances warrant, in addition to the use of notification signs. Entry restrictions may be in the form of physical barricades, warning tape or temporary fencing.

Monitoring

Monitoring utilizes a variety of techniques ranging from casual observation to statistically valid quantitative sampling in order to measure pest damage, track populations of beneficial and pest organisms, and provide assessment of the site and surroundings. Careful records are necessary to determine when specific control tactics are to be implemented to keep pest levels below the Action Threshold. These records are further utilized to measure the effectiveness of specific tactics, to pinpoint problem areas and may be used in subsequent years for planning and timing of control activities. High priority weed species that are the subject of monitoring and control are listed in Appendix C. Priority weeds determinations are dynamic and change as new information becomes available.

Record Keeping & Reporting

Record Keeping

Records of pesticide use shall be completed by all persons applying pesticides. These records are to include:

- Date and time of application
- Brand name of the pesticide
- Active ingredient
- Target pest(s)
- Amount of pesticide used
- Name (or initials) of applicator
- Where application was made (location, host, specific site within a park, etc.)
- Weather and site conditions

These records shall be submitted to the Maintenance Supervisor. This information is provided monthly in summary form to the Sonoma County Department of Agriculture.

Reporting

Monthly Reports

The Maintenance Supervisor will prepare a monthly summary report of all pesticides

used. This is sent to the Sonoma County Department of Agriculture by the 10th of the month following application as required by law.

Annual Report

Regional Parks staff will compile an annual report. This report will include:

- Detailed pesticide usage data
- Discussion of efficacy of methods
- Discussions of methods being used to reduce pesticide usage

Pest Management Implementation

The following section provides information regarding Regional Parks facility types, specific action thresholds and associated recommendations for pest management implementation. Pest management techniques will vary depending on the facility type, and not all pest types will occur or have the potential to occur in all facility types.

Aquatic Facilities

Regional Parks owns and/or manages a variety of aquatic facilities. Aquatic facilities can be defined as any park that has significant aquatic features such as river or ocean access, ponds, and lakes. Aquatic facilities provide important natural resource values and recreation opportunities. These facilities can be further bisected into the following management categories:

Swimming Areas

Swimming areas are aquatic facilities providing lifeguarded swimming opportunities

Fishing or Other Recreation

Fishing or other recreation areas are aquatic facilities providing fishing access and non-swimming recreation such as kayaking

Riparian Areas

The interface of a river or stream and adjacent land. These areas may or may not be accessible to people and recreation.

Beaches and Shorelines

The interface of an ocean or bay and adjacent land. These areas may or may not be accessible to people and recreation

Park Infrastructure

Park infrastructure encompasses the built environment within parks and includes both public and staff facilities. All park properties include some type of infrastructure; the following categories have been created to meet the goals of this IPM Plan and provide an adaptive approach to management:

Buildings

Examples of buildings within parks include Visitor's Centers, restrooms, concession stands, etc. Buildings are excluded from synthetic pesticide application.

Corporation Yards

Corporation yards are staff areas used for storing vehicles, tools, equipment and performing tasks such as tool maintenance or fabricating signage.

Community Gardens & Teaching Gardens

Community and teaching garden areas are designated within a larger park for the purpose of agricultural production. Community gardens are often managed by a community group and provide gardening opportunities on public land to the adjacent populations. Teaching gardens are managed by Regional Parks staff and utilized by Community Engagement programs such as school field trips. These facilities may employ organic agricultural techniques. Community and teaching gardens are excluded from synthetic pesticide application.

Trails

Trails include single track, multi-use, Class I bike paths, ranch and fire roads.

Parking Lots

Parking lots include paved or gravel parking areas providing access to park facilities. Parking lots are excluded from synthetic pesticide application.

Playing Fields

Playing fields include synthetic or natural turf areas maintained for field sports such as baseball, soccer, etc. Playing fields are excluded from synthetic pesticide application.

Playgrounds

Playgrounds are improved areas designed and equipped for children's play. Playgrounds may include traditional play structures or permanent design features intentionally created out of natural materials. Playgrounds include infrastructure such as skate parks. Playgrounds are excluded from synthetic pesticide application.

Plazas

Plazas are improved areas for the purpose of gathering. Plazas may include pervious or impervious surfaces. Plazas may or may not have amenities such as benches and picnic tables. Plazas are excluded from synthetic pesticide application.

Campgrounds

Campgrounds are areas used for overnight accommodation often contain amenities such as picnic benches and cooking grills. Campgrounds are excluded from synthetic pesticide application.

Picnic Areas

Picnic areas improved areas for the purpose of gathering. Picnic areas contain amenities such as picnic benches and tables. Picnic areas are excluded from synthetic pesticide application.

Dog Parks

Dog parks are improved areas designed and equipped for dog's play. Dog parks may contain amenities such as picnic benches and tables. Dog parks are excluded from synthetic pesticide application.

The resolution of the Sonoma County Board of Supervisors on June 4, 2019 prohibits the use of “synthetic herbicides or synthetic insecticides on agency-maintained campuses, sidewalks, playing fields, plazas, playgrounds, County-maintained libraries, or in other “no synthetic spray” zones. As established in this IPM Plan, the infrastructure excluded from pesticide use includes buildings, community and teaching gardens, parking lots, playing fields, playgrounds, plazas, campgrounds, picnic areas, and dog parks as defined above.

Fuels

California’s native vegetation has evolved with and is adapted to periodic fire. However, fire suppression in recent history has led to increased vegetative fuels in wildland areas that now merit active management to preserve ecosystem health and reduce the likelihood of catastrophic fires due to fuel loads. For the purposes of this plan, the fuels category may occur in any facility type and has associated Action Thresholds for management as a pest type.

Regional Parks is actively engaged in fire fuels treatments for the preservation of habitat quality, ecosystem function, and public safety. Treatments may include thinning of ladder fuels, invasive plant removal, and the creation of fuel breaks for community protection or emergency personnel access.

Rangeland, Natural Lands and Open Space Preserves

Rangeland, Natural Lands and Open Space Preserves include properties with minimal recreation infrastructure and typically include trailhead parking with a variety of hiking, biking and/or equestrian trails. These properties may or may not include bathroom and drinking water facilities. Grazing may be present.

IPM Implementation				
PEST CATEGORY	PEST	FACILITY TYPE	ACTION THRESHOLD	TREATMENT
Aquatic				
	swimmers itch (cercarial dermatitis)	Aquatic: swimming	Swimmers itch present in impounded swimming facility disconnected from flow/riverine system	Post signs Chemical: Chlorinate Physical: Provide showers
	Cyanobacteria	Aquatic: swimming, fishing or other recreation	Cyanobacteria present	Post signs
	Aquatic weeds Examples: Azolla, Eurasian milfoil, ceratophyllum, Ludwigia, hyacinth	Aquatic: swimming, fishing or other recreation, riparian	Weed population present at level that directly impacts recreation, natural resources or infrastructure	Manual/mechanical removal Contract with qualified firm for application of herbicides approved for aquatic use
	Quagga mussels (<i>Dreissena rostriformis bugensis</i>) and/or Zebra mussels (<i>Dreissena polymorpha</i>)	Aquatic facilities: swimming, fishing or other recreation	Habitat suitable to support invasive mussels	Implement monitoring If Quagga or Zebra mussels are found, implement best management practices for treatment and prohibition of transmission

PEST CATEGORY	PEST	FACILITY TYPE	ACTION THRESHOLD	TREATMENT
Fuels				
	Vegetative fuels	All	Fuels within defensible space boundaries of buildings	Manual/mechanical removal Biological: Grazing
	Vegetative fuels	All	Fuels along Regional Park boundaries	Manual/Mechanical removal or thinning Biological: Grazing
	Vegetative fuels	Rangeland, Agricultural & Natural Lands	Invasive trees or shrubs known to increase fire intensity in otherwise fire adapted landscape; e.g. eucalyptus or Douglas fir trees	Manual/Mechanical: removal or thinning Removal may be paired with chemical treatment as necessary at minimum level required to achieve project goals

PEST CATEGORY	PEST	FACILITY TYPE	ACTION THRESHOLD	TREATMENT
Invertebrate pests				
	Aphids, beetles, mites	All	Populations present at levels that threaten biodiversity, agricultural production, could lead to pest transmission, and/or cause catastrophic stand mortality	<p>Implement Best Management Practices to avoid further infestation or transmission of pest</p> <p>Cultural: assess water, plant density, pruning, and nutrient elements</p> <p>Chemical: Use organic low risk insecticides such as neem oil or soap</p> <p>Cultural: Remove infested material</p>
	Aphids, beetles, mites	Rangeland, Agricultural & Natural Lands	Populations present at levels that threaten biodiversity, agricultural production, and/or could lead to catastrophic stand mortality	<p>Implement Best Management Practices to avoid further infestation or transmission of pest</p> <p>Contact forester or other qualified specialist</p>
	Bees	All	Bee nest found in area directly affecting employee and/or public safety, particularly around high traffic infrastructure	<p>Cultural: Contact a beekeeper for removal</p> <p>Physical: Install barriers to prevent re-establishment if possible</p>

PEST CATEGORY	PEST	FACILITY TYPE	ACTION THRESHOLD	TREATMENT
Invertebrate pests				
	Wasps and Hornets	All	Wasp or hornets nest found in area directly affecting employee and/or public safety, particularly around high traffic infrastructure	Manual/Mechanical: Remove nest Physical: Install barriers to prevent re-establishment if possible Contract with qualified pest treatment firm
Plant pathogens				
	Sudden Oak Death	All	Host species shows signs of infection with significant oak trees present within transmission radius not showing signs of infection	Monitor Cultural: Remove infected plants Quarantine infected waste Implement best practices to avoid spread and/or transmission to new sites
	Plant Pathogens	All	Plant pathogen detected on existing plantings or recently acquired nursery stock with potential to cause stand mortality	Cultural: Remove and dispose of infected materials per current recommendations Avoid transmission to new sites

PEST CATEGORY	PEST	FACILITY TYPE	ACTION THRESHOLD	TREATMENT
Vegetative				
	Unwanted weed species: grass or forbs Examples: Harding grass, Medusahead, yellow star thistle	Park Infrastructure Rangeland, Agricultural, & Natural Lands	Weed species present at levels that negatively affect forage quality, habitat structure, other natural resource values, or recreation	Biological: Grazing Manual/mechanical removal Physical: mulch, solarizing, controlled burning Chemical: herbicide
	Unwanted weed species: shrubs Examples: Arundo, broom spp., Red Sesbania	Park Infrastructure Rangeland, Agricultural, & Natural Lands	Weed species present at levels that negatively affect forage quality, habitat structure, other natural resource values, or recreation	Biological: Grazing Manual/mechanical removal Physical: solarizing, controlled burning Chemical: herbicide
	Unwanted weed species: trees Examples: Acacia, Eucalyptus	Park Infrastructure Rangeland, Agricultural, & Natural Lands	Weed species present at levels that negatively affect forage quality, habitat structure, other natural resource values, public safety or recreation	Biological: Grazing Manual/mechanical removal Physical: solarizing, controlled burning Chemical: herbicide

PEST CATEGORY	PEST	FACILITY TYPE	ACTION THRESHOLD	TREATMENT
Vertebrate				
	Birds Example: starlings	Park Infrastructure	Population and behavior at level causing significant damage to infrastructure; i.e. foraging or nesting damage to buildings	<p>Cultural: aversive conditioning with faux predators or reflective objects, elimination of food sources</p> <p>Physical: exclusionary structures such as screens, wires, etc.</p> <p>Contract with qualified pest control firm for aversive conditioning, exclusion, or other treatment</p>
	Mesocarnivores Examples: raccoon, skunks, opossums	Park Infrastructure	Population at level causing significant damage to infrastructure and/or risks to employee or public health	<p>Cultural: removal of attractants such as food and habitat around infrastructure</p> <p>Physical: implement exclusions to prohibit rodent entry to buildings</p> <p>Contract with qualified pest control firm</p>
	Rodents Examples: mice, rats, squirrels, gophers, bats	Park Infrastructure	Population at level causing significant damage to infrastructure and/or risks to employee or public health	<p>Cultural: removal of attractants such as food and habitat around infrastructure</p> <p>Physical: implement exclusions to prohibit rodent entry to buildings</p> <p>Contract with qualified pest control firm</p>

Conclusion

Regional Parks will implement this IPM Plan to achieve efficient and effective pest control supporting biodiversity, habitat quality, public safety, recreation. Regional Parks will comply with all applicable laws and regulations including the Sonoma County Board of Supervisor Resolution passed on June 4, 2019 (Appendix B). Monitoring and adaptive management will be used in conjunction with this IPM Plan to enable staff to select non-synthetic chemical control methods whenever possible. This plan will be evaluated periodically and updated on a ten-year cycle to reflect changes in best management practices, laws, information, techniques, equipment and materials.

Appendix A: Definitions

Action Threshold: an observable condition or set of conditions that must be present before a pest control method can be initiated. Action thresholds are designed to initiate a control method or combination of methods when it will be effective in meeting the goals of this plan and keeping a pest below the defined action threshold. The action threshold should take into account the pest's natural population fluctuations, natural enemies, time needed for control measures to take effect, and other available information.

Biological Control: use of beneficial organisms such as insects or ungulates.

Chemical Controls: chemical pesticides including naturally occurring substances such as neem or clove oil as well as synthetic pesticides

Cultural Control: horticultural practices that provide for optimum plant health and thereby reduce vulnerability to pests

Host: the site, plant, or animal on which the pest lives or depends upon for a particular life stage

IPM: Integrated Pest Management (IPM) is a pest management strategy that focuses on long-term prevention or suppression of pest problems with minimum impact on human health, the environment and non-target organisms. These strategies require the selection, integration and implementation of various pest control techniques considering the various economic, ecological and sociological consequences.

Manual/Mechanical Control: employs tools and machinery to control pest levels

Monitoring: a variety of techniques ranging from casual observation to statistically valid quantitative sampling in order to measure pest damage, track populations of beneficial and pest organisms, and provide assessment of the site and surroundings.

Pest: various insect, plant, disease and animal pests have been identified in general terms. The common names of pests are used, though in some cases the scientific name could be used for purposes of clarification.

Physical Control: activities that manipulate the environment

Weed: a plant considered undesirable in a particular situation. Weeds may be native, non-native, and/or invasive.

Appendix B: Resolution of the Sonoma County Board of
Supervisors
June 4, 2019

Date: June 4, 2019

Item Number: _____

Resolution Number: _____

☐ 4/5 Vote Required

Concurrent Resolution Of The Board Of Supervisors Of The County Of Sonoma, The Board Of Directors Of The Sonoma County Water Agency, The Board Of Directors Of The Sonoma County Agricultural Preservation And Open Space District, And The Board Of Commissioners Of The Community Development Commission, State Of California, Establishing Integrated Pest Management Policies And Prohibiting The Use Of Synthetic Pesticides, Including Herbicides, Insecticides, and Fungicides, In Sensitive Areas

Whereas, the County of Sonoma, the Sonoma County Water Agency (Sonoma Water), the Sonoma County Agricultural Preservation And Open Space District (Ag + Open Space), and the Sonoma County Community Development Commission, are committed to using pesticides appropriately, thoughtfully, and only when necessary, and wish to provide the public with the information required to confirm this is the case;

Whereas, Integrated Pest Management is an ecosystem-based strategy that focuses on long-term prevention of pests or their damage through a combination of techniques such as biological control, habitat manipulation, modification of cultural practices, and use of resistant varieties; holistic Integrated Pest Management techniques can lessen the need for pesticides, including synthetic herbicides;

Whereas, the County of Sonoma and Sonoma Water are in the process of updating their Integrated Pest Management policies;

Whereas, at the request of a coalition of community advocates and County leadership, the County of Sonoma's Department of General Services determined it was feasible to stop using synthetic herbicides on the County campus, and stopped using such chemicals for vegetation management on the County campus in 2018;

Whereas, a trial of roadside vegetation management using certified organic alternatives to synthetic herbicides will commence in 2019;

Whereas, Sonoma County Regional Parks, Sonoma County Transportation and Public Works, and Sonoma Water, have established Integrated Pest Management programs or are in process of updating Integrated Pest Management programs that will facilitate environmental stewardship, support public health and safety, and reduce synthetic pesticide use;

Whereas, an annual report on pesticide use, publicly accessible Integrated Pest Management programs, and a publicly available list of “no synthetic spray” zones will enhance transparency and accountability by enabling the public to understand and comment upon pesticide policies;

Whereas, some synthetic pesticides — including herbicides, insecticides, and fungicides — have been shown to increase the prevalence of resistant weeds, insects, and fungi, which in turn leads to increased use of existing synthetic pesticides and development of new synthetic pesticides, and may additionally contribute to global public health threats including the rise of *Candida auris*;

Whereas there is public concern about research findings that certain synthetic herbicides, insecticides, and fungicides induce epigenetic modifications in plants, invertebrates, and vertebrates, and public concern that these chemicals may lead to long-term human health impacts, including endocrine disruption and carcinogenesis;

Whereas, it is the intent of the County of Sonoma, Sonoma Water, Ag + Open Space, and the Sonoma County Community Development Commission, to reduce human contact with synthetic herbicides, insecticides, and fungicides through the reduction of application and use in public spaces;

Whereas, the threat of catastrophic wildfire and the need to expand vegetation management efforts should not drive an increase in the application of synthetic herbicides, but should instead instigate a holistic, ecological approach to wildfire risk reduction and vegetation management;

Now, Therefore, Be It Resolved, Therefore, the Board of Supervisors of the County of Sonoma, the Board of Directors of the Sonoma County Water Agency, the Board Of Commissioners of the Community Development Commission, and the Board of Directors of the Sonoma County Agricultural Preservation and Open Space District hereby concurrently resolve as follows:

1. The County of Sonoma, Sonoma Water, Ag + Open Space, and the Sonoma County Community Development Commission will not use synthetic herbicides or synthetic insecticides on agency-maintained campuses, sidewalks, playing fields, plazas, playgrounds, County-maintained libraries, or in other “no synthetic spray” zones established in Integrated Pest Management plans.
2. By the end of 2019, staff for the County of Sonoma, Sonoma Water, Ag + Open Space, and the Sonoma County Community Development Commission are directed to submit their respective “no synthetic spray” zones to their respective boards for approval.
3. In parks and sensitive areas, synthetic pesticides will not be used for routine, ongoing maintenance, and pesticide use will be limited to targeted, specific weed infestations where non-chemical means are ineffective and the threat of non-action is significant as established in Integrated Pest Management Plans.
4. The County of Sonoma, Sonoma Water, Ag + Open Space, and the Sonoma County Community Development Commission will eliminate pesticide use in all areas and by all departments and contractors to the maximum extent practicable.
5. Pesticides shall be used only if evaluation indicates they are needed and they are applied according to agency guidelines.
6. The County of Sonoma, Sonoma Water, Ag + Open Space, and the Sonoma County Community Development Commission will, to the maximum extent practicable, implement organic or mechanical alternatives to synthetic pesticides.
7. Any required treatments shall be made with the goal of removing only the target organism.
8. Pest controls shall be selected and applied in a manner that minimizes risks to human health, beneficial, non-target organisms, and the environment.
9. The use of pesticides shall not be used in a manner that threatens water quality.

10. Sonoma County and Sonoma Water staff are directed to partner with other agencies and organizations to encourage the use of Integrated Pest Management. Each agency is directed to continue the policy that native or drought-tolerant vegetation will be preferred and planted strategically to reduce water, pesticide, and fertilizer needs.
11. Each County Department with landscape management responsibilities shall have an Integrated Pest Management Plan that integrates countywide policies.
12. Staff for each agency shall report to its Board annually on pesticide use.
13. For the annual report to the Sonoma County Board of Supervisors, as part of the County's existing stormwater program, the Permit and Resources Management Department (Permit Sonoma) shall coordinate the preparation of an annual report on countywide pesticide use in County operations. Departments with landscape management activities are directed to provide Permit Sonoma with any necessary information or data required to complete this report.

Supervisors/Directors/Commissioners:

Gorin:	Zane:	Gore:	Hopkins:	Rabbitt:
Ayes:	Noes:	Absent:	Abstain:	

So Ordered.

Appendix C: Early Detection Rapid Response Priority Weed List

Common Name	Scientific Name
Kangaroo Thorn	<i>Acacia paradoxa</i>
Periwinkle	<i>Vinca</i> sp.
Acacia	<i>Acacia dealbata</i>
Iceplant	<i>Carpobrotus edulis</i>
Nepalese firethorn	<i>Pyracantha crenulata</i>
Biddy Biddy	<i>Acaena novae-zelandiae</i>
Capeweed	<i>Arctotheca calendula</i>
Dusky Dog Fennel	<i>Chamaemelum fuscum</i>
Eggleaf Spurge	<i>Euphorbia oblongata</i>
French Broom	<i>Genista monspessulana</i>
Herb Robert	<i>Geranium purpureum</i>
Scotch Broom	<i>Cytisus scoparius</i>
Wild Geranium	<i>Geranium dissectum</i>
Annual yellow sweetclover	<i>Melilotus indicus</i>
Lollypop tree	<i>Myoporum laetum</i>
Barbed Goatgrass	<i>Aegilops triuncialis</i>
Bearded Creeper	<i>Crupina vulgaris</i>
Buffaloberry	<i>Solanum rostratum</i>
Butterfly Bush	<i>Buddleja davidii</i>
Carolina Horse Nettle	<i>Solanum carolinense</i>
Cotoneaster	<i>Cotoneaster</i> sp.
Denseflowered chordgrass	<i>Spartina densiflora</i>
Dog Fennel, Stinking Chamomile	<i>Anthemis cotula</i>
English Ivy	<i>Hedera helix</i>
Giant Reed	<i>Arundo Donax</i>
Japanese honeysuckle	<i>Lonicera japonica</i>
Meadow fescue	<i>Festuca pratensis</i>
Perennial Pepperweed	<i>Lepidium latifolium</i>
Portuguese Broom	<i>Cytisus striatus</i>
Rattlebox	<i>Sesbania punicea</i>
Reed Canarygrass	<i>Phalaris arundinaceae</i>
Russian Knapweed	<i>Centaurea repens</i>
Saltwater chordgrass	<i>Spartina alterniflora</i>
Salvation echium	<i>Echium plantagineum</i>
Scotch Cottonthistle	<i>Onopordum acanthium</i>

Water Primrose	Ludwigia sp.
White sweetclover	Melilotus albus
Wooly Distaff Thistle	Carthamus lanatus
Andean Tussock Grass	Nassella formicarum
Butter and Eggs	Linaria vulgaris
Cut-leaved blackberry	Rubus laciniatus
Diffuse Knapweed	Centaurea diffusa
Glossy Privet	Ligustrum lucidum
Illyrian cottonthistle	Onopordum Illyricum
Monbretia	Crocosmia x crocosmiiflora
Purple Awned wallaby grass	Danthonia pilosa
Purple Loosestrife	Lythrum salicaria
Tall Oatgrass	Arrhenatherum elatius
Tansy Ragwort	Senecio jacobaeae
Vasey's grass	Paspalum urvillei
American Pokeweed	Phytolacca americana
Iberian Knapweed	Centaurea iberica
Plumeless Thistle	Carduus acanthoides
Skeleton Weed, Hogbite	Chondrilla juncea
Spotted Knapweed	Centaurea maculosa
Whitestem distaff thistle	Carthamus leucocaulos
Japanese knotweed	Fallopia japonica
Robert's Geranium	Geranium robertianum
Andean Pampas Grass	Cortaderia jubata
Pampas Grass	Cortaderia selloana
Stinkwort	Dittrichia Graveolens
Castorbean	Ricinus communis
Finestem Needlegrass	Naseela tenuissima
Gazania	Gazania linearis



Eric Lucan, Chair
Marin County Board of Supervisors

Melanie Bagby, Vice Chair
Sonoma County Mayors' and
Councilmembers Association

Kate Colin
Transportation Authority of Marin

Chris Coursey
Sonoma County Board of Supervisors

Rachel Farac
Transportation Authority of Marin

Debora Fudge
Sonoma County Mayors' and
Councilmembers Association

Patty Garbarino
Golden Gate Bridge,
Highway/Transportation District

Barbara Pahre
Golden Gate Bridge,
Highway/Transportation District

Gabe Paulson
Marin County Council of Mayors and
Councilmembers

David Rabbitt
Sonoma County Board of Supervisors

Chris Rogers
Sonoma County Mayors' and
Councilmembers Association

Mary Sackett
Marin County Board of Supervisors

Eddy Cumins
General Manager

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

August 21, 2024

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

SUBJECT: Amend the Fiscal Year 2025 Adopted Budget to adjustments to roll forward additional funds from Fiscal Year 2024 to Fiscal Year 2025, increase appropriations by \$3,535,043, and modify Appendix C, Position Authorization.

Dear Board Members:

RECOMMENDATIONS:

Adopt Resolution No. 2024-26, amending Resolution No. 2024-19, the Fiscal Year 2025 Adopted Budget

SUMMARY:

During the Fiscal Year 2025 Budget development process, Finance worked closely with the Engineering team to estimate what funds would be utilized in Fiscal Year 2024 (FY24) and what funds would be needed to shift into Fiscal Year 2025 (FY25). Those estimates were included in the Fiscal Year 2025 Board adopted budget. Now that FY24 has ended and the final costs for the projects are known, we need to true-up the revenue and estimated expenditures for FY25 so work on these projects can continue seamlessly. The requested changes impact the Petaluma North Station and the Windsor Extension projects.

The Petaluma North Station project consists of the following project components and adjustments:

- The Petaluma North Station
 - Roll forward \$1,785,065 of Transit and Intercity Rail Program funds
- Reconstruction of the North McDowell Boulevard at-grade vehicular crossing
 - Roll forward \$826,102 in Measure Q funds
- Two segments of bicycle and pedestrian pathway totaling 5.7 miles (from South Pont Boulevard to Main Street and Golf Course Drive to Bellevue)
 - Reduce FY25 budget by \$1,315,602 in Active Transportation Program funds that were overspent in FY24
 - Roll forward \$605,936 in Measure Q funds

- Repaving of portions of McDowell Boulevard for the City of Petaluma
 - Reduce FY25 City of Petaluma funds by \$75,593 due to over expenditure in FY24

Petaluma funding adjustment:

Project Name	Petaluma North Station	McDowell Grade Crossing Reconstruction	Non-Motorized Pathway Segments		North McDowell Paving
Grants	Transit and Intercity Rail Capital Program	Measure Q	Active Transportation Program	Measure Q	City of Petaluma
Total Amount	\$ 9,521,187	\$ 946,458	\$ 10,756,925	\$ 10,057,890	\$ 886,712
FY24	\$ 2,746,530	\$ 936,459	\$ 2,651,942	\$ 605,936	\$ 99,167
Total Expenditure FY24	\$ 961,465	\$ 110,357	\$ 3,967,544	\$ -	\$ 174,759.69
Balance	\$ 1,785,065	\$ 826,102	\$ (1,315,602)	\$ 605,936	\$ (75,593)
FY25	\$ 6,774,657	\$ 9,999	\$ 8,104,983	\$ 9,451,954	\$ 787,545
Amended Total FY25	\$ 8,559,722	\$ 836,101	\$ 6,789,381	\$ 10,057,890	\$ 711,952

The Windsor Extension project includes the following project elements and adjustments:

- Windsor Extension Civil project
 - Reduce Solutions for Congested Corridor funds by \$318,064 in FY25 due to an over expenditure of funds in FY24
 - Roll forward \$1,554,730 in Affordable Housing funds from FY24 to FY25
- Windsor Extension Systems project
- Windsor Pedestrian Undercrossing
 - Roll forward \$396,876 in Town of Windsor funds from FY24
- Windsor Utility Crossings
 - Roll forward \$100,000 of Town of Windsor funds from FY24

Windsor funding adjustment:

Project Name	Windsor Extension -- Civil		Pedestrian Undercrossing + Pathway	TOW Utility Xing
Grants	Solutions for Congested Corridors Program	Affordable Housing Sustainable Communities - Mid-Pen	Town of Windsor	Town of Windsor
Total Amount	\$ 30,000,000.00	\$ 3,851,322.00	\$ 1,500,000.00	\$ 407,100.00
FY24	\$ 16,658,614.00	\$ 1,813,161.00	\$ 1,000,000.00	\$ 100,000.00
Total Expenditure FY24	\$ 16,976,678.02	\$ 258,430.56	\$ 603,123.93	\$ -
Balance	\$ (318,064.02)	\$ 1,554,730.44	\$ 396,876.07	\$ 100,000.00
FY25	\$ 13,341,386.00	\$ 2,038,161.00	\$ 500,000.00	\$ 307,100.00
Amended Total FY25	\$ 13,023,321.98	\$ 3,592,891.44	\$ 896,876.07	\$ 407,100.00

Appendix C – Position Authorization

When Appendix C was included in the original Fiscal Year 2025 budget, the minimum and maximum salary ranges were taken from the consultant's spreadsheet received as part of the Compensation Study. When the ranges were entered into the payroll system, it was discovered that the payroll system only rounds to two decimal points rather than 8+ decimal points in the consultant's spreadsheet. This caused small rounding discrepancies in most of the salary ranges. Since the payroll system cannot be changed, the rounding changes are being made to the minimum and maximum figures in Appendix C.

In addition, we are requesting one position change. We would like to convert the Risk Manager position to a Regulatory Compliance & Civil Rights Manager. The salary range would be \$154,772.80 - \$193,406.80. The range for the Risk Manager was \$133,452 - \$166,666. This is a range difference of \$21,320 - \$26,740. This difference can be absorbed within the current salaries and benefits budgeted in the Fiscal Year 2025 budget.

FISCAL IMPACT: The overall fiscal impact is a roll forward of \$3,766,550 in revenues and \$3,535,043 in expenses, see Appendix A

REVIEWED BY: [x] Finance /s/ [x] Counsel /s/

Sincerely,

/s/

Heather McKillop
Chief Financial Officer

Attachment(s):

1. Resolution No. 2024-26, Budget Amendment #1 – Roll Forward and Position Changes
2. Appendix A to the Fiscal Year 2025 Budget
3. Appendix C to the Fiscal Year 2025 Budget

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT,
STATE OF CALIFORNIA, AMENDING RESOLUTION NO. 2024-19, THE ANNUAL BUDGET FOR FISCAL YEAR
2024-2025 TO PROVIDE FOR REVISED EXPENDITURE AND POSITION AUTHORITY**

WHEREAS, as part of its approval of the Annual Budget for Fiscal Year 2024-2025, the Board of Directors considered the annual expenditures necessary for the Sonoma-Marín Area Rail Transit District; and

WHEREAS, as part of its approval of the Annual Budget for Fiscal Year 2024-2025, the Board of Directors considered employee positions and fixed the compensation and salary for those positions; and

WHEREAS, the Board desires to Amend the Annual Budget Resolution No. 2024-19 to modify expenditure authority to adjust funding based on actual costs for Fiscal Year 2025 for several projects; and

WHEREAS, the Board desires to Amend the Annual Budget Resolution No. 2024-19 to provide for revised position authority.

NOW, THEREFORE, BE IT RESOLVED that expenditure authority in Resolution No. 2024-19, Fiscal Year 2024-2025 Adopted Budget, Appendix A and the Position Authority in Appendix C is hereby amended.

BE IT FURTHER RESOLVED except as specifically amended or supplemented by this Resolution, Resolution No. 2024-19, together with all supplements, amendments, and exhibits thereto is, and shall continue to be, in full force and effect as originally adopted, and otherwise contained herein shall, or shall be construed to, modify, invalidate, or otherwise affect and provision of Resolution No. 2024-19.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Sonoma-Marín Area Rail Transit District held on the 21st day of August 2024, by the following vote:

DIRECTORS:

AYES:

NOES:

ABSENT:

ABSTAIN:

Eric Lucan, Chair, Board of Directors
Sonoma-Marín Area Rail Transit District

ATTEST:

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

Appendix A - Passenger Rail/Pathway Sources & Uses				
FISCAL YEAR 2024-2025 DRAFT BUDGET - SOURCES AND USES				
		A	B	C
		FY25 Adopted Budget	Amendment #1	Amended Budget
1	Beginning Fund Balance *	\$ 81,342,877	\$ -	\$ 81,342,877
2	Revenues			
3	SMART S&U Tax			
4	Measure Q	\$ 50,426,000	\$ 1,432,038	\$ 51,858,038
5	Federal Funds			
6	5307 - Urbanized Area Formula Funds (Preventative Maintenance)	\$ 3,770,292		\$ 3,770,292
7	5337 - Federal State of Good Repair Funds	\$ 6,350,000		\$ 6,350,000
8	Discretionary Earmark	\$ 1,800,000		\$ 1,800,000
9	FRA - Consolidated Rail Infrastructure and Safety Improvements (CRISI)	\$ 1,499,298		\$ 1,499,298
10	FRA Suicide Prevention Grant	\$ 15,943		\$ 15,943
11	Quick Strike (CMAQ) McInnis to Smith Ranch Rd)	\$ 789,308		\$ 789,308
12	State Funds			
13	AHSC - Roseland Village (Round5)	\$ 2,263,161	\$ 1,554,730	\$ 3,817,891
14	AHSC - Kashia Tribe (Round 7)	\$ 750,000		\$ 750,000
15	AHSC - Petaluma (Danco)	\$ 2,549,485		\$ 2,549,485
16	ATP - SoCo Pathway - CTC/Caltrans/MTC	\$ 8,104,983	\$ (1,315,602)	\$ 6,789,381
17	Caltrans Sustainability Communities Competative Planning Grant	\$ 400,000		\$ 400,000
18	Clean California Transit Grant	\$ 881,316		\$ 881,316
19	LCTOP - Low Carbon Transit Operating	\$ 566,356		\$ 566,356
20	LPP - Local Partnership Program	\$ 789,308		\$ 789,308
21	ITIP - Windsor Systems	\$ 3,230,381		\$ 3,230,381
22	SCC - Windsor	\$ 13,341,386	\$ (318,064)	\$ 13,023,322
23	SRA - State Rail Assistance	\$ 3,700,000		\$ 3,700,000
24	STA - State Transit Assistance (Population)	\$ 1,162,223		\$ 1,162,223
25	STA - State Transit Assistance (Revenue)	\$ 2,451,807		\$ 2,451,807
26	STA - SGR (State of Good Repair)	\$ 340,634		\$ 340,634
27	State Funds - Shuttle Service	\$ 500,000		\$ 500,000
28	TIRCP - Petaluma North and McDowell Crossing	\$ 6,774,657	\$ 1,785,065	\$ 8,559,722
29	TIRCP - Windsor to Healdsburg	\$ 1,450,000		\$ 1,450,000
30	Regional Funds			
31	Measure M - SCTA	\$ -		\$ -
32	Other Governments	\$ 1,401,532	\$ 628,383	\$ 2,029,915
33	Regional Measure 3 (RM3)	\$ 1,276,000		\$ 1,276,000
34	Other Sources			
35	Advertising	\$ 132,100		\$ 132,100
36	Charges for Services	\$ 109,564		\$ 109,564
37	Fare Revenues	\$ 2,215,290		\$ 2,215,290
38	Interest Earning	\$ 1,500,000		\$ 1,500,000
39	Misc.	\$ 54,257		\$ 54,257
40	Parking	\$ 11,400		\$ 11,400
41	Rent - Real Estate	\$ 479,636		\$ 479,636
42	Shuttle Revenues	\$ 1,200		\$ 1,200
43	Total Revenues	\$ 121,087,517	\$ 3,766,550	\$ 124,854,067
44	Total Revenues + Fund Balance	\$ 202,430,394	\$ 3,766,550	\$ 206,196,944

45				
46		FY25 Adopted Budget	Amendment #1	Amended Budget
47	Debt Service	\$ 16,904,116		\$ 16,904,116
48	Salaries & Benefits	\$ 28,822,096		\$ 28,822,096
49	Reduction for Salaries Charged to Projects	\$ (1,655,611)		\$ (1,655,611)
50	Reduction for Allocation of Salaries/ Services/ Supplies to Freight	\$ (32,895)		\$ (32,895)
51	Service & Supplies	\$ 19,671,720		\$ 19,671,720
52	Total Salaries, Benefits, Service, & Supplies	\$ 46,805,310	\$ -	\$ 46,805,310
53	Contribution to OPEB/ CalPERS Liability Fund	\$ 1,000,000		\$ 1,000,000
54	Contribution to Capital Sinking Fund	\$ 2,000,000		\$ 2,000,000
55	Operating Reserve	\$ 450,346		\$ 450,346
56	Total Reserve Contributions	\$ 3,450,346	\$ -	\$ 3,450,346
57	Total Debt Service, Operating, Reserves	\$ 68,867,484	\$ -	\$ 68,867,484
58	Balance	\$ 133,562,910	\$ -	\$ 133,562,910
59				
60		FY25 Adopted Budget	Amendment #1	Amended Budget
61				
62	State of Good Repair and Projects			
63	Bridges	\$ -		\$ -
64	DMU	\$ 1,331,218		\$ 1,331,218
65	Equipment	\$ 1,200,000		\$ 1,200,000
66	Information Technology	\$ 813,910		\$ 813,910
67	Non-Revenue Vehicles	\$ 921,654		\$ 921,654
68	Safety and Security	\$ 15,943		\$ 15,943
69	Track, MOW, and Facilities	\$ 475,827		\$ 475,827
70	Train Control	\$ 2,500,000		\$ 2,500,000
71	Total State of Good Repair	\$ 7,258,552	\$ -	\$ 7,258,552
72	Environmental and Mitigation	\$ 1,338,666		\$ 1,338,666
73	Planning - Studies	\$ 445,403		\$ 445,403
74	Planning - Capital	\$ 450,000		\$ 450,000
75	Shuttle	\$ 100,000		\$ 100,000
76	Other Construction	\$ 1,108,632	\$ 24,407	\$ 1,133,039
77	Miscellaneous	\$ 1,715,357		\$ 1,715,357
78	Total Planning, Environmental, Other Construction, Shuttle	\$ 5,158,058	\$ 24,407	\$ 5,182,465
79				
80		FY25 Adopted Budget	Amendment #1	Amended Budget
81				
82	Capital Projects			
83	Expansion	\$ 37,955,872	\$ 4,244,709	\$ 42,200,581
84	Pathways - Design and Permitting	\$ 6,051,072		\$ 6,051,072
85	Pathways - Capital	\$ 21,312,346	\$ (709,666)	\$ 20,602,680
86	Total Capital Expenditures	\$ 65,319,290	\$ 3,535,043	\$ 68,854,333
87	Ending Fund Balance	\$ 55,827,010	\$ 3,535,043	\$ 52,267,560

* Excludes Reserves

Appendix C - Position Authorization

Number of Positions	Position Title	Hourly		Annual	
Administration		Min	Max	Min	Max
1	Accountant I	\$ 37.27	\$ 46.59	\$ 77,521.60	\$ 96,907.20
1	Accounting Manager	\$ 65.76	\$ 82.20	\$ 136,780.80	\$ 170,976.00
1	Accounts Payable Technician	\$ 31.35	\$ 39.19	\$ 65,208.00	\$ 81,515.20
3	Administrative Assistant	\$ 32.14	\$ 40.18	\$ 66,851.20	\$ 83,574.40
1	Assistant General Counsel	\$ 90.66	\$ 113.33	\$ 188,572.80	\$ 235,726.40
1	Assistant Planner	\$ 40.13	\$ 50.16	\$ 83,470.40	\$ 104,332.80
1	Budget and Finance Manager	\$ 65.76	\$ 82.20	\$ 136,780.80	\$ 170,976.00
1	Chief Financial Officer	\$ 118.88	\$ 148.60	\$ 247,270.40	\$ 309,088.00
1	Clerk of the Board/ Executive Assistant	\$ 46.54	\$ 58.18	\$ 96,803.20	\$ 121,014.40
1	Communications and Marketing Coordinator	\$ 40.13	\$ 50.16	\$ 83,470.40	\$ 104,332.80
1	Communications and Marketing Manager	\$ 74.41	\$ 93.01	\$ 154,772.80	\$ 193,460.80
1	Communications and Marketing Specialist	\$ 59.54	\$ 74.43	\$ 123,843.20	\$ 154,814.40
1	Communications and Marketing Specialist - Limited Term Position	\$ 55.32	\$ 69.15	\$ 115,065.60	\$ 143,832.00
1	General Counsel	\$ 118.95	\$ 148.69	\$ 247,416.00	\$ 309,275.20
1	General Counsel - Limited Term Position	\$ 118.95	\$ 148.69	\$ 247,416.00	\$ 309,275.20
1	General Manager	\$ 152.35		\$ 316,888.00	\$ -
2	Grants and Budget Analyst	\$ 52.66	\$ 65.83	\$ 109,532.80	\$ 136,926.40
1	Grants and Legislative Affairs Manager	\$ 76.23	\$ 95.29	\$ 158,558.40	\$ 198,203.20
1	Human Resources Manager	\$ 74.41	\$ 93.01	\$ 154,772.80	\$ 193,460.80
1	Human Resources Specialist	\$ 38.20	\$ 47.75	\$ 79,456.00	\$ 99,320.00
1	Information Systems Analyst	\$ 46.54	\$ 58.18	\$ 96,803.20	\$ 121,014.40
1	Information Systems Manager	\$ 76.27	\$ 95.34	\$ 158,641.60	\$ 198,307.20
1	Information Systems Technician	\$ 41.14	\$ 51.43	\$ 85,571.20	\$ 106,974.40
1	Legal Administrative Assistant	\$ 37.27	\$ 46.59	\$ 77,521.60	\$ 96,907.20
1	MMIS Analyst	\$ 58.09	\$ 72.61	\$ 120,827.20	\$ 151,028.80
1	Payroll Technician	\$ 33.08	\$ 41.35	\$ 68,806.40	\$ 86,008.00
1	Planning Manager	\$ 74.41	\$ 93.01	\$ 154,772.80	\$ 193,460.80
1	Procurement and Contracts Analyst	\$ 48.90	\$ 61.13	\$ 101,712.00	\$ 127,150.40
1	Procurement and Contracts Manager	\$ 69.09	\$ 86.36	\$ 143,707.20	\$ 179,628.80
1	Procurement Technician	\$ 32.14	\$ 40.18	\$ 66,851.20	\$ 83,574.40
1	Real Estate Manager	\$ 82.09	\$ 102.61	\$ 170,747.20	\$ 213,428.80
1	Regulatory Compliance & Civil Rights Manager	\$ 74.41	\$ 93.01	\$ 154,772.80	\$ 193,460.80
1	Senior Buyer	\$ 53.98	\$ 67.48	\$ 112,278.40	\$ 140,358.40
1	Senior Management Analyst	\$ 59.54	\$ 74.43	\$ 123,843.20	\$ 154,814.40
1	Senior Planner	\$ 55.32	\$ 69.15	\$ 115,065.60	\$ 143,832.00
1	Senior Real Estate Officer	\$ 55.29	\$ 69.11	\$ 115,003.20	\$ 143,748.80
	Interns (Multiple)	\$ 18.00			
39					

# of Positions	Position Title	Hourly		Annual	
Capital		Min	Max	Min	Max
2	Assistant Engineer	\$ 48.90	\$ 61.13	\$ 101,712.00	\$ 127,150.40
1	Associate Engineer	\$ 56.71	\$ 70.89	\$ 117,956.80	\$ 147,451.20
1	Chief Engineer	\$ 97.54	\$ 121.93	\$ 202,883.20	\$ 253,614.40
2	Junior Engineer	\$ 42.17	\$ 52.71	\$ 87,713.60	\$ 109,636.80
1	Manager Train Control Systems	\$ 97.54	\$ 121.93	\$ 202,883.20	\$ 253,614.40
1	Principal Engineer	\$ 76.27	\$ 95.34	\$ 158,641.60	\$ 198,307.20
1	Senior Engineer	\$ 65.76	\$ 82.20	\$ 136,780.80	\$ 170,976.00
9					
# of Positions	Position Title	Hourly		Annual	
Operations		Min	Max	Min	Max
1	Administrative Services Specialist	\$ 46.53	\$ 58.16	\$ 96,782.40	\$ 120,972.80
3	Bridge Tender		\$ 35.83	\$ -	\$ 74,526.40
1	Chief Operating Officer	\$ 102.57	\$ 128.21	\$ 213,345.60	\$ 266,676.80
1	Chief of Police	\$ 88.39	\$ 110.49	\$ 183,851.20	\$ 229,819.20
3	Code Compliance Officer	\$ 36.36	\$ 45.45	\$ 75,628.80	\$ 94,536.00
1	Code Compliance Officer - Limited Term	\$ 36.36	\$ 45.45	\$ 75,628.80	\$ 94,536.00
6	Conductor *		\$ 45.52	\$ -	\$ 94,681.60
	Conductor Trainee*		\$ 38.70	\$ -	\$ 80,496.00
28	Engineer *		\$ 54.73	\$ -	\$ 113,838.40

	Engineer Trainee*		\$ 46.52	\$ -	\$ 96,761.60
1	Facilities Maintenance Supervisor	\$ 52.80	\$ 64.18	\$ 109,824.00	\$ 133,494.40
3	Facilities Maintenance Technician		\$ 44.81	\$ -	\$ 93,204.80
2	Inventory and Parts Clerk	\$ 33.08	\$ 41.35	\$ 68,806.40	\$ 86,008.00
1	Materials Sourcing Specialist	\$ 36.36	\$ 45.45	\$ 75,628.80	\$ 94,536.00
1	Inventory Manager / Asset Management Specialist	\$ 56.71	\$ 70.89	\$ 117,956.80	\$ 147,451.20
1	Lead Facility Maintenance Engineer		\$ 49.29	\$ -	\$ 102,523.20
1	Maintenance of Way Manager	\$ 78.17	\$ 97.71	\$ 162,593.60	\$ 203,236.80
1	Maintenance of Way Superintendent	\$ 65.76	\$ 82.20	\$ 136,780.80	\$ 170,976.00
2	Operation Communication Specialist	\$ 37.27	\$ 46.59	\$ 77,521.60	\$ 96,907.20
1	Safety & Compliance Officer	\$ 67.38	\$ 84.23	\$ 140,150.40	\$ 175,198.40
1	Senior Administrative Assistant	\$ 35.47	\$ 44.34	\$ 73,777.60	\$ 92,227.20
2	Signal Supervisor	\$ 56.31	\$ 68.43	\$ 117,124.80	\$ 142,334.40
8	Signal Technician **		\$ 59.34	\$ -	\$ 123,427.20
	Signal Technician Trainee (2) **		\$ 44.50	\$ -	\$ 92,560.00
2	Track Maintenance - Laborers		\$ 33.50	\$ -	\$ 69,680.00
5	Track Maintainer I		\$ 44.38	\$ -	\$ 92,310.40
1	Track Maintainer II		\$ 48.82	\$ -	\$ 101,545.60
2	Track Maintenance Supervisor	\$ 52.67	\$ 64.03	\$ 109,553.60	\$ 133,182.40
1	Transportation Manager	\$ 78.17	\$ 97.71	\$ 162,593.60	\$ 203,236.80
1	Transportation Superintendent	\$ 65.76	\$ 82.20	\$ 136,780.80	\$ 170,976.00
12	Transportation Supervisor	\$ 58.13	\$ 72.66	\$ 120,910.40	\$ 151,132.80
10	Vehicle Maintenance - Laborers		\$ 34.31	\$ -	\$ 71,364.80
1	Vehicle Maintenance Manager	\$ 78.17	\$ 97.71	\$ 162,593.60	\$ 203,236.80
5	Vehicle Maintenance Supervisor	\$ 58.13	\$ 72.66	\$ 120,910.40	\$ 151,132.80
12	Vehicle Maintenance Technician ***		\$ 54.23	\$ -	\$ 112,798.40
	Vehicle Maintenance Tech Trainee (2) ***		\$ 40.67	\$ -	\$ 84,593.60
121					
Freight		Min	Max	Min	Max
0.5	Administrative Assistant	\$ 32.14	\$ 40.18	\$ 66,851.20	\$ 83,574.40
1	Freight Manager	\$ 78.17	\$ 97.71	\$ 162,593.60	\$ 203,236.80
4.5	Freight Utility Worker	\$ 36.36	\$ 45.45	\$ 75,628.80	\$ 94,536.00
6					

Total FTE 175

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Total positions cannot exceed 34.
Total positions cannot exceed 8.
Total positions cannot exceed 12.