

**MEMORANDUM OF UNDERSTANDING (MOU)**

**For the**

**CAL PARK HILL MULTI-USE PATHWAY**

**Between**

**COUNTY OF MARIN, CITY OF SAN RAFAEL, CITY OF LARKSPUR, and the TWIN CITIES  
POLICE AUTHORITY**

This Memorandum of Understanding (MOU) is made and executed this day of \_\_\_\_\_ 2008, by and between the County of Marin (COUNTY), the City of San Rafael, the City of Larkspur, and the Twin Cities Police Authority, collectively referred to as "PARTIES". "The City of San Rafael, the City of Larkspur and the Twin Cities Police Department shall be referred to collectively herein as "AGENCIES".

**RECITALS**

1. WHEREAS, the parties to this MOU acknowledge that a multi-use pathway will be constructed along the railroad right-of-way between Andersen Drive in San Rafael, through the railroad tunnel, and then connecting with Larkspur Landing in Larkspur as more particularly shown in Exhibit "A", attached hereto and incorporated by reference (PATHWAY), and;
2. WHEREAS, the PARTIES desire to provide for an MOU on rights and responsibilities of parties in support of the construction, operation and maintenance of the pathway;
3. WHEREAS, the Parties acknowledge immediately prior to passenger rail services the Sonoma Marin Area Rail Transit District (SMART) will be assuming full control of the railroad Right-of-Way and this MOU shall terminate. It is the intent of the PARTIES that this MOU shall be replaced by a new MOU or another appropriate document at that time.
4. WHEREAS, the PARTIES acknowledge the existence of a separate Cooperative Agreement by and between the COUNTY and SMART regarding the Development, Use and Maintenance of the PATHWAY.

**OPERATIVE PROVISIONS:**

NOW THEREFORE in consideration of the mutual covenants and conditions contained herein, the parties hereto agree as follows:

1. Design of the Multi-Use Pathway. COUNTY OF MARIN will be designated as the responsible agency for all design matters related to the multi-use pathway and will ensure that the design meets all mandatory and advisory standards as identified by Caltrans in the Highway Design Manual, California Supplement to the Manual on Uniform Traffic Control Devices (MUCTD),

Americans With Disabilities Act (ADA), the California Public Utilities Commission (CPUC), design standards provided by the Sonoma Marin Area Rail Transit District (SMART) and other relevant agencies and documents.

2. Construction of Multi-Use Pathway. COUNTY OF MARIN will be designated as the responsible agency for all matters related to construction of the Multi-Use Pathway. COUNTY OF MARIN will be responsible for obtaining all permits, and for coordination of all construction activities with the parties to this MOU and all other agencies as needed. AGENCIES shall have no responsibility for any aspect of this project, including but not limited to costs of design, construction or maintenance."
3. Access to the Pathway. ALL PARTIES to this MOU agree to work with the COUNTY OF MARIN as the agency responsible for constructing the PATHWAY to provide necessary permits for access to the right of way as needed for the construction, operation and maintenance of the PATHWAY, including but not limited to providing and maintaining adequate access to the PATHWAY, within the jurisdiction of each party, and assisting the COUNTY OF MARIN in obtaining private easements within their jurisdictions, as needed, to provide access to the PATHWAY. Such assistance in obtaining private easements shall not include any expenditure of funds, staff time or any other resources by AGENCIES. AGENCIES shall have no responsibility for any aspect of this project, including but not limited to costs of design, construction or maintenance."
4. Permitted Uses. Once constructed, the PATHWAY shall be used exclusively for non-motorized uses normally incident to that purpose (except for maintenance and emergency vehicles; and users accessing private property crossing the PATHWAY in the vicinity of Stations 728+50 and 737+80).
5. Pathway Maintenance.
  - (a) Responsibility. COUNTY OF MARIN will be designated as the responsible agency for all operations and maintenance work on the PATHWAY. COUNTY OF MARIN will be responsible for all maintenance functions of PATHWAY consistent with County Parks protocol and standard of maintenance. Items of responsibility include but are not limited to the following:
    - Pavement maintenance
    - Pathway drainage
    - Water supply beyond MMWD service connection
    - Litter, trash, pet waste stations and graffiti removal
    - Cleaning and painting
    - Pathway bridge
    - Pathway tunnel and portals
    - Pathway gates
    - Pathway retaining structures
    - Pathway ventilation systems
    - Landscape maintenance, irrigation and vegetation control
    - Signing and striping

- Lighting systems on Pathway from station 703+90 to station 744+08 (includes tunnel lighting)
- Closed Circuit TV within the tunnel
- Communication systems
- Fire Protection Equipment, including Fire Hydrants

6. Safety and Security

- (a) Security Features. As the responsible agency, the COUNTY OF MARIN will maintain security features designed to enhance safety and security on the PATHWAY. These features will be maintained and inspected consist with County protocol and will include:
- Provide emergency services (e.g. fire, police departments) with a map of the system, along with access points and Knox box/ pad locks to gates/bollards.
  - Milepost stencils every 250 feet within the tunnel; identify markers on maps.
  - Provide emergency telephones or call box systems in the tunnel linked to the local 911 network with instructions for use and penalties for misuse.
  - Provide adequate lighting within the tunnel and along portions of the pathway
  - Maintain vegetation and avoid overgrowth.
  - Install surveillance cameras inside the tunnel and maintain data feeds that will be made available to PARTIES by means of secure standard connectivity. It is not expected activities inside the tunnel will be continually monitored.
  - Maintain a composite record of maintenance and operations.
  - Maintain access and egress for emergency vehicles.
  - Tunnel portals will be constructed with vandal-resistant and non-scalable gates to allow for PATHWAY closures. PATHWAY access will be controlled in accordance with Agreement between SMART and COUNTY.
  - Leaky co-ax for MERA radio system
- (b) First Responder. Emergency response for crime, fire or medial incidents will be based on established protocol between the CITY OF SAN RAFAEL and CITY OF LARKSPUR Fire Department and the TWIN CITIES POLICE AUTHORITY.
- (c) First Responder Notification. Emergency phones within the tunnel will be routed to the appropriate jurisdiction based on the location of the call. Within the City of San Rafael, emergency phones will access the City's dispatch system. Within the City of Larkspur, emergency phones will access Twin Cities Dispatch (TCPA 911). TCPA will contact Larkspur Fire Department depending on the nature of the call. All mutual aid MOUs between the parties will remain in force on the PATHWAY.
- (d) Data Collection and Reporting. Upon request, and in accordance with all state and federal regulations restricting access to personal information, first responder police and fire organizations will provide reports of any incidents on the PATHWAY to the

COUNTY OF MARIN's designee for the purpose of compiling a history of safety and security incidents on the PATHWAY.

7. Regulations.

- (a) Hours of Operation. Pathway hours of operation will be established by the Marin County Parks. County Parks have established the initial pathway hours to open for use at 5:00AM and close for use at 11:00PM, seven (7) days a week.
- (b) Amending the Hours of Operation. The PARTIES understand that the initial hours of operation will be re-assessed by County Parks after a one-year trial period, or as needed. Adjustments may be made to the hours of operations based on pathway operations utilizing relevant information, public and agency input. PARTIES will meet after a six (6) month period to assess pathway operations and cooperatively prepare an interim report generally describing operational issues.
- (c) Regulatory Signage. At the appropriate time during project development, PARTIES will meet and agree to the regulatory signage that will be posted at appropriate locations along the pathway, which may include, but is not limited to, the following:
  - Hours of operation
  - No trespassing after pathway is closed
  - No trespassing on adjacent private property
  - Motor vehicles, other than power assisted wheelchairs and light maintenance vehicles, are prohibited
  - No loitering; no vandalism; no dumping
  - Keep to the right except when passing
  - Yield to on-coming traffic when passing
  - Bicycles always yield to pedestrians
  - Give an audible warning when passing
  - Pets must always be on a leash and pet waste shall be removed by owner
  - Travel no more than two abreast
  - Alcoholic beverages are not permitted on the Pathway
  - Bicycles to yield to maintenance vehicles
  - Pathway subject to closure for maintenance

The signage responsibility shall be at County's sole cost and expense.

8. Insurance and Risk allocation

- (a) Maintenance of Insurance. COUNTY OF MARIN will maintain all insurance required to construct, operate and maintain the PATHWAY

- (b) Risk allocation. County agrees it is the County’s sole responsibility to construct, operate or maintain PATHWAY. ALL PARTIES agree that the AGENCIES do not have any responsibility for the construction, maintenance or operation of PATHWAY. It is further understood that any responsibility for alleged injuries or damages arising from the existence or use of the PATHWAY shall be governed by the provisions of the California Tort Claims act, including but not limited to all applicable immunities for injuries or damages on Public Property.”

9. Term of the MOU.

- (a) This MOU shall automatically terminate if either (1) the PATHWAY is not substantially completed within seven (7) years after execution of this MOU, or (2) on a future date when SMART has secured capital and operating funds and initiates passenger rail service.
- (b) Should passenger rail service not be initiated the term of this Agreement is twenty (20) years, commencing on execution of this MOU. No later than one year prior to the final year of the twenty (20)-year period, PARTIES agree to: (1) Extend this Agreement for a period to be defined, or (2) Develop a superseding MOU defining future use and maintenance of PATHWAY for a period to be defined and jointly agreed upon by PARTIES. If the above agreement extensions are not exercised, or a change cannot be agreed upon by the end of the twenty-year period, the existing agreement between PARTIES shall remain in effect until such time both parties agree to a change.

10. Amending the MOU. This MOU may be amended at any time by mutual agreement by all PARTIES.

**EFFECTIVE DATE**

This MOU shall be effective upon date of its execution by all parties.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

- A. Termination. This MOU may be terminated as specified in this MOU or at any time upon the mutual agreement by all parties. Termination of this MOU shall not release any party from any liability or obligation hereunder resulting from an event that occurred before termination.
- B. Nonwaiver. The failure of any party to this MOU to enforce or exercise its rights with respect to any term, covenant or condition of this MOU shall not be construed as a waiver of that term, covenant or condition for any subsequent breach of the same or any other term, covenant or condition contained in this MOU.
- C. Notices. All notices shall be in writing and shall be deemed to have been given when delivered personally or deposited in the United States Mail, registered or certified, postage prepaid, and addressed to the party to whom the notice is directed at the address set forth below.

To COUNTY at:

County of Marin  
Parks and Open Space

Attention: General Manager  
P.O. Box 4186  
San Rafael California 94913

To CITY OF SAN RAFAEL at: City of San Rafael  
Attention: City Manager  
P.O. Box 151560  
San Rafael California 94915

To CITY OF LARKSPUR at: City of Larkspur  
Attention: City Manager  
400 Magnolia Avenue  
Larkspur California 94939

To TWIN CITIES POLICE AUTHORITY at:  
Twin Cities Police Authority  
Attention Police Chief  
250 Doherty Drive  
Larkspur, CA 94939.

- D. Entire MOU. This MOU sets forth the entire MOU between the parties with respect to the Operation and Maintenance of PATHWAY and supersedes all prior MOUs, communications, and representations, oral or written, express or implied, since the parties intend that this be an integrated MOU. This MOU shall not be modified except by written MOU of the parties.
- E. Invalidity of Particular Provisions. If any term, covenant or condition of this MOU or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this MOU or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant and condition of this MOU shall be valid and be enforced to the fullest extent permitted by law
- F. Successors. This MOU shall inure to the benefit of COUNTY, CITY OF SAN RAFAEL, CITY OF LARKSPUR, and the TWIN CITIES POLICE AUTHORITY

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the date first above written.

CITY OF LARKSPUR

CITY OF SAN RAFAEL

By: \_\_\_\_\_

By: \_\_\_\_\_

Approved as to form:

Approved as to form:

\_\_\_\_\_  
City of Larkspur Attorney

\_\_\_\_\_  
City of San Rafael Attorney

TWIN CITIES POLICE AUTHORITY

COUNTY OF MARIN

By: \_\_\_\_\_

By: \_\_\_\_\_

Approved as to form:

Approved as to form:

\_\_\_\_\_  
Twin Cities Police Authority Attorney

\_\_\_\_\_  
County of Marin General Counsel