Sierra County Board of Supervisors' Agenda Transmittal & Record of Proceedings

MEETING DATE: June 7, 2016	**TYPE OF AGENDA ITEM:** ☐Regular ☐Timed ☒Consent

DEPARTMENT: Department of Public Works and Transportation
APPROVING PARTY: Tim H. Beals
PHONE NUMBER: 530-289-3201

AGENDA ITEM: Resolution approving Agreement for Transportation Services in the amount of $49,000 between County of Sierra and Golden Rays Senior Citizens of Sierra County, Inc. for FY 2017.

SUPPORTIVE DOCUMENTS ATTACHED: ☐Memo ☐Resolution ☐Agreement ☐Other

BACKGROUND INFORMATION: Renewal of the transit contract with Golden Rays Senior Citizens for fiscal year 2017 is recommended , in accordance with the renewal option provided in the RFP issued on April 23, 2015, which is also outlined in the agreement.

FUNDING SOURCE: . TRANSIT, FTA 5311, LTF, STA
GENERAL FUND IMPACT: No General Fund Impact
OTHER FUND: 055
AMOUNT: $49,000.00 N/A

ARE ADDITIONAL PERSONNEL REQUIRED? ☐Yes, -- -- ☒No	**IS THIS ITEM ALLOCATED IN THE BUDGET?** ☒Yes ☐No **IS A BUDGET TRANSFER REQUIRED?** ☐Yes ☒No

SPACE BELOW FOR CLERK'S USE

BOARD ACTION: ☐Approved ☐Approved as amended ☐Adopted ☐Adopted as amended ☐Denied ☐Other ☐No Action Taken	☐Set public hearing For: _____ ☐Direction to: _____ ☐Referred to: _____ ☐Continued to: _____ ☐Authorization given to: _____	Resolution 2016- _____ Agreement 2016- _____ Ordinance _____ Vote: Ayes: Noes: Abstain: Absent: ☐By Consensus

COMMENTS:

_____ _____
CLERK TO THE BOARD DATE

BOARD OF SUPERVISORS, COUNTY OF SIERRA, STATE OF CALIFORNIA

IN THE MATTER OF APPROVAL OF
TRANSIT VEHICLE OPERATION ASSISTANCE FY 2017
GOLDEN RAYS SENIOR CITIZENS

RESOLUTION NO. 2016-_____

WHEREAS, the Sierra County Transportation Commission (SCTC) is designated as the Regional Transportation Planning Agency (RTPA) for Sierra County; and,

WHEREAS, SCTC approves the annual operational budget for transit vehicle operation; and,

WHEREAS, on the basis of the approved operational budget, and the submitted proposal from the Golden Rays Senior Citizens of Sierra County, Inc. the Sierra County Board of Supervisors approves the transit services contract with the Golden Rays Senior Citizens of Sierra County, Inc.

NOW THEREFORE, BE IT RESOLVED THAT Sierra County Board of Supervisors authorizes Agreement and Contract for Transit Services in Sierra County with Golden Rays Senior Citizens of Sierra County Inc. for fiscal year 2017.

ADOPTED by the Board of Supervisors of the County of Sierra on the 7th day of June, 2016 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

COUNTY OF SIERRA

_____
LEE ADAMS
BOARD OF SUPERVISORS

ATTEST:

_____
HEATHER FOSTER
CLERK OF THE BOARD

APPROVED AS TO FORM:

_____
JAMES A. CURTIS
COUNTY COUNSEL

AGREEMENT FOR
TRANSPORTATION SERVICES IN SIERRA COUNTY

This Agreement is made and entered into on the 7th day of June, 2016 between the County of Sierra, hereafter referred to as "County" and the **Golden Rays Senior Citizens of Sierra County, Inc.**, hereafter referred to as "Contractor", by reason of and in view of the following:

RECITALS

1. Whereas, Contractor has been providing transportation services for elderly, handicapped and general public in western Sierra County since 1979, through operation of a multi-passenger vehicle; and,

2. Whereas, the Sierra County Transportation Commission (SCTC) is the agency in Sierra County responsible for allocation of funds provided to meet the transit needs in the County, under the Transportation Development Act (TDA) (California Public Utilities Code, section 99200, et seq.); and,

3. Whereas, Sierra County Transportation Commission (SCTC) at its May 25, 2016 meeting conducted the required and duly noticed annual Unmet Transit Needs hearing and established the existence of transportation needs that can reasonably be met by use of Transportation Development Act (TDA) Funds; and,

4. Whereas, because of the rural nature of the County and the limited number of residents, no other effective form of public transportation is reasonably available to meet the public transit needs in Sierra County; and,

5. Whereas, the County and SCTC desire to continue to contract for transit services with Contractor to provide transportation for the elderly and disabled, and for the general public in Sierra County in order to meet transit needs which have been defined as "Reasonable to Meet"; and,

6. Whereas, on April 23, 2015 the County issued a Request for Proposals for Public Transit Services and the Contractor has submitted a proposal to provide transit services in accordance with the requirements of the Request for Proposals to western Sierra County for fiscal year 2015-16, with the intent that the selected provider will be used to provide transit services in the County for a period of seven years including fiscal year 2016-17; and,

7. Whereas, all operating agreements are subject to the review of the Division of Mass Transportation for compliance to Federal Transit Administration (FTA) Third Party Contract Requirements 4220.1E.

OPERATIVE PROVISIONS

Now, therefore and in light of the foregoing, it is agreed:

1. County hereby designates and approves Contractor as a transit operator for the purpose of providing transportation service to the elderly, disabled and general public in Sierra County from July 1, 2016 to June 30, 2017.

2. Transportation will be provided in a manner reasonably calculated to meet the needs of the elderly and disabled and general public for shopping, medical appointments and social transportation. Use of the transit vehicle will be scheduled and provided so as to promote maximum occupancy during use. The level of service shall generally be as described in Exhibit B as attached hereto and incorporated herein.

3. Transportation services will be provided to the elderly, defined as persons age 55 and over, to disabled persons and the general public.

4. Contractor agrees to provide an opportunity for persons utilizing the van to contribute to paying their costs of operation and agrees further to use all fees or donations received to pay costs of operation of the van. Contractor must comply with restrictions of federal law, prohibiting direct charges for services provided senior as long as sufficient funds are received from Contractor to defray costs of providing transportation for senior citizens in an amount no less than ten percent ten percent of total annual operating budget (10% fare box revenue). Contractor will make all possible good faith efforts to secure donations and ensure adequate user-support of the transit vehicle.

5. County agrees and approves of Contractor receiving funds from SCTC for the purpose of providing the transportation services hereunder in the total amount of $49,000.00 as TDA funding including State Transit Assistance (STA), Local Transportation Funding (LTF) and FTA 5311 funding as available during fiscal year 2017. Contractor shall receive quarterly payments based upon invoice for services provided the previous quarter and based on the operating budget approved by the SCTC at the May 25, 2016 meeting.

6. Contractor shall be deemed to be an independent contractor for all purposes of this Agreement. For the purpose of facilitating the drug testing as described in paragraph 8 of this Agreement, County shall include Contractor’s employees in County's drug testing procedures and programs.

7. No employee of Contractor shall acquire any employment rights with County by virtue of this Agreement. Contractor agrees it will be solely responsible for negligent or wrongful acts of its agents in performance of this contract. Contractor will defend, hold harmless and indemnify County for losses caused by Contractor’s negligent or willful acts of omission or commission in performance of this contract.

8. In accordance with the requirements for use of FTA 5311 Program Funds and applicable provisions of federal laws and regulations, the County has adopted the Drug and Alcohol Policy for Transit Operators under Contract with the County, which Policy is attached hereto and incorporated herein by this reference. Contractor shall comply with the requirements for drug testing of transit drivers and other safety sensitive personnel, in accordance with the aforesaid Policy as set out in Exhibit 1. Contractor shall provide the County with continuously updated list of names of transit vehicle drivers, including driver license numbers, social security numbers and birth dates, and all transit vehicle drivers shall be required to comply with all County and Federal Transit Administration (FTA) drug testing requirements. County shall be immediately notified of addition of any new transit vehicle

drivers. All new transit vehicle drivers must be drug tested and be found to be in compliance with drug test requirements prior to driving any vehicles owned, operated or controlled by Contractor. Subject to the County's consent, the transit vehicle drivers shall be included in the County's employee pool for purpose of selections of employees for random drug testing. Contractor shall reimburse County for drug testing costs. To the extent practicable, County will endeavor to facilitate Contractor's use of the Employee Assistance & Substance Abuse Programs that are provided by third party contractors; provided however, that at all times, Contractor shall be deemed to be and is the employer of employees hired by Contractor.

9. Contractor shall maintain liability insurance during the term of this Agreement in the amount of $5,000,000 Liability Bodily Injury and Property Damage, $250,000 Uninsured Motorist Protection.

10. Contractor shall supply County with a certificate of insurance evidencing the above, which shall provide for 30 days' notice to County in the event of cancellation. County shall be named as an additional insured.

11. It is the intent of the County that the selected provider resulting from the Request for Proposals of April 23, 2015 will be used to provide transit services in the County for a period of seven years. Because the level of service and compensation to the Contractor will vary in each year dependent on both demand for service and the availability of funding, the intent is to annually revise this Agreement in order to address these variables.

12. In the event Contractor is unable for any reason to provide the transportation services provided for herein, this Agreement may immediately be rescinded and Contractor shall thereafter no longer be eligible to receive any monies and shall be required to return to SCTC any monies advanced and not expended in providing the subject transit services.

13. Contractor shall provide the County auditors and SCTC with a financial audit by a Certified Public Accountant within ninety (90) days after the end of the fiscal year and a performance audit is to be conducted every third year.

14. No change of the terms of this Agreement shall be valid unless in writing and signed by the parties.

15. Federal Transit Administration Requirements for Third Party Contracts as outlined in Exhibit A attached hereto are hereby incorporated into this agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement, at Downieville, Sierra County, California.

COUNTY OF SIERRA	CONTRACTOR
_____	_____
LEE ADAMS Chairman, Board of Supervisors	Golden Rays Senior Citizens of Sierra County, Inc.
ATTEST:	APPROVED AS TO FORM:
_____	_____
Heather Foster Clerk of the Board	Christian M. Curtis Deputy County Counsel

Exhibit A to Agreement for Transportation Services

Required Federal Contracting Clauses

The Federal Government requires that activities financed, in part, with Federal funds and performed by a third party Contractor and its sub-contractors on behalf of a Federal grantee must be carried out in accordance with Federal requirements.

Activities performed resulting from the original contract to this and any other prior or subsequent contract amendments thereto are financed, in part, by a grant from the United States Department of Transportation (DOT), Federal Transit Administration (FTA), and are therefore subject to the applicable grant terms, conditions, and regulations.

Accordingly, any Contractor and its sub-contractors performing activities under this Agreement must adhere to the Federal regulations stated herein as a condition of satisfactory performance. All subcontracts and sub-contractors employed as a result of this Agreement are subject to the same conditions and regulations as set forth herein unless specifically exempted.

The Prime Contractor shall ensure that its subcontractors at all tiers are made aware of and comply with these Federal regulations. The Prime Contractor will be held liable for compliance failures by its subcontractors.

Failure to comply will render the Prime Contractor responsible for damages and/or contract termination.

1. Charter Bus Requirements.
The Contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and sub-recipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

2. School Bus Requirements.
Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and sub-recipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and sub-recipients may not use federally funded equipment, vehicles, or facilities.

3. Energy Conversation Requirements.
The contractor 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.

4. Clean Water Requirements. .

A. 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. 1251et seq. contractor agrees to report each violation immediately to the COUNTY and understands and agrees that the COUNTY will, in turn, report each violation as required to assure notification to FTA the appropriate EPA Regional Office, state and local agencies.
B. CONTRACTOR also agrees to include these requirements in each subcontract exceeding $100,000financed in whole or in part with federal assistance provided by FTA.

5. Lobbying. .

The contractor shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying.". Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any Person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal Contract, grant or award covered by 31 U.S.C. § 1352. Such disclosures are forwarded from tier to tier up to the COUNTY.

During the term of the contract, the contractor agrees to comply with the provisions of 31 U.S.C. § Section 1352, which prohibits the use of federal funds for lobbying by any official or employee of any federal agency, or member or employee of Congress and requires CONTRACTOR to disclose any lobbying of any official or employee or any federal agency, or member or employee of Congress in connection with federal assistance. The contractor agrees to comply with U.S. DOT regulations, 17 "New Restrictions on Lobbying;' 49 CFR Part 20 and include these requirements in any subcontract which exceeds $100,000. The successful Proposer must execute the Restriction on Lobbying certification (Exhibit C) and said fully completed certification will be included in their Proposal.

6. Access To Records and Reports. .

The following access to records requirements apply to this Contract:

A. Where the COUNTY is not a State but a local government and is the FTA Recipient or a sub grantee of the FTA Recipient in accordance with 49 C.F.R. Part 18.36(i), the contractor agrees to provide the COUNTY, the FTA Administrator, the Comptroller General of the United States or any of their Authorized Representatives access to any books, documents, papers and records of the contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions.

   The contractor also agrees, pursuant to 49 C.F.R. Part 633.17 to provide the FTA Administrator or his Authorized Representatives including any PMO contractor access to the contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a) 1, which is receiving federal financial assistance through the programs described at 49 U.S.C. § 5307, 5309 or 5311.

B. Where the COUNTY is a State and is the FTA Recipient or a sub grantee of the FTA Recipient in accordance with 49 C.F.R. Part 633.17, the contractor agrees to provide the COUNTY, the FTA Administrator or his Authorized Representatives, including any PMO contractor, access to the contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)l, which is receiving federal financial assistance through the programs described at 49 U.S.C. § 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at $25,000.

C. Where the COUNTY enters into a negotiated Contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a sub grantee of the FTA Recipient in accordance with 49 C.F.R. Part 19.48, the contractor agrees to provide the COUNTY, FTA Administrator, the Comptroller General of the United States or any of their duly Authorized Representatives with access to any books, documents, papers and record of the contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions.

D. Where any COUNTY which is the FTA Recipient or a sub grantee of the FTA Recipient in accordance with 49 U.S.C. § 5325(a) enters into a Contract for a capital project or improvement (defined at 49 U.S.C. § 5302(a)l) through other than competitive bidding, the contractor shall make available records related to the Contract to the COUNTY, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

E. The contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

F. The contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three 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 the contractor agrees to maintain same until the COUNTY, the FTA Administrator, the Comptroller General, or any of their duly Authorized Representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

G. FTA does not require the inclusion of these requirements in subcontracts.

7. Federal Changes.
The 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 Contract (The FTA Master Agreement) between the COUNTY and FTA, as they may be amended or promulgated from time to time during the term of this Contract. The contractor's failure to so comply shall constitute a material breach of the Contract.

8. Clean Air.

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. The contractor agrees to immediately report each violation to the COUNTY and understands and agrees that the COUNTY will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office state and local agencies.

B. The contractor also agrees to include these requirements in each subcontract exceeding$100,000 financed in whole or in part with federal assistance provided by FTA.

9. Recycled Products.
The Contractor agrees to comply with all the requirements of Section 6002 of 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**.**

10. No Government Obligation To Third Parties

A. The COUNTY and the 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 COUNTY, the contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the underlying Contract.

B. The contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

11. Program Fraud And False Or Fraudulent Statements And Related Acts.

A. 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 CFR Part 31, apply to its actions pertaining to this Contract. 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.

B. 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.

§5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and49 U.S.C. § 5307(n)(l) on the contractor, to the extent the federal government deems appropriate.

C. 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 identity the Subcontractor who will be subject to the provisions.

12. Termination.

A. Termination for Convenience - The COUNTY, by written notice, may terminate this contract, in whole or in part, when it is in the COUNTY's interest. If this contract is terminated, the COUNTY shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

B. Termination for Default (Breach or Cause) - If the contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the contractor fails to perform in the manner called for in the contract, or if the contractor fails to comply with any other provisions of the contract, the COUNTY may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the COUNTY that the contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the contractor, the COUNTY, after setting up a new delivery of performance schedule, may allow the contractor to continue work, or treat the termination as a termination for convenience.

C. Opportunity to Cure - The COUNTY in its sole discretion may, in case of a termination for breach or default, allow the contractor ten (10) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If the contractor fails to remedy to COUNTY's satisfaction the breach or default of any of the terms, covenants, or conditions of the Contract within ten(10) days after receipts by the contractor of written notice from COUNTY setting forth the nature of said breach or default, COUNTY shall have the right to terminate the Contract without any further obligation to the contractor. Any such termination for default shall not in any way operate to preclude COUNTY from also pursuing all available remedies against the contractor and it sureties for said breach or default.

D. Waiver for Remedies for any Breach - In the event that COUNTY elects to waive its remedies for any breach by Contract of any covenant, term or condition of this Contract, such waiver by COUNTY shall not limit COUNTY's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

13. Government-wide Debarment And Suspension (Nonprocurement).

A. This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

B. The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

C. By signing and submitting its certification of this RFP the bidder or proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by the COUNTY. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to COUNTY, 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 49CFR 29, Subpart C 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.

14. Privacy Act.

A. The 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. § 552a. 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. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that 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.

B. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

15. Civil Rights Requirements.

The following requirements apply to the underlying Contract:

A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. §12132, and 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, creed, national origin, sex, age, or disability. In addition, the contractor agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying Contract:

I. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and federal transit laws at 49 U.S.C. § 5332. 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 CFR Parts 60 et seq, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the Project. 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, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, 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.

II. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967,as amended, 29 U.S.C. § 623 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.

III. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the contractor agrees to comply with any implementing requirements FTA may issue.

C. The contractor also agrees to include these requirements in each subcontract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.

16. Breaches And Dispute Resolution.

A. Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the Authorized Representative of the COUNTY. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the contractor otherwise furnishes a written appeal to the COUNTY. In connection with any such appeal, the contractor shall be afforded an pportunity to be heard and to offer evidence in support of its position. The decision of the COUNTY shall be binding upon the contractor and the contractor shall abide by the decision.

B. Performance During Dispute - Unless otherwise directed by COUNTY, the contractor shall continue performance under this Contract while matters in dispute are being resolved.

C. Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of , agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

D. Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the COUNTY and the contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the COUNTY is located.

E. Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the COUNTY or the contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach there under, except as may be specifically agreed in writing.

17. Transit Employee Protective Agreements.

A. The contractor agrees to comply with applicable transit employee protective requirements as follows:

I. General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215,and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

II. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.§5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. §5333(b) are necessary or appropriate for the state and the public body sub Recipient for which work is performed on the underlying contract, the contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

III. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31,1979, and the procedure implemented by U.S. DOL or any revision thereto.

B. The contractor also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

18. Disadvantaged Business Enterprise (DBE).

A. This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. A separate DBE Contract goal has not been established for this procurement.

C. The contractor 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 CFR Part 26 in the award and administration of this DOT-assisted Contract. 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 COUNTY deems appropriate. Each subcontract the contractor signs with a Subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

D. The successful Proposer will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

E. The contractor shall pay its subcontractors or suppliers within seven (7) calendar days of receipt of each progress payment from the COUNTY. The contractor shall pay for the amount of work performed or materials supplied by each subcontractor or supplier as accepted and approved by the COUNTY with each progress payment. In addition, any reduction of retention by the COUNTY to the Contract shall result in a corresponding reduction to subcontractors or suppliers who have performed satisfactory work. The contractor shall pay subcontractors or suppliers the reduced retention within fourteen (14)calendar days of the payment of the reduction of the retention to the contractor. No contract between the contractor and its subcontractors and suppliers may materially alter the rights of any subcontractor or supplier to receive prompt payment and retention reduction as provided herein. If the contractor fails to make payments in accordance with these provisions, the COUNTY may take any one or more of the following actions and the contractor agrees that the COUNTY may take such actions: (1) to hold the contractor in default under this Contract; (2) withhold future payments including retention until proper payment has been made to subcontractors or suppliers in accordance with these provisions; (3) reject all future bids from the contractor for a period not to exceed one (1)year from substantial completion date of this project; or (4) terminate Contract.

F. The contractor must promptly notify the COUNTY whenever a DBE subcontractor performing work related to this Contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the COUNTY.

19. Incorporation Of Federal Transit Administration (FTA) Terms.

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.IE, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA 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 COUNTY requests which would cause the COUNTY to be in violation of the FTA terms and conditions.

20. Drug And Alcohol Testing.

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 655, produce any documentation necessary to establish its compliance with Parts 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 655 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 655 before February 28 and to submit the Management Information System (MIS) reports before February 28 to the Regional Transit Manager. To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

Exhibit B to Agreement for Transportation Services

The following table represents the approximate level of service expected to be reached during the term of this agreement.

Month	Trips 1 way trips	Hours	Mileage
Jul	209	174	3,298
Aug	222	241	5,986
Sep	130	122	2,506
Oct	159	115	1,939
Nov	94	124	2,465
Dec	131	107	2,419
Jan	110	126	2,813
Feb	148	140	3,219
Mar	105	83	1,728
Apr	108	100	2,369
May	123	112	1,998
Jun	103	93	2,024
Total	**1,642**	**1,537**	**32,764**

BOARD OF SUPERVISORS, COUNTY OF SIERRA, STATE OF CALIFORNIA

IN THE MATTER OF APPROVING
ZERO TOLERANCE
DRUG AND ALCOHOL TESTING POLICY
FOR TRANSIT OPERATORS UNDER CONTRACT WITH SIERRA COUNTY

Resolution 2014- 096

A. PURPOSE

1) Sierra County provides public transit and paratransit services for the residents of *Sierra County and the City of Loyalton through contracts with Incorporated Senior Citizens of Sierra County and Golden Rays Senior Citizens of Sierra County (hereinafter referred to as "Transit Operators").* The County requires that these services are delivered safely, efficiently, and to that has established a policy requiring that the Transit Operators maintain a drug and alcohol-free work environment, and to ensure that the workplace remains free from the effects of drugs and alcohol in order to promote the health and safety of employees and the general public. The County also requires that the unlawful manufacture, distribution, dispense, possession, or use of controlled substances or misuse of alcohol be prohibited for all Transit Operator employees.

2) The purpose of this policy is to establish guidelines to maintain a drug and alcohol-free workplace in compliance with the Drug-Free Workplace Act of 1988, and the Omnibus Transportation Employee Testing Act of 1991. This policy is intended to comply with all applicable Federal regulations governing workplace anti-drug and alcohol programs in the transit industry. Specifically, the Federal Transit Administration (FTA) of the U.S. Department of Transportation has published 49 CFR Part 655, as amended, that mandates urine drug testing and breath alcohol testing for safety-sensitive positions, and prohibits performance of safety-sensitive functions when there is a positive test result. The U. S. Department of Transportation (USDOT) has also published 49 CFR Part 40, as amended, that sets standards for the collection and testing of urine and breath specimens.

3) Any provisions set forth in this policy that are included under the sole authority of Sierra County and <u>are not</u> provided under the authority of the above named Federal regulations are underlined. Tests conducted under the sole authority of Sierra County will be performed on non-USDOT forms and will be separate from USDOT testing in all respects.

B. APPLICABILITY

This Drug and Alcohol Testing Policy applies to all Transit Operator employees, which employees are deemed to be safety-sensitive employees (full-or part-time) when performing safety sensitive duties. See Attachment A for a list of employees and the authority under which they are included.

A safety-sensitive function is operation of transit service including the operation of a revenue service vehicle (whether or not the vehicle is in revenue service), maintenance of a revenue service vehicle or equipment used in revenue service, security personnel who carry firearms, dispatchers or persons controlling the movement of revenue service vehicles and any transit employee who operates a vehicle that requires a Commercial Drivers License to operate. Maintenance functions include the repair, overhaul, and rebuild of engines, vehicles and/or equipment used in revenue service. A list of safety-sensitive positions who perform one or more of the above mentioned duties is provided in Attachment A. Supervisors are only safety sensitive if they perform one of the above functions. Volunteers are considered safety sensitive and subject to testing if they are required to hold a CDL, or receive remuneration for service in excess of actual expense.

C. DEFINITIONS

Accident: An occurrence associated with the operation of a vehicle even when not in revenue service, if as a result:

a. An individual dies;
b. An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident; or,
c. One or more vehicles incur disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle. For purposes of this definition, *disabling damage* means damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, mirrors or windshield wipers that makes them inoperative.

Adulterated specimen: A specimen that has been altered, as evidence by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.

Alcohol: The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols contained in any beverage, mixture, mouthwash, candy, food, preparation or medication.

Alcohol Concentration: Expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test under 49 CFR Part 40.

Aliquot: A fractional part of a specimen used for testing. It is taken as a sample representing the whole specimen.

Canceled Test: A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which is cancelled. A canceled test is neither positive nor negative.

Confirmatory Drug Test: A second analytical procedure performed on a different aliquot of the original specimen to identify and quantify the presence of a specific drug or metabolite.

Confirmatory Validity Test: A second test performed on a different aliquot of the original urine specimen to further support a validity test result.

Covered Employee Under FTA Authority: An employee of a Transit Operator who provides transit services under contract with Sierra County, who performs a safety-sensitive function including an applicant or transferee who is being considered for hire into a safety-sensitive function (See Attachment A for a list of covered employees).

Covered Employee Under Company Authority: An employee, applicant, or transferee that will not perform a safety-sensitive function as defined by FTA but is included under the company's own authority. (See Attachment A).

Designated Employer Representative (DER): An employee authorized by the employer to take immediate action to remove employees from safety-sensitive duties and to make required decisions in testing. The DER also receives test results and other communications for the employer, consistent with the requirements of 49 CFR Parts 40 and 655.

Department of Transportation (DOT): For the purposes of Drug and Alcohol regulatory oversight, DOT is the department of the federal government which includes the, Federal Transit Administration, Federal Railroad Administration, Federal Highway Administration, Federal Motor Carriers' Safety Administration,

Pipeline & Hazardous Materials Safety Administration, United States Coast Guard, and the Office of the Secretary of Transportation.
Dilute specimen: A urine specimen with creatinine and specific gravity values that are lower than expected for human urine.

Disabling damage: Damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, or windshield wipers that makes them inoperative.

Evidentiary Breath Testing Device (EBT): A Device approved by the NHTSA for the evidential testing of breath at the 0.02 and the 0.04 alcohol concentrations. Approved devices are listed on the National Highway Traffic Safety Administration (NHTSA) conforming products list.

Initial Drug Test: (Screening Drug Test) The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

Initial Specimen Validity Test: The first test used to determine if a urine specimen is adulterated, diluted, substituted, or invalid.

Invalid Result: The result reported by an HHS-certified laboratory in accordance with the criteria established by the HHS Mandatory Guidelines when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test.

Laboratory: Any U.S. laboratory certified by HHS under the National Laboratory Certification program as meeting standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs; or, in the case of foreign laboratories, a laboratory approved for participation by DOT under this part.

Limit of Detection (LOD): The lowest concentration at which a measurand can be identified, but (for quantitative assays) the concentration cannot be accurately calculated.

Limit of Quantitation: For quantitative assays, the lowest concentration at which the identity and concentration of the measurand can be accurately established.

Medical Review Officer (MRO): A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the drug

testing program who has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result, together with his/her medical history, and any other relevant bio-medical information.

Negative Dilute: A drug test result which is negative for the five drug/drug metabolites but has a specific gravity value lower than expected for human urine.

Negative result: The result reported by an HHS-certified laboratory to an MRO when a specimen contains no drug or the concentration of the drug is less than the cutoff concentration for the drug or drug class and the specimen is a valid specimen.

Non-negative test result: A urine specimen that is reported as adulterated, substitute, invalid, or positive for drug/drug metabolites.

Oxidizing Adulterant: A substance that acts alone or in combination with other substances to oxidize drugs or drug metabolites to prevent the detection of the drug or metabolites, or affects the reagents in either the initial or confirmatory drug test.

Performing (a safety-sensitive function): A covered employee is considered to be performing a safety-sensitive function and includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

Positive result: The result reported by an HHS- Certified laboratory when a specimen contains a drug or drug metabolite equal or greater to the cutoff concentrations.

Prohibited drug: Identified as marijuana, cocaine, opiates, amphetamines (including ecstasy), or phencyclidine at levels above the minimum thresholds specified in 49 CFR Part 40, as amended.

Reconfirmed: The result reported for a split specimen when the second laboratory is able to corroborate the original result reported for the primary specimen.

Rejected for Testing: The result reported by an HHS- Certified laboratory when no tests are performed for specimen because of a fatal flaw or a correctable flaw that has not been corrected.

Revenue Service Vehicles: All transit vehicles that are used for passenger transportation service.

Safety-sensitive functions: Employee duties identified as:

(1) The operation of a transit revenue service vehicle even when the vehicle is not in revenue service.
(2) The operation of a non-revenue service vehicle by an employee when the operation of such a vehicle requires the driver to hold a Commercial Drivers License (CDL).
(3) Maintaining a revenue service vehicle or equipment used in revenue service.
(4) Controlling the movement of a revenue service vehicle; and
(5) Carrying a firearm for security purposes.

Split Specimen Collection: A collection in which the urine collected is divided into two separate bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).

Substance Abuse Professional (SAP): A licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee assistance professional, state-licensed marriage and family therapist, or drug and alcohol counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol and other Drug Abuse(ICRC) or by the National Board for Certified Counselors, Inc. and Affiliates/Master Addictions Counselor (NBCC) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.

Substituted specimen: A urine specimen with creatine and specific gravity values that are so diminished or so divergent that they are not consistent with normal human urine.

Test Refusal: The following are considered a refusal to test if the employee:

(1) Fails to appear for any test (excluding pre-employment) within a reasonable time, as determined by the employer, after being directed to do so by the employer
(2) Fails to remain at the testing site until the testing process is complete
(3) Fails to provide a urine or breath specimen for any drug or alcohol test required by Part 40 or DOT agency regulations
(4) In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of your provision of a specimen
(5) Fails to provide a sufficient amount of urine or breath when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure

(6) Fails or declines to take a second test the employer or collector has directed you to take
(7) Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER as part of the ``shy bladder" or "shy lung" procedures
(8) Fails to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process)
(9) If the MRO reports that there is verified adulterated or substituted test result
(10) Failure or refusal to sign Step 2 of the alcohol testing form
(11) Failure to follow the observer's instructions during an observed collection including instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process
(12) Possess or wear a prosthetic or other device that could be used to interfere with the collection process
(13) Admit to the collector or MRO that you adulterated or substituted the specimen

Vehicle: A bus, electric bus, van, automobile, rail car, trolley car, trolley bus, or vessel. A public transit vehicle is a vehicle used for public transportation or for ancillary services.

Verified negative test: A drug test result reviewed by a medical review officer and determined to have no evidence of prohibited drug use above the minimum cutoff levels established by the Department of Health and Human Services (HHS).

Verified positive test: A drug test result reviewed by a medical review officer and determined to have evidence of prohibited drug use above the minimum cutoff levels specified in 49 CFR Part 40 as revised.

Validity testing: The evaluation of the specimen to determine if it is consistent with normal human urine. Specimen validity testing will be conducted on all urine specimens provided for testing under DOT authority. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

D. EDUCATION AND TRAINING

1) Every covered employee will receive a copy of this policy and will have ready access to the corresponding federal regulations including 49 CFR

Parts 655 and 40, as amended. In addition, all covered employees will undergo a minimum of 60 minutes of training on the signs and symptoms of drug use including the effects and consequences of drug use on personal health, safety, and the work environment. The training also includes manifestations and behavioral cues that may indicate prohibited drug use.

2) All supervisory personnel or company officials who are in a position to determine employee fitness for duty will receive 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable drug use and 60 minutes of additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

E. PROHIBITED SUBSTANCES

1) Prohibited substances addressed by this policy include the following.

   a. Illegally Used Controlled Substance or Drugs Under the Drug-Free Workplace Act of 1988 any drug or any substance identified in Schedule I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined by 21 CFR 1300.11 through 1300.15 is prohibited at all times in the workplace unless a legal prescription has been written for the substance. This includes, but is not limited to: marijuana, amphetamines (including methamphetamine and ecstasy), opiates (including heroin), phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. Also, the medical use of marijuana, or the use of hemp related products, which cause drug or drug metabolites to be present in the body above the minimum thresholds is a violation of this policy.

      Federal Transit Administration drug testing regulations (49 CFR Part 655) require that all employees covered under FTA authority be tested for marijuana, cocaine, amphetamines (including methamphetamine and ecstasy), opiates (including heroin), and phencyclidine as described in Section H of this policy. Employees covered under company authority will also be tested for these same substances. Illegal use of these five drugs is prohibited at all times and thus, covered employees may be tested for these drugs anytime that they are on duty.

b. Legal Drugs: The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be reported to a the Transit Operator and Sierra County Department of Transportation supervisor and the employee is required to provide a written release from his/her doctor or pharmacist indicating that the employee can perform his/her safety-sensitive functions.

c. Alcohol: The use of beverages containing alcohol (including any mouthwash, medication, food, candy) or any other substances such that alcohol is present in the body while performing safety-sensitive job functions is prohibited. A random or reasonable suspicion alcohol test can only be performed on a covered employee under 49 CFR Part 655 just before, during, or just after the performance of safety-sensitive job functions. Under Sierra County Department of Transportation authority, a non- alcohol test can be performed any time a covered employee is on duty.

F. PROHIBITED CONDUCT

1) All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body above the minimum thresholds defined in 49 CFR PART 40, as amended.

2) Each covered employee is prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. The covered employee will subsequently be relieved of his/her on-call responsibilities and subject to discipline for not fulfilling his/her on-call responsibilities.

3) The Transit Operator shall not permit any covered employee to perform or continue to perform safety-sensitive functions if it has actual knowledge that the employee is using alcohol.

4) Each covered employee is prohibited from reporting to work or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.02 or greater regardless of when the alcohol was consumed.

5) No covered employee shall consume alcohol for eight (8) hours following involvement in an accident or until he/she submits to the post-accident drug/alcohol test, whichever occurs first.

6) No covered employee shall consume alcohol within four (4) hours prior to the performance of safety-sensitive job functions.

7) Covered employees are prohibited from consuming of alcohol at all times the employee is on duty, or anytime the employee is in uniform.

8) Consistent with the Drug-free Workplace Act of 1988, all Sierra County Department of Transportation employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the work place including transit system premises and transit vehicles.

G. DRUG STATUTE CONVICTION

Consistent with the Drug Free Workplace Act of 1998, all employees are required to notify the Transit Operator and the Sierra County Department of Transportation management of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction. Failure to comply with this provision shall result in disciplinary action as defined in Section Q of this policy.

H. TESTING REQUIREMENTS

1) Analytical urine drug testing and breath testing for alcohol will be conducted as required by 49CFR part 40 as amended. All employees covered under FTA authority shall be subject to testing prior to performing safety-sensitive duty, for reasonable suspicion, following an accident, and random as defined in Section K, L, M, and N of this policy, and return to duty/follow-up. All employees covered under company authority will also be subject to testing for reasonable suspicion, post-accident, random and return to duty/follow-up using non-DOT testing forms.

2) A drug and/or alcohol test can be performed any time a covered employee is on duty. A reasonable suspicion and random drug and/or alcohol test can be performed just before, during, or after the performance of a safety-sensitive job function. Drug and alcohol tests are to be administered through the County of Sierra and coordinated with the County's Department of Transportation. Under Sierra County authority a non-DOT alcohol test can be performed any time a covered employee is on duty.

3) All covered employees will be subject to urine drug testing and breath alcohol testing as a condition of ongoing employment with their respective Transit Operator. Any safety-sensitive employee who refuses to comply with a request for testing shall be removed from duty and subject to discipline as defined in Section Q of this policy.

I. DRUG TESTING PROCEDURES

1) Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Service (HHS). All testing will be conducted consistent with the procedures set forth in 49 CFR Part 40, as amended. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the drug testing procedure, and the validity of the test result.

2) The drugs that will be tested for include marijuana, cocaine, opiates (including heroin), amphetamines (including methamphetamine and ecstasy), and phencyclidine. After the identity of the donor is checked using picture identification, a urine specimen will be collected using the split specimen collection method described in 49 CFR Part 40, as amended. Each specimen will be accompanied by a DOT Chain of Custody and Control Form and identified using a unique identification number that attributes the specimen to the correct individual. The specimen analysis will be conducted at a HHS certified laboratory. An initial drug screen and validity test will be conducted on the primary urine specimen. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the amounts of the drug(s) and/or its metabolites identified by the GC/MS test are above the minimum thresholds established in 49 CFR Part 40, as amended.

3) The test results from the HHS certified laboratory will be reported to a Medical Review Officer. A Medical Review Officer (MRO) is a licensed physician with detailed knowledge of substance abuse disorders and drug testing. The MRO will review the test results to ensure the scientific validity of the test and to determine whether there is a legitimate medical explanation for a confirmed positive, substitute, or adulterated test result. The MRO will attempt to contact the employee to notify the employee of the non-negative laboratory result, and provide the employee with an opportunity to explain the confirmed laboratory test result. The MRO will subsequently review the employee's medical history/medical records as appropriate to determine whether there is a legitimate medical explanation

for a non-negative laboratory result. If no legitimate medical explanation is found, the test will be verified positive or refusal to test and reported to the Sierra County Department of Transportation Drug and Alcohol Program Manager (DAPM). If a legitimate explanation is found, the MRO will report the test result as negative to the DAPM.

4) If the test is invalid without a medical explanation, a retest will be conducted under direct observation. Employees do not have access to a test of their split specimen following an invalid result.

5) Any covered employee who questions the results of a required drug test under paragraphs L through P of this policy may request that the split sample be tested. The split sample test must be conducted at a second HHS-certified laboratory. The test must be conducted on the split sample that was provided by the employee at the same time as the primary sample. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for a split sample test must be made to the Medical Review Officer within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted at the discretion of the MRO if the delay was due to documentable facts that were beyond the control of the employee. Sierra County will ensure that the cost for the split specimen are covered in order for a timely analysis of the sample, <u>however the Transit Operator will seek reimbursement for the split sample test from the employee.</u> The Transit Operator shall be responsible for all costs incurred by the County of Sierra for drug and alcohol testing.

6) If the analysis of the split specimen fails to confirm the presence of the drug(s) detected in the primary specimen, if the split specimen is not able to be analyzed, or if the results of the split specimen are not scientifically adequate, the MRO will declare the original test to be canceled. If the split specimen is not available to analyze the MRO will direct Sierra County Department of Transportation to retest the employee under direct observation.

7) The split specimen will be stored at the initial laboratory until the analysis of the primary specimen is completed. If the primary specimen is negative, the split will be discarded. If the primary specimen is positive, it will be retained in frozen storage for one year and the split specimen will also be retained for one year. If the primary is positive, the primary and the split will be retained for longer than one year for testing if so requested by the employee through the Medical Review Officer, or by the employer, by the MRO, or by the relevant DOT agency.

8) Observed collections

a. Consistent with 49 CFR part 40, as amended, collection under direct observation (by a person of the same gender) with no advance notice will occur if:

i. The laboratory reports to the MRO that a specimen is invalid, and the MRO reports to Sierra County Department of Transportation that there was not an adequate medical explanation for the result;

ii. The MRO reports to Sierra County Department of Transportation that the original positive, adulterated, or substituted test result had to be canceled because the test of the split specimen could not be performed;

iii. The laboratory reported to the MRO that the specimen was negative-dilute with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, and the MRO reported the specimen to you as negative-dilute and that a second collection must take place under direct observation (see §40.197(b)(1)).

iv. The collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen;

v. The temperature on the original specimen was out of range;

vi. Anytime the employee is directed to provide another specimen because the original specimen appeared to have been tampered with.

vii. All follow-up-tests; or

viii. All return-to-duty tests

J. ALCOHOL TESTING PROCEDURES

1) Tests for breath alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA)-approved Evidential Breath Testing device (EBT) operated by a trained Breath Alcohol Technician (BAT). Alcohol screening tests may be performed using a non-evidential testing device which is also approved by NHSTA. If

the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. The confirmatory test must occur on an EBT. The confirmatory test will be conducted no sooner than fifteen minutes after the completion of the initial test. The confirmatory test will be performed using a NHTSA-approved EBT operated by a trained BAT. The EBT will identify each test by a unique sequential identification number. This number, time, and unit identifier will be provided on each EBT printout. The EBT printout, along with an approved alcohol testing form, will be used to document the test, the subsequent results, and to attribute the test to the correct employee. The test will be performed in a private, confidential manner as required by 49 CFR Part 40, as amended. The procedure will be followed as prescribed to protect the employee and to maintain the integrity of the alcohol testing procedures and validity of the test result.

2) An employee who has a confirmed alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of this policy. The consequences of a positive alcohol test are described in Section Q. of this policy. Even though an employee who has a confirmed alcohol concentration of 0.02 to 0.039 is not considered positive, the employee shall still be removed from duty for at least eight hours <u>or for the duration of the work day whichever is longer</u> and will be subject to the consequences described in Section Q of this policy. An alcohol concentration of less than 0.02 will be considered a negative test.

3) Sierra County Department of Transportation affirms the need to protect individual dignity, privacy, and confidentiality throughout the testing process. If at any time the integrity of the testing procedures or the validity of the test results is compromised, the test will be canceled. Minor inconsistencies or procedural flaws that do not impact the test result will not result in a cancelled test.

4) The alcohol testing form (ATF) required by 49 CFR Part 40 as amended, shall be used for all FTA required testing. Failure of an employee to sign step 2 of the ATF will be considered a refusal to submit to testing.

K. <u>PRE-EMPLOYMENT TESTING</u>

1) All applicants for covered transit positions shall undergo urine drug testing prior to performance of a safety-sensitive function.

    a. All offers of employment for covered positions shall be extended conditional upon the applicant passing a drug test. An applicant will

not be allowed to perform safety-sensitive functions unless the applicant takes a drug test with verified negative results.

b. An employee shall not be placed, transferred or promoted into a position covered under FTA authority or company authority until the employee takes a drug test with verified negative results.

c. If an applicant fails a pre-employment drug test, the conditional offer of employment shall be rescinded and the applicant will be referred to a Substance Abuse Professionals. Failure of a pre-employment drug test will disqualify an applicant for employment for a period of at least one year. Before being considered for future employment the applicant must provide the employer proof of having successfully completed a referral, evaluation and treatment plan as described in section 655.62 of subpart G. The cost for the assessment and any subsequent treatment will be the sole responsibility of the applicant.

d. When an employee being placed, transferred, or promoted from a non-covered position to a covered position under FTA authority or company authority submits a drug test with a verified positive result, the employee shall be subject to disciplinary action in accordance with Section Q herein.

e. If a pre-employment test is canceled, Sierra County Department of Transportation will require the applicant to take and pass another pre-employment drug test.

f. In instances where a FTA covered employee does not perform a safety-sensitive function for a period of 90 consecutive days or more regardless of reason, and during that period is not in the random testing pool the employee will be required to take a pre-employment drug test under 49 CFR Part 655 and have negative test results prior to the conduct of safety-sensitive job functions.

g. Following a negative dilute the employee will be required to undergo another test. Should this second test result in a negative dilute result, the test will be considered a negative and no additional testing will be required unless directed to do so by the MRO.

h. Applicants are required (even if ultimately not hired) to provide to the Transit Operator which they are applying to for employment and to *Sierra County Department of Transportation* with signed written releases requesting FTA drug and alcohol records from all previous, DOT-covered, employers that the applicant has worked

for within the last two years. Failure to do so will result in the employment offer being rescinded. The Transit Operator is required to ask all applicants (even if ultimately not hired) if they have tested positive or refused to test on a pre-employment test for a DOT covered employer within the last two years. If the applicant has tested positive or refused to test on a pre-employment test for a DOT covered employer, the applicant must provide the Transit Operator which they are applying to for employment and to Sierra County Department of Transportation proof of having successfully completed a referral, evaluation and treatment plan as described in section 655.62 of subpart G.

L. REASONABLE SUSPICION TESTING

1) All Transit Operators covered employees will be subject to a reasonable suspicion drug and/or alcohol test when the employer has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse. Reasonable suspicion shall mean that there is objective evidence, based upon specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odor that are consistent with possible drug use and/or alcohol misuse. Reasonable suspicion referrals must be made by one or more supervisors who are trained to detect the signs and symptoms of drug and alcohol use, and who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to possible prohibited substance abuse or alcohol misuse. A reasonable suspicion alcohol test can only be conducted just before, during, or just after the performance of a safety-sensitive job function. A reasonable suspicion drug test can be performed any time the covered employee is on duty.

2) The Transit Operator shall be responsible for transporting the employee to the testing site. Supervisors should avoid placing themselves and/or others into a situation which might endanger the physical safety of those present. The employee shall be placed on administrative leave pending disciplinary action described in Section Q of this policy. An employee who refuses an instruction to submit to a drug/alcohol test shall not be permitted to finish his or her shift and shall immediately be placed on administrative leave pending disciplinary action as specified in Section Q of this policy.

3) A written record of the observations which led to a drug/alcohol test based on reasonable suspicion shall be prepared and signed by the supervisor

making the observation. This written record shall be submitted to the Transit Operator and to Sierra County Department of Transportation.

4) When there are no specific, contemporaneous, articulable objective facts that indicate current drug or alcohol use, but the employee (who is not already a participant in a treatment program) admits the abuse of alcohol or other substances to a supervisor in his/her chain of command, the employee shall be referred for assessment and treatment consistent with Section Q of this policy. The Transit Operator shall place the employee on administrative leave in accordance with the provisions set forth under Section Q of this policy. Testing in this circumstance would be performed under the direct authority of the Transit Operator. **Since the employee self-referred to management, testing under this circumstance would not be considered a violation of this policy or a positive test result under Federal authority.** However, self-referral does not exempt the covered employee from testing under Federal authority as specified in Sections L through N of this policy or the associated consequences as specified in Section Q.

M. POST-ACCIDENT TESTING

1) FATAL ACCIDENTS - All covered employees will be required to undergo urine and breath testing if they are involved in an accident with a transit vehicle regardless of whether or not the vehicle is in revenue service that results in a fatality. This includes all surviving covered employees that are operating the vehicle at the time of the accident and any other whose performance could have contributed to the accident.

2) NON-FATAL ACCIDENTS - A post-accident test of the operator will be conducted if an accident results in injuries requiring immediate transportation to a medical treatment facility; or one or more vehicles incurs disabling damage, unless the operator's performance can be completely discounted as a contributing factor to the accident.

    a. As soon as practicable following an accident, as defined in this policy, the transit supervisor investigating the accident will notify the transit employee operating the transit vehicle and all other covered employees whose performance could have contributed to the accident of the need for the test. The supervisor will make the determination using the best information available at the time of the decision.

    b. The appropriate transit supervisor shall ensure that an employee, required to be tested under this section, is tested as soon as

practicable, but no longer than eight (8) hours of the accident for alcohol, and no longer than 32 hours for drugs. If an alcohol test is not performed within two hours of the accident, the Supervisor will document the reason(s) for the delay. If the alcohol test is not conducted within (8) eight hours, or the drug test within 32 hours, attempts to conduct the test must cease and the reasons for the failure to test documented.

c. Any covered employee involved in an accident must refrain from alcohol use for eight (8) hours following the accident, or until he/she undergoes a post-accident alcohol test.

d. An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying a supervisor of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed to have refused to submit to testing.

e. Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident, or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

f. In the rare event that Transit Operator is unable to perform an FTA drug and alcohol test (i.e., employee is unconscious, employee is detained by law enforcement agency), the Transit Operator may use drug and alcohol post-accident test results administered by local law enforcement officials in lieu of the FTA test. The local law enforcement officials must have independent authority for the test and the employer must obtain the results in conformance with local law.

N. RANDOM TESTING

1) All covered employees will be subjected to random, unannounced testing. The selection of employees shall be made by a scientifically valid method of randomly generating an employee identifier from the appropriate pool of safety-sensitive employees. Employees covered under company authority will be selected from a pool of non-DOT-covered employees.

2) The dates for administering unannounced testing of randomly selected employees shall be spread reasonably throughout the calendar year, day of the week and hours of the day.

3) The number of employees randomly selected for drug/alcohol testing during the calendar year shall be not less than the percentage rates established by Federal regulations for those safety-sensitive employees subject to random testing by Federal regulations. The current random testing rate for drugs established by FTA equals twenty-five percent of the number of covered employees in the pool and the random testing rate for alcohol established by FTA equals ten percent of the number of covered employees in the pool.

4) Each covered employee shall be in a pool from which the random selection is made. Each covered employee in the pool shall have an equal chance of selection each time the selections are made. Employees will remain in the pool and subject to selection, whether or not the employee has been previously tested. There is no discretion on the part of management in the selection.

5) Covered transit employees that fall under the Federal Transit Administration regulations will be included in one random pool maintained with the testing pool of safety sensitive employees that are included under Sierra County authority.

6) Random tests can be conducted at any time during an employee's shift for drug testing. Alcohol random tests can be performed just before, during, or just after the performance of a safety sensitive duty. <u>However, under The Transit Operator's authority, a non-DOT random alcohol test may be performed any time the covered employee is on duty.</u> Testing can occur during the beginning, middle, or end of an employee's shift.

7) Employees are required to proceed <u>immediately</u> to the collection site upon notification of their random selection.

O. <u>RETURN-TO-DUTY TESTING</u>

The Transit Operator will be required to and shall terminate the employment of any employee that tests positive or refuses a test as specified in section Q of this policy. However, in the rare event an employee is reinstated with court order or other action beyond the control of the transit system, the employee must complete the return-to-duty process prior to the performance of safety-sensitive functions. All covered employees who previously tested positive on a drug or alcohol test or refused a test, must test negative for drugs, alcohol (below 0.02 for alcohol), or both and be evaluated and released by the Substance Abuse Professional before returning to work. For an initial positive drug test a Return-to-Duty drug test is required and an alcohol test is allowed. For an initial positive

alcohol test a Return-to-Duty alcohol test is required and a drug test is allowed. Following the initial assessment, the SAP will recommend a course of rehabilitation unique to the individual. The SAP will recommend the return-to-duty test only when the employee has successfully completed the treatment requirement and is known to be drug and alcohol-free and there are no undue concerns for public safety.

P. FOLLOW-UP TESTING

Covered employees that have returned to duty following a positive or refused test will be required to undergo frequent, unannounced drug and/or alcohol testing following their return-to-duty test. The follow-up testing will be performed for a period of one to five years with a minimum of six tests to be performed the first year. The frequency and duration of the follow-up tests (beyond the minimums) will be determined by the SAP reflecting the SAP's assessment of the employee's unique situation and recovery progress. Follow-up testing should be frequent enough to deter and/or detect a relapse. Follow-up testing is separate and in addition to the random, post-accident, reasonable suspicion and return-to-duty testing.

Q. RESULT OF DRUG/ALCOHOL TEST

1) Any covered employee that has a verified positive drug or alcohol test, or test refusal, will be removed from his/her safety-sensitive position, informed of educational and rehabilitation programs available, referred to a Substance Abuse Professional (SAP) for assessment, and will be terminated.

2) Following a negative dilute the employee will be required to undergo another test. Should this second test result in a negative dilute result, the test will be considered a negative and no additional testing will be required unless directed to do so by the MRO.

3) Refusal to submit to a drug/alcohol test shall be considered a positive test result and a direct act of insubordination and shall result in termination and referral to an SAP. A test refusal includes the following circumstances:
    a. Fails to appear for any test (excluding pre-employment) within a reasonable time, as determined by the employer, after being directed to do so by the employer
    b. Fails to remain at the testing site until the testing process is complete
    c. Fails to provide a urine or breath specimen for any drug or alcohol test required by Part 40 or DOT agency regulations

d. In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of your provision of a specimen
e. Fails to provide a sufficient amount of urine or breath when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure
f. Fails or declines to take a second test the employer or collector has directed you to take
g. Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER as part of the ``shy bladder" or "shy lung" procedures
h. Fails to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process)
i. If the MRO reports that there is verified adulterated or substituted test result
j. Failure or refusal to sign Step 2 of the alcohol testing form
k. Failure to follow the observer's instructions during an observed collection including instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process
l. Possess or wear a prosthetic or other device that could be used to interfere with the collection process
m. Admit to the collector or MRO that you adulterated or substituted the specimen

4) An alcohol test result of ≥0.02 to ≤ 0.039 BAC shall result in the removal of the employee from duty for eight hours <u>or the remainder or the work day whichever is longer. The employee will not be allowed to return to safety-sensitive duty for his/her next shift until he/she submits to an alcohol test with a result of less than 0.02 BAC. If the employee has an alcohol test result of ≥ 0.02 to ≤ 0.039 two or more times within a six month period, the employee will be removed from duty and referred to the SAP for assessment and treatment consistent with Section Q of this policy.</u>

5) <u>In the instance of a self-referral or a management referral, disciplinary action against the employee shall include:</u>

   a. <u>Mandatory referral for an assessment by an employer approved substance abuse professional for assessment, formulation of a treatment plan, and execution of a return to work agreement;</u>

b. Failure to execute, or remain compliant with the return-to-work agreement shall result in termination from the Transit Operator employment.
   i. Compliance with the return-to-work agreement means that the employee has submitted to a drug/alcohol test immediately prior to returning to work; the result of that test is negative; the employee is cooperating with his/her recommended treatment program; and, the employee has agreed to periodic unannounced follow-up testing as defined in Section P of this policy.
c. Refusal to submit to a periodic unannounced follow-up drug/alcohol test shall be considered a direct act of insubordination and shall result in termination. **All tests conducted as part of the return to work agreement will be conducted under company authority and will be performed using non-DOT testing forms.**
d. **A self-referral or management referral to the employer's approved substance abuse professional that was not precipitated by a positive test result does not constitute a violation of the Federal regulations and will not be considered as a positive test result in relation to the progressive discipline defined in Section Q of this policy.**
e. Periodic unannounced follow-up drug/alcohol test conducted as a result of a self-referral or management referral which results in a verified positive shall be considered a positive test result in relation to the progressive discipline defined in Section Q of this policy;.
f. A Voluntary Referral does not shield an employee from disciplinary action or guarantee employment with Sierra County Department of Transportation.
g. A Voluntary Referral does not shield an employee from the requirement to comply with drug and alcohol testing.

6) Failure of an employee to report within five days a criminal drug statute conviction for a violation occurring in the workplace shall result in termination.

R. GRIEVANCE AND APPEAL

The consequences specified by 49 CFR Part 40.149 (c) for a positive test or test refusal is not subject to arbitration.

S. PROPER APPLICATION OF THE POLICY

The Transit Operator is dedicated to assuring fair and equitable application of this substance abuse policy. Therefore, supervisors/managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor/manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

T. INFORMATION DISCLOSURE

1) Drug/alcohol testing records shall be maintained by the Sierra County Department of Transportation Drug and Alcohol Program Manager and, except as provided below or by law, the results of any drug/alcohol test shall not be disclosed without express written consent of the tested employee.

2) The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records. Covered employees have the right to gain access to any pertinent records such as equipment calibration records, and records of laboratory certifications. Employees may not have access to SAP follow-up testing plans.

3) Records of a verified positive drug/alcohol test result shall be released to the Drug and Alcohol Program Manager, and other transit system management personnel on a need to know basis.

4) Records will be released to a subsequent employer only upon receipt of a written request from the employee.

5) Records of an employee's drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit, or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test. The records will be released to the decision maker in the preceding.

6) Records will be released to the National Transportation Safety Board during an accident investigation.

7) Information will be released in a criminal or civil action resulting from an employee's performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information is relevant to the case and issues an order to the employer to release the information. The employer will release the information to the decision maker in the proceeding with a binding stipulation that it will only be released to parties of the proceeding.

8) Records will be released to the DOT or any DOT agency with regulatory authority over the employer or any of its employees.

9) Records will be released if requested by a Federal, state or local safety agency with regulatory authority over Sierra County Department of Transportation or the employee.

10) If a party seeks a court order to release a specimen or part of a specimen contrary to any provision of Part 40 as amended, necessary legal steps to contest the issuance of the order will be taken.

11) In cases of a contractor or sub-recipient of a state department of transportation, records will be released when requested by such agencies that must certify compliance with the regulation to the FTA.

In accordance with the requirements for use of FTA 5311 Program Funds and applicable provisions of federal laws and regulations, the Sierra County Board of Supervisors adopted the above policy as a requirement to be adhered to by all contractors conducting transit operations under contract with the County on *October 21, 2014 by the following vote:*

AYES: Supervisors Adams, Huebner, Beard, Schlefstein, Roen
NOES: None
ABSENT: None
ABSTAIN: None

COUNTY OF SIERRA

PAUL ROEN
CHAIRMAN, BOARD OF SUPERVISORS

ATTEST:

HEATHER FOSTER
CLERK OF THE BOARD

APPROVED AS TO FORM:

JAMES A. CURTIS
COUNTY COUNSEL by
Rhetta Vander Ploeg,
Assistant County Counsel

Attachment A

Job Title	Job Duties	Testing Authority
Van Driver	Driving Transit Vehicles	FTA

Attachment B Contacts

Any questions regarding this policy or any other aspect of the substance abuse policy should be directed to the following individual(s).

Sierra County Department of Transportation Drug and Alcohol Program Manager
Name: Tim H. Beals
Title: Director of Transportation
Address: P.O. Box 98
Telephone Number: 530-289-3201

Medical Review Officer
Name: Dr. Brian Heinen, MD
Title: Medical Review Officer
Address: 151 Leon Ave.
Eunice, LA 70535
Telephone Number: 1-800-457-0493

Substance Abuse Professional
Name: Dr. James B. Wallace PHD
Title: President
Address: 1350 Hayes St., Suite B-100
Benicia, CA 94510
Telephone Number: (707) 747-0117

HHS Certified Laboratory Primary Specimen
Name: Alere Toxicology
Address: 1111 Newton Street
Gretna, LA 70053
Telephone Number: (504) 361-8989

HHS Certified Laboratory Split Specimen
Name: Baptist Medical Labs
Address: 3333 Springhill Drive
Little Rock, AR 72117
Telephone Number: (501) 227-8478