



Sonoma-Marín Area Rail Transit
5401 Old Redwood Hwy, Suite 200
Petaluma, CA 94954

P: 707-794-3330
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W: www.SonomaMarinTrain.org

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GENERAL MANAGER

Eddy Cumins

May 20, 2026

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

SUBJECT: State Route 37 Project – Reconstruction of the At-Grade Crossing
Construction and Maintenance Agreement for Consideration

RECOMMENDATIONS:

Consider authorizing the General Manager to execute the Construction and Maintenance Agreement with Caltrans for the State Route 37 at-grade crossing.

SUMMARY:

Caltrans is managing the construction of State Route 37 (SR37) from SR121 to Mare Island. The work includes reconstructing and widening the at-grade crossing of the SMART tracks. The attached Construction and Maintenance Agreement memorializes Caltrans and SMART responsibilities for the construction and future maintenance of the crossing.

BACKGROUND:

The SR37 Program is embarking on flood and congestion relief projects along the SR37 corridor between US101 and Highway 80. An early construction package to implement the SR37 improvements is the reconstruction of the SR37/121 interchange and the Tolay Creek Bridge. This portion of SR37 crosses the SMART tracks between the intersection and the creek. As part of the road work, the project proposes to widen the crossing from two lanes to four lanes.

The attached Construction and Maintenance Agreement defines responsibilities between SMART and Caltrans for the reconstruction of the crossing and ongoing maintenance of the crossing. Caltrans will completely reconstruct the crossing with new track and signal warning devices. The crossing will double in size thereby increasing maintenance activities once it is in service. The agreement does not provide compensation for maintenance activities.

However, SMART received a letter from Caltrans signed by the Region 4 Acting District Director expressing their commitment to amending the Construction and Management Agreement prior to the planned construction completion in 2030 to address the following:

- Long-term maintenance responsibilities for the SMART Railroad Crossing
 - Caltrans will coordinate with SMART to request the California Public Utilities Commission for a determination of maintenance responsibility for the grade crossing.
- Lane-closure procedures for maintenance and repair activities at the grade crossing
 - Caltrans provides lane-closure support with 72-hour advance notice from SMART for routine maintenance and repair activities, and with

24-hour advance notice for emergency situations affecting train or vehicle movements or public safety. SMART will not be required to obtain encroachment permits for these activities.

FISCAL IMPACT: If SMART is required to assume full maintenance responsibility, It is estimated that the widened crossing will increase SMART Freight maintenance costs by \$100,000 to \$200,000 annually.

Sincerely,

/s/

Bill Gamlen
Chief Engineer

Attachment(s): 1.) C&M Agreement
 2.) Caltrans Letter

California Department of Transportation

DISTRICT 4
P.O. BOX 23660, MS-1A | OAKLAND, CA 94623-0660
(510) 286-5900 | FAX (510) 286-6301 | TTY 711
www.dot.ca.gov



May 14, 2026

Mr. Eddy Cumins
General Manager
Sonoma–Marin Area Rail Transit (SMART)
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954

Dear Mr. Cumins:

The California Department of Transportation (Caltrans) District 4 appreciates our partnership with Sonoma–Marin Area Rail Transit (SMART) to address the corridor's near-term congestion and long-term sea level rise challenges through the Resilient SR 37 Program improvements.

The first Construction Package of the near-term Sear Point to Mare Island Improvement Project (Project) is the Tolay Creek Bridge Replacement and SR 37/121 Intersection (EA 04-1Q76U) improvement, which is scheduled to complete design and must be ready for construction funds allocation in June 2026. Because the Construction and Maintenance (C&M) Agreement for railroad grade crossing just east of the SR 37/121 intersection is a requirement in order for the California Transportation Commission to approve funds allocation for Caltrans to advertise the construction contract, we request SMART execute the standard C&M Agreement by the end of May 2026 to avoid risks of lapsing \$91.1M funds from SHOPP, LTCAP, and PROTECT.

Caltrans is committed to amending the C&M Agreement prior to the planned construction completion in 2030 to address the following:

- Long-term maintenance responsibilities for the SMART railroad crossing

Caltrans will coordinate with SMART to request the California Public Utilities Commission for a determination of maintenance responsibility for the grade crossing.

- Lane-closure procedures for maintenance and repair activities at the grade crossing

Mr. Cumins, General Manager

May 14, 2026

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Caltrans provides lane-closure support with 72-hour advance notice from SMART for routine maintenance and repair activities, and with 24-hour advance notice for emergency situations affecting train or vehicle movements or public safety. SMART will not be required to obtain encroachment permits for these activities.

We appreciate SMART's attention, collaboration, and flexibility on this matter. We look forward to continuing our partnership to deliver successfully the Resilient SR 37 Program improvements.

Sincerely,

David Ambuehl

DAVID D. AMBUEHL
Acting District Director

Attachment – draft C&M Agreement

File: 04-SON-37 PM 4.009
Agreement No.: 04R481
EA: 04-1Q76U
PID: 0424000414
DOT: 498708N
RMP: 33.40
Sub: Brazo Junction Sub

CONSTRUCTION AND MAINTENANCE AGREEMENT
SR 37 WIDENING AT SEARS POINT ROAD

This Agreement, made as of this ____ day of _____, 2026 (“Effective Date”), by and between the **SONOMA-MARIN AREA RAIL TRANSIT** District, a California public agency, as successor in interest to the Northwestern Pacific Railroad Company, a California corporation incorporated in 1907 and merged out in 1992, herein called “SMART”, and the **STATE OF CALIFORNIA**, acting by and through its **DEPARTMENT OF TRANSPORTATION**, herein called “STATE.” SMART and State are collectively referred to as the “Parties.”

RECITALS:

WHEREAS on October 19, 1926, the Northwestern Railroad Company granted the Sears Point Toll Road Company the right to construct and maintain a toll road at grade and across the railroad.

WHEREAS, on July 28, 1951, the Northwestern Pacific Railroad Company (NPR) granted to the State of California acting by and through its Department of Public Safety an easement for the purpose of widening and improving a public highway crossing at grade near Sears Point Road.

WHEREAS, SMART is now the successor to NPR and the California State Department of Transportation is the successor to the State’s Department of Public Works and the Sears Point Toll Road Company.

WHEREAS, STATE in cooperation with local partner transportation agencies proposes to widen State Route 37 from Sears Point to Mare Island to provide traffic congestion relief, improve traffic flow at peak travel times, and increase vehicle occupancy (“the Project”). Project will include widening the travel way at Highway/Railroad Crossing DOT# 498708N (“Crossing”) and raising the roadway seven feet (7 feet) to 1,200 feet east of the Crossing and any and all work related to the upgrade and installation of the advance preemption circuitry and crossing safety devices (“The Project”).

WHEREAS, SMART agrees to allow State to widen the travel way of the crossing within the State’s existing easement rights, and to preempt the highway traffic control signals with the grade crossing warning devices indicated on the location map herein identified as Exhibit “A”.

WHEREAS, State requires 11,541 square feet for a temporary construction area as shown in Exhibit "A - 1".

WHEREAS, the Parties agree that at SMART's request and at State's expense, State will install a new crossing surface and acquire and install crossing signal equipment. Upon installation, it is agreed that SMART will assume full responsibility for the operation and maintenance of the crossing.

WHEREAS, the California Public Utilities Commission (CPUC) provides rules governing the construction and maintenance of at grade railroad crossings in its General Order No. 72-B (GO 72B).

WHEREAS, the Parties desire to set forth herein their understanding and agreement relating to the widening of the State Route and any changes to the 1951 Easement made necessary in connection therewith;

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the Parties hereto agree as follows:

AGREEMENT:

The following exhibits are hereby made a part of the Agreement:

- Exhibit A Railroad Location Print
- Exhibit A-1 Temporary Construction Area Description and Map
- Exhibit B Schematic of Crossing
- Exhibit C Railroad Cost Estimate
- Exhibit D SMART Right of Entry

1. SMART shall grant to State the temporary use for construction purposes of an area described in Exhibit A-1 for a period of 54 months upon receipt of the payment of Thirteen Thousand Dollars and Zero Cents (\$13,000.00). Said easement will go into effective upon the execution of this Agreement.

2. State shall furnish or cause to be furnished, at its expense; all labor, materials, tools, and equipment necessary for the modification of the State's Right of Way as described in this Agreement. The new roadway shall be constructed in a manner to commercially reasonably accommodate SMART's tracks, appurtenances and operations in accordance with State's plans and specifications, which shall be subject to the prior commercially reasonable approval of SMART. State shall provide an acknowledgement of review line for SMART's signature on contract plans for all work at the Crossing as shown on Exhibit "B" attached hereto and made a part of this Agreement. No review, comments,

requirements or inspection by SMART shall relieve State or State's engineers, contractors, subcontractors or consultants from their responsibility for errors or omissions in the drawings, specifications, and/or constructions documents or for the quality or accuracy of the work.

3. SMART if required shall furnish or cause to be furnished at no expense to SMART all labor, materials, tools and equipment necessary for the modification of the Crossing as described in this Agreement including engineering review, and inspection. The estimated cost and expense to be incurred by SMART is set forth in Exhibit "C" attached and made a part hereof.

4. At SMART's request and at no cost to SMART, State will install the new crossing panels, install all safety devices, and preemption measures. At the end of construction, SMART will be responsible for the maintenance of crossing panels, safety devices and preemption measures.

5. State, at State's expense, shall assume all responsibility for the reconstruction of the at grade crossing. Prior to commencement of the Project, including the reconstruction of the at grade crossing, State agrees to obtain for the duration of the Project a Right of Entry Permit as set forth in paragraph 6, below and the State shall take possession and responsibility of the railroad at grade crossing and all appurtenances in order to construct the Project, subject to the terms of the Right of Entry Permit. During this period, the State shall be responsible for temporary configurations of the at grade crossing, required maintenance and inspections, railroad flagging and other services as necessary to maintain a safe and operable at grade crossing. When State completes the Project it will request SMART's inspection and acceptance of the crossing. Upon SMART's acceptance of the crossing, SMART will assume maintenance of the crossing.

6. State shall notify railroad in writing of any desired shutdowns or interferences of the railroad one (1) week in advance of the desired shutdown or interference.

7. Additional work may be included as part of this Agreement upon written request by SMART or State provided the work is of emergency nature that is reasonably necessary for the immediate restoration of SMART's operations or for the protection of persons or SMART property or property in the care, custody, or control of either party within or in the vicinity of the construction area, subject to written amendment of this Agreement. SMART or State will, as soon as reasonably practicable, notify the other of said emergency and the nature of the work which either party intends to perform, due to said emergency. In good faith, the parties shall review the emergency work and determine whether to amend the Agreement to include the emergency work.

8. SMART hereby permits State, its employees, agents, contractors and subcontractors to enter upon the property of SMART upon issuance of Right of Entry Permits by SMART.

(A) State and SMART by their signatures below, agree to the general provisions of the form of Right of Entry Permit ("Permit") attached hereto as Exhibit "D" allowing reconstruction of the Crossing on the Property. State shall provide a detailed work plan which will include but not be limited to: a detailed schedule of the work, list of subcontractors who will be on-site, a construction narrative, and construction drawings which will be used as Exhibit B for the Permit.

(B) Issuance of such Permit shall not be unreasonably withheld or denied by SMART. State and its contractor shall coordinate their work with SMART. In the event of any conflict between the construction schedule for the Project and SMART operations, SMART operations shall take precedence, and State shall adjust its construction schedule to accommodate SMART operations.

9. SMART agrees to submit its bills to State on a monthly basis for actual costs incurred by SMART for work performed related to the demolition and reconstruction of the Crossing, on the basis of items set forth in Exhibit "C". Pursuant to the California Government Code Sections 927 to 927.12, State must reimburse SMART for all undisputed charges within forty-five (45) business days from the date of State's receipt of the invoice for such work. Within six (6) months of State completing the Project's railroad work, SMART will submit its final billing.

10. All work to be done hereunder by SMART shall be done by SMART's employees, SMART employees working under SMART Labor Agreements on a force account basis or by contract, and/or by SMART's contractors, and shall be subject to all applicable provisions of Title 23, Code of Federal Regulations, as amended, hereinafter referred to as 23 CFR. All applicable portions of 23 CFR 140 Subpart I and 646 Subparts A and B are by reference incorporated herein and made a part hereof.

11. The parties hereto agree that the widening of the Crossing as part of their reconstruction is deemed to be of no benefit to the SMART pursuant to 23 CFR 646.210(b)(2). Therefore, SMART will not be required to contribute to the cost of the Project.

12. In the event any of the work upon property of SMART, as herein contemplated, should be advertised for bids by State, the awarded contract shall

include the provisions set forth in Exhibit D, attached and made a part hereof. Said work shall not be commenced by the State's Contractor until:

- (A) State and/or State's Contractor has furnished to SMART:
 - (1) A copy of said contract executed by Contractor, and
 - (2) Original policy or policies of insurance coverage of the kinds and in the amounts specified in Exhibit D, SMART Right of Entry Permit; and
- (B) SMART has advised State by letter that limits, form and substance of said insurance policy or policies are satisfactory to SMART.

The above-described insurance policy or policies shall be kept in full force and effect by State's Contractor during the performance of said work upon and adjacent to SMART's property and thereafter until Contractor removes all tools, equipment and materials from SMART's property and cleans up the premises to a presentable condition satisfactory to SMART.

In conformance with and limited to the application effect of California Laws insofar as the indemnity and insurance provisions set forth in any of the preceding sections or any rider, amendment or addendum hereto, State is self-insured. State shall provide SMART defense and indemnification at least equal to the defense, indemnification and insurance provisions contained in Exhibit "C" in accordance with California Code section 14662.5. Nothing herein shall be deemed to insure SMART against its negligence or willful misconduct.

13. After a Right of Entry Permit has been issued, the State and its Contractor shall give ten (10) working days' notice to SMART's authorized representative before commencing any work in connection with State's Project upon or adjacent to SMART's property and shall observe SMART's rules and regulations with respect thereto. All work at Crossing shall be done at such times and in such manner so as not to unreasonably interfere with or endanger the operations of SMART.

14. All work contemplated in this agreement shall be performed in a good and workmanlike manner to the satisfaction of the parties hereto and each portion shall be promptly commenced by the party obligated to do the same and thereafter diligently prosecuted to conclusion in its logical order and sequence.

15. For any future work involving the Crossing, State shall coordinate with SMART on any roadway maintenance repair, inspection, replacement, or other work including work that requires interruption of railroad service, and shall be responsible for any traffic control and lane closures.

16. The books, papers, records, and accounts of the parties, so far as they relate to the items of expense for labor and materials, or are in any way connected with the work herein contemplated, shall at all reasonable times be open to inspection and audit by the agents and authorized representatives of the parties hereto and of the Federal Highway Administration for a period of three years following the date of SMART's final billing.

17. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of SMART and upon the assigns of State.

18. The State and SMART agree that all communications hereunder shall be through a single representative for each party, authorized to make decisions and provide direction related to this Project.

The State designated representative is:

Alden Chalk
Senior Right of Way Agent Department
of Transportation (Caltrans) 111 Grand
Avenue MS 11A
Oakland, CA 94612
(510) 908-4134
alden.chalk@dot.ca.gov

The SMART designated representative is:

Bill Gamlen
Chief Engineer
SMART
5401 Old Redwood Highway, Suite 200
Petaluma, CA 94954
(707) 794-3330

bgamlen@sonomamarintrain.org

19. To the extent permitted by law, State hereby agrees to indemnify, defend and hold harmless SMART, its officers, directors, and employees and agents from and against any claims including attorneys' fees and reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, damage to or loss of use of property caused by the negligent acts and omissions by State, its officers, directors, employees, agents, subcontractors or suppliers in connection with or arising out of the performance of this Agreement, or the uses

authorized by this Agreement and associated easements, licenses, rights of way or right of entry agreements. State agrees to repair or pay for any damage caused by reason of the negligent acts and omissions by State for the uses authorized by this Agreement and associated easements, licenses, rights of way or right of entry agreements.

To the extent permitted by law, SMART hereby agrees to indemnify, defend and hold harmless State, its officers, directors, employees and agents from and against any claims (including attorneys' fees and reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, damage to or loss of use of property caused by the negligent acts and omissions by SMART, its officers, directors, employees, agents, subcontractors or suppliers in connection with or arising out of the performance of this Agreement. SMART agrees to repair or pay for any damage caused by reason of the negligent acts and omissions by SMART for the uses authorized by this Agreement and associated easements, licenses, rights of way or right of entry agreements.

20. Miscellaneous Provisions.

- (A) No Waiver of Breach. The waiver by SMART of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.
- (B) Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.
- (C) Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa, California, or the forum nearest to the city of Santa Rosa, California, in the County of Sonoma.
- (D) Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the

Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

- (E) No Third-Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the Parties do not intend to create any rights in third parties
- (F) Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

IN WITNESS WHEREOF, the Parties have caused these presents to be executed in duplicate, by their officers thereunto duly authorized, as of the day and year first above written.

SONOMA-MARIN AREA RAIL TRANSIT

By: _____
EDDY CUMINS
Title: General Manager

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: _____
TIAIRA T. MOERING-HILL
Chief, Office of Railroad and Utility Relocations
Division of Right of Way and Land Survey

APPROVED AS TO FORM AND PROCEDURES

By: _____
(Attorney)

RECOMMENDED FOR APPROVAL

By: _____
TERESA McNAMARA
Railroad Coordinator
Office of Railroad and Utility Relocations
Division of Right of Way and Land Surveys

File: 04-SON-37-PM 4.009
Agreement No.: 04R481

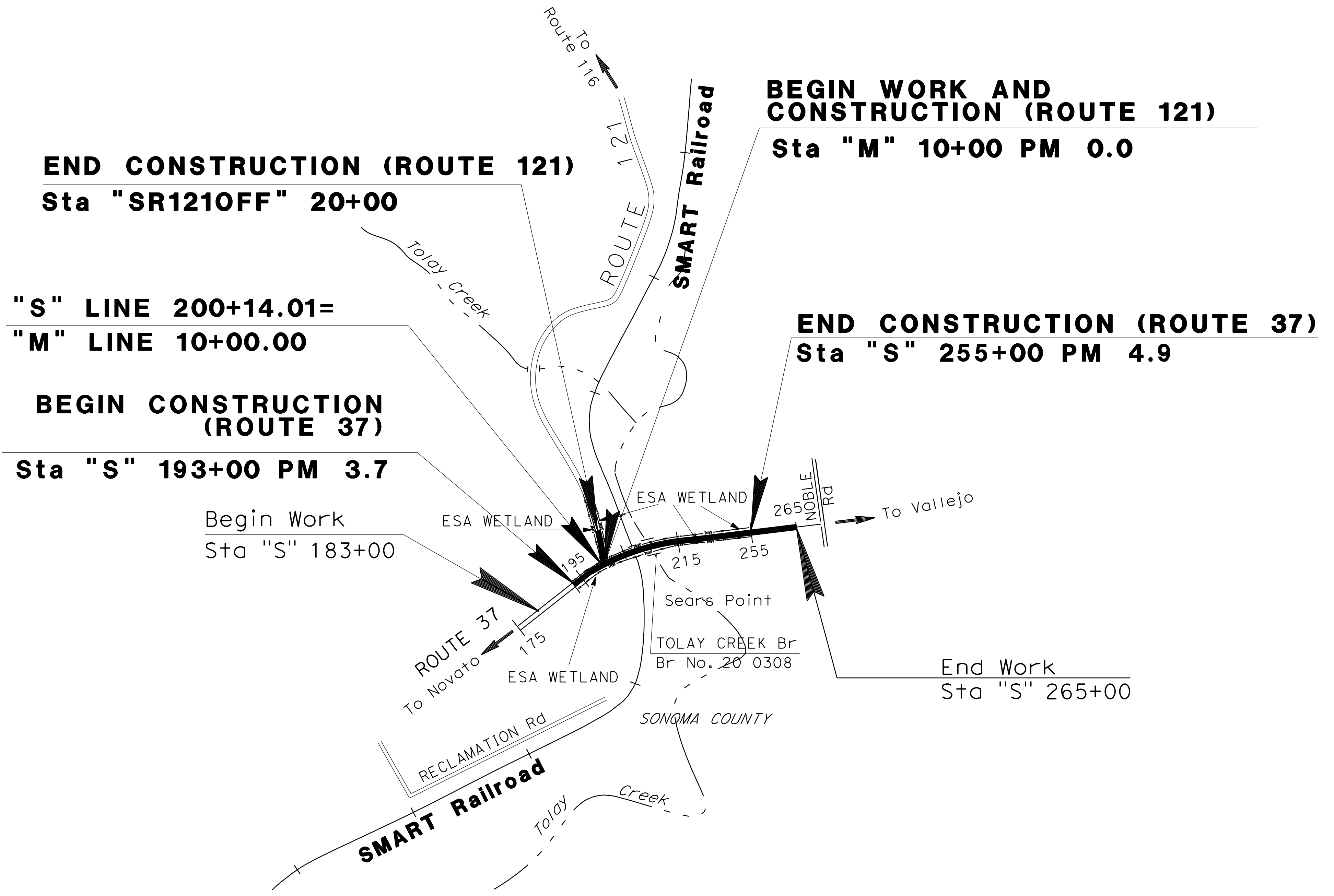
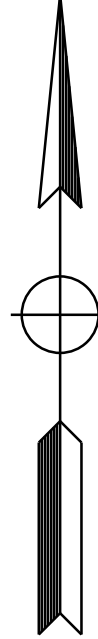
Exhibit "A"

RAILROAD LOCATION MAP

Dist	COUNTY	ROUTE	POST MILES TOTAL PROJECT	SHEET NO.	TOTAL SHEETS
04	Son	37, 121	3.7/4.9, 0.0/0.2	1	x



CONTRACT No.	04-1Q76U4
PROJECT ID	0424000414



NO SCALE

File: 04-SON-37-PM 4.009
Agreement No.: 04R481

Exhibit "A-1"

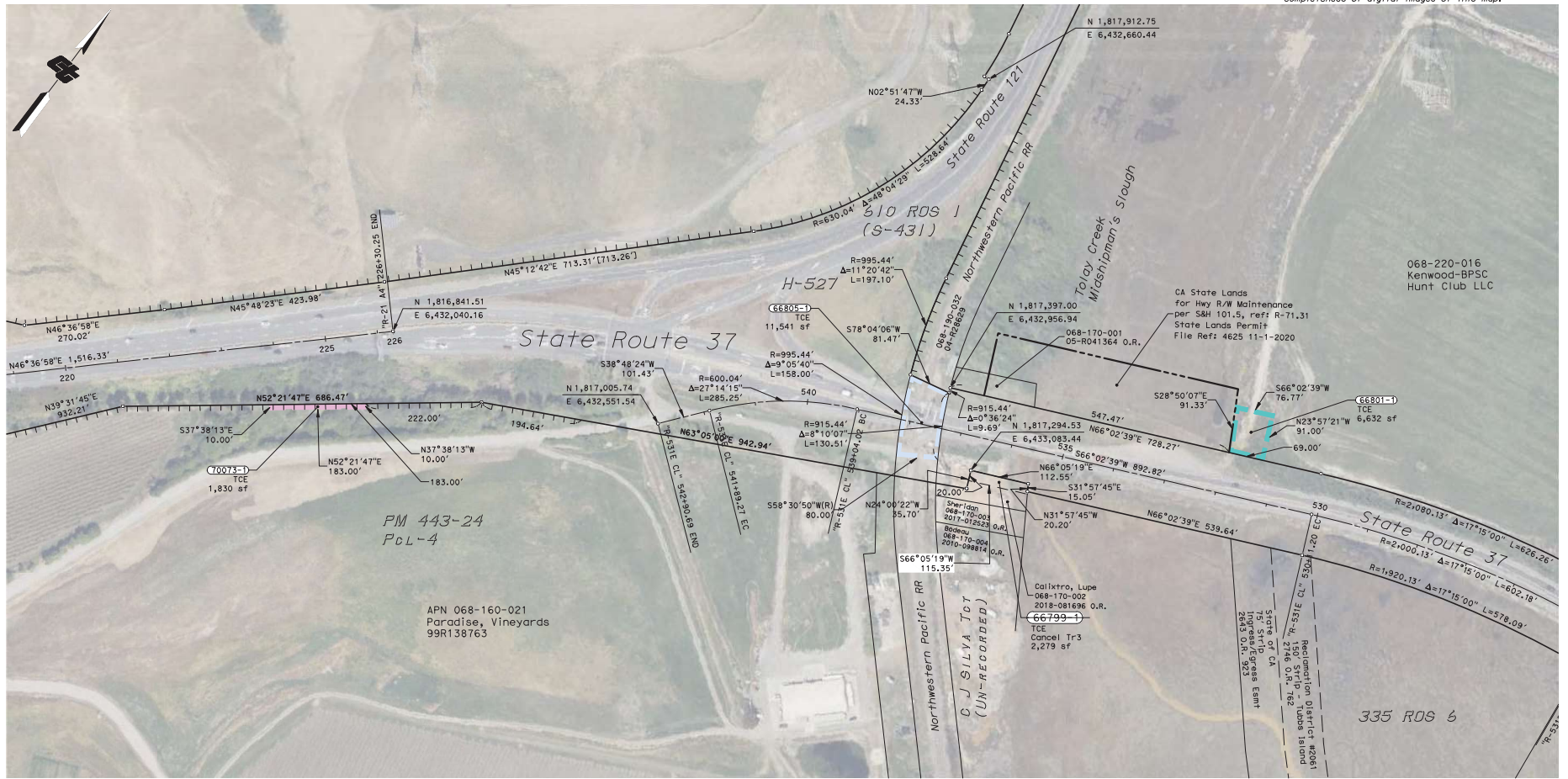
LEGAL DESCRIPTION OF TEMPORARY CONSTRUCTION AND MAP

Exhibit "A-1"

SONOMA COUNTY

See 10035.16a

NOTE: The State of California or its officers or agents shall not be responsible for the accuracy or completeness of digital images of this map.



PROJECT SURVEYOR: AL	LICENSE# L 8037	DATE	REVISIONS	SURVEYOR	LICENSE	DATE	REVISIONS
01-20-2024	10-18-2024	10-18-2024	10-18-2024	AL	AL	10-18-2024	10-18-2024
07-20-2024	10-18-2024	10-18-2024	10-18-2024	AL	AL	10-18-2024	10-18-2024
09-20-2024	10-18-2024	10-18-2024	10-18-2024	AL	AL	10-18-2024	10-18-2024
12-12-2024	10-18-2024	10-18-2024	10-18-2024	AL	AL	10-18-2024	10-18-2024
01-18-2025	10-18-2024	10-18-2024	10-18-2024	AL	AL	10-18-2024	10-18-2024

PARCEL#	TITLE CODE	GRANTOR	AREAS (square feet or as noted)				REMARKS	RECORDATION		
			TOTAL	REQUIRED	[UF] EXCESS	[UF] REMAINDER		TYPE	DATE	DOC.#
66799-1	TCE	Calixtro, Lupe					TCE 2,279sf Expires 12-1-2028	ED		
66801-1	TCE	Kenwood-BPSC Hunt Club LLC					TCE 6,632sf Expires 9-9-2030	ED		
66805-1	TCE	Sonoma-Marin Area Rail Transit District					TCE 11,541sf Expires 9-9-2030	ED		
70073-1	TCE	Paradise, Vineyards					TCE 1,830sf Expires 9-9-2030	ED		

GRANTOR NOTES
 Areas shown do not include underlying fee, unless indicated. Acres
 Indicates underlying Fee (UF) Area
 Indicates Indeterminate UF
 TITLE CODES
 A=Access Rights Only
 E=Easement (Ease)
 TCE=Temp Construction Easement
 TCU=Temp Construction Rights
 TO=Transfer of Jurisdiction
 O=Other (see Remarks)
 ① Grantor's deed
 ② Easement deed
 ③ Director's deed
 ④ Director's deed
 ⑤ Director's deed
 ⑥ Director's deed
 ⑦ Director's deed
 ⑧ Director's deed
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NOTES
 Coordinates and bearings are on CCS 1983 Zone 2. Distances are stationing and grid distances. Distances by 1,0006224 to obtain ground distances. All distances are in feet unless otherwise noted. Ref: Surv Job #19-211

LEGEND
 Access Prohibited
 Access Superseaded
 Existing R/W Superseaded
 Access Opening (Private)
 Indicates Radial Bearing
 Indicates Found Monument as noted
 Indicates calculated point. (Does not imply monument see)
 Title to State
 Required for Others

STATE OF CALIFORNIA
 CALIFORNIA STATE TRANSPORTATION AGENCY
 DEPARTMENT OF TRANSPORTATION
RIGHT OF WAY APPRAISAL MAP
 A-10935.16

COPYRIGHT 2019 CALIFORNIA DEPARTMENT OF TRANSPORTATION. ALL RIGHTS RESERVED.

FOR PREVIOUS R/W INFORMATION SEE MAP(S) R-49-7 H-527 S-431 R-531e-1

FULL SIZE MAP SCALE: 1" = 100'

FEET 0 50 100 200 300

TO DESIGN: 24-2024 EA(s):
 DISTRICT COUNTY ROUTE SHEET PM SHEET NO./TOTAL SHEETS

4	SON	37	4.0	3	4
4	SON	121	0.0		

CHECKED BY: FAW:
 SHEET NO./TOTAL SHEETS

File: 04-SON-37-PM 4.009
Agreement No.: 04R481

Exhibit "B"

SCHEMATIC OF CROSSING

Exhibit "C"

**COST ESTIMATE
SONOMA-MARIN AREA RAIL TRANIST**

Location: Route 37, Sears Point Crossing, Caltrans PM 4.009
(DOT #498708N, RMP 33.40/Brazo Junction Subdivision)

Project: Widening of State Route 37 at Sears Point Road.

Estimate:

Construction Support	\$ <u>20,000</u>
Engineering Review & Inspection	\$ <u>60,000</u>
Contingency (20%)	\$ <u>16,000</u>
Total	\$ <u>96,000</u>

Note: This is an estimate only, SMART shall bill on an actual cost basis.

Exhibit "D"

SMART RIGHT OF ENTRY

Permit Number 20 – ROE –000
DATE

SMART TEMPLATE RIGHT-OF-ENTRY PERMIT

This Right-of-Entry Permit ("Permit") is entered into as of _____ ("Effective Date") by and between SONOMA-MARIN AREA RAIL TRANSIT DISTRICT ("Permittor") and _____ ("Permittee"), _____ (address).

1. Permit. Permittor hereby permits Permittee to enter upon Permittor's property located on State Route 37 near Sears Point Road and the railroad tracks near the City of Sonoma, County of Sonoma, California, near Milepost ____, as described in the attached **Exhibit A** ("Premises"), which is incorporated by this reference, subject to all existing licenses, easements, encumbrances, and claims of title affecting Premises and upon the terms and conditions contained herein. No work shall commence on Premises until Permittee accepts this Permit. The doing of any work under this Permit shall constitute acceptance of these Permit provisions.
2. Exclusive Use. This Permit is for Permittee's exclusive use and is not assignable without the prior consent of Permittor.
3. Purpose. The permitted purpose of Permit shall be solely for entry upon Premises for the addition of a highway lane over the SMART tracks at Sears Point Road and SR 37 in Sonoma County, as described in the attached **Exhibit B**, including bringing a detailed work plan which includes but is not limited to: a detailed schedule of work, lists of subcontractors who will be on-site, a construction narrative, and construction drawings, and a list of all necessary personnel and equipment onto Premises as necessary for the permitted purpose ("Project").
4. Term. This Permit shall be effective at such time as the fees identified in Section 6 have been paid and shall automatically terminate on _____ unless extended by mutual written agreement. If the fees are not received

within fifteen (15) days from the date of this Permit, then Permit shall be null and void.

Permitter reserves the right to revoke or modify this Permit at any time prior to the termination date upon forty-eight (48) hours advance notice from Permitter to Permittee.

If Permittee requires use of Premises prior or subsequent to the foregoing dates, then Permittee shall request approval from Permitter at least forty-eight (48) hours prior to the time requested. Permittee shall pay additional fees as set forth in Section 6 below for such additional use.

5. Permit Shall Remain On-Site. A copy of this Permit must be kept on the site of Premises at all times during the term of this Permit and shall be shown to any representative of Permitter upon demand. Project may be suspended if this Permit is not at Premises.
6. Permit Fees and Costs. As compensation for use of Premises, Permittee shall pay the costs for review of Permit application, design and construction plans, preparation of Permit, and any inspection of activity or construction authorized by this Permit, including but not limited to, expenses incurred by Permitter, which costs and expenses Permittee shall pay upon demand. Permittee shall pay to Permitter upon execution hereof the sum of ____ Thousand Dollars (\$____), which is an estimate of such costs and expenses. Any additional costs for inspectors/safety monitors will be billed at the completion of work.
7. Project Plan. Project shall be performed in accordance with a plan identifying the sequence of operations, schedules and locations for said Project. The plan shall be submitted to Permitter in advance of any work for Permitter's approval and such work shall be subject to monitoring and inspection by Permitter.
8. Cost of Work, Protection of Traffic, Access Requirements, and Working Procedures. All costs related to Permittee's operations upon Premises shall be at Permittee's expense. All work upon or in connection with the use of Premises shall be done at such times and in such manner as not to interfere with the current or future use of Premises. Permittee shall be responsible for the provision of barriers, directions, signage, and other forms of notice to the general public to assure the safe, smooth, and uninterrupted flow of traffic around Project site and on and about Premises. Permittee shall keep Permitter's Premises in a reasonably neat and safe condition failing which

Permitter, after twenty-four (24) hours prior notice to Permittee, may do so at Permittee's expense.

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

Not less than 72 hours prior to entering the Premises, Permittee shall submit a Track Access Permit in a form approved by Permitter. A sample of Permitter's current Track Access form is attached hereto as **Exhibit C**. As a condition of access, Permitter may require any combination of the following safety measures:

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

Depending on the work, one or more flaggers may also be required at Permittees expense.

All work by Permittee upon Premises shall be performed in a good and worker-like manner satisfactory to Permitter. Since there is the possibility of the existence of pipelines or other structures beneath Premises, if Permittee should excavate or drill, then Permittee's forces shall explore such structures with hand tools to a depth of at least eight feet (8') below the surface of the ground or, at Permittee's option, use suitable detection equipment prior to drilling or excavating with mechanized equipment. Absence of markers does not constitute a warranty by Permitter of no subsurface installations. It shall be Permittee's responsibility to determine the existence of any underground facilities and Permittee shall call Underground Service Alert at 1 (800) 642-2444 prior to beginning any work on the property.

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

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

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

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

Permittee shall cooperate with Permitter in making any tests Permitter requires of any installation or condition which in Permitter's reasonable

judgment may have an adverse effect on any of the facilities of Permitter. All costs incurred by the tests, or any corrections required as a result of such tests, shall be borne by Permittee.

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

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

Indemnitees. Permittee waives any and all rights to any type of express or implied indemnity against the Indemnitees arising out of Permittee's use of or activities on Premises. This indemnity shall survive termination of this Permit. It is the intention of the parties that should any term of this indemnity provision be found to be void or unenforceable, the remainder of the provision shall remain in full force and effect.

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

Prior to entry upon the Property and commencement of construction activities, Permittee shall provide Permittor with satisfactory evidence, in the form of a Certificate of Insurance, that Permittee is insured in accordance with the following. Said insurance shall remain in effect throughout the term of this License:

a. Workers' Compensation and Employers' Liability

Permittee shall procure and maintain Workers' Compensation Insurance and Employers' Liability Insurance in accordance with the laws of the State of California. Employers' Liability Insurance shall have coverage for a minimum liability of \$2,000,000, covering Permittee's employees engaged in the work. Permittee shall insure the procurement and maintenance of such insurance by all contractors or subcontractors engaged in the construction, operation or maintenance of the Conveyor.

b. Commercial General Liability

Permittee shall procure and maintain Commercial General Liability insurance covering products-completed and ongoing operations, property damage, bodily injury and personal injury using an occurrence policy form, in an amount no less than \$5,000,000 per occurrence.

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

that said policy does not have any railroad exclusions. A follow form Excess Liability policy may be utilized to satisfy the required limits of liability under this section.

c. Professional Liability

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

d. Automobile Liability

Permittee shall procure and maintain Automobile Liability insurance covering bodily injury and property damage in an amount no less than \$2,000,000 combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles. Said policy shall also include a CA 20 70 10 13 endorsement removing the exclusion of coverage for bodily injury or property damage arising out of operations within 50 feet of any railroad bridge, trestle, track, roadbeds, tunnel, underpass or crossing.

e. Contractors Pollution Liability

Contractors Pollution Liability insurance in an amount no less than \$2,000,000 per incident. The Contractor's Pollution Liability policy shall be written on an occurrence basis with coverage for bodily injury, property damage and environmental damage, including cleanup costs arising out of third-party claims, for pollution conditions, and including claims of environmental authorities, for the release of pollutants caused by construction activities related to the Permit. Coverage shall include the Permittee as the named insured and shall include coverage for acts by others for whom the Permittee is legally responsible.

Coverage to be provided for bodily injury to or destruction of tangible property, including the resulting loss of use thereof, loss of use of tangible property that has been physically injured, and natural resource damage. There shall be no exclusions or limitations regarding damages or injury from existence, removal or abatement of lead paint. There shall be no insured vs. insured exclusion in the policy.

f. Railroad Protective Liability

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

Prior to entering onto the Property, Permittee shall file Certificate(s) of Insurance with Permitter evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. Said endorsements and Certificate(s) of Insurance shall stipulate:

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

this provision applies regardless of whether or not Permittor has received a waiver of subrogation endorsement from the insurer.

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

g. Deductibles and Retentions

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

h. Self-Insurance

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

i. Claims Made Coverage

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

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

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

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

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

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

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

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

[REMAINDER OF PAGE INTENTIONALLY BLANK]

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

PERMITTOR:
SONOMA-MARIN AREA RAIL TRANSIT
DISTRICT

PERMITTEE:

By:

*By:

Real Estate Manager

Name:

Title:

* If Permittee is a corporation, two corporate officers must sign on behalf of the corporation as follows: 1) the chairman of the board, president or vice president; and 2) the secretary; assistant secretary, chief financial officer or assistant treasurer.

File: 04-SON-37-PM 4.009
Agreement No.: 04R481

SMART TEMPLATE RIGHT OF ENTRY PERMIT

EXHIBIT A

[DESCRIPTION OF PREMISES]

SMART TEMPLATE RIGHT OF ENTRY PERMIT


EXHIBIT B

[DESCRIPTION OF PURPOSE OF RIGHT OF ENTRY]

SMART TEMPLATE RIGHT OF ENTRY PERMIT

EXHIBIT C

Must Be Signed for Approval

		One Permit must be submitted for each calendar day of work	Permit Number _____
RIGHT OF WAY ACCESS PERMIT			ROE Permit # _____
This form must be kept onsite by the contractor at all times. If you decide not to use your approved permit for the date requested contact Dispatch and cancel the request.		Date of Work: _____	
		Start Time: _____	
		Finish Time: _____	
CONTRACTOR INFORMATION		Crew Size: _____	
Company Name: _____		Territory	
Applicant Name: _____		<input type="checkbox"/> Brazos Jct. (B-25.8 TO B-49.8)	
Phone: _____		<input type="checkbox"/> SMART Mainline (14.9 TO 84.7)	
Email: _____		<input type="checkbox"/> OTHER: _____	
Always expect a train or on track equipment. Trains may travel in either direction on any track at any time.		EXACT WORK LIMITS:	
Supervisor on Site		FROM: _____	
Supervisor Name: _____		TO: _____	
Cell Phone: _____		OTHER: _____	
The Supervisor is required to: *Be on site at all times and reachable by Dispatch *Call OCC by phone to activate the Permit before work starts & call OCC to deactivate the Permit after work is done and crews are clear.		FORM B EIC ONLY FILL OUT BELOW	
		FORM B Limits _____ to _____	
		Short Flag Location _____ / _____	
DESCRIPTION OF WORK			

WORK CONDITIONS			
<input type="checkbox"/> Roadway Protection Certification is current	<input type="checkbox"/> Work crew may be fouling tracks	<input type="checkbox"/> Heavy equipment within right-of-way	<input type="checkbox"/> Operation of a hysrail vehicle
			<input type="checkbox"/> Right of entry
			<input type="checkbox"/> Outside of fouling zone
Level of On Track Safety			
<input type="checkbox"/> Track & Time	<input type="checkbox"/> Form B	<input type="checkbox"/> Track Warrant	EIC: _____
<input type="checkbox"/> Track Out of Service	<input type="checkbox"/> Approved Flagger	<input type="checkbox"/> None Required	Cell: _____
Operations Control Center Phone: 707-890-8600 Submit permit requests by email to the Track Access Coordinators		SMART TRACK ACCESS COORDINATORS: Jon Kerruish: Jkerruish@sonomamarintrain.org Rachel Schmuhl: Rschmuhl@sonomamarintrain.org Marc Bader: Mbader@sonomamarintrain.org	
FOR CONTROL OFFICE USE		Permit Approval: _____	Date: _____
Active Time: _____	Controller Signature: _____		ID# _____
Clear Time: _____	Controller Signature: _____		ID# _____