STATE OF CALIFORNIA EDMUND Governor

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

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September 26, 2016

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Ratesetting

TO PARTIES OF RECORD IN APPLICATION 13-09-020:

This is the proposed decision of Administrative Law Judge Burcham. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's October 27, 2016 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ RICHARD SMITH for
Karen V. Clopton, Chief
Administrative Law Judge

KVC:jt2

Attachment

Decision **PROPOSED DECISION OF ALJ BURCHAM** **(Mailed 9/26/16)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the Sonoma-Marin Area Rail Transit District seeking cost allocation for required improvements, including installation of quadrant gates at a private crossing over Sonoma-Marin Area Rail Transit District tracks (MP: 36.75) in the County of Sonoma, State of California.	Application 13-09-020 (Filed September 23, 2013)

DECISION ADOPTING THE SETTLEMENT AGREEMENTS BETWEEN THE SONOMA-MARIN AREA RAIL TRANSIT DISTRICT AND TEAM GOLD, LLC, HENRIS INVESTMENTS, LP, AND CORTO MENO SAND & GRAVEL, LLC, REGARDING THE COST ALLOCATION OF PRIVATE CROSSINGS

Summary

This decision grants the joint motion for adoption of three settlement agreements between the Sonoma-Marin Area Rail Transit District (SMART) and Team Gold, LLC, Henris Investments, LP and Corto Meno Sand & Gravel, LLC, for safety improvements to the SMART tracks, specifically the consolidation of three existing crossings into a newly installed private at-grade crossing, commonly known as the "Landing Way Crossing," for the benefit of the settling property owners (Owners).

One party to the settlement agreements, The Dutra Group, is not a public utility and is not a party to this proceeding. This decision and the portions of the

underlying settlement agreements that pertain to The Dutra Group are therefore not enforceable by this Commission as to The Dutra Group.

The proceeding is closed.

1. Jurisdiction

The California Public Utilities Commission (Commission) has the jurisdiction to review and approve railroad crossing applications to determine their necessity and that they are designed to ensure public safety pursuant to Public Utilities Code Section[1] (Pub. Util. Code §) 7537 and General Order 75-D.[2]

2. Procedural Background

On September 23, 2013, the Sonoma-Marin Area Rail Transit District (SMART or District) filed an application with the Commission under Pub. Util. Code § 7537 for a finding that the proposed modifications to the Landing Way Crossing proposed by SMART are necessary, and for the allocation of costs and expenses of such modifications between SMART and property owners Team Gold, LLC (Team Gold), Henris Investments, LP (Henris), and Corto Meno Sand & Gravel LLC, (Owners). Specifically, the application calls for the construction and improvement of the Landing Way Crossing, located south of Petaluma in Sonoma County at or near mile post (MP): 36.78[3] (DOT[4] # 498695P), and the closing of two existing private crossings, one located approximately 520 feet

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[1] All statutory references are to the Public Utilities Code unless otherwise indicated.

[2] Regulations Governing Standards for Warning Devices for At-Grade Highway Rail Crossings in the State of California; adopted August 24, 2006, effective September 23, 2006.

[3] This location has been referred to both as MP: 36.75 and MP: 36.78 in the pleadings and settlement agreements.

[4] DOT refers to the United States Department of Transportation.

north (MP: 36.87; DOT # 498694H) and the other approximately 1800 feet south (MP: 36.37; DOT # 498696 W) of the Landing Way Crossing.

These modifications are necessary to enable the safe operation of the new SMART light rail system and ingress and egress from the private property of the Owners adjacent to the rail line. Construction on Phase I of the SMART rail system, covering 38.5 miles from downtown San Rafael to Santa Rosa, began in May 2012. Passenger service for Phase I is scheduled to begin in late 2016. When completed, the rail passenger service will serve a 70-mile corridor from Cloverdale in Sonoma County to Larkspur in Marin County.

The crossings slated for closure have been in existence since the early 1900s, and were the subject of private roadway agreements and easements (and assignments thereof) executed by SMART and the Owners and their predecessors in interest. The parties acknowledge these private roadway agreements are not controlling in this proceeding.

3. Responses and Protests to the Application

On October 24, 2013, Henris and Team Gold filed a response to the Application expressing the view that the cost of the consolidation and improvements to the Landing Way Crossing should be reasonably allocated between SMART and all affected property owners pursuant to Pub. Util. Code § 7537.

On November 5, 2013, Corto Meno filed a protest to the Application, citing the same arguments as Henris and Team Gold. On November 12, 2013, Henris and Team Gold each filed a motion to convert their response to a protest. However, this application is no longer contested because the parties have reached settlements that resolve all of the issues raised in the protest and responses.

4. Overview of the Settlements

On August 9, 2016, the parties filed a joint motion for adoption of the settlement agreements which had been executed by the parties on April 22, 2016. Each of the three settlement agreements before the Commission is identical in form and content. The settlement agreements provide that:[5]

1) Owners have a non-exclusive license to use the Landing Way Crossing solely as a private crossing, and will take any and all necessary actions to preserve the private character of the crossing and prevent its use as a public road, as specified in Exhibits A, B and C to the joint motion, for an initial period of twenty years, with options for renewal;

2) Owners may change the size or nature of the crossing to accommodate development of an Owner's property at the Owner's sole cost and expense, provided that all crossing change work on the premises is performed by SMART;

3) With the exception of an overhead conveyor crossing the tracks for the benefit of non-party The Dutra Group (as outlined in settlement agreement Exhibit D, which is not before the Commission), SMART will be responsible for 25 percent of the cost and expense of installation of the crossing, major repair expenses (exceeding $5,000) and replacement costs of the crossing incurred over time, and the Owners will be collectively responsible for the remaining 75 percent to be divided equally, 18.75 percent each.

4) Owners will each pay SMART, annually in arrears, 18.75 percent of the actual maintenance costs of the crossing, such costs currently estimated to be $6,500 per year. SMART shall notify Owners in advance of planned maintenance or repairs expected to cost $5,000 or more.

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[5] The following are intended only to summarize the terms of the settlement agreements, not to interpret them. The terms of the conditions of these agreements as contained in the attachments to this decision shall be controlling.

5) Crossing replacement costs will be calculated based on the actual crossing cost amortized over 25 years, not to exceed $750,000 (for the initial installation of the crossing). Once the crossing is installed and the actual crossing cost is determined, the parties will execute an amendment to the settlement agreements setting forth the actual crossing cost. Each Owner will pay to SMART, annually in arrears, 18.75 percent of 1/25th of the actual crossing cost, adjusted annually for inflation using the Construction Cost Index. SMART will maintain a separate bank account into which these funds will be deposited, and may not use these funds for any purpose other than for capital replacements and major repairs to the crossing, as needed. Should any replacement cost be the result of damage or destruction of any equipment as a result of improper use of the crossing by an Owner, that Owner shall pay for that item of repair in addition to its percentage share of replacement costs.

6) The existing commercial Owners are jointly and severally liable for the crossing construction costs, and shall pay 75 percent of the actual cost for construction of the crossing, with total cost in the aggregate not to exceed $750,000. Any costs above $750,000 will be paid by SMART.

7) In the event SMART or any successor in interest ceases running passenger rail in this corridor continuously for more than 12 months, or should the crossing cease to be used, all funds remaining in the replacement account shall be returned to the Owner pro rata with any other contributing party. Each Owner will have the reasonable right to conduct an audit of maintenance and/or replacement costs annually. In the event an Owner is overcharged or undercharged for any such cost, the discrepancy shall be adjusted by a correcting payment to or from the Owner within 30 days of completion of the audit which revealed the overpayment or underpayment.

8) Owners will be responsible for notifying SMART in writing of any need to upgrade the vehicular traffic control devices or signs at or near the crossing, or of any significant change in an Owner's volume or nature of traffic at the crossing.

9) Should any discharge, leakage, spillage, emission or pollution of any type occur upon or arise as a result of an Owner's use, presence, operations, or exercise of the rights granted under the settlement agreements, that Owner shall, at its sole expense, clean all affected property, or pay SMART for such cleaning, to the satisfaction of SMART and any governmental body having jurisdiction in the matter.

10) SMART shall, at its own cost and expense, keep the crossing in good order, repair and condition at all times while the settlement agreements are in effect, in material compliance with all legal requirements and in such condition to maintain the safety and suitability of the crossing with the Commission. SMART shall take any commercially reasonable steps to preserve and protect the useful life, utility and value of the crossing.

11) Owners acknowledge that cables, pipelines and electric and/or fiber optic transmission lines may be on, about, along, or under the premises, and each Owner agrees it will not dig in or disturb the surface of the premises without the express written consent of SMART.

12) Each Owner may request that SMART install, at Owner's sole cost and expense, two chases sufficient to allow Owner to bring water, sewage and power under the railroad tracks. SMART agrees to accommodate such requests provided SMART can legally do so and Owner obtains all necessary governmental and regulatory approvals and permits, including a separate license from SMART for the chases. All work necessary to install the chases shall be performed by SMART.

13) Each Owner may, at its sole cost and expense, construct and maintain a roadway to the crossing and/or premises, including related roadway drainage, in a manner acceptable to SMART and safe for use by any vehicles or equipment. Owners are not required to construct such a roadway. If SMART requires a roadway for its own use of the crossing or premises, SMART will bear all related costs and expenses.

14) Owners agree not to interfere with any crossing gates, farm gates or barriers. Owners will not obstruct or interfere with the passage of any trains or rail vehicles, and shall, at Owners' sole cost and expense, perform all activities and use the crossing in such a manner as not to be a source of danger to, or interfere with the use of present or future tracks, roadbed or property of SMART, or the safe operation and activities of SMART. Owners agree to cease using the crossing at any time if SMART personnel or other public authorities so order due to any hazardous condition. SMART agrees to remediate any hazardous condition as quickly as possible.

15) Owners agree, at their own cost and expense, to keep the crossing clear of obstructions of any kind which may accumulate by virtue of vehicles, equipment or machinery using the crossing, and to remove any vegetation along the rail corridor on each side of the crossing so that motorists' line of sight to approaching trains is not impaired or obstructed, with the exception that Owners are not required to take any actions within an area designated as wetlands by the Army Corps of Engineers.

16) If SMART later desires to use its rail corridor in such a way as would be interfered with by the crossing, SMART may, at its sole discretion and expense, make any necessary changes including relocation of the existing crossing or constructing a new crossing, provided any such activities are in compliance with Pub. Util. Code § 7537, General Order 75-B and other Commission rules, regulations and orders.

17) Owners shall, at their own cost and expense, maintain a commercial general liability insurance policy covering property damage, bodily injury and personal injury using an occurrence policy form, in an amount of no less than $5,000,000 per occurrence, and $10,000,000 annual aggregate. Such policy shall either include a Railroads CG 24 17 endorsement removing the exclusion of coverage for bodily injury or property damage arising out of operations within 50 feet of any railroad property and affecting any railroad bridge, trestle, tracks, roadbeds, tunnel, underpass or

crossing, or provide evidence that the policy does not have any such exclusions. Owners shall also maintain automobile liability insurance covering bodily injury and property damage in an amount no less than $2,500,000 combined single limit for each occurrence, and include coverage for owned, hired, and non-owned vehicles. SMART, its officers and employees are to be named as additional insureds on the policies.

18) Owners agree to indemnify and hold harmless SMART, its officers, agents and employees, from all claims, demands, losses, damages, causes of action, suits and liabilities of every kind (including reasonable attorneys' fees, courts costs and related expenses) for injury to or death of a person, or for loss or damage to any property arising out of or in connection with Owner's performance of its obligations under the agreement, or out of the operations of or work done by Owner, actions taken by Owner, or actions permitted by Owner, its subcontractors, invitees, agents or employees. This indemnity does not protect SMART from liability to the extent such loss or damage was caused by SMART's negligence or willful misconduct. The indemnification provisions apply to SMART, its successors and assigns, and any other railroad company lawfully operating upon and over the tracks, crossing or adjacent to the roadway, and the officers and employees thereof.

19) Upon termination of the agreements, SMART may remove the crossing and restore the rail corridor to the condition as of the effective date of the agreements without incurring any liability to the Owners.

20) SMART may terminate the agreements if notified by the Commission that the crossing is unsafe or no longer suitable for its intended use. SMART shall promptly notify the Owners of any notifications, whether formal or informal, from the Commission or other authority, of a condition or circumstance which may lead to a notification of immediate closure. If such notice from the Commission is based on SMART's failure to properly maintain and/or inspect the

crossing, SMART agrees to immediately proceed to comply with any and all orders of the Commission.

5. Safety Concerns

In addition to the safety considerations identified in the settlement agreements, outlined above, the assigned Administrative Law Judge (ALJ) issued a ruling on November 17, 2015, inquiring specifically:

1. Whether Standard 1-X Private Crossing signs will be installed, as required by the Commission's General Order (G.O.) 75-D, Section 7.3;
2. Whether R8-8 "Do Not Stop on Tracks" signs, as defined in the California Manual of Uniform Traffic Control Devices, will be installed on each approach to the crossing;
3. Whether illumination will be installed on the crossing to provide individuals who use the crossing clear visibility of the crossing at night; and
4. Whether sidelights will be installed on the warning devices:
    a. On the east side of the crossing facing the parallel roadway that approaches the crossing;
    b. Attached to the mast of the warning device in the northeast quadrant, facing north; and
    c. Attached to the mast of the exit gate in the southwest quadrant, facing south.

In response to the ALJ's ruling, on November 24, 2015, SMART reported that:

1. The existing but unauthorized crossing at approximately MP: 36.87 (DOT #498694H) had been closed, and the crossing at approximately MP: 36.37 (DOT #498696W) was scheduled to be closed by December 15, 2015, with all associated costs borne by SMART. On April 15, 2016, SMART confirmed that the crossing at MP: 36.37 was permanently closed on March 29, 2016.

2. Standard 1-X Private Crossings signs will be installed, as required by the Commission's General Order (G.O.) 75-D, Section 7.3;
3. R8-8 "Do Not Stop on Tracks" signs, as defined in the California Manual of Uniform Traffic Control Devices, will not be installed on each approach to the crossing;
4. Illumination will not be installed on the crossing; and
5. Sidelights will not be installed on the warning devices:
    a. On the east side of the crossing facing the parallel roadway that approaches the crossing;
    b. Attached to the mast of the warning device in the northeast quadrant, facing north; or
    c. Attached to the mast of the exit gate in the southwest quadrant, facing south.

The Commission's Rail Crossings and Engineering Branch reviewed SMART's response to the ALJ's ruling, and did not express any concerns.

6. Settlement Standard of Review

The standard of review for settlements is contained in Rule 12.1(d) of the Commission's Rules of Practice and Procedure[6], which states "The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest."

[6] Any reference to Rule or Rules refers to the Commission's Rules of Practice and Procedure.

6.1 The Settlements Satisfy the Standard of Review for Settlements

The record consists of all filed documents, the proposed settlement agreements and the motion for adoption of settlement. The settlements resolve all of the issues raised in the responses and protest.

The settling parties represent a cross-section of interests and all of the directly affected property owners who will utilize the private Landing Way Crossing. SMART represents the interests of the railroad and its concerns regarding the safety of the crossing. Team Gold, Henris and Corto Meno and are the property owners who will need the private Landing Way Crossing to safely access their properties once the SMART light rail line is in operation. The parties to the settlements have a thorough understanding of the issues, and all of the underlying assumptions and data, and could therefore make informed decisions in the settlement process.

The Commission could have resolved the disputed issues in favor of SMART or the property owners. The settling parties have balanced a variety of issues of importance to them, and have agreed to the settlements as a reasonable means to resolve the issues. The settling parties fairly reflect the affected interests, these parties actively participated in the settlement process, and the settlements fairly and reasonably resolve the issues in dispute. Thus, the settlements are reasonable in light of the whole record.

There are no terms in the settlement agreements that would bind the Commission in the future or violate existing law. Therefore, we find the settlements are consistent with the law.

The settling parties addressed and resolved the issues identified in the application, responses and protest. The settlement terms ensure that the

property owners have safe access to their properties, and that the parties and the public are protected from unsafe rail crossings. We may therefore conclude that the settlements, with their provisions for continued access and improved crossing safety, are in the public interest.

There is a public policy favoring the settlement of disputes to avoid costly and protracted litigation.[7] The settlements satisfy this public policy preference for the following reasons:

1. The settling parties represent the interests of SMART and affected property owners to have safe access to their properties adjacent to the railroad tracks and to avoid future collisions between vehicles and trains;
2. The settlements serve the public interest by resolving competing concerns in a collaborative and cooperative manner that protects the public from an unsafe rail crossing. By reaching settlement, the parties avoid the costs of further litigation in this proceeding, and eliminate the possible litigation costs for rehearing and appeal; and
3. Approval of the settlements provides full resolution of the issues. The settlements meet the applicable settlement standards of Rule 12.1(d) and should be accorded the same deference the Commission accords settlements generally. The Commission should adopt the proposed settlements.

While the settlement agreements are binding on the parties to them and to this proceeding, pursuant to Rule 12.5, the settlements do not bind or otherwise impose a precedent in this or any future proceeding. Parties must not presume in any subsequent action that the Commission would deem the outcome adopted herein to be presumed reasonable, and parties must, therefore, fully justify every

[7] Decision 88-12-083, 30 CPUC2d 189, 221.

request and proposal without reference to, or reliance upon, the adoption of the settlements.

7. Categorization and Need for Hearing

Pursuant to Resolution ALJ 176-3324, adopted October 17, 2013, it was preliminarily determined that this proceeding would be categorized as ratesetting and that hearings would not be necessary. It is not necessary to disturb those preliminary determinations.

8. Comments on Proposed Decision

The proposed decision of ALJBurcham in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

9. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner, and Dan H. Burcham is the assigned ALJ in this proceeding.

Findings of Fact

1. On September 3, 2013, SMART filed this Application for approval to close two existing rail crossings and relocate and improve the Landing Way Crossing.
2. On October 24, 2013 and November 5, 2015, Team Gold, Henris and Corto Meno filed responses and/or protests to the Application.
3. The Dutra Group, a non-utility signatory to the settlement agreements, is not a party to this proceeding and has not voluntarily submitted to the jurisdiction of the Commission. The terms and conditions of this agreement, referenced by parties as Exhibit D to the motion for adoption of settlement, are not enforceable by the Commission as to The Dutra Group.

3. On August 9, 2016, the parties filed a Joint Motion for Adoption of Settlement.

4. The record for the proposed settlements consists of the Application, protest and responses of the parties, the settlement agreements and all other filings.

5. The parties to the settlement agreements adopted by this decision have a sound and thorough understanding of the issues and all of the underlying information, and could therefore make informed decisions in the settlement process.

6. The proposed settlements are a balance between the original and final positions of the parties that would otherwise be litigated in the proceeding.

7. The closure of two existing at-grade crossings located at approximately MP: 36.37 and MP: 36.87 is appropriate and has been completed.

8. The relocation and improvement of the Landing Way Crossing at MP: 36.78, as proposed in the Application and settlement agreements, is necessary to improve rail safety and provide safe access to and from private properties along the SMART rail corridor.

9. The safety measures to be installed by SMART at the Landing Way Crossing are adequate to ensure the safety of private property owners, SMART rail passengers and employees and the public.

Conclusions of Law

1. Rule 12.1(d) provides that the Commission will not approve settlements, whether contested or uncontested, unless the settlements are reasonable in light of the whole record, consistent with the law, and in the public interest.

2. The proposed settlements are reasonable in light of the whole record because they fairly balance the interests of the parties.

3. The proposed settlements are consistent with the law because they do not contravene or compromise any statutory provisions or Commission decision.

4. The proposed settlements are in the public interest because they ensure safe access to the settling parties' properties, and protect the public from an unsafe rail crossing.

5. Adoption of the settlements is binding on all parties to the proceeding. However, pursuant to Rule 12.5, the settlements should not bind or otherwise impose precedents in this or any future proceeding. Parties should not presume in any subsequent action that the Commission would deem the outcome adopted herein to be presumed reasonable and it should, therefore, fully justify every request without reference to, or reliance on, the adoption of the settlements.

6. The crossing closures and improvements identified in the Application and settlement agreements are necessary and appropriate under Pub. Util. Code § 7537 and General Order 75-B and should be approved.

O R D E R

IT IS ORDERED that:

1. The unopposed joint motion of the Sonoma-Marin Area Rail Transit District, Team Gold, LLC, Henris Investments, LP and Corto Meno Sand & Gravel, LLC to adopt settlement agreements pertaining to the cost allocation of the closures and improvements of crossings at Mile Post (MP):36:37, MP: 36:87 and MP: 36:78 is granted.

2. The April 22, 2016 settlement agreement between the Sonoma-Marin Area Rail Transit District and Team Gold, LLC, attached to this decision as Exhibit A, is adopted.

3. The April 22, 2016 settlement agreement between the Sonoma-Marin Area Rail Transit District and Henris Investments, LP, attached to this decision as Exhibit B, is adopted.

4. The April 22, 2016 settlement agreement between the Sonoma-Marin Area Rail Transit District and Corto Meno Sand & Gravel, LLC, attached to this decision as Exhibit C, is adopted.

5. The closure of private at-grade crossings located at Mile Post (MP):36.37 and MP: 36.87 is approved.

6. The relocation and improvement of the Landing Way Crossing located at Mile Post: 36.78, as specified in Application 13-09-020 is approved.

8. Application 13-09-020 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A

SMARTS STANDARD LICENSE AGREEMENT FOR PRIVATE CROSSING
SMART NO. PvtX-0008

This Agreement ("Agreement") is made this 22nd day of April, 2016 (the Effective Date") by and between the Sonoma-Marin Area Rail Transit District ("SMART"), and Team Gold, LLC, a California Limited Liability Company ("OWNER ").

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to the following:

1. SMART hereby issues to OWNER a non-exclusive license to use, upon the terms and conditions set forth below, in strict accordance with the location and improvements approved by SMART, which are attached hereto as Exhibit A and made a part hereof, an at grade crossing across the right of way and rail corridor of SMART at or near Milepost 36.78 ("Premises") solely for the purposes specified in Section 3. Owner expressly acknowledges and agrees that the at-grade crossings located at Milepost 36.87 and Milepost 35.81 will be permanently closed and consolidated into a single at-grade crossing located at Milepost 36.78, and Owner expressly waives any claims, right, title or interest of any kind or nature it may have now or in the future to utilize any at-grade crossing located at Milepost 36.87 or Milepost 35.81. For convenience, said Crossing, including the crossing surface and all appurtenances thereto between the ends of railroad ties, cattle guards, farm gates or barriers, drainage facilities, traffic signs or devices, identification signs approved by SMART, whistling posts, or other appurtenances, if any, are hereinafter collectively referred to as the "Crossing." The term of this Agreement shall be for a period of twenty (20) years from the Effective Date so long as OWNER remains in compliance with the terms and conditions of the Agreement, subject to the termination provisions set out in Sections 21, 22 and 23, below. OWNER shall have the option to renew the Agreement beyond the initial period of Twenty (20) Years for two additional periods of five (5) years each. OWNER shall exercise each option by providing written notice of OWNER's exercise of the option to SMART at least six months prior to the expiration of the term then in effect. After the expiration of the 20 year term, and any applicable options, this Agreement shall automatically renew thereafter on a year-to-year basis based on the same terms and conditions as set forth herein.

2. OWNER shall not disturb any improvements of SMART or SMART's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use of such improvements.

3. It is expressly stipulated that the Crossing is to be a strictly private one, to be solely used for the purpose set forth in Exhibit B. The Crossing is not intended for and shall not be for public use. The OWNER, without expense to SMART, will take any and all necessary action to preserve the private character of the Crossing and prevent its use as a public road.

4. If in the future, OWNER desires to change the size of or nature of the Crossing to accommodate development of OWNER's property on the east side of the Premises, OWNER may request such Crossing Change from SMART. SMART agrees to accommodate such change at OWNER's sole cost and expense, provided it can legally do so and OWNER obtains all

necessary governmental and regulatory approvals and permits, including but not limited to environmental investigation and remediation, permitting, legal services, construction, SMART administrative costs, and ongoing crossing inspection, maintenance and repair costs for the upgraded crossing, and any other costs which may arise out of the Crossing Change. All Crossing Change work on the Premises shall be performed by SMART and invoices for all such work will be submitted to OWNER for payment within thirty (30) days of submission.

5. There will be an initial capital expense with regard to the installation of the Crossing (the Crossing Cost), annual inspection, maintenance and minor repair expenses for the Crossing (Maintenance Costs) as well as major repair expenses (repairs exceeding $5,000.00) and replacement costs over time of the components of the Crossing (Replacement Costs), sometimes collectively referred to as the License Fees. For purposes of calculating payment of the Crossing Cost, Maintenance Costs and Replacements Costs, SMART shall be responsible for 25% of the actual Crossing Cost, Maintenance Costs and Replacement Costs incurred. Subject to the conditions set forth in Exhibit D relating to The Dutra Group and SMART's approval of a license agreement for an overhead conveyor crossing the tracks, the remaining 75% of the actual Crossing Cost, Maintenance Costs and Replacement Costs shall be equally allocated amongst the four existing commercial property Owners (Existing Commercial Owners) identified on the map attached hereto as Exhibit C, such that each Existing Commercial Owner shall pay 18.75% of that expense. Other property Owners that will utilize the Crossing are shown as "Other Owners" on Exhibit C. SMART shall be solely responsible to make sure that all "Other Owners" contribute to Crossing Cost, Maintenance Costs and Replacement Costs as SMART deems appropriate. If in the future other non listed new owners utilize the Crossing, or if any Other Owner materially changes its use of the Crossing, the License Fees shall be adjusted and/or reallocated to fairly distribute the expense amongst all parties. If the parties cannot otherwise agree to such adjustment and/or reallocation, it shall be subject to determination by the CPUC.

(a) (1) OWNER shall pay SMART, annually in arrears, 18.75% the actual Maintenance Costs of the Crossing. Costs may include, but are not limited to the actual costs of inspection, maintenance and repair of the private crossing which total expense for all Owners SMART estimates will be in the range of $6,500.00 per year, although actual costs may vary. Maintenance Costs shall not include required costs for rail inspection that SMART would still incur if no Crossing was installed.

(2) SMART shall notify OWNER in advance of planned maintenance or repairs expected to cost $5,000.00 or more.

(3) SMART shall bill OWNER the Maintenance Costs incurred during SMART's prior fiscal year (July 1- June 30), no later than September 1 following the end of the prior fiscal year. If the initial, or any other term of this Agreement shall be less than an entire fiscal year, OWNER will be billed only for the applicable pro-rata portion of the Maintenance Costs for that year. SMART shall provide a detailed accounting of all Maintenance Costs incurred which shall be provided to OWNER annually with the invoice for the preceding year.

(b) Replacement Costs shall be calculated based on the actual Crossing Cost amortized over 25 years, not to exceed $750,000 (for the initial installation of the Crossing).

Once the Crossing is installed, and the actual Crossing Cost is determined, the parties shall execute an amendment to this Agreement setting forth the actual Crossing Cost. SMART shall maintain a separate bank account for this Crossing into which Replacement Costs shall be deposited and separately maintained (the Replacement Account). SMART shall not use any money from the Replacement Account for any purpose other than for capital replacements and major repairs to the Crossing on an as needed basis. OWNER shall pay to SMART, annually in arrears, 18.75% of 1/25th of the actual Crossing Cost, adjusted annually for inflation using the Construction Cost Index. By way of example, should the Crossing Costs be $700,000, OWNER'S share of Replacement Costs would be $5250 per year. SMART shall provide an annual statement to OWNER specifying all deposits made into the Replacement Account and all expenditures made for Replacement Costs. Should any replacement cost be the result of damage or destruction of any equipment as a result of improper use of the Crossing by Owner, Owner shall pay for that item of repair in addition to its percentage share of Replacement Costs.

(c) The Existing Commercial Owners shall pay 75% of the actual cost for construction of the Crossing which total costs in the aggregate shall not exceed $750,000. Any costs above $750,000 will be paid for solely and exclusively by SMART. SMART will invoice Owner for its percentage payment and will provide a detailed accounting of the actual costs incurred for the construction of the Crossing along with each invoice. SMART will provide an initial invoice within thirty (30) days of execution of this Agreement by all Parties. Owner will pay 50% of 18.75% of the Crossing Costs within thirty (30) days of receiving the initial invoice from SMART. Notwithstanding Paragraph 5(d) of this Agreement below, Owner will pay 50% of 18.75% of the Crossing Costs within twelve (12) months of receiving written notice from SMART that the construction of the Crossing is complete. The Existing Commercial Owners are jointly and severally liable for the Crossing Costs. (See Exhibit D)

(d) OWNER shall pay SMART for all billed costs within thirty (30) days of receipt of billing for said costs.

(e) Should SMART, or any successor in interest, cease running passenger rail in this corridor continuously for more than 12 months, or should the Crossing cease to be used, all funds remaining in the Replacement Account shall be returned to Owner pro rata with any other contributing party. Owner shall have reasonable rights to conduct an audit of Maintenance Costs and/or Replacement Costs no more often than once a year. Should such audit reveal that Owner has been overcharged or undercharged for any such cost, the discrepancy shall be adjusted by a correcting payment to or from Owner within 30 days of completion of the audit.

6. OWNER is responsible for notifying SMART in writing of any need by OWNER for upgrading the vehicular traffic control devices or signs at or near the Crossing, since the OWNER is most knowledgeable concerning the OWNER'S volume and nature of the vehicular traffic. In addition, OWNER shall notify SMART of any significant change in OWNER's volume or nature of traffic at the crossing.

7. OWNER shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, or restrictions ("Legal Requirements") relating to the use of the Crossing and the use of the Premises. Should any discharge, leakage, spillage, emission or

pollution of any type occur upon or arise as a result of OWNER's use, presence, operations, or exercise of the rights granted under this Agreement, OWNER shall at its sole expense clean all property affected thereby, or pay SMART for such cleaning, whether owned or controlled by SMART or any third persons to the satisfaction of SMART and any governmental body having jurisdiction in the matter.

8. SMART reserves the right, to be exercised by SMART and any other parties who may obtain written permission or authority from SMART:

(a) To maintain, renew, use, operate, change, modify, and relocate, at its own expense any existing pipe, power, communication lines and appurtenances and other facilities or structures of like character upon, over, under or across the Premises;

(b) To construct, maintain, renew, use, operate, change, modify, and relocate, at its own expense any tracks or additional facilities or structures upon, over, under, or across the Premises; or

(c) To use the Premises in any manner as SMART in its sole discretion deems appropriate, provided that SMART uses all commercially reasonable efforts to avoid material interference with the use of the Premises by OWNER for the purpose specified in Section 3 above.

Notwithstanding anything herein to the contrary, SMART shall, at its own cost and expense, keep the Crossing in good order, repair and condition at all times on and after the Effective Date during the term hereof and any extensions, in material compliance with all Legal Requirements and in such a condition to maintain the safety and suitability of the Crossings with the California Public Utility Commission ("CPUC"). SMART shall take such commercially reasonable steps necessary to preserve and protect the useful life, utility and value of the Crossing.

9. It is specifically understood that cables, pipelines, and other electric and/or fiber optic transmission lines may be on, about, along, or under the Premises and OWNER agrees that under no circumstances will OWNER dig in or disturb the surface of the Premises without the express written consent of SMART.

10. If desired by OWNER, OWNER may request that SMART install two chases sufficient to allow OWNER to bring water, sewage, and power under the railroad tracks. SMART agrees to accommodate such request for two chases at OWNER's sole cost and expense, provided SMART can legally do so and OWNER obtains all necessary governmental and regulatory approvals and permits (including a separate license from SMART for the chases), including, but not limited to, environmental investigation and remediation, permitting, legal services, construction, SMART administrative costs, and ongoing inspection, maintenance and repair costs for the chases, and any other costs which may arise out of the installation of two chases. All work on the Premises to install two chases shall be performed by SMART and invoices for all such work will be submitted to OWNER for payment within thirty (30) days of submission.

11. OWNER, if it so desires, is responsible for constructing and maintaining, at its sole cost and own expense, a roadway to the Crossing and/or Premises, and related roadway drainage, in a manner acceptable to SMART and safe for use by any vehicles or equipment. Nothing contained in this Agreement requires OWNER to construct a roadway to the Crossing and/or Premises. If SMART requires a road for its own use of the Crossing and/or Premises, then SMART will bear this related cost at its sole expense

12. OWNER agrees not to interfere with any Crossing gates, farm gates, or barriers.

13. OWNER shall not obstruct or interfere with the passage of any trains or rail vehicles. OWNER shall, at its sole cost and expense, perform all activities on and about, and/or use the Crossing in such a manner as not at any time to be a source of danger to or interference with the use of present or future tracks, roadbed or property of SMART, or the safe operation and activities of SMART. Operators of vehicles shall comply with all posted signs. If ordered to cease using the Crossing at any time by SMART's personnel or other public authorities due to any hazardous condition, OWNER shall immediately do so and SMART shall remediate any such hazardous condition as quickly as possible. Notwithstanding the foregoing right of SMART, the parties agree that SMART has no duty or obligation to monitor OWNER's use of the Crossing to determine the safe nature thereof, it being solely OWNER's responsibility to ensure that OWNER's use of the Crossing is in a safe manner. Neither the exercise nor the failure by SMART to exercise any rights granted in this Section will alter the liability allocation provided by this Agreement.

14. OWNER, at its own expense, shall keep the rail flange ways of said Crossing clear of all obstructions of any kind which may accumulate by virtue of vehicles, equipment, or from machinery crossing there over or otherwise, and shall remove and keep removed any vegetation along the rail corridor on each side of the crossing so that the motorists' line of sight to approaching trains is not impaired or obstructed by vegetation. However, nothing contained herein shall require OWNER to take any actions within any area which has been designated wetlands by the Army Corps of Engineers.

15. If at any time during the term of this Agreement, SMART shall desire the use of its rail corridor in such a manner as would, in SMART's reasonable opinion, be interfered with by the Crossing, SMART shall make such changes in the Crossing as in the sole discretion of SMART (but in compliance with all applicable PUC regulations, including Section 7537 California Public Utilities Code) may be necessary to avoid interference with the proposed use of SMART's rail corridor, including, without limitation, the relocation of the existing Crossing or the construction of a new Crossing at SMART's sole cost and expense.

16. Upon termination of this Agreement, and in compliance with section 7537 of the California Public Utilities Code, SMART may remove the Crossing and restore the rail corridor to the condition as of the Effective Date of this Agreement, without incurring any liability to the OWNER.

17. OWNER agrees to and shall indemnify and hold harmless SMART, its officers, agents and employees, from and against any and all claims, demands, losses, damages, causes of action, suits and liabilities of every kind (including reasonable attorneys' fees, court costs, and other expenses related thereto) for injury to or death of a person or for loss or damage to any property, arising out of or in connection with OWNER's performance of its obligations under this Agreement or out of the operations of or work done by OWNER, action taken by OWNER, or action permitted by OWNER, its subcontractors, invitees, agents or employees. Said indemnity shall not protect SMART from liability to the extent such loss or damage was caused by SMART's negligence or willful misconduct.

"SMART", as used in this section, shall include SMART and any successors and assigns of SMART, and/or any other railroad company that may be lawfully operating upon and over the tracks, crossing or adjacent to said roadway, and the officers and employees thereof.

OWNER shall provide a defense to SMART, or at SMART's option, reimburse SMART for its costs of defense, including reasonable attorneys' fees, incurred in defense of such claims. OWNER acknowledges and agrees that its obligation to defend SMART is: (i) an immediate obligation, independent of its other obligations hereunder; (ii) applies to any loss which actually or potentially falls within the scope of this agreement; and (iii) arises at the time any claim or loss is tendered and continues at all times thereafter. This obligation to defend arises notwithstanding any alleged negligence or misconduct of SMART, except for such loss or damage arising from the negligence or willful misconduct of SMART.

SMART shall give OWNER prompt notice of any claim or loss, and the Parties shall cooperate in the defense of any such claims. OWNER shall seek SMART's prior written consent to settle or compromise any claim or loss if OWNER contends that SMART shares in liability with respect thereto.

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

19. OWNER shall, at its sole cost and expense, procure and maintain during the life of this License liability insurance covering claims of bodily injury, personal injury and property damage arising out of use of the License issued herein covering the insuring provisions of this License and the requirement of OWNER to indemnify SMART for limits of liability not less than:

(a) Commercial General Liability. OWNER shall procure and maintain Commercial General Liability insurance covering property damage, bodily injury and personal injury using an occurrence policy form, in an amount no less than $5,000,000 per occurrence, and $10,000,000 annual aggregate.

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 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 such exclusions.

A follow form Excess Liability policy may be utilized to satisfy the required limits of liability under this section.

(b) Automobile Liability. OWNER shall procure and maintain Automobile Liability insurance covering bodily injury and property damage in an amount no less than $2,500,000 combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles

(c) The minimum limits of policies of insurance required of OWNER shall in no event limit the liability of OWNER under this agreement. OWNER's insurance shall:

(i) name SMART, its officers, and employees as an additional insured;

(ii) be issued by a company having a rating reasonably acceptable to SMART;

(iii) be primary insurance to all claims thereunder and provide that any insurance carried by SMART is excess and non-contributing;

(iv) provide that said insurance shall not be cancelled unless 30 days' prior notice is given to all insureds; and

(v) SMART shall have the right to annually conduct a review of the adequacy of the insurance requirements provided for in this Section. In the event that SMART should determine that the requirements of this Section no longer provide adequate protection to SMART, at SMART's reasonable discretion, it may require OWNER to obtain such additional insurance as SMART reasonably deems adequate. A certificate of insurance showing the terms of coverage and listing SMART as an additional insured shall be attached hereto as Exhibit E.

20. If SMART has a good faith belief that OWNER is not in compliance with the terms of this Agreement, then SMART shall give a reasonably specific written notice of the default to OWNER and demand that the default be cured within thirty (30) days of the notice. If OWNER fails to cure the default within thirty (30) days of the notice, or give adequate written assurance of due performance within thirty (30) days of the notice (in the event more than thirty (30) days are reasonably required to cure the default, then SMART will notify OWNER in writing that OWNER remains in breach (the Final Notice). OWNER shall have the right to initiate an action at the CPUC and/or the Superior Court to contest the Final Notice. SMART may then terminate this Agreement upon ten (10) days written notice to OWNER, or may, at its option, choose any other remedies that SMART may have at law or equity. OWNER reserves all remedies it may have with regard to loss of any access to its property.

21. SMART shall have the right to terminate this agreement if notified by the CPUC that the crossing is unsafe or no longer suitable for its intended use. Upon receipt of such notice, SMART shall immediately notify OWNER, and proceed to close the Crossing in the manner

required by the CPUC. Termination of this Agreement hereunder need not comply with any other terms and conditions of this Agreement. SMART shall promptly notify OWNER of any notifications, informal or formal, from the CPUC or other authority, of conditions or circumstances which may lead to a notification of immediate closure, as described above. If such notification from the CPUC is based on the failure of SMART to properly maintain and/or inspect the Crossing, SMART shall immediately proceed to comply with any and all orders of the CPUC. All Parties reserve any and all rights they may have in the event the Crossing is closed due to an order by the CPUC.

22. If OWNER fails to surrender to SMART the Premises, upon any termination of this Agreement, all liabilities and obligations of OWNER hereunder shall continue in effect until the Premises are surrendered. Termination shall not release OWNER from any liability or obligation, whether of indemnity or otherwise, resulting from any events happening prior to the date of termination.

23. Neither OWNER, nor the heirs, legal representatives, successors or assigns of OWNER, nor any subsequent assignee, shall assign or transfer this Agreement or any interest herein, without the prior written consent and approval of SMART, which approval may not be unreasonably withheld, conditioned or delayed. Any Assignee must agree to abide by and be bound by the terms of this Agreement, including but not limited to, the allowed uses, providing indemnification and providing the insurance required by this Agreement. Notwithstanding the above, should Owner sell its property to another commercial property owner who intends to utilize the property for similar commercial purposes consistent with those of the Owner, or should Owner transfer or assign its rights under this Agreement in connection with a merger, reorganization, consolidation or sale of all or substantially all of its assets to a parent, subsidiary or affiliated company or to a subsidiary of a parent company, or should owner assign its rights for estate planning purposes, such assignment is deemed preapproved by SMART subject to any new owner executing an assignment of this Agreement and providing SMART a certificate of insurance as provided for herein.

24. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (1) placed in the United States mail, certified, return receipt requested, or (2) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified above or below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days advance written notice of such change in address.

If to SMART:

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
5401 Old Redwood Highway, Ste. 200
Petaluma, CA 94954
Attention: Laura Giraud, Real Property Manager

If to OWNER:

Glen Ghilotti
Team Gold, LLC
1656 Middle Rock Road
Petaluma, CA 94952-3608

25. All questions concerning the interpretation or application of provisions of this Agreement shall be decided according to the laws of the State of California.

26. To the maximum extent possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by, or held to be invalid under applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder or any other provision of this Agreement.

27. The Parties hereby acknowledge and agree that (a) each party has actively participated in the drafting and negotiation of this Agreement, (b) each such party has consulted or has had the opportunity to consult with their own independent counsel relative to matters contemplated under this Agreement, (c) each party and party's counsel have reviewed the Agreement, and (d) any rule of construction to the effect that ambiguities are to be resolved against the drafting party(ies) shall not apply in the interpretation of this Agreement, or any portions hereof or any amendments hereto.

28. This Agreement is the full and complete agreement between SMART and OWNER with respect to all matters relating to OWNER's use of the Crossing, and supersedes any and all other agreements between the parties hereto relating to OWNER's use of the Crossing as described herein. However, nothing herein is intended to terminate any surviving obligation of OWNER or OWNER's obligation to defend and hold SMART harmless in any prior written agreement between the parties.

29. No person who is not a party to this Agreement shall have any rights or obligations as a result of this Covenant. This Agreement is between the parties hereto and no other person or entity is an express, intended, or implied third party beneficiary hereof.

30. The exhibits and attachments hereto are hereby incorporated herein by reference thereto.

Exhibit A – Location of Crossing and Improvements
Exhibit B – Permitted Uses of Crossing
Exhibit C – Map of Owners
Exhibit D– Allocation agreement
Exhibit E – Insurance Certificate

[Signature Page Follows]

SMART:

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

By: _____
Farhad Mansourian,
General Manager

APPROVED AS TO FORM:

By: _____
Adam L. Brand,
District Counsel

OWNER:

By: _____
Glen Ghilotti,
President

APPROVED AS TO FORM:

By: _____
Thomas A. Cregger,
Counsel for OWNER

Exhibit A

LOCAITON OF CROSSING AND IMPROVEMENTS

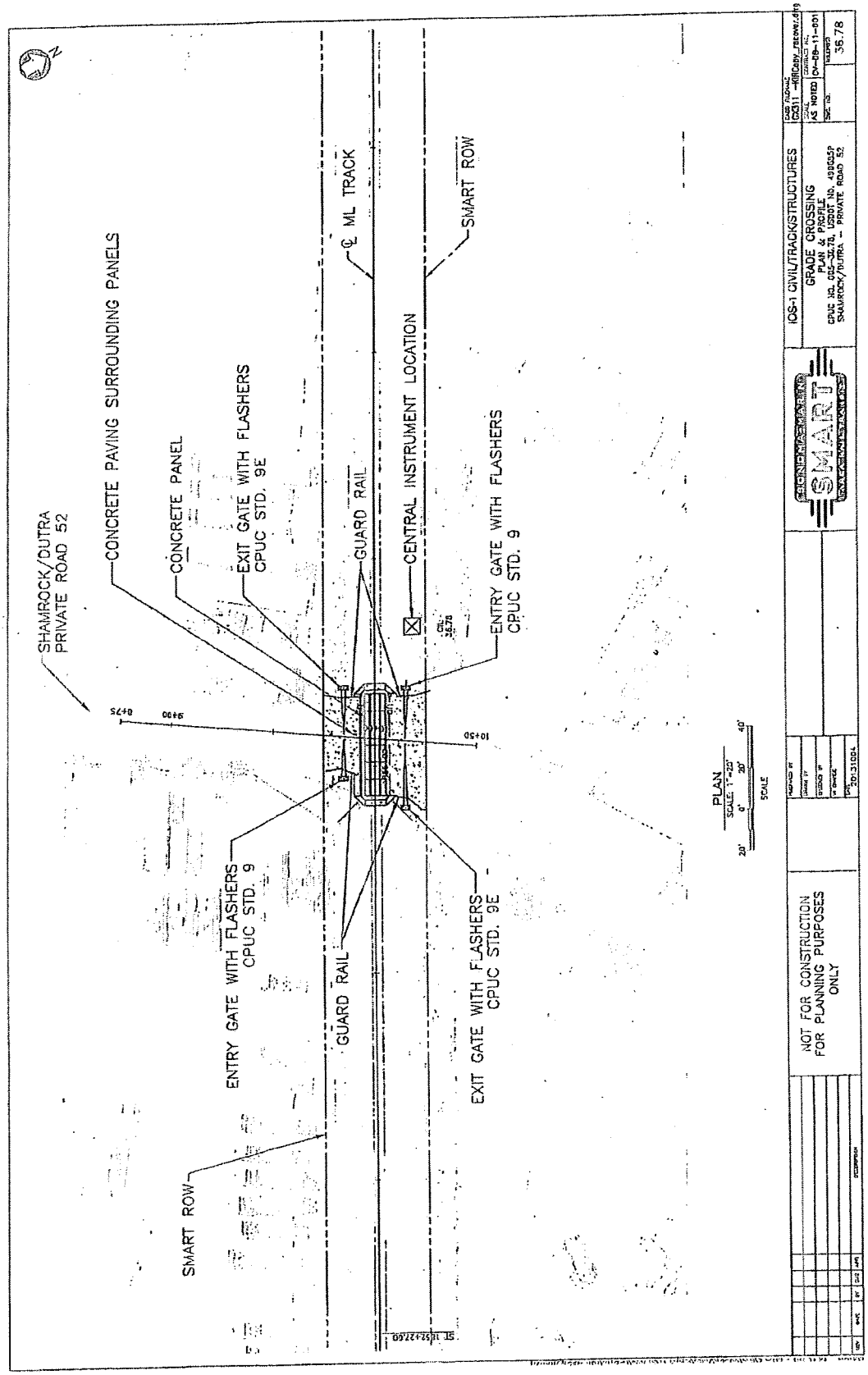
SHAMROCK/DUTRA PRIVATE ROAD 52
CONCRETE PAVING SURROUNDING PANELS
CONCRETE PANEL
EXIT GATE WITH FLASHERS CPUC STD. 9E
GUARD RAIL
℄ ML TRACK
CENTRAL INSTRUMENT LOCATION
SMART ROW
ENTRY GATE WITH FLASHERS CPUC STD. 9
ENTRY GATE WITH FLASHERS CPUC STD. 9
GUARD RAIL
EXIT GATE WITH FLASHERS CPUC STD. 9E
SMART ROW
PLAN
SCALE: 1"=20'
SCALE
NOT FOR CONSTRUCTION FOR PLANNING PURPOSES ONLY
IOS-1 CIVIL/TRACK/STRUCTURES
GRADE CROSSING
PLAN & PROFILE
CPUC NO. 005-32.78, USDOT NO. 490635P
SHAMROCK/DUTRA - PRIVATE ROAD 52
36.78

EXHIBIT B

PERMITTED USES OF CROSSING

Exhibit B

COMMERICAL:

Subject to the terms and conditions of this Agreement, OWNER shall be permitted to use the at-grade private roadway crossing of SMART railroad tracks and railroad property at Railroad Milepost 36.78, in order to access OWNER's property on the east side of the railroad. Said access shall be for the private use of the OWNER, and his tenants, employees, agents and invitees. Said access shall be limited to the passage of persons, vehicles and equipment, including automobiles, light trucks, heavy trucks and heavy equipment, to and from the property of the OWNER. All vehicles and equipment shall comply with and observe all posted signs, warning devices and gates, and in any event shall stop before entering the crossing area and ascertain that it is safe to proceed across the tracks before crossing.

EXHIBIT C

MAP OF OWNERS

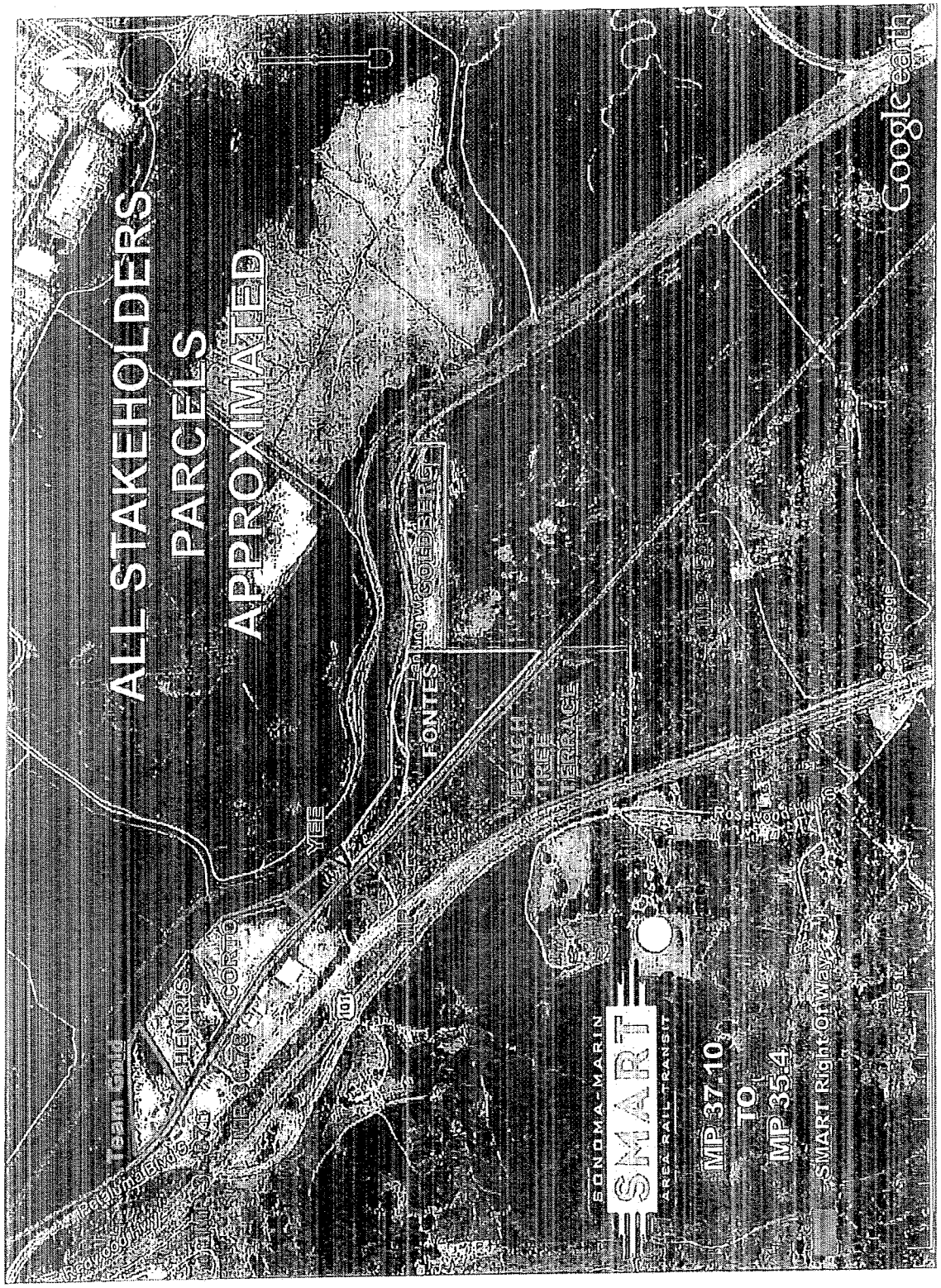
ALL STAKEHOLDERS
PARCELS
APPROXIMATED
HENRIS
CORTE
YEE
FONTES
BEACH
TREE
TERRACE
SONOMA-MARIN
SMART
AREA RAIL TRANSIT
MP 37.10
TO
MP 35.4
SMART Right-of-Way
Google earth

EXHIBIT D

ALLOCATION AGREEMENT

For purposes of calculating payment of the Crossing Cost, Maintenance Costs and Replacements Costs, SMART shall be responsible for 25% of the actual Crossing Cost, Maintenance Costs and Replacement Costs incurred. Subject to the provisions relating to The Dutra Group and SMART's approval of a license agreement for an overhead conveyor crossing the tracks below, the remaining 75% of the actual Crossing Cost, Maintenance Costs and Replacement Costs shall be equally allocated amongst the four existing commercial property Owners (Existing Commercial Owners) identified on the map attached hereto as Exhibit C such that each Existing Commercial Owner shall pay 18.75% of that expense. The Existing Commercial Owners are:

Team Gold, LLC
Henris Investments, LLP
Corto Meno Sand & Gravel, LLC
Peachtree Terrace and The Dutra Group

The Peachtree Terrace parcel is being developed by The Dutra Group for an asphalt batch plant and as part of the operation needs to construct an overhead conveyor across the tracks to connect to other property An Application for Encroachment of Air Space for construction of the conveyor has been submitted to SMART. The Dutra Group, on behalf of Peachtree Terrace, will participate financially in the Crossing Cost, as provided for in this Agreement, even though it has not yet obtained final approval of its Use Permit, if, and only if (1) SMART approves Dutra's application for the conveyor which SMART shall use it best efforts to complete within 30 days and (2) SMART supports The Dutra Group's separate application for the conveyor to the PUC, including the General Manager's stating to the PUC that SMART supports the application for the conveyor. If SMART complies with the foregoing, then Peachtree Terrace will execute the SMARTS STANDARD AGREEMENT FOR PRIVATE CROSSING
SMART NO. PvtX-0011.

Subject to the conditions relating to The Dutra Group, above, the Existing Commercial Owners shall pay 75% of the actual cost for construction of the Crossing which total costs in the aggregate shall not exceed $750,000. Any costs above $750,000 will be paid for solely and exclusively by SMART. SMART will invoice Owner for its percentage payment and will provide a detailed accounting of the actual costs incurred for the construction of the Crossing along with each invoice. SMART will provide an initial invoice within thirty (30) days of execution of this Agreement by all Parties. Owner will pay 50% of 18.75% of the Crossing Costs within thirty (30) days of receiving the initial invoice from SMART. Owner will pay 50% of 18.75% of the Crossing Costs within twelve (12) months of receiving written notice from SMART that the construction of the Crossing is complete. The Existing Commercial Owners are jointly and severally liable for the Crossing Costs. If any Existing Commercial Owner does not pay its proportionate share in a timely basis, SMART shall provide written notice to that owner demanding that payment be made within 10 days with a copy of said notice to the other Existing

to the other Existing Commercial Owners. To the extent any one of the four Existing Commercial Owners fails or refuses to pay its proportionate share of the Crossing Costs, that owner shall cease any use of the Crossing and the amount which would have otherwise been invoiced to that Owner shall be equally divided amongst the other Existing Commercial Owners. Any Existing Commercial Owner who advances funds on behalf of any other Existing Commercial Owner shall be entitled to seek full recovery of any such advances with interest at 10% plus all attorney fees incurred in any collection activities to secure such recovery.

DATED: January 5, 2016

TEAM GOLD, LLC

By: _____
Glen Ghilotti,
President

DATED: _____

HENRIS INVESTMENTS, LLP

By: _____
Steve Henris

DATED: _____

CORTO MENO SAND & GRAVEL, LLC

By: _____
Eugene B. Ceccotti,
Managing Partner

DATED: _____

PEACHTREE TERRACE AND THE DUTRA GROUP

By: _____
Bill T. Dutra,
Chief Executive Officer

DATED: _____

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

By: _____
Farhad Mansourian,
General Manager

Commercial Owners. To the extent any one of the four Existing Commercial Owners fails or refuses to pay its proportionate share of the Crossing Costs, that owner shall cease any use of the Crossing and the amount which would have otherwise been invoiced to that Owner shall be equally divided amongst the other Existing Commercial Owners. Any Existing Commercial Owner who advances funds on behalf of any other Existing Commercial Owner shall be entitled to seek full recovery of any such advances with interest at 10% plus all attorney fees incurred in any collection activities to secure such recovery.

DATED: _____ TEAM GOLD, LLC

By: _____
Glen Ghilotti,
President

DATED: _____ HENRIS INVESTMENTS, LLP

By: _____
Steve Henris

DATED: _____ CORTO MENO SAND & GRAVEL, LLC

By: _____
Eugene B. Ceccotti,
Managing Partner

DATED: _____ PEACHTREE TERRACE AND THE DUTRA GROUP

By: _____
Bill T. Dutra,
Chief Executive Officer

DATED: _____ SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

By: _____
Farhad Mansourian,
General Manager

to the other Existing Commercial Owners. To the extent any one of the four Existing Commercial Owners fails or refuses to pay its proportionate share of the Crossing Costs, that owner shall cease any use of the Crossing and the amount which would have otherwise been invoiced to that Owner shall be equally divided amongst the other Existing Commercial Owners. Any Existing Commercial Owner who advances funds on behalf of any other Existing Commercial Owner shall be entitled to seek full recovery of any such advances with interest at 10% plus all attorney fees incurred in any collection activities to secure such recovery.

DATED: _____

TEAM GOLD, LLC

By: _____
Glen Ghilotti,
President

DATED: _____

HENRIS INVESTMENTS, LLP

By: _____
Steve Henris

DATED: 02/02/2016

CORTO MENO SAND & GRAVEL, LLC

By: _____
Eugene B. Ceccotti,
Managing Partner

DATED: _____

PEACHTREE TERRACE AND THE DUTRA GROUP

By: _____
Bill T. Dutra,
Chief Executive Officer

DATED: _____

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

By: _____
Farhad Mansourian,
General Manager

to the other Existing Commercial Owners. To the extent any one of the four Existing Commercial Owners fails or refuses to pay its proportionate share of the Crossing Costs, that owner shall cease any use of the Crossing and the amount which would have otherwise been invoiced to that Owner shall be equally divided amongst the other Existing Commercial Owners. Any Existing Commercial Owner who advances funds on behalf of any other Existing Commercial Owner shall be entitled to seek full recovery of any such advances with interest at 10% plus all attorney fees incurred in any collection activities to secure such recovery.

DATED: _____ TEAM GOLD, LLC

By: _____
Glen Ghilotti,
President

DATED: _____ HENRIS INVESTMENTS, LP

By: Steve Henris
Steve Henris,
General Partner

DATED: _____ CORTO MENO SAND & GRAVEL, LLC

By: _____
Eugene B. Ceccotti,
Managing Partner

DATED: _____ PEACHTREE TERRACE AND THE DUTRA GROUP

By: _____
Bill T. Dutra,
Chief Executive Officer

DATED: _____ SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

By: _____
Farhad Mansourian,
General Manager

EXHIBIT E

INSURANCE CERTIFICATES

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 4/4/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
ABD Insurance & Financial Services
Attn: Construction Department
3 Waters Park Drive, Building 3, Suite 100
San Mateo, CA 94403

www.theabdteam.com

CONTACT NAME: Construction Certs
PHONE (A/C, No, Ext): 650-488-8565 FAX (A/C, No): 650-488-8566
E-MAIL ADDRESS: ConstructionCertRequest@theabdteam.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Starr Indemnity & Liability Company	38318
INSURER B :	
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Team Ghilotti, Inc.
2531 Petaluma Blvd., South
Petaluma CA 94952

COVERAGES — CERTIFICATE NUMBER: 29333080 — REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	✓ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☑ OCCUR ✓ X, C, U Included GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC OTHER:	✓		1000025448151	10/1/2015	10/1/2016	EACH OCCURRENCE	$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 300,000
							MED EXP (Any one person)	$ 5,000
							PERSONAL & ADV INJURY	$ 1,000,000
							GENERAL AGGREGATE	$ 2,000,000
							PRODUCTS - COMP/OP AGG	$ 2,000,000
								$
A	AUTOMOBILE LIABILITY ✓ ANY AUTO OWNED AUTOS ONLY ✓ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ✓ NON-OWNED AUTOS ONLY	✓		SISIPCA08348915	10/1/2015	10/1/2016	COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
							BODILY INJURY (Per person)	$
							BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
								$
A	☐ UMBRELLA LIAB ✓ OCCUR ✓ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☐ RETENTION $			1000022169	10/1/2015	10/1/2016	EACH OCCURRENCE	$ 10,000,000
							AGGREGATE	$ 10,000,000
								$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N ☐ (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		1000001874	10/1/2015	10/1/2016	✓ PER STATUTE ☐ OTH-ER	
							E.L. EACH ACCIDENT	$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Private crossing agreement/contract, at/near 2531 Petaluma Blvd. So., Petaluma, CA 94952.
Sonoma-Marin Area Rail Transit , it's officers, and employees are named additional insured as respects to general liability and auto liability per the attached endorsements. Coverage is primary and non-contributory per the attached endorsements.

*30 days written notice of cancellation, except 10 days for nonpayment applies to all policies.

CERTIFICATE HOLDER

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

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Rod Sockolov

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Starr Indemnity & Liability Company

Dallas, TX 1-866-519-2522

ADDITIONAL INSURED- OWNERS, LESSEES, OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION

Policy Number: 1000025448151 **Effective Date:** 10/1/2015 at 12:01 A.M.
Named Insured: Team Ghilotti, Inc.

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

SCHEDULE

NAME OF PERSON OR ORGANIZATION: Where required by written contract

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to the endorsement.)

A. SECTION II -WHO IS AN INSURED is amended to include as an insured;

The person or organization shown in the schedule, but only with respect to liability arising out of your ongoing operations performed for that additional insured.

B. With respect to the insurance afforded to these additional insureds, SECTION I - COVERAGES, COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. -Exclusions, is amended to include the following additional exclusion;

This insurance does not apply to "bodily injury" or "property damage" occurring after:

(1) all work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or,

(2) that portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

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Dallas, TX 1-866-519-2522

All other terms and conditions remain unchanged.

Signed for STARR INDEMNITY & LIABILITY COMPANY

Charles H. Dangelo, President

Nehemiah E. Ginsburg, General Counsel

OG 180 (04/12)

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Starr Indemnity & Liability Company

Dallas, TX 1-866-519-2522

Primary and Non-Contributory Condition

Policy Number: 1000025448151 **Effective Date:** 10/1/2015 at 12:01 A.M.
Named Insured: Team Ghilotti, Inc.

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

A. SECTION IV – CONDITIONS, condition **4. Other Insurance** is amended as follows:

1. The following is added to paragraph **4.a.** of the **Other Insurance** condition:

   This insurance is primary insurance as respects our coverage to the additional insured, where the written contract or written agreement requires that this insurance be primary and non-contributory. In that event, we will not seek contribution from any other insurance policy available to the additional insured on which the additional insured is a Named Insured.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Signed for **STARR INDEMNITY & LIABILITY COMPANY**

Charles H. Dangelo, President

Nehemiah E. Ginsburg, General Counsel

OG 107 (04/11)

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Starr Indemnity & Liability Company

Dallas, TX 1-866-519-2522

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Policy Number: SISIPCA08348915 **Effective Date:** 10/1/2015 at 12:01 AM
Named Insured: Team Ghilotti, Inc.

ADDITIONAL INSURED – WHERE REQUIRED UNDER CONTRACT OR AGREEMENT

This policy is amended as follows:

BUSINESS AUTO COVERAGE FORM

SCHEDULE

ADDITIONAL INSURED

ANY PERSON OR ORGANIZATION FOR WHOM YOU ARE CONTRACTUALLY BOUND TO PROVIDE ADDITIONAL INSURED STATUS BUT ONLY TO THE EXTENT OF SUCH PERSON OR ORGANIZATIONS LIABILITY ARISING OUT OF THE USE OF A COVERED "AUTO"

I. SECTION II – LIABILITY COVERAGE A. Coverage, 1. Who is Insured, is amended to add:

d. Any person or organization, shown in the schedule above, to whom you become obligated to include as an additional insured under this policy, as a result of any contract or agreement you enter into which requires you to furnish insurance to that person or organization of the type provided by this policy, but only with respect to liability arising out of use of a covered "auto". However, the insurance provided will not exceed the lesser of:

(1) The coverage and/or limits of this policy, or

(2) The coverage and/or limits required by said contract or agreement.

SICA 1016 (02/12)

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Starr Indemnity & Liability Company

Dallas, TX 1-866-519-2522

Signed for STARR INDEMNITY & LIABILITY COMPANY

Charles H. Dangelo, President

Nehemiah E. Ginsburg, General Counsel

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Starr Indemnity & Liability Company

Dallas, TX 1-866-519-2522

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

INSURANCE PRIMARY AS TO CERTAIN ADDITIONAL INSUREDS

Policy Number: SISIPCA08348915 **Effective Date:** 10/1/2015 at 12:01 AM
Named Insured: Team Ghilotti, Inc.

This policy is amended as follows:

BUSINESS AUTO COVERAGE FORM

Section IV – Business Auto Conditions, B., General Conditions, 5., Other Insurance, c., is amended by the addition of the following sentence:

The insurance afforded under this policy to an additional insured will apply as primary insurance for such additional insured where so required under an agreement executed prior to the date of accident. We will not ask any insurer that has issued other insurance to such additional insured to contribute to the settlement of loss arising out of such accident.

All other terms and conditions remain unchanged.

Signed for STARR INDEMNITY & LIABILITY COMPANY

Charles H. Dangelo, President

Nehemiah E. Ginsburg, General Counsel

SICA 1017 (02/12)

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This certificate cancels and supersedes ALL previously issued certificates.

POLICY NUMBER: SISIPCA08348915

COMMERCIAL AUTO
CA 20 70 10 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COVERAGE FOR CERTAIN OPERATIONS IN CONNECTION WITH RAILROADS

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIERS COVERAGE FORM

With respect to coverage provided under this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured: TEAM GHILOTTI, INC.

Endorsement Effective Date: 10/1/2015

SCHEDULE

Scheduled Railroad	Designated Job Site
All railroads where required by written contract	All railroads where required by written contract
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

With respect to the use of a covered "auto" in operations for or affecting a railroad designated in the Schedule at a Designated Job Site, the two exceptions contained in the definition of "insured contract" relating to construction or demolition operations performed within 50 feet of a railroad do not apply.

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29313000 | 2015-2016 Master GL-Auto-XS-HC-PROF-POLL | Tonya Hartwell | 4/4/2016 1:33:36 PM (PDT) | Page 8 of 9
This certificate cancels and supersedes ALL previously issued certificates.

POLICY NUMBER: 1000025448151

COMMERCIAL GENERAL LIABILITY
CG 24 17 10 01

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTUAL LIABILITY – RAILROADS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Scheduled Railroad:	Designated Job Site:
All railroads where required by written contact	All railroads where required by written contact

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

With respect to operations performed for, or affecting, a Scheduled Railroad at a Designated Job Site, the definition of "insured contract" in the Definitions section is replaced by the following:

9. "Insured Contract" means:

a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";

b. A sidetrack agreement;

c. Any easement or license agreement;

d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;

e. An elevator maintenance agreement;

f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

(1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:

(a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;

(2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in Paragraph (1) above and supervisory, inspection, architectural or engineering activities.

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(End of Attachment A)

ATTACHMENT B

SMARTS STANDARD LICENSE AGREEMENT FOR PRIVATE CROSSING
SMART NO. PvtX-0009

This Agreement ("Agreement"), is made this 21st day of April 2016 (the Effective Date") by and between the Sonoma-Marin Area Rail Transit District ("SMART"), and Henris Investments, LP, a California Limited Partnership ("OWNER ").

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to the following:

1. SMART hereby issues to OWNER a non-exclusive license to use, upon the terms and conditions set forth below, in strict accordance with the location and improvements approved by SMART, which are attached hereto as Exhibit A and made a part hereof, an at grade crossing across the right of way and rail corridor of SMART at or near Milepost 36.78 ("Premises") solely for the purposes specified in Section 3. Owner expressly acknowledges and agrees that the at-grade crossings located at Milepost 36.87 and Milepost 35.81 will be permanently closed and consolidated into a single at-grade crossing located at Milepost 36.78, and Owner expressly waives any claims, right, title or interest of any kind or nature it may have now or in the future to utilize any at-grade crossing located at Milepost 36.87 or Milepost 35.81. For convenience, said Crossing, including the crossing surface and all appurtenances thereto between the ends of railroad ties, cattle guards, farm gates or barriers, drainage facilities, traffic signs or devices, identification signs approved by SMART, whistling posts, or other appurtenances, if any, are hereinafter collectively referred to as the "Crossing." The term of this Agreement shall be for a period of twenty (20) years from the Effective Date so long as OWNER remains in compliance with the terms and conditions of the Agreement, subject to the termination provisions set out in Sections 21, 22 and 23, below. OWNER shall have the option to renew the Agreement beyond the initial period of Twenty (20) Years for two additional periods of five (5) years each. OWNER shall exercise each option by providing written notice of OWNER's exercise of the option to SMART at least six months prior to the expiration of the term then in effect. After the expiration of the 20 year term, and any applicable options, this Agreement shall automatically renew thereafter on a year-to-year basis based on the same terms and conditions as set forth herein.

2. OWNER shall not disturb any improvements of SMART or SMART's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use of such improvements.

3. It is expressly stipulated that the Crossing is to be a strictly private one, to be solely used for the purpose set forth in Exhibit B. The Crossing is not intended for and shall not be for public use. The OWNER, without expense to SMART, will take any and all necessary action to preserve the private character of the Crossing and prevent its use as a public road.

4. If in the future, OWNER desires to change the size of or nature of the Crossing to accommodate development of OWNER's property on the east side of the Premises, OWNER may request such Crossing Change from SMART. SMART agrees to accommodate such change at OWNER's sole cost and expense, provided it can legally do so and OWNER obtains all

necessary governmental and regulatory approvals and permits, including but not limited to environmental investigation and remediation, permitting, legal services, construction, SMART administrative costs, and ongoing crossing inspection, maintenance and repair costs for the upgraded crossing, and any other costs which may arise out of the Crossing Change. All Crossing Change work on the Premises shall be performed by SMART and invoices for all such work will be submitted to OWNER for payment within thirty (30) days of submission.

5. There will be an initial capital expense with regard to the installation of the Crossing (the Crossing Cost), annual inspection, maintenance and minor repair expenses for the Crossing (Maintenance Costs) as well as major repair expenses (repairs exceeding $5,000.00) and replacement costs over time of the components of the Crossing (Replacement Costs), sometimes collectively referred to as the License Fees. For purposes of calculating payment of the Crossing Cost, Maintenance Costs and Replacements Costs, SMART shall be responsible for 25% of the actual Crossing Cost, Maintenance Costs and Replacement Costs incurred. Subject to the conditions set forth in Exhibit D relating to The Dutra Group and SMART's approval of a license agreement for an overhead conveyor crossing the tracks, the remaining 75% of the actual Crossing Cost, Maintenance Costs and Replacement Costs shall be equally allocated amongst the four existing commercial property Owners (Existing Commercial Owners) identified on the map attached hereto as Exhibit C, such that each Existing Commercial Owner shall pay 18.75% of that expense. Other property Owners that will utilize the Crossing are shown as "Other Owners" on Exhibit C. SMART shall be solely responsible to make sure that all "Other Owners" contribute to Crossing Cost, Maintenance Costs and Replacement Costs as SMART deems appropriate. If in the future other non listed new owners utilize the Crossing, or if any Other Owner materially changes its use of the Crossing, the License Fees shall be adjusted and/or reallocated to fairly distribute the expense amongst all parties. If the parties cannot otherwise agree to such adjustment and/or reallocation, it shall be subject to determination by the CPUC.

(a) (1) OWNER shall pay SMART, annually in arrears, 18.75% the actual Maintenance Costs of the Crossing. Costs may include, but are not limited to the actual costs of inspection, maintenance and repair of the private crossing which total expense for all Owners SMART estimates will be in the range of $6,500.00 per year, although actual costs may vary. Maintenance Costs shall not include required costs for rail inspection that SMART would still incur if no Crossing was installed.

(2) SMART shall notify OWNER in advance of planned maintenance or repairs expected to cost $5,000.00 or more.

(3) SMART shall bill OWNER the Maintenance Costs incurred during SMART's prior fiscal year (July 1- June 30), no later than September 1 following the end of the prior fiscal year. If the initial, or any other term of this Agreement shall be less than an entire fiscal year, OWNER will be billed only for the applicable pro-rata portion of the Maintenance Costs for that year. SMART shall provide a detailed accounting of all Maintenance Costs incurred which shall be provided to OWNER annually with the invoice for the preceding year.

(b) Replacement Costs shall be calculated based on the actual Crossing Cost amortized over 25 years, not to exceed $750,000 (for the initial installation of the Crossing).

Once the Crossing is installed, and the actual Crossing Cost is determined, the parties shall execute an amendment to this Agreement setting forth the actual Crossing Cost. SMART shall maintain a separate bank account for this Crossing into which Replacement Costs shall be deposited and separately maintained (the Replacement Account). SMART shall not use any money from the Replacement Account for any purpose other than for capital replacements and major repairs to the Crossing on an as needed basis. OWNER shall pay to SMART, annually in arrears, 18.75% of 1/25th of the actual Crossing Cost, adjusted annually for inflation using the Construction Cost Index. By way of example, should the Crossing Costs be $700,000, OWNER'S share of Replacement Costs would be $5250 per year. SMART shall provide an annual statement to OWNER specifying all deposits made into the Replacement Account and all expenditures made for Replacement Costs. Should any replacement cost be the result of damage or destruction of any equipment as a result of improper use of the Crossing by Owner, Owner shall pay for that item of repair in addition to its percentage share of Replacement Costs.

(c) The Existing Commercial Owners shall pay 75% of the actual cost for construction of the Crossing which total costs in the aggregate shall not exceed $750,000. Any costs above $750,000 will be paid for solely and exclusively by SMART. SMART will invoice Owner for its percentage payment and will provide a detailed accounting of the actual costs incurred for the construction of the Crossing along with each invoice.. SMART will provide an initial invoice within thirty (30) days of execution of this Agreement by all Parties. Owner will pay 50% of 18.75% of the Crossing Costs within thirty (30) days of receiving the initial invoice from SMART. Notwithstanding Paragraph 5(d) of this Agreement below, Owner will pay 50% of 18.75% of the remaining Crossing Costs within twelve (12) months of receiving written notice from SMART that the construction of the Crossing is complete. The Existing Commercial Owners are jointly and severally liable for the Crossing Costs. (See Exhibit D)

(d) OWNER shall pay SMART for all billed costs within thirty (30) days of receipt of billing for said costs.

(e) Should SMART, or any successor in interest, cease running passenger rail in this corridor continuously for more than 12 months, or should the Crossing cease to be used, all funds remaining in the Replacement Account shall be returned to Owner pro rata with any other contributing party. Owner shall have reasonable rights to conduct an audit of Maintenance Costs and/or Replacement Costs no more often than once a year. Should such audit reveal that Owner has been overcharged or undercharged for any such cost, the discrepancy shall be adjusted by a correcting payment to or from Owner within 30 days of completion of the audit.

6. OWNER is responsible for notifying SMART in writing of any need by OWNER for upgrading the vehicular traffic control devices or signs at or near the Crossing, since the OWNER is most knowledgeable concerning the OWNER'S volume and nature of the vehicular traffic. In addition, OWNER shall notify SMART of any significant change in OWNER's volume or nature of traffic at the crossing.

7. OWNER shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, or restrictions ("Legal Requirements") relating to the use of the Crossing and the use of the Premises. Should any discharge, leakage, spillage, emission or

pollution of any type occur upon or arise as a result of OWNER's use, presence, operations, or exercise of the rights granted under this Agreement, OWNER shall at its sole expense clean all property affected thereby, or pay SMART for such cleaning, whether owned or controlled by SMART or any third persons to the satisfaction of SMART and any governmental body having jurisdiction in the matter.

8. SMART reserves the right, to be exercised by SMART and any other parties who may obtain written permission or authority from SMART:

(a) To maintain, renew, use, operate, change, modify, and relocate, at its own expense any existing pipe, power, communication lines and appurtenances and other facilities or structures of like character upon, over, under or across the Premises;

(b) To construct, maintain, renew, use, operate, change, modify, and relocate, at its own expense any tracks or additional facilities or structures upon, over, under, or across the Premises; or

(c) To use the Premises in any manner as SMART in its sole discretion deems appropriate, provided that SMART uses all commercially reasonable efforts to avoid material interference with the use of the Premises by OWNER for the purpose specified in Section 3 above.

Notwithstanding anything herein to the contrary, SMART shall, at its own cost and expense, keep the Crossing in good order, repair and condition at all times on and after the Effective Date during the term hereof and any extensions, in material compliance with all Legal Requirements and in such a condition to maintain the safety and suitability of the Crossings with the California Public Utility Commission ("CPUC"). SMART shall take such commercially reasonable steps necessary to preserve and protect the useful life, utility and value of the Crossing.

9. It is specifically understood that cables, pipelines, and other electric and/or fiber optic transmission lines may be on, about, along, or under the Premises and OWNER agrees that under no circumstances will OWNER dig in or disturb the surface of the Premises without the express written consent of SMART.

10. If desired by OWNER, OWNER may request that SMART install two chases sufficient to allow OWNER to bring water, sewage, and power under the railroad tracks. SMART agrees to accommodate such request for two chases at OWNER's sole cost and expense, provided SMART can legally do so and OWNER obtains all necessary governmental and regulatory approvals and permits (including a separate license from SMART for the chases), including, but not limited to, environmental investigation and remediation, permitting, legal services, construction, SMART administrative costs, and ongoing inspection, maintenance and repair costs for the chases, and any other costs which may arise out of the installation of two chases. All work on the Premises to install two chases shall be performed by SMART and invoices for all such work will be submitted to OWNER for payment within thirty (30) days of submission.

11. OWNER, if it so desires, is responsible for constructing and maintaining, at its sole cost and own expense, a roadway to the Crossing and/or Premises, and related roadway drainage, in a manner acceptable to SMART and safe for use by any vehicles or equipment. Nothing contained in this Agreement requires OWNER to construct a roadway to the Crossing and/or Premises. If SMART requires a road for its own use of the Crossing and/or Premises, then SMART will bear this related cost at its sole expense

12. OWNER agrees not to interfere with any Crossing gates, farm gates, or barriers.

13. OWNER shall not obstruct or interfere with the passage of any trains or rail vehicles. OWNER shall, at its sole cost and expense, perform all activities on and about, and/or use the Crossing in such a manner as not at any time to be a source of danger to or interference with the use of present or future tracks, roadbed or property of SMART, or the safe operation and activities of SMART. Operators of vehicles shall comply with all posted signs. If ordered to cease using the Crossing at any time by SMART's personnel or other public authorities due to any hazardous condition, OWNER shall immediately do so and SMART shall remediate any such hazardous condition as quickly as possible. Notwithstanding the foregoing right of SMART, the parties agree that SMART has no duty or obligation to monitor OWNER's use of the Crossing to determine the safe nature thereof, it being solely OWNER's responsibility to ensure that OWNER's use of the Crossing is in a safe manner. Neither the exercise nor the failure by SMART to exercise any rights granted in this Section will alter the liability allocation provided by this Agreement.

14. OWNER, at its own expense, shall keep the rail flange ways of said Crossing clear of all obstructions of any kind which may accumulate by virtue of vehicles, equipment, or from machinery crossing there over or otherwise, and shall remove and keep removed any vegetation along the rail corridor on each side of the crossing so that the motorists' line of sight to approaching trains is not impaired or obstructed by vegetation. However, nothing contained herein shall require OWNER to take any actions within any area which has been designated wetlands by the Army Corps of Engineers.

15. If at any time during the term of this Agreement, SMART shall desire the use of its rail corridor in such a manner as would, in SMART's reasonable opinion, be interfered with by the Crossing, SMART shall make such changes in the Crossing as in the sole discretion of SMART (but in compliance with all applicable PUC regulations, including Section 7537 California Public Utilities Code) may be necessary to avoid interference with the proposed use of SMART's rail corridor, including, without limitation, the relocation of the existing Crossing or the construction of a new Crossing at SMART's sole cost and expense.

16. Upon termination of this Agreement, and in compliance with section 7537 of the California Public Utilities Code, SMART may remove the Crossing and restore the rail corridor to the condition as of the Effective Date of this Agreement, without incurring any liability to the OWNER.

17. OWNER agrees to and shall indemnify and hold harmless SMART, its officers, agents and employees, from and against any and all claims, demands, losses, damages, causes of action, suits and liabilities of every kind (including reasonable attorneys' fees, court costs, and other expenses related thereto) for injury to or death of a person or for loss or damage to any property, arising out of or in connection with OWNER's performance of its obligations under this Agreement or out of the operations of or work done by OWNER, action taken by OWNER, or action permitted by OWNER, its subcontractors, invitees, agents or employees. Said indemnity shall not protect SMART from liability to the extent such loss or damage was caused by SMART's negligence or willful misconduct.

"SMART", as used in this section, shall include SMART and any successors and assigns of SMART, and/or any other railroad company that may be lawfully operating upon and over the tracks, crossing or adjacent to said roadway, and the officers and employees thereof.

OWNER shall provide a defense to SMART, or at SMART's option, reimburse SMART for its costs of defense, including reasonable attorneys' fees, incurred in defense of such claims. OWNER acknowledges and agrees that its obligation to defend SMART is: (i) an immediate obligation, independent of its other obligations hereunder; (ii) applies to any loss which actually or potentially falls within the scope of this agreement; and (iii) arises at the time any claim or loss is tendered and continues at all times thereafter. This obligation to defend arises notwithstanding any alleged negligence or misconduct of SMART, except for such loss or damage arising from the negligence or willful misconduct of SMART.

SMART shall give OWNER prompt notice of any claim or loss, and the Parties shall cooperate in the defense of any such claims. OWNER shall seek SMART's prior written consent to settle or compromise any claim or loss if OWNER contends that SMART shares in liability with respect thereto.

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

19. OWNER shall, at its sole cost and expense, procure and maintain during the life of this License liability insurance covering claims of bodily injury, personal injury and property damage arising out of use of the License issued herein covering the insuring provisions of this License and the requirement of OWNER to indemnify SMART for limits of liability not less than:

(a) Commercial General Liability. OWNER shall procure and maintain Commercial General Liability insurance covering property damage, bodily injury and personal injury using an occurrence policy form, in an amount no less than $5,000,000 per occurrence, and $10,000,000 annual aggregate.

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 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 such exclusions.

A follow form Excess Liability policy may be utilized to satisfy the required limits of liability under this section.

(b) Automobile Liability. OWNER shall procure and maintain Automobile Liability insurance covering bodily injury and property damage in an amount no less than $2,500,000 combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles

(c) The minimum limits of policies of insurance required of OWNER shall in no event limit the liability of OWNER under this agreement. OWNER's insurance shall:

(i) name SMART, its officers, and employees as an additional insured;

(ii) be issued by a company having a rating reasonably acceptable to SMART;

(iii) be primary insurance to all claims thereunder and provide that any insurance carried by SMART is excess and non-contributing;

(iv) provide that said insurance shall not be cancelled unless 30 days' prior notice is given to all insureds; and

(v) SMART shall have the right to annually conduct a review of the adequacy of the insurance requirements provided for in this Section. In the event that SMART should determine that the requirements of this Section no longer provide adequate protection to SMART, at SMART's reasonable discretion, it may require OWNER to obtain such additional insurance as SMART reasonably deems adequate. A certificate of insurance showing the terms of coverage and listing SMART as an additional insured shall be attached hereto as Exhibit E.

20. If SMART has a good faith belief that OWNER is not in compliance with the terms of this Agreement, then SMART shall give a reasonably specific written notice of the default to OWNER and demand that the default be cured within thirty (30) days of the notice. If OWNER fails to cure the default within thirty (30) days of the notice, or give adequate written assurance of due performance within thirty (30) days of the notice (in the event more than thirty (30) days are reasonably required to cure the default, then SMART will notify OWNER in writing that OWNER remains in breach (the Final Notice). OWNER shall have the right to initiate an action at the CPUC and/or the Superior Court to contest the Final Notice. SMART may then terminate this Agreement upon ten (10) days written notice to OWNER, or may, at its option, choose any other remedies that SMART may have at law or equity. OWNER reserves all remedies it may have with regard to loss of any access to its property.

21. SMART shall have the right to terminate this agreement if notified by the CPUC that the crossing is unsafe or no longer suitable for its intended use. Upon receipt of such notice, SMART shall immediately notify OWNER, and proceed to close the Crossing in the manner

required by the CPUC. Termination of this Agreement hereunder need not comply with any other terms and conditions of this Agreement. SMART shall promptly notify OWNER of any notifications, informal or formal, from the CPUC or other authority, of conditions or circumstances which may lead to a notification of immediate closure, as described above. If such notification from the CPUC is based on the failure of SMART to properly maintain and/or inspect the Crossing, SMART shall immediately proceed to comply with any and all orders of the CPUC. All Parties reserve any and all rights they may have in the event the Crossing is closed due to an order by the CPUC.

22. If OWNER fails to surrender to SMART the Premises, upon any termination of this Agreement, all liabilities and obligations of OWNER hereunder shall continue in effect until the Premises are surrendered. Termination shall not release OWNER from any liability or obligation, whether of indemnity or otherwise, resulting from any events happening prior to the date of termination.

23. Neither OWNER, nor the heirs, legal representatives, successors or assigns of OWNER, nor any subsequent assignee, shall assign or transfer this Agreement or any interest herein, without the prior written consent and approval of SMART, which approval may not be unreasonably withheld, conditioned or delayed. Any Assignee must agree to abide by and be bound by the terms of this Agreement, including but not limited to, the allowed uses, providing indemnification and providing the insurance required by this Agreement. Notwithstanding the above, should Owner sell its property to another commercial property owner who intends to utilize the property for similar commercial purposes consistent with those of the Owner, or should Owner transfer or assign its rights under this Agreement in connection with a merger, reorganization, consolidation or sale of all or substantially all of its assets to a parent, subsidiary or affiliated company or to a subsidiary of a parent company, or should owner assign its rights for estate planning purposes, such assignment is deemed preapproved by SMART subject to any new owner executing an assignment of this Agreement and providing SMART a certificate of insurance as provided for herein.

24. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (1) placed in the United States mail, certified, return receipt requested, or (2) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified above or below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days advance written notice of such change in address.

If to SMART:

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
5401 Old Redwood Highway, Ste. 200
Petaluma, CA 94954
Attention: Laura Giraud, Real Property Manager

If to OWNER:

Henris Investments, LP
2581 Petaluma Boulevard South
Petaluma, CA 94952
Attention: Steve Henris

25. All questions concerning the interpretation or application of provisions of this Agreement shall be decided according to the laws of the State of California.

26. To the maximum extent possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by, or held to be invalid under applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder or any other provision of this Agreement.

27. The Parties hereby acknowledge and agree that (a) each party has actively participated in the drafting and negotiation of this Agreement, (b) each such party has consulted or has had the opportunity to consult with their own independent counsel relative to matters contemplated under this Agreement, (c) each party and party's counsel have reviewed the Agreement, and (d) any rule of construction to the effect that ambiguities are to be resolved against the drafting party(ies) shall not apply in the interpretation of this Agreement, or any portions hereof or any amendments hereto.

28. This Agreement is the full and complete agreement between SMART and OWNER with respect to all matters relating to OWNER's use of the Crossing, and supersedes any and all other agreements between the parties hereto relating to OWNER's use of the Crossing as described herein. However, nothing herein is intended to terminate any surviving obligation of OWNER or OWNER's obligation to defend and hold SMART harmless in any prior written agreement between the parties.

29. No person who is not a party to this Agreement shall have any rights or obligations as a result of this Covenant. This Agreement is between the parties hereto and no other person or entity is an express, intended, or implied third party beneficiary hereof.

30. The exhibits and attachments hereto are hereby incorporated herein by reference thereto.

Exhibit A – Location of Crossing and Improvements
Exhibit B – Permitted Uses of Crossing
Exhibit C – Map of Owners
Exhibit D – Allocation agreement
Exhibit E – Insurance Certificate

[Signature Page Follows]

SMART:

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

By: _____
Farhad Mansourian,
General Manager

APPROVED AS TO FORM:

By: _____
Adam L. Brand,
District Counsel

OWNER:

By: Steve Henris
Steve Henris
General Partner

APPROVED AS TO FORM:

By: _____
Robert P. Oliker,
Counsel for OWNER

Exhibit A

LOCATION OF CROSSING AND IMPROVEMENTS

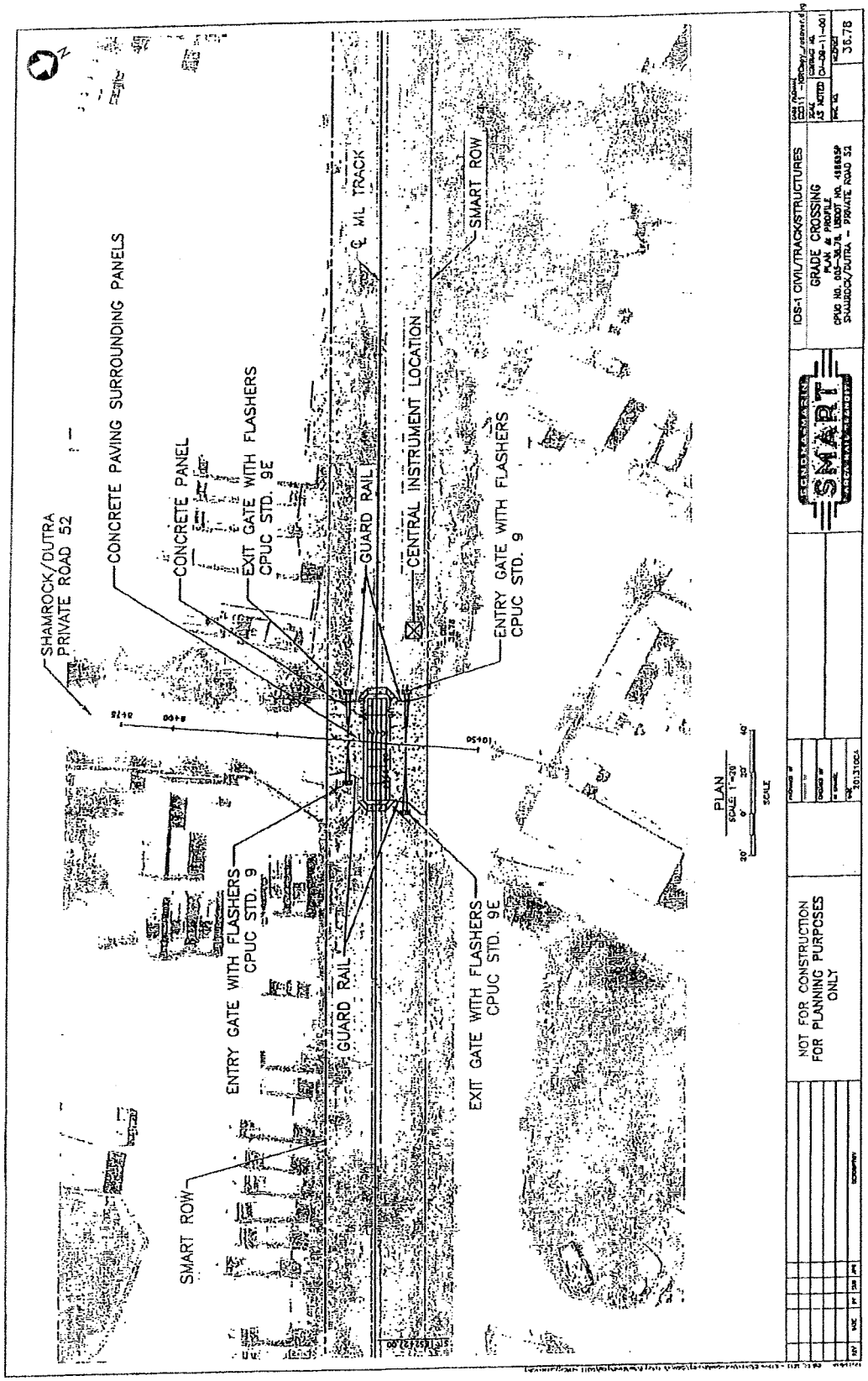
SHAMROCK/DUTRA PRIVATE ROAD 52
CONCRETE PAVING SURROUNDING PANELS
CONCRETE PANEL
EXIT GATE WITH FLASHERS CPUC STD. 9E
GUARD RAIL
℄ ML TRACK
CENTRAL INSTRUMENT LOCATION
SMART ROW
ENTRY GATE WITH FLASHERS CPUC STD. 9
ENTRY GATE WITH FLASHERS CPUC STD. 9
GUARD RAIL
EXIT GATE WITH FLASHERS CPUC STD. 9E
SMART ROW
PLAN
SCALE: 1"=20'
SCALE
NOT FOR CONSTRUCTION FOR PLANNING PURPOSES ONLY
SMART
IDS-1 CIVIL/TRACK/STRUCTURES
GRADE CROSSING
PLAN & PROFILE
CPUC NO. 005-36.78, USDOT NO. 488835P
SHAMROCK/DUTRA - PRIVATE ROAD 52
36.78

EXHIBIT B

PERMITTED USES OF CROSSING

Exhibit B

COMMERICAL:

Subject to the terms and conditions of this Agreement, OWNER shall be permitted to use the at-grade private roadway crossing of SMART railroad tracks and railroad property at Railroad Milepost 36.78, in order to access OWNER's property on the east side of the railroad. Said access shall be for the private use of the OWNER, and his tenants, employees, agents and invitees. Said access shall be limited to the passage of persons, vehicles and equipment, including automobiles, light trucks, heavy trucks and heavy equipment, to and from the property of the OWNER. All vehicles and equipment shall comply with and observe all posted signs, warning devices and gates, and in any event shall stop before entering the crossing area and ascertain that it is safe to proceed across the tracks before crossing.

EXHIBIT C

MAP OF OWNERS

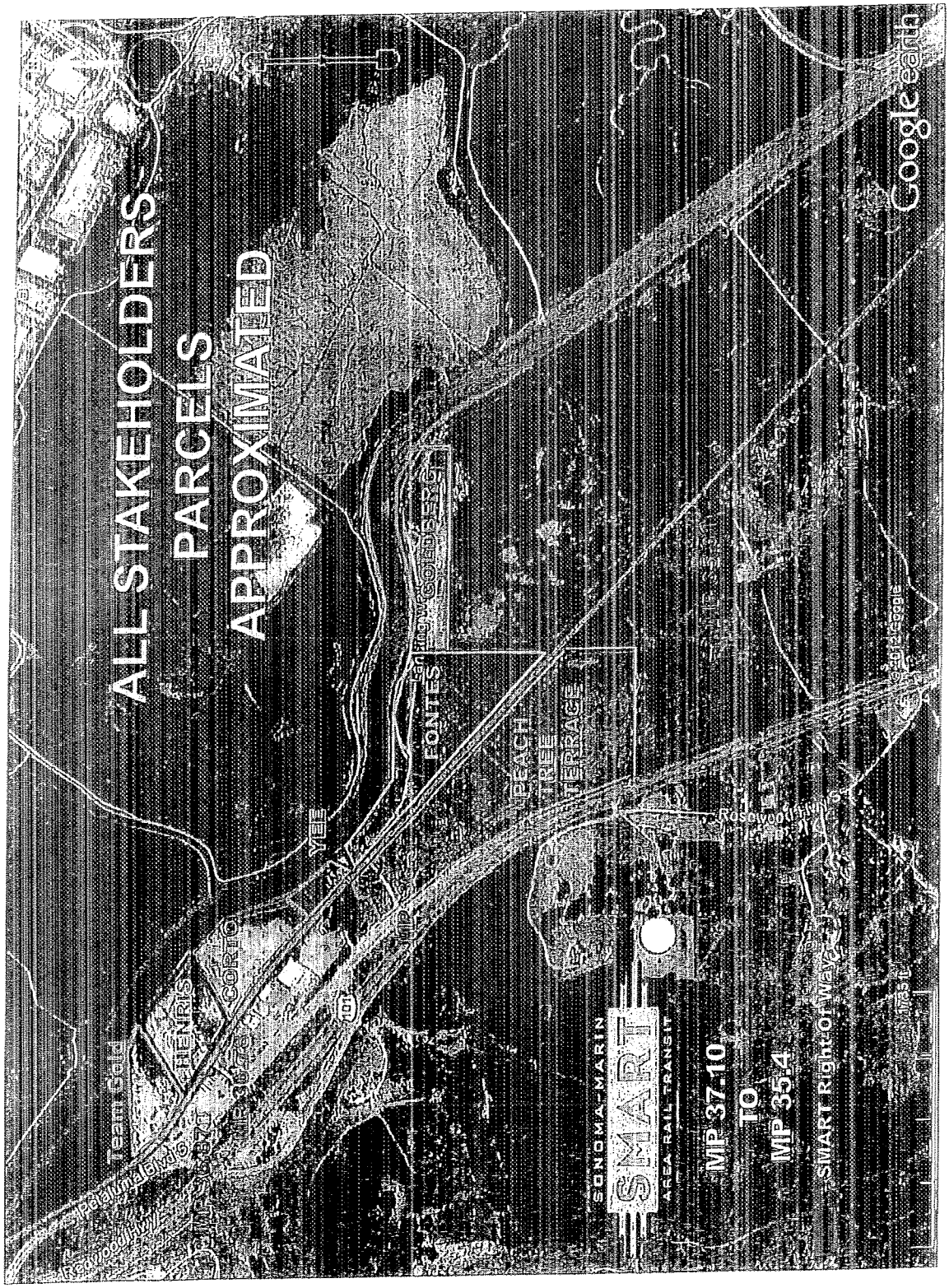
ALL STAKEHOLDERS
PARCELS
APPROXIMATED
Google earth
SONOMA-MARIN
SMART
AREA RAIL TRANSIT
MP 37.10
TO
MP 35.4
SMART Right Of Way
Team Gold
HENRIS
CORTO
YEE
FONTES
PEACH
TREE
TERRACE
Rosewood Hwy
Petaluma Blvd
Rosewood Hwy

EXHIBIT D

ALLOCATION AGREEMENT

For purposes of calculating payment of the Crossing Cost, Maintenance Costs and Replacements Costs, SMART shall be responsible for 25% of the actual Crossing Cost, Maintenance Costs and Replacement Costs incurred. Subject to the provisions relating to The Dutra Group and SMART's approval of a license agreement for an overhead conveyor crossing the tracks below, the remaining 75% of the actual Crossing Cost, Maintenance Costs and Replacement Costs shall be equally allocated amongst the four existing commercial property Owners (Existing Commercial Owners) identified on the map attached hereto as Exhibit C such that each Existing Commercial Owner shall pay 18.75% of that expense. The Existing Commercial Owners are:

Team Gold, LLC
Henris Investments, LP
Corto Meno Sand & Gravel, LLC
Peachtree Terrace and the Dutra Group

The Peachtree Terrace parcel is being developed by The Dutra Group for an asphalt batch plant and as part of the operation needs to construct an overhead conveyor across the tracks to connect to other property An Application for Encroachment of Air Space for construction of the conveyor has been submitted to SMART. The Dutra Group, on behalf of Peachtree Terrace, will participate financially in the Crossing Cost, as provided for in this Agreement, even though it has not yet obtained final approval of its Use Permit, if, and only if (1) SMART approves Dutra's application for the conveyor which SMART shall use it best efforts to complete within 30 days and (2) SMART supports The Dutra Group's separate application for the conveyor to the PUC, including the General Manager's stating to the PUC that SMART supports the application for the conveyor. If SMART complies with the foregoing, then Peachtree Terrace will execute the SMARTS STANDARD AGREEMENT FOR PRIVATE CROSSING
SMART NO. PvtX-0011.

Subject to the conditions relating to The Dutra Group, above, the Existing Commercial Owners shall pay 75% of the actual cost for construction of the Crossing which total costs in the aggregate shall not exceed $750,000. Any costs above $750,000 will be paid for solely and exclusively by SMART. SMART will invoice Owner for its percentage payment and will provide a detailed accounting of the actual costs incurred for the construction of the Crossing along with each invoice. SMART will provide an initial invoice within thirty (30) days of execution of this Agreement by all Parties. Owner will pay 50% of 18.75% of the Crossing Costs within thirty (30) days of receiving the initial invoice from SMART. Owner will pay 50% of 18.75% of the remaining Crossing Costs within twelve (12) months of receiving written notice from SMART that the construction of the Crossing is complete. The Existing Commercial Owners are jointly and severally liable for the Crossing Costs. If any Existing Commercial Owner does not pay its proportionate share in a timely basis, SMART shall provide written notice to that owner demanding that payment be made within 10 days with a copy of said notice

to the other Existing Commercial Owners. To the extent any one of the four Existing Commercial Owners fails or refuses to pay its proportionate share of the Crossing Costs, that owner shall cease any use of the Crossing and the amount which would have otherwise been invoiced to that Owner shall be equally divided amongst the other Existing Commercial Owners. Any Existing Commercial Owner who advances funds on behalf of any other Existing Commercial Owner shall be entitled to seek full recovery of any such advances with interest at 10% plus all attorney fees incurred in any collection activities to secure such recovery.

DATED: _____ TEAM GOLD, LLC

By: _____
Glen Ghilotti,
President

DATED: _____ HENRIS INVESTMENTS, LP

By: Steve Henris
Steve Henris,
General Partner

DATED: _____ CORTO MENO SAND & GRAVEL, LLC

By: _____
Eugene B. Ceccotti,
Managing Partner

DATED: _____ PEACHTREE TERRACE AND THE DUTRA GROUP

By: _____
Bill T. Dutra,
Chief Executive Officer

DATED: _____ SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

By: _____
Farhad Mansourian
General Manager

Commercial Owners. To the extent any one of the four Existing Commercial Owners fails or refuses to pay its proportionate share of the Crossing Costs, that owner shall cease any use of the Crossing and the amount which would have otherwise been invoiced to that Owner shall be equally divided amongst the other Existing Commercial Owners. Any Existing Commercial Owner who advances funds on behalf of any other Existing Commercial Owner shall be entitled to seek full recovery of any such advances with interest at 10% plus all attorney fees incurred in any collection activities to secure such recovery.

DATED: _____ TEAM GOLD, LLC

By: _____
Glen Ghilotti,
President

DATED: _____ HENRIS INVESTMENTS, LLP

By: _____
Steve Henris

DATED: _____ CORTO MENO SAND & GRAVEL, LLC

By: _____
Eugene B. Ceccotti,
Managing Partner

DATED: _____ PEACHTREE TERRACE AND THE DUTRA GROUP

By: _____
Bill T. Dutra,
Chief Executive Officer

DATED: _____ SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

By: _____
Farhad Mansourian,
General Manager

to the other Existing Commercial Owners. To the extent any one of the four Existing Commercial Owners fails or refuses to pay its proportionate share of the Crossing Costs, that owner shall cease any use of the Crossing and the amount which would have otherwise been invoiced to that Owner shall be equally divided amongst the other Existing Commercial Owners. Any Existing Commercial Owner who advances funds on behalf of any other Existing Commercial Owner shall be entitled to seek full recovery of any such advances with interest at 10% plus all attorney fees incurred in any collection activities to secure such recovery.

DATED: _____ TEAM GOLD, LLC

By: _____
Glen Ghilotti,
President

DATED: _____ HENRIS INVESTMENTS, LLP

By: _____
Steve Henris

DATED: 02/02/2014 CORTO MENO SAND & GRAVEL, LLC

By: _____
Eugene B. Ceccotti,
Managing Partner

DATED: _____ PEACHTREE TERRACE AND THE DUTRA GROUP

By: _____
Bill T. Dutra,
Chief Executive Officer

DATED: _____ SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

By: _____
Farhad Mansourian,
General Manager

to the other Existing Commercial Owners. To the extent any one of the four Existing Commercial Owners fails or refuses to pay its proportionate share of the Crossing Costs, that owner shall cease any use of the Crossing and the amount which would have otherwise been invoiced to that Owner shall be equally divided amongst the other Existing Commercial Owners. Any Existing Commercial Owner who advances funds on behalf of any other Existing Commercial Owner shall be entitled to seek full recovery of any such advances with interest at 10% plus all attorney fees incurred in any collection activities to secure such recovery.

DATED: January 5, 2016

TEAM GOLD, LLC

By: _____
Glen Ghilotti,
President

DATED: _____

HENRIS INVESTMENTS, LLP

By: _____
Steve Henris

DATED: _____

CORTO MENO SAND & GRAVEL, LLC

By: _____
Eugene B. Ceccotti,
Managing Partner

DATED: _____

PEACHTREE TERRACE AND THE DUTRA GROUP

By: _____
Bill T. Dutra,
Chief Executive Officer

DATED: _____

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

By: _____
Farhad Mansourian,
General Manager

EXHIBIT E

INSURANCE CERTIFICATES

HENRI-6 OP ID: SD

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 04/05/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Don Ramatici Insurance, Inc.
P.O. Box 551
Petaluma, CA 94953
Paul Ramatici

CONTACT NAME: Paul Ramatici
PHONE (A/C, No, Ext): 707-782-9200 FAX (A/C, No): 707-782-9300
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Ohio Security Insurance Co.	24082
INSURER B : American Fire & Casualty	24066
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Henris Investments LP
PO Box 138
Petaluma, CA 94953

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY PRO-JECT LOC OTHER:	X		BLS17572108B4	03/10/2016	03/10/2017	EACH OCCURRENCE	$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 500,000
							MED EXP (Any one person)	$ 15,000
							PERSONAL & ADV INJURY	$ 1,000,000
							GENERAL AGGREGATE	$ 2,000,000
							PRODUCTS - COMP/OP AGG	$ 2,000,000
								$
A	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS X HIRED AUTOS SCHEDULED AUTOS X NON-OWNED AUTOS			BAS17 57210884	03/10/2016	03/10/2017	COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
							BODILY INJURY (Per person)	$
							BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
								$
B	X UMBRELLA LIAB EXCESS LIAB X OCCUR CLAIMS-MADE DED RETENTION $			ESA1757210884	03/10/2016	03/10/2017	EACH OCCURRENCE	$ 8,000,000
							AGGREGATE	$ 8,000,000
								$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A					PER STATUTE OTH-ER	
							E.L. EACH ACCIDENT	$
							E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

***Its officers and employees are additional insureds, afforded primary/non contributory verbiage, when required by contract per forms CG2026 & CG8810.
Railroad Contractual per forms CG2427(04/13) & CA2070(10/01) attached.
Excess Liability follows form to the General & Automobile Liability above.
RE: Private Crossing Agreement, SMART No. PvtX-0009

CERTIFICATE HOLDER

SONMAR6

Sonoma-Marin Area Rail Transit District***
5401 Old Redwood Hwy. Ste. 200
Petaluma, CA 94954

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Paul Ramatici

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POLICY NUMBER: BLS1757210884

COMMERCIAL GENERAL LIABILITY
CG 20 26 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)
Sonoma Marin Area Rail Transit (SMART)
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

A. In the performance of your ongoing operations; or

B. In connection with your premises owned by or rented to you.

© ISO Properties, Inc., 2004

POLICY NUMBER: BLS1757210884

COMMERCIAL GENERAL LIABILITY
CG 88 10 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL GENERAL LIABILITY EXTENSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

INDEX

SUBJECT	PAGE
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NON-OWNED WATERCRAFT	2
PROPERTY DAMAGE LIABILITY – ELEVATORS	2
EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage)	2
MEDICAL PAYMENTS EXTENSION	3
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ADDITIONAL INSUREDS – BY CONTRACT, AGREEMENT OR PERMIT	3
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ADDITIONAL INSUREDS – EXTENDED PROTECTION OF YOUR "LIMITS OF INSURANCE"	6
WHO IS AN INSURED – INCIDENTAL MEDICAL ERRORS/MALPRACTICE AND WHO IS AN INSURED – FELLOW EMPLOYEE EXTENSION – MANAGEMENT EMPLOYEES	6
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LIBERALIZATION CLAUSE	7
BODILY INJURY REDEFINED	7
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WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US – WHEN REQUIRED IN A CONTRACT OR AGREEMENT WITH YOU	8

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b. The last paragraph of subsection **2. Exclusions** is replaced by the following:

Exclusions c. through n. do not apply to damage by fire, lightning, explosion, smoke or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to Damage To Premises Rented To You as described in **Section III – Limits Of Insurance.**

2. Paragraph **6.** under **Section III – Limits Of Insurance** is replaced by the following:

6. Subject to Paragraph **5.** above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of "property damage" to:

a. Any one premise:

(1) While rented to you; or

(2) While rented to you or temporarily occupied by you with permission of the owner for damage by fire, lightning, explosion, smoke or leakage from automatic protection systems; or

b. Contents that you rent or lease as part of a premises rental or lease agreement.

3. As regards coverage provided by this provision D. **EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage)** - Paragraph **9.a.** of **Definitions** is replaced with the following:

9.a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, explosion, smoke, or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with the permission of the owner, or for damage to contents of such premises that are included in your premises rental or lease agreement, is not an "insured contract".

E. MEDICAL PAYMENTS EXTENSION

If **Coverage C Medical Payments** is not otherwise excluded, the Medical Payments provided by this policy are amended as follows:

Under Paragraph **1. Insuring Agreement** of **Section I – Coverage C – Medical Payments,** Subparagraph **(b)** of Paragraph **a.** is replaced by the following:

(b) The expenses are incurred and reported within three years of the date of the accident; and

F. EXTENSION OF SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

1. Under **Supplementary Payments – Coverages A** and **B**, Paragraph **1.b.** is replaced by the following:

b. Up to **$3,000** for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. Paragraph **1.d.** is replaced by the following:

d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to **$500** a day because of time off from work.

G. ADDITIONAL INSUREDS - BY CONTRACT, AGREEMENT OR PERMIT

1. Paragraph **2.** under **Section II – Who Is An Insured** is amended to include as an insured any person or organization whom you have agreed to add as an additional insured in a written contract, written agreement or permit. Such person or organization is an additional insured but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by:

a. Your acts or omissions, or the acts or omissions of those acting on your behalf, in the performance of your on going operations for the additional insured that are the subject of the written contract or written agreement provided that the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" is committed, subsequent to the signing of such written contract or written agreement; or

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b. The last paragraph of subsection **2. Exclusions** is replaced by the following:

Exclusions c. through n. do not apply to damage by fire, lightning, explosion, smoke or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to Damage To Premises Rented To You as described in **Section III – Limits Of Insurance.**

2. Paragraph **6.** under **Section III – Limits Of Insurance** is replaced by the following:

6. Subject to Paragraph **5.** above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to:

a. Any one premise:

(1) While rented to you; or

(2) While rented to you or temporarily occupied by you with permission of the owner for damage by fire, lightning, explosion, smoke or leakage from automatic protection systems; or

b. Contents that you rent or lease as part of a premises rental or lease agreement.

3. As regards coverage provided by this provision D. **EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage)** - Paragraph **9.a.** of **Definitions** is replaced with the following:

9.a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, explosion, smoke, or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with the permission of the owner, or for damage to contents of such premises that are included in your premises rental or lease agreement, is not an "insured contract".

E. MEDICAL PAYMENTS EXTENSION

If Coverage C **Medical Payments** is not otherwise excluded, the Medical Payments provided by this policy are amended as follows:

Under Paragraph **1. Insuring Agreement** of **Section I – Coverage C – Medical Payments,** Subparagraph **(b)** of Paragraph **a.** is replaced by the following:

(b) The expenses are incurred and reported within three years of the date of the accident; and

F. EXTENSION OF SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

1. Under **Supplementary Payments – Coverages A** and **B**, Paragraph **1.b.** is replaced by the following:

b. Up to **$3,000** for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. Paragraph **1.d.** is replaced by the following:

d. All reasonable expenses incurred by the Insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to **$500** a day because of time off from work.

G. ADDITIONAL INSUREDS - BY CONTRACT, AGREEMENT OR PERMIT

1. Paragraph **2.** under **Section II – Who Is An Insured** is amended to include as an Insured any person or organization whom you have agreed to add as an additional insured in a written contract, written agreement or permit. Such person or organization is an additional insured but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by:

a. Your acts or omissions, or the acts or omissions of those acting on your behalf, in the performance of your on going operations for the additional insured that are the subject of the written contract or written agreement provided that the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" is committed, subsequent to the signing of such written contract or written agreement; or

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b. Premises or facilities rented by you or used by you; or

c. The maintenance, operation or use by you of equipment rented or leased to you by such person or organization; or

d. Operations performed by you or on your behalf for which the state or political subdivision has issued a permit subject to the following additional provisions:

(1) This insurance does not apply to "bodily injury", "property damage", or "personal and advertising injury" arising out of the operations performed for the state or political subdivision;

(2) This insurance does not apply to "bodily injury" or "property damage" included within the "completed operations hazard".

(3) Insurance applies to premises you own, rent, or control but only with respect to the following hazards:

a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or

(b) The construction, erection, or removal of elevators; or

(c) The ownership, maintenance, or use of any elevators covered by this insurance.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and

2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

With respect to Paragraph 1.a. above, a person's or organization's status as an additional insured under this endorsement ends when:

(1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

(2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

With respect to Paragraph 1.b. above, a person's or organization's status as an additional insured under this endorsement ends when their written contract or written agreement with you for such premises or facilities ends.

With respects to Paragraph 1.c. above, this insurance does not apply to any "occurrence" which takes place after the equipment rental or lease agreement has expired or you have returned such equipment to the lessor.

The insurance provided by this endorsement applies only if the written contract or written agreement is signed prior to the "bodily injury" or "property damage".

We have no duty to defend an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured as required in Paragraph b. of Condition 2. **Duties In the Event Of Occurrence, Offense, Claim Or Suit** under **Section IV – Commercial General Liability Conditions.**

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2. With respect to the insurance provided by this endorsement, the following are added to Paragraph **2. Exclusions** under **Section I - Coverage A - Bodily Injury And Property Damage Liability**:

This insurance does not apply to:

a. "Bodily injury" or "property damage" arising from the sole negligence of the additional insured.

b. "Bodily injury" or "property damage" that occurs prior to you commencing operations at the location where such "bodily injury" or "property damage" occurs.

c. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

(1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

d. "Bodily injury" or "property damage" occurring after:

(1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

(2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

e. Any person or organization specifically designated as an additional insured for ongoing operations by a separate **ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS** endorsement issued by us and made a part of this policy.

3. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

a. Required by the contract or agreement; or

b. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

H. PRIMARY AND NON-CONTRIBUTORY ADDITIONAL INSURED EXTENSION

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this policy.

Condition **4. Other Insurance** of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

a. The following is added to Paragraph **a. Primary Insurance:**

If an additional insured's policy has an Other Insurance provision making its policy excess, and you have agreed in a written contract or written agreement to provide the additional insured coverage on a primary and noncontributory basis, this policy shall be primary and we will not seek contribution from the additional insured's policy for damages we cover.

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b. The following is added to Paragraph b. **Excess Insurance:**

When a written contract or written agreement, other than a premises lease, facilities rental contract or agreement, an equipment rental or lease contract or agreement, or permit issued by a state or political subdivision between you and an additional insured does not require this insurance to be primary or primary and non-contributory, this insurance is excess over any other insurance for which the additional insured is designated as a Named Insured.

Regardless of the written agreement between you and an additional insured, this insurance is excess over any other insurance whether primary, excess, contingent or on any other basis for which the additional insured has been added as an additional insured on other policies.

I. ADDITIONAL INSUREDS - EXTENDED PROTECTION OF YOUR "LIMITS OF INSURANCE"

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this policy.

1. The following is added to Condition **2. Duties In The Event Of Occurrence, Offense, Claim or Suit:**

An additional insured under this endorsement will as soon as practicable:

a. Give written notice of an "occurrence" or an offense that may result in a claim or "suit" under this insurance to us;

b. Tender the defense and indemnity of any claim or "suit" to all insurers whom also have insurance available to the additional insured; and

c. Agree to make available any other insurance which the additional insured has for a loss we cover under this Coverage Part.

d. We have no duty to defend or indemnify an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured.

2. The limits of insurance applicable to the additional insured are those specified in a written contract or written agreement or the limits of insurance as stated in the Declarations of this policy and defined in **Section III – Limits of Insurance** of this policy, whichever are less. These limits are inclusive of and not in addition to the limits of insurance available under this policy.

J. WHO IS AN INSURED - INCIDENTAL MEDICAL ERRORS / MALPRACTICE
WHO IS AN INSURED - FELLOW EMPLOYEE EXTENSION - MANAGEMENT EMPLOYEES

Paragraph **2.a.(1)** of **Section II - Who Is An Insured** is replaced with the following:

(1) "Bodily injury" or "personal and advertising injury":

(a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

(b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1) (a) above;

(c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1) (a) or (b) above; or

(d) Arising out of his or her providing or failing to provide professional health care services. However, if you are not in the business of providing professional health care services or providing professional health care personnel to others, or if coverage for providing professional health care services is not otherwise excluded by separate endorsement, this provision (Paragraph (d)) does not apply.

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Paragraphs (a) and (b) above do not apply to "bodily injury" or "personal and advertising injury" caused by an "employee" who is acting in a supervisory capacity for you. Supervisory capacity as used herein means the "employee's" job responsibilities assigned by you, includes the direct supervision of other "employees" of yours. However, none of these "employees" are insureds for "bodily injury" or "personal and advertising injury" arising out of their willful conduct, which is defined as the purposeful or willful intent to cause "bodily injury" or "personal and advertising injury", or caused in whole or in part by their intoxication by liquor or controlled substances.

The coverage provided by provision J. is excess over any other valid and collectable insurance available to your "employee".

K. NEWLY FORMED OR ADDITIONALLY ACQUIRED ENTITIES

Paragraph 3. of **Section II - Who Is An Insured** is replaced by the following:

3. Any organization you newly acquire or form and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

   a. Coverage under this provision is afforded only until the expiration of the policy period in which the entity was acquired or formed by you;

   b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

   c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

   d. Records and descriptions of operations must be maintained by the first Named Insured.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations or qualifies as an Insured under this provision.

L. FAILURE TO DISCLOSE HAZARDS AND PRIOR OCCURRENCES

Under **Section IV – Commercial General Liability Conditions**, the following is added to Condition **6. Representations:**

Your failure to disclose all hazards or prior "occurrences" existing as of the inception date of the policy shall not prejudice the coverage afforded by this policy provided such failure to disclose all hazards or prior "occurrences" is not intentional.

M. KNOWLEDGE OF OCCURRENCE, OFFENSE, CLAIM OR SUIT

Under **Section IV – Commercial General Liability Conditions**, the following is added to Condition **2. Duties In The Event of Occurrence, Offense, Claim Or Suit:**

Knowledge of an "occurrence", offense, claim or "suit" by an agent, servant or "employee" of any insured shall not in itself constitute knowledge of the insured unless an insured listed under Paragraph **1.** of **Section II – Who Is An Insured** or a person who has been designated by them to receive reports of "occurrences", offenses, claims or "suits" shall have received such notice from the agent, servant or "employee".

N. LIBERALIZATION CLAUSE

If we revise this Commercial General Liability Extension Endorsement to provide more coverage without additional premium charge, your policy will automatically provide the coverage as of the day the revision is effective in your state.

O. BODILY INJURY REDEFINED

Under **Section V – Definitions**, Definition 3. is replaced by the following:

3. "Bodily Injury" means physical injury, sickness or disease sustained by a person. This includes mental anguish, mental injury, shock, fright or death that results from such physical injury, sickness or disease.

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P. EXTENDED PROPERTY DAMAGE

Exclusion a. of COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY is replaced by the following:

a. **Expected Or Intended Injury**

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

Q. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US – WHEN REQUIRED IN A CONTRACT OR AGREEMENT WITH YOU

Under **Section IV – Commercial General Liability Conditions**, the following is added to Condition **8. Transfer Of Rights Of Recovery Against Others To Us:**

We waive any right of recovery we may have against a person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard" provided:

1. You and that person or organization have agreed in writing in a contract or agreement that you waive such rights against that person or organization; and
2. The injury or damage occurs subsequent to the execution of the written contract or written agreement.

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POLICY NUMBER: BLS1757210884

COMMERCIAL GENERAL LIABILITY
CG 24 27 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITED CONTRACTUAL LIABILITY – RAILROADS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Scheduled Railroad:	Sonoma Marin Area Rail Transit (SMART)
Designated Job Site:	As per written contract
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

With respect to operations performed for, or affecting, a Scheduled Railroad at a Designated Job Site, the definition of "insured contract" in the **Definitions** section is replaced by the following:

9. "Insured contract" means:

   a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";

   b. A sidetrack agreement;

   c. Any easement or license agreement;

   d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;

   e. An elevator maintenance agreement;

   f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or those acting on your behalf. However, such part of a contract or agreement shall only be considered an "insured contract" to the extent your assumption of the tort liability is permitted by law. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

   Paragraph f. does not include that part of any contract or agreement:

   (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:

      (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

      (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;

   (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in Paragraph (1) above and supervisory, inspection, architectural or engineering activities.

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POLICY NUMBER: BAS1757210884

COMMERCIAL AUTO
CA 20 70 10 01

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COVERAGE FOR CERTAIN OPERATIONS IN CONNECTION WITH RAILROADS

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
GARAGE COVERAGE FORM
MOTOR CARRIERS COVERAGE FORM
TRUCKERS COVERAGE FORM

With respect to coverage provided under this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective: 03/10/16	Countersigned By:
Named Insured: Henris Investments LP	(Authorized Representative)

SCHEDULE

Scheduled Railroad	Designated Job Site
Sonoma Marin Area Rail Transit (SMART)	As per written contract

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

With respect to the use of a covered "auto" in operations for or affecting a railroad designated in the Schedule at a Designated Job Site, the two exceptions contained in the definition of "insured contract" relating to construction or demolition operations performed within 50 feet of a railroad do not apply.

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(End of Attachment B)

ATTACHMENT C

SMARTS STANDARD LICENSE AGREEMENT FOR PRIVATE CROSSING
SMART NO. PvtX-0010

This Agreement ("Agreement"), is made this 22 day of April 2016 (the Effective Date") by and between the Sonoma-Marin Area Rail Transit District ("SMART"), and Corto Meno Sand & Gravel, LLC, a California Limited Liability Company ("OWNER ").

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to the following:

1. SMART hereby issues to OWNER a non-exclusive license to use, upon the terms and conditions set forth below, in strict accordance with the location and improvements approved by SMART, which are attached hereto as Exhibit A and made a part hereof, an at grade crossing across the right of way and rail corridor of SMART at or near Milepost 36.78 ("Premises") solely for the purposes specified in Section 3. Owner expressly acknowledges and agrees that the at-grade crossings located at Milepost 36.87 and Milepost 35.81 will be permanently closed and consolidated into a single at-grade crossing located at Milepost 36.78, and Owner expressly waives any claims, right, title or interest of any kind or nature it may have now or in the future to utilize any at-grade crossing located at Milepost 36.87 or Milepost 35.81. For convenience, said Crossing, including the crossing surface and all appurtenances thereto between the ends of railroad ties, cattle guards, farm gates or barriers, drainage facilities, traffic signs or devices, identification signs approved by SMART, whistling posts, or other appurtenances, if any, are hereinafter collectively referred to as the "Crossing." The term of this Agreement shall be for a period of twenty (20) years from the Effective Date so long as OWNER remains in compliance with the terms and conditions of the Agreement, subject to the termination provisions set out in Sections 21, 22 and 23, below. OWNER shall have the option to renew the Agreement beyond the initial period of Twenty (20) Years for two additional periods of five (5) years each. OWNER shall exercise each option by providing written notice of OWNER's exercise of the option to SMART at least six months prior to the expiration of the term then in effect. After the expiration of the 20 year term, and any applicable options, this Agreement shall automatically renew thereafter on a year-to-year basis based on the same terms and conditions as set forth herein.

2. OWNER shall not disturb any improvements of SMART or SMART's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use of such improvements.

3. It is expressly stipulated that the Crossing is to be a strictly private one, to be solely used for the purpose set forth in Exhibit B. The Crossing is not intended for and shall not be for public use. The OWNER, without expense to SMART, will take any and all necessary action to preserve the private character of the Crossing and prevent its use as a public road.

4. If in the future, OWNER desires to change the size of or nature of the Crossing to accommodate development of OWNER's property on the east side of the Premises, OWNER may request such Crossing Change from SMART. SMART agrees to accommodate such change at OWNER's sole cost and expense, provided it can legally do so and OWNER obtains all

necessary governmental and regulatory approvals and permits, including but not limited to environmental investigation and remediation, permitting, legal services, construction, SMART administrative costs, and ongoing crossing inspection, maintenance and repair costs for the upgraded crossing, and any other costs which may arise out of the Crossing Change. All Crossing Change work on the Premises shall be performed by SMART and invoices for all such work will be submitted to OWNER for payment within thirty (30) days of submission.

5. There will be an initial capital expense with regard to the installation of the Crossing (the Crossing Cost), annual inspection, maintenance and minor repair expenses for the Crossing (Maintenance Costs) as well as major repair expenses (repairs exceeding $5,000.00) and replacement costs over time of the components of the Crossing (Replacement Costs), sometimes collectively referred to as the License Fees. For purposes of calculating payment of the Crossing Cost, Maintenance Costs and Replacements Costs, SMART shall be responsible for 25% of the actual Crossing Cost, Maintenance Costs and Replacement Costs incurred. Subject to the conditions set forth in Exhibit D relating to The Dutra Group and SMART's approval of a license agreement for an overhead conveyor crossing the tracks, the remaining 75% of the actual Crossing Cost, Maintenance Costs and Replacement Costs shall be equally allocated amongst the four existing commercial property Owners (Existing Commercial Owners) identified on the map attached hereto as Exhibit C, such that each Existing Commercial Owner shall pay 18.75% of that expense. Other property Owners that will utilize the Crossing are shown as "Other Owners" on Exhibit C. SMART shall be solely responsible to make sure that all "Other Owners" contribute to Crossing Cost, Maintenance Costs and Replacement Costs as SMART deems appropriate. If in the future other non listed new owners utilize the Crossing, or if any Other Owner materially changes its use of the Crossing, the License Fees shall be adjusted and/or reallocated to fairly distribute the expense amongst all parties. If the parties cannot otherwise agree to such adjustment and/or reallocation, it shall be subject to determination by the CPUC.

(a) (1) OWNER shall pay SMART, annually in arrears, 18.75% the actual Maintenance Costs of the Crossing. Costs may include, but are not limited to the actual costs of inspection, maintenance and repair of the private crossing which total expense for all Owners SMART estimates will be in the range of $6,500.00 per year, although actual costs may vary. Maintenance Costs shall not include required costs for rail inspection that SMART would still incur if no Crossing was installed.

(2) SMART shall notify OWNER in advance of planned maintenance or repairs expected to cost $5,000.00 or more.

(3) SMART shall bill OWNER the Maintenance Costs incurred during SMART's prior fiscal year (July 1- June 30), no later than September 1 following the end of the prior fiscal year. If the initial, or any other term of this Agreement shall be less than an entire fiscal year, OWNER will be billed only for the applicable pro-rata portion of the Maintenance Costs for that year. SMART shall provide a detailed accounting of all Maintenance Costs incurred which shall be provided to OWNER annually with the invoice for the preceding year.

(b) Replacement Costs shall be calculated based on the actual Crossing Cost amortized over 25 years, not to exceed $750,000 (for the initial installation of the Crossing).

Once the Crossing is installed, and the actual Crossing Cost is determined, the parties shall execute an amendment to this Agreement setting forth the actual Crossing Cost. SMART shall maintain a separate bank account for this Crossing into which Replacement Costs shall be deposited and separately maintained (the Replacement Account). SMART shall not use any money from the Replacement Account for any purpose other than for capital replacements and major repairs to the Crossing on an as needed basis. OWNER shall pay to SMART, annually in arrears, 18.75% of 1/25th of the actual Crossing Cost, adjusted annually for inflation using the Construction Cost Index. By way of example, should the Crossing Costs be $700,000, OWNER'S share of Replacement Costs would be $5250 per year. SMART shall provide an annual statement to OWNER specifying all deposits made into the Replacement Account and all expenditures made for Replacement Costs. Should any replacement cost be the result of damage or destruction of any equipment as a result of improper use of the Crossing by Owner, Owner shall pay for that item of repair in addition to its percentage share of Replacement Costs.

(c) The Existing Commercial Owners shall pay 75% of the actual cost for construction of the Crossing which total costs in the aggregate shall not exceed $750,000. Any costs above $750,000 will be paid for solely and exclusively by SMART. SMART will invoice Owner for its percentage payment and will provide a detailed accounting of the actual costs incurred for the construction of the Crossing along with each invoice.. SMART will provide an initial invoice within thirty (30) days of execution of this Agreement by all Parties. Owner will pay 50% of 18.75% of the Crossing Costs within thirty (30) days of receiving the initial invoice from SMART. Notwithstanding Paragraph 5(d) of this Agreement below, Owner will pay 50% of 18.75% of the remaining Crossing Costs within twelve (12) months of receiving written notice from SMART that the construction of the Crossing is complete. The Existing Commercial Owners are jointly and severally liable for the Crossing Costs. (See Exhibit D)

(d) OWNER shall pay SMART for all billed costs within thirty (30) days of receipt of billing for said costs.

(e) Should SMART, or any successor in interest, cease running passenger rail in this corridor continuously for more than 12 months, or should the Crossing cease to be used, all funds remaining in the Replacement Account shall be returned to Owner pro rata with any other contributing party. Owner shall have reasonable rights to conduct an audit of Maintenance Costs and/or Replacement Costs no more often than once a year. Should such audit reveal that Owner has been overcharged or undercharged for any such cost, the discrepancy shall be adjusted by a correcting payment to or from Owner within 30 days of completion of the audit.

6. OWNER is responsible for notifying SMART in writing of any need by OWNER for upgrading the vehicular traffic control devices or signs at or near the Crossing, since the OWNER is most knowledgeable concerning the OWNER'S volume and nature of the vehicular traffic. In addition, OWNER shall notify SMART of any significant change in OWNER's volume or nature of traffic at the crossing.

7. OWNER shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, or restrictions ("Legal Requirements") relating to the use of the Crossing and the use of the Premises. Should any discharge, leakage, spillage, emission or

pollution of any type occur upon or arise as a result of OWNER's use, presence, operations, or exercise of the rights granted under this Agreement, OWNER shall at its sole expense clean all property affected thereby, or pay SMART for such cleaning, whether owned or controlled by SMART or any third persons to the satisfaction of SMART and any governmental body having jurisdiction in the matter.

8. SMART reserves the right, to be exercised by SMART and any other parties who may obtain written permission or authority from SMART:

(a) To maintain, renew, use, operate, change, modify, and relocate, at its own expense any existing pipe, power, communication lines and appurtenances and other facilities or structures of like character upon, over, under or across the Premises;

(b) To construct, maintain, renew, use, operate, change, modify, and relocate, at its own expense any tracks or additional facilities or structures upon, over, under, or across the Premises; or

(c) To use the Premises in any manner as SMART in its sole discretion deems appropriate, provided that SMART uses all commercially reasonable efforts to avoid material interference with the use of the Premises by OWNER for the purpose specified in Section 3 above.

Notwithstanding anything herein to the contrary, SMART shall, at its own cost and expense, keep the Crossing in good order, repair and condition at all times on and after the Effective Date during the term hereof and any extensions, in material compliance with all Legal Requirements and in such a condition to maintain the safety and suitability of the Crossings with the California Public Utility Commission ("CPUC"). SMART shall take such commercially reasonable steps necessary to preserve and protect the useful life, utility and value of the Crossing.

9. It is specifically understood that cables, pipelines, and other electric and/or fiber optic transmission lines may be on, about, along, or under the Premises and OWNER agrees that under no circumstances will OWNER dig in or disturb the surface of the Premises without the express written consent of SMART.

10. If desired by OWNER, OWNER may request that SMART install two chases sufficient to allow OWNER to bring water, sewage, and power under the railroad tracks. SMART agrees to accommodate such request for two chases at OWNER's sole cost and expense, provided SMART can legally do so and OWNER obtains all necessary governmental and regulatory approvals and permits (including a separate license from SMART for the chases), including, but not limited to, environmental investigation and remediation, permitting, legal services, construction, SMART administrative costs, and ongoing inspection, maintenance and repair costs for the chases, and any other costs which may arise out of the installation of two chases. All work on the Premises to install two chases shall be performed by SMART and invoices for all such work will be submitted to OWNER for payment within thirty (30) days of submission.

11. OWNER, if it so desires, is responsible for constructing and maintaining, at its sole cost and own expense, a roadway to the Crossing and/or Premises, and related roadway drainage, in a manner acceptable to SMART and safe for use by any vehicles or equipment. Nothing contained in this Agreement requires OWNER to construct a roadway to the Crossing and/or Premises. If SMART requires a road for its own use of the Crossing and/or Premises, then SMART will bear this related cost at its sole expense

12. OWNER agrees not to interfere with any Crossing gates, farm gates, or barriers.

13. OWNER shall not obstruct or interfere with the passage of any trains or rail vehicles. OWNER shall, at its sole cost and expense, perform all activities on and about, and/or use the Crossing in such a manner as not at any time to be a source of danger to or interference with the use of present or future tracks, roadbed or property of SMART, or the safe operation and activities of SMART. Operators of vehicles shall comply with all posted signs. If ordered to cease using the Crossing at any time by SMART's personnel or other public authorities due to any hazardous condition, OWNER shall immediately do so and SMART shall remediate any such hazardous condition as quickly as possible. Notwithstanding the foregoing right of SMART, the parties agree that SMART has no duty or obligation to monitor OWNER's use of the Crossing to determine the safe nature thereof, it being solely OWNER's responsibility to ensure that OWNER's use of the Crossing is in a safe manner. Neither the exercise nor the failure by SMART to exercise any rights granted in this Section will alter the liability allocation provided by this Agreement.

14. OWNER, at its own expense, shall keep the rail flange ways of said Crossing clear of all obstructions of any kind which may accumulate by virtue of vehicles, equipment, or from machinery crossing there over or otherwise, and shall remove and keep removed any vegetation along the rail corridor on each side of the crossing so that the motorists' line of sight to approaching trains is not impaired or obstructed by vegetation. However, nothing contained herein shall require OWNER to take any actions within any area which has been designated wetlands by the Army Corps of Engineers.

15. If at any time during the term of this Agreement, SMART shall desire the use of its rail corridor in such a manner as would, in SMART's reasonable opinion, be interfered with by the Crossing, SMART shall make such changes in the Crossing as in the sole discretion of SMART (but in compliance with all applicable PUC regulations, including Section 7537 California Public Utilities Code) may be necessary to avoid interference with the proposed use of SMART's rail corridor, including, without limitation, the relocation of the existing Crossing or the construction of a new Crossing at SMART's sole cost and expense.

16. Upon termination of this Agreement, and in compliance with section 7537 of the California Public Utilities Code, SMART may remove the Crossing and restore the rail corridor to the condition as of the Effective Date of this Agreement, without incurring any liability to the OWNER.

17. OWNER agrees to and shall indemnify and hold harmless SMART, its officers, agents and employees, from and against any and all claims, demands, losses, damages, causes of action, suits and liabilities of every kind (including reasonable attorneys' fees, court costs, and other expenses related thereto) for injury to or death of a person or for loss or damage to any property, arising out of or in connection with OWNER's performance of its obligations under this Agreement or out of the operations of or work done by OWNER, action taken by OWNER, or action permitted by OWNER, its subcontractors, invitees, agents or employees. Said indemnity shall not protect SMART from liability to the extent such loss or damage was caused by SMART's negligence or willful misconduct.

"SMART", as used in this section, shall include SMART and any successors and assigns of SMART, and/or any other railroad company that may be lawfully operating upon and over the tracks, crossing or adjacent to said roadway, and the officers and employees thereof.

OWNER shall provide a defense to SMART, or at SMART's option, reimburse SMART for its costs of defense, including reasonable attorneys' fees, incurred in defense of such claims. OWNER acknowledges and agrees that its obligation to defend SMART is: (i) an immediate obligation, independent of its other obligations hereunder; (ii) applies to any loss which actually or potentially falls within the scope of this agreement; and (iii) arises at the time any claim or loss is tendered and continues at all times thereafter. This obligation to defend arises notwithstanding any alleged negligence or misconduct of SMART, except for such loss or damage arising from the negligence or willful misconduct of SMART.

SMART shall give OWNER prompt notice of any claim or loss, and the Parties shall cooperate in the defense of any such claims. OWNER shall seek SMART's prior written consent to settle or compromise any claim or loss if OWNER contends that SMART shares in liability with respect thereto.

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

19. OWNER shall, at its sole cost and expense, procure and maintain during the life of this License liability insurance covering claims of bodily injury, personal injury and property damage arising out of use of the License issued herein covering the insuring provisions of this License and the requirement of OWNER to indemnify SMART for limits of liability not less than:

(a) Commercial General Liability. OWNER shall procure and maintain Commercial General Liability insurance covering property damage, bodily injury and personal injury using an occurrence policy form, in an amount no less than $5,000,000 per occurrence, and $10,000,000 annual aggregate.

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 operations within 50

fect 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 such exclusions.

A follow form Excess Liability policy may be utilized to satisfy the required limits of liability under this section.

(b) Automobile Liability. OWNER shall procure and maintain Automobile Liability insurance covering bodily injury and property damage in an amount no less than $2,500,000 combined single limit for each occurrence. Said insurance shall include coverage for owned, hired, and non-owned vehicles. A follow form Excess Liability policy may be utilized to satisfy the required limits of liability under this section.

(c) The minimum limits of policies of insurance required of OWNER shall in no event limit the liability of OWNER under this agreement. OWNER's insurance shall:

(i) name SMART, its officers, and employees as an additional insured;

(ii) be issued by a company having a rating reasonably acceptable to SMART;

(iii) be primary insurance to all claims thereunder and provide that any insurance carried by SMART is excess and non-contributing;

(iv) provide that said insurance shall not be cancelled unless 30 days' prior notice is given to all insureds; and

(v) SMART shall have the right to annually conduct a review of the adequacy of the insurance requirements provided for in this Section. In the event that SMART should determine that the requirements of this Section no longer provide adequate protection to SMART, at SMART's reasonable discretion, it may require OWNER to obtain such additional insurance as SMART reasonably deems adequate. A certificate of insurance showing the terms of coverage and listing SMART as an additional insured shall be attached hereto as Exhibit E.

20. If SMART has a good faith belief that OWNER is not in compliance with the terms of this Agreement, then SMART shall give a reasonably specific written notice of the default to OWNER and demand that the default be cured within thirty (30) days of the notice. If OWNER fails to cure the default within thirty (30) days of the notice, or give adequate written assurance of due performance within thirty (30) days of the notice (in the event more than thirty (30) days are reasonably required to cure the default, then SMART will notify OWNER in writing that OWNER remains in breach (the Final Notice). OWNER shall have the right to initiate an action at the CPUC and/or the Superior Court to contest the Final Notice. SMART may then terminate this Agreement upon ten (10) days written notice to OWNER, or may, at its option, choose any other remedies that SMART may have at law or equity. OWNER reserves all remedies it may have with regard to loss of any access to its property.

21. SMART shall have the right to terminate this agreement if notified by the CPUC that the crossing is unsafe or no longer suitable for its intended use. Upon receipt of such notice, SMART shall immediately notify OWNER, and proceed to close the Crossing in the manner

required by the CPUC. Termination of this Agreement hereunder need not comply with any other terms and conditions of this Agreement. SMART shall promptly notify OWNER of any notifications, informal or formal, from the CPUC or other authority, of conditions or circumstances which may lead to a notification of immediate closure, as described above. If such notification from the CPUC is based on the failure of SMART to properly maintain and/or inspect the Crossing, SMART shall immediately proceed to comply with any and all orders of the CPUC. All Parties reserve any and all rights they may have in the event the Crossing is closed due to an order by the CPUC.

22. If OWNER fails to surrender to SMART the Premises, upon any termination of this Agreement, all liabilities and obligations of OWNER hereunder shall continue in effect until the Premises are surrendered. Termination shall not release OWNER from any liability or obligation, whether of indemnity or otherwise, resulting from any events happening prior to the date of termination.

23. Neither OWNER, nor the heirs, legal representatives, successors or assigns of OWNER, nor any subsequent assignee, shall assign or transfer this Agreement or any interest herein, without the prior written consent and approval of SMART, which approval may not be unreasonably withheld, conditioned or delayed. Any Assignee must agree to abide by and be bound by the terms of this Agreement, including but not limited to, the allowed uses, providing indemnification and providing the insurance required by this Agreement. Notwithstanding the above, should Owner sell its property to another commercial property owner who intends to utilize the property for similar commercial purposes consistent with those of the Owner, or should Owner transfer or assign its rights under this Agreement in connection with a merger, reorganization, consolidation or sale of all or substantially all of its assets to a parent, subsidiary or affiliated company or to a subsidiary of a parent company, or should owner assign its rights for estate planning purposes, such assignment is deemed preapproved by SMART subject to any new owner executing an assignment of this Agreement and providing SMART a certificate of insurance as provided for herein.

24. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (1) placed in the United States mail, certified, return receipt requested, or (2) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified above or below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days advance written notice of such change in address.

If to SMART:

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT
5401 Old Redwood Highway, Ste. 200
Petaluma, CA 94954
Attention: Laura Giraud, Real Property Manager

If to OWNER:

Corto Meno Sand & Gravel, LLC
P.O. Box 80844
Petaluma, CA 94975
Attention: Eugene Ceccotti, Managing Member

25. All questions concerning the interpretation or application of provisions of this Agreement shall be decided according to the laws of the State of California.

26. To the maximum extent possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by, or held to be invalid under applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder or any other provision of this Agreement.

27. The Parties hereby acknowledge and agree that (a) each party has actively participated in the drafting and negotiation of this Agreement, (b) each such party has consulted or has had the opportunity to consult with their own independent counsel relative to matters contemplated under this Agreement, (c) each party and party's counsel have reviewed the Agreement, and (d) any rule of construction to the effect that ambiguities are to be resolved against the drafting party(ies) shall not apply in the interpretation of this Agreement, or any portions hereof or any amendments hereto.

28. This Agreement is the full and complete agreement between SMART and OWNER with respect to all matters relating to OWNER's use of the Crossing, and supersedes any and all other agreements between the parties hereto relating to OWNER's use of the Crossing as described herein. However, nothing herein is intended to terminate any surviving obligation of OWNER or OWNER's obligation to defend and hold SMART harmless in any prior written agreement between the parties.

29. No person who is not a party to this Agreement shall have any rights or obligations as a result of this Covenant. This Agreement is between the parties hereto and no other person or entity is an express, intended, or implied third party beneficiary hereof.

30. The exhibits and attachments hereto are hereby incorporated herein by reference thereto.

Exhibit A – Location of Crossing and Improvements
Exhibit B – Permitted Uses of Crossing
Exhibit C – Map of Owners
Exhibit D– Allocation agreement
Exhibit E – Insurance Certificate

[Signature Page Follows]

SMART:

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

By: _____
Farhad Mansourian,
General Manager

APPROVED AS TO FORM:

By: _____
Adam L. Brand,
District Counsel

OWNER:

By: _____
Eugene B. Ceccotti,
Managing Member

APPROVED AS TO FORM:

By: _____
Clay Clement,
Counsel for OWNER

Exhibit A

LOCAITON OF CROSSING AND IMPROVEMENTS

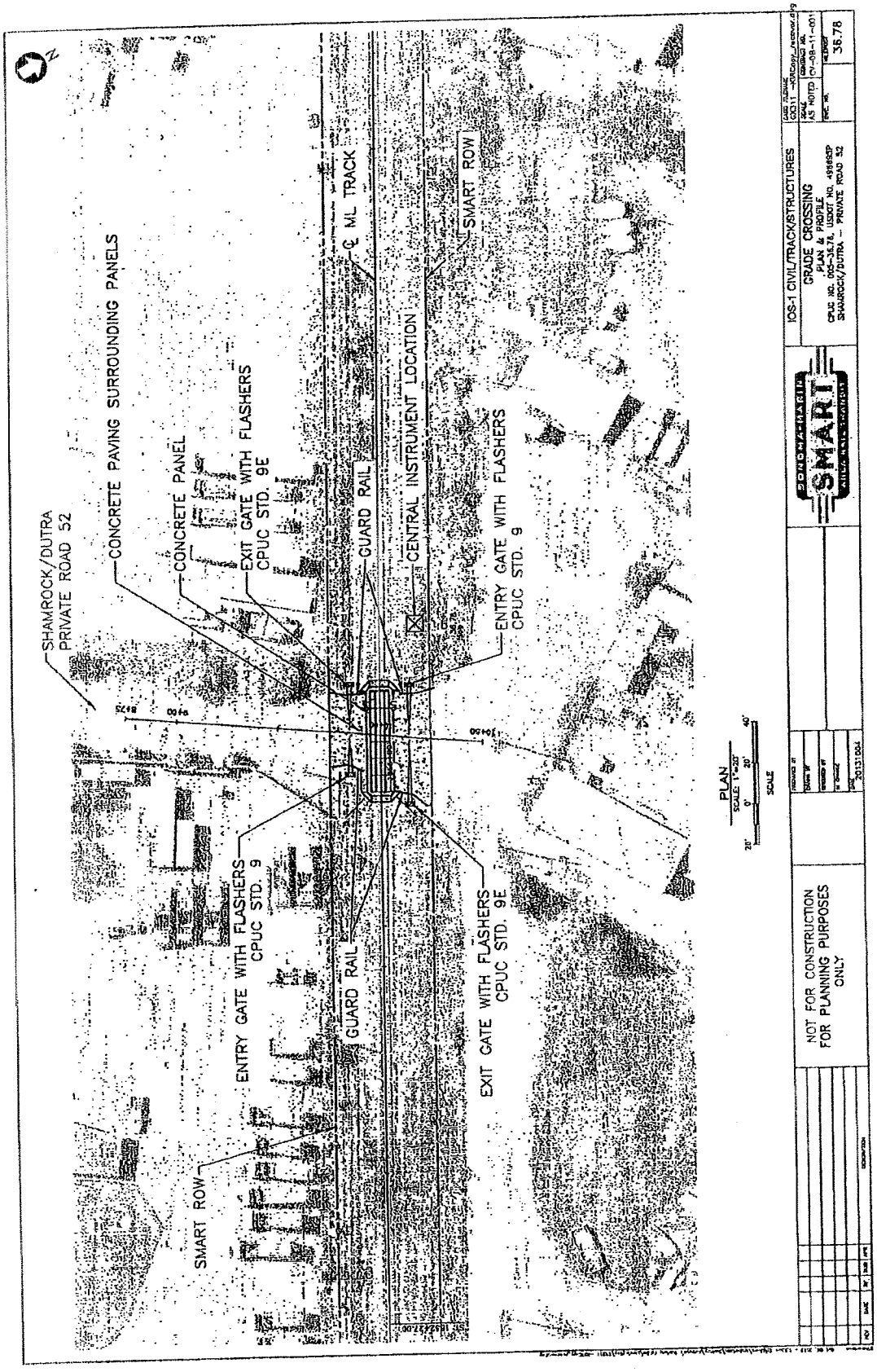
SHAMROCK/DUTRA
PRIVATE ROAD 52
CONCRETE PAVING SURROUNDING PANELS
CONCRETE PANEL
EXIT GATE WITH FLASHERS
CPUC STD. 9E
GUARD RAIL
CENTRAL INSTRUMENT LOCATION
℄ ML TRACK
SMART ROW
ENTRY GATE WITH FLASHERS
CPUC STD. 9
ENTRY GATE WITH FLASHERS
CPUC STD. 9
GUARD RAIL
EXIT GATE WITH FLASHERS
CPUC STD. 9E
SMART ROW
PLAN
SCALE: 1"=20'
SCALE
NOT FOR CONSTRUCTION
FOR PLANNING PURPOSES
ONLY
IOS-1 CIVIL/TRACK/STRUCTURES
GRADE CROSSING
PLAN & PROFILE
CPUC NO. 005-36.78, USDOT NO. 498695P
SHAMROCK/DUTRA – PRIVATE ROAD 52
SMART
36.78

EXHIBIT B

PERMITTED USES OF CROSSING

Exhibit B

COMMERICAL:

Subject to the terms and conditions of this Agreement, OWNER shall be permitted to use the at-grade private roadway crossing of SMART railroad tracks and railroad property at Railroad Milepost 36.78, in order to access OWNER's property on the east side of the railroad. Said access shall be for the private use of the OWNER, and his tenants, employees, agents and invitees. Said access shall be limited to the passage of persons, vehicles and equipment, including automobiles, light trucks, heavy trucks and heavy equipment, to and from the property of the OWNER. All vehicles and equipment shall comply with and observe all posted signs, warning devices and gates, and in any event shall stop before entering the crossing area and ascertain that it is safe to proceed across the tracks before crossing.

EXHIBIT C

MAP OF OWNERS

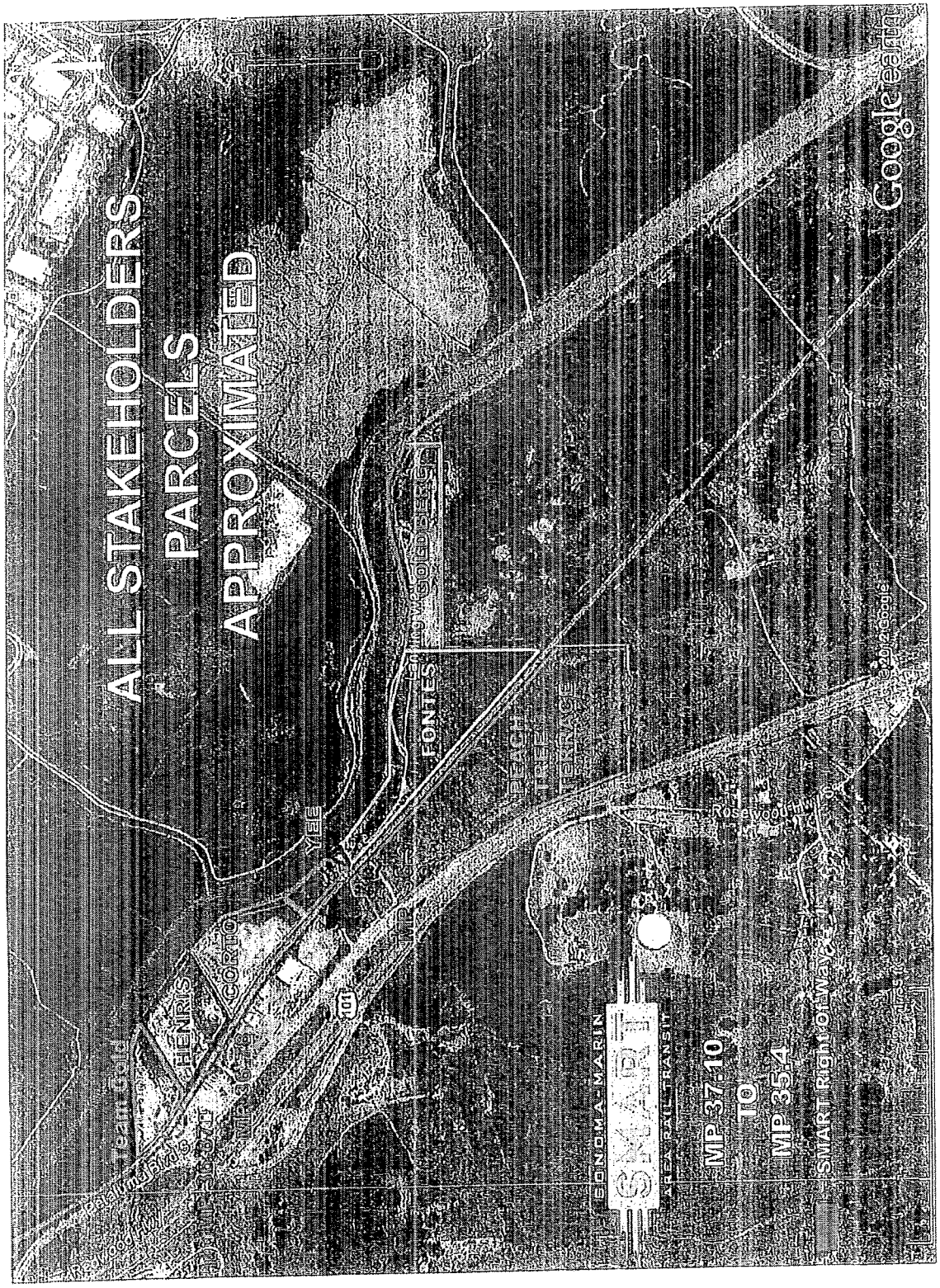
ALL STAKEHOLDERS
PARCELS
APPROXIMATED
Google earth
FONTES
YEE
CORTO
HENRIS
PEACH
TREE
TERRACE
Roseyood Hwy
SMART
MP 37.10
TO
MP 35.4
SMART Right Of Way

EXHIBIT D

ALLOCATION AGREEMENT

For purposes of calculating payment of the Crossing Cost, Maintenance Costs and Replacements Costs, SMART shall be responsible for 25% of the actual Crossing Cost, Maintenance Costs and Replacement Costs incurred. Subject to the provisions relating to The Dutra Group and SMART's approval of a license agreement for an overhead conveyor crossing the tracks below, the remaining 75% of the actual Crossing Cost, Maintenance Costs and Replacement Costs shall be equally allocated amongst the four existing commercial property Owners (Existing Commercial Owners) identified on the map attached hereto as Exhibit C such that each Existing Commercial Owner shall pay 18.75% of that expense. The Existing Commercial Owners are:

Team Gold, LLC
Henris Investments, LLP
Corto Meno Sand & Gravel, LLC
Peachtree Terrace and the Dutra Group

The Peachtree Terrace parcel is being developed by The Dutra Group for an asphalt batch plant and as part of the operation needs to construct an overhead conveyor across the tracks to connect to other property An Application for Encroachment of Air Space for construction of the conveyor has been submitted to SMART. The Dutra Group, on behalf of Peachtree Terrace, will participate financially in the Crossing Cost, as provided for in this Agreement, even though it has not yet obtained final approval of its Use Permit, if, and only if (1) SMART approves Dutra's application for the conveyor which SMART shall use it best efforts to complete within 30 days and (2) SMART supports The Dutra Group's separate application for the conveyor to the PUC, including the General Manager's stating to the PUC that SMART supports the application for the conveyor. If SMART complies with the foregoing, then Peachtree Terrace will execute the SMARTS STANDARD AGREEMENT FOR PRIVATE CROSSING
SMART NO. PvtX-0011.

Subject to the conditions relating to The Dutra Group, above, the Existing Commercial Owners shall pay 75% of the actual cost for construction of the Crossing which total costs in the aggregate shall not exceed $750,000. Any costs above $750,000 will be paid for solely and exclusively by SMART. SMART will invoice Owner for its percentage payment and will provide a detailed accounting of the actual costs incurred for the construction of the Crossing along with each invoice. SMART will provide an initial invoice within thirty (30) days of execution of this Agreement by all Parties. Owner will pay 50% of 18.75% of the Crossing Costs within thirty (30) days of receiving the initial invoice from SMART. Owner will pay 50% of 18.75% of the remaining Crossing Costs within twelve (12) months of receiving written notice from SMART that the construction of the Crossing is complete. The Existing Commercial Owners are jointly and severally liable for the Crossing Costs. If any Existing Commercial Owner does not pay its proportionate share in a timely basis, SMART shall provide written notice to that owner demanding that payment be made within 10 days with a copy of said notice

to the other Existing Commercial Owners. To the extent any one of the four Existing Commercial Owners fails or refuses to pay its proportionate share of the Crossing Costs, that owner shall cease any use of the Crossing and the amount which would have otherwise been invoiced to that Owner shall be equally divided amongst the other Existing Commercial Owners. Any Existing Commercial Owner who advances funds on behalf of any other Existing Commercial Owner shall be entitled to seek full recovery of any such advances with interest at 10% plus all attorney fees incurred in any collection activities to secure such recovery.

DATED: _____

TEAM GOLD, LLC

By: _____
Glen Ghilotti,
President

DATED: _____

HENRIS INVESTMENTS, LLP

By: _____
Steve Henris

DATED: 02/02/2016

CORTO MENO SAND & GRAVEL, LLC

By: _____
Eugene B. Ceccotti,
Managing Partner

DATED: _____

PEACHTREE TERRACE AND THE DUTRA GROUP

By: _____
Bill T. Dutra,
Chief Executive Officer

DATED: _____

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

By: _____
Farhad Mansourian,
General Manager

Commercial Owners. To the extent any one of the four Existing Commercial Owners fails or refuses to pay its proportionate share of the Crossing Costs, that owner shall cease any use of the Crossing and the amount which would have otherwise been invoiced to that Owner shall be equally divided amongst the other Existing Commercial Owners. Any Existing Commercial Owner who advances funds on behalf of any other Existing Commercial Owner shall be entitled to seek full recovery of any such advances with interest at 10% plus all attorney fees incurred in any collection activities to secure such recovery.

DATED: _____

TEAM GOLD, LLC

By: _____
Glen Ghilotti,
President

DATED: _____

HENRIS INVESTMENTS, LLP

By: _____
Steve Henris

DATED: _____

CORTO MENO SAND & GRAVEL, LLC

By: _____
Eugene B. Ceccotti,
Managing Partner

DATED: _____

PEACHTREE TERRACE AND THE DUTRA GROUP

By: _____
Bill T. Dutra,
Chief Executive Officer

DATED: _____

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

By: _____
Farhad Mansourian,
General Manager

to the other Existing Commercial Owners. To the extent any one of the four Existing Commercial Owners fails or refuses to pay its proportionate share of the Crossing Costs, that owner shall cease any use of the Crossing and the amount which would have otherwise been invoiced to that Owner shall be equally divided amongst the other Existing Commercial Owners. Any Existing Commercial Owner who advances funds on behalf of any other Existing Commercial Owner shall be entitled to seek full recovery of any such advances with interest at 10% plus all attorney fees incurred in any collection activities to secure such recovery.

DATED: _____ TEAM GOLD, LLC

By: _____
Glen Ghilotti,
President

DATED: _____ HENRIS INVESTMENTS, LP

By: Steve Henris
Steve Henris,
General Partner

DATED: _____ CORTO MENO SAND & GRAVEL, LLC

By: _____
Eugene B. Ceccotti,
Managing Partner

DATED: _____ PEACHTREE TERRACE AND THE DUTRA GROUP

By: _____
Bill T. Dutra,
Chief Executive Officer

DATED: _____ SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

By: _____
Farhad Mansourian,
General Manager

to the other Existing Commercial Owners. To the extent any one of the four Existing Commercial Owners fails or refuses to pay its proportionate share of the Crossing Costs, that owner shall cease any use of the Crossing and the amount which would have otherwise been invoiced to that Owner shall be equally divided amongst the other Existing Commercial Owners. Any Existing Commercial Owner who advances funds on behalf of any other Existing Commercial Owner shall be entitled to seek full recovery of any such advances with interest at 10% plus all attorney fees incurred in any collection activities to secure such recovery.

DATED: January 5, 2016

TEAM GOLD, LLC

By: _____
Glen Ghilotti,
President

DATED: _____

HENRIS INVESTMENTS, LLP

By: _____
Steve Henris

DATED: _____

CORTO MENO SAND & GRAVEL, LLC

By: _____
Eugene B. Ceccotti,
Managing Partner

DATED: _____

PEACHTREE TERRACE AND THE DUTRA GROUP

By: _____
Bill T. Dutra,
Chief Executive Officer

DATED: _____

SONOMA-MARIN AREA RAIL TRANSIT DISTRICT

By: _____
Farhad Mansourian,
General Manager

EXHIBIT E

INSURANCE CERTIFICATES

314206

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 1/29/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Construction & Real Estate Practice
Wells Fargo Insurance Services USA, Inc. - CA Lic#: 0D08408
959 Skyway Road
San Carlos, CA 94070

CONTACT NAME:
PHONE (A/C, No, Ext): FAX (A/C, No): (866) 358-1487
E-MAIL ADDRESS: Certrequests@wellsfargo.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: Arch Insurance Company	11150
INSURER B: Navigators Insurance Company	42307
INSURER C:	
INSURER D:	
INSURER E:	
INSURER F:	

INSURED
Corte Mono Sand & Gravel, LLC
P.O. Box 808044
Petaluma CA 94975-8044

COVERAGES CERTIFICATE NUMBER: 10070622 REVISION NUMBER: See below

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY [X] PRO-JECT [ ] LOC OTHER:	X		71PKG8905105	7/1/2015	7/1/2016	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 100,000 $ 5,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $
A	AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS	X		71PKG8905105	7/1/2015	7/1/2016	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 2,000,000 $ $ $ $
B	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION $			SF15EXC756379IV	7/1/2015	7/1/2016	EACH OCCURRENCE AGGREGATE	$ 8,000,000 $ 8,000,000 $
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N N/A If yes, describe under DESCRIPTION OF OPERATIONS below			71WCI8905005	7/1/2015	7/1/2016	X PER STATUTE OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 1,000,000 $ 1,000,000 $ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CG20100413,CG20370413,CG24270413,00CA0070001013 Sonoma Marin Area Rail Transit (SMART), its officers, and employees is named as additional insured as respects general liability and automobile liability on a primary and non-contributory basis.

CERTIFICATE HOLDER

Sonoma Marin Area Rail Transit (SMART)
5401 Old Redwood Hwy #200
Petaluma, CA 94954

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

The ACORD name and logo are registered marks of ACORD © 1988-2014 ACORD CORPORATION. All rights reserved.

ACORD 25 (2014/01)

(This certificate replaces certificate 10070079 issued on 1/15/2016)

POLICY NUMBER: 71PKG8905105

COMMERCIAL GENERAL LIABILITY
CG 20 10 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
ALL PARTIES WHERE REQUIRED BY A WRITTEN CONTRACT	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. **Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

© Insurance Services Office, Inc., 2012

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

© Insurance Services Office, Inc., 2012

POLICY NUMBER: 71PKG8905105

COMMERCIAL GENERAL LIABILITY
CG 20 37 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
ALL PARTIES WHERE REQUIRED BY A WRITTEN CONTRACT	

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. **Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

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POLICY NUMBER: 71PKG8905105

COMMERCIAL GENERAL LIABILITY
CG 24 27 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITED CONTRACTUAL LIABILITY – RAILROADS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Scheduled Railroad:	RAILROADS WHERE REQUIRED BY WRITTEN CONTRACT
Designated Job Site:	LOCATIONS WHERE REQUIRED BY WRITTEN CONTRACT
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

With respect to operations performed for, or affecting, a Scheduled Railroad at a Designated Job Site, the definition of "insured contract" in the **Definitions** section is replaced by the following:

9. "Insured contract" means:
   a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
   b. A sidetrack agreement;
   c. Any easement or license agreement;
   d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
   e. An elevator maintenance agreement;
   f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or those acting on your behalf. However, such part of a contract or agreement shall only be considered an "insured contract" to the extent your assumption of the tort liability is permitted by law. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

   Paragraph f. does not include that part of any contract or agreement:
   (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
      (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
      (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
   (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in Paragraph (1) above and supervisory, inspection, architectural or engineering activities.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

SCHEDULE

Name of Person(s) or Organization(s):
ANY PERSON OR ORGANIZATION THAT YOU HAVE AGREED IN A WRITTEN CONTRACT, THAT SUCH PERSON OR ORGANIZATION IS AN ADDITIONAL INSURED ON THIS POLICY.

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

Under **Covered Autos Liability Coverage**, the **Who Is An Insured** provision is amended to include as an "insured" the person(s) or organization(s) named in the Schedule above, but only with respect to their legal liability for your acts or omissions or acts or omissions of any person for whom **Covered Auto Liability Coverage** is afforded under this policy.

All other terms and conditions of this Policy remain unchanged.

Endorsement Number:

Policy Number: 71PKG8905105

Named Insured: NORTH BAY ROCK & READY-MIX, INC.

This endorsement is effective on the inception date of this Policy unless otherwise stated herein:

Endorsement Effective Date: 7/1/2015

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the Sonoma-Marin Area Rail Transit District seeking cost allocation for required improvements, including installation of quadrant gates at a private crossing over Sonoma-Marin Area Rail Transit District tracks (MP:36.75) in the County of Sonoma, State of California.	Application 13-09-020 (Filed September 23, 2013)

INFORMATION REGARDING SERVICE

I hereby certify that I have this day served a copy of the "Joint Motion to Adopt Settlement Agreements" on all known parties to A.13-09-020 by first class mail with postage pre-paid to each person in the attached service list.

The official service list I use is current as of today's date.

Dated: August 8, 2016, at Santa Rosa, California

Kristin Whalley, Legal Secretary
Sonoma County Counsel
575 Administration Drive, Room 105-A
Santa Rosa, CA 95403
(707) 565-2421
Kristin.Whalley@sonoma-county.org

(End of Attachment C)