

City of Santa Rosa



Legislation Details

File #:	24-0275	Version:	1	Name:	Jennings Ave Real Property License Agreement with SMART
Type:	CC- Report	Status:		Status:	Agenda Ready
File created:	3/18/2024	In control:		In control:	City Council
On agenda:	4/9/2024	Final action:		Final action:	4/9/2024
Title:	REPORT - JENNINGS AVENUE AT-GRADE BICYCLE AND PEDESTRIAN RAILROAD CROSSING REAL PROPERTY LICENSE AGREEMENT WITH THE SONOMA MARIN AREA RAIL TRANSIT DISTRICT (SMART)				

BACKGROUND: The City received approval from the California Public Utilities Commission (CPUC) on September 20, 2016, through Decision 16-09-002, granting the City’s application for an at-grade bicycle and pedestrian crossing of SMART’s rail line at Jennings Avenue. Since that date, the City and SMART have been negotiating the terms and conditions required to achieve SMART’s approval to proceed with construction. In alignment with the City’s third request to the CPUC to extend the authorization period for construction of the at-grade crossing, SMART’s staff has insisted upon a license agreement to allow the City to proceed with construction that includes very one-sided, expansive language that would impose substantial liability on the City related to SMART’s negligent acts. The language in the proposed agreement requires the City to assume all operational costs associated with the crossing and liability resulting from the location, design, establishment or maintenance of the at-grade crossing even if resulting solely from SMART’s negligence, except for liability ultimately determined by the courts to be due to the gross negligence or willful misconduct of SMART. Additionally, the License Agreement proposed by SMART staff requires the City to pay the attorneys’ fees and costs associated with defending SMART against any claims resulting from the location, design, establishment or maintenance of the at-grade crossing, even if the courts ultimately determine that the claims resulted from SMART’s gross negligence or willful misconduct.

RECOMMENDATION: It is recommended by the City Manager’s Office, Transportation and Public Works Department and the City Attorney’s Office that the Council consider, by motion, taking one of the following actions relating to the license agreement proposed by staff of SMART for use and construction of the at-grade crossing of SMART’s Right-of-Way at Milepost 54.96 in the City of Santa Rosa at Jennings Avenue: 1) direct the City Manager to execute the version of the license agreement proposed by SMART’s staff after the remaining Exhibits have been provided by SMART in a form to be approved by the City Attorney, and return the executed agreement to the SMART Board of Directors for consideration and notify the CPUC; or 2) direct the City Manager to execute a revised license agreement containing more balanced liability and indemnity language after the remaining Exhibits have been provided by SMART in a form to be approved by the City Attorney, and return the executed agreement to the SMART Board of Directors for consideration and notify the CPUC; or 3) reject the license agreement proposed by SMART’s staff and direct the City Manager to notify the CPUC and SMART that the City retracts its application to construct an at-grade bicycle and pedestrian crossing at Jennings Avenue.

Sponsors:	Public Works, City Manager
Indexes:	Not a Project
Code sections:	15378 - Not a Project
Attachments:	1. Staff Report, 2. Attachment 1 - Real Property License proposed by SMART with redline changes to address typographical errors, 3. Attachment 2 – Alternative Real Property License Agreement, 4. Presentation, 5. Late Correspondence (Uploaded 04-09-2024), 6. Late Correspondence (Uploaded 04-11-2024)

Date	Ver.	Action By	Action	Result
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4/9/2024

1

City Council

approved

Pass