

# Jennings Avenue Bicycle and Pedestrian Rail Crossing Real Property License Agreement and Construction and Funding Agreement

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# Proposed At-Grade Crossing



# CPUC Decision Timeline

- October 9, 2025 – ALJ Greenburg directs City and SMART to complete negotiations by December 31, 2025:
  - Provide joint written updates on November 3 & 24
  - Appear for an in-person status conference on December 8
  - Directed to complete and submit:
    - Real Property License Agreement
    - Construction and Funding Agreement
    - 2025 Extension Request

# Real Property License Agreement

## Primary Areas of Negotiation

### 1. **Section 14.**

- The “but for” clauses relating to the City’s decision to locate and construct an at-grade crossing at Jennings Avenue.

### 2. **Section 15.a.**

- Clarify and expand SMART’s responsibility around their “sole negligence”, “gross negligence” and “willful misconduct”.
- Clarify License Area.

### 3. **Section 15.b.**

- The City’s “absolute” duty to defend SMART

# Real Property License Agreement

## 14. Assumption of Risk and Liability.

The “...but for...” clause essentially resulted in the City assuming **ALL** risk and liability for determining the location, placement, design and establishment of the pedestrian at-grade crossing, including incidents where SMART is solely negligent.

Proposal – Insert language describing that the City assumes the majority of the risk and liability for the crossing, removing the “...but for...” clause and carving out incidents caused by SMART’s “sole negligence”, “gross negligence” or “willful misconduct”.



# Real Property License Agreement

## 15.a. Indemnity Provision - Licensed Property

SMART looked to significantly limit exposure by incorporating very limiting language around “gross negligence” and “willful misconduct” making the City responsible for **ALL** losses from any claims, suits, or actions arising from **ANY** cause whatsoever.

Proposal - Clarify and expand indemnification language to include “sole negligence”, “gross negligence” and “willful misconduct”. This increases SMART’s responsibility when their officers, employee or agents are found to be at least partially responsible for an incident.

# Real Property License Agreement

## 15.a. Indemnity Provision - Licensed Property

There was a clear need to better define the License Area. Ambiguity could result in the City being found responsible simply because an incident occurred between the Santa Rosa North Station and College Avenue where the crossing at Jennings could have contributed.

Proposal – Incorporate the following language, “...shall apply to incidents within, adjacent to, or in connection with the License Area, regardless of whether the incident occurs strictly within the boundaries of the License Area.” In combination with Exhibit A, this will provide a basis for determining if the Jennings crossing was a contributing factor.

# Real Property License Agreement

## 15.b. Indemnity Provision - Licensed Property

Established that the City's duty to defend SMART is absolute. City cannot recoup its attorney's fees and litigation costs even after a non-appealable judgment that the damage, death, or injury through which any claim arises was proximately or directly caused by the gross negligence or willful misconduct of SMART.

Proposal – Add Section 15.c. - Incorporates binding arbitration and meet and confer prior to adjudication or settlement where incidents determined to be caused by SMART's "sole negligence", "gross negligence" or "willful misconduct". City is entitled to reimbursement.



# Construction and Funding Agreement

## Guiding Principles

- **City will pay for design, permitting, construction and testing.**
- City to obtain approval of finalized designs from the CPUC RSD
  - SMART to incorporate revisions to integrate the at-grade crossing warning systems into the Enhanced Automatic Train Control System.
  - City to update civil construction drawings to incorporate additional crossing safety equipment as mutually agreed to.
- SMART to issue request for bids, award construction contract, award construction management contract (as needed) and provide project management and inspection.

## Recommendation

The City Manager's Office recommends that the Council, by motion, approve and delegate authority to the City Manager to negotiate and execute both the Real Property License Agreement and Construction and Funding Agreement in substantially the same form as the attached drafts, subject to approval as to form by the City Attorney, and return the executed agreements to the SMART Board of Directors for consideration.