

ORDINANCE NUMBER O-20842 (NEW SERIES)

DATE OF FINAL PASSAGE JULY ~~25~~, 2017

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO RATIFYING THE EXECUTION OF THE MEMORANDUM OF AGREEMENT AND CONSTRUCTION AND MAINTENANCE AGREEMENT REGARDING THE BAYSHORE BIKEWAY PROJECT; AND AUTHORIZING SUBLICENSES TO U.S. FISH AND WILDLIFE SERVICE, GGTW, LLC (SOUTH BAY SALT WORKS), AND FRIENDS OF THE SAN DIEGO WILDLIFE REFUGE FOR THE USE OF AN ACCESS ROAD.

WHEREAS, in 2008, as part of the City of San Diego's (City) project to construct the segment of the Bayshore Bikeway in the Otay Mesa-Nestor community extending from the western terminus of Main Street to the northern terminus of 13th Street, the City sought to use a roadway on land owned by the Metropolitan Transit System (MTS) that was being used by the GGTW, LLC, operator of the South Bay Salt Works, and the San Diego Bay National Wildlife Refuge, South San Diego Bay Unit, of the U.S. Fish and Wildlife Service (USFWS) for truck and vehicle access; and

WHEREAS, in exchange for the San Diego County Regional Airport Authority (owner of the South Bay Salt Works property), GGTW, USFWS, and MTS and agreeing to an alignment of the Bayshore Bikeway along the existing access road, the City agreed to construct and maintain a new access road for the benefit of the Airport Authority, GGTW, and USFWS, and further agreed that if the access road should ever cease to be available for use by GGTW and USFWS due to circumstances beyond their control that the City would provide an alternate access road; and

WHEREAS, the parties memorialized their agreements in a Memorandum of Agreement dated October 15, 2008 between the City and Airport Authority, USFWS, and GGTW (MOA)

and a Construction and Maintenance Agreement dated May 19, 2009 between the City and MTS and the San Diego and Arizona Eastern (SDAE) Railway (CMA); and

WHEREAS, the CMA authorized the City to use MTS and SDAE Railway property in order to constructing the new access road and permitted the City to issue sublicenses to GGTW and USFWS and the MOA stated that the City would issue sublicenses to GGTW and USFWS permitting them to use the access road but it appears that the sublicenses were never executed and GGTW and USFWS have been using the access road without incident and without any requests to the City for maintenance; and

WHEREAS, in 2015, City staff was apprised of the City's duties under the MOA when the Airport Authority inquired of the City's obligations because the Airport Authority was in the process of selling its property being used by the South Bay Salt Works; and

WHEREAS, in order to formally and properly allow GGTW and USFWS to continue to use the access road and for the City to be able to maintain the access road for the time period contemplated in the MOA, it is necessary to execute the sublicenses referenced in the MOA, and in order to execute the sublicenses it is necessary to ratify the executions of the MOA and the CMA because obligations in excess of five years are involved; and

WHEREAS, under Charter section 99, no contract, agreement or obligation extending for a period of more than five years may be authorized except by Ordinance approved by a two-thirds majority vote of the City Council; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the execution of the Memorandum of Agreement dated October 15, 2008 between the City and the Airport Authority, USFWS, and GGTW, a copy of which is on file in

the office of the City Clerk as Document No. OO- 20842, is authorized and hereby ratified.

Section 2. That the execution of the Construction and Maintenance Agreement dated May 19, 2009 between the City and MTS and the San Diego and Arizona Eastern Railway, a copy of which is on file in the office of the City Clerk as Document No. C-14977, is authorized and hereby ratified.

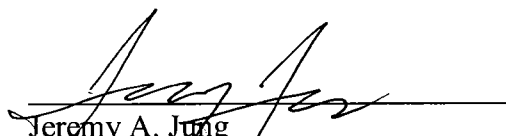
Section 3. That the Mayor, or his designee, is authorized to issue sublicenses to the USFWS, GGTW, and Friends of the San Diego Wildlife Refuge for use of the access road, in accordance with the Memorandum of Agreement, for a term that may exceed five years.

Section 4. That a full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 5. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By


Jeremy A. Jung
Deputy City Attorney

JAJ:cw
04/25/17
06/16/17 COR. COPY
01/18/18 COR. COPY 2
Or.Dept: Transportation & Storm Water Department
CC No.: N/A
Doc. No.: 1490180_3

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

~~ELIZABETH S. MALAND~~
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

(See Attached Memo and Signature Page)

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 533-5800

DATE: January 18, 2018
TO: Elizabeth Maland, City Clerk
FROM: Jeremy A. Jung, Deputy City Attorney
SUBJECT: Ordinance (O-2017-132 COR. COPY 2)

On July 11, 2017, Item 52 was adopted by City Council, an ordinance ratifying the Memorandum of Agreement, dated October 15, 2008, and the Construction and Maintenance Agreement, dated May 19, 2009, regarding the Bayshore Bikeway Project; and authorizing sublicenses to U.S. Fish and Wildlife Service, GGTW, LLC (South Bay Salt Works), and Friends of the San Diego Wildlife Refuge for the use of an access road.

After adoption, it came to our attention that it is necessary to correct page 3, Section 2, referencing the Constructive and Maintenance Agreement Document No. approved under a Mayoral Action on May 19, 2009, as C-14977. The "OO- _____" has been replaced with "C-14977."

There are no other changes.

Accordingly, we have enclosed a corrected version of (O-2017-132 COR. COPY).

JAJ:cw
Doc. No.: 1670458
Enclosure

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of JUL 11 2017

ELIZABETH S. MALAND
City Clerk

By *Elizabeth Maland*
Deputy City Clerk

Approved: 7/24/17
(date)

Kevin L. Faulconer
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

"The date of final passage is July 25, 2017, which represents the day this ordinance was returned to the Office of the City Clerk with the Mayor's signature of approval."

Passed by the Council of The City of San Diego on JUL 11 2017, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gomez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUL 25 2017

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By *Atty Ready*, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

JUN 20 2017, and on JUL 25 2017

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By *Atty Ready*, Deputy

Office of the City Clerk, San Diego, California
Ordinance Number O- <u>20842</u>