

RESOLUTION NUMBER R- 315768

DATE OF FINAL PASSAGE SEP 23 2024

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING THE TRANSFER OF FUNDS
FROM FUND BALANCE – NORTH UNIVERSITY CITY DIF
TO THE MIRAMAR ROAD I-805 EASTERLY RAMPS
PROJECT.

RECITALS

The Council of the City of San Diego (Council) adopts this Resolution based on the following:

A. In 2021, the City of San Diego (City) completed the Miramar Road I-805 Easterly Ramps Project (Project) to provide a right turn pocket and a Class II bicycle lane for westbound Miramar Road at the Eastgate Mall.

B. The City needed to acquire permanent easements and temporary construction easements (collectively, the Property Interests) over portions of the property identified as Assessor's Parcel Numbers 343-260-06 and 343-260-07 (collectively, the Property) and owned by Eastgate Miramar Associates, a California limited partnership (Property Owner), to complete the Project.

C. In 2013, the Council adopted Resolution R-308571, a Resolution of Necessity to commence eminent domain proceedings against Property Owner to acquire the Property Interests. On June 6, 2018, the City filed an eminent domain lawsuit against the Property Owner titled *City of San Diego v. Eastgate Miramar Associates, LP.*, San Diego Superior Court Case No. 37-2018-00027801 (Lawsuit).

D. Two tenants that operate businesses on the Property, AY Oil dba Stars & Stripes Gas Station and Scrub Me Down (collectively, AY Oil) intervened in the Lawsuit, alleging that the Project's construction interfered with their business operations because of (1) the permanent

loss of prime parking spaces, (2) the loss of queuing area for the gas station, and (3) a year of dust and construction activity on the Property. AY Oil asserted a claim against the City of over \$2,000,000 for their loss of goodwill.

E. The City negotiated the just compensation owed to Property Owner and paid the mutually negotiated just compensation to Property Owner in December 2023. The City could not resolve the loss of goodwill claims with AY Oil and proceeded to trial in January 2024. The judge awarded AY Oil a total of \$790,000 as just compensation for the Project's impacts to the businesses. The City satisfied this judgment using funds remaining in the account for the Project.

F. Because AY Oil was the prevailing party at trial, the judge determined that AY Oil was entitled to recover its litigation expenses and entered an award of \$820,000 against the City (Award). The City does not have sufficient funds in the account for the Project to pay the Award. The City must satisfy the Award and interest by October 31, 2024, to avoid paying further interest and penalties and to fully satisfy the eminent domain judgment against the City.

G. On September 11, 2024, the Active Transportation and Infrastructure Committee unanimously recommended approval of the transfer of funds to satisfy the Award for litigation expenses and interest against the City.

H. The Office of the City Attorney prepared this Resolution based on the information provided by City staff, with the understanding that this information is complete and accurate.

ACTION ITEMS

Be it resolved by the Council of the City of San Diego:

The Chief Financial Officer is authorized to increase the Capital Improvements Program Budget in CIP S-00880 (Miramar Road I-805 Easterly Ramps); and to appropriate and expend \$820,000 from Fund 400849, North University City DIF, for the purpose of satisfying a court-

ordered judgment payment, contingent upon the Chief Financial Officer furnishing a certificate certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

APPROVED: MARA W. ELLIOTT, City Attorney

By Jenny K Goodman
Jenny Goodman
Lead Deputy City Attorney

JKG1:msb
10/09/23
Or. Dept: Engineering and Capital Projects
CC No. 103468974
Doc. No.: 3787568

I certify that the Council of the City of San Diego adopted this Resolution at a meeting held on SEP 17 2024.

DIANA J.S. FUENTES
City Clerk

By Connie Patterson
Deputy City Clerk

Approved: 9/23/24
(date)

Todd Gloria
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

**The City of San Diego
COMPTROLLER'S CERTIFICATE**

CERTIFICATE OF UNALLOTTED BALANCE

ORIGINATING DEPT. NO. 103468974
2112

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: \$820,000.00

Purpose: To reserve funds for the current Urgent Fund Transfer for Miramar Road I-805 Easterly Ramps Project CIP S-00880 council action within FBA fund 400849 North University City. Funds block was done via JE 103468974.

Date: August 16, 2024 By: Naiahd Askor *Naiahd Askor*
COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Funded Program	Fund	Grant Number	G/L Account	Functional Area	Business Area	Fund Center or Cost Center	Internal Order or WBS Element	Original Amount
1	NON-PROGRAM	400849	NOT_RELEVANT_GRANT	330081	OTHR-00000000-GG	9913	9913000011	NON-PROGRAM	\$ 820,000.00
TOTAL AMOUNT									\$ 820,000.00

FUND OVERRIDE

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: _____

Vendor: _____

Purpose: _____

Date: _____ By: _____
COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Funded Program	Fund	Grant Number	G/L Account	Functional Area	Business Area	Fund Center or Cost Center	Internal Order or WBS Element	Original Amount
1									
TOTAL AMOUNT									

Passed by the Council of The City of San Diego on SEP 17 2024, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Henry L. Foster III	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kent Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage SEP 23 2024.

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

(Seal)

TODD GLORIA
Mayor of The City of San Diego, California.

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By Linda Shwin, Deputy
For Connie Patterson

Office of the City Clerk, San Diego, California

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