

**AMENDMENT NO. 1 TO
CONSTRUCTION AND MAINTENANCE AGREEMENT FOR BAYSHORE BIKEPATH**

This Amendment No. 1 (Amendment) to Construction and Maintenance Agreement (CMA) is made and entered into this 2nd day of July, 2021, ~~2020~~, by and between San Diego Metropolitan Transit System (MTS), a California public transit agency, the San Diego and Arizona Eastern Railway (SDAE), a Nevada non-profit public benefit corporation wholly owned by MTS (MTS and SDAE are collectively referred to herein as RAILROAD), the San Diego Association of Governments, a legislatively-created regional planning agency (SANDAG), and the City of Chula Vista (CITY), a municipal corporation (collectively the "Parties").

RECITALS

- A. RAILROAD, CITY, and the San Diego Association of Governments (SANDAG) entered into this CMA effective December 14, 2010.
- B. Under the terms of the CMA, once the second segment of the Bayshore Bikepath Project (the "Existing Bikepath") was constructed by SANDAG, and the Existing Bikepath was accepted by CITY, which occurred on or about November 5, 2012, the CMA, associated Durable Right of Entry Permit, and any licenses issued to SANDAG for the Existing Bikepath project were automatically assigned to CITY.
- C. CITY desires to extend the Bikepath approximately 0.75 miles, from E Street to H Street (the "Extended Bikepath").
- D. RAILROAD is willing to allow the Extended Bikepath to be constructed and maintained in its Right-of-Way on the same terms and conditions as the Existing Bikepath, subject to the limitations set forth in this Amendment.

AGREEMENT

1. Assignment of SANDAG's interest to CITY. RAILROAD and CITY acknowledge that SANDAG is no longer a party to this CMA pursuant to the assignment in Paragraph 11(a) and (b) of the CMA. All references to SANDAG in the CMA shall be considered references to CITY as it relates to the construction and maintenance of the Extended Bikepath. For the avoidance of doubt, the Parties acknowledge and agree that nothing in this Amendment amends or modifies any of SANDAG's obligations or responsibilities under the CMA as it relates to the Existing Bikepath, including but not limited to its obligations and responsibilities under Section 7 (Indemnification) and 8 (Insurance) of the CMA.
2. License. Effective upon the date set forth in Section 4 below, the License granted in Paragraph 1 and Exhibit B of the CMA is hereby amended to include the additional property set forth in Exhibit 1 of this Amendment.
3. Construction of Extended Bikepath.

a. Prior to construction of the Extended Bikepath, CITY shall present for RAILROAD's review and approval the design and construction plans. The Extended Bikepath shall not be constructed until and unless RAILROAD approves such plans.

b. The Extended Bikepath shall be constructed at no cost to RAILROAD. CITY shall reimburse RAILROAD for all reasonable RAILROAD staff expenses, consultant expenses, and other direct expenses accrued in reviewing, approving, and constructing the Extended Bikepath and any other agreements relating to the Extended Bikepath's construction, including but not limited to licenses for the Extended Bikepath and a Right of Entry Permit issued pursuant to Paragraph 5 of the CMA that allows CITY's contractor to enter into the RAILROAD right-of-way to construct the Extended Bikepath.

4. Project Planning and Financing. RAILROAD acknowledges that CITY is in the process of identifying a financing plan for the Extended Bikepath, including the filing of grant applications or other requests for special funding from local, state and federal sources. RAILROAD agrees to support such funding requests so long as they do not create a financial or operational burden on RAILROAD. Except as it relates to reimbursing MTS for plan review costs under Section 3(a) above, the rights and obligations of this Amendment No. 1 shall not commence unless and until CITY delivers a Notice of Intent to Proceed with the Extended Bikepath project to RAILROAD at the notice address listed in Paragraph 13 of the CMA. The date stated in the Notice of Intent to Proceed shall be the effective date for the expanded License in Section 2 above.

[the next page is the signature page]

IN WITNESS THEREOF, the RAILROAD and CITY have caused this Amendment No. 1 to the CMA to be executed by and through their respective officers duly authorized on the date written below their signatures.

RAILROAD

San Diego Metropolitan Transit System

By: Sharon Cooney
Sharon Cooney
Chief Executive Officer

San Diego and Arizona Eastern Railway

By: Sharon Cooney
Sharon Cooney
President

Approved as to Form and Legality:

By: Karen Landers
Karen Landers
General Counsel

CITY

City of Chula Vista

By: William Valle
William Valle
Director of Engineering and Capital
Projects

Approved as to Form and Legality:

By: Glen R. Googins
Glen R. Googins
City Attorney

SANDAG

San Diego Association of Governments

By: _____

Approved as to Form and Legality:

By: _____
Amberlynn Griffin, Esq.
Office of General Counsel

IN WITNESS THEREOF, the RAILROAD and CITY have caused this Amendment No. 1 to the CMA to be executed by and through their respective officers duly authorized on the date written below their signatures.

RAILROAD

San Diego Metropolitan Transit System

By: _____
Sharon Cooney
Chief Executive Officer

San Diego and Arizona Eastern Railway

By: _____
Sharon Cooney
President

Approved as to Form and Legality:

By: _____
Karen Landers
General Counsel

CITY

City of Chula Vista

By: _____
William Valle
Director of Engineering and Capital
Projects

Approved as to Form and Legality:

By: _____
Glen R. Googins
City Attorney

SANDAG

San Diego Association of Governments

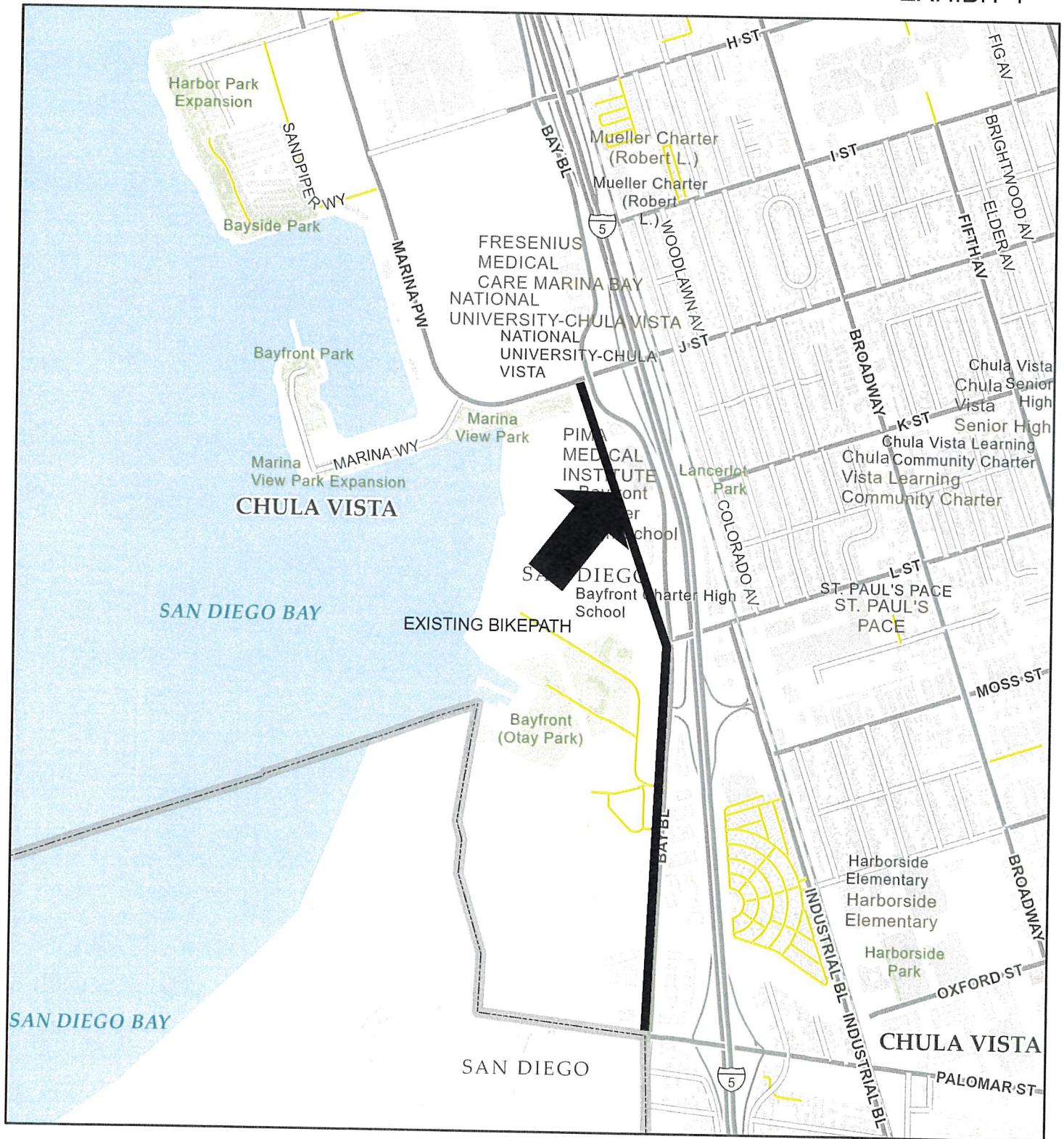
By: _____
Helen Hehuth

Approved as to Form and Legality:

By: _____
Amberlynn Griffin, Esq.
Office of General Counsel

EXHIBIT 1

Map showing Existing Bikepath segment, plus proposed Extended Bikepath segment in MTS License Area



BAYSHORE BIKEWAY EXISTING BIKEPATH

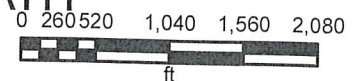
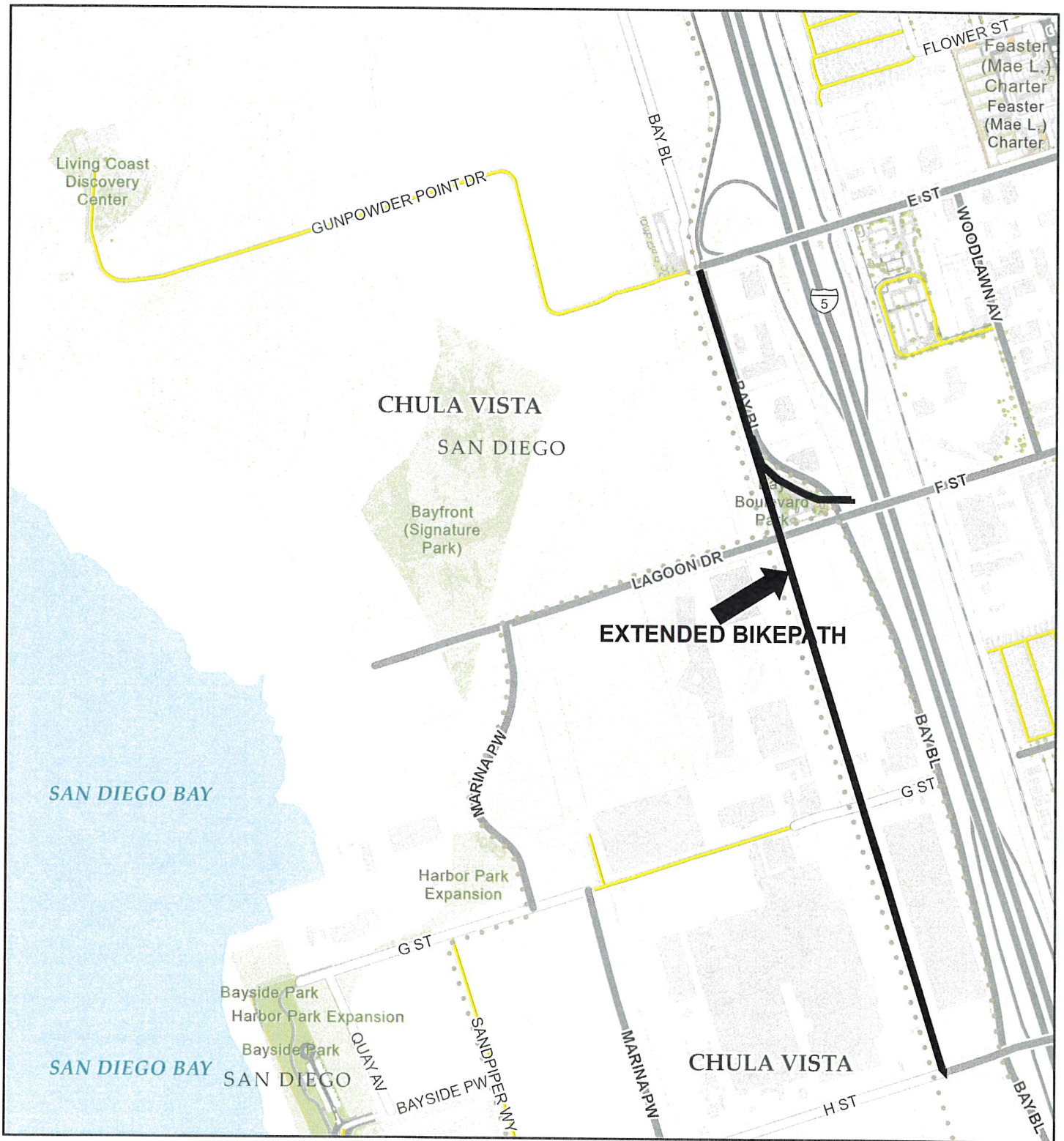


Exhibit 1: MTS Doc. No. G 13421.1-11 (J St. to Palomar St.
1.2-miles)

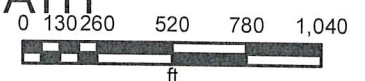
Date Printed:
November 17, 2020



RAYSHORE BIKEWAY "EXTENDED BIKEPATH"



Exhibit 1: MTS Doc. No. G 13421.1-11 (E St. to H St.
0.75-miles)



Date Printed:
November 17, 2020