

## RESOLUTION 2016-53

### RESOLUTION DETERMINING THE NECESSITY OF ACQUISITION BY EMINENT DOMAIN AND AUTHORIZING THE ACQUISITION OF REAL PROPERTY OWNED BY ROHR, INC., CONSISTING OF APPROXIMATELY 4 ACRES OF LAND KNOWN AS THE TRIANGLE PARCEL LOCATED AT THE INTERSECTION OF MARINA PARKWAY AND G STREET IN CHULA VISTA, CALIFORNIA

**WHEREAS**, the San Diego Unified Port District (District) is a public corporation created by the legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1 (Port Act); and

**WHEREAS**, Section 27 of the Port Act grants authority to the District to acquire property by eminent domain as necessary or convenient to the exercise of its powers consistent with Section 4 of the Port Act; Section 25 of the Port Act grants authority to the District to take by grant, purchase, gift, devise, lease or to otherwise acquire, hold, and enjoy real property within the District necessary to the full or convenient exercise of its powers; Section 30(b)(2) of the Port Act grants authority to the District to acquire, purchase, take over, construct, maintain, operate, develop, and regulate property necessary for or incident to the development and operation of a harbor or for the accommodation and promotion of commerce, navigation, fisheries, or recreation in the District, and to acquire, purchase, develop, construct, maintain, repair, operate, and regulate, among other things, streets, roadways, parking facilities, and all other transportation facilities or betterments incidental, necessary, or convenient to the public trust purposes for which the District was established; Section 30.5(a) of the Port Act grants authority to the District to undertake the activities authorized in Sections 27 and 30(b)(2), subject to conditions specified therein; and

**WHEREAS**, Section 2 of the Port Act directs the District to develop the harbors and ports of the State of California (State) for multiple purpose use for the benefit of the people; and Section 4 of the Port Act establishes the District for the acquisition, construction, maintenance, operation, development, and regulation of harbor works and improvements, including rail and water, for the development, operation, maintenance, control, regulation, and management of the harbor of San Diego upon the tidelands and lands lying under the inland navigable waters of San Diego Bay, and for the promotion of commerce, navigation, fisheries, and recreation thereon; and

**WHEREAS**, the real property that is the subject of this Resolution is currently owned by Rohr, Inc., operating as BFGoodrich Aerospace Aerostructures Group, a Delaware corporation and wholly owned subsidiary of the B.F. Goodrich Company, also known as Rohr, Inc., operating as UTC Aerospace Systems (formerly operating as

Goodrich Aerostructures), a Delaware corporation (Owner) and consists of the fee simple interest in real property, legally described by Exhibit "A" attached hereto and incorporated herein by this reference, which real property is designated as San Diego County Assessor's Parcel Number 571-330-28 and located in the City of Chula Vista, County of San Diego, State of California (Property); and

**WHEREAS**, the Property is required for a public use, namely for the public trust purposes specified in Sections 2 and 4 of the Port Act, and all purposes necessary and convenient thereto, for the Chula Vista Bayfront Master Plan Project (Project), which is a collaboratively planned mixed-use project consisting of a reconfigured marina and improved commercial harbor and navigation channel, public parks and open space, habitat restoration and preservation including protection of sensitive wildlife habitats, species and other coastal resources, public promenades, bike trails, and other public access areas connecting the entire bayfront, hotels and RV camping sites, convention center and resort hotel, parking, and other development; and

**WHEREAS**, on or before March 29, 2016, pursuant to the requirements of California Code of Civil Procedure Section 1245.235, the District mailed, by first-class mail, notice to the Owner of the Property, to its address as shown by the last equalized San Diego County assessment roll, of the intention of the Board of Port Commissioners (Board), acting in its capacity as the governing board of the District, to consider the necessity of acquiring the Property through eminent domain proceedings for purposes of the Project, and of the date set for a hearing thereon of April 14, 2016; and

**WHEREAS**, said notice by District notified the Owner of its right to appear and to be heard at a hearing before the Board on the following matters: (a) whether the public interest and necessity require the Project; (b) whether the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; (c) whether the Property sought to be acquired is necessary for the Project; and (d) whether the offer required by Section 7267.2 of the Government Code has been made to the owner(s) of record; and

**WHEREAS**, on April 14, 2016, the Board conducted a hearing and heard and considered public comments, if any, regarding the Project and regarding the proposed acquisition of the Property by eminent domain; and

**WHEREAS**, at the close of the hearing and after the opportunity for open and public discussion among the Board, the Board voted, by the statutorily required two-thirds' majority of the Board membership or greater, to adopt this Resolution of Necessity to acquire the Property necessary for the Project through eminent domain proceedings.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Port Commissioners of the San Diego Unified Port District, finds and determines as follows:

1. The public interest and necessity require the Project for the public trust purposes specified in Sections 2 and 4 of the Port Act, including, but not limited to, development of the harbors and ports of the State for multiple purpose use for the benefit of the people, the acquisition, construction, maintenance, operation, development, and regulation of harbor works and improvements, including rail and water, the development, operation, maintenance, control, regulation, and management of the harbor of San Diego upon the tidelands and lands lying under the inland navigable waters of San Diego Bay, and the promotion of commerce, navigation, fisheries, and recreation thereon; and

2. The District is authorized to acquire the Property in fee simple absolute and to exercise the power of eminent domain for the public uses set forth herein under the California Constitution, Article I, Section 19, the California Eminent Domain Law (Code of Civil Procedure Section 1230.010 et seq., including, without limitation, Sections 1240.010 to 1240.050, 1240.110, 1240.120, 1240.510, 1240.610, 1240.650, and 1245.250), and Sections 2, 4, 25, 27, 30(b)(2), 30.5, and 87 of the Port Act; and

3. The Project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury; and

4. The Property, described and depicted in Exhibit "A" hereto, is necessary for the Project to carry out the public uses specified in Sections 2 and 4 of the Port Act and for all purposes necessary and convenient thereto, namely, to develop the harbors and ports of the State for multiple purpose use for the benefit of the people, and for the acquisition, construction, maintenance, operation, development, and regulation of harbor works and improvements, including rail and water, for the development, operation, maintenance, control, regulation, and management of the harbor of San Diego upon the tidelands and lands lying under the inland navigable waters of San Diego Bay, and for the promotion of commerce, navigation, fisheries, and recreation thereon; and

5. The proposed use of the Property for the Project constitutes a valid public use and the use of the Property will in fact be a public use; and

6. In conformance with Sections 7267.1 and 7267.2 of the California Government Code, an appraisal was prepared covering the Property; an offer based on said appraisal was made to the Owner, and a written statement showing the appraised value of the Property and summarizing the basis of that valuation was also delivered to the Owner; the District's offer letter also included an informational pamphlet describing the eminent domain process and the owner's rights, and the District further offered to pay the Owner the reasonable cost, up to \$5,000, for an independent appraisal of the Property pursuant to California Code of Civil Procedure Section 1263.025; and

7. On May 18, 2010, the Board certified the Chula Vista Bayfront Master Plan and Port Master Plan Amendment Final Environmental Impact Report by adoption of Board Resolution 2010-78; and on August 13, 2013, the Board certified the Addendum to the Final Environmental Impact Report for the Chula Vista Bayfront Master Plan and Port Master Plan Amendment by adoption of Board Resolution 2013-138; and

8. The Project was unanimously approved by the California Coastal Commission on August 9, 2012; and

9. The Executive Director is hereby authorized and directed to request the California State Lands Commission (Commission) consider and approve the proposed acquisition of the Property for the Project pursuant to Section 30.5 of the Port Act; and

10. To the extent the Property, or any portion thereof, is already devoted to a public use, the use of the Property for the Project is a compatible use that will not unreasonably interfere with or impair the continuance of the public use as it presently exists or may reasonably be expected to exist in the future (California Code of Civil Procedure Section 1240.510), or the use of the Property for the Project is a more necessary public use than the presently existing use (California Code of Civil Procedure Section 1240.610).

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that the Board of Port Commissioners of the San Diego Unified Port District, authorizes as follows:

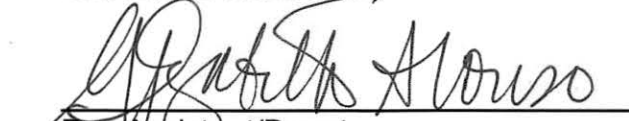
1. That the Property be acquired by the District in fee simple absolute, and that the General Counsel of the District institute eminent domain proceedings for the foregoing acquisition, to do, perform, and carry out all necessary proceedings and steps incident to acquire the Property, to correct any errors or to make or agree to non-material changes in the legal description of the Property as may be necessary for the conduct of the action or other proceedings or transactions required to acquire the Property, and to seek and obtain an order for prejudgment possession of some or all of the Property at such time as the General Counsel deems it to be necessary and appropriate; and

2. That the Executive Director or her designee issue checks, as necessary and requested by the General Counsel, in the total amount of up to \$1,595,000, the total estimated fair market value of the Property as of the date of value of the appraisal which was the basis of the purchase offer made to the Owner, so that the General Counsel may make deposits of estimated compensation into the Condemnation Deposits Fund with the Office of the State Treasurer; and that the Executive Director or her designee issue such additional checks as may be requested by the General Counsel, as and if necessary to satisfy any court orders for higher deposits or payment of greater compensation, and as necessary to pay for title insurance and other fees following transfer of ownership of the Property to the District.

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that the Board of Port Commissioners of the San Diego Unified Port District, authorizes as follows:

1. That the Property to be acquired by the District is adjacent to District tidelands;
2. That adequate area for the planned activities do not presently exist with the District tidelands; and
3. The planned activities for the Property are necessary or incidental to carrying out the purposes described in Port Act Section 87.

APPROVED AS TO FORM AND LEGALITY:  
GENERAL COUNSEL

  
By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 14th day of April 2016, by the following vote:

AYES: Bonelli, Malcolm, Merrifield, Moore, Nelson and Valderrama.

NAYS: None.

EXCUSED: Castellanos.

ABSENT: None.

ABSTAIN: None.

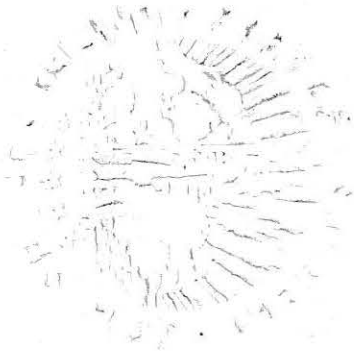


Marshall Merrifield, Chairman  
Board of Port Commissioners

ATTEST:



for Timothy A. Deuel  
District Clerk



(Seal)