

RESOLUTION _____

RESOLUTION OF NECESSITY OF THE CITY OF CHULA VISTA TO ACQUIRE CERTAIN REAL PROPERTY OR INTEREST IN REAL PROPERTY BY EMINENT DOMAIN FOR E STREET EXTENSION AND TEMPORARY ACCESS FOR CONSTRUCTION OF ROAD AND WALL

WHEREAS, the Chula Vista Bayfront project is one of the last truly significant large-scale waterfront development opportunities in Southern California and, at approximately 535 acres, the project seeks to transform a largely vacant and underutilized industrial landscape into a thriving recreational, residential, and resort and convention center area; and

WHEREAS, the Chula Vista Bayfront project is an economic development and redevelopment project of substantial public benefit and interest; and

WHEREAS, the first phase of the Chula Vista Bayfront project is the relocation of an existing Recreational Vehicle (RV) park. The RV park relocation is an important element of the overall Chula Vista Bayfront project and is also legally necessary before the development of the Chula Vista Bayfront Project resort and convention center; and

WHEREAS, in order to complete this first phase, an extension of E Street needs to be constructed to provide public access to the new RV Park location, and a new recreational trail leading north from E Street to the northeast corner of the new RV park needs to be constructed to provide continuous access from the Class 1 Bikeway to the new RV park (“E Street Extension Project”); and

WHEREAS, in addition to the E Street Extension Project, the City and Unified Port of San Diego (Port), and its employees, contractors, agents, and invitees, will require: (i) the temporary access for the construction of a temporary road to facilitate access to the Living Coast Discovery Center to transport visitors from the parking lot to the Discovery Center and provide access by employees of the U.S. Fish and Wildlife Agency to their place of employment during the RV Park relocation (“Temporary Road Project”); and (ii) temporary access for construction of a retaining wall on an abutting property in furtherance of the Bayfront project (“Wall Project”); and

WHEREAS, the E Street Project, Temporary Road Project, and Wall Project may be collectively referred to herein as the “Project”; and

WHEREAS, completion of the Project requires the City to acquire easements from the landowner, SDG&E, for street and public utility purposes, and temporary access for construction and related purposes, as more particularly described below:

1. a non-exclusive, assignable easement of approximately 0.46 acres of land to excavate for, erect, construct, install, modify, reconstruct, replace, repair, inspect, patrol, test, maintain, operate, use, and remove the following facilities: a paved public roadway and public utilities, conduits, and appurtenances incidental thereto, for public street, utility, and related municipal purposes at the location described and depicted on Exhibit A (“E Street Extension Easement”); and
2. a non-exclusive assignable easement for access over approximately 3,370 square feet of land measuring five (5) feet wide, at the location described and depicted on Exhibit B, to perform finish cosmetic work related to a retaining wall being constructed entirely upon an adjacent property (“Temporary Wall Easement”); and
3. a non-exclusive assignable easement for ingress and egress over approximately 17,087 square feet of land to install, place, lay, construct, operate, use, patrol, maintain, repair and replace a paved roadway 20.00 feet (narrowing to 13 feet in sections) in width at the location described and depicted on Exhibit B (“Temporary Road Easement”).

WHEREAS, the E Street Extension Easement, Temporary Wall Easement, and Temporary Road Easement, may be collectively referred to herein as the “Easements”; and

WHEREAS, portions of the real property within the proposed Easements are currently appropriated to public use, and may be reasonably expected to be appropriated for public use in the future, including but not limited to the following:

1. SDG&E’s ownership and maintenance of utility poles, overhead electric facilities, underground electric facilities, underground gas pipelines, an underground petroleum pipeline, duct banks, and other related appurtenances; and
2. SDG&E’s ownership and maintenance of electrical vault facilities; and
3. SDG&E’s ownership and maintenance of future electrical transmission lines and related facilities.

WHEREAS, City’s use of the proposed Easements for the Project will not unreasonably interfere with or impair the continuance of the public use as it now exists, or may reasonably be expected to exist in the future, for, without limitation, the following reasons:

1. City has located the Easements and designed the facilities to be developed thereon in consultation with SDG&E to assure compatibility with SDG&E’s current and future uses of its improvements and facilities; and

2. City's use or uses under the proposed Easements shall not restrict or prevent SDG&E's access to the property within the Easements so that SDG&E can continue the current appropriated public uses, or reasonably expected appropriated future public uses, including access to construct, maintain, or repair facilities in furtherance of its current and future uses; and
3. City's use or uses under the proposed Easements shall not prevent or interfere with SDG&E's underlying fee ownership rights of property included within the Easements.

WHEREAS, should City's use or uses under the proposed Easements require or necessitate a rearrangement, relocation, or reconstruction of SDG&E's improvements or facilities, the terms and conditions for such rearrangement, relocation, or reconstruction shall be subject to franchise agreements between the City and SDG&E, or other future written agreements between the parties; and

WHEREAS, working with the Port of San Diego, the required Easements have been appraised; and

WHEREAS, pursuant to Government Code Section 7267.2 a written Offer to Acquire was made to the owner of record and that the Offer to Acquire was based upon an approved appraisal; and

WHEREAS, SDG&E has informed City staff that it is unable, due to regulatory constraints, to settle this acquisition prior to the City adopting a Resolution of Necessity to condemn the necessary interest; and

WHEREAS, in order to complete the construction of the Project in a timely and responsible manner it is necessary to acquire these Easements at this time in order to allow for the timely completion of the RV park relocation project and elements of the Chula Vista Bayfront project; and

WHEREAS, on November 14, 2019, a notice of public hearing was mailed by certified and first-class mail and was hand delivered to the owner of record notifying them of their right to appear and be heard on the matter of the City's interest in adopting a resolution of necessity; and

WHEREAS, in accordance with California Code of Civil Procedure Section 1245.235, the City properly noticed, for November 19, 2019, a public hearing to consider the resolution, and gave to each person or entity whose property is to be acquired a reasonable opportunity to be heard on the matters referred to in section 1240.030 of the California Code of Civil Procedure, at which time the public hearing was properly conducted and each person whose property is to be acquired by eminent domain was afforded an opportunity to be heard on said matters; and

WHEREAS, at such public hearing the City considered all of the evidence submitted including public testimony and all relevant staff reports, and all evidence relating to the need for the Project and for the property, all of which are incorporated herein by reference; and

WHEREAS, the City possess the right to acquire said property by the use of eminent domain pursuant to the California Constitution and the California Eminent Domain Law, California Government Code Sections 37350 and 37350.5, Code of Civil Procedure Sections 1230.010 et. Seq., and in accordance with California Code of Civil Procedure Section 1240.030 which provides that the power of eminent domain may be exercised to acquire property upon following all proper procedures and making the required findings.

NOW THEREFORE, the City Council of the City of Chula Vista does hereby find, resolve and determine, by a vote of not less than two-thirds of its members, as follows:

SECTION 1. Compliance with California Code of Civil Procedure and California Environmental Quality Act. This project has been reviewed for compliance with the California Environmental Quality Act (CEQA) and it has been determined that the project was adequately covered in previously certified Final Environmental Impact Report UPD#83356-EIR-658/SCH#2005081077 for the Chula Vista Bayfront Master Plan.

SECTION 2. Public Use. The public use for which the real property is to be acquired is for the construction and operation of public rights-of-way in furtherance of the Project in the City of Chula Vista, San Diego County, California, and all uses necessary, incidental, or convenient thereto.

SECTION 3. Description of Property. Attached and marked as Exhibits “A” and “B” hereto are the legal descriptions and depictions of the following property interests required for the Project:

EASEMENT INTERESTS ACROSS PORTIONS OF SAN DIEGO COUNTY ASSESSOR’S PARCEL NUMBERS 565-010-08, 565-010-12, 565-010-15, AND 567-011-01, AS SET FORTH IN EXHIBITS “A” AND “B”.

SECTION 4. Findings. Based upon the evidence presented at the hearing, the City of Chula Vista hereby finds and determines each of the following:

- (a) The public interest and necessity require the proposed Project;
- (b) The proposed Project is planned or located in the manner that will be most compatible with the greatest public good and least private injury;

- (c) The real property interests described in Exhibits "A" and "B",, and as further described and limited in this resolution of necessity, are necessary for the proposed Project;
- (d) The proposed public use of the property interests to be acquired will not unreasonably interfere with or impair the continuance of the public use as it now exists or may reasonably be expected to exist in the future as provided in section 1240.510 of the California Code of Civil Procedure;
- (e) The offer required by section 7267.2 of the California Government Code was made to the owner or owners of record, or the offer has not been made because the owner(s) cannot be located with reasonable diligence; and
- (f) All conditions and statutory requirements necessary to exercise the power of eminent domain ("the right to take") to acquire the property described herein have been complied with by the City of Chula Vista.

SECTION 5. Use Not Unreasonably Interfering with Existing Public Use(s). Some or all of the real property or interests in real property to be acquired may be subject to easements and rights-of-way appropriated to existing public uses. In the event the use or uses will not unreasonably interfere with or impair the continuance of the public use as it now exists or may reasonably be expected to exist in the future, counsel for the City of Chula Vista is authorized to acquire the real property subject to such existing public use(s) pursuant to section 1240.510 of the California Code of Civil Procedure.

SECTION 6. Further Activities. Counsel for the City of Chula Vista is hereby authorized to file legal proceedings necessary to acquire the hereinabove described real property in the name of and on behalf of the City of Chula Vista by eminent domain, and counsel is authorized to institute and prosecute such legal proceedings as may be required in connection therewith. Legal counsel is further authorized to take such steps as may be authorized and required by law, and to make such deposits as may be required by order of court, to permit the City to take possession of and use said real property at the appropriate time to ensure timely construction of the public Project. Counsel is further authorized to correct any errors or to make or agree to non-material changes in the legal description of the real property that are deemed necessary for the conduct of the condemnation action or other proceedings or transaction required to acquire the subject real property. Counsel is further authorized to reduce or modify the extent of the interests or property to be acquired so as to reduce the compensation payable in the action where such change would not substantially impair the construction and operation for the Project for which the real property is being acquired.

SECTION 7. Appropriation of Necessary Proceeds. The appraised value of the parcels being considered for acquisition by eminent domain is \$77,400. The funds for the acquisition of the Parcel A which is needed for the E street extension will be funded by the City's General Fund to be reimbursed through the Revenue Sharing Agreement with the Port of San Diego. No appropriations are needed as funding is included in the fiscal year 2019-20 General Fund budget for the Bayfront project. Funding for Parcel B needed for the temporary construction easements will be funded by the Port of San Diego.

SECTION 8. Independent Judgement. The City Council hereby finds and determines that their approval of eminent domain proceedings, adoption of this resolution and related findings made in connection therewith, were the product of their exercise of their independent review and judgement.

Presented by

Approved as to form by

Eric Crockett
Director of Economic Development

Glen R. Googins
City Attorney