

**GRANT OF EASEMENT AND AGREEMENT**

For good and valuable consideration, the sufficiency of which is hereby acknowledged, **ROHR, INC.**, a UTC Aerospace Systems Company, a [\_\_\_\_], hereinafter called "Grantor," grants to **SAN DIEGO UNIFIED PORT DISTRICT**, a public corporation, hereinafter called "Grantee," an easement, based upon the following terms and conditions set forth in this Grant of Easement and Agreement ("Agreement"), effective as of December \_\_\_\_, 2018 ("Effective Date"):

1. **Uses:** Grantor grants Grantee an exclusive easement to excavate, place, lay, construct, operate, install, modify, improve, rebuild, reconstruct, relocate, pave, reconfigure, repair, replace, remove, substitute, change the size of, upgrade, maintain, patrol, inspect, test and use the public access improvements associated with the Chula Vista Bayfront Master Plan ("CVBMP") and Sweetwater Bicycle Path and Pedestrian Promenade project, which include without limitation, parks, public access and recreational uses, and are collectively referred to hereinafter as, the "Public Access Improvements", in, upon, over, under, through and across the Grantor's property located in the City of Chula Vista, County of San Diego, State of California described and depicted in Exhibit A, attached hereto and by this reference made a part hereof ("Easement Area"), together with the right of ingress thereto and egress therefrom, for itself and its invitees, which include the general public (collectively, the "Easement"). Grantee, at its sole cost and expense, shall obtain all permits for and shall install the Public Access Improvements in compliance with applicable building and construction codes and all applicable laws, codes, regulations and requirements relating to Hazardous Materials (as defined below). The Public Access Improvements shall be those reasonably necessary or appropriate for park, public access and recreational use including, without limitation, landscaping, bikeways, pedestrian paths, wildlife preservation buffers, furniture such as benches, trash receptacles, kiosks, lighting structures, art objects, and other furnishings and all utility service lines and facilities directly serving the Public Access Improvements (excluding distribution lines and facilities serving other properties). No permanent buildings shall be constructed or permitted to remain on or upon the Easement Area. Grantor shall not plant any trees or shrubs, drill any well or increase or decrease the ground elevation within the limits of said Easement Area and right of way. Grantee shall have the right to trim and cut trees, shrubs, foliage and roots under, in, through or upon the Easement Area.
2. **Easement Term:** The term of the Easement is twenty-five (25) years commencing upon the Effective Date.
3. **Grantee's Improvements and Repairs:** The Public Access Improvements shall be constructed substantially in accordance with the plans and specifications set forth in Exhibit B, attached hereto and incorporated herein by reference. Subsequent reconstruction, reconfiguring, replacement, substitutions, changes,

upgrades and/or repairs to the Public Access Improvements ("Subsequent Work") shall not require Grantor's approval; provided that (a) Grantee shall notify Grantor in advance of such Subsequent Work (except in the case such Subsequent Work does not require a permit or is less than \$100,000)); and (b) such Subsequent Work shall be a Public Access Improvement. In the case of emergency repairs, Grantee shall immediately commence repairs and give Grantor written notification within ten (10) days of the commencement of any emergency repairs. Subsequent Work shall be performed in compliance with all applicable building and construction codes.

4. **Maintenance and Repair; Hazardous Materials:** Grantee shall maintain in good condition and repair the Public Access Improvements. Grantor shall not cause or allow the release of any Hazardous Materials (defined below) on, in, or under the Easement Area or Public Access Improvements. If Grantee or any of its invitees, releases any Hazardous Materials on, in, or under the Easement Area, Grantee shall promptly investigate the release of Hazardous Materials. If the results of the investigation determine that the release of Hazardous Materials was solely caused by Grantee or its invitees, and not directly or indirectly caused by Grantor, Grantor's officers, employees, agents, independent contractors, or invitees, or pre-existing Hazardous Materials, Grantee shall remediate the release of Hazardous Materials to the extent required under applicable state or federal environmental laws or regulations. If the Hazardous Materials were caused by Grantor, Grantor's officers, employees, agents, independent contractors, or invitees, or pre-existing Hazardous Materials, Grantor shall reimburse Grantee for the cost of the investigation. As used herein, "Hazardous Material" means any material, waste, chemical, compound, substance, mixture, or byproduct that is identified, defined, designated, listed, restricted or otherwise regulated under any applicable state or federal environmental laws or regulation. Nothing in the Agreement limits the ability of either party in pursuing any third-party costs related to Hazardous Materials or any other contaminants on the premises.
  
5. **Use and Enjoyment of Easement Area:** Grantee, with respect to the use and enjoyment of the Easement Area, shall comply with all applicable laws, statutes, ordinances, rules and regulations, and shall keep, and shall use commercially reasonable efforts to cause its invitees to keep, the Easement Area free of trash, garbage, waste, and other discarded items. For purposes of this Section 5, Grantor and Grantee acknowledge and agree that Grantee shall be determined to have used commercially reasonable efforts to cause its invitees to keep the Easement Area free of trash, garbage, waste, and other discarded items, if Grantee places trash cans or other similar refuse receptacles within the Easement Area.
  
6. **Exclusivity:** Grantor represents and warrants that it is the fee owner of the Easement Area and there are no other person or entity with any rights to the Easement Area. Grantor shall not grant, transfer, dedicate, license or convey

any leases, permits, easements, servitudes, licenses or rights-of-way, upon, in, over, under and across the Easement Area. Grantee may grant or convey any short-term permits, licenses, Tideland Use and Occupancy Permits, leases, or interest in real property at its full discretion without Grantor's consent provided said conveyance or grant is consistent with Grantee's rights under this Agreement.

7. **Indemnification**: Grantee shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless Grantor and its officers, employees, and agents for any and all liability, claims, judgments, demands, losses, cost or expenses (including reasonable attorney's fees and expert witness fees and costs) ("Claims") arising directly or indirectly out of the Grantee's construction, operation, maintenance and repair of the Public Access Improvements, except Claims arising out of (i) the negligence or willful misconduct of Grantor, its officers, agents, employees, independent contractors, or invitees, or (ii) any preexisting Hazardous Material unless such Claim arises out of the negligence of, or breach of this Agreement by, Grantee. This indemnity obligation shall apply for the entire time that any third party can make a claim against or sue Grantor for liabilities arising out of Grantee's construction, operation, maintenance and repair of the Public Access Improvements.
8. **Binding Covenants**: This Agreement and any covenants, conditions, and restrictions contained herein shall run with the land and be binding upon and inure to the benefit of the successors, heirs, executors, administrators, permittees, licensees, agents, and assigns of Grantor and Grantee.
9. **Notices**: All notices provided for by this Agreement or by law to be given or served upon Grantor or Grantee shall be in writing and (A) personally served upon Grantor or Grantee, or any person hereafter authorized by either party in writing to receive such notice, or (B) served by certified letter or reputable overnight courier addressed to the appropriate address hereinafter set forth, or to such other address designated in writing by the respective party:

**To Grantor:**

Rohr, Inc., a UTC Aerospace Systems Company  
 850 Lagoon Drive  
 Chula Vista, CA 91910-2058  
 Attention: Legal Department

**To Grantee:**

Director, Real Estate  
 San Diego Unified Port District  
 3165 Pacific Highway  
 San Diego, CA 92101

Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the parties so served; provided, however, if served by certified mail, service will be considered completed and binding on the party served two (2) business days after deposit in the U.S. Mail and if by overnight courier, service will be considered completed and binding on the party served one (1) business day after deposit with such overnight courier.

10. **Attorney's Fees:** If either party files any action or brings any proceeding against the other arising from or related to this Agreement, the prevailing party shall be entitled to recover from the other party as an element of its costs of suit and not as damages, reasonable attorneys' fees (including fees for in-house counsel), costs and expenses incurred in the action or proceeding, including any appeal thereof. The "prevailing party" within the meaning of this Paragraph 10 shall be the party to the action or proceeding adjudged by a court of competent jurisdiction to be the prevailing party, whether or not the same proceeds to final judgment. A party not entitled to recover its costs shall not recover attorneys' fees.
  
11. **Amendment:** This Agreement may be amended or modified only by an instrument in writing duly executed and acknowledged by the Grantor and Grantee.
  
12. **Severability:** If any term or provision of this Agreement-or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
  
13. **Applicable Laws:** The Agreement shall be construed, interpreted and determined in accordance with the laws of the State of California without reference to its choice of law provisions.
  
14. **Time is of the Essence:** Grantor and Grantee hereby agree that time is of the essence with respect to this Agreement.
  
15. **Effectiveness:** It is an express condition of this Agreement that the Agreement shall not be complete or effective until signed by Grantor and Grantee.
  
16. **No Joint Venture:** Nothing in this Agreement shall be deemed to create any form of business organization between the parties, including, without limitation,

a joint venture or partnership.

17. **No Third-Party Rights**: Nothing in this Agreement is intended to or shall confer any benefits, rights or remedies on any persons or entities other than the Grantor and Grantee and the invitees of Grantee to the extent set forth in this Agreement.

18. **Recordation of Agreement**: Within two (2) days of the full execution of this Agreement, Grantor shall cause this Agreement to be recorded as part of the Official Records of the County of San Diego.

19. **Drafting Presumption**: Grantor and Grantee acknowledge and agree that this Agreement has been agreed to by both the Grantor and Grantee, that both Grantor and Grantee have consulted with attorneys with respect to the terms of this Agreement and that no presumption shall be created against the drafting party. Any deletion of language from this Agreement prior to its execution by Grantor and Grantee shall not be construed to raise any presumption, canon of construction or implication, including, without limitation, any implication that the Grantor and Grantee intended thereby to state the converse of the deleted language.

20. **Authority**: Grantor represents and warrants that it has the full right and authority to execute and deliver this Agreement and that the person signing on Grantor's behalf is authorized to do so.

[Signatures on following page.]

IN WITNESS WHEREOF, the parties hereof have executed this Agreement as of the date and year first written above.

Grantor:

**ROHR, Inc., a UTC Aerospace  
Systems Company,**  
a [\_\_\_\_\_] corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Grantee:

APPROVED AS TO FORM AND LEGALITY: **SAN DIEGO UNIFIED PORT  
DISTRICT**, a public corporation  
GENERAL COUNSEL

By: \_\_\_\_\_  
Assistant/Deputy

By: \_\_\_\_\_  
Tony Gordon  
Director,  
Real Estate

[INSERT EXHIBITS FOR LEGAL DESCRIPTION AND NOTARY ACKNOWLEDGMENTS.]

J-18359-B

## EXHIBIT 'A'

## PARCEL 1

That portion of quarter section 172 of Rancho De La Nacion, in the City of Chula Vista, County of San Diego, State of California, according to map thereof no. 166, filed in the office of the county recorder of San Diego County, being more particularly described as follows:

**Beginning** at the southeast corner of said quarter section 172 as shown on record of survey 9039 on file in the office of the recorder of said county; thence along the easterly boundary of said quarter section North  $17^{\circ} 45' 57''$  West 332.01 feet (record North  $17^{\circ} 47' 11''$  West 332.00 feet); thence leaving said easterly boundary along the southerly boundary of said record of survey 9039 and its easterly prolongation, South  $72^{\circ} 11' 56''$  West (record North  $72^{\circ} 12' 12''$  East) 170.02 feet to the southeasterly corner of record of survey 9039 and the **True Point of Beginning** of this description; thence continuing South  $72^{\circ} 11' 56''$  West 1333.57 feet (record 1333.46 feet); thence continuing along the boundary of said record of survey North  $66^{\circ} 38' 39''$  West 73.95 feet (record North  $86^{\circ} 58' 55''$  West 73.94 feet); thence South  $84^{\circ} 48' 01''$  West 339.66 feet (record South  $84^{\circ} 47' 56''$  West 339.69 feet); thence North  $38^{\circ} 00' 20''$  West 328.14 feet (record North  $38^{\circ} 00' 25''$  West 328.08 feet); thence North  $31^{\circ} 19' 51''$  West 217.16 feet (record North  $31^{\circ} 19' 56''$  West 216.96 feet); thence North  $72^{\circ} 03' 09''$  East 703.95 feet (record North  $72^{\circ} 03' 22''$  East 703.95 feet); thence North  $17^{\circ} 56' 51''$  West 299.96 feet (record North  $17^{\circ} 36' 38''$  West 300.00 feet); thence North  $72^{\circ} 03' 09''$  East 1182.28 feet (record North  $72^{\circ} 03' 22''$  East 1182.05 feet); thence South  $17^{\circ} 46' 57''$  East 946.30 feet (record South  $17^{\circ} 47' 11''$  East 946.06 feet) to the **True Point of Beginning**.

Excepting therefrom Parcel 10E, in the City of Chula Vista, County of San Diego, State of California, according to record of survey map no. 11749, filed in the office of the county recorder of San Diego County, August 10, 1988.

Also excepting that portion lying easterly of the east line of said Parcel 10E of said record of survey map no. 11749.

Containing 4.828 more or less

