

1 [Authorizing the Acquisition of Real Property Interests by Eminent Domain—Water System
2 Improvement Program-CUW 35901, New Irvington Tunnel Project]

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4 **Resolution authorizing acquisition of the following interests in real property in**
5 **Alameda County: (1) a temporary construction easement in a portion of Assessor's**
6 **Parcel #513-0065-011-02 in Fremont, owned by Malik A. Alarab, Trustee, and Barbara E.**
7 **Alarab, Trustee, (2) a temporary construction easement in a portion of Assessor's**
8 **Parcel # 096-0001-020-03 in Sunol, owned by Kenneth and Janice Mackin, and (3) a**
9 **temporary construction easement and a permanent subsurface soil nail easement in**
10 **portions of Assessor's Parcel # 096-0080-004 in Sunol, owned by Carolyn Marie Garcia**
11 **and Stanley A. Garcia, Trustees, by eminent domain, for the public purpose of**
12 **constructing the San Francisco Public Utilities Commission Water System**
13 **Improvement Program-Funded Project CUW35901, New Irvington Tunnel Project;**
14 **adopting environmental findings under the California Environmental Quality Act**
15 **(CEQA), CEQA Guidelines, and Administrative Code Chapter 31; and adopting findings**
16 **of consistency with the General Plan and under City Planning Code Section 101.1.**

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18 WHEREAS, The San Francisco Public Utilities Commission (SFPUC) plans to
19 construct Project CUW35901 New Irvington Tunnel Project (the "Project"), under the Water
20 System Improvement Program (WSIP), for improvements to the regional water supply system,
21 a public use, and in connection therewith will require interests in certain real property
22 described herein; and,

23 WHEREAS, The objectives of the Project are to:

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1 Within 24 hours after a major earthquake on the Calaveras fault, allow for reliable
2 transmission of a minimum of 120 mgd of water between SFPUC facilities in the Sunol Valley
3 and the Bay Division Pipeline (BDPL) transmission system starting in the City of Fremont;

4 Within 24 hours after a major earthquake on the San Andreas or Hayward fault, allow
5 for reliable transmission of a minimum of 229 mgd of water between SFPUC facilities in the
6 Sunol Valley and the BDPL transmission system starting in the City of Fremont;

7 Within 30 days after a major earthquake on the Calaveras fault, allow for a reliable
8 transmission of a minimum of 160 mgd of water between the Sunol Valley and the BDPL
9 transmission system;

10 Increase delivery reliability by providing operational flexibility to allow for planned
11 shutdowns of the existing Irvington Tunnel for inspection, maintenance, and repair while
12 providing for a maximum capacity of 320 mgd monthly average flow;

13 Increase delivery reliability by allowing for a planned outage of the existing Irvington
14 Tunnel (e.g., shutdown for maintenance) concurrent with an unplanned outage (e.g.,
15 emergency outage due to facility failure) of any of the BDPLs or San Joaquin Pipelines while
16 delivering a maximum flow of about 246 mgd between the Sunol Valley and BDPL
17 transmission system during the outages; and

18 WHEREAS, The Project is a capital improvement project approved by the SFPUC as
19 part of WSIP; and

20 WHEREAS, A Final Program Environmental Impact Report ("PEIR") was prepared for
21 WSIP and certified by the Planning Commission on October 30, 2008 by Motion No. 17734;
22 and

23 WHEREAS, Thereafter, the SFPUC approved WSIP and adopted findings and a
24 Mitigation Monitoring and Reporting Program ("MMRP") as required by California
25 Environmental Quality Act ("CEQA") on October 30, 2008 by Resolution No. 08-200; and

1 WHEREAS, The PEIR has been made available for review by the SFPUC and the
2 public, and is part of the record before this Board of Supervisors of the City and County of San
3 Francisco (this "Board" or the "Board of Supervisors"); and

4 WHEREAS, The Final Environmental Impact Report ("Final EIR") prepared for the
5 Project is tiered from the PEIR, as authorized by and in accordance with CEQA; and

6 WHEREAS, On November 5, 2009, the Planning Commission reviewed and
7 considered the Final EIR for the Project in Planning Department File No. 2005.0162E,
8 consisting of the Draft EIR and the Comments and Responses document and Errata Sheet(s),
9 and found that the contents of said report and the procedures through which the Final EIR
10 was prepared, publicized, and reviewed complied with the provisions of CEQA, the CEQA
11 Guidelines and Chapter 31 of the San Francisco Administrative Code and found further that
12 the Final EIR reflects the independent judgment and analysis of the City and County of San
13 Francisco, is adequate, accurate, and objective, and that the Comments and Responses
14 document and Errata Sheet(s) contains no significant revisions to the Draft EIR, and certified
15 the completion of said Final EIR in compliance with CEQA and the CEQA Guidelines in its
16 Motion No. M-17972; and,

17 WHEREAS, On November 10, 2009, the SFPUC, by Resolution No. 09-0190, adopted
18 CEQA Findings for the Project, including a Statement of Overriding Considerations, and a
19 Mitigation Monitoring and Reporting Program ("MMRP") as required by CEQA, and approved
20 the Project; and,

21 WHEREAS, On December 15, 2009, this Board adopted Resolution No. 505-09, a
22 copy of which is on file with the Clerk of the Board in File No. 091326, adopting the CEQA
23 Findings, including the Statement of Overriding Considerations, and the MMRP for the
24 Project, signed by the Mayor on December 18, 2009; and,

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1 WHEREAS, The Project and Final EIR files have been made available for review by
2 the SFPUC and the public in File No. 2005.0162E, at 1650 Mission Street, Fourth Floor, San
3 Francisco, California; and those files are part of the record before this Board; and

4 WHEREAS, California Code of Civil Procedure §1240.125 authorizes a local public
5 entity to acquire property by eminent domain outside its territorial limits for water, gas or
6 electric supply purposes, or for drainage or sewer purposes if it is authorized to acquire
7 property by eminent domain for the purposes for which the property is to be acquired; and,

8 WHEREAS, California Government Code §38730 authorizes a city to acquire real
9 property by eminent domain for purposes of obtaining water, water rights, reservoir sites,
10 rights of way for pipes, aqueducts, flumes, or other conduits, and all other property and
11 appliances suitable and proper to supply water for the use of such city and its inhabitants;
12 and,

13 WHEREAS, California Government Code §25350.5 authorizes the board of supervisors
14 of any county to acquire by eminent domain any property necessary to carry out any of the
15 powers or functions of the county; and,

16 WHEREAS, California Government Code §37350.5 authorizes any city to acquire by
17 eminent domain any property necessary to carry out any of the powers or functions of such
18 city; and,

19 WHEREAS, California Code of Civil Procedure §1240.030 authorizes the acquisition of
20 property by eminent domain for a proposed project only if all of the following are established:

- 21 1. The public interest and necessity require the project;
- 22 2. The project is planned or located in the manner that will be most compatible with the
23 greatest public good and the least private injury; and
- 24 3. The property sought to be acquired is necessary for the project.

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1 WHEREAS, The City and County of San Francisco ("CCSF") requires for the
2 construction and improvement of the Project acquisition of the following interests in real
3 property in Alameda County: (1) a temporary construction easement in a portion of
4 Assessor's Parcel #513-0065-011-02 in Fremont, owned by Malik A. Alarab, Trustee, and
5 Barbara E. Alarab, Trustee, (2) a temporary construction easement in a portion of Assessor's
6 Parcel # 096-0001-020-03 in Sunol, owned by Kenneth and Janice Mackin, and (3) a
7 temporary construction easement and a permanent subsurface soil nail easement in portions
8 of Assessor's Parcel # 096-0080-004 in Sunol, owned by Carolyn Marie Garcia and Stanley A.
9 Garcia, Trustees (such easements referred to herein collectively as the "Easements" and
10 such Assessor's Parcels referred to herein collectively as the "Subject Properties"), which
11 Easements are more particularly described in Schedule 1, a copy of which is on file with the
12 Clerk of the Board of Supervisors in File No. [_____] and incorporated herein by this
13 reference; and,

14 WHEREAS, On November 10, 2009, the SFPUC, by Resolution No. 09-0190,
15 authorized the SFPUC General Manager to commence the process, in compliance with
16 Government Code §§7260 et seq., the San Francisco Charter, and all applicable laws, for
17 possible acquisition of the Easements; and,

18 WHEREAS, The SFPUC staff obtained appraisals in compliance with California
19 Government Code §§7267 et seq. and all related statutory procedures for possible acquisition
20 of the Easements, and on November 11, 2009 and November 20, 2009, submitted offers to
21 each of the owners of the Subject Properties, and on April 7, 2010, submitted an amended
22 offer to the owner of Assessor's Parcel #096-0080-004, to purchase the Easements as
23 required by California Government Code §7267.2, and continues to negotiate the possible
24 acquisition of those interests with those owners; and,

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1 WHEREAS, The SFPUC will provide the owners of the Subject Properties thirty (30)
2 days advance written notice identifying the date upon which activities in the Easement area
3 will commence ("Commencement Date"), with the expectation that the temporary Easements
4 will expire on the last day of the fifty first (51st) full calendar month after the Commencement
5 Date, unless extended by agreement of the parties, based upon SFPUC payment of the then
6 fair market value of the Easement as extended, but in no case less than the rate paid for the
7 initial term, prorated on a monthly basis; and

8 WHEREAS, In Planning Case 2009.0558R, the Department of City Planning found the
9 acquisition of the Easements to be in conformity with the General Plan and consistent with the
10 Eight Priority Policies of City Planning Code Section 101.1 to the extent applicable; and,

11 WHEREAS, On April 13, 2010, the SFPUC adopted Resolution No. 10-0057 in which
12 the SFPUC found that (a) the public interest and necessity require the proposed Project in
13 order to meet the adopted WSIP levels of service of seismic and delivery reliability, (b) the
14 proposed Project, which includes the construction of a 3.5-mile tunnel, with finished diameter
15 between 8.5 and 10.5 feet, located 30 feet to 700 feet underground largely within real property
16 interests already owned by CCSF, will be constructed using conventional mining excavation,
17 heavy groundwater inflow control, reinforced concrete tunnel lining, buried portal structures,
18 large pipe lining reinforcement inside the tunnel, pipe connections at both ends of the tunnel,
19 a 120-foot deep temporary shaft for construction access at Vargas Road/Highway I-680,
20 temporary and permanent bridge crossings of Alameda Creek, other site improvements, and
21 environmental mitigation work, is planned and located in the manner that will be most
22 compatible with the greatest public good and the least private injury, based on significant
23 evidence of economic, legal, environmental, social, technological and other considerations
24 indicating that the proposed project is superior to other alternatives to the Project or the
25 Project location, and (c) the Easements are necessary for the Project, because the alignment

1 for the new tunnel must be in proximity to the existing Irvington Tunnel in order to facilitate
2 connection with the existing infrastructure for the regional water distribution system at both
3 ends of the tunnel, and for the reasons reflected in the Final EIR for the Project, as well as in
4 the CEQA Findings, and although the new tunnel and both of the portals would be located
5 within property already owned by the City (either as permanent easements or fee interests) in
6 Fremont and the Sunol Valley, one temporary shaft, some essential temporary construction
7 areas, and a permanent subsurface easement for construction related reinforcement, must be
8 located on adjacent properties in order to perform the construction; and,

9 WHEREAS, The acquisition and use of the Easements for construction of the Project is
10 compatible with the existing public uses of the Subject Properties for drainage and water
11 pipeline purposes and electric tower purposes; and,

12 WHEREAS, On April 13, 2010, by Resolution No. 10-0057, the SFPUC authorized the
13 SFPUC General Manager (a) to request that the Board of Supervisors hold a hearing to
14 consider adoption of a Resolution of Necessity to acquire the Easements, (b) if the Board
15 adopts said Resolution of Necessity, to take such actions that are consistent with the Charter
16 and all applicable law, to proceed to acquire the Easements; and (c) in any event, to continue
17 to discuss the acquisition with the owners of the Subject Properties; and,

18 WHEREAS, Notice of this Board's intention to adopt this Resolution of Necessity was
19 duly given as required by law and owners of the Subject Properties were provided a
20 reasonable opportunity to appear and be heard on the matters referred to in California Code
21 of Civil Procedure §1240.030 and copies of the notices delivered to such owners (each, a
22 "Notice") are on file with the Clerk of the Board of Supervisors in File No. [_____] and
23 incorporated herein by this reference; and

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1 WHEREAS, On [_____], 2010, by Motion No. [_____], the Board of Supervisors
2 moved to hold a public hearing on adopting this Resolution of Necessity on this date and at
3 this time; and

4 WHEREAS, Owners of the Subject Properties who filed a written request within the
5 time specified in the Notice were provided an opportunity to be heard on the matters referred
6 to in California Code of Civil Procedure §1240.030; and

7 WHEREAS, The Project is one of the regional projects to be completed as part of
8 WSIP that will allow the SFPUC to reduce the vulnerability of the system to damage in the
9 event of a major earthquake; now, therefore, be it

10 RESOLVED, This Board finds and determines that notice of its intention to adopt this
11 Resolution of Necessity was duly given as required by law, and on the date and at the time
12 and place fixed for hearing, this Board did hear and consider all of the evidence presented;
13 and, be it

14 FURTHER RESOLVED, This Board finds and determines that owners of the Subject
15 Properties who filed a written request within the time specified in the Notice were provided an
16 opportunity to be heard on the matters referred to in California Code of Civil Procedure
17 §1240.030; and, be it

18 FURTHER RESOLVED, By at least a two-thirds vote of all the members of this Board
19 as required under California Code of Civil Procedure §1245.240, this Board finds and
20 determines, as required under California Code of Civil Procedure §§1240.030 and 1245.230,
21 each of the following:

- 22 1. The public interest and necessity require the proposed Project;
- 23 2. The proposed Project is planned or located in the manner that will be most
24 compatible with the greatest public good and the least private injury;
- 25 3. The Easements sought to be acquired are necessary for the Project;

1 4. The offer required by California Government Code §7267.2 has been made to the
2 owner of record of each of the Subject Properties; and, be it

3 FURTHER RESOLVED, That to the extent that any portion of the Easements sought to
4 be acquired is presently appropriated to public use, the purpose for which the acquisition and
5 use of the Easements is sought, namely, for construction and operation of the Project, is a
6 more necessary public use, as required by California Code of Civil Procedure §1240.610; and,
7 be it

8 FURTHER RESOLVED, That to the extent that any portion of the Easements is
9 presently appropriated to public use, the purpose for which the acquisition and use of the
10 Easements is sought, namely, for construction and operation of the Project, will not
11 unreasonably interfere with or impair the continuance of the public use as it then exists or may
12 reasonably be expected to exist in the future, as required by California Code of Civil
13 Procedure §1240.510; and, be it

14 FURTHER RESOLVED, That the City Attorney is hereby authorized and directed to
15 commence proceedings in eminent domain against each owner of the Subject Properties and
16 any and all interests therein or claims thereto for the condemnation thereof for the public use
17 of CCSF; together with the authorization and direction to file any actions or comply with any
18 legal procedures to obtain an order for immediate possession for all or a portion of the
19 Easements as depicted in Schedule 1, in conformity with existing or amended law; and, be it

20 FURTHER RESOLVED, That the Board of Supervisors has reviewed and considered
21 the Final EIR and record as a whole, finds the action taken herein is within the scope of the
22 Project and activities evaluated in the Final EIR, and that the Final EIR is adequate for its use
23 as the decision-making body for the action taken herein; and, be it

24 FURTHER RESOLVED, That the Board of Supervisors, in exercising its independent
25 judgment, adopts and incorporates by reference all prior CEQA Findings adopted by the San

1 Francisco Public Utilities Commission and this Board for the Project including, without
2 limitation, the CEQA Findings, including the Statement of Overriding Considerations, set forth
3 in the San Francisco Public Utilities Commission Resolution No. 09-0190 and this Board's
4 findings in Resolution No. 505-09, with respect to the approval of this Resolution in
5 conformance with CEQA; and, be it

6 FURTHER RESOLVED, That the Board of Supervisors finds that since the Final EIR
7 was finalized, there have been no substantial Project changes and no substantial changes in
8 Project circumstances that would require major revisions to the Final EIR due to the
9 involvement of new significant environmental effects or an increase in the severity of
10 previously identified significant impacts, and there is no new information of substantial
11 importance that would change the conclusions set forth in the Final EIR; and, be it

12 FURTHER RESOLVED, That the Board of Supervisors finds that the Project mitigation
13 measures set forth in the Final EIR and the MMRP and adopted by the San Francisco Public
14 Utilities Commission and this Board will be implemented as reflected in and in accordance
15 with the MMRP; and, be it

16 FURTHER RESOLVED, That the Board of Supervisors hereby adopts as its own and
17 incorporates by reference herein, as though fully set forth, the findings of the Planning
18 Department that the acquisition of the Property is in conformity with the General Plan and
19 consistent with the Eight Priority Policies of City Planning Code Section 101.1; and, be it

20 FURTHER RESOLVED, That the Board of Supervisors adopts as its own and
21 incorporates by reference herein, as though fully set forth, each of the findings made by the
22 SFPUC in adopting Resolution No. 10-0057 on April 13, 2010; and, be it,

23 FURTHER RESOLVED, That the cost of acquiring the Easements shall be paid from
24 Project funds appropriated in Appropriation Ordinance No. 0311-08, adopted by this Board on
25 December 16, 2008, and signed by the Mayor on December 19, 2008.

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RECOMMENDED:

PUBLIC UTILITIES COMMISSION

Edward M. Harrington, General Manager

Pursuant to SFPUC Resolution No. 10-0057

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Name: _____
Deputy City Attorney