

1 [Authorizing the Acquisition of Subsurface Real Property Easement By Eminent Domain for
2 Central Subway/Third Street Light Rail Extension]

3 **Resolution authorizing the acquisition of a subsurface easement in real property**
4 **commonly known as 1455 Stockton Street, San Francisco, California, Assessor's**
5 **Parcel No. Block 0130, Lot 001, by eminent domain for the public purpose of**
6 **constructing the Central Subway/Third Street Light Rail Extension and other**
7 **improvements; adopting environmental findings under the California Environmental**
8 **Quality Act (CEQA), CEQA Guidelines, and Administrative Code Chapter 31; and**
9 **adopting findings of consistency with the General Plan and City Planning Code Section**
10 **101.1.**

11
12 WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) plans to
13 construct a continuation of the T-Third Light Rail Vehicle line from the Caltrain Station at
14 Fourth and King Streets to an underground station in Chinatown and other improvements (the
15 "Project") to create a critical transportation improvement linking neighborhoods in the
16 southeastern portion of the City and County of San Francisco (the "City") with the retail and
17 employment centers in the City's downtown and Chinatown neighborhoods, a public use, and
18 will require an interest in the real property described herein to construct the Project tunnels
19 that will connect the Project's three subway stations and provide direct rail service to the City's
20 Financial District and Chinatown neighborhoods; and

21 WHEREAS, The Project's primary objectives are to provide direct rail service to
22 regional destinations, including the City's Chinatown, Union Square, Moscone Convention
23 Center, Yerba Buena, SoMa and AT&T Park neighborhoods; connect BART and Caltrain;
24 serve a low-auto-ownership population of transit customers; increase transit use and reduce
25 travel time; reduce air and noise pollution and provide congestion relief; and,

1 WHEREAS, California Government Code Sections 25350.5 and 37350.5 authorize the
2 City's Board of Supervisors to acquire any property necessary to carry out any of the powers
3 or functions of the City by eminent domain; and

4 WHEREAS, The City requires a subsurface easement in the real property commonly
5 known as 1455 Stockton Street, San Francisco, California, Assessor's Parcel No. Block 0130
6 Lot 001 (the "Subject Property"), which easement is more particularly described in Exhibit A
7 (the "Subsurface Easement") and shown in Exhibit B (the "Project Alignment"), copies of
8 which are on file with the Clerk of the Board of Supervisors in File No. 100849 and
9 incorporated herein by this reference, for the construction and improvement of the Project;
10 and

11 WHEREAS, On August 7, 2008, the City's Planning Commission certified that the Final
12 Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report
13 ("Final Supplemental EIS/EIR") for the Central Subway/Third Street Light Rail Phase 2 was in
14 compliance with CEQA and the CEQA Guidelines in Planning Commission Motion No. 17668.
15 The Final Supplemental EIS/EIR and Motion No. 17668 are on file with the Clerk of the Board
16 of Supervisors in File No. 100849 and are incorporated by reference; and

17 WHEREAS, On August 19, 2008, the SFMTA's Board of Directors, by Resolution
18 No. 08-150, approved the Project, adopted CEQA Findings, including a Statement of
19 Overriding Considerations and a Mitigation Monitoring and Reporting Program (MMRP) as
20 required by CEQA. Resolution No. 08-150 is on file with the Clerk of the Board of Supervisors
21 in File No. 100849 and is incorporated by reference; and

22 WHEREAS, On September 16, 2008, the City's Board of Supervisors (this "Board")
23 adopted Motion No. 08-145, in Board File No. 081138, affirming the City's Planning
24 Department decision to certify the Final Supplemental EIS/EIR. Motion No. 08-145 is on file
25

1 with the Clerk of the Board of Supervisors in File No. 100849 and is incorporated by
2 reference; and

3 WHEREAS, SFMTA staff obtained an appraisal of the Subsurface Easement in
4 compliance with California Government Code Section 7267 et seq. and all related statutory
5 procedures for possible acquisition of the Subsurface Easement, submitted an offer to the
6 Subject Property owner of record to purchase the Subsurface Easement as required by
7 California Government Code Section 7267.2 on November 20, 2009, and continues to
8 negotiate the possible acquisition of the Subsurface Easement with the Subject Property
9 owner of record; and

10 WHEREAS, On May 4, 2009, the City's Planning Department found the acquisition of
11 the Subsurface Easement for the Project to be consistent with the General Plan and the Eight
12 Priority Policies of City Planning Code Section 101.1 to the extent applicable. On April 9,
13 2010, the Planning Department confirmed the May 4, 2009 determination; and

14 WHEREAS, On April 15, 2010, the City's Planning Department found that there have
15 been no substantial changes proposed for the Project that would require major revisions to
16 the Final Supplemental EIS/EIR or that would result in significant environmental impacts that
17 were not evaluated in the Final Supplemental EIS/EIR; and no new information has become
18 available that was not known and could not have been known at the time the Final
19 Supplemental EIS/EIR was certified as complete and that would result in significant
20 environmental impacts not evaluated in the Final Supplemental EIS/EIR; and

21 WHEREAS, On February 26, 2010, the SFMTA's Board of Directors adopted
22 Resolution No. 10-024, in which it found that (a) the Project will assist SFMTA in meeting the
23 objectives of Goal No. 1 of the SFMTA Strategic Plan (to provide safe, accessible, clean,
24 environmentally sustainable service and encourage the use of auto-alternative modes through
25 the Transit First policy), of Goal No. 2 (to improve transit reliability), of Goal No. 3 (to improve

1 economic vitality through improved regional transportation), and of Goal No. 4 (to ensure the
2 efficient and effective use of resources); (b) the Subsurface Easement is needed to construct
3 and operate the Project; (c) SFMTA has limited any potential private injury by seeking to
4 acquire only a subsurface easement and leaving the remainder of the Subject Property in
5 private ownership; and (d) the acquisition and use of the Subsurface Easement for
6 construction and operation of the Project is compatible with the existing uses of the Subject
7 Property and the surrounding area; and

8 WHEREAS, On February 26, 2010, the SFMTA Board of Directors, by SFMTA
9 Resolution No. 10-024, authorized the SFMTA Executive Director/CEO to request that this
10 Board hold a duly noticed public hearing, as required by State law, to consider the adoption of
11 a Resolution of Necessity for the acquisition of the Subsurface Easement for its appraised fair
12 market value and, if this Board adopts such Resolution of Necessity, to take such actions that
13 are consistent with the City's Charter and all applicable law to proceed to acquire the
14 Subsurface Easement; and

15 WHEREAS, This Board finds and determines that each person whose name and
16 address appears on the last equalized County Assessment Roll as an owner of the Subject
17 Property has been given notice and a reasonable opportunity to appear and be heard on this
18 date on the matter referred to in California Code of Civil Procedure Section 1240.030 in
19 accordance with California Code of Civil Procedure Section 1245.235; now, therefore, be it

20 RESOLVED, That by at least a two-thirds vote of this Board under California Code of
21 Civil Procedure Sections 1240.030 and 1245.230, this Board finds and determines each of the
22 following:

- 23 1. The public interest and necessity require the proposed Project;
- 24 2. The proposed Project is planned and located in the manner that will be most
25 compatible with the greatest public good and the least private injury;

1 3. The Subsurface Easement, the portion of the Subject Property sought to be
2 acquired, is necessary for the Project;

3 4. The offer required by California Government Code Section 7267.2 has been made
4 to the Subject Property owner of record; and, be it

5 FURTHER RESOLVED, That to the extent that any portion of the Subsurface
6 Easement sought to be acquired is presently appropriated to a public use, the purpose for
7 which the acquisition and use of the Subsurface Easement is sought, namely, for construction
8 and operation of the Project, is a more necessary public use under Section 1240.610 of the
9 California Code of Civil Procedure; and, be it

10 FURTHER RESOLVED, That to the extent that any portion of the Subject Property is
11 presently appropriated to a public use, the purpose for which the acquisition and use of the
12 Subsurface Easement is sought, namely, for construction and operation of the Project, is a
13 compatible public use under Section 1240.510 of the California Code of Civil Procedure; and,
14 be it

15 FURTHER RESOLVED, That the City Attorney is hereby authorized and directed to
16 take all necessary steps to commence and prosecute proceedings in eminent domain against
17 the Subject Property owner of record and the owner or owners of any and all interests therein
18 or claims thereto for the condemnation thereof for the public use of the City, to the extent such
19 proceedings are necessary; together with the authorization and direction to take any and all
20 actions or comply with any and all legal procedures to obtain an order for immediate or
21 permanent possession for all or a portion of the Subsurface Easement as depicted in
22 Exhibit A and Exhibit B, in conformity with existing or amended law; and, be it

23 FURTHER RESOLVED, That this Board has reviewed and considered the Final
24 Supplemental EIS/EIR and record as a whole, finds that the action taken herein is within the
25 scope of the Project and activities evaluated in the Final Supplemental EIS/EIR, and that the

1 Final Supplemental EIS/EIR is adequate for its use by the decision-making body for the action
2 taken herein; and, be it

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

10 FURTHER RESOLVED, That this Board hereby adopts as its own and incorporates by
11 reference herein, as though fully set forth, the findings of the Planning Department that the
12 acquisition of the Subsurface Easement is consistent with the General Plan and the Eight
13 Priority Policies of City Planning Code Section 101.1; and, be it

14 FURTHER RESOLVED, That this Board adopts as its own and incorporates by
15 reference herein, as though fully set forth, each of the findings made by the SFMTA in
16 adopting Resolution No. 08-145 on August 19, 2008, and Resolution No. 10-024 on February
17 26, 2010.

18

19 **RECOMMENDED:**

20 SAN FRANCISCO MUNICIPAL
21 TRANSPORTATION AGENCY

22

23 _____
24 Nathaniel P. Ford Sr.
Executive Director/CEO

25 Pursuant to SFMTA Board of Directors
Resolution No. 10-024

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

By: _____
Thomas S. Lakritz
Deputy City Attorney