

1 [Acquisition of a Temporary Construction License by Eminent Domain - Central Subway/Third
2 Street Light Rail Extension - 77 O'Farrell Street]

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4 **Resolution authorizing the acquisition of a temporary construction license at the real**
5 **property commonly known as 77 O'Farrell Street, San Francisco, California, Assessor's**
6 **Parcel Block No. 0328, Lot Nos. 003 and 004, by eminent domain for the public purpose**
7 **of constructing the Central Subway/Third Street Light Rail Extension and other**
8 **improvements; adopting environmental findings under the California Environmental**
9 **Quality Act (CEQA), CEQA Guidelines, and Administrative Code Chapter 31; and**
10 **adopting findings of consistency with the General Plan and City Planning Code Section**
11 **101.1.**

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

22 WHEREAS, The Project's primary objectives are to provide direct rail service to
23 regional destinations, including the City's Chinatown, Union Square, Moscone Convention
24 Center, Yerba Buena, SoMa and AT&T Park neighborhoods; connect BART and Caltrain;

1 serve a low-auto-ownership population of transit customers; increase transit use and reduce
2 travel time; reduce air and noise pollution and provide congestion relief; and

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

6 WHEREAS, The City requires a temporary construction license for the construction and
7 improvement of the Project at the real property commonly known as 77 O'Farrell, San
8 Francisco, California, Assessor's Parcel No. Block 0328, Lots 003 and 004 (the "Subject
9 Property"), which license is more particularly described in Exhibit A (the "License") and shown
10 in Exhibit B (the "Project Alignment"), copies of which are on file with the Clerk of the Board of
11 Supervisors in File No. 120337, which is hereby declared to be a part of this resolution as if
12 set forth fully herein; and

13 WHEREAS, On August 7, 2008, the City's Planning Commission certified that the Final
14 Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report
15 ("Final Supplemental EIS/EIR") for the Central Subway/Third Street Light Rail Phase 2 was in
16 compliance with CEQA and the CEQA Guidelines in Planning Commission Motion No. 17668.
17 The Final Supplemental EIS/EIR and Motion No. 17668 are on file with the Clerk of the Board
18 of Supervisors in File No. 120337, which is hereby declared to be a part of this resolution as if
19 set forth fully herein; and

20 WHEREAS, On August 19, 2008, the SFMTA's Board of Directors, by Resolution No.
21 08-150, approved the Project, adopted CEQA Findings, including a Statement of Overriding
22 Considerations and a Mitigation Monitoring and Reporting Program (MMRP) as required by
23 CEQA. Resolution No. 08-150 is on file with the Clerk of the Board of Supervisors in File No.
24 120337, which is hereby declared to be a part of this resolution as if set forth fully herein; and
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1 WHEREAS, On September 16, 2008, the City's Board of Supervisors (this "Board")
2 adopted Motion No. 08-145, in Board File No. 081138, affirming the City's Planning
3 Department decision to certify the Final Supplemental EIS/EIR. Motion No. 08-145 is on file
4 with the Clerk of the Board of Supervisors in File No. 120337, which is hereby declared to be
5 a part of this resolution as if set forth fully herein; and

6 WHEREAS, SFMTA staff obtained an appraisal of the License in compliance with
7 California Government Code Section 7267 et seq. and all related statutory procedures for
8 possible acquisition of the License, submitted an offer to the Subject Property owner of record
9 to purchase the License as required by California Government Code Section 7267.2 on
10 January 17, 2012, and continues to negotiate the possible acquisition of the License with the
11 Subject Property owner of record; and

12 WHEREAS, On March 29, 2012, the City's Planning Department found the acquisition
13 of the License for the Project to be consistent with the General Plan and the Eight Priority
14 Policies of City Planning Code Section 101.1 to the extent applicable. On March 29, 2012,
15 the Planning Department confirmed the May 4, 2009 determination; and

16 WHEREAS, On March 28, 2012, the City's Planning Department found that there have
17 been no substantial changes proposed for the Project, and no substantial changes in Project
18 circumstances, that would require major revisions to the Final Supplemental EIS/EIR due to
19 the involvement of new significant environmental effects or a substantial increase in the
20 severity of previously identified significant impacts; and there is no new information of
21 substantial importance that was not known and could not have been known at the time the
22 Final Supplemental EIS/EIR was certified, that shows either significant environmental effects
23 not discussed in the Final Supplemental EIS/EIR, a substantial increase in the severity of
24 previously examined significant effects, or that unadopted mitigation measures or alternatives
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1 previously found not to be feasible, would be feasible and capable of substantially reducing
2 one or more of the significant effects of the Project; and

3 WHEREAS, On March 20, 2012, the SFMTA's Board of Directors adopted Resolution
4 No. 12-036, in which it found that (a) the Project will assist SFMTA in meeting the objectives
5 of Goal No. 1 of the SFMTA Strategic Plan (to provide safe, accessible, clean,
6 environmentally sustainable service and encourage the use of auto-alternative modes through
7 the Transit First policy), of Goal No. 2 (to improve transit reliability), of Goal No. 3 (to improve
8 economic vitality through improved regional transportation), and of Goal No. 4 (to ensure the
9 efficient and effective use of resources); (b) the License is needed to construct and operate
10 the Project; (c) SFMTA has limited any potential private injury by seeking to acquire only a
11 license; and (d) the acquisition and use of the License for construction and operation of the
12 Project is compatible with the existing uses of the Subject Property and the surrounding area;
13 and

14 WHEREAS, On March 20, 2012, the SFMTA Board of Directors, by SFMTA Resolution
15 No. 12-036, authorized the SFMTA Executive Director to request that this Board hold a duly
16 noticed public hearing, as required by State law, to consider the adoption of a Resolution of
17 Necessity for the acquisition of the License for its appraised fair market value and, if this
18 Board adopts such Resolution of Necessity, to take such actions that are consistent with the
19 City's Charter and all applicable law to proceed to acquire the License; and

20 WHEREAS, This Board finds and determines that each person whose name and
21 address appears on the last equalized County Assessment Roll as an owner of the Subject
22 Property has been given notice and a reasonable opportunity to appear and be heard on this
23 date on the matter referred to in California Code of Civil Procedure Section 1240.030 in
24 accordance with California Code of Civil Procedure Section 1245.235; now, therefore, be it
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1 RESOLVED, That by at least a two-thirds vote of this Board under California Code of
2 Civil Procedure Sections 1240.030 and 1245.230, this Board finds and determines each of the
3 following:

- 4 1. The public interest and necessity require the proposed Project;
- 5 2. The proposed Project is planned and located in the manner that will be most
6 compatible with the greatest public good and the least private injury;
- 7 3. The License, the portion of the Subject Property sought to be acquired, is necessary
8 for the Project;
- 9 4. The offer required by California Government Code Section 7267.2 has been made
10 to the Subject Property owner of record; and, be it

11 FURTHER RESOLVED, That to the extent that any portion of the License sought to be
12 acquired is presently appropriated to a public use, the purpose for which the acquisition and
13 use of the License is sought, namely, for construction and operation of the Project, is a more
14 necessary public use under Section 1240.610 of the California Code of Civil Procedure; and,
15 be it

16 FURTHER RESOLVED, That to the extent that any portion of the Subject Property is
17 presently appropriated to a public use, the purpose for which the acquisition and use of the
18 License is sought, namely, for construction and operation of the Project, is a compatible public
19 use under Section 1240.510 of the California Code of Civil Procedure; and, be it

20 FURTHER RESOLVED, That the City Attorney is hereby authorized and directed to
21 take all necessary steps to commence and prosecute proceedings in eminent domain against
22 the Subject Property owner of record and the owner or owners of any and all interests therein
23 or claims thereto for the condemnation thereof for the public use of the City, to the extent such
24 proceedings are necessary; together with the authorization and direction to take any and all
25 actions or comply with any and all legal procedures to obtain an order for immediate or

1 permanent possession for all or a portion of the License as depicted in Exhibit A and Exhibit
2 B, in conformity with existing or amended law; and, be it

3 FURTHER RESOLVED, That this Board has reviewed and considered the Final
4 Supplemental EIS/EIR and record as a whole, finds that the action taken herein is within the
5 scope of the Project and activities evaluated in the Final Supplemental EIS/EIR, and that the
6 Final Supplemental EIS/EIR is adequate for its use by the decision-making body for the action
7 taken herein; and, be it

8 FURTHER RESOLVED, That this Board finds that there have been no substantial
9 changes proposed for the Project, and no substantial changes in Project circumstances, that
10 would require major revisions to the Final Supplemental EIS/EIR due to the involvement of
11 new significant environmental effects or a substantial increase in the severity of previously
12 identified significant impacts; and there is no new information of substantial importance that
13 was not known and could not have been known at the time the Final Supplemental EIS/EIR
14 was certified, that shows either significant environmental effects not discussed in the Final
15 Supplemental EIS/EIR, a substantial increase in the severity of previously examined
16 significant effects, or that unadopted mitigation measures or alternatives previously found not
17 to be feasible, would be feasible and capable of substantially reducing one or more of the
18 significant effects of the Project; and, be it

19 FURTHER RESOLVED, That this Board hereby adopts as its own and incorporates by
20 reference, as though fully set forth herein, the findings of the Planning Department that the
21 acquisition of the License is consistent with the General Plan and the Eight Priority Policies of
22 City Planning Code Section 101.1; and, be it

23 FURTHER RESOLVED, That this Board adopts as its own and incorporates by
24 reference, as though fully set forth herein, each of the findings made by the SFMTA in
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1 adopting Resolution No. 08-150 on August 19, 2008, and Resolution No. 12-036 on March 20,
2 2012.

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