

1 [Authorizing the Acquisition of Fee Simple Interest By Eminent Domain for Central
2 Subway/Third Street Light Rail Extension]

3 **Resolution authorizing the acquisition of a fee simple interest in real property**
4 **commonly known as 266-286 4th Street, San Francisco, California, Assessor's Parcel**
5 **No. Block 3733, Lot 093, by eminent domain for the public purpose of constructing the**
6 **Central Subway/Third Street Light Rail Extension and other improvements; adopting**
7 **environmental findings under the California Environmental Quality Act (CEQA), CEQA**
8 **Guidelines, and Administrative Code Chapter 31; and adopting findings of consistency**
9 **with the General Plan and City Planning Code Section 101.1.**

10
11 WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) plans to
12 construct a continuation of the T-Third Light Rail Vehicle line from the Caltrain Station at
13 Fourth and King Streets to an underground station in Chinatown and other improvements (the
14 "Project") to create a critical transportation improvement linking neighborhoods in the
15 southeastern portion of the City and County of San Francisco (the "City") with the retail and
16 employment centers in the City's downtown and Chinatown neighborhoods, a public use, and
17 will require an interest in the real property described herein to construct the Project tunnels
18 that will connect the Project's three subway stations and provide direct rail service to the City's
19 Financial District and Chinatown neighborhoods; and

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

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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 the fee simple interest in the real property commonly
5 known as 266-286 4th Street, San Francisco, California, Assessor's Parcel No. Block 3773,
6 Lot 093 (the "Subject Property"), which is more particularly described in Exhibit A and shown
7 in Exhibit B (the "Project Alignment"), copies of which are on file with the Clerk of the Board of
8 Supervisors in File No. 100837 and incorporated herein by this reference, for the construction
9 and improvement of the Project; and

10 WHEREAS, On August 7, 2008, the City's Planning Commission certified that the Final
11 Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report
12 ("Final Supplemental EIS/EIR") for the Central Subway/Third Street Light Rail Phase 2 was in
13 compliance with CEQA and the CEQA Guidelines in Planning Commission Motion No. 17668.
14 The Final Supplemental EIS/EIR and Motion No. 17668 are on file with the Clerk of the Board
15 of Supervisors in File No. 100837 and are incorporated by reference; and

16 WHEREAS, On August 19, 2008, the SFMTA's Board of Directors, by Resolution
17 No. 08-150, approved the Project, adopted CEQA Findings, including a Statement of
18 Overriding Considerations and a Mitigation Monitoring and Reporting Program (MMRP) as
19 required by CEQA. Resolution No. 08-150 is on file with the Clerk of the Board of Supervisors
20 in File No. 100837 and is incorporated by reference; and

21 WHEREAS, On September 16, 2008, the City's Board of Supervisors (this "Board")
22 adopted Motion No. 08-145, in Board File No. 081138, affirming the City's Planning
23 Department decision to certify the Final Supplemental EIS/EIR. Motion No. 08-145 is on file
24 with the Clerk of the Board of Supervisors in File No. 100837 and is incorporated by
25 reference; and

1 WHEREAS, SFMTA staff obtained an appraisal of the Subject Property in compliance
2 with California Government Code Section 7267 et seq. and all related statutory procedures for
3 possible acquisition of the Subject Property, submitted an offer to the Subject Property owner
4 of record to purchase the Subject Property as required by California Government Code
5 Section 7267.2 on January 12, 2010, and continues to negotiate the possible acquisition of
6 the Subject Property with the Subject Property owner of record; and

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

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

18 WHEREAS, On April 20, 2010, the SFMTA's Board of Directors adopted Resolution
19 No. 10-049, in which it found that (a) the Project will assist SFMTA in meeting the objectives
20 of Goal No. 1 of the SFMTA Strategic Plan (to provide safe, accessible, clean,
21 environmentally sustainable service and encourage the use of auto-alternative modes through
22 the Transit First policy), of Goal No. 2 (to improve transit reliability), of Goal No. 3 (to improve
23 economic vitality through improved regional transportation), and of Goal No. 4 (to ensure the
24 efficient and effective use of resources); (b) the Subject Property is needed to construct and
25 operate the Project; (c) SFMTA has limited any potential private injury; and (d) the acquisition

1 and use of the Subject Property for construction and operation of the Project is compatible
2 with the existing uses of the Subject Property and the surrounding area; and

3 WHEREAS, On April 20, 2010, the SFMTA Board of Directors, by SFMTA Resolution
4 No. 10-049, authorized the SFMTA Executive Director/CEO to request that this Board hold a
5 duly noticed public hearing, as required by State law, to consider the adoption of a Resolution
6 of Necessity for the acquisition of the Subject Property for its appraised fair market value and,
7 if this Board adopts such Resolution of Necessity, to take such actions that are consistent with
8 the City's Charter and all applicable law to proceed to acquire the Subject Property; and

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

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

- 17 1. The public interest and necessity require the proposed Project;
- 18 2. The proposed Project is planned and located in the manner that will be most
19 compatible with the greatest public good and the least private injury;
- 20 3. The Subject Property sought to be acquired is necessary for the Project;
- 21 4. The offer required by California Government Code Section 7267.2 has been made
22 to the Subject Property owner of record; and, be it

23 FURTHER RESOLVED, That to the extent that any portion of the Subject Property
24 sought to be acquired is presently appropriated to a public use, the purpose for which the
25 acquisition and use of the Subject Property is sought, namely, for construction and operation

1 of the Project, is a more necessary public use under Section 1240.610 of the California Code
2 of Civil Procedure; and, be it

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

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

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

21 FURTHER RESOLVED, That this Board finds that since the Final Supplemental
22 EIS/EIR was finalized, there have been no substantial Project changes and no substantial
23 changes in Project circumstances that would require major revisions to the Final
24 Supplemental EIS/EIR due to the involvement of new significant environmental effects or an
25 increase in the severity of previously identified significant impacts, and there is no new

1 information of substantial importance that would change the conclusions set forth in the Final
2 Supplemental EIS/EIR; and, be it

3 FURTHER RESOLVED, That this Board hereby adopts as its own and incorporates by
4 reference herein, as though fully set forth, the findings of the Planning Department that the
5 acquisition of the Subject Property is consistent with the General Plan and the Eight Priority
6 Policies of City Planning Code Section 101.1; and, be it

7 FURTHER RESOLVED, That this Board adopts as its own and incorporates by
8 reference herein, as though fully set forth, each of the findings made by the SFMTA in
9 adopting Resolution No. 08-145 on August 19, 2008, and Resolution No. 10-049 on April 20,
10 2010.

11

12 **RECOMMENDED:**

13 SAN FRANCISCO MUNICIPAL
14 TRANSPORTATION AGENCY

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Nathaniel P. Ford Sr.
Executive Director/CEO

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18 Pursuant to SFMTA Board of Directors
19 Resolution No. 10-049

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

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By: _____
Thomas S. Lakritz
Deputy City Attorney

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