

1 [Authorizing the Acquisition of Subsurface Real Property Easement By Eminent Domain for
2 Central Subway/Third Street Light Rail Extension - 1455 Stockton Street]

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. _____ 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 Report ("Final Supplemental EIR") for the Central
13 Subway/Third Street Light Rail Phase 2 was in compliance with CEQA and the CEQA
14 Guidelines in Planning Commission Motion No. 17668. Motion No. 17668 is on file with the
15 Clerk of the Board of Supervisors in File No. _____ and is incorporated by reference;
16 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. _____ 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 EIR. Motion No. 08-145 is on file with
25

1 the Clerk of the Board of Supervisors in File No. _____ 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 April 9, 2010, 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; and

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

20 WHEREAS, On February 26, 2010, the SFMTA's Board of Directors adopted
21 Resolution No. 10-024, in which it found that (a) the Project will assist SFMTA in meeting the
22 objectives of Goal No. 1 of the SFMTA Strategic Plan (to provide safe, accessible, clean,
23 environmentally sustainable service and encourage the use of auto-alternative modes through
24 the Transit First policy), of Goal No. 2 (to improve transit reliability), of Goal No. 3 (to improve
25 economic vitality through improved regional transportation), and of Goal No. 4 (to ensure the

1 efficient and effective use of resources); (b) the Subsurface Easement is needed to construct
2 and operate the Project; (c) SFMTA has limited any potential private injury by seeking to
3 acquire only a subsurface easement and leaving the remainder of the Subject Property in
4 private ownership; and (d) the acquisition and use of the Subsurface Easement for
5 construction and operation of the Project is compatible with the existing uses of the Subject
6 Property and the surrounding area; and

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

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

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

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

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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 commence proceedings in eminent domain against the Subject Property owner of record and
17 any and all interests therein or claims thereto for the condemnation thereof for the public use
18 of the City; together with the authorization and direction to take any actions or comply with any
19 legal procedures to obtain an order for immediate possession for all or a portion of the
20 Subsurface Easement as depicted in Exhibit A and Exhibit B, in conformity with existing or
21 amended law; and, be it

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

3 FURTHER RESOLVED, That this Board finds that since the Final Supplemental EIR
4 was finalized, there have been no substantial Project changes and no substantial changes in
5 Project circumstances that would require major revisions to the Final Supplemental EIR due to
6 the involvement of new significant environmental effects or an increase in the severity of
7 previously identified significant impacts, and there is no new information of substantial
8 importance that would change the conclusions set forth in the Final Supplemental EIR; and,
9 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. 10-024 on February 26, 2010.

17

18 **RECOMMENDED:**

19 SAN FRANCISCO MUNICIPAL
20 TRANSPORTATION AGENCY

21

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

24 Pursuant to SFMTA
25 Resolution No. 10-024

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

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4 By: _____
5 Thomas S. Lakritz
6 Deputy City Attorney
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