

1 [Authorizing the Acquisition of Subsurface Real Property Easement By Eminent Domain for
2 Central Subway/Third Street Light Rail Extension - 790 Market Street]

3 **Resolution authorizing the acquisition of a subsurface easement in real property**
4 **commonly known as 790 Market Street, San Francisco, California, Assessor's Parcel**
5 **No. Block 0328, Lot 002, 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.**

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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 a subsurface easement in the real property commonly
5 known as 790 Market Street, San Francisco, California, Assessor's Parcel No. Block 0328 Lot
6 002 (the "Subject Property"), which easement is more particularly described in Exhibit A (the
7 "Subsurface Easement") and shown in Exhibit B (the "Project Alignment"), copies of which are
8 on file with the Clerk of the Board of Supervisors in File No. _____ and incorporated
9 herein by this reference, for the construction 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 Report ("Final Supplemental EIR") for the Central
12 Subway/Third Street Light Rail Phase 2 was in compliance with CEQA and the CEQA
13 Guidelines in Planning Commission Motion No. 17668. Motion No. 17668 is on file with the
14 Clerk of the Board of Supervisors in File No. _____ and is incorporated by reference;
15 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. _____ 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 EIR. Motion No. 08-145 is on file with
24 the Clerk of the Board of Supervisors in File No. _____ and is incorporated by
25 reference; and

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

8 WHEREAS, On April 9, 2010, the City's Planning Department found the acquisition of
9 the Subsurface Easement for the Project to be consistent with the General Plan and the Eight
10 Priority Policies of City Planning Code Section 101.1 to the extent applicable; 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 EIR or that would result in significant environmental impacts that were
14 not evaluated in the Final Supplemental EIR; and no new information has become available
15 that was not known and could not have been known at the time the Final Supplemental EIR
16 was certified as complete and that would result in significant environmental impacts not
17 evaluated in the Final Supplemental EIR; and

18 WHEREAS, On February 26, 2010, the SFMTA's Board of Directors adopted
19 Resolution No. 10-025, in which it found that (a) the Project will assist SFMTA in meeting the
20 objectives 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 Subsurface Easement is needed to construct
25 and operate the Project; (c) SFMTA has limited any potential private injury by seeking to

1 acquire only a subsurface easement and leaving the remainder of the Subject Property in
2 private ownership; and (d) the acquisition and use of the Subsurface Easement for
3 construction and operation of the Project is compatible with the existing uses of the Subject
4 Property and the surrounding area; and

5 WHEREAS, On February 26, 2010, the SFMTA Board of Directors, by SFMTA
6 Resolution No. 10-025, authorized the SFMTA Executive Director/CEO to request that this
7 Board hold a duly noticed public hearing, as required by State law, to consider the adoption of
8 a Resolution of Necessity for the acquisition of the Subsurface Easement for its appraised fair
9 market value and, if this Board adopts such Resolution of Necessity, to take such actions that
10 are consistent with the City's Charter and all applicable law to proceed to acquire the
11 Subsurface Easement; and

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

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

- 20 1. The public interest and necessity require the proposed Project;
- 21 2. The proposed Project is planned and located in the manner that will be most
22 compatible with the greatest public good and the least private injury;
- 23 3. The Subsurface Easement, the portion of the Subject Property sought to be
24 acquired, is necessary for the Project;

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

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

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

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

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

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

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

12 FURTHER RESOLVED, That this Board adopts as its own and incorporates by
13 reference herein, as though fully set forth, each of the findings made by the SFMTA in
14 adopting Resolution No. 10-025 on February 26, 2010.

15

16 **RECOMMENDED:**

17 SAN FRANCISCO MUNICIPAL
18 TRANSPORTATION AGENCY

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20 _____
21 Nathaniel P. Ford Sr.
22 Executive Director/CEO

23 Pursuant to SFMTA
24 Resolution No. 10-025

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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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