

1 [Acquisition of a Temporary Construction License by Eminent Domain - Central Subway/Third
2 Street Light Rail Extension - 801 Market Street]

3 **Resolution authorizing the acquisition of a temporary construction license at the real**
4 **property commonly known as 801 Market Street, San Francisco, California, Assessor's**
5 **Parcel Block No. 3705, Lot No. 048A, 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.**

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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;

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 801 Market Street, San
8 Francisco, California, Assessor's Parcel Block No. 3705, Lot No. 048A (the "Subject
9 Property"), which license is more particularly described in File No. 121098, including Exhibit A
10 (the "License") and as shown in Exhibit B (the "Project Alignment"), on file with the Clerk of
11 the Board of Supervisors, which is hereby declared to be a part of this resolution as if set forth
12 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. M-
17 17668. The Final Supplemental EIS/EIR and Motion No. M-17668 are on file with the Clerk of
18 the Board of Supervisors in File No. 121098, which is hereby declared to be a part of this
19 resolution as if 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 121098, 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. M08-145, in Board File No. 081138, affirming the City's Planning
3 Department decision to certify the Final Supplemental EIS/EIR. Motion No. M08-145 is on file
4 with the Clerk of the Board of Supervisors in File No. 121098, 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 March
10 21, 2012, and continues to negotiate the possible acquisition of the License with the Subject
11 Property owner of record; and

12 WHEREAS, On May 4, 2009, the City's Planning Department found the Project to be
13 consistent with the General Plan and the Eight Priority Policies of City Planning Code Section
14 101.1 to the extent applicable. On October 17, 2012, the Planning Department confirmed the
15 May 4, 2009 determination, as applicable to the acquisition of the License; and

16 WHEREAS, On October 19, 2012, the City's Planning Department found that there
17 have been no substantial changes proposed for the Project, and no substantial changes in
18 Project circumstances, that would require major revisions to the Final Supplemental EIS/EIR
19 due to 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 June 19, 2012, the SFMTA's Board of Directors adopted Resolution
4 No. 12-087, 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 the Project; (c)
10 SFMTA has limited any potential private injury by seeking to acquire only a license; and (d)
11 the acquisition and use of the License for construction of the Project is compatible with the
12 existing uses of the Subject Property and the surrounding area; and

13 WHEREAS, On June 19, 2012, the SFMTA Board of Directors, by SFMTA Resolution
14 No. 12-087, authorized the SFMTA Executive Director to request that this Board hold a duly
15 noticed public hearing, as required by State law, to consider the adoption of a Resolution of
16 Necessity for the acquisition of the License for its appraised fair market value and, if this
17 Board adopts such Resolution of Necessity, to take such actions that are consistent with the
18 City's Charter and all applicable law to proceed to acquire the License; and

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

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 sought to be acquired provides the right to temporarily use portions of
8 the Subject Property, and is necessary 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 use allowed under the License
12 sought to be acquired is presently appropriated to a public use, the purpose for which the
13 acquisition and use of the License is sought, namely, for construction 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 of the Project, is a compatible public use under
19 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,
22 including settlement or compromise of any such proceedings consistent with the City's
23 Charter and all applicable law, against the Subject Property owner of record and the owner or
24 owners of any and all interests therein or claims thereto for the condemnation thereof for the
25 public use of the City, to the extent such proceedings are necessary; together with the

1 authorization and direction to take any and all actions or comply with any and all legal
2 procedures to obtain an order for immediate or permanent possession to use the portions of
3 the Subject Property pursuant to the License as depicted in Exhibit A and Exhibit B, in
4 conformity with existing or amended law; and, be it

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

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

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

1 FURTHER RESOLVED, That this Board adopts as its own and incorporates by
2 reference, as though fully set forth herein, each of the findings made by the SFMTA in
3 adopting Resolution No. 08-150 on August 19, 2008, and Resolution No. 12-087 on June 19,
4 2012.

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