

1 [Acquisition of a Temporary Construction License by Eminent Domain - Central Subway/Third  
2 Street Light Rail Extension - 250-4<sup>th</sup> Street]

3 **Resolution authorizing the acquisition of a temporary construction license at the real**  
4 **property commonly known as 250-4<sup>th</sup> Street, San Francisco, California, Assessor's**  
5 **Parcel Block No. 3733, Lot No. 008, 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 temporary construction license for the construction and  
5 improvement of the Project at the real property commonly known as 250-4<sup>th</sup> Street, San  
6 Francisco, California, Assessor's Parcel Block No. 3733, Lot No. 008 (the "Subject Property"),  
7 which license is more particularly described in File No. 121096, including Exhibit A (the  
8 "License") and as shown in Exhibit B (the "Project Alignment"), on file with the Clerk of the  
9 Board of Supervisors, which is hereby declared to be a part of this resolution as if set forth  
10 fully herein; and

11           WHEREAS, On August 7, 2008, the City's Planning Commission certified that the Final  
12 Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report  
13 ("Final Supplemental EIS/EIR") for the Central Subway/Third Street Light Rail Phase 2 was in  
14 compliance with CEQA and the CEQA Guidelines in Planning Commission Motion No.  
15 M-17668. The Final Supplemental EIS/EIR and Motion No. M-17668 are on file with the Clerk  
16 of the Board of Supervisors in File No. 121096, which is hereby declared to be a part of this  
17 resolution as if set forth fully herein; and

18           WHEREAS, On August 19, 2008, the SFMTA's Board of Directors, by Resolution No.  
19 08-150, approved the Project, adopted CEQA Findings, including a Statement of Overriding  
20 Considerations and a Mitigation Monitoring and Reporting Program (MMRP) as required by  
21 CEQA. Resolution No. 08-150 is on file with the Clerk of the Board of Supervisors in File No.  
22 121096, which is hereby declared to be a part of this resolution as if set forth fully herein; and

23           WHEREAS, On September 16, 2008, the City's Board of Supervisors (this "Board")  
24 adopted Motion No. M08-145, in Board File No. 081138, affirming the City's Planning  
25 Department decision to certify the Final Supplemental EIS/EIR. Motion No. M08-145 is on file

1 with the Clerk of the Board of Supervisors in File No. 121096, which is hereby declared to be  
2 a part of this resolution as if set forth fully herein; and

3 WHEREAS, SFMTA staff obtained an appraisal of the License in compliance with  
4 California Government Code Section 7267 et seq. and all related statutory procedures for  
5 possible acquisition of the License, submitted an offer to the Subject Property owner of record  
6 to purchase the License as required by California Government Code Section 7267.2 on  
7 October 15, 2012, and continues to negotiate the possible acquisition of the License with the  
8 Subject Property owner of record; and

9 WHEREAS, On May 4, 2009, the City's Planning Department found the Project to be  
10 consistent with the General Plan and the Eight Priority Policies of City Planning Code Section  
11 101.1 to the extent applicable. On October 17, 2012, the Planning Department confirmed the  
12 May 4, 2009 determination, as applicable to the acquisition of the License; and

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

24 WHEREAS, On June 19, 2012, the SFMTA's Board of Directors adopted Resolution  
25 No. 12-087, in which it found that (a) the Project will assist SFMTA in meeting the objectives

1 of Goal No. 1 of the SFMTA Strategic Plan (to provide safe, accessible, clean,  
2 environmentally sustainable service and encourage the use of auto-alternative modes through  
3 the Transit First policy), of Goal No. 2 (to improve transit reliability), of Goal No. 3 (to improve  
4 economic vitality through improved regional transportation), and of Goal No. 4 (to ensure the  
5 efficient and effective use of resources); (b) the License is needed to construct the Project; (c)  
6 SFMTA has limited any potential private injury by seeking to acquire only a license; and (d)  
7 the acquisition and use of the License for construction of the Project is compatible with the  
8 existing uses of the Subject Property and the surrounding area; and

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

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

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

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

1           3. The License sought to be acquired provides the right to temporarily use portions of  
2 the Subject Property, and 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 use allowed under the License  
6 sought to be acquired is presently appropriated to a public use, the purpose for which the  
7 acquisition and use of the License is sought, namely, for construction of the Project, is a more  
8 necessary public use under Section 1240.610 of the California Code of Civil Procedure; and,  
9 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 License is sought, namely, for construction of the Project, is a compatible public use under  
13 Section 1240.510 of the California Code of Civil Procedure; and, be it

14          FURTHER RESOLVED, That the City Attorney is hereby authorized and directed to  
15 take all necessary steps to commence and prosecute proceedings in eminent domain,  
16 including settlement or compromise of any such proceedings consistent with the City's  
17 Charter and all applicable law, against the Subject Property owner of record and the owner or  
18 owners of any and all interests therein or claims thereto for the condemnation thereof for the  
19 public use of the City, to the extent such proceedings are necessary; together with the  
20 authorization and direction to take any and all actions or comply with any and all legal  
21 procedures to obtain an order for immediate or permanent possession to use the portions of  
22 the Subject Property pursuant to the License as depicted in Exhibit A and Exhibit B, in  
23 conformity with existing or amended law; and, be it

24          FURTHER RESOLVED, That this Board has reviewed and considered the Final  
25 Supplemental EIS/EIR and record as a whole, finds that the action taken herein is within the

1 scope of the Project and activities evaluated in the Final Supplemental EIS/EIR, and that the  
2 Final Supplemental EIS/EIR is adequate for its use by the decision-making body for the action  
3 taken herein; and, be it

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

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

19 FURTHER RESOLVED, That this Board adopts as its own and incorporates by  
20 reference, as though fully set forth herein, each of the findings made by the SFMTA in  
21 adopting Resolution No. 08-150 on August 19, 2008, and Resolution No. 12-087 on June 19,  
22 2012.