

1 [Authorizing the Acquisition of Fee Simple Interest By Eminent Domain for Central  
2 Subway/Third Street Light Rail Extension - 266-286 4th Street]

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 4<sup>th</sup> 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. \_\_\_\_\_ and incorporated herein by this reference, for the  
9 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 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 April 9, 2010, 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; and

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

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

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 notice as an owner of the  
11 Subject Property has been given notice and a reasonable opportunity to appear and be heard  
12 on this date on the matter referred to in California Code of Civil Procedure Section 1240.030  
13 in 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 commence proceedings in eminent domain against the Subject Property owner of record and  
10 any and all interests therein or claims thereto for the condemnation thereof for the public use  
11 of the City; together with the authorization and direction to take any actions or comply with any  
12 legal procedures to obtain an order for immediate possession for all or a portion of the Subject  
13 Property as depicted in Exhibit A and Exhibit B, in conformity with existing or amended law;  
14 and, be it

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

20 FURTHER RESOLVED, That this Board finds that since the Final Supplemental EIR  
21 was finalized, there have been no substantial Project changes and no substantial changes in  
22 Project circumstances that would require major revisions to the Final Supplemental EIR due to  
23 the involvement of new significant environmental effects or an increase in the severity of  
24 previously identified significant impacts, and there is no new information of substantial  
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1 importance that would change the conclusions set forth in the Final Supplemental EIR; and,  
2 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. 10-049 on April 20, 2010.

10

11 **RECOMMENDED:**

12 SAN FRANCISCO MUNICIPAL  
13 TRANSPORTATION AGENCY

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15 \_\_\_\_\_  
16 Nathaniel P. Ford Sr.  
Executive Director/CEO

17 Pursuant to SFMTA  
18 Resolution No. 10-049

19 APPROVED AS TO FORM:  
20 DENNIS J. HERRERA, City Attorney

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22 By: \_\_\_\_\_  
23 Thomas S. Lakritz  
Deputy City Attorney

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