

1 [Purchase Agreement - Subsurface Easements - Bay Division Pipeline Reliability Upgrade
2 Project - Bay Tunnel - \$650]

3 **Resolution approving and authorizing an Agreement for Purchase and Sale of Real**
4 **Estate to obtain two permanent, exclusive, subsurface easements from Cargill,**
5 **Incorporated, for the purpose of constructing the San Francisco Public Utilities**
6 **Commission Water System Improvement Program-Funded Project CUW36801, Bay**
7 **Division Pipeline Reliability Upgrade - Bay Tunnel for a purchase price of \$650;**
8 **adopting environmental findings under the California Environmental Quality Act**
9 **(CEQA), CEQA Guidelines, and Administrative Code Chapter 31; adopting findings of**
10 **consistency with City Planning Code Section 101.1; and authorizing the General**
11 **Manager of SFPUC to execute documents, make certain modifications and take certain**
12 **actions in furtherance of this resolution.**

13
14 WHEREAS, The San Francisco Public Utilities Commission (SFPUC) plans to
15 construct Project CUW36801 Bay Division Pipeline Reliability Upgrade Project-Bay Tunnel
16 (the Project) under the Water System Improvement Program (WSIP) for improvements to the
17 regional water supply system, a public use, and in connection therewith will require interests
18 in certain real property described herein; and,

19 WHEREAS, The objectives of the Project, together with other Bay Division Pipeline
20 (BDPL) Reliability Upgrade projects, are to provide a seismically reliable conduit between
21 Mission Boulevard in Fremont and the Pulgas Tunnel in San Mateo County, to size and
22 configure the BDPL transmission system for transmission of water across the Bay distribution
23 to residents of San Mateo County and the City and County of San Francisco, (the City) to
24 replenish local reservoirs, and to contribute toward meeting estimated average annual
25 demand under conditions of both planned and unplanned facility outages; and,

1 WHEREAS, A Final Program Environmental Impact Report (PEIR) was prepared for
2 the WSIP and certified by the Planning Commission on October 30, 2008 by Motion No.
3 17734; and

4 WHEREAS, Thereafter the SFPUC approved the WSIP and adopted findings and a
5 Mitigation Monitoring and Reporting Program as required by the California Environmental
6 Quality Act (CEQA) on October 30, 2008 by Resolution No. 08-0200; and

7 WHEREAS, An environmental impact report (EIR) as required by CEQA was
8 prepared for the Project in Planning Department File No. 2005.01 64E; and

9 WHEREAS, The Final EIR (FEIR) for the Project was certified by the San Francisco
10 Planning Commission on July 9, 2009 by Motion No. 17918; and

11 WHEREAS, The FEIR prepared for the Project is tiered from the PEIR, as
12 authorized by and in accordance with CEQA and the CEQA Guidelines; and

13 WHEREAS, On July 14, 2009, the SFPUC, by Resolution No. 09-0120, a copy of
14 which is on file with the Clerk of the Board of Supervisors of the City (Board) in File
15 No. 090979 and which is incorporated herein by this reference and is considered part of the
16 record before this Board: (1) approved the Project; (2) adopted findings (CEQA Findings),
17 including the statement of overriding considerations, and a Mitigation Monitoring and
18 Reporting Program (MMRP) required by CEQA; (3) authorized the General Manager to
19 seek Board approval of, and if approved, to execute certain necessary agreements and
20 deeds for acquisition of interests in specified parcels of real property, including the real
21 property commonly known as San Mateo County Assessor's Parcels No. 537-0551-028
22 and 537-0852-008-03 (the Subject Property), owned by Cargill, Incorporated (Seller); and

23 WHEREAS, The Project files, including the FEIR, PEIR and SFPUC Resolution No.
24 09-0120 have been made available for review by the Board and the public, and those files
25 are considered part of the record before this Board; and

1 WHEREAS, The Board has reviewed and considered the information and findings
2 contained in the FEIR, PEIR and SFPUC Resolution No. 09-0120, and all written and oral
3 information provided by the Planning Department, the public, relevant public agencies,
4 SFPUC and other experts and the administrative files for the Project; and

5 WHEREAS, This Board, by Resolution No. 371-09 adopted on September 22, 2009,
6 a copy of which is on file with the Clerk of the Board in File No. 090979 and which is
7 incorporated herein by this reference and considered part of the record before this Board,
8 adopted findings under CEQA related to the Project, including the statement of overriding
9 considerations and the MMRP; and

10 WHEREAS, In Planning case 2009.0558R, the Department of City Planning found
11 the acquisition of subsurface property interests in specified properties, including the Subject
12 Property, for the Project to be in conformity with the General Plan and consistent with the
13 Eight Priority Policies of City Planning Code Section 101.1 to the extent applicable; and

14 WHEREAS, This Board, by Resolution No. 0471-09 adopted on November 24, 2009,
15 (1) adopted findings of public necessity and other findings under California Code of Civil
16 Procedure Sections 1240.030, 1240.510, 1240.610 and 1245.230, (2) authorized
17 acquisition of subsurface tunnel easements in specified properties, including the Subject
18 Property, by eminent domain, and (3) adopted CEQA Findings, including the statement of
19 overriding considerations, and the MMRP required by CEQA, with respect to approval of
20 such resolution; and

21 WHEREAS, A copy of the proposed Agreement for Purchase and Sale of Real
22 Estate (the Agreement) between the City and Cargill, Incorporated, as Seller, is on file with
23 the Clerk of the Board of Supervisors under File No. _____, which is incorporated
24 herein by this reference and is considered part of the record before this Board; and
25

1 WHEREAS, The Director of Property has determined, based on an independent
2 appraisal, that the purchase price of \$650 reflects the fair market value of the subsurface
3 easements; and

4 WHEREAS, In recognition that the purchase price of \$650 will not cover Seller's
5 costs reasonably incurred in the sale of the tunnel easements, including costs of title
6 searches, appraisals and attorneys' fees, the proposed Agreement provides for the City to
7 reimburse the Seller for such costs up to a maximum amount of \$8,000; now therefore, be
8 it

9 RESOLVED, The Board has reviewed and considered the FEIR and record as a whole,
10 finds that the FEIR is adequate for its use as the decision-making body for the action taken
11 herein and hereby incorporates by reference the CEQA findings contained in Resolution No.
12 371-09; and be it

13 FURTHER RESOLVED, The Board finds that the Project mitigation measures adopted
14 by the SFPUC will be implemented as reflected in and in accordance with the MMRP; and be
15 it

16 FURTHER RESOLVED, The Board finds that since the FEIR was finalized, there
17 have been no substantial Project changes and no substantial changes in the Project
18 circumstances that would require major revisions to the FEIR due to the involvement of
19 new significant environmental effects or an increase in the severity of previously identified
20 significant impacts, and there is no new information of substantial importance that would
21 change the conclusions set forth in the FEIR; and, be it

22 FURTHER RESOLVED, That the Board hereby adopts as its own and incorporates
23 by reference herein, as though fully set forth, the findings of the Planning Department that
24 acquisition of subsurface property interests for the Project is consistent with the Eight
25 Priority Policies of City Planning Code Section 101.1; and, be it

1 FURTHER RESOLVED, That in accordance with the recommendations of the Public
2 Utilities Commission and the Director of Property, the Board of Supervisors hereby
3 approves the Agreement and the transaction contemplated thereby in substantially the form
4 of such Agreement presented to the Board; and, be it

5 FURTHER RESOLVED, That the Board authorizes the Director of Property and/or
6 the General Manager of the SFPUC to enter into any additions, amendments or other
7 modifications to the Agreement (including, without limitation, the attached exhibits) that the
8 Director of Property and/or the General Manager determines are in the best interest of the
9 City, that do not materially increase the obligations or liabilities of the City, and are
10 necessary or advisable to complete the transaction contemplated in the Agreement and
11 effectuate the purpose and intent of this resolution, such determination to be conclusively
12 evidenced by the execution and delivery by the Director of Property or the General
13 Manager of the Agreement and any additions or amendments thereto; and, be it

14 FURTHER RESOLVED, That the Director of Property is hereby authorized and
15 urged, in the name and on behalf of the City and County, to execute the Agreement for the
16 purchase of easements in accordance with the terms and conditions of the Agreement, and
17 to take any and all steps (including, but not limited to, the execution and delivery of any and
18 all certificates, agreements, notices, consents, escrow instructions, closing documents and
19 other instruments or documents) as the Director of Property deems necessary or
20 appropriate pursuant to the Agreement, or to otherwise effectuate the purpose and intent of
21 this resolution, such determination to be conclusively evidenced by the execution and
22 delivery by the Director of Property.

23 RECOMMENDED:

FUNDS AVAILABLE

24 _____
25 Amy L. Brown
Director of Property

Controller
Appropriation: Index Code 737312