

1 [Agreement to Acquire Easement in Connection with the Bay Division Pipeline Reliability
2 Upgrade Project - Bay Tunnel]

3 **Resolution approving and authorizing acceptance of a Right of Way Easement deed for**
4 **a 50-year, exclusive, subsurface easement, at no charge, from United States**
5 **Department of the Interior, for the purpose of constructing the San Francisco Public**
6 **Utilities Commission Water System Improvement Program-Funded Project CUW36801,**
7 **Bay Division Pipeline Reliability Upgrade - Bay Tunnel; adopting environmental**
8 **findings under the California Environmental Quality Act (CEQA), CEQA Guidelines, and**
9 **Administrative Code Chapter 31; adopting findings of consistency with City Planning**
10 **Code Section 101.1; and authorizing the General Manager of SFPUC to execute**
11 **documents, make certain modifications and take certain actions in furtherance of this**
12 **resolution.**

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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 for
23 distribution to residents and businesses in San Mateo County and the City and County of San
24 Francisco (the City), to replenish local reservoirs, and to contribute toward meeting estimated
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1 average annual demand under conditions of both planned and unplanned facility outages;
2 and,

3 WHEREAS, A Final Program Environmental Impact Report (PEIR) was prepared for
4 the WSIP and certified by the Planning Commission on October 30, 2008 by Motion No.
5 17734; and

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

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

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

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

15 WHEREAS, On July 14, 2009, the SFPUC, by Resolution No. 09-0120, a copy of
16 which is on file with the Clerk of the Board of Supervisors of the City (Board) in File
17 No. 090979 and which is incorporated herein by this reference and is considered part of the
18 record before this Board: (1) approved the Project; (2) adopted findings (CEQA Findings),
19 including the statement of overriding considerations, and a Mitigation Monitoring and
20 Reporting Program (MMRP) required by CEQA; (3) authorized the General Manager to
21 seek Board approval of, and if approved, to execute certain necessary agreements and
22 deeds for acquisition of interests in parcels of federal land under the jurisdiction of the U.S.
23 Fish and Wildlife Service, including the real property commonly known as Alameda County
24 Assessor's Parcels No. 537-0551-014-06, 537-0551-014-03, 537-0601-007-03, 537-0601-
25 008 and 537-0601-009-02 (together, the Subject Property); and

1 WHEREAS, The Project files, including the FEIR, PEIR and SFPUC Resolution No.
2 09-0120 have been made available for review by the Board and the public, and those files
3 are considered part of the record before this Board; and

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

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

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

17 WHEREAS, A copy of the proposed Right of Way Easement deed (the Agreement)
18 between the United States Department of the Interior, U.S. Fish and Wildlife Service, as
19 Grantor, and the City as Grantee, is on file with the Clerk of the Board of Supervisors under
20 File No. _____, which is incorporated herein by this reference and is considered
21 part of the record before this Board; now therefore, be it

22 RESOLVED, The Board has reviewed and considered the FEIR and record as a whole,
23 finds that the FEIR is adequate for its use as the decision-making body for the action taken
24 herein and hereby incorporates by reference the CEQA findings contained in Resolution No.
25 371-09; and be it

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

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

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

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

18 FURTHER RESOLVED, That the Board authorizes the Director of Property and/or
19 the General Manager of the SFPUC to enter into any additions, amendments or other
20 modifications to the Agreement (including, without limitation, the attached exhibits) that the
21 Director of Property and/or the General Manager determines are in the best interest of the
22 City, that do not materially increase the obligations or liabilities of the City, and are
23 necessary or advisable to complete the transaction contemplated in the Agreement and
24 effectuate the purpose and intent of this resolution, such determination to be conclusively
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1 evidenced by the execution and delivery by the Director of Property or the General
2 Manager of the Agreement and any additions or amendments thereto; and, be it

3 FURTHER RESOLVED, That the Director of Property is hereby authorized and
4 urged, in the name and on behalf of the City and County, to execute the Agreement for the
5 purchase of easements in accordance with the terms and conditions of the Agreement, and
6 to take any and all steps (including, but not limited to, the execution and delivery of any and
7 all certificates, agreements, notices, consents, escrow instructions, closing documents and
8 other instruments or documents) as the Director of Property deems necessary or
9 appropriate pursuant to the Agreement, or to otherwise effectuate the purpose and intent of
10 this resolution, such determination to be conclusively evidenced by the execution and
11 delivery by the Director of Property.

12 RECOMMENDED:

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14 Amy L. Brown
15 Director of Property
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