

**THIS PRINT COVERS CALENDAR ITEM NO.: 10.4**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Finance and Information Technology

**BRIEF DESCRIPTION:**

Requesting that the Board of Supervisors hold a public hearing to consider adoption of a Resolution of Necessity to acquire a temporary construction license for its fair market value, in the real property at 55 Stockton Street, San Francisco; and if the Board of Supervisors adopts such Resolution of Necessity, authorizing the Director of Transportation to take such actions that are consistent with the City's Charter and all applicable law to acquire the temporary construction license.

**SUMMARY:**

- The SFMTA needs to acquire a temporary construction license (License) at 55 Stockton Street, San Francisco, Assessor's Block 0327, Lots 001, 002, 003, and 020 (Property), for construction and operation of the Union Square/Market Street Station of the Central Subway Project (Project). The Property is owned by Zaber Corporation, Inc. (Owner). The License would allow the installation of subsurface piles within an approximate 517 square-foot, rectangular strip along the Property's eastern boundary between the depths of approximately 99.7' to 155' below the ground surface, and the installation of settlement monitoring equipment at the Property.
- The SFMTA has obtained an appraisal of the License from a licensed real estate appraiser, which concluded that the fair market value is \$13,500. The SFMTA also obtained a review appraisal from a second licensed appraiser, which concurred with the first appraiser's valuation of the temporary construction license.
- The SFMTA mailed an offer to the Owner to acquire the License for \$13,500 and is in discussions with the Owner on the acquisition terms.
- If the SFMTA and Owner are not able to agree upon the acquisition of the License, the SFMTA will request that the Board of Supervisors consider holding a public hearing to adopt a Resolution of Necessity to acquire the License through eminent domain.

**ENCLOSURES:**

1. Resolution
2. Project Budget & Financial Plan

**APPROVALS:**

**DATE**

DIRECTOR \_\_\_\_\_ 3/13/12

SECRETARY \_\_\_\_\_ 3/13/12

**ASSIGNED SFMTAB CALENDAR DATE:** March 20, 2012

**PURPOSE**

The proposed resolution authorizes the Director of Transportation to request that the Board of Supervisors hold a hearing to consider adopting a Resolution of Necessity to acquire the License through eminent domain for its appraised fair market value.

**GOAL**

The License will allow temporary use of the Property to facilitate construction of the Project's Union Square/Market Street (UMS) Station. The Project, a critical transportation improvement linking neighborhoods in the southeastern part of San Francisco with retail and employment centers in downtown and Chinatown, is consistent with the SFMTA Strategic Plan and meets the following goals and objectives:

Goal 1: Customer Focus - to provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy

Objective 1.3 Reduce emissions as required by the SFMTA Clean Air Plan

Objective 1.4 Improve accessibility across transit service

Objective 1.5 Increase percentage of trip using more sustainable modes

Goal 2 – System Performance - to get customers where they want to go, when they want to be there

Objective 2.2 Ensure efficient transit connectivity and span of service

Objective 2.4 Reduce congestion through major corridors

Goal 3 – External Affairs/Community Relations - to improve the customer experience, community value, and enhance the image of the SFMTA, as well as ensure the SFMTA is a leader in the industry

Objective 3.1 Improve economic vitality by growing relationships with businesses, community, and stakeholder groups

Objective 3.2 Pursue internal and external customer satisfaction through proactive outreach and heightened communication conduits

Objective 3.3 Provide a working environment that fosters a high standard of performance, recognition for contributions, innovations, mutual respect and a healthy quality of life

Objective 3.4 Enhance proactive participation and cooperatively strive for improved regional transportation

Goal 4 – Financial Capacity - to ensure financial stability and effective resource utilization

Objective 4.2 Ensure efficient and effective use of resources

**DESCRIPTION**

**Background:**

The Project is the second phase of the SFMTA's Third Street Light Rail Project, and will add 1.67 miles of light rail track north from the northern end of the new Third Street Light Rail at Fourth and King Streets to a terminal in Chinatown. The Project will serve regional destinations, including Chinatown (the most densely populated area of the country that is not currently served

by modern rail transportation), Union Square, Moscone Convention Center, Yerba Buena, SoMa and AT&T Park. The Project will also connect BART and Caltrain (the Bay Area's two largest regional commuter rail services), serve a low auto ownership population of transit customers, increase transit use and reduce travel time, reduce air and noise pollution, and provide congestion relief. The public interest and necessity require the construction and operation of the Project to achieve such benefits.

The Project will have four stations and connecting subsurface tunnels to provide direct rail service to the South of Market and Chinatown neighborhoods. The Project has been planned and located in a manner that will be most compatible with the greatest public good and the least private injury.

**Current Status of the Project:**

Currently, one construction contract for relocating utilities for the Moscone Station and the portal areas is completed. Another construction contract to relocate utilities in the Union Square/Market Street Station location is currently under construction. In addition, the largest contract for the Project, the tunneling contract, has been awarded and is to start construction shortly. Four additional construction contracts are in the final design phase. The Project construction is expected to be completed in 2018.

**Acquisition of the Temporary Construction License:**

The Property, comprised of a 15,125-square-foot lot and improved with a retail building, abuts the Project right-of-way. The SFMTA needs to acquire the License to facilitate construction of the Project's future UMS Station. The proposed acquisition is to allow the installation of subsurface piles in an approximate 517-square-foot area, which forms a narrow rectangular strip along the eastern boundary of the Property between the approximate depths of 99.7' to 155' below the ground surface, approximately 4' 8 3/8" from the Property's boundary along Stockton Street.

On November 17, 2011, the SFMTA obtained an independent real property appraisal, which determined the fair market value of the License to be \$13,500. The SFMTA also obtained a review appraisal of the License by a second licensed appraiser, which concurred with the valuation determined by the first appraiser.

The SFMTA sent a letter offering to acquire the License from the Owner for \$13,500 on January 17, 2012. The offer was conditioned on the negotiation of a mutually acceptable license agreement. The offer also notified the Owner of its rights to obtain its own independent appraisal of the fair market value of the License. As required under state law, the SFMTA agreed to reimburse the Owner up to \$5,000 for such an independent appraisal if it met FTA appraisal requirements.

The SFMTA provided the Owner with engineering plans and details of the proposed installation of subsurface piles and settlement monitors to Owner's representative on January 31, 2012. The SFMTA has offered to meet with the Owner's representative since January 31, 2012 and has made repeated attempts by phone and by email. To date, the Owner has not provided any

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comments to the proposed work scope or temporary construction license. On February 6, 2012, the Property Owner's representative informed the SFMTA that it planned to obtain its own independent appraisal of the fair market value of the temporary construction license. On February 9, 2012, the SFMTA provided written confirmation that it would reimburse the Owner up to \$5,000 for the independent appraisal and provided the Owner with FTA guidelines for preparing an such an appraisal. The SFMTA's February 9, 2012 correspondence requested that the independent appraisal be complete within 30 days.

The SFMTA intends to continue good faith discussions with the Owner in hopes of reaching agreement for the acquisition of the License. However, the SFMTA must acquire the License within the next two months to avoid construction delays for the Project. If the SFMTA and the Owner do not agree to the acquisition of the License within that timeframe, it will affect the SFMTA's ability to construct the UMS Station and cause substantial Project delays.

If the SFMTA and Owner do not timely agree to the acquisition of the License, the SFMTA could proceed with eminent domain proceedings and acquire possession of the License without delaying the construction schedule. If the SFMTA and Owner reach an agreement that allows the SFMTA to acquire the License, the SFMTA will suspend the request to the Board of Supervisors to consider an eminent domain action and acquire the License in lieu of such action.

**ALTERNATIVES CONSIDERED**

The alternative to purchasing the License is to proceed with eminent domain if the SFMTA and the Owner are unable to negotiate the acquisition of the License.

**FUNDING IMPACT**

The acquisition of the License will be funded by a combination of federal, state and local money. The Project Budget & Financial Plan is set forth in Enclosure 2.

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

The Board of Supervisors must approve a Resolution of Necessity to acquire the License by eminent domain.

The City Attorney's Office has reviewed this calendar item.

**RECOMMENDATION**

It is recommended that the SFMTA Board of Directors approve a resolution authorizing the Director of Transportation to request that the Board of Supervisors hold a public hearing to consider a Resolution of Necessity to acquire the License by eminent domain for the Central Subway Project, while the SFMTA continues negotiations for the acquisition of the License.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) intends to construct the Central Subway Project (Project) to provide rail service to the South of Market and Chinatown neighborhoods; and,

WHEREAS, The Project is the second phase of the SFMTA's Third Street Light Rail Project and the Project will add 1.67 miles of light rail track north from the northern end of the new Third Street Light Rail at Fourth and King Streets to a terminal in Chinatown, serve regional destinations, including Chinatown (the most densely populated area of the country that is not currently served by modern rail transportation), Union Square, Moscone Convention Center, Yerba Buena, SoMa and AT&T Park, connect BART and Caltrain (the Bay Area's two largest regional commuter rail services), serve a low auto ownership population of transit customers, increase transit use and reduce travel time, reduce air and noise pollution, and provide congestion relief; and,

WHEREAS, The public interest and necessity require the construction and operation of the Project to achieve such benefits; and,

WHEREAS, The Project will include four subway stations and connecting subsurface tunnels to provide direct rail service to the South of Market and Chinatown neighborhoods, and the Project has been planned and located in a manner that will be most compatible with the greatest public good and the least private injury; and,

WHEREAS, The Final Environmental Impact Statement / Environmental Impact Report (SEIS/SEIR) for the Project was certified by the San Francisco Planning Commission on August 7, 2008 and a Record of Decision was issued by the Federal Transit Administration on November 26, 2008; and,

WHEREAS, There have been no substantial changes proposed for the Project which will require major revisions to the SEIS/SEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; no substantial changes have occurred with respect to the circumstances under which the Project is being undertaken which will require major revisions in the SEIS/SEIR; and no new information of substantial importance has become available which was not known and could not have been known at the time the SEIS/SEIR was certified as complete and that would result in either significant environmental effects not discussed in the SEIS/SEIR, a substantial increase in the severity of previously identified significant effects, or feasible mitigation measures or alternatives that would substantially reduce one of the significant effects but which have not been adopted; and,

WHEREAS, The Project will assist the SFMTA in meeting the objectives of Goal No. 1 of the Strategic Plan (to provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First policy), of Goal No. 2 (to improve transit reliability), of Goal No. 3 (to improve economic vitality through improved regional transportation), and of Goal No. 4 (to ensure the efficient and effective use of resources); and,

WHEREAS, The property located at 55 Stockton Street, San Francisco, Assessor's Block 0327, Lots 001, 002, 003, and 020 (Property), is owned by Zaber Corporation, Inc. (Owner) and abuts the Project right of way; and,

WHEREAS, To construct the Project's Union Square/Market Street (UMS) Station, the SFMTA needs to acquire a temporary construction license (License) to install subsurface piles within an approximate 517-square-foot portion of the Property, between the depths of approximately 99.7' to 155' below the ground surface, and to install settlement monitoring equipment at the Property; and,

WHEREAS, The acquisition and use of the License is necessary to construct the Project's Union Square/Market Street Station; and,

WHEREAS, The Project has been planned and located in a manner that will be most compatible with the surrounding area, the greatest public good and interest, and the least private injury; and,

WHEREAS, The SFMTA has limited any potential private injury by seeking to acquire the License; and,

WHEREAS, The SFMTA has obtained an appraisal dated as of November 17, 2011, which determined that the fair market value of the License is \$13,500; the SFMTA also obtained a review appraisal of the License that concurred that its fair market value is \$13,500; and,

WHEREAS, The SFMTA mailed an offer to the Owner on January 17, 2012, to acquire the License for \$13,500, subject to the negotiation of a license agreement, and the SFMTA is in discussions with the Owner to negotiate the License terms; and,

WHEREAS, If the SFMTA and Owner do not agree to the acquisition of the License within the next two months, it would delay the construction of the Project and cause Project delays; and,

WHEREAS, Funding for the License, either by negotiation or by eminent domain, will be furnished from federal, state and local sources; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors requests the Board of Supervisors to consider adoption of a Resolution of Necessity for the acquisition of the License for the real property at 55 Stockton, San Francisco for its fair market value; and if the Board of Supervisors adopts such Resolution of Necessity, authorizes the Director of Transportation to take such actions that are consistent with the City's Charter and all applicable law, to proceed to acquire the License by eminent domain.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of March 20, 2012.

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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

ENCLOSURE 2  
 THIRD STREET LIGHT RAIL PROJECT  
 CENTRAL SUBWAY

Project Budget & Financial Plan

<b>Cost</b>	<b>(\$Million)</b>
Conceptual and Preliminary Engineering	59.41
Program Management & Construction Management	132.78
Final Design	85.94
Construction Contracts (Tunnel, Stations and System is \$560 million)	986.68
Vehicles	26.39
Contingency	160.26
Right-of-Way	34.84
Other Professional Services	92.00
<b>Total Central Subway Cost</b>	<b>\$ 1,578.30</b>

<b>Funding</b>	<b>(\$Millions)</b>
Federal 5309 New Starts	942.20
State RTIP Grant	68.28
CMAQ	41.03
State TCRP Grant	14.00
Proposition 1B-2006 MTC Share	82.50
Proposition 1B-MTA Share	225.28
Proposition K Sales Tax Funds	123.98
High Speed Rail Funds	61.31
State Local Partnership Program	19.72
<b>Total Central Subway Funding</b>	<b>\$ 1,578.30</b>