

THIS PRINT COVERS CALENDAR ITEM NO.: 10.5

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Capital Programs and Construction

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute an agreement with Pacific Gas and Electric Company (PG&E) indemnifying PG&E from any claims (other than claims arising from PG&E's gross negligence or willful misconduct) resulting from the boring and installation of electrical conduits underneath the SFMTA track right-of-way at the intersection of 2nd and King Streets.



SUMMARY:

- On April 17, 2018, the SFMTA Board of Direction authorized the award of SFMTA Contract No. 1304, Muni Metro System King Substation Upgrade (Project) to DMZ Builders.
- In November 2018, the Contractor completed boring and installation of conduits underneath the SFMTA track right-of-way at 2nd and King Streets.
- PG&E refused to accept ownership of the bore because the SFMTA did not comply with all of PG&E's protocols, which are designed to minimize damage to neighboring utility facilities.
- On April 9, 2019, PG&E stated that it is now prepared to accept the boring and pull its electrical cables through the conduit provided that the SFMTA conduct a post-boring video and indemnify PG&E for any claims resulting from the boring.
- The project is necessary in order to provide sufficient electrical power for the Muni light rail vehicles serving Oracle Park and the Chase Center, among other facilities, especially after the Central Subway is in operation.

ENCLOSURES:

1. SFMTAB Resolution
2. Indemnification Agreement with PG&E

APPROVALS:

DIRECTOR  _____
SECRETARY  _____

DATE

June 11, 2019

June 11, 2019

ASSIGNED SFMTAB CALENDAR DATE: June 18, 2019

PAGE 2.

PURPOSE

Authorizing the Director of Transportation to execute an agreement with PG&E indemnifying PG&E from any claims (other than claims arising from PG&E's gross negligence or willful misconduct) resulting for the boring and installation of electrical conduits underneath the SFMTA track right-of-way at the intersection of 2nd and King Streets.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

This action supports the following goals and objectives in the SFMTA's Strategic Plan and Transit First Policy Principles:

Strategic Plan Goals/Objectives:

- Goal 1: Create a safer transportation experience for everyone.
 - Objective 1.3 Improve the safety of the transportation system.

- Goal 2: Make transit and other sustainable modes of transportation the most attractive and preferred means of travel.
 - Objective 2.1 Improve transit service.
 - Objective 2.2 Enhance and expand use of the city's sustainable modes of transportation and land use principles

- Goal 3: Improve the environment and quality of life in San Francisco
 - Objective 3.2 Increase the transportation system's positive impact to the economy.
 - Objective 3.3 Allocate capital resources effectively.
 - Objective 3.4 Deliver Services efficiently.

Transit First Policy Principles:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.

2. Public transit, including taxis and vanpools, is an economically and environmentally sound alternative to transportation by individual automobiles. Within San Francisco, travel by public transit, by bicycle and on foot must be an attractive alternative to travel by private automobile.

DESCRIPTION

On April 17, 2018, the SFMTA Board of Direction authorized the award of SFMTA Contract No. 1304, Muni Metro System King Substation Upgrade Project (the Project), to upgrade the existing King Substation to provide additional power capacity as a result of increased transit

PAGE 3.

service demands on our system. Over the past several years, the Mission Bay area has experienced significant growth with more construction projects. Notice to proceed was issued to the Contractor, DMZ Builders, on June 12, 2018.

As part of that Project, the SFMTA planned to install a new underground conduit to connect new and temporary substations to PG&E's facilities located at 2nd and Townsend Streets. Open trench construction methodology was used to install most of the conduit, while directional boring was the only feasible approach to install the conduits underneath the SFMTA railway tracks at the intersection of 2nd and King Streets. Directional boring is a trenchless method for the placement of encasement and/or carrier pipe under, across, or within existing right-of-way.

Under normal practice, the SFMTA would construct the bore and conduit and deed it over to PG&E. In this instance, however, PG&E refused to accept ownership of the bore because the SFMTA did not comply with all of PG&E's protocols regarding the box sewer, which are designed to minimize damage to neighboring utility facilities (which, in this case, are pipes belonging to the City's Public Utilities Commission). The SFPUC originally set the protocols. One protocol is to provide a video of the box sewer prior to construction. The SFMTA provided a video of the box sewer; however, the video quality was not acceptable to PG&E because recent rains had increased the flow of the sewer, preventing the videographer from taking a high-quality video. PG&E would not accept this video recording. In order not to further delay the project, and with the approval of the SFPUC, the SFMTA completed the construction of the bore. There was no damage to SFPUC facilities, and the SFPUC accepted the work.

Based on recent correspondence among the SFMTA, SFPUC and PG&E, PG&E is now prepared to accept the bore and conduit and pull its electrical cables through the conduit. However, this acceptance was contingent on the SFMTA conducting a post-boring video under PG&E's inspection and indemnifying PG&E for any claims resulting from the boring. The post-bore video of the box sewer facility was completed May 10, 2019, verifying that there was no damage to any facilities in or near the bore.

Impact to Transit Operations

The boring work was completed without impact to SFMTA revenue service. PG&E's failure to accept the bore and provide the electrical service would have prevented the SFMTA from completing the refurbishment of the King Substation. The project is essential in order to provide sufficient electrical power for the Muni light rail vehicles serving Oracle Park and the Chase Center, among other facilities, and will become acute once the Central Subway is in operation. Currently, the project has been suspended pending approval of the indemnification agreement with PG&E.

Indemnification

The Indemnification Agreement contains an unlimited indemnity of PG&E except for claims arising from PG&E's gross negligence or willful misconduct. Also, PG&E requested that the

PAGE 4.

City install two conduits within the bore (presumably, for other PG&E customers), which was done. The indemnity limits the City's liability for claims regarding the second conduit except to the extent they resulted from faulty construction of the bore or the conduit.

STAKEHOLDER ENGAGEMENT

During active construction, the SFMTA maintained communications with the International Longshore and Warehouse Union, SF Port, South Beach Harbor, and SF Giants. Issues raised were addressed.

ALTERNATIVES CONSIDERED

The SFMTA considered alternative methods:

Option 1: PG&E required the SFMTA to install an electrical interrupter and meter close to the point of interconnection. To accommodate the meter for this electrical power draw, the SFMTA would have to install a large, unsightly aboveground meter cabinet on Second Street, where there would be heavy pedestrian traffic on SF Giants game days or for other events held at Oracle Park. The lead time to purchase an interrupter is 22 weeks. Inclusive of the equipment and delay costs, the total potential cost to the SFMTA might exceed \$3.5 million.

Option 2 is a subset of Option 1, where PG&E would waive the electrical meter requirement, as the electrical loss could be calculated, and PG&E compensated accordingly. Inclusive of the interrupter equipment and delay costs, the total potential cost to the SFMTA might exceed \$3 million.

The SFMTA's preference is for PG&E to accept ownership of the bore and conduit. The SFMTA would agree to fully indemnify PG&E for any claims resulting from the boring, so PG&E would not have any risk of liability or damages when it pulled its electrical cables through the conduit (except for PG&E's own gross negligence or willful misconduct). This option is the least expensive and most expeditious way for the SFMTA to connect PG&E power to the temporary and refurbished substations.

FUNDING IMPACT

The Indemnification Agreement does not add costs to the King Substation Project; however, failure to approve this Agreement would impact the Project schedule and increase the delay claim from the contractor.

ENVIRONMENTAL REVIEW

On April 25, 2019, the SFMTA, under authority delegated by the Planning Department, determined that the Indemnification Agreement between the City and County of San Francisco and Pacific Gas & Electric Company (PG&E) is not a "project" under the California

PAGE 5.

Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

No other approvals are required.

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

RECOMMENDATION

Authorizing the Director of Transportation to execute an agreement with PG&E indemnifying PG&E from any claims (other than claims arising from PG&E's gross negligence or willful misconduct) resulting from the boring and installation of electrical conduits underneath the SFMTA right-of-way at the intersection of 2nd and King Streets.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, Contract No. 1304, Muni Metro System King Substation Upgrade Project was designed to upgrade the existing King Substation to provide additional power capacity as a result of increased transit service demands on our system, including light rail vehicles serving Oracle Park, Chase Center, and the Central Subway; and,

WHEREAS, On April 17, 2018, the SFMTA Board of Direction authorized the award of SFMTA Contract No. 1304, Muni Metro System King Substation Upgrade (Project) to DMZ Builders; the SFMTA issued the Notice to Proceed with the work on June 12, 2018; and,

WHEREAS, On November 6, 2018, the DMZ Builders completed boring and installation of conduits underneath the SFMTA right-of-way at the intersection of 2nd and King Streets under direction from the SFMTA; and,

WHEREAS, PG&E refused to accept ownership of the bore and conduit in order to pull its electrical cables through the conduit unless the SFMTA indemnified P&E for all claims (other than claims arising from PG&E's gross negligence or willful misconduct) resulting from the boring and installation of electrical conduits underneath the SFMTA track right-of-way at the intersection of 2nd and King Streets; and,

WHEREAS, On April 25, 2019, the SFMTA, under authority delegated by the Planning Department, determined that the Indemnification Agreement between the City and County of San Francisco and Pacific Gas & Electric Company (PG&E) is not defined as a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute an agreement with Pacific Gas and Electric Company indemnifying PG&E from any claims (other than claims arising from PG&E's gross negligence or willful misconduct) resulting from the boring and installation of electrical conduits underneath the SFMTA track right-of-way at the intersection of 2nd and King Streets.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of June 18, 2019.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

**City and County of San Francisco
Municipal Transportation Agency
One South Van Ness Ave. 7th floor
San Francisco, California 94103**

**Indemnification Agreement
between
the City and County of San Francisco and
Pacific Gas & Electric Company**

This Agreement is made this ___ day of June, 2019, in the City and County of San Francisco, State of California, by and between: Pacific Gas & Electric Company (PG&E) and the City and County of San Francisco, a municipal corporation (City), acting by and through its Municipal Transportation Agency (SFMTA) (collectively, Parties).

Recitals

- A. The SFMTA is constructing a new King Substation to provide sufficient electrical power for the Muni light rail vehicles serving Oracle Park, the Chase Center, and the Central Subway. The new King Substation will upgrade the electrical distribution circuits and create spare electrical circuits for future needs. The SFMTA will install a temporary mobile substation to provide power while the new substation is constructed.
- B. In order to connect the new and temporary substations to PG&E's distribution facilities, the SFMTA installed a new underground conduit across King Street (the Conduit). The SFMTA had to construct a bore (the Bore) under the light rail tracks to install the Conduit.
- C. Under normal practice, the SFMTA would drill a bore and deed it over to PG&E for installation of PG&E facilities. But here, PG&E refused to accept ownership of the Bore because the SFMTA did not comply with all of PG&E's protocols related to boring, which are designed to prevent damage to neighboring utility facilities and to ensure the integrity and safety of the bore, the conduit and the facilities it will house. The SFMTA and San Francisco Public Utilities Commission (SFPUC) agree that the SFMTA completed the boring without incident, however PG&E's inspector was not present during the boring performed by the SFMTA and did not inspect the Bore during or immediately after the SFMTA's boring operations.
- D. The SFPUC recently inspected the wastewater culvert to investigate the possibility of cross-bores. Similarly, the SFPUC provided PG&E with an opportunity to review a video of the Conduit. After reviewing the post-boring video of the culvert and the video of the Conduit, as a one-time accommodation to the City, PG&E is now prepared to accept the Bore and pull its cable through the Conduit to the temporary mobile substation and new King Substation, provided that the City indemnify and hold PG&E harmless for any claims associated with the Bore, the Conduit, and the electric facilities located in the Conduit.

Accepting the above Recitals as true, the Parties agree as follows:

Indemnification

City, through the SFMTA, agrees to release, indemnify and hold harmless PG&E, its officers, affiliates, subsidiaries, parent company, officers, managers, directors, agents, and employees for any losses, costs, damages, expenses, claims, liabilities (legal, contractual, or otherwise), including all fees and charges of internal or external counsel and all reasonable

expenses of litigation and preparation therefor (collectively, Claims) arising from, involving, or in connection with the construction, operation, maintenance, or use of the Bore and Conduit in the Bore, and the electric facilities in the Conduit and Bore, except to the extent that City demonstrates that such Claims arose or were caused by the gross negligence or willful misconduct of PG&E, its officers, affiliates, subsidiaries, parent company, officers, managers, directors, agents, and employees. This indemnity shall not apply to any claims resulting from PG&E's use of the second conduit in the Bore for any customer other than the City except to the extent that those claims arise from faulty construction of the Bore or the Conduit in the Bore.

City shall defend all third party Claims (with counsel acceptable to PG&E) at its own cost and expense and City shall satisfy any judgment or decree that may be rendered against PG&E arising out of a Claim, and reimburse PG&E for any and all attorney, expert witness, and consulting fees and reasonable expenses incurred in connection with the Claim or in enforcing the indemnity and defense.

Nothing contained herein will be construed to impose any obligation in conflict with current California state law. In the event of a conflict with Civil Code sections 2782, *et seq.*, as may be amended, this agreement will be modified to allow indemnification and defense by City to the greatest extent permitted by law.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day first mentioned above.

CITY
MUNICIPAL TRANSPORTATION AGENCY

By _____ Municipal Transportation Agency Board of Directors
Edward D. Reiskin
Director of Transportation

Resolution No. _____
Dated: _____

Approved as to Form:

Dennis J. Herrera
City Attorney

Attest:

Secretary, SFMTA Board of Directors

By _____
Robin M. Reitzes
Deputy City Attorney

INDEMNITEE
Pacific Gas & Electric Company

By _____