

THIS PRINT COVERS CALENDAR ITEM NO.: 6

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Capital Programs and Construction

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute Modification No. 4 to Contract No. 1304, Muni Metro System King Substation Upgrade, with DMZ Builders to agree to a global settlement of all Contractor's delay claims, which were primarily caused by PG&E activity, extending the Contract Term by 950 Days to January 12, 2023, and increasing the Contract Amount by \$2,550,000 for a total Contract Amount not to exceed \$15,372,966.

SUMMARY:

- On April 17, 2018, the SFMTA Board of Directors adopted Resolution No. 180417-061 awarding Contract No. 1304, Muni Metro System King Substation Upgrade, to DMZ Builders for an amount of \$11,398,450 and a term of 365 days. The Contract upgrades the King Substation to meet demand for electrical power for Muni light rail vehicles serving Oracle Park, the Chase Center, and the Central Subway, upgrade electrical distribution circuits, and create spare electrical circuits to meet future needs.
- The Contract previously has been amended three times, increasing the Contract Amount by a total of \$1,424,516 to \$12,822,966, and extending the Contract term by 360 days.
- This Contract Modification agrees to a global settlement of all claims by Contractor for delays on the project before September 30, 2022, by extending the Contract Term by 950 Days and increasing the Contract Amount by \$2,550,000.

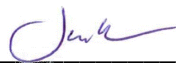
ENCLOSURES:

1. SFMTAB Resolution
2. Contract Modification No. 4
3. Project Budget and Finance Plan
4. SFMTA Warriors/Chase Event Center Resolution No.15-154, [2015_1103_Resolution.pdf](https://www.gsweventcenter.com/2015_1103_Resolution.pdf)
5. Warriors/Chase Event Center FEIR (Station Relocation Variant), [Responses to Comments on the DSEIR on the Event Center and Mixed-Use Development at Mission Bay Blocks 29-32](https://sfplanning.s3.amazonaws.com/Responses%20to%20Comments%20on%20the%20DSEIR%20on%20the%20Event%20Center%20and%20Mixed-Use%20Development%20at%20Mission%20Bay%20Blocks%2029-32.pdf)
6. Warriors/Chase Event Center Mitigation Monitoring and Reporting Program, https://www.gsweventcenter.com/OCIICommissionPublicMeetings/2015_1103_Adopt70_ExhibitB.pdf

APPROVALS:

DATE

DIRECTOR



December 8, 2022

SECRETARY



December 8, 2022

ASSIGNED SFMTAB CALENDAR DATE: December 13, 2022

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PURPOSE

The purpose of this calendar item is to authorize the Director of Transportation to execute Modification No. 4 to Contract No. 1304, Muni Metro System King Substation Upgrade, with DMZ Builders to agree to a global settlement of Contractor's delay claims, which were primarily caused by PG&E activity, extending the Contract Term by 950 Days to January 12, 2023, and increasing the Contract Amount by \$2,550,000, for a total Contract Amount not to exceed \$15,372,966.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

Goal 4: Make streets safer for everyone.

Goal 5: Deliver reliable and equitable transportation services.

Goal 6: Eliminate pollution and greenhouse gas emissions by increasing use of transit, walking, and bicycling.

Goal 8: Deliver quality projects on-time and on-budget.

Goal 9: Fix things before they break, modernize systems and infrastructure.

Transit First 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.
9. The ability of the City and County to reduce traffic congestion depends on the adequacy of regional public transportation. The City and County shall promote the use of regional mass transit and the continued development of an integrated, reliable, regional public transportation system.
10. The City and County shall encourage innovative solutions to meet public transportation needs wherever possible and where the provision of such service will not adversely affect the service provided by the Municipal Railway.

DESCRIPTION

The Muni Metro System King Substation Upgrade (Project) upgrades the existing King Substation to provide sufficient electrical power for Muni light rail vehicles. Due to the anticipated developments and projects in the surrounding area, including the Central Subway, Oracle Park, and the Chase Center, the demand for light rail service is expected to increase, potentially overloading the existing feeder circuits in the current King Substation. The Project addresses these issues by upgrading the electrical distribution circuits and creating spare electrical circuits for future anticipated needs. As part of the project, the SFMTA also procured a temporary mobile substation to provide traction power while the King Substation is being

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upgraded.

On April 17, 2018, the SFMTA Board of Directors adopted Resolution No. 180417-061, authorizing the award of SFMTA Contract No. 1304 to DMZ Builders in the amount of \$11,398,450 with a Contract term of 365 days from Notice to Proceed to Substantial Completion.

The SFMTA issued the Notice to Proceed to the Contractor on June 12, 2018, establishing June 13, 2018, as the official date of commencement of work, and June 12, 2019, as the required substantial completion date.

As part of the Project, a new underground conduit was to be installed to connect a temporary mobile substation and the upgraded King Substation to PG&E's facilities located at 2nd and Townsend Streets. The conduit was necessary to provide power to the mobile substation while the contractor shut down the permanent substation for upgrades. To install the new underground conduit, the contractor was required to conduct a directional boring operation underneath the trackway to avoid a box culvert. Because no work on the permanent substation upgrade could be completed until PG&E energized the mobile substation, PG&E's work was on the critical path of the project schedule.

Two months after the Notice to Proceed, PG&E delayed the directional boring operation by making unprecedented objections to the SFMTA's plan for doing the work. PG&E informed the SFMTA that it would only allow the directional boring if the SFMTA completed a post-boring inspection video under PG&E's direction, and also indemnified PG&E for any damage resulting from the boring. It took ten months for the SFMTA to meet these conditions, and required the SFMTA Board of Directors to adopt Resolution No. 190618-071 to authorize the Director of Transportation to execute an indemnification agreement with PG&E.

Even after receiving the demanded inspection video and indemnification, PG&E took another full year to energize the mobile substation. PG&E was slow in providing a potential schedule for installing the power connection to the temporary mobile substation, and then further delayed energizing the mobile substation for more than three months after the SFMTA directed the contractor to resume field work.

The PG&E delays caused the contractor to incur significant additional direct and overhead costs. The SFMTA had to suspend all field work on the DMZ Builders contract while overcoming PG&E's obstacles, but the contractor still was required to do administrative work like submittal submission and approval, keep the construction site safe, and resolve issues related to the Supervisory Control and Data Acquisition (SCADA) system work.

The PG&E delays pushed contract performance into the pandemic period and were followed by additional independent delays related to coordination with the Central Subway project and a worksite electrical fire which is inside one of the mobile substation cabinets. This electrical fire was due to a surge arrester failure, and it was fixed by replacing with newer model of surge arresters with a new design of moving the suggesters to outside of the mobile substation with

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fiber glass enclosures. Overall, these delays extended the schedule for completion of the contract by a total of 3 years and 7 months beyond the original scheduled completion date.

Contractor DMZ Builders has submitted multiple claims for contract damages since the time of the original PG&E delay. Earlier claims and added SCADA work were resolved in Contract Modification 1 in March 2020 and Modification 3 in April 2021, which together increased the contract price by about \$1.3 million and the completion date by one year. After resolution of those claims, DMZ Builders' remaining claims totaled about \$3.4 million, plus an unpriced claim based on expected additional costs of work that still remained to be done. The SFMTA had the remaining claims reviewed by an outside consultant, and based on that analysis negotiated the proposed final, global settlement of all delay claims on the project that would extend the contract term by 950 days to January 12, 2023, and increase the contract price by \$2,550,000 to not to exceed \$15,372,966.

Prior Contract Modifications

Contract Modification No. 1 approved payment for a list of specific, additional direct costs incurred by the Contractor that coincided with the PG&E delays to the critical path, including double handling of materials and equipment to and from storage locations; additional demobilization and remobilization effort; and additional storage costs for a total of \$327,687. This modification also paid for additional required work unrelated to the PG&E delay, including new work necessary to maintain SCADA functionality for a total of \$620,000. On March 26, 2020, the Director of Transportation approved Contract Modification No. 1 for \$942,687.

Contract Modification No. 2 added a new Allowance Bid Item for the implementation of additional safe work practices due to COVID-19 emergency and was not related to delays on the contract. On July 12, 2020, the Director of Transportation approved Contract Modification No. 2 for \$118,000.

Contract Modification No. 3 compensated the Contractor for additional verified office overhead costs of \$363,829 and increased the term of the Contract by 360 days, based on the suspension of the contract field work required by the PG&E delays. On April 20, 2021, the SFMTA Board of Directors adopted Resolution No. 210420-056, authorizing the Director of Transportation to execute Contract Modification No. 3.

Current Modification

This contract modification agrees to a global settlement that resolves and settles in full all of Contractor's claims arising before September 30, 2022, by increasing the Contract time to substantial completion by 950 days to January 12, 2023, and by increasing the Contract price by a negotiated amount of \$2,550,000 to compensate for all additional costs incurred by the Contractor related to all delay claims, including all escalation costs for remaining scopes of work and all additional storage costs.

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TRANSIT IMPACT

There was no impact to transit service due to the schedule of delay or other work covered in Contract Modification No. 4.

STAKEHOLDER ENGAGEMENT

During construction phase, communications with the community stakeholders, including district supervisors, Oracle Park, and South of Market Business Association have been ongoing. The outreach team used multiple media channels such as Twitter, Facebook, webpost, and emails to reach out to the impacted businesses and neighborhoods regarding transit and traffic disruptions.

ALTERNATIVES CONSIDERED

The project team considered the alternative of terminating the contract for convenience and rebidding the work after the PG&E delays had ended, but this would have caused an even greater delay in completion and an even greater increase in the overall cost of the work

FUNDING IMPACT

Contract Modification No. 4 will be funded through the existing King Substation project budget.

ENVIRONMENTAL REVIEW

The King Substation Upgrade Project was included as part of the approved Golden State Warriors Event Center and Mixed-Use Project at Mission Bay Blocks 29-32, Muni UCSF/Mission Bay Station Final EIR project refinement. On November 3, 2015, the San Francisco Commission on Community Investment and Infrastructure (CCII), the successor agency to the former Redevelopment Agency, reviewed and considered the Final Subsequent Environmental Impact Report for the Golden State Warriors Event Center and Mixed Use Project at Mission Bay Blocks 29-32 (Event Center Project Final Subsequent Environmental Impact Report [FSEIR]) and, by CCII Resolution No. 12 69-2015, certified the FSEIR in compliance with California Environmental Quality Act. The CCII also approved the Event Center Project by the adoption of Resolutions No. 70-2015 (adopting CEQA Findings), No.71-2015 (approving amendments to the Mission Bay South Design for Development), and No.72-2015 (conditionally approving the Major Phase and Basic Concept/Schematic Design applications for the Project).

As mentioned above, this Board adopted the Event Center Project's CEQA findings as applicable to the SFMTA on November 3, 2015 (Resolution No. 15-154). In Resolution No. 15-154, this Board approved various elements of the Transportation Service Plan and capital improvements for the Event Center Project, including augmenting the power supply.

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Modification No. 4 to Contract No. 1304, Muni Metro System King Substation Upgrade, falls within the scope of the Event Center Project FSEIR.

The Event Center Project FSEIR can be found at: [Environmental Review Documents | SF Planning](#)

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The SFMTA Contract compliance Office has determined that DMZ Builders is in compliance with the Local Business Enterprise (LBE) participation goals established in this Contract.

The Contract Compliance Office has established LBE goals at 30%.

The City Attorney's Office has reviewed this report.

No other approvals are required for this Contract Modification.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the Director of Transportation to execute Modification No. 4 to Contract No. 1304, Muni Metro System King Substation Upgrade, with DMZ Builders to agree to a global settlement of Contractor's delay claims, which were primarily caused by PG&E activity, extending the contract term by 950 days to January 12, 2023, and increasing the Contract Amount by \$2,550,000, for a total Contract Amount not to exceed \$15,372,966.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, On April 17, 2018, the SFMTA Board of Directors adopted Resolution No. 180417-061, awarding Contract No. 1304, Muni Metro System King Substation Upgrade, to DMZ Builders, in the amount of \$11,398,450, and for a term of 365 days to substantial completion; and,

WHEREAS, The work under the Contract involves construction of a new King Substation to provide sufficient electrical power to meet increased demand from the Muni light rail vehicles serving Oracle Park, the Chase Center, and the Central Subway, and the installation of a temporary mobile substation to provide power while the new substation is constructed; and,

WHEREAS, In order to connect the new and temporary substations to PG&E's distribution facilities, the SFMTA had to install a new underground conduit across King, and had to bore under the light rail tracks to install the conduit, and this work was on the critical path of the project schedule; and,

WHEREAS, PG&E unexpectedly took the position that it would only allow the boring if the SFMTA completed a post-boring inspection video under PG&E's direction and indemnify PG&E for any damage resulting from the boring; and,

WHEREAS, It took ten months for PG&E to obtain the post-boring video and the requested indemnity agreement executed by the Director of Transportation after receiving authorization from the SFMTA Board (Resolution No. 190618-071); and,

WHEREAS, After its demands were met, PG&E took another full year to energize the mobile substation; and,

WHEREAS, The PG&E delays caused the contractor to incur significant additional direct and overhead costs, pushed contract performance into the pandemic period, and were followed by additional independent delays related to coordination with the Central Subway project and a worksite electrical fire; and,

WHEREAS, The combined delays extended the schedule for completion of the contract by a total of 3 years and 7 months beyond the original scheduled completion date; and,

WHEREAS, On March 26, 2020, the Director of Transportation executed Contract Modification No. 1 to compensate the Contractor for specific costs incurred relating to the field work suspension and additional required work in the amount of \$942,687, for a total Contract amount not to exceed \$12,341,137, with no extension of time; and,

WHEREAS, On July 12, 2020, the Director of Transportation executed Contract Modification No. 2, to provide an allowance for COVID-19 safety costs, increasing the Contract amount by \$118,000, for a total Contract amount not to exceed \$12,459,137, with no extension

of time; and,

WHEREAS, On April 20, 2021, the SFMTA Board of Directors adopted Resolution No. 210420-056 authorizing the Director of Transportation to execute Contract Modification No. 3, to compensate the Contractor for additional verified office overhead of \$363,829 resulting from suspension of contract field work due to the PG&E delay, for a total contract amount not to exceed \$12,822,966; and to extend the contract term by 360 days to a new substantial completion date of June 7, 2020; and,

WHEREAS, After an analysis of Contractor's submitted claims under the contract, and negotiations with the Contractor, an agreement was reached for a global settlement of all of Contractor's claims arising before September 30, 2022, for \$2,550,000, with a time extension of 950 days to establish a new substantial completion date of January 12, 2023; and,

WHEREAS, The King Substation Upgrade Project was included as part of the approved Golden State Warriors Event Center and Mixed-Use Project at Mission Bay Blocks 29-32, Muni UCSF/Mission Bay Station Final EIR project refinement, and on November 3, 2015, the San Francisco Commission on Community Investment and Infrastructure (CCII), the successor agency to the former Redevelopment Agency, reviewed and considered the Final Subsequent Environmental Impact Report for the Golden State Warriors Event Center and Mixed Use Project at Mission Bay Blocks 29-32 (Event Center Project Final Subsequent Environmental Impact Report [FSEIR]) and, by CCII Resolution No. 12 69-2015, certified the FSEIR in compliance with California Environmental Quality Act, and the CCII also approved the Event Center Project by the adoption of Resolutions No. 70-2015 (adopting CEQA Findings), No.71-2015 (approving amendments to the Mission Bay South Design for Development), and No.72-2015 (conditionally approving the Major Phase and Basic Concept/Schematic Design applications for the Project); and,

WHEREAS, As mentioned above, this Board adopted the Event Center Project's CEQA findings as applicable to the SFMTA on November 3, 2015 (Resolution No. 15-154); in Resolution No. 15-154, this Board approved various elements of the Transportation Service Plan and capital improvements for the Event Center Project, including augmenting the power supply; and,

WHEREAS, Modification No. 4 to Contract No. 1304, Muni Metro System King Substation Upgrade, falls within the scope of the Event Center Project FSEIR; and,

WHEREAS, A copy of the Event Center Project FSEIR is on file with the Secretary to the SFMTA Board of Directors, and may be found in the records of the Planning Department at <https://sfplanning.org/> and 49 South Van Ness Avenue, Suite 1400 in San Francisco, and is incorporated herein by reference; and,

RESOLVED, That the SFMTA Board of Directors adopts the Event Center Final Subsequent Environmental Impact Report California Environmental Quality Act Findings as its

own, and to the extent the above actions are associated with any mitigation measures, the SFMTA Board of Directors adopts those measures as conditions of this approval; a copy of the Planning Commission Resolutions, the CEQA findings, and the CEQA determinations are on file with the Secretary to the SFMTA Board of Directors and may be found in the records of the Planning Department at <https://sfplanning.org/> and 49 South Van Ness Avenue, Suite 1400 in San Francisco, and are incorporated herein by reference; and be it further

RESOLVED, That SFMTA Board of Directors authorizes the Director of Transportation to execute Modification No. 4 to Contract No. 1304, Muni Metro System King Substation Upgrade, with DMZ Builders to agree to a global settlement of Contractor's claims for delay, which were primarily caused by PG&E activity, extending the contract term by 950 days to January 12, 2023, and increasing the amount by \$2,550,000, for a total contract amount not to exceed \$15,372,966.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of December 13, 2022.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

CONTRACT MODIFICATION NO. 4

San Francisco Municipal Transportation Agency
Contract No. 1304
Muni Metro System King Substation Upgrade

Contractor: DMZ Builders
4070 Nelson Ave, Suite A
San Francisco, CA 94124

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The Contract is modified as follows:

1. Scope of Change
Amount

CM-4	<u>Global Claims Settlement: Settle All Claims Arising Before September 30, 2022:</u> Resolves and settles all claims arising before September 30, 2022, by increasing the Contract Time to Substantial Completion by 950 days and increasing the Contract Amount by a negotiated amount of \$2,550,000.00 to compensate for all additional costs incurred by the Contractor related to the claims, including all escalation costs for remaining scopes of work and all additional storage costs.	\$2,550,000
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Total Negotiated Lump Sum: \$2,550,000

2. Add the following new Contract Pay Items:

Item	Description	Quantity	Unit	Unit Price	Amount
CM-4	Global Claims Settlement: Settle all claims arising before September 30, 2022	-	LS	-	\$2,550,000

Total Amount of this Contract Modification: Increase \$ 2,550,000

Previous Total of Contract: \$12,822,966

New Revised Total of Contract: \$15,372,966

Total Contract Time Added by this Contract Modification:	950 Days
Previous Contract Substantial Completion Date:	06/06/2020
Current Contract Substantial Completion Date:	01/12/2023

3. This Contract Modification is made in accordance with Articles 6 and 7 of the General Provisions of the Contract.
4. The compensation (time and cost) set forth in this Modification comprises the total of all compensation due to Contractor, all Subcontractors and all Suppliers, as a result of all claims arising before September 30, 2022, and includes the cost of all labor escalations, and additional storage. The compensation covers any time impact on unchanged Work, including delays and inefficiencies, and includes all claims Contractor was aware of or should have been aware of before September 30, 2022, including those in the following letters from Contractor:

DMZ-SFMTA 027.3 dated June 29, 2020
DMZ-SFMTA 028.2 dated July 24, 2020

The execution of this Modification constitutes an accord and satisfaction of any claim for additional compensation or time for all claims arising before September 30, 2022, including labor escalation and additional storage. Contractor, on behalf of itself and all Subcontractors and Suppliers, specifically waives and releases any and all claims, rights or interest, including but not limited to legal and equitable claims for direct, indirect, and overhead costs, delay, impact, disruption, loss of efficiency or other special, extraordinary or consequential costs arising from or related to claims arising before September 30, 2022, including labor escalation and additional storage, without exception or reservation of any kind.

5. Except as specifically stated herein, all other terms and conditions of the Contract remain unchanged. Any modification of the Contract must be express and in conformance with the General Provisions and Special Provisions.

Signatures on following page.

In Witness Whereof, this Modification has been executed in San Francisco, California, as of this date: _____.

DMZ Builders

CITY AND COUNTY OF SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY

By: _____
Ying Xie
Project Manager

By: _____
Jeffrey P. Tumlin
Director of Transportation

Authorized By:

San Francisco Municipal
Transportation Agency

Board of Directors

Resolution No. _____

Adopted:

Attest:

Christine Silva, Secretary

SFMTA Board of Directors

APPROVED AS TO FORM:

David Chiu, City Attorney

By: _____
David F. Innis

Deputy City Attorney

ENCLOSURE 3

King Substation Upgrade

San Francisco Municipal Transportation Agency, Contract No. 1304,

Project Budget and Financial Plan

Cost	Amount
Detail Design Phase Staff Support (SFMTA and Other City Services)	\$1,252,111
Construction Phase Construction Contract, Contingency, and Staff Support	\$29,432,811
Total Cost	\$30,684,922

Funding Sources	Amount
Development Impact Fees	\$394,201
General Fund (Operating)	\$945,000
General Fund Subsidy (Population Based Baseline)	\$5,103,462
SFMTA Revenue Bond	\$6,555,000
Bridge Tolls (AB664)	\$4,400,000
Transportation and Road Improvement General Obligation	\$13,287,259
Grand Total	\$30,684,922