

THIS PRINT COVERS CALENDAR ITEM NO.: 10.2

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Capital Programs and Construction

BRIEF DESCRIPTION:

Rescinding Modification No. 3 and approving Modification No. 3R to Contract No. 1236R, Third Street Light Rail Project Mission Bay Loop, with Mitchell Engineering, to design and construct a duct bank for the San Francisco Public Utilities Commission; to increase the Contract amount by \$1,744,867.67, for a total amount not to exceed \$6,392,788.44; and to extend the Contract term by 90 days, for a total term of 832 days to substantial completion.



SUMMARY:

- In 2014, the SFMTA Board of Directors awarded Contract No. 1236R, Third Street Light Rail Project Mission Bay Loop, to Mitchell Engineering, in the amount of \$3,521,115, to install trackwork around the 3rd Street/18th Street/Illinois Street/19th Street block to create a short line loop for the T-Line (Contract). The term of the Contract was for 240 days.
- Due to the pendency of a lawsuit under the California Environmental Quality Act (CEQA), all Contract work was suspended from March 4, 2015, to May 16, 2016.
- On July 17, 2018, the SFMTA Board approved Contract Modification No. 3 for design and construction of a duct bank for the San Francisco Public Utilities Commission (SFPUC); at that time, staff had not analyzed any time impacts of the duct bank. The Contractor felt that the original release in the Modification was too broad. Under Modification No. 3R, the contractor will release the City for compensation for the direct costs of design, but any time extension and associated costs related to design will be reserved for a future modification. There will still be a release of all costs related to construction of the duct bank.

ENCLOSURES:

1. SFMTAB Resolution
2. Contract Modification No. 3R
3. Project Budget & Financial Plan

APPROVALS:

	DATE
DIRECTOR  _____	8/29/2018 _____
SECRETARY  _____	8/27/2018 _____

ASSIGNED SFMTAB CALENDAR DATE: September 4, 2018

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PURPOSE

The purpose of this calendar item is to rescind Modification No. 3 and approve Modification No. 3R to Contract No. 1236R, Third Street Light Rail Project Mission Bay Loop, with Mitchell Engineering, to design and construct a duct bank for the San Francisco Public Utilities Commission (SFPUC); to increase the Contract amount by \$1,744,867.67, for a total amount not to exceed \$6,392,788.44; and to extend the Contract term by 90 days, for a total term of 832 days to substantial completion.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

The Work to be performed under Contract No. 1236R will assist in the implementation of the following goals, objectives and initiatives in the SFMTA Strategic Plan:

- Goal 2: Make transit and other sustainable modes of transportation the most attractive and preferred means of travel
 - Objective 2.1 Improve transit performance
 - Objective 2.2 Enhance and expand use of the city’s sustainable modes of transportation

- Goal 3: Improve the quality of life and environment in San Francisco and the region
 - Objective 3.2 Advance policies and decisions in support of sustainable transportation and land use principles
 - Objective 3.4 Provide environmental stewardship to improve air quality, enhance resource efficiency, and address climate change
 - Objective 3.5 Achieve financial stability for the agency

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

When constructed, the Third Street Light Rail Project Mission Bay Loop (the Project) will provide turn-around capabilities for the T-Third light rail line through a connection from Third Street to 18th, Illinois, and 19th Streets. The Loop will afford the southbound train the ability to turn left on 18th Street, travel around the block via Illinois Street and 19th Street and make the right turn to go northbound on Third Street. The Loop will allow trains to turn around for special events (e.g., baseball games, concerts, street fairs) and during peak periods to meet the projected service needs in the Central Subway Corridor, including the Chinatown, Mission Bay, and South of Market (SOMA)

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neighborhoods.

Allowing half of the trains on the T-Third line to turn around at the Loop will not affect performance for residents of Hunters Point and those living along the 3rd Street corridor because additional train capacity will be added to the turn-around route as part of the Central Subway Project. The SFMTA constructed the turnouts from Third Street in 2003 and completed signal system testing in 2006. The turnouts extend over two-thirds of the block on 18th and 19th Streets towards Illinois Street. The new trackwork for the Loop will connect these turnouts from 18th Street to Illinois Street to 19th Street.

In 2014, the SFMTA Board of Directors awarded Contract No. 1236R, Third Street Light Rail Project Mission Bay Loop, to Mitchell Engineering, in the amount of \$3,521,115, and for a contract term of 240 calendar days, to install trackwork, utilities, sidewalk, street lighting and traffic signal improvements around the 3rd Street/18th Street/Illinois Street/19th Street block necessary to create the short line loop for the T-Line.

Scope of the Original Contract

Work to be performed under the Contract includes, but is not limited to, the following:

- Trackwork using a paved direct fixation system.
- Overhead Catenary System (OCS) work, including trolley poles and foundations, guy wires and contact wire.
- Roadway, sidewalk and curb ramp work, including Asphalt Concrete grinding and paving.
- Vehicle Tagging System (VTS) work, including loops, conduit, pull boxes, ground rods, wire and cable, cabinets and bollards.
- Rail bonding.
- Street-lighting work, including conduit, pull boxes, ground rods, and wire.
- Traction power work, including conduit and cable.
- Traffic signal work, including poles, mast arms, signals, conduits, pull boxes, wire and cable, controllers and bollards.
- Sewer work, including force and gravity mains, steel casings, culverts, manholes and catch basins.

Contract Modifications

On January 8, 2018, the Director of Transportation approved Contract Modification No. 1 for \$667,065.77. Contract Modification No. 1 approved additional work relating to the construction of the sewer system under Illinois Street and added noise and dust monitoring requirements as dictated by a Storm Water Pollution and Prevention Plan from the Port of San Francisco, which has overall jurisdiction over the Project site, and as requested by a local pre-school that is close to the Project site.

On April 17, 2018, the SFMTA Board of Directors approved Contract Modification No. 2 for \$459,740 for contract bid price escalation during a period the Project was delayed because of a

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CEQA lawsuit and for the resolution of a Memorandum of Understanding between San Francisco Public Works (SFPW), the Port of San Francisco, and the SFMTA regarding work on Port property. Contract Modification No. 2 also increased the term of the Contract by 502 days.

The lawsuit necessitated a 439-day Contract extension. On March 3, 2015, the California Court of Appeal issued a stay of construction, halting all construction on the project pending resolution of the lawsuit. On March 4, 2015, the SFMTA suspended the construction contract. The Court of Appeal lifted the stay of construction on January 21, 2016, and the Supreme Court denied review on March 15, 2017, allowing the construction to continue. On May 16, 2016, the SFMTA lifted the suspension.

Furthermore, the Port of San Francisco initially required the development of a Memorandum Of Understanding to delegate its responsibility for encroachment permits to SFPW. The Port ultimately decided to allow the Port Engineer to delegate this responsibility by written letter instead of an MOU. The negotiations between the Port and SFPW did not continue during the period construction was stayed by the Court. When the stay was lifted on May 16, 2016, the negotiations resumed. On July 18, 2016, after the Port issued its letter delegating encroachment permit responsibility to SFPW, the SFMTA notified the Contractor to resume work on obtaining encroachment approval. This resulted in a 63-day time extension. During this time, the Contractor had direct labor costs for a full-time superintendent and field/office engineer and indirect costs for employee payroll taxes and employee fringe benefits.

On July 17, 2018, the SFMTA Board of Directors approved Contract Modification No. 3 for \$1,744,867.67 to install a duct bank along Illinois Street between 16th Street and 23rd Street on behalf of our sister agency, the SFPUC. The SFPUC currently has a project, the Bay Corridor Electrical Power Transmission and Distribution Project, to install a duct bank along Illinois Street between 16th Street and 23rd Street to provide a power distribution system for electricity users along the eastern waterfront. This duct bank goes directly through the SFMTA's Project limits. The proposed work under Contract Modification No. 3 includes design and construction of the duct bank within the limits of the Project. Contract Modification No. 3 also increased the term of the Contract by 90 days.

Rescinding Contract Modification No. 3 and approving Modification No. 3R

Contract Modification No. 3 added the time necessary for the contractor to construct the duct bank on behalf of the SFPUC. Contract Modification No. 3 also contained a comprehensive release for all costs related to the construction work under that Modification. The Contractor also designed the duct bank for the SFPUC and is not willing to release the City for costs associated with any time impacts associated with the design services. Indeed, while staff developed Contract Modification No. 3 without agreement from the Contractor, they also did not receive a request from the Contractor for a compensable time extension until after Modification No. 3 had been approved. Thus, staff had not had time to analyze any time impacts associated with the design of the duct bank work. Under this revised Modification, the contractor will release the City for compensation for the direct costs of design and installation, and time impacts associated with construction. Any time extension and associated costs related to design will be reserved for a future modification.

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STAKEHOLDER ENGAGEMENT

The Project team provided updates to SFMTA Transit Operations and Maintenance-of-Way staff regarding the delays to the Project.

Community Outreach:

Prior to the actual start of the construction work, staff conducted a safety presentation around construction for Potrero Kids Preschool (800 Illinois Street), installed posters at 18th/19th/ Illinois streets and along 3rd Street at 18th/19th Streets that included the project summary and contact information, sent direct mailers to residents within 900 feet of the project area about upcoming construction, met with Dogpatch Neighborhood Association and Potrero Dogpatch Merchants Association to provide an update and explain the outreach methods that will be deployed once construction activity begins, staffed a table at the Bayview-Dogpatch Sunday Streets event to discuss the project, met with the Ballpark Mission Bay Transportation Coordinating Council Committee to discuss the project, posted a blog article on the SFMTA website explaining that construction would commence, and met with Potrero Kids Preschool for a site visit.

During construction, staff will continue to send weekly updates to Potrero Kids Preschool and the 700 Illinois Condominium Complex Homeowners Association Board, sends direct mailers to residents within 900 feet alerting them about sewer work, posts project information on the Potrero Dogpatch Merchants Association website and Dogpatch Neighborhood Association website, sends numerous e-mail updates to stakeholders regarding the construction progress, and meets with Potrero Kids preschool to update them about construction activity.

ALTERNATIVES CONSIDERED

The SFMTA could have declined the SFPUC's request to design and construct the duct bank through the Project limits. This would have required the SFPUC to construct the duct bank after the Project was completed and also wait for the five-year moratorium on disturbing new paving to expire. This would have had a serious impact on the SFPUC's project and an adverse effect for electricity users on the waterfront.

FUNDING IMPACT

The costs for the design and construction of Modification No. 3 are being borne by the SFPUC.

The total cost of this Project is \$10,276,970. This contract is funded by State Infrastructure Bonds, Local Proposition 1B and Local Proposition K funds, a Federal TIGER Cycle IV Grant, the SFPUC, and SFMTA operating funds. All funding for this project has been secured.

The budget and financial plan for this Project is presented in Enclosure 3.

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ENVIRONMENTAL REVIEW

The Mission Bay Loop Project initially was reviewed and analyzed in the Environmental Impact Report and Environmental Impact Statement (EIR/EIS) for the Third Street Light Rail Project Phase 1. The EIR/EIS was certified by the City in 1998 and the Record of Decision (ROD) for this project was issued in 1999. On October 12, 2012, the San Francisco Planning Department determined that no further assessment was required under the CEQA Guidelines for the Project. An Environmental Assessment was completed in May 2013 for which the Federal Transit Administration issued a Finding of No Significant Impact on July 30, 2013. Finally, on August 27, 2014, the Planning Department determined that there were no circumstances occurring since October 2012 that would require additional environmental review under the CEQA guidelines. A citizens' group challenged the Planning Department's determination in court, but, as mentioned above, the Courts denied the challenge.

The work being performed on behalf of the SFPUC is a subsection of its larger Bay Corridor Electrical Power Transmission and Distribution Project. This project received a Categorical Exemption (Case Number 2016-007195ENV) from CEQA from the San Francisco Planning Department on February 1, 2017. CEQA provides a categorical exemption from environmental review for new construction or conversion of small structures as defined in Title 14 of the California Code of Regulations Sections 15303.

All environmental documents are on file with the Secretary to the SFMTA Board of Directors and may be found in the records of the Planning Department at 1650 Mission Street in San Francisco.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The City Attorney's Office has reviewed this calendar item. The SFMTA Contract Compliance Office has determined that it is consistent with the SBE participation goals of 25% established for the Contract. No other approvals are required for this Contract Modification.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors rescind Modification No. 3 and approve Modification No. 3R to Contract No. 1236R, Third Street Light Rail Project Mission Bay Loop, with Mitchell Engineering, to design and construct a duct bank for the San Francisco Public Utilities Commission (SFPUC); to increase the Contract amount by \$1,744,867.67, for a total amount not to exceed \$6,392,788.44; and to extend the Contract term by 90 days, for a total term of 832 days to substantial completion.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, On September 16, 2014, the SFMTA Board of Directors adopted Resolution No. 14-121, awarding Contract No. 1236R, Third Street Light Rail Project Mission Bay Loop (the Contract), to Mitchell Engineering (the Contractor), in the amount of \$3,521,115, for a term of 240 days, to install trackwork around the 3rd Street/18th Street/Illinois Street/19th Street block to create a short line loop for the T-Line; and,

WHEREAS, The SFMTA issued a written notice to proceed with the work with a commencement date of December 8, 2014; and,

WHEREAS, On January 8, 2018, the Director of Transportation approved Contract Modification No. 1, for additional work to the sewer system under Illinois Street and further noise and dust monitoring requirements as dictated by a Storm Water Pollution and Prevention Plan from the Port of San Francisco; Modification No. 1 increased the Contract amount by \$667,065.78; and,

WHEREAS, On April 17, 2018, the San Francisco Municipal Transportation Agency Board of Directors approved Contract Modification No. 2, increasing the Contract amount by \$459,740, for a total amount not to exceed \$4,647,920.77. Contract Modification No. 2 approved escalation costs due to a suspension of the work as a result of the pendency of a California Environmental Quality Act lawsuit and because of a delay in the delegation of permitting authority from the Port of San Francisco to San Francisco Public Works, regarding work on Port property. Contract Modification No. 2 also added two subcontractors, W. Bradley Electric and Reliance Engineering, due to public necessity as authorized under Public Contract Code Section 4109; and

WHEREAS, The San Francisco Public Utilities Commission currently has a project, the Bay Corridor Electrical Power Transmission and Distribution Project, to install a duct bank along Illinois Street between 16th Street and 23rd Street to provide a power distribution system for electricity users along the eastern waterfront; and

WHEREAS, The San Francisco Public Utilities Commission duct bank goes directly through the SFMTA's project limits; and

WHEREAS, After analysis of the proposed San Francisco Public Utilities Commission work, the SFMTA determined that if it were constructed after completion of the Mission Bay Loop Project, it would undermine the newly constructed San Francisco Municipal Transportation Agency trackway, in addition to causing additional construction impacts to the public, including noise, dust and traffic; and

WHEREAS, The Public Works Code establishes a moratorium on excavating in streets that have been reconstructed, repaved or resurfaced in the preceding five years; if the duct bank work were to be performed after the Project, then it would have to be delayed for five years because of this moratorium; and

WHEREAS, On July 17, 2018, the San Francisco Municipal Transportation Agency Board of Directors approved Contract Modification No. 3, related to design and construction of a duct bank on behalf of the San Francisco Public Utilities Commission, including adding the time necessary for Mitchell Engineering to construct the duct bank; and

WHEREAS; By the time Modification No. 3 was approved, staff had not analyzed any time impacts associated with the design (as opposed to the construction) of the duct bank, and,

WHEREAS, The Contractor felt that the original release in Contract Modification No. 3 was too broad; under Modification No. 3R, the Contractor will release the City for compensation for the direct costs of design, but any time extension and associated costs related to design will be reserved for a future modification; there will still be a release of all costs related to construction of the duct bank; and,

WHEREAS, Any such claims by Mitchell Engineering will be reviewed, negotiated and incorporated into a future Contract modification; and

WHEREAS, The Mission Bay Loop Project initially was reviewed and analyzed in the Environmental Impact Report and Environmental Impact Statement for the Third Street Light Rail Project Phase 1; and

WHEREAS, The Environmental Impact Report and Environmental Impact Statement for the Third Street Light Rail Project Phase 1 was certified by the City in 1998 and the Record of Decision for this project was issued in 1999; and

WHEREAS, On October 12, 2012, the San Francisco Planning Department determined that no further assessment was required under the California Environmental Quality Act Guidelines for the Project; and

WHEREAS, An Environmental Assessment was completed in May 2013 for which the Federal Transit Administration issued a Finding of No Significant Impact on July 30, 2013; and

WHEREAS, On August 27, 2014, the Planning Department determined that there were no circumstances occurring since October 2012 that would require additional environmental review under the California Environmental Quality Act guidelines; a citizens' group challenged the Planning Department's determination, but the California courts denied the challenge; and,

WHEREAS, The work being performed for the San Francisco Public Utilities Commission is a subsection of its larger Bay Corridor Electrical Power Transmission and Distribution Project, which received a Categorical Exemption (Case Number 2016-007195ENV) from California Environmental

Quality Act (new construction or conversion of small structures as defined in Title 14 of the California Code of Regulations Sections 15303) from the San Francisco Planning Department on February 1, 2017; and

WHEREAS, All environmental documents are on file with the Secretary to the San Francisco Municipal Transportation Agency Board of Directors, and may be found in the records of the Planning Department at 1650 Mission Street in San Francisco, and are incorporated herein by reference; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors rescinds Modification No. 3 and approves Modification No. 3R to Contract No. 1236R, Third Street Light Rail Project Mission Bay Loop, with Mitchell Engineering, to design and construct a duct bank for the San Francisco Public Utilities Commission; to increase the Contract amount by \$1,744,867.67, for a total amount not to exceed \$6,392,788.44; and to extend the Contract term by 90 days, for a total term of 832 days to substantial completion.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of September 4, 2018.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

Enclosure 2

CONTRACT MODIFICATION NO. 3R

**San Francisco Municipal Transportation
Agency
Contract No. 1236R
Third Street Light Rail Project Mission Bay**

Contractor: Mitchell Engineering
1395 Evans Avenue
San Francisco, CA 94124

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The Contract is modified as follows:

1. Scope of Work: Amount

CM-3RA	<p>PCC No. 010 - Design and Install Electrical Duct Bank for the San Francisco Public Utilities Commission (SFPUC): compensates Contractor for 100% design and construction of 760ft electrical duct bank along Illinois St. between 18th St. and 19th St. to link with SFPUC's current Bay Corridor Transmission and Distribution project on either side of the project limits of Contract 1236R. Electrical duct bank work includes a series of 2-inch, 4-inch, 6-inch Polyvinyl Chloride conduits and underground utility vaults for future cable and fiber installation. Installation of underground utility vaults consists of two City-furnished power vaults and of two City-furnished communication vaults.</p> <p>The new Contract Drawings and Specifications added to the contract are as follows:</p> <p><u>Add new Contract Drawings</u> G-010R, C-101R, C-105R, C-106R, E-101, E-102R and E-103R</p> <p><u>Add New Contract Specifications</u> 26 05 00 Common Work Results for Electrical 26 05 26 Grounding and Bonding for Electrical Systems 26 05 43 Underground Ducts and Raceways for Electrical Systems 26 05 53 Identification for Electrical Systems</p>	\$1,744,867.67
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2. Add the following new Item to the Schedule of Prices:
Amount

CM-3A	Design and Install SFPUC Duct Bank	\$1,744,867.67
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Total Amount of this Contract Modification:	Increase	\$1,744,867.67
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Previous Total of Contract:	\$4,647,920.77
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New Revised Total of Contract:	\$6,392,788.44
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Total Contract Time added by this Contract Modification:	90 Days
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Previous Contract Substantial Completion Date:	12/18/2016
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Current Contract Substantial Completion Date:	03/18/2017
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3. This Modification is made in accordance with Articles 6 and 7 of the Contract General Provisions.
4. Except as provided herein all previous terms and conditions of the Contract remain unchanged.
5. Except as provided below, Contractor acknowledges and agrees that the compensation stated herein for the Additional Work described above shall be full accord and satisfaction of all current and prospective costs incurred in connection with Contractor's design and installation of the SFPUC electrical duct bank (Duct Bank) under this Contract Modification, without limitation, including any and all markups and overhead. This Modification also involves the granting of an extension of time for installation of the Duct Bank. Except as specified below, Contractor releases the City from all claims, for which full accord and satisfaction is made, for the installation of the Duct Bank. Such costs may include, but are not limited to, costs for labor, materials, equipment, disruption, lost productivity, escalation, delay, extended overhead, administration and extended performance time.

No extension of time has been granted for the period of time during which Contractor designed (as opposed to installed) the Duct Bank. Contractor does not release the City from any time impact claims and costs associated with any extension of time that may be granted in the future associated with the design of the Duct Bank (including any associated disruption, lost productivity, escalation, delay, extended overhead, administration and extended performance time).

In Witness Whereof, the parties have executed this Modification in San Francisco, California as of this _____ day of _____, 2018.

Mitchell Engineering

**CITY AND COUNTY OF SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

By: _____
Curtis Mitchell
Owner

By: _____
Edward D. Reiskin
Director of Transportation

Authorized By:

**MUNICIPAL TRANSPORTATION
AGENCY**

Resolution No. _____

Adopted: _____

Attest:

By: _____
Secretary
Municipal Transportation Agency

APPROVED AS TO FORM:
Dennis J. Herrera, City Attorney

By: _____
Robin M. Reitzes
Deputy City Attorney

ENCLOSURE 3

THIRD STREET LIGHT RAIL PROJECT - MISSION BAY LOOP

San Francisco Municipal Railway Contract No. 1236R

Project Budget and Financial Plan

Cost	Amount
Environmental Assessment Staff Support (SFMTA and Other City Services)	\$183,059
Detail Design Phase Staff Support (SFMTA and Other City Services)	\$870,370
Construction Phase Construction Contract, Contingency, and Staff Support	\$8,788,889
Other City Agency Cost Share	\$434,652
Total Cost	\$10,276,970

Funding	Amount
Federal TIGER Cycle IV Grant	\$4,872,226
State Infrastructure Bonds Local Proposition 1B	\$3,221,685
Local Proposition K	\$157,000
SFMTA Operating	\$26,059
SFPUC	\$2,000,000
Total Funding	\$10,276,970