

THIS PRINT COVERS CALENDAR ITEM NO.: 10.9

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Capital Programs and Construction

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute Modification No. 3 to Contract No. 1304, Muni Metro System King Street Substation Upgrade, with DMZ Builders, to compensate the Contractor for additional verified office overhead of \$363,829 resulting from suspension of the contract field work due to PG&E delay, for a total Contract amount not to exceed \$12,822,966; and to extend the Contract term by 360 days, for a total of 725 days to substantial completion.



SUMMARY:

- On April 17, 2018, the SFMTA Board of Directors adopted Resolution No. 180417-061, awarding Contract No. 1304, Muni Metro System King Street Substation Upgrade Project to DMZ Builders, in the amount of \$11,398,450, and for a term of 365 days to substantial completion.
- The SFMTA is upgrading the King Street Substation to provide sufficient electrical power for the Muni light rail vehicles serving Oracle Park, the Chase Center, and the Central Subway. The King Street Substation will upgrade the electrical distribution circuits and create spare electrical circuits for future needs. The SFMTA has installed a temporary mobile substation to provide power while the existing substation is being upgraded.
- The SFMTA previously issued Contract Modifications Nos. 1 and 2, which increased the total contract amount to \$12,459,137, with no increase to the contract term.
- As a result of delays by PG&E in providing power to the temporary mobile substation, the SFMTA suspended the Contract, and the Contractor incurred costs resulting from the suspension.
- Modification No. 1 paid the Contractor for direct costs resulting from the suspension. Modification No. 3 will compensate the Contractor for indirect costs incurred during the field suspension (\$363,829) and extend the Contract term by 360 days.

ENCLOSURES:

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

APPROVALS:

	DATE
DIRECTOR 	April 13, 2021
SECRETARY 	April 13, 2021

ASSIGNED SFMTAB CALENDAR DATE: April 20, 2021

PURPOSE

Authorizing the Director of Transportation to execute Modification No. 3 to Contract No. 1304, Muni Metro System King Street Substation Upgrade, with DMZ Builders, to compensate the Contractor for additional verified office overhead of \$363,829 resulting from suspension of the contract field work due to PG&E delay, for a total Contract amount not to exceed \$12,822,966; and to extend the Contract term by 360 days, for a total of 725 days to substantial completion.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

Goal 1: Create a safer transportation experience for everyone

Objective 1.2: Improve the safety of the transit 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.

Goal 3: Improve the environment and quality of life in San Francisco

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.

DESCRIPTION

Background:

The Muni Metro System King Street Substation Upgrade Project (Project) will upgrade 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 Street Substation. The Project will address these issues by upgrading the electrical distribution circuits and creating spare electrical circuits for future anticipated needs. The SFMTA procured a temporary mobile substation, which will provide traction power while the King Street Substation is being 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. The SFMTA issued the Notice to Proceed to the Contractor as of June 12, 2018.

As part of the Project, the SFMTA planned to install a new underground conduit to connect a temporary mobile substation and the upgraded King Street Substation to PG&E's facilities located at 2nd and Townsend Streets. It was crucial for the project to make this connection, as the conduit provides power to the mobile

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substation while allowing the contractor to shut down the permanent substation for upgrades. During construction in August 2018, PG&E disputed the directional boring operation underneath the trackway to avoid the box culvert.¹

Under normal practice, the SFMTA would construct the bore, install the conduit, and deed it over to PG&E. In this instance, however, PG&E would only accept ownership of the bore and conduit and pull its electrical cables through the conduit on the condition that the SFMTA conduct a post-boring video under PG&E’s inspection and indemnify PG&E for any damage resulting from the boring. The post-bore video of the box sewer facility was completed on May 10, 2019, verifying that there was no damage to any facilities in or near the bore.

On February 27, 2019, the SFMTA had suspended all contract field work while resolving PG&E disputes. The goal of the suspension was to to minimize the contractor’s field work delay costs. During the suspension, the contractor conducted minimal construction administration work, such as ongoing submittal reviews, keeping the construction site safe, and resolving issues related to the Supervisory Control and Data Acquisition (SCADA) system work.

On June 18, 2019, the SFMTA Board of Directors adopted Resolution No. 190618-071, which authorized 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 track right-of-way at the intersection of 2nd and King Streets.

Despite resolution of the disputes, PG&E did not immediately energize the mobile substation, which impacted the critical path of the project. After receiving a potential schedule from PG&E for the power connection service installation to the temporary mobile substation, the SFMTA issued a letter to the contractor on January 31, 2020, to resume the field work by March 5, 2020. PG&E eventually energized the mobile substation on June 24, 2020.

This Modification No. 3 adds 360 days (period of suspension) to the substantial completion date, extending that date to June 6, 2020. The project is evaluating and under negotiations with the contractor on additional claimed time delays, which would be the subject of a future contract modification.

Prior Contract Modifications

The Director of Transportation authorized Contract Modification No. 1 on March 26, 2020, to compensate the Contractor for the following direct costs for the contract field work shutdown in the amount of \$942,687, with no contract time extension.

Transport of Materials to/from Storage Location	\$90,800
Additional Demobilization/Remobilization Costs Due to PG&E Delay	\$92,412
Storage Costs from 1/1/19 thru 2/28/20	\$139,475
Additional Work Required to Maintain SCADA Functionality	\$620,000
Total	\$942,687

The Director of Transportation authorized Contract Modification No. 2 on July 15, 2020, in the amount of

¹ Directional boring is a trenchless method for the placement of encasement and/or carrier pipe under, across, or within an existing right-of-way,

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\$118,000, to provide an allowance for the Contractor to implement additional safe work practices due to COVID-19 requirements.

Contract Modifications Nos. 1 and 2 were executed by the Director of Transportation under the authority of SFMTA Board of Directors Resolution No. 191203-153.

Contract Modification No. 3:

On May 8, 2020, the Contractor submitted a certified claim under the Contract for \$419,098.89 for additional office overhead costs related to 360 days of suspension (\$405,000) and additional storage costs from February 29, 2020 through May 8, 2020 (\$14,098.89).

On February 23, 2021, the Contractor filed a California Government Code Claim with the Clerk of the Board of Supervisors for \$419,098.89 for the 360 days of the field suspension and additional storage costs.²

After negotiations with the Contractor, an agreement was reached to resolve the claim for \$363,829 through this Modification, with a time extension of 360 days to substantial completion. The additional storage costs will be processed through regular monthly contract progress payments.

The Contractor has submitted two additional certified claims that the construction team is currently evaluating.

STAKEHOLDER ENGAGEMENT

During construction phase, communications with the community stakeholders, including district supervisors, Oracle Park, South 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

Staff considered terminating the current contract and re-advertising the project, but this could have had a risk of impacting Central Subway opening.

FUNDING IMPACT

Contract Modification No. 3 will be funded through the existing King Street Substation project budget.

² A Government Code claim is a required precursor to filing a lawsuit.

ENVIRONMENTAL REVIEW

The King Street 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.

Modification No. 3 to Contract No. 1304, Muni Metro System Kings Street Substation Upgrade, falls within the scope of the Event Center Project FSEIR.

The Event Center Project FSEIR can be found at: https://sfplanning.org/environmental-review-documents?title=Event+Center&field_environmental_review_categ_target_id=212&items_per_page=10

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The SFMTA Contract compliance Office has determined that DMZ 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 calendar item.

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. 3 to Contract No. 1304, Muni Metro System King Street Substation Upgrade, with DMZ Builders, to compensate the Contractor for additional verified office overhead of \$363,829 resulting from suspension of the contract field work due to PG&E delay, for a total Contract amount not to exceed \$12,822,966; and to extend the Contract term by 360 days, for a total of 725 days to substantial completion.

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 Street Substation Upgrade Project, 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 Street Substation to provide sufficient electrical power for the Muni light rail vehicles serving Oracle Park, the Chase Center, and the Central Subway; the SFMTA will install 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 installed a new underground conduit across King Street; the SFMTA had to construct a bore under the light rail tracks to install the conduit; and,

WHEREAS, Under normal practice, the SFMTA would drill a bore and deed it over to PG&E for installation of PG&E facilities; however, PG&E would only accept ownership of the bore and the conduit and pull its electrical cables through the conduit, provided that the SFMTA conduct a post-boring video under PG&E's inspection and indemnify PG&E for any damage resulting from the boring; and,

WHEREAS, After reviewing the post-boring video of the culvert and the video of the conduit, PG&E agreed to accept the bore and pull its cable through the conduit to the temporary mobile substation and new King Substation; and,

WHEREAS, On September 27, 2019, the Director of Transportation executed an indemnity agreement with PG&E, after receiving authorization from the SFMTA Board (Resolution No. 190618-071); and,

WHEREAS, On March 26, 2020, the Director of Transportation executed Contract Modification No. 1 to compensate the Contractor for costs relating to a field work suspension 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 May 8, 2020, the Contractor submitted a certified claim under the Contract for \$419,098.89 for additional office overhead costs related to 360 days of suspension (\$405,000) and additional storage costs from February 29, 2020 through May 8, 2020 (\$14,098.89); and,

WHEREAS, On February 23, 2021, the Contractor filed a California Government Code Claim with the Clerk of the Board of Supervisors for \$419,098.89 for the 360 days of the field suspension and additional storage costs; and,

WHEREAS, After negotiations with the Contractor, an agreement was reached to resolve the above-mentioned claims for \$363,829, with a time extension of 360 days to substantial completion; the additional storage costs will be processed through regular monthly contract progress payments; and,

WHEREAS, The King Street 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); 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. 3 to Contract No. 1304, Muni Metro System Kings Street 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 the SFMTA Board of Directors authorizes the Director of Transportation to execute Modification No. 3 to Contract No. 1304, Muni Metro System King Street Substation Upgrade, with DMZ Builders, to compensate the Contract for additional verified office overhead of \$363,829 resulting from suspension of the contract field work due to PG&E delay, for a total contract amount not to exceed \$12,822,966; and to extend the contract term by 360 days, for a total of 725 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 April 20, 2021.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

ENCLOSURE 3

King Street Substation Upgrades Project

San Francisco Municipal Transportation Agency, Contract No. 1304

Project Budget and Financial Plan

Cost	Amount
Detail Design Phase Staff support (SFMTA and Other City Service)	\$1,252,111
Construction Phase Staff support (SFMTA and Other City Service)	\$25,032,811
Total Cost	\$26,284,922

Funding Sources	Amount
Development Impact Fees	\$ 394,201
General Fund Subsidy (Population Based Baseline)	\$ 6,048,462
SFMTA Revenue Bond	\$ 6,555,000
Transportation and Road Improvement General Obligation	\$13,287,259
Total Committed	\$26,284,922

CONTRACT MODIFICATION NO. 3

San Francisco Municipal Transportation Agency
Contract No. 1304
MUNI METRO SYSTEM KING SUBSTATION UPGRADE

Contractor:
DMZ Builders
4070 NELSON AVENUE, SUITE A
Concord, CA 94124

The Contract is modified as follows:

1. Compensation for Delay Resulting from Suspension of Contract field Work

CM-3	<u>Temporary Suspension of Contract field Work (Claim Settlement)</u>	\$363,829
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Increase the Contract Term by 360 compensable Days, resulting from the SFMTA's suspension of the Contract field Work. The compensable cost for the 360 Days is negotiated as a Lump Sum of \$ 363,829.

<u>Total Negotiated Lump Sum:</u>	\$363,829
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2. Add the following new Contract Pay Items:

CM-3	Temporary Suspension of Contract field Work (Claim Settlement)	LS	\$363,829
Total Amount of this Contract Modification:		Increase	\$363,829
Previous Total of Contract:			\$12,459,137
New Revised Total of Contract:			\$12,822,966

Total Contract Time added by this Contract Modification:	360 Days
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Previous Contract Substantial Completion Date:	<u>06/12/2019</u>
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Current Contract Substantial Completion Date:	<u>06/06/2020</u>
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3. This Contract Modification is made in accordance with Articles 6 and 7 of the General Provisions of the Contract.
4. Contractor acknowledges and agrees that the compensation stated herein for the impacts of the suspension of Contract field Work referenced above shall be full accord and satisfaction of all current and prospective costs incurred in connection with the suspension and the extension of time granted herein, which costs may include, but are not limited to, costs for labor, materials, equipment, disruption, lost productivity, delay, extended overhead, and administration of extended performance time. Contractor releases the City from all claims for which full accord and satisfaction is made, as set forth above, including the Contract claim submitted by Contractor on May 8, 2020, in its letter #DMZ-SFMTA-027.1.5, and in the Government Code Claim filed on or about February 23, 2021.
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.

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: _____
Rami Abi-Khalil
Project Manager

By: _____
Jeffrey P. Tumlin
Director of Transportation

Authorized By:

San Francisco Municipal Transportation Agency
Board of Directors

Resolution No. _____

Adopted: _____

Attest:

Secretary, SFMTA Board of Directors

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

By: _____
Robin M. Reitzes
Deputy City Attorney