



## MEMORANDUM

January 20, 2023

**TO:** MEMBERS, PORT COMMISSION  
Hon. Willie Adams, President  
Hon. Kimberly Brandon, Vice President  
Hon. John Burton  
Hon. Gail Gilman  
Hon. Steven Lee

**FROM:** Elaine Forbes  
Executive Director 

**SUBJECT:** Request for retroactive authorization to modify Construction Contract No. 2795, Heron's Head Park Path and Electrical Improvements, to extend the substantial completion date 71 days, for a total duration of 269 days.

**DIRECTOR'S RECOMMENDATION:** Approve Attached Resolution No. 23-02

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### EXECUTIVE SUMMARY

Port staff requests that the Port Commission authorize a contract modification to extend the substantial completion date of Construction Contract 2795, Heron's Head Park Path and Electrical Improvements (the "Project"), by an additional 71 days. The requested time extension is in addition to a prior time extension of 18 days (10% of original contract duration) granted by Port staff due to supply chain delays. Staff requests this final extension of 71 days due purchasing challenges related to the supply chain. In addition to supply chain issues, closing the contract was delayed a year because the construction triggered unforeseen fire code requirements and additional work in the EcoCenter was required. This work was not the contractor's responsibility. Under Section 6.22 of San Francisco Administrative Code, time extensions more than 10% of the original contract duration are subject to Port Commission approval.

The original contract provided a duration of 180 calendar days for substantial completion of the work. A total of 269 days was required to substantially complete the work because of unavoidable supply chain related purchasing delay which were beyond

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the control of the contractor. Port staff has determined there is no basis to assess liquidated damages against the contractor. The contract budget will remain within the approved 10% contingency.

### **Strategic Objectives**

This Project supports the goals of the Port's Strategic Plan as follows:

**Evolution:** This Project made improvements to Port open spaces at Heron's Head Park by providing more amenities at the EcoCenter and the pathways in the Park. It provided an ADA-compliant pathway connecting the PG&E shoreline, which provides a connection for access to more of the Southern Waterfront.

**Engagement:** By performing upgrades to the EcoCenter's solar panels, the Project provided more amenities to the EcoCenter's tenant, which is currently the San Francisco Recreation & Parks Department. This will allow the tenant to more effectively provide public programming for the EcoCenter.

**Equity:** This contract promoted living wage jobs by providing opportunities for local business enterprises (LBE), which includes contractors from historically disadvantaged communities, and by meeting mandates for Local Hire in construction projects.

**Sustainability:** The EcoCenter at Heron's Head Park is off the grid, and powered by the solar panel system. By upgrading the solar panel system, the Port improved Heron's Head Park's self-sufficient energy supply.

### **BACKGROUND**

The Port Commission awarded this contract to CF Contracting on December 8, 2020. The contract amount was for \$1,237,800, with an LBE subcontracting commitment of 40.3%. The scope of work for this contract involved repaving pathways at the entrance of Heron's Head Park with asphalt, bollard lighting on the path from the parking lot to the EcoCenter, installing a habitat protection fence along the boundary of the marsh on the southern shore, and electric upgrades at the EcoCenter, including new solar panels and a battery. Exhibit A presents the project location and Exhibit B presents some before and after photos of the path.

The contract work began on March 8, 2021. During this construction contract, there were additional delays due to supply chain issues and shipping delays for the solar power upgrade materials. The materials took longer than expected to arrive on site due to COVID-19 related shipping and procurement delays. Once they were onsite, the contractor worked quickly to have the solar power system working and the system has been operational since December 2021.

Despite the contract being substantially complete and operational in December 2021, Fire Code issues delayed Port staff’s ability to confirm the substantial completion date and prepare this request for an extension. The Project triggered certain Fire Code upgrades, which needed to be completed for Port building inspectors to sign off on the building permit. These upgrades were not, however, explicitly part of the Contractor’s scope of work. Port staff and CF Contracting nonetheless worked together to address the Fire Code issues in a cost-effective manner, clear the building permit, and confirm the date of substantial completion. The total change orders for the contract amounts to less than \$10,000 (0.5% of the contract value).

Section 6.22(h) of the City Administrative Code allows staff to grant contract schedule increases up to 10 percent of the original contract amount, which in this case is 18 days. Port staff could not foresee contract close out and confirm the substantial completion date of December 1, 2021 until the unforeseen fire code work was complete. Port staff are seeking a retroactive schedule extension to account for the delays in construction. Port staff has found no basis to assess liquidated damages against the Contractor for the construction delay. Port staff therefore requests authorization to execute a contract modification to extend the original contract duration of 180 calendar days for substantial completion by an additional 71 calendar days, for a total of 269 days (in addition to Port staff’s prior extension of 18 days). The requested contract modification would thus extend the substantial completion date from September 3, 2021 to December 1, 2021.

**San Francisco Local Business Enterprise Requirement**

The Contract Monitoring Division established a 20% Local Business Enterprise (“LBE”) subcontracting goal for this Project. CF Contracting’s bid committed to 40.3% LBE participation. CMD is in the process of reviewing for compliance, and it is anticipated to be above that commitment.

**Funding**

The projected final contract expenditure details are shown below.

|                                    |                    |
|------------------------------------|--------------------|
| <b>Contract Award</b>              | <b>\$1,237,800</b> |
| Contract Change Orders             | \$7,418            |
| <b>Total Contract Expenditures</b> | <b>\$1,245,218</b> |

## **Schedule**

The modified Project completion schedule is noted below:

|  |                   |
|--|-------------------|
| Port Commission Authorization to Award | December 8, 2020  |
| Notice to Proceed                      | March 8, 2021     |
| Original Substantial Completion        | September 3, 2021 |
| Revised Substantial Completion         | December 1, 2021  |

## **Summary**

The Contractor experienced delays in contract completion beyond 10% of the original contract duration for the Project. The circumstances for the delay were due to supply chain issues. Port staff determined that the additional time required to complete the Project was reasonable and justified. As a result, staff finds no basis to assess liquidated damages for such delay. In addition to supply chain issues, the completion date was delayed because the construction triggered fire code requirements and additional work in the EcoCenter. This work was not the contractor's responsibility but was required to be complete in order to sign off on the building permit. The Port can now confirm the substantial completion date of December 1, 2021 and thus prepared this retroactive schedule extension request.

Port staff requests Port Commission authorization to execute a contract modification to extend the original contract duration for substantial completion by 71 calendar days. This extension is in addition to Port staff's prior time extension of 18 days, for a total extension of 89 calendar days to the original contract duration of 180 days.

Prepared by: Erica Petersen  
Project Manager

Prepared for: Rod K. Iwashita  
Chief Harbor Engineer

**PORT COMMISSION  
CITY AND COUNTY OF SAN FRANCISCO  
RESOLUTION NO. 23-02**

- WHEREAS, on December 8, 2020, the Port Commission adopted Resolution No.20-54, which authorized the award of Construction Contract No. 2795 (“the Contract”), Heron’s Head Park Path and Electrical Improvements to CF Contracting Inc.,. (“Contractor”); and
- WHEREAS, the scope of work for Contract No. 2795 included involved repaving pathways at the entrance of Heron’s Head Park with asphalt, bollard lighting on the path from the parking lot to the EcoCenter, installing a habitat protection fence along the boundary of the marsh on the southern shore, and electric upgrades at the EcoCenter, including new solar panels and a battery; and
- WHEREAS, during the course of construction, the Contractor encountered unavoidable delays as defined in the contract that required additional time to complete the contract work; and
- WHEREAS, Section 6.22(h) of the City Administrative Code authorizes the Port Commission to approve time extensions greater than 10% of the original contract duration, and such a time extension is permissible retroactively when there is no basis to assess liquidated damages for the delay against the contractor; and
- WHEREAS, Port staff requests authorization of an extension of time of 71 calendar days to the original contract duration of 180 calendar days, which combined with Port staff’s prior extension of 18 calendar days, will extend the original contract substantial completion date from September 3, 2021 to December 1, 2021; and
- WHEREAS, as described in the accompanying staff report, Port staff have determined that the delays in the completion of the contract were beyond the Contractor’s control and there is no basis to assess liquidated damages against the Contractor; now, therefore be it
- RESOLVED, that the Port Commission hereby authorizes Port staff to execute a contract modification to Contract No. 2795, Heron’s Head Park Path and Electrical Improvements, to extend the existing substantial completion date by an additional 71 days, and further, the Port Commission hereby ratifies all actions taken by the Port staff in furtherance of such contract modification.

***I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of January 24, 2023.***

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Secretary

**EXHIBIT A**  
**AREA OF WORK LOCATION MAP**



**EXHIBIT B**  
**PATH: BEFORE AND AFTER PHOTOS**



Before



After