

CITY AND COUNTY OF SAN FRANCISCO



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December 4, 2024

VIA E-MAIL

Attn: Brittney Branaman
Office of Energy Infrastructure Safety
Underground Safety Board
715 P St., 20th Floor
Sacramento, CA 95814
enforcement.dig@energysafety.ca.gov

Re: **Case No: D223430002**
1990 Diamond Street, San Francisco, California 94131
Contest in Writing
Request for Informal Hearing on December 9, 2024 (Virtual Meeting Platform)

Dear Brittney Branaman:

On behalf of the Municipal Transportation Agency (“SFMTA” or “MUNUTL”), the Public Utilities Commission (“SFPUC” or “CTYSF2”), and the Department of Technology (“DT” or “SFOTEC”), the City and County of San Francisco (“City”) hereby contests the Underground Safety Board’s (the “Board”) notice dated October 18, 2024, Case No. D223430002 (the “Notice”) and requests an informal hearing on that Notice. The City does not contest the recommended mandatory completion of the Underground Safety Board’s education course, but contests the imposition of penalties.

As an initial matter, the City notes that the Underground Safety Board addressed the Notices of Probable Violation to Iqbal Dhapa of San Francisco Public Works. As the SFMTA, the SFPUC, and DT specified in past communications to the Underground Safety Board, Mr. Dhapa is no longer the proper point of contact for these departments. The departments will

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coordinate with the Underground Safety Board to confirm the proper contacts; however, the Underground Safety Board should already have the information in its records.

The City takes its responsibility to identify underground utilities seriously. The work is key to public safety. In the second half of 2022, 811 USA changed its ticketing system and requested that all tickets be electronically closed out. The City's departments have endeavored to comply with 811 USA's updated system and requirements. The City believes its current practices now comply 811 USA's requirements, but as of late-2022, some City departments were still working to come into compliance with 811 USA requirements that had recently changed. These delays in complying with 811 USA's amended requirements were not unique to City departments. Other entities had similar difficulties.

The City acknowledges that SFMTA and DT did not provide electronic position response, as required, for ticket number X225902277-00X; however, this was unintentional and resulted from the City's need to implement new compliance practices in response to 811 USA's new requirements. In addition, the SFPUC and DT marked utilities in the excavation area, the SFMTA had no utilities to mark, and the damage at issue was to a Comcast line, not a City-owned utility facility. As a result, while the City will agree to the SFPUC, the SFMTA, and DT completing the Underground Safety Board's education course, penalties are unwarranted and would be unnecessarily punitive.

1. San Francisco Public Utilities Commission (CTYSF2)

In response to the Notice, the SFPUC searched its files for relevant notices and responses. The SFPUC's search indicates that the CTYSF2 received ticket number X225902277-00X on September 16, 2022. As Exhibit A indicates, CTYSF2 responded on September 16, 2022. The

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Water Department's "Mark and Locate" staff confirms that this indicates an electronic positive response. The SFPUC's diligent search did not identify any other potentially relevant ticket. Thus, SFPUC disputes that CTYSF2 failed to provide electronic positive response for ticket number X225902277-00X.

Attached as Exhibit B is the SFPUC's response form.

2. San Francisco Municipal Transportation Agency (MUNUTL)

The SFMTA responds that it did not provide electronic positive response for ticket number X225902277-00X because the SFMTA does not have infrastructure in that geographic area. The SFMTA subsequently recognized that this practice is not consistent with its obligations and has already changed its practice to provide an electronic positive response in every instance. The SFMTA takes this responsibility seriously and has notified the appropriate staff that they must respond, and the appropriate staff will undertake training to emphasize this obligation.

The SFMTA has no record of receiving the Notice of Probable Violation, but became aware of it through the SFPUC and DT notices. This is likely due to the retirement of Overhead Lines Superintendent John Orkes who was the main point of contact for these issues. He retired prior to this NOPV and no longer works at the SFMTA. The SFMTA is reconfirming with 811 USA multiple appropriate contacts at the SFMTA for future correspondence. Because it does not have a record of receiving the NOPV, the SFMTA is unable to attach the response form to this document. However, the SFMTA wishes to contest the notice in writing and request an informal hearing.

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3. San Francisco Department of Technology (SFOTEC)

DT (SFOTEC) acknowledges that it received ticket number X225902277-00X. DT has fiber optic cables running along excavation area at issue, and DT marked the area with paint. DT acknowledges that it failed to provide electronic positive response, but it responded based on its best practices at the time. In late 2022, 811 USA changed their ticketing system and requested that all tickets be electronically closed out. However, it took substantial time and effort—including implementing new practices, training employees, and bringing on new staff—before DT was able to provide electronic positive response in a timely manner and consistent with 811 USA's requirements. DT takes its responsibility to identify underground utilities seriously, and has now updated its practices and provides electronic positive response consistently.

Attached as Exhibit C is DT's response form.

Very truly yours,

DAVID CHIU
City Attorney



David R. Hobstetter
Deputy City Attorney

DRH:eb
Encls.

EXHIBIT A

CTYSF2 00087X USAN 09/16/22 12:05:35 X225902277-00X NEW NORM POLY LREQ

Ticket: X225902277 Rev: 00X Created: 09/16/22 12:05 User: MMCCARTHY Chan: WEB

Work Start: 09/20/22 17:01 Legal Start: 09/20/22 17:01 Expires: 10/14/22 23:59
Response required: Y Priority: 2

Excavator Information

Company: M SQUARED CONSTRUCTION
Co Addr: 1278 20TH AVE
City : SAN FRANCISCO State: CA Zip: 94122
Created By: MIKE MCCARTHY Language: ENGLISH
Office Phone: 415-661-6902 SMS/Cell:
Office Email: mike@msquaredconstruction.com

Site Contact: MIKE MCCARTHY
Site Phone: 415-361-2930 Site SMS/Cell: 415-361-2930
Site Email: mike@msquaredconstruction.com

Excavation Area

State: CA County: SAN FRANCISCO Place: SAN FRANCISCO
Zip: 94131
Location: Address/Street: DIAMOND ST
: X/ST1: 29TH ST
:
: BEGINNING AT THE SOUTH EDGE OF THE DIAMOND ST AND 29TH ST
: INTERSECTION, EXTEND SOUTH ALONG DIAMOND ST FOR APPROXIMATELY 640
: FEET, THROUGH THE BEACON ST INTERSECTION, AND TO THE INTERSECTION OF
: DIAMOND HEIGHTS BLVD AND DIAMOND ST. FOLLOW WHITE PAINT DELINEATIONS.

Delineated Method: WHITE PAINT

Work Type: EXCAVATION TO INSTALL WATER MAIN AND CONCRETE CURB RAMPS

Work For : CITY OF SAN FRANCISCO

Permit: 22EXC-01981 Job/Work order:

1 Year: N Boring: N Street/Sidewalk: Y Vacuum: N Explosives: U

Lat/Long

Center Generated (NAD83): 37.743434/-122.435886 37.743385/-122.434936
: 37.741255/-122.435998 37.741207/-122.435048

Excavator Provided:

Map link:

https://newtin.usan.org/newtinweb/map_tkt.nap?TRG=E7jLiFp8nAk8hA4o7p

Post a response to this ticket at:

https://newtin.usan.org/pos_resp/pr.html?q=E5KeLhFjAmYKXMWGXJXIVJY

Members:

COMNCA CTYSF2 CTYSF4 MUNUTL PACBEL PGESFO SFOTEC

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Audit History:

9/16/2022 12:05:59 PM: Received

DETAILS: Ticket received for registration code CTYSF2

9/16/2022 12:05:59 PM: Put in Folder

DETAILS: Put in Open Tags by auto process

NOTE: Auto Processed per All Tickets

9/16/2022 2:42:25 PM: Moved to Folder

DETAILS: Moved from Open Tags to Marked in Field by Milton Scott

9/16/2022 2:42:25 PM: Responded

DETAILS: Marked: added by Milton Scott, Locate Time: 9/16/2022 2:42:25 PM

NOTE: Responded per folder placement.

EXHIBIT B



RESPONSE TO A NOTICE OF PROBABLE VIOLATION

Case Number: D223430002

Name: City and County of San Francisco Water Department

The provisions of California Code of Regulations, Title 19, Division 4, Chapter 3, governs the Notice of Probable Violation (Notice) proceeding before the California Underground Safety Board (Board). Specifically, 19 CCR § 4252 provides your response options upon the receipt of a Notice.

Be advised that all material submitted by you in response to a Notice are subject to public disclosure.

Please select from one of the response options listed below. You have 30 business days to submit your written response to the Underground Safety Board. Failure to submit a written response will be considered by the Board as a "No Contest" response. Please attach this form with your selection to your response. If you choose "Contest in Writing" or "Contest in Writing and Request Informal Hearing," please also include your written explanation and documents that may be referenced in your written explanation or informal hearing. For all options, Board investigators may present the basis for your probable violation on the date of the public meeting as provided in your Notice, and the Board will review your case and vote to determine whether a probable violation exist and whether the corrective action and/or penalty proposed by the Board staff is appropriate at the meeting.

Response Options

___ No Contest

You do not contest the violations or the penalty. If you choose to not contest the violations or the penalty, you will waive your right to request the Board to reconsider its decision or recommendation issued.

___ Contest in Writing

You wish to contest either the violation, the penalty, or both by providing the Board with written explanations and other records supporting the explanation. You will submit the written explanations and records, if any, with your written response within 30 business days of receiving this Notice. Your response must not exceed 10 pages (excluding exhibits) in length and must be on 8.5" x 11" white paper, double-spaced, and in a font size no smaller than 11-point. You must submit the original and 12 physical copies of the written explanation and records to the address below or submit one (1) copy electronically to enforcement.dig@energysafety.ca.gov. You may request an extension to the page limit by submitting a request to the Board staff within 5 days of receiving this Notice. The Board staff will notify you of its determination with respect to the page limit extension request within 10 days of you submitting the request. The Board will review and vote on your case on the date of the public meeting provided in the Notice.

X **Contest in Writing and Request Informal Hearing**

You wish to contest either the violation, the penalty, or both with oral argument at an informal hearing during a public Board meeting. You will submit with your written response, written explanations, information, or other materials you wish to reference in your oral hearing. Your response must not exceed 10 pages (excluding exhibits) in length and must be on 8.5" x 11" white paper, double-spaced, and in a font size no smaller than 11-point. You must submit the original and 12 physical copies of the written explanation and records to the address below, or submit one (1) copy electronically to enforcement.dig@energysafety.ca.gov.

Your hearing would be during the public meeting noted in the Notice, on December 9, 2024, at 1:00 p.m., and the location of the meeting will be in Sacramento, California.

Warren Alquist State Energy Building
Rosenfeld Hearing Room
1516 9th Street
Sacramento, California 95814

Please note that your oral hearing may not start exactly at the time provided as there may be multiple hearing during one Board meeting. You may request to reschedule your hearing no later than 15 business days from your hearing date. Your request to reschedule a hearing may be granted no more than once and only for good cause.

You may participate in person or through a virtual meeting platform. You will have 15 minutes to present your reasons for contesting the allegation or reasons that may support a modification or elimination of the penalty or corrective action. During your hearing, conducted pursuant to Section 4253 of Title 19 of the California Code of Regulations, Board investigators may present the basis for your Notice of probable violation. You will be granted up to 15 minutes to respond to the Notice and up to 5 minutes to respond to any Board staff rebuttal. You may arrange, at your expense, for a stenographer or court reporter to transcribe the informal hearing. You must provide a copy of any transcription to the Board.

The Board will issue a decision at,

- The informal hearing;
- Thereafter within 45 business days of the informal hearing; or
- At a subsequent Board public meeting where a quorum of the Board is present.

The Board will adopt the issued written decision at the hearing or a subsequent public meeting. The Board's decision is effective upon the adoption of the written decision.

Reservation of Rights to Contest Violation with the Enforcement Agency

You contest the violation, the penalty, or both, but do not wish to present your comments to the Board. You request that the Board refer the case to the appropriate state or local agency that would conduct the enforcement of the probable violation pursuant to Government Code § 4216.6(c) (Enforcement Agency), and you will reserve the right to contest the violation, the penalty, or both before the Enforcement Agency. The Board will review and vote on your case to determine whether a probable violation exist and whether the corrective action and/or penalty proposed by the Board staff is appropriate at the public meeting noted in your Notice. Should the Board determine a probable violation exist, the Board will refer your case to the Enforcement Agency.

Board Contact Information:

Please direct all formal correspondence, including your written response to the Notice, to the Board either via email at enforcement.dig@energysafety.ca.gov or via mail to the following address:

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715 P St., 20th Floor
Sacramento, CA 95814

Please provide your written response within 30 business days of receiving this Notice. If a response is provided via mail, the mailed response must be received by the Board within 30 business day.

Penalties

Any penalties, including corrective actions, are only proposals by Board staff, and do not require any current corrective action or payment at this time. Your Enforcement Agency will provide the final determination to and instructions for any penalty. Please do not include any proof of compliance with proposed corrective actions or payment of a proposed penalty with your written response.

ADA Compliance

The California Underground Safety Board complies with the Americans with Disabilities Act ("ADA") by ensuring that the facilities are accessible to persons with disabilities, and providing this Notice and information given to the members of the California Underground Safety Board in appropriate alternate formats when requested. If you need further assistance, including disability-related modifications or accommodations, you may contact the Underground Safety Board no later than seven (7) calendar days before a scheduled hearing at (916) 902-6000. California Relay Service is available by dialing 711.

EXHIBIT C



RESPONSE TO A NOTICE OF PROBABLE VIOLATION

Case Number: D223430002

Name: City and County of San Francisco Department of Technology

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