



**SFMTA**

# **Central Subway Project SFMTA Board of Directors March 2, 2021**

**Contract Modification 137 – Global Settlement of Claims  
Contract Modification 138 – Settlement of 409 Changes (Omnibus 2)**

**By**

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# Overview

- The Central Subway project is now approaching substantial completion
- Contract Modification (CMOD) 137 and CMOD 138 propose to resolve over 100 Certified Construction Claims and a collection of over 409 construction Change Orders known as Omnibus #2
- SFMTA staff with the support of the City Attorney's Office and consultants have reached an agreement with Tutor Perini (Tutor) to resolve all outstanding claims (\$93.6 million) and 409 changes (\$53 million)
- CMODs #137 and #138 will mitigate potential litigation with Tutor and dozens of subcontractors and will allow the SFMTA to move forward to finish the project and minimize its financial risks
- Substantial Completion will be extended 275 days to March 31, 2021
- Final Completion will be extended to September 27, 2021

# Contract Modification No. 137

## Global Claims Agreement

- CMOD 137 would increase the Contract Amount a total of \$93.6 million to compensate Tutor for claims and change orders.
- Tutor will provide a full release for Tutor's claim of \$176.5 million settled for \$ 93.6 million which includes subcontractor claims, indirect costs of delay, support costs, incidentals, acceleration, impacts, inefficiencies, escalation and interest related to base contract and change order work occurring on or before January 20, 2021.
- Substantial Completion is extended 275 Days to March 31, 2021.
- Final Completion is extended 90 Days to September 27, 2021.
- COVID-19 pandemic impacts costs will be compensated only if the federal or State governments provide funding to SFMTA specifically for COVID impacts to public works projects. Tutor claims impacts are worth \$18M.

# Contract Modification No. 138 Omnibus #2

- CMOD 138 would increase the Contract Amount a total of \$53M to compensate Tutor for 409 changes known as Omnibus #2.
- Tutor will provide a full release for \$53M for indirect costs of associated with the change order work.
- The SFMTA and Tutor agreed that said change orders and certified claims comprise all of the claims for Additional Work existing as of February 15, 2021 for which Tutor has not been fully compensated, and on that basis, the Parties execute this Contract Modification No. 138 to fully and finally resolve all claims and potential claims, in law, contract, and equity, related to Additional Work that exist or may exist as of February 15, 2021.

# Tutor's Certified/Future Claims That Would Be Resolved

## Resolution of 100 Claims and 154 Notice of Potential Claims

Category	Contractor's Certified Claim (Millions)
Incidentals (Tutor's supports cost)	48
Delay through 3.31.21	11
Subcontractor Claims	67
Inefficiencies	27.5
Escalation (labor & materials)	10
Interest	10 (estimated, not certified)
Time extension from 3.31.21 to Final Completion	3 (estimated, not certified)
Total	176.5 + Interest

# Estimate at Completion (EAC)

#	Line Items	Amount (\$ Millions)
1	Currently booked expenditures	\$ 1,683.16
	<i>Tutor-Perini costs</i>	
2	CMOD 137 – Resolve all Tutor Perini claims	\$ 93.60
3	CMOD 138 – Omnibus 2 (409 Tutor Perini change orders)	\$ 53.00
4	Omnibus 3 and other Tutor Perini changes to Final Completion	\$ 13.50
	<i>Other non-Tutor Perini costs through startup</i>	
5	Project management – AECOM, EWP, MTA Staff	\$ 22.00
6	Other contractors – CSDG design, Thales, Harris	\$ 22.80
7	Contingencies and Reserves	\$ 3.00
8	<b>TOTAL</b>	<b>\$ 1,891.06</b>
9	Available Revenues	\$ 1,706.46
10	<b>Shortfall</b>	<b>\$ (184.60)</b>

# Estimate at Completion (EAC)

Sources of Funds to Address Shortfall		Amount (\$ Millions)
11	Revenue Bond Refinancing	\$ 22.39
12	Proposition B Population Baseline	\$ 30.00
13	Operating Budget FY 2021	\$ 53.47
14	Claims Reserve	\$ 19.44
15	Additional FTA CIG NS/CC	\$ 23.10
16	Shift flexible capital funds	\$ 25.00
17	Increase Operating Budget Savings	\$ 11.20
<b>Subtotal</b>		<b>\$ 184.60</b>

## ***Conclusion and Questions***

**Staff recommends approval of CMODs #137 and #138 to mitigate larger potential liability in litigation**

**Approval of CMODs will allow the SFMTA to move forward with completion of Central Subway and begin train testing in Spring of 2021.**