

THIS PRINT COVERS CALENDAR ITEM NO.: 13

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Central Subway

BRIEF DESCRIPTION:

Approving Contract Modification No. 137 to Contract No. 1300, Third Street Light Rail Program Phase 2 – Central Subway Stations, Surface, Track and Systems with Tutor Perini Corporation (Contractor) to clarify the work that the Contractor must complete for Substantial Completion to commence systems and train testing, compensate the Contractor and subcontractors' claims for delay through March 31, 2021, incidental and support costs, inefficiencies, overhead, interest, other indirect costs for claims arising through January 20, 2021, and compensate the Contractor for overhead and incidental costs from Substantial to Final Completion, which increases the Contract Amount by \$93,600,000 for an amount not to exceed \$1,090,298,587.32, and extends the Substantial Completion date to March 31, 2021 and the Final Completion date to September 27, 2021.


SUMMARY:

- In 2013, the SFMTA Board of Directors awarded Contract No. 1300 to Tutor Perini Corporation (Contractor) to construct stations, trackways and systems for the Central Subway Project in an amount not to exceed \$839,676,400, for a term of 1700 calendar days, with a Substantial Completion date of February 10, 2018, and a Final Completion date on May 11, 2018.
- The SFMTA has issued over 1450 change orders to Contract 1300, which the Contractor claims has impacted its ability to complete the work within the Contract Time and Amount.
- Contract Modification 122, approved by the SFMTA Board in 2019, extended the Project Substantial Completion date to June 29, 2020.
- Contract Modification 137 extends the Project Substantial Completion date to March 31, 2021 and the Final Completion date to September 27, 2021, and clarifies the work that the Contractor must complete for Substantial Completion to allow operational train testing.
- Contract Modification 137 will resolve over \$176 million of the Contractor's and subcontractors' claims associated with impacts arising from delay through March 31, 2021, including claims for incidental costs, contractor support, inefficiencies, overhead, interest, other indirect costs, related to change orders through January 20, 2021, with a broad waiver of claims arising before that date.
- The Contractor's claims concerning direct costs (labor and materials) of unpaid change orders and claims for additional work will be paid or otherwise resolved separately.

ENCLOSURES:

1. SFMTA Board Resolution
2. Contract 1300 Modification No. 137
3. <https://www.sfmta.com/about-sfmta/reports/central-subway-final-seis-seir> (Central Subway Final SEIS/SEIR and Mitigation Monitoring and Reporting Program)

APPROVALS:

DIRECTOR 
SECRETARY 

DATE

February 24, 2021

February 24, 2021

ASSIGNED SFMTA CALENDAR DATE: March 2, 2021

PURPOSE

Approving Bilateral Modification No. 137 to Contract No. 1300, Third Street Light Rail Program Phase 2 – Central Subway Stations, Surface, Track and Systems with Tutor Perini Corporation (Contractor) to clarify the work that the Contractor must complete for Substantial Completion to commence systems and train testing, compensate the Contractor and subcontractors' claims for delay through March 31, 2021, incidental and support costs, inefficiencies, overhead, interest, other indirect costs for claims arising through January 20, 2021, and compensate the Contractor for overhead and incidental costs from Substantial to Final Completion, which increases the Contract Amount by \$93,600,000 for an amount not to exceed \$1,090,298,587.32, and extends the Substantial Completion date to March 31, 2021 and the Final Completion date to September 27, 2021.

STRATEGIC GOALS AND TRANSIT FIRST POLICY PRINCIPLES

This action supports the following SFMTA Strategic Plan Goal and Objectives:

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.

Objective 2.3: Manage congestion and parking demand to support the Transit First policy.

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

Objective 3.1: Use Agency programs and policies to advance San Francisco's commitment to equity.

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.

This item will support the following Transit First Policy Principles:

1. Improves the safe and efficient movement of people and goods.
2. Improves public transit as an attractive alternative to travel by private automobile.
8. Allocates transit investments to meet the demand for public transit generated by new public and private commercial and residential developments.
9. Promotes the use of regional mass transit and the continued development of an integrated, reliable, regional public transportation system.

DESCRIPTION

Contract 1300 and Prior Amendments

On May 21, 2013, the SFMTA Board of Directors adopted Resolution No. 13-061 awarding Contract 1300, Third Street Light Rail Program Phase 2 – Central Subway Stations, Surface,

Track and Systems (Contract), to Tutor Perini Corporation (Contractor) to construct the stations, trackway, and control systems for the Central Subway, for an amount not to exceed \$839,676,400, for a term of 1700 days to Substantial Completion. The SFMTA issued notice to proceed to the Contractor effective June 17, 2013. The Contract required the Contractor to achieve Project Substantial Completion by February 10, 2018.

The Contract has been amended 136 times to address unexpected site conditions and design changes required by the City, which has resulted in a total amended contract amount of \$996,698,587.32. The majority of those contract modifications addressed the direct costs of change orders for additional work and modified work, but did not resolve time impacts and related costs, which were excluded from those contract modifications and to which the Contractor reserved its rights to pursue those costs in separate claims.

Contract Modification 122, approved by the SFMTA Board on September 17, 2019, extended the Substantial Completion date 730 calendar days to June 29, 2020, and paid the Contractor \$31,240,000 for Project delays caused by unforeseen site conditions and changes to the Project required by the SFMTA.

Proposed Contract Modification

Resolution of the Contractor’s and Subcontractors’ Claims:

The proposed Contract Modification 137 will resolve 100 certified claims and 150 notices of potential claims the Contractor and subcontractors have presented for Project delay through March 31, 2021 and for impacts and other indirect costs arising from additional work performed under change orders through January 20, 2021. As shown on the following chart, the Contractor values those claims at approximately \$163.5 Million, excluding interest and overhead/support costs between Substantial Completion and Final Completion, which could increase the total value of claims an additional \$13 Million.

<u>Claim Type</u>	<u>Value (in Millions)</u>
Delay through March 31, 2021	\$11
Escalation Costs (Labor & Materials)	\$10
Contractor Incidental and Subcontractor Support	\$48
Subcontractors’ Claims	\$67
Inefficiencies and Impacts of Additional Work	\$27.5
Time Extension - Substantial Completion (3/31/21) to Final Completion (9/27/2021)	\$3
Interest	\$10 (estimated)
Total	\$176.5

The proposed contract amendment will pay the Contractor \$10,600,000 for 265 compensable unavoidable calendar days of delay, calculated at \$40,000 per day (the daily rate for compensable delay stated in the Contract), in addition to a lump sum payment of \$1.6 million to compensate the Contractor for all overhead and support costs from Substantial Completion to Final Completion. The remaining amount compensates the Contractor and all subcontractors for all claims for incidentals, support costs, acceleration, subcontractor impacts, inefficiencies,

interest, escalation, and other costs incurred of any kind arising from Project delay and the additional work the SFMTA has required the Contractor to perform under change orders through January 20, 2021. The Contractor is responsible for 10 days of delay, which are not compensable.

To investigate the Contractor's claims, the SFMTA claims team, comprised of construction claims experts and a forensic accountant hired by the City Attorney, reviewed the Contractor's job cost records and cost allocation records, and subcontractors' claims and supporting records. The claims team identified deducted claimed amounts paid under previous contract modifications and miscalculated cost claims, and compared claimed costs with engineer's cost estimates, which resulted in the negotiated amount of \$92 million. To preclude the Contractor's additional claims for overhead, impacts and subcontractor support, the SFMTA negotiated a lump sum payment of \$1.6 Million to cover those costs through September 27, 2021, the extended Final Completion date, which brought the total amount of this Contract Modification No. 137 to \$93.6 Million.

The proposed Contract Modification compensates the Contractor for all delays and impacts from changed work arising on or before January 20, 2021, and contains a broad release by which the Contractor releases and waives all known and unknown claims for delay and impact damages arising on or before that date. This Contract Modification does not resolve the claims for direct costs for labor and materials for additional work performed under change orders issued on or before January 20, 2021, which the SFMTA and the Contractor have separately negotiated and will be presented to the SFMTA Board under proposed Contract Modification No. 138 (also referenced as "Omnibus No. 2"). Incidental costs for any change orders issued after January 21, 2021 are also not included in this Contract Modification No. 137.

Extension of Project Substantial Completion and Final Completion:

Contract Modification No. 137 will extend Contract Time 365 calendar days, which will move the Project Substantial Completion date from June 29, 2020 to March 31, 2021 and will extend Final Completion to September 27, 2021. Revenue service is anticipated to commence no later than Summer of 2022. The modified value of the Contract under the proposed Contract Modification No. 137 will be \$1,090,298,587.32. The proposed Contract Modification also clarifies the work that the Contractor must complete for Substantial Completion, which will allow the SFMTA to commence operational systems testing and dynamic train testing starting April 1, 2021. That work includes the following stations-based and surface, track and systems:

1. Track, Switches, Crossovers
2. Traction Power
3. Facilities and Traction Power Supervisory Control and Data Acquisition System (SCADA)
4. Overhead Catenary System (tunnel only)
5. Sectionalizing Breakers
6. Electrical Power
7. Advanced Train Control System
8. Fire Alarm and Detection
9. Mechanical Fire Protection
10. Emergency Ventilation – Mechanical

11. Undercar Deluge
12. Tunnel Fire Suppression
13. Central Control Communications
14. Radio and Data Communications System
15. Closed Circuit Television
16. Portal Jet Fans
17. Elevators
18. Tunnel Mechanical (Pumps, Drainage)

Basis for Contract Modification

The SFMTA staff evaluated the Contractor's claims in consultation with a nationally recognized scheduling and claims expert, a forensic accountant contracted by the City Attorney's Office, and claims consultants contracted by Central Subway Partners (the SFMTA's program and construction management consultant,). That evaluation confirmed that the majority of Project delays from September 3, 2018 (the date the SFMTA Board approved Contract Modification No. 122) were caused by major redesign efforts of the Advanced Train Control System, the Radio Communication System, the Fire Alarm System, and other design clarifications. The direct costs of those design changes were addressed in previous Contract Modifications, but the Contractor's additional support and incidental costs related to time impacts of those design changes were not resolved. In addition, the Contractor raised claims for indirect costs, including delay, incidental, inefficiencies, support, overhead, interest, other indirect costs that the Contractor claimed it and its subcontractors incurred related to impacts of the additional work performed under change orders the SFMTA issued since September 3, 2018 to address issues concerning Project design, unexpected site conditions, and to make other changes the SFMTA required. The costs of that additional work were not included in the Contractor's bid for the Project.

STAKEHOLDER ENGAGEMENT

The SFMTA meets with community organizations and elected officials on a regular basis to inform them of construction activities, status of the Project, and anticipated completion and revenue service dates.

ALTERNATIVES CONSIDERED

The SFMTA Board could reject the proposed Contract Modification but doing so may further delay completion of the Project. The Contractor has stated that unless the SFMTA compensates it for those costs, it will cease performing change order work, and will limit its work to completion of base contract work, which will further delay the Project and leave unfinished until the issues of payment for change order work is resolved. As discussed above, the Contractor's job cost reports show that it has incurred substantial costs in performing additional work under change orders, as well as costs incurred due to Project delay. Unless the SFMTA compensates the Contractor for those costs, it will cease performing change order work, and will limit its work to completion of base contract work. That would further delay the Project and may leave the Project unfinished until the issues of payment for change order work are resolved. It is unlikely that additional negotiation with the Contractor would produce a better result for the SFMTA. The SFMTA could seek to resolve this dispute through litigation, but doing so would likely further delay the Project, and the SFMTA would incur additional costs in doing so. Project staff

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have considered potential ways to mitigate Project delay by accelerating portions of the Project but have determined that paying the Contractor to accelerate remaining Project work is unlikely to shorten significantly the time needed to complete remaining Contract Work.

FUNDING IMPACT

The source of funds to pay for this contract modification of \$93,600,000 will come from SFMTA capital reserves.

The Contract Modification requires the SFMTA to pay the Contractor \$65,000,000 within 30 Days following the SFMTA Board of Directors' approval of this Contract Modification (Approval Date). The SFMTA must then make best efforts to pay the remaining \$28,600,000 within six months of the Approval Date, and should those best efforts not result in full payment, the SFMTA will make full payment of the remaining amount within 18 months of the Approval Date. The SFMTA will pay the Contractor interest at an annual rate of six percent on any portion of the agreed payment amount that is not paid within 30 Days following the Approval Date.

ENVIRONMENTAL REVIEW

The Central Subway Final Supplemental Environmental Impact Statement / Supplemental Environmental Impact Report (Central Subway SEIS/SEIR) evaluated the environmental impacts of the Central Subway project, including construction of the subway stations. On August 7, 2008, the San Francisco Planning Commission certified the Final SEIR (Case No. 1996.281E). On August 19, 2008, the SFMTA Board of Directors approved Resolution 08-150 adopting Central Subway Project Alternative 3B as the Locally Preferred Alternative, the California Environmental Quality Act (CEQA) Findings, Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting Plan.

The Amendment as described herein falls within the scope of the Central Subway SEIS/SEIR.

The Central Subway SEIS/SEIR is on file with 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.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The City Attorney's Office has reviewed this calendar item. No other approvals are required.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors approve Bilateral Modification No. 137 to Contract No. 1300, Third Street Light Rail Program Phase 2 – Central Subway Stations, Surface, Track and Systems with Tutor Perini Corporation (Contractor) to clarify the work that the Contractor must complete for Substantial Completion to commence systems and train testing, compensate the Contractor and subcontractors' claims for delay through March 31, 2021, incidental and support costs, inefficiencies, overhead, interest, other indirect costs for claims arising through January 20, 2021, and compensate the Contractor for overhead and incidental costs from Substantial to Final Completion, which increases the Contract Amount by

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\$93,600,000 for an amount not to exceed \$1,090,298,587.32, and extends the Substantial Completion date to March 31, 2021 and the Final Completion date to September 27, 2021.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION NO. _____

WHEREAS, Design and construction of the 1.75-mile Central Subway (Central Subway Project) is Phase 2 of the Third Street Light Rail Transit Project; and,

WHEREAS, On May 21, 2013, the SFMTA Board of Directors awarded Contract No. 1300, Third Street Light Rail Program Phase 2 – Central Subway Stations, Surface, Track and Systems (Contract) to Tutor Perini Corporation (Contractor) to construct stations, trackways and systems for the Central Subway Project in an amount not to exceed \$839,676,400, for a term of 1700 calendar days, with a Substantial Completion date of February 10, 2018; and,

WHEREAS, The Project Substantial Completion date was previously extended to June 29, 2020, under Contract Modification 122, approved by the SFMTA Board on September 17, 2019; and,

WHEREAS, The SFMTA has issued over 1450 change orders to the Project, which has impacted the Contractor's costs and ability to complete the work within the Contract Time and Contract Amount; and,

WHEREAS, Contract Modification 137 will resolve over \$176 million of the Contractor and subcontractor claims for delay through March 31, 2021, incidental, support, overhead, interest, other indirect costs, and subcontractor claims for overhead, indirect costs and delay costs related to change orders through January 20, 2021 and,

WHEREAS, Under Contract Modification No. 137, except for certain express reserved claims, including the Contractor certified subcontractor claims and certain classes of construction costs related to Project delays, the Contractor releases all claims for further compensation related to the Project delay covered by the extension of Contract Time; and,

WHEREAS, Contract Modification No. 137 clarifies the work that the Contractor must complete to achieve Project Substantial Completion and for the SFMTA to commence operational (dynamic) train testing, and provides that the Contractor must complete all remaining work within 180 calendar days following Substantial Completion; and,

WHEREAS, Under Contract Modification No. 137, the Contractor will bring the Project to Substantial Completion on or before March 31, 2021 and to Final Completion on or before September 27, 2021; and,

WHEREAS, The Contractor's claims concerning direct costs (labor and materials) of unpaid change orders and claims for additional work will be paid or otherwise resolved separately; and,

WHEREAS, To facilitate the timely installation and testing of the radio communications system and of the Advanced Train Control System (ATCS), the Contractor shall provide scheduled access to the SFMTA's radio and ATCS vendors, and other technology vendors and consultants, to the Project's stations and tunnels; and

WHEREAS, Following the Contractors' completion of work to reach Project Substantial Completion, punch list work and final acceptance, and the SFMTA completion of systems testing and operations (dynamic) vehicle testing, revenue service is anticipated to commence no later than in the Summer of 2022; and,

WHEREAS, The SFMTA does not waive or otherwise compromise any contractual right or legal defense concerning the any provisions or protections provided by the Contract or applicable law; and,

WHEREAS, The Central Subway Final Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report (Central Subway SEIS/SEIR) evaluated the environmental impacts of the Central Subway Project, including construction of the subway stations; on August 7, 2008, the San Francisco Planning Commission certified the Final SEIR (Case No. 1996.281E); on August 19, 2008, the SFMTA Board of Directors approved Resolution 08-150 adopting Central Subway Project Alternative 3B as the Locally Preferred Alternative, the CEQA Findings, Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting Plan; and,

WHEREAS, The modification to Contract 1300 described herein comes within the scope of the Central Subway SEIS/SEIR; and,

WHEREAS, The Central Subway SEIS/SEIR is on file with 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; now therefore, be it

RESOLVED, That the SFMTA Board has reviewed and considered the Central Subway SEIS/SEIR and record as a whole, and finds that the Central Subway Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report is adequate for the Board's use as the decision-making body for the actions taken herein relative to construction of the Project, and incorporates the California Environmental Quality Act findings by this reference as though set forth in this Resolution; and be it

FURTHER RESOLVED, The SFMTA Board of Directors approves Contract Modification No. 137 to Contract No. 1300, Third Street Light Rail Program Phase 2 – Central Subway Stations, Surface, Track and Systems with Tutor Perini Corporation (Contractor) to clarify the work that the Contractor must complete for Substantial Completion to commence systems and train testing, compensate the Contractor and subcontractors' claims for delay through March 31, 2021, incidental and support costs, inefficiencies, overhead, interest, other indirect costs for claims arising through January 20, 2021, and compensate the Contractor for overhead and incidental costs from Substantial to Final Completion, which increases the Contract Amount by \$93,600,000 for an amount not to exceed \$1,090,298,587.32, and extends the Substantial Completion date to March 31, 2021 and the Final Completion date to September 27, 2021.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of March 2, 2021.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

BILATERAL CONTRACT MODIFICATION NO. 137

**SFMTA Contract No. 1300 Stations, Surface,
Track & Systems**

Contractor: Tutor Perini Corporation
530 Bush Street, Suite
302
San Francisco, CA
94108

Contract Modification No. 137 – CTS: Extension of Contract Time and Modified Substantial Completion Requirements

The Contract is modified as follows:

I. Summary

A. Contract Modification. Contract Time is extended 365 Days, extending substantial completion 275 Days and extending Final Completion 90 Days, to address Project delays arising from Additional Work and other unavoidable delays. This extension consists of 265 days compensable time at the contract rate of \$40,000 per day and 10 days of non-compensable time, in addition to a lump sum payment of \$1.6 million to compensate Contractor for all overhead and support costs through Final Completion. The Contract Amount is increased \$93,600,000.00 to compensate Contractor for all compensable delay and to resolve all Contractor and subcontractor claims for indirect costs and impacts submitted as of January 20, 2021, including impacts and costs associated with Project delay. Direct costs of change order work will be separately resolved.

This Contract Modification shall be effective as of January 20, 2021 (“Effective Date”), and subject to approval by the SFMTA Board of Directors.

B. Changes to Contract Amount and Time

1. Contract Amount

Contract Amount	\$996,698,587.32
Total Net Amount of this Contract Price Increase	<u>\$93,600,000.00</u>

Revised Contract Amount	\$1,090,298,587.32
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2. Contract Time

Original Contract Time (as awarded)	1700 Days
Prior Compensable Time Extensions	870 Days
Extension of Contract Time by this Contract Modification	<u>365 Days</u>
Amended Total Contract Time	2935 Days

Original Substantial Completion Date (as awarded)	February 10, 2018
Revised Substantial Completion Date (Contract Modification 122)	June 29, 2020
Revised Substantial Completion Date	March 31, 2021
Revised Final Completion Date	September 27, 2021

II. CONTRACT MODIFICATION

The parties amend the Contract as follows:

A. Extension of Contract Time

In accordance with Contract General Provisions section 7.02, the parties agree to the following modifications to Contract Time (as defined in General Provisions section 1.03.G and Special Provisions section SP-4.A):

1. Contract Time is extended 365 Days due to Additional Work and other unavoidable delays, of which 265 Days are compensable delay and 10 Days are not compensable. Substantial Completion is extended to March 31, 2021. Final Completion is extended an additional 90 Days to September 27, 2021.
2. As stated in greater detail in Appendix A to this Contract Modification, as a condition of Substantial Completion, Contractor shall complete the installation and functional testing of all items listed in Appendix A, including, but not limited to all elements of the following systems that are within Contractor's scope of Work: (1) Overhead Catenary System (OCS); (2) Traction Power System (TPS); (3) Automatic Train Control System (ATCS) (4) Radio Communication System; (5) Fire Alarm System. Contractor shall complete all Work and incidental tasks necessary to complete the Work listed in Appendix A so that the SFMTA and its operations contractors may commence operational (dynamic) train testing no later than April 1, 2021. Appendix A to this Contract Modification is incorporated by reference as if fully set out herein.
3. As a condition of Final Completion, Contractor shall complete all remaining Work under the Contract (that is all Work not described in the preceding Paragraph 2) on or before September 27, 2021.

B. Increase to Contract Amount

1. In accordance with the foregoing, the SFMTA will pay Contractor a total of \$93,600,000.00 (Payment Amount), for a modified total Contract Amount of **\$1,090,298,587.32**. The SFMTA will pay Contractor \$65,000,000 of the Payment Amount within 30 Days following the SFMTA Board of Directors' approval of this Contract Modification (Approval Date). The SFMTA will make best efforts to pay the remaining \$28,600,000 of the Payment Amount within six months of the Approval Date, and should those best efforts not result in full payment, the SFMTA will make full payment of the remaining Payment Amount within 18 months of the Approval Date. The SFMTA agrees to pay Contractor interest at an annual rate of six percent (6%) on any portion of the Payment Amount that is not paid within 30 Days following the Approval Date.

C. Schedule.

TPC and SFMTA will jointly prepare a Project completion schedule as a List of Tasks comprising the Substantial Completion Work listed in Appendix A with a corresponding estimated completion date for each task, and showing completion of all tasks listed in

Appendix A on or March 31, 2021. Contractor shall provide the referenced List of Tasks by February 12, 2021.

D. Site Access.

As provided in Contract Modification 122, Contract General Provision's section 5.01 was amended as follows:

5.01.H. Contractor shall provide access to the Site for the ATCS vendor, Thales, and the radio and data communications systems vendor, Harris, and to City personnel and other consultants as the SFMTA deems necessary to perform systems work and testing. Contractor shall accommodate the work of said vendors, personnel and consultants, and shall provide them with access to the Stations and Tunnels during the 16-hour periods Monday through Friday (i.e., non-Regular Working Hours) and during weekends and holidays, when Contractor is not performing Work at the Site. Contractor shall also provide access to said vendors, personnel and consultants during regular weekday working hours to areas at the Site where Contractor is not performing Work. Contractor shall coordinate with the SFMTA to provide scheduled times for Site access in each Contractor Three-Week Look Ahead Schedule and similar Work planning documents. The SFMTA will pay Contractor's additional costs to provide City vendors' access as necessary on a Time and Materials basis to facilitate access or provide support or safety after hours or on Holidays and Weekends. The SFMTA will compensate Contractor for additional costs to repair any damage to Contractor's Work caused by vendors' performing their work in the tunnels and stations.

Contractor affirms its obligations under the foregoing Section 5.01.H to provide Thales, Harris and other City consultants and personnel access to the Site.

E. Release and Reservation of Claims.

- 1. Release of Claims.** This parties execute this Contract Modification in accordance with Article 6 of the General Provisions of the Contract. Contractor acknowledges and agrees that the Payment Amount when fully paid shall be full satisfaction and accord of all of Contractor's claims known and unknown, potential Contractor and subcontractor claims whether or not noticed, impacts and costs the Contractor has incurred, may incur, or to which it may be entitled that directly or indirectly arise from or relate to the delays to the Work and other schedule impacts (collectively "Delay Damages") that have occurred up to and including January 20, 2021, the Effective Date of this Contract Modification, and all corresponding obligations of the City to pay Contractor for such Delay Damages, including all costs covered under the "Established Daily Rate for Delay" as defined in the Contract, General Provisions section 1.01.44, unless specifically otherwise excluded in Section E(2) below. Contractor hereby releases the City from any and all claims for Delay Damages and claims for or associated with the extended Contract Time, based on any cause or event that occurred or may have occurred prior to the Effective Date of this Contract Modification, without limitation. In the interest of clarity, the Delay Damages Contractor hereby releases include, but are not limited to, claims for incidentals, support costs, acceleration, subcontractor impacts or costs incurred of any kind, delay, inefficiencies, interest, escalation, and/or damages of any kind arising from Project delay, Additional Work under change orders received on or before January 20, 2021, the SFMTA's administration of the Contract, and all other claims known and unknown, irrespective of whether Contractor has provided SFMTA notice of such claim(s).

Contractor acknowledges that in so waiving said claims for Delay Damages and related costs, Contractor also waives all rights to claims for Delay Damages of which it is not aware that arise from or are related to delays to the Work up to and including the Effective Date of this Contract Modification. Contractor understands and acknowledges that a risk exists that it has incurred or suffered, or may incur or suffer, loss or damages as a result of the delays to the Work and the facts and circumstances of such delays which were unknown, unsuspected or unanticipated as of the Effective Date of this Contract Modification. Contractor assumes this risk and agrees that the foregoing release shall in all respects be effective and not subject to termination or rescission, and that Contractor waives the protections provided by California Civil Code section 1542. Contractor affirms that it has read, considered and understands the provisions and significance of California Civil Code section 1542, which states:

SECTION 1542. GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER PAYMENT WITH THE DEBTOR OR RELEASED PARTY.

2. Reservation of Claims and Defenses.

- a. The SFMTA does not waive or otherwise compromise any contractual right or legal defense to any claim or action.
- b. SFMTA agrees to merit to the following Contract Claims: Claim #28 (Shotcrete vs Concrete CTS), Claim #116 (Becho Stair Piles), Claim #145 (4th Street MOT), Claim #146 (Becho), Claim #160 (Covid) and Claim #167(Covid-Fisk). The SFMTA reserves all rights, including the right to dispute quantum as to any merited claims. Contractor does not waive or otherwise compromise any contractual right or legal defense to any reserved claim or action.
- c. As to Claims 160 and 167, subject to proof, the SFMTA agrees to continue to compensate Contractor its direct costs incurred in complying with the San Francisco County Health Director's orders regarding COVID-19 safe work practices. Compensable direct costs are Contractor's and all subcontractors' actual incurred costs of compliance that have not otherwise been compensated, but do not include support costs, supervision, inefficiencies, incidentals or other indirect costs. The SFMTA shall compensate Contractor its indirect costs and impacts arising from or related to the COVID-19 pandemic only to the extent funds are made available from a non-City and County of San Francisco source to compensate the SFMTA for inefficiencies or construction impacts arising from the COVID-19 pandemic.
- d. Direct costs of merited Change Orders listed in claims covered by pending contract modifications (that are commonly referenced by the parties as Omnibus 2 and Omnibus 3) are not included in this Agreement and are to be negotiated separately.

F. Changes Limited and Express. Except as specifically stated in this Contract Modification, all other terms and conditions of the Contract remain unchanged and are in full force and

effect. Any modification of the Contract must be express and in conformance with the General Provisions and Special Provisions of the Contract.

G. Effective Date. The Effective Date of this Contract Modification shall be January 20, 2021, conditioned upon the approval of the SFMTA Board of Directors. Any change orders issued by the SFMTA on or after the Effective Date are not included in this Agreement.

In Witness whereof, this Contract Modification has been executed in San Francisco, California as of this day, March 2, 2021.

Signatures are on the following page.

TUTOR PERINI CORPORATION

Accepted

By:

Jack Frost
President/COO and CEO of Civil
Group
Tutor Perini Corporation

CITY AND COUNTY OF SAN FRANCISCO

Recommended

By:

Nadeem S. Tahir, P.E.
Deputy Director 1
Program Director, Central Subway Project
San Francisco Municipal Transportation Agency

Approved

By:

Jeffrey Tumlin
Director of Transportation
San Francisco Municipal Transportation Agency

Authorized By:

Municipal Transportation Agency Board of Directors

Resolution No: _____

Adopted: _____

Attest: _____
Secretary, Board of Directors

APPROVED AS TO FORM:

Dennis J. Herrera
City Attorney

By:

Robert K. Stone
Deputy City Attorney
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Appendix A –Substantial Completion

Contractor shall complete the Stations-based systems Work and Surface Systems and Track Work listed below in Sections 1 and 2 as condition of Substantial Completion, so that the SFMTA may perform operational (dynamic) train testing. The Work listed below must be fully constructed and installed, fully operational, successfully tested, and accepted by the Engineer as useable for the purposes for which it is intended.

1. Stations-Based Systems.
 - a. Elevators
 - b. Emergency Ventilation – Mechanical
 - c. Mechanical Fire Protection
 - d. Closed Circuit Television
 - e. Electrical Power
 - f. Fire Alarm and Detection
 - g. Traction Power
 - h. Emergency Ventilation - Electrical

2. Surface, Track and Systems.
 - a. Radio and Data Communications System
 - b. Facilities and Traction Power SCADA
 - c. Sectionalizing Breakers
 - d. Central Control Communications
 - e. Overhead Catenary System (tunnel only)
 - f. Advanced Train Control System
 - g. Tunnel Mechanical (Pumps, Drainage)
 - h. Undercar Deluge
 - i. Tunnel Fire Suppression
 - j. Portal Jet Fans
 - k. Track, Switches, Crossovers