

**THIS PRINT COVERS CALENDAR ITEM NO. :10.8**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Capital Programs and Construction

**BRIEF DESCRIPTION:**

Authorizing the Director of Transportation to execute Modification No. 7 to Contract No. 1289, Van Ness Corridor Transit Improvement Project, with Walsh Construction Company II, LLC, to resolve claims related to delays resulting from water and sewer work, by increasing the contract amount by \$4,819,650, for a total contract amount not to exceed \$213,105,974.83, and extending the time to substantial completion by 279 days.



**SUMMARY:**

- On July 7, 2015, the SFMTA Board of Directors awarded Contract No. 1289, Van Ness Corridor Transit Improvement Project (the Contract), to Walsh Construction Company II, LLC, in the amount of \$800,000, to provide pre-construction services under a Construction Manager/General Contractor (CM/GC) type contract.
- On August 16, 2016, the SFMTA Board approved Modification No. 1 to the Contract, in the amount of \$193,027,555, to implement the construction phase of the Contract, for a total contract amount of \$193,927,555, and for an overall contract term not to exceed five years.
- Modification No. 7 to Contract No. 1289 is for the unavoidable delays resulting from sewer and water issues to the project.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Contract Modification No. 7
3. Project Budget and Financial Plan
4. Van Ness BRT Project Final EIS/EIR: <https://www.sfcta.org/projects/van-ness-improvement-project#panel-reports-documents>

**APPROVALS:**

	<b>DATE</b>
DIRECTOR 	July 9, 2019
SECRETARY 	July 9, 2019

**ASSIGNED SFMTAB CALENDAR DATE:** July 16, 2019

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**PURPOSE**

The purpose of this calendar item is to authorize the Director of Transportation to execute Modification No. 7 to Contract No. 1289, Van Ness Corridor Transit Improvement Project, with Walsh Construction Company II, LLC, to resolve claims related to delays resulting from water and sewer work, by increasing the contract amount by \$4,819,650, for a total contract amount not to exceed \$213,105,974.83, and extending the time to substantial completion by 279 days.

**STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES**

Goal 1: Create a safer transportation experience for everyone

Objective 1.1: Achieve Vision Zero by eliminating all traffic deaths.

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.

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

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.
3. Decisions regarding the use of limited public street and sidewalk space shall encourage the use of public rights of way by pedestrians, bicyclists, and public transit, and shall strive to reduce traffic and improve public health and safety
4. Transit priority improvements, such as designated transit lanes and streets and improved signalization, shall be made to expedite the movement of public transit vehicles (including taxis and vanpools) and to improve pedestrian safety.
5. New transportation investment should be allocated to meet the demand for public transit generated by new public and private commercial and residential developments
6. The ability of the City and County to reduce traffic congestion depends on the adequacy of regional public transportation. The City and County shall promote the use of regional mass transit and the continued development of an integrated, reliable, regional public transportation system.
7. The City and County shall encourage innovative solutions to meet public transportation needs wherever possible and where the provision of such service will not adversely affect the service provided by the Municipal Railway
8. Parking policies for areas well served by public transit shall be designed to encourage travel by public transit and alternative transportation.

**DESCRIPTION**

The Van Ness Corridor Transit Improvement Project (formerly known as the Van Ness Bus Rapid Transit (BRT) Project) (the Project) will implement the first BRT service in San Francisco, which will improve transit reliability for the 47 and 49 Muni routes and provide reliable transit connections to transfer routes. The transit service and infrastructure changes are expected to reduce transit travel times by over 30 percent and increase ridership by about 33 percent. Van Ness Avenue is a high-injury corridor; to improve safety, the Project will install pedestrian countdown timers, pedestrian bulb-outs, and eliminate the majority of left turns that currently exists along the corridor. In addition, the Project will replace the City's 100-year-old sewer and water system along the length of the corridor, as well as selected sections of the auxiliary water supply system. The Project will also enhance the urban design of Van Ness Avenue.

On July 7, 2015, the SFMTA Board of Directors adopted Resolution No. 15-108, awarding Contract No. 1289, Van Ness Corridor Transit Improvement Project (the Contract), to Walsh Construction Company II, LLC (Walsh), in the amount of \$800,000, to provide pre-construction services for the Project as a Construction Manager/General Contractor (CM/GC).

On August 16, 2016, the SFMTA Board of Directors adopted Resolution No. 16-110, authorizing Contract Modification No. 1 to the Contract, in the amount of \$193,027,555, for construction of the Project, for a total contract amount of \$193,827,555, and for an overall contract term not to exceed five years.

On August 21, 2018, the SFMTA Board adopted Resolution No. 180821-115, approving Contract Modification No. 2 to the Contract for changes to the Overhead Contact System trolley/light poles and foundations, increasing the Contract amount by \$4,463,160.98, for a total contract amount not to exceed \$198,290,715.98, with no extension of time; and authorizing the Director of Transportation to approve up to an additional aggregate of \$10,000,000 in future amendments to Contract No. 1289 without further approval by the SFMTA Board of Directors.

On July 5, 2018, Director of Transportation executed Contract Modification No. 3 at no cost to add specifications related to establishment of a dispute review board.

In accordance with the Director of Transportation's contracting authority (Resolution No. 180821.11)5, the Director of Transportation executed the following Contract Modifications totaling \$9,995,608.85 (see Table below). For each of these approved Contract Modifications a memorandum to the Board was filed with the Secretary of the Board.

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CMOD No.	Modification Description	Amount	Time Extension (Days)	Approved By
4	Plans and Specification revisions to sewer, water, landscaping, traction power, streetlights and roadway.	\$3,376,341.14	0	DOT
5	Traffic signal modifications	\$2,606,043.75	0	DOT
6	Payments for extra field work for various items, specifications changes to sewer system, Dispute Resolution Board services.	\$4,013,223.96	0	DOT
	Total	\$9,995,608.85		

Contract Modification No. 7

Walsh submitted Claim No. 1 on July 18, 2017, seeking 179 compensable unavoidable delay days due to sewer and water design issues and \$4,311,477 in compensation for sewer and water design issues. On December 11, 2017, Walsh supplemented the claim—this time asking for 279 compensable days of delay and \$6,693,525 in compensation.

Walsh submitted Claim No. 2 on November 9, 2017, in the amount of \$11,927,772, for additional compensation related to the amount of its sewer and water subcontract, which was higher than the price it negotiated with the City for the work.

Since these claims are related to sewer and water issues, the Project team, with help from San Francisco Public Utilities Commission (SFPUC) staff, analyzed the claims and agreed to negotiate Claim No.1 with Walsh. As a result of the negotiations, the parties agreed to 135 compensable days (out of 279). The balance of 144 delay days will be a non-compensable time extension to the Contract.

The Project team and Walsh agreed to \$4,819,650 as compensation for Claim No. 1.

For Claim No.2, the Project team found no merit, and Walsh agreed not to pursue that claim.

The SFPUC is in agreement with this resolution of the two claims.

**STAKEHOLDER ENGAGEMENT**

The SFMTA notified the stakeholders of potential claims from Walsh in 2017, including at the San Francisco County Transportation Authority (SFCTA) meeting October 17, 2017.

In June 2019, the SFMTA informed stakeholders about the resolution of Claims 1 and 2, and the plans to bring Modification #7 to the SFMTA Board of Directors on July 16, 2019. These

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communications included an email briefing sent to local, state and federal funding partners. The SFMTA also advised stakeholders about the resolution of the claims at several public meetings, including the Van Ness Business Advisory Committee on June 20, 2019, the Van Ness Bus Rapid Transit Community Advisory Committee on June 27, 2019, and in a memo prepared for the SFCTA's Citizens Advisory Committee meeting scheduled for July 24, 2019.

## **ALTERNATIVES CONSIDERED**

If the Modification is not submitted or approved, the claims could result in litigation, which could cost the Project more delays and costs.

## **FUNDING IMPACT**

Contract Modification No. 7, in the amount of \$4,819,650 will be funded through existing approved budgets for the Project.

## **ENVIRONMENTAL REVIEW**

On May 15, 2012, the SFMTA Board of Directors adopted Resolution No. 12-070, selecting the Center-running BRT with Right Side Boarding Platforms Single Median and Limited Left Turns as the Locally Preferred Alternative (LPA) for the Project to be analyzed in the Final EIS/EIR. Under this alignment of the Project, BRT lanes would flank the center median except at stations where the BRT vehicles would transition to the center of the roadway and be protected by right side boarding platforms. This alignment would also eliminate all left turns from Van Ness Avenue between Mission and Lombard streets, with the exception of a two-lane left turn onto Broadway from southbound Van Ness, in order to gain the most transit travel time benefits.

On September 10, 2013, the Transportation Authority, as lead agency under CEQA, certified the Final EIS/EIR for the Project under Resolution 14-18, adopted CEQA Findings and a Statement of Overriding Considerations, adopted the Mitigation Monitoring and Reporting Plan, and approved the Locally Preferred Alternative (LPA). The certification of the Final EIS/EIR included incorporating the Vallejo Northbound Station Variant into the Project.

On September 17, 2013, the SFMTA Board of Directors, acting in the capacity as a responsible agency under CEQA, adopted Resolution No. 13-214, approving the Project, analyzed as the LPA in the Final EIS/EIR, including an amendment to include the Vallejo Northbound Station Variant in the approval of the LPA. As part of the resolution, the Board also adopted the CEQA Findings, a Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting Plan for the Final EIS/EIR and authorized the Director of Transportation to direct staff to continue with obtaining the necessary approvals to implement the Project.

On December 20, 2013, the Federal Transit Administration issued a Record of Decision for the Project, determining that the requirements of the National Environmental Policy Act have been met through the Final EIS document and process.

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Since the adoption of CEQA Findings and the approval of the Project, the Transportation Authority has prepared a memo to file dated July 15, 2014, titled “Van Ness Avenue Bus Rapid Transit Project – Environmental Compliance for the Proposed Parking Removal from Conceptual Engineering Report” (Memo to File), which concludes that the removal of 11 parking spaces more than assumed in the Final EIS/EIR, as proposed by SFMTA in the Conceptual Engineering Report, would not result in a new significant environmental impact due to parking loss.

As mentioned above, on July 7, 2015, the SFMTA Board of Directors authorized the award of the Contract for Phase 1 (pre-construction services), for a target duration of 300 days, and in an amount not to exceed \$800,000. At that time, the Board reviewed and considered the EIS/EIR and record as a whole and found that the Final EIS/EIR was adequate for its use as the decision-making body for the approval of the Contract, found that the actions being taken were within the scope of the EIS/EIR, and incorporated the CEQA findings contained in its Resolution No. 13-214, including the Statement of Overriding Considerations, and found that no additional environmental review would be required under Public Resources Code section 21166.

On March 4, 2016, the SFCTA issued an “Addendum to Environmental Impact Report” for the Project, which concludes that removal and replacement of various trees along the Van Ness corridor not previously identified in the Final EIS/EIR would not result in a new significant environmental impact.

Based on its review of the Addendum, the SFMTA Board found, on April 5, 2016, under Resolution No. 16-044, that proposed actions to remove and replace trees, as outlined in the Addendum, were within the scope of the Final EIS/EIR and that no additional environmental review would be required under Public Resources Code section 21166.

<https://www.sfmta.com/sites/default/files/agendaitems/2016/4-5-16%20Item%2016%20Revenue%20Bond%20-%20Resolution.pdf>

Based on its review of the Final EIS/EIR, the SFMTA Board found, on August 16, 2016, under Resolution No. 16-110, that Amendment No. 1 to the Contract, for Phase 2 construction services, was within the scope of the Final EIS/EIR, and that there had been no substantial project changes and no substantial changes in project circumstances that would require major revisions to the Final EIS/EIR due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there was no new information of substantial importance that would change the conclusions set forth in the Final EIS/EIR.

<https://www.sfmta.com/sites/default/files/agendaitems/2016/8-16-16%20Item%2011%20Contract%20Amendment%20-%20Van%20Ness%20Project%20resolution.pdf>

Based on its review of the Final EIS/EIR, on August 21, 2018, the SFMTA Board found in Resolution No. 180821-115 that the work comprising Modification No. 2 to the Contract was within the scope of the Final EIS/EIR. [https://www.sfmta.com/sites/default/files/reports-and-documents/2018/08/8-21-18\\_item\\_10.7\\_contract\\_modification\\_-](https://www.sfmta.com/sites/default/files/reports-and-documents/2018/08/8-21-18_item_10.7_contract_modification_-)

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[\\_van\\_ness\\_project\\_resolution.docx .pdf](#)

The proposed Modification No. 7 to Contract No. 1289 would include additional compensation and delay days for sewer and water work, as described above. The proposed contract modification is within the scope of the Final EIS/EIR.

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

No other approvals are required for this Contract Modification.

The City Attorney's Office has reviewed this calendar item.

**RECOMMENDATION**

Staff recommends that the SFMTA Board of Directors authorize the Director of Transportation to execute Modification No. 7 to the Contract to resolve claims related to delays resulting from water and sewer work, by increasing the contract amount by \$4,819,650, for a total contract amount not to exceed \$213,105,974.83, and extending the time to substantial completion by 279 days.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

WHEREAS, The Van Ness Corridor Transit Improvement Project (formerly known as the Van Ness Bus Rapid Transit Project) (the Project) will implement the first BRT service in San Francisco, which will improve transit reliability for the 47 and 49 Muni routes and provide reliable transit connections to transfer routes; and,

WHEREAS, On July 7, 2015, the SFMTA Board of Directors adopted Resolution No. 15-108, awarding Contract No. 1289, Van Ness Corridor Transit Improvement Project (Contract), to Walsh Construction Company II, LLC (Walsh), in the amount of \$800,000, to provide pre-construction services for the Project; and,

WHEREAS, On August 16, 2016, the SFMTA Board of Directors adopted Resolution No. 16-110 authorizing Modification No. 1 to the Contract, in the amount of \$193,027,555, construction of the Project, for a total contract amount of \$193,827,555 and for an overall contract term not to exceed five years; and,

WHEREAS, On August 21, 2018, the SFMTA Board adopted Resolution No. 180821-115, approving Contract Modification No. 2 to the Contract for changes to the Overhead Contact System trolley/light poles and foundations, increasing the Contract amount by \$4,463,160.98, for a total contract amount not to exceed \$198,290,715.98, with no extension of time; and authorizing the Director of Transportation to approve up to an additional aggregate of \$10,000,000 in future amendments to Contract No. 1289 without further approval by the SFMTA Board of Directors; and,

WHEREAS, Contract Modifications 3 through 6, executed by the Director of Transportation, increased the contract amount by \$9,995,608.85, for a total contract amount not to exceed \$208,286,324.83, with no extension of time; and,

WHEREAS, Walsh submitted Claim No. 1 on July 18, 2017, seeking 179 compensable unavoidable delay days and \$4,311,477 in compensation for sewer and water design issues. On December 11, 2017, Walsh supplemented its claim—this time asking for 279 compensable days of delay and \$6,693,525 in compensation; Walsh submitted Claim No. 2 on November 9, 2017, in the amount of \$11,927,772, for additional compensation related to the amount of its sewer and water subcontract; and,

WHEREAS, As a result of negotiations between the SFMTA and the San Francisco Public Utilities Commission, representing the City, and Walsh, the parties agreed to a time extension of 135 compensable days and 144 non-compensable delay days, and additional compensation of \$4,819,650 for Claim No. 1; for Claim No.2, the Project team found no merit, and the Contractor agreed not to pursue that claim; and,

WHEREAS, On May 15, 2012, the SFMTA Board of Directors adopted Resolution No. 12-070, selecting the Center-running BRT with Right Side Boarding Platforms Single Median



and Limited Left Turns as the Locally Preferred Alternative (LPA) for the Project to be analyzed in the Final EIS/EIR for the Project (Final EIS/EIR); under this alignment of the Project, BRT lanes would flank the center median except at stations where the BRT vehicles would transition to the center of the roadway and be protected by right side boarding platforms; this alignment would also eliminate all left turns from Van Ness Avenue between Mission and Lombard streets, with the exception of a two-lane left turn onto Broadway from southbound Van Ness, in order to gain the most transit travel time benefits; and,

WHEREAS, On September 10, 2013, the Transportation Authority, as lead agency under CEQA, certified the Final EIS/EIR under Resolution 14-18, adopted CEQA Findings and a Statement of Overriding Considerations, adopted the Mitigation Monitoring and Reporting Plan, and approved the Locally Preferred Alternative (LPA); the certification of the Final EIS/EIR included incorporating the Vallejo Northbound Station Variant into the Project; and,

WHEREAS, On September 17, 2013, the SFMTA Board of Directors, acting in the capacity as a responsible agency under CEQA, adopted Resolution No. 13-214, approving the Project, analyzed as the LPA in the Final EIS/EIR, including an amendment to include the Vallejo Northbound Station Variant in the approval of the LPA; as part of the resolution, the Board also adopted the CEQA Findings, a Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting Plan for the Final EIS/EIR, and authorized the Director of Transportation to direct staff to continue with obtaining the necessary approvals to implement the Project; and,

WHEREAS, On December 20, 2013, the Federal Transit Administration issued a Record of Decision for the Project, determining that the requirements of the National Environmental Policy Act have been met through the Final EIS document and process; and,

WHEREAS, Since the adoption of the CEQA Findings and the approval of the Project, the Transportation Authority has prepared a memo to file dated July 15, 2014, titled “Van Ness Avenue Bus Rapid Transit Project – Environmental Compliance for the Proposed Parking Removal from Conceptual Engineering Report” (Memo to File), which concluded that the removal of 11 parking spaces more than assumed in the Van Ness BRT Project Final EIS/EIR, as proposed by SFMTA in the Conceptual Engineering Report, would not result in a new significant environmental impact due to parking loss; based on its review and consideration of the information contained in the Final EIS/EIR, the SFMTA Board found, on July 7, 2015, under Resolution No. 15-108, that the actions to remove parking spaces were within the scope of the Final EIS/EIR, and that no additional environmental review would be required under Public Resources Code section 21166; and,

WHEREAS, On March 4, 2016, the SFCTA issued an “Addendum to Environmental Impact Report” for the Project, which concluded that removal and replacement of various trees along the Van Ness corridor not previously identified in the Final EIS/EIR would not result in a new significant environmental impact; based on its review of the Addendum, the SFMTA Board found, on April 5, 2016, under Resolution No. 16-044, that actions to remove and replace trees, as outlined in the Addendum, were within the scope of the Final EIS/EIR and that no additional environmental review would be required under Public Resources Code section 21166; and,

WHEREAS, As mentioned above, on July 7, 2015, the SFMTA Board of Directors authorized the award of the Contract for Phase 1 pre-construction services to Walsh, having reviewed and considered the EIS/EIR and record as a whole and found that the Final EIS/EIR was adequate for its use as the decision-making body for the approval of the Contract; the Board also found that the actions being taken were within the scope of the EIS/EIR, incorporated the CEQA findings contained in its Resolution No. 13-214, including the Statement of Overriding Considerations, and further found that no additional environmental review would be required under Public Resources Code section 21166; and,

WHEREAS, Based on its review of the Final EIS/EIR, the SFMTA Board found, on August 16, 2016, under Resolution No. 16-110, that Amendment No. 1 to the Contract for Phase 2 construction services, was within the scope of the Final EIS/EIR; and,

WHEREAS, Based on its review of the Final EIS/EIR, the SFMTA Board found on August 21, 2018, under Resolution No. 180821-115, that Modification No. 2 to the Contract was within the scope of the Final EIS/EIR; and,

WHEREAS, A copy of the CEQA determinations are on file with the Secretary to the SFMTA Board of Directors and are incorporated herein by reference; now, therefore, be it

RESOLVED, That the SFMTA Board has reviewed and considered the Van Ness BRT Project Final EIS/EIR and record as a whole, finds that the Final EIS/EIR 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 CEQA findings by this reference as though set forth in this Resolution; and be it

FURTHER RESOLVED, That the SFMTA Board further finds that since the Final EIS/EIR was finalized, there have been no substantial Project changes and no substantial changes in Project circumstances that would require major revisions to the Final EIS/EIR due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the Final EIS/EIR; and be it further

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute Modification No. 7 to Contract No. 1289, Van Ness Corridor Transit Improvement Project, with Walsh Construction Company II, LLC, to resolve claims related to delays resulting from water and sewer work, by increasing the contract amount by \$4,819,650, for a total contract amount not to exceed \$213,105,974.83, and extending the time to substantial completion by 279 days.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of July 16, 2019.

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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency  
San Francisco Municipal Transportation Agency

**CONTRACT MODIFICATION NO. 7**

**San Francisco Municipal Transportation Agency Contract No. 1289**

**I. VAN NESS CORRIDOR TRANSIT IMPROVEMENT PROJECT**

Contractor: **Walsh Construction Company II, LLC**  
**180 Redwood Street, Suite 300**  
**San Francisco, CA 94102**

The Contract is modified as follows:

**1. Compensation/Extra Time for Delay -- Water and Sewer Issues**  
Amount

**CM-7A Claim No. 1 and Claim No. 2: Water and Sewer Issues**

A total of 279 calendar days of total time extension is granted for the delays resulting from Water and Sewer Issues. Of the 279 total calendar days, 135 calendar days are agreed to be compensable for a total compensation of \$4,819,650, and the balance of the time extension, 144 calendar days, are agreed to be non-compensable. The adjusted contract substantial completion date resulting from this time extension moves the original substantial completion date of 10/16/19 to 7/21/20. The negotiated Lump Sum compensation for Claim No. 1 and Claim No. 2 is \$4,819,650.00, and includes all costs associated with the delay days, including escalation.

\$4,819,650

**Total Negotiated Lump Sum (Claim Nos. 1 and 2):**

**\$4,819,650**

**2. The following new Pay Items are added to the Contract:**

CM-7A	Compensation for Delay Resulting from Water and Sewer Issues	Lump Sum	\$4,819,650
<b>Total Amount of this Contract Modification</b>		<b>Increase</b>	<b>\$4,819,650</b>

Total Contract Time added by this Contract Modification:	<b>279 Days</b>
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Previous Contract Substantial Completion Date:	10/16/2019
Current Contract Substantial Completion Date:	7/21/2020

3. This Contract Modification resolves all matters and claims described in or related to Claim No. 1, dated July 17, 2017 (as amended on December 11, 2017) and Claim No. 2, dated November 9, 2017. SFMTA and Contractor acknowledge and agree that the releases referenced herein are limited solely to Claim Nos. 1 and 2, and this Modification shall neither waive nor release any rights that Walsh may possess as to any other claims, damages, costs, losses, etc.
4. Contractor acknowledges and agrees that the compensation stated herein for the delays and other matters described above shall be a full accord and satisfaction of all direct costs of any kind whatsoever incurred in connection with Claim No.1 and Claim No. 2, as detailed above, without limitation, including any and all markups and overhead on the direct costs.
5. Solely with respect to Claim Nos. 1 and 2, Contractor releases the City from all claims, responsibilities, liabilities, obligations, and costs associated with the extension of Contract Time in Contract Modification No. 7, including, but not limited to, any and all markups, overhead costs, direct and indirect costs for labor, materials, equipment, disruption, mobilization, demobilization, lost productivity, loss of efficiency, lost profits, lost opportunity costs, consequential damages of any kind, escalation, delay, extended overhead, administration, and extended performance time.
6. Payment in full for the negotiated lump sum of \$4,819,650 for Claim Nos. 1 and 2, as included in this Modification, shall be made as part of the next progress payment due after approval of this Modification by the SFMTA Board of Directors. Further, the Contractor and SFMTA agree that no further documentation from Contractor will be required to facilitate payment under the Modification upon approval by the SFMTA Board of Directors, and that the negotiated lump sum of \$4,819,650 for Claim Nos. 1 and 2 shall be paid in its entirety and without any offset for withholdings, liquidated damages or any other amounts from the \$4,819,650 portion of the progress payment.
7. The SFMTA and Contractor agree that the negotiated lump sum for Claim Nos. 1 and 2 shall be allocated for purposes of the Contract as Contractor's General Conditions, with no payments to subcontractors from said amount; therefore, the negotiated lump sum for Claim Nos. 1 and 2 will not be considered when evaluating Contractor's compliance with the SBE/DBE participation goals.
8. The resolution of the specified claims described above are full and final releases applying to all losses, including but not limited to damages, costs, and expenses incurred by Contractor, arising out of or in any way connected with Claim Nos. 1 and 2. Contractor, in executing this Modification, knowingly, voluntarily, and expressly waives any and all rights and benefits otherwise conferred by the provisions of Section 1542 of the California Civil Code, but only with respect to Claim Nos. 1 and 2, which states as follows:

*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 settlement with the debtor or released party.*

Contractor expressly consents that, notwithstanding Section 1542 of the California Civil Code, this Modification shall be given full and final effect according to each and

all of its express terms and conditions, including those related to unknown and unsuspected damages or losses relating to the specific claims herein being waived. The parties acknowledge and agree that this waiver is an essential and material term of this Modification, and, without such waiver, this Modification would not have been entered into.

- 9. This Modification is made in accordance with Articles 6 and 7 of the Contract General Provisions.
- 10. Except as provided herein all previous terms and conditions of the Contract remain unchanged.

In Witness Whereof, the parties have executed this Modification in San Francisco, California as of this date: \_\_\_\_\_.

**WALSH CONSTRUCTION**

**CITY AND COUNTY OF SAN FRANCISCO**

**MUNICIPAL TRANSPORTATION AGENCY**

By:   X    
Sean C. Walsh  
President

By:   X    
Edward D. Reiskin  
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:   X    
Robin M. Reitzes  
Deputy City Attorney

ENCLOSURE 3

Van Ness Improvement Project  
San Francisco Municipal Railway Contract No. 1289  
Project Budget and Financial Plan

Project Budget (by Type of Work)	Amount
Core Bus Rapid Transit (BRT)	\$185.5 M
Water Line Replacement	\$26.8 M
Sewer Replacement	\$20.6 M
SFGo Traffic Signals	\$24.6 M
Muni Forward	\$4.3 M
Emergency Firefighting System Replacement	\$6.2 M
Bus Procurement	\$4.0 M
Bus Power Overhead Contact System and Pole Replacement	\$30.3 M
Lighting Replacement	\$13.0 M
Green Infrastructure	\$1.2 M
<b>Total</b>	<b>\$316.4 M</b>

Project Budget (by Phase)	Amount
Environmental	\$6.0 M
Conceptual Engineering	\$8.9 M
Detailed Design	\$15.9 M
Construction	\$281.7 M
<b>Total</b>	<b>\$316.4 M</b>

Funding Sources	Amount
FTA 5309 Small Starts	\$74,999,999
Active Transportation Program	\$4,058,000
California Pacific Medical Center Contribution	\$5,000,000
Central Freeway Parcel Revenues	\$12,654,135
FTA 5307 Formula Funds	\$3,980,000
FTA 5309 State of Good Repair Funds	\$23,871,440
FTA Congestion Mitigation and Air Quality	\$20,000,000
PPM: Planning, Programming and Monitoring funds	\$197,907
Prop B Population based General Fund Set Aside	\$8,134,232
Prop K Sales Tax	\$44,898,444
PUC Local Funds	\$61,543,618
SFMTA Series 2013 Revenue Bonds	\$1,765,751
SFMTA Series 2016 Revenue Bonds	\$48,000,000
State Highway Operation and Protection Program (SHOPP)	\$7,304,868
<b>TOTAL</b>	<b>\$316,408,394</b>