

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. 230606-049

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 one street-level and three subway stations, trackways, and systems for the Central Subway Project for a Contract Amount of \$839,343,400 and Contract Time to complete all work within 1700 calendar days, with a Final Completion date of May 11, 2018; and,

WHEREAS, The Contract previously was amended 146 times to increase the Contract Amount to \$1,158,241,864.70 and extend Contract Time 1,754 days to approve 2,500 Change Orders and resolve Contractor claims arising from unforeseen site conditions and design changes; and,

WHEREAS, The SFMTA declared Substantial Completion of the Work following the completion of systems work on June 28, 2021, and the Central Subway commenced Revenue Service (full passenger service) on January 7, 2023; and,

WHEREAS, Bilateral Contract Modification No. 147 (Amendment) is intended to resolve all Contractor claims for additional compensation and extension of Contract Time, and interest on late payments, resolve SFMTA claims for credit and reduction in the Contract Amount for unused contingency funds, Non-Conforming Work, and accounts paid, and authorize the close-out of the Contract; and,

WHEREAS, The Amendment includes the negotiated amount of \$39,359,659 to be paid to the Contractor for completion of Additional Work the Contractor performed under 310 Change Orders listed in Attachment 1 to the Amendment, which resulted from SFMTA and City-directed design changes, and changes which were required to comply with regulatory agencies' permit requirements; and,

WHEREAS, The Amendment includes \$7,700,000 to be paid Contractor as settlement of Tutor Perini Corp. v. CCSF/SFMTA, Santa Clara County Sup. Ct. Case No. 23CV414035, a lawsuit Contractor filed against the SFMTA to recover additional costs Contractor incurred due to work inefficiencies and related impacts arising from its compliance with San Francisco County Health Orders and work requirements during the Covid-19 pandemic, which settlement is approved in a separate SFMTA Board action; and,

WHEREAS, The Amendment includes \$3,246,041 to be paid to the Contractor to resolve its claims for statutory and contract interest for late payment of undisputed invoices, and payment of interest agreed in Contract Modification 137; and,

WHEREAS, The Amendment reduces the Contract Amount \$2,144,299 by liquidating unexpended funds remaining in Contract contingency accounts, which are listed in Attachment 2 to the Amendment; and,

WHEREAS, The Amendment reduces the Contract Amount of \$700,000 as credit to the SFMTA for the value of corrective work that the SFMTA will have others perform to correct incomplete or Non-Conforming water proofing and grouting at the Chinatown Station, and to replace defective spool insulators in the Overhead Contact System (OCS) and make related repairs to the OCS, which releases Contractor from further obligation to compensate the City the costs of that corrective work, but does not waive or in any way compromise Contractor's contractual or statutory obligations as to warranty and latent defects; and,

WHEREAS, The Amendment reduces the Contract Amount \$705,407.80 to credit the SFMTA that amount, which the SFMTA paid to Thales Transport & Security, Inc., as provided in Contract Modification 93; and,

WHEREAS, The net value of payment due and credit to the SFMTA increase the Contract Amount \$46,755,993.90, for a final Contract Amount of \$1,204,997,857.90, which is the final Contract Amount for purposes of Contract Final Acceptance; and,

WHEREAS, The Amendment extends the Contract Final Completion date 121 calendar days to March 31, 2023 for a total Contract Time of 3,483 calendar days; and,

WHEREAS, The Amendment includes a broad global release by which Contractor releases all claims known and unknown that it may or might bring against the City arising from the Central Subway Project; 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 California Environmental Quality Act (CEQA) Findings, Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting Plan; and,

WHEREAS, The changes effected by the Bilateral Modification No. 147 to Contract No. 1300, as described herein, falls 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 at [Central Subway Final SEIS/SEIR | SFMTA](#), 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 of Directors has reviewed and considered the Central Subway Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report 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 (CEQA) findings by this reference as though set forth in this Resolution; and be it further

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to: (1) execute Bilateral Contract Modification No. 147 to Contract No. 1300, Third Street Light Rail Program Phase 2 - Central Subway Stations, Surface, Track and Systems (Contract) with Tutor Perini Corporation, which resolves and releases all change orders, claims and credits, increases the Contract Amount \$46,755,993.20 for a total Contract Amount of \$1,204,997,857.90, and extends Project Final Completion date 121 days to March 31, 2023; and be it further

RESOLVED, That the Director of Transportation shall withhold progress payment retained funds (retention) as legally required and necessary to pay stop notices, prevailing wage actions, and other lawful claims against Contract funds; and be it further

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to accept the Work from Tutor Perini Corporation, issue final payments, release retention (less amount subject to claims), and close-out Contract 1300, when Contractor has met all Contract requirements for Final Acceptance; and be it further

RESOLVED, That the SFMTA Board authorizes the Director of Transportation, in consultation with the City Attorney, to make such changes to Contract Modification 146 as necessary to effect the intent and purpose of this Resolution, provided that said changes shall not further increase the Contract Amount or further extend Contract Time beyond the values stated in this Resolution, or reduce warranty or bond protections stated in the Contract.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of June 6, 2023.



Secretary to the Board of Directors
San Francisco Municipal Transportation Agency