

**THIS PRINT COVERS CALENDAR ITEM NO.: 10.2**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Capital Programs and Construction

**BRIEF DESCRIPTION:**

Authorizing the Director of Transportation to execute Modification No. 12 to Contract No. 1289, Van Ness Corridor Transit Improvement Project, with Walsh Construction Company II, LLC, for additional costs related to pedestrian monitoring services in the amount of \$2,589,381, for a total Contract amount not to exceed \$220,507,216, with no time extension.

**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 (Walsh), in an amount not to exceed \$800,000 and a term of 300 days, to provide pre-construction services for the Project.
- In August 2016, this Board approved Modification No. 1 for construction services, increasing the Contract to an amount not to exceed \$193,827,555 and for an overall term not to exceed five years.
- Contract Modification No. 12 is for the additional costs related to pedestrian monitoring services in the amount of \$2,589,381 and no time extension.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Contract Modification No. 12
3. Project Budget and Financial Plan
4. Van Ness Corridor Transit Improvement Project Final EIS/EIR:  
<https://www.sfcta.org/projects/van-ness-improvement-project#panel-reports-documents>
5. SFMTA Board Resolution No. 13-214:  
<https://www.sfmta.com/sites/default/files/agendaitems/2016/09-17-13--13-214.pdf>

**APPROVALS:**

	<b>DATE</b>
DIRECTOR 	November 24, 2020
SECRETARY 	November 23, 2020

**ASSIGNED SFMTAB CALENDAR DATE:** December 1, 2020

**PURPOSE**

The purpose of this calendar item is to authorize the Director of Transportation to execute Modification No. 12 to Contract No. 1289, Van Ness Corridor Transit Improvement Project, with Walsh Construction Company II, LLC, for additional costs related to pedestrian monitoring services in the amount of \$2,589,381, for a total Contract amount not to exceed \$220,507,216, with no time extension.

**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**

**Background**

The Van Ness Corridor Transit Improvement Project (Proejct) will implement the first bus rapid transit (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 ridership on these lines are historically about 45,000 passengers per day. 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 Vision Zero 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 exist along the corridor. In addition, the Project replaced 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. The project is about 59 % completed. All the major underground sewer and water work has been completed. Currently, the contractor is constructing the BRT lanes, sidewalk and traffic systems. Current project schedule shows as the substantial completion in early spring of 2022. No major incidents were reported during the construction.

**Prior Contract Modifications**

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 (Walsh), in an amount not to exceed \$800,000 and a term of 300 days, to provide pre-construction services for the Project

On October 7, 2014, the SFMTA Board of Directors adopted Resolution No. 14-147, which authorized the SFMTA to use a Construction Manager/General Contractor (CM/GC) project delivery method for the Project to include a team of core trade subcontractors, minimum qualifications for the CM/GC and certain subcontractors; evaluation of the CM/GC primarily on non-cost criteria; and negotiation of a guaranteed maximum price (GMP) with the selected CM/GC, provided the price is fair and reasonable.

Walsh and the City agreed to a GMP and prepared a Contract Modification (Contract Modification 1) to add the construction work.

In August 2016, this Board approved Modification No. 1 for construction services, increasing the Contract to an amount not to exceed \$193,827,555 and for an overall term not to exceed five years.

The following table represents all previous modifications to the Contract. Contract Modifications 4, 5, and 6 were approved by the Director of Transportation (DOT) under the authority given by SFMTA Board Resolution No. 191203-153. Contract Modification 3 was approved by the DOT to form a Dispute Resolution Board at no additional cost to the Agency. The DOT approved Contract Modification 11 on July 24, 2020, under the authority given by SFMTA Board Resolution No. 1800821-115.

<b>Item</b>	<b>Contract Modifications Description</b>	<b>Change</b>	<b>Approval</b>	<b>Resolution No. / Date</b>
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CM 1	Phase 2 CM/GC - Construction	\$ 193,027,555(includes original Contract amount of \$800,000)	Board	16-110/8-16-2016
CM 2	Historic Street Lights & Pole Foundation Reinforcement	\$ 4,463,160.98	Board	180821-115
CM 3	Formation of Dispute Resolution Board	\$ -	DOT	7/5/2018
CM 4	Revisions to plans and specifications for sewer, water, landscaping, traction power, streetlights and roadway	\$ 3,376,341.14	DOT	9/28/2018
CM 5	Traffic Signal Modifications	\$ 2,606,043.75	DOT	10/16/2018
CM 6	Payments for extra field work for various items, specification changes to sewer system, amendment of Dispute Review Board (DRB) process	\$ 4,013,223.96	DOT	4/13/2019
CM 7	Resolution of Claim Nos. 1 and 2	\$ 4,819,650	Board	190716-092
CM 8	Resolution of Claim No. 3	\$ 1,709,201.81	Board	190820-104
CM 9	Additional Out-Of-Sequence Sewer and Roadway Work	\$ 633,003.16	Board	200218-015
CM 10	Miscellaneous Additional Work	\$ 2,187,655.23	Board	200519-047
CM 11	Allowance for Safe Work Practices due to COVID-19	\$ 282,000	DOT	7/24/2020
	Contract Total	\$ 217,117,835.03		

Contract Modification No. 12

Pedestrian Monitors are supplemental personnel meant to support “flaggers” in the active areas of construction. They work with construction flaggers to ensure that pedestrians do not accidentally wander into the area of construction, specifically when that construction is taking place in crosswalks or other paths of travel. They were not included in the original contract because it was believed that the number of flaggers required by the contract would be sufficient to prevent pedestrians from entering active work areas. Once the major utility construction was underway, it became apparent that, at times, the level of pedestrian traffic along Van Ness exceeded the level that the Contractor’s flaggers could comfortably control. To ensure public safety, the City agreed that the Contractor should use pedestrian monitors when needed.

When pedestrian monitors are authorized by the Engineer, the Contract provides that the work will be handled on a force account basis (time and materials, with a not-to-exceed cap).

The Contractor filed a claim (Claim No. 4) for additional costs related to pedestrian monitors from Notice to Proceed to May 31, 2019. Contract Modification No. 12 will resolve Claim No. 4 for \$760,557, and include a negotiated cost of \$815,588 for pedestrian monitors services from June 1, 2019 to May 31, 2020. Finally, this Modification creates an allowance for all future pedestrian monitor costs from June 1, 2020 through the final project completion for an amount not to exceed \$1,013,236. The total cost for Modification No. 12 will not exceed \$2,589,381.

## **STAKEHOLDER ENGAGEMENT**

The SFMTA first informed stakeholders of the plans to bring Contract Modification No. 12 to the SFMTA Board of Directors on November 19, 2020. These communications included an email briefing sent to more than 300 local, state and federal public officials at the end of November. Stakeholders were also notified at the Van Ness Bus Rapid Transit Community Advisory Committee on November 19, 2020. No concerns were expressed.

## **ALTERNATIVES CONSIDERED**

The SFMTA considered no alternatives to Walsh performing the subject work, as the additional work is within the overall scope of the Project.

## **FUNDING IMPACT**

Contract Modification No. 12, in the amount of \$2,589,381, will be funded through the existing approved budget for the Project.

## **ENVIRONMENTAL REVIEW**

On September 10, 2013, the San Francisco County Transportation Authority (SFCTA), as lead agency under California Environmental Quality Act (CEQA), certified the Final Environmental Impact Statements (EIS)/Environmental Impact Report (EIR) for the Van Ness Corridor Improvement 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.

Since the adoption of CEQA Findings and the approval of the Project, the San Francisco County 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.

The proposed Modification No. 12 to Contract No. 1289 that is the subject of this calendar item would include additional costs related to pedestrian monitoring services. The proposed Contract Modification is within the scope of the Final EIS/EIR. Copies of the CEQA documents are on file with the Secretary to the SFMTA Board of Directors and are incorporated herein by reference.

#### **OTHER APPROVALS RECEIVED OR STILL REQUIRED**

The SFMTA Contract compliance Office has determined that Walsh is in compliance with the Small Business Enterprise (SBE) participation goals established in this Contract and concurs with this Modification.

The Contract Compliance Office has established SBE goals for each of the core subcontracts packages:

Paving 25%

Overhead Contact System 20%

Traffic Control 10%

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

No other approvals are required for this Contract Modification.

#### **RECOMMENDATION**

Staff recommends that the SFMTA Board authorize the Director of Transportation to execute Modification No. 12 to Contract No. 1289, Van Ness Corridor Transit Improvement Project, with Walsh Construction Company II, LLC, for additional costs related to pedestrian monitoring services in the amount of \$2,589,381, for a total Contract amount not to exceed \$220,507,216, with no time extension.

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 Bus Rapid Transit (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 and a for a term of 300 days, 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 for construction of the Project in the amount of \$193,027,555, 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 of the SFMTA Board; and,

WHEREAS, Contract Modifications Nos. 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, The SFMTA Board adopted Resolutions Nos. 190716-092, 190820-104, 200218-015, and 200519-047, approving Contract Modifications Nos. 7 through 10, respectively, increasing the Contract amount by \$9,349,510.20, for a total Contract amount not to exceed \$217,635,835.03, and extending the time to substantial completion by 279 days; and,

WHEREAS, Contract Modification No. 11, executed by the Director of Transportation per Board Resolution No. 191203-153, increased the Contract amount by \$282,000, for a total Contract amount not to exceed \$217,917,835.03, with no extension of time; and,

WHEREAS, The Contractor filed a Contract claim (Claim No. 4) for additional costs related to pedestrian monitors from Notice to Proceed to May 31, 2019; and,

WHEREAS, Contract Modification No. 12 will resolve Claim No. 4 for \$760,557, as well as a negotiated cost for pedestrian monitor services from June 1, 2019 to May 31, 2020 for \$815,588; and create an allowance for all future pedestrian monitor costs from June 1, 2020 through the final project

completion for an amount not to exceed \$1,013,236, for a total cost for this Modification not to exceed \$2,589,381; and,

WHEREAS, On September 10, 2013, the San Francisco County 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; 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, Based on its review of the Final EIS/EIR, the SFMTA Board found on July 16, 2019, under Resolution No. 190716-092, that Modification No. 7 to the Contract 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 20, 2019, under Resolution 190820-104, that Modification No. 8 to the Contract was within the scope of the Final EIS/EIR; and,

WHEREAS, The proposed Modification No. 12 to Contract No. 1289 would include additional costs related to pedestrian monitoring services as described above and is within the scope of the Final EIS/EIR; and,

WHEREAS, A copy of the CEQA determinations is 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 Bus Rapid Transit Project Final Environmental Impact Statement/Environmental Impact Report (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. 12 to Contract No. 1289, Van Ness Corridor Transit Improvement Project, with Walsh Construction Company II, LLC, for additional costs related to pedestrian monitoring services in the amount of \$2,589,381, for a total Contract amount not to exceed \$220,507,216, with no time extension.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of December 1, 2020.

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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency



**CONTRACT MODIFICATION NO. 12**

**San Francisco Municipal Transportation Agency Contract No. 1289  
Van Ness Corridor Transit Improvement Project**

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

**Background**

- A. During negotiation of the Contract Guaranteed Maximum Price, bid item TR-4 for Pedestrian Monitors was removed from the Contract (as reflected in the Contract’s Special Provisions, Exhibit A, item 9). Thereafter, in order for the Contractor to use pedestrian monitors, the engineer must either require or approve a request for pedestrian monitors, as they are not otherwise authorized under the Contract. In this regard, pedestrian monitors are distinguished from traffic control “flaggers,” which are required under the Contract (See Tech. Specs. 01570 (Traffic Control) 3.02, 3.13)).
  
- B. When pedestrian monitors are authorized by the Engineer, the Contract provides that the work will be handled on a force account basis. See General Provisions Section 6.05 (Force Account Work), which requires City approval (Sec. 6.05A.1): "The City will pay only the actual necessary costs for the Work that is verified in the field by the City on a daily basis." (Sec. 6.05A.3.) The City contends that Contractor failed to provide documentation of affirmative City approval for the use of pedestrian monitors, but in the interest of public safety, and without waiving any rights under the Contract, the City agrees to the compromise reflected in this Contract Modification for use of certified pedestrian monitors.

The Contract is modified as follows:

1. Pedestrian Monitors	<u>Amount</u>
CM-12.1 <u>Contract Claim No. 4: Pedestrian Monitors (NTP through May 31, 2019)</u>  The negotiated Lump Sum provides full compensation for Claim No. 4, inclusive of all direct and indirect costs, including profit, for providing pedestrian monitors at intersections along the Van Ness corridor during construction of the Project from NTP through May 31, 2019.	
<b>Negotiated Lump Sum for Contract Claim No. 4:</b>	<b>\$760,557</b>
CM-12.2 <u>Pedestrian Monitors from June 1, 2019 through May 31, 2020</u>  The negotiated lump sum provides full compensation, inclusive of all direct and indirect costs, including profit, for providing pedestrian monitors at intersections along the Van	

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Ness corridor during construction of the Project from June 1, 2019 through May 31, 2020.	
<b>Negotiated Lump Sum for Pedestrian Monitors—June 1, 2019 – May 31, 2020:</b>	<b>\$815,588</b>

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CM-12.3 A new Subsection AA (Pedestrian Monitors from June 1, 2020 through Final Completion) is added to Article 01210 (Allowances), Part 1 (General), Section 1.02 (Scope of Work) of the Technical Specifications to read as follows:

**AA. Pedestrian Monitors from June 1, 2020 through Final Completion.**

- i. A new allowance is provided for furnishing pedestrian monitors at intersections along the Van Ness corridor during construction of the Project from June 1, 2020, through Final Completion of Contract Work.
- ii. Pedestrian monitors may be needed at certain intersections when the flagger(s) assigned to that intersection are occupied controlling vehicles and movement of construction equipment. In this situation, pedestrian traffic necessitates a pedestrian monitor to assist in the safe guidance of pedestrian traffic through work areas.
- iii. Contractor agrees to provide a completed Pedestrian Monitor Request Form (Exhibit A), attached to and submitted with Contractor’s Daily Work Plan no later than 6:00 p.m. the day prior to the work requiring pedestrian monitors. The Pedestrian Monitor Request Form (PMR Form) will include the location, associated Project work, and working hours (including any estimated overtime) of each pedestrian monitor that the Contractor asserts is necessary for the Project. Contractor agrees that it will receive no compensation for pedestrian monitors where it fails to provide such advance notice. Contractor further agrees that it will receive no compensation for pedestrian monitors lacking required certification.
- iv. Pedestrian monitoring work that may be required during this time period shall be negotiated as a lump sum or paid under force account, using this Allowance.
- v. Upon review of the PMR Form, the SFMTA reserves the right to request additional pedestrian monitors as it deems necessary. The SFMTA will provide notice to Contractor by e-mail no later than 6:00 am on the day of the scheduled Work.
- vi. Upon review of the PMR Form, the SFMTA reserves the right to request fewer pedestrian monitors than indicated on the Form. Prior to making such a request, the Resident Engineer will review the PMR Form with the City Traffic Engineer for concurrence. The SFMTA will send the request by e-mail to the Contractor’s Project Manager no later than 6:00 am on the day of the scheduled Work. In the event the Contractor receives e-mail notice after 6:00 am, Contractor will use pedestrian monitors for corridor clean-up for a maximum of two hours, and the City will authorize payment for such time.



- vii. In the event of a disagreement between the SFMTA and the Contractor regarding the use and/or quantity of pedestrian monitors, the Contractor shall be allowed to provide “under protest” its recommended number of pedestrian monitors at the location(s) recommended by the Contractor. However, payment for Pedestrian Monitors used at disputed or unauthorized locations shall be made by the SFMTA to Walsh “under protest” until the matter is resolved by the Parties or brought to the next regularly scheduled DRB meeting as an “Informal DRB Hearing” agenda item. The SFMTA will pay for “disputed or protested” use of pedestrian monitors in the normal invoicing cycle.

**Allowance for Pedestrian Monitors from June 1, 2020 through Final Completion:**

**Not to Exceed  
 \$1,013,236**

**Total Amount of this Contract Modification**

**Not to Exceed  
 \$2,589,381**

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

<b>New Pay Item</b>	<b>Description</b>	<b>Quantity</b>	<b>Unit</b>	<b>Unit Price</b>	<b>Extension</b>
CM-12.1	Compensation for Contract Claim No. 4	N/A	LS	\$760,557	\$760,557
CM-12.2	Pedestrian Monitors from June 1, 2019 through May 31, 2020	N/A	LS	\$815,588	\$815,588
CM-12.3	Allowance for Pedestrian Monitors from June 1, 2020 through Final Completion	N/A	AL	Not to Exceed \$1,013,236	\$1,013,236
<b>Total Amount of this Contract Modification</b>			<b>Increase</b>	<b>Not to Exceed</b>	<b>\$2,589,381</b>

Total Contract Time added by this Contract Modification:	<b>None</b>
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Previous Contract Substantial Completion Date: 7/21/2020

Current Contract Substantial Completion Date: 7/21/2020

#### **Claim No. 4 (CM-12.1)**

1. Contractor acknowledges and agrees that the compensation stated herein shall be a full accord and satisfaction of all direct costs of any kind whatsoever incurred because of Claim No. 4, as detailed above, without limitation, including any and all markups and overhead on the direct costs. With respect to Claim No. 4, Contractor releases the City from all claims, responsibilities, liabilities, obligations, and costs associated therewith, 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. In addition, in executing this Modification, Contractor knowingly, voluntarily, and expressly waives any and all rights and benefits otherwise conferred by the provisions of Section 1542 of the California Civil Code, 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.

#### **Pedestrian Monitors from June 1, 2019 through May 31, 2020 (CM-12.2)**

2. Contractor acknowledges and agrees that the compensation stated herein shall be a full accord and satisfaction of all direct costs of any kind whatsoever incurred as a result of a claim for the costs of Pedestrian Monitors from June 1, 2019 through May 31, 2020, as detailed above, without limitation, including any and all markups and overhead on the direct costs. With respect such claim, Contractor releases the City from all claims, responsibilities, liabilities, obligations, and costs associated with this claim, 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.

#### **Budget**

3. The SFMTA will pay for pedestrian monitor services through the allowance item CM 12.3 created herein. The allowance budget shall be monitored and evaluated with the current project schedule to assure there are sufficient funds to cover projected pedestrian monitor activities or requests.
4. The SFMTA reserves the right to cancel the use of pedestrian monitors. In such an event, the City may issue a Unilateral Change Order deleting future pedestrian monitor services. In such a case, the City will compensate the Contractor for pedestrian monitoring services provided up to the date specified in the Unilateral Change Order. After any cancellation of pedestrian monitor services, future pedestrian monitor services that may be required shall be negotiated as a lump sum or paid under force account, using the allowance in CM 12.3.


**Payments**

5. Payments in full for the negotiated lump sum amounts for Claim No. 4 and for (CM-12.2), shall be made as part of the next progress payment due no later than 45 Days after approval of this Modification by the SFMTA Board of Directors. Contractor and City agree that no further documentation from Contractor will be required to facilitate such payments upon approval by the SFMTA Board of Directors other than an invoice, and that said negotiated lump amounts shall be paid in full and without any offset for withholdings, liquidated damages, or any other amounts from those portions of the progress payment.

6. This Modification is not intended to address or include any change in the Contract duration. Except for all matters and releases relating to pedestrian monitors, as set forth herein, the release language contained in this Modification is not intended to and will not foreclose or reduce the right of Walsh to pursue the general indirect cost/overhead change order request contained in what is generally referred to as the "True-up" change order request, or any similar future "True-up" change order requests.
7. This Modification is made in accordance with Articles 6 and 7 of the Contract General Provisions.
8. Except as provided herein, all previous terms and conditions of the Contract remain unchanged.

In witness thereof, the parties have executed this Modification in San Francisco, California as of this date: \_\_\_\_\_

**WALSH CONSTRUCTION**

By: X   
Sean C. Walsh  
President

**CITY AND COUNTY OF SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

By: X \_\_\_\_\_  
Jeffrey P. Tumlin  
Director of Transportation

**Authorized By:**

San Francisco Municipal Transportation Agency  
Board of Directors  
Resolution No. \_\_\_\_\_  
Adopted: \_\_\_\_\_

**Attest:**

\_\_\_\_\_  
Roberta Boomer, Secretary

**APPROVED AS TO FORM:**  
Dennis J. Herrera, City Attorney

By: \_\_\_\_\_  
Robin M. Reitzes  
Deputy City Attorney

ENCLOSURE 3  
 Van Ness Corridor Transit Improvement Project 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>