

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. 180417-062

WHEREAS, On September 16, 2014, the SFMTA Board of Directors adopted Resolution No. 14-121, awarding Contract No. 1236R, Third Street Light Rail Project Mission Bay Loop (the Contract), to Mitchell Engineering (the Contractor), in the amount of \$3,521,115, for a term of 240 days, to install trackwork around the 3rd Street/18th Street/Illinois Street/19th Street block to create a short line loop for the T-Line; and,

WHEREAS, The SFMTA issued a written notice to proceed with the work with a commencement date of December 8, 2014; and,

WHEREAS, On September 26, 2014, the Petitioners Committee for Re-Evaluation of the T-Line Loop filed a Petition for Writ of Mandate (the Petition) in the San Francisco Superior Court, alleging that the City failed to comply with the California Environmental Quality Act (CEQA) when it approved Contract No. 1236R; and,

WHEREAS, The California Court of Appeal issued a stay of construction on March 3, 2015; the SFMTA then suspended the Contract on March 4, 2015; and,

WHEREAS, The trial court denied the Petition on December 24, 2015; the Court of Appeal lifted the stay of construction on January 21, 2016, ultimately found in favor of the City on November 29, 2016, and the California Supreme Court denied review on March 15, 2017; and,

WHEREAS, The SFMTA lifted the suspension and directed the Contractor to resume work on May 16, 2016, for a total suspension period of 439 days; and,

WHEREAS, The SFMTA directed the Contractor to resume work on May 16, 2016, for a total suspension period of 439 days; and,

WHEREAS, On January 8, 2018, the Director of Transportation approved Contract Modification No. 1, for additional work to the sewer system under Illinois Street and further noise and dust monitoring requirements as dictated by a Storm Water Pollution and Prevention Plan from the Port of San Francisco; Modification No. 1 increased the Contract amount by \$667,065.78; and,

WHEREAS, Public Contract Code Section 4106 provides that if a prime contractor fails to specify a subcontractor for work under the contract in excess of one-half of one percent of the bid price, the prime contractor agrees that it is fully qualified to perform that portion itself and shall perform that portion itself; under Public Contract Code Section 4110, violation of this section subjects the contractor to cancellation of the contract or assessment of up to a 10 percent penalty; and,

WHEREAS, Public Contract Code Section 4109 authorizes an owner to permit an unlisted subcontractor to perform work only “in cases of public emergency or necessity,” and then only after a finding reduced to writing as a public record of the awarding authority setting forth the facts constituting the emergency or necessity; and,

WHEREAS, As a result of the suspension of work, the Contractor was unable to hire the crews that it had intended to perform electrical, overhead, and traffic signal work; when the suspension was lifted, the Contractor tried to hire the crews, but discovered that they were no longer available; and

WHEREAS, As a result of the suspension of the Contract, which was not the fault of the Contractor, the SFMTA has elected not to assess a penalty under the Public Contract Code Section 4110; and

WHEREAS, To prevent further delay to the project and to Central Subway Project, the Contractor has proposed hiring two unlisted subcontractors, W. Bradley Electric and Reliance Engineering, to perform the electrical, overhead, and traffic signal work; and

WHEREAS, Any further delay to this Contract would severely impact the Central Subway opening in 2019 and would jeopardize grant funds that expire in September 2018, unless the Contractor is allowed to hire the unlisted subcontractors mentioned above; and,

WHEREAS, During the 439 days that the Contract was suspended, the Contractor demonstrated, and the SFMTA confirmed, that the prices bid for the work had escalated by \$407,434; and,

WHEREAS, Contract Modification No. 2 also provides a 63-day compensable time extension for owner-caused delay due to protracted discussions between the Port of San Francisco and San Francisco Public Works (SFPW) regarding delegation of the encroachment permitting process on the portion of the project site that is on Port property; and,

WHEREAS, The 63-day period began on May 16, 2016, and ended on July 18, 2016, after the Port issued a letter delegating encroachment permit responsibility to SFPW; and,

WHEREAS, During this time, the Contractor incurred direct labor costs for a full-time superintendent and field/office engineer and indirect costs for employee payroll taxes and employee fringe benefits, amounting to \$52,306; and,

WHEREAS, The Mission Bay Loop Project initially was reviewed and analyzed in the Environmental Impact Report and Environmental Impact Statement (EIR/EIS) for the Third Street Light Rail Project Phase 1; and,

WHEREAS, The EIR/EIS for the Third Street Light Rail Project Phase 1 was certified by the City in 1998 and the Record of Decision (ROD) was issued in 1999; and,

WHEREAS, On October 12, 2012, the San Francisco Planning Department determined that no further assessment was required under the California Environmental Quality Act (CEQA) Guidelines; and,

WHEREAS, An Environmental Assessment was completed in May 2013 for which the Federal Transit Administration issued a Finding of No Significant Impact on July 30, 2013; and,

WHEREAS, On August 27, 2014, the Planning Department determined that there were no circumstances occurring since October 2012 that would require additional environmental review under the CEQA guidelines; and

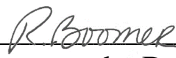
WHEREAS, This Contract Modification does not modify the scope of the Project, and thus has no impact on the August 27, 2014, CEQA determination; and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors, and may be found in the records of the Planning Department at 1650 Mission Street in San Francisco, and are incorporated herein by reference; now, therefore, be it

RESOLVED, That based on the above findings, the SFMTA Board determines that the addition of subcontractors W. Bradley Electric and Reliance Engineering to assist in performing the Work is a “public necessity” under Public Contract Code Section 4109; and be it further

RESOLVED, That the SFMTA Board of Directors approves Modification No. 2 to Contract No. 1236R, Third Street Light Rail Project Mission Bay Loop, with Mitchell Engineering, to add two subcontractors, W. Bradley Electric and Reliance Engineering, to the Contract due to public necessity, with no penalty against Mitchell Engineering under Public Contract Code Section 4110; to increase the Contract amount by \$459,740, for a total amount not to exceed \$4,647,920.77; and to extend the Contract term by 502 days, for a total term of 742 days to substantial completion.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of April 17, 2018.



Secretary to the Board of Directors
San Francisco Municipal Transportation Agency