

**THIS PRINT COVERS CALENDAR ITEM NO.: 12**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Central Subway Project

**BRIEF DESCRIPTION:**

Approving Modification No. 133 to Contract No. 1300, Third Street Light Rail Program Phase 2 - Central Subway Stations, Surface, Track and Systems with Tutor Perini Corporation, to resolve claims from subcontractor Frontier-Kemper Constructors, Inc. arising from the excavation of the Chinatown Station in the amount of \$10,382,106, for a modified contract amount \$946,873,016.76.



**SUMMARY:**

- The SFMTA contracted with Tutor Perini Corporation (Tutor) awarded in April 2013, to construct the Central Subway Stations, Surface, Track and Systems under Contract No. 1300. Frontier-Kemper Constructors, Inc. (Frontier) is a subsidiary of and subcontractor to Tutor that excavated the Central Subway Chinatown Station (CTS).
- Frontier submitted seven certified claims, valued at \$11,608,588 for uncompensated labor costs, delays, schedule impacts, and escalated equipment costs arising from additional work and effort required to excavate soils and rock.
- The City Attorney engaged a forensic accountant to audit Contractor's and Frontier's records to confirm claimed costs and expenditures. The SFMTA engaged Edgar Lopez, former City Architect for S.F. Public Works, as a consultant to negotiate the Claims. The SFMTA also independently estimated the fair and reasonable costs of the additional work and effort, which informed the SFMTA's negotiations.
- The negotiated total value of this Contract Modification is \$10,382,106, of which \$7,435,059 will compensate Frontier for the Claims, and \$2,947,047 will compensate Tutor's support of that Additional Work and financing costs.

**ENCLOSURES:**

1. SFMTA Board Resolution
2. Contract 1300 Modification No. 133
3. <https://www.sfmta.com/about-sfmta/reports/central-subway-final-seisseir> (Central Subway Final SEIS/SEIR and Mitigation Monitoring and Reporting Program)

**APPROVALS:**

**DIRECTOR**   
\_\_\_\_\_  
**SECRETARY**   
\_\_\_\_\_

**DATE**

October 14, 2020  
\_\_\_\_\_

October 14, 2020  
\_\_\_\_\_

**ASSIGNED SFMTAB CALENDAR DATE:** October 20, 2020

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## **PURPOSE**

Approving Modification No. 133 to Contract No. 1300, Third Street Light Rail Program Phase 2 - Central Subway Stations, Surface, Track and Systems with Tutor Perini Corporation, to resolve claims from subcontractor Frontier-Kemper Constructors, Inc. arising from the excavation of the Chinatown Station in the amount of \$10,382,106, for a modified contract amount \$946,873,016.76.

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

Approval of the proposed resolution will support the following SFMTA Strategic Plan Goals:

Goal 4: Create a workplace that delivers outstanding service.

Objective 4.5: Increase the efficiency and effectiveness of business processes and project delivery through the implementation of best practices.

This item does not directly address any Transit First Policy Principles, but by streamlining the process for contract approvals, the proposed policy would support and facilitate more efficient implementation of projects that enhance safety and public transportation.

## **DESCRIPTION**

The SFMTA contracted with Tutor Perini Corporation (Tutor) awarded April 2013, to construct the Central Subway Stations, Surface, Track and Systems under Contract No. 1300. Frontier-Kemper Constructors, Inc. (Frontier) is a subsidiary of and subcontractor to Tutor that excavated the Central Subway Chinatown Station (CTS).

Frontier excavated the CTS caverns using a sequential excavation method, a traditional mining technique. The sequential excavation method excavates from below the surface and is done one section at a time. This method of excavation is performed without disturbing the surface, and thereby, avoids severe impacts to surface activities.

During excavation of the underground cavern, unforeseen, differing site conditions were encountered, increasing the difficulty of excavation, which resulted in increased costs and delays to the schedule. Unforeseen and differing site conditions are not uncommon in underground excavations and owners are generally responsible for the additional costs. Frontier claimed that the value of the seven certified claims totaled \$11,608,588 and Tutor claimed an additional \$3,252,272 compensation for direct costs of additional work it performed to support Frontier's performance of its work. This totaled does not include Claim 61 for \$9,649,839, which SFMTA determined to have no merit of entitlement.

The City Attorney engaged a forensic accountant to audit Contractor's and Frontier's records to confirm claimed costs and expenditures. The SFMTA engaged Edgar Lopez, former City Architect for S.F. Public Works, as a consultant to negotiate the Claims. The SFMTA also engaged a consultant to estimate the fair and reasonable costs of the additional work and effort, which informed the SFMTA's negotiations.

As outlined in the following table, the negotiated total value of this Contract Modification is \$10,382,106, of which \$7,435,059 will compensate Frontier for the Claims, and \$2,947,047 will compensate Tutor’s support of that Additional Work and financing costs.

Cert. Claim #	Amount Claimed	Negotiated Amount
31	\$ 7,736,528	\$ 4,943,063
32	\$ 2,728,478	\$ 1,847,704
33	\$ 1,229,005	\$ 883,304
34	\$ 1,066,960	\$ 750,690
39	\$ 1,299,633	\$ 924,797
40	\$ 800,256	\$ 632,548
61	\$ 9,649,839*	\$ 0
Interest		\$ 400,000**
Total	\$24,510,699	\$10,382,106

\* Claim 61 for \$9,649,839, SFMTA determined to have no merit of entitlement

\*\*During negotiations \$1,200,000 for interest expenses was requested by the Contractor and \$400,000 was the negotiated amount.

**Contractor Certified Claim 31.** Claimed costs of the extra work and direct cost performance impacts resulting from intact rock blocks (i.e. “hard rock”), a differing site condition, encountered during excavation of the CTS. Claim 31, totaling \$7,736,528, was ultimately negotiated to \$3,349,491 for Frontier’s direct costs, \$970,649 for the Contractor’s direct costs, \$128,418 for additional quality control and/or testing costs, and \$494,505 for Contractor markups, for a total cost payment of \$4,943,063.

**Contractor Certified Claim 32.** Claimed costs of the extra work and direct cost performance impacts resulting from changing the tunnel precast segment widths from 4 foot to 5 foot throughout the CTS. Claim 32, totaling \$2,728,478, was ultimately negotiated to \$1,256,076 for Frontier’s direct costs, \$359,499 for the Contractor’s direct costs, \$47,552 for additional quality control and/or testing costs, and \$184,578 for Contractor markups, for a total payment of \$1,847,704.

**Contractor Certified Claim 33.** Claimed costs of the extra work and direct cost performance impacts due to voids and unstable ground encountered during excavation at CTS. This differing site condition Claim totaled \$1,229,005, which was ultimately negotiated to \$612,716 for Frontier’s direct costs, \$161,775 for Contractor direct cost, \$21,385 for additional quality control and/or inspections, and \$87,427 for Contractor markups, for a total payment of \$883,304.

**Contractor Certified Claim 34.** Claimed costs of extra work and direct cost performance impacts resulting from the first delay to the CTS excavation due to required compensation grouting. The Claim, totaling \$1,066,960, was ultimately negotiated to \$513,060 for Frontier’s direct costs, \$143,800 for the Contractor’s direct costs, \$19,021 for additional quality control and/or inspections, and \$74,809 for Contractor markups, for a total payment of \$750,690.

**Contractor Certified Claim 39.** Claimed costs of the extra work and direct cost performance impacts during the barrel vault stage grouting due to differing site conditions. The Claim, totaling \$1,299,633, was ultimately negotiated to \$628,876 for Frontier’s direct costs, \$179,750

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for Contractor direct costs, \$23,803 for additional quality control and/or inspections, and \$92,368 for Contractor markups, for a total payment of \$924,797.

**Contractor Certified Claim 40.** Claimed costs of extra work and direct cost performance impacts resulting from delay to the CTS excavation due to required compensation grouting. The Claim, totaling \$800,256, was ultimately negotiated to \$448,442 for Frontier's direct costs, \$107,850 for Contractor direct costs, \$14,292 for additional quality control and/or inspections, and \$61,964 for Contractor markups, for a total payment of \$632,548.

**Contractor Certified Claim 61.** Contractor agreed that the costs included in that Claim are compensated under the Contractor Certified Claims listed above, and no separate payment will be made for this Claim.

**Financing Costs.** During negotiation \$1,200,000 for interest expenses was request by the Contractor and \$400,000 was the negotiated amount.

## **STAKEHOLDER ENGAGEMENT**

The proposed actions will facilitate the timely completion of the Project, which will benefit stakeholders. During construction of the Chinatown Stations and the specifically excavation work by Frontier, extensive outreach and stakeholder communications was conducted. These outreach activities will continue until the completion of the project.

## **ALTERNATIVES CONSIDERED**

The Board could decide to ask staff to re-negotiate these items. If renegotiation fails then, mediation could be attempted and if that fails then litigation would be the final option.

## **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 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, may be found in the records of the Planning Department at 49 South Van Ness in San Francisco, and is incorporated herein by reference.

## **FUNDING IMPACT**

The source of funds to pay for this contract modification will come from SFMTA capital reserve funds.

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**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

No other approvals are required.

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

**RECOMMENDATION**

Staff recommends that the SFMTA Board of Directors approve Modification No. 133 to Contract No. 1300, Third Street Light Rail Program Phase 2 - Central Subway Stations, Surface, Track and Systems with Tutor Perini Corporation, to resolve claims from subcontractor Frontier-Kemper Constructors, Inc. arising from the excavation of the CTS in the amount of \$10,382,106, for a modified contract amount \$946,873,016.76.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION NO. \_\_\_\_\_

WHEREAS, The SFMTA contracted with Tutor Perini Corporation (Tutor) to construct the Central Subway Stations, Surface, Track and Systems under Contract No. 1300. Frontier-Kemper Constructors, Inc. (Frontier) is a subsidiary of and subcontractor to Tutor that excavated the Central Subway Chinatown Station; and,

WHEREAS, Frontier submitted seven certified claims that it valued at \$11,608,588 for uncompensated labor costs, delays, schedule impacts, and escalated equipment costs arising from additional work and effort required to excavate soils and rock. Frontier claimed that the additional work, costs, and effort was necessary due to unexpected geologic conditions. Tutor claimed an additional \$3,252,272 in costs incurred to support Frontier's work; and,

WHEREAS, The City Attorney engaged a forensic accountant to audit Contractor's and Frontier's records to confirm claimed costs and expenditures. The SFMTA engaged Edgar Lopez, former City Architect for S.F. Public Works, as a consultant to negotiate the Claims. The SFMTA also independently estimated the fair and reasonable costs of the additional work and effort, which informed the SFMTA's negotiations; and,

WHEREAS, The negotiated total value of this Contract Modification is \$10,382,106, of which \$7,435,059 will compensate Frontier for the Claims, and \$2,947,047 will compensate Tutor's support of that Additional Work; 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 49 South Van Ness in San Francisco, and is incorporated herein by reference; therefore, be it

RESOLVED, That the SFMTA Board has reviewed and considered the Central Subway Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report (SEIS/SEIR) and record as a whole, and finds that the Central Subway SEIS/SEIR 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

RESOLVED, That the SFMTA Board of Directors approves Modification No. 133 to Contract No. 1300, Third Street Light Rail Program Phase 2 - Central Subway Stations, Surface, Track and Systems with Tutor Perini Corporation for the construction of Central Subway Stations, Trackway and Systems, to resolve claims from subcontractor Frontier-Kemper Constructors, Inc. arising from the excavation of the Chinatown Station in the amount of \$10,382,106.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of October 20, 2020.

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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

## BILATERAL CONTRACT MODIFICATION NO. 133

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

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

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**Contract Modification No. 133** – China Town Station: Impacts of Differing Site Conditions and Design Changes to Subcontractor Frontier-Kemper, Inc.

This Bilateral Contract Modification No. 133 (“Modification”), negotiated by the parties, resolves Contractor’s Certified Contract Claims Nos. 31, 32, 33, 34, 39, 40, and 61 and any related claims that Frontier-Kemper Constructors, Inc. (“Frontier”) has brought or may bring concerning its work on the Central Subway Project, including but not limited to costs, delays and impacts incurred from differing site conditions and related design changes, which Contractor claims caused it and its subcontractor, Frontier to incur additional costs arising from differing site conditions, design changes, cumulative delays, impacts and related inefficient performance of Frontier’s Work (collectively “Claims”).

**The Contract is hereby modified as follows:**

1. City shall pay Contractor \$10,382,106.00 to compensate Contractor and Frontier to resolve the SFMTA merited Claims, which costs include but are not limited to:
  - a. Added costs due to inefficiencies Contractor and Frontier claim were incurred arising from differing site conditions and design changes;
  - b. Additional labor and use of materials due to differing site conditions encountered due to unanticipated “hard rock” while excavating the Chinatown Station (CTS);
  - c. Added labor costs due to Work performed outside of planned work hours, during overtime hours and on weekends;
  - d. Escalation of equipment costs;
  - e. Additional mobilization costs for Work performed outside the planned period of performance of July 2013 through December 31, 2016;
  - f. Added supervisory and administrative costs.
2. The Parties negotiated the following compromise resolution of the Claims:
  - a. Contractor Certified Claim 31. Contractor claimed costs for extra work and direct cost performance impacts resulting from intact rock blocks (i.e. “hard rock”), a differing site condition, encountered during excavation of the CTS. This Claim, totaling \$7,736,528, was ultimately negotiated to \$3,349,491 for Frontier’s direct costs, \$970,649 for the Contractor’s direct costs, \$128,418 for additional quality control and/or testing costs, and \$494,505 for Contractor mark-ups, for a total cost payment of \$4,943,063.



- b. Contractor Certified Claim 32. Contractor claimed costs for extra work and direct cost performance impacts resulting from changing the tunnel precast segment widths from 4-foot to 5-foot throughout the CTS. This Claim, totaling \$2,728,478, was ultimately negotiated to \$1,256,076 for Frontier’s direct costs, \$359,499 for the Contractor’s direct costs, \$47,552 for additional quality control and/or testing costs, and \$184,578 for Contractor markups, for a total payment of \$1,847,704.
- c. Contractor Certified Claim 33. Contractor claimed costs for extra work and direct cost performance impacts due to voids and unstable ground encountered during excavation at CTS. This differing site condition Claim totaled \$1,229,005, which was ultimately negotiated to \$612,716 for Frontier, \$161,775 for Contractor direct cost, \$21,385 for additional quality control and/or inspections, and \$87,427 for Contractor markups, for a total payment of \$883,304.
- d. Contractor Certified Claim 34. Contractor claimed costs for extra work and direct cost performance impacts resulting from the first delay to the CTS excavation due to required compensation grouting. The Claim, totaling \$1,066,960, was ultimately negotiated to \$513,060 for Frontier’s direct costs, \$143,800 for the Contractor’s direct costs, \$19,021 for additional quality control and/or inspections, and \$74,809 for Contractor markups, for a total payment of \$750,690.
- e. Contractor Certified Claim 39. Contractor claimed costs for extra work and direct cost performance impacts during the barrel vault stage grouting due to differing site conditions. The Claim, totaling \$1,299,633, was ultimately negotiated to \$628,876 for Frontier’s direct costs, \$179,750 for Contractor direct costs, \$23,803 for additional quality control and/or inspections, and \$92,368 for Contractor markups, for a total payment of \$924,797.
- f. Contractor Certified Claim 40. Contractor claimed costs for extra work and direct cost performance impacts resulting from delay to the CTS excavation due to required compensation grouting. The Claim, totaling \$800,256, was ultimately negotiated to \$448,442 for Frontier direct costs, \$107,850 for Contract direct costs, \$14,292 for additional quality control and/or inspections, and \$61,964 for Contractor markups, for a total payment of \$632,548.
- g. Contractor Certified Claim 61. Contractor agreed that the costs claimed in Claim 61 that Claim are compensated under the Contractor Certified Claims listed above.

3. The following new Contract Pay Item is added to compensate for the Claims:

Pay Item	Description	Agreed Amount
CM 133-01	Contractor Certified Claims 31, 32, 33, 34, 39, 40 and 61: CTS: Impacts of DSCs and Design Changes to Frontier-Kemper, Inc. – As Negotiated with TPC mark-ups	\$ 7,435,059.00
	Contractor’s Direct and Support Costs	\$ 2,547,047.00
	Contractor’s Financing Costs	\$ 400,000.00
	Total Net Amount of this Contract Modification Increase:	\$ 10,382,106.00
	Previous Contract Amount	\$ 936,490,910.76

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New Revised Contract Amount:

\$ 946,873,016.76

4. Excluded Claims: This Modification does not resolve Contractor's claims for additional compensation for Contractor "extended direct costs of support," which costs include Traffic Control, Survey, Quality Control, Stormwater Treatment Plan, Vibration, Dust, Noise and Settlement monitoring, General Maintenance; Toilets, Traffic Plans and Engineering, Permits. The SFMTA and Contractor each reserves all rights and defenses regarding the Excluded Claims.
5. Claims Release: Except as specifically stated herein, the compensation (time and cost) set forth in this Contract Modification comprises the total compensation due to Contractor and Frontier-Kemper Constructors, Inc. and its subcontractors' and suppliers, as a result of the events giving rise to the Contract Modification and for the Claims described herein, including any impact on unchanged Work. The execution of this Contract Modification constitutes an accord and satisfaction of any claim for additional compensation or time for the Work and Claims described in this Contract Modification, and Contractor on behalf of itself, and all Subcontractors and Suppliers, specifically waives and releases any and all claims rights or interest, including but not limited to legal and equitable claims for direct, indirect, and overhead costs, delay, impact, interest, disruption, loss of efficiency or other extraordinary or consequential costs arising from or related to the Work described in this Contract Modification 133, the Claims, and in Contractor's Certified Claims Nos. 31, 32, 33, 34, 39, 40, 61, with exception and reservation of the Excluded Claims described in the preceding section of this Modification.

Except as specifically stated herein, all other terms and conditions of the Contract remain unchanged. Any modification of the Contract must be expressed and in conformance with the General Provisions and Special Provisions.

Signatures on the next page.

In Witness Whereof, this Modification has been executed in San Francisco, California as of this day  
October \_\_\_\_\_, 2020.

**TUTOR PERINI CORPORATION**

**Accepted**

By:

\_\_\_\_\_  
Patrick Jennings  
Project Manager  
Tutor Perini Corporation

**CITY AND COUNTY OF SAN FRANCISCO**

**Recommended**

By:

\_\_\_\_\_  
Nadeem S. Tahir P.E.  
Program Director  
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: \_\_\_\_\_  
Roberta Boomer, Secretary

**APPROVED AS TO FORM:**

Dennis J. Herrera  
City Attorney

By:

\_\_\_\_\_  
Robert K. Stone  
Deputy City Attorney