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November 1, 2024

The Honorable Members of the Board of Supervisors  
City and County of San Francisco  
1 Dr. Carlton Goodlett Place, Room 244  
San Francisco, CA 94102

***Subject: Request for Approval – Modification No. 4 CN1266-2 Agreement for Design Review, Software, Implementation and Testing Services for an Advanced Train Control System for the Central Subway Project, with Hitachi, Inc.***

**Honorable Members of the Board of Supervisors:**

The San Francisco Municipal Transportation Agency (SFMTA) requests that the San Francisco Board of Supervisors approve Modification No. 4 to the Agreement for Design Review, Software, Implementation and Testing Services for an Advanced Train Control System (ATCS) for the Central Subway Project, with Hitachi Rail GTS USA, Inc. (formerly Thales Transport & Security Inc.). This modification pays for changes to ATCS software that improve the subway throughput, acknowledges contractor name change to Hitachi Rail GTS USA Inc., extends the warranty period to August 30, 2025, compensates for costs Hitachi incurred from delays to the Project, and replenishes monies to this contract that had previously been paid to Hitachi under this contract. The funds require replenishment because Tutor Perini Corporation (Tutor Perini) failed to release retention to Hitachi under the related Central Subway construction contract. Modification No. 4 increases the total contract price by \$2,095,084.82, for a modified Contract Amount of \$29,825,385.22.

**Background**

On December 3, 2013, the SFMTA Board of Directors adopted Resolution No. 13-260 awarding Contracts 1266-1 and 1266-2 (ATCS Contracts) to Thales for procurement of proprietary ATCS equipment, designs, software, configuration and testing for the Central Subway. On June 10, 2014, the Board of Supervisors adopted Resolution No. 196-14 approving the award of the ATCS Contracts.

Contract 1266-1 for ATCS equipment was awarded for a total amount not-to-exceed \$3,425,424. Contract 1266-2 for ATCS design, software, implementation and testing services was awarded for a total amount not-to-exceed \$21,363,292. The sum total contract amounts of the ATCS Contracts is \$24,788,716. The ATCS is a proprietary system only available from Thales (since acquired by Hitachi), and the ATCS Contracts were therefore sole source procurements.

Tutor Perini was assigned the scope of the Central Subway construction work, including the construction of ATCS infrastructure and installation of ATCS equipment, under SFMTA Contract 1300. The term for the ATCS Contracts commenced upon Notice to Proceed in 2014. The term ended on



March 31, 2024 after a Warranty Period that ran for three years past the March 31, 2021 Contract 1300 Substantial Completion.

### **Prior Modifications to Contract No. 1266-2**

Hitachi was originally a subcontractor to Tutor under Contract No. CS-1300, but that arrangement proved to be unworkable. SFMTA exercised its rights under Contract 1300 to re-assign Contract 1266-2 back to the SFMTA. On February 19, 2019, the SFMTA Board of Directors (Board) approved an amendment to Contract 1300 (the Central Subway construction contract) to affect an early reassignment of the ATCS Contracts from Tutor back to the SFMTA before the Revenue Service date. Following reassignment back to the SFMTA, Contract 1266-2 has been modified three times.

Contract Modification No. 1, dated December 3, 2019, affirmed the reassignment of the contract back to SFMTA and corrected the contract amount to \$14,309,214.00 to reflect ATCS design expenditures made under Contract 1300 when Thales was a subcontractor to Tutor.

Contract Modification No. 2, dated February 19, 2021, modified ATCS designs concerning emergency stop equipment, station controllers, and the location of wayside equipment installation, increasing the contract amount to \$589,342.80 for a total contract amount not to exceed \$14,898,556.80. The Director of Transportation approved those contract modifications under the contracting authority the SFMTA Board delegated to him.

Contract Modification No. 3, dated April 6, 2021, modified the ATCS for NFPA Rule 130 compliance, adjusted track speed limits, updated design documents, reduced the number of portal intrusion devices, changed platform emergency stop buttons circuits, modified Chinatown Station equipment placement, and compensated Hitachi for accelerated implementation to achieve revenue service by April 29, 2022. The Amendment increased the total Project cost by \$12,831,743.60 for a total contract amount of \$27,730,300.40. Modification No. 3 was approved by the SFMTA Board in Resolution 210406-043 on April 6, 2021 and by the Board of Supervisors in Resolution 169-21 on April 30, 2021.

### **Contract Modification No. 4**

The modification formalizes the contractor's name change from Thales Transport & Security, Inc. to Hitachi Rail GTS USA Inc. The name change took place through two transactions: on April 11, 2022, it became Ground Transportation Systems USA Inc., and on June 3, 2024, it changed to Hitachi Rail GTS USA Inc. The contract is amended to replace all instances of "Thales Transport & Security, Inc." and "Thales" with "Hitachi Rail GTS USA Inc." and "Hitachi", respectively.

The modification covers additional work for non-communicating train tracking to improve subway throughput. Specifically, non-communicating trains are allowed to depart if the downstream platform block is occupied, provided all interstation blocks are unoccupied. The contract amount is increased by \$392,992.43 to pay for this additional work.



The modification also provides compensation for three periods of delay. In the first, the contractor's work was delayed 34 days from August 9 to September 13, 2021, due to construction delays. The modification increases the contract by \$600,000 to compensate for these delays. The second delay is related to a fire at the Yerba Buena Station traction power substation that caused a 14-day delay from July 6 to July 20, 2022. To cover the fire delay, the modification increases the contract amount by \$255,563.95. The third delay was caused by a work safety zone violation in the Central Subway during testing, leading to an 88-day delay from August 7 to November 3, 2023. For the third delay, the modification increases the contract amount by \$141,120.64. The total impact of these three delays is an increase in the contract amount of \$996,684.59.

When the contract was reassigned back to the SFMTA, the SFMTA paid Hitachi \$705,407.80, or the equivalent of the retention owed to Hitachi by Tutor Perini at that time. Tutor Perini disputed the retention payment to Hitachi, and the payment was made to ensure that Hitachi's work would continue uninterrupted. This amount is added to the contract value to ensure the total contract amount reflects all payments that will have been made to Hitachi when the contract is closed.

The modification also memorializes the actual warranty period for the Central Subway ATCS. The warranty started on August 30, 2022, when the contractor completed testing and achieved Substantial Completion in preparation for revenue service. The modification states that the warranty period will expire on August 30, 2025.

### **Charter Section 9.118 and Approval of SFMTA 2020-2020**

Board of Supervisors' approval is required for CN1266-2 under Charter section 9.118(b), because the modifications have an impact on the value of the Contract of more than \$500,000.

### **Alternatives Considered**

The SFMTA could have decided not to amend Contract 1266-2 to modify ATCS functions, but doing so would likely have degraded Central Subway operations and service delivery. The SFMTA could have denied Hitachi's delay claims, but that would have likely resulted in a further delay in the completion of the ATCS work, which would have delayed Central Subway revenue service. Denying Hitachi's claims may also have caused Hitachi to litigate its claims, transfer personnel off the Project, and/or refuse to provide further services to the SFMTA. The SFMTA reviewed these claims with the assistance of a claims expert contracted through AECOM, the SFMTA's project and construction management consultant for the Central Subway Project, and relied on that claims analysis to support its negotiation of the settlement of those claims that is being implemented through this modification.

### **Funding Sources**

The Central Subway Project was funded with Federal Transit Administration (FTA) New Starts, Federal Congestion Management & Air Quality (CMAQ), State Transportation Bond Proposition 1A and 1B,



State Regional Improvement Program, State Transportation Congestion Relief Program (TCRP), Prop K Half-Cent Local Sales Tax funds and other local funds.

**Funding Impact/Budget**

This Amendment reflects the execution of policy decisions previously made by the SFMTA Board. It will increase the total Project cost by \$2,095,084.88, which is included in the \$1.891 billion estimate-at-completion presented to the SFMTA Board on March 21, 2021. The additional budget for this contract modification will be funded by the Capital Budget Reserve, which is a source available when no other funding sources are available and there is a regulatory or life/safety project element that must be funded.

**Recommendation**

The SFMTA respectfully requests that the San Francisco Board of Supervisors adopt the Resolution executing Modification 4 to 1266-2 Contract with Hitachi Rail GTS USA, Inc.

Thank you for your consideration of this proposal. Should you have any questions or require more information, please do not hesitate to contact me at any time.

**Sincerely,**

A handwritten signature in blue ink, appearing to read 'Jeff Tumlin'.

**Jeff Tumlin**  
**Director of Transportation**