

**THIS PRINT COVERS CALENDAR ITEM NO. : 10.5**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Capital Programs & Construction

**BRIEF DESCRIPTION:**

Approving Contract Modification Number One for San Francisco Municipal Transportation Agency (SFMTA) Contract No. 1282R, Twin Peaks Tunnel Trackway Improvement Project (Project), with NTK Construction, Inc., to decrease the contract amount by \$16,749,132 for a total contract amount not to exceed \$16,216,618, extend the contract term from 460 days to 593 days; and terminate the contract for convenience.

**SUMMARY:**



- On April 5, 2016, the SFMTA Board of Directors the Director of Transportation to execute Contract No. 1282R, Twin Peaks Tunnel Trackway Improvement Project, with NTK Construction, Inc., in the amount of \$32,965,750 and for a term of 400 calendar days, to replace the track structure and perform seismic strengthening in the Twin Peaks Tunnel.
- Under the original contract, the work was to be performed during 21 weekend shutdowns. But after the contract had been awarded, the SFMTA concluded that a large number of shutdowns of short duration would more severely impact transit service and the community surrounding the tunnel than anticipated.
- The SFMTA and NTK were not able to agree on an amended schedule. The SFMTA therefore determined it was in the best interest of the public to terminate the contract and rebid the work using an extended shutdown to perform the work.
- The San Francisco Administrative Code Section 6.22(l) authorizes a City agency to terminate a construction contract for convenience.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Project Budget & Financial Plan
3. Contract Modification No. 1

**APPROVALS:**

**DATE**

DIRECTOR	 _____	<u>1/8/2018</u>
SECRETARY	 _____	<u>1/8/2018</u>

**ASSIGNED SFMTAB CALENDAR DATE:** January 16, 2018

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### **PURPOSE**

To approve Contract Modification Number One for San Francisco Municipal Transportation Agency (SFMTA) Contract No. 1282R, Twin Peaks Tunnel Trackway Improvement Project (Project), with NTK Construction, Inc., to decrease the contract amount by \$16,749,132 for a total contract amount not to exceed \$16,216,618, extend the contract term from 460 days to 593 days; and terminate the contract for convenience.

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

This action supports the following goals and objectives in the SFMTA's Strategic Plan and Transit First Policy Principles:

- Goal 1: Create a safer transportation experience for everyone.
  - Objective 1.2: Improve workplace safety and security.
  - Objective 1.3: Improve the safety of the transportation system
  
- Goal 2: Make transit, walking, bicycling, taxi, ridesharing & car-sharing the preferred means of travel.
  - Objective 2.2: Improve transit performance
  
- Goal 3: Improve the environment and quality of life in San Francisco.
  - Objective 3.1: Reduce the Agency's and the transportation system's resource consumption, emissions, waste and noise
  - Objective 3.2: Increase the transportation system's positive impact to the economy
  - Objective 3.3: Allocate capital resources effectively
  - Objective 3.4: Deliver services efficiently

Transit First Policy 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.

### **DESCRIPTION**

#### **Background**

To improve light rail vehicle service, maintain system safety, and increase vehicle speed between the West Portal and Castro Stations, the SFMTA must replace the track structure and perform seismic upgrades in the Twin Peaks Tunnel between the West Portal Station and the Old Eureka Valley

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Station. The Old Eureka Valley Station was originally built as part of the Twin Peaks Tunnel. The station is no longer in service for passenger access, but Muni Metro lines currently operate through the station structure.

The work under this contract work included replacement of ballast, ties, rail, rail fixation and drainage between the tracks. The tracks in the Twin Peaks Tunnel were last replaced in the early 1970's and are reaching the end of their useful life. A February 2012 report on the seismic vulnerability of the Forest Hill Station and the Eureka Valley Station identified necessary repairs. The Project will implement that report's recommendations, including seismic strengthening of walls, beams and columns in the Eureka Valley Station and strengthening a section of the tunnel at the top east of the West Portal Station.

### **Project Description**

The Project intended to replace the track structure (ballast, ties, rail, and track drainage) in the Twin Peaks Tunnel, between the West Portal and Old Eureka Valley Stations and make seismic improvements to the Old Eureka Valley Station within the tunnel.

Trackwork improvements included replacing the existing tie and ballast tracks, replacing embedded tie and ballast track at West Portal and Forest Hill Stations with direct fixation embedded track installing four new crossovers with associated overhead catenary systems and maintenance lighting, replacing two turnouts at the Old Eureka Valley Station, installing wayside rail lubrication systems, and installing a track switch control panel at West Portal Station.

Track drainage improvements included cleaning and video inspection of tunnel drainage lines and manholes, and repairing, replacing, and slip-lining broken or damaged drainage lines. Seismic improvements include adding concrete footings and steel columns and girders, strengthening column/girder connections, and adding fireproofing material to columns and girders.

Other work included strengthening the brick crown at the top of the tunnel, repairing concrete cracks in the tunnel ceiling, replacing fire alarm and fire detection and suppression systems in the West Portal Station, repairing isolation gate valves for firefighting water lines, and replacing undercar deluge system branch lines (fire suppression system below the trains installed between the trackway) at the Forest Hill Station.

### **Contract Status**

On April 5, 2016, the SFMTA Board of Directors adopted Resolution No. 16-040 which authorized the Director of Transportation to execute Contract No. 1282R, Twin Peaks Tunnel Trackway Improvement Project, with NTK Construction, Inc., as the responsible bidder that submitted the lowest responsive bid in the amount of \$32,965,750, and for a term of 400 calendar days.

On May 21, 2016, the Contractor and SFMTA staff discovered a clerical error in the Board Calendar Item and the text of Resolution No. 16-040, which incorrectly stated the contract term to be 400

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calendar days, not 460 calendar days as advertised and bid. The contract as originally bid stated a contract time of 460 days instead of the 400 days.

The original contract provided that the Contractor would perform work requiring rail service suspension during 21 weekend service shutdowns of the Twin Peaks Tunnel. After the SFMTA awarded the Contract, based on recent experience with trackway replacement in the Sunset Tunnel, the SFMTA concluded that a large number of shutdowns of short duration would more severely impact transit service and the community surrounding the tunnel than the Agency had anticipated. With each shutdown, the SFMTA would have to provide bus bridges to replace suspended rail service which would create planning and staffing challenges for each shutdown. In addition to the time the Contractor must allot to mobilize (equipment, materials and personnel), perform the work, and then demobilize and vacate the tunnel, the Agency must also schedule sufficient time to test the Advanced Train Control System (ATCS) and safety systems to return the tunnel to revenue service. Consolidating shutdowns into fewer but longer periods would substantially reduce the chance that restarting transit services will be delayed, and would reduce customer uncertainties. In addition, after the contract was awarded, residents and merchants at the West Portal community raised concerns about problems that would arise as to parking, traffic impacts, noise, transit service changes, and staging areas during a large number of weekend shutdowns.

## **PROPOSED CONTRACT MODIFICATION**

The SFMTA and the Contractor explored different potential approaches and schedules to perform the work to reduce and consolidate the number and duration of shutdowns of the Twin Peaks Tunnel. The SFMTA and the Contractor negotiated a proposed contract modification that reduced the shutdowns to five of ten to 14 days' duration. The proposed contract modification also addressed community concerns by modifying the traffic control specifications and Contractor staging and work areas to reduce construction impacts on commercial areas in West Portal during business hours.

Changing the number and duration of the shutdowns resulted in a significant increase to the overall time required to perform the work and the cost of the work. The Contractor required approximately eight to ten weeks between each shutdown to procure needed equipment, materials and labor necessary to perform the work using continuous work shifts (that is, shifts scheduled 24 hours/seven days per week). The scheduling of shutdowns was further complicated by City mandated "blackout" dates on holidays and during certain community events that require transit service, during which the Contractor could not perform any work.

The Contractor's proposed costs for the changed shutdown work schedule would have increased the original contract amount by \$15,265,000, for a new total contract amount of \$48,230,750, and would have extended the term of the contract from 460 days to 807 days. Staff attempted to negotiate costs with the Contractor, but in the end, staff was unable to reach an agreement in which the additional costs could be considered to be fair and reasonable to the Agency and structured in a way that would accord with the Federal Transit Administration (FTA) requirements. The Agency determined that it will obtain better competitive pricing if the contract was terminated and the work re-advertised with the revised shutdown schedule and traffic plans. Doing so would ensure that all aspects of the work,

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including the revised shutdown schedule, are competitively bid and tested in the open-market for construction services. During the period that the Contractor and the SFMTA were negotiating the proposed contract modification, the Contractor performed work that did not require suspension of transit service in the tunnel, but was otherwise on standby.

### **AUTHORITY TO TERMINATE FOR CONVENIENCE**

Contract General Provision Section 14.03 exercises authority granted under San Francisco Administrative Code Section 6.22(l), which authorizes a City agency to terminate a construction contract for convenience. Section 6.22(l) requires that the terminating agency's commission or board approve the termination with a finding that the termination is in the best interest of the City. Section 14.03 of the General Provisions of the Contract also sets out the parameters and conditions for a negotiated final contract modification to pay the Contractor for the work it performed prior to the termination, to transfer materials and equipment to the City, and to reimburse the Contractor its expenses arising from the termination.

On June 1, 2017, the Director of Transportation notified the SFMTA Board of Directors that he authorized staff to direct the Contractor to suspend the work pending negotiation of a termination agreement and final contract modification to the contract. On June 2, 2017 the SFMTA issued to the contractor a notice of intent to terminate the Contract for the City's convenience. On September 22, 2017, NTK submitted the Termination Contract Claim in the amount of \$6,230,695. The claim is to compensate the Contractor for material and equipment already procured as part of the original contract, extended overhead for the period of August 19, 2017 through December 29, 2017, and MTA directed field work to clean and secure the jobsite after the termination date.

Staff evaluated the claim, negotiated with the Contractor and agreed that it is fair and reasonable to adjust the contract value based on the following:

1. Compensate the Contractor in the amount of \$266,000 for Indirect Cost for Delay associated with the increase in Contract Time from 460 to 593 days. This amount is based on an extension of 133 days and the Established Daily Indirect Rate for Delay of \$2,000 per day as set forth in the Schedule of Bid Prices. The project schedule was delayed because SFMTA cancelled the 21 weekend shutdowns in the original Contract in August 2016, and underwent a ten month long discussion to rearrange the five longer shutdowns and attempt to negotiate with NTK on its proposed contract modification. NTK's field work was not suspended during the discussion, but NTK could not perform any tunnel shutdown work on the Critical Path of the construction schedule. Moreover, upon the notice of contract termination, SFMTA decided it would be more time-efficient and cost-effective to continue engaging NTK's field crews to wrap up the open construction areas and deliver Contract materials to SFMTA's designated locations. NTK was directed by SFMTA to maintain its project management and field staff for the project, with incurring project overhead costs and home office overhead costs, through the original Contract Substantial Completion Date of August 18, 2017 (Contract Day 460), and substantially completing the work on December 29, 2017 (Contract Day 593).

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2. Compensate the Contractor in the amount of \$1,908,746 to resolve NTK's Termination Contract Claim. This amount includes transfer of ownership of specialty equipment that NTK purchased to perform the Contract Work, which specialty equipment could not be used or transferred to any other ongoing or planned NTK projects. This amount also includes compensation for handling and delivering the above specialty equipment, the Contractor-fabricated materials, equipment, tools and supplies acquired in connection with the performance of the Work for this Contract to the Engineer's designated locations and for any and all title transferring costs. The equipment, materials, tools and supplies purchased under this terminated contract will be transferred exclusively to the new construction contract advertised in November 2017, and will not be used for other projects.
3. Adjust the estimated Contract bid quantities to accord with the actual quantities of materials installed or used in performing the Work. The new construction contract will benefit from the installed materials and work performed under existing contract. Completed work will not be duplicated under new contract. The total value of work not performed under existing contract resulted in a reduction of (\$18,923,878) to the contract value.
4. The remaining funds from this Contract as a result of the notice to terminate the Contract will be used to fund the rehabilitation of the tunnel in the scope of the rebid of 1282R1.
5. Contract Modification Number One will decrease the contract value of \$32,965,750 by the net amount of \$16,749,132. The final contract amount of \$16,216,618 consists of \$266,000 of indirect cost due to delay; termination claim cost of \$1,908,746; material purchase cost of \$8,092,771; work completed cost of \$5,949,101 from the original contract amount of \$32,965,750.

Staff anticipates bringing Contract #1282R1, Twin Peaks Tunnel Trackway Improvement Project, to the Board for approval early in 2018.

**ENVIRONMENTAL REVIEW**

The Twin Peaks Tunnel Trackway Improvement Project is subject to the California Environmental Quality Act (CEQA). Title 14 of the California Code of Regulations Section 15302 provides an exemption from environmental review for the replacement or reconstruction of existing structures and facilities where the new structure is located on the same site as the structure replaced.

The Planning Department has determined that the Twin Peaks Tunnel Trackway Improvement Project is exempt from environmental review (Planning Case No. 2015-008803ENV) pursuant to Title 14 of the California Code of Regulations Section 15302.

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

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

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The Contract Compliance Office confirms that NTK has met the Contract's 26% SBE participation goal.

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

No other approval are required for this Contract Modification.

**RECOMMENDATION**

Staff recommends that the SFMTA Board of Directors approve Contract Modification Number One for San Francisco Municipal Transportation Agency (SFMTA) Contract No. 1282R, Twin Peaks Tunnel Trackway Improvement Project, with NTK Construction, Inc. to decrease the contract amount by \$16,749,132, for a total contract amount not to exceed \$16,216,618, to extend the contract term from 460 days to 593 days, and terminate the contract for convenience.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

WHEREAS, The purpose of the Twin Peaks Tunnel Trackway Improvement Project is to replace the track structure (ballast, ties, rail, and track drainage) in the Twin Peaks Tunnel, between the West Portal and old Eureka Valley Stations; and,

WHEREAS, The completion of the Work under this contract is required to maintain the efficiency and safety of public transit service through the Twin Peaks Tunnels; and,

WHEREAS, On April 5, 2016, the SFMTA Board of Directors adopted Resolution No. 16-040 which authorized the Director of Transportation to execute Contract No. 1282R, Twin Peaks Tunnel Trackway Improvement Project, with NTK Construction, Inc., (“Contract”) as the responsible bidder that submitted the lowest responsive bid, in the amount of \$32,965,750, and for a term of 400 calendar days; and,

WHEREAS, On May 21, 2016, Contractor and SFMTA staff discovered a clerical error in the executed contract documents, which incorrectly stated the contract term to be 400 calendar days, not 460 calendar days as advertised and bid, and the City and Contractor agree that the contract as originally bid and awarded should have stated a contract time of 460 days instead of the 400 days; and,

WHEREAS, The original contract required the Contractor to perform work in the Twin Peaks Tunnel during 21 weekend shutdowns when transit service in the tunnel would be suspended; and,

WHEREAS, Based on lessons learned from similar work in the Sunset Tunnel after award of the Contract, to reduce Project impacts to transit services, traffic, residents and businesses in the Castor and West Portal Districts and areas west of Twin Peaks, the SFMTA sought to modify the Project schedule so that the work would be performed during with five extended shutdowns instead of 21 weekend shutdowns; and

WHEREAS, Changing the number and duration of the shutdowns required a contract modification that would have significantly increased both the overall time required to perform the work and the costs of the work ; and,

WHEREAS, Staff attempted to negotiate some of these costs with the Contractor, but were unable to reach an agreement in which the additional costs could be considered to be fair and reasonable to the Agency and structured in a way that would accord with FTA and other legal requirements; and,



WHEREAS, The Agency anticipates that it will obtain better competitive pricing if the Contract is terminated and the work re-advertised using a revised shutdown schedule and amended traffic plans, and on that basis, the Director of Transportation determined that it is in the best interest of the City to terminate Contract 1282R; and,

WHEREAS, On June 2, 2017 the SFMTA issued to contractor a notice of intent to terminate the Contract for the City's convenience, authorized in Contract General Provisions section 14.03 and San Francisco Administrative Code section 6.22(l), which authorizes a City agency to terminate a construction contract for convenience; and

WHEREAS, On September 22, 2017, the Contractor submitted the Termination Contract Claim in the amount of \$6,966,516.65 in accordance with the claims procedures set in Contract General Provisions section 14.03 to compensate the Contractor for work performed prior to and after the notice of termination and compensation for specialty materials and equipment that contractor had purchased for the work and then transferred to the SFMTA; and,

WHEREAS, Staff negotiated and recommends the adjustment to the Contract amount as fair and reasonable compensation for contractor's direct and indirect costs arising from and related to the termination of the Contract, and to compensate the Contractor for materials and specialty equipment procured to perform the work, which have been transferred to the SFMTA, and to adjust the Contract bid item quantities to reflect quantities of materials actually installed or used in performing the work; and,

WHEREAS, The Contract Compliance Office reviewed Contract Modification No. 1 and confirmed that NTK Construction, Inc. will continue to meet the Small Business Enterprise participation goal of 26% established for this contract; and,

WHEREAS, The Twin Peaks Tunnel Trackway Improvement Project is subject to the California Environmental Quality Act (CEQA); Title 14 of the California Code of Regulations Section 15302 provides an exemption from environmental review for the replacement or reconstruction of existing structures and facilities where the new structure is located on the same site as the structure replaced; and,

WHEREAS, The Planning Department has determined that the Twin Peaks Tunnel Trackway Improvement Project is exempt from environmental review (Planning Case No. 2015-008803ENV) pursuant to Title 14 of the California Code of Regulations Section 15302; and,

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

WHEREAS, The funding for work under the contract is from Federal grants and local sources; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors approves Contract Modification Number One to Contract No. 1282R, Twin Peaks Tunnel Trackway Improvement Project, with NTK Construction, Inc. to decrease the contract amount \$16,749,132, for a final contract amount not to exceed \$16,216,618 and to extend the contract term from 460 days to 593 days; and be it further

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to terminate the contract for the City's convenience and that such termination is in the best interest of the City.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of January 16, 2018.

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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

ENCLOSURE 2

TWIN PEAKS TUNNEL TRACKWAY IMPROVEMENT PROJECT

San Francisco Municipal Railway Contract No. 1282R

Project Budget and Financial Plan

<b>Cost</b>	<b>Amount</b>
Pre-development, Conceptual Engineering, Detail Design Phase Staff Support (SFMTA and Other City Services)	\$3,314,000
Construction Phase Construction Contract, Contingency, and Staff Support	\$48,500,000
<b>Total Cost</b>	<b>\$51,814,000</b>

<b>Funding</b>	<b>Amount</b>
Federal Grant Funds	\$41,451,200
SFMTA Revenue Bonds	\$4,754,780
Bridge Toll Funds	\$1,458,907
Prop K Sales Tax	\$4,149,113
<b>Total Funding</b>	<b>\$51,814,000</b>

ENCLOSURE 3

**CONTRACT MODIFICATION NO. 01**

**San Francisco Municipal Transportation Agency Contract No. 1282R  
Twin Peaks Tunnel Trackway Improvement Project**

Contractor: NTK Construction, Inc.  
501 Cesar Chavez Street, Suite 123  
San Francisco, CA 94124

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The Contract is modified as follows:

1. Scope of Work:

CM-1A	<p>Unavoidable Delay</p> <p>Increase the Contract Time from 460 days to 593 days, for a 133-day time extension to the date of Substantial Completion, as a result of the following SFMTA's actions: the SFMTA's cancellation of the Twin Peaks Tunnel shutdowns; SFMTA's notice of termination for convenience on June 2, 2017; and SFMTA's direction for additional work in the Junipero Serra median and Eureka Shoofly areas, which was completed in December of 2017.</p> <p>Compensation of the Indirect Cost for Delay is based on the Established Daily Indirect Rate for Delay of \$2,000 per day as established in the Schedule of Bid Prices.</p> <p><b>Total Unit Price: \$266,000.00</b></p>
CM-1B.1	<p>Termination Contract Claim</p> <p>On June 2, 2017, SFMTA on RE Letter #089 communicated its determination to terminate the contract for the City's convenience and directed the NTK Construction Inc. (NTK) to comply with its requirement under the General Provisions (GP) Section 14.3 Termination By the City For Convenience. In accordance with Sections 14.3.C and 14.3.D, NTK submitted its termination Contract Claim. The termination Contract Claim has been resolved as follows:</p> <p>As directed by the SFMTA during the period between June 2, 2017 and December 29, 2017, the Contractor is compensated for additional costs associated with protection and preservation of the property related to this Contract, surveying various locations of the Site, and completing such part(s) of the Work in the Junipero Serra median and Eureka Shoofly areas, which was not terminated by the notice of termination.</p> <p>The Contractor transferred ownership (to the extent that ownership of said equipment has not previously been transferred to the SFMTA) of the following specialty equipment that NTK purchased to perform the Contract Work, which specialty equipment could not be used or transferred to any other ongoing/planned NTK projects:</p>

1. Pettibone Speedswing x 2 EA
2. Harsco Tamper 2400 x 1 EA
3. Hudson Ballast Cart x 1 EA
4. Ford F350 Hi-Rail Pickup x 1 EA
5. Ford F250 Hi-Rail Pickup x 1 EA
6. Rail Cart (8' x 20' x 30' Ton Capacity, w/3' Removable Metal Side/End Panels) x 1 EA
7. Rail Cart (8' x 20' x 30' Ton Capacity) x 5 EA
8. Rail Rider x 2 EA
9. Tow behind Double Cart x 1 EA
10. MTM Portable Steel Rail Carts (10,000# Capacity) with 10' Tow Bar X 6 EA

The Contractor is also compensated for handling and delivering the above specialty equipment, the Contractor-fabricated materials, equipment, tools and supplies acquired in connection with the performance of the Work for this Contract, to the Engineer's designated locations and for any and all title transferring costs.

This Contract Modification settles all outstanding liabilities and all claims arising out of such termination of orders and subcontracts with the approval or ratification of the SFMTA.

**Total Lump Sum: \$1,908,746.00**

CM-1B.2

As a result of Contract Termination, adjust the estimated Contract bid quantities to accord with the actual quantities of materials installed or used in performing the Contract Work, as listed in the attached Appendix A of the Engineer's Final Quantity Summary. The final quantity adjustment to all bid items under the base Contract results in a reduction of \$18,923,878.00 to the base Contract Amount.

**Total of Unit Price Quantity Adjustments: (\$18,923,878.00)**

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

CM-1A	Unavoidable Delay	Unit Price	\$266,000.00
CM-1B.1	Termination Contract Claim Resolution	Lump Sum	\$1,908,746.00
CM-1B.2	Final Quantity Adjustment to the Contract Amount	Unit Price	(\$18,923,878.00)

Total Amount of this Contract Modification: Decrease (\$16,749,132.00)

Previous Total of Contract: \$32,965,750

New Revised Total of Contract: \$16,216,618

Total Contract Time added by this Contract Modification:	133 Days
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Previous Contract Substantial Completion Date: 8/18/2017

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Modified Contract Substantial Completion Date: 12/29/2017

3. This Modification is made in accordance with Articles 6, 7 and 14 of the Contract General Provisions. Except as provided herein all other terms and conditions of the Contract remain unchanged. This Contract Modification and resolution of the SFMTA Board of Directors approving it finally effect the City's termination of the Contract for the City's convenience.
  
4. Contractor acknowledges and agrees that the compensation stated herein for the Additional Work, transferred materials and equipment, adjustment to quantities and reduction in the Contract Amount, and extension of Contract Time, all as described above and in the referenced and attached documents, shall be full accord and satisfaction of all past, current and prospective costs incurred or that may be incurred in connection with Contractor's performance of the Contract or otherwise related or arising from the Contract and the termination of the Contract for the City's convenience without limitation, including any and all markups, overhead costs, direct and indirect costs for labor, materials, equipment, disruption, lost productivity, loss of efficiency, lost profits, lost opportunity costs, escalation, delay, extended overhead, administration and extended performance time.

Contractor releases the City from all claims, known and not known, arising from or related to the Contract, its performance of the Contract and the City's termination of the Contract for the City's convenience, for which full accord and satisfaction is hereby made. Contractor acknowledges that in so waiving all claims arising from or related to the Contract, its performance of the Contract and the City's termination of the Contract for the City's convenience, Contractor also waives all rights to any claims of which it is not aware arising from or related to the Contract, and that it has read, considered and understand the provisions and significance of Section 1542 of the California Civil Code, which states:

SECTION 1542. GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Contractor understands and acknowledges that a risk exists that it incurred or suffered or may incur or suffer, loss or damages as a result of the matters, facts, events, occurrences, transactions, causes and things referred to in this Contract Modification or the Contract which were unknown, unsuspected or unanticipated at the time this Contract Modification was executed. Contractor assumes this risk, and agree that the foregoing release shall in all respects be effective and not subject to termination or rescission.

5. SFMTA agrees to make the final and full payment within 30 days after the approval by the Board of Directors of SFMTA.

In Witness Whereof, the parties have executed this Modification in quadruplicate in San Francisco, California as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**NTK Construction, Inc.**

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

By: \_\_\_\_\_  
Sammy Kwok  
Project Manager

By: \_\_\_\_\_  
Edward D. Reiskin  
Director of Transportation

**Authorized By:**

MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

Resolution No. \_\_\_\_\_

Adopted: \_\_\_\_\_

\_\_\_\_\_  
Attest:

By: \_\_\_\_\_  
\_\_\_\_\_  
Secretary, SFMTA Board of Directors

**APPROVED AS TO FORM:**

Dennis J. Herrera, City Attorney

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