

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. 180116-005

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.



Secretary to the Board of Directors
San Francisco Municipal Transportation Agency