

THIS PRINT COVERS CALENDAR ITEM NO.: 13

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Central Subway

BRIEF DESCRIPTION:

Approving retroactively Amendment No. 3 and approving Amendment No. 4 to Contract No. CS-163-1 OCIP Insurance Brokerage Services, to provide excess liability insurance for the Central Subway Project, with Aon Risk Insurance Services West, Inc., to increase the contract amount by \$684,382 and \$6,321,304, respectively, for additional premium charges due to increased construction time and contract costs, for a total contract amount not to exceed \$25,094,436, and requesting the Board of Supervisors to approve retroactively approval of Amendment No. 3 and to approve Amendment No. 4.

SUMMARY:

- On February 7, 2012, the SFMTA Board of Directors approved Contract No. CS-163-1 with Aon Risk Insurance Services West, (Aon), for an amount not-to-exceed \$9,808,750 and a term of eight years, for brokerage services to procure owner-controlled insurance (OCIP) to cover catastrophic losses arising from the construction of the Central Subway Project that exceed the Project contractors' policies.
- The OCIP provides \$150 million in coverage over the tunnels contractor's own \$350 million policies, for total coverage of \$500 million. The OCIP also provides \$150 million in coverage over the contractor's own \$50 million policy for claims arising from construction of the stations, trackway and control systems.
- The premiums for the excess policies are based on the value of the construction contracts and the periods of active construction. The Aon Contract has been modified twice before, which have increased the total contract amount by \$8,280,000, for a total contract amount not to exceed \$18,088,750. Amendment Nos. 3 and 4 increase the contract amount by \$684,382 and \$6,321,304, respectively for additional premium arising from increases to construction contract amounts and extensions of construction time.
- Amendments Nos. 3 and 4 each require Board of Supervisors' approval under Charter Section 9.118(b), because each amendment exceeds \$500,000.

ENCLOSURES:

1. SFMTAB Resolution
2. CS-163-1 Contract, Amendments No. 3 and No. 4
3. <https://www.sfmta.com/about-sfmta/reports/central-subway-final-seis-seir> (Central Subway Final SEIS/SEIR and Mitigation Monitoring and Reporting Program)

APPROVALS:

DIRECTOR



DATE

9/11/2018

SECRETARY



9/11/2018

ASSIGNED SFMTAB CALENDAR DATE: September 18, 2018

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PURPOSE

Approving retroactively Amendment No. 3 and approving Amendment No. 4 to Contract CS-163-1 OCIP Insurance Brokerage Services, to provide excess liability insurance for the Central Subway Project, with Aon Risk Insurance Services West, Inc., to increase the contract amount by \$684,382 and \$6,321,304, respectively, for additional premium charges due to increased construction time and contract costs, for a total contract amount not to exceed \$25,094,436, and requesting the Board of Supervisors' retroactive approval of Amendment No. 3 and approval of Amendment No. 4.

STRATEGIC GOALS AND TRANSIT FIRST POLICY PRINCIPLES

This item will support the following SFMTA Strategic Plan Goals and Objectives:

Strategic Plan 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.

Objective 3.5: Reduce capital and operating structural deficits.

This item will support the following Transit First Policy Principles:

1. Improves the safe and efficient movement of people and goods.
2. Improves public transit as an attractive alternative to travel by private automobile.
8. Allocates transit investments to meet the demand for public transit generated by new public and private commercial and residential developments.
9. Promotes the use of regional mass transit and the continued development of an integrated, reliable, regional public transportation system.

DESCRIPTION

Background:

The Central Subway Project (Project) is the second phase of the SFMTA's Third Street Light Rail Project, which will add 1.67 miles of light rail track north from the northern end of the new Third Street Light Rail at Fourth and King Streets to a terminal in Chinatown, with a surface station at 4th and King Streets, and three subway stations located at Yerba Buena/Moscone Center, Union Square, and Chinatown. The Project will serve regional destinations, including Chinatown (the most densely populated area of the country that is not currently served by modern rail transportation), Union Square, Moscone Convention Center, Yerba Buena, South of Market and AT&T Park. The Project will also connect BART and Caltrain (the Bay Area's two largest regional commuter rail services), serve a low automobile ownership population of transit customers, increase transit use and reduce travel time, reduce air and noise pollution, and provide congestion relief. The Project has issued construction contracts with a current value of \$241,409,170 for tunnels and \$852,263,645 for stations, trackway and control systems. Tunnels construction commenced in January 2012 and

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concluded in May 2015. Stations, trackway and control systems construction commenced in June 2013 and is expected to conclude in late 2019. The start of Central Subway revenue operations is scheduled for December 2019.

The complexity of the Central Subway construction, including tunneling, cut-and-cover and mining of stations, in proximity to sensitive urban structures and facilities, has presented difficult construction challenges and significant potential liability to the City. To cover that liability, the SFMTA, through Aon, established an Owner Controlled Insurance Program (OCIP) to provide excess insurance coverage above the insurance that Project contractors would be required to provide. The purpose of the OCIP was to reduce the overall cost of procuring large insurance policies, reduce construction contract bid costs by relieving contractor's of some of the insurance burden, ensure that the insurance requirements for the Project did not reduce the number of contractors able to bid. The OCIP also reduced the impact of Project insurance requirements on insurance markets, which had reacted negatively to the large coverage requirements and had indicated that they would not offer the large policies required to multiple contractors.

On February 7, 2012, the SFMTA Board of Directors approved Contract No. CS-163-1 between the SFMTA and Aon Risk Insurance Services West, Inc. (Aon), in an amount not-to-exceed \$9,808,750 and for a term of eight years, actual premium costs to be adjusted based on final bid costs of the covered contract work. OCIP premiums are based on the cost of the construction work and the length of the construction period. OCIP premiums increase if Project construction contract costs increase or completion of construction is delayed (or time extensions are granted). OCIP costs also increase where heavy construction activities extend beyond five years, as OCIP underwriters' costs increase if re-insurance policies must be extended to match extended OCIP coverage periods.

The majority of Project construction is divided between two contracts. The Project tunnels were constructed under Contract 1252 with Barnard Impregelo Healey (Barnard) for a contract amount, as currently amended, of \$241,409,170, and a construction period of 1150 calendar days. Barnard provided \$350 million in insurance coverage, and the OCIP provided \$150 million in excess coverage. Construction under Contract 1252 commenced on January 27, 2012, and was completed on May 15, 2015, 24 days over the initial schedule.

The stations, trackways, and control systems are being constructed under Contract 1300 with Tutor Perini Corporation (Tutor) for a contract amount, as currently amended, of \$852,263,645. Tutor provided \$50 million in insurance coverage, and the OCIP provided \$150 million in excess coverage. Construction under Contract 1300 commenced on June 17, 2013, and is estimated to be substantially complete by December 12, 2019, a delay of 118 days.

Prior Amendments of the Contract:

The Aon Contract has been modified twice before, which increased the total contract amount by \$8,280,000, for a total amended contract amount not to exceed \$18,088,750.

Amendment No. 1. On August 3, 2012, the SFMTA Director of Transportation executed Amendment No. 1 to allow payment of services to more than one division of the Aon organization. Amendment No. 1 did not change the amount or term of the contract.

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Amendment No. 2. On November 6, 2012, the SFMTA Board of Directors adopted Resolution No. 12-135, which authorized the Director of Transportation to execute Amendment No. 2 to the agreement to provide additional excess insurance coverage for the Central Subway Program and to bind each layer of additional excess insurance coverage for a total amount not-to-exceed \$8,280,000.

Pending Contract Amendments

Amendment No. 3. May 21, 2013, the SFMTA awarded Contract 1300 for the construction of stations, trackway and systems for the Central Subway to Tutor Perini in an amount of \$839,676,400, which amount increased the value of the contract work covered by the excess insurance policies provided by Aon, and thereby triggered a net increase in the premiums for those policies in the amount of \$684,382. The Director of Transportation approved Amendment No. 3 on June 23, 2014.

Amendment No. 3 should have been presented to the SFMTA Board and then to the Board of Supervisors for their approval as required by Charter Section 9.118(b), but was not due to staff misunderstanding of the Director of Transportation's contract approval authority.

Amendment No. 4. Amendments to the contracts amounts and the construction time to the tunnels Contract No. 1252 for construction of the tunnels, and to Contract No. 1300 for the construction of the stations, trackway, and controls systems, have resulted in an increase in the premium costs for the OCIP excess insurance coverage in the amount of \$6,321,304. The contract amount for Contract 1252 has been increased \$7,825,155 and extended 24 calendar days. The contract amount for Contract 1300 has been increased \$12,587,245 and extended 118 calendar days.

Amendment No. 4 is subject to Board of Supervisors' approval under Charter Section 9.118(b) because it exceeds \$500,000.

STAKEHOLDER ENGAGEMENT

The contract amendment does not have any impact to the community; hence, no community outreach was performed.

ALTERNATIVES CONSIDERED

Should the Board of Directors or the Board of Supervisors disapprove Amendment No. 3 or Amendment No. 4, the Aon Contract would be rendered void, and the underwriters of the excess insurance would cancel the OCIP policies. The underwriters could also seek payment of premiums amounts owed for unpaid coverage periods prior to termination. Further, the SFMTA's provision of the excess insurance coverage is a requirement of Contract No. 1252 and Contract No. 1300. Cancellation of the OCIP policies would require the SFMTA to amend those contracts to cap the contractors' liability to their respective insurance policies. If the OCIP policies were cancelled, the SFMTA could be liable in whole or in part for claims that exceed the contractors' own liability insurance policies where those claims fall outside the initial coverage

period of the OCIP. The risk of such catastrophic loss is remote, given the robust design and level of completion of the Central Subway tunnels and stations. But the potential costs of third party liability arising from failure of the tunnels or stations could be extremely high, should a seismic event or other catastrophe reveal a previously unknown defect in the work or issue with the surrounding soil caused by Central Subway construction.

FUNDING IMPACT

The Central Subway Project is 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), and Prop K Half-Cent Local Sales Tax funds. The additional OCIP costs incurred under Contract CS-163-1 Amendment 3 are within the approved Project budget of \$1.578B. Existing Project funds will be used to pay the additional insurance costs. The breakdown of the funding sources and their amounts is as follows:

Source	TOTAL
5309 New Starts	\$942,200,000
CMAQ3	\$41,025,000
Prop 1A High Speed Rail Connectivity	\$61,308,000
Prop 1B- MTC	\$87,895,815
Prop 1B-SFMTA	\$219,896,185
RIP-SF/Other	\$74,248,000
TCRP	\$14,000,000
Prop K	\$137,727,000
	\$1,578,300,000

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.

Amendment No. 3 and Amendment No. 4, as described above, fall within the scope of the Final 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 1650 Mission Street in San Francisco, and is incorporated herein by reference.

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OTHER APPROVALS RECEIVED OR STILL REQUIRED

Amendments Nos. 3 and 4 require approval by the Board of Supervisors under Charter Section 9.118(b), as the original contract was subject to the Board of Supervisors approval, and the value of each amendment exceeds \$500,000.

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

RECOMMENDATION

Staff recommends that the SFMTA Board approve retroactively Amendment No. 3 and approve Amendment No. 4 to Contract No. CS-163-1 OCIP Insurance Brokerage Services, to provide excess liability insurance for the Central Subway Project, with Aon Risk Insurance Services West, Inc., to increase the contract amount by \$684,382 and \$6,321,304, respectively, for additional premium charges due to increased construction time and contract costs, for a total contract amount not to exceed \$25,094,436, and request the Board of Supervisors' to approve retroactively Amendment No. 3 and to approve Amendment No. 4.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, On February 7, 2012, the SFMTA Board of Directors approved Contract No. CS-163-1 (Aon Contract), Insurance Brokerage Services for an Owner's Controlled Insurance Program (OCIP), between the SFMTA and Aon Risk Insurance Services West, Inc. (Aon), in an amount not-to-exceed \$9,808,750 and for a term of eight years, with actual insurance premium charges to be adjusted based on contract costs and construction period of the covered contract work; and,

WHEREAS, The OCIP provides excess liability insurance coverage (OCIP) to cover catastrophic losses arising from the construction of the Central Subway Project, which is Phase 2 of the Third Street Light Rail Transit Project (Project) that exceed the Project contractors' liability insurance policies; and,

WHEREAS, Barnard Impregilo Healy (Barnard) is the contractor for the construction of the Project tunnels, under Contract No. 1252. The OCIP provides \$150 million in coverage over Barnard's own \$350 million policies, for total coverage of \$500 million; and,

WHEREAS, Tutor Perini Corporation (Tutor) is the contractor for the construction of the Project stations, trackway, and control systems under Contract No. 1300. The OCIP provides \$150 million in coverage over Tutor's own \$50 million policy, for total coverage of \$200 million; and,

WHEREAS, The SFMTA pays the premiums (charges) for the OCIP through Aon, which as the OCIP insurance broker, procures the insurance policies for the OCIP from 16 underwriters; and,

WHEREAS, The premiums for the OCIP are based on the value of the construction contracts and the period of active construction. The Aon Contract has been modified twice before, which has increased the total amount of the Aon Contract by \$8,280,000, for a total contract amount not to exceed \$18,088,750. Amendment Nos. 3 and 4 increase the contract amount by \$684,382 and \$6,321,304, respectively, for additional premium due and arising from increases to construction contract amounts and extension of construction time. Amendments Nos. 3 and 4 each require Board of Supervisors' approval under Charter Section 9.118(b) because each amendment exceeds \$500,000; and,

WHEREAS, On August 3, 2012, the Director of Transportation approved Amendment No. 1 to the Aon Contract to allow payment for premium and broker services to more than one division of the Aon organization; and,

WHEREAS, On November 6, 2012, the SFMTA Board of Directors approved Amendment No. 2 to the Aon Contract to provide additional excess insurance coverage for the Central Subway Program under the OCIP, and to bind each layer of additional excess insurance coverage for a total amount not-to-exceed \$8,280,000; and,

WHEREAS, On May 21, 2013, the SFMTA awarded Contract 1300 for the construction of stations, trackway and systems for the Central Subway to Tutor Perini Corporation in an amount not to exceed \$839,676,400, which amount increased the value of the contract work covered by the OCIP, and thereby triggered a net increase in the premium for the OCIP policies in the amount of \$684,382, paid through an increase of that amount to the Aon Contract; and,

WHEREAS, Amendment No. 3 to the Contract requires approval by the Board of Supervisors under Charter Section 9.118(b), as the original contract was subject to the Board of Supervisors approval and the value of the amendment exceeds \$500,000; and,

WHEREAS, Due to staff misunderstanding of the Director of Transportation's authority to approve contracts, Amendment No. 3 was not timely presented to the SFMTA Board of Directors for approval, and was not timely presented to the Board of Supervisors for approval; and,

WHEREAS, Amendment No. 4 to the Contract requires approval by the Board of Supervisors under Charter Section 9.118(b), as the original contract was subject to the Board of Supervisors approval and the value of the amendment exceeds \$500,000; 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, Amendment No. 3 and Amendment No. 4, as described above, fall within the scope of the Final SEIS/SEIR; and

WHEREAS, 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 1650 Mission Street in San Francisco, and is incorporated herein by reference; therefore be it,

RESOLVED, That the SFMTA Board has reviewed and considered the Central Subway 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, The SFMTA Board of Directors approves retroactively Amendment No. 3 to Contract CS-163-1 Insurance Brokerage Services for an Owner's Controlled Insurance Program, to provide Excess Liability Insurance for the Central Subway Project, with Aon Risk Insurance Services West, Inc., to increase the contract amount by \$684,382 for payment of additional premium due to additional covered construction contract value, for a total contract amount not to exceed \$18,773,132; and be it further

RESOLVED, The SFMTA Board of Directors approves Amendment No. 4 to Contract CS-163-1 Insurance Brokerage Services for an Owner's Controlled Insurance Program, to provide Excess Liability Insurance for the Central Subway Project, with Aon Risk Insurance Services West, Inc., to increase the contract amount by \$6,321,304 for payment of additional premium due to increased construction time and construction costs, for a total contract amount not to exceed \$25,094,436; and be it further

RESOLVED, The SFMTA Board of Directors requests that the Board of Supervisors' approve retroactively Amendment No. 3 and approve Amendment No. 4 to Contract CS-163-1 Insurance Brokerage Services for an Owner's Controlled Insurance Program, to provide Excess Liability Insurance for the Central Subway Project, with Aon Risk Insurance Services West, Inc., to increase the contract amount by \$684,382 and \$6,321,304, respectively, for payment of additional premium due to increased construction time and contract costs, for a total amended contract amount not to exceed \$25,094,436.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of September 18, 2018.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

AMENDMENT NO. 3

TO

AGREEMENT BETWEEN

CITY AND COUNTY OF SAN FRANCISCO

MUNICIPAL TRANSPORTATION AGENCY

AND

AON RISK INSURANCE SERVICES WEST, INC.

FOR

INSURANCE BROKERAGE SERVICES for an OWNER'S CONTROLLED

INSURANCE PROGRAM ("OCIP") to provide EXCESS LIABILITY INSURANCE

for the

CENTRAL SUBWAY PROJECT

(CONTRACT CS-163-1)

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

AMENDMENT NO. 3

TO

**THE AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
AND
AON RISK INSURANCE SERVICES WEST, INC.
FOR
INSURANCE BROKERAGE SERVICES FOR AN OWNER'S CONTROLLED
INSURANCE PROGRAM ("OCIP") TO
PROVIDE EXCESS LIABILITY INSURANCE FOR THE CENTRAL SUBWAY
PROJECT**

This Amendment No. 3 is made this _____ day of _____, 2018, in the City and County of San Francisco, State of California, by and between: Aon Risk Insurance Services West, Inc. ("Broker"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA")

RECITALS

WHEREAS, On February 7, 2012, the SFMTA Board of Directors adopted Resolution No. 12-017, which authorized the Director of Transportation to execute Contract No. CS-136-1 between SFMTA and Broker for Insurance Brokerage Services for an Owner's Controlled Insurance Program ("OCIP") to provide Excess Liability Insurance for the Central Subway Project ("Agreement"), in an amount not to exceed \$9,808,750 and for a term of eight years, actual premium cost adjusted based on final bid costs of the covered contract work; and

WHEREAS, On August 3, 2012, the parties executed Amendment No. 1 to allow payment of services to more than one division of the Aon organization; and

WHEREAS, On November 6, 2012 the SFMTA Board of Directors adopted Resolution No. 12-135, which authorized the Director of Transportation to execute Amendment No. 2 to the Agreement to provide additional excess insurance coverage for the Central Subway Program and to bind each layer of additional excess insurance coverage for a total amount not-to-exceed \$8,280,000; for a total contract amount not-to-exceed \$18,088,750; and

WHEREAS, On May 21, 2013, the SFMTA awarded Contract 1300 for the construction of stations, trackway and systems for the Central Subway to Tutor Perini in an amount of \$839,676,400, which amount increased the value of the contract work covered by the excess insurance policies provided by Aon, and thereby triggered a net increase in the premium for those policies in the amount of \$684,382, which is now due;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Section 5.2 of Agreement is deleted and replaced in its entirety with the following:

5.2 (a) In no event shall the City's total expenditure (inclusive of all premiums, broker's fees, broker's commissions, Surplus Line Taxes and fees, and government fees for insurance coverage, and other changes and fees) for insurance secured and services provided by Broker under this Agreement exceed **Ten Million Eight Hundred Seventy Eight Thousand Three Hundred Thirty Two Dollars (\$10,878,332)** for liability insurance coverage of \$150 Million in excess of \$200 Million.

(b) In addition, in no event shall the City's total expenditure (inclusive of all premiums, broker's fees, broker's commissions, Surplus Line Taxes and fees, and government fees for insurance coverage, and other changes and fees) for insurance secured and services provided by Broker under this Agreement exceed **Seven Million Eight Hundred Ninety Four Thousand Eight Hundred Dollars (\$7,894,800)** for liability insurance coverage \$150 Million in excess of \$50 Million.

(c) The total cost of the City for the insurance coverage described above shall not exceed **Eighteen Million Seven Hundred Seventy Three Thousand One Hundred Thirty Two Dollars (\$18,773,132)**. Each component of the Broker's compensation and the breakdown of costs associated with this Agreement appear in Appendix C, "Calculation of Charges", attached hereto and incorporated by reference as though fully set forth herein.

2. The contract amount is increased by \$684,382 for payment of additional premium due to additional covered construction contract value. All other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, each party has duly executed this Third Amendment to the Agreement as of the date first referenced above.

CITY Municipal Transportation Agency	BROKER
<p>_____</p> <p>Edward D. Reiskin Director of Transportation</p> <p>Authorized By: Municipal Transportation Agency</p> <p>Resolution No. _____</p> <p>Adopted: _____</p> <p>Attest:</p> <p>By: _____</p> <p>Approved as to Form: Dennis J. Herrera City Attorney</p> <p>By: _____ Robert K. Stone Deputy City Attorney</p>	<p>_____</p> <p>Billy Deeb Director, Public Entities Aon Risk Insurance Services West, Inc. 199 Fremont Street, Suite 1500 San Francisco, CA 94105</p>

CS-163-1
APPENDIX C
CALCULATION OF CHARGES

Note: The fees schedule and other compensation listed in the final Contract will be based on the selected Proposer's price bid submitted with its Proposal. The City anticipates that the compensation provisions of the final Contract will set out terms substantially similar to the following:

1. **Total Amount.** The total amount of this Contract, inclusive of all broker's fees, administrative costs and charges, insurance premiums paid through Broker and other charges for services provided by the Broker, shall not exceed, Eighteen Million Seven Hundred Seventy Three Thousand One Hundred Thirty Two Dollars (\$18,773,132).
2. **Fees.** As compensation for all services provided under this Agreement, including but not limited to program planning, marketing, placement, implementation and servicing of insurance policies, the SFMTA shall pay Broker standard commissions to be included in the Cost of Premiums. Broker shall disclose the amounts and percentages of its fees as provided in Sections 5.4, 5.5 and 5.6 of the Contract.
3. **Invoices.** Invoices furnished by Broker under this Contract must be in a form acceptable to the Controller, and must include the Contract Progress Payment Authorization number. All amounts paid by City to Broker shall be subject to audit by the City.
4. **Payment.** Payment shall be made by City to Broker at the address specified in the section entitled "Notices."
5. **Cost of Premiums.** Total cost for insurance provided under this Agreement, including all Brokers fees, Surplus Lines taxes and government fees, shall not exceed Eighteen Million Seven Hundred Seventy Three Thousand One Hundred Thirty Two Dollars (\$18,773,132).
6. **Taxes.** The aforesaid amounts for the Premiums specified in this Contract are inclusive of all federal, state and local sales taxes, use, excise, receipts, gross income and other similar taxes and governmental charges.
7. **Late Payments.** In no event shall the City be liable for interest or late charges for any late payments.
8. **Commissions.** Broker Fees set out herein shall be full and complete compensation for all Program services for the insurance procured under this Contract. Broker and its officers, agents and employees shall not accept or receive any additional commissions or payments from insurance companies, agents or affiliates as a result or in relation to any excess liability, or other insurance contract for the said insurance coverages.

If agreements with insurers require Broker to receive commissions in regard to the coverages provided under this Agreement, Broker will promptly notify City of such commissions and will credit an amount equal to the excess received and retained against any other amount owing to Broker.
9. **Other Service Providers.** City may choose to use a property appraiser, safety control service, structured settlement firm or other similar service provider in connection with

the insurance coverages Broker places for City or the services Broker provides to the City. If City elects to use a service provider from which Broker or its corporate parents, subsidiaries or affiliates will receive any compensation directly or indirectly relating to the services City purchases from the provider, Broker will disclose additional information regarding that compensation to City before City makes a final decision to use the service provider.

AMENDMENT NO. 4

TO

AGREEMENT BETWEEN

CITY AND COUNTY OF SAN FRANCISCO

MUNICIPAL TRANSPORTATION AGENCY

AND

AON RISK INSURANCE SERVICES WEST, INC.

FOR

INSURANCE BROKERAGE SERVICES for an OWNER'S CONTROLLED

INSURANCE PROGRAM ("OCIP") to provide EXCESS LIABILITY INSURANCE

for the

CENTRAL SUBWAY PROJECT

(CONTRACT CS-163-1)

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

AMENDMENT NO. 4

TO

**THE AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
AND
AON RISK INSURANCE SERVICES WEST, INC.
FOR
INSURANCE BROKERAGE SERVICES FOR AN OWNER'S CONTROLLED
INSURANCE PROGRAM ("OCIP") TO
PROVIDE EXCESS LIABILITY INSURANCE FOR THE CENTRAL SUBWAY
PROJECT**

This Amendment No. 4 is made this _____ day of _____, 2018, in the City and County of San Francisco, State of California, by and between: Aon Risk Insurance Services West, Inc. ("Broker"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA")

RECITALS

WHEREAS, On February 7, 2012, the SFMTA Board of Directors adopted Resolution No. 12-017, which authorized the Director of Transportation to execute Contract No. CS-136-1 between SFMTA and Broker for Insurance Brokerage Services for an Owner's Controlled Insurance Program ("OCIP") to provide Excess Liability Insurance for the Central Subway Project ("Agreement"), in an amount not to exceed \$9,808,750 and for a term of eight years, actual premium cost adjusted based on final bid costs of the covered contract work; and

WHEREAS, On August 3, 2012, the parties executed Amendment No. 1 to allow payment of services to more than one division of the Aon organization; and

WHEREAS, On November 6, 2012 the SFMTA Board of Directors adopted Resolution No. 12-135, which authorized the Director of Transportation to execute Amendment No. 2 to the Agreement to provide additional excess insurance coverage for the Central Subway Program and to bind each layer of additional excess insurance coverage for a total amount not-to-exceed \$8,280,000; for a total contract amount not-to-exceed \$18,088,750; and

WHEREAS, On May 21, 2013, the SFMTA awarded Contract 1300 for the construction of stations, trackway and systems for the Central Subway to Tutor Perini in an amount of \$839,676,400, which amount increased the value of the contract work covered by the excess insurance policies provided by Aon, and thereby triggered a net increase in the premium for those policies in the amount of \$684,382.

WHEREAS, Due to staff misunderstanding of the Director of Transportation's authority to approve contracts, Amendment No. 3 was not presented to the SFMTA Board of Directors for approval, nor to the Board of Supervisors for approval; and,

WHEREAS, Construction of the Central Subway Project has been delayed 118 calendar days beyond the revised substantial completion date, and Amendment No. 4 to the Contract CS-163 increases the contract by \$6,321,304 to extend the excess insurance coverage; and,

WHEREAS, the parties wish to further amend the Agreement to extend the term of the Agreement from June 25, 2018 to June 24, 2020.

Now, THEREFORE, the parties agree to amend the Contract as follows:

A. Section 2 of the Contract, Term and Expiration of the Agreement is deleted and replaced in its entirety with the following:

2.1 Subject to Section 1, the term of this Agreement shall be for a period of ten (10) years commencing on the Effective Date of the Agreement, excluding Broker's obligations for completed operations claims services

2.2 Prior to expiration of this Agreement, Broker shall commence and perform, with diligence, all actions necessary on the part of Broker to effect the termination of this Agreement and to minimize the liability of Broker and City to third parties as a result of expiration. Further, Broker shall perform all actions necessary for the uninterrupted continuance of insurance policies secured pursuant to this Agreement with the City and/or through an alternative Broker of the City's choosing. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation those listed in Section 21.2 of this Agreement. The Term may be extended upon agreement in writing by Broker and SFMTA in one-year increments. However, the expiration of this Contract does not relieve Broker of its responsibilities to provide closeout services as required under the Contract.

B. Section 5.2 of Agreement

5.2 (a) In no event shall the City's total expenditure (inclusive of all premiums, broker's fees, broker's commissions, Surplus Line Taxes and fees, and government fees for insurance coverage, and other changes and fees) for insurance secured and services provided by Broker under this Agreement exceed **Fourteen Million One Hundred Fifty One Thousand Eight Hundred Thirty Seven Dollars (\$14,151,837)** for liability insurance coverage of \$150 Million in excess of \$200 Million.

(b) In addition, in no event shall the City's total expenditure (inclusive of all premiums, broker's fees, broker's commissions, Surplus Line Taxes and fees, and government fees for insurance coverage, and other changes and fees) for insurance secured and services provided by Broker under this Agreement exceed **Ten Million Nine Hundred Forty Two Thousand Five Hundred Ninety Nine Dollars (\$10,942,599)** for liability insurance coverage \$150 Million in excess of \$50 Million.

(c) The total cost to the City for the insurance coverage described above shall not exceed **Twenty Five Million Ninety Four Thousand Four Hundred Thirty Six Dollars (\$25,094,436)**. Each component of the Broker's compensation and the breakdown of costs associated with this Agreement appear in Appendix C, "Calculation of Charges", attached hereto and incorporated by reference as though fully set forth herein.

- C. By signing below, the signatories warrant that they each have the authority to sign this modification to the contract and bind the respective party he or she represents.

The remainder of this page has been intentionally left blank.

IN WITNESS WHEREOF, each party has duly executed this Fourth Amendment to the Agreement as of the date first referenced above.

CITY Municipal Transportation Agency	BROKER
<p>_____</p> <p>Edward D. Reiskin Director of Transportation</p> <p>Authorized By: Municipal Transportation Agency</p> <p>Resolution No. _____</p> <p>Adopted: _____</p> <p>Attest:</p> <p>By: _____</p> <p>Approved as to Form: Dennis J. Herrera City Attorney</p> <p>By: _____ Robert K. Stone Deputy City Attorney</p>	<p>_____</p> <p>Billy Deeb Director, Public Entities Aon Risk Insurance Services West, Inc. 199 Fremont Street, 17th Floor San Francisco, CA 94105</p>

CS-163-1
APPENDIX C
CALCULATION OF CHARGES

Note: The fees schedule and other compensation listed in the final Contract will be based on the selected Proposer's price bid submitted with its Proposal. The City anticipates that the compensation provisions of the final Contract will set out terms substantially similar to the following:

1. **Total Amount.** The total amount of this Contract, inclusive of all broker's fees, administrative costs and charges, insurance premiums paid through Broker and other charges for services provided by the Broker, shall not exceed, Twenty Four Million Eight Hundred Eight Five Thousand Seven Hundred Ten Dollars (\$25,094,436).
2. **Fees.** As compensation for all services provided under this Agreement, including but not limited to program planning, marketing, placement, implementation and servicing of insurance policies, the SFMTA shall pay Broker standard commissions to be included in the Cost of Premiums. Broker shall disclose the amounts and percentages of its fees as provided in Sections 5.4, 5.5 and 5.6 of the Contract.
3. **Invoices.** Invoices furnished by Broker under this Contract must be in a form acceptable to the Controller, and must include the Contract Progress Payment Authorization number. All amounts paid by City to Broker shall be subject to audit by the City.
4. **Payment.** Payment shall be made by City to Broker at the address specified in the section entitled "Notices."
5. **Cost of Premiums.** Total cost for insurance provided under this Agreement, including all Brokers fees, Surplus Lines taxes and government fees, shall not exceed Twenty Four Million Eight Hundred Eight Five Thousand Seven Hundred Ten Dollars (\$25,094,436).
6. **Taxes.** The aforesaid amounts for the Premiums specified in this Contract are inclusive of all federal, state and local sales taxes, use, excise, receipts, gross income and other similar taxes and governmental charges.
7. **Late Payments.** In no event shall the City be liable for interest or late charges for any late payments.
8. **Commissions.** Broker Fees set out herein shall be full and complete compensation for all Program services for the insurance procured under this Contract. Broker and its officers, agents and employees shall not accept or receive any additional commissions or payments from insurance companies, agents or affiliates as a result or in relation to any excess liability, or other insurance contract for the said insurance coverages.

If agreements with insurers require Broker to receive commissions in regard to the coverages provided under this Agreement, Broker will promptly notify City of such commissions and will credit an amount equal to the excess received and retained against any other amount owing to Broker.
9. **Other Service Providers.** City may choose to use a property appraiser, safety control service, structured settlement firm or other similar service provider in connection with

the insurance coverages Broker places for City or the services Broker provides to the City. If City elects to use a service provider from which Broker or its corporate parents, subsidiaries or affiliates will receive any compensation directly or indirectly relating to the services City purchases from the provider, Broker will disclose additional information regarding that compensation to City before City makes a final decision to use the service provider.