

**THIS PRINT COVERS CALENDAR ITEM NO.:10.6**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Central Subway Project

**BRIEF DESCRIPTION:**

Requesting authorization to execute Amendment No. 2 to Contract No. CS-163-1, Insurance Brokerage Services for an Owner Controlled Insurance Program (OCIP) to provide a second tier of Excess Liability Insurance for the Central Subway Project, with Aon Risk Insurance Services West, Inc. and to bind each layer of excess insurance coverage up to a maximum limit of \$150,000,000 for the stations construction for a total amount not to exceed \$8,280,000.

**SUMMARY:**

- The SFMTA Board of Directors adopted Resolution No. 12-017 on February 7, 2012 authorizing Contract No. CS-163-1, Brokerage Services for an Owner Controlled Insurance Program for the Central Subway Project with Aon Risk Insurance Services West, Inc. to obtain \$150,000,000 in general liability insurance. The excess liability policy was procured on February 29, 2012 for the tunnel and three station contracts.
- The SFMTA issued construction contracts for competitive bid for the Chinatown and Union Square/Market Street Stations. Responsive bids for the Chinatown Station greatly exceeded the engineer's estimate, and bidders indicated that the insurance premium cost to obtain the required \$200,000,000 primary general liability coverage was abnormally high. Staff confirmed that the obtaining multiple primary policies of that amount for each of the station contracts would cause contract bids to greatly exceed the Project budget.
- The SFMTA has consolidated the remaining construction contracts and amended the insurance requirements. The contractor for the consolidated contract will be required to provide \$50,000,000 in primary general liability insurance coverage.
- The SFMTA proposes to supplement the existing \$150,000,000 excess liability policy with an additional excess liability policy in the same amount for the stations construction; the new policy will be a first tier of excess liability coverage, and the existing policy will be a second tier of excess coverage. Aon Risk Insurance Services West, Inc. will provide services to procure the additional \$150,000,000 liability insurance.

**ENCLOSURES:**

1. SFMTA Board of Directors Resolution
2. Project Budget & Financial Plan
3. Amendment No. 2 to Contract CS-163-1

**APPROVALS:**

**DATE**

DIRECTOR \_\_\_\_\_

10/29/12

SECRETARY \_\_\_\_\_

10/29/12

**ASSIGNED SFMTAB CALENDAR DATE:** November 6, 2012

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### **PURPOSE**

Requesting authorization to execute Amendment No. 2 to Contract No. CS-163-1, Insurance Brokerage Services for an Owner Controlled Insurance Program (OCIP) to provide additional Excess Liability Insurance for the Central Subway Project, with Aon Risk Insurance Services West, Inc. and to bind each layer of excess insurance coverage for the Central Subway Project for a total amount not to exceed \$8,280,000 inclusive of all premiums, fees, costs and taxes for the additional insurance.

### **GOAL**

Excess liability insurance coverage for the Central Subway Project will provide liability protection that is consistent with the SFMTA Strategic Plan in the following goals and objectives:

Goal 3 – Improve the environment and quality of life in San Francisco  
Objective 3.3 Allocate capital resources effectively

### **DESCRIPTION**

#### **Background:**

The Central Subway Project (Project) is the second phase of the SFMTA's Third Street Light Rail Project, and 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. 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 auto ownership population of transit customers, increase transit use and reduce travel time, reduce air and noise pollution, and provide congestion relief. The public interest and necessity require the construction and operation of the Project to achieve such benefits.

The Project will have four stations and connecting subsurface tunnels to provide direct rail service to the South of Market and Chinatown neighborhoods. The Project has been planned and located in a manner that will be most compatible with the greatest public good and the least private injury.

The Project will issue construction contracts with a total estimated construction cost of approximately \$1,090 million. The construction started in 2010 and will continue for 8 years. The start of revenue operations is scheduled for 2019.

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**Current Status:**

The Central Subway design consists of a short portion of in-street surface light rail in the southern portion of the system before transitioning into subway operation for most of the alignment. Twin bore tunnels are proposed for the subway, with three subway stations serving the Yerba Buena/Moscone, Union Square/Market Street, and Chinatown areas.

The Union Square/Market Street Station will interconnect with the existing BART/Muni Powell Street Station. A deep tunneling approach using tunnel boring machines (TBMs) is proposed to reduce surface disruption during construction, to create a more direct alignment, and to shorten the construction period. The Central Subway tunnels will pass under the existing BART/Muni Market Street subway tunnels with the rail over 100 feet below the ground surface. Most of the alignment will be located under existing street right-of-way with limited required underground easements. The stations will have center-platforms with passenger end-loading and are designed to accommodate high-floor two-car trains. Whenever feasible, off-street properties have been identified for the primary station access with transit oriented development opportunities at the Moscone/Yerba Buena and Chinatown Stations.

Construction methods consist of TBM construction of the running tunnels, which will pass through differing geological formations, including bay mud, alluvium, Colma formation, and Franciscan bedrock. Subway station construction methods will vary. The Yerba Buena/Moscone Station will be constructed using traditional top-down cut-and-cover construction. The Union Square/Market Street Station is located in a very constricted area and will be constructed using a top-down cut-and-cover method. Chinatown Station, also in a very constricted area, will be constructed using mined sequential excavation.

On January 7, 2010, the FTA issued its approval for the Project to enter into Final Design. Three design consultant teams in conjunction with SFMTA staff have prepared design packages that the SFMTA will issue for competitive contract bids to construct the Project.

Currently, two construction contracts for relocating utilities for the Yerba Buena/Moscone Station, the portal area and Union Square/Market Street Station are completed. The largest contract of the Project, the tunneling contract, has started construction. Construction contract for stations and systems is issued for competitive bids. The Project construction is expected to be completed in 2018.

**Purpose and Scope of Amendment:**

SFMTA Board of Directors adopted Resolution No. 12-017 on February 7, 2012 authorizing the Director of Transportation or his designee to execute Contract No. CS-163-1, Insurance Brokerage Services for an Owner Controlled Insurance Program to provide \$150,000,000 Excess Liability Insurance for the Central Subway Project with Aon Risk Insurance Services West, Inc. (Broker) and to bind each layer of excess insurance coverage for the Central Subway Project for a total amount not to exceed \$9,808,750 and for a term of eight years.

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The Director of Transportation approved Amendment No. 1 to allow direct premium payments to additional branches of the Aon Company assisting the local Aon Risk Insurance Services West, Inc. in obtaining bindable policy premium quotes. Amendment No. 1 did not change the amount or term of the contract.

The Broker procured \$150,000,000 liability coverage in excess of \$200 million base (primary) insurance coverage for the tunnel and three station contracts. The SFMTA obtained the excess liability coverage to address the availability of contractor provided traditional insurance at a reasonable cost. The Tunneling Contractor provided primary liability insurance of \$200 million and all other required insurances, including worker's compensation, automobile, professional liability insurance, and environmental pollution liability insurance. In addition, the Tunneling Contractor provided another \$150 million insurance coverage above the excess layer provided by SFMTA for total coverage of \$500 million general liability coverage for tunnel construction.

Since the start of tunnel construction, the SFMTA has issued two station contracts for competitive bid. Bidders have indicated that the quotes they received for primary liability insurance for the \$200,000,000 coverage required by the contract were abnormally high. The SFMTA has confirmed that seeking a \$200,000,000 primary policy for each station contract at an abnormally high premium would greatly exceed the Agency's Project budget. Working with Aon, the staff determined that supplementing excess general liability coverage would allow the primary insurance coverage requirements to be reduced (which would presumably result in cost savings) while maintaining sufficient insurance coverage against potential losses caused by construction of the stations.

To reduce costs, the SFMTA has consolidated the three contracts for stations construction and the contract for track, surface and systems into a single contract. The SFMTA will require the contractor for the consolidated contract to provide \$50,000,000 in primary general liability coverage, while the SFMTA would provide a total of \$300,000,000 in excess general liability coverage. The insurance program for the tunnels contract would not be changed.

The final cost of the excess liability insurance policy for the consolidated contact will be determined when the broker is authorized under an amendment with the SFMTA and when bindable policy premium quotes have been received and negotiated with the insurance carriers. Staff has estimated premium cost for the excess insurance coverage as not exceeding \$8,280,000 inclusive of all premiums, fees, costs and taxes.

The Contract Compliance Office has determined that there are no significant opportunities for SBEs to participate on the negotiated services to place excess liability insurance as set forth in this contract.

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

**ALTERNATIVES CONSIDERED**

The principal alternatives that Agency staff considered are maintaining the contractor provided \$200 million primary liability insurance program or layering the \$200 million liability insurance program with contractor provided \$50 million primary liability insurance and SFMTA obtained \$150 million excess liability insurance.

**FUNDING IMPACT**

The funding for services under this contract, are from federal, state and local sources. All costs for these services are covered by the existing Central Subway Project budget and this does not increase the Project budget. The Central Subway Project Budget & Financial Plan is set forth in Enclosure 2.

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

This Amendment requires approval by the San Francisco Board of Supervisors.

**RECOMMENDATION**

Staff recommends that the SFMTA Board of Directors authorize the Director of Transportation or his designee to execute Amendment No. 2 to Contract No. CS-163-1, Insurance Brokerage Services for an Owner Controlled Insurance Program (OCIP) to provide Excess Liability Insurance for the Central Subway Project with Aon Risk Insurance Services West, Inc. and to bind each layer of excess insurance coverage for station contracts of Central Subway Project for a total amount not to exceed \$8,280,000.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, The Final Environmental Impact Statement/Environment Impact Report (Final EIS/EIR) for the two-phase Third Street Light Rail Project (the "Project") was completed in November 1998; and,

WHEREAS, The former Public Transportation Commission approved Resolution No. 99-009 on January 19, 1999, which adopted the environmental findings pursuant to the California Environmental Quality Act (CEQA) for the Project, including mitigation measures as set forth in the Project's Final Environmental Impact Report and Mitigation Monitoring Report; and,

WHEREAS, Design and construction of the 1.7-mile Central Subway is Phase 2 of the Third Street Light Rail Transit Project; and,

WHEREAS, The SFMTA Board of Directors adopted Resolution No. 12-017 on February 7, 2012 authorizing the Director of Transportation or his designee to execute Contract No. CS-163-1, Insurance Brokerage Services for an Owner Controlled Insurance Program to provide Excess Liability Insurance for the Central Subway Project with Aon Risk Insurance Services West, Inc. (Broker) and to bind each layer of excess insurance coverage for the Central Subway Project for a total amount not to exceed \$9,808,750 and for a term of eight years; and,

WHEREAS, The SFMTA obtained \$150 million liability coverage in excess of \$200 million insurance coverage provided by the contractors for the tunnel and stations contracts; and,

WHEREAS, The SFMTA has consolidated the construction of the three stations, surface work, track and systems for the Central Subway into a single construction contract; and

WHEREAS, The SFMTA desires to restructure the insurance program for the construction of the Central Subway's three stations to reduce the required contractor primary coverage to \$50,000,000 and supplement the existing \$150,000,000 excess liability insurance coverage with an additional \$150,000,000 excess coverage for the stations contract to be acquired through a traditional construction contractor insurance procurement; and,

WHEREAS, The SFMTA desires to authorize Aon Risk Insurance Service West, Inc., to obtain the additional excess liability insurance; and,

WHEREAS, The funding for services under this Contract is from federal, state and local sources; and,

WHEREAS, Civil Service Commission approval for contracts resulting from Request of Proposal Contract No. CS-163-1 was obtained by the SFMTA on June 20, 2010 under Civil Service Approval No. 4117-10/11; and,

WHEREAS, Contract No. CS-163-1 will assist SFMTA in meeting the Strategic Plan Objective No. 3.3 Allocate capital resources effectively; and

WHEREAS, Execution of this Amendment is contingent upon approval of the Board of Supervisors; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation or his designee to execute Amendment No. 2 to Contract No. CS-163-1, Insurance Brokerage Services for an Owner Controlled Insurance Program (OCIP) to provide Excess Liability Insurance for the Central Subway Project with Aon Risk Insurance Services West, Inc. and to bind each layer of additional excess insurance coverage for the Central Subway Project for a total amount not to exceed \$8,280,000 for the additional insurance; for a total contract amount not to exceed \$18,088,750; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors requests the Board of Supervisors to approve this Amendment No. 2 to Contract No. CS-163-1 in the amount and for the reasons stated herein.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of November 6, 2012.

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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

ENCLOSURE 2

THIRD STREET LIGHT RAIL PROJECT  
CENTRAL SUBWAY

Project Budget & Financial Plan

<b>Cost</b>	<b>(\$Million)</b>
Conceptual and Preliminary Engineering	46.32
Program Management & Construction Management	206.52
Final Design	86.05
Construction Contracts	1,089.61
Vehicles	26.38
Contingency	63.34
Right-of-Way	37.40
Other Professional Services	22.68
<b>Total Central Subway Cost</b>	<b>\$ 1,578.30</b>

<b>Funding</b>	<b>(\$Millions)</b>
Federal 5309 New Starts	942.20
Federal CMAQ	41.03
State RTIP Grant	88.00
State TCRP Grant	14.00
State Proposition 1A - High Speed Rail	61.31
State Proposition 1B - PTMISEA	307.78
Proposition K Sales Tax Funds	123.98
<b>Total Central Subway Funding</b>	<b>\$ 1,578.30</b>



Enclosure 3

**AMENDMENT NO. 2**

**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 SEGMENT**

**(CONTRACT CS-163-1)**

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

**AMENDMENT NO. 2**

**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. 2 is made this \_\_\_\_\_ day of \_\_\_\_\_, 2012, 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**

- A. On February 7, 2012, the SFMTAB adopted Resolution No. 12-017, which authorized the Director of Transportation to execute Contract No. CS-136-1 between City 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.
- B. On August 3, 2012, the parties executed Amendment No. 1 to allow payment of services to more than one division of the Aon organization.
- C. The parties wish to amend the Agreement to allow providing additional Excess Liability Insurance for the Central Subway Project.

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. In no event shall the City's total expenditure (inclusive of all premiums, broker's fees, brokers' commissions, Surplus Lines Taxes and fees, and government fees for insurance coverage, and other charges and fees) for insurance secured and services provided by Broker under this Agreement exceed Nine Million Eight Hundred Eight Thousand Seven Hundred Fifty Dollars (\$9,808,750) for liability insurance coverage of \$150 Million in

excess of \$200 Million. In addition, in no event shall the City's total expenditure (inclusive of all premiums, broker's fees, brokers' commissions, Surplus Lines Taxes and fees, and government fees for insurance coverage, and other charges and fees) for insurance secured and services provided by Broker under this Agreement exceed Eight Million Two Hundred Eight Thousand Dollars (\$8,280,000) for liability insurance coverage \$150 Million in excess of \$50 Million. 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. I. Background of APPENDIX B of the Agreement is deleted and replaced in its entirety with the following:**

**I. Background:**

- A. Barnard Impregilo Healy ("BIH" or "Contractor"), the contractor selected by the SFMTA for the construction of the tunnels under SFMTA Contract CS-156, and Marsh (BIH's insurance broker) have met the \$500 Million general liability requirement of Contract CS-156 through a layered insurance program. Under that insurance program, BIH provides as primary (first layer) coverage \$200 Million in project specific general liability insurance. The City has procured a Project Specific Rolling \$150 Million in excess liability insurance "secondary", which would be a second layer of insurance excess to the \$200 Million project specific policy provided by BIH. This BIH also provides \$150 Million in excess liability insurance as a third layer of coverage, excess to the primary (\$200 Million) and secondary (\$150 Million) layers. The new excess layer will act as a second excess layer to cover general liability arising from the construction of the stations, surface work, track, and systems for the Central Subway, which will be constructed under a single consolidated contract.
- B. In the course of bidding separate contracts for the construction of the Chinatown and the Union Square/Market Street Stations, bidders reported that the cost of the insurance was unreasonably high and there was little availability in the market for the primary coverage of \$200 Million. To reduce project construction costs and encourage more contractors to bid, staff proposes to maintain the insurance program described above for the tunnels contract, but propose to reduce the primary coverage requirement for the consolidated contract to \$50 Million and allow the contractor to use its corporate policy or a project specific policy. The rolling \$150 Million excess liability policy that is a first layer of excess coverage for the tunnel will provide secondary excess coverage for the consolidated contract, and the SFMTA will procure an additional excess liability policy that will be excess to the contractor's primary \$50 Million policy.

**3. There is an \$8,280,000 cost increase and no additional time necessitated from this Amendment.**

**4. Remaining terms and conditions of the Agreement remain the same.**

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

<b>CITY</b>	<b>BROKER</b>
Municipal Transportation Agency	
<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>Regina M. Carter Managing Director Aon Risk Insurance Services West, Inc. 199 Fremont Street, 17<sup>th</sup> Floor San Francisco, CA 94105</p>