

THIS PRINT COVERS CALENDAR ITEM NO.: 10.3

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Central Subway

BRIEF DESCRIPTION:

Approving Amendment No. 5 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 by an amount not to exceed \$1,684,550 for additional premium due to increased construction time and costs, for a total contract amount not to exceed \$26,778,986, and requesting the Board of Supervisors' approval of Amendment No. 5.


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' general liability policies.
- The OCIP provides \$150 million in coverage over the tunnels contractor's own \$200 million policies, for total coverage of \$350 million. The OCIP also provides \$150 million in coverage over the stations, trackway and systems contractor's own \$50 million policy for claims arising from construction of the stations, trackway and control systems.
- The premiums (charges) for the excess policies are based on the value of the construction contracts and the periods of active construction. The Aon Contract has previously been modified four times, which have increased the contract amount by \$15,285,456.23 due to increases to construction contract amounts and construction time.
- Amendment No. 5 requires Board of Supervisors' approval under Charter Section 9.118(b), because the amendment exceeds \$500,000.

ENCLOSURES:

1. SFMTAB Resolution
2. CS-163-1 Contract, Amendment No. 5
3. <https://www.sfmta.com/about-sfmta/reports/central-subway-final-seisseir> (Central Subway Final SEIS/SEIR and Mitigation Monitoring and Reporting Program)

APPROVALS:

	DATE
DIRECTOR 	October 28, 2020
SECRETARY 	October 28, 2020

ASSIGNED SFMTAB CALENDAR DATE: November 3, 2020

PURPOSE

Requesting approval of Amendment No. 5 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 by an amount not to exceed \$1,684,550 for additional premium due to increased construction time and costs, for a total contract amount not to exceed \$26,778,986.00, and requesting the Board of Supervisors' approval of Amendment No. 5.

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, 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 Project has issued construction contracts with a current value of \$239,973,354.17 for tunnels and \$936,490,910.76 for stations, trackway and control systems. Tunnels construction commenced in 2010 and concluded in October 3, 2018. Stations, trackway and control systems construction commenced in June 17, 2013 and is expected to conclude in early 2021. The start of revenue operations is scheduled for early 2022.

The complexity of the Central Subway construction methods, including tunneling, cut-and-cover, and mining, in proximity to sensitive urban structures and facilities, has posed significant

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 are required to provide under their respective contracts. The purpose of the OCIP was to reduce the overall cost of procuring large insurance policies, reduce construction contract bid costs by relieving contractors of some of the insurance burden, and 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 large insurance contract requirements and had indicated that they would not provide the large policies required to multiple contractors.

On February 7, 2012, the SFMTA Board of Directors adopted Resolution No. 12-017, approving Contract No. CS-163-1 between the SFMTA and Aon Risk Insurance Services West, Inc, 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. OCIP premiums are based on the cost of the construction work and the period of construction. The premiums for the OCIP are increased if Project construction contract costs increase or completion of construction is delayed (or time extensions are granted).

Project construction is largely divided between two contracts. The Project tunnels were constructed under Contract 1252 with Barnard Impregilo Healey (Barnard) for a contract amount, as currently amended, of \$239,973,354.17, and a construction period of 1174 calendar days. Barnard provided \$350 million in insurance coverage, and the OCIP provided \$150 million in excess coverage. Construction under Contract 1252 commenced on June 28, 2011, and was completed on October 3, 2018, 24 days over the initial schedule. Coverage for the tunnels was reduced in 2019 to \$350 million, as the risk of catastrophic incident was greatly reduced upon completion of the tunnels and subway station walls.

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 \$936,490,910.76. 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 March 2021, an estimated delay of 1145 calendar days.

Prior Amendments of the Contract:

The premiums for the OCIP are based on the value of the construction contracts and the period of active construction. The Aon Contract previously has been modified four times, which has increased the total amount of the Aon Contract by \$15,285,456.23, for a total contract amount not to exceed \$25,094,436, which have been due to increases in construction contract value and extension of time of Contract 1252 (Tunnels) for \$6,389,339.17 and 24 Calendar Days, and the increase in contract value and extension of time of Contract 1300 for \$96,814,510.76 and 1145 Calendar Days.

Amendment No. 1. Under the Director of Transportation's authority, Amendment No. 1, dated August, 3, 2012, enabled the payment of premiums to the Bermuda underwriters' portion of the excess liability coverage. 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, which provided additional excess insurance coverage, for a total amount not to exceed \$8,280,000. The Board of Supervisors approved Amendment No. 2 on January 15, 2013.

Amendment No. 3. Amendment No. 3, dated June 23, 2014, was approved by the Director of Transportation to address the increase in premium due to the additional covered construction contract value, which increased the contract amount by \$684,382. The SFMTA Board of Directors and the Board of Supervisors retroactively approved Amendment No. 3 on September 18, 2018 and October 16, 2018, respectively.

Amendment No. 4. On October 29, 2018, the SFMTA Board of Directors adopted Resolution No. 180918-130, approving additional insurance coverage and premium payment due to amendments to the contract amounts and construction time of the tunnels under Contract No. 1252 and the stations, trackway, and controls system under Contract No. 1300, which increased the contract amount by \$6,321,304. The Board of Supervisors approved Amendment No. 4 on October 16, 2018.

STAKEHOLDER ENGAGEMENT

The contract amendment does not have any negative impact to the community; hence, no community outreach was performed. Project staff conferred with SFMTA executive leadership and the City's Risk Manager in determining that it is in the SFMTA's best interests to continue the OCIP insurance coverage to protect the Agency from the (albeit extremely low) risk of catastrophic failure of the tunnels and stations.

ALTERNATIVES CONSIDERED

Should the Board of Directors or the Board of Supervisors disapprove Amendment No. 5, the Aon Contract would be rendered void, and the underwriters of the excess insurance would cancel the OCIP policies. The SFMTA's provision of the excess insurance coverage is required by Contract No. 1252 and Contract No. 1300. Cancellation of the OCIP policies would effectively 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' liability insurance policies. The risk of such catastrophic loss is remote, given the robust design 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.

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 5 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. 5, as described above, falls 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 49 South Van Ness Avenue in San Francisco, and is incorporated herein by reference.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

Board of Supervisors' approval is required under Charter Section 9.118(b) because the amount of the amendment exceeds \$500,000.

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

RECOMMENDATION

Staff recommends that the SFMTA Board approve of Amendment No. 5 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 by an amount not to exceed \$1,684,550 for additional premium due to increased construction time and costs, for a total contract amount not to exceed \$26,778,986, and request the Board of Supervisors' approval of Amendment No. 5.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, On February 7, 2012, the SFMTA Board of Directors adopted Resolution No. 12-017, which 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, actual premium cost adjusted based on final bid costs 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) was 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, Barnard completed the tunnels and the SFMTA accepted that work and closed out Contract 1252 on October 3, 2018, and the SFMTA subsequently determined that it was not necessary or fiscally prudent to continue to maintain \$500 million of catastrophic liability insurance for Contract 1252 and therefore reduced the SFMTA's coverage to \$150 million over the Contractor's \$100 Million policy; 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 claims arising from construction of the stations, trackway and control systems; 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, and the Aon Contract has been modified four times previously, which has increased the total amount of the Aon Contract by \$15,285,456.23, for a total contract amount not to exceed \$25,094,436; 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 and for a term not to exceed 1700 calendar days; and,

WHEREAS, Contract 1300 has been modified 132 times, increasing the contract value by \$96,814,510.76 and extending the contract time (construction duration) 1145 Days, which amount increased the value of the contract work covered by the OCIP, and thereby has triggered a net increase in the premium for the OCIP policies in the amount of \$26,778,986, over amounts previously approved, which increases have been paid through an increase of that amount to the Aon Contract; and,

WHEREAS, On June 28, 2011, the SFMTA awarded Contract 1252 for the construction of tunnels for the Central Subway to Barnard Impregilo Healy (BIH) in an amount not to exceed \$233,584,015 and for a term not to exceed 1150 calendar days; and,

WHEREAS, Contract 1252 was modified 63 times, increasing the contract value by \$6,389,339.17 and extending the construction period 24 calendar days; and,

WHEREAS, Amendment No. 5 increases the amount of the Aon Contract by an amount not to exceed \$1,684,550 for additional premium due and arising from increases to construction contract amounts and extension of construction time; and,

WHEREAS, Amendment No. 5 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 tunnels; 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. 5, as described above, falls within the scope of the Final SEIS/SEIR; and,

WHEREAS, The environmental review determination is on file with the SFMTA Board of Directors, and may be found in the records of the Planning Department at 49 South Van Ness Avenue in San Francisco, and is incorporated herein by reference; and, 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 Supplemental Environmental Impact Statement / Supplemental Environmental Impact Report (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 California Environmental Quality Act (CEQA) findings by this reference as though set forth in this Resolution; and be it further

RESOLVED, The SFMTA Board of Directors approves Amendment No. 5 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 by an amount not to exceed \$1,684,550 for additional premium due to increased Central Subway Project construction time and costs, for a total contract amount not to exceed \$26,778,986; and be it further

RESOLVED, The SFMTA Board of Directors requests that the Board of Supervisors' approve Amendment No. 5 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 an amount not to exceed \$1,684,550 for additional premium due to increased construction time and costs, for a total contract amount not to exceed \$26,778,986.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of November 3, 2020.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

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

AMENDMENT NO. 5

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. 5, dated for convenience as October ____, 2020, is made 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, Construction of the Central Subway Project has been delayed 1145 calendar days beyond the revised substantial completion date, and Amendment No. 5 to the Contract CS-163 increases the contract by an amount not to exceed \$1,684,550 to extend the excess insurance coverage for the Project; and,

WHEREAS, the parties wish to further amend the Agreement to extend the term of the Agreement from June 24, 2020 to July 1, 2022.

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(c) of Agreement

(c) The total cost to the City for the insurance coverage described above shall not exceed **Twenty Six Million Seven Hundred Seventy Eight Thousand Nine Hundred Eighty Six Dollars (\$26,778,986)**. 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 Fifth Amendment to the Agreement as of the date first referenced above.

CITY Municipal Transportation Agency	BROKER
<p>_____ Jeffrey P. Tumlin 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>_____ 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 Six Million Seven Hundred Seventy Eight Thousand Nine Hundred Eighty Six Dollars (\$26,778,986).
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 Six Million Seven Hundred Seventy Eight Thousand Nine Hundred Eighty Six Dollars (\$26,778,986).
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.