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Edward D. Reiskin, Director of Transportation

September 11, 2018

The Honorable Members of the Board of Supervisors
City and County of San Francisco
1 Dr. Carlton Goodlett Place, Room 244
San Francisco, CA 94102

Subject: Request for Approval - Amendments No. 3 and 4 to Contract CS-163-1 with Aon Risk Insurance Services West Inc., to increase the contract amount for additional premium charges due to increased construction time and contract cost.

Honorable Members of the Board of Supervisors:

The San Francisco Municipal Transportation Agency (SFMTA) requests that the San Francisco Board of Supervisors approve Amendment No. 3 retroactively and approve Amendment No. 4 to Contract CS-163-1 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.

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 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.

Alternatives Considered

Disapproval of 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/Budget

The total cost of the Central Subway project is \$1.578 billion. Contract CS-163-1 Amendment No. 4 will not increase the total project budget. Existing funds will be used to pay for the additional cost.

Total Project Cost Summary	Cost
Contract Amount	\$9,808,750
Amendment No. 1	\$0
Amendment No. 2	\$8,280,000
Amendment No. 3	\$684,382
Amendment No. 4	\$6,321,304
Total Project Cost Amount	\$25,094,436

Funding Sources:

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

SFMTA Board Action

On September 18, 2018, the SFMTA Board of Directors approved Resolution No. _____ authorizing the Director of Transportation to execute Amendments No. 3 and 4, subject to approval by the Board of Supervisors (see attached).

Recommendation

The SFMTA recommends that the San Francisco Board of Supervisors adopt the resolution approving Amendment No. 3 retroactively and approving Amendment No. 4 to Contract No. 163-1 with Aon Risk Insurance Services West, Inc.

Thank you for your consideration of this proposed amendment. Should you have any questions or require more information, please do not hesitate to contact me at any time.

Sincerely,



Edward D. Reiskin
Director of Transportation