

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)

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MUNICIPAL TRANSPORTATION AGENCY**

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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.

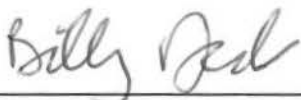
(b) In addition, in no event shall the City's total expenditure (inclusive of all premiums, broker's fees, broker's commissions, Surplus Line Taxes and fees, and government fees for insurance coverage, and other changes and fees) for insurance secured and services provided by Broker under this Agreement 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 First Amendment to the Agreement as of the date first referenced above.

| CITY Municipal Transportation Agency | BROKER |
|---|--|
| <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> <hr/> <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.