

**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~~ ^{November} 6, 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 data-bbox="300 493 462 556"></p> <p data-bbox="251 562 592 634">_____ Jeffrey P. Tumlin Director of Transportation</p> <p data-bbox="251 783 690 854">Authorized By: Municipal Transportation Agency</p> <p data-bbox="251 884 771 924">Resolution No. <u>201103-092</u></p> <p data-bbox="251 953 633 997">Adopted: <u>November 3, 2020</u></p> <p data-bbox="251 1039 341 1071">Attest:</p> <p data-bbox="251 1102 641 1144">By: <u></u></p> <p data-bbox="251 1260 535 1365">Approved as to Form: Dennis J. Herrera City Attorney</p> <p data-bbox="251 1480 763 1585">By: <u></u> Robert K. Stone Deputy City Attorney</p>	<p data-bbox="901 462 1323 546"></p> <p data-bbox="852 562 1364 745">_____ 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.