

No.	Document	Relevant Section	Cat.	Question/Comments/Rationale for Proposed Change	Sponsor Comments
1.			1	What is the intent of the following statement contained in Table 5.1, Retaining Walls: "All walls meet necessary standards in the Department's Highway Design Manual or successor; and Achievement of standards in the Handback Renewal Work Plan to demonstrate the achievement of the required life remaining at the end of the Term."	The intent is to specify a means of evaluating the remaining useful life.
2.	Appropriations Risk General Comments	See also: Part III (nos. 38-39, 48)	1	<p>Please confirm our understanding and clarify:</p> <p>We understand that STIP funds may only be applied to capital improvements in accordance with Cal. Sts. &amp; Hwy Code Sec. 163(e). As such, other State Highway Account funds will be required to pay for the portion of the Availability Payment that does not contribute to capital improvements (e.g., operations and maintenance). Please identify the sources of these funds.</p> <p>STIP funds are funded in accordance with Cal. Sts. &amp; Hwy Code Sec. 163(e) after expenditures for administration, operation, maintenance, local assistance, safety and rehabilitation. The current covenant to prioritize payments "in the State Highway Account" under Section 11.5.2 appears to apply only to STIP funds. Please revise as shown at left to clarify that the Department will prioritize such payments in the State Highway Account generally.</p> <p>The Department covenants to prioritize all payments "ahead of annual capacity for new projects". Please define what constitutes a "new project" as broadly as possible to include rehabilitation work and any other non-maintenance capital construction.</p> <p>We assume that the new last sentence of Section 11.5.1 is a covenant to seek any budget appropriation to fund payments due under the Agreement. Please amend the language to clarify that such requests are not limited to additional STIP budget requests.</p> <p>We understand that the STIP was not adequately funded until the recent passage of ABX8 6 and ABX8 9 (the "Tax Swap"). Under the Tax Swap, STIP funds remain subordinate to GO debt service. Please insert additional covenants that the Department will tap funding in the State Highway Account including SHOPP in the event that (a) later legislation changes the apportionment of funds between SHOPP and STIP and (b) funding applied to GO debt service prevents the Department from meeting any payment obligation under the Agreement.</p> <p>We understand that the Department is authorized to pledge revenues, moneys and rights to payment, including grant funding, for financing leases under Cal. Gov. Code Section 5451. We remain interested in exploring with the Department a grant of security or other arrangements that could enhance the credit of the transaction.</p>	<p>The White Paper and Section 11.5 will be modified.</p> <p>Section 17.2.7: The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p>
3.	Base Drawing Information		2	Clarify in the ITP text, the definition of responsibilities required within the ROW line types shown on the Base Drawings. Digital drawings show ROW, Irrigation ex, O&M line work.	Additional information can be found in Appendix 5.
4.	Built Environment Treatment Plan Section 9		2	<ol style="list-style-type: none"> <li>Who will perform the HABS report on building 201?</li> <li>When will the report and recommendations be available?</li> <li>What is the responsibility of the O&amp;M after rehabilitation/construction?</li> </ol>	<ol style="list-style-type: none"> <li>Department developing report.</li> <li>Prior to NTP 1.</li> <li>No responsibility.</li> </ol>
5.	Contract 3 Storm Water Drainage Report			Please provide the Appendixes to this Drainage Report	<p>The appendices are in the data room and can be accessed at the following location:</p> <p><a href="http://www.dot.ca.gov/hq/esc/oe/project_ads_addenda/04/04-1637U4/Reference%20Documents/Design%20and%20Construction/Phase%201/Contract%203/Contract%203%20Stormwater%20Drainage%20Report/Contract%203%20Storm%20Drainage%20Report%20of%203%20-%20Appendix.zip">http://www.dot.ca.gov/hq/esc/oe/project_ads_addenda/04/04-1637U4/Reference%20Documents/Design%20and%20Construction/Phase%201/Contract%203/Contract%203%20Stormwater%20Drainage%20Report/Contract%203%20Storm%20Drainage%20Report%20of%203%20-%20Appendix.zip</a></p>
6.	Contract 4 Storm Water Drainage Report			Please provide the Appendixes to this Drainage Report	<p>The appendices are in the data room and can be accessed at the following location:</p> <p><a href="http://www.dot.ca.gov/hq/esc/oe/project_ads_addenda/04/04-1637U4/Reference%20Documents/Design%20and%20Construction/Phase%201/Contract%204/Contract%204%20Stormwater%20Drainage%20Report/Contract%204%20Stormwater%20Drainage">http://www.dot.ca.gov/hq/esc/oe/project_ads_addenda/04/04-1637U4/Reference%20Documents/Design%20and%20Construction/Phase%201/Contract%204/Contract%204%20Stormwater%20Drainage%20Report/Contract%204%20Stormwater%20Drainage</a></p>

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					%20Report%20-%20Appendix.zip
7.	Data Room		2	Please provide all preliminary investigation reports for the corridor.	All information available to the Department are posted to the data room.
8.	Doyle Drive Replacement Project Storm Water Drainage Report			Please provide the Appendixes to this Drainage Report	Appendices are located in the data room here: <a href="http://www.dot.ca.gov/hq/esc/oe/project_ads_addenda/04/04-1637U4/Reference%20Documents/Design%20and%20Construction/Phase%202/Stormwater/Stormwater%20Drainage%20Report/">http://www.dot.ca.gov/hq/esc/oe/project_ads_addenda/04/04-1637U4/Reference%20Documents/Design%20and%20Construction/Phase%202/Stormwater/Stormwater%20Drainage%20Report/</a>
9.	Factsheets – Exceptions to Mandatory/Advisor y Design Standards - Table 1 in each		2	Design exception tables are in metric units and stationing. Have design exceptions been converted to English units?	No.
10.	General		3	Will the work of relocating utilities, currently being performed within Contract #2, include utilities within the limits of Contracts #5, #6, #7 and #8?	No. Contract #2 dealt only with utilities relocated under Phase 1. Developer will be required to do utility relocation based on Developer's design.
11.	General		4	Please convert the Caice files included in the reference documents to a more common file format.	The Caice file is a duplicate and will be removed from the data room.
12.	General		3	Will a Materials Information Handout be provided to address the hazardous materials?	All information related to hazardous materials has been posted in the data room and no additional information is forthcoming.
13.	General		4	The Design Exception Fact Sheets used Metric standards. How do these exceptions relate to U. S. Customary unit standards? What standards will be used for any additional design exceptions?	Metric units were converted for contract 3 & 4. New design exceptions will use US customary units.
14.	General -- Water rates		4	Please provide water rate unit prices during concession period.	That is for Proposers /Developer to obtain determine from PT. The suppliers not for the Department to provide. The Department will attempt to provide.
15.	Indicative Plans	Sheet L-4	2	Are there any setback requirements for any roadway section elements from the buildings along Girard at approximate Station 'GI' 58+70?	Proposers should note the requirements and commitments set out in the various Contract Documents.
16.	Indicative Plans	Sheet L-6	2	It appears that a retaining wall will be required to retain fill from encroaching at bldg 610 – approx. 'SB' 67+50 to 69+00, Rt. Is there a required setback from the building to the face of this wall?	Proposers should note the requirements and commitments set out in the various Contract Documents. If the Proposer's design requires such a feature then Proposer should establish such criteria with the property owners.
17.	Indicative Plans	Sheet P?	1	The indicative plans are missing the profile and super elevation diagram for the DOY4 alignment. Will these documents be provided?	DOY4 IPDs will be posted to the data room.
18.	Indicative Plans	Sheet u-5 and u-7	2	Is it expected that the pump stations (design and installation) are part of this project?	Pump Stations on Page U5 of the IPD are to be constructed in Phase 2. Pump Station and force main shown on Page U7 will be constructed in Phase 1.
19.	IPD Plans		1	High Water elevation for Tennessee Hollow structures is shown at elevation 13.12 feet, provide reference to this requirement	The Low Causeway Hydraulics Report uploaded to the Data Room here: <a href="http://www.dot.ca.gov/hq/esc/oe/project_ads_addenda/04/04-1637U4/Reference%20Documents/Design%20and%20Construction/Phase%202/Hydraulic%20Reports/Girard%20Interchange/">http://www.dot.ca.gov/hq/esc/oe/project_ads_addenda/04/04-1637U4/Reference%20Documents/Design%20and%20Construction/Phase%202/Hydraulic%20Reports/Girard%20Interchange/</a>
20.	ITP P3 Agreement	1.2 1.3.1	2	Please add the following sentence at the end of RFP § 1.2: "Notwithstanding the foregoing, Developer may rely on the Reference Documents as having been prepared in accordance with applicable, legal industry and professional standards."  Corresponding language should also be added at the end of § 1.3 of the P3 Agreement.  Further, we would propose to amend the definition of "Relief Event" in the P3 Agreement to include the following additional clause:  "any defect in any Reference Documents arising from the failure of such Reference Document to be prepared in accordance with applicable, legal	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.

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				industry and professional standards"	
21.	ITP	1.6.2	3	Any additions to the Contract Documents per the second sentence should be by mutual agreement (including agreement on priority).	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
22.	ITP	1.7.5-6 2.2.2(A) Financing Proposals	1	In Section 1.7.6, please extend non-exclusivity to rating agencies and clarify the reference to "private finance banks".	Non-exclusivity should extend to rating agencies.
23.	ITP	1.7.5-6 Financing Proposals	2	Please define "project finance bank".	Project Finance Bank is any financial institution which is in the business of providing capital to projects through the use of project finance structures.
24.	ITP	1.7.5-6 2.2.2(A) Appendix D-2 Financing Proposals	1	1. Section 2.2.2(A) of the ITP should permit communications (subject to customary information barriers) with rating agencies, monoline insurers and banks as lenders acting on behalf of multiple bidder teams. 2. Please clarify this and also the date at which NPV of MAPs has to be discounted.	1. The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1. 2. The Sponsors are considering amending the Agreement as appropriate.
25.	ITP	1.9.2-3 TIFIA/PABs	2	Please provide additional information on the status and anticipated process for PABs and TIFIA, including the anticipated PABs issuer.	The general information regarding TIFIA presentation will be provided. We are currently in discussions with USDOT regarding PABS.
26.	ITP	2.8 Changes to Proposer Team	3	Please provide a response time for the Department to comment on or approve requests for changes to the Proposer's organization.	Sponsors will revise ITP Section 2.8 to reflect a three business day approval period, to commence after all necessary information is submitted.
27.	ITP	4.9 Proposal Security and Financial Close Security	1	In the event of a financial market disruption (i.e. a market MAC) that adversely impacts the ability of the Proposer to enter into the Agreement, and thereafter the Developer to reach Financial Close, the Proposal Security (for a market MAC during the validity period) and the Financial Close Security (for a market MAC after execution and before Financial Close) should be returned by the Department and not drawn.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
28.	ITP	5.3 Pass/Fail Evaluation	2	Pass/Fail criteria must be objective and easily determinable based on facts or submissions.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
29.	ITP	5.5 Adjectival Scoring	4	Please clarify how the adjectival ratings will be converted to numerical scores.	Per ITP Sections 5.5.4 and 5.5.6, the PSC will convert the adjectival ratings to points.
30.	ITP	5.7.2 Revised Proposals	2	If the Department requests revised Proposals under Section 5.7.2 after the initial submission, then (i) the stipend should be increased to reflect the increased bid costs, (ii) Proposers should be allowed to decline to submit revised Proposals without penalty and (iii) the original validity period should continue to run without being reset.	i: The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time. ii: The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1. iii: The BAFO will specify a specific time period bids have to remain valid.
31.	ITP	6.2 Failure to sign with Best Value Proposer	2	1. If the Best Value Proposer and the Department fail to finalize the Agreement due to a disagreement on changes requested by the Department, then such Proposer should be eligible to receive the Stipend and its Proposal Security should be returned. 2. Please provide a hard date for when the Agreement will be submitted to the Legislature.	1. The Preferred Proposer is obligated to negotiate in good faith. If the Preferred Proposer negotiates in good faith and no agreement is reached, it is entitled to the stipend and a return of its proposal security. 2. The Actual date of submission is dependent upon when the finalization of the final form of the lease agreement is completed.
32.	ITP	6.2.1 Finalization of Agreement 6.2.2	1	Further requests to modify the Stipend Policy (Appendix H, ITP): • A court prohibiting the award of the Project, or • The Department electing to make changes to the Agreement post Bid Submission, based on changes suggested by the Legislature, PIAC or the	Provided a Proposer fulfills its obligations under the terms of the RFP, the Proposer will be entitled to receive the stipend and a return of the proposal security in accordance with the terms of the RFP.

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		Public Hearing ITP Appendix H, Stipend Policy		Public, or <ul style="list-style-type: none"> <li>The Legislature not making the requested appropriation for the Project.</li> </ul>	
33.	ITP	6.2.1 6.2.3	3	Please provide an objective standard for determining "good faith" applicable to both Parties for purposes of negotiation and finalization of the Agreement.	Examples of failures to negotiate in good faith have been provided in the ITP.
34.	ITP	6.3 Post-award Process to Execution	4	Would the Sponsors consider shortening the time allotted to the Department to execute the Agreement after it has been executed by the Developer?	The time period required for the Department to sign the Agreement once it is executed by the Developer will be changed to 15 days from 30 days. This revision will be reflected in Addendum No. 1.
35.	ITP	Appendix B 2.2.12	2	1. Potential sureties read this as an un-conditioned commitment to provide bonds which goes beyond the language of the Bid Security. Why are both required? 2. § 2.2.12 continues that such "letter must specifically state that the surety has read the RFP (including the ITP) and has evaluated the Proposer's backlog and work-in-progress in determining its willingness to issue the performance bond and payment bond." Will the Sponsors agree to delete this language?	1. The surety commitment requirement applies to performance security, not proposal security. 2. The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.
36.	ITP	Appendix B Sec. 1.2	4	Please explain the Department's concern and specify the Department's expectations for the requirement that the Construction Phasing/Sequencing Plan "will address limitations contained in the right of entry agreement with the Presidio Trust." Will the Sponsors consider submittal of confidential drafts?	The Department expects the Proposers to reflect all the limitations contained in all the Contract Documents in the schedule. The Sponsors will not accept "confidential" submittals.
37.	ITP	Appendix B Sec. 1.4	4	Please clarify which Requirements are considered "sustainability Requirements" for purposes of the Sustainability Plan.	Reference is contained in Appendix C, Section 1.4.
38.	ITP	Appendix D Sec. 1(d)	3	1. The new requirement that Due Diligence reports be to the standard of a bond circular is not fully comprehensible, but if it means that it should meet disclosure standards for SEC registered securities offerings it is overly prescriptive and will unnecessarily increase bid costs and reduce value to the Department. Will Sponsors consider deleting this provision? 2. Please explain why the Department now requires a letter of support from a Proposer's financial advisor.	1. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time. 2. Financial Advisor's letter is considered part of the Developer's due diligence package.
39.	ITP	Appendix E Form H	4	Appendix E lists Form H as a Required Form but Form H does not appear in the Proposal Checklist. Please clarify whether Form H should be submitted as part of the Proposal.	Form H is not to be submitted with the proposal. The opinion letter is to be provided by the Preferred Proposer
40.	ITP	Appendix F 1.3(B)(i)	4	With respect to Operations and Maintenance Evaluation Criteria related to "approach to coordinating and working with other government agencies whose operations are associated with the project," please provide a list of relevant government agencies and details regarding coordination required during proposal and thereafter.	It is the responsibility of the Developer to determine the government agencies whose operations are associated with the project.
41.	ITP	Appendix H Stipend General Comment	3	The stipend amount is set at \$500,000. Will the Sponsors consider increasing the amount of the Stipend?	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
42.	ITP	Appendix I-1 Item B	4	What is to be included in the pavement design package?	The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.
43.	ITP	Grading and Landscaping Concept	2	Need clear delineation of extent of work outside ROW	Proposers should note the requirements and commitments set out in the various Contract Documents.
44.	LA-3	LA-3	2	("by Caltrans" is unclear if it is the responsibility of the DB contractor)	All work shown in phase II to be performed by Developer. LA-3 has been removed from the IPDs

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45.	P3 Agreement	1.2.1	4	Please consider revising Section 1.2.2 to provide that Developer's Proposal Commitments will not be interpreted to contain terms and conditions that exceed the requirements of the Contract Documents unless there is an unambiguous written statement on the part of Developer agreeing to such terms. In the event of any ambiguity between the Contract Documents and a purportedly higher standard set forth in Developer's Proposal Commitments, the standards set forth in the Contract Documents should prevail.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
46.	P3 Agreement	1.3	2	Please see the requested language in comment 63 above to RFP § 1.2, which should also be added at the end of § 1.3 of the P3 Agreement.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
47.	P3 Agreement	1.3 Reference Documents	4	Will the Sponsors consider further revisions to Section 1.3 for certain claims and losses associated with Reference Documents that are used as "benchmark" under the Agreement for risk allocation?	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
48.	P3 Agreement	1.4 Third Party Agreements General Comments	1	<p>1. It is unclear how Developer will comply with the provisions of the Programmatic Agreement, the Presidio Trust Right of Entry Agreement, and the License to Enter and Conduct Utility Relocations, as many provisions call for actions to be taken by parties to the agreements or for cooperation with other governmental entities in producing reports and plans. Please:</p> <p>a. specify in an Appendix Developer's the obligations under the Programmatic Agreement, the Presidio Trust Right of Entry Agreement, the License to Enter and Conduct Utility Relocations and any third party agreements with which Developer is obliged to comply;</p> <p>b. specify the obligations retained under such agreements by the Department; and</p> <p>c. insert the requirements placed upon Developer by any plan or other document produced in accordance with such agreements into the Requirements.</p> <p>2. Developer should also be compensated for costs arising from Delays due to the breach of another party to the Programmatic Agreement, the Presidio Trust Right of Entry Agreement, the License to Enter and Conduct Utility Relocations and any third party agreements.</p> <p>3. Please delete the proviso in Section 1.4.2 or specify what services under the Standard Agreement will give rise to Department Recoverable Costs under other provisions of the Agreement so the cost can be estimated for bid purposes as otherwise the proviso undercuts the intent of Section 1.4.2.</p>	<p>1. Developer is only obligated to comply with the provisions of the third party agreements that concern the Developer's design, construct, operate and maintain obligations under the P3 agreement. Appendix 23 will be revised to delete the reference to Contracts 1-4.</p> <p>2. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>3. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p>
49.	P3 Agreement	1.4	2	Please clarify order of precedence for Developer's compliance with the provisions of Third Party Agreements (e.g., if the terms and conditions of a Third Party Agreement conflict with Developer's obligations under the Contract Documents).	Third party agreements are not Contract Documents. Contract Documents state that the Developer is to abide by and in some cases carry out Dept. obligations under third party agreements. Where the third party may have the power to impose standards and specs more onerous than the Contract Documents, the Contract Documents in some instances provide relief – e.g. landscaping and haul routes. In addition, while Program. P3 Agreement specifies procedures to deal with historic structures and other archeo/paleo resources, discovery or archeo/paleo resources are a Relief Event; thus, Developer's costs would be recoverable per terms of the P3 Agreement.
50.	P3 Agreement	1.4.1	3	Please confirm whether Department knows of any provisions or obligations in the third party agreements listed on Appendix 23 which would be an impediment under the RFP or to the contractual commitments of Developer in connection with the Project. Please confirm that Department is not currently in default or in violation of any provisions of such third party agreements.	Section 17.2 will be amended to reflect that the Department has received no notice of default or violation of the third party agreements. Third party agreements contain requirements, obligations, protections, limitations, specifications and provisions that are impediments compared to if the agreements did not exist. It is Proposer's responsibility to conduct due diligence and evaluate effect of these agreements on the Project and Developer's obligation and cost to carry out the Work.
51.	P3 Agreement ITP	2 Availability Payment	1	As part of the Availability Payment Discussion, we have requested clarification from the Department about the split that is set out in the ITP Appendix D p.10 Section 2 (c) (v) Maximum Availability Payment (MAP) where 85% of the MAP would be fixed and 15% would be indexed at 2.2%.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.

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		ITP Appendix D Section 2. Financial Model		We therefore ask the Department to consider increasing the variable portion of the MAP to a level that is in line with market precedent in the US, i.e. up to 30% of the MAP indexed and 70% of the MAP fixed.	
52.	P3 Agreement	2.1	4	Inasmuch as some required lands are not owned by Department, the new language in the first line should read "Department grants or shall cause to be granted to".	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
53.	P3 Agreement 2.1.2	2.1.2	4	Please consider changing Department's standard for cooperation from "reasonable assistance" to providing us with "commercially reasonable efforts" to obtain necessary right of way.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
54.	P3 Agreement  ITP	2.1-2 4.4  ITP Appendix D Section 2(c)(ii) Appendix D and Appendix 1 (def. of "Project Right of Way") Appendix 3 Grant of Concession, Lease	1	<ol style="list-style-type: none"> <li>Please add to the grant in Section 2.1.1 a concession, license and franchise.</li> <li>Please explain why the Lease is effective from Substantial Completion.</li> <li>We note that the Developer is responsible for compliance with the Presidio Trust Right of Entry Agreement (which is subject to review and comment) and the Programmatic Agreement (which has not been provided), including payment of charges and fees and obtaining of consents. Please provide a copy of the Programmatic Agreement. Please also confirm that there are no other relevant agreements governing the right of entry described in Section 2.1.2.</li> <li>Section 4.4.7 permits the Department to restrict access to parts of the Project Right of Way after NTP 3 and before Phase I Final Acceptance for purpose of achieving Phase I Final Acceptance. While we appreciate that the Department will waive its right to assess O&amp;M Noncompliance Adjustments, in addition this should constitute a Department-Caused Delay.</li> </ol>	<ol style="list-style-type: none"> <li>The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</li> <li>The permanent boundaries of the ROW cannot be determined until substantial completion.</li> <li>Sponsors confirm that there are no other relevant agreements governing the right of entry described in Section 2.1.2 other than the Presidio Trust Right or Entry Agreement.</li> <li>The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</li> </ol>
55.	P3 Agreement	2.3.3	4	In § 2.3.1, the reference to § 2.3.3 should be changed to § 2.3.2.	The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.
56.	P3 Agreement	3.1.2 Preliminary Planning and Engineering	4	<p>In the first sentence of Section 3.1.2 the Department recognizes that the Developer's risk exposure for incorrect or incomplete review of Site conditions should be subject to Sections 4.10 (regarding Hazardous Materials), 4.15 (regarding Phase I), and 9.2 (regarding Relief Events).</p> <ol style="list-style-type: none"> <li>As a clarification the second sentence of Section 3.1.2 should be made subject to these same provisions.</li> <li>In addition, both parts of Section 3.1.2 should also be subject to Sections 4.16 and 4.17, which concern the Phase I Construction by the Department.</li> </ol>	<ol style="list-style-type: none"> <li>The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</li> <li>The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</li> </ol>
57.	P3 Agreement	3.1.2	2	<ol style="list-style-type: none"> <li>"3.1.3 Nothing in this Section 3.1 shall affect the right of Developer to rely upon any Reference Documents as contemplated in Section 1.3 above."</li> <li>Please add "§ 1.3", before "§ 4.10" in the first line. (§ 1.3 of the P3 Agreement.)</li> <li>In addition, please strike the last sentence of Section 3.1.2. The inclusion of this acknowledgement creates an ambiguity in the Agreement and may act as a limitation on the scope of certain Relief Events. In particular, Sections (l), (m), (r) and (u) of the definition of Relief Events contemplate remedies to Developer for certain unforeseen site conditions relating to utilities, hazardous materials, archeological, paleontological, cultural and historic resources.</li> </ol>	<ol style="list-style-type: none"> <li>The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</li> <li>The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</li> <li>The Sponsors will revise language by adding a final sentence to Section 3.1.2. to state that "the preceding sentence does not affect or limit Developer's entitlement to compensation and other relief under the terms of this Agreement respecting occurrence of Relief Events."</li> </ol>
58.	P3 Agreement	3.2 Appendix 21 Governmental Approvals	3	<ol style="list-style-type: none"> <li>The Developer's general obligations regarding Government Approvals under Section 3.2.1 should be subject to Section 3.2.3, which requires coordination and support from the Department.</li> <li>The Developer needs to have time extensions and compensation for costs incurred for unreasonable delays by Governmental Entities in issuing permits.</li> <li>Governmental Approvals necessarily require the exercise of administrative discretion outside the Developer's control. The risk of such delays should be shared by the Department. As such, please add that the Developer will not be in default for failing to meet a deadline due to delays in obtaining Governmental Approvals that are beyond the reasonable control of Developer-Related Entities. Please also explicitly provide that the Concessionaire may submit a claim for</li> </ol>	<ol style="list-style-type: none"> <li>The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</li> <li>The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</li> <li>The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</li> </ol>

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				delays in obtaining Major Permits under Section 3.2.2.	
59.	P3 Agreement	3.2 Appendix 21 Governmental Approvals	3	<p>1. At a minimum, if the Department refrains from assisting the Developer with Governmental Approvals under Section 3.2.3.1, the belief on which it bases that decision in subsections (a) and (c) should be "reasonable".</p> <p>2. In addition, subsection (b) of Section 3.2.3.1, which allows the Department to refrain from assisting in securing approvals when the position would be unusual or not customary under similar circumstances, should be deleted because unique positions are likely given the nature of the PPP procurement and subsections (a) and (c) already adequately protect the Department's interests.</p> <p>3. Please advise whether the list of existing Governmental Approvals in Table 1 of Appendix 21 and the list of Major Permits in Table 2 of Appendix 21 are comprehensive or whether you expect to revise them further. Please also confirm the bracketed deadlines in the list of Major Permits which appears as Table 2.</p>	<p>1. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>2. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>3. The list is comprehensive.</p>
60.	P3 Agreement	3.2.1.1	4	Is Department aware of any change in the status or effectiveness of any Governmental Approval listed in Table 1 of Appendix 21?	No.
61.	P3 Agreement	3.2.1.2	2/3	<p>1. Please replace "may" in the fourth line with "on terms consistent with the Contract Documents will";</p> <p>2. replace "approval rights" with "approvals" in the penultimate line; and add at the end of the § ";</p> <p>3. provided such approvals are consistent with the Contract Documents."</p> <p>4. § 3.2.1.2 provides that the failure/inability of Department to obtain the relevant permit may constitute a Relief Event under clause (h) of the definition of Relief Event, "provided Developer's design meets the requirements of the Contract Documents." Please revise this proviso to say that only non-compliance with requirements that impact in some way the required portion of the Project Right of Way owned by GGBHTD will impact Developer's right with respect to such Relief Event.</p>	<p>1. The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.</p> <p>2. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>3. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>4. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p>
62.	P3 Agreement	3.2.1.3	4	We propose that the same standard of performance be applicable to Department and Developer. In light of the foregoing, please consider modifying Developer's standard of performance from "take all actions necessary" to more customary "commercially reasonable" standard in connection with the procurement and maintenance of Governmental Approvals.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
63.	P3 Agreement	3.2.2.1	3	<p>1. § 3.2.2.1 states that Table 2 of Appendix 21 identifies the expected time necessary to secure each of the Major Permits, "commencing from the date on which Developer submits a complete application in accordance with the Contract Documents to the applicable Governmental Entity...."</p> <p>2. If the Sponsor will submit certain of these on behalf of Developer (under § 3.2.3.2 or otherwise), § 3.2.2.1 should be revised to reflect this.</p>	<p>1. The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.</p> <p>2. Addendum for this paragraph Will reflect that Department has 5 days after it receives the completed application from Developer to submit it.</p>
64.	P3 Agreement	3.2.2.2 (Major Permit Delays) 4.5.7.2 (Utility Owner Delay) 4.10.2.5 (Hazardous Materials) 4.10.2.7 (Hazardous Materials)	2	<p>Throughout the P3 Agreement (e.g., §§ 3.2.2.2(1), 4.5.7.2, 4.10.2.5, 4.10.2.7, etc.), Department purports to limit Developer's right in the context of a Relief Event by excluding the right to Extra Work and Delay Costs. This is not an appropriate allocation of risk given that, in the context of a Relief Event, it requires Developer to assume risks which are not under its control.</p> <p>Please revise the Agreement to provide that for all Relief Events arising from events/circumstances that are not within Developer's control (including, without limitation, those arising from the actions/inactions of Department or third parties), Developer will be entitled to claim all applicable compensation, extensions and other relief under Article 9 (including, without limitation, 100% of the relevant Extra Work Costs and Delay Costs).</p>	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
65.	P3 Agreement	3.2.2.2 Major Permit delays	1	Proposer notes that changes have been made to 3.2.2.2 that now provides relief for delay costs. However, there has been new drafting that restricts relief for delay, in relation to obtaining major permits that should be removed, specifically; 3.2.2.3 Notwithstanding the provisions in this Section 3.2.2, Developer shall not be entitled to any relief for Delay Costs relating to delays in obtaining the Major	Section 3.2.2.3 will be deleted.

No.	Document	Relevant Section	Cat.	Question/Comments/Rationale for Proposed Change	Sponsor Comments
				Permit from the U.S. Fish and Wildlife Service/ National Marine Fisheries Service listed in Table 2 of Appendix 21. The Developer should be entitled to any relief for Delay Costs relating to delays in obtaining the Major Permit from the U.S. Fish and Wildlife Service/ National Marine Fisheries Service listed in Table 2 of Appendix 21.	
66.	P3 Agreement	3.2.2.2	2	The Department should not limit Developer's right to recover damages incurred as a result of a Relief Event arising from events/ circumstances that are not within Developer's control. To the extent the failure (due to no fault on the part of Developer) to obtain a Major Permit by the applicable deadline results in Extra Work, Developer should have the right to receive 100% compensation for the same. Please delete § 3.2.2.2(1).  The word 'or' should be inserted at the end of the penultimate numbered item in § 3.2.2.2.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
67.	P3 Agreement	3.2.3.2	4	Please consider modifying the standard applicable to Developer from "provide all necessary support" to "provide all commercially reasonable support".	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
68.	P3 Agreement	3.3.2 Department Discretionary Approvals		The Department's absolute discretion for approval of Submittals should be exercised reasonably and in good faith. Good faith should mean a reasonable interpretation of the Contract Documents in order to provide a stable standard.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
69.	P3 Agreement	3.3.2 Department Discretionary Approvals	1	Certain Submittals are subject to the Department's approval in its sole or absolute discretion or good faith discretion. We believe that the reservation of unfettered discretion for the Sponsor is inequitable and that all such decisions should be subject to reasonableness and accessible to dispute resolution. To that effect, Proposer suggests the following changes to the Agreement. The Department should honor their existing mandatory design exceptions without any additional approvals required.  For example in Volume II, page 23 the Agreement states that: "Developer shall design all the elements associated with mainline highway and other roadways in accordance with the criteria established in the Contract Documents. Some elements of the design developed in the preliminary design may not meet these design requirements. For these variances, mandatory design exceptions have already been approved by the Department and FHWA and are described below. Developer shall submit the final mandatory design exceptions for approval by the Department in its sole discretion and for the approval of the FHWA ninety (90) days prior to the anticipated commencement of construction."	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
70.	P3 Agreement	3.3.2	4	In circumstances where Department is authorized to exercise its "sole and absolute" discretion, please include obligation for Department to act in "good faith" towards Developer.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
71.	P3 Agreement	3.3.2	3	Department should be required to directly approve or make comments on submittals. Disapproval without comment does not permit concessionaire to correct submittal and resubmit.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
72.	P3 Agreement	3.3.3	2	Please replace "at its election and risk," with ", but" in the first sentence and delete the second sentence.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
73.	P3 Agreement	3.3.3 - 3.3.8 Department Reviews and Comments	4	Section 3.3.8 provides 14 days for the Department to respond to "complete submissions" but does not provide for notice to Developer if the Department does not consider the submission to be complete. Please clarify to ensure a definitive submittal and response timeframe.	The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.
74.	P3 Agreement	3.3.7	3	We propose including a concept in this § 3.3.7 that would allow Developer to rely on a written confirmation or instruction by Department with respect to any ambiguity on a requirement in the Contract Documents. In effect, if Developer requests Department's view on an interpretation of a requirement, a subsequent change in interpretation of such requirement should constitute a Relief Event	The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.

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				with payment by Department to Developer of any Delay Costs or Extra Work relating to the same.	
75.	P3 Agreement	3.3.7.1	3	We appreciate that work latently defective and discovered to be defective prior to Final Acceptance should be the responsibility of Developer. However, 3.3.7.1 is overly broad and creates risk for the Developer and Contractors regarding when approvals issued by the Department are final and may be relied upon by Developer and its Contractors. Please modify provision 3.3.7.1 in order to clarify when approvals issued by Department are binding and may be relied upon by Developer and Contractors.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
76.	P3 Agreement	3.3.8.2	3	The new language does not address the issue previously raised by Developer. Developer will accept delays caused by furloughs of up to one day per week covering the entire Department or an entire Division of Department necessary for such action.	The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.
77.	P3 Agreement	3.3.8.4	4	In § 3.3.8.4, the reference to § 6.7 should be changed to § 6.8.	The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.
78.	P3 Agreement	4.1 D&C Obligations of the Developer	4	Section 4.1.2.2, which requires absolute compliance by the Developer with the approved Project standards and specifications absent a Department-approved Change Proposal, appears to conflict with Section 4.1.2.1 (which allows alterations without a formal change), with Section 1.2 (which provides for an objective order of precedence among documents) and with the Developer's overriding obligation to comply with law. Please conform Section 4.1.2.2 with these other provisions.	The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.
79.	P3 Agreement	4.1.1.1	4	Please consider modifying standard for Developer's actions from "all efforts necessary or appropriate" to "all commercially reasonable efforts necessary or appropriate"	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
80.	P3 Agreement	4.1.1.5 9.2.6 Developer Obligation to Mitigate	3	1. Regarding Section 4.1.1.5, please clarify that "commercially reasonable efforts" are efforts that do not impose significant additional costs on Developer or Contractor. 2. Regarding Section 9.2.6, please clarify that any costs associated with "proper re-sequencing and re-scheduling" will be included in compensation for the Relief Event that is mitigated.	1. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time. 2. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
81.	P3 Agreement	4.1.2.3	3	1. Please delete the first sentence of § 4.1.2.3 in its entirety. In the second sentence, please delete words "or, in the exercise of reasonable care should have known" (re the standard for when Developer shall have the duty to notify Department). 2. Developer's obligation should be limited to those circumstances where it actually knows about the issue with the Requirements. Developer should not have liability for an error on the part of Department (which promulgates the Requirements).	1. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time. 2. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
82.	P3 Agreement	4.10.2 Pre-Existing Hazardous Materials	1	1. Section 4.10.2.3.1: The cost of moving contaminated soils should count against any deductible, regardless of whether such soil is deposited on or off-site, as the disposal will in any event impose an unknown cost on Developer. 2. Section 4.10.2.3.2: Please clarify the scope of "originate". It remains our position that Developer cannot be responsible for contaminated soil introduced during Phase I Construction. 3. Section 4.10.2.3.3: Developer cannot price the risk of Pre-existing Hazardous Materials that migrate onto the Project Right of Way. Please delete this provision. 4. Section 4.10.2.6 - 7: Any deductible imposed should be an aggregate deductible covering the Term in order to allow Developer to price its potential risk. 5. Section 4.10.4: Please confirm that a "third party spill" is considered a Release and costs to Developer under this section will be compensated pursuant to Section 4.10.3. Please also remove the exception for spills caused by Developer-Related Entities for reasons discussed with regards to defects and damage caused by Developer-Related Entities during Phase I Construction and the protection provided to the Department by Section 4.10.4.4.	1. The issue will be addressed in Addendum No. 1. 2. The issue will be addressed in Addendum No. 1. 3. The issue will be addressed in Addendum No. 1. 4. The issue will be addressed in Addendum No. 1. 5. The issue will be addressed in Addendum No. 1.

No.	Document	Relevant Section	Cat.	Question/Comments/Rationale for Proposed Change	Sponsor Comments
83.	P3 Agreement	4.10.2.5 4.10.2.7	2	<p>1. Please clarify that in the event Pre-existing Hazardous Materials are discovered on the site, Developer should be allowed to seek recovery for Extra Works Costs and Delay Costs relating to the same. Please consider striking §§ 4.10.2.5(3) [incorrectly numbered (6)] and (4) [incorrectly numbered (7)], as well as 4.10.2.7(2) and (3).</p> <p>2. Please correct the numbering of Items in § 4.10.2.5.</p>	<p>1. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>2. The numbering will be corrected in Addendum No.1.</p>
84.	P3 Agreement	4.10.3	3	Please modify the third sentence to allow recovery of Extra Work Costs and Delay Costs relating to repair, replacement or decontamination of Work as a result of Release of Hazardous Materials by Department or any third party other than a Contractor or a Developer-Related Entity.	The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.
85.	P3 Agreement	4.11	4	<p>1. Delete "(a)" where it appears in the thirteenth line.</p> <p>2. Please insert the following at the end of § 4.11: "required as a result of the differences between the Indicative Preliminary Design and Developer's Final Design, unless such differences are due to a Department Change pursuant to Article 10."</p>	<p>1: The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.</p> <p>2: The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.</p>
86.	P3 Agreement	4.12	2	<p>1. We do not understand the connection between §§ 4.12.1 and 4.12.2. Is the Allowance Landscaping (which is subject to the provisions of § 4.12.2) defined by the Requirements (as the definition in Appendix 1 suggests), or are modifications resulting from consultation between Department and the Presidio Trust per § 4.12.1 included within the scope of the allowance? If the later is the case, how are these modifications to be documented?</p> <p>2. Department should share in all overruns relating to landscaping requirements which are determined by Department in consultation with the Presidio Trust if they are beyond the current scope of the Requirements. Otherwise, Department has no incentive not to exceed the allowance. § 4.12.2.2 appears to be inconsistent with that and would require contractor to include the higher (\$18,000,000) number, rather than \$12 million number which we believe is intended</p>	<p>1: Landscaping on Presidio Trust lands, the subject of 4.12.1, is a subset of Allowance Landscaping, the subject of 4.12.2. Allowance landscaping is all the landscaping that the Developer is required to perform as part of the D&amp;C Work, both within and outside Presidio Trust lands. The Department will establish the final landscaping criteria and requirements in consultation with the Trust and deliver the same to the Developer.</p> <p>2: The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p>
87.	P3 Agreement	4.12 4.13 4.17 Landscaping / Haul Routes / Survey of Existing Site Conditions	2	<p>1. As in Section 4.13, a Relief Event, including cost and time relief, should be provided for any changes between the known Haul Route requirements upon which bids are based and the Presidio Trust's final requirements. This will allow the initial design to be used as the basis of a bid assumption.</p> <p>2. It is similarly difficult for the Developer to estimate Haul Route costs, so it will be forced to assume the maximum cost exposure in its bid under this approach. To achieve better value for the Department, the Department should bear the cost of any actual Extra Work Costs.</p> <p>3. Section 4.17.4 and 4.17.7 should not be exempted from the compensation provisions of Section 4.17.5 as otherwise Developer cannot price the cost of restoration work due to Phase I Construction.</p> <p>4. Please also define "Allowance Landscaping".</p>	<p>1. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>2. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>3. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>4. Definition of "Allowance Landscaping" will be provided.</p>
88.	P3 Agreement	4.12 Landscaping	2	Publishing the Presidio Trust design criteria will enable a more cost effective bid and remove the need for 4.12.2	All information is currently in the data room.
89.	P3 Agreement	4.15.1 Construction Warranties	3	Construction warranties should be effective only if payment to Developer or Contractor of amounts owed by the Department under the Contract Documents are current.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
90.	P3 Agreement	4.15.1	3	<p>1. Clause "(a)" sets an impossible standard if, as 3.3.3 currently provides, Department is not bound by stated time periods in giving approvals, comments, etc. Please delete clause "(a)".</p> <p>2. In the final sentence, please replace "would be voided" with "is voided" and add "which would otherwise have been covered by such warranty" at the end.</p>	<p>1. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>2. The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.</p>

No.	Document	Relevant Section	Cat.	Question/Comments/Rationale for Proposed Change	Sponsor Comments
91.	P3 Agreement	4.16.6 Defects in Phase I Construction	1	<p>1. if Developer encounters any Structural Latent Defect after the Phase I Final Acceptance, Developer shall be responsible for rehabilitation of the defect and increased costs of operating and maintaining the Project, but shall be entitled to receive compensation from the Department if the defects are identified within 5 years after Phase I Substantial Completion.</p> <p>2. The five year limitation period in Section 4.16.6.1 is not market standard within the North American P3 market, as the Developer cannot evaluate, price or insure risk of defects on work it did not build. In fact, in most cases Developers will not take rehabilitation risk of infrastructure that they have not constructed.</p> <p>3. As such, our requirement is that the defect period should be raised to 10 years in order to allow for defects to become apparent. Or, the Developer could take responsibility for rehabilitation of Phase 1 work (not "rehabilitation of any and all defects") at the Department's direction under Section 4.15.4 or 4.15.6, as applicable, subject to appropriate compensation and so long as such defects and the resulting rehabilitation work do not reduce or delay the payment of Availability Payments or other amounts due to the Developer.</p> <p>4. Furthermore, the Developer should not be obliged to bear the risk of latent defects generated by Phase 1 Contractors (in regards to their work done in respect of Phase 1) engaged by the Developer for Phase 2 work.</p>	<p>1. The 5 years limitation period in Section 4.16.6 will be changed to 10 years.</p> <p>2. The 5 years limitation period in Section 4.16.6 will be changed to 10 years.</p> <p>3. The 5 years limitation period in Section 4.16.6 will be changed to 10 years.</p> <p>4. Sections 4.16.7 and 4.17.8 will be deleted.</p>
92.	P3 Agreement	4.16.6 and throughout (Definition of Structural Latent Defects)	2	<p>Use of the term "Structural Latent Defects" is inappropriate in light of the definition of that term on Appendix 1, in that:</p> <ul style="list-style-type: none"> <li>● it denies Developer relief from subsurface conditions for which it is not able to inspect, contrary to established public construction law (See, e.g., Public Contract Code § 7104); and</li> <li>● it provides relief for failure of Phase 1 Construction to meet the standards and specifications in effect at the time of Phase 1 construction only, whereas Developer must comply with the standards and specifications which are currently applicable.</li> </ul> <p>Please delete the definition and replace the term throughout with "latent defects". Please provide a Phase 1 Construction Schedule.</p>	The Department is including the risk of costs to repair significant damage to Phase I structures caused by unknown subsurface conditions in this relief event
93.	P3 Agreement	4.16-17 Defects in Phase I Construction	1	<p>1. In order to ensure the most efficient integration between the Project phases and achieve the best value for the Department, the Developer should have the opportunity to comment on any aspects of the Phase I Construction works that remain subject to further design and adjustment prior to completion.</p> <p>2. The Agreement should provide that completion of the Phase I work and the punch list is independently evaluated and certified, with an assignment of warranties and full assumption of liability for defects and delays to follow completion. The Independent Engineer should be separately defined by reference to an entity appointed jointly by the Department and the Developer pursuant to a form of agreement to be provided as part of the RFP package</p> <p>3. The Developer should not be responsible for the actions and omissions of a Developer-related Entity acting under its Phase I Construction contract with the Department. Please delete these provisions.</p>	<p>1. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>2. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>3. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p>
94.	P3 Agreement	4.17 Survey of Existing Site Conditions	2	<p>1. The Developer should have an opportunity to observe and comment on the preparation of the Survey of Existing Conditions. The surveys and inspections under Section 4.16 should be performed or certified by an independent third party.</p> <p>2. Surveys should be conducted by the Independent Engineer.</p>	<p>1. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>2. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p>
95.	P3 Agreement	4.17.7	3	This does not appear to be on the same basis as 4.13.2 which provided relief for damage caused by Phase 1 contractors. We need a basis for our costs.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
96.	P3 Agreement	4.2 Project	3	The Department should consider whether the generalized quality assurance and control provisions in Section 4.2.1, 4.2.8 and 4.2.9 are necessary as they	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP

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		Management Plan; Design		effectively reiterate the Developer's preexisting obligations to comply with the Project Management Plan and the Contract Documents.	documents at this time.
97.	P3 Agreement	4.2-4 Project Management Plan; Design; Nonconforming and Defective Work	3	<p>1. Please clarify that the Department's ability to direct the correction of Nonconforming work is limited by the Contract Documents.</p> <p>2. The Department's right to assert claims resulting from defects in the Work should not extend to defects that result from work performed as part of the Phase I Construction.</p> <p>3. Sections 4.2.4 and 4.6 prevent any Design Work from being conducted before finalizing the initial Project Management Plan. These restrictions are not practical, as some work that might be considered within the broad definition of Design Work may begin before bid submission and must continue thereafter together with other work. We suggest that, together with our prior comments above on Design Work generally, the Department consider revising the definition of Design Work and the approach to the initial Project Management Plan to not prohibit the types of pre-bid and associated early 'design work' that will inevitably be ongoing even before Financial Close.</p>	<p>1. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>2. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>3. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p>
98.	P3 Agreement	4.3 Non-conforming Work	1	<p>1. The Department's discretion to direct the correction of Nonconforming Work must be limited to the specifications set out in the Contract Documents.</p> <p>2. Please provide a formula for the calculation of cost savings under this section. The standard "shall take into account" will lead to disputes over these costs.</p> <p>3. Please delete the final sentence. Developer should be entitled to discount the NPV of expected cost increases for O&amp;M incurred as a result of the non-conforming work.</p>	<p>1. Definition of "Nonconforming Work" is already limited to work which does not meet the requirements of the Contract Documents.</p> <p>2. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>3. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p>
99.	P3 Agreement	4.3.1	3	Developer should have the option of correcting Nonconforming Work, and Department should have the right to recover avoided correction costs only if Developer does not correct. The second sentence should read: "Department may condition its acceptance of Nonconforming work on recovery from Developer of 100% of the costs avoided by Developer by not correcting such Nonconforming Work (in addition to any other adjustment of the Milestone Payment or Availability Payments)."	The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1. The second sentence to read, "If, at Developer's request, the Department elects to accept Nonconforming Work, ..."
100.	P3 Agreement	4.4	3	<p>1. In Section 4.4.2, Department should be obligated to coordinate upon Developer's request in accordance with Section 3.2.3.</p> <p>2. In Section 4.4.3, Developer will need a fixed date on which the final right of way is established for planning purposes.</p> <p>3. Please confirm that Department will obtain the Temporary Construction Easements in the Developer's TCE Occupation Plan.</p>	<p>1. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>2. The date is subject to the provisions of the Right of Entry and Substantial Completion.</p> <p>3. CONFIRMED</p>
101.	P3 Agreement	4.5	2	Department should bear all costs associated with Unknown Utilities. The Department has better access to the information needed to evaluate this risk, and Developer will be forced to price the risk highly due to lack of information. Please delete the exception for Delay Costs.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
102.	P3 Agreement	4.5 Appendix 1 (def. of "Utility Adjustment", "Utility Owner Delay") Utility Adjustments	2	<p>1. The Developer cannot control all the parties and factors that affect Utility Adjustments. It can however use appropriate efforts to try to accomplish such adjustments. Please revise Section 4.5.1.1 as shown at left.</p> <p>2. The Developer should be able to claim a Department-Caused Delay similar to the Relief Event for Utility Owner Delays under Section 4.5.7 for delays by the Department</p> <p>3. Please clarify Section 4.5.7(2)(e) to refer to the Developer's pursuit of commercially reasonable efforts "including commencing enforcement..." instead of "including the enforcement" as it should be clear that the Developer only needs to have commenced its rights of enforcement and not exhausted them in order to benefit from the compensation and performance relief, as finality of enforcement rights can be very long.</p> <p>4. Under Section 4.5.8 the Developer is responsible for the risk and cost of the Adjustment Work regarding Unknown Utilities. The Department is better positioned to assess and manage the risks associated with Unknown Utilities.</p>	<p>1. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>2. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>3. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>4. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p>

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				To achieve better value for the Department and to avoid the Developer pricing in a contingency for this work, the costs of Unknown Utilities should be borne by the Department.	
103.	P3 Agreement	4.5.4	4	Please provide that Department's prior approval of a Utility Enhancement will not be "unreasonably withheld."	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
104.	P3 Agreement	4.5.7 4.5.8	2	1. We do not think it is appropriate to exclude Delay Costs or Extra Work Costs in the event of a Utility Owner Delay or an Unknown Utility. In addition to relief in the form of an extension of the Project Schedule, there will be certain fixed and idle costs relating to personnel, equipment, etc., which will be incurred by the design and construction team in the event of a Utility Owner Delay or an Unknown Utility. 2. Please delete § 4.5.7.2(1) and (2). 3. Please delete the proviso in § 4.5.8.	1. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time. 2. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time. 3. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
105.	P3 Agreement	4.6 19.2.1 Commencement of Design Work, Conditions to Financial Close and Termination for Failure to Achieve Financial Close	1	1. In Section 19.2.1, if the Agreement is terminated due to a failure to achieve Financial Close that results from a failure to secure TIFIA financing or an injunction, then the compensation to the Developer should include all actual, external costs, as well as reasonable overhead and a rate of return (for the period from NTP 1 until termination). 2. Section 19.2.1.4 covers external costs from between the Effective Date and Financial Close. Section 19.2 only applies where there is a failure to achieve Financial Close, so this calculation does not work. As a drafting clarification please revise the reference to Financial Close to indicate the Termination Date. 3. The caps on compensation to the Developer for costs incurred under Section 19.2 are inadequate and should be increased in all cases.	1. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time. 2. The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1. 3. The Caps have been changed to \$18 million and monthly caps have been eliminated.
106.	P3 Agreement	4.6.4 4.7.10	4	Please consider revising these §§ to add following materiality qualifier: "All representations and warranties of Developer set forth in this Agreement and the Key Contracts to which Developer is a party shall be and remain true and correct in all material respects."	The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.
107.	P3 Agreement	4.7.9 Conditions to Commencement of Construction Work	3	Department should specify the applicable provisions of other Contract Documents or delete the condition as provided.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
108.	P3 Agreement	4.7-9 Commencement of Construction; Substantial Completion	4	The "best efforts" standard to achieve this date implies that the Developer will have a breach of contract claim prior to the deadline for achieving Substantial Completion, which is inappropriate and unnecessary. The Developer already has an incentive to complete on time in the form of the delayed Availability Payment.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
109.	P3 Agreement	4.9.2.1, Item 8 4.9.3.1, Item 10	2	Please add "which is material, capable of being cured and has not been waived" at the end of each of these Items.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
110.	P3 Agreement	4.9.2-3 Substantial Completion and Final Acceptance	1	1. Substantial Completion and Final Acceptance are determined by the Department. Please provide for the use of an independent and objective engineer to certify both events. Otherwise, given the size and timing of the Milestone Payment, this Agreement will not be financeable. 2. Any delay in achieving either Substantial Completion and/or Final Acceptance as a result of the Department's management of the Phase I Construction should constitute a Relief Event as a Department-Caused Delay. 3. An unrelated and yet uncured Developer Default should not prevent issuance of Substantial Completion, if Developer has satisfied the other conditions and is able to operate the Project in accordance with the Contract Documents	1. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time. 2. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time. 3. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time. 4a. The Sponsors considered the issue presented by the

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				<p>notwithstanding that such Developer Default has occurred and not yet cured.</p> <p>4. A number of the completion criteria should be reconsidered:</p> <p>a. The 10th Substantial Completion requirement regarding training should be objective, not at the Department's reasonable satisfaction. The 4th Final Acceptance requirement should similarly be objective and not subject to the Presidio Trust's acceptance.</p> <p>b. The 1st Final Acceptance requirement (completion of work in accordance with the relevant documents) appears to be duplicative as it overlaps with the previously satisfied 1st Substantial Completion Requirement.</p> <p>c. The 5th Final Acceptance requirement, which requires the Developer to demonstrate to the Department's reasonable satisfaction that sufficient spares are on hand, is subjective and otherwise unnecessary and intrusive into the Developer's management of the Project. As such, this requirement should be deleted.</p>	<p>Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>4b. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>4c. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p>
111.	P3 Agreement	4.9.4 11.1-3 Appendix 4 Availability Payments and Milestone Payments	1	<p>1. Availability Payments should begin with Substantial Completion, as the Project is effectively completed and operational at that point.</p> <p>2. Payment of Availability Payments on a quarterly basis will present the Developer with significant cash flow issues requiring it to maintain costly reserves.</p> <p>3. The right of the Department to withhold payment under Section 11.2.2.4 due to delayed or inaccurate reports is disproportionate to the potential damage or inconvenience to the Department. The amount withheld should be no greater than the maximum amount that the Availability Payment could be reduced if such report contained the worst possible Unavailability Events or O&amp;M Non-compliance Events of the type evidenced by such report.</p> <p>4. To avoid potentially lengthy disputes over Availability Payments as the underlying facts should be in nature, an independent engineer should determine the amount due under any Availability Payment invoice. Conforming changes should also be made throughout.</p> <p>5. The Milestone Payment is a key credit support and any deduction in the anticipated payment amount raises the risk of a funding gap. We suggest applying deductions to the Availability Payment equally over each monthly Availability Payment for the first year following Substantial Completion. Deductions to the Milestone Payment will jeopardize financing and must be eliminated.</p> <p>6. In addition, as drafted Section 4.9.4.3 does not expressly exclude adjustments to the Milestone Payments for poor O&amp;M performance that results from a breach by the Department with respect to its Phase I Construction obligations.</p>	<p>1. The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.</p> <p>2. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>3. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>4. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>5. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>6. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p>
112.	P3 Agreement	4.9.4 Appendix 4 Milestone Payment	1	<p>We appreciate that the Department has introduced the concept of a cap in deductions to the Milestone Payment. However, Appendix 4 and Section 4.9.4.5 still allow supplemental deductions above the deduction cap.</p> <p>As a result, it remains our position that applying deductions beyond the cap to a single Milestone Payment of this size creates a funding gap that makes the Project unfinanceable. As previously suggested, deductions should be deferred to Availability Payments to enable Developer to service debt with the Milestone Payment.</p>	<p>The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.</p>
113.	P3 Agreement	5.1 Issuance of NTP 2	1	<p>1. Department should provide a Department-caused Delay for costs to the Developer due to commencement of O&amp;M During Construction after September 5, 2011 that are not attributable to acts or omissions by Developer in order to compensate Developer for mobilization and retention costs.</p> <p>2. Sections 5.1.4 and 5.1.5 do not provide a clear date by which Developer must meet the requirements of these sections, since the Phase I Operation Start Date is not fixed before bid submission. Please provide a definitive date for NTP 2.</p> <p>3. Please clarify whether Section 5.1.5 is intended to present a condition to the issuance of NTP 2.</p>	<p>1. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>2. A definitive date for NTP2 will not be provided. The Developer will receive 30 days notice prior to NTP2.</p> <p>3. Obtaining the requisite insurance is an obligation of Developer prior to commencing the O&amp;M During Construction Work.</p>
114.	P3 Agreement	5.2 O&M Standards	4	<p>Section 5.2.2.6 contemplates deductibles for Extra Work performed in relation to Non-Discriminatory Changes. To ensure the best value for the Department</p>	<p>The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP</p>

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		and Requirements		these deductibles should be deleted.	documents at this time.
115.	P3 Agreement	5.2 O&M Standards and Requirements	4	<p>1. In clause (b) of Section 5.2.1.1, changes to the terms and standards in the Contract Documents "from time to time" should only be effective in accordance with the terms of the Contract Documents.</p> <p>2. In Section 5.2.2.7(b), "(b) the net present value (applying the discount rate used in the Financial Model for determining the Equity IRR) of the cost of funds..." is unclear as to what discount rate should be used. We request further clarification.</p>	<p>1. The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.</p> <p>2. The WACC as shown in the Financial Model will be used as the discount rate.</p>
116.	P3 Agreement	5.2.2.2	2	<p>1. Developer cannot anticipate increased O&amp;M costs related to major changes in standards. Please revise Agreement to limit Developer's responsibility for increased O&amp;M costs related to betterment.</p> <p>2. Please insert "reasonably" before "prescribed" in clause "(a)" and delete clause "(d)".</p>	<p>1. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>2. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p>
117.	P3 Agreement	5.5-10 Renewal and Handback	4	<p>1. Under this provision the Department is able to step in and perform Renewal Work at the Developer's expense if the work is not completed within 30 days. 30 days may not be a sufficient time to complete certain Renewal Work.</p> <p>2. Please clarify in Section 5.7.1.1 that the Renewal Work Reserve Account is only required after Final Acceptance.</p> <p>3. Please provide in Section 5.7.2 that the Developer has the ability to change the amounts in Renewal Reserve Account on a yearly basis according to the Renewal Work Plan in order to reflect Renewal Work that remains outstanding.</p> <p>4. The calculation of the Monthly Handback Reserve Deposit is calculated by reference to the Handback Renewal Amount, divided by the number of months remaining in the Term, less six months. The reduction by six months effectively inflates the Monthly Handback Reserve Deposit and therefore creates an unnecessary financial burden.</p>	<p>1. The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1. The time period will be modified to 90 days.</p> <p>2. CONFIRMED</p> <p>3. CONFIRMED</p> <p>4. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p>
118.	P3 Agreement	6.1 6.2 Section 4 of Division II of the Requirements) General Comment Noncompliance Points	2	Under Section 6.2.1.2 the Department may require more frequent noncompliance reporting than the standard monthly reports. Increased frequency might increase the cost of reporting without increasing the Developer's actual performance. Please remove this obligation.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
119.	P3 Agreement	6.1.3	2	The 10% limit specified in this § provides little comfort to Developer if Department may remove contractual obligations which are being met in order to stay within the limit. Please remove the right to do so and restore the requirement that new Noncompliance Points be added only with respect to previous failures of which Developer has been given notice.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
120.	P3 Agreement	6.1-8 Section 4 of Division II of the Requirements Noncompliance Points Issues	2	<p>1. The amendments to Section 6.1 are insufficient to limit the Department's right in Section 6.1.2 to add Noncompliance Point events. Given the advanced state of design for the Project and the ongoing work on Phase I, the Department should be able to identify all relevant Noncompliance Points prior to the bid due date. As such it is not appropriate for the Department to reserve the right to add Noncompliance Point events under Section 6.1.2.</p> <p>2. Please delete the reference to the Developer's Cure Period beginning when "first reasonably suspected". The cure period should begin when the Developer has knowledge of the Noncompliance.</p> <p>3. The contract should include provisions for Fast Cure in the event a noncompliance is discovered by the Department, as this incentivizes the prompt cure of a condition. This is found in similar P3 contracts throughout the US.</p>	<p>1. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>2. The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.</p> <p>3. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>4. CONFIRMED</p> <p>5. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p>

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				<p>4. Please clarify that undisputed portions of the Availability Payment and any other payment obligations of the Department will be paid pending dispute resolution.</p> <p>5. Please provide an appropriate default interest rate (see separate comments below on the Late Payment Rate definition in Appendix 1) for payments that are delayed pending disputes on Noncompliance Points and eventually found to have been improperly withheld by the Department. We would like to otherwise discuss the related potential working capital concerns raised by the risk that large numbers of Noncompliance Points could be subject to ongoing dispute.</p>	
121.	P3 Agreement	6.2.1.1	3	On the third last line, replace the words "at all times" with "upon notice".	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
122.	P3 Agreement	6.3	3	Please make DBE/SBE Offsets bankable for future use during the Operating period.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
123.	P3 Agreement	6.5-6.6 6.8.1 Appendix 1, def. "Long Cure Priority Noncompliance" "O&M Noncompliance Event"	1	<p>Please also clarify the following:</p> <ol style="list-style-type: none"> <li>Section 6.5.2.2: Please provide for suspension of Intervals of Recurrence for Noncompliances caused by Relief Events.</li> <li>Section 6.5.2.3: Please clarify that a Noncompliance that is cured within the applicable Cure Period will also not count as a Noncompliance incident for purposes of determining a Persistent Developer Noncompliance.</li> <li>Section 6.6.1.2: Please advise what the Department means by "forfeited" Cure Periods. Noncompliance Points should not accumulate for Noncompliances whose Cure Period is "forfeited" when the Department steps in.</li> <li>Please reinstate the language regarding an applicable cure period in the definition O&amp;M Noncompliance Event. Under a strict interpretation of this definition, Developer would be subject to a deduction and register an instance of noncompliance regardless of when the defect is detected and cured.</li> <li>Please clarify whether Noncompliances in Table 4.2 with no defined Adjustments have no adjustments or these figures will be inserted in a later addendum.</li> <li>Per Section 6.8.1, we understand Long Cure Priority Noncompliances to count as instances of Noncompliance even if cured in the Cure Period. Developer can accept this risk only if Section 6.5.1 is expanded to include all events beyond Developer's control, such as vandalism and/or damage caused by animals.</li> <li>Long Cure Priority Noncompliances should not include events that Developer cannot prevent through performance under the Agreement. For example, for instances of Noncompliance related to the pavement condition or condition of the structures, the noncompliance is not caused by Developer's lack of performance and can only be detected after inspection making it too late for Developer to avoid the instance of Noncompliance. Please remove all such events from Long Cure Priority Noncompliances.</li> </ol>	<ol style="list-style-type: none"> <li>Already provided</li> <li>CONFIRMED</li> <li>The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</li> <li>The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.WILL BE CONFIRMED</li> <li>The Sponsors will confirm in Addendum No. 1.</li> <li>The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.</li> <li>The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</li> </ol>
124.	P3 Agreement	6.6 12.4 18.2.4.1	3	Will Department consider including a priority for the Lead Contractor, Lead Engineer and Lead Design Firm to continue with work on the Project in the event of a Department Step-in with respect to instances where the Lead Contractor, Lead Engineer and the Lead Design Firm are complying with the terms and conditions of their respective contracts?	Yes.
125.	P3 Agreement  ITP	7.3 7.8  ITP 1.8 Key Contracts	2	<ol style="list-style-type: none"> <li>In Section 7.3.1.1 the Department is granted complete discretion to approve/disprove a Key Contract. This leads to greater uncertainty in the Developer's future contract negotiations.</li> <li>Under Section 7.3.3.2 the lack of discretion to terminate a contract may prevent the Developer from seeking a better value contract for the same work.</li> <li>The definition of Key Contracts should not include all O&amp;M Contracts if the Developer is self-performing the O&amp;M, as it will have various subcontracts in order to perform these services, but it ultimately maintains the overall liability for the O&amp;M work. Limitations on the Developer's right to amend, terminate or</li> </ol>	<ol style="list-style-type: none"> <li>The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</li> <li>The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</li> <li>The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</li> </ol>

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				replace such subcontractors will make self-performance unworkable and ultimately less efficient for the Department, particularly in light of the Department's level of "good faith" and "sole" discretion for these approvals.	
126.	P3 Agreement	7.5.2 Contracts with Affiliates	4	The Department has a right to review and comment on any Contract with an Affiliate for 20 days. Unless the Contract is a Key Contract, the Developer is under no obligation to accept these comments. We expect the 20 day period to impose a real cost on the Developer concerning contracts with limited value. We suggest placing a dollar limit on the contracts provided to Department and requiring only delivery, eliminating the comment period.	The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1. The dollar limits will be \$500,000.
127.	P3 Agreement	7.6.1 Labor Standards	4	Please clarify whether forfeiture of penalties to the Department for noncompliance with the Labor Code are in addition to penalties imposed by governmental authorities or the obligation to forfeit is relieved if penalties are paid to a governmental authority.	The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.
128.	P3 Agreement	7.8.3	3	Please delete Section 7.8.3 discussing the restrictions on Developer to terminate Key Contracts.	Section 7.8.3 will be modified in Addendum 1 to reflect the conditions for termination of Key Contracts with DBE/UDBE/SBE/DVBE/LBE firms.
129.	P3 Agreement	8.2 Mandatory Enhancements	4	As drafted, Developer will not receive the benefits otherwise granted in the Agreement for Department Changes, Changes in Law or interoperability standards in connection with making Mandatory Technology Enhancements. Developer should not lose these benefits just because the changes Developer is required to make are defined as Mandatory Technology Enhancements. Please delete the sentence stating that Mandatory Technology Enhancements required prior to Substantial Completion shall not entitle the Developer to claims against the Department.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
130.	P3 Agreement	9.1 Appendix 1 (misc. related definitions) Developer Claims	3	<p>1. Clause 2(c) of Section 9.1.1.1. remains unclear. By its nature an initial notice may need to be updated as the facts are clarified.</p> <p>2. This section appears to require the Developer to proceed with work during the period in which a Claim is underway (see e.g. clause 7 of Section 9.1.1.1). The Developer should be able to partially suspend the relevant part of the work pending the claim if continuing to perform such work would require financing in the absence of a payment from the Department.</p> <p>3. The Developer's cost of preparing ultimately valid claims should be reimbursed by the Department. Claim Deductible, Cost and Delay Relief</p> <p>4. Under the current approach the Developer could be exposed to significant cost and delay risks for a number of events each falling under the Claim Deductible amount. We suggest aggregate limits be added to the definition of Claim Deductible as shown at left.</p> <p>5. Section 9.1.2.2 contemplates imposing a claim deductible for Relief Events that are beyond the control of Developer. Since the Claim Deductible cost cannot be estimated without a cap, Developer cannot estimate and finance costs based on the actions of third parties. In addition, Structural Latent Defects should remain included as all Structural Latent Defects should be exempt from the Claim Deductible, not simply those discovered in the first five years after the Baseline Report. Seismic Even Claims</p> <p>6. The Department should eliminate the Seismic Event Deductible to increase the value to the Department in the bids through reduced Availability Payments. On this we note that the California Public Contract Code Section 7105 indicates: "Construction contracts of public agencies shall not require the contractor to be responsible for the cost of repairing or restoring damage to the work, which damage is determined to have been proximately caused by an act of God, in excess of 5 percent of the contracted amount, provided, that the work damaged is built in accordance with accepted and applicable building standards and the plans and specifications of the awarding authority."</p> <p>7. Insurance "available" to the Developer seems to be the incorrect standard—it should be insurance proceeds that Developer receives or that it was required to</p>	<p>1. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>2. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>3. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>4. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>5. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>6. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>7. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p>

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				obtain under the Agreement.	
131.	P3 Agreement	9.1.1.1 (1)	2	<p>1. There should not be a waiver by Developer of right to submit a claim for failure to comply with applicable time requirements, unless Department has been prejudiced by such delay.</p> <p>2. The time requirements in § 9.1.1.1 should not begin until a "responsible officer" of Developer has knowledge of such claim.</p>	<p>1. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>2. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p>
132.	P3 Agreement	9.1.1.1(2)	4	<p>1. Please remove reference to requirement of notice for "potential claim" as this is ambiguous. It is unclear what would constitute a "potential" Claim and, as such, it will be difficult to determine when applicable time requirements begin to run.</p> <p>2. Please consider inclusion of concept that time required for notice will not begin to run until a "responsible officer" of Developer has knowledge of such claim.</p>	<p>1. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>2. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p>
133.	P3 Agreement	9.1.1.2	4	The requirement for submission of "full and final documentation of Claim" prior to Department's review of the Claim is not practical. In particular, in instances where Department requests supplemental information from Developer, there will be an ambiguity as to when Department will respond to the Claim. Consider modifying section to allow: (i) Developer to provide notice of claim, with information describing claim and relief sought, (ii) Department to request supplemental information from Developer.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
134.	P3 Agreement	9.1.2.1	1	While it is recognized that this is intended to avoid minor claims, the 10 day schedule deductible appears to go well beyond reasonable. Can the definition of "claim deductible" be limited to the \$50,000 impact with a cap on the maximum total aggregated deductible?	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
135.	P3 Agreement	9.1.3		Seismic Event Deductible: We would like to obtain the "Seismic Probability Analysis" Report for this project in order to assess the seismic risks present.	The seismic report from AMEC is in dataroom.
136.	P3 Agreement	9.1.5	3	Please modify § 9.1.5 to provide that only the insurance proceeds actually received by Developer will be "netted out" from the applicable Extra Work Costs and Delay Costs.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
137.	P3 Agreement	9.2.1-2 Appendix 1 (def. of "Deductible Relief Event" and "Relief Event") Relief Events	1	<p>1. If a Relief Event Delay extends Final Acceptance, then the Milestone Payment is delayed with interest to follow. As the Developer will have incurred considerable financing costs and made capital expenditures in anticipation of completion, it may be difficult for the Developer (and its Lenders) to wait during the period of delay without receiving the anticipated Milestone Payment. Final Acceptance should be deemed to occur notwithstanding the Relief Event Delay for purposes of paying the Milestone Payment. This approach has the additional benefit of saving the Department considerable interest expenses.</p> <p>2. If the Availability Payments are delayed the deemed payment to the Developer must compensate it for actual costs and expenses. Specifically:</p> <p>a. Under Section 9.2.2.2, debt service under clause 1 should be calculated from the date on which such debt service obligations actually begin under the financing documents and not the Baseline Final Acceptance Date, as debt service payments could begin earlier (e.g. to reflect the Milestone Payment or tolling, or an earlier Availability Payment).</p> <p>b. Under Sections 9.2.2.2-3, O&amp;M After Construction costs should reference actual costs, not estimated costs under the model. In addition, in Section 9.2.2.2, clause 3, the cost multiplier should be 100% of costs (not 85% of costs) because other than proceeds from insurance policies, Developer does not have any mitigation mechanism for the risk associated with uncovered O&amp;M After Construction costs between the Final Acceptance Date and Baseline Final Acceptance Date; therefore compensation should cover 100% of those specific costs.</p> <p>c. Please explain why certain Relief Events are considered Deductible Relief</p>	<p>1. Section 9.2.3.1. will be revised to substitute the phrase "Substantial Completion" for "Final Acceptance."</p> <p>2. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>3. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>4. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>5. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>6. The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.</p>

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				<p>Events, which are not subject to relief for the first 90 days. In addition, the definition of Deductible Relief Event should limit such events to those in clause (a) (but only for events for which insurance is available) of the definition of Relief Events. If an insurance policy to cover the loss associated to the initial 90 days period of the Relief Event is not available in the market place, the Developer is not able to mitigate the risk. Therefore, only insurable Relief Events should be considered as Deductible Relief Events.</p> <p>3. It is inappropriate in Section 9.2.1 for the Developer to be required to waive all its legal and contractual rights to make claims on the basis that Relief Events will fully compensate it in all cases. The waiver should be limited to the subject matter of the Relief Event.</p> <p>4. Section 9.2.4 should be limited to Relief Events in clause (a) (but only for events for which insurance is available) of the definition of Relief Events only. If the Relief Event causes a Closure that is not deemed a Permitted Closure, the only way for the Developer to compensate the Quarterly Unavailability Adjustment to the Availability Payments is based on insurance policies. Therefore, only Relief Events for which insurance policies are available in the market place should be considered for the purposes of this section 9.2.4.</p> <p>5. In Section 9.2.5, please provide for an extension of the Financial Close Deadline if any Relief Event occurs that affects Financial Close.</p> <p>6. Structural Latent Defects (referenced in clause (s) of the definition of "Relief Event") should more reasonably constitute Relief Events if discovered during the ten (not five) year period after the date of the Baseline Report given that these relate to Phase I Construction.</p>	
138.	P3 Agreement	9.2.2.2	2	<p>In order to preserve Developer's incentive to create schedule "float", the phrase "Causes the Substantial Completion Date to extend beyond the Baseline" in Item 3 should be replaced with "delays the Substantial Completion Date".</p>	<p>The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.</p>
139.	P3 Agreement	9.2.2.3 19.3.1.1	1	<p>Deductible Relief Events</p> <p>1. Section 9.2.2.3 - If a Deductible Relief Event causes a Relief Event Delay, no compensation under this Section 9.2.2 shall be due or payable for the first 90 days of Relief Event Delays attributable to such Deductible Relief Event, and such deductible shall not be included in calculating the number of days of Relief Event Delays under Section 9.2.2.2. Such 90 day deductible shall be cumulative and apply in the aggregate for all Deductible Relief Events. If a Relief Event Delay is caused concurrently by a Deductible Relief Event and a non- Deductible Relief Event, such delay shall be deemed caused solely by the Deductible Relief Event.</p> <p>We suggest Deductible Relief Events:</p> <ul style="list-style-type: none"> <li>• Include a maximum deductible of 14 days per event with a maximum of 90 days for all events.</li> <li>• Include a deductible of \$25,000 unless the Deductible Relief Event exceeds \$25,000 in which case there will be no deduction.</li> </ul> <p>Further to Deductible Relief Events:</p> <p>2. Section 19.3.1.1 - Either party may deliver to the other Party written notice of its conditional election to terminate this Agreement ... if: "A Relief Event has occurred before the end of the Construction Period and the resulting Relief Event Delays exceed 270 days in the aggregate, ..." [emphasis added]</p> <ul style="list-style-type: none"> <li>• It is not clear if "A Relief Event" means that the 270 day limit is per event (the "A" implies a single event)</li> <li>• It is not clear how a single Relief Event could have an "aggregate" delay</li> <li>• If the 270 day limit is per event, both the cumulative delays for Relief Events and the cumulative time deductibles for Deductible Relief Events would be</li> </ul>	<p>1. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p> <p>2. The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.</p>

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				unlimited	
140.	P3 Agreement	9.2.3.1	2	1. The phrase "Final Acceptance beyond the date scheduled in the initial Project Schedule included in Appendix 2-A," should be replaced with "Substantial Completion" in the first/second lines of this §: and 2. Clause "(a)" should be deleted.	1. "Final Acceptance beyond the date scheduled in the initial Project Scheduled" will be replaced with "Substantial Completion beyond the Baseline Substantial Completion Date" and "(a)" should be deleted. 2. Clause (a) will be deleted.
141.	P3 Agreement	9.2.3.3	2	Please delete the new section 9.2.3.3 restricting calculation interest to principal payments equal to the Milestone Payment Amount. Developer should receive payments adequate to compensate for all costs due to the Relief Event.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
142.	P3 Agreement	9.2.5 Appendix 1 / def. "Delay Costs"	1	We believe the bid validity period should be 240 days from the Bid Submission Date. It is unreasonable for the Lead Contractor to hold its price beyond this period if Financial Closing is delayed.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
143.	P3 Agreement	9.2.5.1 9.3.1	3	Please consider modifying clause to change standard from "directly caused by a Relief Event" to "attributable to" or "to the extent there has been" to a Relief Event, which is more customary. The inclusion of a "directly caused" standard for Relief Events will impose an undue burden on Developer and does not appear to preserve the benefit of time extensions in instances where there is a Department caused delay.	The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.
144.	P3 Agreement	9.2.6 Mitigation	4	The mitigation requirement references "proper" re-sequencing and re-scheduling of the Work. This is a vague and subjective standard which could lead to excessive compliance costs and disputes. This should instead reference a more objective standard, namely "reasonably practicable under the circumstances."	The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.
145.	P3 Agreement	9.2.6	2	To the extent that Developer is required to re-sequence and re-schedule the Work in order to mitigate delays that are not under its control, we propose that such re-sequencing and re-scheduling be considered a Relief Event. In particular, we note that Developer may incur additional costs (e.g., Delay Costs, Extra Work Costs) relating to the re-sequencing and re-scheduling of the Work, even in instances where the project schedule is unaffected (as a result of re-sequencing and re-scheduling by Developer).	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
146.	P3 Agreement	9.2.7	3	If a Change in Law requires Department to change its facilities or practices at a Facility owned and operated by Department, Department would almost certainly seek funds from appropriate state sources. Department should act similarly with respect to the Project. Accordingly, please delete § 9.2.7.2.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
147.	P3 Agreement	9.2.7.3 16.4.1.5 17.1.3 Appendix 1 (def. of "Change in Law") Taxes and Change in Law	1	Please explain the intended approach to property and equivalent taxes and summarize your analysis of the associated risk.  1. We note that Section 9.2.7.3 provides for compensation following the levy of State or local ad valorem property taxes, while Section 16.4.1.5 includes a Developer indemnity for taxes, including for "use of any property", Section 17.1.3 provides that the Developer will pay all applicable taxes, and the Change in Law definition excludes State or local ad valorem property taxes. It is our position that the Developer should not indemnify for any State or local ad valorem property taxes and that these should be expressly covered in the Change in Law definition.  In the Change in Law definition, also please delete the references to changes in State labor laws and State tax laws other than with respect to income tax.  2. Relief for Changes in Law should also not be limited under Section 9.2.7.2.	1. Section 143 (o) contains an exemption from property taxes. If there's a change in law that imposes property taxes on the Developer's interest in the real property the Developer is entitled to make a claim for compensation as a relief event due to change in law.  2. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
148.	P3 Agreement	9.3 Appendix 1 (def. of "Deductible Relief Event" def. of "Relief	2	Consider amending the definition of Relief Event to include the following provisions:  (w) Discovery of (i) subsurface or latent physical conditions identified in the geo reports included in the Reference Documents that differ materially from the subsurface conditions indicated in such geo reports, excluding any such conditions known to Developer prior to the Proposal Submission Date, or (ii) physical conditions within the Project Right of Way of an unusual nature, differing	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.

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		Event*) Relief Events		<p>materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in the Agreement, excluding any such conditions known to Developer 30 days prior to the Proposal Submission Date or that would become known to Developer by undertaking reasonable investigation prior to the date that is 30 days prior to the Proposal Submission Date;</p> <p>(x) Failure to obtain, or unreasonable and unjustified delay in obtaining, a Governmental Approval from any Governmental Entity, except to the extent that such failure or delay in obtaining a Governmental Approval results from failure by any Developer-Related Entity to locate or design the Project or carry out the work in accordance with the NEPA/CEQA Approval or other Governmental Approval;</p> <p>(y) Omission of an underground Utility from the Utility Information included in the Contract Documents or misidentification of a Utility from the Utility Information included in the Contract Documents and any other Unidentified Utilities;</p> <p>(z) (i) the necessity of acquiring additional land or property for the Project in accordance with Section 4.4.2 as a result of the Phase I Construction or (ii) any failure or defect in the Phase I Construction work that does not otherwise constitute a Department-Caused Delay;</p> <p>(aa) Irreconcilable differences between the Requirements and the landscaping criteria and requirements finally established by the Presidio Trust in accordance with Section 4.12.1; and</p> <p>(bb) wrongful (i) entry or Closure by the Department in accordance with Section 18.2.2 or (ii) action or suspension by the Department in accordance with Section 18.2.3.4.</p> <p>Notwithstanding the foregoing, a "Relief Event" excludes any event or circumstance to the extent caused by the negligence, willful misconduct, breach of contract, or violation of Law or Governmental Approval by any Developer-Related Entity.</p>	
149.	P3 Agreement	10.0	3	Will the Sponsors consider including a funding process for disputed changes and not merely an obligation to perform and submit a claim for changes in the work?	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
150.	P3 Agreement	10.1.3	4	Please consider including a "commercially reasonable" standard rather than a "sole discretion" standard for evaluation by Department of Change Proposals.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
151.	P3 Agreement	10.1-2 Changes	3	<ol style="list-style-type: none"> <li>1. Department Changes should be capped at an aggregate value of 10% of the Agreement price. The absence of a cap exposes the Developer to potentially significant and open ended cost and time impacts.</li> <li>2. In Section 10.1 the Department is entitled to 100% of the net savings in financing, labor, material and equipment costs associated with a Department Change. Will the Sponsors consider a sharing of cost savings on a 50%/50% basis to incentivize the Developer to help achieve cost savings?</li> <li>3. Similarly, the sharing of cost savings in Section 10.2 should also be subject to the availability of cash to pay the Department, and financing cost savings under Section 10.2.6 should be shared on a 50%/50% basis given the financing risk assumed by the Proposer.</li> </ol>	<ol style="list-style-type: none"> <li>1. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</li> <li>2. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</li> <li>3. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</li> </ol>
152.	P3 Agreement	10.2.4	3	With respect to cost savings resulting from changes under § 10.2.1(b) that do not involve changes to the requirements, will the Sponsors consider deleting the right of Department to share in cost savings that relate to D&C costs?	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
153.	P3 Agreement	10.2.6	3	Please conform to the 50% split set forth in § 10.2.4.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
154.	P3 Agreement	11.1.1 (Timing and Basis for Availability Payments)	1	Will the Sponsors consider the commencement of availability payment to begin at substantial completion? Also tie Availability Payments to Substantial Completion.	Availability Payments will commence at substantial completion with a holdback of 20% of the AP and other conditions.

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155.	P3 Agreement	11.3.2	4	Would the Sponsors consider deleting Section 11.3.2 or otherwise clarifying that the provision will not limit Developer's ability to submit a Claim even if it relates to an invoiced amount?	The last sentence of Section 11.3.2 will be deleted. This revision will be reflected in Addendum No.1.
156.	P3 Agreement	11.4 Interest on Payments	4	The Department should be required to notify the Developer if it determines that it is entitled to deduct or receive payment for interest owed due to an overpayment of a prior Availability Payment due to an inaccurate invoice.	The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.
157.	P3 Agreement	11.5	3	Will the Sponsors consider including a right for Developer to cease work on the Project (without terminating the Agreement) in the event that Department ceases to make payments required thereunder?	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
158.	P3 Agreement	11.5.1	1	1. § 183 of the California Streets and Highway Code specifically provides that certain (e.g., federal and local) funds are deemed continuously appropriated. Please (a) amend this § accordingly and (b) provide Developer with a source of funds analysis so Developer may evaluate the risk of failure to appropriate funds.	The Sponsors will provide a source of funds analysis.
159.	P3 Agreement	11.5.2	1	1. Please reflect undertakings in the "White Paper" (including seeking continuous appropriation) in this §. 2. Please amend the second sentence so that the obligation to provide the annual report to Developer is not dependent on the TIFIA loan being outstanding.	1. The "White Paper" and Section 11.5 will be modified. 2. The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.
160.	P3 Agreement	11.6 General Comment Tolling	1	We would appreciate additional details on the Department's expectations regarding tolling, including what the limitations on the toll and user fees that the Developer may propose, how the potential additional costs for operations and maintenance of a tolling system would be accounted for, how collection, enforcement and toll system interoperability will be managed and how excess toll revenues might be used to address appropriations risk. Please clarify Section 11.6.1.7.	The allowable tollable provisions are provided in the Memorandum of Understanding (MOU). The MOU is not a third party agreement.
161.	P3 Agreement	12.4.3 Cure and Step-in	4	Please consider revising the standard for the Collateral Agent to cure Noncompliance to "diligent efforts reasonable under the circumstances", rather than "as quickly as possible" as this may require an unreasonable degree of cost and expediency.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
162.	P3 Agreement	12.5 Substituted Entities	4	1. Will the Sponsors consider reducing the time period to approve a Substituted Entity in Section 12.5.3 to 30 days? 2. Will the Sponsors consider removing the Department's right to revoke an approval of a Substituted Entity if its contractors, owners, personnel, officers, directors or affiliates are debarred or suspended where the relevant person or entity can be isolated or removed?	1. The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1. 2. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
163.	P3 Agreement	13 General Comment Equity Transfers and Changes of Control	2	The Equity Transfer and Change of Control provisions are unnecessarily restrictive. Will the Department consider modifying these provisions?	Section 13.1.1.3 and 13.1.13 will be modified to allow transfer of ownership between initial equity members and the appropriate revisions will be provided in Addendum No. 1.
164.	P3 Agreement	14.1-2 Financial Model	4	Will the Sponsor's consider modifying the provision to allow the Proposer time to defend against a request for disclosure of the Proposer's confidential materials even beyond what has been allowed for under Section 14 of the P3 Agreement?	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
165.	P3 Agreement	14.4.9 (D) Division II, § 3	3	Will Department make available a connection into the State's FO network in San Francisco to meet this requirement?	The limits of the fiber optics is the limit of the project and it must terminate in a hub at the location of the Developer's choosing.
166.	P3 Agreement	15.1 Financing Project	3	The Departments obligation in Sections 15.1.3-4 to provide assistance to the Developer in securing funding from Governmental Entities including associated approvals should be extended to provide the same type of coordination as is offered under Section 3.2.3 regarding Governmental Approvals generally. Will the Sponsors consider modification to this provision so that the Developer is not be required to take blanket TIFIA and PABs approval risks for aspects of such approvals are outside of its control?	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.

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167.	P3 Agreement	15.1.3-4	1	Please provide that Department will cooperate to obtain Government Approvals for financing as provided in Section 3.2.3.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
168.	P3 Agreement  ITP	15.2.1-9 14.1-2 19.2 Appendix 1 (def. of "Core Lender")  ITP 1.5 1.7.7 4.8 Appendix G Financing Situation	1	<ol style="list-style-type: none"> <li>1. Please clarify in Appendix G of the ITP whether a financial advisor can also be a Core Lender.</li> <li>2. Please explain in Section 14.2.1 why the Equity IRR cannot be updated as approved by both Parties to reflect amendments to the Agreement or other matters.</li> <li>3. Regarding Section 15.2.9, please explain why margin adjustments are shared 85%/15% between the Department and the Developer, instead of being borne 100% (up to a cap) by the Department, especially given the extent of the Department's approval rights in the IPDC.</li> <li>4. To reduce the requirements on the Developer and its Lenders and to ensure that the Lenders can achieve a clean security package, please delete the provisions in Sections 15.4.3, 6-8, 10-14.</li> <li>5. The Project Debt and Financing Documents, including related amendments, should not be subject to the Department's prior written approval.</li> <li>6. Delays in achieving Phase I Substantial Completion should result in time/compensation relief to the Developer and eventually result in the termination of the Agreement, with appropriate compensation to the Developer. We suggest the Department consider providing a more express termination right, with the resulting compensation for costs incurred to be calculated according to the compensation rules under Section 19.2 for a failure to achieve Financial Close.</li> <li>7. The caps on compensation to the Developer for costs incurred under Section 19.2 remain inadequate.</li> <li>8. Given recent financial market disruptions and the extended period between bid and Financial Close, the Department should consider adding to the permitted excuses in Section 15.2.7 a market MAC provision to provide an extended period to reach Financial Close and, thereafter, the ability of either party to terminate under Section 19.2.</li> </ol>	<ol style="list-style-type: none"> <li>1. A financial advisor can also be a core lender. The appropriate revisions will be provided in Addendum No. 1.</li> <li>2. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</li> <li>3. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</li> <li>4. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</li> <li>5. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</li> <li>6. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</li> <li>7. The Caps have been changed in Section 19.2.13 to \$18 million and monthly caps have been eliminated.</li> <li>8. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</li> </ol>
169.	P3 Agreement	15.5 Refinancing	3	Please reduce the notice and consent periods for Refinancings to permit submittal four weeks (three weeks for Rescue Refinancings) prior to the proposed date of closing, with responses to follow two weeks (one week for Rescue Refinancings) later.	The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.
170.	P3 Agreement	15.5 Refinancing	3	<ol style="list-style-type: none"> <li>1. In Section 15.5.3 please consider sharing the Refinancing Gain on an equal, 50%/50% basis, as would be more customary in the market and further incentivize the Developer.</li> <li>2. The limitations in Section 15.5.4.1 on the Developer's ability to affect Refinancings prior to the Substantial Completion Date interfere with its ability to manage and structure its debt. Refinancing are already subject to gain sharing to the Department's benefit.</li> </ol>	<ol style="list-style-type: none"> <li>1. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</li> <li>2. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</li> </ol>
171.	P3 Agreement	16.1 Appendix 1 def. "Force Majeure"; Appendix 9 Insurance	1	<ol style="list-style-type: none"> <li>1. Section 16.1.2.13: would Sponsors consider a 50%/50% cost sharing mechanism would provide incentive for the Developer to pursue cost saving opportunities and therefore would be something to consider?</li> <li>2. Section 16.1.5: In Section 16.1.5 the Developer is required to apply all insurance proceeds to restore each part or parts of the Project for which such proceeds were received. Builder's Risk and Property Insurance for O&amp;M contain limits on the full replacement cost for covered property (see Appendix 9, Section 1), which appears to be excessive as compared to placement on a PML basis. Will the Sponsors consider modifying this provision?</li> <li>3. Definition of "Force Majeure": The definition of Force Majeure is extremely narrow and inflexible. Limiting events such as war, armed conflicts and violent acts or foreign enemy to those occurring within the State of California is overly restrictive.</li> <li>4. Please eliminate reductions in Maximum Availability Payments due to a reduction in the annual insurance premiums below 70%. The risk cost sharing mechanism for increases in premiums remains under review.</li> </ol>	<ol style="list-style-type: none"> <li>1. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</li> <li>2. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</li> <li>3. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</li> <li>4. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</li> </ol>

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172.	P3 Agreement	16.1.2.13	2	<p>1. Section 16.1.2.13.1: We suggest that "commercially reasonable rates" instead be benchmarked against the Financial Model rates in the absence of an Insurance Premium Benchmark Amount.</p> <p>2. Section 16.1.2.13.2: An adjustment to the MAP for avoided costs should be limited to costs that would have been paid by Developer had the insurance remained available at commercially reasonable rates (i.e., up to 200% above the benchmark rate).</p>	<p>1. The Sponsors will consider this recommendation.</p> <p>2. The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.</p>
173.	P3 Agreement	16.1.2.6	3	Why is not PL required to be project specific? Limits required cannot be provided by DBE/SBE firms and this makes it more difficult for them to participant.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
174.	P3 Agreement	16.1.6		<p>Due to the combined nature construction and operation &amp; maintenance activities under a PPP project, Developer may consider ensuring full coverage protection to them, its contractors and subcontractors during the term of construction and through Final Acceptance including 10 years completed operations.</p> <p>Participation in the OCIP that applies only to construction activities can create a gap in coverage and increase its risk under the PPP agreement. Additionally, the limits of insurance provided by the Department's OCIP apply to many projects and not solely to the Presidio Parkway, which means the limits available to the Developer and Contractors can be less than \$200 million at any given time.</p> <p>Furthermore, procuring Workers' Compensation, General Liability and Excess Liability coverage in the amounts required in Appendix 9 for stand-alone operations &amp; maintenance work during the construction term without the benefit of the supporting construction related premium will be a challenge in the US market given the lack of loss experience available for the operations &amp; maintenance aspect of a PPP project.</p>	Section 16.1.6.2 allows the Developer to purchase liability insurance in addition to the OCIP; however, the OCIP must remain in place as a requirement of the Right of Entry Agreement.
175.	P3 Agreement	16.1.6.10		The Department has added the wording "and other amounts owing to the OCIP insurer; provided that deductibles are governed by Section 16.1.6.12." We recommend adding the full proposed wording in this section. It is not mentioned in this section how the Developer should price their cost proposal relative to the OCIP. Additionally, it needs to be clear that the Department is responsible for all financial obligations under the OCIP including premiums, deductibles, loss funds, letters of credit, claims handling fees, etc.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
176.	P3 Agreement  ITP	16.2  ITP Appendix B 2.2.12 Performance Security and Payment Bond	3	<p>1. Both the Performance Security and Payment Bond provisions state the amount of the security in terms of a percentage of the contract price for the Lead Contractor and as a percentage of the contract price with any other "prime" contractor. There is no clear definition of what constitutes a "prime" contractor and so this is a likely source of dispute.</p> <p>2. Please consider providing an approved form of Performance Security or Payment Bond, as otherwise the Developer faces uncertainty and the potential for delay in obtaining prior written approval of the form of such security.</p> <p>3. Please delete Section 16.2.3, as Lenders will need to rely on the letter of credit as liquid security to be applied to the debt given the construction risk they take under the "haircut" included in the termination payment for Developer Default.</p>	<p>1. The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.</p> <p>2. Approved Bond and Payment Bonds are attached as appendix 16.</p> <p>3. Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p>
177.	P3 Agreement	16.4 Indemnity	3	<p>1. The Developer should not be liable for Structural Defects, without regard to the tests set out in (a) and (b) of Section 16.4.2.3, because such defects relate to the Phase I Construction performed by the Department.</p> <p>2. The exclusions from the Developer's indemnity obligation under Section 16.4.2 should include a material breach by the Department of any of its obligations under the Contract Documents.</p> <p>3. Please add an aggregate joint and comparative fault limit for Developer-related Entities and the Department, which would cap the Developer's indemnification obligations.</p>	<p>1. The Department is considering clarification of Section 16.4.2.3 with regard to the limitation on indemnity for Structural Latent Defects.</p> <p>2. The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.</p> <p>3. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</p>
178.	P3 Agreement	16.4.1.10	2	Clause "(b)" should be limited to obligations of Department under agreements specifically listed in an Appendix to the Agreement.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP

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179.	P3 Agreement	16.4.2.3	2	Structural Latent Defects should be expanded to include unknown subsurface conditions.	The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.
180.	P3 Agreement	16.4.4	4	Please insert "or worker's compensation coverage required by law" at the end of the first sentence.	The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.
181.	P3 Agreement	16.5.10	4	The factors listed should be neither exclusive nor in order of priority. Please revise "specific consideration ... the claim" to read "among the factors to be considered are [continue as in original, with removal of letter designations "(a)", "(b)", etc.]".	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
182.	P3 Agreement	17.1.6	2	Please make the representation and warranty subject to our comments regarding reliance set forth in § 1.3.1 (See comment 63 above.)	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
183.	P3 Agreement	17.2	2	1. Please add representations and warranties mirroring Developer's representations and warranties in §§ 17.1.5 and 17.1.12. 2. Please provide for bringing representations and warranties current at Financial Close (as may reasonably be required by any Lender).	1: The Sponsors have accepted the recommendation regarding Section 17.1.5 and the appropriate revisions will be provided in Addendum No. 1. 2: The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1. The requirement will be mutual.
184.	P3 Agreement	17.2.7	2	1. Please include the representations set forth in the White Paper. 2. If continuous appropriation is obtained, please include representations and warranties accordingly.	1. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time. 2: The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
185.	P3 Agreement	17.1.5 and elsewhere	2	When will the 3rd Party agreements and any related utility agreements be provided for review?	Refer to RFP License to Enter, which is included in the data room.
186.	P3 Agreement	18.1 Default by Developer	2	1. Under Section 18.1.1.2 the Developer will be in default for failing to begin Design Work within 30 days after NTP 1 subject to Section 4.2.4. This conflicts with Section 4.2.4 which prevents the Developer from starting Design Work until after the Project Management Plan is approved by the Department. 2. We appreciate the allowance of 30 days as the period for beginning Design Works, however we suggest the period be 60 days. 3. We appreciate the allowance of 60 consecutive days for default for abandonment, however 90 consecutive days is more customary. 4. The default for failure to comply with applicable Governmental Approvals and Laws should be subject to a materiality qualifier so that a minor infraction would not result in a default. 5. The default for failure to pay an amount due under Section 18.1.16 should be subject to a materiality threshold. 6. The default under Section 18.1.1.7 should be limited to uses of the Project in violation of the Agreement, Law or other applicable standards. 7. Bankruptcy or insolvency of an Equity Member or Guarantor should not be a Developer Default under Sections 18.1.1.12-13. So long as Developer is performing its obligations under the Project Agreement (a default under Section 18.1.1.12 would occur if it were not), Department should be satisfied. 8. The default for failure to comply with a suspension order under Section 18.1.1.14 should be measured by time reasonably necessary to affect the suspension, not the time reasonably allowed by the order. 9. The default in Section 18.1.1.15 should be limited to a failure to achieve Substantial Completion by the Long Stop Date only. The agreement already adequately governs how failure to achieve Financial Close shall be compensated, etc. Also, once Substantial Completion has occurred, failure to achieve Final Acceptance should not constitute a Developer Default. 10. Please delete the default for the occurrence of a Closure that is not permitted in Section 18.1.1.17. Closures are already appropriately sanctioned and	1. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time. 2. The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1. 3. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time. 4. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time. 5. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time. 6. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time. 7. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time. 8. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time. 9. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time. 10. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.

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				penalized through monetary adjustments to the Agreement, and should not be grounds for termination of the Agreement. 11. Please delete clauses (c) and (d) from Section 18.1.1.18 which cover debarment of Affiliates and Key Contractors. 12. Defaults should be appropriately subject to materiality qualifiers throughout, including the defaults in 18.1.1.1-2, 4-8, 10-11 and 14.	11. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time. 12. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
187.	P3 Agreement	18.1.1.18	2	Please consider excluding reference to "any local department or agency" as it seems overbroad to the extent that there would not be any impact on the Project. Also, consider excluding any debarment in another State on the same grounds.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
188.	P3 Agreement	18.1.17	4	Please replace "There occurs" with "Developer or any Developer-related entity causes or permits to occur."	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
189.	P3 Agreement	18.2 Appendix 1 (def. of Persistent Developer Noncompliance" ) Department Remedies for Developer Default	2	1. In Section 18.2.3.4 a good faith mistake by the Department in addressing a believed emergency should result in a Relief Event. 2. The Department's suspension right under Section 18.2.7.1 in clause (1) should not include "breaches" of the Contract Documents, as failure to perform Work in compliance with the Contract Documents is clearer and already sufficient. 3. Suspensions under Section 18.2.7.1 may result from violations (failure to provide proof of insurance) and conditions outside the Developer's control (the existence of unsafe conditions). These should not prevent the Developer from receiving the Milestone Payment or the Availability Payments. As a related matter, Section 18.2.7.2 should be expanded to (i) expressly permit such payments to be made if the suspension is a Department-Caused Delay and (ii) to extend such payments and other relief to other circumstances where the Developer was not at fault or a dispute determines that the suspension was wrongful. 4. As a clarification, please make Section 18.2.8.3 expressly "subject to the Lenders' rights under the Lenders Direct Agreement". 5. The limitations on the Developer's liability under Section 18.2.13 should extend to lost toll revenues or user fees.	1. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time. 2. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time. 3. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time. 4. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time. 5. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
190.	P3 Agreement	18.2.10	2	Please replace the phrase "do not liquidate other damages including OCIP damages described in § 18.2.5.1" with "other than OCIP damages described in the second sentence of § 18.2.5.1."	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
191.	P3 Agreement	18.2.13.2 Item 1	2	In Item 1, please replace "Developer's Indemnity and defense liabilities" with "Developer's obligations regarding claims by third parties under § 16.4," in order to limit the clause to third party consequential and incidental damages.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
192.	P3 Agreement	18.2.2	3	Please consider striking requirement for Developer to pay Department Department's Recoverable Costs in the context of an erroneous Department Entry (i.e., a Developer Default does not exist).	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
193.	P3 Agreement	18.2.3.1	3	Please repeat the phrase " , acting reasonably," after "Department" in the eighth line.	The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.
194.	P3 Agreement	18.2.4	2	This section does not appear to contain a provision which provides for an adjudication of a default. Instead it appears to allow for a brief assertion by Department as to when a default has occurred. In light of the foregoing, we believe it is appropriate to include a clause that would preserve Developer's rights against Department if the determination was wrongful and an acknowledgement that the takeover actions by Department may affect or invalidate warranties. This section should also be subject to the rights of any sureties for the Project to preserve the sureties obligations under its bonds.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time. The Developer has dispute resolution rights elsewhere in the contract.
195.	P3 Agreement	18.2.5	4	Please clarify that Department's right of offset against Developer would only arise after the issuance of a final judgment in favor of Department.	Developer has the option of disputing the Department's right to offset.
196.	P3 Agreement	18.2.5.1	2	Please insert "§ 18.2.10.2 and" before "§ 18.2.13".	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP

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197.	P3 Agreement	18.2.7.1	4	Please clarify the exception for Persistent Developer Noncompliances from the Department's suspension rights. Are Department's suspension rights triggered by a Persistent Developer Noncompliance?	The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.
198.	P3 Agreement	18.2.9		The Performance and Payment Security provided on behalf of Lead Contractor can not be called on as a result of a Developer Default unless the Developer Default is a direct result of a Lead Contractor Default in which case the Primary or Additional Obligees can make a claim on the Bond based on the DB Contractor's breach as defined in the DB Contract.	The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.
199.	P3 Agreement	18.3 Default by the Department; Cure Periods	2	1. The Department Defaults should include failures to appropriate and prioritize payments or to take the actions required to ensure appropriations are made (as well as any other failures related to the final package of obligations regarding appropriations). 2. There should be a Department Default associated with Department's failure to perform its obligations under any Contract Document, just as there is a corresponding Developer Default in Section 18.1.1.12. 3. Please reduce the cure period for Department payment defaults from 60 days to 30 days in Section 18.3.2.1.	1. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time. 2. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time. 3. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
200.	P3 Agreement	18.4.3.2 Item 2	4	In Item 1, please replace "the proceeds of insurance" with "or which would have been covered by insurance required to be carried by Department pursuant to Article 16 or Appendix 9."	The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.
201.	P3 Agreement	18.4.3.2 Item 2	3	Consistent with Item 2 in § 18.2.13.2, Item 2 of this § should include gross negligence of Department.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
202.	P3 Agreement	19.1.4	3	Please clarify that in the event of a Termination for Convenience, Developer's warranties obligations would be relieved.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
203.	P3 Agreement	19.2.1 19.5.3 Appendix 1 Termination by Legal Proceedings	1	A Termination by Court ruling due to a successful challenge of the authority of the Department to enter into the Agreement will make the Agreement void ab initio and thereby eliminate the Department's termination payment obligation. We offer, by way of suggestion, revising Section 19.5.3 to provide both parties a right to terminate the Agreement upon the initiation of proceedings challenging the Department's authority (unless clearly spurious). To avoid confusion, we suggest the label "Termination by Legal Proceedings".	The Department is revising the amount of termination that would be paid to \$18 million from \$12 million for design related costs with no monthly cap.  18.5 will be added to reflect that upon the initiation of litigation prior to the Substantial Completion Date challenging the validity of the Agreement, the Developer shall have the right to suspend Work. This suspension of Work will be treated as a Relief Event and provide for an extension of Completion Deadlines and appropriate compensation for delay costs.  19.5.3 will be modified to reflect that (a) either Party shall have the right to terminate the Agreement if such litigation is pending as of March 1, 2011, and after mutual consultation through March 31, 2011, the Party finds the risk unacceptable, (b) Developer shall have the right to terminate the Agreement if such litigation is filed after March 1, 2011, and the court denies the Department's demurrer or the Department fails to file a demurrer, and (c) the Department shall have the right to terminate the Agreement if such litigation is filed after March 1, 2011, and the Developer suspends Work as a result of such litigation being initiated.
204.	P3 Agreement	19.2.1 Termination	1	The Agreement stipulates the opportunity for the Sponsor to terminate the Agreement in case Financial Close is not achieved due the MAP exceeding the Affordability Limit and for the Sponsor and Developer to terminate the Agreement in case (i) the TIFIA Joint Program Office refuses to provide credit, or (ii) the TIFIA Joint Program Office is unable to close financing or (iii) a court issues an order prohibiting the execution of the Work.  Proposer had previously requested that it also be protected from external	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.

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				<p>influences and their potential consequences that may have an effect on the IPDC process such as the general state of financial markets or the credit rating of the State of California or legal challenges against the Project.</p> <p>In case that the Department prefers the execution of the Agreement prior to the adoption of the budget, Proposer seeks the same protection as in cases where a court prohibits the execution of the Agreement.</p> <p>Proposer requests that the compensation provided for in Section 19.2.1 is also made available in cases where the appropriation of funds for the Project is not approved.</p> <p>Proposer requests that the Department reconsider its position and amend Sections 15.2 and 19.2 of the PPP Agreement so as to provide this much needed protection to the Concessionaire.</p>	
205.	P3 Agreement	19.2.1	2	Developer will have to decide whether to continue incurring costs without increase in termination compensation after the occurrence of the contingency referred to in this §. Accordingly, please add a requirement that Department notify Developer and start the 30-day negotiation period within 10 days of such occurrence.	The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.
206.	P3 Agreement	19.2.1.5 19.3.6.3 19.5.3	1	<p>Please insert as a condition to NTP 1, as has become standard for P3 agreements in the U.S., that the Department will provide an opinion of outside legal counsel, in a form agreed and attached to the Agreement.</p> <p>Each of the Department's representations in Section 17.2 (valid existence, due authorization, binding commitments, no conflict with Department's organizational documents or applicable Law, no pending suit threatening authority or enforceability);</p> <p>The Department's authority under Sts &amp; Hwy Code Section 143; and</p> <p>The Department's authority under Cal. Gov. Code Section 14131.</p>	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
207.	P3 Agreement	19.3.1.1	2	The new language in this § (dealing with court orders) should only apply if the Relief Event is expected to delay the Substantial Completion Date beyond the Long Stop Date, in which event either party should be entitled to give conditional election to terminate.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
208.	P3 Agreement	19.3.4	2	Regarding § 19.3.4, please delete "the same or" from this §.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
209.	P3 Agreement	19.4.2.2	4	Please delete reference in Item 1 to "the Milestone Payment Amount actually paid." This § only applies to termination before the Substantial Completion Date.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
210.	P3 Agreement	19.5.1.1	1	Please include a reference to § 18.3.1.2 in the second line. Currently, there is no remedy provided in the Agreement for such Department Default.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
211.	P3 Agreement	19.5.3.2	2	Given that both California and Federal judiciary systems provide for appeal of first-level appellate court rulings, please conform the "regardless of whether" phrase in clause (b) with the "no appeal is filed ...." phrase from clause (a).	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
212.	P3 Agreement	19.9.5	3	Please insert "are waived or" before "expire" in the final line.	The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.
213.	P3 Agreement	21.2.1 Audits	4	Please remove the Bureau of State Audits from parties granted audit rights in this provision. The Bureau of State Audits will not be bound by the confidentiality provisions of the Agreement. We expect that the audit rights of agencies other than the Department will be governed by applicable Law.	The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.
214.	P3 Agreement	21.2.2 Audits	4	Failure of the Developer, Contractor or their respective agents to retain sufficient books and records to allow auditors to verify a Claim constitutes a waiver of the Claim. Please otherwise remove the waiver of the Claim, as this should may be curable or immaterial.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.

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215.	P3 Agreement	21.3.2 Action under Public Records Act	4	If an action under the Public Records Act is brought against the Department, Department may participate in defense in its sole discretion and otherwise will only be the custodian of the materials. Developer is required to reimburse Department for its involvement in any defense. As Developer must bear the cost of defense, Department should be required to cooperate with the requests of Developer to participate in the defense to the extent such intervention is not prejudicial and Department should not be allowed to intervene/participate except as agreed with Developer unless Developer's defense is adverse to the interests of the Department.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
216.	P3 Agreement	21.4 Intellectual Property	3	1. The license to use the Proprietary Intellectual Property granted under Sections 21.4.2 and 21.4.9 should be limited to use on the project and not any other highway or road. 2. The limitation of liability for use of Proprietary Intellectual Property set forth in Section 21.4.7 should not extend to infringements caused by a modification or alternation made by the Department or its directors, officers, employees, consultants or agents. 3. Section 21.4.9 regarding Proprietary Intellectual Property owned by third parties should be revised to license to what is reasonably attainable from third parties and necessary for the project (i.e. a right to modify or adapt might not be acceptable to third parties).	1. The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1. 2. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time. 3. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
217.	P3 Agreement	24.1.3 DRB Expertise	3	1. Please consider including financial disputes and O&M disputes in the scope of the DRB board or a separately empanelled and qualified board. 2. Please also consider providing that disputes will be resolved through binding arbitration, which is a more efficient mechanism to resolve disputes than litigating in the California courts.	1. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time. 2. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
218.	P3 Agreement	24.11 Continuance of Work During Dispute	3	Please clarify that continuance of work during a dispute is conditional on payment of undisputed sums.	Undisputed amounts due Developer will be paid to Developer during the course of any and all dispute resolution procedure.
219.	P3 Agreement	24.4 Appointment of DRB	4	The DRB is convened for each within 10 days after 30 days negotiations of managers to resolve the dispute. In order to provide a more efficient method of resolving disputes, please consider the following: 1. a standing DRB throughout the agreement; 2. appointment of the DRB during 30 days managers negotiations; 3. right of the parties to agree to waive the period for managers' negotiations and proceed to DRB/litigation.	1: The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1. 2: The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time. 3: The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
220.	P3 Agreement	24.8	4	DRB members are compensated only at \$1500 per meeting and at \$150/hr for time away from the project specifically agreed in advance by the parties. Any increase and other costs/expenses for DRB members must be agreed between the parties. Costs are to be shared equally between the parties. Please clarify how disputes will be resolved over the increased costs of DRB administrative expenses. Consider allowing DRB binding apportionment of administrative costs as part of their review.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
221.	P3 Agreement	25.6	1	Please provide for survival of Department's representations and warranties, as well as Developer's.	The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.
222.	P3 Agreement	Appendix 1 General Comments	2	Please provide definitions for the following new defined terms: 1. TCE Occupation Plan (Sections 4.17.4; 4.4.5) 2. Allowance Landscaping (Sections 4.12; 4.17.7) 3. New Agreements (Sections 19.4.2.3; 19.4.2.4; 19.9.5) 4. Please delete or amend the new defined term "Availability Payment Escrow" as it does not appear in the text.	1. ALREADY DEFINED 2. ALREADY DEFINED 3. The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1. 4. NOT A DEFINED TERM.
223.	P3 Agreement	Appendix 1 Definitions (general)	2	This definition would limit compensation/relief to only those items that affect "Controlling Work Items," but the definition of "Delay Costs" itself addresses how payment for delays to non-Controlling Work Items should be made. Please	1. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.

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		comment)		<p>therefore delete the reference to "any Controlling Work Item".</p> <ol style="list-style-type: none"> <li>1. Please also provide the rates for determining Delay Costs and confirm that delay costs include overhead for staff retained as a result of the delay and the cost of professional services and materials.</li> </ol> <p>Department-Caused Delays</p> <ol style="list-style-type: none"> <li>2. Department-Caused Delays should include all suspensions to the extent they are not otherwise considered Relief Events.</li> <li>3. The definition should include O&amp;M Changes that are applicable to only P3 projects as opposed to regular design-build projects. Please revise as shown at left.</li> </ol> <p>Long Stop Date</p> <ol style="list-style-type: none"> <li>4. Please set the Long Stop Date 18 months (not 365 days) after the Baseline Substantial Completion Date, subject to adjustment in accordance with the Agreement.</li> <li>5. Closures should be considered permitted generally when they are 'due' to a Relief Event (i.e. absent such event no closure would have occurred).</li> </ol>	<ol style="list-style-type: none"> <li>2. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</li> <li>3. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</li> <li>4. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</li> <li>5. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</li> </ol>
224.	P3 Agreement	Appendix 1 "Delay Costs" and "Extra Work Costs"	3	These definitions do not include additional costs (e.g. "work-around" costs, additional staffing) in the event of a Delay caused by a Relief Event. All costs should be recovered by Developer in the event of a Delay caused or ordered by Department or a third party.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
225.	P3 Agreement	Appendix 1 Department-Caused Delay and Float	2	<ol style="list-style-type: none"> <li>1. As noted in the second one-on-one meeting, relief provisions which are conditioned on Developer absorbing work-around costs and schedule float are inconsistent with appropriate incentive, risk and reward to Developer and its contractors with respect to schedule. This is especially true when the relief is for an act of the other party to the Agreement.</li> <li>2. Please (a) delete clause "(a)" from the introductory paragraph and (b) delete the definition of Float from Appendix 1.</li> </ol>	<ol style="list-style-type: none"> <li>1. Addendum No. 1 will delete the work around provision and replace it with a provision under which Department can require Developer to do a work around to mitigate Department-Caused Delay at Department's expense.</li> <li>2. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.</li> </ol>
226.	P3 Agreement	Appendix 1 Project Adjusted Costs	3	The new language in the definition of "Project Adjusted Costs" can be read to require double-counting of adjustments to the Milestone Payment Amount. Please remove "and" at the beginning of the new language and put parentheses around the new language as so amended.	The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.
227.	P3 Agreement	Appendix 1 (def. of "Affiliate") 18.1.1.19 19.2.1.4	3	The expansive definition of "Affiliate is inappropriate as applied in Section 19.2.1.4.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
228.	P3 Agreement	Appendix 1 def. "Delay Costs"	2	Since Delay Costs are by definition the result of unanticipated events and Extra Work Costs are by definition the result of events beyond the Developer's control, Developer must be fully compensated by the Department for the result of those delays in order to price its bid. Delay Costs and Extra Work Costs should thus not exclude indirect costs, the costs of funds, and Lender charges.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
229.	P3 Agreement	Appendix 5B	2	There are several areas on the Appendix 5B exhibit where it multiple boundaries are overlapping and it cannot be determined where the temporary construction easement boundary lies. Can CAD files in Microstation format of the line work in this exhibit be made available through the data room?	Revised Appendix 5B has been published. This change will be reflected in Addendum 1.
230.	P3 Agreement	Appendix 5B	2	Will the additional temporary construction easement at the termini of Girard at Marina Blvd and NB mainline at Gorgas that was identified as "to be negotiated" in the previous version of Appendix 5B be added at a later date?	Revised Appendix 5B has been published. This change will be reflected in Addendum 1.
231.	P3 Agreement	Appendix 5B	3	In Appendix 5B Plans shows schedule for entering zones with dates later than June 2012 (Reception Phase I). Why is it this delay?	Revised Appendix 5B has been published. This change will be reflected in Addendum 1.
232.	P3 Agreement	Appendix 9		Developer may consider a PML policy limit for this risk as the actual values will shift from construction to the property operational side as the work is performed until Final Acceptance. This means the full replacement limit would not be	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.

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				exposed at any given time for both builder's risk and property during the term of construction.	
233.	P3 Agreement	Appendix 9		The \$50 million limit of liability seems excessive for a project of this size, especially given the fact that the fleet size anticipated will not be significant.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
234.	P3 Agreement	Appendix 9		The \$10 million limit of practice coverage for this project is insufficient given the potential exposure and the fact that practice policies can be eroded by other claims unrelated to this project. It is necessary that the limits be adequate and be 100% dedicated to the project.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
235.	P3 Agreement	Appendix 9		The diminution in value of third party property not accompanied by physical damage is not commercially available in the insurance marketplace today.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
236.	P3 Agreement	Appendix 9		Due to the potential presence of naturally occurring asbestos originating from serpentine bedrock in the project area it may not be possible to fully remove the asbestos exclusion in this policy.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
237.	P3 Agreement	Appendix 9		Please eliminate reductions in Maximum Availability Payments due to a reduction in the annual insurance premiums below 70%. The risk cost sharing mechanism for increases in premiums remains under review.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
238.	P3 Agreement	Appendix 16 Form A Performance Bond		Insertion of this language would tie the obligations of the Performance Bond to the provisions outlined in Section 16.2.1.1 of the PPP Agreement. Similar insertion needs to be made on the Payment Bond.	Addendum No. 1 will revise 16A to except out O&M after Construction.
239.	P3 Agreement	Appendix 16 Form A Performance Bond		Several of the activities that must be completed prior to reaching Final Acceptance are tied to Developer responsibilities. Here again sureties will not support obligations tied to Developer performance. The same issue exists in the payment bond. Further definition of "Contract" could also resolve this issue. Absolute clarity is very important. In theory contractor should be able to achieve Final Acceptance at a different time than the Developer.	Addendum No. 1 will reflect a modification that Contract refers to a contract which the Developer is a party.
240.	P3 Agreement	Appendix 16 Form A Performance Bond		Surety consent will be required in connection with any contractual modifications to terms of payment or extension of time relating to payments.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
241.	P3 Agreement	Appendix 16 Form B Payment Bond		Surety consent will be required in connection with any contractual modifications to terms of payment or extension of time relating to payments.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
242.	P3 Agreement	Appendix 16 Form D Payment Bond Multiple Obligee Rider		The recourse of the Primary Obligee, and Additional Obligees in the event of contractor default is payable under the performance bond, not the payment bond. The DB contractor also has no direct contractual relationship with the lenders.	The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Final RFP documents at this time.
243.	P3 Agreement	Appendix 22 Section 2.0 Baseline Report	3	Will one of the goals of the field inspections of Phase 1 Construction be to confirm compliance with the performance measures in Tables 4.1 and 4.2 of Section 4 of Division II before operations and maintenance responsibilities for the Phase 1 Construction components are turned over?	No
244.	P3 Agreement	Appendix C 2 A) Transportation Management Plan	2	Since there was a TMP produced for Contracts 3 and 4 and that the TMP is a "living document", a digital copy of the current TMP should be placed in the Data File Room. Recreating these files seems unnecessary and should not be required.	WILL BE PROVIDED.
245.	P3 Agreement	Appendix C 2a Utilities	2	Please provide design plans and as-builts for completed utility relocation work performed under Contract 2.	Contract 2 Design Plan As-builts are not available. The design documents have been uploaded to the Data Room

No.	Document	Relevant Section	Cat.	Question/Comments/Rationale for Proposed Change	Sponsor Comments
246.	P3 Agreement	Appendix C 2a Utilities	2	This activity is highly dependent on quality of information received from Agencies on Phase 1 work.	All relevant documents have been provided.
247.	P3 Agreement	Appendix C 2a Utilities	3	What was the original scope of Contract #2?	To clear Contract 3 & 4 (Phase I) Relocation of utilities in the Project corridor contained in Phase 1.
248.	P3 Agreement	Appendix C 2a Utilities	2	In order for the contractor to relocate the utilities, they had to have the assessment of property rights, the ownership, and the necessary permitting. Please provide that information.	The License to Enter outlines this information and is available in the Data Room.
249.	P3 Agreement	Appendix C 2a Utilities	2	What utilities besides those shown (water, electrical, sanitary and telecom) in the IPD were encountered and either retained and protected or relocated?	The IPD as defined in the RFP indicates that it is not complete. Further the documents relating to Phase 1 have been provided in the data room.
250.	P3 Agreement	Appendix C 2a Utilities	2	Is the Phase 2 contractor responsible for developing agreement language and executing said agreements with the utilities for relocation work?	Yes
251.	P3 Agreement		2	How long can review of "reasonably acceptable "Utility Agreements be expected to take in days?	The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 1.
252.	P3 Agreement	Vol. II, Div. II, Sec. 3, Item 6. Roadway	1	The indicative plan sheets (L-2, ST-13, ST-14, and ST-15) show various conflicting section configurations for Girard Road beneath the NB and SB structures. None of the dimensions shown appear to accommodate a standard sidewalk width. Please specify the required dimensions and elements of the roadway section passing beneath the structure.	The IPD as defined in the RFP indicates that it is not complete.
253.	P3 Agreement	Vol. II, Div. II, Sec. 3, Item 6. Roadway	2	The indicative plans show a bike lane in the roadway section for Girard Road beneath the NB and SB structures on Sheets ST-13 and ST-14. Roadway plan sheet L-2 has lane dimension widths that would not accommodate the 4' bike lanes beyond the section under the bridges. Is this discontinuity of the bike lanes intended? Can the local road section requirements be added to this section of the technical requirements?	The IPD as defined in the RFP indicates that it is not complete.
254.	P3 Agreement	Vol. II, Div. II, Sec. 3, Item 6.3.1 Roads	2	Does the removal of the line in the table for Gorgas Ave "From existing Gorgas Ave approximately 150' to Richardson Ave" indicate that the connection of Gorgas Ave to Richardson Ave will remain as is? Should the Indicative plans Sheet L-1 be revised to indicate this (i.e. linework for the revised connection, callout to landscape the area, begin construction callouts, etc.)?	The IPD as defined in the RFP indicates that it is not complete.
255.	P3 Agreement	Vol. II, Div. II, Sec. 3, Item 6.3.3 Project Specific Design Standards	2	The CALTRANS HDM mandatory standard for design speed of an urban freeway section is 55 to 80 mph (Section 101.2). Will an additional design exception be required for the proposed design speed of 50 mph shown in 6.3.3? Or should the functional class be revised to expressway which requires 50 to 70 mph design speeds?	Functional classification is "freeway". No additional design exceptions are envisioned unless some where identified in final design. Facility needs to be designed for 50 mph.
256.	Preliminary Master Design Submittal .F) B129	Preliminary Master Design Submittal .F) B129	3	Is irrigation for Phase I completed in Phase I or additional irrigation work for Phase I needs to be performed under Phase 2?	Refer to Section 12 of the Technical Specifications.
257.	Preliminary Master Design Submittal .G)	Preliminary Master Design Submittal .G)	3	Please provide water supply cost.	The Sponsors will attempt to obtain.
258.	Preliminary Master Design Submittal .G)	Preliminary Master Design Submittal .G)	3	Please provide information for the water supply to the fire suppression system: pressure, flow, connection point, pipe, etc.	Upload the water distribution study by PT. Presidio Trust Doyle Drive Water Distribution Modeling Final Letter Report K/J 0968016 has been uploaded to the Data Room here: <a href="http://www.dot.ca.gov/hq/esc/oe/project_ads_addenda/04/04-1637U4/Reference%20Documents/Design%20and%20Construction/Phase%201/Contract%204/Contract%204%20Fire%20Suppression/">http://www.dot.ca.gov/hq/esc/oe/project_ads_addenda/04/04-1637U4/Reference%20Documents/Design%20and%20Construction/Phase%201/Contract%204/Contract%204%20Fire%20Suppression/</a>
259.	Preliminary Master	Preliminary	3	Will Sponsor provide Conceptual plans for landscaping?	See IPD for Landscaping in the data room.

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	Design Submittal G) Grading & Landscape Concepts	Master Design Submittal G) Grading & Landscape Concepts			
260.	Preliminary Master Design Submittal. A) Roadway Concepts	Preliminary Master Design Submittal. A) Roadway Concepts	3	We request Department to provide files of Basin Area Maps for hydraulic calculations and the hydraulic model analysis for Phase I	All available information has been made available in the data room.
261.	Preliminary Master Design Submittal. A) Roadway Concepts	Preliminary Master Design Submittal. A) Roadway Concepts	3	Please provide additional Cross §§.	All available information has been made available in the data room.
262.	Preliminary Master Design Submittal. A) Roadway Concepts	Preliminary Master Design Submittal. A) Roadway Concepts	3	Will Pavement § Package and Typical §§ for Roadway will be provided or Phase I must be used?	No. All available information has been made available in the data room. Developer's must comply with the contract documents.
263.	Preliminary Master Design Submittal. A) Roadway Concepts	Preliminary Master Design Submittal. A) Roadway Concepts	4	Please provide Roadway Typical §§-New and hauling routes to be repaved.	All available information has been made available in the data room. Developers must comply with the contract documents.
264.	Preliminary Master Design Submittal. A) Roadway Concepts	Preliminary Master Design Submittal. A) Roadway Concepts	4	Please provide Pavement section packages (same as Phase I).	All available information has been made available in the data room. Developers must comply with the contract documents
265.	Preliminary Master Design Submittal. B) Structural Concepts	Preliminary Master Design Submittal. B) Structural Concepts	3	Please clarify requirements for Tsunami event calculation. Please provide water elevation	The Low Causeway Hydraulics Report uploaded to the Data Room here: <a href="http://www.dot.ca.gov/hq/esc/oe/project_ads_addenda/04/04-1637U4/Reference%20Documents/Design%20and%20Construction/Phase%202/Hydraulic%20Reports/Girard%20Interchange/">http://www.dot.ca.gov/hq/esc/oe/project_ads_addenda/04/04-1637U4/Reference%20Documents/Design%20and%20Construction/Phase%202/Hydraulic%20Reports/Girard%20Interchange/</a> .
266.	Preliminary Master Design Submittal. B) Structural Concepts	Preliminary Master Design Submittal. B) Structural Concepts	3	Please provide parameters of design for SB Battery Tunnel	All available information has been provided in the data room.
267.	Preliminary Master Design Submittal. B) Structural Concepts	Preliminary Master Design Submittal. B) Structural Concepts	3	Bridges and Viaduct: Type Selection vs. Indicative. Which takes precedence?	All available information has been provided in the data room and the IPD is indicative and not complete; developers must comply with all contract documents.
268.	Preliminary Master Design Submittal. B) Structural Concepts	Preliminary Master Design Submittal. B) Structural Concepts	3	Please Project Specific Structure Design Criteria.	Has been provided, RFP and documental available information has been made available in the data room. The IPD is as defined in the RFP indicative and not complete. The Developer must comply with the requirements of the Contract Documents.
269.	Preliminary Master Design Submittal. B) Structural Concepts	Preliminary Master Design Submittal. B) Structural Concepts	3	Please provide the revised water elevation at Tennessee Hollow structures based on tsunami wave elevation at bridge site (current elevation shown is at shore)	The Low Causeway Hydraulics Report uploaded to the Data Room here: <a href="http://www.dot.ca.gov/hq/esc/oe/project_ads_addenda/04/04-1637U4/Reference%20Documents/Design%20and%20Construction/Phase%202/Hydraulic%20Reports/Girard%20Interchange/">http://www.dot.ca.gov/hq/esc/oe/project_ads_addenda/04/04-1637U4/Reference%20Documents/Design%20and%20Construction/Phase%202/Hydraulic%20Reports/Girard%20Interchange/</a> .
270.	Preliminary Master Design Submittal. B) Structural	Preliminary Master Design Submittal. B) Structural	4	Please provide all Structures Preliminary Investigative Reports	All information available to the Department are posted to the data room.

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	Concepts	Structural Concepts			
271.	Preliminary Master Design Submittal. E) Tunnel Systems Plans	Preliminary Master Design Submittal. E) Tunnel Systems Plans	3	Please provide requirements (if any) for Main Post Tunnel substation	Developer responsibility based on RFP and documents All available information has been made available in the data room. The IPD is as defined in the RFP indicative and not complete. The Developer must comply with the requirements of the Contract Documents.
272.	Presidio Trust Agreement	Presidio Trust Agreement	2	Please provide a list with all the permits, timeframes and fees to be obtained from Presidio Trust to perform the work included in the scope of work.	The Sponsors will attempt to provide.
273.	Presidio Trust Agreement	Presidio Trust Agreement	3	Will Presidio Trust do partial acceptances in items such as landscaping?	That is for the Successful Bidder to discuss with the Presidio Trust after discussions are permitted pursuant to the Agreement.
274.	Presidio Trust Agreement	Presidio Trust Agreement	2	Due to the uncertainty of its cost, will Department have an allowance for the review cost to be transferred to Developer by Presidio Trust?	No
275.	Project Documents Right of Entry vd Storm water & BMP	Project Documents Right of Entry vd Storm water & BMP	3	In Exhibit B of Right of Entry document a Temporary Construction Easement line is showed. Some elements of Outfalls Storm water and BMP's Water Treatment Pollution elements are outside of the region delimited by this line. How can we get the permits to build these elements?	Outfalls have been removed from P3 scope.
276.	Project Schedule and Sequence Plan 2.6	Project Schedule and Sequence Plan 2.6	3	Will Transportation Management Plan be provided in order to study consistence between Construction Phasing/Sequence Plan and this Plan?	TMP is responsibility of Developer.
277.	Project Schedule and Sequence Plan 2.6	Project Schedule and Sequence Plan 2.6	2	Will Sponsor allow Developer the possibility to perform activities that do not conflict with other Contracts work such as Geotechnical studies, or survey prior to NTP3?	Yes, pursuant to 4.4.6.
278.	Reference Documents		4	Please provide Plan of Borings.	Plans of Borings are in the data room here: <a href="http://www.dot.ca.gov/hq/esc/oe/project_ads_addenda/04/04-1637U4/Reference%20Documents/Design%20and%20Construction/Phase%202/Geotechnical%20and%20Underground%20Investigation/Borings/">http://www.dot.ca.gov/hq/esc/oe/project_ads_addenda/04/04-1637U4/Reference%20Documents/Design%20and%20Construction/Phase%202/Geotechnical%20and%20Underground%20Investigation/Borings/</a>
279.	Reference Documents		4	Please provide Plans for Building 201, 230, 204 ,228, 1063, 1161-1163	All available information is provided in the data room.
280.	Reference Documents		3	Please provide SEE and FEE ARS curve data	All available information is provided in the data room
281.	Reference Documents		4	Please provide the as-built plans for the pump stations at Girard Road and Halleck Street.	The Sponsors will provide this.
282.	Reference Documents		4	Please provide the as-built information including profiles for utility relocations for Phase I	All available information is provided in the data room
283.	Reference Documents		4	Please provide the Storm water Data Report including appendices. The Project Report only has the cover of the SWDR attached.	All available information is provided in the data room.
284.	Reference Documents		3	In the Outfall Technical Advice Report dated April 2009, five different options are listed. Which is the preferred option?	Outfalls have been removed from P3 scope of work.
285.	Reference Documents		4	Please provide the technical appendices to the TMP.	A revised version of the TMP relating to Contracts 3 and 4 was uploaded to the Data Room. The revised TMP makes no reference to appendices.
286.	Reference Documents	Reference Documents /Phase I / Contracts 3 &4/ Survey	3	Data Survey information is from March 2008 it is written in Transmittal letter. Could we obtain new information?	All available information is provided in the data room
287.	Reference Documents	Reference Documents/Des	2	We are requesting the Geotechnical and Underground Investigation Lab Data. When will the geotechnical laboratory testing results/data be made available for	The lab data is already in the data room as a zip file: <a href="http://www.dot.ca.gov/hq/esc/oe/project_ads_addenda/04/04-">http://www.dot.ca.gov/hq/esc/oe/project_ads_addenda/04/04-</a>

No.	Document	Relevant Section	Cat.	Question/Comments/Rationale for Proposed Change	Sponsor Comments
		ign and Construction/Phase 2/Geotechnical and Underground Investigation/Lab Data		review and how can this be obtained?	1637U4/Reference%20Documents/Design%20and%20Construction/Phase%202/Geotechnical%20and%20Underground%20Investigation/Lab%20Data/Geotechnical%20and%20Underground%20Investigation%20Lab%20Data.zip
288.	Reference Documents	Reference Documents/Design and Construction/Phase 2/Geotechnical and Underground Investigation/Field Logs/Northbound Presidio Viaduct	2	Only the field logs have been presented for this structure. Will the final logs be issued? Is there laboratory data available as a result of these investigations?	All available information is provided in the data room
289.	Reference Documents	Reference Documents/Design and Construction/Phase 2/Geotechnical and Underground Investigation	2	Is there R-value data available for the roadway portions of the project? Very little data can be found in the RFP documents.	All information is provided in the contract and reference documents.
290.	Structural Design Criteria for Cut-and-Cover Tunnels & Non-Standard Retaining Walls § 4.3.1-2 Live Load	Structural Design Criteria for Cut-and-Cover Tunnels & Non-Standard Retaining Walls § 4.3.1-2 Live Load	4	Most of the areas above the Main Post Tunnels are landscaped without provisions for vehicular access. Can we consider the live load in this area to be 100 psf for pedestrian/public use?	Subject to a successful bidder's negotiation with the Presidio Trust and compliance with the contract documents.
291.	Structural Design Criteria for Cut-and-Cover Tunnels & Non-Standard Retaining Walls § 6.3.3 Ductility Requirements & Performance Measures	Structural Design Criteria for Cut-and-Cover Tunnels & Non-Standard Retaining Walls § 6.3.3 Ductility Requirements & Performance Measures	4	Do tunnel structural components that resist seismic racking deformation elastically need to be detailed to meet the ductility requirements?	Bidders must comply with the contract documents.
292.	System Integration Plan	System Integration Plan	2	Where are the Project limits for ITS?	ITS limits are the same as the project limits.
293.	Technical Requirements Volume II	Technical Requirements Volume II	2	Please confirm that the( Independent) Design Check Certifications are to be submitted with the Final Design Submittal	CONFIRMED.
294.	Technical Requirements DIV II Sec 3: 6.2.3. , 7.2.5.3	Technical Requirements DIV II Sec 3: 6.2.3. , 7.2.5.3	3	For items to be reviewed by Presidio Trust (e.g. Halleck St., subsurface investigation), what is the time frame?	All timelines for review have been identified in PT documents.
295.	Technical Requirements	Technical Requirements	3	Permits Coordination and Inspection: We request that Presidio Trust provide list of their permits, permitting procedures and anticipated permit timeframes	The Sponsors will attempt to provide.

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	DIV II - I- 3.5	DIV II - I- 3.5			
296.	Technical Requirements Div VII -- II, Sec 4, 3.2	Technical Requirements Div VII -- II, Sec 4, 3.2	4	Traffic Incident Management: please provide published accident data for existing facility.	All available information is provided in the data room or the public domain.
297.	Technical Requirements Div VII -- II, Sec 4, 3.2	Technical Requirements Div VII -- II, Sec 4, 3.2	4	Emergency Management: please provide information related to support services or reimbursement provided by City, County, State and other local agencies.	The requested information will not be provided.
298.	Technical Requirements / Cultural Resources, Technical Requirements 3	Technical Requirements / Cultural Resources, Technical Requirements 3	4	Can the Cultural Resources Compliance Manager also act as the archaeologist and architectural historian?	There is no express preclusion from Cultural Resources Compliance Manager also acting as the archaeologist and architectural historian.
299.	Technical Requirements / Environmental, Gorgas buildings 3.2.11.1	Technical Requirements / Environmental, Gorgas buildings 3.2.11.1	3	Regarding the potential need for stabilizing the Gorgas warehouse buildings, will payment for such work be made at force account, or is the Developer to carry contingency costs for this in its pricing?	Bidders must comply with the Contract Documents.
300.	Technical Requirements / Environmental, Wetlands 3.2.4 / p.7	Technical Requirements / Environmental, Wetlands 3.2.4 / p.7	2	This section states that the Developer will review the proposed alignment of the outfalls for any impacts on wetlands, and shall minimize the impacts. Does the current EIR/EIS consider the impacts to wetlands of the proposed alignment of the outfalls?	Outfalls have been removed from P3 scope of work.
301.	Technical Requirements / Lighting, Design Requirements 11.3	Technical Requirements / Lighting, Design Requirements 11.3	3	Will additional payment be made, if required, should the Developer not be able to obtain concurrence from the National Park Service on the currently unresolved light locations, or is the Developer to carry contingency costs for this in its pricing?	Indicative lighting design has been provided that meet all stakeholder issues. Any change is Developer risk.
302.	Technical Requirements, 4.2.2 Landscaping	Technical Requirements, 4.2.2 Landscaping	4	Was the preliminary planning performed for the irrigation controllers, power and waterlines for the Landscaping? Were these items planned in the contract 3 and 4 plans that are in construction?	Indicative plan for landscaping for phase II has been provided. No planning for irrigation has taken place.
303.	Technical Requirements, 4.2.2 System Integration Plan	Technical Requirements, 4.2.2 System Integration Plan	3	What was the System Integration criteria used for Contracts 3 and 4? Will the criteria be posted to the DATA FILE ROOM?	All available information has been posted to the data room.
304.	Technical Requirements, Elements of Phase II Construction Division 11, Section 1 / Governmental Approvals 4.3	Technical Requirements, Elements of Phase II Construction Division 11, Section 1 / Governmental Approvals 4.3	3	What remaining governmental approvals have not yet been secured and obtained?	The Department has obtained the Governmental Approvals identified in Table 1 of Appendix 21, and further Governmental Approvals will be needed.
305.	Technical Requirements, Div II, Section 3, Subsection 6.5.3	Technical Requirements, Div II, Section 3, Subsection 6.5.3	2	Item A.4. Please clarify what is mean by "approving authority". For storm drains and outfalls not owned by the Department, will 25-year criteria apply? OR may these be designed consistent with alternate drainage criteria used by the Presidio Trust, e.g. 10-year storm event?	The "approving authority" is the authority responsible for the conveyance. The approving authority ensures that the conveyance has been designed in accordance with their standard specifications. The stormwater network is to be design for a storm event that compliments the area where the conveyance is to be implemented.

No.	Document	Relevant Section	Cat.	Question/Comments/Rationale for Proposed Change	Sponsor Comments
306.	Technical Requirements, Division I and Division II	Technical Requirements, Division I and Division II	3	Will Sponsor accept partial submittals such as foundations DIV I 3.2.1. Page 19?	Partial submittals may be submitted however it is for Developer to provide sufficient information to demonstrate that all aspects that may influence the design of the element have been considered.