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|------|----------|---|-----|---|---|
| 505. | General  |   | 3   | Maintenance Facility: Request for Presidio sites available for Maintenance facility and leasing costs. Facility requirements include secure parking for 4 maintenance vehicles, office space, secure material storage space and employee parking area.  | The Sponsors will attempt to obtain.  |
| 506. | General  | Prior Comments Remain Valid                             | 1   | While we have drafted this new submission in compliance with Sections 1.5 and 2.3.1 of the Addendum No. 1 version of the ITP, we emphasize that we remain concerned about those concerns previously raised to the Department but not fully addressed. The Department should not interpret our omission of previously submitted but not fully addressed comments as anything other than a reflection of the new ITP restrictions on the number and timing of comments. As such we strongly encourage you to respond to our comments on the basis of our prior analysis, and to revise the RFP accordingly.   | The Sponsors have responded to all previously submitted requests for clarifications to the extent they intended to respond.   |
| 507. | General  | Project Site Office                                     | 2   | Does the P3 Agreement allow for the Contractor to locate its temporary project offices within the project site? Permanent building lease will be considerably more expensive for the project.   | The P3 Agreement does not address this subject. The Presidio Trust Right of Entry Agreement prohibits temporary project offices in the TCE. Presidio Trust authorization subsequent to a Developer request would be required. |
| 508. | General  | TECHNICAL COMMENTS                                      | 2   | Does the amount designated for Landscaping include all construction costs for parking areas, hardscape, grading, etc. that is outside the permanent easement boundary as shown in the P3 Appendix 5A Exhibit?   | The landscaping provisions in the P3 Agreement will be modified in Addendum No. 2 to the Final RFP.   |
| 509. | ITP      | 4.9<br><br>PROPOSAL SECURITY & FINANCIAL CLOSE SECURITY | 1   | The Proposal Security and Financial Close Security must be reduced significantly. Such a reduction is necessary to reflect the unusually high level of uncertainty and risk placed on the Proposer and following award. Developer, under the procurement documents and as we have repeatedly pointed out, has an extremely limited time to prepare a Proposal, and the Department has responded to few of our requests for clarification, including many of our high priority issues. This creates significant uncertainty whether a Proposer is submitting a viable Proposal. Moreover, the Department's ability to control the IPDC process and therefore the terms and conditions and timing of the financing impose great risk on Developer. Therefore, it is inappropriate for Developer to risk a significant Financial Close Security given the number and type of circumstances under which the Financial Close Security may be drawn by the Department under the current documents.  | Appendix G of the ITP will be modified to reflect that the Developer can issue the IPDC Commencement Notice at any time starting with notice of intent to award without the Department's mutual determination.                |
| 510. | ITP      | 5.4<br>5.5.2<br>5.5.5.1                                 | 2   | 5.4 has been revised to provide that "if the conditions regarding Alternative Financial Proposals set forth in Section 5.5.5.1 are met, Sponsors will only evaluate and score those Proposals that contain an Alternative Financial Proposal." Similarly, new 5.5.5.1 provides that the "Sponsors will only score the Alternative Financial Proposals, and not the Primary Financial Proposals, if at least two Proposers submit Alternative Financial Proposals that meet" the criteria specified in 5.5.5.1. Revised 5.5.2 contains the same concept. We request that the 5.4, 5.5.2 and 5.5.5.1 be revised so as to eliminate the prohibition on the Sponsors evaluating and scoring a Proposal that contain only a Primary Financial Proposal if the two other Proposals contain an Alternative Financial Proposal. It is inequitable at this late stage to require that Proposer either (i) put together an Alternative Financial Proposal or (ii) put its Proposal at risk by submitting only a Primary Financial Proposal in the hope that at least one other Proposer will also fail to include an Alternative Financial Proposal. Further, this new exclusion is potentially contrary to Caltrans's interests, in that it may require Caltrans to disqualify a Proposer who presents, for example, a proposal with an NPV of MAP that is lower than the other two Proposers. | The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Addendum No. 1 to the Final RFP documents at this time.   |
| 511. | ITP      | 6.3(C)  | 3   | Section 6.3(C) requires that the Original Financial Model to be addressed to Department. Typically model auditors are very reticent to address model audit letters to parties that have not signed an engagement letter with them (for liability reasons). Please revise 6.3 to provide that the Department will execute and deliver an   | The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 2 to the Final RFP.  |

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|      |          |  |     | engagement letter (to be provided by the model auditors), in form and substance reasonably satisfactory to Department, before receiving a copy of the Original Financial Model addressed to it or change the requirement so that a copy of the Original Financial Model audit letter as addressed to Developer will be sufficient.  |   |
| 512. | ITP      | Appendix C<br>Technical Proposal.- 1.2.-<br>Project Schedule and Construction/Phasing Sequencing Plan. | 3   | Please clarify the documents to be submitted in Technical Proposal. Our understanding is :1) CPM Project in Primavera format 2) Brief Overall narrative regarding assumptions used 3) Executive summary project schedule no longer than 5 pages. 4) Project Schedule Construction Phasing /Sequencing Plan no longer than 25 pages excluding Primavera schedule. Are these 4 documents to be submitted ?  | The documents listed are to be included in the Technical Proposal in order to comply with the requirements of Appendix C, Section 1.2 only. The other required materials for the technical proposal are set forth in the ITP. Proposer's attention is particularly directed to Appendices C, I, and I-1 for the requirements for the Technical Proposal, as well as the pass/fail and evaluation criteria.  |
| 513. | ITP      | Appendix D-2A<br>Appendix D-2B<br>Table 11 & 12  | 3   | Primary and Alternative Financial Proposal, operating and routine maintenance costs: Should the table start in 2014 after the O&M during construction period?   | Construction completion dates and operations start dates may vary between Proposers and the tables were designed in order to provide flexibility for different construction/operations start/end dates. If a Proposer has no costs in a given period, then a value of zero can be used.   |
| 514. | ITP      | Appendix D<br><br>TIFIA<br>FINANCING OF<br>THE PROJECT   | 2   | Please explain why TIFIA terms that are more restrictive than the standard TIFIA terms, namely the start of repayment, the level of DSRA (12 months versus 6 months), the capitalized interest only period and interest only period and why the Department is imposing a date on the TIFIA rate. By imposing these terms, Proposers will have to increase even more their Contract Price and will be unable to meet the Affordability Limit. In order to provide best value for money, we request the Department allow Proposers to abide by the standard TIFIA terms / guidelines and that the rate of the TIFIA be part of the rate setting that is set to occur 2 weeks prior to the bid date. | The Sponsors have considered the Proposer's comments and intend to remain conservative in their assumptions but will make the following revisions in the next Addendum No. 2 to the Final RFP:<br>1) Capitalized Interest period now from Financial Close to no later than 5 years following Substantial Completion as in standard TIFIA term sheet;<br>2) Interest only period from end of Capitalized Interest to no later than 10th anniversary of Substantial Completion;<br>3) Depending on market conditions, the Sponsors may update the TIFIA rate at the time of base interest rate setting two weeks prior to the bid date. |
| 515. | ITP      | Appendix D<br>Section (f)<br>TIFIA<br>FINANCING OF<br>THE PROJECT                                      | 1   | The Drawdown assumptions of TIFIA should not be higher than on a pro rata basis with the disbursements of the senior debt. Such assumption will not be suitable for some financing structures and should be amended.<br><br>Additionally, it seems to require TIFIA to be drawn after equity being contributed and funded. We request the Department to confirm that is the case, since from a Value for Money perspective allowing to draw on TIFIA as far as equity is fully secured and committed improves the proposal.<br><br>On a pro rata basis with disbursements of the proceeds of the senior debt obligations and after equity contributions.  | The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Addendum No. 1 to the Final RFP documents at this time.   |
| 516. | ITP      | Appendix D-2<br><br>Pavement<br>Sections   | 2   | Vol. 2, Div. 2, Sec. 3 Section 5.3.7 Pavement Design of the Technical Specifications requires mainline and ramp pavement to be continuously reinforced concrete pavement (CRCP).<br><br>Page 10 of Appendix D-2 Financial Plan Summary in the Instructions to Proposers has a line item for Pavement Mainline - Asphaltic Concrete Pavement implying that a portion of the mainline is to be asphalt. Will the Department accept Asphaltic Concrete Pavement on Mainline between NB/SB Stations 105+00+/- to 118+62 +/- and between SB Station 107+50 to 118+79 and NB Station 105+00 +/- to 118+62?  | No.   |
| 517. | ITP      | Appendix E<br>Form D-4   | 4   | The reference to June 30, 2011 should be changed to June 30, 2011.  | The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 2 to the Final RFP.  |
| 518. | ITP      | Appendix E<br>Proposal and<br>Financial<br>Proposal<br>Security<br><br>FINANCING OF                    | 1   | In ITP Appendix E the Proposal LC is now valid for 240 days, not 180 days. The reason for this change is unclear as it exceeds the validity period by 60 days (90 days for Alternative Financial Proposals). Similarly the Financial Close Security LC for the Alternative Financial Proposal is now June 30, 2011, and December 31, 2011 for the Primary Financial Proposal. Please align the expiry date of the Proposal and Financial Proposal Security Instruments with the relevant validity periods.  | The Proposal LC validity extends beyond the proposal validity to allow the Sponsors sufficient time to reach a reasoned decision as to whether to draw on the Proposal LC.<br><br>The Sponsors will modify ITP Appendix E in Addendum No. 2 to the Final RFP documents to reflect that the Proposal Letter of Credit must remain valid for 210 days.  |

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|      |  | THE PROJECT   |     |   |   |
| 519. | New Alternative Indicative Plan Profiles | TECHNICAL COMMENTS  | 2   | Are the New Alternative Profiles added to the data room under the Indicative Preliminary Design folder (i.e. not within the Addendum 1 folder) to be added as addenda to the Indicative Preliminary Design as part of Addendum 1?   | Yes.  |
| 520. | New Alternative Indicative Plan Profiles | TECHNICAL COMMENTS  | 2   | Does incorporation of the new alternative profiles violate or alter in any way the previous environmental commitments, permits, or other requirements documented in the project reference documents including the FEIS/R and Programmatic Agreement?  | No.   |
| 521. | New Alternative Indicative Plan Profiles | Vol. II, Div. II, 3, Item 5. Roadway TECHNICAL COMMENTS       | 2   | The following statement is from the P3 Technical Requirements section: "Department-approved packages covering the Exceptions to Advisory Design Standards and Exceptions to Mandatory Design Standards already incorporated in the Indicative Preliminary Design are included in the Reference Documents." Without further RFP language modification, we assume the above statement still applies. Please clarify if any modification to the design exception process from the new alternative profiles is necessary.   | The statement still applies. No modification is necessary   |
| 522. | New Alternative Indicative Plan Profiles | Vol. II, Div., II, 3, Item 5. Roadway TECHNICAL COMMENTS      | 2   | Will the department assure that changes to parameters within the Department-approved packages covering the Exceptions to Advisory Design Standards and Exceptions to Mandatory Design Standards from incorporation of the new alternative profiles will be approved unconditionally by FHWA and the Department?   | Yes.  |
| 523. | P3 Agreement                             | 1.3<br>Technical Comments                                     | 2   | If a document is deemed to be mandatory and binding on Developer and its team and such document constitutes a Reference Document, it is not appropriate for the Department to disavow responsibility.<br><br>Provide that Department disavowal of accuracy of Reference Materials does not apply to those Reference Materials that are mandatory and binding (i.e., those documents referenced in (a) and (b) of Section 1.3.1). To this effect, in 1.3.2, insert "Reference Materials referenced in clauses (a) or (b) of Section 1.3.1" after ", except" and prior to "to the extent that...."  | Addendum No. 2 to the Final RFP documents will provide that the exception in 1.3.1(b) will also be an exception to the disavowal in 1.3.2. No other change will be made.    |
| 524. | P3 Agreement                             | 1.3.3<br>3.1.2<br><br>Definition of Structural Latent Defects | 2   | Proposer has previously commented that discovery of conditions at the Site which could not reasonably be discovered (e.g., latent defects in Phase I work, subsurface conditions or other conditions which could not be discovered without disturbing or destroying Phase I Construction, etc.) should give rise to a Relief Event.<br><br>It appears that Department has attempted to address this issue in Addendum 1 by adding a new sentence at the end of 3.1.2 and modifying the definition of Structural Latent Defect. However, these changes to the P3 Agreement do not have the intended effect, in that:<br><br>1. The substantial (almost complete) overlap between the subject matter of Section 1.3.3 (reliance on Reference Documents with respect to Site conditions) and 3.1.2 (inadequate Site investigation, or reliance on information provided by Department or other Persons regarding conditions at the Site) puts the broad, specific prohibition against claims in Section 1.3.3 in direct conflict with the more general language of the new sentence at the end of Section 3.1.2; and<br><br>2. Even if claim for a latent condition at the Site the existence of which is caused by, or the discovery of which was inhibited by, the Phase 1 Construction does not run afoul of 1.3.3, the relief available is inappropriately limited by the definition of Structural Latent Defects, even as that definition amended in Addendum 1. For example, under the revised definition, an unknown subsurface condition the discovery of which was rendered impracticable by the existence of the Phase 1 Construction would only provide a basis for a Relief Event if it gave rise to a defect in or damage to Structures of the Phase 1 Construction. It would not provided a basis for relief if such subsurface condition only affected Phase 2 Structures or activities.<br><br>We suggest that the appropriate relief can be provided <u>without allowing reliance on</u> | The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Addendum No. 1 to the Final RFP documents at this time. |

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|      |              |                                   |     | <p><u>Reference Documents</u>, by making the following amendments:</p> <p>a. Adding a sentence at the end of Section 1.3.3 of like effect as the new sentence in Section 3.1.2; and</p> <p>b. Revising the definition of Structural Latent Defects to read as follows:<br/> “<u>Structural Latent Defects</u> means (a) latent defects in the Structures of the Phase 1 Construction or (b) abnormal subsurface or surface conditions at the Site the discovery of which was substantially and materially inhibited by the Phase 1 Construction activities or the existence of the Structures of the Phase 1 Construction.”</p> <p>Please also modify 1.3.3 to provide for Department (to the extent possible) to assign to Developer any claims Department may have against the third party authors/providers of the Reference Documents arising from any defects or infirmity in such Reference Documents.</p>  |   |
| 525. | P3 Agreement | 2.1.2                             | 6   | <p>The Presidio Trust Right Of Entry Agreement requires that Department compensate the Presidio Trust for all project ROW claims, issues and matters including but not limited to:</p> <p>a) Functional replacement of Building 201 and the Archeology Lab (Building 230);<br/> b) Cost of construction of temporary parking with 600 stalls;<br/> c) Fair Market value of four major Buildings: 1158,605,606 &amp; 204;<br/> d) Relocation of cellular site at Armistead and relocation or removal of cellular site off of Halleck (near Crissy Field);<br/> e) Fair market value of Building 670;<br/> f) Relocation of CNG station and bus yard located between Buildings 201 and 204 underneath the structure;<br/> g) Use of Building 603 (Crissy Field Center) for PROJECT purposes;<br/> h) Use of Building 211 (Goldman Foundation) for PROJECT purposes;<br/> i) Damages to/for Gorgas Warehouses;<br/> j) All easement fees, including those for utility easements.</p> <p>Please modify Section 2.1.2 to make it clear that these obligations of Department are not being transferred to Developer.</p>  | The obligation regarding Building 201 as identified in subsection (a) as well as the obligations in subsections (i) and (j) are the Developer's responsibility.             |
| 526. | P3 Agreement | 3.1.2<br><br>TECHNICAL COMMENTS   | 2   | <p>Site investigation responsibility all transferred to Developer. This is unacceptable for knowingly inaccurate information.</p> <p>Add to end of new sentence at end of section: “or respecting any information provided by the Department to Developer or its representatives that Department knows or has reason to know is false or materially inaccurate at the time it is provided by Department.”</p>   | The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Addendum No. 1 to the Final RFP documents at this time. |
| 527. | P3 Agreement | 4.1.2.2<br><br>TECHNICAL COMMENTS | 2   | <p>The addition of subsections (b) and (c) creates an ambiguity and potential conflict given that a Department-approved Change Proposal, by its nature, likely will be inconsistent with the Technical Requirements and may establish a lower quality, manner or method of performing the Work, may not necessarily exceed Best Management Practices, or may not constitute the most stringent standards. In such instance, in order to effectuate the Department-approved Change Proposal, the Developer should be able to deviate from the Contract Documents' established standards and as provided in the last sentence of Section 4.1.2.1.</p> <p>Insert the following sentence after the first complete sentence in Section 4.1.2.2:<br/> “In the event of a conflict, ambiguity or inconsistency among the standards and specifications, and deviations therefrom as set forth under this Section 4.1.2.2, then the order of precedence, from highest to lowest, shall be as follows: (i) a deviation [required][permitted] under the most recent applicable Department-approved Change Proposal (ii) a deviation [required][permitted] under a subsequent applicable Department-approved Change Proposal, (iii) a deviation required by</p> | The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Addendum No. 1 to the Final RFP documents at this time. |

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|      |              |   |     | Section 4.1.2.2(b), (iv) a deviation required by Section 4.1.2.2(c), and (v) the Technical Requirements."   |   |
| 528. | P3 Agreement | 4.7<br>4.7.13                                 | 2   | The P3 Agreement includes a restriction for the beginning of NTP 3, until the Department has achieved Phase I Substantial Completion. As such date is not provided, when we must establish the NTP3 date?<br><br>Furthermore, in Appendix 5B the first available zone will be release 1st October 2011, so we need to know if this date means the start of the construction (NTP3) or only the start of O&M for this zone and the start of construction not will be approved until the achievement Phase I Substantial Completion, according to 4.7.13. Please clarify this issue.  | The Proposer does not establish the date for Phase I Substantial Completion. It is to establish its Baseline Project Schedule taking into consideration a number of factors, including (a) the fact that a delay by the Department in achieving Phase I Substantial Completion beyond 10/31/2011 may be a Department-Caused Delay, (b) the outside date of 12/31/2014 for the Baseline Substantial Completion Date (as defined), (c) the requirement in the definition of Long Stop Date that it be consistent with the Final Acceptance Deadline and (d) the 6/30/2015 Final Acceptance Deadline. The Department currently estimates that it will achieve a 9/5/2011 Phase I Operation Start Date. |
| 529. | P3 Agreement | 4.10.2.2                                      | 2   | 1. Reading 3.1.2 with 4.10.2.2, does Developer have any assurance that the quantities or classification of Hazardous Materials that are the basis of the risk sharing are correct?<br><br>2. Would dollar allowance for the value of 4.10.2.2.1 and 4.10.2.2.2 be a better way to manage than the quantities?   | 1. No.<br>2. The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Addendum No. 1 to the Final RFP documents at this time.  |
| 530. | P3 Agreement | 4.10.2.6<br><br>TECHNICAL COMMENTS            | 2   | Developer should be encouraged to produce a Final Design that minimizes the costs associated with addressing Pre-existing Hazardous Materials. Accordingly, Developer should be entitled to recover investigation costs even prior to Final Design and the Agreement should be explicit that Work done with respect to Pre-existing Hazardous Materials is Extra Work for purposes of the Agreement.<br><br>Insert as new sentence immediately preceding final sentence in definition of "Extra Work" in Appendix 1: "The term "Extra Work" also includes the investigation and remediation of any Pre-existing Hazardous Materials." Also, delete item 3 of 4.10.2.7.  | The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Addendum No. 1 to the Final RFP documents at this time.   |
| 531. | P3 Agreement | 4.10.3  | 2   | Section 4.10.3 has been modified to provide that "no compensation shall be available under Section 9.3 for Extra Work Costs and Delay Costs arising out of Releases of Hazardous Materials from vehicles operating within the Project Right of Way, unless operated by Department."<br><br>It is highly likely that Releases of Hazardous Materials will be from vehicles operated by third parties (and not by Department). This modification thus shifts a significant risk over to Developer.<br><br>Previously, Developer would potentially have been entitled to Extra Work Costs and Delay Costs arising out of Releases of Hazardous Materials from vehicles operating by third parties under two Relief Events, namely (j) violations of Law by a third party and (n) Release of Hazardous Materials by a third party.<br><br>We request that new clause (b) in Section 4.10.3 be deleted and replaced with the following:<br><br>"(b) no compensation shall be available under Section 9.3 for Extra Work Costs and Delay Costs arising out of Releases of Hazardous Materials from vehicles operated by Developer or any Developer-Related Entity within the Project Right of Way." | The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Addendum No. 1 to the Final RFP documents at this time.   |
| 532. | P3 Agreement | 4.12<br>TECHNICAL COMMENTS                    | 2   | The risk allocation for Extra Work Costs of Allowance Landscaping in the event such cost is less than \$12 million, requires the Developer to include a premium on the cost of such landscaping in order to be made whole for the potential 50% savings to the Department. Please confirm that this is an accurate reading of Section 4.12.2.1. or clarify provision.   | Each Proposer is responsible for deciding how to price its costs of Allowance Landscaping taking into account the provisions of 4.12.2.   |
| 533. | P3 Agreement | 4.12.2<br><br>Technical Requirement (general) | 2   | We believe that Section 4.12 is ambiguous:<br><br><u>Alternative 1:</u><br><br>Is Extra Work Cost of Allowance Landscaping a provision for Extra Work in Landscaping (including irrigation) beyond what is required in the Landscaping Concept Plan (Reference Document) and the Baseline Landscaping Design Criteria   | Addendum No. 2 to the Final RFP will clarify that 4.12 applies to first dollar costs of Allowance Landscaping that are eligible costs under the Extra Work Costs specifications.<br><br>The assumption regarding 4.12.2 is correct. See 9.1.2.2, which will be revised in Addendum No. 2 to the Final RFP to add increased costs of Haul Route restoration.   |

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|      |              |   |     | <p>(Technical Requirements)?</p> <p>If this is the case:</p> <ul style="list-style-type: none"> <li>There are no rows to include these amounts for landscape and haul routes allowances in Appendix D-2. Where should we include these amounts?</li> <li>We believe that a dollar allowance for the landscaping shown on the Landscaping Concept Plan is a better way to manage this risk sharing than to attempt to measure Extra Work Costs over what different teams will estimate from what is a very conceptual plan. If the Landscaping Concept Plan allowance was \$15 M then measuring the added cost would be far simpler and less prone to dispute. Appendix 1 provides a definition for Allowance Landscaping but it addresses scope and not a dollar value.</li> <li>Re 4.12.2, may we assume that the Claim Deductible does not apply to Extra Work Costs associated with risk sharing Extra Work Costs at 4.10.2, 4.12, 4.13.2 or 9.1.3?</li> </ul> <p><u>Alternative 2:</u></p> <p>Does the allocation of the costs of the Allowance Landscaping in 4.12.2 apply <u>from</u> the first dollar spent on the costs of Allowance Landscaping and not just to Extra Work Costs (namely additional landscaping required by Department in the future which "is not otherwise covered or included in the Project by the Contract Documents ....")? (See definition of Extra Work.)</p> <p>If this is the case, in each of 4.12.2.1, 4.12.2.2, 4.12.3., 4.12.2.4, please change "Extra Work Costs" to "costs".</p> |  |
| 534. | P3 Agreement | 4.13.2  | 2   | <p>Comment ___ above also applies to the use of "Extra Work Costs" in 4.13.2.1, 4.13.2.2, 4.13.3., 4.13.2.4 (re the costs of Haul Route restoration).</p>   | <p>Addendum No. 2 to the Final RFP will clarify that 4.13 applies to first dollar costs of Haul Route restoration that are eligible costs under the Extra Work Costs specifications.</p>   |
| 535. | P3 Agreement | 4.13.2<br><br>TECHNICAL COMMENTS  | 2   | <p>The risk allocation for Extra Work Costs of the Haul Routes restoration, in the event such cost is less than \$1 million, requires the Developer to include a premium on the cost of such work in order to be made whole for the potential 50% savings to the Department. Please confirm that this is an accurate reading of Section 4.13.2.1 or clarify provision.</p>  | <p>Each Proposer is responsible for deciding how to price its costs of Haul Route restoration taking into account the provisions of 4.12.2.</p>  |
| 536. | P3 Agreement | 4.17.4<br><br>TECHNICAL COMMENTS  | 2   | <p>The Developer has no way of knowing the extent of the work required to restore the TCE areas from the conditions described in the Survey of Existing Conditions (which will not be available until Phase 1 is actually completed) to the conditions described in the Survey of Existing Conditions Prior to the Phase 1 Work. This will introduce an unforeseeable cost impact on the bids/budget.</p> <p>Replace "Survey of Existing Conditions Prior to Phase 1 Work" with "Survey of Existing Conditions" in Section 4.17.4.</p>  | <p>The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Addendum No. 1 to the Final RFP documents at this time.</p>   |
| 537. | P3 Agreement | 5.1.3<br><br>9.2.5.1<br><br>15.2.2<br><br>App. 1<br>"Financial Close Deadline"<br><br>App. 1<br>"Department Caused Delay" | 2   | <p>The PPPA stipulates the following:</p> <p>The Department issues NTP2 on the Phase 1 Operation Start Date. The issuance of NTP2 constitutes the commencement date of the O&amp;M During Construction. However, O&amp;M During Construction may commence no later than September 5, 2011.</p> <p>On the other hand, the Financial Close Deadline is 180 days after commencement of the IPDC but no later than 150 days before Phase 1 Substantial Completion. The definitions for Phase 1 Completion and Phase 1 Operation Start Date seem to overlap.</p> <p>NTP 3 shall occur no later than October 31, 2011 and a delay in the issuance of NTP 3 constitutes a Department Caused Delay and entitles the Developer to an extension of the Financial Close Deadline.</p> <p>The Proposer requests clarification as the connection between NTP2, NTP3 and the Financial Close Deadline:</p>  | <p>O&amp;M During Construction may commence no <i>earlier</i> than 9/5/2011. See 5.1.3, which lists three triggering events. It is the "latest to occur" of these events that starts O&amp;M During Construction. This allows Proposers to plan their O&amp;M schedule and related costs with certainty as to the earliest date this work could start.</p> <p>Phase I Substantial Completion does not overlap the Phase 1 Operation Start Date. It will occur <i>after</i> the Phase 1 Operation Start Date, as it also requires demolition work and demobilization that will occur after Phase I is opened for traffic.</p> <p>Accordingly, NTP 2 and O&amp;M During Construction will occur before NTP 3 and the commencement of the right to construct Phase II. NTP 2 and O&amp;M During Construction could also occur before Financial Close depending on when Developer elects to give the IPDC Commencement Notice and start the IPDC.</p> <p>NTP 3 will not be issued, and construction may not commence, until, among other things, Developer achieves Financial Close and Phase I Substantial Completion has occurred. See 4.9.2.1. It is possible that Financial Close would occur after Phase I Substantial Completion. This timing is in the Developer's control. See range of time</p> |

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|      |              | App. 1 "Phase 1 Substantial Completion"<br><br>App. 1 "Phase 1 Operation Start Date"<br><br>Connection between NTP 2 and NTP 3 |     | In the opinion of the Proposer, NTP2 and NTP3 are connected because the commencement of construction for Phase 2 (save other conditions according to Cl. 4.7 PPPA) cannot occur prior to Substantial Completion of Phase 1.<br><br>The commencement of O&M During Construction is also contingent on the Phase I Construction being safe to open for traffic. Traffic safety is also a condition for Phase I Substantial Completion.<br><br>However, whereas NTP2 and the Financial Close Deadline are subject to extensions, the latest date for NTP2 is September 5, 2011 with no possibility of an extension.<br><br>The Proposer would like to receive clarification from the Department whether the fixed date of NTP2 with no extension in case of Department Caused Delay is intended.          | within which Developer may issue IPDC Commencement Notice set forth in 15.2.2 (Primary Financial Proposal)."  |
| 538. | P3 Agreement | 5.2.2.6<br>5.2.2.7   | 2   | Non-Discriminatory O&M Changes are made at Department's discretion, and Developer cannot anticipate or price them. Just as Department would need to seek additional funding to make them on its other projects, it should be required to do so for the Project.<br><br>Please remove both of the capital work deductibles in 5.2.2.6 and the limitation on Extra Work Costs and Delay Costs in Section 5.2.2.7.  | The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Addendum No. 1 to the Final RFP documents at this time.   |
| 539. | P3 Agreement | 5.2.2.6  | 4   | In 5.2.2.6, the cross reference to 9.1.4 has been incorrectly changed to 9.1.3. It should be changed back to 9.1.4.  | The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 2 to the Final RFP.  |
| 540. | P3 Agreement | 9.1.2<br>TECHNICAL COMMENTS  | 2   | Modify to eliminate references to deductibles in subparts 5 and 6.   | The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Addendum No. 1 to the Final RFP documents at this time.   |
| 541. | P3 Agreement | 9.1.3<br>TECHNICAL COMMENTS  | 2   | Seismic Event Deductible – Compare "Act of God" provision of Public Contract Code. Note that Developer bears first \$10 million for costs incurred due to seismic event.<br><br>Modify to indicate that the Seismic Event Deductible may be covered by insurance, and that payments by the insurance shall be credited against the Seismic Event Deductible.   | The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Addendum No. 1 to the Final RFP documents at this time.   |
| 542. | P3 Agreement | 9.1.3.4<br>TECHNICAL COMMENTS  | 2   | Requires seismic damage to be done per emergency.<br><br>Modify to indicate that if work is required prior to Final Acceptance, it may be performed without bidding by the DB or its subcontractors.   | The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in Addendum No. 1 to the Final RFP documents at this time. Under 5.2.7, competitive bidding for emergency work is only required if required by FEMA or FHWA.   |
| 543. | P3 Agreement | 9.2.2.4<br>19.3.1.1  | 2   | To clarify that Notice of Conditional Election to Terminate may be given when it is clear that the 270 day limit will be exceeded (rather than having to wait for the 270 days of delay to have actually occurred), please make the following changes:<br><ul style="list-style-type: none"><li>• revise the second sentence of Section 9.2.2.4 to read as follows: "If Relief Event Delays actually exceed, or if it is reasonably determined that they will exceed, 270 days in the aggregate, the Parties' rights and remedies shall be as set forth in Section 19.3."</li><li>• insert "has exceeded or will" before "exceed" in the second line of Clause 1 of Section 19.3.1.1</li><li>• replace "persists" with "has persisted or will persist" in Clauses 2 and 3 of Section 9.3.1.1</li></ul> | Section 19.3.6.1 (2) will be modified to reflect that if 19.3.1.1 (3) is triggered and the Department's failure to secure access rights contributes to at least 50% of the 270 consecutive days of closure, if the Agreement is terminated, in addition to compensation previously provided in the Agreement, the Developer's compensation will include Equity IRR. |
| 544. | P3 Agreement | 9.2.4  | 1   | 9.2.4 provides that Closures resulting from certain specified Relief Events are deemed <u>not</u> to be Permitted Closure for the purposes of calculating the Availability Payment reductions under Appendix 7 arising from an Unavailability Event (subject to the adjustments to such reductions provided for in 9.2.4).<br><br>Developer believe that it its inequitable for the Availability Payments to be reduced due to events outside the control of Developer and which Developer can do little (if anything) to mitigate. Further, it is extremely difficult for Developer to quantify the   | The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Addendum No. 1 to the Final RFP documents at this time.   |

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|      |              |                                       |     | <p>potential economic impacts of such risks for the purposes of submitting its Proposal.</p> <p>Please delete 9.2.4.</p>  |  |
| 545. | P3 Agreement | 11.5<br>Prioritization APPROPRIATIONS | 1   | <p>In the revised Section 11.5 of the P3 Agreement, the Department commits to prioritize payments to the 'maximum' extent possible under Section 163 of the Streets &amp; Highways code. Reading this language alone together with the statute and without reference to the rest of the new drafting, we would expect that the maximum level of prioritization would result in a blended prioritization. Under a blended approach, each element of the Department's payment obligations would be treated separately in accordance with subcategories that align with the statutory categories set out in Section 163 (i.e., certain payments for construction will receive second rank priority as "rehabilitation" expenditures, certain payments for O&amp;M will receive third rank priority as "maintenance" expenditures, and other payments will receive the lowest rank priority for "capital improvement projects").</p> <p>However, when read as a whole Section 11.5 contradicts this interpretation and, we believe, possibly Section 163 as well. The Department states that payments to the Developer will be given a unitary level of priority equal to all other 'contractual obligations' as determined by reference to those obligations at the time each STIP Fund Estimate is submitted.</p> <p>It appears that the first STIP Fund Estimate is now expected to be delivered sometime after signing, given the change in the Department's representation in Section 17.2.8, so there is no way to know what other contractual obligations will be pari passu with payments under the P3 Agreement even during the first year of payments.</p> <p>Moreover, this approach is a step-back from the prior language which promised prioritization over 'new' projects. Under the new drafting the Developer's level of priority may be diluted over time in each successive Fund Estimate as new contractual obligations are incurred by the Department. This is a significant deviation from the team's request for priority over 'new' (i.e. later in time) projects, which is the standard approach to ensuring prioritization of payments in order to ensure financeability. In addition, this drafting also conflicts with the commitment to prioritize payments to the maximum extent possible under Section 163, as we read the statute as requiring that different types of payments be treated differently and not uniformly based on the single criteria of whether they constitute 'contractual obligations'.</p> <p>Please revise Section 11.5 to ensure a true maximization of the priority of payments in accordance with Section 163 through a blended prioritization scheme (i.e. break up payments by category and match with Section 163), including priority over new (later in time projects), and delete references to parity with other contractual obligations generally.</p> | <p>Section 11.5 will be modified to reflect the following: (1) the Department will provide a commitment to use all available resources to budget all payments due Developer through the Term; (2) the Department will use its best efforts to ensure the availability of all payments due Developer through the Term; (3) the Department will use its best efforts to obtain funding to pay all payments due Developer as a result of Termination of the Agreement; (4) the Department will provide a representation that the currently programmed funds for the Milestone Payment are not available to be used for any other purpose.</p> |
| 546. | P3 Agreement | 11.5<br>White Paper APPROPRIATIONS    | 1   | <p>During the one-on-one meetings, the Department promised to provide an updated version of the White Paper explaining the changes in Addendum No. 1 to Section 11.5 of the P3 Agreement. This paper has not yet been provided. As a result it is difficult to analyze the Department's intent in its revisions to Section 11.5, which as noted below remains unclear despite progress in some areas. Please provide an updated White Paper, including among other things the following :</p> <p>(1) Explanation of how each type of payment (e.g. Milestone Payment, Availability Payment, Claims compensation, termination payment etc) will be prioritized within the STIP Fund Estimate.</p> <p>(2) An explanation as to the reasons by the Department cannot prioritize payments due to the Developer over other contractual obligations, even those entered into after the Effective Date, and how this is compatible with Section 163.</p> <p>(3) Detailed explanations as to why each element of our prior comments seeking to reduce appropriations risk have been rejected.</p> <p>(4) An explanation as to the reasons why the Department will not provide security</p>  | <p>The White Paper will be modified to reflect changes related to modifications to P3 Agreement section 11.5 in Addendum No. 1 to the Final RFP.</p> <p>(4) The Sponsors deemed that the requested security was not required since the Milestone Payment funds have been allocated and cannot be used for any other purpose.</p>   |

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|      |              |  |     | <p>over the funds expected to pay the Milestone Payment.</p> <p>(5) An explanation as to why the Department cannot secure a legal opinion of outside counsel opining as to the validity of the Department's obligations under the Agreement for California law and in particular its appropriations and prioritization covenants.</p>   |  |
| 547. | P3 Agreement | 11.5.1<br>State Highway Account Funding<br><br>APPROPRIATIONS        | 1   | <p>Section 11.5.1 of the P3 Agreement now provides that the STIP Fund Estimate will include amounts anticipated to be due "during the following Fiscal Year (and any subsequent periods for which appropriations may be budgeted, requested, and appropriated) as amounts to be appropriated from the State Highway Account". This revision does clarify the Department's intent that amounts will be budgeted from the SHA generally, as the Department expressed during our one-on-one meeting . However, we suggest that the drafting be made even more specific to ensure that appropriations will be made from any available sub-account that has funding since technically under the current drafting this covenant could be satisfied simply by appropriating from an underfunded sub-account within the SHA (which we do not understand to be the Department's intent).</p> <p>11.5.1 ...The Department shall include the Milestone Payment, Maximum Availability Payment, and other amounts then anticipated to be due under this Agreement) during the following Fiscal Year (and any subsequent periods for which appropriations may be budgeted, requested, and appropriated) as amounts to be appropriated from the State Highway Account in its proposed STIP Fund Estimate ("Fund Estimate") or, as necessary, any other or equivalent budget submission, for adoption by the California Transportation Commission, or any other relevant authority, and in its legislative budget request prepared in accordance with the Budget Acts and Executive Orders of the years covered by this Agreement, including any mid-year budget augmentation process as needed to meet its obligations under the Agreement....</p> | There are no sub-accounts in the State Highway Account (SHA).  |
| 548. | P3 Agreement | 11.5.2<br>Department Default<br>APPROPRIATIONS                       |     | <p>Under Sec. 11.5.2, payments are subject to prioritization. Backstopping this covenant is a new Department Default in Sec. 18.3 of the P3 Agreement for a failure by the Department "to prioritize any payments under the Agreement in accordance with Section 11.5". This default is significantly narrower than the appropriation defaults which we believe are necessary to ensure financeability, which should also include (i) a failure to appropriate and (ii) a failure to observe/perform any other obligation under Section 11.5. In addition, the addition of this new, limited default does not satisfy the need for an additional, broader Department default as previously requested to any other material failure by the Department to observe or perform its obligations generally under the agreement.</p> <p>18.3.1.4 The Department fails to appropriate for or prioritize any payments under this Agreement in accordance with , or to otherwise timely observe or perform or cause to be observed or performed any other obligation under, Section 11.5; or</p> <p>18.3.1.5 The Department materially fails to timely observe or perform or cause to be observed or performed any other material covenant, agreement, obligation, term or condition required to be observed or performed by Department under the Contract Documents.</p>   | The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Addendum No. 1 to the Final RFP documents at this time.  |
| 549. | P3 Agreement | 15.2.8<br>Interest Rate Risk Sharing<br><br>FINANCING OF THE PROJECT | 1   | <p>Section 15.2.8 of the P3 Agreement (for both committed and uncommitted financing) state that the Department will 85% of the impact on the MAP for the differences between 'all other assumed financial terms' in the model and financial plan at bid, and the actual debt and financing at close. This follows a provision that concerns the sharing of interest rate risk. In the ITP and in the prior draft of the P3 Agreement, the 85%/15% risk sharing mechanism concerned margin risk. However, the new drafting references simply movement in 'all other assumed financial terms'. Please clarify what is intended, describe what other assumed financial terms are covered by the new language, and explain how this relates to the margin risk sharing mechanism described in the ITP.</p>  | <p>Proposer's statement is incorrect. For an Alternative Financial Proposal, the Department will bear the risk and have the benefit of 100% of the movement in base interest rates, and will have the benefit of 60% of gain resulting from all other changes in financial terms. See 15.2.8 and 15.2.9 of Alternative Financial Proposal.</p> <p>For a Primary Financial Proposal, the Department will bear the risk and have the benefit of 100% of the movement in base interest rates, and 85% of the changes in all other financial terms that are assumed and indicated in the Original Financial Model and financial plan. See 15.2.8.1 and 15.2.8.2 of Primary Financial Proposal.</p> <p>In addition to changes in margins, changes in other financial terms might include reserve requirements, repayment terms, tenor and the like.</p> |
| 550. | P3           | 15.2.8.1   | 4   | In 15.2.8.1, there are two references to 10:00 a.m. EPT ..." Please correct.  | The reference to EPT (Eastern Prevailing Time) refers to three different dates, one of which could be either EDT (Eastern Daylight Time) or EST (Eastern Standard Time).   |

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|      | Agreement    |  |     |  | For this reason, the references to EPT will remain.   |
| 551. | P3 Agreement | 16.4.2.4                                 | 2   | <p>16.4.2.4 has been modified to say that Developer's indemnity shall not apply to Losses relating to a "Structural Latent Defect, "except to the extent that the Loss would have been avoided had Developer undertaken rehabilitation in accordance with Section 4.16.4 after discovery of the Structural Latent Defect."</p> <p>However, Developer has no obligation under 4.16.4 to undertake rehabilitation after discovery of the Structural Latent Defect <u>unless</u> instructed to do so pursuant to a Department Change.</p> <p>Please delete 16.4.2.4 and replace it with the following:</p> <p>"A Structural Latent Defect, except to the extent Developer was required to undertake rehabilitation in accordance with Section 4.16.4 after discovery of the Structural Latent Defect."</p>  | 16.4.2.4 will be revised to read as follows: "A Structural Latent Defect, except to the extent that the Loss would have been avoided had Developer properly and timely undertaken rehabilitation after receiving a Department Change pursuant to <u>Section 4.16.4</u> directing Developer to undertake such rehabilitation or repair." |
| 552. | P3 Agreement | 18.1.1.15<br>RIGHT OF WAY<br>ACQUISITION | 1   | It is unrealistic and unacceptable to establish the Long Stop Date and Final Acceptance Deadline as currently provided, a failure to meet either of which is a Developer Default under Section 18.1.1.15, given that the Department will not commit under Appendix 5-B to deliver a critical portion of the Project Right of Way subject to Contract No. 4 until August 2012. Delivery of these parcels on this time schedule would leave an unacceptably small margin of time between the expected substantial and final completion dates for the work and the Long Stop Date and Final Acceptance Deadline. We, our design-build contractor and our financing providers cannot accept this risk as it is currently allocated under the Agreement.  | Appendix 5B will be modified in Addendum No. 2 to the Final RFP to reflect that the indicated dates of availability of particular areas of Work correspond with NTP3 as defined in the Agreement.   |
| 553. | P3 Agreement | 18.2.10.2                                | 2   | The "but do not liquidate other damages" language in 18.2.10.2 arguably renders the liquidation of damages unenforceable. In order to be enforceable, the liquidated damages provision must purport to liquidate <u>all</u> of the relevant delay damages (other than those which are <u>expressly</u> addressed elsewhere). Please delete 18.2.10 and replace it with the following: "Such liquidated damages shall constitute Department's sole right to damages for such delay (other than delay damages arising from the extension of the OCIP (under the penultimate sentence of Section 18.2.5.1) and delay damages encompassed by adjustments to Maximum Availability Payments)."   | The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 2 to the Final RFP.  |
| 554. | P3 Agreement | 18.2.13                                  | 2   | <p>18.2.13.1 purports to exclude Developer's liability to Department for consequential and incidental damages. However, this exclusion is effectively nullified by 18.2.13.2.4, which provides that the exclusion does not apply to "Developer's indemnity and defense liabilities" under the Contract Documents. Thus, Department can maintain an indemnity claim for consequential and incidental damages <u>arising from its own losses</u>. We believe that the effect of 18.2.13.2.4 should be that Developer's indemnity extends to consequential and incidental damages <u>arising from claims by third parties, but not to claims for Department's own losses</u>.</p> <p>This being the case, in 18.2.13.2.4 please replace "Developer's Indemnity and defense liabilities" with the following:</p> <p>"Developer's obligations regarding claims by third parties under Section 16.4"</p> | The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Addendum No. 1 to the Final RFP documents at this time.   |
| 555. | P3 Agreement | 18.2.4.1 (4)<br>INSURANCE<br>AND SURETY  | 2   | <p>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.</p> <p>Remove Provision</p>  | The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Addendum No. 1 to the Final RFP documents at this time.   |
| 556. | P3 Agreement | 18.2.9<br><br>TECHNICAL<br>COMMENTS      | 2   | <p>New language is ambiguous and needs clarification.</p> <p>Replace new last sentence of 18.2.9 with the following: "For the avoidance of doubt, Payment and Performance Security provided by or on behalf of the Lead Contractor securing such Lead Contractor's obligations under a Key Contract will not be available to the Department to cure a Developer Default unless such Developer Default directly resulted from a corresponding breach by the Lead</p>  | The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Addendum No. 1 to the Final RFP documents at this time.   |

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|      |              |  |     | Contractor under such Key Contract."  |  |
| 557. | 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 in clause (a).   | The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Addendum No. 1 to the Final RFP documents at this time.  |
| 558. | P3 Agreement | 25.12.1<br>TECHNICAL COMMENTS  | 4   | That ambiguity in agreement will not be construed against Department; is unreasonable. Delete second to last sentence in section regarding ambiguity of contract documents.   | The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Addendum No. 1 to the Final RFP documents at this time.  |
| 559. | P3 Agreement | Appendix 1 definition of "Long Stop Date"  | 2   | The "Long Stop Date" has been revised to be the earlier of (a) 365 days after the Baseline Substantial Completion Date or (b) a date consistent with achieving Final Acceptance by the Final Acceptance Deadline assuming a time period needed between Substantial Completion and Final Acceptance as set forth in the original Project Schedule.<br><br>The time period between Substantial Completion and Final Acceptance will be a conservative estimate assuming that the activities after Substantial Completion will be conducted in the most cost efficient manner, whereas it would be normal practice to use acceleration methods to shorten this period if necessary to meet the Final Acceptance Deadline. The definition of Long Stop Date should not assume otherwise.<br><br>Please revise clause (b) to simply refer to the Final Acceptance Deadline.                | The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in Addendum No. 1 to the Final RFP documents at this time.<br><br>It is up to each Proposer to determine what time it will need after Substantial Completion to achieve Final Acceptance. This time period will be indicated in the Project Schedule in its Proposal. If as a result of a conservative time period the Long Stop Date must end sooner than 365 days after the Baseline Substantial Completion Date in order to be consistent with the 6/30/2015 Final Acceptance Deadline, then clause (b) will control the duration of the Long Stop Date. |
| 560. | P3 Agreement | Appendix 1 Definition of First Year Maximum Availability Payment<br><br>FINANCING OF THE PROJECT |     | 1. It is uncertain whether "first full year" in the definition refers to First Year as defined in Appendix 1.<br><br>2. It is unclear whether "earned for" refers to when the payment of such availability payments are received or if it refers to the operational period for which the availability payments will be received in the following quarter.<br><br>First Year Maximum Availability Payment means the nominal value of all the Availability Payments which could be earned for the first full year following the Baseline Substantial Completion Date  | 1. The words 'full year' were deliberately chosen to not mean a Fiscal Year. The defined term is used to determine whether the APs that the Department would have to pay for the first 365 days of AP accruals, assuming no adjustments, will not exceed the \$35 million Availability Limit.<br><br>2. The word "earned" is intended to refer to the APs that could accrue during the first full year.  |
| 561. | P3 Agreement | Appendix 3 Project Lease, Article 3.1<br><br>TECHNICAL COMMENTS                                  | 3   | Will the Department allow construction of O&M offices, yard, and Traffic Operation Center facilities within the R/W and if so can The Department provide any architectural requirements or location and size restrictions.<br><br>Use of the Premises "only for the purposes of performing the work and holding the project open" does not expressly allow nor preclude construction of O&M offices, yard, and Traffic Operations Center facilities within the R/W.   | The P3 Agreement does not address this subject. The Presidio Trust Right of Entry Agreement prohibits the proposed uses in the TCE. Presidio Trust authorization subsequent to a Developer request would be required.  |
| 562. | P3 Agreement | Appendix 5B<br><br>TECHNICAL COMMENTS  | 1   | (Area in Yellow is labeled CALTRANS – Developer cannot use.) Will be this area accessible for improvements on including landscape, trails and access to substation?   | No.  |
| 563. | P3 Agreement | Appendix 6 Delay Costs and Extra Work Costs<br><br>DELAY COSTS AND EXTRA WORK COSTS              | 1   | Appendix 6 was previously released by the Department ahead of Addendum 1, and is now included in Addendum 1. It calculates Delay Costs and Extra Work Costs differently. For example, materials costs may not be recoverable for Delay Costs, although they are recoverable for Extra Work Costs. While conceptually it might be possible to identify all types of expenses as either delays associated or extra work associated, in practice the two concepts typically overlap. This means that the different methods for calculation may result in unnecessary disputes between the Developer and the Department as to whether an expense was a Delay Cost or an Extra Work Cost. To avoid this confusion and to simplify the process, we suggest that the two concepts be merged into a single category of incurred costs using the more inclusive Extra Work Costs calculations. | The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Addendum No. 1 to the Final RFP documents at this time.  |
| 564. | P3           | Appendix 16-A  | 2   | Surety consent will be required in connection with any contractual modifications to   | The Sponsors considered the issue presented by the Proposer and decided to not   |

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|      | Agreement                | Performance Bond<br>INSURANCE<br>AND SURETY   |     | terms of payment or extension of time relating to payments.<br>Under Conditions of this Obligation paragraph #4 – remove reference to payment terms.   | modify the position reflected in the Addendum No. 1 to the Final RFP documents at this time.   |
| 565. | P3 Agreement             | Appendix 16-B<br>Payment Bond<br>INSURANCE<br>AND SURETY  | 2   | Insertion of this language would tie the obligations of the Payment Bond to the provisions outlined in Section 16.2.2.1 of the PPP Agreement.<br>Insert “during the construction period” or “except operations and maintenance work after the Substantial Completion Date” in the second AND WHEREAS paragraph after “operations and maintenance work”   | Paragraph 4 of the bond forms will be modified as follows: “This Bond shall cover all payment obligations under the Contract except obligations to pay for operations and maintenance work performed after the Substantial Completion Date as defined in the Agreement.” |
| 566. | Reference Documents      |   | 3   | Please provide the design parameters for the pavement design for Contracts 3 and 4 including R values, T1 and ESALs.   | The Sponsors will attempt to obtain.   |
| 567. | Reference Documents      | Indicative Preliminary Plans. Update 16th August.   | 3   | The design of the Phase II drainage will depend on the outfalls. Will the size and location of these outfalls be as shown in the Indicative Drawings?  | The size and location of the outfalls will be substantially the size and location as shown on the Indicative Preliminary Design.   |
| 568. | Reference Documents      | Indicative Preliminary Plans. Update 16th August. Sheet L-5   | 3   | Sheet L-5 of the Indicative Preliminary Design Drawings does not show a retaining wall at the southeast end of Halleck Street. Did Department intend to have a fill slope at this location?  | 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.  |
| 569. | Reference Documents      | Indicative Preliminary Plans. Update 16th August. Sheets U-1 , U-2, U-4 and U-5.                          | 3   | There are utilities shown in color that are outside the TCE. Must Developer relocate these utilities ?   | The need to relocate utilities is dependent upon the Developer’s design and should be in accordance to the Contract Documents.   |
| 570. | Right Of Entry Agreement | 11<br>Utility Relocations   | 2   | According to the ROE Agreement "Trust shall convey a utility easement vested in the name of PG&E for underground electrical lines for the 12 kV distribution line for the PROJECT, the details of which shall be determined by the parties ". In the last set of Indicative Preliminary Plans, sheets U-2 and U-5 one Electrical line 2 (6") is shown in Mason St. Can we conclude this is the final easement and therefore no work is to be performed by Developer?                               | Yes.   |
| 571. | Technical Specifications | Div. II 3   | 3   | Please clarify paragraph 5.3.7 of the Design and Construction Specifications. The first line says that the design shall conform to Department standards. The second sentence says the full depth pavement shall extend for the entire width including the shoulders. Department standards allow for a reduction in thickness for lane 1 of a three lane roadway.   | Full depth pavement is a project-specific requirement.   |
| 572. | Technical Specifications | Div. II, Sec 3, Article 12.1<br><br>TECHNICAL COMMENTS  | 1   | The Presidio Trust will provide adequate space for the propagation of native plant material for the Project. The Presidio Trust will provide expertise in the collection of seed and plants, propagation and plant out of native species.<br><br>Will the Presidio provide an on-site nursery area adequate for growing native plant material and expertise in native seed and plant collection and propagation to the Developer, and define the percent of native species required survival rate? | The Proposers should consult the VMP to determine the Presidio Trust's responsibilities with regard to these issues.   |
| 573. | Technical Specifications | Div. II, Sec 3, Article 12.3.4 Hardscape Design, D) & Table 12.4Site Signage, C<br><br>TECHNICAL COMMENTS | 1   | The Landscape SoW mentions interpretive signage in Table 12.4. The amount and level of interpretive signage is ambiguous in quantity and detail.<br><br>The Developer is not responsible for design, development and construction of Interpretive Signage.   | The landscaping provisions in the P3 Agreement will be modified in Addendum No. 2 to the Final RFP.  |

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| 574. | Technical Specifications | Div. II, Sec 3, Article 12.4.4, B)<br><br>TECHNICAL COMMENTS                       | 1   | No As-built information of existing irrigation system has been provided yet it is called out to be maintained during construction and reconnected after construction.<br><br>No recycled water lines have been identified on the utility plans provided by the sponsors. Existing reclaimed water is identified by the line style shown on UNW-01 of the full set of Contract 2 utility plans only.<br><br>Please provide as-built drawings of Presidio irrigation systems which might be impacted by the Project                  | The landscaping provisions in the P3 Agreement will be modified in Addendum No. 2 to the Final RFP.  |
| 575. | Technical Specifications | Div. II, Sec 3, Article 12<br><br>TECHNICAL COMMENTS                               | 1   | Permanent Parking areas are not included in the Allowance Landscaping<br><br>It is unclear if parking is included under Allowance Landscape as they are mentioned in the Landscape Typologies. Developer should assume Landscape Architect and Aesthetic Architect shall input on design.  | The landscaping provisions in the P3 Agreement will be modified in Addendum No. 2 to the Final RFP.  |
| 576. | Technical Specifications | Div. II, Sec 3, Article 12<br><br>TECHNICAL COMMENTS                               | 1   | Hardscape referencing highway safety elements as called out in Typologies shall be included under roadway not Allowance Landscape. This includes safety fences, guard rails, barriers, and safety fencing.<br><br>These typical highway safety required items are appropriate to the roadway section. The Landscape Architect and Aesthetic Architect shall input on the design and thematic elements.   | The landscaping provisions in the P3 Agreement will be modified in Addendum No. 2 to the Final RFP.  |
| 577. | Technical Specifications | Div. II, Sec 4 - Tables 4.1 & 4.1  | 3   | O&M Work Period Requirements: The tables were removed from Addendum. Will the tables be revised or eliminated?   | The tables were not revised or eliminated from the non-redline version of Addendum No. 1 to the Final RFP. The redline version provided to the Proposers inadvertently omitted the tables. |
| 578. | Technical Specifications | Div. II, Sec 4, Table 4.1 & 4.2  | 3   | O&M Work Requirements - Drains & Drainage: We request that the Minimum Performance Requirement related to "maintain travel lanes free of standing water of greater than one inch deep" be tied to drainage system design criteria and no penalty for events that exceed design criteria.   | The roadway is to be designed according to the design criteria specified in the appropriate Design Manual.   |
| 579. | Technical Specifications | Div. II, Sect 3, Par 5.3.7 Pavement Design<br><br>TECHNICAL COMMENTS               | 3   | In the event of significant Seismic activity, the time and money required for repair and rehabilitation of concrete pavement could be substantial. In the interest of faster and more economical restoration of the roadway, would the Department allow flexible pavement design for mainline and ramp applications?<br><br>Propose modification to allow use of flexible pavement on mainline and ramps.  | The Sponsors expect the Proposers to determine and adhere to all Contract Documents.   |
| 580. | Technical Specifications | Div. II, Sect 4, Table 4.1 item 48 and table 4.2 item 69<br><br>TECHNICAL COMMENTS | 3   | The severity of mitigation and cleanup efforts required for large Contaminated Materials/Fuel Spills including those caused by third parties may require more significant efforts and time frame for proper restoration.<br><br>For Item, "Contaminated Materials/Fuel Spills, propose to change cure period of "10 days" to "As agreed upon by Developer and Department" to mirror language used for Major Structures Damage.   | No.  |
| 581. | Technical Specifications | Div. II, Sect 4, par 2.2.1 Bridge Inspections<br><br>TECHNICAL COMMENTS            | 3   | Can the Department provide detail as to the interface between the Developer and the Department as relates to responsibilities for:<br><br>-Inspection report electronic document migration<br>-Pontis or other data application input requirements<br>-Department utilized software applications for work and repair tracking and reporting.<br><br>Propose to add additional detail to the language ... "The Developer shall create inspection reports" in a format consistent with the Departments Integrated Management System. | The Sponsors will attempt to obtain.   |
| 582. | Technical Specifications | Div. II, Sect 4, par 3,  | 3   | Will the ITS and Tunnel components (hardware, signage etc) and SCADA as installed in Phase 1 support the reversal of traffic direction through the Southbound  | All available information has been made available to the Proposers. It is for the Proposers to determine their staffing requirements.  |

| No.  | Document                 | Relevant Section   | Cat | Question/Comments/Rationale for Proposed Change   | Sponsor Comments  |
|------|--------------------------|--|-----|---|---|
|      |                          | Operations Requirements<br><br>TECHNICAL COMMENTS  |     | Batter Tunnel and movable barrier shift. Additionally, can the Department provide specific staffing requirements for this management?<br><br>Propose additional wording to clarify the intent of "For O&M during Construction the Developer shall manage all ITS and tunnel operations at the temporary facility located adjacent to the Southbound Battery Tunnel substation."   |   |
| 583. | Technical Specifications | Div. II, Sect 4, par 3.2.2, Traffic Incident Management Plan.<br><br>TECHNICAL COMMENTS                        | 3   | Can the Department confirm that "vehicle recovery and clearance" is defined as removal of vehicles and materials from the travel lanes and that movement of said vehicles to paved or unpaved shoulders or safe location on ramps or surface street satisfies this requirement. Additionally please confirm that ultimate removal of vehicles from paved or unpaved shoulders is to be accomplished by rotation wreckers under contract to CHP?<br><br>Propose additional wording to clarify the role of the Developer as relates to "first response, vehicle recovery and clearance services".   | No.   |
| 584. | Technical Specifications | Div. II, Sect 4, par 3.3.2, Movable Barriers<br><br>TECHNICAL COMMENTS   | 3   | As the Developer will be required to obtain services from a sole source vendor, the Department may incur significant additional costs in the Financial Proposals as a result. Can the Department coordinate with Phase 1 construction to allow for alternative vendors, or, obtain as part of the Phase 1 construction an obligation from the Vendor to provide this equipment at a fixed cost, or, eliminate the movable barrier and allow the traffic reversal to be achieved through tubular markers or other channeling devices?<br><br>Propose additional wording to allow the Developer to predict and control pricing level for use and operation of the Movable Barrier System.   | The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Addendum No. 1 to the Final RFP documents at this time. |
| 585. | Technical Specifications | Div. II, Sect 4, Table 4.1 items 119 through 123 and Table 4.2 items 207 through 211<br><br>TECHNICAL COMMENTS | 3   | Overall clearance of travel lanes cannot be completed if access to portions of scene is restricted.<br><br>Propose modification to second criteria... "Clearing of incidents and reopening of travel lanes after on scene CHP/Emergency response Officials provide notification that police and life safety activities have concluded and the developer has unrestricted access to the scene for recovery and cleanup.  | The Sponsors have accepted the recommendation and the appropriate revisions will be provided in Addendum No. 2 to the Final RFP.  |
| 586. | Technical Specifications | Div. II, Section 3/<br>14.3.4<br><br>TECHNICAL COMMENTS  | 3   | In the interest of providing the most competitive Financial Proposal, can the Department provide (in addition to phase 1 plans and documentation previously provided) quantities, and any other documentation for ITS and Tunnel systems components installed as part phase 1? Also, can the Department confirm that there are no existing ITS facilities outside of those installed as part of Phase 1?<br><br>Propose to clarify the requirement for coordination with adjacent projects This section reads: "<br><br>Developer shall obtain the ITS design plans for all adjacent projects, and determine the coordination requirements for continuous functioning of the ITS equipment for the Project. Developer shall adjust the design and construction schedule accordingly to coordinate the installation of the required components, while continuously maintaining the ITS System" | All pertinent information has been made available to the Proposers.   |
| 587. | Technical Specifications | Div. II, Section 3/<br>14.4.9<br>16.7.2.4<br>16.7.2.5<br><br>TECHNICAL COMMENTS                                | 3   | In that there appears to be a contradiction, can the Department confirm that the OMC referenced in 14.4.9 is in fact to be the primary control location for tunnels and that the Departments TMC and/or OMC at Caldecott shall serve as the remote location referenced in 16.7.2.5?<br><br>Propose the following change in language....<br><br>Section 14.4.9 requires the Developer to establish a new OMC from which it will operate tunnels and highways.<br><br>Section 16.7 details the following<br>16.7.2.3. Operation Control Rooms   | The Sponsors considered the issue presented by the Proposer and decided to not modify the position reflected in the Addendum No. 1 to the Final RFP documents at this time. |

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|      |                          |  |     | <p>SCADA system shall be monitored and controlled from both the local and remote operations control rooms as described below.</p> <p>16.7.2.4. Local Operations Control Room</p> <p>Developer's Tunnel Control Center is the local operations control room and shall be used as the primary point of control for the tunnel mechanical, electrical, and ancillary building systems.</p> <p>16.7.2.5. Remote Operations Control Room</p> <p>The remote operations control room shall be located at the Department's OMC and TMC and shall provide the backup control function for the tunnel mechanical, electrical, and ancillary building SCADA system in the event the local operations control room is not operational.</p> |   |
| 588. | Technical Specifications | Div. II, Sec. 3<br><br>Allowance Landscaping | 2   | Since the final requirements for the Landscaping have not been finalized, we suggest that the Sponsor provide direction to include a Sponsor-specified amount in each Proposal rather than the tiered pricing included in the Addendum 1 Agreement. We also request a more definitive description of what items are to be included in the allowance.   | The landscaping provisions in the P3 Agreement will be modified in Addendum No. 2 to the Final RFP. |
| 589. | Technical Specifications | Div. II, Sec. 3<br><br>Haul Road Allowance   | 2   | <p>1. Does the Haul Road allowance include the restoration of haul roads that are not utilized as haul roads by the P3 Contractors?</p> <p>2. Will the haul roads utilized by the Phases 1 contractors require restoration as part of this allowance?</p>  | <p>1. Yes.</p> <p>2. Yes.</p>   |