



PRESIDIO PARKWAY PROJECT SUMMARY OF PUBLIC-PRIVATE PARTNERSHIP AGREEMENT

DISCLAIMER: THE FOLLOWING IS A SUMMARY OF SELECTED PROVISIONS OF THE PROPOSED PUBLIC-PRIVATE PARTNERSHIP AGREEMENT AND RELATED PRINCIPAL AGREEMENTS FOR THE PRESIDIO PARKWAY PROJECT AND IS NOT A FULL STATEMENT OF THE TERMS OF SUCH AGREEMENTS. ACCORDINGLY, THE FOLLOWING SUMMARY IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO SUCH AGREEMENTS AND IS SUBJECT TO THE FULL TEXT OF SUCH AGREEMENTS. NOTHING IN THE FOLLOWING SUMMARY IS INTENDED OR MAY BE USED TO CONSTRUE OR INTERPRET SUCH AGREEMENTS.

Capitalized Terms: Refer to Appendix 1 of the Public-Private Partnership Agreement for definitions of capitalized terms used in this summary.

PRESIDIO PARKWAY PROJECT - SUMMARY OF PUBLIC-PRIVATE PARTNERSHIP AGREEMENT

SCOPE

Project Scope

The Project is being built in two phases, as follows:

Phase I:

- Advanced Environmental Mitigation – (wet land creation, biological mitigation, tree removal, plant material collection and propagation). Mitigation prior to construction activities. Building stabilization prior to construction activities. Grading and contractor access. Geotechnical Demonstration - Cement Deep Soil Mixing (CDSM), for tunnel construction and pile indicators. Environmental mitigation during construction is accounted for in the individual contract budgets.
- Ruckman, portions of the Southern Park Presidio Interchange (PPI), South Bound (SB) High Viaduct. Including the southbound portion of the Presidio Interchange.
- South Bound (SB) Battery Tunnel, at grade detour, retaining wall # 6 and 8, permanent roadway sections, long weekend closure, partial demolition of low viaduct structures & open at-grade detour to public traffic.
- Utility relocation prior to the foregoing construction activity, including water, electric, sewer and telecommunications, and including private utility relocation for items owned by the Presidio Trust.

Phase II:

- Main Post Tunnels, Northbound Battery Tunnel, Electrical and Mechanical Substation, Traffic Switch, Utility Adjustment
- Girard Road Undercrossing, Low Viaduct, Utility Adjustment
- Northbound High Viaduct, completion of the Park Presidio Interchange, Northbound Roadway to Merchant Road, Demolish Existing High Viaduct, Utility Adjustment
- Landscaping

Developer General Scope of Work

Developer is responsible for the operation, maintenance, repair and renewal of the permanent Phase I improvements, commencing upon Phase I substantial completion.

Developer is responsible for the design, construction, financing, operation, maintenance, repair and renewal of Phase II.

CONTRACT DOCUMENTS

Contract Documents

The comprehensive development lease agreement are a set of integrated contract documents (“Contract Documents”) that include:

- A public-private partnership agreement (“Agreement”) setting forth legal and business terms for design, construction, financing, operation, maintenance and related matters;
- A project lease (“Lease”), signed at Substantial Completion; and
- Technical specifications (“Technical Requirements”), setting forth design, construction, operations and maintenance technical standards, requirements, terms and conditions.

TERM AND MILESTONES

Agreement Term

The Term of the Agreement shall commence on the effective date of the Agreement. The term of the Lease will commence upon Substantial Completion. The Term of the Agreement and Lease will end the earliest of (a) 30 years after the Baseline Substantial Completion Date, (b) 30 years after the Substantial Completion Date, or (c) any earlier termination as provided in the Agreement.

Completion Milestones/Dates

Substantial Completion means the Project is complete except for certain improvements and punch list items, and open to traffic.

Baseline Substantial Completion Date means Developer’s originally scheduled date for Substantial Completion, in no event later than December 31, 2014. The Substantial Completion Date means the date Developer achieves Substantial Completion.

Substantial Completion shall occur no later than the Long Stop Date. Long Stop Date means the earlier of a date no later than 365 days after the Baseline Substantial Completion Date or a date consistent with achieving Final Acceptance by the Final Acceptance Deadline, subject to adjustment in accordance with the Agreement.

Developer will be required to achieve Final Acceptance by the Final Acceptance Deadline. The Final Acceptance Deadline is June 30, 2015, subject to adjustment in accordance with the Agreement. Final Acceptance requires completion of all improvements and punch list items, including landscaping and local street improvements, and clearance and restoration of construction areas to their original condition .

The right to Availability Payments will begin on Substantial Completion.

Department will assess liquidated damages of \$1,000 per day for failure to meet the deadline for Final Acceptance. Failure to achieve Substantial Completion by the Long Stop Date may result in termination, in Department’s sole discretion.

DEVELOPER PAYMENT

At Financial Close, Developer shall pay Department the sum of \$1 million as consideration for the grant of the rights under the Agreement to Developer.

PROJECT PLANNING, REVIEW AND OVERSIGHT

Project Management Plan

Developer is to prepare a project management plan that will set forth Developer’s approach to development, design, construction, operation and maintenance of the Project and quality

assurance/control. Among other things, the plan will include a quality assurance/quality control plan, an operations and maintenance plan, and a traffic management and traffic control plan. The plan must comply with the standards and specifications set forth in the Technical Requirements and is subject to Department's approval.

Review and Oversight by Department

Department will have the right to review and comment on, or approve, certain submittals. The Contract Documents specify the standards for Department approvals (sole discretion, reasonable approval, etc.) The right of Department to review and comment on, or approve, submittals does not relieve Developer from complying with the Contract Documents.

DESIGN AND CONSTRUCTION

Design and Construction Generally

Developer is responsible for design and construction in accordance with the Contract Documents, regulatory permits and approvals, applicable law, the Project Management Plan, and best management practices. Developer is responsible for correcting any nonconforming work.

Design and Construction Monitoring

Developer is responsible for assuring and controlling the quality of the design and construction.

Department shall have the right to perform oversight and auditing of the work to determine that it is performed in accordance with the Contract Documents, regulatory permits and approvals, applicable law, the Project Management Plan, and best management practices.

Right of Way

Department has obtained or will obtain specified right of way and rights of entry for the work, including temporary construction staging areas. Developer will confirm adequacy of the agreed right of way and rights of entry for the work. Developer will be responsible for obtaining all additional rights of way, rights of entry and other property rights, including additional temporary rights of way and rights of entry that are desirable for the Project.

Department, the San Francisco County Transportation Authority (SFCTA) and the Presidio Trust have executed a Right of Entry Agreement under which the Presidio Trust has established terms and conditions regarding entry onto and use of Trust lands for the Project. There also is a Programmatic Agreement among various federal, state and local agencies, entered into pursuant to section 106 of the National Historic Preservation Act, establishing procedures, terms and conditions for preservation of historical structures and archaeological resources. Developer will be obligated to adhere to the Right of Entry Agreement and the Programmatic Agreement.

Developer will be entitled to relief in the event of Department's failure to provide the agreed right of way and right of entry in a timely manner.

Utilities

Developer is responsible for utility adjustment work necessary to construct Phase II of the Project. Existing utilities are owned predominantly by the Presidio Trust. Department has entered into an agreement with the Presidio Trust granting Department a license to enter to accomplish utility adjustment work. Developer shall carry out the obligations of Department under such agreement and is bound by its terms, conditions and limitations. To the extent Developer encounters unidentified trunk and mainline utilities, or if there is unreasonable delay

by a utility owner in its performance of work to relocate its utilities, Developer may be entitled to relief.

A new electric service line is required for a back-up power substation for the Project. Department retains the responsibility to work with PG&E to bring such service line to the substation in a timely manner. Developer is responsible to design and build the substation and connect the service line to it.

Permits

Department has obtained or will obtain key permits and governmental approvals as specified in the Contract Documents. Developer will be responsible for obtaining all other permits and government approvals.

Developer is responsible for complying with the terms and conditions of all permits and governmental approvals.

Certain delays by the Presidio Trust in providing approvals required under the Right of Entry Agreement or by a regulatory agency in providing approvals required under the Programmatic Agreement will entitle Developer to relief.

Hazardous Materials

Developer shall be responsible for the management, handling and remediation of Hazardous Materials.

The Extra Work Costs for off-site disposal of Hazardous Materials that exist in the Project Right of Way at any time during construction, including those that migrate from elsewhere into the Project Right of Way after the Effective Date ("Pre-Existing Hazardous Materials"), are allocated as follows after the issuance of NTP 2:

- Developer is responsible for the Extra Work Costs for the first 9,450 cubic yards of excavated soils contaminated with Pre-existing Hazardous Materials that must be disposed of at a Class 1 disposal facility, and the first 53,550 cubic yards of excavated soils contaminated with Pre-existing Hazardous Materials that can be disposed of at a Class 2 disposal facility .
- Department and Developer shall each be responsible for 50% of the Extra Work Costs for the next 1,890 cubic yards of excavated soils contaminated with Pre-existing Hazardous Materials that must be disposed of at a Class 1 disposal facility, and for the next 10,710 cubic yards of excavated soils contaminated with Pre-existing Hazardous Materials that can be disposed of at a Class 2 disposal facility.
- Department will pay 100% of the Extra Work Costs of any additional off-site disposal of Pre-existing Hazardous Materials.

If remediation of Pre-existing Hazardous Materials cannot be accomplished through off-site disposal of excavated soils, then Department will pay 100% of the Extra Work Costs and Delay Costs reasonably incurred for managing, handling and remediating such Pre-existing Hazardous Materials.

Developer is responsible for the remediation cost of Hazardous Materials that it releases.

Developer is entitled to compensation in the event of a release of Hazardous Materials by Department.

Developer is entitled to relief in the event of a release of Hazardous Materials by a third party other than a Developer-Related Entity, except Developer bears the risk of releases from vehicles operating within the Project Right of Way (unless operated by Department).

Department shall be the “generator” and “arranger” of

- All Pre-Existing Hazardous Materials;
- All releases by Department;
- All Hazardous Materials that migrate from elsewhere into the Project Right of Way; and
- Third party spills on the Project Right of Way if it is not possible to obtain generator and arranger responsibility with the vehicle operator or other spill source or a state or local response agency.

Developer shall be the “generator” and “arranger” of all Hazardous Materials that any Developer-Related Entity releases.

Cultural/Archeological Heritage

Developer is entitled to relief in the event undisclosed or unexpected items of cultural or archeological heritage are found. Developer is not entitled, however, to any relief or compensation for complying with provisions of the Contract Documents relating to the historical preservation of the Project site and surrounding historical structures; provided that relief may be available for unexpected delays by those governmental entities in taking actions required from them in order to proceed with work.

Traffic Management and Control

Developer will be responsible for traffic management and control during design and construction. Developer’s traffic management and control responsibilities will apply to both Phase I and Phase II of the Project.

Landscaping Costs

Final landscaping requirements and criteria of the Presidio Trust are not yet known. Accordingly, the cost risk of designing and constructing landscaping are allocated as follows:

- Department is to receive 85% of savings in landscaping costs below \$12 million.
- Each of Department and Developer will bear 50% of landscaping costs in excess of \$12 million but less than or equal to \$24 million.
- Department will bear 100% of landscaping costs in excess of \$24 million.

These costs do not include Delay Costs, which are not recoverable from Department.

Site Conditions Restoration

Prior to the start of the Phase I construction, Department surveyed the condition of lands, facilities and properties of the Presidio Trust to be affected by Project construction, including haul routes.

In coordination with Department’s timing for certifying substantial completion of Phase I of the Project, Developer and Department will inspect the lands, facilities and properties of the Presidio Trust affected by Phase I construction activities and prepare an updated survey of the condition of these areas.

Department and Developer will again update this survey in coordination with Department's timing for certifying final acceptance of Phase II of the Project.

For those areas and facilities used by Developer during the construction work, Developer will be responsible for restoring to the same condition as existed before the start of Phase I construction (the "pre-existing conditions").

- For staging areas that Developer uses, it must re-landscape them, subject to the cost allocations for landscaping work.
- Similarly, for haul routes that Developer uses, it must restore according to requirements to be supplied by the Presidio Trust. Because those requirements are not yet known, the costs of haul route restoration are allocated as follows: The first \$1 million to Developer, the next \$300,000, 50% to each of Developer and Department; and costs exceeding \$1.3 million to Department. No Delay Costs are recoverable from Department.

For those areas and facilities used and damaged by the Phase I contractors but not Developer, Department will elect either to undertake restoration through independent means at its own expense or through issuing a Department Change to Developer.

For all other areas and facilities that are disturbed or damaged by Phase II construction as indicated by a comparison of surveys, Developer shall restore to the pre-existing conditions at its sole cost.

OPERATIONS AND MAINTENANCE

O&M Scope

Developer will be responsible for operation and maintenance of all Project facilities, including those in both Phase I and Phase II of the Project. This includes responsibility for monitoring tunnel traffic flow and safety from Developer's traffic management center.

Developer will be responsible for providing video feeds from the Project to Department's traffic management center.

Operation and Maintenance Standards and Requirements

Developer shall operate and maintain the Project in accordance with the Contract Documents, regulatory permits and approvals, applicable law, the Project Management Plan, and best management practices. The Contract Documents set forth performance-based standards and specifications for operations and maintenance.

Non-discriminatory changes (changes of general application to Department projects) will be implemented at Developer's expense for all added operations and maintenance costs and up to a cap on capital expenditures to be set forth in the Agreement, and at Department's expense for capital expenditures above the cap.

Discriminatory changes (changes directed at the Project or Developer that are more onerous than those applied to other Department projects) are treated as Department Changes.

Noncompliance with operating standards and requirements will result in decreases in payment and may result in termination if persistent.

Defects in Phase I Improvements

In coordination with Department's timing for certifying substantial completion of the construction work performed under Phase I of the Project, Developer and Department shall inspect the Phase I improvements. If defects are discovered during such inspections, Department will elect either to remedy the defects itself or have Developer perform the corrective work at Department's expense.

Except for such discovered defects and Structural Latent Defects, Developer shall be deemed to accept the Phase I improvements. Department will be responsible for Structural Latent Defects on the following terms and conditions: (a) the Structural Latent Defects must be discovered and reported to Department not later than ten years after completion of the inspection report, and (b) Department's responsibility for the Structural Latent Defects will apply only to the extent they are not attributable to substandard maintenance and repair by Developer. Thereafter, Developer will bear all risk of such latent defects.

O&M Monitoring

Department will perform oversight and audits relating to Developer's O&M Work in accordance with the Contract Documents. The O&M monitoring will include self-monitoring by Developer, electronic monitoring systems and audit inspections by Department.

Developer will prepare and implement a quality assurance/quality control plan for the O&M Work, which must comply with the performance standards and output specifications set forth in the Technical Requirements.

Policing, Security and Incident Response

Developer is obligated to provide law enforcement agencies free access to the Project at all times. The Agreement preserves all police powers.

Developer is responsible for safety and security of workers and the public during performance of the work. Developer is responsible for carrying out emergency procedures and incident response according to the standards and requirements of the Contract Documents, including the terms of an emergency response plan.

Technology Enhancements

Developer may be required to implement technology enhancements during the Term. Technology enhancements include modifications, revisions and upgrades to traffic and safety systems, computer systems, software and other technology used for the operation of the Project.

There is no relief for technology enhancements that are required before Substantial Completion. After the Substantial Completion Date, allocation of the cost of technology enhancements will be treated the same as changes in O&M standards. See "Operation and Maintenance Standards and Requirements" above.

Renewal Work

Developer will perform Renewal Work (maintenance and rehabilitation work not normally included in annual maintenance budgets) when necessary to maintain compliance with performance standards. Developer will provide a yearly report of renewal work performed and a Renewal Work Plan and Schedule for the coming year.

Developer shall establish a Renewal Work Reserve to fund the Renewal Work, compliance work, and work pursuant to Handback Requirements. In lieu of a reserve account, Developer

may provide a letter of credit, which Department may draw upon in the event that Developer fails to perform the required Renewal Work.

Handback Requirements

Department will inspect the Project at the times and according to the terms set forth in the Handback Requirements. Developer will perform Renewal Work necessary prior to expiration of the Term of the Agreement. At the conclusion of the Term, Developer will transfer the Project in the condition set forth in the Contract Documents.

Beginning four full Fiscal Years before the end of the Term, Developer shall establish a Handback Requirements Reserve Account to fund the required handback work for the amount determined pursuant to the Contract Documents. Department shall have a first priority, perfected security interest in the Handback Requirements Reserve Account, and the right to receive monthly account statements directly from the depository institution. In lieu of a reserve account, Developer may provide a letter of credit, which Department may draw on in the event that Developer fails to comply with the Handback Requirements.

NONCOMPLIANCE

Noncompliance Points and Noncompliance Events

Department will assess noncompliance points for Developer's failure to meet availability and performance requirements or satisfy contract requirements for operations and maintenance work, both during and after construction. The accumulation of noncompliance points will lead to additional oversight and monitoring, and may result in termination.

Instances of noncompliance may result in reductions of the Milestone Payments or Availability Payments.

Developer is obligated to self-monitor occurrences of noncompliance and maintain an electronic data base in real time to identify, track and report noncompliance and noncompliance points. Department will have electronic access to the data base at all times.

Developer has the opportunity to offset noncompliance points based on levels of DBE/SBE participation in design, construction, operations and maintenance.

CONTRACTING AND LABOR PRACTICES

Contracting

Developer shall be entitled to contract with others to perform the work, but such contracts shall not relieve Developer of responsibility for the work. Developer shall not terminate or substitute any Key Contractor without Department's prior written approval. The provisions that are to be included in Key Contracts shall be set forth in the Agreement.

Key Personnel

Developer shall utilize in its performance of the work the individuals identified in its proposal as key personnel. Prior to Substantial Completion Developer shall not change or substitute such individuals except due to retirement, death, disability, incapacity or voluntary or involuntary termination of employment. Key personnel replacements are subject to Department's approval.

Labor Standards

Developer will comply with applicable labor standards, including payment of prevailing wages.

UDBE/DBE Program

The following DBE/UDBE/SBE/DVBE/LBE participation goals have been established for the design and construction work:

- DBE 13.5%
- UDBE 5%
- SBE 25%
- DVBE 3%
- LBE 5%

Developer is obligated to use good faith efforts to achieve the participation goals through implementation of Developer's approved DBE/UDBE/SBE/DVBE/LBE program.

While no participation goals are established for operations and maintenance work, Developer is obligated to use good faith efforts to encourage DBE/UDBE/SBE/DVBE/LBE participation in such work.

RELIEF EVENTS

Relief Event Categories

The following are Relief Events:

- Force Majeure Events;
- Changes in Law;
- Department Changes;
- Discriminatory and non-discriminatory O&M Changes;
- Department failure to perform or observe any of its material covenants or obligations under the Agreement or other Contract Documents;
- Department-Caused Delays (including certain suspensions, failure to issue notices to proceed within required times, failure to respond to submittals in times specified);
- Certain delays in Department's acquisition of Right of Way, and the lack or loss of Department's continued rights in Right of Way;
- The development or operation of a Business Opportunity in the Airspace or Project Right of Way;
- Violation of Law by Department or a third party that materially and adversely impacts the Project or Developer;
- Unexpected performance of (or failure to perform) works in the vicinity of the Project Right of Way carried out by Department or a Governmental Entity that disrupts Developer's onsite work;
- Discovery on or near the Project right of way of unexpected items of cultural / archeological significance;
- Discovery on or near the Project right of way of unexpected threatened or endangered species;

- Release of Hazardous Materials by Department or a third party who is not a Developer-Related Entity;
- Issuance of a temporary restraining order or other form of injunction or legal order by a court that prohibits prosecution of any portion of the work;
- Safety Compliance Orders;
- Issuance of a directive from the U.S. Department of Homeland Security or any Governmental Entity regarding specific security threats to the Project or the region in which the Project is located or which the Project serves;
- Pre-Existing Hazardous Materials;
- Structural Latent Defects (i.e. in structures and facilities in Phase I of the Project) discovered during the ten-year period after the inspection (see “Existing Structures and Facilities” above);
- Delays in obtaining major permits by the applicable major permits deadline or, once obtained, the unlawful revocation or suspension of a major permit by the relevant Governmental Entity;
- Delays by utility owners in self-performing Utility Adjustments work;
- Discovery of Unknown Utilities affecting Phase II construction; and
- Delay directly attributable to Developer suspension of work due to existence of litigation challenging the validity of the Agreement on grounds it is not authorized by Streets and Highways Code section 143.

Developer Relief for Relief Events

Occurrence of Relief Events may entitle Developer to the following relief, depending on the particular Relief Event:

- **Extra Work Costs.** For some Relief Events, Developer bears the risk of the first \$50,000 of Extra Work Costs per occurrence (the Claim Deductible).
- **Delay Costs.** For some Relief Events, Developer bears the risk for the first ten days of Delay Costs per occurrence (the Claim Deductible).
- If Relief Events delay the scheduled start of Availability Payments on the Baseline Substantial Completion Date, Department will compensate Developer, for the period of the Relief Event Delay, for its cost of debt service plus its continuing cost of operations and maintenance work during construction, less its avoided cost of operations and maintenance work after construction completion, and less available insurance proceeds (if any). However, for certain Relief Events (Deductible Relief Events), Developer bears the risk of these lost Availability Payments for an aggregate delay period of the first 90 days. The payments in any event will not exceed what the Availability Payment amount would have been.
- If Relief Events delay the scheduled date for payment of the Milestone Payment, Department will compensate Developer for the additional interest incurred resulting from delay in making any principal payment scheduled to be funded from the Milestone Payment. However, for certain Relief Events (Deductible Relief Events), Developer bears the risk of this additional interest incurred for an aggregate delay period of the first 90 days.

- Extension of the Completion Deadlines if the event occurs during the Construction Period and impacts the critical path.
- Temporary suspension of Developer's obligation to meet performance standards or provide full service if the Relief Event materially impacts Developer's ability to meet the performance standards or provide full service.

Matrix for Relief Event Compensation and Deductibles

Attached as Exhibit A is a matrix of the Extra Work Costs, Delay Costs and deductibles for each Relief Event. Certain Relief Events are subject to deductibles, which are costs to be borne by Developer.

Methods for Payment of Extra Work and Delay Costs

Where Relief Events entitle Developer to compensation for Extra Work Costs or Delay Costs, Department may choose to make payment (a) in a lump sum, (b) through periodic payments over the Term, (c) by adjustment to the Maximum Availability Payment so as to make up all or any portion of such amount, (d) through progress payments invoiced as work is completed, (e) by extension of the Term so as to make up all or any portion of such amount, or (f) any combination of the foregoing.

If payment is by periodic payments, MAP adjustment or Term extension, the compensation also must include sums necessary to preserve Developer's equity rate of return and meet lender debt service ratios.

CHANGES

Changes

Changes in the work may be initiated by either Department or Developer. Developer-initiated changes are subject to Department approval.

Department bears cost and delay risks due to Department changes. Developer bears cost and delay risks due to Developer changes.

If a Department change reduces the scope of work, Department will be entitled to 100% of the net reduction in labor, material, equipment and financing costs. If an approved Developer change reduces the scope of work, Department will be entitled to 50% of the net reduction in labor, material and equipment costs, 50% of any savings in real estate costs, and 100% of the net reduction in financing costs.

DEVELOPER COMPENSATION

Milestone Payment

Department will make one lump sum payment to Developer of \$173,430,000 ("Milestone Payment"), subject to the deductions and offsets described in the Contract Documents. The Milestone Payment is due 45 days after Substantial Completion and Department's receipt of an invoice and report on calculation of adjustments, if any, to the Milestone Payment.

The Milestone Payment will be adjusted based on construction period closures and Noncompliance events concerning operations and maintenance during construction.

The Milestone Payment may be reduced and offset by damages to Department due to failures to design and construct according to contract requirements, and by other items specified in the Agreement.

The adjustments, reductions and offsets are subject to a cap of \$3 million. Excess adjustments, reductions and offsets will be recovered through adjustments to subsequent Availability Payments.

Payment Mechanism

Developer bid a single Maximum Availability Payment ("MAP") of \$_____ for the full Fiscal Year commencing July 1, 2014.

This MAP, as adjusted as described below, is an annual amount (each an "Availability Payment"), and is payable in quarterly installments. Availability Payments will commence to accrue upon Substantial Completion, and will continue throughout the Term thereafter.

The MAP will be subject to adjustment as follows:

- By 100% of the impact, positive or negative, of changes in base interest rates, as achieved at Financial Close, from those in effect 14 days prior to proposal submission;
- By 100% of the impact, positive or negative, of any difference between the actual subsidy amount required to be paid the federal government for a TIFIA loan and the subsidy amount assumed in Developer's financial proposal;
- By 85% of the impact, positive or negative, of the differences between other specified financial terms obtained at Financial Close and those assumed in Developer's financial proposal; and
- 15% of the MAP will be adjusted over time for inflation per changes in the CPI. This adjustment recognizes that costs of operations and maintenance will change during the Term. 15% is an approximation of the portion of the MAP that covers Developer's operations and maintenance expenses;

Availability Payments will be subject to the following reductions:

- Reductions due to carryover of adjustments to the Milestone Payment that exceed the cap on Milestone Payment adjustments;
- Reductions due to impermissible closures of traffic lanes and to events of Noncompliance; and
- Offsets and deductions for damages or other amounts owing from Developer to Department.

Availability Payments will not be adjusted over time for traffic growth.

Quarterly Availability Payments prior to Final Acceptance will be subject to a 20% holdback as security. Department will release to Developer the retained sums, without interest, within 30 days after Final Acceptance.

Tolling

Developer will have the authority to impose tolls and user fees pursuant to Streets and Highways Code Section 143(j)(1) provided Developer satisfies certain conditions precedent, including obtaining approval from Department and various local governments and agencies, complying with applicable environmental laws and governmental permits, agreement between

Department and SFCTA on the disposition of excess toll and user fee revenues payable to Department, and legal compliance with Section 143(q).

If tolling commences, then Availability Payments will cease and Department will be entitled to 85% of toll revenues in excess of the Availability Payments that would have been in effect.

Appropriations Risk

Developer assumes the risk of appropriations by Legislature, provided Department:

- Will include all payments that will become due in the next Fiscal Year in its annual STIP Fund Estimate for CTC adoption and in its annual budget requests and mid-year budget augmentation requests;
- Commits to use all resources legally available to budget all payments due Developer; and
- Must use best efforts to obtain funding.

In the development of its annual fund estimates, Department will prioritize in the State Highway Account, ahead of annual capacity for projects for which Department does not have contractual obligations, the Milestone Payment, Availability Payments and other amounts then anticipated to be due. Department may not prioritize any other project contractual obligations higher than the prioritization of payments due Developer under the Agreement.

If Department fails to make payments when due, Developer may declare a default; which default could lead to termination and other contractual remedies (despite lack of appropriations).

FINANCING

Financing

Developer is responsible for financing the Project, and in its proposal to Department provided a comprehensive description of the financing plan and letters of support from underwriters and/or financial institutions.

The letters of support are not binding commitments. Department did not require binding financing commitments for various reasons related to financial market conditions and timing considerations.

Developer will run a financing competition designed to maximize competition among qualified debt sources for financing the Project. The results of the financing competition will be compared to the costs of financing reasonably assumed in Developer's financing plan. The amount of the MAP will be adjusted (up or down) for differences between the actual cost of financing and that reasonably assumed in the financing plan, as more particularly described under "Payment Mechanism" above.

If, however, these adjustments would result in a nominal value of Availability Payments over the first full year following the Baseline Substantial Completion Date exceeding the \$35 million limit set by the California Transportation Commission, then Department will have the right to terminate the Agreement and Lease. (See "Termination for Failure to Close Financing" below.)

Refinancing

Developer has the right, with Department's written consent, to refinance funding agreements. Department is entitled to 60% of any refinancing gains.

Taxes

Developer is responsible for payment of all applicable taxes and assumes the risk of future changes in tax laws of general application, with the exception of ad valorem real property taxes.

LENDERS' RIGHTS

Lenders' Rights

Lenders will have the right to notice and the opportunity to step in and cure in the event of Developer default. Lenders will have no greater rights than Developer other than a limited time extension to step in and cure.

After termination of the Agreement for certain types of Developer Default, Lenders will have the opportunity to receive a replacement agreement from Department on the same terms and conditions and for the remainder of the Term (had there been no termination). In order to receive a replacement agreement, the Lenders must cure the prior Developer Defaults.

Lenders are third party beneficiaries of the lenders' rights provisions in the Agreement, and may enter into direct agreements with Department confirming these rights.

DEVELOPER OWNERSHIP AND CONTROL

Changes in Ownership and Changes in Control

There shall be no change in equity ownership of Developer (equity transfers) between commercial close and two years after the Final Acceptance Date.

During the third and fourth years after the Final Acceptance Date equity transfers are allowed, provided that one or more of the initial Equity Members collectively maintain more than 50% of the equity interest in Developer. Starting in the fifth year, this 50% requirement no longer applies.

All equity transfers that occur more than two years after the Final Acceptance Date and do not rise to the level of a change of control of Developer shall be subject to Department's prior review and written concurrence that the equity transfer is permitted.

All equity transfers that occur more than two years after the Final Acceptance Date and result in a change in control of Developer are subject to Department's reasonable approval.

Assignments and Other Transfers

Developer cannot assign, sublease or otherwise transfer Developer's Interest without Department's prior approval. Exceptions to the approval requirement are provided for grants of security interests to Lenders, transfers due to Lender foreclosure, and transfers to entities over which the original members of Developer have management control and meet the above requirements for equity ownership.

For proposed transfers up to six years after the Final Acceptance Date, Department may withhold approval in its sole discretion. Thereafter, Department will not unreasonably withhold approval.

INSURANCE, INDEMNITY AND PAYMENT/PERFORMANCE SECURITY

Insurance

Department has put in place an owner-controlled insurance program during project construction. It provides general liability insurance for construction activities, contractors' pollution liability insurance, and worker's compensation. Developer and all its contractors at all tiers are obligated to sign up to these coverages.

Developer shall provide required insurance coverages not within the owner-controlled insurance program.

Commencing after the end of the first three full annual insurance periods after the Final Acceptance Date, Availability Payments will be adjusted for significant increases or decreases in premiums due to market-based factors, via the following insurance benchmarking procedure.

- Actual insurance premium costs during the first three years will be averaged to establish an annual benchmark insurance premium.
- This benchmark is increased annually to 105% of the previous year's benchmark.
- If insurance premiums are between 130% and 200% of the applicable benchmark, then Developer is entitled to an adjustment in the Availability Payment for that year by 85% of such excess premiums.
- If insurance premiums exceed 200% of the applicable benchmark, then Department must (i) pay such excess, (ii) elect to act as the insurer of last resort or (iii) elect to terminate the Agreement and Lease. If it acts as insurer of last resort, then the Availability Payment for that year shall be reduced by 100% of Developer's avoided insurance premium (deemed to be up to 200% of the applicable benchmark).
- If insurance premiums are less than 70% of the applicable benchmark, then Department is entitled to a reduction in the Availability Payment for that year by 85% of the difference between such premiums and 70% of the benchmark.

Indemnity

Developer shall indemnify, defend, protect and hold harmless Department against any claims or losses resulting or accruing from Developer's responsibilities and liabilities under the Agreement, including Developer's breach of the Agreement, and negligence, willful misconduct or breach of applicable Law or contract.

Performance and Payment Security

Developer shall provide or cause its design-build contractor to provide performance bonds or letters of credit equal to 15% of the contract price for design and construction and the operations and maintenance work during construction. Developer also shall provide or cause its design-build contractor to provide a payment bond in the same amount.

Such security will cover payment and performance of the design and construction work and the operations and maintenance during construction.

Such security may be held by the Lenders, provided that Department shall have access rights if Lenders do not call upon the security.

DEFAULT AND REMEDIES

Developer Defaults

Developer Defaults include:

- Developer fails to satisfy the applicable conditions to commencement of the Design Work within 90 days of the Effective Date;
- Developer fails to begin the applicable portion of the Design Work within 60 days following Department's issuance of NTP 1;
- Developer abandons the Project (such as no significant work for a consecutive period of 60 days);
- Developer fails to perform the work or any portion thereof in accordance with the Contract Documents (unless addressed by Noncompliance Points);
- Developer fails to comply with applicable Governmental Approvals and Laws;
- Developer fails to make an undisputed payment to Department under this Agreement when due, or fails to deposit funds to any reserve or account in the amount and within the time period required by the Agreement;
- There occurs any use of the Project or any portion thereof in violation of or not permitted by the Contract Documents, the Technical Requirements, Governmental Approvals or Laws (except violations of Law by Users);
- Developer fails to obtain, provide and maintain any insurance, bonds, guarantees, letters of credit or other performance or payment security as and when required under the Agreement, or fails to comply with any requirement of the Agreement pertaining to the amount, qualifications, terms or coverage of the same;
- Developer makes or attempts to make an assignment or transfer in violation of the limitations on assignment or transfer or there occurs an unpermitted equity transfer or change of control;
- Any representation or warranty made by Developer in the Contract Documents, or documents delivered to Department pursuant to the Contract Documents, is false, misleading or inaccurate in any material respect when made or omits material information when made;
- Developer fails to timely observe or perform any other material covenant, agreement, obligation, term or condition required to be observed or performed by Developer under the Contract Documents;
- Bankruptcy or insolvency events of Developer, any Equity Member or any guarantor;
- Developer fails to comply with Department's written suspension of work order;
- Developer fails to: (a) close its financing by the Financial Close Deadline, subject to specified excuses, (b) achieve Substantial Completion by the Long Stop Date, or (c) achieve Final Acceptance by the Final Acceptance Deadline;
- Persistent Developer Noncompliance exists;
- There occurs any closure of the Project or any portion thereof, or any lane closure, except as expressly permitted or excused under the Contract Documents; and

- Developer, an Equity Member, any of certain Affiliates of Developer, or a Key Contractor is suspended or debarred.

Cure of Developer Defaults

Developer shall be provided the opportunity to cure certain Developer Defaults, as described in the Contract Documents.

Department Remedies for Developer Default

Department shall have the right to exercise one or more of the following remedies in the event of an uncured Developer Default:

- Right to enter and take control of the Project to cure the default, restore the permitted uses and reopen and continue operations for the benefit of Developer and the public, all at Developer's expense (entry to rectify wrongful uses or closures of the Project can be immediate, without giving notice or awaiting lapse of any cure period);
- Certain rights to ensure implementation of and compliance with Safety Standards;
- Right to suspend work for certain Developer Defaults;
- Right to recover damages for a Developer Default and liquidated damages of \$1,000 per day for failure to achieve Final Acceptance by the Final Acceptance Deadline;
- Right to make demand upon, draw on, and enforce and collect any bonds, letters of credit, guaranty, or other performance security available to Department for Developer Default;
- Right to terminate in the event of a material Developer Default; and
- Other remedies as provided by Law.

Department Defaults

Department Defaults include:

- Failure to make any payment due Developer under the Agreement when due after expiration of the cure period to be defined in the Agreement;
- If any express representation or warranty made by Department is false, misleading or inaccurate in any material respect when made or omits material information when made;
- If Department or other Governmental Entity confiscates, sequesters, condemns or appropriates the Project or any material part thereof, or Developer's Interest or any material part thereof, excluding a Termination for Convenience or any other exercise of a right of termination set forth in the Agreement; and
- Department fails to prioritize payments to Developer in Department's budgets as required by the Agreement.

Cure of Department Defaults

Department shall be provided the opportunity to cure Department defaults, as described in the Contract Documents.

Developer Remedies for Department Default

Developer shall have the right to exercise one or more of the following remedies in the event of an uncured Department default:

- Right to terminate the Agreement for a material failure to pay or material confiscation of Developer's Interest; or
- Right to seek damages or other remedies as provided by law.

Limitations on Liability

Subject to limitations for certain losses, Department and Developer waive punitive damages or any indirect or incidental consequential damages except as set out in the Agreement, whether arising out of breach of the Agreement, tort (including negligence), or any other theory of liability.

EARLY TERMINATION AND COMPENSATION FOR EARLY TERMINATION

Grounds for Termination

The Agreement may be terminated for: Developer's failure to close its financing by the Financial Close Deadline, extended Relief Events, certain defaults by either party; convenience of Department, pendency of litigation challenging the validity of the Agreement, court order voiding the Agreement or making performance impossible, and unavailability of insurance.

Compensation Entitlement

In the event of a termination prior to the end of the Term, then as full and final payment and satisfaction of Department's obligations Developer shall be entitled to compensation based on the nature of the termination.

Termination for Failure to Close Financing

If termination occurs because Developer fails to timely close financing and such failure is excused due to specified conditions, including keeping the first year availability payment as adjusted after the financing competition within the \$35 million cap, Department shall compensate Developer in an amount equal to:

- Developer's reasonable external costs related to design work up to a cap of \$18 million; plus
- The \$500,000 stipend available to responsive proposers under the RFP; plus
- Developer's reasonable external costs incurred toward achieving Financial Close, preparing the Project Management Plan and satisfying other conditions to issuance of NTP 1 not related to Design work, up to a \$3 million cap.

If Developer's failure to timely close financing is not excused, Developer will owe liquidated damages to Department in the amount of \$15 million. As a condition to signing the Agreement, Developer will be obligated to deliver to Department liquid security (forfeiture bond or letter of credit) to assure Department a ready source for collecting these damages.

Termination for Material Developer Default

If Department terminates the Agreement due to uncured or incurable material Developer Default and termination occurs before Financial Close, then Developer shall be liable for liquidated damages of \$15 million, and Department may resort to the Financial Close Security to recover such damages.

If Department terminates the Agreement due to uncured or incurable material Developer Default and termination occurs after Financial Close and before Substantial Completion, then Department shall compensate Developer in an amount equal to the smaller of:

(1) The following:

- Certain costs expended by Developer up to the termination date to design and build the Project, less the Milestone Payment if previously paid to Developer; plus
- Certain costs expended by Developer to perform operations and maintenance work during construction; less
- Department losses due to Developer Default and the costs of replacing Developer; less
- Any amounts Department previously paid to Developer under the Agreement;

Or

(2) 80% of the Project Debt and net breakage costs, minus any amounts Department previously paid to Developer that were not used to reduce outstanding Project Debt.

If Department terminates the Agreement due to uncured or incurable material Developer Default and termination occurs after Substantial Completion, then Department shall compensate Developer in an amount equal to the smaller of:

(1) The following:

- Certain unamortized costs expended by Developer up to the termination date to design, build, operate and maintain the Project, less
- The Milestone Payment if previously paid to Developer; less
- Department losses due to Developer Default and the costs of replacing Developer; less
- Any amounts Department previously paid to Developer under the Agreement (other than the Milestone Payment and Availability Payments);

Or

(2) 80% of the Project Debt and net breakage costs, minus any amounts Department previously paid to Developer under the Agreement (other than the Milestone Payment and Availability Payments) that were not used to reduce outstanding Project Debt.

Termination for Extended Relief Events or Insurance Unavailability

Either party may terminate with the concurrence of the other if:

- Relief Event Delays before Substantial Completion (other than delays due to Department default) cumulate to more than 270 days;
- A permitted closure during construction persists for a consecutive period of 270 days or more; or
- A permitted closure after Substantial Completion persists for a consecutive period of 270 days or more.

If Department rejects a Developer request for termination, Department will compensate Developer for the continuing financial effects of the Relief Event. If Developer rejects a Department request for termination, Developer shall be entitled to extension of Completion Deadlines but shall not be entitled to any further compensation.

Department also may elect to terminate the Agreement if insurance is unavailable to Developer at commercially reasonable rates and Department chooses not to act as an insurer of last resort. See "Insurance" above.

Upon any such termination, Department shall compensate Developer in an amount equal to:

- (1) The Project Debt and net breakage costs; plus
 - (2) Previously committed equity investment plus a 5% rate of return on equity up to the date of termination, less any distributions, provided that if at least 135 of the 270 days of Relief Event Delay are due to Developer suspension of work because litigation is pending challenging the validity of the Agreement, then the rate of return on equity will be the rate as originally proposed by Developer; plus
 - (3) out of pocket termination costs;
- minus
- (4) All amounts standing to the credit of any bank account held by or on behalf of Developer as of the Early Termination Date if and to the extent such amounts are available to pay items (1) through (3).

Termination for Convenience, Department Default, or Department Suspension of Work

In its Project proposal, Developer will select the formula (Forward Looking or Backward Looking) for the termination payment that will apply upon a Termination for Convenience, termination due to material Department Default, or termination due to Department suspension of work. Upon any such termination, Department shall compensate Developer in an amount equal to:

- (1) The Project Debt and net breakage costs; plus
 - (2) If Backward Looking: An amount which gives an internal rate of return up to the date of payment on previously committed equity investment equal to the Equity IRR, after taking into account all distributions previously paid to Equity Members. If Forward Looking: The amount of all distributions anticipated in the Financial Model to be paid between the Early Termination Date until the date of expiration of the Term, discounted back at the Equity IRR; plus
 - (3) Out of pocket termination costs;
- minus
- (4) All amounts standing to the credit of any bank account held by or on behalf of Developer as of the Early Termination Date if and to the extent such amounts are available to pay items (1) through (3).

Termination Due to Section 143 Litigation or by Court Ruling

If litigation is filed challenging the validity of the Agreement and is not dismissed as of March 1, 2011, or if such litigation is filed thereafter and before Substantial Completion and either Developer elects to suspend work or the suit survives an initial defense (i.e. a demurrer) by Department, then the Agreement is subject to termination by one or the other party.

The Agreement also is subject to termination due to issuance of a final court order voiding the Agreement or finding it is impossible to perform for reasons beyond Developer's control.

Upon any such termination before Financial Close, the termination compensation will be the same as for termination due to excused failure to close financing. (See "Termination for Failure to Close Financing" above.)

Upon any such termination after Financial Close, the termination compensation will be the same as termination due to extended Relief Events. (See "Termination for Extended Relief Events" above.)

DISPUTE RESOLUTION

Dispute Resolution

Dispute resolution will include an administrative dispute resolution process before resort to litigation. Dispute resolution also will include a disputes review board to hear all disputes arising out of design or construction work, all of whose decisions will be non-binding. Use of the board is a precondition to the initiation of litigation regarding design and construction disputes.

GOVERNING LAW AND FEDERAL REQUIREMENTS

Governing Law

The Contract Documents shall be governed by and construed in accordance with the laws of the State of California.

Federal Requirements

Developer will be required to comply with all requirements applicable to federally funded design-build and public-private partnership projects.

EXHIBIT A

Presidio Parkway Relief Event Cost Allocation Matrix

Key Terms:

1) Claim Deductible – Applies to Extra Work Costs and Delay Costs. For each Claim, the deductible equals, as applicable, (a) the first US \$50,000 of Extra Work Costs and (b) the amount equal to the Delay Costs for the first 10 days.

2) 90-Day MP/MAP Deductible – Applies a deductible to the compensation for (a) delays in paying Milestone Payments (“MP”) (compensation = additional interest incurred resulting from a delay in making any Project Debt principal payment beyond the date scheduled in the Financial Model) and (b) missed Maximum Availability Payments (“MAP”) (compensation = the lesser of (i) the MAP or (ii) scheduled debt service plus increased costs for the number of days delayed) caused by certain Relief Events called “Deductible Relief Events.” Pursuant to this deductible, such compensation is not payable for the first 90 days of delays caused by the Deductible Relief Events. This 90-day deductible is cumulative and applies in the aggregate for all delays caused by Deductible Relief Events.

| No. | Relief Event | Definition Reference | Deductible | Payment of Extra Work Costs / Delay Costs |
|-----|---|----------------------|--|---|
| 1. | Force Majeure Event (except Seismic Events) | (a) | Claim Deductible 90-Day MP/MAP Deductible | Both Extra Work and Delay Costs |
| 2. | Seismic Events | (a) | Seismic Event Deductible - Developer responsible for first US \$10,000,000 of Extra Work and Delay Costs in aggregate during Term incurred to repair or replace tangible property damage to Project caused by Seismic Events (see Section 9.1.3.2). No Claim Deductible 90-Day MP/MAP Deductible | Both Extra Work and Delay Costs |

| No. | Relief Event | Definition Reference | Deductible | Payment of Extra Work Costs / Delay Costs |
|-----|---|----------------------|--|--|
| 3. | Change in Law | (b) | Claim Deductible 90-Day MP/MAP Deductible | Both Extra Work and Delay Costs, but no compensation for increases in costs of O&M Work, except for capital costs of required major new improvements or required major repair, restoration, etc. of any Element. |
| 4. | Department Change (other than a Discriminatory O&M Change and Non-Discriminatory O&M Change) | (c) | No deductibles | Both Extra Work and Delay Costs |
| 5. | Discriminatory O&M Change | (d) | No deductibles | Both Extra Work and Delay Costs |
| 6. | Non-Discriminatory O&M Change | (e) | Non-Discriminatory O&M Change Deductible: <ul style="list-style-type: none"> • Prior to the Substantial Completion Date: Developer responsible for an aggregate deductible of US \$2,000,000 relating to capital expenditures required by Non-Discriminatory O&M Changes (see Section 5.2.2.6). • After the Substantial Completion Date: Developer responsible for an aggregate deductible of US \$2,000,000 relating to capital expenditures required by Non-Discriminatory O&M Changes (see Section 5.2.2.6). 90-Day MP/MAP Deductible | Both Extra Work and Delay Costs, but no compensation for increases in costs of O&M Work, except for capital costs of required major new improvements or required major repair, restoration, etc. of any Element. |
| 7. | Department's failure to perform material covenants / obligations (except where covered by another Relief Event) | (f) | No deductibles | Both Extra Work and Delay Costs |
| 8. | Department-Caused Delay | (g) | No deductibles | Both Extra Work and Delay Costs |

| No. | Relief Event | Definition Reference | Deductible | Payment of Extra Work Costs / Delay Costs |
|-----|---|----------------------|--|--|
| 9. | Failure or inability to make available Project ROW | (h) | No deductibles | Both Extra Work and Delay Costs |
| 10. | Development or operation of a Business Opportunity in the Airspace or Project ROW | (i) | No deductibles | Both Extra Work and Delay Costs |
| 11. | Violation of Law by Department or third party that materially and adversely impacts the Project or Developer (except where covered by another Relief Event) | (j) | No deductibles for violations of Law by Department Claim Deductible and 90-Day MP/MAP Deductible for violations of Law by a third party | Both Extra Work and Delay Costs |
| 12. | Department or Governmental Entity performance or failure to perform work that materially disrupts Developer's on-site Work | (k) | No deductibles for Department's materially disrupting work Claim Deductible and 90-Day MP/MAP Deductible for Governmental Entity's materially disrupting work | Both Extra Work and Delay Costs |
| 13. | Discovery of previously unknown presence or archeological, paleontological or cultural resources | (l) | Claim Deductible 90-Day MP/MAP Deductible | Both Extra Work and Delay Costs |
| 14. | Discovery of previously unknown presence of threatened or endangered species | (m) | Claim Deductible 90-Day MP/MAP Deductible | Both Extra Work and Delay Costs |
| 15. | Release of Hazardous Materials by Department or a third party who is not a Developer-Related Entity | (n) | No deductibles for releases of Hazardous Materials by Department Claim Deductible and 90-Day MP/MAP Deductible for releases of Hazardous Materials by third party | Releases by Department: Both Extra Work and Delay Costs Releases due to migration onto Project from third party source: Both Extra Work and Delay Costs Releases from third party vehicles operating on Project Right of Way: Neither Extra Work nor Delay Costs |

| No. | Relief Event | Definition Reference | Deductible | Payment of Extra Work Costs / Delay Costs |
|-----|--|----------------------|--|--|
| 16. | Issuance of a temporary restraining order or other form of injunction or legal order that prohibits prosecution of the Work | (o) | Claim Deductible | Both Extra Work and Delay Costs |
| 17. | Safety Compliance Orders | (p) | No deductibles | Both Extra Work and Delay Costs, provided that no compensation due if the order is the result of the negligence, willful misconduct or breach of applicable Law or contract by Developer or any Developer-Related Entity |
| 18. | U.S. Dept. of Homeland Security or other Gov. Entity rules or directives regarding security threats, to the extent they require changes in design, construction, operation or maintenance procedures | (q) | Claim Deductible 90-Day MP/MAP Deductible | Both Extra Work and Delay Costs |

| No. | Relief Event | Definition Reference | Deductible | Payment of Extra Work Costs / Delay Costs |
|---|----------------------------------|----------------------|--|--|
| 19. | Pre-existing Hazardous Materials | (r) | <p><u>Off-site Disposal:</u></p> <p>Pre-existing Hazardous Materials Deductible – Developer bears 100% of the Extra Work Costs for off-site disposal after NTP 2 of the first 9,450 cubic yards of excavated soils contaminated with Pre-Existing Hazardous Materials that must be disposed of at a Class 1 facility, and the first 53,550 cubic yards of excavated soils contaminated with Pre-existing Hazardous Materials that can be disposed of at a Class 2 facility.</p> <p>Tiered Pre-existing Hazardous Materials Deductible - After the Pre-existing Hazardous Materials Deductible is satisfied, each party bears 50% of the Extra Work Costs for off-site disposal after NTP 2 of the next 1890 cubic yards of excavated soils contaminated with Pre-Existing Hazardous Materials that must be disposed of at a Class 1 facility, and the first 10,710 cubic yards of excavated soils contaminated with Pre-existing Hazardous Materials that can be disposed of at a Class 2 facility.</p> <p>Department bears 100% of further Extra Work Costs of off-site disposal</p> <p>No Claim Deductible</p> <p>90-Day MP/MAP Deductible</p> | <p><u>Offsite Disposal:</u></p> <p>Extra Work Costs only</p> <p>Extra Work Costs only</p> <p>Extra Work Costs only</p> |
| California Department of Transportation Presidio Parkway Project | | | 26 | Summary of Public-Private Partnership Agreement Number 04-1637U4 |

| No. | Relief Event | Definition Reference | Deductible | Payment of Extra Work Costs / Delay Costs |
|---------------|--|----------------------|--|--|
| 19 (cont.) | | | <u>Other Remediation</u> If remediation of Pre-existing Hazardous Materials requires measures other than off-site disposal: Claim Deductible 90-Day MP/MAP Deductible | <u>Other Remediation:</u> Both Extra Work and Delay Costs, except those: (i) covered by Project insurance; (ii) that could have been mitigated through reasonable efforts; or (iii) associated with investigation and planning for Pre-existing Hazardous Materials prior to completion of design. |
| 20. | Discovery of Structural Latent Defects during the ten year period after the date of the Baseline Report | (s) | No deductibles | Both Extra Work and Delay Costs |
| 21. | Delays in obtaining Major Permits by the applicable Major Permits Deadline, or, once obtained, unlawful revocation or suspension of a Major Permit | (t) | Claim Deductible 90-Day MP/MAP Deductible | Delay Costs only, except that no compensation for delays: (i) that could have been mitigated through reasonable efforts; or (ii) resulting from differences in the Indicative Preliminary Design and Developer's Final Design, unless such differences are due to a Department Change. |

| No. | Relief Event | Definition Reference | Deductible | Payment of Extra Work Costs / Delay Costs |
|-----|---|----------------------|---|---|
| 22. | Utility Owner Delays (i.e. delays by a utility owner in its own performance of Utility relocation work) | (u) | Claim Deductible not applicable 90-Day MP/MAP Deductible | Neither Extra Work nor Delay Costs (Note: Presidio Trust utility relocations not eligible as Utility Owner Delay because Presidio Trust is not a Qualifying Utility. Presidio Trust delay in approving designs for relocations of its Utilities may, however, be a Major Permit Delay) |
| 23. | Discovery of Unknown Utilities during Phase II Construction | (v) | Claim Deductible 90-Day MP/MAP Deductible | Extra Work Costs only |
| 24. | Delay directly attributable to Developer's suspension of Work due to pendency of litigation challenging validity of Agreement on grounds it is not legally authorized | (w) | No deductibles | Delay Costs only, except that no compensation for Delay Costs that: (i) are covered by Project insurance; or (ii) could have been mitigated through reasonable efforts. |