

DOCUMENT SECTION REFERENCE	TEXT WITH PROPOSED REVISION/COMMENT	SPONSOR COMMENTS
P3 Agreement Section 1.2.3 Order of Precedence	Will the Department consider that conflicts between the manuals and guidelines should not be at the Department's "sole" discretion?	References to sole discretion will be deleted. The Sponsors have considered the issue presented by the Proposer and revised language will be included in the final P3 Agreement.
P3 Agreement Section 11.1.1	Will the Department consider that the right to Availability Payments commence on Substantial Completion rather than Final Acceptance?	The Sponsors considered the issue presented by the Proposer and have decided not to modify the position reflected in the draft RFP documents at this time.
P3 Agreement Section 15.5.3	Are sharing of refinancing gains necessary? If sharing of refinancing gains is not necessary, is it necessary to share the financial model?	The Sponsors considered the issue presented by the Proposer and have decided not to modify the position reflected in the draft RFP documents at this time.
P3 Agreement Section 16.1 / 16.1.6.10	Only half of the insurance in the OCIP is required. Why is only half the insurance in the OCIP?	The Sponsors considered the issue presented by the Proposer and have decided not to modify the position reflected in the draft RFP documents at this time.
P3 Agreement Section 16.2	Does the 15% value comply with state law requirements? Has there been a federal waiver of 100% value?	The Sponsors considered the issue presented by the Proposer and have decided not to modify the position reflected in the draft RFP documents at this time.
P3 Agreement Section 18.1.1 Developer Default	<p>Please amend/delete the following Developer Defaults:</p> <ul style="list-style-type: none"> · 18.1.1.2, period for beginning Design Works should be 60 days (not 10 days) · 18.1.1.3, period for abandonment should be 180 days (not 30 days) · 18.1.1.4, delete default regarding provision of sufficient workmen · 18.1.1.6, delete default regarding compliance with Governmental Approvals and Laws · 18.1.1.8, delete default regarding use of the Project in violation of the Agreement or Governmental Approvals or Laws · 18.1.1.15, delete default regarding compliance with suspension of Work order · 18.1.1.18, delete default regarding Closures · 18.1.1.19, delete default regarding suspensions, debarments, disqualifications etc 	<ul style="list-style-type: none"> · 18.1.1.2, period for beginning Design Works is modified to 30 days · 18.1.1.3, period for abandonment is modified to 60 days <p>For sections 18.1.1.4, 18.1.1.6, 18.1.1.8, 18.1.1.15, 18.1.1.18, 18.1.1.19, the Sponsors considered the issue presented by the Proposer and have decided not to modify the position reflected in the draft RFP documents at this time.</p>
P3 Agreement Section 2.3.2	Will the Department consider deletion of this provision of Section 2.3.2?	The Sponsors considered the issue presented by the Proposer and have decided not to modify the position reflected in the draft RFP documents at this time.
P3 Agreement Section 3.2.1.1	The Developer is responsible for securing all remaining Governmental Approvals for the construction of the project, including revisions to or extensions of Governmental Approvals previously obtained. Who is responsible for any re-authorization (update) for NEPA?	The Sponsors considered the issue presented by the Proposer and have decided not to modify the position reflected in the draft RFP documents at this time.
P3 Agreement Section 3.2.2	Who bears the cost of defense in the event of a challenge to the Governmental Approvals? Are the time frames tolled during challenges	If there is a challenge and the court restrains work affected by the Governmental Approvals, that is a Relief Event and includes performance

	to the governmental approvals, albeit administrative or judicial, or is the Developer otherwise entitled to relief under the Agreement? In the event that a challenge results in a change to the project requirements, is Developer entitled to Relief (Extra Work Costs and/or Deadline Extensions)?	relief, schedule adjustment and delay costs (subject to claim deductible). If there is no TRO, then work can proceed and there would be no entitlement to performance or schedule relief or delay costs. The permit-issuing agency would be the party sued and would bear its costs of defending its permit action. Dept. and Dev., as parties in interest, would each bear their own costs of advocacy. If challenge results in change to Project requirements, or if the permitting agency itself requires such a change in its Major Permit decision, 3.2.2 and other Relief Event provisions provide no relief to Developer, except with respect to Extra Work Costs due to changes in landscaping requirements from the benchmark assumptions (see 4.12).
P3 Agreement Section 3.2.2.2 Major Permit delays	Will the Department consider deleting the exclusion in Section 3.2.2.2 for Extra Works Costs and Delay Costs from the provision?	The Sponsors considered the issue presented by the Proposer and have decided not to modify the position reflected in the draft RFP documents at this time.
P3 Agreement Section 3.2.3.2	What happens if the applicable regulations require the Owner of the Property to apply for the Governmental Approvals and ultimately be the permittee? Will there be a joint permittee? As to the Governmental Approvals already obtained, will these Approvals remain in the name of the current permit holder?	The Sponsors are required to assist, cooperate and provide all the necessary support to obtain Governmental Approvals (G.A.). The G.A. issued to the Sponsors as permittee would benefit the project and the Developer would be obligated to comply with the G.A. It is anticipated that the G.A. already obtained will remain in the name of the current permit holder.
P3 Agreement Section 3.3.2 Department Discretionary Approvals	Certain Submittals are subject to the Department's approval in its sole or absolute discretion or good faith discretion. Will the Department consider revising this section and provide clear submittal review periods?	The Sponsors considered the issue presented by the Proposer and have decided not to modify the position reflected in the draft RFP documents at this time.
P3 Agreement Section 4.1.2.1	Would the Department consider establishing an order or precedence, rather than requiring Developer to advise the Department of contradictions on a case-by-case basis?	The Sponsors have considered the issue presented by the Proposer and revised language will be included in the final P3 Agreement.
P3 Agreement Section 4.1.2.3	Would the Department consider deleting the "should have known" standard?	The Sponsors considered the issue presented by the Proposer and have decided not to modify the position reflected in the draft RFP documents at this time.
P3 Agreement Section 4.10	Will the Department consider signing all waste manifests?	If the Hazmat must be disposed of off-site because of a Developer-Related Entity's release, then the Developer, not Department, must sign the manifest.
P3 Agreement Section 4.10.2.2	What investigation of existing conditions is contemplated prior to the completion of the Final Design?	The Department's investigations are completed and made available to the Proposers in the Data Room.
P3 Agreement Section 4.15.6, Defects in Phase I Construction	Will the Department consider extending the time period for the Developer to discover Structural Latent Defects caused by Contractors?	The Sponsors considered the issue presented by the Proposer and have decided not to modify the position reflected in the draft RFP documents at this time.
P3 Agreement Section 4.15.7 Defects in Phase I Construction P3 Agreement Section 4.16.6 Survey of Existing Site Conditions	What is the Sponsors' intent of Section 4.15.7 and 4.16.6?	The intent is for Developer to be responsible to the extent any of its contractors caused the Phase I defective work. It is not the intent to shift all defective work risk to the Developer merely because a portion of the responsibility for defective work rests with one of its contractors.

<p>P3 Agreement Section 4.3.1, Nonconforming or Defective Work</p>	<p>What is the Sponsor's intent regarding P3 Agreement Section 4.3.1, which states that, "As directed by the Department in its sole discretion and as specified in the Contract Documents, the Developer shall be responsible for removing, replacing and otherwise correcting Nonconforming Work discovered by Department."?</p>	<p>The intent is that Department has sole discretion whether to require or waive correction of Nonconforming Work; not the issue of whether work is in fact. The Sponsors have considered the issue presented by the Proposer and revised language will be included in the final P3 Agreement.</p>
<p>P3 Agreement Section 4.4.4</p>	<p>In the event that the Developer is unable to secure access to additional staging areas on commercially reasonable terms, is Developer able to obtain such access through the use of eminent domain by the Department?</p>	<p>The Sponsors do not have eminent domain rights.</p>
<p>P3 Agreement Section 4.5.1, 4.5.2 and 4.5.3.1</p>	<p>Will the Department establish a Utility Allowance similar to that in Section 4.10.2 for Hazardous Materials?</p>	<p>The applicable Utility Agreement will be included as a Contract Document.</p>
<p>P3 Agreement Section 4.5.8 Unknown Utilities P3 Agreement Section 4.10.2 Pre - Existing Hazardous Materials P3 Agreement Section 8.1 Mandatory Technology Enhancements P3 Agreement Section 9.1.3.2 Seismic Events P3 Agreement Section 5.2.2.6 Non - Discriminatory O&M Change P3 Agreement Section 9.1.2 Claim Deductible P3 Agreement Section 9.2.2.3 Delayed Availability Payments P3 Agreement Section 9.2.3.2 Delayed Milestone Payments</p>	<p>General questions were presented to the Sponsors relating to claim deductibles. The Sponsors are providing the following clarification.</p>	<p>Deductibles do not apply if based on Department caused relief events: c, d, f, g, h, i, j (as to Department's violation of the law), k (as to department performance of work), n (as to Department releases), and s (as to structures and latent defects).</p>
<p>P3 Agreement Section 4.7.15</p>	<p>When is Phase 1 Substantial Completion scheduled?</p>	<p>The "maximum incentive" demobilization date is 1/1/12/. The contractually required completion date for Phase I is 6/4/12.</p>
<p>P3 Agreement Section 4.9.3.1.2</p>	<p>Will the Department consider that the requirement for "all punch list items" be limited to "all material punch list items"?</p>	<p>The Sponsors considered the issue presented by the Proposer and have decided not to modify the position reflected in the draft RFP documents at this time.</p>

<p>P3 Agreement Section 9.1.1.1 Claim Submission Procedures</p>	<p>We suggest amending P3 Agreement Section 9.1.1.1(2)(a) (Initial Notice of Claim) as follows:</p> <ul style="list-style-type: none"> · Extend the time period for submitting notice from 10 to 20 days · Delete the words “(or should have become aware, using all reasonable due diligence)” 	<p>The revised P3 Agreement will remove the language “should have known.”</p> <p>Time remains the same.</p>
<p>P3 Agreement Section 9.1.1.1(1) Time of Essence</p>	<p>The claims procedure provides for a waiver of claims in case the Developer does not comply with a notice requirement. We believes that a waiver of claims is inequitable in such instances and the Proposer must prove that the missing of a claim submission deadline has harmed the rights of the Proposer. We proposes to delete CA Section 9.1.1.1(1).</p>	<p>The Sponsors considered the issue presented by the Proposer and have decided not to modify the position reflected in the draft RFP documents at this time.</p>
<p>P3 Agreement Section 9.2.2.4</p>	<p>Will the Department consider eliminating and/or modifying the 270 days cap on Relief Events such that the Developer is not required to price or accept an uncontrolled and/or unquantifiable risk?</p>	<p>The Sponsors considered the issue presented by the Proposer and have decided not to modify the position reflected in the draft RFP documents at this time.</p>
<p>P3 Agreement Section App. 9</p>	<p>Will the Department consider a revision to the insurance limits set forth in Appendix 9, specifically to increase the limit to \$20 million and that such coverage be project-specific?</p>	<p>The Sponsors considered the issue presented by the Proposer and have decided not to modify the position reflected in the draft RFP documents at this time.</p>