



**STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION**



**SAN FRANCISCO COUNTY TRANSPORTATION  
AUTHORITY**

**REQUEST FOR PROPOSALS  
NUMBER 04-1637U4**

**TO DESIGN, BUILD, FINANCE, OPERATE AND  
MAINTAIN**

**THE  
PRESIDIO PARKWAY PROJECT**

**THROUGH A  
PUBLIC-PRIVATE PARTNERSHIP AGREEMENT**

**ADDENDUM No. 4 ISSUED SEPTEMBER 17, 2010**

The Sponsors issue this Addendum No. 4 to inform Proposers of the following changes and corrections to the RFP.

## INSTRUCTIONS TO PROPOSERS

The Instructions to Proposers is modified as indicated by the deletions and additions set forth below.

### 1.5 Procurement Schedule

Sponsors currently anticipate the following procurement schedule:

Activity	Due Date and Time
Issue RFQ	February 2, 2010
SOQ Due Date	March 11, 2010
Shortlisting Announcement	April 8, 2010
Issue Draft RFP	May 25, 2010
Data Room Access Permitted	May 25, 2010
One-on-One Meetings with Shortlisted Proposers (First Round)	June 9-10, 2010
One-on-One Meetings with Shortlisted Proposers (Second Round)	June 28-30, 2010
Issue Final RFP	July 9, 2010
One-on-One Meetings with Shortlisted Proposers (Third Round)	July 20-22, 2010
Site visits/utility agencies meetings	July 20-22, 2010
Last date for submittal of ATCs as described in <u>Section 3.2</u>	August 2, 2010, 2:00 p.m. PDT
Issue Addendum No. 1 to Final RFP	August 13, 2010
Last day for Proposers to submit questions under ITP <u>Section 2.3</u>	August 18, 2010, 2:00 p.m. PDT
Last date for Sponsors' responses to ATCs as described in <u>Section 3.3</u>	August 19, 2010, 2:00 p.m. PDT
Issue Addendum No. 2 to Final RFP	August 30, 2010
One-on-One Meetings with Shortlisted Proposers (Fourth Round)	August 31 and September 1, 2010
Issue Addendum No. 3 to Final RFP	September 7, 2010
<u>Issue Addendum No. 4 to Final RFP</u>	<u>September 17, 2010</u>
Technical Proposal Due Date	September 13, 2010, 2:00 p.m. PDT
Base Interest Rates priced by Proposers	September <del>22</del> <sup>13</sup> , 2010, 10:00 a.m. EDT
Base Interest Rates provided to Sponsors by Proposers (rates are selected as of two weeks prior to the Financial Proposal Due Date, see ITP <u>Section 4.14</u> and <u>Appendix D, Section 2(c)(iv)(A)</u> )	September <del>24</del> <sup>15</sup> , 2010, 2:00 p.m. PDT

Activity	Due Date and Time
Financial Proposal Due Date	<del>October 6, September 27,</del> 2010, 2:00 p.m. PDT
Notice of Intent to Award	October 2010
Submission of final form of Agreement to PIAC and Legislature pursuant to Section 143(c)(5)	At least 60 days prior to execution
Award and Execution of Agreement	December <del>23-31</del> <del>20-29</del> , 2010
NTP 1 Issuance	Per Agreement Section 4.6
Financial Close Deadline	Per Agreement

All dates set forth above and in the RFP are subject to change in Sponsors' sole discretion. To the extent such dates are changed, Sponsors shall formally notify the Proposers.

## 2.1 Designated Contact

Sponsors have designated the following individual to be their designated contact for the Project (the "Designated Contact"):

State of California  
Department of Transportation  
Director's Office  
1120 N Street, MS-49  
Sacramento, CA 95814 ~~Division of Engineering Services~~  
~~1727 30<sup>th</sup> Street, 2nd Floor, MS 47~~  
~~P.O. Box 168041~~  
~~Sacramento, CA 95816-8041~~  
Attention: P3 Program ~~Leo Martinez~~  
Telephone: (916) 654-5266 ~~(916) 227-6246~~  
Fax: (916) 654-6608 ~~(916) 227-6282~~  
Email Address: caltrans\_p3\_program@dot.ca.gov ~~leo\_martinez@dot.ca.gov~~

From time to time during the procurement process or during the term of the Agreement, Sponsors may designate another Designated Contact or other representatives to carry out some or all of Department's obligations pertaining to the Project.

### 6.2.1 Finalization of Agreement

Unless Department rejects all Proposals or cancels this procurement, Department will proceed with the Preferred Proposer to finalize the Agreement, including incorporation of Developer's Proposal Commitments. Department may agree to incorporation of unsuccessful Proposers' work product, subject to agreement with the Preferred Proposer; however, any decision to commence discussions regarding incorporation of such work product is at Department's sole discretion. By submitting its Proposal, each Proposer commits to enter into the form of Agreement included in the RFP, without negotiation or variation, except discussions as provided in the immediately preceding sentence and to fill in blanks and include information that the form of Agreement indicates is required from the Proposal.

If an Agreement satisfactory to Sponsors cannot be reached with the Preferred Proposer after ~~five~~~~seven~~ days where the parties have attempted to finalize the Agreement in good faith, Department may formally end discussions with that Proposer and take action consistent with the direction provided by the Director. Such action may include (a) rejection of all Proposals, (b)

issuance of a request for Proposal Revisions to Proposers; or (c) proceeding to the next most highly ranked Proposal to finalize an Agreement with that Proposer in accordance with this Section 6.2 and applicable law. A failure to finalize the Agreement in good faith includes, but is not limited to: (a) failure of the Preferred Proposer to attend and actively participate in reasonably scheduled meetings with Department, or (b) the Preferred Proposer's insistence upon terms or conditions that are inconsistent with the RFP Documents.

The final form of Agreement will be conformed to include any pre-approved ATC (including conditionally pre-approved ATCs that have been revised to satisfy any conditions to approval), as well as any other items provided in the successful Proposal and approved or required by Department for inclusion in the Agreement.

### **6.2.3 Negotiations**

After receipt of comments, if any, from the Secretary of Business, Transportation and Housing or the Chairperson of the Senate or Assembly fiscal committees or policy committees with jurisdiction over transportation matters, Department may, in its sole discretion, commence negotiations with the Preferred Proposer. In the event Department commences negotiations with the Preferred Proposer, such Preferred Proposer shall be obligated to negotiate in good faith with Department for a period of not less than ~~three~~five days. Failure of the Preferred Proposer to negotiate in good faith during this period shall result in the Proposer forfeiting its Proposal Security. A failure to negotiate in good faith includes, but is not limited to: (a) failure of the Preferred Proposer to attend and actively participate in reasonably scheduled negotiation meetings with Department, or (b) the Preferred Proposer's insistence upon terms or conditions that are inconsistent with the RFP Documents.

If an Agreement satisfactory to Sponsors cannot be reached with the Preferred Proposer after the parties have met in and attempted to finalize the Agreement in good faith for a period of not less than ~~three~~five days, Department may formally end discussions with that Proposer and take action consistent with the direction provided by the Director. Such action may include (a) rejection of all Proposals, (b) issuance of a request for Proposal Revisions to Proposers; or (c) proceeding to the next most highly ranked Proposal to finalize an Agreement with that Proposer in accordance with this Section 6.2 and applicable Law.

### **6.3 Agreement Award and Execution**

After conclusion of negotiations under Section 6.2.3, if any, and after completion of the events in Section 6.2, Department will award the Agreement to the responsible Proposer that submits the Best Value Proposal. Within ~~three~~five days of Department's award of the Agreement, the Preferred Proposer shall:

- A) Deliver to Department five sets of the executed Agreement, plus the number of sets the Proposer desires (not to exceed five) together with evidence (if not previously provided) as to the authority, power, and capacity of the individuals executing the Agreement to bind the Proposer to the Agreement;
- B) Deliver to Department executed parent company guaranties (if proposed as part of the Proposer's Financial Proposal);
- C) Deliver to Department an audit of the Original Financial Model conducted by an independent audit firm satisfactory to Department (at the Proposer's sole

expense). The audit of the Original Financial Model for this purpose may be the same as the audit required by the Proposer's lenders. The audit reports shall acknowledge the Department as a recipient, but the audit reports need not be addressed to Department. Any amendment to the Original Financial Model required by the independent audit will be implemented without any change to the MAP, Substantial Completion Milestone Payment, or other payments from Department;

- D) Deliver evidence of insurance required to be provided by Developer under the Agreement for the performance of work under NTP 1;
- E) Deliver copies of the final form of the Key Contracts between the Developer and 1) the Lead Contractor, 2) the Lead Engineer, and 3) the Lead Operations and Maintenance Contractor;
- F) Deliver written opinion from counsel for Developer, which counsel shall be approved by Department (which may be in-house or outside counsel, provided that the organization/authorization/execution opinion shall be provided by an attorney licensed in the State of the formation/organization of the entity for which the opinion is rendered (i.e., Developer, joint venture member, etc.) and the qualification to do business in California and the enforceability opinion shall be provided by an attorney licensed in the State of California), in substantially the form attached hereto as Appendix E, Form H (with such changes as agreed to by Department in its sole discretion); provided, however, that the organization/authorization/execution opinion for an entity formed or organized under the laws of the State of Delaware may be issued by an in-house or outside counsel not licensed in Delaware;
- G) Deliver to the Department a Financial Close Bond or Financial Close Letter(s) of Credit, in the form provided in Appendix E, Form D-3 or D-4, as applicable. The Financial Close Bond or Financial Close Letter(s) of Credit, as applicable, shall be in the amount of \$15,000,000 US Dollars. If a Proposer decides to submit a Financial Close Letter of Credit as its Financial Close Security, it may submit more than one Financial Close Letter of Credit in the form provided in Appendix E, Form D-4, provided that the Financial Close Letters of Credit total \$15,000,000 US Dollars in the aggregate; and
- H) Satisfy any other requirements identified by Department as a condition to award or execution or determined during pre-award negotiations.

Delivery of the preceding is a condition precedent to execution. Should the Preferred Proposer fail to comply with any of the above requirements, Department shall call upon the Proposal Security in its entirety, and the Preferred Proposer will not be entitled to the Stipend.

Subject to the mutual agreement of the parties otherwise, if Department does not execute the Agreement within 15 days following receipt from the Preferred Proposer of the information and documents listed in this ITP Section 6.3, the Proposer shall have the right to withdraw the Proposal without penalty and Department shall have the obligation to pay the Proposer the Stipend.

If the Preferred Proposer fails to execute the Agreement within the time periods identified above, Department may award the Agreement to the Proposer whose Proposal was the next apparent Best Value Proposal, re-advertise and complete the work under a different contract, cancel the Project or pursue any other option it chooses in its sole discretion.

The Agreement will not be effective until it has been fully executed and delivered by both of the parties thereto.

## **Appendix E, Form A-2**

See the revised Financial Proposal Letter at the end of this Addendum

## **PUBLIC-PRIVATE PARTNERSHIP AGREEMENT**

In addition to corrections of spacing, punctuation, grammar, capitalization, underlining and formatting that do not affect meaning, the form of Agreement is modified as indicated by the deletions and additions set forth below.

### **9.5 Delayed Notice of Intent to Award**

9.5.1 If Department issued notice of intent to award later than November 1, 2010, Developer shall be entitled to extension of applicable Completion Deadlines by the period of any delay to a Controlling Work Item, provided that (a) the delay to the Controlling Work Item is solely and directly attributable to such delay in issuance of notice of intent to award, (b) the delay to the Controlling Work Item is not concurrent with any other delay which is not caused by a Relief Event, and (c) Developer cannot reasonably avoid such delay through mitigation, Section 9.2.6 shall apply with respect to Developer's duty to mitigate such delay. Developer's right to such extension shall be subject to satisfaction of any conditions or requirements set forth in the Contract Documents respecting delay Claims.

9.5.2 Issuance of notice of intent to award later than November 1, 2010 shall not constitute a basis for any other Claim or relief of any kind.

### **9.65 Disputes Related to Claims and Relief Events**

Any Dispute as to whether Developer is entitled to Extra Work Costs, Delay Costs, other compensation, Financial Close Deadline or Completion Deadline extensions or other relief as provided in this Article 9 shall be resolved according to the Dispute Resolution Procedures. If the Department disagrees with an amount of compensation or deadline extension sought by Developer, the Department shall pay the undisputed portion of compensation and allow the undisputed portion of Financial Close Deadline or Completion Deadline extension, and the disputed portion shall be resolved according to the Dispute Resolution Procedures.

## **ARTICLE 13: EQUITY TRANSFERS AND CHANGE OF CONTROL; ~~COMMITTED~~ INVESTMENT REQUIREMENT**

### **13.1 Restrictions on Equity Transfers and Changes of Control of Developer**

No Equity Transfers by or among Equity Members shall be allowed during the Term of this Agreement, except as provided in this Section 13.1.1 and Section 13.31.4.

13.1.1 No Equity Transfers by or among Equity Members are allowed from the Effective

Date to the second anniversary of the Final Acceptance Date.

#### **13.1.1.1**

**13.1.2** Two years following the Final Acceptance Date, Equity Transfers by or among Equity Members are allowed until four years from the Final Acceptance Date, provided that one or more of the initial Equity Members identified in Appendix 2-H collectively maintain more than 50% of the equity interest in Developer.

#### **13.1.1.2**

**13.1.3** After four years from the Final Acceptance Date, Equity Transfers by or among Equity Members are allowed.

#### **13.1.1.3**

**13.1.4** If any Equity Transfer pursuant to Sections 13.1.4.2 or 13.1.4.3 would result in a Change of Control, such Equity Transfer shall be subject to the Department's prior reasonable approval in writing; and, if such Equity Transfer occurs prior to or without the Department's prior reasonable approval in writing, the Equity Transfer shall be deemed to be denied. The Department shall have the right to request information from Developer related to the potential Change of Control, including information to determine the impact on the technical capabilities and financial standing of Developer and Equity Members that may result from the Change of Control.

#### **13.1.1.4**

**13.1.5** Notwithstanding the provisions in this Section 13.1.4, Equity Transfers by an Equity Member to its Affiliates are allowed after the Effective Date. For purposes of this Section 13.1 only, an Equity Member whose role (and role of its Affiliates involved in the Project, if any) is restricted solely to financial matters and who have no role in the performance of the Work, shall be deemed Affiliated to infrastructure funds managed by such Equity Member (or by one of its Affiliates).

#### **13.1.1.5**

### **13.2 Review and Approval Procedures**

~~13.1.2~~**13.2.1** No less than 90 days prior to the expected date of an Equity Transfer pursuant to Section 13.1, Developer shall provide the Department information regarding the proposed Equity Transfer to enable the Department to evaluate whether the Equity Transfer is permitted, including: (a) the names of the transferor and transferee; (b) the three most recent audited financial statements of the transferee (if applicable); (c) the percentage of equity interest to be transferred; (d) the expected date of the Equity Transfer; (e) details of the Affiliate relationship between the transferor and the transferee (if applicable); (f) information demonstrating whether the Equity Transfer will result in a Change of Control; and (g) experience of the proposed equity transferee on similar projects as an investor, contractor or operator.

~~13.1.3~~**13.2.2** Provided that Developer furnished the Department the information required under Section 13.2.1.2, the Department shall provide written notice to Developer no later than 30 days before the expected date of the Equity Transfer if the Department concurs that such Equity Transfer is permitted under Section 13.2.1.1. If the proposed Equity Transfer would result in a Change of Control, the Department shall also provide written notice to Developer within such period if the Department approves of such Equity Transfer. If the Department fails to provide its concurrence or approval, as applicable, such Equity Transfer

shall not be permitted, subject to Developer's right to submit a Dispute for resolution according to the Dispute Resolution Procedures.

### **13.3 Lender Exception**

~~13.1.4~~ Notwithstanding Sections 13.1 and 13.2 the foregoing, and provided that the conditions and limitations of Section 12.1 are fully satisfied, the exercise of a Lender's rights under the Security Documents to foreclose on the pledge of a shareholder, general partner or member's interest in Developer or otherwise acquire such interest by or through the exercise of a Lender's rights under the Security Documents that would otherwise result in a Change of Control shall not in and of itself constitute a Change of Control. However, any Person acquiring such interest shall be subject to the Department's prior reasonable approval in writing. Notwithstanding the foregoing, the acquisition of such interest by any entity that is wholly owned by a Lender or group of Lenders shall not require Department approval, provided that (a) the Department is furnished documentation proving that the entity is duly formed, validly existing and wholly owned by the Lender (including a certificate signed by an executive officer of each Lender in favor of the Department certifying, representing and warranting such ownership) and (b) the remaining Lenders have not exercised any rights to step in or to cure a Developer Default.

### **13.4 Invalidation and Default**

~~13.1.5~~ Any Equity Transfer or Change of Control in violation of this ~~Section~~ Article 13-1 shall be null and void *ab initio* and the Department, at its option, may declare any such attempted action to be a material Developer Default. The foregoing shall not prejudice Developer's right to cure a Developer Default under Section 18.1.2.1.

**15.2.7.1** Developer has diligently and timely conducted the IPDC in accordance with Appendix 13 and diligently and timely completed all necessary steps to obtain and close any TIFIA financing indicated in Appendix 2-B, but the IPDC and such TIFIA negotiations result in a First Year Maximum Availability Payment that exceeds the Affordability Limit, ~~provided that the Department in its sole discretion may waive this contingency and accept such First Year Maximum Availability;~~

**15.2.8.1** 100% of the impact (either positive or negative) on the Base Maximum Availability Payment of changes in the base interest rates set forth in Appendix 2-C (the "base interest rates") for the period beginning at 10:00 a.m. EPT on September ~~22~~ 23, 2010 and ending on the earliest of (a) 10:00 a.m. EPT on the date of Financial Close, (b) 10:00 a.m. EPT on the Financial Close Deadline, or (c) the date of execution of any interest rate hedging instrument by Developer (the "last date of the base interest rate protection period"). The interest rate adjustment will be based on the movement, if any, in the base interest rates. Developer and the Department shall both adjust the Original Financial Model as of the last date of the base interest rate protection period to reflect the changes (if any) in the base interest rates and any revisions approved by the Parties but not any potential errors identified as part of the updated audit opinion provided pursuant to Section 14.2.2:

**18.1.1.9** Developer makes or attempts to make an assignment or transfer of all or any portion of this Agreement, the Lease, the Project or Developer's equity or economic

interest therein in violation of Article 23 or there occurs an Equity Transfer or Change of Control in violation of Section Article 13.1;

~~19.2.1 The Department may terminate this Agreement without fault or penalty if Financial Close does not occur by the Financial Close Deadline and such failure is directly attributable to the contingency set forth in Section 15.2.7.1. The Department shall notify Developer within ten days after the Financial Close Deadline whether it elects to waive such contingency or elects to terminate. In the absence of such notice, it shall be assumed that the Department has elected to terminate. Developer or the Department may terminate this Agreement without fault or penalty if Financial Close does not occur by the Financial Close Deadline and such failure is directly attributable to any of the contingencies set forth in Sections 15.2.7.2, 15.2.7.3, 15.2.7.4 and 15.2.7.5. In either case, h~~However, notice of termination shall obligate the Department and Developer to engage in good faith negotiations for a minimum period of 30 days before such termination is effective. Termination shall take effect at the end of such 30-day period unless the Parties otherwise agree in writing. In the event of such a termination:

**21.2.1** The Department and its designated representatives shall have such rights to review and audit Developer and its Contractors, and to review, copy and audit on an Open Book Basis their respective books and records and supporting documentation pertaining to the Project, Work or Contract Documents, as the Department deems necessary for purposes of verifying compliance with the Contract Documents and applicable Law. Without limiting the foregoing, the Department shall have the right to audit Developer's Project Management Plan and compliance therewith, including the right to inspect Work and/or activities and to verify the accuracy and adequacy of the Project Management Plan and its component parts, plans and other documentation. Developer agrees to maintain such books and records pertaining to the period up to Final Acceptance for a minimum of four years after the Final Acceptance Date, and for all other books and records for a minimum of four years after the end of the Fiscal Year in which they were created, unless a longer period of records retention is stipulated or necessary resolve a Claim or Dispute. Developer shall allow auditor(s) access to such books and records during normal business hours and to allow interviews of any employer who might reasonably have information related to such books and records. Further, Developer agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of the Contract Documents. (Government Code Section 8546.7, Public Contract Code Section 10115 et seq., CCR Title 2, Section 1896). Developer shall comply with the above and be aware of the penalties for fraud and for obstruction of investigation set forth in Public Contract Code Section § 10115.10.

**24.3.3** DRB members shall be knowledgeable in the type of construction and contract documents anticipated by ~~this~~ Agreement and shall have completed training through the Dispute Review Board Foundation.

**24.3.4** No DRB member shall have prior direct involvement in ~~this~~ Agreement. No DRB member shall have a financial interest in this Agreement, the Parties, Developer-Related Entities, Affiliates, or legal and business service providers to either Party, at any time within 24 months prior to Financial Close or during the Term.

**24.3.9** No Party shall bear a greater responsibility for damages or personal injury than is normally provided by Federal or State ~~of California Law~~.

**24.7.6** Within 30 days after receiving the DRB Report, the Parties shall respond to the DRB in writing stating their respective position as to whether the Dispute is resolved or remains unresolved. Failure of a Party to provide the written statement within the time specified, a written rejection of the DRB's recommendation, or a written statement requesting that the DRB reconsider their recommendation, shall conclusively indicate that ~~such~~ the Party(s) failing to respond accepts the DRB recommendation. Immediately after responses have been received from both Parties, the DRB shall provide copies of both responses to the Parties simultaneously.

## **25.6 Survival**

Developer's and the Department's representations and warranties, the Dispute Resolution Procedures contained in ~~Article 24 and the Disputes Review Board Agreement~~, the indemnifications, ~~and releases and defense procedures~~ contained in Sections 16.4 and 16.5, the rights and obligations regarding compensation contained in Article 19 and any other obligations to pay amounts hereunder, and all other provisions which by their inherent character should survive expiration or earlier termination of this Agreement and/or completion of the Work under this Agreement, shall survive the expiration or earlier termination of this Agreement and/or the completion of the Work under this Agreement. The provisions of Article 24 ~~and the Disputes Review Board Agreement~~ shall continue to apply after expiration or earlier termination of this Agreement to all Claims and Disputes between the Parties arising out of the Contract Documents.

## **25.10 Integration of Contract Documents**

The Department and Developer agree and expressly intend that, subject to Sections 1.2.2, 1.2.3 and 25.112, this Agreement and other Contract Documents constitute a single, non-severable, integrated agreement whose terms are interdependent and non-divisible.

## **APPENDIX 1 TO PUBLIC-PRIVATE PARTNERSHIP AGREEMENT**

In addition to corrections of spacing, punctuation, grammar, capitalization, underlining and formatting that do not affect meaning, the form of Appendix 1 Agreement is modified as indicated by the deletions and additions set forth below.

**Affordability Limit** means an amount not exceeding \$35,000,000 for the First Year ~~m~~Maximum Availability Payment.

**Change of Control** means any Equity Transfer, transfer of an interest in an Equity Member, or other transaction that results in a loss or acquisition of a Controlling Interest in Developer. Notwithstanding the foregoing, the following shall not constitute a Change of Control:

(a) The grant of Security Documents, including the Initial Security Documents, in strict compliance with Section 12.1 of the Agreement or the exercise of Lender remedies thereunder, including foreclosure, subject to Section 13.3.1.4 of the Agreement; and

**Condition Assessment Report** or **CAR** means the report that documents the findings of the pre-construction survey and assessment of character-defining features of historic buildings and historic integrity of the features by an architectural historian or historical architect. The assessment will include the use of ~~3~~three-dimensional recording equipment to survey the buildings with the resulting images draped over digital photographs to provide a highly detailed visual and measured record of each building.

**Contract Documents** means the Agreement, the Technical Requirements, including all Appendices and exhibits to the Agreement and Technical Requirements (and the executed originals of Appendices and exhibits that are contracts), and the other documents listed in Section 1.2 of the Agreement, including all amendments to the foregoing and all issued Supplemental Agreements. “Contract Documents” include the Lease.

**Department-Caused Delays** means Delays directly attributable to the following matters and no others, but only to the extent that they (1a) are not mitigated by or susceptible to handling by consumption of Float, (2b) are not capable of mitigation pursuant to Section 9.2.6 of the Agreement, and (3e) are not due to the negligence, willful misconduct, breach of contract or violation of Law or Governmental Approval by any Developer-Related Entity: ...

**Developer’s Interest** means all right, title, interest and estate, real or personal, of Developer in, to, under or derived from the Agreement and the other Contract Documents, including (a) Developer’s leasehold estate in, license to enter or right of access to the Project and Project Right of Way under the Lease, (b) Developer’s right, title and/or interest in and to the Milestone Payment and Availability Payments earned, Handback Requirements Reserve Account, Submittals, Claims and Intellectual Property, and (c) any right of Developer to collect tolls and users fees.

**Final System Integration Test** means the test described in ~~of Section 3~~, 17 of Division II.

**Financial Modeling Data** means all back-up information regarding the basis for Developer’s estimates, projections and calculations in its Proposal, in the Original Financial Model, in the Financial Model and in Financial Model Updates of revenues, pricing, costs, expenses, repayment of Facility Debt, Distributions and internal rate of return, including:

(a) Appendix D-2 of the Proposal (Detailed Costing Form)]; ...

**Force Majeure Event** means the occurrence of any of the following events that materially and adversely affects performance of Developer’s obligations, provided that such events (or the effects of such events) could not have been avoided by the exercise of caution,

due diligence, or reasonable efforts by Developer or any Developer-Related Entity: (a) war (including civil war and revolution), invasion, armed conflict, violent act of foreign enemy, military or armed blockade, or military or armed takeover of the Work, in each case occurring within the State of California; (b) any act of riot, insurrection, civil commotion or sabotage that causes direct physical damage to the Work; (c) nuclear explosion directly impacting the Site, or radioactive contamination of the Site, unless the source of the explosion or radioactive contamination, is brought to or near the Site by any Developer-Related Entity; (d) fire, explosion, Seismic Event, flood caused by natural events, gradual inundation caused by natural events, sinkhole caused by natural events or landslide caused by natural events, in each case directly impacting the physical improvements of the Project or performance of Work at the Site; (e) Terrorism; or (f) any governor declared Emergency within the limits of the Project Right of Way.

**Geotechnical Design Report** means the report described in ~~of~~ Section 3, 6 of Division II.

**Key Contract** means any one, or an aggregate of more than one, of the following Contracts for Work Developer causes to be performed:

...

(d) All Prime Contracts for project or program management services;

**Key Personnel** means those individuals appointed by Developer and approved by the Department from time to time to fill the following positions:

...

(f) Any other key members of Developer's management team or other individuals that ~~are~~ were identified in Appendix 2-H to the Agreement~~the Proposal~~ or elsewhere in the Contract Documents.

**Major and Unusual Structures** means (1) tunnels, (2) bridges of complex geometry and/or complex design, and (3) rehabilitation, widening or lengthening of tunnels or any such bridges. Generally, this includes the following types of bridge structures:

...

(g) Arch bridges; and

~~(h) Tunnels;~~

~~(i) Movable bridges (specifically electrical and mechanical components); and~~

~~(j) Rehabilitation, widening, or lengthening of any of the above.~~

**The Manual on Uniform Traffic Control Devices** means the Manual on Uniform Traffic Control Devices for Streets and Highways, 2003 Edition (MUTCD) as administered by the Federal Highway Administration. The **MUTCD 2003 California Supplement** (MUTCD California Supplement) is issued by the Department to provide amendments to the MUTCD.

The MUTCD and MUTCD California Supplement supersede the Department's Manual of Traffic Controls.

**Materials** means (whether capitalized or not) any substances to be incorporated in, or encountered during the execution of, the Work under the Contract Documents.

**O&M Records** means all documentation and data in connection with maintenance, operation, renewals and expansion of the Project including (a) all inspection and inventory records, whether generated by Developer or a third party, (b) any communication to and/or from the Department or a third party, and (c) any information system (as may be introduced or amended by the Department from time to time) in connection with operation, maintenance, renewal or handback of the Project or the Availability Payment (including O&M Noncompliance Events, Closures and Permitted Closures), Construction Noncompliance Events, Construction Closures, Permitted Construction Closures, and Noncompliance Points—systems that the Department requires Developer to use or operate.

**Payment Bond** means ~~one or more~~ payment bonds in place as a condition to the commencement of O&M During Construction and Construction Work and the Department's issuance of NTP 2 or NTP 3, as set forth in Section 16.2.2 of the Agreement.

**Performance Security** means ~~one or more~~the performance bond(s) or letter(s) of credit in place as a condition to the commencement of O&M During Construction and Construction Work and the Department's issuance of NTP 2 or NTP 3, as set forth in Section 16.2.1 of the Agreement.

**Permitted Closure** means, subject to Section 9.2.4 of the Agreement:

...

- (c) A Closure due to utility installation work during the Operating Period as provided in Section 5.2.6, provided Developer is using commercially reasonable efforts to (i) avoid or minimize the impact thereof on traffic flow during High Priority Hours and Mid Priority Hours, and (ii) reopen the affected Traffic Lane(s) as quickly as possible to traffic during High Priority Hours and Mid Priority Hours;

**Permitted Construction Closure** means:

...

- (c) A Closure due to utility installation work during the Construction Period as provided in Section 4.5.6, provided Developer is using commercially reasonable efforts to (i) avoid or minimize the impact thereof on traffic flow during High Priority Hours and Mid Priority Hours, and (ii) reopen the affected Traffic Lane(s) as quickly as possible to traffic during High Priority Hours and Mid Priority Hours;

**Phase I Final Acceptance** means ~~that the date after Phase I Substantial Completion at which~~ the Department has certified, in its sole discretion, final acceptance of the Phase I

Construction such that (a) the conditions of Phase I Substantial Completion are met, (b) the Phase I Punch List has been resolved to the Department's satisfaction, (c) the Department has issued the Survey of Existing Conditions pursuant to Section 4.17 of the Agreement, and (d) the Department is able to make available to Developer use of all of Developer's TCE Occupation Plan, as it may be amended pursuant to Section 4.4.5 of the Agreement.

**Phase I Operation Start Date** means the date that the Department has certified, in its sole discretion, that the Phase I Construction is safe to open for traffic.

**Programmatic Agreement** means that certain Programmatic Agreement among FHWA, the Department, the Authority SFCTA, Presidio Trust, the National Parks Service, the Department of Veterans Affairs, the California State Historic Preservation Officer, the Advisory Council on Historic Preservation and the San Francisco Recreation and Parks Department, for the South Access to the Golden Gate Bridge, Doyle Drive Replacement Project, San Francisco, California.

**Project Debt** means bona fide indebtedness (including mezzanine and subordinated indebtedness) for funds borrowed or for the value of goods or services rendered or received, the repayment of which is secured by one or more Security Documents, and shall include the TIFIA Loan. Project Debt includes principal (including accreted principal), accrued interest (including capitalized interest), customary and reasonable lender, agent, trustee and monoline fees (excluding those monoline fees that would not otherwise have been due and payable if termination under the Agreement had not occurred), costs and expenses payable to Lenders with respect thereto, premiums or reimbursement obligations with respect to any insurance or financial guaranty with respect thereto (excluding those premiums that would not otherwise have been due and payable if termination under the Agreement had not occurred), all payment obligations under any hedging agreements with respect thereto, including current-pay and accreting swaps, lease financing obligations, and Breakage Costs. Project Debt excludes Equity Member Debt, and Project Debt also excludes any other indebtedness of Developer or any Equity Member, partner or joint venturer of Developer (or Affiliate thereof) that is secured by anything less than the entire Developer's Interest, such as indebtedness secured only by an assignment of economic interest in Developer or of rights to cash flow or dividends from Developer. Project Debt also excludes any increase in indebtedness, other than an increase in indebtedness incurred due to a Rescue Refinancing or permitted borrowing or funds raised exclusively for Extra Work Costs or Delay Costs, to the extent resulting from an agreement or other arrangement Developer enters into or first becomes obligated to repay after it was aware (or should have been aware, using reasonable due diligence) of the occurrence or prospective occurrence of an event of termination giving rise to an obligation of the Department to pay Termination Compensation, including Developer's receipt of a Notice of Termination for Convenience, a Warning Notice or other notice of Developer Default respecting a Default Termination Event, and Developer's declaration of a Department Default of the type entitling Developer to terminate the Agreement.

**Project Enhancement** means any extensions of, or additions ~~to~~, modifications or improvements to, the Project that are not part of the Work.

**Proposal Submission Date** means October 6 ~~September 24~~, 2010.

**Qualifying Utility Agreement** means a Utility Agreement between Developer and a Qualifying Utility Owner that meets all of the following requirements:

...

- (b) ~~Contains~~Indicates a schedule for the Utility Adjustment(s) that indicates the start date and scheduled duration of the Utility Adjustment(s), including the duration of each activity to be performed by Developer and the Qualifying Utility Owner; and

**Quarter** means a time period comprised of three calendar months. Each Fiscal Year contains four Quarters: July – September; ~~and~~ October – December; January – March; and April – June.

**Quarterly Milestone Payment Adjustment Excess** has the meaning set forth in Section 3.5 of Appendix 7 to the Agreement.

**Refinancing** means:

...

- (c) The disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Project Debt ~~or~~of the Financing Documents, or the creation or granting of any other form of benefit or interest in either the Financing Documents or the Developer's Interest, whether by way of security or otherwise, by Developer; or
- (d) Any other arrangement put in place by Developer or another Person which has an effect similar to any of the arrangements discussed in clauses (a) through (c) above.

**Relief Event** means any of the following events, subject to other limitations, requirements and deductibles that may be set forth in the Agreement for such events:

...

- (l) Discovery at, near or on the Project Right of Way as defined in the Right of Way Plans of archeological, paleontological or cultural resources, excluding any such resources known to Developer 30 days prior to the Proposal Submission Date or that would have become known to Developer by ~~undertaking reasonable investigation~~30 days prior to the Proposal Submission Date by undertaking reasonable investigation;
- (m) Discovery at, near or on the Project Right of Way as defined in the Right of Way Plans of any species listed as threatened or endangered under the federal or State endangered species act (regardless of whether the species is listed as threatened or endangered as of the Effective Date), excluding any such presence of species known to Developer 30 days prior to the Proposal Submission Date or that would have become known to Developer by ~~undertaking reasonable~~

~~investigation~~—30 days prior to the Proposal Submission Date by undertaking reasonable investigation;

**RFP** or **Request for Proposals** has the meaning set forth in Recital C of ~~the~~this Agreement.

**RFQ** or **Request for Qualifications** has the meaning set forth in Recital B of ~~the~~this Agreement.

**Supplemental Agreement** means a written agreement between Developer and the Department, signed by the surety (if applicable), modifying or supplementing the Contract Documents within the limitations set forth in the Contract Documents.

**Unknown Utility** means a Utility, other than a Service Line, that meets one of the following criteria:

...

- (c) ~~Both~~—The Utility Information incorrectly indicates that the subject Utility is abandoned (i.e., nonexistent except on paper, or existent but no longer active for any type of Utility use).

## **APPENDIX 20 TO PUBLIC-PRIVATE PARTNERSHIP AGREEMENT**

### **Attachment 3 to Appendix 20:**

As stated in Attachment 3 to Appendix 20 of the Agreement, the Developer will be bound by the prevailing wage rates published on the date that is ten days before the Proposal Submission Date of October 6, 2010. Proposers are advised that the schedule of rates currently set forth in Addendum No. 3 will be replaced at commercial close with the schedule of rates published as of September 26, 2010, and that the rates published as of September 26, 2010 can be found at <http://www.dot.ca.gov/hq/esc/oe/federal-wages>. Except for such replacement, Attachment 3 to Appendix 20 will be unchanged at commercial close. There shall be no right to any adjustment of Availability Payments, or other compensation from the Department, by reason of any differences in the rates contained in Addendum No. 3 and those published as of September 26, 2010.

## FORM A-2

### Financial Proposal Letter

PROPOSER: \_\_\_\_\_

Financial Proposal Date: October 6, September 27,2010

State of California  
Department of Transportation  
Office of the Director  
P3 Program  
1120 N Street , MS 49  
Sacramento, CA 95814

The undersigned (“**Proposer**”) submits this Financial Proposal (this “**Proposal**”) in response to that certain Request for Proposals (the “**RFP**”) issued by the California Department of Transportation (“**Department**”), an agency of the State of California, in cooperation with the San Francisco County Transportation Authority (“**Authority**”) (collectively “**Sponsors**”), dated July 9, 2010, as amended, to design, build, finance, operate and maintain the Presidio Parkway Project (the “**Project**”), as more specifically described herein and in the documents provided with the RFP. Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the RFP.

In consideration for Department supplying us, at our request, with the RFP and agreeing to examine and consider this Proposal, the undersigned undertakes [jointly and severally] ***[if Proposer is a joint venture or association other than a corporation, limited liability company or a partnership, leave in the words “jointly and severally,” otherwise delete]*** :

a) to keep this Proposal open for acceptance for a period of 180 days after submission of the Proposal without unilaterally varying or amending its terms and without any member or partner withdrawing or any other change being made in the composition of the partnership/joint venture/limited liability company/consortium on whose behalf this Proposal is submitted, without first obtaining the prior written consent of Department, in Department’s sole discretion; and

b) to provide security (including bonds, insurance and letters of credit) for the due performance of the Public Private Partnership Agreement (“**Agreement**”) as stipulated in the Agreement.

If selected by Sponsors, Proposer agrees to: (a) enter into the Agreement and satisfy all other conditions to and after award of the Agreement as set forth in Sections 6.2 and 6.3 of the Instructions to Proposers (“**ITP**”) included in the RFP; and (b) perform its obligations as set forth in the Agreement, including compliance with all commitments contained in this Proposal.

Enclosed, and by this reference incorporated herein and made a part of this Proposal, are the following Proposal components:

- Financial Proposal Executive Summary;

- Administrative Information Submittals; and
- Financial Proposal

Proposer further incorporates by reference the Technical Proposal and Administrative Information Submittals submitted by Proposer on September 13, 2010.

Proposer acknowledges receipt, understanding and full consideration of the following:

- Addendum No. 1 to Final RFP, issued August 13, 2010
- Addendum No. 2 to Final RFP, issued August 30, 2010
- Addendum No. 3 to Final RFP, issued September 7, 2010
- Addendum No. 4 to Final RFP, issued October 6, 2010
- Final Clarification Matrix RFCs 1-306 081310
- Final Clarification Matrix RFCs 307-491 081310
- Final Clarification Matrix RFCs 492-504 081310
- Final Clarification Matrix RFCs 505-589 083010
- Final Clarification Matrix RFCs 090410
- ***[list any other addenda to the RFP and sets of questions and answers by dates and numbers***

Proposer certifies the following: the Proposal is submitted without reservation, qualification, assumptions or conditions; Proposer has carefully examined and is fully familiar with all of the RFP documents and is satisfied that the RFP documents provide sufficient detail regarding Developer's obligations and do not contain internal inconsistencies; Proposer has carefully checked all the words, figures and statements in the Proposal; Proposer has conducted such other field investigations and additional design development as is prudent and reasonable in preparing this Proposal; and that Proposer has notified Department of any deficiencies in or omissions from any RFP documents or other documents provided by Department and of any unusual site conditions observed prior to the date hereof.

Proposer agrees to comply with the terms of the Initial Project Debt Competition set forth in Appendix G to the ITP.

Proposer represents that all statements made in the Statement of Qualifications previously delivered to Department, including those in Request for Qualifications Form F, are true, correct and accurate as of the date hereof, except as otherwise specified in the enclosed Proposal and Proposal forms. Proposer agrees that such Statement of Qualifications, including Request for Qualifications Form F, except as modified by the enclosed Proposal and Proposal forms, is incorporated as if fully set forth herein.

Proposer further represents that all statements made in the Technical Proposal and Administrative Information Submittals previously delivered to Department, including those in the completed ITP Appendix E, Forms A-1, C, E, G, I, K, L, M, and O, are true, correct and accurate as of the date hereof, except as otherwise specified in the enclosed Proposal and Proposal forms. Proposer agrees that such Technical Proposal and Administrative Information Submittals, including those in the completed ITP Appendix E, Forms A-1, C, E, G, I, K, L, M, and O, except as modified by the enclosed Proposal and Proposal forms, are incorporated as if fully set forth herein.

Proposer understands that Department is not bound to award the Agreement to the lowest priced Proposal, the highest scoring Proposal or any Proposal Department may receive.

Proposer further understands that all costs and expenses incurred by it in preparing this Proposal and participating in the RFP process will be borne solely by the Proposer, except any payment for work product that Department may pay Proposer in accordance with Appendix H. Proposer further agrees to accept the stipend offered for such work product and to the terms in Appendix H.

Proposer agrees that Sponsors will not be responsible for any errors, omissions, inaccuracies or incomplete statements in the Proposal.

The Proposal shall be governed by and construed in all respects according to the laws of the State of California.

Proposer's business address:

(No.)	(Street)	(Floor or Suite)
(City)	(State or Province)	(ZIP or Postal Code)
		(Country)

State or Country of Incorporation/Formation/Organization: \_\_\_\_\_

*[insert appropriate signature block from following pages]*

1. Sample signature block for corporation or limited liability company:

*[Insert the Proposer's name]*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

2. Sample signature block for partnership or joint venture:

*[Insert the Proposer's name]*

By: *[Insert general partner's or member's name]*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

*[Add signatures of additional general partners or members as appropriate]*

3. Sample signature block for attorney in fact:

*[Insert the Proposer's name]*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Attorney in Fact

## ADDITIONAL REQUIREMENTS:

- A. If the Proposer is a corporation, enter the state or country of incorporation in addition to the business address. If the Proposer is a partnership, enter the state or country of formation. If the Proposer is a limited liability company, enter the state or country of organization.
- B. Describe in detail the legal structure of the entity making the Proposal.
1. Provide a table showing the organization of the anticipated contracting entity. This table shall describe the role of all Equity Members, Major Non-Equity Members, Contractors and Guarantors (if any).
  2. If the Proposer (or any member, partner or joint venturer of the Proposer) is a corporation or includes a corporation as a joint venturer, partner or member, provide articles of incorporation and bylaws for the Proposer and each corporation certified by an appropriate individual.
  3. If the Proposer (or any member, partner or joint venturer of the Proposer) is a partnership or includes a partnership as a joint venturer, partner or member, attach full names and addresses of all partners and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for the Proposer and each general partner (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture agreement for a joint venture) certified by an appropriate individual.
  4. If the Proposer (or any member, partner or joint venturer of the Proposer) is a joint venture or includes a joint venture as a joint venturer, partner or member, attach the full names and addresses of all joint venturers and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for the Proposer and each joint venturer (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture agreement for a joint venture) certified by an appropriate individual.
  5. If the Proposer (or any member, partner or joint venturer of the Proposer) is a limited liability company or includes a limited liability company as a joint venturer, partner or member, attach full names and addresses of all members and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for the Proposer and each member (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture) certified by an appropriate individual. Attach evidence to the Proposal and to each letter that the person signing has authority to do so.
- C. With respect to authorization of execution and delivery of the Proposal and validity

thereof, if the Proposer is a corporation, it shall provide evidence in the form of a resolution of its governing body certified by an appropriate officer of the corporation. If the Proposer is a partnership, such evidence shall be in the form of a partnership resolution and a general partner resolution (as to each general partner) providing such authorization, in each case, certified by an appropriate officer of the general partner. If the Proposer is a limited liability company, such evidence shall be in the form of a limited liability company resolution and a managing member(s) resolution providing such authorization, certified by an appropriate officer of the managing member(s). If there is no managing member, each member shall provide the foregoing information. If the Proposer is a joint venture, such evidence shall be in the form of a resolution of each joint venturer, certified by an appropriate officer of such joint venturer. If the Proposer is a joint venture or a partnership, the Proposal must be executed by all joint venture members or all general partners, as applicable.

- D. The Proposer must also identify those persons authorized to enter into clarification discussions (if any) on its behalf with Sponsors in connection with this RFP, the Project and the Agreement.
- E. The Proposer's partnership agreement, limited liability company operating agreement, and joint venture agreement, as applicable, must include an express provision satisfactory to Department, in its sole discretion, stating that, in the event of a dispute between or among joint venturers, partners or members, as applicable, no joint venturer, partner or member, as applicable, shall be entitled to stop, hinder or delay work on the Project. Proposers should submit the applicable agreement to Department and identify on a cover page where in the agreement the provision can be found.