

**PRESIDIO PARKWAY PROJECT
TERM SHEET**

This Term Sheet uses certain terms that are capitalized. For a full definition of these terms, please see Appendix 1 of the draft agreement.

Term	Provision
Scope	
Project Scope	See Exhibit A, Section 1.
Contract Documents	
Contract Documents	<p>The comprehensive development lease agreement will be a set of integrated contract documents (“Contract Documents”) that will include:</p> <ul style="list-style-type: none"> • A public-private agreement (“Agreement”) setting forth legal and business terms for design, construction, financing, operation, maintenance and related matters, a draft of which is part of Attachment 4; • A project lease (“Lease”), signed concurrently with the public-private agreement, a draft of which is part of Attachment 4; and • Technical specifications (“Technical Provisions”), 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 earlier of (a) [33] years after the effective date of the Agreement, or (b) any earlier termination as provided in the Agreement.
Completion Milestones/Dates	Substantial Completion means the project is complete except for punch list items and open to traffic. The Substantial Completion Date sets the date for Substantial Completion of the Project. Substantial Completion shall occur no later than the Long Stop Date. Long Stop Date means a date beyond the Substantial Completion Date to be set forth in the Contract

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	<p>Documents.</p> <p>Developer will be required to achieve Final Acceptance within a set time after Substantial Completion.</p> <p>The right to Availability Payments will begin either on Substantial Completion or Final Acceptance, but in no event may Availability Payments commence earlier than the Early Completion Date. Early Completion Date means a date before the Substantial Completion Date or Final Acceptance Date to be set forth in the Contract Documents.</p> <p>Department will assess liquidated damages for failure to meet the Substantial Completion Date (and perhaps for failure to meet the deadline for Final Acceptance), in amounts to be determined. Failure to achieve Substantial Completion by the Long Stop Date may result in termination, in Department's sole discretion.</p>
<p>Project Planning, Review and Oversight</p>	
<p>Project Management Plan</p>	<p>Developer to prepare a project management plan that will set forth Developer's approach to development, design, construction, operation and maintenance of the Project. Among other things, the plan will include an operations and maintenance plan and a traffic management and traffic control plan.</p>
<p>Review and Oversight by Department</p>	<p>Department will have the right to review and comment on, or approve, certain submittals. The Contract Documents shall specify the standards for Department approvals (sole discretion, reasonable approval, etc.) Department approvals do not relieve Developer from complying with the Contract Documents.</p>
<p>Design and Construction</p>	
<p>Design and Construction Generally</p>	<p>Developer is responsible for design and construction in accordance with the Contract Documents.</p>
<p>Design and Construction Monitoring</p>	<p>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.</p> <p>Developer will provide and implement a quality assurance/quality control plan, , which must comply with the standards and specifications set forth in the Technical</p>

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	Provisions.
Right of Way	<p>Department has obtained or will obtain agreed right of way and rights of entry for the work. 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 temporary rights of way and rights of entry that are desirable for the Project.</p> <p>The Department, 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.</p> <p>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.</p>
Utilities	<p>Utility adjustment work is not included in the Contract Documents and will be performed by others. To the extent Developer encounters unidentified trunk and mainline Utilities, or if there is unreasonable delay by a utility in its performance of work to relocate them or to provide utilities for the Project, Developer will be entitled to relief.</p>
Permits	<p>Department has obtained or will obtain key specified permits and governmental approvals as specified in the Contract Documents. Developer will be responsible for obtaining all other permits and government approvals.</p>
Hazardous Materials	<p>Developer shall be responsible for the handling and remediation of Hazardous Materials.</p> <p>The costs for remediation of Hazardous Materials that are existing in the right of way as of the Effective Date ("Pre-Existing Hazardous Materials") are allocated as follows:</p> <ul style="list-style-type: none"> -Developer is responsible for the first \$XX million in costs. -The second \$YY million in costs are shared [50/50] by

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	<p>Department and Developer.</p> <p>-After the second \$YY million in costs, Department shall pay 100% of the costs.</p> <p>Developer is responsible for the remediation cost of Hazardous Materials that it releases.</p> <p>Developer is entitled to relief in the event of a release of Hazardous Materials by a third party other than a Developer-Related Entity.</p> <p>Developer is entitled to compensation in the event of a release of Hazardous Materials by Department.</p> <p>Department shall be the “generator” of all Pre-Existing Hazardous Materials and releases of Hazardous Materials by those other than Developer-Related Entities.</p> <p>Developer shall be the “generator” of all Hazardous Materials that any Developer-Related Entity releases.</p>
Cultural/Archeological Heritage	<p>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.</p>
Differing Site Conditions	<p>Developer will bear all cost risk, but will be entitled to schedule relief, in the event of (a) subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to proposers prior to the deadline for submitting proposals or (b) unknown physical conditions at the site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents. Developer will acknowledge it has received and analyzed designated site investigations, surveys and reports previously done by or for Department.</p>
Traffic Management and Control	<p>Developer will be responsible for traffic management and control during design and construction. The Developer’s traffic management and control responsibilities will apply to both work designed and constructed by Developer (Contracts 5 through 8, or “Phase II”) as well as work not designed and constructed by Developer (Contracts 3 and 4, or “Phase I”).</p>
Operations and Maintenance	

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Operating Standards and Requirements	<p>Developer shall operate and maintain the Project in accordance with best management practices, the Contract Documents and applicable laws and approvals. Non-discriminatory changes (changes of general application to Department projects) will be implemented at Developer's expense up to a cap to be set forth in the Agreement, and at Department's expense for costs above the cap; but 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.</p> <p>Noncompliance with operating standards and requirements will result in decreases in payment and may result in termination.</p>
O&M Scope	<p>During the course of design and construction of the Project, Developer will be responsible for certain operation and maintenance work.</p> <p>After Substantial Completion, Developer will be responsible for operation and maintenance of all Project facilities, including the operation and maintenance of work designed and constructed by Developer (Phase II) as well as work not designed and constructed by Developer (Phase I), except that Department will retain responsibility for monitoring tunnel traffic flow and safety from its traffic management center, and may retain responsibility for certain other functions.</p>
Existing Structures and Facilities	<p>Not later than [3] months after the issuance of NTP 2, Developer and Department shall inspect all existing structures and facilities of Phase I. 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.</p> <p>As of the Substantial Completion Date, Developer shall be deemed to accept such existing structures and facilities in their then-current condition, except for Structural Latent Defects. Notwithstanding the foregoing, 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 [3-5] years after completion of the inspection, 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. Thereafter, Developer will bear all risk of such latent defects.</p>

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O&M Monitoring	<p>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.</p> <p>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 Provisions.</p>
Technology Enhancements	<p>Developer may be required to implement technology enhancements during the term. Technology enhancements include modifications, revisions and upgrades to enforcement systems, computer systems, software and other technology used for the operation of the Project.</p> <p>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 "Operating Standards and Requirements" above.</p>
Renewal Work	<p>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 schedule for the coming year.</p> <p>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 on in the event that Developer fails to perform the required renewal work.</p>
Handback Requirements	<p>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 reversion of the Project to Department. At the conclusion of the Operating Period, the Developer will transfer the Project in the condition set forth in the Contract Documents.</p> <p>For a specified period (e.g. four years) before the end of the term, Developer shall establish a handback requirements</p>

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	<p>reserve to fund the required handback work for the amount determined pursuant to the Contract Documents. At that time, any funds left in the renewal work reserve are transferred into the handback requirements reserve. 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.</p>
<p>Noncompliance</p>	
<p>Noncompliance Points and Noncompliance Events</p>	<p>Department will assess noncompliance points for Developer's failure to meet availability and performance requirements or satisfy contract requirements for both the design and construction and operations and maintenance work. The accumulation of noncompliance points will lead to additional oversight and monitoring, and may result in termination.</p> <p>Noncompliance points are not directly linked to liquidated damages. Instances of non-compliance, however, may lead to decreases in Milestone Payments or Availability Payments.</p>
<p>Contracting and Labor Practices</p>	
<p>Contracting</p>	<p>Developer shall be entitled to contract with others to perform the work, but such contracts shall not relieve the Developer of responsibility for the work. Developer shall not terminate or substitute any Key Contractor without Department's approval. The provisions that are to be included in Key Contract shall be set forth in the Agreement.</p>
<p>Labor Standards</p>	<p>Developer will comply with applicable labor standards, including payment of prevailing wages.</p>
<p>UDBE/DBE Program</p>	<p>Developer will comply with UDBE/DBE Program requirements.</p>
<p>Relief Events</p>	
<p>Relief Event Categories</p>	<p>The following are Relief Events:</p> <ul style="list-style-type: none"> Force Majeure Events; Department failure to perform or observe any of its material covenants or obligations under the Agreement or other Contract Documents; Changes in state law; Discriminatory O&M Changes;

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	<p>Department Changes;</p> <p>Department-Caused Delays (including certain suspensions, failure to issue notices to proceed within required times, failure to respond to submittals in times specified);</p> <p>Certain delays or impacts associated with Department's acquisition of Right of Way;</p> <p>Utility owner delays;</p> <p>Pre-Existing Hazardous Materials;</p> <p>Discovery on or near the Project right of way of items of cultural / archeological significance;</p> <p>Discovery on or near the Project right of way threatened or endangered species;</p> <p>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;</p> <p>Non-Discriminatory O&M Changes;</p> <p>Safety Compliance Orders;</p> <p>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;</p> <p>Release of Hazardous Materials by Department or a third party who is not a Developer-Related Entity;</p> <p>Violation of Law by Department or a third party that materially and adversely impacts the Project or Developer;</p> <p>Unexpected performance of works in the vicinity of the Project Right of Way carried out by Department or a Governmental Entity that disrupts Developer's onsite work;</p> <p>The development or operation of a Business Opportunity in the Airspace or Project Right of Way;</p> <p>Differing site conditions;</p> <p>Structural Latent Defects (i.e. in structures and facilities in Phase I of the Project) discovered during the [3-5] year period after the inspection (see "Existing Structures and Facilities" above); and</p> <p>Delays in obtaining major permits.</p>
<p>Developer Relief for Relief Events</p>	<p>When a defined Relief Event occurs, the Developer is entitled to an extension of the Completion Deadlines if the event occurs</p>

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	<p>during the Construction Period and impacts the critical path. If the Relief Event occurs during the Operating Period, Developer is entitled to a temporary suspension of the Developer's obligation to meet performance standards or provide full service if the Relief Event materially impacts the Developer's ability to meet the performance standards or provide full service – provided in both cases that the Developer would otherwise have met such deadlines or obligations.</p> <p>The Developer is entitled to extra work and delay costs associated with specified Relief Events.</p> <p>The Agreement will outline the limitations to Developer's entitlement to relief, time extensions and compensation based on the nature of the Relief Events. Limitations may include the Developer retaining responsibility for the first \$XXXX (to be determined) of extra work costs or the first XX (to be determined) days of delay costs. Developer may also not be entitled to relief until the Relief Event has lasted at least XX days.</p>
Force Majeure Events	<p>“Force Majeure Events” means the occurrence of any specified events outside the control of the parties 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. Force Majeure Events will be specifically listed in the Agreement.</p> <p>Time extensions and compensation will be provided for Force Majeure Events, with a right to terminate under certain circumstances.</p>
Compensation for Extra Work and Delay Costs	<p>Developer is entitled to compensation for extra work and delay costs for certain Relief Events. For those Relief Events, payment may be made in the Department's discretion (a) through periodic payments in accordance with a written payment schedule, (b) in a lump sum, (c) by adjustment to the maximum availability payment so as to make up all or any portion of such amount, (d) by extension of the Term so as to make up all or any portion of such amount, (e) any combination of the foregoing, or (f) in such other manner as agreed upon by the parties or determined through the dispute resolution procedures.</p>
Availability Payments	<p>In the event of delay in the trigger date for starting availability</p>

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During Delay in Project Opening	payments due to certain Relief Events, Department will compensate Developer based on a formula set forth in the Agreement for a portion of the Availability Payments that would otherwise be due during the period of delay. The reduction in the amount of these Availability Payments will be based on Department's estimate of Developer's avoided costs of performing operations and maintenance.
Delays Relating to Milestone Payments	In the event of a delay in a Milestone Payment due to certain Relief Events, Developer will be entitled to compensation for the additional interest it accrues as a result of the delay.
Extended Relief Events	Either party is entitled to request termination of the Agreement if a Relief Event (other than Department default) lasts longer than [270] days. If a request for termination is rejected by the Department, the Department will compensate the Developer. If a request for termination is rejected by the Developer, the Developer shall be entitled to extension of Completion Deadlines but shall not be entitled to any further compensation.
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.
Developer Compensation	
Milestone Payments	<p>Department will make one or two lump sum payments to the Developer in amounts and at times to be determined ("Milestone Payments").</p> <p>Milestone Payments will be adjusted based on construction violations, construction availability faults, construction closures and Noncompliance with the Contract Documents. Milestone Payments also may be reduced by liquidated damages for failing to meet deadlines for Substantial Completion or Final Acceptance. See "Completion Milestones/Dates" above.</p>
Payment Mechanism	<p>Developer will bid a single Maximum Availability Payment ("MAP") for a year specified. Availability Payments will be earned and paid as provided in the Agreement.</p> <p>Developer will begin earning Availability Payments upon Substantial Completion or Final Acceptance, but in no event</p>

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	<p>earlier than the Early Completion Date.</p> <p>Availability Payments will be adjusted based on factors as set forth in the Contract Documents. See Project Proposal Report for further discussion of Availability Payment adjustments.</p> <p>Availability Payments will not be adjusted over time for traffic growth. A portion of the Availability Payments ($\pm 15\%$) will be adjusted over time for inflation per changes in the CPI.</p>
Tolling	<p>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 the Department and various local governments and agencies, complying with applicable environmental laws and governmental permits, and agreement between the Department and the Authority on the disposition of excess toll and user fee revenues payable to the Department.</p> <p>If tolling commences, then Availability Payments will cease and the Department will be entitled to [<u> </u>%] of toll revenues in excess of the Availability Payments that would have been in effect.</p>
Financing	
Financing	Developer is responsible for financing the Project , and shall provide the Department with a comprehensive description of the financing plan.
Refinancing	Developer has the right, with Department’s written consent, to refinance funding agreements. Department is to share equally in 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 a possible exception for ad valorem real property taxes.
Appropriations Risk	<p>Developer assumes the risk of appropriations by Legislature, provided Department will be required to take certain steps to include the payments in its budget requests.</p> <p>If the Department fails to make payments when due, Developer may declare a default; which default could lead to termination and other contractual remedies.</p>
Lenders’ Rights	

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Lenders' Rights	<p>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 the Developer other than a limited time extension to step in and cure.</p> <p>Lenders are third party beneficiaries of the lenders' rights provisions in the Agreement, and may enter into direct agreements with the Department confirming these rights.</p>
Developer Ownership and Control	
Changes in Ownership and Changes in Control	<p>There shall be no change in equity ownership of the Developer (equity transfers) between commercial close and two years after the Substantial Completion Date.</p> <p>During the third through the sixth years after the Substantial Completion 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 seventh year, this 50% requirement no longer applies.</p> <p>All equity transfers that occur more than two years after the Substantial Completion 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.</p> <p>All equity transfers that occur more than two years after the Substantial Completion Date and result in a change in control of Developer are subject to Department's reasonable approval.</p>
Insurance, Indemnity and Payment/Performance Security	
Insurance	<p>Developer shall provide required insurance coverages. Developer will be entitled to an increase in the Availability Payment for significant increases in premiums due to market-based factors, via an insurance benchmarking procedure.</p> <p>In the event the required insurance is unavailable or unavailable at commercially reasonable rates, Department may elect to act as the insurer of last resort and be entitled to a credit for any insurance premium savings resulting from modification or elimination of the insurance requirements. Alternately, Department may elect to terminate the Agreement and pay termination compensation the same as upon termination for an Extended Relief Event.</p>
Indemnity	Developer shall indemnify, defend, protect and hold harmless

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	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 Security	Developer shall provide or cause its design-build contractor to provide payment and performance bonds or letters of credit (in amounts to be determined by Department). Developer shall also provide specified security for operations and maintenance work (in an amount to be determined by Department).
Default and Remedies	
Developer Defaults	<p>Developer Defaults include:</p> <p>Developer fails to satisfy the applicable conditions to commencement of the Design Work within 30 days of the Effective Date;</p> <p>Developer fails to begin the applicable portion of the Design Work within 10 days following Department's issuance of NTP 1;</p> <p>Developer discontinues the prosecution of the work for a period of 30 days or more;</p> <p>Developer fails to perform the work with sufficient resources to ensure prompt completion of the work;</p> <p>Developer fails to perform the work or any portion thereof in accordance with the Contract Documents (unless addressed by Noncompliance Points);</p> <p>Developer fails to comply with applicable Governmental Approvals and Laws;</p> <p>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 this Agreement;</p> <p>There occurs any use of the Project or a material portion thereof in violation of or not otherwise contemplated by the Contract Documents, the Technical Provisions, Governmental Approvals or Laws (except violations of Law by Users);</p> <p>Developer fails to obtain, provide and maintain any insurance, bonds, guarantees, letters of credit or other performance security as and when required under the Agreement, or fails to comply with any requirement of the Agreement pertaining to</p>

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	<p>the amount, qualifications, terms or coverage of the same;</p> <p>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;</p> <p>Any representation or warranty made by Developer in the Contract Documents, or documents delivered to Department pursuant to the Contract Documents, is false in any material respect or materially misleading or inaccurate in any material respect when made or omits material information when made;</p> <p>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;</p> <p>Bankruptcy or insolvency events of Developer, any Equity Member or any guarantor;</p> <p>Developer fails to comply with Department's written suspension of work order;</p> <p>Developer fails to: (a) commence the Construction Work by the Construction Commencement Deadline; or (b) achieve Substantial Completion by the Long Stop Date;</p> <p>Persistent Developer Noncompliance exists and</p> <p>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 or Department-approved Traffic Management Plan.</p>
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	<p>Department shall have the right to exercise one or more of the following remedies in the event of an uncured Developer Default:</p> <p>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 (entry to rectify wrongful uses or closures of the Project can be immediate, without giving notice or awaiting lapse of any cure period);</p> <p>Right to step-in and cure Developer Defaults;</p> <p>Certain rights to ensure implementation of and compliance with</p>

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	<p>Safety Standards;</p> <p>Right to suspend work for certain Developer Defaults;</p> <p>Right to recover damages for a Developer Default and for specified persistent Developer defaults;</p> <p>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;</p> <p>Right to terminate in the event of a material Developer Default that, after delivery of a warning notice and failure to cure, becomes a default termination event; and</p> <p>Other remedies as provided by Law.</p>
Department Defaults	<p>Department Defaults include:</p> <p>Failure to make any payment due the Developer under the Agreement when due after expiration of the cure period to be defined in the Agreement;</p> <p>If any express representation or warranty made by Department is false or materially misleading or inaccurate when made in any material respect or omits material information when made; and</p> <p>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 this Agreement.</p>
Cure of Department Defaults	<p>Department shall be provided the opportunity to cure Department defaults, as described in the Contract Documents.</p>
Developer Remedies for Department Default	<p>Developer shall have the right to exercise one or more of the following remedies in the event of an uncured Department default:</p> <p>Right to terminate the Agreement for a material failure to pay or material confiscation of Developer's Interest; or</p> <p>Right to seek damages or other remedies as provided by law.</p>
Limitations on Liability	<p>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</p>

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	negligence), or any other theory of liability.
Appropriations Risk	Same as provided under Financing.
Early Termination and Compensation for Early Termination	
Grounds for Termination	The Agreement may be terminated for: extended Relief Events, certain defaults by either party; convenience of Department and court order voiding the Agreement or making performance impossible.
Compensation Entitlement	In the event of a termination prior to the end of the term, the Developer shall be entitled to compensation based on the nature of the termination.
Termination for Extended Relief Events	<p>If a Relief Event lasts more than [270] days, either party may terminate with the concurrence of the other.</p> <p>As full and final payment and satisfaction of Department's obligations, Department shall pay Developer (or to its lenders when duly pledged) a termination payment in an amount equal to:</p> <ul style="list-style-type: none"> (1) The Project Debt and net breakage costs; plus (2) Previously committed equity investment less any distributions; plus (3) out of pocket termination costs; <p>minus</p> <ul style="list-style-type: none"> (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, Department Suspension of Work, or by Court Ruling	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 Department Default, termination due to Department Suspension of Work, or Termination by Court Ruling. As full and final payment and satisfaction of Department's obligations, Department shall pay Developer (or to his lenders when duly pledged) a termination payment in an amount equal to:

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	<p>(1) The Project Debt and net breakage costs; plus</p> <p>(2) If Backward Looking: An amount which gives an internal rate of return 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, each amount discounted back at the Equity IRR; plus</p> <p>(3) out of pocket termination costs;</p> <p>minus</p> <p>(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).</p>
Termination for Developer Default	<p>The termination settlement payment will be:</p> <p>(1) The lesser of (a) Project Adjusted Costs, or (b) the costs as shown in the Schedule of Values for work completed as of the Early Termination Date; plus</p> <p>(2) The lesser of (a) the actual costs incurred in performing the O&M Work, or (b) the costs shown in the O&M Work budget for the Construction Period, corresponding to the percentage of the O&M Work completed as of the Early Termination Date;</p> <p>minus the sum of (3) and (4) below:</p> <p>(3) Department losses due to Developer Default and the costs of replacing Developer; and</p> <p>(4) Any amounts previously paid by Department to Developer under the Agreement.</p> <p>(The Agreement, however, may possibly provide a floor for the Termination Amount equal to a portion [80% or less] of the outstanding Project Debt (including net breakage costs) minus the sum of (3) and (4) above.)</p>
Appropriations Risk	Same as provided under Financing.
Dispute Resolution	
Dispute Resolution	Dispute resolution will include a disputes review board, whose decisions will be non-binding. Use of the board is a

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	precondition to the initiation of arbitration or litigation.
Governing Law and Federal Requirements	
Governing Law	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

1. Project Scope – Phase I

Developer will be responsible for the operation and maintenance of the following primary Doyle Drive Replacement Project components (Phase I):

Contract	Project Description
Contract 1	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.
Contract 2	Utility relocation prior to construction activity, including water, electric, sewer and telecommunications, and including private utility relocation for items owned by the Presidio. (Public utility relocations included in the Right of Way (ROW) data sheet).
Contract 3	Ruckman, Southern Park Presidio Interchange (PPI), South Bound (SB) High Viaduct. Including the southbound portion of the Presidio Interchange.
Contract 4	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.

2. Project Scope – Phase II

Developer will be responsible for the design, construction, operation, maintenance and financing of the following primary Doyle Drive Replacement Project components (Phase II):

Contract	Description
Contract 5	Main Post Tunnels, Northbound Battery Tunnel, Electrical and Mechanical Substation, Traffic Switch (Full Weekend Closure)
Contract 6	Girard Road Undercrossing, Low Viaduct
Contract 7	Northbound High Viaduct, Northern Park Presidio Interchange, Northbound Roadway to Merchant Road, Demolish Existing High Viaduct
Contract 8	Landscaping