

# Memorandum

# TAB 71

To: CHAIR AND COMMISSIONERS  
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: June 29-30, 2016

Reference No.: 2.5e.(2)  
Action Item

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Subject: **SUPPLEMENTAL FUNDS FOR PUBLIC PRIVATE PARTNERSHIP – PRESIDIO PARKWAY PROJECT**

## **RECOMMENDATION:**

The California Department of Transportation (Department) recommends that the California Transportation Commission (Commission) allocate up to \$120,100,000 for the Public Private Partnership Presidio Parkway Project (Project) for unanticipated expenses in excess of the Risk Reserve. This request is intended to address all claims, known or unknown, related to the issues resolved in the proposed settlement, including the identified Notice of Potential Claims, Department Changes, remaining work, Landscaping Work and the current litigation. It also represents the best business decision to resolve the total known universe of claims to articulate a path to successfully complete the Project.

## **ISSUE:**

This supplemental request is for the three categories of Project expenses identified below:

- A. **Contract Obligations:** Contract obligations are based on additional scope of work arising from differing site conditions and obligations to pay the Department's share of costs incurred during the execution of the Project. The supplemental request for the Contract Obligations is split into two categories. The first category with a sum of \$4.7 million is for the additional scope of work that was completed by the Developer. The second category with an estimated cost of not more than \$24.3 million is for additional scope of work to be performed by the Developer to achieve Final Acceptance. The supplemental request for the Contract obligations is not to exceed \$29 million.
- B. **Proposed Settlement:** A significant portion of the "Settlement" is resolving the dispute of responsibility and risk transfer to the Developer to obtain all approvals from the Presidio Trust. The Department has been working diligently to resolve certain outstanding potential disputes at the lowest possible cost. The supplemental request for the Proposed Settlement is \$90.1 million.
- C. **Owner Control Insurance Program (OCIP):** A delay in the overall project timeline has caused the need for extending OCIP. The supplemental request for OCIP is \$1 million.

**BACKGROUND:**

The Public Private Partnership (P3) Presidio Parkway Project (PPNO 0619P) is located in the city and county of San Francisco on Doyle Drive (Route 101) and Richardson Avenue from Lombard Street to the Golden Gate Bridge Toll Plaza. An initial budget of \$1.4 billion was approved by the Commission in May 2010. In June 2013, the Commission adopted a revised budget of \$1.08 billion, which included a risk reserve to pay for Department obligations expressly identified in the Contract Documents.

That \$36.84 million risk reserve, approximately 3.4 percent of the total approved budget, has been drawn down to cover the following costs, with Commission's approval:

- \$6 million to cover the costs of the Owner Controlled Insurance Program (OCIP), September 2012
- \$12 million for staffing, May 2014
- \$1.8 million for additional scope of work resulting from differing site conditions, May 2014
- \$600,000 for the Resident Engineer's construction office, December 2014
- \$3.75 million to cover the Presidio Trust fees for oversight of design and construction activities for its facilities, January 2015
- \$3.135 million was for Department Changes and Dispute Resolution Board fees, May 2015
- \$9.515 million for Settlement of outstanding disputes, May 2015

In September 2015, the Developer received a \$185 million milestone payment for reaching Substantial Completion of the Project by opening the main line to traffic. Substantial Completion also entitled the Developer to partial quarterly installments of the Availability Payments (AP) for the Maintenance and Operation of the Project. Until the Developer achieves Final Acceptance, however, the Department will withhold 20 percent of the quarterly payments as required by the Contract Documents.

While most of the work to be completed are outside the Department's right-of-way, the Developer claims that it has been hindered in achieving Final Acceptance because of delays the Developer largely attributes to the permitting authority of the federally established Presidio Trust. The Developer also maintains that additional changes and unresolved disputes will greatly impact the likelihood of Final Acceptance by the September 2016 date required in the Contract Documents. Details of the delays are discussed further in this request.

**BASIS FOR SUPPLEMENTAL FUNDS:**

**A. Contract Obligations**

The request for up to \$29.0 million identified below, is to cover the Department Changes (DCOs) resulting either from work which was not performed under Phase 1, due to physical constraints or design and construction sequencing of the Project. There were elements of Phase 1 that were not completed at the time the Developer submitted its proposal. Therefore, issues that arose in construction of Phase 1 had an impact on the work that was contemplated by Developer at the time its

bid was submitted, resulting in either a change of the scope of work required or in differing site conditions that could not have been reasonably anticipated by the Developer before submitting its bid. These DCOs are identified in more detail below:

**Completed DCOs (\$4.74 million):**

**Department Change No. 10 – Abandon and Protect Unidentified Utilities along Girard (\$53,000)**

This DCO compensates the Developer for the removal of abandoned existing vault and sewer line, and the protection of an electrical line, along Girard Road. These facilities were not previously known and not shown in the Indicative Preliminary Design Plan. Therefore, they were not identified before the Department received the Developer's bid. This work is completed.

**Department Change No. 13 – ST-10 Barrier Rail along Southbound US 101 (\$1,183,000)**

This DCO compensates the Developer for installing approximately 618 ft. of ST-10 barrier rail on SB-101. These sections of railing were not installed under Phase 1 as they were either in the way of the temporary detour or in conflict with the shoring that was holding up the old abutment. This determination was not made until after the Developer was selected. In addition, it compensates the Developer for all the work associated with the modifications of Traffic Operation System (TOS) equipment, drainage, vaults and electrical system that were installed in Phase 1 at this location that are now in conflict with the installation of the new ST-10 barrier rail. This change was made after the Department received the Developer's bid. This work is completed.

**Department Change No. 14 – Polyester Concrete Overlay at Hook Ramp (\$10,266)**

This DCO compensates the Developer for work entailing the infill of a dip in the concrete pavement under the Hook Ramp Bridge with Polyester Concrete. The Phase 1 portion of the Hook Ramp tunnel was cast with a grade variation that is outside of specification requirements. This variation was not known at the time of the completion of Phase 1 since it was located next to a temporary shoring wall and could not be properly profiled. Therefore, it was not known to the Developer at the time its proposal was submitted. The Department is sharing the cost of this work with the Developer as they also failed to catch this error and cast their work to meet the existing grades. This change was made after the Department received the Developer's bid. This work is completed.

**Department Change No. 17 – Battery Tunnel Fire Water Connection (\$52,000)**

This DCO compensates the Developer for locating a fire water supply line tie-in from Phase 1 and the removal and replacement of the Continuously Reinforced Concrete Pavement (CRCP) to access the connection. The water line was extended beyond Phase 1 CRCP. This change was made after the Department received Developer's bid. Work is completed.

**Department Change No. 20 – Conflicts with Phase 1 South Bound Battery Tunnel (SBBT) Opening Infill (\$85,000)**

This DCO compensates the Developer for additional work required to close the existing SBBT opening. The opening was not built per Phase 1 initial plans due to changes that were made during construction and not known to Developer at bid submittal, and the extent of the changes were not visible at the surface. Previous cost estimate for this closure was contingent upon the existing opening having been constructed per Phase 1 plans. Further investigation by the Developer revealed

that additional work was required, including the removal of PVC sleeves to extend bar reinforcing steel through the beams, chipping down the top of the longitudinal beams to lay transverse bars at the correct elevation, drilling holes for longitudinal rebars where existing bar couplers were filled with mortar, and correcting rebar coupler alignment for the large transverse bars. This change was made after the Department received the Developer's bid. This work is completed.

**Department Change No. 23 – Restriping at Hook Ramp Bridge (\$10,359)**

This DCO compensates the Developer for restriping and signage at the Hook Ramp Bridge leading from Northbound US 101 to Southbound State Route 1. During the construction of Phase 1, a solid edge stripe was placed from SB101 to SB1 instead of the final delineation. The decision to not place the final pavement delineation was made towards the end of Phase 1 construction and after the Department received the Developer's bid. This work is completed.

**Department Change No. 25 – Northbound Presidio Viaduct & Veterans Off-Ramp Steel Fin Design Phase 1 Contract Change Order No 73 (\$808,563)**

This DCO compensates the Developer for matching the architectural details of Southbound High Viaduct steel fins, for the construction of Northbound Presidio Viaduct & Veterans Off-Ramp. Phase 1, Contract Change Order 73 revised SB High Viaduct steel fins design details by modifying the structural tube size and reconfiguring the web plate connection details. This change was made after the Department received the Developer's bid. This work is completed.

**Department Change No. 30 – Temporary Storm Drain Bypass and Pump System at SBBT, Phase 1 Contract Change Order 22 (\$211,774)**

This DCO compensates the Developer for managing temporary storm drain bypass and a pump system installed in Phase 1 to dewater the SBBT. This change was made after the Department received the Developer's bid. Work is completed.

**Department Change No. 31 – Various Electrical & Systems Change Orders from Phase 1 (\$2,033,000)**

This DCO compensates the Developer for finishing and completing the installation of the electrical systems that were modified in Phase 1. This change was made after the Department received the Developer's bid. This work is completed.

**Department Change No. 32 – Bridge Demolition (not completed in Phase 1) (\$190,133)**

This DCO compensates the Developer for Extra Work Costs for demolition and removal of a portion of the on-ramp bridge that could not be completed in Phase 1. This change was made after the Department received the Developer's bid. This work is completed.

**Department Change No. 37 – Phase 1 Camera Replacement (\$100,431)**

This DCO compensates the Developer for upgrading the existing Cameras that were installed in Phase 1 to a higher definition cameras. This change was made after the Department received the Developer's bid. This work is completed.

**Uncompleted DCOs (not to exceed \$24.26 million):**

**Department Change No. 12 – Signaling at Richardson and Gorgas Intersection (\$201,500)**

This DCO compensates the Developer for Extra Work Costs associated with modifications required for the signals at the intersection to meet City standards. Work was initially performed to Department standards, however the Developer was unaware that the intersection is subject to a cooperative agreement with the City. This change was made after the Department received the Developer's bid. This work is not completed.

**Department Change No. 15 – ST-10 Barrier Rail at the Existing Southbound High Viaduct (\$406,000)**

During Phase 1 construction, Southbound High Viaduct was cast with a temporary widened section to accommodate contraflow traffic. After the selection of the Developer, the Department made constructability changes to the details of this widened section. Since the changes were made after the Developer submitted its bid, this DCO compensates the Developer for work including the removal of polyester overlay to uncover couplers, adjusting Phase 1 alignment (curb, edge of deck and anchors), drilling and bonding additional bar reinforcing steel, and supplying larger diameter anchor rods. This work also includes the maintenance of K-rail and delineators during the time required for finishing the work. This change was made after the Department received the Developer's bid. This work is not completed.

**Department Change No. 18 – Reclaimed Water Line Work (\$782,188)**

This DCO compensates the Developer for Extra Work Costs to relocate a reclaimed water line that was not shown in the Indicative Preliminary Design (IPD) plan. Additionally, the pre-existing alignment of the water line would have placed it in the middle of and be exposed in the future wetlands. The Developer is entitled to compensation under the Contract Documents (Volume 1, Article 4, Subsection 4.5.8, "Unknown Utilities,") since the reclaimed water line was not shown on the Utility Information sheets. This change was made after the Department received the Developer's bid. This work is not completed.

**Department Change No. 21 – Demolish Barrier and Retaining Wall at Richardson (\$208,099)**

This DCO compensates the Developer for demolition of a barrier and short retaining wall along Richardson. The Phase I contract was originally tasked to remove this portion of rail and fence. At the time of this work, it was more important to open up the temporary detour alignment to traffic, so barrier and wall were not demolished. Additionally, the location of the existing rail did not affect the overall geometry of the temporary detour. For these two reasons, the rail and fence were left in place. This change was made after the Department received the Developer's bid. This work is not completed.

**Department Change No. 27 – Detour Design Change Cellular Concrete from Phase 1 Contract Change Order 45 and 59 (\$5,570,332)**

This DCO compensates the Developer for removing cellular concrete that was placed under the temporary bypass road in Phase 1, Contract Change Order 45 and 59. This change was made after the Department received the Developer's bid. This work is not completed.

**Department Change No. 33 – Presidio Trust Lighting Criteria (\$333,500)**

This DCO compensates the Developer for Extra Work Costs associated with new criteria for lighting set by the Presidio Trust that was different from the lighting requirements in the Contract Documents. This change was made after the Department received the Developer's bid. This work is not completed.

**Department Change No. 34 – Realignment of Lincoln (\$1,385,131)**

This DCO compensates the Developer for Extra Work Costs incurred in realigning Lincoln Boulevard from its current alignment constructed in Phase 1 to its final configuration over the Battery Tunnel. This work was not explicitly defined in the Contract Documents. This change was made after the Department received the Developer's bid. This work is not completed.

**Department Change No. 35 – Utility Line installed at Cavalry Bowl (\$100,000)**

This DCO compensates the Developer for adjusting utility lines installed during Phase 1 that are in conflict with the final grading plan. At the time of installation, the final grading plan was not yet developed. This change was made after the Department received the Developer's bid. This work is not completed.

**Department Change No. 36 – Trust Required Rail/Fencing (west McDowell) (\$200,000)**

This DCO compensates the Developer for Extra Work to change the original rail/fencing at McDowell as required by the Presidio Trust to match Phase 2 rail and fencing. This change was made after the Department received the Developer's bid. This work is not completed.

**Department Change No. 38 – Southbound High Viaduct ST -10 Barrier Railing at Seismic Joints (\$515,000)**

This DCO compensates the Developer for all the work associated with the installation of ST-10 Barrier Railing over the Seismic Joints at Southbound High Viaduct. Southbound High Viaduct was cast with a temporary widened section to accommodate contraflow traffic on the Temporary Bypass in Phase 1. In order to accommodate future installation of ST-10 Barrier Railing, bar reinforcing steel inserts and anchor couplers were cast into the deck by Phase 1 contractor. During the design, the Developer made a determination that there were insufficient amounts of inserts and couplers installed at the seismic joints and additional work and material will be required by the Developer to finish the installation of the ST-10 Barrier Railing into its final configuration. This work is not completed

**Department Change No. 39 – Girard Rd, remove barrier left from Phase 1(\$97,000)**

This DCO compensates the Developer for removal of barrier rail left from Phase 1. This portion of barrier was to be removed under the Phase 1 contracts but was left in place to expedite the initial traffic switch to allow for the P3 contract to proceed. The barrier rail was not in conflict with the temporary detour. This change was made after the Department receiving of the Developer's bid. Work is not completed.

**Department Change No. 45 – Building 201 (\$366,000)**

This DCO compensates the Developer for Extra Work Costs in restoring building 201 including, resizing of gas line, garbage enclosure and deck as required by the Presidio Trust. This change was made after the Department received the Developer's bid. This work is not completed.

**Department Change No. 47 – Additional Asphalt Concrete removal at Parking Lot C&D and Temporary Girard Detour (\$85,000)**

This DCO compensates the Developer for the removal of additional Asphalt Concrete at parking lots C&D and Temporary Girard Detour that was placed in Phase 1. This change was made after the Department received the Developer's bid. This work is not completed.

**Department Change No. 50 – Unknown Utility High-Density Polyethylene Pipe (HDPE) temporary drain (\$250,000)**

This DCO compensates the Developer for inspection and proper abandonment of an underground drain line installed during Phase 1 as a temporary drain line. This change was made after the Department received the Developer's bid. This work is not completed.

**Department Change No. 51 – Battery Substation Retaining Wall and Fence (\$250,000)**

This DCO compensates the Developer for removing a portion of Retaining Wall No. 04 and the chain link railing atop the wall in accordance with Presidio Trust requirements. This change was made after the Department received the Developer's bid. This work is not completed.

**Department Change No. 52 – Reconfigure Waterline Adjacent to YMCA (\$250,000)**

This DCO compensates the Developer for the unanticipated relocation of an existing waterline, in accordance with Presidio Trust requirements. This change was made after the Department received the Developer's bid. This work is not completed.

**Department Change No. 53 – Storm Drain 32 (\$250,000)**

This DCO compensates the Developer for installing Storm drain that was not included in the Contract Documents. This change was made after the Department received the Developer's bid. This work is not completed.

**Department Change No. 54 – Safety Rail at Sta 75+00. (\$199,146)**

This DCO compensates the Developer for installing additional Safety Rail at various locations within the job limits above and beyond the Department's cable safety railing. The cable railing previously installed by the Department will be replaced with this new railing. At the time of the P3 bid and during Phase I contracts, the Department was still in negotiations with the Presidio Trust and had not yet agreed to an acceptable railing type. This change was made after the Department received the Developer's bid. This work is not completed.

**Department Change No. 55 – Demo Parapet Wall from Phase 1 (\$227,719)**

This DCO compensates the Developer for removing a parapet wall left from Phase 1 as required by the Presidio Trust to facilitate installation of their landscaping. This change was made after the Department received the Developer's bid. This work is not completed.

Other DCOs are under discussion with the Developer and final estimated cost will be included in this estimate of work.

## B. Proposed Settlement

As with any project, and as allowed under the P3 Agreement, the Department is in receipt of potential claims from the Developer. The request for \$90.1 million identified below is to cover the proposed settlement of those potential claims. While it is the position of the Department that the risk was allocated to the Developer on these potential claims under the Contract Documents, based on the uncertainty of litigation it is in the Department's best interest to settle these claims at this point. The Proposed Settlement is for the following potential disputes and the total amount the Developer's claims is over \$250 million:

1. **Design Changes due to the Quartermaster Reach (QMR) Wetland Restoration Project (\$1,320,227):** The Presidio Trust has an ongoing, adjacent project entitled Quartermaster Reach (QMR) wetland restoration project. During the design process the Trust issued their criteria for the design of the Tennessee Hollow and Girard bridge foundations within the QMR restoration project. The Developer claims that the additional mandatory design criteria requirements by the Presidio Trust's QMR restoration project impacted the design and construction activities and schedule. These changes include but are not limited to additional analyses, revised foundations for Tennessee Hollow and Girard Bridges, revised grading plans, revised support features for Halleck Street, revised utility alignments and revised boundaries of the QMR restoration project. This work was completed.
2. **Allowance Landscaping for Recreated Bluffs (\$5,000,000):** The Project Allowance Landscaping includes certain elements of work for which the Contract Documents describe an allocation of cost and risk sharing between the Developer and the Department. The Developer claims the embankment work necessary to construct the road way is not included in the Allowance Landscaping costs, but that the earthwork to recreate the historic bluffs is part of the costs of the Allowance Landscaping. The Developer claims that the recreated bluffs are strictly a landscape feature and are not necessary for the construction of the roadways, and therefore all costs for the construction of the recreated bluffs are included in the Allowance Landscaping including the design, purchase (including transportation and handling), construction, installation and any stabilization measures. This work is not completed.
3. **Battery Bluffs, Landscape Outside the Temporary Construction Easement (TCE) (\$4,326,354):** The Developer claims the scope of work as detailed in Volume 2, Division II, Landscaping is bound by the limits of the (TCE) secured by the Department from the Presidio Trust under the Right of Entry Agreement. Based on the Landscape Design Criteria provided by the Department, the Developer claims all landscaping identified in the criteria was bound by the (TCE) as described in the Contract Documents and no landscaping was shown outside the TCE in the area north of the Battery Tunnels at Battery Bluff. The Developer is requesting additional compensation and time extension for landscaping outside the TCE at the Battery Bluffs. This work is not completed.



4. **Storm Water Treatment Permit Modification (\$2,542,000):** The Developer claims the additional acreage, increased from 27.3 acres to 33.37 acres, requested by the Regional Water Quality Control Board (RWQCB) is more than the area of the project Right of Way for which the storm water can be collected. In addition to the revised treatment area, the RWQCB required a sizing methodology impacted the Project's tributary area to size BMP. Since the RWQCB requirements took effect after the Department's selection of the Developer. This work is not completed.
5. **Swords to Plowshares Parking Lot (\$1,358,020):** The Developer claims the Presidio Trust required a complete replacement of the Swords to Plowshares parking lot, including but is not limited to moving the parking lot further to the south and constructing new retaining walls, access, drainage, and landscaping. The Developer claims that this scope is not included in Contract Documents and therefore additional compensation is due to the Developer for the new scope of work. This work is not completed.
6. **Gorgas Avenue/Richardson Avenue Intersection Design and Traffic Studies (\$536,767):** The Developer claims the Presidio Trust have demanded the Developer to perform design development and analysis for various options along Gorgas at the Richardson intersection. These demands included the review of a roundabout design, multiple revisions to traffic studies based on evolving criteria from the Presidio Trust, various turn lane options at Richardson and parking solutions along Gorgas. Also the Developer claims this work is outside the (TCE) and requested additional compensation. Work was completed.
7. **Main Post Tunnel (MPT) Substation Power (\$312,376):** The Developer claims that a lack of coordination between the Department and PG&E to provide a utility line to the MPT substation has impacted the sequence of activities that must occur after the line is installed and has caused a delay. Additionally, the Developer had to mitigate the impacts of this issue through the use of acceleration measures and additional compensation. Work was completed.
8. **Multiple Use Trail (MUT) at Lyons Street (\$118,731):** The Developer claims the Presidio Trust has demanded that the Developer construct the connection of the MUT from Lyon Street to Gorgas Street as shown in the Architectural Criteria. The Developer also claims that this work is not part of the Contract Documents scope and this area is not within the TCE and therefore additional compensation will be due to the Developer for the new scope of work. This work is not completed.
9. **Presidio Trust (PT) Service Fees (\$4,000,000):** The Developer claims the Contract Documents does not require the Developer to enter into an agreement with the Presidio Trust to reimburse the Presidio Trust for the costs of their review, inspection and oversight for their facilities that are designed and constructed by the Developer. During Phase 1, the Department entered into such agreement with the Presidio Trust. .
10. **Presidio Trust Permit Process (\$84,028,674 for this item and item 11 below):** The Developer claims the Presidio Trust has required the Developer to apply for multiple Excavation Clearance Permits (dig permits) in order to commence construction work. The Developer also claims the Presidio Trust is improperly using the permit process as an additional approval process in order to control the work and extract further scope, concessions, or construction costs from the Developer. Delays in issuance of permits by the Presidio Trust have caused significant delays to critical path work, increased application

reviews, and added requirements resulting in additional costs. Some permits are still outstanding and the Developer is waiting for the Trust to issue them before commencing the work.

11. **Reimbursement for Management of the Presidio Trust:** The Developer claims the Presidio Trust has challenged the design authority of the design-build joint venture (DBJV) regarding the design of the Presidio Trust facilities by requesting that the DBJV provide a large amount of additional analysis, reports, and memos. The Developer also claims the Presidio Trust has requested the DBJV to evaluate design alternatives and demonstrate that they are not in conflict with the Contract Requirements. The Developer claims these requests and comments from the Presidio Trust required work that is beyond what is defined by the Contract Documents and is considered to be Extra Work. Furthermore, the Developer claims that these requests should be managed and directed by the Department and the Department should have sole responsibility for consulting and interacting with the Presidio Trust. The Developer claims there are no contractual obligations by which the Developer is required to receive or respond to comments directly from the Presidio Trust. Therefore, the management of interactions with the Presidio Trust is beyond the Developer's contractual obligations and has significantly impacted the Developer's resources and management of the Project.
12. **Vegetation Preservation Plan (VPP) (\$716,958):** The Developer claims even after the Department provided a conditional approval of the VPP and the Treatment Oversight Panel had no further comments on the VPP, the Presidio Trust provided specific comments on the VPP and requested that the Presidio Trust's Technical Requirements for Forested Areas be incorporated as a standard for the Work. The Trust made the incorporation of this standard a prerequisite to issue Excavation Clearance Permits. The Developer claims the Presidio Trust's changes in the VPP caused significant Extra Work that was not included in the Contract Documents. Work was completed.
13. **Presidio Trust (PT) Geotechnical Criteria (\$22,040,094):** The Developer claims the Presidio Trust requested the implementation of their newly developed geotechnical and seismic criteria called "Supplemental geotechnical requirements for deep fills and slopes returned to Trust ownership and built as part of the Presidio Parkway". The Trust has generated these criteria to be utilized for the design and construction of several features on the Presidio Parkway Project. The Developer claims these requirements are not in conformance with the Contract Documents and were developed after the designs had reached the Release for Construction stage and after the Developer's bid was accepted. The Developer claims this new criteria constitutes a change to the contract requirements, resulting in increased costs and delays. This work is not completed.
14. **Soils Management for Planting Soils (\$40,085,556):** The Developer claims that the Presidio Trust requested that the Developer prepare a soils management plan for earthwork activities. The Developer complied with the Trust's ambiguous request and provided numerous plans describing earthwork activities, including testing, cut to fill, and off-haul and stockpiling plans. The Presidio Trust continued to request further iterations and additional information as each plan was provided. The Presidio Trust developed their own Supplemental Soils Management Requirements (SSMRs) for Horticultural Soil and provided them to the Department and the Developer in draft form. The Developer claims that these standards impose significant Extra Work. The Developer claims that the Presidio Trust ignored their comments on the SSMRs

and proceeded to evaluate and permit certain earthwork activities based on their specifications. The Developer claims the Presidio Trust's SSMRs are not required under the Contract Documents and impose significant Extra Work on the Developer, resulting in additional costs. This work is not completed.

15. **Re-Route Phase 1 Electrical and Lighting Systems (\$250,000):** The Developer claims re-routing of the power feeds from the substation at the MacArthur Tunnel to the substation at the Battery Tunnel for 8 street lights constructed in Phase 1 was not part of the Contract documents and is Extra Work. This work is not completed.

### **C. Owner Control Insurance Program**

**OCIP:** A delay in the overall project timeline and Final Acceptance of the Project has caused the need for extended OCIP coverage. Based on the current changes, it is estimated that another \$1million will be needed to pay for OCIP service cost for the remainder of the project activities.

The parties have entered into a conditional agreement, subject to the approval of the CTC and FHWA, to settle the potential disputes for an amount totaling \$90.1 million. The Department believes that approval of the global settlement for these certain potential claims minimizes its exposure in court where litigation risk is uncertain. As with any “Major Projects” the Department had already engaged FHWA and based on our ongoing discussions we believe that this request will be approved for federal reimbursement.

### **LANDSCAPING WORK:**

Initially Doyle Drive Replacement Project was programed into 8 contracts. The first four contracts were delivered using Design-Bid-Built delivery method. The eighth contract was designated for Landscaping work and was combined with contracts five, six and seven into one Public Private Partnership contract. In order to facilitate the global settlement and keep the project moving forward, the Developer will complete the landscaping work and associated soil improvements within the State’s right of way per the Contract Documents, however the final landscape work for areas returning to the Presidio Trust will be removed from the Developers scope and will be delivered separately from the P3 Project. The Department is currently working with the Presidio Trust and other stakeholders to finalize the scope and the costs of the Landscape Work within the Presidio Trust’s right of way. The Contract Documents establishes a cost-share allowance for landscaping work. The Department will receive a credit from the Developer for the reduced scope and it is expected that another request to the CTC will be submitted once that scope is finalized, for additional funds to supplement the current allowance and complete the final landscaping work.

**LITIGATION SUMMARY:**

Litigation for declaratory relief was commenced by the Developer on July 20, 2015 in the Superior Court for the State of California, County of San Francisco (*Golden Link Concessionaire LLC v. State of California Dept. of Transportation* Case No. CGC-15-546962). The parties agreed to stay the litigation to allow the parties to engage in the negotiations that have resulted in the proposed settlement.

**CONCLUSION:**

Because it is the first P3 delivered under the authority granted in SB 4, the Presidio Parkway P3 will naturally be a topic of debate regarding this particular delivery method. While this supplemental funds request will no doubt figure into that conversation, useful conclusions are unlikely to emerge until a thorough post-project analysis can be conducted. A thorough examination will ultimately yield data-based conclusions about the impact of changing delivery methods after the first phase of a complex project, about limitations of risk transfer and assumptions and consequences of relying on a contingency of about 3.4 percent to a project which if delivered under a different method might have been assigned a more typical contingency of 10 percent. The effects of those decisions, along with the unusual complications of building without land ownership, under the oversight of a uniquely structured authorizing agency, deserve and will likely receive robust analysis.

It is worth noting that Substantial Completion occurred as scheduled, the corridor is seismically safe, and the facility opened to full traffic on time. Operations and maintenance have been executed well by the Developer, and the Department is relieved of those activities for 30 years. In addition to controls the Department will obtain through this settlement agreement, the P3 Agreement retains a measure of performance enforcement. The Developer provided performance and payment bonds equal to 15 percent of the design-build contract price of \$271 million. A letter of credit is also in place equal to 5 percent of the design-build contract price. Developer also had to provide parent company guarantees on a joint and several basis that will not expire until the end of the warranty period. Lastly, the Department holds back 20 percent of the quarterly Availability Payments (before any adjustments). This is approximately \$1 million per payment.

**FINANCIAL RESOLUTION:**

Resolved, that \$120,100,000 be allocated from the Budget Act of 2015, Budget Act Items 2660-302-0042 and 2660-302-0890, to provide funds to complete construction on the Presidio Parkway P3 Project.

**Project's Location:**



*“Provide a safe, sustainable, integrated and efficient transportation system to enhance California’s economy and livability”*