

Memorandum

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To: CHAIR AND COMMISSIONERS
CALIFORNIA TRANSPORTATION COMMISSION

CTC Meeting: May 28, 2015

Reference No.: 2.5b.(3)
Action Item

From: NORMA ORTEGA
Chief Financial Officer

Prepared by: Nizar Melehani
Acting, P3 Program Manager
Division of Planning

Subject: **FINANCIAL ALLOCATION FOR SHOPP PROJECTS – PRESIDIO PARKWAY PROJECT
RESOLUTION FP-14-48**

RECOMMENDATION:

The California Department of Transportation (Department) recommends that the California Transportation Commission (Commission) allocate \$12,650,000 for one State Highway Operation and Protection Program (SHOPP) known as the Presidio Parkway P3 Project (Project) from the Project's risk reserve for unanticipated expenses which are further identified below.

ISSUE:

This risk reserve allocation request is for the two 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 expenses incurred through participation in the required informal dispute resolution process. The risk reserve request for the Contract Obligations is \$3.135 million; and
- B. **Proposed Settlement:** The parties have been working diligently to finally resolve in a global settlement certain outstanding potential disputes at the lowest possible denominator. The risk reserve request for the Proposed Settlement is \$9.515 million.

BACKGROUND:

The Presidio Parkway improvement project 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. In May 2010, the Commission approved an original \$1,401.79 million budget for the Presidio Parkway Public Private Partnership (P3) Project. In June 2013, the Commission approved a revised \$1,080.54 million budget including a \$36.84 million risk reserve which was set aside to pay for certain Department obligations as expressly identified in the P3 Agreement (i.e.: insurance, differing site conditions, etc.). Prior to this request, the Commission had approved a risk reserve allocation of \$12,000,000 for staffing, \$6,000,000 to cover the costs of the Owner Controlled Insurance Program (OCIP), \$1,800,000 for additional scope of work resulting from differing site

conditions, \$600,000 for the Resident Engineer's construction office, and \$3,750,000 to cover the Presidio Trust fees for its oversight of design and construction activities for its facilities.

BASIS OF RISK RESERVE ALLOCATION:

A. Contract Obligations

1. Additional Scopes of Work Due to Differing Site Conditions - \$2.985 million

The request for \$2,985,000, identified below, is to cover the Department's contract changes which resulted either from work which was not performed under Phase I of the Project or differing site conditions which could not have been reasonably anticipated by the Developer before Financial Close. These Department Changes (identified here interchangeably as Contract Change Orders or CCOs) are identified in more detail below:

Department Change No. 4 – Additional Demolition of Portion of Existing On-Ramp - \$80,000

This CCO compensates the Developer for \$80,000 to cover the Department's changes to the scope of work resulting from a change of conditions following bid opening. Demolition of portions of the existing viaduct structure occurred after the P3 Contract was awarded. A portion of the on-ramp structure was left in place for stability reasons. This was a condition that was not anticipated and therefore could not have been disclosed to the bidders until the situation was encountered.

Department Change No. 5 – Utility Gap - \$1,105,000

This CCO compensates the Developer for \$1,105,000 to cover the costs to design, relocate and install Presidio Trust fiber optics, telecommunication lines and water lines within the Project Right of Way. These utilities were not shown on the Indicative Preliminary Designs and are required to be completed as they have been affected by the Presidio Parkway Construction.

Department Change No. 6 – Unknown Water Main at Girard Road - \$130,000

This CCO compensates the Developer for \$130,000 to compensate for labor, material and support to abandon an approximately 240 feet of 8 inch diameter - ABS water main pipe. The Developer's contractor encountered the unknown pipe during the excavation for the new Girard Road reconstruction. This water main runs along Girard road approximately 240 feet South of Eddie Street. This pipe was not shown on the original Phase 1 Contract plans.

Department Change No. 7 – Hook Ramp Drainage – \$570,000

This CCO compensates the Developer for \$570,000 for construction work of various drainage elements: the installation of drainage pipe extending from existing manhole 21b out to the end of the existing Phase 1 Hook Ramp structure; correct the locations of DI 16a and MH 19b from their as-built locations to the correct plan locations; installation of a retaining wall weep hole collection system inside the existing Hook Ramp structure. The existing tunnel has weep holes that drain across the traveled way presenting a hazard to future motorists. The water from these weep holes needs to be collected and channeled into the existing drainage system. Also, a portion of storm drain in the Hook Ramp was not installed in Phase 1, as the connection point was unknown. This line will need to be connected to the Phase 2 Hook Ramp storm drain. The work above will need to be conducted to complete the Hook Ramp drainage system.

Department Change No. 8 – Retaining Wall 117 – \$850,000

This CCO compensates the Developer for \$850,000 for construction of a slope embankment, and Design/Construction/Maintenance of an additional wall (Wall 117) at the top of the slope located at the North side of the project along the northbound lane between North Battery Tunnel & Main Post Tunnel. In order to eliminate impact to the existing wetlands at the North side of the project, the Department and the Developer were successful in developing a hybrid solution consisting of the slope (as part of contract requirement) as well as a short retaining wall at the top of the slope with the wall being an added feature to the contract. This also eliminates the need to find an alternative mitigation site not adjacent to the embankment slope, which would've incurred significantly higher costs to the Department.

Department Change No. 9 – W-2 Wetland Relocation – \$230,000

This CCO compensates the Developer for \$230,000 to cover the Department's changes to the scope of work resulting from impacts to jurisdictional wetlands and subsequent work to mitigate the impacts not outlined in the contract scope of work for the Project. The additional scope of work is comprised of:

- a. Initial clearing and grubbing
- b. Salvage and maintain existing willows
- c. Relocate existing electrical pole
- d. Relocate stored construction materials to provide room for wetlands contractor

This work is associated with the mitigation of the construction of Retaining Wall 117 and the impact to the wetlands and adjacent embankment slope. The construction of Wall 117 and adjoining slope impacted approx. 0.24 acre of existing Cowardin Wetlands (W-2 wetlands). Replacement wetland mitigation was implemented (as required by regulatory permits) adjacent to the Wall 117 slope at the batch plant. Developer's contractor performed initial work to clear and grub the existing wetland site and salvaged approximately 20 large willow trees and over 150 willow cuttings to be rooted and replanted as part of the wetland mitigation. In order to implement the wetland grading, an existing power pole that provides electricity to the batch plant had to be removed and transmission wires adjusted and re-tensioned. Also, the wetlands subcontractor required room to stage materials and equipment. The Developer provided room, but had to re-locate stored construction falsework.

Department Change No. 10 – Abandonments in Girard Road - \$20,000

This Department Change for \$20,000 is for the abandonment of two unknown utilities located during the reconstruction of Girard Road. The first utility is a sewer line that was not properly abandoned and will need to be slurry filled so that the new Girard Road will not settle after completion. The second utility is an existing 30' steam line that runs perpendicular to Girard. This is a Presidio Trust historic feature that will need to be abandoned in place under the new Girard roadway.

2. Informal Dispute Resolution Costs - \$150K

Article 24 of the P3 Agreement governs the Parties' obligation with respect to the two-step informal dispute resolution process. The two step process includes, an informal escalation ladder, followed by formal presentation of a Claim before the established Dispute Resolution Board (DRB). Completion of the two-step dispute resolution process is a condition precedent for either Party to litigate any

outstanding Claims. Each Party bears its even share of expenses related to the dispute resolution process. The DRB has been convened for this Project and the Developer has been generously paying for the Department's share in participating in the DRB process. The Department seeks an allocation of \$100K to be able to reimburse GLC for paying the Department's half of the costs of the DRB process. In addition, the parties have been using a facilitated dispute resolution (FDR) process, which is an agreed to alternative to the DRB process, to resolve open disputes. This latter method has proven quite successful in allowing the Parties to amicably resolve open claims. The Department seeks an allocation of \$50K to cover its own one-half costs of the FDR process. The results of the FDR will be discussed below.

B. Proposed Settlement

As with any project, the Department is in receipt of potential disputes from the Developer. The potential disputes, resolved below, are based on the Parties' different interpretation of the prescriptive or performance based design criteria specified in the P3 Agreement. The Proposed Settlement is for the following potential disputes:

1. Hook Ramp: Developer's claim regarding the design and construction of the Bridge over the Hook Ramp (DOY 2 Line).
2. Design Exception: Developer's claim regarding additional mandatory design exceptions per design criteria established in the P3 Agreement.
3. Delay to License to Enter: Developer's claim regarding for the delay of site investigation work for the areas outside the Temporary Construction Easement.
4. Low Viaduct Debris Removal: Developer's claim regarding the debris removal from the low viaduct that was demolished in Phase I.
5. Load and Resistant Factor Design (LFRD) Requirements: Developer's claim regarding for using the LRFD method for retaining wall design.
6. Southbound Battery Tunnel Ventilation Closure : Developer's claim regarding for additional work required to close the SBBT ventilation openings.
7. Archeological Investigation and Mitigation Plan (AIMP) Changes: Developer's claim regarding developing the AIMP for Cement Deep Soil Mixing (CDSM) based on updated archaeological sensitivity maps from Presidio Trust.
8. Golden Gate Bridge, Highway and Transportation District Requirements (GGBHTD): This is to compensate the Developer for the fees paid to GGBHTD to provide incident response and towing service within the operations and maintenance limits.
9. Tennessee Hollow Load Test: Developer's claim regarding the performance of a load test to confirm design assumptions for certain drilled shaft foundations.
10. Operations and Maintenance Work- Temporary Operations Management Center: Developer's claim regarding the performance of certain upgrades to the Temporary Operations and Maintenance Center (TOMC) to comply with State Fire Marshal requirements.
11. Operations and Maintenance Work-Backup Generator: Developer's claim regarding the costs associated with the lease of a portable generator to provide back-up electrical power at the TOMC.

12. Extra work Hook Ramp: Developer’s claim regarding extra work at Hook Ramp which included the demolition of existing N.E. Wing Wall, N.W. Wing Wall, and roadway, construction of retaining walls 1A & 2A Related railing, concrete gutter; construction of Roadway from DOY2 104+22.6 to NB 101 bridge; removal of fill along north edge of NB 101 from approximate station 101+00 to 110+00 of NB Line; related drainage and striping; and all design, quality control/quality assurance and temporary works activities necessary for the execution of the above activities.

13. Retaining Wall 117 (disputed portion): Developer’s claim regarding certain costs associated with constructing a retaining wall to provide access control to Highway 101 northbound that is beneficial to the Department and Presidio Trust.

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 total \$9.515 million. The total value assessed by the Developer for the above referenced potential disputes is \$17.02 million. The Department believes that approval of the global settlement for these certain potential claims minimize the exposure of the Department in court where litigation risk is an uncertain risk. The Department selected this set of potential disputes to negotiate with the Developer because they appear to be mostly interpretation of the design criteria required for the Developer to design and construct the Project.

FINANCIAL RESOLUTION:

Resolved, that \$12,650,000 be allocated from the Budget Act of 2013, Budget Act Item 2660-302-0890 for State Highway Operation and Protection Program work described on the attached vote list. The Department has complied with the National Environmental Policy Act and California Quality Act requirements in preparing this project.

Project #	Allocation Amount	County	Dist-Co-Rte	Postmile	Location	Project Description	PPNO Program/Year Prgm'd Amount Project ID Adv Phase EA	Budget Year Item # Fund Type Program Code	Amount by Fund Type
2.5b.(3) SHOPP Project (Risk Reserve) – Presidio Parkway						Resolution FP-14-48			
1	\$12,650,000	San Francisco	04-SF-101	8.0/9.8	In San Francisco, from Marina Boulevard to south of the Golden Gate Bridge. <u>Outcome/Output</u> : Improve the seismic, structural and traffic safety of Doyle Drive to maintain structural integrity. Allocation is from the projects SHOPP Risk Reserve. (\$12,650,000 for construction capital)	04-0619P SHOPP/14-15 \$12,690,000 0400020166 4E2 1637U4	2013-14 302-0890 FTF 20.20.201.110	\$2,985,000	
						0400020166 4E5 1637U4	2013-14 302-0890 FTF 20.20.201.110	\$9,515,000	
						0400020166 4E6 1637U4	2013-14 302-0890 FTF 20.20.201.110	\$150,000	