

From: [Phan, Johnny](#)
To: [Downtown West Project](#)
Subject: FW: Google - DW - DA Provision re CB Adjustment and DISC
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Attachments: [Google - DW- DA provision re CB Adjustment and DISC-c.docx](#)

From: Straka, Stephanie <SStraka@coblentzlaw.com>
Sent: Wednesday, March 10, 2021 9:36 PM
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Cc: Miller, Gregg <gmiller@coblentzlaw.com>
Subject: Google - DW - DA Provision re CB Adjustment and DISC

[External Email]

Johnny, Apologies for sending docs through multiple emails tonight (this is email 3 of 3). Please see the attached DA provision regarding DISC and CB Adjustment. Thanks.

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4.2.2 Community Benefits Adjustments Due to Acquisition by DISC Partner

Agencies. [PENDING NEGOTIATIONS] In furtherance of the collaborative efforts described in Section 3.6, as well as the collective goals of the Developer, City, and the DISC Partner Agencies to effectively deliver both the Project and DISC, the following provisions set forth the understandings and obligations of the Parties in the event of an eminent domain proceeding initiated by a DISC Partner Agency(ies), and the circumstances in which Developer shall be provided a Community Benefits Adjustment:

(a) The Parties agree and have established an estimated area of the Project Site located in proximity to a proposed transit alignment, referred to as the “Transit Project Buffer Zone” and depicted in Exhibit_____. In the event a DISC Partner Agency acquires any portion of the Project Site located within the Transit Project Buffer Zone through eminent domain the Parties agree and understand that the Developer shall be compensated by the condemning authority for the land acquired based on its fair market value as defined in California Code of Civil Procedure Section 1263.320. The Parties also understand and acknowledge that a taking within the Transit Project Buffer Zone would negatively affect the value of the Project and, in particular, diminish the value of all land within the Project Site, and that such value loss may be recoverable as compensation from the condemning agency. Within the Transit Project Buffer Zone, the Parties will work together in Good Faith to retain Developer’s office yield; however, in the event office yield within the Transit Project Buffer Zone is reduced due to an acquisition through eminent domain, Developer assumes the risk that that displaced office yield would need to fit on the remaining Project Site if it is to be developed, which would necessitate development at greater densities, resulting in increased development costs. To that end, and despite the risk that Developer may be undercompensated in the eminent domain process if office yield is reduced within the

Transit Project Buffer Zone, there shall not be a Community Benefits Adjustment as a result of a DISC Partner Agency acquiring any portion of the Project Site located within the Transit Project Buffer Zone.

(b) It is further understood by the Parties that acquisition of any amount or portion of the Project Site beyond the Transit Project Buffer Zone would result in a reduction in the Project's development program that could be substantial and, due to the fixed infrastructure costs of the Project, such acquisition could directly affect the overall feasibility of the Project. Like a taking within the Transit Project Buffer Zone, a taking of any portion of the Project Site beyond that zone (e.g., Parcels A1, B1, C2, F5, and G1) would also diminish the value of the remaining portion of Project Site (the "Remainder"), and this diminution in value would be not less than one hundred twenty-one dollars and 92/100 (\$121.92) per office gross square foot ("Base Diminution Value"). If Developer is awarded severance damages equal to or greater than the Base Diminution Value, measured on per square foot basis of office loss or as otherwise defined, there will be no adjustment to Community Benefits as described in Paragraph (c) below, despite the fact that the cost impact to Developer of a taking beyond the Transit Project Buffer Zone will substantially exceed the Base Diminution Value. The Parties acknowledge, to the City's benefit, that the Base Diminution Value does not include all of Developer's cost impacts, and to the extent that additional severance damage proceeds are received beyond one hundred percent (100%) of the Base Diminution Value on a per square foot basis, those proceeds shall be used to offset Developer's additional cost impacts. For clarity, for the determination of whether a Community Benefits adjustment is to be made, the relevant reference point is whether the severance damage award is equal to or greater than \$121.92 per square foot of office space lost as a result of the taking, regardless of whether the condemned property is from one or more parcels in the Project Site.

With respect to parking, if the land acquired through eminent domain results in reduced office yield and area available for parking, the parking provided by the Project would be similarly reduced based on the Required Parking Ratio, and the requirement that a minimum of 2,850 publicly available parking spaces be maintained within the Project Site would be reduced by the number of spaces that otherwise would have been accommodated by the lost parking area.

(c) In the event a DISC Partner Agency(ies) condemns or acquires any portion of the Project Site beyond the Transit Project Buffer Zone, and there is no award of severance damages, or such award does not equal or exceed the Base Diminution Value described in Paragraph (b) above, (i) a Community Benefits Adjustment commensurate with the difference between the severance damages award and the Base Diminution Value shall be required, and (ii) the City agrees that such Community Benefits Adjustment shall be according to the following formula (with all values subject to escalation based on the Engineering News Record Construction Cost Index):

$$\text{Lost Land Area outside the Transit Buffer Zone} \times \text{Office Parcel Yield PSF with Transit Buffer} = \text{Total Lost Office Program}$$
$$(\text{Total Lost Office Program} \times \text{PSF Base Diminution Value}) - \text{Severance Damages} = \text{Net Value Loss}$$
$$\text{Remaining Community Benefits} - \text{Net Value Loss} = \text{Adjusted Community Benefits Value}$$
$$\text{Adjusted Community Benefits Value} / (\text{Remaining Office Program} - \text{Total Lost Office Program}) = \text{Adjusted Community Benefits Value PSF}$$

Further, if a DISC Partner Agency(ies) condemns or acquires a portion of the F5 development Parcel located beyond the Transit Project Buffer Zone, the Parties agree that the entire Parcel would be deemed non-developable if the parcel size were to fall below 0.75 acres (while maintaining a minimum east to west dimension of 70' and average 110'), in which case a

Community Benefits Adjustment shall be provided based on loss of the full developable area on the Parcel.

This section 4.2.2 shall be superseded by the future agreement between the Developer, City, and the other DISC Partner Agencies referenced in Section 3.6 upon the effective date of such agreement.