

From: [Phan, Johnny](#)
To: [Downtown West Project](#)
Subject: FW: Final City Draft Transfer Agreements
Date: Tuesday, May 18, 2021 11:35:57 AM

From: Willhite, Britney <bwillhite@allenmatkins.com>
Sent: Thursday, May 13, 2021 10:01 AM
To: Phan, Johnny <Johnny.Phan@sanjoseca.gov>; dsnow@rwglaw.com
Cc: Miller, Gregg <gmiller@coblenzlaw.com>; pandes@allenmatkins.com
Subject: RE: Final City Draft Transfer Agreements

[External Email]

Hi Johnny and Dave,

Subject to 1 very minor clean-up change below, all 4 transfer agreements are approved.

The clean-up change relates to H1, and is a clean-up to a section cross-reference as indicated below. Section 4.5.2.4 deals with "Transferor's Work" as described on Exhibit "C", so the reference to any work on Exhibit "C" should be to Section 4.5.2.4, not 4.5.2.5. This same cross-reference is made above in the same paragraph, as highlighted, for context.

"19.2 Transferor's Work. Notwithstanding anything in this Agreement to the contrary, if despite Transferor using its commercially reasonable efforts in accordance with **Section 4.5.2.4, Transferor's Work (other than Item 6 as set forth in Schedule 1 to Exhibit "C")** is not Completed by the Closing as a result of any delays caused by Transferee or Force Majeure, then Transferee shall have no right to terminate this Agreement and the Closing shall occur on the Closing Date, provided that following the Closing, Transferor shall diligently pursue the remaining Transferor's Work to Completion (such remaining portion being the "Remaining Transferor's Work"). Notwithstanding the foregoing, it shall be a condition to the Closing in accordance with Section 4.5.2 above that **Item 6 as set forth in Schedule 1 to Exhibit "C" shall be Completed by the Closing in accordance with Section 4.5.2.5 4 above**. As security for the performance of the Remaining Transferor's Work, at the Closing, Transferor shall provide Transferee with a construction completion bond in an amount equal to the 1.5 times the cost to perform the Remaining Transferor's Work. Following the Closing, Grantee shall provide Transferor with reasonable access to the Property as necessary to perform the Remaining Transferor's Work."

If that change is acceptable, can you make that change on your end and resend the final H1?

H5, H6 and Autumn are final as-is.

Thank you for all your and your team's hard work on these,
Bryt

Britney J. Willhite

Partner

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Allen Matkins

From: Phan, Johnny <Johnny.Phan@sanjoseca.gov>

Sent: Wednesday, May 12, 2021 9:31 PM

To: Gregg Miller <gmiller@coblentzlaw.com>; Andes, Pam <PAandes@allenmatkins.com>; Willhite, Britney <bwillhite@allenmatkins.com>

Cc: David Snow <DSnow@rwglaw.com>

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See attached.

Johnny V. Phan

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