

File No. 150644

Committee Item No. 1  
Board Item No. \_\_\_\_\_

**COMMITTEE/BOARD OF SUPERVISORS**  
AGENDA PACKET CONTENTS LIST

Committee: Land Use & Transportation

Date July 20, 2015

Board of Supervisors Meeting

Date \_\_\_\_\_

**Cmte Board**

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Introduction Form                            |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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**OTHER** (Use back side if additional space is needed)

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Completed by: Andrea Ausberry Date July 16, 2015  
Completed by: \_\_\_\_\_ Date \_\_\_\_\_

1 [Land Transfer, Summary Street Vacation, Gift Acceptance, Encroachment Permit, and  
2 Related Actions - Archstone Daggett Place, LLC - Daggett Street Between 16th and 7th  
3 Streets]

4 Ordinance approving an agreement with the Port of San Francisco for the City's  
5 purchase of Daggett Street between 16th and 7th Streets; summarily vacating the  
6 northern portion of the street; authorizing an interdepartmental transfer of the vacation  
7 area from Public Works to the Real Estate Division of the Office of the City  
8 Administrator for public open space; modifying the official public right-of-way width,  
9 changing the official sidewalk width, and changing the official grade on the remaining  
10 portion of Daggett Street and portions of 16th and 7th Streets; accepting a gift from  
11 Archstone Daggett Place, LLC, for certain park improvements on the portion of Daggett  
12 Street to be vacated and their maintenance; approving a major encroachment permit  
13 for the shared public way improvements on the remaining southerly portion of Daggett  
14 Street; delegating to the Director of Public Works the authority to accept other required  
15 public improvements associated with the adjacent development project; authorizing  
16 the Director of Property to execute a license agreement for the maintenance of the  
17 vacation area; affirming the Planning Commission's determination under the California  
18 Environmental Quality Act; and making findings of consistency with the General Plan,  
19 and the eight priority policies of Planning Code, Section 101.1 for the actions  
20 contemplated in this Ordinance.

21 NOTE: Unchanged Code text and uncodified text are in plain Arial font.  
22 Additions to Codes are in single-underline italics Times New Roman font.  
23 Deletions to Codes are in ~~strikethrough italics Times New Roman font~~.  
24 Board amendment additions are in double-underlined Arial font.  
25 Board amendment deletions are in ~~strikethrough Arial font~~.  
Asterisks (\* \* \* \*) indicate the omission of unchanged Code  
subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

1           Section 1. **General Findings.**

2           (a) As San Francisco continues to grow and develop, the need increases for well-  
3 maintained public open spaces that meet the demands of existing and new residents,  
4 workers, and visitors. The Showplace Square/Potrero Hill Area Plan, a part of the Eastern  
5 Neighborhoods Area Plan, identifies the need for additional open space to enhance livability in  
6 the Plan Area.

7           (b) In order to provide these new open spaces, significant funding beyond existing City  
8 resources is necessary to acquire, develop, and maintain the necessary new open spaces.  
9 One potential source of funds is new residential development that could contribute to the  
10 capital costs of open space. New residential development directly impacts the existing park  
11 sites with its influx of new residents. Therefore, new development in the Eastern  
12 Neighborhoods is required under Planning Code Section 423 to pay the Eastern  
13 Neighborhoods Infrastructure Impact Fee directly into the Eastern Neighborhoods Public  
14 Benefit Fund to, among other infrastructure improvements, acquire and/or construct new open  
15 space. Alternatively, project sponsors may propose to directly provide community  
16 improvements to the City in lieu of fee payments. In such a case, the Planning Commission  
17 may enter into an in-kind improvement agreement with the sponsor and issue a fee waiver for  
18 the Eastern Neighborhoods Infrastructure Impact Fee in the amount of the cost of the  
19 acquisition of property and/or proposed improvements.

20           (c) The June 2010 Showplace Square Open Space Plan identified a significant  
21 opportunity for new open space on the approximately one-acre one block section of Daggett  
22 Street between 16<sup>th</sup> and 7<sup>th</sup> Streets, owned by the Port of San Francisco and subject to the  
23 public trust. The Eastern Neighborhoods Community Advisory Committee ("ENCAC"), as well  
24 as various City agencies, recommended use of the Eastern Neighborhoods Infrastructure  
25

1 Impact Fee to support a new open space on this publicly-owned site. The ENCAC resolution  
2 is on file with the Clerk of the Board of Supervisors in File No. 150644.

3 (d) In 2012, the Planning Commission and Archstone Daggett Place, LLC ("Project  
4 Sponsor"), which plans to develop a 453-unit rental development project, entered into an in-  
5 kind agreement on the properties abutting Daggett Street, to build a new open space and  
6 shared public way in this location in exchange for a waiver of a portion of its Eastern  
7 Neighborhoods Infrastructure Impact Fee. The Planning Commission and the Project  
8 Sponsor entered into the 1000 16th Street In-Kind Improvement Agreement dated as of  
9 November 29, 2012 (the "In-Kind Agreement"). Project Sponsor will provide the additional  
10 cost of construction of the initial park improvements and maintenance of the open space as a  
11 gift to the City. On November 29, 2012 and \_\_\_\_\_, 2015, at duly noticed public  
12 hearings, the Planning Commission, in Resolution Nos. 18752 and \_\_\_\_\_ approved an  
13 In-Kind Agreement and an amended In-Kind Agreement, respectively. Copies of these  
14 resolutions are on file with the Clerk of the Board in File No. \_\_\_\_\_.

15 (e) The Showplace Square/Potrero Hill area will benefit greatly from this new local  
16 amenity, facilitated by the adjacent new residential development by Project Sponsor, as  
17 adequate resources have not been available to fund a significant new open space in this Plan  
18 Area.

19 (f) Daggett Street, which was transferred to the City under the Burton Act, was subject  
20 to the public trust and placed in the jurisdiction of the Port of San Francisco. In order to  
21 support new open space uses on Daggett Street, the City worked with the Port and California  
22 State Lands Commission to lift the public trust from Daggett Street in exchange for the City's  
23 payment of the appraised fair market value of \$1,675,000 to the Port. In exchange for such  
24 payment, the Port agreed to remove the public trust and transfer jurisdiction of Daggett Street  
25 to the City.

1 (g) Once construction of the park improvements is complete, jurisdiction over the  
2 portion of Daggett Street that will be vacated (the "Vacation Area") will transfer to the Real  
3 Estate Division of the Office of the City Administrator ("RED"). RED will manage the Vacation  
4 Area as a public open space and intends to request the Board to designate the Vacation Area  
5 as a City Plaza once RED has identified a steward for the Board's consideration and approval  
6 under Administrative Code Section 94, the San Francisco Plaza Program. The Vacation Area  
7 is proposed to be zoned as public/open space use, while the remaining street right-of-way  
8 portion of Daggett Street will continue as a public street under the jurisdiction of Public Works.

9 (h) The Daggett Park project ("Project") was included in the adjacent 1000 16th Street  
10 mixed-use project and obtained project specific environmental clearance through a Final  
11 Environmental Impact Report ("FEIR") prepared in accordance with the California  
12 Environmental Quality Act (Public Resources Code Sections 21000 et seq.) in Planning Case  
13 No. 2003.0527E. As part of various actions related to the adjacent development, including  
14 approval of an in-kind agreement for the construction of Daggett Park, the Planning  
15 Commission adopted California Environmental Quality Act findings in Resolution Nos. 18419  
16 and 18752, copies of which are in Clerk of the Board of Supervisors File No. 150644, and  
17 incorporated herein by reference. The Board adopts these findings as its own.

18 (i) The Board finds that no substantial changes are proposed to the Project or the  
19 circumstances under which the Project is undertaken that would cause new significant  
20 environmental effects or any increase in the severity of previously identified significant effects  
21 in the FEIR. The Board further finds there is no new information of substantial importance  
22 showing that the Project would have any significant effects not discussed in the FEIR, that  
23 significant effects would be substantially more severe, or that new or different mitigation  
24 measures or alternatives would substantially reduce one or more significant effects, if any, of  
25 the Project.

1 (j) On \_\_\_\_\_, 2015, the Planning Department, in a letter dated  
2 \_\_\_\_\_, 2015, determined that the actions contemplated in this ordinance are  
3 consistent, on balance, with the City's General Plan and eight priority policies of Planning  
4 Code Section 101.1. The Board adopts these findings as its own. A copy of said letter is on  
5 file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_, and is incorporated herein  
6 by reference.  
7

8 **Section 2. Approval of the Transfer of Daggett Street from the Port of San**  
9 **Francisco to the City and Approval of the Interdepartmental Transfer of a Portion of**  
10 **Daggett Street.**

11 (a) **Findings.**

12 (1) On October 28, 2014, at a duly noticed public hearing, the San Francisco  
13 Port Commission, in Resolution No. 14-57, authorized Port staff to seek termination of the  
14 public trust on Daggett Street from State Lands Commission. On December 16, 2014, at a  
15 duly noticed public hearing, the San Francisco Port Commission, in Resolution No. 14-62,  
16 authorized a memorandum of understanding ("MOU") regarding the removal of the public trust  
17 from Daggett Street and jurisdictional transfer to RED. Copies of these resolutions and the  
18 draft MOU are on file with the Clerk of the Board in File No. \_\_\_\_\_. At RED's  
19 request, jurisdiction of the entirety of Daggett Street between 16th and 7th Streets will initially  
20 transfer to Public Works on behalf of the City and County of San Francisco, and following the  
21 Project Sponsor's satisfactory completion of the park improvements on the Vacation Area,  
22 jurisdiction of Vacation Area will transfer to RED. Jurisdiction of the remaining right of way  
23 portion of Daggett Street will remain with Public Works.

24 (2) On December 17, 2014, at a duly noticed public hearing, the State Lands  
25 Commission, in Calendar Item C68, authorized termination of the State's public trust interest

1 in Daggett Street, in accordance with California State Legislative Session 2007's Chapter No.  
2 660. As part of this action, the State Lands Commission authorized transfer of Daggett Street  
3 to the City and County of San Francisco for \$1,675,000.00 free of any public trust interest. A  
4 copy of this Calendar item is on file with the Clerk of the Board in File No. \_\_\_\_\_.

5 (3) On July 18, 2011 and June 15, 2015, at duly noticed public hearings, the  
6 ENCAC supported the use of an In-Kind Agreement between the City and Project Sponsor  
7 that would utilize a portion of the Eastern Neighborhoods Infrastructure Impact Fees owed by  
8 the Project Sponsor's surrounding mixed use development, as set forth in Planning Code  
9 Section 423.3, to be allocated to the construction of the park improvements. The ENCAC  
10 recommended this action to the Planning Commission and Board of Supervisors.

11 (4) On September 7, 2012, the Interagency Planning and Implementation  
12 Committee ("IPIC") agreed with this recommendation.

13 (5) On November 29, 2012 and \_\_\_\_\_, 2015, at duly noticed public  
14 hearings, the Planning Commission in Resolution Nos. 18752 and \_\_\_\_\_ agreed  
15 with the recommendation of the ENCAC and the IPIC. Copy of these resolutions are on file  
16 with the Clerk of the Board in File No. \_\_\_\_\_.

17 (6) The Board recognizes that additional money is necessary to complete the  
18 transfer of Daggett Street. The main source of these funds is the State Housing Related Parks  
19 Program Grant. On February 2, 2015, at a duly noticed hearing, the Board of Supervisors  
20 approved a Resolution retroactively authorizing the Recreation and Park Department to  
21 accept and expend a grant that included \$1,600,000 in funding for transfer of Daggett Street.  
22 A copy of this resolution is on file with the Clerk of the Board of Supervisors in File No.  
23 141305.

24 (7) The \$75,000 balance of the transfer funding will be paid to the Port pursuant  
25 to the MOU.

1           **(b) Approval of the Property Transfer from the Port.**

2           (1) Notwithstanding the provisions of Administrative Code Chapter 23, the  
3 Board hereby approves the interdepartmental transfer of Daggett Street from the Port of San  
4 Francisco to the City in accordance with terms of the draft MOU between the Port and City.

5           (2) The Board approves use of a portion of the Eastern Neighborhoods Public  
6 Benefits Fund for open space and recreational facilities as set forth in Planning Code Section  
7 423.5, to transfer the Property.

8           **(c) Approval of the Interdepartmental Transfer of the Vacation Area from**  
9 **Public Works to RED.**

10          (1) Notwithstanding the provisions of Administrative Code Chapter 23, the  
11 Board hereby authorizes the transfer of the Vacation Area from Public Works to RED in  
12 accordance with the terms of the transfer specified above in order to establish a public open  
13 space on the Vacation Area.

14          (2) This transfer also is conditioned upon the effective date of companion  
15 legislation in Clerk of the Board of Supervisors File No. \_\_\_\_\_ that will rezone the  
16 subject area so that its zoning designation is P (Public) with a height and bulk designation of  
17 OS (Open Space).

18          (3) The Vacation Area shall be subject to a declaration of restrictions as set  
19 forth below in Section 3(a)(6) for purposes of sidewalk use and compliance with the Building  
20 and Fire Codes.

21  
22           **Section 3. Summary Street Vacation of the Northern Portion of Daggett Street.**

23           **(a) Findings.**

24           (1) California Street and Highways Code Sections 8300 et seq. and Public  
25 Works Code Section 787(a) set forth the procedures that the City and County of San



1 Francisco follows to vacate public streets and public service easements. California Street and  
2 Highways Code Sections 8330 et seq. permits the summary vacation of a public street or  
3 public service easement if certain conditions are satisfied.

4 (2) The Board of Supervisors finds it appropriate to pursue a street vacation of  
5 the Vacation Area.

6 (3) The location and extent of the Vacation Area is more particularly shown on  
7 the Public Works ("PW") SUR Map No. \_\_\_\_\_, dated \_\_\_\_\_. A copy of this map  
8 is on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_.

9 (4) This portion of Daggett Street is being vacated to allow for the establishment  
10 of a public open space that will be under the jurisdiction of RED. Companion legislation in  
11 Clerk of the Board of Supervisors File No. 150586 will rezone the Vacation Area so that its  
12 zoning designation is P (Public) with a height and bulk designation of OS (Open Space).

13 (5) Section 8334(a) of the California Streets and Highways Code provides that  
14 the legislative body of a local agency may summarily vacate an excess right-of-way of a  
15 street, highway, or public easement under certain circumstances.

16 (6) In PW Order No. \_\_\_\_\_, dated \_\_\_\_\_, the Director of Public  
17 Works (the "PW Director") determined: (A) the Vacation Area has been impassable for  
18 vehicular travel for over five years and is excess right-of-way that can be summarily vacated  
19 under California Streets and Highways Code Sections 8331 and 8334(a), respectively; (B) the  
20 Vacation Area is unnecessary for the City's present or prospective public street, sidewalk, and  
21 service easement purposes; (C) with the relocation of the sanitary sewer line under the  
22 jurisdiction of the San Francisco Public Utility Commission as part of the Park design, there  
23 are no functioning in-place public or private utility facilities that would be affected by the  
24 vacation of the Vacation Area, which allows the City to proceed with a summary street  
25 vacation under Streets and Highways Code Section 8334.5; (D) pursuant to the Streets and

1 Highways Code Section 892, the Vacation Area hereunder will not affect a nonmotorized  
2 transportation facility because commuters can continue to use the Daggett Street shared  
3 public way that will remain in public right-of-way use; (E) the public interest, convenience, and  
4 necessity do not require any easements or other rights be reserved for any public or private  
5 utility facilities that are in place in the Vacation Area and that any rights based upon any such  
6 public or private utility facilities shall be extinguished automatically upon the effectiveness of  
7 the vacation; provided, however, that a declaration of restrictions be recorded on the Vacation  
8 Area that an approximately 12-foot wide area on northerly side of the Vacation Area be  
9 permanently set aside for sidewalk and open space use; and (F) it is a policy matter for the  
10 Board of Supervisors to transfer jurisdiction of the Vacation Area to RED. A copy of the PW  
11 Order and the draft declaration of restrictions are on file with the Clerk of the Board of  
12 Supervisors in File No. \_\_\_\_\_.

13 (7) The PW Director also recommends that the effectiveness of the street  
14 vacation be conditioned on PW's determination that the Vacation Area park improvements  
15 and the shared public way improvements on the remaining portion of the Daggett Street public  
16 right-of-way ("Daggett Street Shared Public Way") are complete and ready for their intended  
17 use. The Board of Supervisors adopts as its own, the recommendations of the PW Director  
18 as set forth in PW Order No. \_\_\_\_\_ concerning the vacation of the Vacation Area and  
19 other actions in furtherance thereof and the Board hereby incorporates such  
20 recommendations and findings by reference as though fully set forth herein.

21 (b) **Ordering a Summary Street Vacation of the Northern Portion of Daggett**  
22 **Street.**

23 (1) The Board of Supervisors hereby summarily vacates the Vacation Area, as  
24 shown on SUR Map No. \_\_\_\_\_, upon satisfaction of the conditions described in this  
25

1 ordinance and pursuant to California Street and Highways Code Section 8300 et seq. and  
2 Public Works Code Section 787(a).

3 (2) The Board of Supervisors finds that the Vacation Area is unnecessary for  
4 present or prospective public use, subject to the conditions described in this ordinance.

5 (3) The public interest and convenience require that the vacation be done as  
6 declared in this ordinance.

7 (4) The Street Vacation shall be effective automatically and without the  
8 requirement for further action whatsoever, as to all of the Vacation Area, upon satisfaction of  
9 the following:

10 (A) The Director of PW's determination that the park improvements on  
11 the Vacation Area and the shared public way improvements on the remaining portion of the  
12 Daggett Street public right-of-way ("Daggett Street Shared Public Way") are complete and  
13 ready for their intended use and

14 (B) A declaration of restrictions be recorded on the Vacation Area that  
15 the northerly side of the Vacation Area be permanently set aside for sidewalk and open space  
16 use.

17  
18 **Section 4. Modifying the official public right-of-way width on the Daggett Street**  
19 **Shared Public Way, changing the official sidewalk width, and changing the official**  
20 **grade.**

21 (a) Findings.

22 (1) Public Works prepared map A-17- \_\_\_\_\_ to designate the new right-of-way  
23 width of the Daggett Street Shared Public Way, change official sidewalk width, and change  
24 official grade. In PW Order No. \_\_\_\_\_, the PW Director approved such map and  
25

1 recommended that the Board of Supervisors approve such changes to the Daggett Street  
2 public right-of-way.

3 **(b) Approval of Public Right-of-Way Changes.**

4 (1) Pursuant to California Streets and Highways Code Section 1806 and San  
5 Francisco Administrative Code Sections 1.51 et seq., and in accordance with the  
6 recommendation in PW Order No. \_\_\_\_\_, the Board of Supervisors approves the  
7 modified public right-of-way width for the Daggett Street Shared Public Way.

8 (2) In accordance with the PW Order No. \_\_\_\_\_, dated \_\_\_\_\_, 2015,  
9 a copy of which is in the Clerk of the Board of Supervisors File No. \_\_\_\_\_, Board of  
10 Supervisors Ordinance No.1061, entitled "Regulating the Width of Sidewalks," a copy of which  
11 is in the Clerk of the Board of Supervisors Book of General Ordinances, in effect May 11,  
12 1910, is hereby amended by adding thereto a new section to read as follows:

13 Section 1603. The width of sidewalks on Daggett Street between 16th and 7th Streets  
14 and along 16th and 7th Streets perpendicular to Daggett Street shall be modified as shown on  
15 Public Works Map No. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_.

16 (3) Notwithstanding California Streets and Highways Code Sections 8000 et  
17 seq., the Board of Supervisors, in accordance with San Francisco Administrative Code  
18 Sections 1.51 et seq., chooses to follow its own procedures for the establishment of street  
19 grades and hereby accepts and designates the street grades for the Daggett Street Shared  
20 Public Way as set forth in the PW Order No. \_\_\_\_\_, Map No. \_\_\_\_\_, dated  
21 \_\_\_\_\_, 2015.

22 (4) The sidewalk widths designated by the Board pursuant to Subsection (2) do  
23 not obviate, amend, alter, or in any other way affect the maintenance obligations of the  
24 adjacent property owners and further subject to the terms of the major encroachment permit  
25 authorized under this ordinance.

1 (5) The Board of Supervisors hereby directs Public Works to add the public  
2 right-of-way width, the sidewalk widths, and the street grade to its Official City Maps in  
3 accordance with this ordinance.

4  
5 **Section 5. Gift Acceptance of Park Improvements, Including Maintenance, and**  
6 **Daggett Street Shared Public Way.**

7 **(a) Findings.**

8 (1) On November 29, 2012, at a duly noticed hearing, the Planning Commission  
9 in Resolution No. 18752 approved the In-Kind Agreement to allow the Project Sponsor, to  
10 construct park improvements on the Vacation Area in lieu of paying a portion of the Eastern  
11 Neighborhoods Infrastructure Impact Fee. On \_\_\_\_\_, 2015, at a duly noticed  
12 hearing, the Planning Commission in Resolution No. \_\_\_\_\_ approved an amended In-  
13 Kind Agreement. Copies of these resolutions are on file with the Clerk of the Board in File No.  
14 \_\_\_\_\_.

15 (2) The cost of constructing the park improvements, estimated to be  
16 \$4,899,999.00, exceeds the amount of the approved fee waiver. Consequently, the Project  
17 Sponsor, has offered the excess cost of construction for the park improvements to the City  
18 and County of San Francisco as a gift. In addition, the gift includes permanent maintenance  
19 of the Vacation Area as evidenced in a declaration of restrictions to be recorded against the  
20 adjacent property. A copy of the gift offer and draft declaration of restrictions are on file with  
21 the Clerk of the Board of Supervisors in File No. \_\_\_\_\_.

22 **(b) Acceptance of the Gift.**

23 (1) The Board of Supervisors, on behalf of the City and County of San  
24 Francisco, graciously accepts the gift offer from the Project Sponsor, Archstone Daggett  
25

1 Place, LLC, for the park improvements to the Vacation Area, including permanent  
2 maintenance thereof.

3  
4 **Section 6. Major Encroachment Permit for the Daggett Street Shared Public Way.**

5 **(a) Findings.**

6 (1) The Daggett Street Shared Public Way is a one-block street connecting 16th  
7 and 7th Streets.

8 (2) The Project Sponsor currently is constructing a mixed use project consisting  
9 of approximately 450 housing units along with accompanying space for ground floor retail and  
10 Production, Distribution, and Repair (PDR) on its properties that abut Daggett Street.

11 (3) The Project Sponsor has agreed to construct certain public improvements  
12 on and in Daggett Street, including the creation of public open space park improvements of  
13 approximately 38,000 square feet and a shared public way. The shared public way  
14 improvements are more fully shown in permit drawings and diagrams, copies of which are in  
15 the Clerk of the Board of Supervisors File No. \_\_\_\_\_ and are incorporated herein by  
16 reference.

17 (4) Pursuant to Public Works Code Section 786, the Project Sponsor requested  
18 permission to occupy portions of the public right-of-way to construct the Daggett Street  
19 Shared Public Way improvements and provide for the maintenance of this encroachment.

20 (5) The Eastern Neighborhoods Streets and Open Space Concept (Appendix  
21 A3 of the Showplace Square/Potrero Hill Area Plan) shows a public open space on Daggett  
22 Street as a priority area for the City to provide new open space. Policies 5.1.1 and 5.1.2 of the  
23 Showplace Square/Potrero Hill Area Plan (2009) call for the City to “[i]dentify opportunities to  
24 create new public parks and open spaces and provide at least one new public park or open  
25 space serving the Showplace/Potrero” and “[r]equire new residential development and

1 commercial development to provide, or contribute to the creation of publicly accessible open  
2 space." In addition, the Showplace Open Space Plan (2010) identified Daggett Street as a  
3 potential location for open space to fulfill the goals of the Showplace Square/Potrero Hill Area  
4 Plan.

5 (6) The Transportation Advisory Staff Committee, at its meeting of \_\_\_\_\_,  
6 20\_\_\_\_\_, recommended the proposed encroachments for approval. Minutes of said meeting  
7 are on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_.

8 (7) After a public hearing on \_\_\_\_\_, 20\_\_\_, Public Works recommended  
9 to the Board approval of a street encroachment permit for the Daggett Street Shared Public  
10 Way and its maintenance. This recommendation is contained in PW Order No. \_\_\_\_\_, a  
11 copy of which is on file with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_, and  
12 incorporated herein by reference.

13 **(b) Approval of a Major Encroachment Permit for the Daggett Street Shared**  
14 **Public Way.**

15 (1) The Street (Major) Encroachment Permit and its associated encroachment  
16 agreement for the Daggett Street Shared Public Way shall not become effective until:

17 (A) The Permittee executes and acknowledges the permit and delivers  
18 said Permit to Public Works,

19 (B) PW records the Permit and associated encroachment agreement  
20 along with a declaration of restrictions ensuring maintenance in perpetuity in the County  
21 Recorder's Office, and

22 (C) The Project Sponsor posts a maintenance bond in an amount and  
23 subject to terms acceptable to the Director of PW and the City Attorney to ensure long-term  
24 maintenance of the Daggett Street Shared Public Way.  
25

1 (2) The Permit and its associated encroachment agreement are on file with the  
2 Clerk of the Board of Supervisors in File No: \_\_\_\_\_ and incorporated herein by  
3 reference.

4 (3) The Permittee, at its sole expense and as is necessary as a result of this  
5 permit, shall make the following arrangements:

6 (A) To provide for the support and protection of facilities under the  
7 jurisdiction of PW, the San Francisco Public Utilities Commission, the San Francisco Fire  
8 Department and other City Departments, and public utility companies;

9 (B) To provide access to such facilities to allow said entities to construct,  
10 reconstruct, maintain, operate, or repair such facilities; and,

11 (C) To remove or relocate such facilities if installation of the  
12 encroachment requires said removal or relocation and to make all necessary arrangements  
13 with the owners of such facilities, including payment for all their costs, should said removal or  
14 relocation be required.

15 (4) No structures shall be erected or constructed within said street right-of-way  
16 except as specifically permitted herein.

17 (5) The Permittee shall assume all costs for the maintenance and repair of the  
18 encroachment and no cost or obligation of any kind shall accrue to Public Works by reason of  
19 this permission granted.

20 (6) Pursuant to Public Works Code Section 786, the Board of Supervisors  
21 hereby grants revocable permission to the Project Sponsor, Archstone Daggett Place, LLC, to  
22 occupy the public right-of-way with the Daggett Street Shared Public Way improvements and  
23 to maintain this encroachment.  
24  
25



1 (7) The Board, pursuant to Section 786 and 786.7, finds that the Daggett Street  
2 Shared Public Way shall provide a public benefit, and therefore, waives the public right-of-way  
3 occupancy assessment fee.

4 (8) The Board of Supervisors accepts the recommendations of the PW Order  
5 and approves the Street Encroachment Permit and its associated maintenance agreement.

6 (9) The Board also delegates the authority to the PW Director, after confirmation  
7 from the General Manager of the Public Utilities Commission and the City Engineer's issuance  
8 of a determination of completion, to accept the sanitary sewer line in the Daggett Street  
9 Shared Public Way for City maintenance and liability purposes, subject to any terms related to  
10 its operation and maintenance that are contained in the permit or street encroachment  
11 agreement.

12  
13 **Section 7. Approval of Maintenance License Agreement for Vacation Area.**

14 (a) Under the In-Kind Agreement, Project Sponsor agreed to maintain the Vacation  
15 Area in perpetuity, which maintenance obligation will be detailed in a declaration of  
16 maintenance obligations ("Declaration") to be recorded against the Project Sponsor properties  
17 that abut Daggett Street, which Declaration shall be substantially in the form on file with the  
18 Clerk of the Board of Supervisors in File No. \_\_\_\_\_.

19 (b) To authorize the Project Sponsor to enter on the Vacation Area to perform such  
20 maintenance obligations in perpetuity under the Declaration, RED recommends that Project  
21 Sponsor and City enter into a maintenance license agreement in substantially the form on file  
22 with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_. Such agreement shall  
23 remain in effect until such time that City elects in writing to terminate such maintenance  
24 obligations.  
25

1 (c) The Board of Supervisors authorizes the Director of Property to execute such  
2 maintenance license agreement on behalf of the City, to perform and exercise City's rights  
3 and obligations under such agreement, and to enter into any amendments or modifications to  
4 such agreement (including without limitation, the exhibits) that the Director of Property  
5 determines, in consultation with the City Attorney, are in the best interest of the City, do not  
6 materially increase the obligations or liabilities of the City or materially decrease the  
7 obligations of Project Sponsor or its successors, are necessary or advisable to effectuate the  
8 purposes of the Declaration or this Ordinance, and are in compliance with all applicable laws,  
9 including City's Charter.

10  
11 **Section 8. Delegation to Public Works of Acceptance of Future Public**  
12 **Improvements.**

13 (a) **Findings.**

14 (1) The Board of Supervisors in Motion No. \_\_\_\_\_, approved Final  
15 Subdivision Map No. \_\_\_\_\_, associated with the development of \_\_\_\_\_. This  
16 map was accompanied by a public improvement agreement that addresses required public  
17 improvements associated with the development on private properties abutting Daggett Street.  
18 These improvements include an extended sidewalk and public right-of-way are at the corner  
19 of 16th and Hubbell Streets and the corner of 16th and 7th Streets . A copy of the motion,  
20 public improvement agreement, and an irrevocable offer for the identified public improvements  
21 and the fee title underlying such improvements are on file with the Clerk of the Board in File  
22 No. \_\_\_\_\_. The subject public improvements are not complete at this time when  
23 the Board is considering this legislation. Consequently, the Board of Supervisors determines  
24 that it would be efficient to delegate to the Director of PW the authority, upon completion of  
25 these future public improvements and the satisfaction of other conditions, to adopt any related

1 official PW maps, dedicate the improvements to public use, and accept the improvements for  
2 City maintenance and liability purposes, subject to the maintenance responsibility of fronting  
3 property owners pursuant to the Public Works Code, including, but not limited to, Public  
4 Works Code Section 706. The Board of Supervisors also determines that it would be efficient  
5 to delegate to the Director of RED the authority, upon the City Engineer's determination of  
6 completion of these future public improvements, to accept and record, on behalf of the City  
7 and County of San Francisco, a grant deed for the fee title to property underlying the public  
8 improvements.

9 **(b) Approval of the Delegation to the Directors of PW and RED of Certain**  
10 **Authority in Regard to Required Public Improvements.**

11 (1) The Board of Supervisors hereby delegates to the Director of PW the  
12 authority, upon completion of the future public improvements associated with the Project  
13 Sponsor's Final Subdivision Map and certification from the City Engineer that the  
14 improvements are ready for their intended use, to adopt any related official PW maps,  
15 dedicate the improvements to public use, and accept the improvements for City maintenance  
16 and liability purposes, subject to the maintenance responsibility of the Project Sponsor or his  
17 or her successor(s) pursuant to the Public Works Code.

18 (2) The Board of Supervisors hereby delegates to the Director of RED the  
19 authority, upon the City Engineer's determination of completion of these future public  
20 improvements, to accept and record, on behalf of the City and County of San Francisco, a  
21 grant deed for the fee title to property underlying the public improvements.

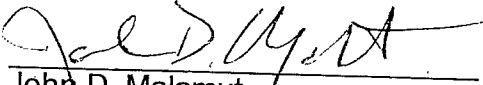
22  
23 **Section 9. Official Acts in Furtherance of the Ordinance.** The Board of Supervisors  
24 directs the Directors of PW and RED, in consultation with the City Attorney's Office, to take all  
25

1 actions necessary to implement the intent of this ordinance, including acceptance and  
2 recordation of deeds and the aforementioned declarations of restrictions.  
3

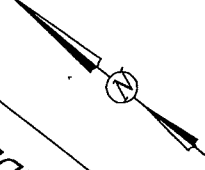
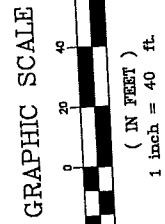
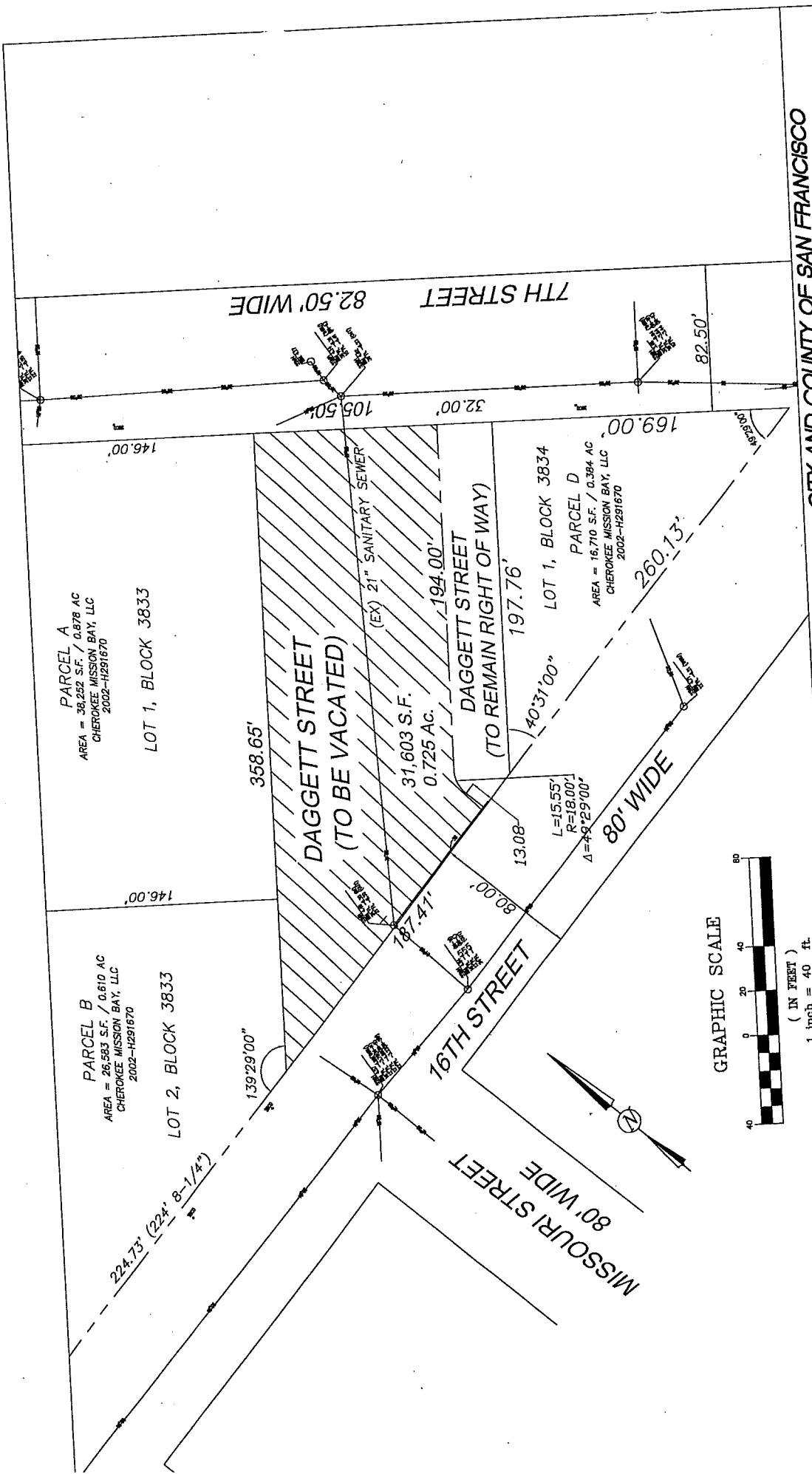
4 Section 10. **Effective Date.** This ordinance shall become effective 30 days after  
5 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
6 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
7 of Supervisors overrides the Mayor's veto of the ordinance.  
8

9 APPROVED AS TO FORM:  
10 DENNIS J. HERRERA, City Attorney

11 By:

  
12 John D. Malamut  
13 Deputy City Attorney

14 n:\landas2015\1500868\01022173.doc  
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17  
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25



CITY AND COUNTY OF SAN FRANCISCO  
 DEPARTMENT OF PUBLIC WORKS  
 STREET VACATION OF A PORTION OF DAGGETT STREET BETWEEN  
 16TH STREET AND 7TH STREET.

REFERENCES:	APPROVED:	BRUCE R. STORRS CITY & COUNTY SURVEYOR	DATE
		SUR 2015-xxx	SHEET 1 OF 1
			SCALE: 1:50
			CHANGE



# SAN FRANCISCO PLANNING DEPARTMENT

## Executive Summary

### Fee Waiver for the Eastern Neighborhoods Infrastructure Impact Fee

HEARING DATE: NOVEMBER 29, 2012

*Date:* November 19, 2012  
*Case No.:* 2003.0527U  
*Project Address:* 1000 16<sup>th</sup> Street/"Daggett Park"  
*Plan Area:* Showplace Square/Potrero Hill  
*Project Sponsor:* Archstone  
San Francisco, CA  
*Staff Contact:* Steve Wertheim (415-558-6612)  
*steve.wertheim@sfgov.org*

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

#### SUMMARY

The Project Sponsor of the development at 1000 16<sup>th</sup> Street is seeking to enter an In-Kind Agreement with the City of San Francisco for the provision of a public park along the Daggett Street right-of-way (Daggett Park) in return for a waiver of \$1.88 million of their Eastern Neighborhoods Infrastructure Impact Fees. As part of the In-Kind Agreement, the Project Sponsor agrees to maintain Daggett Park in perpetuity at no cost to the City. Additionally, the Project Sponsor is proposing to gift approximately \$1.15 million worth of improvements to the City, via a separate and subsequent legal agreement with the Board of Supervisors.

#### BACKGROUND

A primary goal of 2008's Eastern Neighborhoods Plan is to convert a portion of the city's industrial areas into complete mixed-use neighborhoods. Such neighborhoods feature infrastructure such as public parks, efficient transit, affordable housing, safe and walkable streets, and child care. In order to help pay for such infrastructure, development projects within the Eastern Neighborhoods Plan Area are subject to the Eastern Neighborhoods Infrastructure Impact Fee. This impact fee varies by project, as it is based on the amount of development proposed. Project sponsors may pay the impact fee directly to the City. Alternatively, project sponsors may request to directly provide the infrastructure that supports complete neighborhoods. Such direct provision of infrastructure requires the approval of the City, in the form of a legally binding "In-Kind Agreement".

Such an In-Kind Agreement, as contained in Attachment 2, is being sought at this time by Archstone, the Project Sponsor at 1000 16<sup>th</sup> Street. The project is located at the triangle created by 16<sup>th</sup>, 7<sup>th</sup>, and Hubbell Streets, which also includes the right-of-way for Daggett Street, a "paper" street that has never functioned as a city street and is currently a largely flat dirt area (for a map, see Attachment 3). At that location, the

Project Sponsor proposes to build approximately 470 units of rental housing, along with accompanying ground floor retail. The project, Case 2003.0527, was entitled by the Planning Commission on July 21, 2011 in Motion No. 18419. The project is projected to owe approximately \$4.2 million in Eastern Neighborhoods Infrastructure Impact Fees.

As part of the development of the project, the Sponsor is proposing to construct a public park along the Daggett Street right-of-way. Such a park would fulfill the vision of the Showplace Square/Potrero Hill Plan (one of the Eastern Neighborhoods plans), whose Policy 5.1.1 calls for the City to "identify opportunities to create new public parks and open spaces and provide at least one new public park or open space serving the Showplace/Potrero." The Eastern Neighborhoods process identified the creation of a new park in Showplace Square as an Eastern Neighborhoods Priority Project. A park along the Daggett Street right-of-way was identified in 2009's Showplace Square Open Space Plan. Subsequently, the Eastern Neighborhoods N CAC identified the Daggett park site as the top priority for new open space in the Showplace Area.

## PROPOSAL

The proposed Daggett Park would be 0.88 acres in size, about half the size of South Park and substantially larger than Patricia's Green in Hayes Valley. The park would have a number of amenities and design features, (as shown in Attachment 4), including:

- Large, unprogrammed lawn areas for general recreation and gathering
- Ample seating opportunities dispersed throughout the park.
- Architectural features that double as play and sitting areas, such as the "Tilted Lawn" and the "Penta Step"
- Universal accessibility, per requirements of the Americans with Disability Act and the Mayor's Office of Disability.
- A fenced-off dog run
- "Mission Marsh Bears", a public art piece selected through a process facilitated by the San Francisco Arts Commission.
- Easy and welcoming access from both 16<sup>th</sup> and 7<sup>th</sup> Streets, including signage, to ensure that the area clearly reads as a public park.
- Multiple features to minimize stormwater runoff, such as permeable pavers and a stormwater garden.
- Drought-resistant trees and landscaping.

In addition to the park there would be a single lane, one-way "shared street" consistent with the San Francisco Better Streets Design Guidelines that would create a pedestrian-oriented environment while allowing vehicle access. The shared street is designed to minimize through traffic, the paving is consistent with pedestrian areas in the park rather than a typical street, and vehicular area is defined by detectable warning strips and bollards rather than a curb.

The value of the proposed improvements has been calculated at over \$3.72 million. Of this, over \$0.80 million would be the value of improvements that the Project Sponsor would be required to undertake if the In-Kind Agreement were not to occur, and \$1.88 million would be waived from their Eastern Neighborhoods Infrastructure Impact Fees, should this In-Kind Agreement be completed. The additional

\$1.04 million to complete Daggett Park would be gifted by the Project Sponsor to the City in a separate legal agreement. To see the specifics of the valuation, see Exhibit C (Calculation of In-Kind Value) of Attachment 2 (Draft In-Kind Agreement).

## PROCESS

The approval of this In-Kind Agreement is only one aspect of completing the proposed park. Other elements include acquiring the land from the Port of San Francisco, entering into a legal agreement to receive the gift of park improvements from the Project, Phase III of the Civic Design Review process, completion of an Operations Plan with the Project Sponsor, and ensuring that the park improvements are completed per the requirements of the legal agreements made between the City and the Project Sponsor. These are discussed below:

### Acquiring Land from the Port of San Francisco

The Daggett Street right-of-way land is owned by the Port of San Francisco, and the City's Department of Public Works ("DPW") holds an easement over the land for public street purposes. Daggett Street is a "Paper Street" constructed on fill in Mission Bay and is subject to the Public Trust. The Public Trust is a doctrine that reserves public access to the waterfront on a piece of property. After consultation with outside counsel, the City concluded that a park use on Daggett Street would not be consistent with the Public Trust. Therefore, to complete the proposed Daggett Park, it will be necessary to remove the Public Trust from Daggett Street.

Such removal of the Public Trust on Daggett Street is enabled by 2007's Senate Bill 815, in which the State Legislature recognized that the now land-locked Paper Streets did not further the purpose of the Public Trust, and granted San Francisco the right to sell the Paper Street parcels for fair market value free of the Public Trust.

In order to ensure fair market value is received for the parcel, the Department of Real Estate will commission an appraisal of the parcel. Staff has agreed to instruct the appraiser to provide the value of the property as it is currently zoned, Public Use (P), and with the existing height and bulk restrictions, Open Space (OS). After the appraisal is complete, the State Lands Commission must make findings that the sale of the parcel at the appraised price is at fair market value. The City will then propose to purchase Daggett Street from the Port at the appraised value, subject to the approval of the Port Commission and Board of Supervisors. Once the Public Trust has been removed, ownership of the Daggett Street parcel will be transferred either to the Department of Real Estate or DPW for the purpose of constructing Daggett Park.

Staff is working to identify a funding source for the purchase of Daggett Street by the City. The strategies explored will be informed by the appraised value of the property, which is still ongoing. This process is being managed by the Office of Economic and Workforce Development. To facilitate this process, the Port has agreed to accept payment over time, subject to a reasonable annual interest rate.

### Entering into a Legal Agreement for the Gift



Executive Summary  
Hearing Date: November 29, 2012

CASE NO. 2003.0527U  
1000 16<sup>th</sup> Street (Daggett Park) In-Kind Agreement

As discussed above, the Project Sponsor is proposing to gift the City of San Francisco park improvements valued at approximately \$1.04 million. Such a gift would occur via a legal agreement that would require approval by the Board of Supervisors. Staff is working with the Project Sponsor and staff at the Office of Economic and Workforce Development on developing language for this legal agreement.

#### Phase III of the Civic Design Review Process

Early in 2012 the proposed park completed Phase I (schematic design) and Phase II (design development) of the Civic Design Review Process. Staff and the Project Sponsor will work to facilitate Phase III (construction documents) upon approval of this In-Kind Agreement.

#### Completing an Operations Plan

The Project Sponsor has agreed to maintain Daggett Park in perpetuity. Such an action will result in substantial long-term cost savings to the City of San Francisco. Per Article 4.2.2 of the In-Kind Agreement, prior to the issuance of the Final Inspection Notice for the park this Operations Plan must be approved by the Director of Planning, in consultation with relevant City agencies such as Park and Recreation and the Department of Public Works. The Operations Plan must ensure that Daggett Park functions as a public open space.

#### Ensuring Park Completion

The In-Kind and Gift legal agreements will require that the park is completed prior to the issuance of the First Certificate of Occupancy for the Project Sponsor's adjacent development at 1000 16<sup>th</sup> Street. If the park is not completed at that time, the Project Sponsor will provide the City with a letter of credit or other form of security for the amount of the uncompleted improvements. This security will be held by the City until the completion of the agreed-to park improvements.

### **REQUIRED COMMISSION ACTION**

To complete this In-Kind Agreement requires that the Planning Commission approve an impact fee waiver in return for the in-kind improvements discussed above.

### **BASIS FOR RECOMMENDATION**

In September of 2010, the Planning Commission adopted a policy entitled "Procedures for In-Kind Agreements". The proposed Daggett Park project meets all of the thresholds established in those Procedures for supporting an In-Kind Agreement, as follows:

#### The Proposed Improvement is Eligible for an In-Kind Agreement

To be eligible for an In-Kind Agreement, the proposed project must meet the following three requirements:

- Fulfills purpose of community improvements
- Infrastructure type is identified in fee ordinance
- Expenditure category for infrastructure type is not exhausted

The proposed Daggett Park meets these three requirements, as follows.

- The Showplace Square/Potrero Hill Area Plan Policy 5.1.1 calls for the City to “identify opportunities to create new public parks and open spaces and provide at least one new public park or open space serving the Showplace/Potrero.” Such a park would fulfill this goal.
- The Eastern Neighborhoods Community Benefits Fund includes parks as a type of infrastructure for which the Eastern Neighborhoods Infrastructure Impact Fee could be spent.
- With the contribution of this and other projects, the “parks” expenditure category is expected to have within the Eastern Neighborhoods Community Benefits Fund has over \$1.88 million at this time.

#### The Proposed Improvements is a Priority

As discussed above, the creation of a park in the Showplace Square area is a goal of the Showplace Square/Potrero Hill Area Plan, and as a “Priority Project” by the Eastern Neighborhoods Infrastructure Prioritization Memorandum of Understanding (MOU), completed in January 2009.

#### The Project is Recommended

The proposed project was supported by 2009’s Showplace Square Open Space Plan. It was also supported by a community meeting held in early 2011. Finally, as discussed above, the proposed project has the support of the Eastern Neighborhoods Citizens Advisory Committee, who unanimously supported the proposal on July 18, 2011 in Motion 2011-6-1.

The proposed project has also been reviewed and supported by a number of City agencies, including the Department of Public Works, the Port, Park and Recreation, and the Office of Economic and Workforce Development.

Based on the community support, support of other agencies, a review of the value, the proposed Operations Plan, and the terms of agreement contained in the In-Kind Agreement, the Planning Department recommends approval of this In-Kind Agreement.

#### **Attachments:**

1. Draft Planning Commission Motion
2. Draft In-Kind Agreement for 1000 16<sup>th</sup> Street
3. Location of the Proposed Daggett Park
4. Design and Images of the Proposed Daggett Park

# **Attachment 1**

## **Draft Planning Commission Motion**



## SAN FRANCISCO PLANNING DEPARTMENT

*Date:* November 19, 2012  
*Case No.:* 2003.0527U  
*Project Address:* 1000 16<sup>th</sup> Street/"Daggett Park"  
*Plan Area:* Showplace Square/Potrero Hill  
*Project Sponsor:* Archstone  
San Francisco, CA  
*Staff Contact:* Steve Wertheim (415-558-6612)  
*steve.wertheim@sfgov.org*

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

**APPROVING AN IMPACT FEE WAIVER FOR 1000 16th STREET IN THE AMOUNT OF \$1,880,000 TO CONTRIBUTE TO THE CONSTRUCTION OF A PARK ALONG THE DAGGETT STREET RIGHT-OF-WAY BASED ON THE COMPLETION OF AN IN-KIND AGREEMENT BETWEEN THE PROJECT SPONSOR AND THE CITY**

### PREAMBLE

- On January 19, 2009 the Eastern Neighborhoods Plan became effective, including now Section 423.3 of the San Francisco Planning Code, the Eastern Neighborhoods Infrastructure Impact Fee applicable to all projects in the plan area, including the subject property. This Impact Fee enabled Project Sponsors to seek a waiver from the City for impact fees that they provided in-kind.
- In January of 2009, seven City agencies entered into a Memorandum of Understanding which identified "Priority Projects" for the expenditure of Eastern Neighborhoods Infrastructure Impact Fees. One of these Priority Projects was locating a site for and constructing a new park in Showplace Square.
- The Showplace Square Open Space Plan, conducted in 2009, identified the Daggett Street right-of-way as a potential location for a public park.
- On October 18, 2010, the Project Sponsor's predecessor, Cherokee, formally requested to the City for approval of an In-Kind Agreement for provision of a park along the Daggett Street right-of-way.
- On July 18, 2011, in Motion 2011-6-1, the Eastern Neighborhoods Citizens Advisory Committee unanimously supported the construction of a park along the Daggett Street right-of-way as the means to fulfill the goal of constructing a new park within the Showplace Square Area.
- On July 21, 2011, in Motion No. 18419, the Project Sponsor received entitlement by the Planning Commission to build approximately 470 units of rental housing, along with accompanying ground floor retail (Case 2003.0527). The project is projected to owe approximately \$4.2 million in Eastern Neighborhoods Infrastructure Impact Fees.

**MOVED**, that the Commission hereby authorizes the Eastern Neighborhoods Impact Fee Waiver for 1000 16<sup>th</sup> Street based on the following findings:

### FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

- The above recitals are accurate and constitute findings of this Commission.
- The proposed Daggett Park project meets all of the thresholds established in the Planning Commission's Procedures for In-Kind Agreements, as follows:
  - The proposed project meets the following fulfills purpose of community improvements by fulfilling Policy 5.1.1 of the Showplace Square/Potrero Hill Area Plan, which calls for the City to "identify opportunities to create new public parks and open spaces and provide at least one new public park or open space serving the Showplace/Potrero."
  - The infrastructure type is identified in fee ordinance, since the Eastern Neighborhoods Community Benefits Fund includes parks as a type of infrastructure for which the Eastern Neighborhoods Infrastructure Impact Fee could be spent.
  - Expenditure category for infrastructure type is not exhausted, as the contribution of this and other projects ensure that the "parks" expenditure category within the Eastern Neighborhoods Community Benefits Fund has over \$1.88 million.
  - The proposed improvements are a priority, as the creation of a park in the Showplace Square area is a goal of the Showplace Square/Potrero Hill Area Plan, and as a "Priority Project" by the Eastern Neighborhoods Infrastructure Prioritization Memorandum of Understanding (MOU), completed in January 2009.
  - The Project is Recommended, including
    - Being identified by 2009's Showplace Square Open Space Plan,
    - Supported by a community meeting held in early 2011,
    - Supported by the Eastern Neighborhoods Citizens Advisory Committee, who unanimously supported the proposal on July 18, 2011 in Motion 2011-6-1.
    - Reviewed and supported by a number of City agencies, including the Department of Public Works, the Port, Park and Recreation, and the Office of Economic and Workforce Development.
  - The Department determined the final value of the proposed improvements to be equivalent to the fee amount based on 2012 cost estimates provided by the Project Sponsor.

### DECISION

The Commission, after carefully balancing the competing public and private interests, and based upon the Recitals and Findings set forth above, in accordance with the standards specified in the Code, hereby approves an impact fee waiver .

Draft Planning Commission Motion  
Hearing Date: November 29, 2012

CASE NO. 2003.0527U  
1000 16<sup>th</sup> Street (Daggett Park) In-Kind Agreement

The Commission approves an in-kind agreement that substantially conforms to the attached drafts and authorizes the Director and City Attorneys' office to make changes as necessary to finalize the agreement.

I hereby certify that the foregoing Motion was adopted by the Planning Commission on November 29<sup>th</sup>, 2012.

Jonas Ionin  
Acting Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED:

# **Attachment 2**

**Draft In-Kind Agreement for  
1000 16<sup>th</sup> Street**

**1000 16th STREET IN-KIND AGREEMENT  
(PER PLANNING CODE SECTION 423.3)**

**THIS IN-KIND AGREEMENT** (the "Agreement") is entered into as of November 29<sup>th</sup>, 2012, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the Planning Commission (the "City") and ARCHSTONE DAGGETT PLACE LLC, a Delaware limited liability company ("Project Sponsor"), with respect to the project approved for 1000 16th Street, San Francisco, California 94107 (the "Project").

**RECITALS**

- A. On December 19, 2008, the San Francisco Board of Supervisors enacted Ordinance No. 298-08 (File No. 081153) (the "Ordinance"), adding Section 327 to the San Francisco Planning Code (now Sections 423-423.5). Any undefined term used herein shall have the meaning given to such term in Article 4 of the Planning Code, and all references to Sections 423-423.5 shall mean Sections 423-423.5 of the San Francisco Planning Code.
- B. In order to mitigate the impacts from the new mixed residential and commercial development permitted under the Eastern Neighborhoods Plan, the Ordinance imposed an Impact Fee on new residential and commercial development (the "Fee"). Under Section 423.3(e), the Fee is required to be paid to the City before issuance of the first construction document for a development project. As an alternative to payment of the Fee, the Ordinance provides that the City may reduce the Fee obligation at that time if the project sponsor agrees to provide specified community improvements. In order for the project sponsor to satisfy its Fee obligation by providing such in-kind improvements, the Ordinance requires the City and the Project Sponsor to enter into an "In-Kind Agreement" described in Section 423.3(d).
- C. The property described in Exhibit A attached hereto (the "Land") and generally known as 1000 16th Street (Lots 1, 2, and 3 in Assessor's Block 3833 and Lot 1 in Assessor's Block 3834) is owned by Project Sponsor. Archstone New Development Holdings LP, the Project Sponsor's predecessor in interest, submitted an application for the development of a mixed residential and commercial development on the Land, and the Planning Commission approved the Project on July 28, 2011 (Motion No. 18419). In its approval motion, the Commission urged the Project Sponsor to pursue an In-Kind Agreement for open space improvements in the Daggett Street right-of-way.
- D. The Showplace Square/Potrero Area Plan contains objectives and policies for creating a complete mixed-use neighborhood along 16<sup>th</sup> Street, including developing public open space in the vicinity of the Project. The Showplace Square Open Space Study identified the Daggett Street right-of-way, an unaccepted street situated between Block 3833 and Block 3834, as a priority location for a public open space in the Showplace Square neighborhood. The Daggett Street right-of-way land is owned by the Port of San Francisco, and the City's Department of Public Works ("DPW") holds an easement over the land for public street purposes.



E. The Project Sponsor has requested that the City enter into an In-Kind Agreement associated with development of public open space improvements in a portion of the Daggett Street right-of-way to create a public open space referred to herein as "Daggett Park," in order to reduce its Fee obligation per the terms of the Ordinance, provided the owner of the land upon which Daggett Park would be constructed (currently, the Port of San Francisco) and any public street easement holder timely and irrevocably consent to the construction and maintenance of such improvements.

F. The In-Kind Improvements meet an identified community need as analyzed in the Eastern Neighborhoods Community Improvements Program and are not a physical improvement or provision of space otherwise required by the Planning Code or any other City Code.

G. On July 18, 2011, the Eastern Neighborhoods Citizens Advisory Committee voted in Motion 2011-6-1 to support the use of Eastern Neighborhoods Public Benefit Funds for the development of a Daggett Park, via an In-Kind Agreement with the sponsor of the surrounding development.

H. The City is willing to enter into an In-Kind Agreement, on the terms and conditions set forth below.

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### ARTICLE 1 DEFINITIONS

1.1 Defined Terms. As used in this Agreement, the following words and phrases have the following meanings.

"**Agreement**" shall mean this Agreement.

"**City**" shall have the meaning set forth in the preamble to this Agreement.

"**Date of Satisfaction**" shall have the meaning set forth in Section 4.8 below.

"**DBI**" shall have the meaning set forth in Section 3.3 below.

"**DPW**" shall have the meaning set forth in Recital D.

"**Effective Date**" shall have the meaning set forth in Section 5.1 below.

"**Final Inspection Notice**" shall have the meaning set forth in Section 4.6 below.

**"First Construction Document"** shall have the meaning set forth in Section 401 of the Planning Code.

**"Impact Fee"** or **"Fee"** shall mean the fee charged to all residential and commercial development projects in the Eastern Neighborhoods Plan Areas under Section 423.3 of the Ordinance.

**"In-Kind Improvements"** shall have the meaning set forth in Recital E.

**"In-Kind Value"** shall have the meaning set forth in Section 3.2 below.

**"Initial Amount"** shall have the meaning set forth in Section 3.3 below.

**"Inspection Notice"** shall have the meaning set forth in Section 4.6 below.

**"Land"** shall have the meaning set forth in Recital C.

**"Memorandum of Agreement"** shall have the meaning set forth in Section 7.1 below.

**"Ordinance"** shall have the meaning designated in Recital A.

**"Payment Analysis"** shall have the meaning set forth in Section 5.2 below.

**"Payment Documentation"** shall have the meaning set forth in Section 4.7 below.

**"Plans"** shall have the meaning set forth in Section 4.3 below.

**"Project"** shall have the meaning set forth in the preamble to this Agreement.

**"Project Sponsor"** shall have the meaning set forth in the preamble to this Agreement.

**"Project Sponsor Fee"** shall mean the Project Sponsor's share of the Fee, as calculated pursuant to Section 3.1 hereof.

## **ARTICLE 2 PROJECT SPONSOR REPRESENTATIONS AND COVENANTS**

The Project Sponsor hereby represents, warrants, agrees and covenants to the City as follows:

2.1 The above recitals relating to the Project are true and correct.

2.2 Project Sponsor: (1) is a limited liability company duly organized and existing under the laws of the State of Delaware, (2) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated to be

conducted, (3) has the power to execute and perform all the undertakings of this Agreement, and (4) is the fee owner of the real property on which the Project is located.

2.3 The execution and delivery of this Agreement and other instruments required to be executed and delivered by the Project Sponsor pursuant to this Agreement: (1) have not violated and will not violate any provision of law, rule or regulation, any order of court or other agency or government, and (2) have not violated and will not violate any provision of any agreement or instrument to which the Project Sponsor is bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature.

2.4 No document furnished or to be furnished by the Project Sponsor to the City in connection with this Agreement contains or will contain any untrue statement of material fact, or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

2.5 Neither the Project Sponsor, nor any of its principals or members, have been suspended, disciplined or debarred by, or prohibited from contracting with, the U.S. General Services Administration or any federal, state or local governmental agency during the past five (5) years.

2.6 Pursuant to Section 423.3(d)(5), the Project Sponsor shall reimburse all City agencies for their administrative and staff costs in negotiating, drafting, and monitoring compliance with this Agreement.

### ARTICLE 3 CALCULATION OF FEE AND IN-KIND CREDIT

3.1 The Project Sponsor Fee shall be calculated in accordance with Section 423.3(c) of the Ordinance. Based on the project entitled by the Planning Commission, the Fee is estimated at \$4,197,142 (for the fee calculations, see Exhibit B). The final Fee shall be calculated based on the project entitled by its First Construction Document.

3.2 Based on two estimates provided by independent sources, the Director of Planning determines that the In-Kind Improvements have a value of approximately \$1,880,000 (the "In-Kind Value"); provided, however, if upon final completion the actual construction and development costs to the Project Sponsor of providing the In-Kind Improvements are lower than this amount, the provisions of Section 5.2 shall apply. Documentation establishing the estimated eligible costs of providing the In-Kind Improvements in compliance with applicable City standards is attached hereto as Exhibit C (the "Cost Documentation").

3.3 The Project Sponsor shall pay to the Development Fee Collection Unit at the Department of Building Inspection ("DBI") \$2,317,142 (the "Initial Amount"), which is an amount equal to the Project Sponsor Fee (see Exhibit B) minus the In-Kind Value (see Exhibit C), prior to issuance of the Project's First Construction Document, pursuant to Section 423.3 of the Planning Code and Section 107A.13.3 of the San Francisco Building Code. On the Date of Satisfaction, the Project Sponsor shall receive a credit against the Project Sponsor Fee in the amount of the In-Kind Value, subject to Section 5.2 below.

## ARTICLE 4 IN-KIND IMPROVEMENTS

4.1 The Port of San Francisco ("Port") is the current owner of Daggett Street. The City, acting by and through its Planning Commission, hereby requests that the Port (or its successor in interest) and any public street easement holder of the Daggett Street right-of-way irrevocably consent in writing, at no cost to the Project Sponsor, to use of Daggett Street for public open space purposes in a form acceptable to the Project Sponsor (the "Port Consent") prior to the following milestones:

4.1.1 If the Port Consent is given prior to March 1, 2013, the Project Sponsor shall proceed with design and construction of the In-Kind Improvements pursuant to the terms of this Agreement.

4.1.2 If the Port Consent is not given prior to March 1, 2013, the Project Sponsor shall have the option of terminating this Agreement. If the Project Sponsor elects not to terminate this Agreement and instead elects to proceed with design of the In-Kind Improvements, all such design costs (up to a maximum cost of \$500,000) shall be deemed an In-Kind Value and be credited against the Project Sponsor Fee whether or not the Port Consent is ever received.

4.2 The Project Sponsor agrees to take all steps necessary to construct and provide, at the Project Sponsor's sole cost, the In-Kind Improvements for the benefit of the City and the public, and the City shall accept the In-Kind Improvements in lieu of a portion of the Project Sponsor Fee under this Agreement if this Agreement is still in effect and each of the following conditions are met:

4.2.1 The Port Commission authorizes the Port Consent as provided in Section 4.1. The Project Sponsor agrees that the Port Consent may be conditioned on the construction, operation, and maintenance of the In-Kind Improvements at no cost to the Port.

4.2.2 The Project Sponsor will prepare an Operations Plan providing maintenance services for the life of Daggett Park, including, but not limited to, gardening, maintenance, and security services for Daggett Park, prior to issuance of the first temporary certificate of occupancy for the Project. Prior to the issuance of the Final Inspection Notice for the park, this Operations Plan must be approved by the Director of Planning, in consultation with relevant City agencies such as Park and Recreation and the Department of Public Works. The Project Sponsor shall comply with the Operations Plan at no cost to the City or Port and must ensure that Daggett Park functions as a public open space including equal access for all members of the public with operating hours similar to similar publicly owned and operated open spaces, other rules of operation similar to other publicly owned and operated public open spaces, including allowable activities.

4.3 Plans and Permits. The Project Sponsor shall cause its landscape architect to prepare detailed plans and specifications for the In-Kind Improvements, which plans and

specifications shall be submitted for review and approval by DPW and DBI in the ordinary course of the process of obtaining a building permit for the Project (upon such approval, the "Plans"). Such review and approval of the plans and specifications of the In-Kind Improvements by DPW and DBI shall not be unreasonably withheld, delayed or conditioned. The Project Sponsor shall be responsible, at no cost to the City, for completing the In-Kind Improvements strictly in accordance with the approved Plans and shall not make any material change to the approved Plans during the course of construction without first obtaining the Director of Planning's written approval. Upon completion of the In-Kind Improvements, the Project Sponsor shall furnish the City with a copy of the final approved plans and specifications for the In-Kind Improvements and documentation of any material changes or deviations therefrom that may occur during construction of the In-Kind Improvements.

4.4 Construction. All construction with respect to the In-Kind Improvements shall be accomplished prior to the First Certificate of Occupancy for the Project, including a temporary Certificate of Occupancy. The improvements shall be accomplished and in accordance with good construction and engineering practices and applicable laws. The Project Sponsor, while performing any construction relating to the In-Kind Improvements, shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to the surrounding property, and the risk of injury to members of the public, caused by or resulting from the performance of such construction. All construction relating to the In-Kind Improvements shall be performed by licensed, insured and bonded contractors, and pursuant to a contract that includes a release and indemnification for the benefit of the City.

4.5 If the Final Inspection Notice has not been completed prior to issuance of the First Certificate of Occupancy, the Project Sponsor shall provide a letter of credit, surety bond, escrow account, or other security reasonably satisfactory to the Planning Director in the amount of one hundred percent (100%) of the Cost Documentation applicable to the uncompleted In-Kind Improvements (the "Security") to be held by the City until issuance of the Final Inspection Notice, at which date it shall be returned to the Project Sponsor.

4.6 Upon final completion of the In-Kind Improvements and the Project Sponsor's receipt of all final permit sign-offs, the Project Sponsor shall notify the Director of Planning that the In-Kind Improvements have been completed. The Director of Planning, or his or her agent, shall inspect the site to confirm compliance with this Agreement, and shall promptly thereafter notify the Project Sponsor that the In-Kind Improvements have been completed in accordance with the requirements of this Agreement, or, if there are any problems or deficiencies, shall notify the Project Sponsor of any such problems or deficiencies (the "Inspection Notice"). The Project Sponsor shall correct any such problems or deficiencies set forth in the Inspection Notice and then request another inspection, repeating this process until the Director of Planning approves the In-Kind Improvements as satisfactory. Such approval shall be based on the requirements of this Agreement and shall not be unreasonably withheld. This condition will not be satisfied until the Director of Planning delivers an Inspection Notice that certifies that the In-Kind Improvements are ready for use by the public, as determined by the Director of Planning based on current City standards, and constitute the full satisfaction of the obligation to provide In-Kind Improvements in the form required hereunder (the "Final Inspection Notice"). The City may, in its sole discretion, waive the requirements of this Section 4.5.]

4.7 Evidence of Payment. The Project Sponsor shall provide the Planning Department with documentation substantiating payment by the Project Sponsor of the cost of providing the In-Kind Improvements in the form of third-party checks and invoices and its or its general contractor's standard general conditions allocation (the "Payment Documentation"). The Payment Documentation shall include information necessary and customary in the construction industry to verify the Project Sponsor's costs and payments. The cost of providing the In-Kind Improvements shall be substantially similar to the average capital costs for the City to provide the same square feet of public open space, based on current value of recently completed projects.

4.8 The Project Sponsor shall not receive final credit for the In-Kind Improvements until the Final Inspection Notice is delivered, the Memorandum of Agreement is recorded and the City receives any additional payments as may be required under Articles 4 and 5 below, and all other obligations of the Project Sponsor under this Agreement have been satisfied (the "Date of Satisfaction"). The Project Sponsor assumes all risk of loss during construction, and shall not receive final credit for the In-Kind Improvements until the Date of Satisfaction. Notwithstanding the foregoing, on and after the Effective Date (as defined in Section 5.1 below), for so long as this Agreement remains in effect and the Project Sponsor is not in breach of this Agreement the City shall not withhold the issuance of any additional building or other permits necessary for the Project due to the Project Sponsor's payment of less than the full Project Sponsor Fee amount in anticipation of the In Kind Improvements ultimately being accepted and credited against the Project Sponsor Fee under the terms and conditions set forth in this Agreement.

## ARTICLE 5 PAYMENT AND SECURITY

5.1 This Agreement shall not be effective until this Agreement is signed by both the Project Sponsor and the City, is approved as to form by the City Attorney, and is approved by the Planning Commission. The date upon which the foregoing requirements have been satisfied shall be the "Effective Date".

5.2 The City shall provide the Project Sponsor with a written report of its review of the Payment Documentation ("Payment Analysis") within ten (10) business days of its receipt thereof, which review shall be conducted for the exclusive purpose of determining whether the Payment Documentation substantially and reasonably document that the cost of providing the In-Kind Improvements shall be substantially similar to the average capital costs for the City to provide the same type of public open space, with comparable improvements, based on current value of recently completed projects, as selected by the City in its sole discretion. If the Payment Analysis reasonably substantiates that the Project Sponsor made payments in respect of the In-Kind Improvements in an amount less than the In-Kind Value, the Project Sponsor shall, within sixty (60) days of the date of the Payment Analysis, pay the City in an amount equal to the difference between the In-Kind Value and the actual amount paid in respect of the In-Kind Improvements by the Project Sponsor. If the Payment Analysis reasonably substantiates that the Project Sponsor made payments in respect of the improvements in an amount equal to or greater than the In-Kind Value, the Project Sponsor shall not be entitled to a refund of such

overpayments and the City shall not be entitled to any additional funds related to the In-Kind Value.

5.3 The City and Project Sponsor shall endeavor to agree upon the Payment Analysis. If they are unable to so agree within thirty (30) days after receipt by Project Sponsor of the City's Payment Analysis, Project Sponsor and the City shall mutually select a third-party engineer/cost consultant. The City shall submit its Payment Analysis and Project Sponsor shall submit the Payment Documentation to such engineer/cost consultant, at such time or times and in such manner as the City and Project Sponsor shall agree (or as directed by the engineer/cost consultant if the City and Project Sponsor do not promptly agree). The engineer/cost consultant shall select either the City's Payment Analysis or Project Sponsor's determination pursuant to the Payment Documentation, and such determination shall be binding on the City and Project Sponsor.

5.4 Notwithstanding anything in this Agreement to the contrary:

5.4.1 The City shall not issue or renew any further certificates of occupancy to the Project Sponsor until the City receives payment of the full Project Sponsor Fee (in some combination of the payment of the Initial Amount, the acceptance of In-Kind Improvements having the value described under this Agreement and other cash payments received by the City directly from Project Sponsor) before issuance of the First Certificate of Occupancy for the Project.

5.4.2 The City's issuance of a certificate of final completion or any other permit or approval for the Project shall not release the Project Sponsor of its obligation to pay the full Project Sponsor Fee (with interest, if applicable), if such payment has not been made at the time the City issues such certificate of final completion.

5.4.3 If the In-Kind Improvements for any reason prove to be insufficient to provide payment for sums due from the Project Sponsor as and when required, and after demand by the City the Project Sponsor fails to pay such amount, such amount shall accrue interest from the date of such demand at the rate of [one-half percent per month, or fraction thereof, compounded monthly, until the date of payment]. If such nonpayment continues for a period of six (6) months, the City's Treasurer shall initiate proceedings in accordance with Article XX of Chapter 10 of the San Francisco Administrative Code to make the entire unpaid balance of the Project Sponsor Fee, including interest, a lien against all parcels used for the housing in the Project and shall send all notices required by that Article.

5.5 The Project Sponsor understands and agrees and any payments to be credited against the Project Sponsor Fee shall be subject to the provisions set forth in San Francisco Administrative Code Sections 6.80-6.83 relating to false claims. Pursuant to San Francisco Administrative Code Sections 6.80-6.83, a party who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A party who submits a false claim shall also be liable to the City for the cost, including attorney's fees, of a civil action brought to recover any of those penalties or damages and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A party will be deemed to have

submitted a false claim to the City if the party: (a) knowingly presents or causes to be presented to any officer or employee of the City a false claim; (b) knowingly makes, uses or causes to be made or used a false record or statement to get a false claim approved by the City; (c) conspires to defraud the City by getting a false claim allowed by the City; (d) knowingly makes, uses or causes to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the City; or (e) is beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim. The Project Sponsor shall include this provision in all contracts and subcontracts relating to the In-Kind Improvements, and shall take all necessary and appropriate steps to verify the accuracy of all payments made to any such contractors and subcontractors.

## ARTICLE 6 NOTICES

Any notice given under this Agreement shall be effective only if in writing and given by delivering the notice in person or by sending it first-class mail or certified mail with a return receipt requested or by overnight courier, return receipt requested, addressed as follows:

### CITY:

Director of Planning  
City and County of San Francisco  
1650 Mission St., Suite 400  
San Francisco, CA 94103

with a copy to:

Deputy City Attorney  
Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Attn: Susan Cleveland-Knowles

### PROJECT SPONSOR:

Archstone Daggett Place LLC  
807 Broadway, Suite 210  
Oakland, CA 94607  
Attn: Amir Massih

with a copy to:

Farella Braun + Martel LLP  
235 Montgomery Street  
San Francisco, CA 94104  
Attn: Steven L. Vettel, Esq.

or to such other address as either party may from time to time specify in writing to the other party. Any notice shall be deemed given when actually delivered if such delivery is in person, two (2) days after deposit with the U.S. Postal Service if such delivery is by certified or registered mail, and the next business day after deposit with the U.S. Postal Service or with the commercial overnight courier service if such delivery is by overnight mail.



**ARTICLE 7  
RUN WITH THE LAND**

7.1 The parties understand and agree that this Agreement shall run with the Project Sponsor's land, and shall burden and benefit every successor owner of the Land. The City would not be willing to enter into this Agreement without this provision, and the parties agree to record a Memorandum of Agreement in the form attached hereto as Exhibit C (the "Memorandum of Agreement"). On the Date of Satisfaction or if this Agreement is terminated pursuant to Section 8.4, this Agreement shall terminate and the City shall execute and deliver to the Project Sponsor a release of the Memorandum of Agreement, which the Project Sponsor may record.

**ARTICLE 8  
ADDITIONAL TERMS**

8.1 This Agreement contemplates the acquisition of In-Kind Improvements as authorized under the Ordinance and is not a public works contract. The City and the Project Sponsor agree that the In-Kind Improvements are of local and not state-wide concern, and that the provisions of the California Public Contracts Code shall not apply to the construction of the In-Kind Improvements.

8.2 The City shall have the right, during normal business hours and upon reasonable notice, to review all books and records of the Project Sponsor pertaining to the costs and expenses of providing the In-Kind Improvements.

8.3 This instrument (including the exhibit(s) hereto) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

8.4 This Agreement may be effectively amended, changed, modified, altered or terminated only by written instrument executed by the parties hereto except that the Project Sponsor may terminate this Agreement by written notice to the City at any time prior to issuance of the Project's first construction document, in which event the Project Sponsor shall have no obligations or liabilities under this Agreement and the City would have no obligation to issue the first construction document unless and until this Agreement is reinstated, another agreement is executed by the parties, or the Project Sponsor's obligations under the Ordinance are satisfied in another manner. Any material amendment shall require the approval of the City's Planning Commission, in its sole discretion.

8.5 No failure by the City to insist upon the strict performance of any obligation of Project Sponsor under this Agreement or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of payments during the continuance of any such breach, shall constitute a waiver of such breach or of the City's right to demand strict compliance with such term, covenant or condition. Any waiver must be in writing, and shall be limited to the terms or matters contained in such writing. No express written waiver of any default or the performance of any provision

hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. In the event of any breach of this Agreement by the Project Sponsor, the City shall have all rights and remedies available at law or in equity.

8.6 This Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of California.

8.7 The section and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement. Time is of the essence in all matters relating to this Agreement.

8.8 This Agreement does not create a partnership or joint venture between the City and the Project Sponsor as to any activity conducted by the Project Sponsor relating to this Agreement or otherwise. The Project Sponsor is not a state or governmental actor with respect to any activity conducted by the Project Sponsor hereunder. This Agreement does not constitute authorization or approval by the City of any activity conducted by the Project Sponsor. This Agreement does not create any rights in or for any member of the public, and there are no third party beneficiaries.

8.9 Notwithstanding anything to the contrary contained in this Agreement, the Project Sponsor acknowledges and agrees that no officer or employee of the City has authority to commit the City to this Agreement unless and until the Planning Commission adopts a resolution approving this Agreement, and it has been duly executed by the Director of Planning and approved as to form by City Attorney.

8.10 The Project Sponsor, on behalf of itself and its successors, shall indemnify, defend, reimburse and hold the City and the Port, including their respective employees and agents, harmless from and against any and all claims, demands, losses, liabilities, damages, injuries, penalties, lawsuits and other proceedings, judgments and awards and costs by or in favor of a third party, incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any accident, injury to or death of a person, or loss of or damage to property occurring in, on or about Daggett Park, provided that such accident, injury, death, loss or damage does not result from the gross negligence of the City; (b) any default by the Project Sponsor under this Agreement, (c) the condition of the In-Kind Improvements constructed by or on behalf of the Project Sponsor; and (d) any acts, omissions or negligence of the Project Sponsor or its agents in or about Daggett Park. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's and Port's costs of investigation. The Project Sponsor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City and the Port from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the Project Sponsor by City or the Port and continues at all times thereafter. The Project Sponsor's obligations under this Section shall survive the expiration or sooner termination of this Agreement.

## ARTICLE 9 CITY CONTRACTING PROVISIONS

9.1 The Project Sponsor understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov't Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. The Project Sponsor hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

9.2 In the performance of this Agreement, the Project Sponsor covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee or any City employee working with or applicant for employment with the Project Sponsor, in any of the Project Sponsor's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Project Sponsor.

9.3 Through execution of this Agreement, the Project Sponsor acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provision and agrees that if it becomes aware of any such fact during the term, the Project Sponsor shall immediately notify the City.

9.4 Through execution of this Agreement, the Project Sponsor acknowledges that it is familiar with Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for the contract until three (3) months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

9.5 The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City also urges San

Francisco companies to do business with corporations that abide by the MacBride Principles. The Project Sponsor acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

9.6 The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product.

NOW THEREFORE, the parties hereto have executed this In-Kind Agreement as of the date set forth above.

CITY AND COUNTY OF SAN FRANCISCO, acting by and through its Planning Commission

ARCHSTONE DAGGETT PLACE LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Director of Planning

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED:

DENNIS J. HERRERA  
City Attorney

APPROVED AS TO FORM:

FARELLA BRAUN & MARTEL, LLP

By: \_\_\_\_\_  
Deputy City Attorney

By: \_\_\_\_\_  
Steven L. Vettel

ACKNOWLEDGED:

Department of Building Inspection

By: \_\_\_\_\_  
Authorized Representative

ACKNOWLEDGED:

Department of Public Works

By: \_\_\_\_\_  
Authorized Representative

ACKNOWLEDGED:

Port of San Francisco

By: \_\_\_\_\_  
Authorized Representative

**Exhibit A**

The land referred to is situated in the County of San Francisco, City of San Francisco, State of California, and is described as follows:

Lots 1, 2, and 3 in Assessor's Block 3833 and Lot 1 in Assessor's Block 3834

**Exhibit B**

**Calculation of Impact Fees**

North Building

400,683 square feet of residential space at \$8.51 per square foot	\$3,409,812
6,048 square feet of non-residential space at \$10.63 per square foot	\$ 64,290

South Building

74,536 square feet of residential space at \$8.51 per square foot	\$ 634,301
8,348 square feet of non-residential space at \$10.63 per square foot	\$ 88,739

**Total**

**\$4,197,142**

## Exhibit C

### Calculation of In-Kind Value

The calculation of In-Kind Value for the proposed Daggett Park at 1000 16<sup>th</sup> Street has multiple components. These include:

- Determining the value of required improvements
- Determining the value of the proposed improvements
- Determining the specific improvements that would be provided via this In-Kind Agreement
- Determining the specific improvements that would need to be provided via a gift to the City

#### Determining the Value of Required Improvements

Fee waivers cannot be made for improvements that the Project Sponsor is already legally required to undertake. In this instance, the Project Sponsor is responsible for improving the entire Daggett Street right-of-way, given that their development is on both sides of this street. Such improvement would likely consist of transforming the unimproved areas into a new roadway, with sidewalk and landscaping. Working with the Department of Public Works, it was estimated that such improvements would cost \$802,350.

Table 1 – Value of Required Improvements

	AMOUNT	UNIT	UNIT COST	TOTAL COST
Site remediation	1,048	Tons	\$145	\$151,960
Site engineering	43,400	Square Feet	\$0.40	\$17,360
Earthwork	43,400	Square Feet	\$2.00	\$86,800
Hydraulic engineering				\$75,000
Curb & gutter	654	Linear Feet	\$40.00	\$26,160
City Sidewalk	7,800	Square Feet	\$8.00	\$62,400
Ramps	8	Each	\$2,500.00	\$20,000
Paving material	34,100	Square Feet	\$4.00	\$136,400
Street trees	28	Each	\$3,265.00	\$91,420
Curbside planting	1,500	Square Feet	\$10.00	\$15,000
Traffic Striping	310	Linear Feet	\$3.00	\$930
Traffic Routing			\$15,000.00	\$15,000
Curbside Irrigation	1,500	Square Feet	\$10.00	\$15,000
Lighting	7	Each	\$8,000.00	\$56,000
<b>Subtotal</b>				<b>\$769,430</b>
City tax				\$923
General Contractor insurance			0.12%	\$2,696
Fee			0.35%	\$27,057
Bonds			3.50%	\$2,424
<b>Total</b>				<b>\$802,530</b>



### **Determining the Value of Proposed Improvements**

To help determine the value of the proposed improvements, the Project Sponsor provided two cost estimates of the hard costs: one from the James E. Roberts – Obayashi Corporation, and one by Johnstone Moyer, Inc. These estimates are included below. The lower estimate was utilized by the Project Sponsor in calculating the overall value of the proposed improvements, including other costs such as design and engineering fees, site preparation, and hazardous remediation. This estimate concluded that the overall cost of the improvements was \$3,724,407. These estimates were reviewed and corroborated by staff at the Department of Public Works.

### **Determining the Specific Improvements that Would be Provided via this In-Kind Agreement**

The approval of this In-Kind Agreement would commit the Project Sponsor to creating a public park on the Daggett Street right-of-way, and not a typical city street. Therefore, the \$802,530 that the Project Sponsor would be required to contribute will instead be directed towards the construction of the park.

In addition, through this In-Kind Agreement the Project Sponsor would commit to \$1,880,000 in improvements in return for a reduction in their Eastern Neighborhoods Infrastructure Impact Fee of the same amount. Combined, that means that this In-Kind Agreement would enable \$2,682,530 towards the creation of a park along the Daggett Street right-of-way. The City and Project Sponsor have agreed that this amount will include all the preliminaries necessary to make a park. This includes the following items:

- Site Preparation
- Hazardous Remediation
- Sewer Relocation/Abandon Gas Line
- Design and Engineering
- Permits and Fees
- Testing and Inspections

Based on the Project Sponsor's cost estimate, the total for these preliminaries is \$1,623,170 (including the City tax and other mark-ups applied to each item).

The remaining \$1,059,360 would be spent on improvements to the park. They will focus on baseline amenities, including:

- Site engineering
- Earthwork
- Public art
- Landscaping
- Storm Drainage

**Determining the specific improvements that would need to be provided via a gift to the City**

The cost of the proposed improvements to the Daggett Street right-of-way (\$3,724,407) exceed the Project Sponsors required contribution (\$802,530) and requested fee waiver (\$1,880,000) by \$1,041,877. The Project Sponsor is proposing to gift the City the value of these improvements. Such a gift would occur via a separate legal agreement with the City. Such a gift should include all of those items identified as proposed improvements by the Project Sponsor but that are not included in this In-Kind Agreement.



James E. Roberts - Obayashi Corporation

GENERAL CONTRACTOR'S  
LICENSE NO. 258518

**Daggett Place Park**  
San Francisco, CA

3-20-12

Item	Description	Sec #	Total
		01100	N/A
1	General Conditions	02050	\$ 63,877
2	Demolition	02100	\$ 11,440
3	Site Engineering	02200	\$ 67,820
4	Earthwork	02510	\$ 296,525
5	Site Concrete	02520	\$ 96,140
6	Precast Concrete Pavers	02640	\$ 129,649
7	Storm Drainage	02800	\$ 184,250
8	Penta-Step Precast	02825	\$ 1,720
9	Site Carpentry	02835	\$ 27,220
10	Metal Fence & Gates	02870	\$ 43,300
11	Site Furnishings	02900	\$ 524,213
12	Landscaping	05500	\$ 53,540
13	Metal Fabrication	16100	\$ 75,000
14	Electrical		
15		20000	\$ 142,454
16	Offsite Work		
17		21000	By Owner
18	Testing & Inspections	21020	By Owner
19	Building Permits & Fees	21040	By Owner
20	Street Permits	21060	By Owner
21	Water Fees	21080	By Owner
22	Sewer Fees	21100	By Owner
23	PG&E Joint Trench	21120	By Owner
24	Security Guard or Roving Patrols	21040	By Owner
25	Builders Risk	21060	By Owner
26	Sub Bonds		

SUBTOTAL \$ 1,717,147

City Tax 0.20% \$ 3,434

GC offsite Liability 0.50% \$ 8,603

Fee 3.50% \$ 60,521

G.C. Bond \$ 25,568

\*\*Current Market Total \$ 1,815,274

Recommended design / escalation contingency 5.00% \$ 90,764

\$ 1,906,038

\*Based on OCIP insurance provided by owner

\*\*Current Market Total

Recommended design / escalation contingency



1720 South Amphlett Boulevard, Suite 250  
 San Mateo, CA 94402  
 T 650.570.6161 F 650.570.6144  
 www.johnstonemoyer.com

## Daggett Place Park, San Francisco, CA Landscaping Costs

Mr. Fred Kriebel  
 Archstone  
 807 Broadway #210 Oakland, CA  
[fred@kriebelandassociates.com](mailto:fred@kriebelandassociates.com)

Johnstone Moyer is pleased to present you with pricing for the landscaping work at Daggett Place Park. Pricing is based off of the David Baker and Partners drawings date 2-21-12. Please review the following pricing and contact us with any questions or concerns.

General Conditions		\$94,000
Demoilition		\$67,000
Misc. Offsite Improvements		\$138,250
Site Engineering		\$12,200
Site Furnishings		\$42,000
Lanscaping		\$513,750
Earthwork		\$75,300
Storm Drain		\$133,400
Site Concrete		\$322,200
Concrete Pavers		\$94,200
Penta-Step Pre-Cast		\$193,400
Misc. Site Carpentry		\$1,800
Metal Fence		\$29,000
Misc Metals		\$62,500
Electrical		\$83,100
<b>Subtotal</b>		<b>\$1,862,100</b>
City Tax	0.20%	\$3,724
Offsite Liability Insurance	0.50%	\$9,329
Fee	4.00%	\$75,006.13
Bond	1.00%	\$19,502
<b>Total</b>		<b>\$1,969,661</b>
Contingency	5%	\$98,483.05
<b>Grand Total</b>		<b>\$2,068,144</b>

DAGGETT PARK  
SAN FRANCISCO, CALIFORNIA  
IN-KIND COST REVIEW

**TOTAL COMMENTS**

**DESCRIPTION**

Design & Engineering Fees	\$	210,000	
CMG (Landscape Architecture)	\$	26,000	
LUK Associates (Civil)	\$	4,000	
Robison (Lighting & Electrical)	\$	4,500	
ECS (Park power service, gas line demo)	\$	50,000	
David Baker + Partners	\$	294,500	
<b>Design Sub-Total</b>	\$	63,877	
Site Preparation-Demo	\$	1,044,453	Park site 3' overex 6,285 tons @ \$145/ton offhaul, Class 1, + 2,324 cy @ \$22/cy import; + Generator tax \$82K
Hazardous Remediation	\$	67,000	\$57K for sewer reloc in main bldg., \$10k gas abandon/cap
Sewer Relocation/Abandon Gas Line	\$	1,653,270	James E Roberts-Obayashi 3.20.12 est less site prep.
Improvements	\$	10,000	
Permits and Fees	\$	10,000	
Testing and Inspections	\$	3,143,100	
<b>Sub-Total</b>	\$	281,307	City tax (0.2%); GC Offsite Liability (0.5%); GC Fee (3.5%); GC Bond (1.5%); Escalation Contingency (3.25%)
Mark-Ups (applied to improvement cost)	\$	300,000	
Public Art	\$	3,724,407	
<b>TOTAL PARK COST</b>	\$	404,643	70' ROW = (2) 12' traffic lanes, (2) 8' parking, (2) 15' s/w
Value of Street Improvements (theoretical)	\$	3,319,764	
Park Cost less street improvements	\$	1,880,000	
<b>IN-KIND FUNDING</b>			

**Exhibit D**

Memorandum of Agreement

**RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:**

**City and County of San Francisco  
Department of Planning  
1650 Mission St., Suite 400  
San Francisco, CA 94103  
Attn: Director**

---

(Free Recording Requested Pursuant to  
Government Code Section 27383)

**Memorandum of In-Kind Agreement**

This Memorandum of In-Kind Agreement (this "Memorandum"), is dated as of \_\_\_\_\_, 2012, and is by and between the City and County of San Francisco, a municipal corporation, acting and through the Planning Commission (the "City"), and Archstone Daggett Place LLC (the "Project Sponsor").

1. The property described in Exhibit A attached hereto (the "Land") and generally known as 1000 16th Street, San Francisco, California 94107 is owned by Project Sponsor.
2. Under San Francisco Planning Code Section 423.3 ("Section 423.3"), the Project Sponsor must pay to the City an Impact Fee (the "Fee") on or before the issuance of the first construction document for the Land; provided, however, the City can reduce such payment under Section 423.3(d) if the Project Sponsor enters into an agreement with the City to provide in-kind improvements.
3. In accordance with Section 423.3(d), the City and the Project Sponsor have entered into an in-kind agreement (the "In-Kind Agreement"), which permits the Project Sponsor to receive construction documents with the satisfaction of certain conditions in return for the Project Sponsor's agreement to provide certain in-kind improvements under the terms and conditions set forth therein.
4. Upon the Project Sponsor's satisfaction of the terms of the In-Kind Agreement, the In-Kind Agreement shall terminate and the City will execute and deliver to the Project Sponsor a termination of this Memorandum in recordable form.

5. The Project Sponsor and the City have executed and recorded this Memorandum to give notice of the In-Kind Agreement, and all of the terms and conditions of the In-Kind Agreement are incorporated herein by reference as if they were fully set forth herein. Reference is made to the In-Kind Agreement itself for a complete and definitive statement of the rights and obligations of the Project Sponsor and the City thereunder.

6. This Memorandum shall not be deemed to modify, alter or amend in any way the provisions of the In-Kind Agreement. In the event any conflict exists between the terms of the In-Kind Agreement and this Memorandum, the terms of the In-Kind Agreement shall govern.

IN WITNESS WHEREOF, the undersigned have executed this Memorandum as of the date first written above.

CITY AND COUNTY OF SAN FRANCISCO,  
acting by and through its Planning Commission

By: \_\_\_\_\_  
Director of Planning

ARCHSTONE DAGGETT PLACE LLC,  
a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CALIFORNIA ALL-PURPOSE  
CERTIFICATE OF ACKNOWLEDGEMENT

State of California  
County of \_\_\_\_\_

On \_\_\_\_\_ before me,  
\_\_\_\_\_  
(here insert name and title of the officer)  
personally appeared

\_\_\_\_\_  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.  
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

(Notary Seal)



CALIFORNIA ALL-PURPOSE  
CERTIFICATE OF ACKNOWLEDGEMENT

State of California  
County of \_\_\_\_\_

On \_\_\_\_\_ before me,

(here insert name and title of the officer)  
personally appeared

\_\_\_\_\_

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

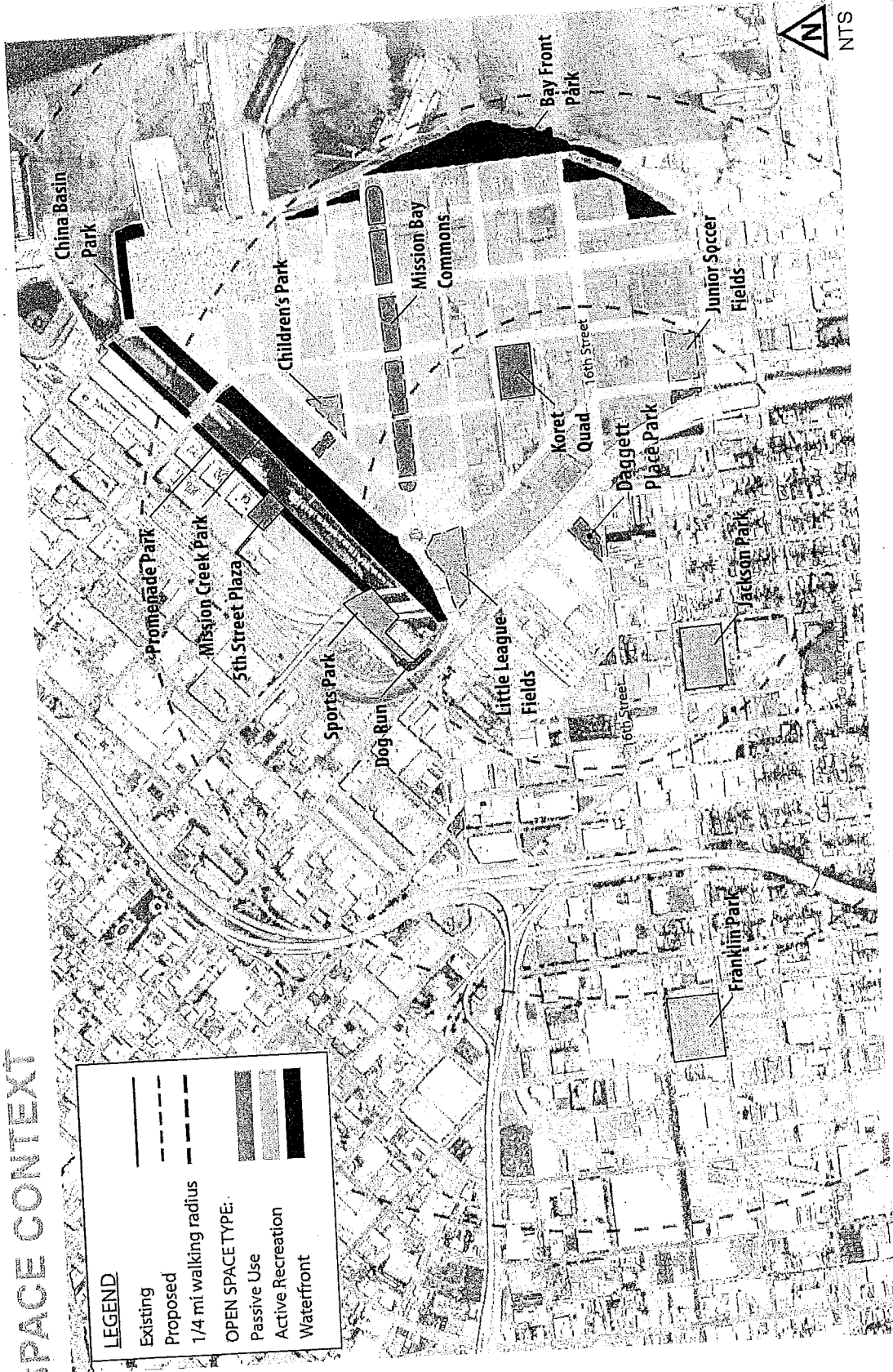
\_\_\_\_\_  
Signature of Notary Public

(Notary Seal)

# **Attachment 3**

Location of the Proposed  
Daggett Park

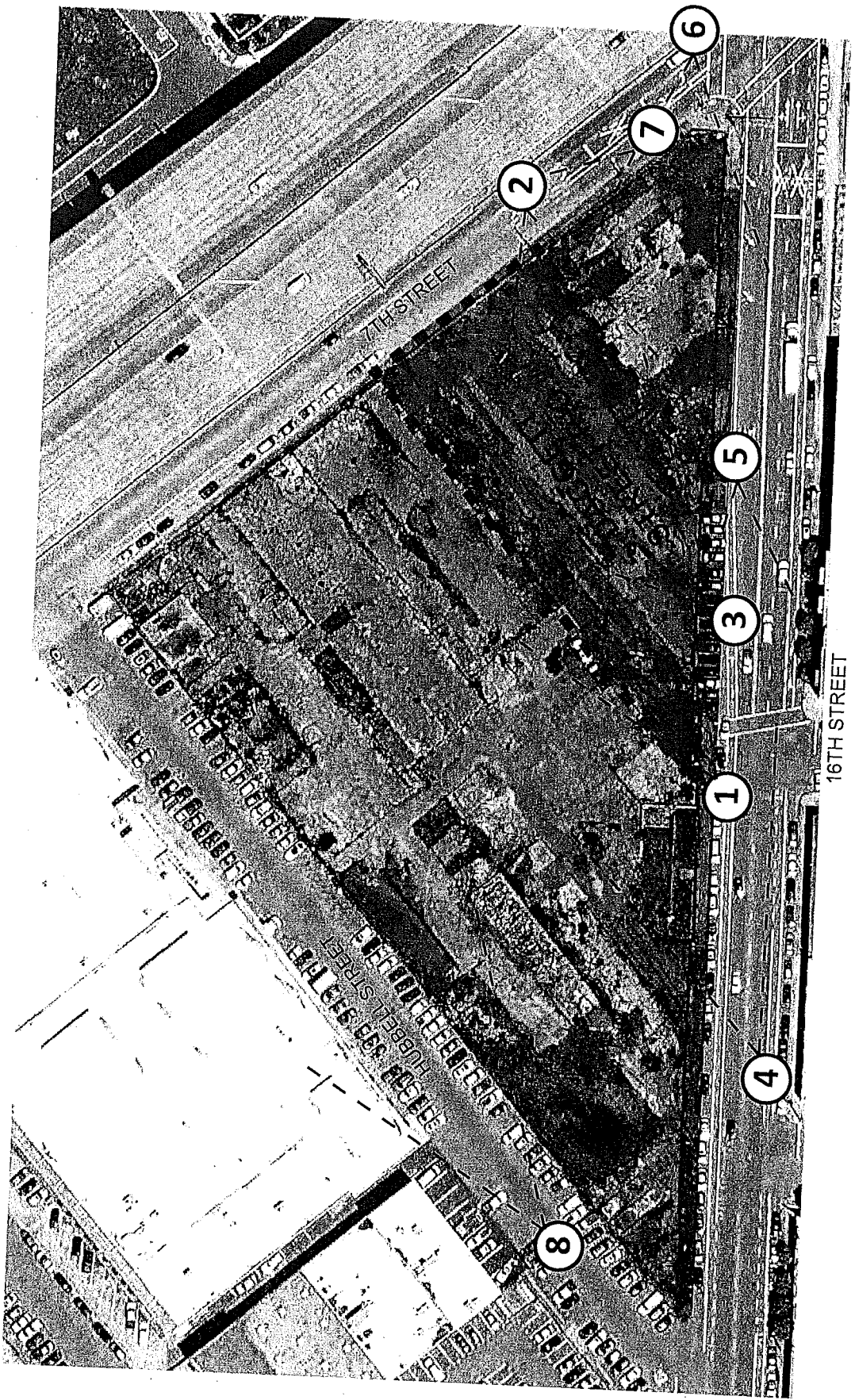
# OPEN SPACE CONTEXT



LEGEND	
	Existing
	Proposed
	1/4 mi walking radius
OPEN SPACE TYPE:	
	Passive Use
	Active Recreation
	Waterfront



AERIAL- EXISTING SITE

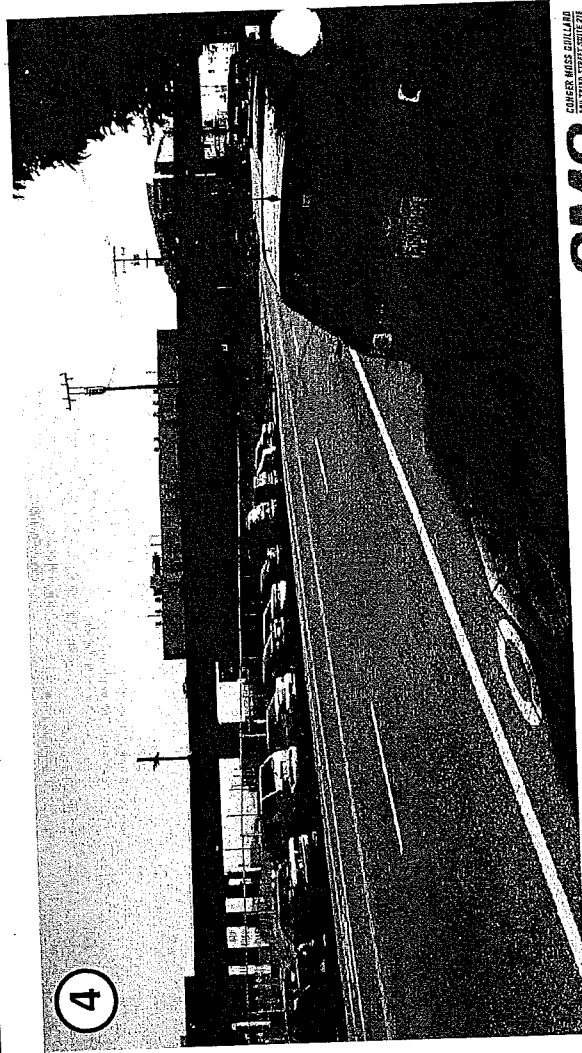
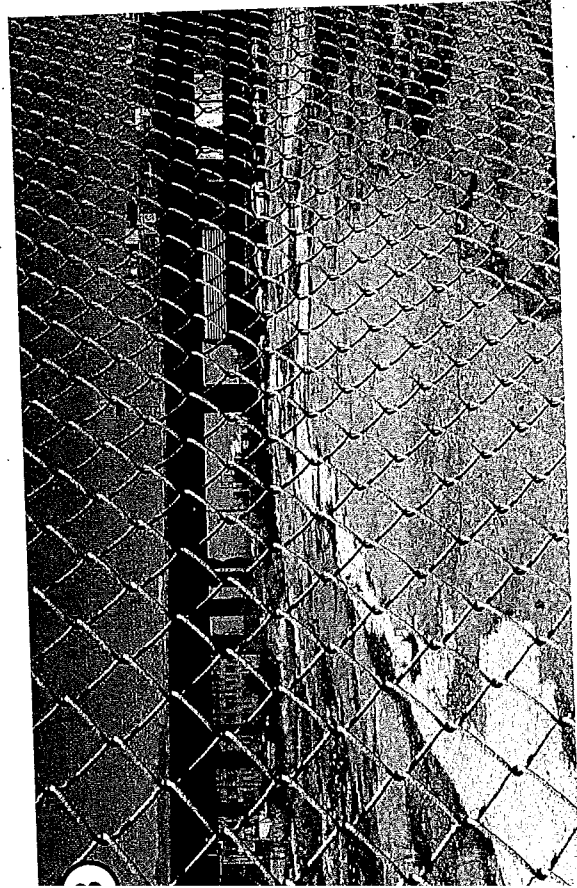
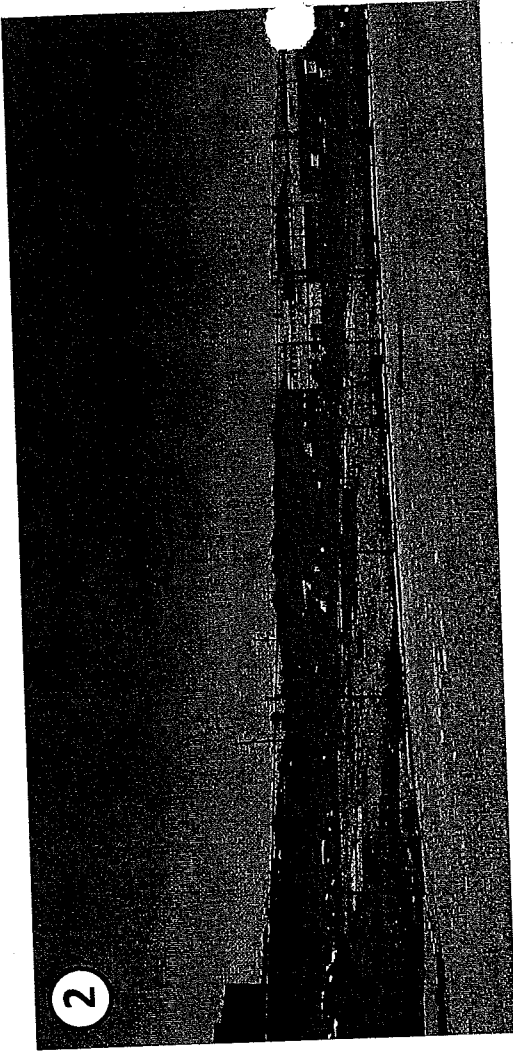
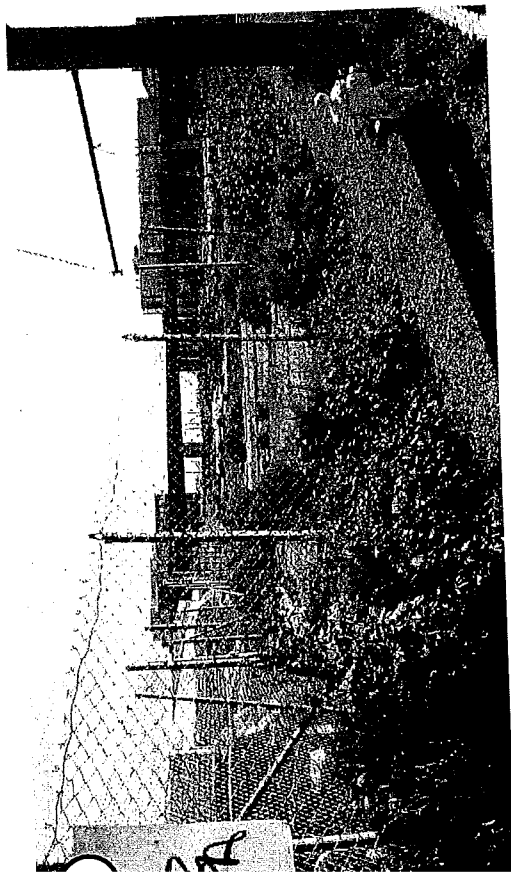


GGETT PARK - ARCHSTONE POTRERO  
DESIGN REVIEW - PHASE 1 SCHEMATIC DESIGN - JAN 23 2012

**CMG**  
ARCHSTONE

CONNER WASSER GILLILAND  
200 WASHINGTON STREET  
SAN FRANCISCO, CA 94102  
TEL: 415.774.1000 FAX: 415.774.1001  
WWW.CWGARCHSTONE.COM

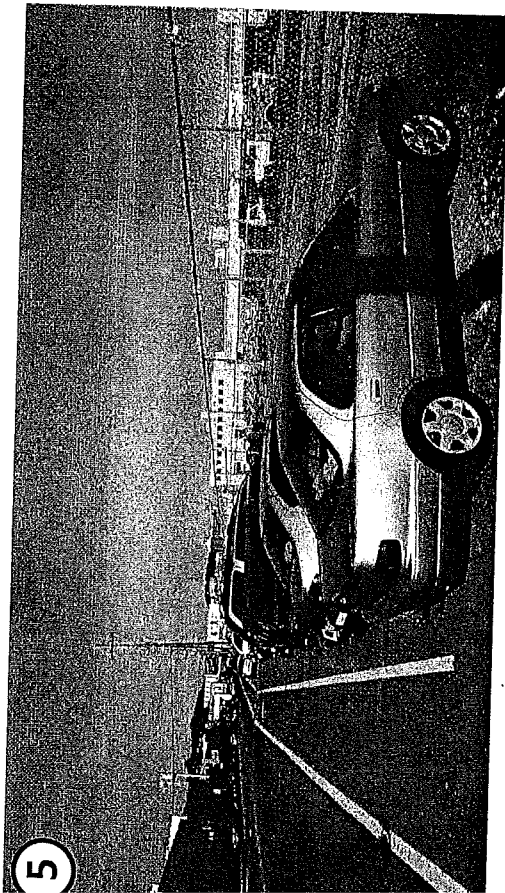
EXISTING SITE & SURROUNDING CONTEXT



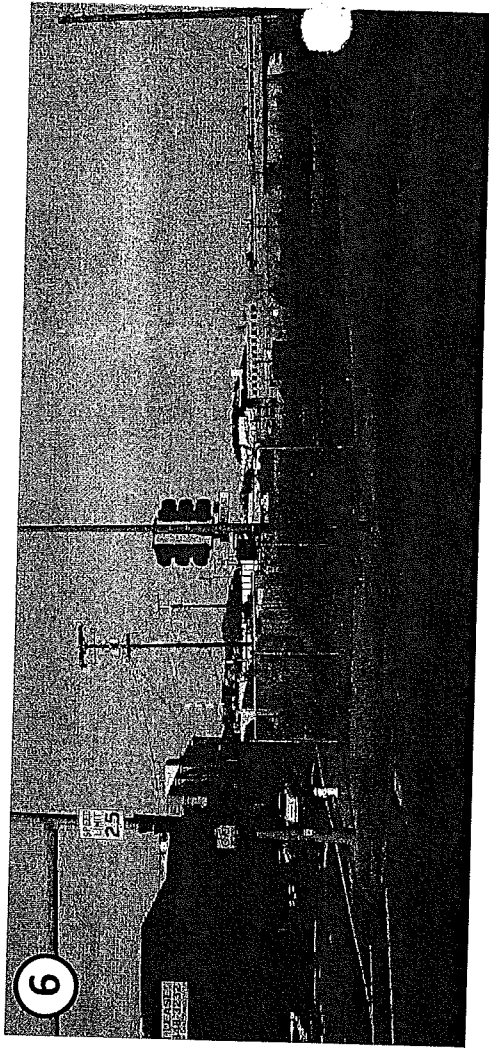
CMG ARCHSTONE  
CORNER WESS GULLLAW  
100-7000 STREET SOUTH  
VANCOUVER, BC V6P 4R1  
TEL: 604-271-1111  
FAX: 604-271-1111

AGGETT PARK - ARCHSTONE POTRERO  
VIC DESIGN REVIEW - PHASE 1 SCHEMATIC DESIGN - JAN 23 2012

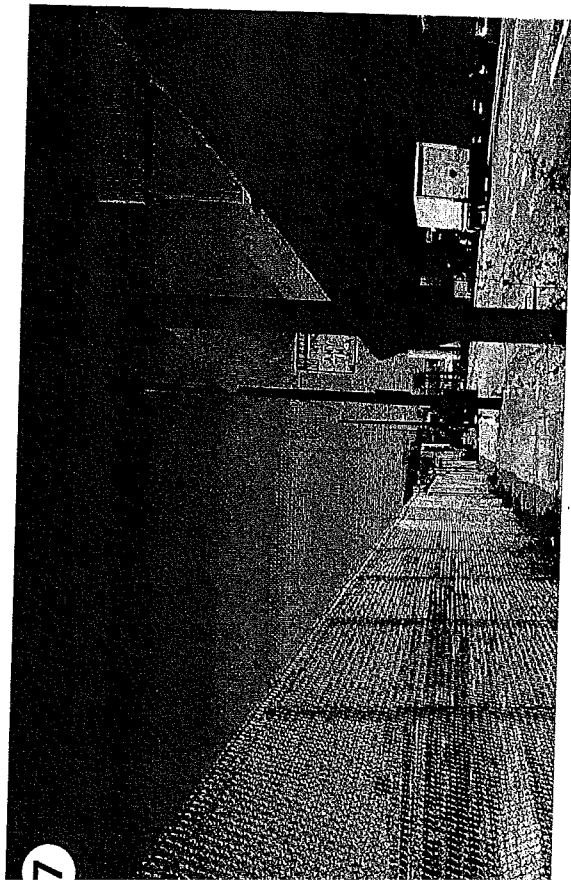
EXISTING SITE & SURROUNDING CONTEXT



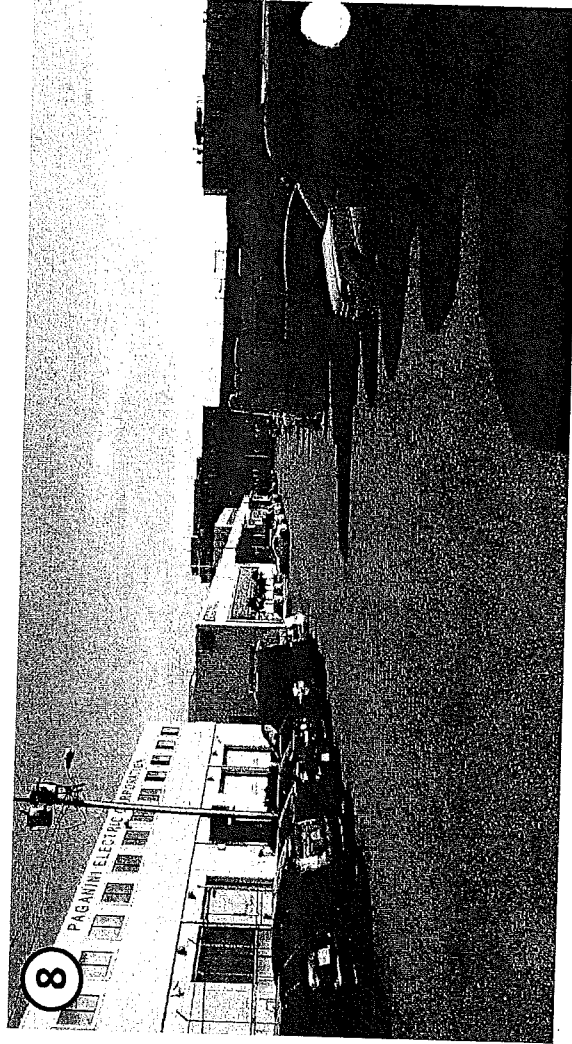
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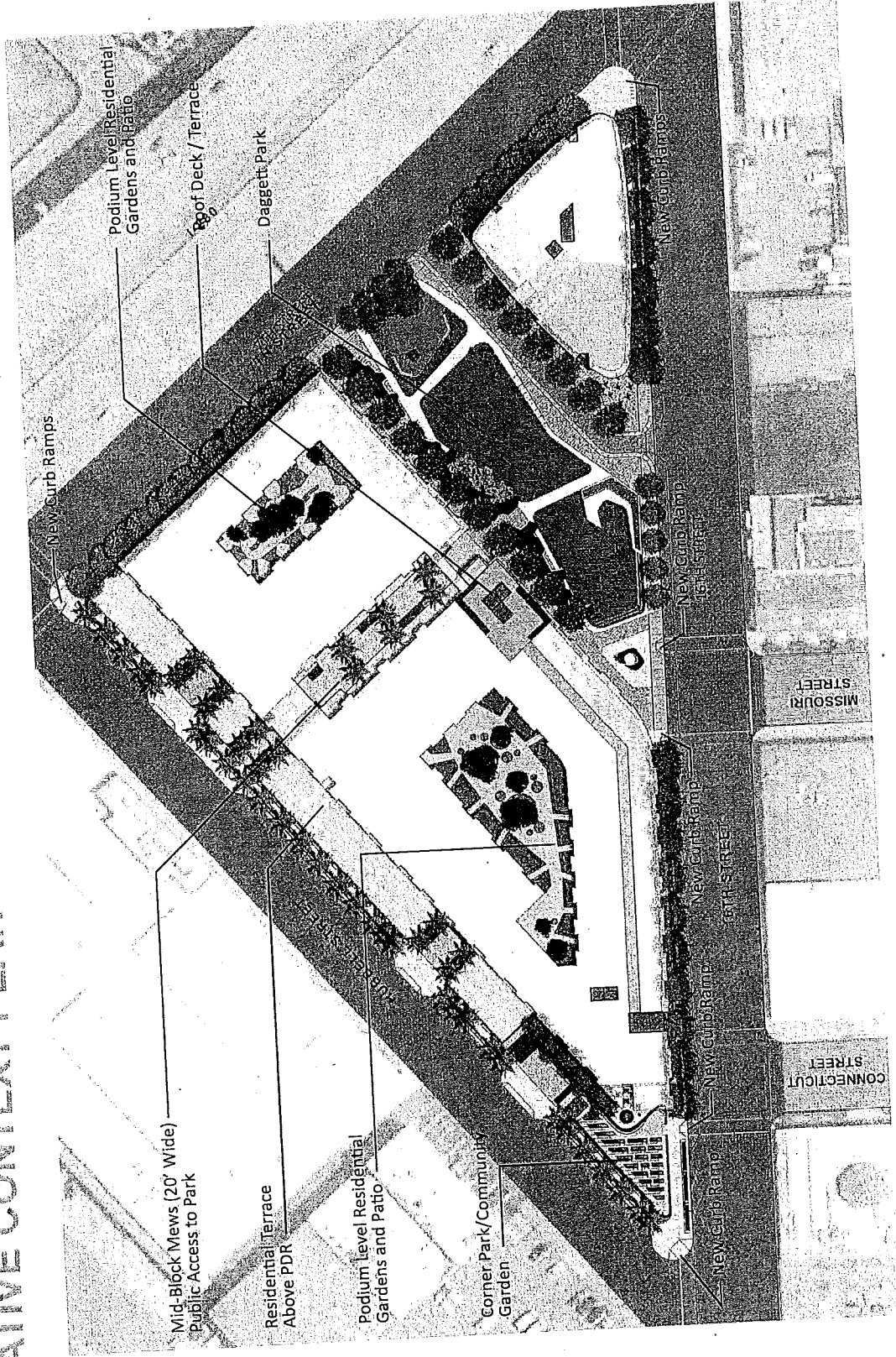


8

GGETT PARK - ARCHSTONE POTRERO  
 DESIGN REVIEW - PHASE 1 SCHEMATIC DESIGN - JAN 23 2012

CMG ARCHSTONE  
CONSTRUCTION MANAGEMENT GROUP  
 1000 CALIFORNIA STREET, SUITE 1000  
 SAN FRANCISCO, CA 94108  
 TEL: 415.774.1000 FAX: 415.774.1001

# ISTRATIVE CONTEXT PLAN



**CMG**  
ARCHSTONE

CORNER MARK ARCHITECTS  
1000 MARKET STREET, SUITE 200  
SAN FRANCISCO, CA 94102  
TEL: 415.774.4400  
WWW.CORNERMARKARCHITECTS.COM

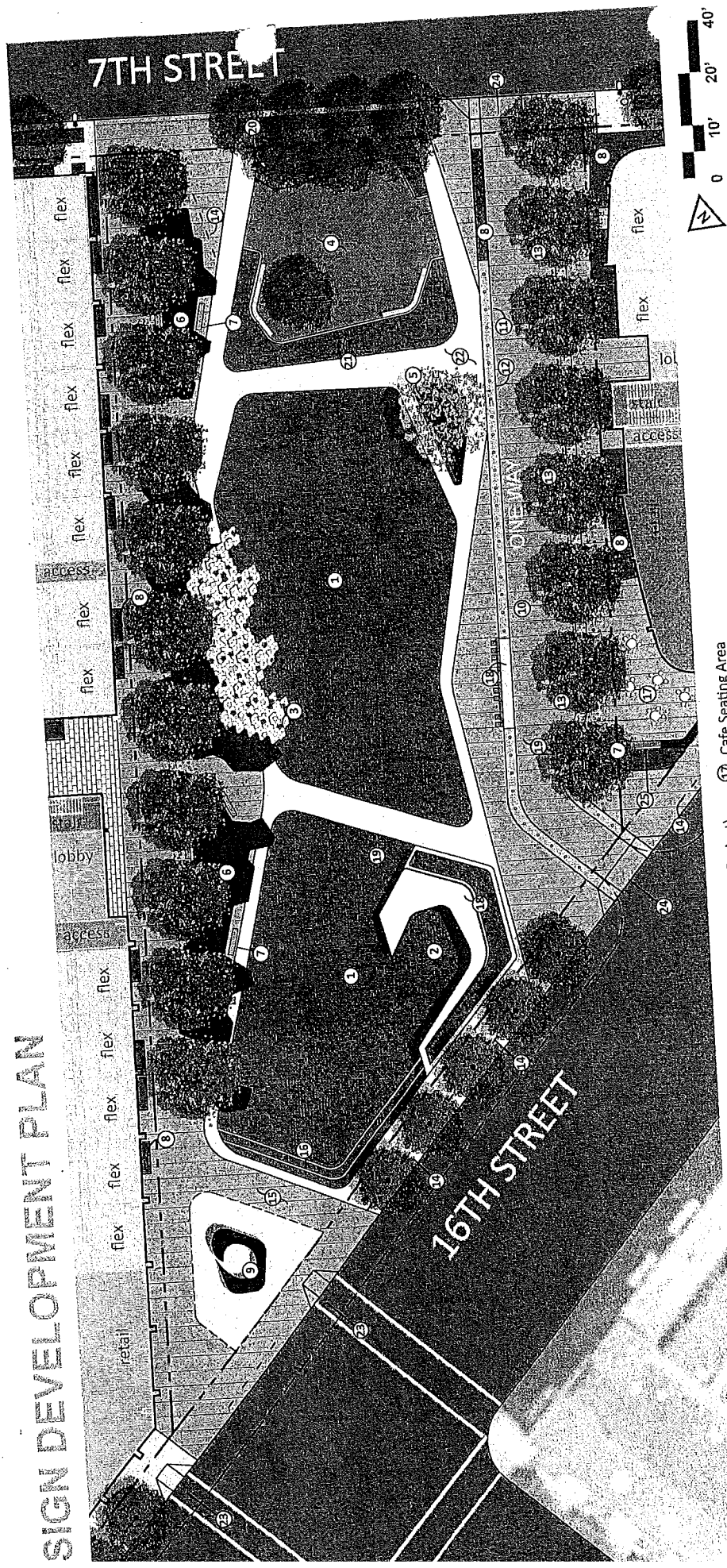
**DAGGETT PARK** - ARCHSTONE POTRERO  
CIVIC DESIGN REVIEW - PHASE 1 SCHEMATIC DESIGN - JAN 23 2012

# **Attachment 4**

## Design and Images of the Proposed Daggett Park



# SIGN DEVELOPMENT PLAN

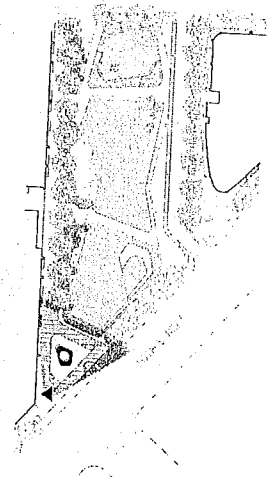
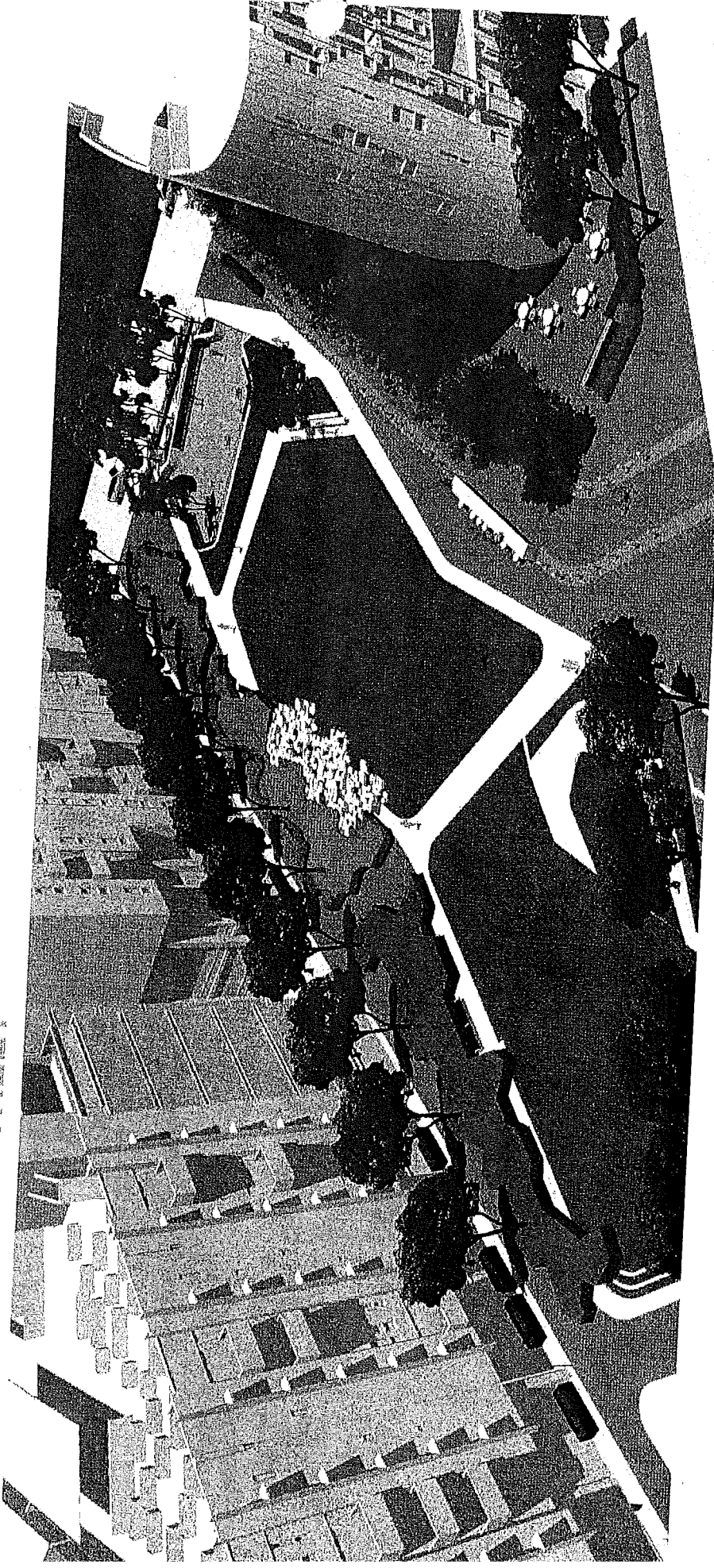


- 1) Lawn (Flexible Open Space)
- 2) Tilted Lawn (C.I.P. Concrete)
- 3) "Penta-Step" Landscape Feature (Precast Conc. & Wood)
- 4) Dog Run (Synthetic Turf)
- 5) Stadium Bench & Specimen Tree
- 6) Garden Edge (Mixed Native Planting/Butterfly Garden)
- 7) Park Bench
- 8) Planter at Grade
- 9) Gateway Art Feature (Arts Commission Project)
- 10) One-Way Drive Lane (12' width, flush w/ park)
- 11) Detectable Warning Pavers
- 12) Bollards 36"-42" @ +/- 5' O.C.
- 13) (6) Parallel Parking Spaces
- 14) Bike Parking
- 15) Informal Community Stage
- 16) Lawn Steps (6"x24")
- 17) Cafe Seating Area
- 18) The Park Counter & Stools (Concrete & Steel)
- 19) C.I.P. Integral Color Conc. w/ Water Washed Finish or Unit Pavers, TBD
- 20) San Francisco Standard Park Entry Sign
- 21) 30" Conc. Wall w/42" Stainless Steel Picket Fence & Wood Bench
- 22) C.I.P. Integral Color Conc. w/Sandblast Finish
- 23) Driveway Curb Cut
- 24) \*Note: The site is essentially flat and all paths within the Park will be accessible.
- 25) Built in Bench w/36" Concrete Wall



**DAGGETT PARK - ARCHSTONE POTRERO**  
 CIVIC DESIGN REVIEW - PHASE 2 DESIGN DEVELOPMENT - FEB 13 2012

AERIAL FROM 16TH STREET

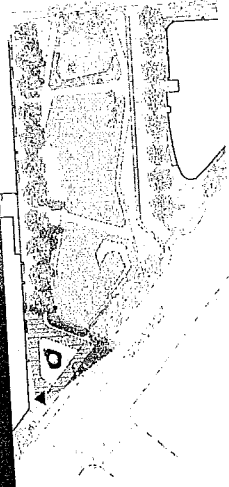
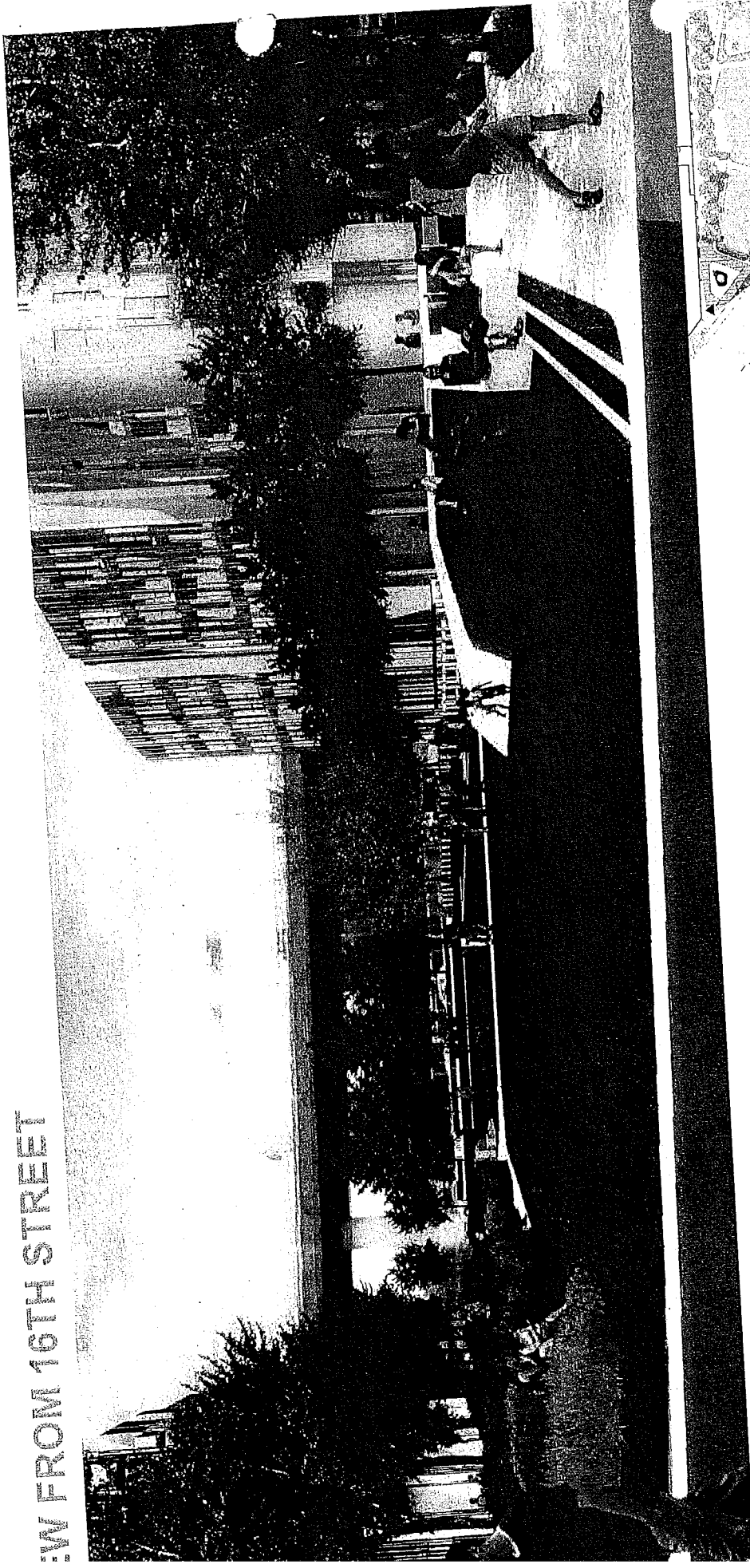


**GGETT PARK** - ARCHSTONE POTRERO  
DESIGN REVIEW - PHASE 2 DESIGN DEVELOPMENT - FEB 13 2012

**CMG**  
ARCHSTONE

CAROL M. GILLARD  
ARCHITECT  
1000 MARKET STREET, SUITE 200  
SAN FRANCISCO, CA 94102-4000  
TEL: 415.774.3474  
WWW.CMGARCHITECT.COM

VIEW FROM 16TH STREET

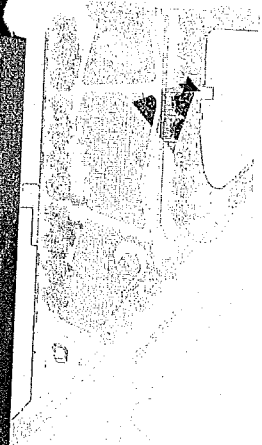
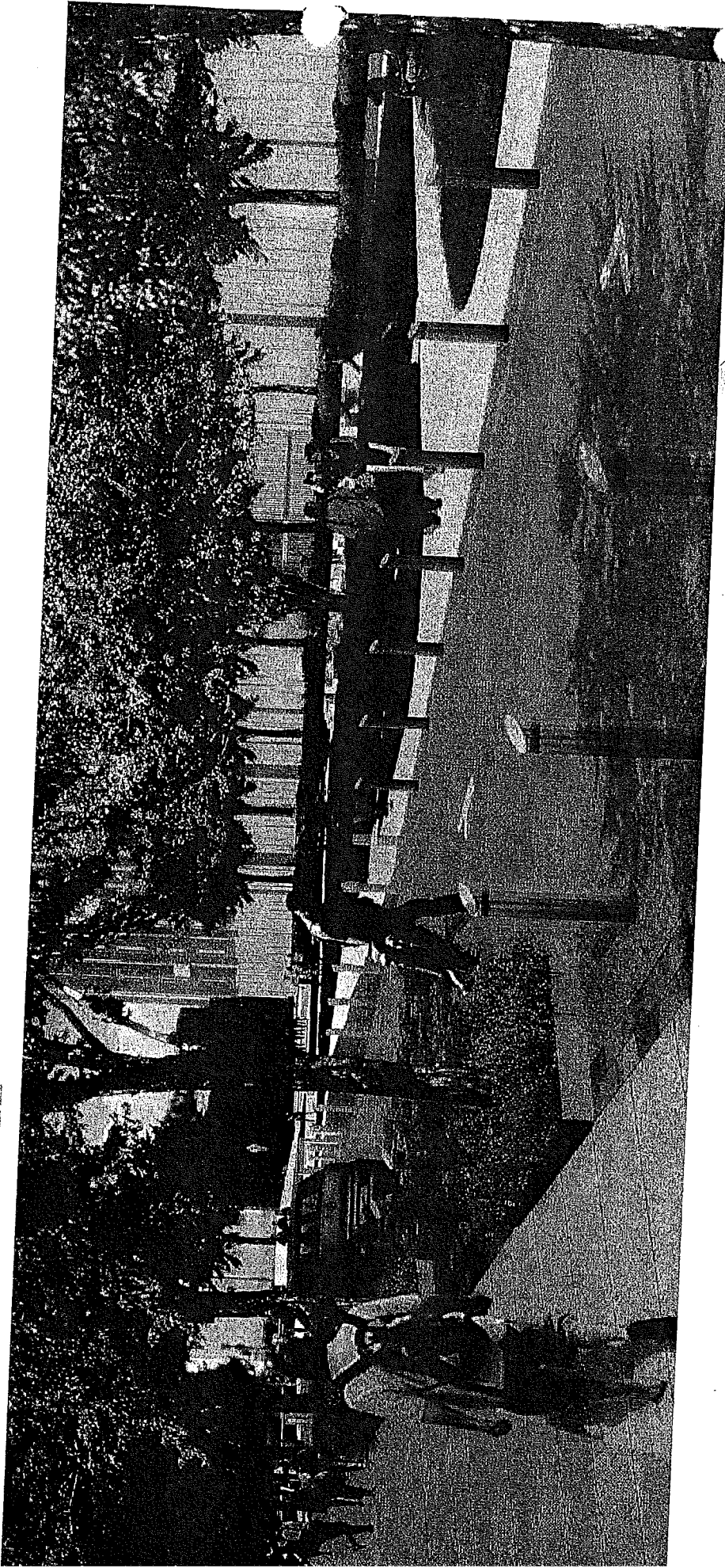


CANCER WALK & BIKELANE  
3000 16TH STREET, SUITE 200  
SAN FRANCISCO, CA 94114  
TELEPHONE: 415/774-3338

**CMG**  
ARCHSTONE

**DAGGETT PARK** - ARCHSTONE POTRERO  
CIVIC DESIGN REVIEW - PHASE 2 DESIGN DEVELOPMENT - FEB 13 2012

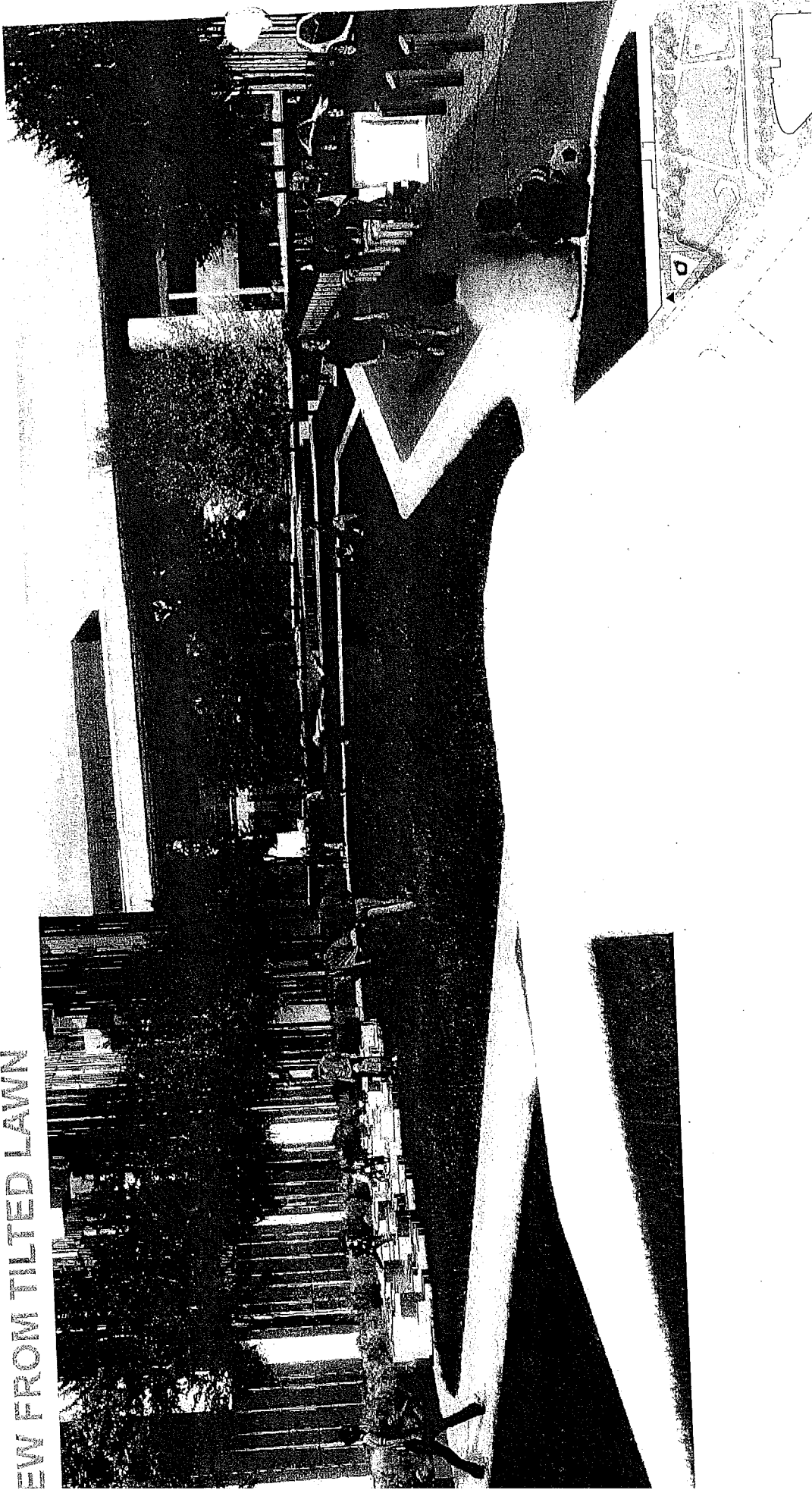
VIEW FROM DRIVE AISLE



**GGETT PARK** - ARCHSTONE POTRERO  
C DESIGN REVIEW - PHASE 2 DESIGN DEVELOPMENT - FEB 13 2012

**CMG**  
ARCHSTONE  
CAMERON MACK GILLIARD  
1000 STREET CENTER  
SUNNYVALE, CA 94089  
TEL: 415.353.8888  
WWW.CMGARCHSTONE.COM

VIEW FROM TILTED LAWN



CMG  
ARCHSTONE

CONKER MOSE DILLARD  
ARCHITECTS  
1000 10TH STREET, SUITE 100  
DENVER, CO 80202  
TELEPHONE: 303-461-3075  
FACSIMILE: 303-733-3407

DAGGETT PARK - ARCHSTONE POTRERO  
CIVIC DESIGN REVIEW - PHASE 2 DESIGN DEVELOPMENT - FEB 13 2012



# SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- Affordable Housing (Sec. 415)
- Jobs Housing Linkage Program (Sec. 413)
- Downtown Park Fee (Sec. 412)
- First Source Hiring (Admin. Code)
- Child Care Requirement (Sec. 414)
- Other (EN Impact Fee – Sec. 423)

1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

## Planning Commission Motion No. 18419 HEARING DATE: JULY 28, 2011

Date: July 21, 2011  
Case No.: 2003.0527EX  
Project Address: 1000 16<sup>th</sup> Street  
Zoning: UMU (Urban Mixed Use) Zoning District and  
PDR-1-G (General Production, Distribution, and Repair) Zoning District  
68-X Height and Bulk District  
Block/Lots: 3833 / 001, 002 & 003  
3834 / 001  
Project Sponsor: Cherokee Mission Bay, LLC &  
Archstone New Development Holdings LP  
333 3<sup>rd</sup> Street, Suite 210  
San Francisco, CA 94107  
Staff Contact: Ben Fu – (415) 558-6613  
[ben.fu@sfgov.org](mailto:ben.fu@sfgov.org)

ADOPTING FINDINGS RELATING TO LARGE PROJECT AUTHORIZATION PURSUANT TO PLANNING CODE SECTION 329 TO ALLOW THE CONSTRUCTION OF TWO NEW SIX-STORY, 68-FOOT BUILDINGS CONSISTING OF UP TO 470 DWELLING UNITS, APPROXIMATELY 15,000 SQUARE FEET OF GROUND FLOOR RETAIL, APPROXIMATELY 8,000 SQUARE FEET OF PRODUCTION, DISTRIBUTION, AND REPAIR (PDR) SPACE, PARKING FOR APPROXIMATELY 306 SPACES, TO ALLOW EXCEPTIONS FOR REAR YARD, DWELLING UNIT EXPOSURE, OFF-STREET LOADING, HORIZONTAL MASS REDUCTION AND GROUND FLOOR ACTIVE USES, AND TO ADOPT FINDINGS AND MITIGATION MONITORING AND REPORTING PROGRAM UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT. THE SUBJECT PROPERTY IS LOCATED WITHIN THE UMU (URBAN MIXED USE) ZONING DISTRICT AND PDR-1-G ZONING DISTRICT WITHIN A 68-X HEIGHT AND BULK DESIGNATION.

### PREAMBLE

On February 23, 2006, Cherokee Mission Bay, LLC filed an application and on May 4, 2011, Archstone New Development Holdings LP (Project Sponsor) filed an updated application with the Planning Department (hereinafter "Department") for Large Project Authorization under Planning Code Section 329 to allow construction of two new six-story, 68-foot buildings consisting of up to 470 dwelling units,

Motion No. 18419  
July 28, 2011

CASE NO. 2003.0527EX  
1000 16<sup>th</sup> Street

approximately 15,000 square feet of ground floor retail, approximately 8,000 square feet of Production, Distribution, and Repair (PDR) spaces, Small Enterprise Workspace (SEW), parking for approximately 306 spaces, and exceptions for rear yard, dwelling unit exposure, off-street loading, horizontal mass reduction and ground floor active uses, within the UMU (Urban Mixed Use) and PDR-1-G Zoning Districts and within a 68-X Height and Bulk Designation.

On April 16, 2009, the Planning Commission reviewed and considered the Final Environmental Impact Report (FEIR) in Planning Department File No. 2003.0527E consisting of the Draft EIR and the Comments and Responses document, and found that the contents of said report and the procedures through which the FEIR was prepared, publicized and reviewed complied with the provisions of the California Environmental Quality Act (CEQA), the CEQA Guidelines and Chapter 31 of the San Francisco Administrative Code and found further that the FEIR reflects the independent judgment and analysis of the City and County of San Francisco, is adequate, accurate and objective, and that the Comments and Responses document contains no significant revisions to the Draft EIR, and certified the completion of said FEIR in compliance with CEQA and the CEQA Guidelines in its Motion No. 17864.

On July 20, 2011, the Planning Department issued a Memorandum determining that the Project would not result in new significant environmental effects not disclosed in the FEIR, and that no supplemental environmental review for the project is necessary.

The Commission has reviewed and considered the information contained in the FEIR, all written and oral information provided by the Planning Department, the public, relevant public agencies, and other experts and the administrative files for the Project and the EIR. The Project and EIR files have been made available for review by the Planning Commission and the public, and those files are part of the record before this Commission.

Planning Department staff prepared proposed findings, as required by CEQA, (CEQA Findings) and a proposed Mitigation, Monitoring and Reporting Program (MMRP), which material was made available to the public and the Commission for the Commission's review, consideration and action.

This Commission has reviewed and considered the FEIR and hereby adopts the CEQA Findings, including the statement of overriding considerations, attached hereto as Exhibit A and incorporated herein as part of this Resolution by this reference thereto, and adopts the MMRP attached to this Resolution as Attachment B and incorporated herein as part of this Resolution by this reference thereto.

On July 28, 2011, the Commission adopted findings pursuant to CEQA as set forth in Motion No. 18418, which findings are incorporated herein by this reference thereto as if fully set forth in this Motion.

The Planning Department, Linda Avery, is the custodian of records, located in the File for Case No. 2003.0527EX at 1650 Mission Street, Fourth Floor, San Francisco, California.

On July 28, 2011, the Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Large Project Authorization Application No. 2003.0527X.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties.

MOVED, that the Commission hereby authorizes the Large Project Authorization requested in Application No. 2003.0527X, subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

## FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.

**Site Description and Present Use.** The vacant project site consists of Lots 1, 2 and 3 on Assessor's Block 3833, Lot 1 on Assessor's Block 3834, and the Daggett Street right-of-way (ROW). The project is located on a triangular site bounded by Hubbell Street on the northwest, 7th Street on the northeast, and 16th Street to the south in San Francisco's Showplace Square/Potrero Hill area at the foot of the Potrero Hill neighborhood. The project site is located in an UMU (Urban Mixed Use) Zoning District and a PDR-1-G (Production, Distribution and Repair, General) Zoning District, and within a 68-X Height and Bulk District.

2. **Surrounding Properties and Neighborhood.** The immediate surroundings at present is primarily commercial, industrial and institutional with small scale live-work units, and residential structures (the 12-unit 49 Missouri Street and the 20-unit 999 16th Street) alongside warehouses. Land uses in the project vicinity are varied and include educational facilities (UCSF-Mission Bay, California College of the Arts), light industry, office space, a public park, residences, retail, storage, transportation and utility services fleet parking lots, warehouses, and wholesale interior-design-related establishments. The site is approximately two blocks north of the north-facing slope of Potrero Hill, where the land use is predominantly single- and multi-family residential. The site is across the Cal Train tracks and elevated I-280 Freeway from the UCSF campus in Mission Bay. The proposed development would shift the neighborhood toward decidedly denser residential uses in an area with relatively few residential units at present.

The broader context exemplifies uses that define the transition between two neighborhoods. The project site occupies a flat, low-lying area where the northern residential side of Potrero Hill slopes down to meet the historically industrial flatlands, an area also known as Showplace Square. The northern slope of Potrero Hill is mainly a mix of one-, two- and three-story cottage and row houses, along with multi-family homes, limited stretches of neighborhood-serving retail uses and open space at the two-block Jackson Playground. The buildings have been built over multiple decades and encompass diverse styles, such as Victorian, Art Deco, Modern and live/work. Showplace Square, which begins approximately to the north of 17th Street, is a predominantly industrial area as exemplified by the prevalence of low-rise to mid-rise buildings distributed amid work yards, parking lots, and storage facilities. While occupying relatively



large footprints, few of these industrial-use buildings are taller than two stories, though some showroom and office buildings in the western portion of Showplace Square exceed 65 feet in height. In general, the biggest buildings in the area tend to house multiple uses and tenants, ranging from office and retail space to warehouse distribution, which are visually characterized by loading docks and retractable doors.

3. **Project Description.** The project, a.k.a. Daggett Place, proposes the construction of two new six-story, 68-foot buildings consisting of up to 470 dwelling units, approximately 15,000 square feet of ground floor retail, approximately 8,000 square feet of Production, Distribution, and Repair (PDR) / Small Enterprise Workspace (SEW) spaces, parking for approximately 306 spaces, and Planning Code exceptions for rear yard, dwelling unit exposure, off-street loading, horizontal mass reduction and ground floor active uses. The project is seeking authorization under the Eastern Neighborhoods Controls.

The Northern Building would be located on the northwestern block of the site, constructed on a podium over at-grade parking and contain a mix of residential units, retail and SEW space. The Southern Building contains residential units and retail spaces, would be located at the southeastern corner of the site.

The existing Daggett Street, or the Daggett Right of Way, that is located between the two proposed buildings, has been planned for the development of a public park. On July 18, 2011, Eastern Neighborhoods Citizen Advisory Committee (CAC) voted in support of an in-kind agreement with the sponsor for a new park. The park is tentatively designed to include a lawn, play area, built-in seating, dog run, and ample landscaping.

4. **Public Comment.** The Department has received general inquiries and oppositions on the proposed project from Neighborhood Coalition to Save Potrero Hill and other members of the public. The oppositions are focused on parking, density, and the number of exceptions requested. The project has also received letters of support from the Potrero Boosters Neighborhood Association, Dogpatch Neighborhood Association, San Francisco Housing Action Coalition, Potrero Hill Association of Merchants and Businesses, and Bay Area Council.
5. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:

- A. **Zoning District.** The project site is located within Urban Mixed Use (UMU) District in the Potrero Hill neighborhood. The UMU District is intended to promote a vibrant mix of uses while maintaining the characteristics of this formerly industrially-zoned area. It is also intended to serve as a buffer between residential districts and PDR districts in the Eastern Neighborhoods. Within the UMU, allowed uses include production, distribution, and repair uses such as light manufacturing, home and business services, arts activities, warehouse, and wholesaling. Additional permitted uses include retail, educational facilities, and nighttime entertainment. Housing is also permitted, but is subject to higher affordability requirements. Family-sized dwelling units are encouraged. The project proposes retail, PDR, and

residential uses that include 40 percent two-bedroom unit, or family-sized units in the UMU Zoning District.

There is also a 32-foot deep band along the project site at Hubbell Street that is zoned PDR-1-G. The intention of this district is to retain and encourage existing production, distribution, and repair activities and promote new business formation. Thus, this district prohibits residential and office uses and limits retail and institutional uses. The project proposes PDR/SEW spaces, which are principally permitted uses under Planning Code Section 227(t).

- B. **Use.** Planning Code Section 843 identifies residential use and various nonresidential uses as principally permitted uses in the UMU Zoning District. In general, the principally permitted uses are industrial and business service, assembly and social service, retail, recreation and arts, and residential.

The proposed residential, retail, and PDR/SEW uses are compatible and consistent with the zoning designation. The exceptions sought after are necessary to allow maximum number of units and to provide a desirable design.

- C. **Residential Open Space.** Planning Code Section 135 requires that usable open space be located on the same lot as the dwelling units it serves. At least 80 square feet of usable open space per dwelling unit, or 54 square feet per dwelling unit of publicly accessible open space, is required. Up to 50 percent of the publicly accessible open space may be provided off-site. The Project has a residential open space requirement of up to 37,600 square feet of usable open space if private, or 25,380 square feet of publically accessible open space.

*The Project includes court yards that meet the minimum open space requirements for a total of approximately 22,000 square feet. The Project also includes public accessible open space for a total of approximately 20,000 square feet. While additional inner court yards provide approximately 8,900 additional square feet, they do not meet the minimum dimensional requirements for useable open space.*

*Private open space provided at the North Building will provide 22,000 square feet of useable open space, enough for 275 units. The proposed publicly accessible corner park and open spaces at the North Building will provide 16,000 square feet of useable open space; the proposed publicly accessible open spaces at the South Building will provide an additional 4,000 square feet. The total proposed publicly accessible open spaces will provide enough open space for an additional 370 units. The open space provided by the project will satisfy up to 645 units; the project proposes a total of 470 units. Therefore, these open spaces combine to exceed the minimum useable open space required for the project.*

- D. **Commercial Open Space.** Planning Code Section 135.3 requires usable open space for uses other than dwelling units. For retail use, one square foot per 250 square feet of occupied floor area of usable open space is required. In Eastern Neighborhoods Mixed Use Districts, this open space requirement may be satisfied through payment of a fee of \$76 for each square foot of usable square footage not provided pursuant to this Code section.

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*The Project is required to provide at least 104 square feet of commercial open space, and it will meet the requirement by establishing the publicly accessible open space at the South Building. After accounting for required residential open space, the park provides an additional 9,470 square feet, which exceeds the required 104 feet of commercial open space.*

- E. **Streetscape and Pedestrian Improvements.** Planning Code Section 138.1 requires improvement of the public right-of-way associated with development projects. The owner or developer of a new building in this District must install street trees. Each street tree must be a minimum of 24-inch box for every 20 feet of frontage of the property along each street or public alley with any remaining fraction of 10 feet or more of frontage requiring an additional tree.

*The Project is required to install 19 street trees along 7<sup>th</sup> Street, 22 along 16<sup>th</sup> Street and 32 along Hubbell Street, for a total of 73 trees. The project complies with this requirement by providing the required number of street trees.*

- F. **Street Frontages.** Planning Code Section 145.1 requires the following for street frontages in Eastern Neighborhood Mixed Use Districts: (1) not more than 1/3 the width of the building facing the street may be devoted to ingress/egress to parking; (2) off-street parking at street grade must be set back at least 25 feet; (3) "active" use shall be provided within the first 25 feet of building depth at the ground floor; (4) ground floor non-residential uses in UMU zoning district shall have a floor-to-floor height of 17-feet; (5) frontages with active uses shall be fenestrated with transparent windows; and, (6) decorative railings or grillwork placed in front of or behind ground floor windows, shall be at least 75 percent open to perpendicular views.

*The project meets the requirements of Section 145.1, except for one area along 7<sup>th</sup> Street, as follows: (1) providing a 39-foot and a 40-foot wide garage openings, which total less than 1/3 the width of the approximately 640-foot wide building; (2) incorporating an approximately 26,000 square foot of active uses, including ground floor retail, PDR, and flex units within the first 25 feet of the building depth at ground floor; (3) providing a floor-to-floor ground floor height of 18 feet for the commercial frontage; and, (4) providing transparent windows at the ground floor active use. The required 25-foot off-street parking setback at the ground floor is met for the vast majority of the project. However, an approximately 110-foot section at the 7<sup>th</sup> Street frontage on the North Building is only five feet deep in order to permit acceptable vehicular maneuverability within the ground floor parking area. An exception for this area is detailed in 8C below.*

- G. **Parking.** Planning Section 151.1 allows for provision of up to three parking space for each four dwelling units. Additionally, up to one parking space is permitted for each dwelling unit that is two or more bedrooms and at least 1,000 square feet of occupied floor area, subject to the requirements of Sections 151.1. No additional parking is permitted above these amounts.

*Based on the proposed dwelling unit mix, the maximum parking rate permitted is .75 spaces per dwelling unit, or 352 spaces. The project proposes a parking rate of approximately .65 spaces per dwelling unit, or 306 spaces.*

- H. **Bicycle parking.** Planning Code Section 155.4 requires commercial and industrial projects where the gross square footage of the floor area exceeds 25,000 square feet but is no greater than 50,000 feet, 3 bicycle spaces are required. Planning Code Section 155.5 requires projects over 50 dwelling units to provide 25 Class 1 spaces plus one Class 1 space for every 4 dwelling units over 50.

*The project proposes an approximately 22,000 square feet of retail and industrial spaces, less than the square footage trigger of 25,000 square feet. The proposed total number of 470 dwelling units requires a total of 130 bicycle parking spaces. The project complies with this requirement by providing up to 378 bicycle parking spaces.*

- I. **Car Share.** Planning Code Section 166 requires two spaces plus 1 for every 200 dwelling units over 200.

*The project exceeds the minimum three-car car share requirement by providing four care share spaces.*

- J. **Shadow.** Planning Code Section 147 requires reduction of substantial shadow impacts on public plazas and other publicly accessible spaces other than those protected under Planning Code Section 295. Section 295 restricts new shadow, cast by structures exceeding a height of 40 feet, upon property under the jurisdiction of the Recreation and Park Commission.

*The Shadow Analysis conducted for the Project indicates that the Project will not cast shadow upon Public, Publicly Accessible or Publicly Financed or Subsidized Open Space.*

- K. **Dwelling unit mix.** Planning Code Section 207.6 requires at least 40 percent of the total number of proposed dwelling units to contain two or more bedrooms. Any fraction resulting from this calculation shall be rounded to the nearest whole number of dwelling units.

*The Project will provide 40 percent of the dwelling units as 2-bedroom units or larger (188 units).*

- L. **Height Limit.** Planning Code Section 260 requires that the height of buildings not exceed the limits specified in the Zoning Map and defines rules for the measurement of height. The Project Site is within a 68-foot Height District.

*The Project complies. The height of roof is no higher than 68 feet.*

- M. **Inclusionary Affordable Housing Program.** Planning Code Section 415 sets forth the requirements and procedures for the Inclusionary Affordable Housing Program. Under Planning Code Section 415.3, these requirements would apply to projects that consist of five or more units, where the first application (EE or BPA) was applied for on or after July 18, 2006. Pursuant to Planning Code Section 415.5 and 415.6, the Project is meeting the Inclusionary Affordable Housing Program requirement through the On-site Affordable

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Housing Alternative by providing 20% of the proposed dwelling units as affordable, as this project is located within the Urban Mixed Use District within Eastern Neighborhoods.

The Project Sponsor has demonstrated that it is eligible for the On-Site Affordable Housing Alternative under Planning Code Section 415.5 and 415.6, and has submitted a 'Affidavit of Compliance with the Inclusionary Affordable Housing Program: Planning Code Section 415,' to satisfy the requirements of the Inclusionary Affordable Housing Program by providing the affordable housing on-site instead of through payment of the Affordable Housing Fee. In order for the Project Sponsor to be eligible for the On-Site Affordable Housing Alternative, the Project Sponsor must submit an 'Affidavit of Compliance with the Inclusionary Affordable Housing Program: Planning Code Section 415,' to the Planning Department stating that any affordable units designated as on-site units shall be sold as ownership units and will remain as ownership units for the life of the project or submit to the Department a contract demonstrating that the project's on- or off-site units are not subject to the Costa Hawkins Rental Housing Act, California Civil Code Section 1954.50 because, under Section 1954.52(b), the Project Sponsor has entered into an agreement with a public entity in consideration for a direct financial contribution or any other form of assistance specified in California Government Code Sections 65915 et seq. All such contracts entered into with the City and County of San Francisco must be reviewed and approved by the Mayor's Office Housing and the City Attorney's Office. The Project Sponsor has indicated an intent in writing to enter into an agreement with the City to qualify for a waiver from the Costa-Hawkins Rental Housing Act based upon the proposed density bonus and concessions provided by the City and approved herein. The Project Sponsor submitted such Affidavit on July 14, 2011. The EE application was submitted on October 11, 2006. 94 units (40 two-bedroom, and 37 three-bedroom) of the 470 units provided will be affordable units. If the Project becomes ineligible to meet its Inclusionary Affordable Housing Program obligation through the On-site Affordable Housing Alternative, it must pay the Affordable Housing Fee with interest, if applicable. The Project must execute the agreement documenting the exception to Costa Hawkins within 60 days of Planning Commission approval or must revert to payment of the Affordable Housing Fee.

- N. **Eastern Neighborhoods Public Benefit Fund.** The project shall comply with the provisions of Planning Code Section 423, including payment of the Eastern Neighborhoods Impact Fee, or execution of an In-Kind Agreement with the Planning Department prior to issuance of the first site or building permit.
6. **General Compliance with the Large Project Authorization in Eastern Neighborhoods Mixed Use District Objectives.** Planning Code Section 329(c) lists nine aspects of design review in which a project must comply; the Planning Commission finds that the project is compliant with these nine aspects as follows:
- A. **Overall building massing and scale;**  
The Project conforms to the applicable height and bulk requirements. The community in the vicinity of the Project is constantly evolving with development in the Potrero Hill region and the recent Eastern Neighborhoods Area Plans, and contains a range of building masses. The project, with residential, retail, and PDR uses, will be consistent with the existing and evolving character of the area. The Project massing will improve the character of the neighborhood and general pedestrian accessibility by providing a midblock news that allows pedestrian access from Hubbell Street to the Daggett Right of

*Way, breaking up the existing 640-foot continuous block layout that is not conducive to pedestrian walkability.*

B. Architectural treatments, facade design and building materials;

*The architecture of this Project responds to the site's location between the industrial nature of Showplace Square, and the contemporary architecture of the residential and lofts toward the bottom of Potrero Hill. The Project's facades all present fenestration patterns and scale similar to the expressed frame of residential and industrial uses common in the area. The exterior of the North Building is designed with modern materials including painted cement plaster, hardi trim, aluminum storefronts and windows, metal screens, railings and downspout, concrete, and aluminum sun shades. The aluminum punched window openings with cement plaster recesses on the aluminum framed building for the South Building provide a stimulating and visually interesting buffer between the I-280 Freeway and the Daggett Right of Way. The different facade expression of the two buildings is a dynamic expression of the synergy of the evolving distinct with various architectural styles. Variations in fenestration and treatment of the building facades allow the architecture to read as distinct pieces of a whole.*

C. The design of lower floors, including building setback areas, commercial space, townhouses, entries, utilities, and the design and siting of rear yards, parking and loading access;

*The ground floor character of the building is active with retail oriented and viable spaces along 16<sup>th</sup> Street, which interact and give way to the equally active industrial spaces with transparent storefront along Hubbell Street and the residential character along the Daggett Right of Way. There are exposed residential entries on every facade as indicated by the architecture of the building via recessed entries and landscaped metal screens. The Project's retail spaces are located near the corner of Hubbell and 16<sup>th</sup> Streets, 16<sup>th</sup> Street and the Daggett Right of Way, and 16<sup>th</sup> and 7<sup>th</sup> Streets. "Flexible-Occupancy" units are also proposed along 16<sup>th</sup> Street and the Daggett Right of Way. PDR, or SEW spaces are proposed at the Hubbell Street facade, in the portion of the property within the PDR-1-G Zoning District. The mid-block mews connects the Hubbell Street frontage with the Daggett Right of Way, which is tentatively proposed as a public park. A 6,600 square-foot public park is proposed at the corner of Hubbell and 16<sup>th</sup> Streets, providing public seating, shade, trees, and green space, and serves as a pedestrian connection between Hubbell and 16<sup>th</sup> Streets. The retail corners and facades are carved out at the ground floor, inviting pedestrians, and providing an opportunity for outdoor seating. Retail spaces have 17-foot clear ceiling heights at the ground floor. Curb cuts are minimized to three parking access points for entire project. Street trees along all street frontages are proposed per the Planning Code, in most cases below the prescribed 20' spacing, with the exception of building entries, corners and at the vehicular access point.*

D. The provision of required open space, both on- and off-site. In the case of off-site publicly accessible open space, the design, location, access, size, and equivalence in quality with that otherwise required on-site;

*The Project provides adequate open space, all on-site. The open spaces are provided in the form of private courts, roof deck, and publicly accessible parks and open space. The total open spaces provided exceed the total square footage required.*

E. The provision of mid-block alleys and pathways on frontages as required by the criteria set forth in Section 270, and the design of mid-block alleys and pathways as required by and pursuant to the criteria set forth in Section 270.2, as follows;

1. Generally be located as close to the middle portion of the subject block face as possible, perpendicular to the subject frontage and connect to existing adjacent streets and alleys;

*The proposed mid-block pathway is perpendicular to Hubbell Street and connects Hubbell Street with the Daggett Right of Way, which is tentatively proposed to be a public park. The proposed mews also provides visual connection to 16<sup>th</sup> Street. The location of the mews is as close to the middle portion of the subject block as possible.*

2. Provide pedestrian access;

*The proposed mid-block pathway will provide direct pedestrian access from Hubbell and the Daggett Right of Way / 16<sup>th</sup> Street, and will provide direct access to ground floor Flexible-Occupancy units. The flex units are units that can be residential or principally permitted non-residential uses such as retail, arts activities, trade shops, or catering services.*

3. Provide no, limited or full vehicular access, as specific conditions warrant;

*The proposed mid-block pathway will provide no vehicular access.*

4. Have a minimum width of 20 feet from building face to building face, exclusive of those obstructions allowed pursuant to Section 136, and a minimum clearance height from grade of 15 feet at all points;

*The proposed mid-block pathway has a width of 20 feet at the ground level along Hubbell Street. The pathway will increase up to a width of 30 feet for levels four to six. The pathway is completely open, with no obstructions pursuant to Section 136 or otherwise. The proposed private balconies do not extend into the pathway and are further setback from the pathway.*

5. Have a minimum clear walking width of 10 feet free of any obstructions in the case of a pedestrian-only right-of-way, and dual sidewalks each of not less than 6 feet in width with not less than 4 feet minimum clear walking width in the case of an alley with vehicular access;

*The proposed mid-block pathway will act as a park and include a cleared walking width in excess of 10 feet.*

6. In the Eastern Neighborhoods Mixed Use Districts, be at least 60% open to the sky, including those encroachments permitted in front setbacks by Section 136 of this Code;

*The proposed mid-block pathway will be approximately 70 percent open to the sky.*

7. Provide such ingress and egress as will make the area easily accessible to the general public;

*The proposed mid-block pathway will have a frontage of 30 feet along both Hubbell Street and Daggett Street Right of Way.*

8. Be protected from uncomfortable wind, as called for elsewhere in this Code;

*The proposed mid-block pathway will not be significantly impacted by uncomfortable wind.*

9. Be ungated and publicly accessible 24 hours per day, as defined elsewhere in this Section;

*The proposed mid-block pathway will not be gated and will be publicly accessible 24 hours per day.*

10. Be provided with appropriate paving, furniture, and other amenities that encourage pedestrian use, and be landscaped to greatest extent feasible;

*A line of trees will buffer the pathway. The pathway leads to a planned public park at the Daggett Right of Way.*

11. Be provided with ample pedestrian lighting to ensure pedestrian comfort and safety;

*The proposed mid-block pathway will have ample lighting to ensure pedestrians' and flex units' occupants' comfort and safety.*

12. Be free of any changes in grade or steps not required by the underlying natural topography and average grade;

*The proposed mid-block pathway includes no grade changes or steps.*

13. Be fronted by active ground floor uses, as defined in Section 145.1, to the extent feasible;

*The proposed mid-block pathway will be fronted by ground floor Flexible-Occupancy units.*

14. New buildings abutting mid-block alleys provided pursuant to this Section 270.2 shall feature upper story setbacks according to the provisions of Section 261.1.

*The proposed mid-block pathway is 20 feet wide. The top two stories have a 30-foot wide pathway, excluding private balconies. The Project effectively provides a nearly 10-foot setback.*

- F. Streetscape and other public improvements, including tree planting, street furniture, and lighting;



*The Project proposes the installation of street trees along all frontages, public parks and open spaces, sidewalk improvements, and a publicly accessible park connecting Hubbell Street and Daggett Right of Way, a planned public park.*

G. Circulation, including streets, alleys and mid-block pedestrian pathways;

*The Project provides two ingress/egress accesses on Hubbell Street and is not anticipated to create traffic problems. No ingress/egress is proposed on any other street frontages to prevent possible conflicts and congestion. Additionally, the proposed mid-block pedestrian pathway will improve circulation on a 640-foot block.*

H. Bulk limits;

*The Project site is located in an X Bulk District, which provides no bulk restrictions.*

I. Other changes necessary to bring a project into conformance with any relevant design guidelines, Area Plan or Element of the General Plan.

*The Project generally meets the Objectives and Policies of the General Plan.*

7. Exceptions. Proposed Planning Code Section 329 allows exceptions for Large Projects in the Eastern Neighborhoods Mixed Use Districts.

A. Planning Code Section 134 requires a minimum rear yard equal to 25 percent of the total lot depth beginning at the lowest story containing a dwelling unit. The subject property is a triangular lot with three frontages and a mid-lot public right of way. Planning Code Section 329(d) allows an exception for the rear yard requirement pursuant to requirements of Planning Code Section 134(f).

1. Residential uses are included in the new or expanding development and a comparable amount of readily accessible usable open space is provided elsewhere on the lot:

*The Project is occupied by residential uses, and ground floor retail, PDR/SEW spaces, flex units, and a comparable amount of readily accessible open space is proposed. Per the Planning Code, the required rear yard should equal 25 percent of the lot area, which is approximately 34,338 square feet for this property. The proposed mid-block pathway, roof deck, inner courtyards, public open spaces and parks combine to provide approximately 42,000 square feet. Additional private decks and open spaces that do not meet the dimensional requirements combine to provide an additional 8,900 square feet of usable open space.*

2. The proposed new or expanding structure will not significantly impede the access to light and air from adjacent properties:

*The Project will occupy an independent triangular lot bounded by Hubbell Street, 7<sup>th</sup> Street, and 16<sup>th</sup> Street, with a planned park in the Daggett Right of Way in the center. The upper floors of the building steps 32 feet back from the property line at Hubbell Street to maintain a buffer between the PDR district the UMU district. The 68-foot tall building is separated from the warehouses and lofts ranging 25 to 50 feet across the 80-foot wide 16<sup>th</sup> Street. The Project will result in no significant impediment on light and air to adjacent properties.*

3. The proposed new or expanding structure will not adversely affect the interior block open space formed by the rear yards of adjacent properties:

*The project is located on its own block with no adjacent buildings. Buildings across Hubbell Street are approximately 70 feet away and approximately 80 away on 16<sup>th</sup> Street. However, the Project includes an approximately 5-foot setback from the street frontages.*

- B. Planning Code Section 140 requires dwelling units to have at least one window facing a street or alley, a Code-complying rear yard. Seven of the 470 proposed dwelling units would not meet the requirement.

*Although the dwelling units enjoy ample light and air with the proposed open spaces, setbacks, and parks, dimensional requirements prohibit seven of the units to comply with the exposure requirement.*

- C. Planning Code Section 145.1 requires that all ground floor parking be set back at least 25 feet from each street frontage. The proposal includes an approximately 110-foot portion of parking along 7<sup>th</sup> Street that is only set back five feet from the street.

*This deviation is needed to ensure adequate vehicular maneuverability in the ground floor parking area. This exception will not be visible from the street, and the overall intent of the Section 145.1 will still be met.*

- D. Planning Code Section 152.1 requires two off-street freight loading spaces for a residential use in UMU Districts when the gross floor area is between 200,001 and 500,000 square feet. The project proposes three loading spaces at curbside, with one on Hubbell Street and two on 7<sup>th</sup> Street, but none within the garage.

*Providing interior loading areas would significantly alter the building configuration and coverage, resulting in larger or more curb cuts and reduce active ground floor uses. The on-street loading zones are in close proximity to building entrances and will likely be more utilized and provide easier access.*

- E. Planning Code Section 270.1 requires any project with a frontage of more than 200 feet to incorporate one or more mass reduction breaks in the building that reduce the horizontal scale of the building into discrete sections not more than 200 feet in length. The minimum dimensions required for such a break are 30 feet of width and 60 feet of depth above 25 feet. The North Building frontages at 7<sup>th</sup> and 16<sup>th</sup> Streets do not meet the required separation. A mid-block pathway at Hubbell Street is proposed to connect with the Daggett Right of Way.

In granting an exception for horizontal mass reductions, the Planning Commission shall consider the following criteria per Planning Code Section 270.1(d).

1. No more than 50 percent of the required mass is reduced unless special circumstances are evident;

*Although not proposed at the required location, the proposed mass reduction break at Hubbell Street represents 115 percent of required amount. The 16<sup>th</sup> Street façade has articulated notches that divide the building mass. The notches, although occurs often throughout the façade, do not*

meet the dimensional requirements. The special circumstance for the Project is that the vast majority of developments large enough to trigger this requirement will include double-loading corridors to access its dwelling units, as it is the most efficient means of doing so. A mass reduction break that is 60 feet deep makes this extremely difficult, and would effectively reduce the Project into multiple smaller buildings. This in turn would result in approximately 30 fewer units, thus significantly impacting the creation and affordability of new units in the City. Additionally, providing building articulations and notches on a large frontage is an effective alternative in separating the building mass than one large break.

2. The depth of any mass reduction breaks provided is not less than 15 feet from the front facade, unless special circumstances are evident;

*There are no proposed building breaks at 15 feet deep. Such reduction would still effectively result in approximately 30 fewer units, thus significantly impacting the creation and affordability of new units in the City. Additionally, the planned public park at the 211-foot wide Daggett Right of Way essentially breaks up the block and creates a larger than required reduction.*

3. The proposed building envelope can be demonstrated to achieve a distinctly superior effect of reducing the apparent horizontal dimension of the building; and

*As discussed above, providing building articulations and notches on a large frontage is an effective alternative to separate the building mass than one large break. The building design incorporates many setbacks and recesses that achieve the effect of horizontal dimension reduction.*

4. The proposed building achieves unique and superior architectural design.

*The building achieves unique and superior architectural design by including a 6,600 square foot publicly accessible park and a 20-foot wide, 208-foot deep pathway that separates the North Building into two masses. Additionally, the building proposes modular articulations and notches, as opposed to the code-required single break. Further, the building contains varied building materials, colors, and recesses at the façade to create a unique and vibrant architectural rhythm. The dynamic nature of the design of the Project is emphasized through the horizontal breakdown of the Hubbell Street façade, the depth and hierarchy of the design elements, the overlying organization of the frames, the recessed punched windows, and the corner elements with projecting balconies and setbacks.*

8. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

## HOUSING

### Objectives and Policies – 2004 Housing Element

#### Housing Supply

##### OBJECTIVE 1:

PROVIDE NEW HOUSING, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING, IN APPROPRIATE LOCATIONS WHICH MEETS IDENTIFIED HOUSING NEEDS AND TAKES INTO ACCOUNT THE DEMAND FOR AFFORDABLE HOUSING CREATED BY EMPLOYMENT DEMAND.

**Policy 1.1:**

Encourage higher residential density in areas adjacent to downtown, in underutilized commercial and industrial areas proposed for conversion to housing, and in neighborhood commercial districts where higher density will not have harmful effects, especially if the higher density provides a significant number of units that are affordable to lower income households.

**Policy 1.3:**

Identify opportunities for housing and mixed use districts near downtown and former industrial portions of the City.

**Policy 1.4:**

Locate in-fill housing on appropriate sites in established residential neighborhoods.

*The Project is a high density mixed-use development in an underutilized, transitioning industrial area. The Project site is a large opportunity site that is currently only used as a surface parking lot, which significantly degrades the built and pedestrian environment that surrounds it. The area around the Project site was recently rezoned to UMU as part of a long range planning goal to create a cohesive, high density residential and mixed-use neighborhood.*

**Housing Choice**

**OBJECTIVE 8:**

ENSURE EQUAL ACCESS TO HOUSING OPPORTUNITIES.

**Policy 8.9:**

Encourage the provision of new home ownership opportunities through new construction so that increased owner occupancy does not diminish the supply of rental housing.

*The Project proposes 470 dwelling units with the opportunity for ownership.*

**Housing Density, Design and Quality of Life**

**Policy 11.2:**

Ensure housing is provided with adequate public improvements, services and amenities.

**Policy 11.3:**

Encourage appropriate neighborhood-serving commercial activities in residential areas, without causing affordable housing displacement.

*The Proposed Project will site 470 dwelling units on an in-fill site within an established mixed-use neighborhood, thereby meeting the goals of providing housing near employment, transportation, and commercial/retail locations. No affordable housing would be displaced by the project.*

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### Regional and State Housing Needs

**OBJECTIVE 12:**  
STRENGTHEN CITYWIDE AFFORDABLE HOUSING PROGRAMS THROUGH  
COORDINATED REGIONAL AND STATE EFFORTS.

**Policy 12.2:**  
Support the production of well-planned housing region-wide that addresses regional housing needs and improve the overall quality of life in the Bay Area.

*The Project will site 470 dwelling units on an in-fill site within an established mixed-use neighborhood, thereby meeting the goals of providing housing near employment, transportation, and commercial/retail locations.*

### Objectives and Policies – 2009 Housing Element

**OBJECTIVE 1**  
IDENTIFY AND MAKE AVAILABLE FOR DEVELOPMENT ADEQUATE SITES TO MEET THE  
CITY'S HOUSING NEEDS, ESPECIALLY PERMANENTLY AFFORDABLE HOUSING.

**Policy 1.1**  
Plan for the full range of housing needs in the city and county of San Francisco, especially affordable housing.

**Policy 1.8**  
Promote mixed use development, and include housing, particularly permanently affordable housing, in new commercial, institutional or other single use development projects.

*The Project is a high density mixed-use development in an underutilized, transitioning industrial area. The Project site is a large opportunity site that is currently only used as a surface parking lot, which significantly degrades the built and pedestrian environment that surrounds it. The area around the Project site was recently rezoned to UMU as part of a long range planning goal to create a cohesive, high density residential and mixed-use neighborhood. The project includes 94 affordable housing units.*

**OBJECTIVE 11**  
SUPPORT AND RESPECT THE DIVERSE AND DISTINCT CHARACTER OF SAN  
FRANCISCO'S NEIGHBORHOODS.

**Policy 11.1**  
Promote the construction and rehabilitation of well-designed housing that emphasizes beauty, flexibility, and innovative design, and respects existing neighborhood character.

**Policy 11.2**  
Ensure implementation of accepted design standards in project approvals.

**Policy 11.3**

Ensure growth is accommodated without substantially and adversely impacting existing residential neighborhood character.

**Policy 11.4**

Continue to utilize zoning districts which conform to a generalized residential land use and density plan and the General Plan.

**Policy 11.5**

Ensure densities in established residential areas promote compatibility with prevailing neighborhood character.

**Policy 11.6**

Foster a sense of community through architectural design, using features that promote community interaction.

**Policy 11.8**

Consider a neighborhood's character when integrating new uses, and minimize disruption caused by expansion of institutions into residential areas.

*The architecture of this Project responds to the site's location between the industrial nature of Showplace Square, and the contemporary architecture of the residential and lofts toward the bottom of Potrero Hill. The Project's facades all present fenestration patterns and scale similar to the expressed frame of residential and industrial uses common in the area. The exterior of the North Building is designed with modern materials including painted cement plaster, hardi trim, aluminum storefronts and windows, metal screens, railings and downspout, concrete, and aluminum sun shades. The aluminum punched window openings with cement plaster recesses on the aluminum framed building for the South Building provide a stimulating and visually interesting buffer between the I-280 Freeway and the Daggett Right of Way. The different façade expression of the two buildings is a dynamic expression of the synergy of the evolving distinct with various architectural styles. Variations in fenestration and treatment of the building facades allow the architecture to read as distinct pieces of a whole.*

**OBJECTIVE 12**

**BALANCE HOUSING GROWTH WITH ADEQUATE INFRASTRUCTURE THAT SERVES THE CITY'S GROWING POPULATION.**

**Policy 12.2**

Consider the proximity of quality of life elements, such as open space, child care, and neighborhood services, when developing new housing units.

*The Project provides adequate open space, all on-site. The open spaces are provided in the form of private courts, roof deck, and publicly accessible parks and open space. The existing Daggett Street Right of Way has been planned for a public park. The park is tentatively designed to include a lawn, play area, built-in seating, dog run, and ample landscaping.*

## RECREATION AND OPEN SPACE ELEMENT

### Objectives and Policies

**OBJECTIVE 4:**  
PROVIDE OPPORTUNITIES FOR RECREATION AND THE ENJOYMENT OF OPEN SPACE IN EVERY SAN FRANCISCO NEIGHBORHOOD.

**Policy 4.5:**  
Require private usable outdoor open space in new residential development.

**Policy 4.6:**  
Assure the provision of adequate public open space to serve new residential development.

*The Project will create private and public outdoor open space areas in new residential mixed-use development through private balconies, roof deck, ground floor open spaces and parks. It will not cast shadows over any open spaces under the jurisdiction of the Recreation and Park Department. Additionally, a new pedestrian pathway will be created to connect Hubbell Street with the Daggett Right of Way, a planned public park, and 16<sup>th</sup> Street.*

## TRANSPORTATION ELEMENT

### Objectives and Policies

**OBJECTIVE 24:**  
IMPROVE THE AMBIENCE OF THE PEDESTRIAN ENVIRONMENT.

**Policy 24.2:**  
Maintain and expand the planting of street trees and the infrastructure to support them.

**Policy 24.3:**  
Install pedestrian-serving street furniture where appropriate.

**Policy 24.4:**  
Preserve pedestrian-oriented building frontages.

*The Project will install street trees at approximately 20 foot intervals all along the three frontages on Hubbell, 7<sup>th</sup> and 16<sup>th</sup> Streets. Frontages are designed with active spaces oriented at the pedestrian level. The proposed mid-block mews also provides connection through the site.*

**OBJECTIVE 28:**  
PROVIDE SECURE AND CONVENIENT PARKING FACILITIES FOR BICYCLES.

**Policy 28.1:**  
Provide secure bicycle parking in new governmental, commercial, and residential developments.

**Policy 28.3:**

Provide parking facilities which are safe, secure, and convenient.

*The Project includes 378 bicycle parking spaces in secure, convenient locations on the ground floor.*

**OBJECTIVE 34:**

RELATE THE AMOUNT OF PARKING IN RESIDENTIAL AREAS AND NEIGHBORHOOD COMMERCIAL DISTRICTS TO THE CAPACITY OF THE CITY'S STREET SYSTEM AND LAND USE PATTERNS.

**Policy 34.1:**

Regulate off-street parking in new housing so as to guarantee needed spaces without requiring excesses and to encourage low auto ownership in neighborhoods that are well served by transit and are convenient to neighborhood shopping.

**Policy 34.3:**

Permit minimal or reduced off-street parking supply for new buildings in residential and commercial areas adjacent to transit centers and along transit preferential streets.

**Policy 34.5:**

Minimize the construction of new curb cuts in areas where on-street parking is in short supply and locate them in a manner such that they retain or minimally diminish the number of existing on-street parking spaces.

*The Project has a parking to dwelling unit ratio of .65 spaces per unit. The 306 parking spaces are accessed by two ingress/egress points on Hubbell Street.*

## **URBAN DESIGN ELEMENT**

### **Objectives and Policies**

**OBJECTIVE 1:**

EMPHASIS OF THE CHARACTERISTIC PATTERN WHICH GIVES TO THE CITY AND ITS NEIGHBORHOODS AN IMAGE, A SENSE OF PURPOSE, AND A MEANS OF ORIENTATION.

**Policy 1.7:**

Recognize the natural boundaries of districts, and promote connections between districts.

**OBJECTIVE 2:**

CONSERVATION OF RESOURCES WHICH PROVIDE A SENSE OF NATURE, CONTINUITY WITH THE PAST, AND FREEDOM FROM OVERCROWDING.

**Policy 2.6:**



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Respect the character of older development nearby in the design of new buildings.

*The Project lies within the Showplace/Potrero neighborhood that is transitioning from industrial uses to a mid- to high-density residential mixed-use neighborhood. As such, the proposed building provides more intricate street façades that respond to the existing industrial built environment, while respecting the lofts influences of the buildings to the south.*

**OBJECTIVE 4:**  
IMPROVEMENT OF THE NEIGHBORHOOD ENVIRONMENT TO INCREASE PERSONAL SAFETY, COMFORT, PRIDE AND OPPORTUNITY.

**Policy 4.5:**  
Design walkways and parking facilities to minimize danger to pedestrians.

**Policy 4.13:**  
Improve pedestrian areas by providing human scale and interest.

*While the triangular lot has a unique four-street frontage, it only provides two vehicular access points for the entire project, limiting conflicts with pedestrians and bicyclists. Numerous street trees will be planted on each façade, ample public and private open spaces, ground floor active uses, and ground floor flexible occupancy units directly accessing the street. The pedestrian experience along the Project site will be improved.*

## **SHOWPLACE SQUARE/POTRERO AREA PLAN**

### **Objectives and Policies**

**OBJECTIVE 1.1:**  
ENCOURAGE THE TRANSITION OF PORTIONS OF SHOWPLACE / POTRERO TO A MORE MIXED USE AND NEIGHBORHOOD-SERVING CHARACTER, WHILE PROTECTING THE CORE OF DESIGN-RELATED PDR USES.

**Policy 1.1.2:**  
In the northern part of Showplace Square (around 8th and Brannan, east of the freeway and along 16th and 17th Streets) revise land use controls to create new mixed use areas, allowing mixed-income housing as a principal use, as well as limited amounts of retail, office, and research and development uses, while protecting against the wholesale displacement of PDR uses.

**Policy 1.1.3:**  
Allow for active ground floor uses and a more neighborhood commercial character in newly designated mixed use areas within Showplace Square.

**Policy 1.1.4:**

Permit and encourage greater retail use on the ground floor on parcels that front 16th Street to take advantage of transit service and encourage more mixed uses, while protecting against the wholesale displacement of PDR uses.

*The project is a mixed-use mixed-income development along 16<sup>th</sup> Street with active ground floor uses and a neighborhood commercial character that will not displace any existing PDR uses.*

**OBJECTIVE 1.2**

IN AREAS OF SHOWPLACE/POTRERO WHERE HOUSING AND MIXED USE IS ENCOURAGED, MAXIMIZE DEVELOPMENT POTENTIAL IN KEEPING WITH NEIGHBORHOOD CHARACTER

*The project maximizes its development potential while remaining in keeping with the neighborhood character.*

**OBJECTIVE 1.7**

RETAIN THE ROLE OF SHOWPLACE SQUARE AS AN IMPORTANT LOCATION FOR PRODUCTION, DISTRIBUTION, AND REPAIR (PDR) ACTIVITIES, FOCUSING IN PARTICULAR ON DESIGN RELATED ACTIVITIES.

**Policy 1.7.3**

Require development of flexible buildings with generous floor-to-ceiling heights, large floor plates, and other features that will allow the structure to support various businesses.

*The Project includes nonresidential spaces on the ground floor with large ground floor ceiling heights and adequate area for a range of uses, including PDR.*

**OBJECTIVE 2.1**

ENSURE THAT A SIGNIFICANT PERCENTAGE OF NEW HOUSING CREATED IN THE SHOWPLACE / POTRERO IS AFFORDABLE TO PEOPLE WITH A WIDE RANGE OF INCOMES

**Policy 2.1.1**

Require developers in some formally industrial areas to contribute towards the City's very low, low, moderate and middle income needs as identified in the Housing Element of the General Plan.

*The project includes 20% on-site lower income affordable units, and the remainder of the units are contemplated to be held as rental housing, which is generally more affordable to moderate and middle income households than ownership housing.*

**OBJECTIVE 2.3**

REQUIRE THAT A SIGNIFICANT NUMBER OF UNITS IN NEW DEVELOPMENTS HAVE TWO OR MORE BEDROOMS EXCEPT SENIOR HOUSING AND SRO DEVELOPMENTS UNLESS ALL BELOW MARKET RATE UNITS ARE TWO OR MORE BEDROOM UNITS

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**Policy 2.3.3**

Require that a significant number of units in new developments have two or more bedrooms, except Senior Housing and SRO developments.

*The project contains 40% two-bedroom units.*

**OBJECTIVE 2.4**

**LOWER THE COST OF THE PRODUCTION OF HOUSING**

**Policy 2.4.1**

Require developers to separate the cost of parking from the cost of housing in both for sale and rental developments.

**Policy 2.4.2**

Revise residential parking requirements so that structured or off-street parking is permitted up to specified maximum amounts in certain districts, but is not required.

*The project has unbundled parking at a ratio of approximately 0.65 space per unit.*

**OBJECTIVE 3.2**

**PROMOTE AN URBAN FORM AND ARCHITECTURAL CHARACTER THAT SUPPORTS WALKING AND SUSTAINS A DIVERSE, ACTIVE AND SAFE PUBLIC REALM.**

**Policy 3.2.1**

Require high quality design of street-facing building exteriors.

**Policy 3.2.2**

Make ground floor retail and PDR uses as tall, roomy and permeable as possible.

**Policy 3.2.3**

Minimize the visual impact of parking.

**Policy 3.2.4**

Strengthen the relationship between a building and its fronting sidewalk.

**Policy 3.2.5**

Building form should celebrate corner locations.

**Policy 3.2.7**

Strengthen the pedestrian network by extending alleyways to adjacent streets or alleyways wherever possible, or by providing new publicly accessible mid-block rights of way.

*The Project's facades are of high quality materials. The ground floor will be tall enough to create attractive storefronts for pedestrians and viable space for a variety of uses, including PDR. The parking, although at*

*grade, are only accessible by two garage doors and are only visible through approximately 110-foot wide of a 240-foot wide frontage designed with metal screen and enclosed vegetated swale and board-formed concrete. The buildings also include appropriate modulation of the facades to break them into distinct sections.*

**OBJECTIVE 5.1**

PROVIDE PUBLIC PARKS AND OPEN SPACES THAT MEET THE NEEDS OF RESIDENTS, WORKERS AND VISITORS

**Policy 5.1.1**

Identify opportunities to create new public parks and open spaces and provide at least one new public park or open space serving the Showplace / Potrero.

**Policy 5.1.2**

Require new residential development and commercial development to provide, or contribute to the creation of publicly accessible open space.

*The project proposes a corner park at the intersection of 16<sup>th</sup> and Hubbell Streets, and is proposing to conversion of the Daggett Street Right-of-Way to a public park to serve the Showplace Square/Potrero neighborhood.*

**OBJECTIVE 5.2**

ENSURE THAT NEW DEVELOPMENT INCLUDES HIGH QUALITY PRIVATE OPEN SPACE

**Policy 5.2.1**

Require new residential and mixed-use residential development to provide on-site private open space designed to meet the needs of residents.

**Policy 5.2.2**

Establish requirements for commercial development to provide on-site open space.

**Policy 5.2.3**

Encourage private open space to be provided as common spaces for residents and workers of the building wherever possible.

**Policy 5.2.4**

Encourage publicly accessible open space as part of new residential and commercial development.

*The project includes high quality private and common open space in balconies, decks, courtyards, and a roofdeck, as well as publicly accessible open space.*

9. Planning Code Section 101.1(b) establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project does comply with said policies in that:

- A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

*There are no existing neighborhood-serving retail uses on the site. The Project will provide approximately 15,000 square feet of ground floor space adequate for various retail uses, including neighborhood serving retail, which will create opportunities for local resident employment and ownership opportunities.*

- B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

*No housing exists on the project site. The project will provide up to 470 new dwelling units, significantly increasing the neighborhood housing stock. The design of the Project is compatible with the surrounding neighborhood. For these reasons, the proposed project would protect and preserve the cultural, economic and historic significance of the neighborhood.*

- C. That the City's supply of affordable housing be preserved and enhanced.

*The Project will not displace any affordable housing because there is currently no housing on the site. The Project will comply with the City's Inclusionary Housing Program, therefore increasing the stock of affordable housing units in the City.*

- D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

*The project site is well-served by public transportation. The majority of future residents are expected to use alternative methods of transportation other than private automobiles, and the small number of vehicle trips generated by this project would not impede MUNI transit service or overburden streets.*

- E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

*The Project does not include any commercial office development. The Project will increase the potential for future development of PDR uses on the site with the proposed PDR spaces. The proposal with dwelling units and retail spaces will increase the diversity of the City's housing supply, a top priority in the City, and will provide potential neighborhood-serving uses.*

- F. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

*The project will be designed and will be constructed to conform to the structural and seismic safety requirements of the Building Code. This proposal will not impact the property's ability to withstand an earthquake.*

- G. That landmarks and historic buildings be preserved.

*A landmark or historic building does not occupy the Project site.*

- H. That our parks and open space and their access to sunlight and vistas be protected from development.

*The Project will not affect the City's parks or open space or their access to sunlight and vistas. A shadow study was completed and concluded that the Project will not cast shadows on any property under the jurisdiction of, or designated for acquisition by, the Recreation and Park Commission.*

10. **First Source Hiring.** The Project is subject to the requirements of the First Source Hiring Program as they apply to permits for residential development (Section 83.4(m) of the Administrative Code), and the Project Sponsor shall comply with the requirements of this Program as to all construction work and on-going employment required for the Project. Prior to the issuance of any building permit to construct or a First Addendum to the Site Permit, the Project Sponsor shall have a First Source Hiring Construction and Employment Program approved by the First Source Hiring Administrator, and evidenced in writing. In the event that both the Director of Planning and the First Source Hiring Administrator agree, the approval of the Employment Program may be delayed as needed.

The Project Sponsor executed a First Source Hiring Memorandum of Understanding and a First Source Hiring Agreement with the City's First Source Hiring Administration.

11. **Mitigation.** Pursuant to CEQA, the Commission has considered the mitigation measures as described in the FEIR and will include these measures and the mitigation monitoring program as conditions of Project approval.
12. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
13. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety and welfare of the City.

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### DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Large Project Authorization Application No. 2003.0527X** under Planning Code Section 329 to allow the proposed construction of two new six-story, 68-foot buildings consisting of up to 470 dwelling units, approximately 15,000 square feet of ground floor retail, approximately 11,100 square feet of Production, Distribution, and Repair (PDR) spaces, and parking for up to 306 spaces and exceptions for rear yard, dwelling unit exposure, off-street loading, horizontal mass reduction and ground floor active uses within the UMU (Urban Mixed Use) District with a 68-X Height and Bulk Designation. The project is subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated June 18, 2011, and stamped "EXHIBIT B", which is incorporated herein by reference as though fully set forth.

The Planning Commission hereby adopts the MMRP attached hereto as Exhibit C and incorporated herein as part of this Resolution/Motion by this reference thereto. All required mitigation measures identified in the IS/MND and contained in the MMRP are included as conditions of approval.

**APPEAL AND EFFECTIVE DATE OF MOTION:** Any aggrieved person may appeal this Large Project Authorization to the Board of Appeals within fifteen (15) days after the date of this Motion No. 18419. The effective date of this Motion shall be the date of this Motion if not appealed (After the 15-day period has expired) OR the date of the decision of the Board of Appeals if appealed to the Board of Appeals. For further information, please contact the Board of Appeals at (415) 575-6880, 1650 Mission Street, Room 304, San Francisco, CA 94102.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on July 28, 2011.

Linda D. Avery  
Commission Secretary

AYES: Commissioners Antonini, Miguel, Moore, Sugaya, and Olague  
NAYS: None  
ABSENT: Commissioners Borden and Fong  
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## EXHIBIT A

### AUTHORIZATION

This authorization is to allow a Large Project Authorization and exceptions for rear yard, dwelling unit exposure, off-street loading, horizontal mass reduction and ground floor active uses for the proposed construction of two new six-story, 68-foot buildings consisting of up to 470 dwelling units, approximately 15,000 square feet of ground floor retail, approximately 8,000 square feet of Production, Distribution, and Repair (PDR) and Small Enterprise Workspace (SEW) spaces, and parking for approximately 306 spaces; in general conformance with plans, dated June 18, 2011, and stamped "EXHIBIT B" included in the docket for Case No. 2003.0527X and subject to conditions of approval reviewed and approved by the Commission on July 28, 2011, under Motion No 18419. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

### RECORDATION OF CONDITIONS OF APPROVAL

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on July 28, 2011, under Motion No. 18419.

### PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. 18419 shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building permit application for the Project. The Index Sheet of the construction plans shall reference to the Large Project Authorization and any subsequent amendments or modifications.

### SEVERABILITY

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

### CHANGES AND MODIFICATIONS

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Large Project Authorization.



## Conditions of Approval, Compliance, Monitoring, and Reporting PERFORMANCE

1. **Validity and Expiration.** The authorization and right vested by virtue of this action is valid for three years from the effective date of the Motion. A building permit from the Department of Building Inspection to construct the project and/or commence the approved use must be issued as this Large Project Authorization is only an approval of the proposed project and conveys no independent right to construct the project or to commence the approved use. The Planning Commission may, in a public hearing, consider the revocation of the approvals granted if a site or building permit has not been obtained within three (3) years of the date of the Motion approving the Project. Once a site or building permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. The Commission may also consider revoking the approvals if a permit for the Project has been issued but is allowed to expire and more than three (3) years have passed since the Motion was approved. *For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org).*
2. **Extension.** This authorization may be extended at the discretion of the Zoning Administrator only where failure to issue a permit by the Department of Building Inspection to perform said tenant improvements is caused by a delay by a local, State or Federal agency or by any appeal of the issuance of such permit(s). *For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org).*

## DESIGN

3. **Final Materials.** The Project Sponsor shall continue to work with Planning Department on the building design. Final materials, glazing, color, texture, landscaping, and detailing shall be subject to Department staff review and approval. The architectural addenda shall be reviewed and approved by the Planning Department prior to issuance. *For information about compliance, contact the Case Planner, Planning Department at 415-558-6613, [www.sf-planning.org](http://www.sf-planning.org).*
4. **Flexible-Occupancy Units.** The ground floor dwelling units in the North Building are designated as Flexible-Occupancy Units and are subject to the following conditions:
  - a. The units are considered dwelling units and are subject to the affordability controls of Planning Code Section 415. The total gross floor area of each unit is subject to the residential rate of Eastern Neighborhood Impact Fee per Planning Code Section 427.3.
  - b. The ground floor of these units may be occupied by the following non-residential uses:
    - i. All retail sales and services permitted as of right in the UMU Zoning District (Sec. 843.45);
    - ii. All arts activities permitted as of right in the UMU Zoning District (Sec. 843.55);
    - iii. Trade shops (Sec. 843.80); and

- iv. Catering services (Sec. 843.81).
  - v. Other uses not specified herein that are permitted as of right in the UMU Zoning District and deemed appropriate by the Zoning Administrator.
  - c. Changes of non-residential uses are subject to the notification requirements of Planning Code Section 312.
  - d. Permitted non-residential uses may occupy the ground floor only. Any conversion of residential space on the 2<sup>nd</sup> floor shall be tantamount to the removal of a dwelling unit and be subject to the controls of Planning Code Section 317.
  - e. Non-residential uses permitted on the ground floor are subject to all applicable requirements of the Building and Fire Codes.
5. **The Mid-block Pedestrian Pathway.** Planning Code Section 270.2, the project shall meet all design criteria of Subsection (e). It shall also meet the following criteria:
- a. **Maintenance.** The mid-block pedestrian pathway shall be maintained at no public expense. The owner of the property on which the alley is located shall maintain it by keeping the area clean and free of litter and by keeping it in an acceptable state of repair. Conditions intended to assure continued maintenance of the right-of-way for the actual lifetime of the building giving rise to the open space requirement may be imposed in accordance with the provisions of Section 329 for Eastern Neighborhoods Mixed Use Districts.
  - b. **Informational Plaque.** Prior to issuance of a permit of occupancy, a plaque shall be placed in a publicly conspicuous location for pedestrian viewing. The plaque shall state the right of the public to pass through the alley and stating the name and address of the owner or owner's agent responsible for maintenance. The plaque shall be of no less than 24 inches by 36 inches in size.
  - c. Property owners providing a pathway or alley under this section will hold harmless the City and County of San Francisco, its officers, agents and employees, from any damage or injury caused by the design, construction or maintenance of the right-of-way, and are solely liable for any damage or loss occasioned by any act or neglect in respect to the design, construction or maintenance of the right-of-way.
6. **Garbage, composting and recycling storage.** Space for the collection and storage of garbage, composting, and recycling shall be provided within enclosed areas on the property and clearly labeled and illustrated on the building permit plans. Space for the collection and storage of recyclable and compostable materials that meets the size, location, accessibility and other standards specified by the San Francisco Recycling Program shall be provided at the ground level of the buildings. *For information about compliance, contact the Case Planner, Planning Department at 415-558-6613, [www.sf-planning.org](http://www.sf-planning.org).*
7. **Transformer Vault.** The location of individual project PG&E Transformer Vault installations has significant impacts to San Francisco streetscapes when improperly located. However, they may not have any impact if they are installed in preferred locations. Therefore, the Planning

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Department recommends the following preference schedule in locating new transformer vaults, in order of most to least desirable:

- A. On-site, in a basement area accessed via a garage or other access point without use of separate doors on a ground floor façade facing a public right-of-way;
- B. On-site, in a driveway, underground;
- C. On-site, above ground, screened from view, other than a ground floor façade facing a public right-of-way;
- D. Public right-of-way, underground, under sidewalks with a minimum width of 12 feet, avoiding impacts on streetscape elements, such as street trees; and based on Better Streets Plan guidelines;
- E. Public right-of-way, underground; and based on Better Streets Plan guidelines;
- F. Public right-of-way, above ground, screened from view; and based on Better Streets Plan guidelines;
- G. On-site, in a ground floor façade (the least desirable location).

Unless otherwise specified by the Planning Department, Department of Public Work's Bureau of Street Use and Mapping (DPW BSM) should use this preference schedule for all new transformer vault installation requests. For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-5810, <http://sfdpw.org>

## AFFORDABLE HOUSING

8. **Number of Required Units.** Pursuant to Planning Code Section 415.6, the Project is required to provide 20% of the proposed dwelling units as affordable to qualifying households. The Project contains 470 units; therefore, 94 affordable units are required. The Project Sponsor will fulfill this requirement by providing the X affordable units on-site. If the number of market-rate units change, the number of required affordable units shall be modified accordingly with written approval from Planning Department staff in consultation with the Mayor's Office of Housing ("MOH").

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org) or the Mayor's Office of Housing at 415-701-5500, <http://sf-moh.org/index.aspx?page=321>

9. **Unit Mix.** The Project contains 30 flexible-occupancy, 50 studios, 202 one-bedroom, 188 two-bedroom, and 0 three-bedroom units; therefore, the required affordable unit mix is 6 flexible-occupancy, 10 studios, 40 one-bedroom, 38 two-bedroom, and 0 three-bedroom units. If the market-rate unit mix changes, the affordable unit mix will be modified accordingly with written approval from Planning Department staff in consultation with MOH.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org) or the Mayor's Office of Housing at 415-701-5500, <http://sf-moh.org/index.aspx?page=321>

10. **Unit Location.** The affordable units shall be designated on a reduced set of plans recorded as a Notice of Special Restrictions on the property prior to the issuance of the first construction permit.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org) or the Mayor's Office of Housing at 415-701-5500, <http://sf-moh.org/index.aspx?page=321>.*

11. **Phasing.** If any building permit is issued for partial phasing of the Project, the Project Sponsor shall have designated not less than twenty percent (20%) of the each phase's total number of dwelling units as on-site affordable units.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org) or the Mayor's Office of Housing at 415-701-5500, <http://sf-moh.org/index.aspx?page=321>.*

12. **Duration.** Under Planning Code Section 415.8, all units constructed pursuant to Section 415.6, must remain affordable to qualifying households for the life of the project.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org) or the Mayor's Office of Housing at 415-701-5500, <http://sf-moh.org/index.aspx?page=321>.*

13. **Other Conditions.** The Project is subject to the requirements of the Inclusionary Affordable Housing Program under Section 415 et seq. of the Planning Code and City and County of San Francisco Inclusionary Affordable Housing Program Monitoring and Procedures Manual ("Procedures Manual"). The Procedures Manual, as amended from time to time, is incorporated herein by reference, as published and adopted by the Planning Commission, and as required by Planning Code Section 415. Terms used in these conditions of approval and not otherwise defined shall have the meanings set forth in the Procedures Manual. A copy of the Procedures Manual can be obtained at the MOH at 1 South Van Ness Avenue or on the Planning Department or Mayor's Office of Housing's websites, including on the internet at:

<http://sf-planning.org/Modules/ShowDocument.aspx?documentid=4451>.

As provided in the Inclusionary Affordable Housing Program, the applicable Procedures Manual is the manual in effect at the time the subject units are made available for sale.

*For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, [www.sf-planning.org](http://www.sf-planning.org) or the Mayor's Office of Housing at 415-701-5500, <http://sf-moh.org/index.aspx?page=321>.*

- a. The affordable unit(s) shall be designated on the building plans prior to the issuance of the first construction permit by the Department of Building Inspection ("DBI"). The affordable unit(s) shall (1) reflect the unit size mix in number of bedrooms of the market rate units, (2) be constructed, completed, ready for occupancy and marketed no later than the market rate units, and (3) be evenly distributed throughout the building; and (4) be of comparable overall quality, construction and exterior appearance as the market rate units in the principal project. The interior features in affordable units should be generally the same as those of the market units in the principal project, but need not be the same make, model or type of such item as long they are of good and new quality and are consistent with then-current standards for new housing. Other specific standards for on-site units are outlined in the Procedures Manual.

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- b. If the units in the building are offered for sale, the affordable unit(s) shall be sold to first time home buyer households, as defined in the Procedures Manual, whose gross annual income, adjusted for household size, does not exceed an average of one hundred (100) percent of the median income for the City and County of San Francisco as defined in the Inclusionary Affordable Housing Program, an amount that translates to ninety (90) percent of Area Median Income under the income table called "Maximum Income by Household Size" derived from the Unadjusted Area Median Income for HUD Metro Fair Market Rent Area that contains San Francisco. The initial sales price of such units shall be calculated according to the Procedures Manual. Limitations on (i) reselling; (ii) renting; (iii) recouping capital improvements; (iv) refinancing; and (v) procedures for inheritance apply and are set forth in the Inclusionary Affordable Housing Program and the Procedures Manual.
- c. The Project Sponsor is responsible for following the marketing, reporting, and monitoring requirements and procedures as set forth in the Procedures Manual. MOH shall be responsible for overseeing and monitoring the marketing of affordable units. The Project Sponsor must contact MOH at least six months prior to the beginning of marketing for any unit in the building.
- d. Required parking spaces shall be made available to initial buyers or renters of affordable units according to the Procedures Manual.
- e. Prior to the issuance of the first construction permit by DBI for the Project, the Project Sponsor shall record a Notice of Special Restriction on the property that contains these conditions of approval and a reduced set of plans that identify the affordable units satisfying the requirements of this approval. The Project Sponsor shall promptly provide a copy of the recorded Notice of Special Restriction to the Department and to MOH or its successor.
- f. The Project Sponsor has demonstrated that it is eligible for the On-site Affordable Housing Alternative under Planning Code Section 415.6 instead of payment of the Affordable Housing Fee, and has submitted the Affidavit of Compliance with the Inclusionary Affordable Housing Program: Planning Code Section 415 to the Planning Department stating the intention to enter into an agreement with the City to qualify for a waiver from the Costa-Hawkins Rental Housing Act based upon the proposed density bonus and concessions provided by the City provided herein. The Project must execute the Costa Hawkins agreement within 60 days of Planning Commission approval or must revert to payment of the Affordable Housing Fee.
- g. If the Project Sponsor fails to comply with the Inclusionary Affordable Housing Program requirement, the Director of DBI shall deny any and all site or building permits or certificates of occupancy for the development project until the Planning Department notifies the Director of compliance. A Project Sponsor's failure to comply with the requirements of Planning Code Section 415 et seq. shall constitute cause for the City to record a lien against the development project and to pursue any and all available remedies at law.

- h. If the Project becomes ineligible at any time for the On-site Affordable Housing Alternative, the Project Sponsor or its successor shall pay the Affordable Housing Fee prior to issuance of the first construction permit or may seek a fee deferral as permitted under Ordinances 0107-10 and 0108-10. If the Project becomes ineligible after issuance of its first construction permit, the Project Sponsor shall notify the Department and MOH and pay interest on the Affordable Housing Fee at a rate equal to the Development Fee Deferral Surcharge Rate in Section 107A.13.3.2 of the San Francisco Building Code and penalties, if applicable.

#### **PARKING AND TRAFFIC**

14. **Parking for Affordable Units.** All off-street parking spaces shall be made available to Project residents only as a separate "add-on" option for purchase or rent and shall not be bundled with any Project dwelling unit for the life of the dwelling units. The required parking spaces may be made available to residents within a quarter mile of the project. All affordable dwelling units pursuant to Planning Code Section 415 shall have equal access to use of the parking as the market rate units, with parking spaces priced commensurate with the affordability of the dwelling unit. Each unit within the Project shall have the first right of refusal to rent or purchase a parking space until the number of residential parking spaces are no longer available. No conditions may be placed on the purchase or rental of dwelling units, nor may homeowner's rules be established, which prevent or preclude the separation of parking spaces from dwelling units.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

15. **Managing Traffic During Construction.** The Project Sponsor and construction contractor(s) shall coordinate with the Traffic Engineering and Transit Divisions of the San Francisco Municipal Transportation Agency (SFMTA), the Police Department, the Fire Department, the Planning Department, and other construction contractor(s) for any concurrent nearby Projects to manage traffic congestion and pedestrian circulation impacts during construction of the Project.

*For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

#### **EASTERN NEIGHBORHOODS INFRASTRUCTURE IMPACT FEE**

16. **Impact Fees**

The project shall comply with the provisions of Planning Code Section 423, including payment of the Eastern Neighborhoods Impact Fee, or execution of an In-Kind Agreement with the Planning Department prior to issuance of the first site or building permit. While recognizing that the Commission will review any use of the Eastern Neighborhoods Impact Fee in the future, the Commission urges the Project Sponsor to pursue the execution of an In-Kind Agreement pursuant to Planning Code Section 423.3(d) to authorize the project sponsor to provide in-kind improvements in the form of development of a public park in the Daggett Street Right of Way.

## PROVISIONS

17. **First Source Hiring.** The Project shall adhere to the requirements of the First Source Hiring Construction and Employment Program approved by the First Source Hiring Administrator, pursuant to Section 83.4(m) of the Administrative Code. The Project Sponsor shall comply with the requirements of this Program regarding construction work and on-going employment required for the Project. *For information about compliance, contact the First Source Hiring Manager at 415-401-4960, [www.onestopSF.org](http://www.onestopSF.org)*

## MONITORING

18. **Enforcement.** Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction. *For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

19. **Revocation due to Violation of Conditions.** Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific conditions of approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization. *For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

## OPERATION

20. **Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards. *For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, <http://sfdpw.org/>*
21. **Community Liaison.** Prior to issuance of a building permit to construct the project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor. *For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, [www.sf-planning.org](http://www.sf-planning.org)*

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**22. Mitigation Measures**

Mitigation measures described in the MMRP attached as Exhibit C are necessary to avoid potential significant effects of the proposed project and have been agreed to by the project sponsor. Their implementation is a condition of project approval.

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**1000 16th STREET IN-KIND AGREEMENT  
(PER PLANNING CODE SECTION 423.3)**

**THIS IN-KIND AGREEMENT** (the "Agreement") is entered into as of November 29<sup>th</sup>, 2012, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the Planning Commission (the "City") and ARCHSTONE DAGGETT PLACE LLC, a Delaware limited liability company ("Project Sponsor"), with respect to the project approved for 1000 16th Street, San Francisco, California 94107 (the "Project").

**RECITALS**

A. On December 19, 2008, the San Francisco Board of Supervisors enacted Ordinance No. 298-08 (File No. 081153) (the "Ordinance"), adding Section 327 to the San Francisco Planning Code (now Sections 423-423.5). Any undefined term used herein shall have the meaning given to such term in Article 4 of the Planning Code, and all references to Sections 423-423.5 shall mean Sections 423-423.5 of the San Francisco Planning Code.

B. In order to mitigate the impacts from the new mixed residential and commercial development permitted under the Eastern Neighborhoods Plan, the Ordinance imposed an Impact Fee on new residential and commercial development (the "Fee"). Under Section 423.3(e), the Fee is required to be paid to the City before issuance of the first construction document for a development project. As an alternative to payment of the Fee, the Ordinance provides that the City may reduce the Fee obligation at that time if the project sponsor agrees to provide specified community improvements. In order for the project sponsor to satisfy its Fee obligation by providing such in-kind improvements, the Ordinance requires the City and the Project Sponsor to enter into an "In-Kind Agreement" described in Section 423.3(d).

C. The property described in Exhibit A attached hereto (the "Land") and generally known as 1000 16th Street (Lots 1, 2, and 3 in Assessor's Block 3833 and Lot 1 in Assessor's Block 3834) is owned by Project Sponsor. Archstone New Development Holdings LP, the Project Sponsor's predecessor in interest, submitted an application for the development of a mixed residential and commercial development on the Land, and the Planning Commission approved the Project on July 28, 2011 (Motion No. 18419). In its approval motion, the Commission urged the Project Sponsor to pursue an In-Kind Agreement for open space improvements in the Daggett Street right-of-way.

D. The Showplace Square/Potrero Area Plan contains objectives and policies for creating a complete mixed-use neighborhood along 16<sup>th</sup> Street, including developing public open space in the vicinity of the Project. The Showplace Square Open Space Study identified the Daggett Street right-of-way, an unaccepted street situated between Block 3833 and Block 3834, as a priority location for a public open space in the Showplace Square neighborhood. The Daggett Street right-of-way land is owned by the Port of San Francisco, and the City's Department of Public Works ("DPW") holds an easement over the land for public street purposes.

E. The Project Sponsor has requested that the City enter into an In-Kind Agreement associated with development of public open space improvements in a portion of the Daggett Street right-of-way to create a public open space referred to herein as "Daggett Park," in order to reduce its Fee obligation per the terms of the Ordinance, provided the owner of the land upon which Daggett Park would be constructed (currently, the Port of San Francisco) and any public street easement holder timely and irrevocably consent to the construction and maintenance of such improvements.

F. The In-Kind Improvements meet an identified community need as analyzed in the Eastern Neighborhoods Community Improvements Program and are not a physical improvement or provision of space otherwise required by the Planning Code or any other City Code.

G. On July 18, 2011, the Eastern Neighborhoods Citizens Advisory Committee voted in Motion 2011-6-1 to support the use of Eastern Neighborhoods Public Benefit Funds for the development of a Daggett Park, via an In-Kind Agreement with the sponsor of the surrounding development.

H. The City is willing to enter into an In-Kind Agreement, on the terms and conditions set forth below.

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### ARTICLE 1 DEFINITIONS

1.1 Defined Terms. As used in this Agreement, the following words and phrases have the following meanings.

"**Agreement**" shall mean this Agreement.

"**City**" shall have the meaning set forth in the preamble to this Agreement.

"**Date of Satisfaction**" shall have the meaning set forth in Section 4.8 below.

"**DBI**" shall have the meaning set forth in Section 3.3 below.

"**DPW**" shall have the meaning set forth in Recital D.

"**Effective Date**" shall have the meaning set forth in Section 5.1 below.

"**Final Inspection Notice**" shall have the meaning set forth in Section 4.6 below.

**"First Construction Document"** shall have the meaning set forth in Section 401 of the Planning Code.

**"Impact Fee"** or **"Fee"** shall mean the fee charged to all residential and commercial development projects in the Eastern Neighborhoods Plan Areas under Section 423.3 of the Ordinance.

**"In-Kind Improvements"** shall have the meaning set forth in Recital E.

**"In-Kind Value"** shall have the meaning set forth in Section 3.2 below.

**"Initial Amount"** shall have the meaning set forth in Section 3.3 below.

**"Inspection Notice"** shall have the meaning set forth in Section 4.6 below.

**"Land"** shall have the meaning set forth in Recital C.

**"Memorandum of Agreement"** shall have the meaning set forth in Section 7.1 below.

**"Ordinance"** shall have the meaning designated in Recital A.

**"Payment Analysis"** shall have the meaning set forth in Section 5.2 below.

**"Payment Documentation"** shall have the meaning set forth in Section 4.7 below.

**"Plans"** shall have the meaning set forth in Section 4.3 below.

**"Project"** shall have the meaning set forth in the preamble to this Agreement.

**"Project Sponsor"** shall have the meaning set forth in the preamble to this Agreement.

**"Project Sponsor Fee"** shall mean the Project Sponsor's share of the Fee, as calculated pursuant to Section 3.1 hereof.

## **ARTICLE 2 PROJECT SPONSOR REPRESENTATIONS AND COVENANTS**

The Project Sponsor hereby represents, warrants, agrees and covenants to the City as follows:

2.1 The above recitals relating to the Project are true and correct.

2.2 Project Sponsor: (1) is a limited liability company duly organized and existing under the laws of the State of Delaware, (2) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated to be conducted, (3) has the power to execute and perform all the undertakings of this Agreement, and (4) is the fee owner of the real property on which the Project is located.

2.3 The execution and delivery of this Agreement and other instruments required to be executed and delivered by the Project Sponsor pursuant to this Agreement: (1) have not violated and will not violate any provision of law, rule or regulation, any order of court or other agency or government, and (2) have not violated and will not violate any provision of any agreement or instrument to which the Project Sponsor is bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature.

2.4 No document furnished or to be furnished by the Project Sponsor to the City in connection with this Agreement contains or will contain any untrue statement of material fact, or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

2.5 Neither the Project Sponsor, nor any of its principals or members, have been suspended, disciplined or debarred by, or prohibited from contracting with, the U.S. General Services Administration or any federal, state or local governmental agency during the past five (5) years.

2.6 Pursuant to Section 423.3(d)(5), the Project Sponsor shall reimburse all City agencies for their administrative and staff costs in negotiating, drafting, and monitoring compliance with this Agreement.

### **ARTICLE 3 CALCULATION OF FEE AND IN-KIND CREDIT**

3.1 The Project Sponsor Fee shall be calculated in accordance with Section 423.3(c) of the Ordinance. Based on the project entitled by the Planning Commission, the Fee is estimated at \$4,197,142 (for the fee calculations, see Exhibit B). The final Fee shall be calculated based on the project entitled by its First Construction Document.

3.2 Based on two estimates provided by independent sources, the Director of Planning determines that the In-Kind Improvements have a value of approximately \$1,880,000 (the "In-Kind Value"); provided, however, if upon final completion the actual construction and development costs to the Project Sponsor of providing the In-Kind Improvements are lower than this amount, the provisions of Section 5.2 shall apply. Documentation establishing the estimated eligible costs of providing the In-Kind Improvements in compliance with applicable City standards is attached hereto as Exhibit C (the "Cost Documentation").

3.3 The Project Sponsor shall pay to the Development Fee Collection Unit at the Department of Building Inspection ("DBI") \$2,317,142 (the "Initial Amount"), which is an amount equal to the Project Sponsor Fee (see Exhibit B) minus the In-Kind Value (see Exhibit C), prior to issuance of the Project's First Construction Document, pursuant to Section 423.3 of the Planning Code and Section 107A.13.3 of the San Francisco Building Code. On the Date of Satisfaction, the Project Sponsor shall receive a credit against the Project Sponsor Fee in the amount of the In-Kind Value, subject to Section 5.2 below.

## ARTICLE 4 IN-KIND IMPROVEMENTS

4.1 The Port of San Francisco ("Port") is the current owner of Daggett Street. The City, acting by and through its Planning Commission, hereby requests that the Port (or its successor in interest) and any public street easement holder of the Daggett Street right-of-way irrevocably consent in writing, at no cost to the Project Sponsor, to use of Daggett Street for public open space purposes in a form acceptable to the Project Sponsor (the "Port Consent") prior to the following milestones:

4.1.1 If the Port Consent is given prior to March 1, 2013, the Project Sponsor shall proceed with design and construction of the In-Kind Improvements pursuant to the terms of this Agreement.

4.1.2 If the Port Consent is not given prior to March 1, 2013, the Project Sponsor shall have the option of terminating this Agreement. If the Project Sponsor elects not to terminate this Agreement and instead elects to proceed with design of the In-Kind Improvements, all such design costs (up to a maximum cost of \$500,000) shall be deemed an In-Kind Value and be credited against the Project Sponsor Fee whether or not the Port Consent is ever received.

4.2 The Project Sponsor agrees to take all steps necessary to construct and provide, at the Project Sponsor's sole cost, the In-Kind Improvements for the benefit of the City and the public, and the City shall accept the In-Kind Improvements in lieu of a portion of the Project Sponsor Fee under this Agreement if this Agreement is still in effect and each of the following conditions are met:

4.2.1 The Port Commission authorizes the Port Consent as provided in Section 4.1. The Project Sponsor agrees that the Port Consent may be conditioned on the construction, operation, and maintenance of the In-Kind Improvements at no cost to the Port.

4.2.2 The Project Sponsor will prepare an Operations Plan providing maintenance services for the life of Daggett Park, including, but not limited to, gardening, maintenance, and security services for Daggett Park, prior to issuance of the first temporary certificate of occupancy for the Project. Prior to the issuance of the Final Inspection Notice for the park, this Operations Plan must be approved by the Director of Planning, in consultation with relevant City agencies such as Park and Recreation and the Department of Public Works. The Project Sponsor shall comply with the Operations Plan at no cost to the City or Port and must ensure that Daggett Park functions as a public open space including equal access for all members of the public with operating hours similar to similar publicly owned and operated open spaces, other rules of operation similar to other publicly owned and operated public open spaces, including allowable activities.

4.3 Plans and Permits. The Project Sponsor shall cause its landscape architect to prepare detailed plans and specifications for the In-Kind Improvements, which plans and specifications shall be submitted for review and approval by DPW and DBI in the ordinary course of the process of obtaining a building permit for the Project (upon such approval, the

"Plans"). Such review and approval of the plans and specifications of the In-Kind Improvements by DPW and DBI shall not be unreasonably withheld, delayed or conditioned. The Project Sponsor shall be responsible, at no cost to the City, for completing the In-Kind Improvements strictly in accordance with the approved Plans and shall not make any material change to the approved Plans during the course of construction without first obtaining the Director of Planning's written approval. Upon completion of the In-Kind Improvements, the Project Sponsor shall furnish the City with a copy of the final approved plans and specifications for the In-Kind Improvements and documentation of any material changes or deviations therefrom that may occur during construction of the In-Kind Improvements.

4.4 Construction. All construction with respect to the In-Kind Improvements shall be accomplished prior to the First Certificate of Occupancy for the Project, including a temporary Certificate of Occupancy. The improvements shall be accomplished and in accordance with good construction and engineering practices and applicable laws. The Project Sponsor, while performing any construction relating to the In-Kind Improvements, shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to the surrounding property, and the risk of injury to members of the public, caused by or resulting from the performance of such construction. All construction relating to the In-Kind Improvements shall be performed by licensed, insured and bonded contractors, and pursuant to a contract that includes a release and indemnification for the benefit of the City.

4.5 If the Final Inspection Notice has not been completed prior to issuance of the First Certificate of Occupancy, the Project Sponsor shall provide a letter of credit, surety bond, escrow account, or other security reasonably satisfactory to the Planning Director in the amount of one hundred percent (100%) of the Cost Documentation applicable to the uncompleted In-Kind Improvements (the "Security") to be held by the City until issuance of the Final Inspection Notice, at which date it shall be returned to the Project Sponsor.

4.6 Upon final completion of the In-Kind Improvements and the Project Sponsor's receipt of all final permit sign-offs, the Project Sponsor shall notify the Director of Planning that the In-Kind Improvements have been completed. The Director of Planning, or his or her agent, shall inspect the site to confirm compliance with this Agreement, and shall promptly thereafter notify the Project Sponsor that the In-Kind Improvements have been completed in accordance with the requirements of this Agreement, or, if there are any problems or deficiencies, shall notify the Project Sponsor of any such problems or deficiencies (the "Inspection Notice"). The Project Sponsor shall correct any such problems or deficiencies set forth in the Inspection Notice and then request another inspection, repeating this process until the Director of Planning approves the In-Kind Improvements as satisfactory. Such approval shall be based on the requirements of this Agreement and shall not be unreasonably withheld. This condition will not be satisfied until the Director of Planning delivers an Inspection Notice that certifies that the In-Kind Improvements are ready for use by the public, as determined by the Director of Planning based on current City standards, and constitute the full satisfaction of the obligation to provide In-Kind Improvements in the form required hereunder (the "Final Inspection Notice"). The City may, in its sole discretion, waive the requirements of this Section 4.5.]

4.7 Evidence of Payment. The Project Sponsor shall provide the Planning Department with documentation substantiating payment by the Project Sponsor of the cost of

providing the In-Kind Improvements in the form of third-party checks and invoices and its or its general contractor's standard general conditions allocation (the "Payment Documentation"). The Payment Documentation shall include information necessary and customary in the construction industry to verify the Project Sponsor's costs and payments. The cost of providing the In-Kind Improvements shall be substantially similar to the average capital costs for the City to provide the same square feet of public open space, based on current value of recently completed projects.

4.8 The Project Sponsor shall not receive final credit for the In-Kind Improvements until the Final Inspection Notice is delivered, the Memorandum of Agreement is recorded and the City receives any additional payments as may be required under Articles 4 and 5 below, and all other obligations of the Project Sponsor under this Agreement have been satisfied (the "Date of Satisfaction"). The Project Sponsor assumes all risk of loss during construction, and shall not receive final credit for the In-Kind Improvements until the Date of Satisfaction. Notwithstanding the foregoing, on and after the Effective Date (as defined in Section 5.1 below), for so long as this Agreement remains in effect and the Project Sponsor is not in breach of this Agreement the City shall not withhold the issuance of any additional building or other permits necessary for the Project due to the Project Sponsor's payment of less than the full Project Sponsor Fee amount in anticipation of the In Kind Improvements ultimately being accepted and credited against the Project Sponsor Fee under the terms and conditions set forth in this Agreement.

## **ARTICLE 5 PAYMENT AND SECURITY**

5.1 This Agreement shall not be effective until this Agreement is signed by both the Project Sponsor and the City, is approved as to form by the City Attorney, and is approved by the Planning Commission. The date upon which the foregoing requirements have been satisfied shall be the "Effective Date".

5.2 The City shall provide the Project Sponsor with a written report of its review of the Payment Documentation ("Payment Analysis") within ten (10) business days of its receipt thereof, which review shall be conducted for the exclusive purpose of determining whether the Payment Documentation substantially and reasonably document that the cost of providing the In-Kind Improvements shall be substantially similar to the average capital costs for the City to provide the same type of public open space, with comparable improvements, based on current value of recently completed projects, as selected by the City in its sole discretion. If the Payment Analysis reasonably substantiates that the Project Sponsor made payments in respect of the In-Kind Improvements in an amount less than the In-Kind Value, the Project Sponsor shall, within sixty (60) days of the date of the Payment Analysis, pay the City in an amount equal to the difference between the In-Kind Value and the actual amount paid in respect of the In-Kind Improvements by the Project Sponsor. If the Payment Analysis reasonably substantiates that the Project Sponsor made payments in respect of the improvements in an amount equal to or greater than the In-Kind Value, the Project Sponsor shall not be entitled to a refund of such overpayments and the City shall not be entitled to any additional funds related to the In-Kind Value.

5.3 The City and Project Sponsor shall endeavor to agree upon the Payment Analysis. If they are unable to so agree within thirty (30) days after receipt by Project Sponsor of the City's

Payment Analysis, Project Sponsor and the City shall mutually select a third-party engineer/cost consultant. The City shall submit its Payment Analysis and Project Sponsor shall submit the Payment Documentation to such engineer/cost consultant, at such time or times and in such manner as the City and Project Sponsor shall agree (or as directed by the engineer/cost consultant if the City and Project Sponsor do not promptly agree). The engineer/cost consultant shall select either the City's Payment Analysis or Project Sponsor's determination pursuant to the Payment Documentation, and such determination shall be binding on the City and Project Sponsor.

5.4 Notwithstanding anything in this Agreement to the contrary:

5.4.1 The City shall not issue or renew any further certificates of occupancy to the Project Sponsor until the City receives payment of the full Project Sponsor Fee (in some combination of the payment of the Initial Amount, the acceptance of In-Kind Improvements having the value described under this Agreement and other cash payments received by the City directly from Project Sponsor) before issuance of the First Certificate of Occupancy for the Project.

5.4.2 The City's issuance of a certificate of final completion or any other permit or approval for the Project shall not release the Project Sponsor of its obligation to pay the full Project Sponsor Fee (with interest, if applicable), if such payment has not been made at the time the City issues such certificate of final completion.

5.4.3 If the In-Kind Improvements for any reason prove to be insufficient to provide payment for sums due from the Project Sponsor as and when required, and after demand by the City the Project Sponsor fails to pay such amount, such amount shall accrue interest from the date of such demand at the rate of [one-half percent per month, or fraction thereof, compounded monthly, until the date of payment]. If such nonpayment continues for a period of six (6) months, the City's Treasurer shall initiate proceedings in accordance with Article XX of Chapter 10 of the San Francisco Administrative Code to make the entire unpaid balance of the Project Sponsor Fee, including interest, a lien against all parcels used for the housing in the Project and shall send all notices required by that Article.

5.5 The Project Sponsor understands and agrees and any payments to be credited against the Project Sponsor Fee shall be subject to the provisions set forth in San Francisco Administrative Code Sections 6.80-6.83 relating to false claims. Pursuant to San Francisco Administrative Code Sections 6.80-6.83, a party who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A party who submits a false claim shall also be liable to the City for the cost, including attorney's fees, of a civil action brought to recover any of those penalties or damages and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A party will be deemed to have submitted a false claim to the City if the party: (a) knowingly presents or causes to be presented to any officer or employee of the City a false claim; (b) knowingly makes, uses or causes to be made or used a false record or statement to get a false claim approved by the City; (c) conspires to defraud the City by getting a false claim allowed by the City; (d) knowingly makes, uses or causes to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the City; or (e) is beneficiary of an inadvertent



submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim. The Project Sponsor shall include this provision in all contracts and subcontracts relating to the In-Kind Improvements, and shall take all necessary and appropriate steps to verify the accuracy of all payments made to any such contractors and subcontractors.

## ARTICLE 6 NOTICES

Any notice given under this Agreement shall be effective only if in writing and given by delivering the notice in person or by sending it first-class mail or certified mail with a return receipt requested or by overnight courier, return receipt requested, addressed as follows:

### CITY:

Director of Planning  
City and County of San Francisco  
1650 Mission St., Suite 400  
San Francisco, CA 94103

with a copy to:

Deputy City Attorney  
Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Attn: Evan Gross

### PROJECT SPONSOR:

Archstone Daggett Place LLC  
c/o Equity Residential  
333 Third Street, Suite 210  
San Francisco, CA 94107  
Attn: Jim Kelly

with a copy to:

Farella Braun + Martel LLP  
235 Montgomery Street  
San Francisco, CA 94104  
Attn: Steven L. Vettel, Esq.

or to such other address as either party may from time to time specify in writing to the other party. Any notice shall be deemed given when actually delivered if such delivery is in person, two (2) days after deposit with the U.S. Postal Service if such delivery is by certified or registered mail, and the next business day after deposit with the U.S. Postal Service or with the commercial overnight courier service if such delivery is by overnight mail.

## ARTICLE 7 RUN WITH THE LAND

7.1 The parties understand and agree that this Agreement shall run with the Project Sponsor's land, and shall burden and benefit every successor owner of the Land. The City would not be willing to enter into this Agreement without this provision, and the parties agree to record a Memorandum of Agreement in the form attached hereto as Exhibit C (the "Memorandum of Agreement"). On the Date of Satisfaction or if this Agreement is terminated pursuant to Section 8.4, this Agreement shall terminate and the City shall execute and deliver to the Project Sponsor a release of the Memorandum of Agreement, which the Project Sponsor may record.

**ARTICLE 8**  
**ADDITIONAL TERMS**

8.1 This Agreement contemplates the acquisition of In-Kind Improvements as authorized under the Ordinance and is not a public works contract. The City and the Project Sponsor agree that the In-Kind Improvements are of local and not state-wide concern, and that the provisions of the California Public Contracts Code shall not apply to the construction of the In-Kind Improvements.

8.2 The City shall have the right, during normal business hours and upon reasonable notice, to review all books and records of the Project Sponsor pertaining to the costs and expenses of providing the In-Kind Improvements.

8.3 This instrument (including the exhibit(s) hereto) contains the entire agreement between the parties and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

8.4 This Agreement may be effectively amended, changed, modified, altered or terminated only by written instrument executed by the parties hereto except that the Project Sponsor may terminate this Agreement by written notice to the City at any time prior to issuance of the Project's first construction document, in which event the Project Sponsor shall have no obligations or liabilities under this Agreement and the City would have no obligation to issue the first construction document unless and until this Agreement is reinstated, another agreement is executed by the parties, or the Project Sponsor's obligations under the Ordinance are satisfied in another manner. Any material amendment shall require the approval of the City's Planning Commission, in its sole discretion.

8.5 No failure by the City to insist upon the strict performance of any obligation of Project Sponsor under this Agreement or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of payments during the continuance of any such breach, shall constitute a waiver of such breach or of the City's right to demand strict compliance with such term, covenant or condition. Any waiver must be in writing, and shall be limited to the terms or matters contained in such writing. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. In the event of any breach of this Agreement by the Project Sponsor, the City shall have all rights and remedies available at law or in equity.

8.6 This Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of California.

8.7 The section and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement. Time is of the essence in all matters relating to this Agreement.

8.8 This Agreement does not create a partnership or joint venture between the City and the Project Sponsor as to any activity conducted by the Project Sponsor relating to this Agreement or otherwise. The Project Sponsor is not a state or governmental actor with respect to any activity conducted by the Project Sponsor hereunder. This Agreement does not constitute authorization or approval by the City of any activity conducted by the Project Sponsor. This Agreement does not create any rights in or for any member of the public, and there are no third party beneficiaries.

8.9 Notwithstanding anything to the contrary contained in this Agreement, the Project Sponsor acknowledges and agrees that no officer or employee of the City has authority to commit the City to this Agreement unless and until the Planning Commission adopts a resolution approving this Agreement, and it has been duly executed by the Director of Planning and approved as to form by City Attorney.

8.10 The Project Sponsor, on behalf of itself and its successors, shall indemnify, defend, reimburse and hold the City and the Port, including their respective employees and agents, harmless from and against any and all claims, demands, losses, liabilities, damages, injuries, penalties, lawsuits and other proceedings, judgments and awards and costs by or in favor of a third party, incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any accident, injury to or death of a person, or loss of or damage to property occurring in, on or about Daggett Park, provided that such accident, injury, death, loss or damage does not result from the gross negligence of the City; (b) any default by the Project Sponsor under this Agreement, (c) the condition of the In-Kind Improvements constructed by or on behalf of the Project Sponsor; and (d) any acts, omissions or negligence of the Project Sponsor or its agents in or about Daggett Park. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's and Port's costs of investigation. The Project Sponsor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City and the Port from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the Project Sponsor by City or the Port and continues at all times thereafter. The Project Sponsor's obligations under this Section shall survive the expiration or sooner termination of this Agreement.

## **ARTICLE 9 CITY CONTRACTING PROVISIONS**

9.1 The Project Sponsor understands and agrees that under the City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov't Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. The Project Sponsor hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

9.2 In the performance of this Agreement, the Project Sponsor covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status,

marital status, disability, weight, height or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee or any City employee working with or applicant for employment with the Project Sponsor, in any of the Project Sponsor's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Project Sponsor.

9.3 Through execution of this Agreement, the Project Sponsor acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provision and agrees that if it becomes aware of any such fact during the term, the Project Sponsor shall immediately notify the City.

9.4 Through execution of this Agreement, the Project Sponsor acknowledges that it is familiar with Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for the contract until three (3) months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

9.5 The City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. The Project Sponsor acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

9.6 The City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product.

[Signature page follows.]

NOW THEREFORE, the parties hereto have executed this In-Kind Agreement as of the date set forth above.

CITY AND COUNTY OF SAN FRANCISCO, acting by and through its Planning Commission

By: [Signature]  
Director of Planning

ARCHSTONE DAGGETT PLACE LLC, a Delaware limited liability company

By: EQR-WARWICK, L.L.C., a Delaware limited liability company, its sole member

By: ERP Operating Limited Partnership, an Illinois limited Partnership, its managing member

By: Equity Residential, a Maryland real estate investment trust, its general partner

By: [Signature]  
Name: PETER SCAN  
Title: VICE PRESIDENT

APPROVED:

DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

ACKNOWLEDGED:

Department of Building Inspection

By: \_\_\_\_\_  
Authorized Representative

ACKNOWLEDGED:

Department of Public Works

By: \_\_\_\_\_  
Authorized Representative

APPROVED AS TO FORM:

FARELLA BRAUN & MARTEL, LLP

By: [Signature]  
Steven L. Vettel

ACKNOWLEDGED:

Port of San Francisco

By: \_\_\_\_\_  
Authorized Representative

**EXHIBIT A**  
**LAND DESCRIPTION**

The land referred to is situated in the County of San Francisco, City of San Francisco, State of California, and is described as follows:

**PARCEL A:**

BEGINNING AT THE POINT FORMED BY THE INTERSECTION OF THE SOUTHWESTERLY LINE OF 7TH STREET WITH THE NORTHWESTERLY LINE OF DAGGETT STREET; RUNNING THENCE NORTHWESTERLY, ALONG SAID SOUTHWESTERLY LINE OF 7TH STREET, 146 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 262 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 146 FEET TO THE NORTHWESTERLY LINE OF DAGGETT STREET; THENCE NORTHEASTERLY, ALONG SAID NORTHWESTERLY LINE OF DAGGETT STREET, 262 FEET TO ITS INTERSECTION WITH THE SOUTHWESTERLY LINE OF 7TH STREET AND THE POINT OF BEGINNING. BEING A PORTION OF SOUTH BEACH BLOCK NO. 36

**PARCEL B:**

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF DAGGETT STREET, DISTANT THEREON 262 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF 7TH STREET; RUNNING THENCE NORTHWESTERLY, AT A RIGHT ANGLE TO SAID LINE OF DAGGETT STREET, PARALLEL WITH SAID LINE OF 7TH STREET, 146 FEET; THENCE AT A RIGHT ANGLE SOUTHERLY, PARALLEL WITH SAID LINE OF DAGGETT STREET 267 FEET, 7-¼ INCHES TO THE NORTHERLY LINE OF 16TH STREET; THENCE EASTERLY, ALONG SAID LINE OF 16TH STREET, 224 FEET, 8-¼ INCHES TO THE NORTHWESTERLY LINE OF DAGGETT STREET; THENCE NORTHEASTERLY, ALONG SAID LINE OF DAGGETT STREET, 96 FEET, 9-¼ INCHES TO THE POINT OF BEGINNING. BEING A PORTION OF SOUTH BEACH BLOCK NO. 36

**PARCEL C:**

BEGINNING AT THE POINT FORMED BY THE INTERSECTION OF THE SOUTHEASTERLY LINE OF HUBBELL STREET WITH THE SOUTHWESTERLY LINE OF 7TH STREET; RUNNING THENCE SOUTHEASTERLY, ALONG SAID SOUTHWESTERLY LINE OF 7TH STREET, 94 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 529 FEET, 7-¼ INCHES, MORE OR LESS, TO THE NORTHERLY LINE OF 16TH STREET; THENCE WESTERLY, ALONG SAID NORTHERLY LINE OF 16TH STREET, 144 FEET, 8-¼ INCHES, MORE OR LESS, TO THE SOUTHEASTERLY LINE OF HUBBELL STREET; THENCE NORTHEASTERLY, ALONG SAID SOUTHEASTERLY LINE OF HUBBELL STREET, 639 FEET, 6-7/8 INCHES, MORE OR LESS, TO THE SOUTHWESTERLY LINE OF 7TH STREET AND THE POINT OF BEGINNING. BEING A PORTION OF SOUTH BEACH BLOCK NO. 36

**PARCEL D:**

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHWESTERLY LINE OF

7TH STREET AND THE SOUTHEASTERLY LINE OF DAGGETT STREET; RUNNING  
THENCE SOUTHEASTERLY, ALONG SAID LINE OF 7TH STREET, 170 FEET, 9-<sup>3</sup>/<sub>4</sub>  
INCHES TO THE NORTHERLY LINE OF 16TH STREET; THENCE WESTERLY, ALONG  
SAID NORTHERLY LINE OF 16TH STREET, 262 FEET, 10-<sup>1</sup>/<sub>2</sub> INCHES TO THE  
SOUTHEASTERLY LINE OF DAGGETT STREET; THENCE NORTHEASTERLY, ALONG  
SAID SOUTHEASTERLY LINE OF DAGGETT STREET, 199 FEET, 9-<sup>7</sup>/<sub>8</sub> INCHES TO THE  
POINT OF BEGINNING. BEING SOUTH BEACH BLOCK NO. 35-<sup>1</sup>/<sub>2</sub>.

Assessor's Lot 001; Block 3833  
Assessor's Lot 002; Block 3833  
Assessor's Lot 003; Block 3833  
Assessor's Lot 001; Block 3834

**EXHIBIT B**  
**CALCULATION OF IMPACT FEES**

North Building

400,683 square feet of residential space at \$8.51 per square foot	\$3,409,812
6,048 square feet of non-residential space at \$10.63 per square foot	\$ 64,290

South Building

74,536 square feet of residential space at \$8.51 per square foot	\$ 634,301
8,348 square feet of non-residential space at \$10.63 per square foot	\$ 88,739

<b>Total</b>	<b>\$4,197,142</b>
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**EXHIBIT C**  
**CALCULATION OF IN-KIND VALUE**

The calculation of In-Kind Value for the proposed Daggett Park at 1000 16<sup>th</sup> Street has multiple components. These include:

- Determining the value of required improvements
- Determining the value of the proposed improvements
- Determining the specific improvements that would be provided via this In-Kind Agreement
- Determining the specific improvements that would need to be provided via a gift to the City

**Determining the Value of Required Improvements**

Fee waivers cannot be made for improvements that the Project Sponsor is already legally required to undertake. In this instance, the Project Sponsor is responsible for improving the entire Daggett Street right-of-way, given that their development is on both sides of this street. Such improvement would likely consist of transforming the unimproved areas into a new roadway, with sidewalk and landscaping. Working with the Department of Public Works, it was estimated that such improvements would cost \$802,350.

Table 1 – Value of Required Improvements

	AMOUNT	UNIT	UNIT COST	TOTAL COST
Site remediation	1,048	Tons	\$145	\$151,960
Site engineering	43,400	Square Feet	\$0.40	\$17,360
Earthwork	43,400	Square Feet	\$2.00	\$86,800
Hydraulic engineering				\$75,000
Curb & gutter	654	Linear Feet	\$40.00	\$26,160
City Sidewalk	7,800	Square Feet	\$8.00	\$62,400
Ramps	8	Each	\$2,500.00	\$20,000
Paving material	34,100	Square Feet	\$4.00	\$136,400
Street trees	28	Each	\$3,265.00	\$91,420
Curbside planting	1,500	Square Feet	\$10.00	\$15,000
Traffic Striping	310	Linear Feet	\$3.00	\$930
Traffic Routing			\$15,000.00	\$15,000
Curbside Irrigation	1,500	Square Feet	\$10.00	\$15,000
Lighting	7	Each	\$8,000.00	\$56,000
<b>Subtotal</b>				<b>\$769,430</b>
City tax			0.12%	\$923
General Contractor insurance			0.35%	\$2,696
Fee			3.50%	\$27,057
Bonds				\$2,424
<b>Total</b>				<b>\$802,530</b>

### **Determining the Value of Proposed Improvements**

To help determine the value of the proposed improvements, the Project Sponsor provided two cost estimates of the hard costs: one from the James E. Roberts – Obayashi Corporation, and one by Johnstone Moyer, Inc. These estimates are included below. The lower estimate was utilized by the Project Sponsor in calculating the overall value of the proposed improvements, including other costs such as design and engineering fees, site preparation, and hazardous remediation. This estimate concluded that the overall cost of the improvements was \$3,724,407. These estimates were reviewed and corroborated by staff at the Department of Public Works.

### **Determining the Specific Improvements that Would be Provided via this In-Kind Agreement**

The approval of this In-Kind Agreement would commit the Project Sponsor to creating a public park on the Daggett Street right-of-way, and not a typical city street. Therefore, the \$802,530 that the Project Sponsor would be required to contribute will instead be directed towards the construction of the park.

In addition, through this In-Kind Agreement the Project Sponsor would commit to \$1,880,000 in improvements in return for a reduction in their Eastern Neighborhoods Infrastructure Impact Fee of the same amount. Combined, that means that this In-Kind Agreement would enable \$2,682,530 towards the creation of a park along the Daggett Street right-of-way. The City and Project Sponsor have agreed that this amount will include all the preliminaries necessary to make a park. This includes the following items:

- Site Preparation
- Hazardous Remediation
- Sewer Relocation/Abandon Gas Line
- Design and Engineering
- Permits and Fees
- Testing and Inspections

Based on the Project Sponsor's cost estimate, the total for these preliminaries is \$1,623,170 (including the City tax and other mark-ups applied to each item).

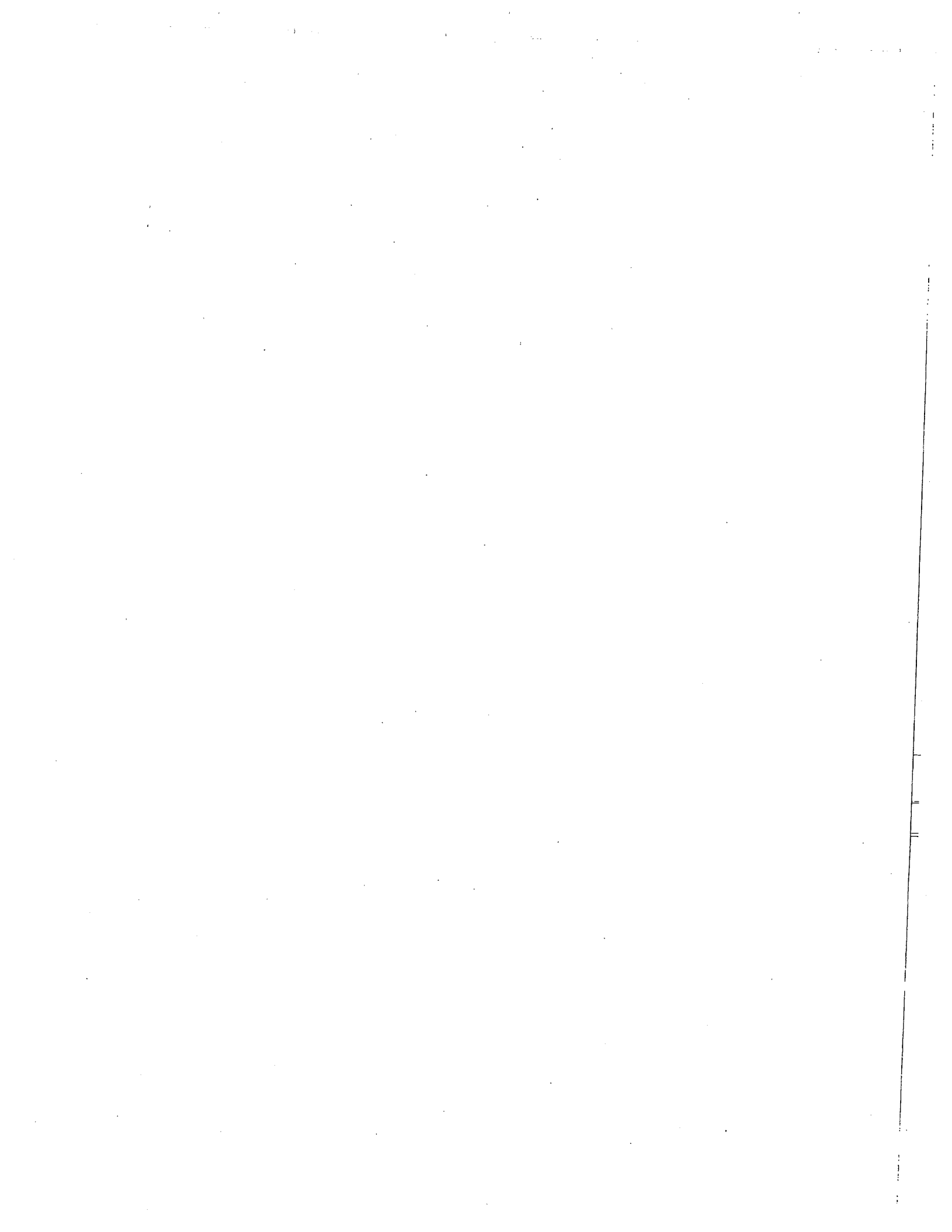
The remaining \$1,059,360 would be spent on improvements to the park. They will focus on baseline amenities, including:

- Site engineering
- Earthwork
- Public art
- Landscaping
- Storm Drainage

### **Determining the specific improvements that would need to be provided via a gift to the City**

The cost of the proposed improvements to the Daggett Street right-of-way (\$3,724,407) exceed the Project Sponsors required contribution (\$802,530) and requested fee waiver (\$1,880,000) by

\$1,041,877. The Project Sponsor is proposing to gift the City the value of these improvements. Such a gift would occur via a separate legal agreement with the City. Such a gift should include all of those items identified as proposed improvements by the Project Sponsor but that are not included in this In-Kind Agreement.





James F. Roberts - Obayashi Corporation

GENERAL CONTRACTOR  
LICENSE NO. 80519

**Daggett Place Park**  
San Francisco, CA

3-20-12

Item	Description	Sec#	Total
		01100	N/A
1	General Conditions	02050	\$ 63,877
2	Demolition	02100	\$ 11,440
3	Site Engineering	02200	\$ 67,820
4	Earthwork	02510	\$ 296,525
5	Site Concrete	02520	\$ 96,140
6	Precast Concrete Pavers	02640	\$ 129,649
7	Storm Drainage	02800	\$ 184,250
8	Penta-Step Precast	02825	\$ 1,720
9	Site Carpentry	02835	\$ 27,220
10	Metal Fence & Gates	02870	\$ 43,300
11	Site Furnishings	02900	\$ 524,213
12	Landscaping	05500	\$ 53,540
13	Metal Fabrication	16100	\$ 75,000
14	Electrical		
15			
16	Offsite Work	20000	\$ 142,454
17			
18	Testing & Inspections	21000	By Owner
19	Building Permits & Fees	21020	By Owner
20	Street Permits	21040	By Owner
21	Water Fees	21060	By Owner
22	Sewer Fees	21080	By Owner
23	PG&E Joint Trench	21100	By Owner
24	Security Guard or Roving Patrols	21120	By Owner
25	Builders Risk	21040	By Owner
26	Sub Bonds	21060	By Owner

SUBTOTAL \$ 1,717,147

City Tax 0.20% \$ 3,434

GC offsite Liability 0.50% \$ 8,603

Fee 3.50% \$ 60,521

G.C. Bond \$ 25,568

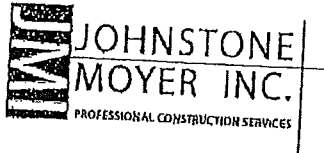
\$ 1,815,274

\*\*Current Market Total

Recommended design / escalation contingency 5.00% \$ 90,764

\$ 1,906,038

\*Based on OCIP insurance provided by owner



1720 South Amphlett Boulevard, Suite 250  
 San Mateo, CA 94402  
 T 650.570.6161 F 650.570.6144  
 www.johnstonemoyer.com

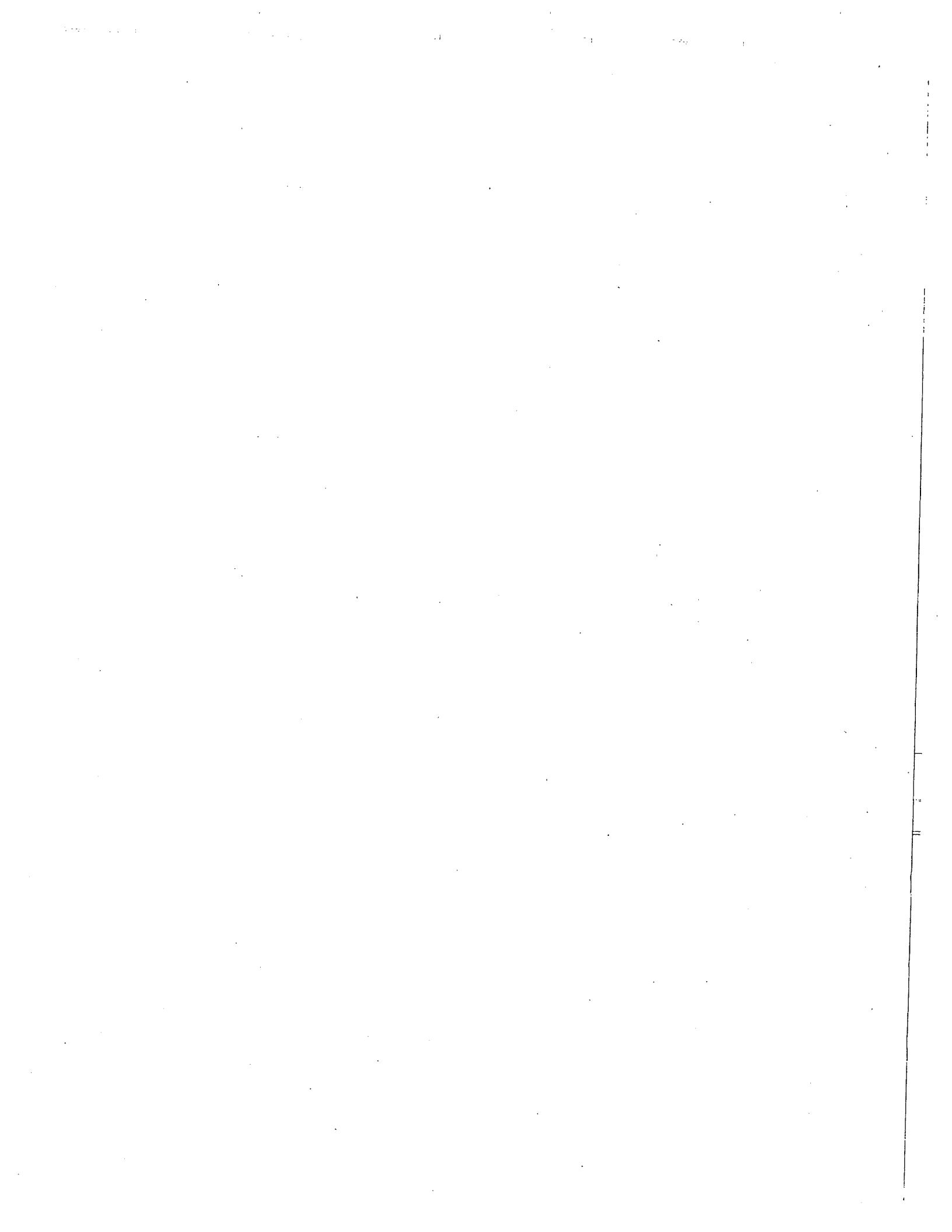
## Daggett Place Park, San Francisco, CA Landscaping Costs

Mr. Fred Kriebel  
 Archstone  
 807 Broadway #210 Oakland, CA  
[fred@kriebelassociates.com](mailto:fred@kriebelassociates.com)

Johnstone Moyer is pleased to present you with pricing for the landscaping work at Daggett Place Park. Pricing is based off of the David Baker and Partners drawings date 2-21-12. Please review the following pricing and contact us with any questions or concerns.

General Conditions		\$94,000
Demolition		\$67,000
Misc. Offsite Improvements		\$138,250
Site Engineering		\$12,200
Site Furnishings		\$42,000
Landscaping		\$513,750
Earthwork		\$75,300
Storm Drain		\$133,400
Site Concrete		\$322,200
Concrete Pavers		\$94,200
Penta-Step Pre-Cast		\$193,400
Misc. Site Carpentry		\$1,800
Metal Fence		\$29,000
Misc Metals		\$62,500
Electrical		\$83,100
<b>Subtotal</b>		<b>\$1,862,100</b>
City Tax	0.20%	\$3,724
Offsite Liability Insurance	0.50%	\$9,329
Fee	4.00%	\$75,006.13
Bond	1.00%	\$19,502
<b>Total</b>		<b>\$1,969,661</b>
Contingency	5%	\$98,483.05
<b>Grand Total</b>		<b>\$2,068,144</b>

DESCRIPTION	TOTAL	COMMENTS
Design & Engineering Fees	\$ 210,000	
CMG (Landscape Architecture)	\$ 26,000	
LUK Associates (Civil)	\$ 4,000	
Robison (Lighting & Electrical)	\$ 4,500	
ECS (Park power service, gas line demo)	\$ 50,000	
David Baker + Partners	\$ 294,500	
Design Sub-Total	\$ 63,877	
Site Preparation-Demo	\$ 1,044,453	Park site 3' overex 6,286 tons @ \$145/ton offhaul, Class 1 + 2,324 cy @ \$22/cy import; + Generator tax \$82K
Hazardous Remediation	\$ 67,000	\$57K for sewer reloc in main bldg., \$10K gas abandon/cap
Sewer Relocation/Abandon Gas Line	\$ 1,653,270	James E Roberts-Obayashi 3.20.12 est less site prep.
Improvements	\$ 10,000	
Permits and Fees	\$ 10,000	
Testing and Inspections	\$ 3,143,100	
Sub-Total	\$ 281,307	City tax (0.2%); GC Offsite Liability (0.5%); GC Fee (3.5%); GC Bond (1.5%); Escalation Contingency (3.25%)
Mark-Ups (applied to improvement cost)	\$ 300,000	
Public Art	\$ 3,724,407	
<b>TOTAL PARK COST</b>	\$ 404,643	70' ROW = (2) 12' traffic lanes, (2) 8' parking, (2) 15' s/w
Value of Street Improvements (theoretical)	\$ 3,319,764	
Park Cost less street improvements	\$ 1,880,000	
<b>IN-KIND FUNDING</b>		





**Exhibit D**

Memorandum of Agreement

**RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:**

**City and County of San Francisco  
Department of Planning  
1650 Mission St., Suite 400  
San Francisco, CA 94103  
Attn: Director**

---

(Free Recording Requested Pursuant to  
Government Code Section 27383)

**Memorandum of In-Kind Agreement**

This Memorandum of In-Kind Agreement (this "Memorandum"), is dated as of \_\_\_\_\_, 2014, and is by and between the City and County of San Francisco, a municipal corporation, acting and through the Planning Commission (the "City"), and Archstone Daggett Place LLC (the "Project Sponsor").

1. The property described in Exhibit A attached hereto (the "Land") and generally known as 1000 16th Street, San Francisco, California 94107 is owned by Project Sponsor.
2. Under San Francisco Planning Code Section 423.3 ("Section 423.3"), the Project Sponsor must pay to the City an Impact Fee (the "Fee") on or before the issuance of the first construction document for the Land; provided, however, the City can reduce such payment under Section 423.3(d) if the Project Sponsor enters into an agreement with the City to provide in-kind improvements.
3. In accordance with Section 423.3(d), the City and the Project Sponsor have entered into an in-kind agreement (the "In-Kind Agreement"), which permits the Project Sponsor to receive construction documents with the satisfaction of certain conditions in return for the Project Sponsor's agreement to provide certain in-kind improvements under the terms and conditions set forth therein.
4. Upon the Project Sponsor's satisfaction of the terms of the In-Kind Agreement, the In-Kind Agreement shall terminate and the City will execute and deliver to the Project Sponsor a termination of this Memorandum in recordable form.



5. The Project Sponsor and the City have executed and recorded this Memorandum to give notice of the In-Kind Agreement, and all of the terms and conditions of the In-Kind Agreement are incorporated herein by reference as if they were fully set forth herein. Reference is made to the In-Kind Agreement itself for a complete and definitive statement of the rights and obligations of the Project Sponsor and the City thereunder.

6. This Memorandum shall not be deemed to modify, alter or amend in any way the provisions of the In-Kind Agreement. In the event any conflict exists between the terms of the In-Kind Agreement and this Memorandum, the terms of the In-Kind Agreement shall govern.

IN WITNESS WHEREOF, the undersigned have executed this Memorandum as of the date first written above.

CITY AND COUNTY OF SAN FRANCISCO, acting by and through its Planning Commission

By: \_\_\_\_\_  
Director of Planning

ARCHSTONE DAGGETT PLACE LLC,  
a Delaware limited liability company

By: EQR-WARWICK, L.L.C., a Delaware limited liability company, its sole member

By: ERP Operating Limited Partnership, an Illinois limited Partnership, its managing member

By: Equity Residential, a Maryland real estate investment trust, its general partner

By: \_\_\_\_\_  
Name:  
Title:



CALIFORNIA ALL-PURPOSE  
CERTIFICATE OF ACKNOWLEDGEMENT

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me,

\_\_\_\_\_  
(here insert name and title of the officer)  
personally appeared

\_\_\_\_\_  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

(Notary Seal)

# EASTERN NEIGHBORHOODS CITIZENS ADVISORY COMMITTEE

## Meeting Minutes

Planning Department - Room 528  
1650 Mission St.

Monday, July 18, 2011

6:00 PM

Regular Meeting 2011-06

COMMITTEE MEMBERS PRESENT: Voting: Doumani, Gillett, Goldstein, Grande, Huie, Lopez, Martí, Murphy, Ongoco, Scully, Shen  
Non-Voting: Karnilowitz, Levy

COMMITTEE MEMBERS ABSENT: Voting: Block, Quezada, Sofis  
Non-Voting: Reis

THE MEETING WAS CALLED TO ORDER BY THE SECRETARY AT 6:11 P.M.

STAFF IN ATTENDANCE: Steve Wertheim (Planning), Ilaria Salvadori (Planning), David Beaupre (Port)

1. Review agenda and announcements

Item heard. No action taken. The CAC welcomed Kristian Ongoco and Oscar Grande.

2. Review and Approve Minutes from the April 18<sup>th</sup> and May 15<sup>th</sup> CAC meetings.

ACTION: Approve the minutes from the April 18<sup>th</sup> and May 15<sup>th</sup> CAC meetings.

MOTION: Gillett SECOND: Shen

AYES: Doumani, Gillett, Goldstein, Grande, Huie, Lopez, Martí, Murphy, Ongoco, Scully, Shen

NOES: None

ABSENT: Block, Quezada, Sofis

MOTION: 2011-6-1

3. Capital Planning Prioritization: Showplace Square Open Space: Discussion of the appropriate location to fund new open space in Showplace Square, followed by comment, and potential action. The discussion will include context for the process, and presentations of conceptual

**designs for two candidate locations: a new park on the Daggett Street right-of-way and a widening of Jackson Playground.**

**ACTION:** Support the use of Eastern Neighborhoods Public Benefit Funds for the development of a Daggett Park, via an In-Kind Agreement with the sponsor of the surrounding development, subject to the following conditions:

- The maximum value of the In-Kind Agreement shall be \$1.88 million, which represents the high estimate for the park's costs as proposed by the sponsor.
- The value of the In-Kind Agreement may be decreased pending analysis by the City regarding the value-added to the development by the new park, relative to the costs incurred through ongoing maintenance, as well as any other financial considerations,
- The design will continue to be refined by input from the City and the community,
- The park shall be designed to read as a welcoming public space to the greatest degree possible, and
- MTA will be encouraged to located bus stops in such a way as to facilitate easy access to the park.

**MOTION:** Goldstein

**SECOND:** Shen

**AYES:** Doumani, Gillett, Goldstein, Grande, Huie, Lopez, Martí, Ongoco, Scully, Shen

**NOES:** None

**RECUSED:** Murphy

**ABSENT:** Block, Quezada, Sofis

**MOTION:** 2011-6-1

- 4. Capital Planning Prioritization: Proposed In-Kind Agreement for Streetscape Improvements along Clementina St.: Presentation by representatives of the development at 260 5th St. and 900 Folsom St. who are considering applying for an In-Kind Agreement for streetscape improvements along Clementina Street between 5th and 6th Streets, followed by discussion and comment. No action.**

Item heard. No Action taken.

- 5. Capital Planning Working Group: Monthly report back by this working group, followed by discussion, comment, and potential action.**

Item heard. No Action taken.

- 6. Neighborhood Meetings: Discussion of timing and logistics of the CAC's SoMa neighborhood meeting, followed by comment, and potential action.**

Item heard. No action taken.

- 7. Historic Preservation Working Group: Monthly report back by this working group, followed by discussion, comment, and potential action.**

Item heard. No action taken.

- 8. Development Project Working Group: Monthly report back by this working group, followed by discussion, comment, and potential action.**

Item heard. No action taken.

**9. Committee members' questions and comments.**

Item heard. No Action taken.

**10. Public Comment:**

Item heard. No Action taken.

**Adjournment: 8:45 PM.**



Citizens Advisory Committee of the  
Eastern Neighborhoods Plan,  
City and County of San Francisco

**DRAFT Meeting Minutes**

1650 Mission Street, 4th Floor, Room 431

**Monday, June 15, 2015**

**6:00 PM**

Regular Meeting

Committee Members Present:

Walker Bass, Chris Block, Joe Boss, Don Bragg, Keith Goldstein, Henry Karnilowitz,  
Kristian Ongoco, Arthur Reis, Maureen Sedonaen, Kate Sofis

Committee Members Absent:

Oscar Grande, Bruce Kin Huie, Toby Levy, Robert Lopez, Fernando Marti, Alisa Shen

Staff Present:

Mat Snyder, Steve Wertheim, Robin Abad, Planning Department

- 
1. Announcements and Review of Agenda.
  2. Review and Approve Minutes from the May 18, 2015 CAC Meeting.

ACTION:	To approve the minutes from May 18, 2015.
MOTION:	Goldstein   SECOND:     Sofis
AYES:	Bass, Block, Boss, Bragg, Goldstein, Karnilowitz, Ongoco, Reis, Sedonaen, Sofis
NOES:	[none]
ABSENT:	Grande, Huie Levy, Lopez, Marti, Shen

3. The Mission District and Affordable Housing. Update from the staff on ongoing efforts by the City to address the Mission Districts affordable housing needs, followed discussion.  
Item heard. No action taken.

4. Initial Impact Fee Revenue Projections for FY 16 through 21. Presentation by staff on the initial fee projections for the next five fiscal years, followed by discussion and potential action.

Item heard. No action taken.

5. Daggett Triangle Park In-Kind Agreement. Presentation by staff and EQR Residential on the Daggett Park and a proposal to amend the in-kind agreement increasing the fee-waiver amount to cover additional costs in constructing the park, followed by discussion and action.

ACTION: To approve the increase of value of the in-kind agreement from 1,880,000 by \$489,144 for a total of \$2,369,144.

MOTION: Boss SECOND: Karnilowitz

AYES: Bass, Block, Boss, Bragg, Goldstein, Karnilowitz, Ongoco, Reis, Sedonaen, Sofis

NOES: [none]

ABSENT: Grande, Huie Levy, Lopez, Marti, Shen

MOTION NO.: 2015-06-05

6. Central Waterfront /Dogpatch Public Realm Plan. Presentation by staff on the creation of the forthcoming Central Waterfront / Dogpatch Public Realm Plan, followed by discussion and potential action.  
Item heard. No action. Staff will provide periodic updates on the creation of the Plan.

7. The Eastern Neighborhoods Five-Year Monitoring Report. Presentation on the current City Code requirements for the Eastern Neighborhoods Five-Year Monitoring Report and some of the five Area Plans' objective and policies that could also inform the contents of the Report. The CAC will discuss other potential questions and metrics to be pursued in the Report's analysis, followed by comment and potential action.

Item Heard. The Chair will convene a working group to further discuss and scope out the Monitoring Report along with a potential scope-of-work for a potential consultant. The Working Group will report back for the full committee of discussion.

8. Cancellation of Summer Meeting. Discussion of possible cancellation of one of the summer meetings followed by potential action.

Action. To cancel the regular July meeting.

MOTION: SECOND:

AYES: Bass, Block, Boss, Bragg, Goldstein, Karnilowitz, Ongoco, Reis, Sedonaen, Sofis

NOES: Goldstein

MOTION NO: 2015-06-08

ABSENT: Grande, Huie Levy, Lopez, Marti, Shen

9. Public Comment.  
Public comment provided.

Adjourn.

BOARD of SUPERVISORS



City Hall  
Dr. Carlton B. Goodlett Place, Room 244  
San Francisco 94102-4689  
Tel. No. 554-5184  
Fax No. 554-5163  
TDD/TTY No. 554-5227

## MEMORANDUM

TO: Mohammed Nuru, Director, Public Works  
Harlan Kelly, General Manager, Public Utilities Commission  
John Updike, Director, Real Estate  
Phil Ginsberg, Director, Recreation and Parks Department  
Monique Moyer, Executive Director, Port

FROM: Andrea Ausberry, Assistant Clerk, Land Use and Transportation Committee,  
Board of Supervisors

DATE: June 16, 2015

SUBJECT: LEGISLATION INTRODUCED

---

The Board of Supervisors' Land Use and Transportation Committee has received the following legislation, introduced by Supervisor Cohen:

**File No. 150644**

**Ordinance approving an agreement with the Port of San Francisco for the City's purchase of Daggett Street between 16th and 7th Streets; summarily vacating the northern portion of the street; authorizing an interdepartmental transfer of the vacation area from Public Works to the Real Estate Division of the Office of the City Administrator for public open space; modifying the official public right-of-way width, changing the official sidewalk width, and changing the official grade on the remaining portion of Daggett Street and portions of 16th and 7th Streets; accepting a gift from Archstone Daggett Place, LLC, for certain park improvements on the portion of Daggett Street to be vacated and their maintenance; approving a major encroachment permit for the shared public way improvements on the remaining southerly portion of Daggett Street; delegating to the Director of Public Works the authority to accept other required public improvements associated with the adjacent development project; authorizing the Director of Property to execute a license agreement for the maintenance of the vacation area; affirming the Planning Commission's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, for the actions contemplated in this Ordinance.**

If you have any additional comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c:

Frank Lee, Secretary to the Director  
Juliet Ellis, External Affairs  
Donna Hood, Commission Secretary  
Sarah Ballard, Director of Policy and Public Affairs  
Margaret McArthur, Commission Secretary  
Amy Quesada, Commission Secretary

BOARD of SUPERVISORS



City Hall  
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San Francisco 94102-4689  
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TDD/TTY No. 554-5227

June 30, 2015

Planning Commission  
Attn: Jonas Ionin  
1650 Mission Street, Ste. 400  
San Francisco, CA 94103

Dear Commissioners:

On June 16, 2015, Supervisor Cohen introduced the following legislation:

**File No. 150644**

**Ordinance approving an agreement with the Port of San Francisco for the City's purchase of Daggett Street between 16th and 7th Streets; summarily vacating the northern portion of the street; authorizing an interdepartmental transfer of the vacation area from Public Works to the Real Estate Division of the Office of the City Administrator for public open space; modifying the official public right-of-way width, changing the official sidewalk width, and changing the official grade on the remaining portion of Daggett Street and portions of 16th and 7th Streets; accepting a gift from Archstone Daggett Place, LLC, for certain park improvements on the portion of Daggett Street to be vacated and their maintenance; approving a major encroachment permit for the shared public way improvements on the remaining southerly portion of Daggett Street; delegating to the Director of Public Works the authority to accept other required public improvements associated with the adjacent development project; authorizing the Director of Property to execute a license agreement for the maintenance of the vacation area; affirming the Planning Commission's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, for the actions contemplated in this Ordinance.**

The proposed ordinance is being transmitted pursuant to Planning Code Section 302(b) for public hearing and recommendation. The ordinance is pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

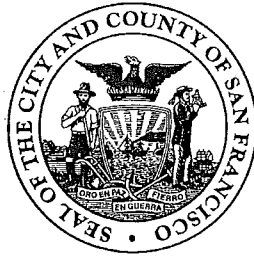
A handwritten signature in cursive script, appearing to read "A. Ausberry".

By: Andrea Ausberry, Assistant Clerk

Land Use and Transportation Committee

- c: John Rahaim, Director of Planning
- Aaron Starr, Acting Manager of Legislative Affairs
- AnMarie Rodgers, Senior Policy Manager
- Scott Sanchez, Zoning Administrator
- Sarah Jones, Chief, Major Environmental Analysis
- Jeanie Poling, Environmental Planning
- Joy Navarrete, Environmental Planning

BOARD of SUPERVISORS



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TDD/TTY No. 554-5227

## NOTICE OF PUBLIC HEARING

### BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO LAND USE AND TRANSPORTATION COMMITTEE

NOTICE IS HEREBY GIVEN THAT the Land Use and Transportation Committee will hold a public hearing to consider the following proposal and said public hearing will be held as follows, at which time all interested parties may attend and be heard:

**Date:** Monday, July 20, 2015

**Time:** 1:30 p.m.

**Location:** Legislative Chamber, Room 250, located at City Hall  
1 Dr. Carlton B. Goodlett Place, San Francisco, CA


**Subject:** File No. 150644. Ordinance approving an agreement with the Port of San Francisco for the City's purchase of Daggett Street between 16th and 7th Streets; summarily vacating the northern portion of the street; authorizing an interdepartmental transfer of the vacation area from Public Works to the Real Estate Division of the Office of the City Administrator for public open space; modifying the official public right-of-way width, changing the official sidewalk width, and changing the official grade on the remaining portion of Daggett Street and portions of 16th and 7th Streets; accepting a gift from Archstone Daggett Place, LLC, for certain park improvements on the portion of Daggett Street to be vacated and their maintenance; approving a major encroachment permit for the shared public way improvements on the remaining southerly portion of Daggett Street; delegating to the Director of Public Works the authority to accept other required public improvements associated with the adjacent development project; authorizing the Director of Property to execute a license agreement for the maintenance of the vacation area; affirming the Planning Commission's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, for the actions contemplated in this Ordinance.

In accordance with Administrative Code, Section 67.7-1, persons who are unable to attend the hearing on this matter may submit written comments to the City prior to the time the hearing begins. These comments will be made as part of the official public record in this matter, and shall be brought to the attention of the members of the Committee. Written comments should be addressed to Angela Calvillo, Clerk of the Board, City Hall,



Notice of Public Hearing  
Land Use and Transportation Committee  
July 20, 2015  
Page 2

1 Dr. Carlton Goodlett Place, Room 244, San Francisco, CA 94102. Information relating to this matter is available in the Office of the Clerk of the Board. Agenda information relating to this matter will be available for public review on Friday, July 17, 2015.

  
Angela Calvillo, Clerk of the Board

DATED: July 2, 2015  
POSTED/PUBLISHED: July 6 & 14, 2015



**New Order**



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**NOTICE OF PUBLIC HEARING BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO LAND USE AND TRANSPORTATION COMMITTEE JULY 20, 2015 -1:30 PM LEGISLATIVE CHAMBER, RM 250, CITY HALL 1 DR. CARLTON B. GOODLETT PLACE, SF, CA**

NOTICE IS HEREBY GIVEN THAT the Land Use and Transportation Committee will hold a public hearing to consider the following proposal and said public hearing will be held as follows, at which time all interested parties may attend and be heard: File No. 150644. Ordinance approving an agreement with the Port of San Francisco for the City's purchase of Daggett Street between 16th and 7th Streets; summarily vacating the northern portion of the street; authorizing an interdepartmental transfer of the vacation area from Public Works to the Real Estate Division of the Office of the City Administrator for public open space; modifying the official public right-of-way width, changing the official sidewalk width, and changing the official grade on the remaining portion of Daggett Street and portions of 16th and 7th Streets; accepting a gift from Archstone Daggett Place, LLC, for certain park improvements on the portion of Daggett Street to be vacated and their maintenance; approving a major encroachment permit for the shared public way improvements on the remaining southerly portion of

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Daggett Street; delegating to the Director of Public Works the authority to accept other required public improvements associated with the adjacent development project; authorizing the Director of Property to execute a license agreement for the maintenance of the vacation area; affirming the Planning Commission's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, for the actions contemplated in this Ordinance. In accordance with Administrative Code, Section 67.7-1, persons who are unable to attend the hearing on this matter may submit written comments to the City prior to the time the hearing begins. These comments will be made as part of the official public record in this matter, and shall be brought to the attention of the members of the Committee. Written comments should be addressed to Angela Calvillo, Clerk of the Board, City Hall, 1 Dr. Carlton Goodlett Place, Room 244, San Francisco, CA 94102. Information relating to this matter is available in the Office of the Clerk of the Board. Agenda information relating to this matter will be available for public review on Friday, July 17, 2015. Angela Calvillo, Clerk of the Board

**BOS  
NOTICE REVIEW**

Legislative File No. 150644

Land Transfer, Street Vacation, Gift Acceptance, Encroachment  
Permit, and Related Actions - Archstone Daggett Place, LLC -  
Daggett Street Between 16th and 7th Street

Initial: 

Date: July 1, 2015

Initial: AA w/ changes

**Publishing Logistics**

14-Day Publish

Two times, 2 days apart

Hearing Date: JUL 20

Notice Must be Submitted: JUL 2

Notice Must be Mailed: N/A

Notice Will Publish: JUL 6 & JUL 14

Print Form

# Introduction Form

By a Member of the Board of Supervisors or the Mayor

Time stamp  
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee.  
An ordinance, resolution, motion, or charter amendment.
- 2. Request for next printed agenda without reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor [ ] inquires"
- 5. City Attorney request.
- 6. Call File No. [ ] from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No. [ ]
- 9. Request for Closed Session (attach written motion).
- 10. Board to Sit as A Committee of the Whole.
- 11. Question(s) submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission       Youth Commission       Ethics Commission
- Planning Commission       Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative**

**Sponsor(s):**

COHEN

**Subject:**

Land Transfer, Street Vacation, Encroachment permit - Daggett ST.

**The text is listed below or attached:**

Attached

Signature of Sponsoring Supervisor: Mali Cur

For Clerk's Use Only: