

**1532 HARRISON STREET IN-KIND AGREEMENT
(PER ARTICLE 4 OF THE PLANNING CODE)**

THIS IN-KIND AGREEMENT (“Agreement”) is entered into as of February 8, 2018 by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the Planning Commission (the “City”) and 1532 Harrison Owner, LLC, a California limited liability company (“Project Sponsor”), with respect to a development project approved for 1532 Harrison Street, San Francisco, California (the “Project”).

RECITALS

A. Article 4 of the San Francisco Planning Code authorizes the City, acting through the Planning Commission, and the sponsor of a development project in specified areas of the City to enter into an In-Kind Agreement that would allow the project sponsor to directly provide community improvements to the City as an alternative to payment of all or a portion of a fee that would be imposed on the development project in order to mitigate the impacts caused by the development project. Any undefined term used herein shall have the meaning given to such term in Article 4 of the Planning Code.

B. This Agreement shall not be effective until it has been 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, and a duly executed Memorandum of Agreement in the form attached hereto as Exhibit A (the “Memorandum of Agreement”) is recorded in the Official Records of San Francisco County. The date upon which the foregoing requirements have been satisfied shall be the “Effective Date.”

C. The property described in Exhibit B attached hereto and generally known as 1532 Harrison Street in San Francisco, California (Assessor’s Block 3521, Lot 056) (the “Land”) is owned by Project Sponsor. On January 9, 2015, the Project Sponsor submitted an application for the development of a project on the Land that is subject to a development impact fee under Section 423-423.5 of the Planning Code and is currently estimated to be \$1,821,531.92 (the “Fee”).

D. Pursuant to the provisions of Article 4 of the Planning Code, the Project Sponsor has requested that the City enter into an In-Kind Agreement associated with the Project in order to reduce its Fee obligation under Section 423-423.5 of the Planning Code. The in-kind improvements consist of: open space improvements to approximately 16,525 square feet of the 12th Street public right-of-way (ROW) between Harrison and Bernice Streets, known as Eagle Plaza, as more particularly described in Exhibit C (“In-Kind Improvements”) which Project Sponsor shall install on the City property described in Schedule 1 attached hereto (the “City Property”) if Project Sponsor receives all of the required approvals described in Section 4.2 below.

E. The cost of the In-Kind Improvements exceeds the amount of the Fee waiver that would be made by the City pursuant to this Agreement, and Project Sponsor has offered to make a gift of such excess cost. While the City would retain all ownership of the City Property, Project Sponsor has also offered to assume full physical maintenance responsibility for the In-Kind Improvements and liability relating to the construction and maintenance of the In-Kind Improvements in perpetuity, even if City elects to accept ownership of the In-Kind Improvements.

F. The In-Kind Improvements meet community needs as identified by the 2011 Western SoMa Community Plan, the 2011 Western SoMa Area Plan, and the 2013 D6 Open Space Task Force Recommendations Report and are not a physical improvement or provision of space otherwise required by the Project entitlements or other City Code, including Planning Code Section 135.

G. On September 21, 2015, in Motion 2015-09-03, the Eastern Neighborhoods Citizens Advisory Committee passed a resolution supporting the proposed In-Kind Improvements in the amount of \$1,505,000.

H. City retains all rights to operate and manage the City Property and the In-Kind Improvements in its sole discretion, including any maintenance obligations that City may require of Project Sponsor under the Encroachment Permits (as defined in Section 4.2 below), if any, for the In-Kind Improvements in the ROW Area.

I. On October 8, 2015 (Motion No. 19488), the Planning Commission approved the Project and in (Motion No. 19566), the Planning Commission authorized the Director of Planning to enter into this In-Kind Agreement on the terms and conditions set forth below.

J. If the cost of the In-Kind Improvements exceeds the amount of the Fee waiver that would be made by the City pursuant to the Agreement, Project Sponsor has offered to make a gift of such excess cost.

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

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 5.3 below.

“**Development Impact Fee**” or “**Fee**” shall mean the fee charged to development projects under Article 4, Section 423 of the Planning Code.

“**DBI**” shall mean the Department of Building Inspection.

“**DPW**” shall mean the Department of Public Works.

“**Effective Date**” shall have the meaning set forth in Recital B.

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

“**In-Kind Improvements**” shall have the meaning set forth in Recital D.

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

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

“**Material Change**” shall have the meaning set forth in Section 3.2 below.

“**Memorandum of Agreement**” shall have the meaning set forth in Article 8 below.

“**Non-Material Change**” shall have the meaning set forth in Section 3.2 below.

“**Notice of Satisfaction**” shall have the meaning set forth in Section 5.3 below.

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

“**Payment Documentation**” shall have the meaning set forth in Section 5.1 below.

“**Plans**” shall have the meaning set forth in Section 4.2 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 Fee**” shall mean the Project Sponsor’s share of the Development Impact Fee, as calculated pursuant to Section 3.1 below.

“**Remainder Amount**” shall have the meaning set forth in Section 3.3 below.

“**Security**” shall have the meaning set forth in Section 5.4 below.

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 California, (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 Land 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) of the Planning Code, 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 **Calculation of Fee.** The Project Fee shall be calculated in accordance with Section 423.3 of the Planning Code. Based on the development project approved by the Planning Commission, the Project Fee is estimated to be \$1,821,531. (For the fee calculations, see Exhibit D.) The final Fee shall be calculated based on the estimated cost of the Project at the time of its First Construction Document.

3.2 **Calculation of In-Kind Value.** Based on two estimates provided by independent sources, as well as a third estimate provided by the Project Sponsor, the Director of Planning determines that the In-Kind Improvements may have a value up to approximately \$2,027,933. Of this amount, \$1,505,878 ("**In-Kind Value**") will be credited to the Project Sponsor through this fee waiver agreement. Of the \$522,055 amount of the In-Kind Value beyond the value of the fee waiver, \$122,055 improvements would have otherwise been required by Planning Code section 138.1 ("**Better Streets Requirement**") and \$400,000 is expected to be gifted to the City by the Project Sponsor. It is recognized that if upon final completion the actual construction and development costs to the Project Sponsor of providing the In-Kind Improvements are lower than the value of the fee waiver, the provisions of Section 5.2 shall apply. Documentation establishing the estimated third-party eligible costs of providing the In-Kind Improvements in compliance with applicable City standards is attached hereto as Exhibit E (the "**Cost Documentation**"). The Project Sponsor may request an increase in the In-Kind Value by delivering written notice of such request to the Director, together with reasonable documentation of the third-party eligible costs exceeding the In-Kind Value. The Director shall have the sole discretion to approve or disapprove a requested increase of up to 15% of the In-Kind Value (a "**Non-Material Change**"), and the Planning Commission shall have the sole discretion to approve or disapprove any higher requested increase (a "**Material Change**"). 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 below shall apply.

3.3 **Payment.** Pursuant to Section 423.3 of the Planning Code and Section 107A.13.3 of the San Francisco Building Code, the Project Sponsor shall pay to the Development Fee Collection Unit at DBI \$315, 653.92 (the "**Remainder Amount**"), which is an amount equal to the Project Fee (see Exhibit D) minus the In-Kind Value (see Exhibit E), prior to issuance of the Project's First Construction Document. On the Date of Satisfaction, the Project Sponsor shall receive a credit against the Project Fee in the amount of the In-Kind Value, subject to Section 5.1 below.

ARTICLE 4 CONSTRUCTION OF IN-KIND IMPROVEMENTS

4.1 **Conditions of Performance.** 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 Fee under this Agreement if this Agreement is still in effect and each of the following conditions are met:

4.2 **Plans and Permits.** The Project Sponsor shall cause an appropriate design professional to prepare detailed plans and specifications for the In-Kind Improvements, which plans and specifications shall be submitted for review and approval by DBI, the Planning Department, and other applicable City departments or agencies in the ordinary course of the process of obtaining a site or building permit for the Project (upon such approval, the "Plans"). The Project Sponsor shall be responsible for obtaining, at its sole cost, the appropriate approvals, encroachment permits and agreements needed from DPW (each, an "SFPW Encroachment Permit" and collectively, the "SFPW Encroachment Permits") for the construction and maintenance of the In-Kind Improvements and all other permits and approvals from other affected departments that are necessary to implement this proposal. 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 the DPW Encroachment Permits 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 for the In-Kind Improvements and documentation of any approved material changes or deviations therefrom that may occur during construction of the In-Kind Improvements.

4.3 **Construction.** All construction with respect to the In-Kind Improvements shall be accomplished prior to the first certificate of occupancy for the Project, including any 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.

4.4 **Inspections.** The Project Sponsor shall request the customary inspections of work by DBI, DPW, and all other applicable City departments or agencies during construction using applicable City procedures in accordance with the City's Building Code and other applicable law. Upon final completion of the installation of the In-Kind Improvements and the Project Sponsor's receipt of all final permit sign-offs, the Project Sponsor shall notify all applicable City departments or agencies that the In-Kind Improvements have been completed. Such City departments or agencies shall inspect the site to confirm compliance with applicable City standards for such installation. This condition will not be satisfied until all applicable City departments and agencies have certified that the In-Kind Improvements are complete and ready for their intended use, including the City Engineer's issuance of a Determination of Completion.

4.5 **Completion of In-Kind Improvements.** 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 In-Kind Improvements to confirm

compliance with this Agreement, and shall promptly notify the Project Sponsor if there are any problems or deficiencies. The Project Sponsor shall correct any such problems or deficiencies 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.

4.6 **Irrevocable Offer of ROW Improvements.** The Project Sponsor shall irrevocably offer the ROW Improvements to City at or before, at City's sole election, the issuance of the Determination of Completion, as described in Section 4.4 above, or the Notice of Satisfaction (as defined in Section 5.3 below). Such offer shall be made by delivering an Irrevocable Offer of Improvements to SFPW in substantially the form attached to this Agreement as **Exhibit F**, which shall be properly completed to describe the ROW Improvements, duly executed by the Project Sponsor, and acknowledged.

ARTICLE 5 SATISFACTION OF OBLIGATIONS; PARTIAL REIMBURSEMENTS

5.1 **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 not be significantly higher than the average capital costs for the City to provide comparable improvements, based on current value of recently completed projects, as selected by the City in its sole discretion.

5.2 **Payment Analysis.** 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 documents that the cost of providing the In-Kind Improvements shall not be significantly higher than the average capital costs for the City to provide comparable improvements, based on current value of recently completed projects, as selected by the City in its sole discretion.

5.2.1 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 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 In-Kind 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.

5.2.2 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.

5.3 **Satisfaction of Obligations.** Upon agreement of the Payment Analysis and completion of the In-Kind Improvements, and following Project Sponsor's delivery of the Offer of Improvements to the City pursuant to Section 4.6 above, the Director of Planning shall provide the Project Sponsor with a Notice of Satisfaction of Obligations (the "**Notice of Satisfaction**") that certifies that the In-Kind Improvements have been inspected and been determined to be ready for use by the public based on current City standards, and constitute the full satisfaction of the obligation to provide In-Kind Improvements in the form required hereunder, and that the City has received full payment 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, subject to City's rights under Section 5.6 below. The Project Sponsor shall not receive final credit for the In-Kind Improvements until the Notice of Satisfaction is delivered the City receives any additional payments as may be required under this Article 5, and all other obligations of the Project Sponsor under this Agreement have been satisfied (the "**Date of Satisfaction**").

5.3.1 Notwithstanding the provisions of Article 7 of this Agreement, the notices given by the parties under this Section 5.3 may be in the written form and delivered in the manner mutually agreed upon by the parties.

5.3.2 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.

5.4 **Security.** If the Planning Director has not issued the Notice of Satisfaction under Section 5.3 above prior to issuance of the first certificate of occupancy for the Project, including any temporary certificate of occupancy ("TCO"), 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 Notice of Satisfaction, at which date it shall be returned to the Project Sponsor. If the Project Sponsor is required to post a bond for the Project with the Department of Public Works under the Subdivision Map Act and that security covers the In-Kind Improvements to be provided under this Agreement, the Subdivision Map Act bond may be substituted for the Security required by this Section 5.4 and the Project Sponsor is not required to provide additional Security for the In-Kind Improvements.

In the event that any delay to the construction of the In-Kind Improvements occur due to unforeseen circumstances not the fault of the Project Sponsor, such as the discovery of an artifact that requires excavation or an act of God, the issuance of the Certificate of Occupancy for the Project will not be withheld from the Project Sponsor solely by reason of such delay in constructing the In-Kind Improvements. In such an event that the completion of the In-Kind Improvement is delayed, the posting of the Security referenced in this Section 5.4 will be delayed for a period equal to the length of the unforeseen delay. However, in no circumstance shall the security be delivered later than the issuance of the TCO.

5.5 **Additional Obligations.** Notwithstanding anything in this Agreement to the contrary:

5.5.1 On and after the Effective Date defined in Article 1, 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 Fee amount in anticipation of the In Kind Improvements ultimately being accepted and credited against the Project Fee under the terms and conditions set forth in this Agreement.

5.5.2 The City shall not issue or renew any further certificates of occupancy for the Project until the City receives payment of the full Project Fee (in some combination of the payment of the Initial Amount, the acceptance of In-Kind Improvements having the value described under this Agreement, receipt of the Security, and/or the acceptance of other cash payments received by the City directly from Project Sponsor for payment of the Project Fee or completion of the In-Kind Improvements) before issuance of the first certificate of occupancy for the Project, including any temporary certificate of occupancy.

5.5.3 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 Fee (with interest, if applicable), if such payment has not been made at the time the City issues such certificate of final completion.

5.5.4 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 the Project Sponsor fails to pay such amount within thirty (30) days following notice by the City, DBI shall institute lien proceedings to recover the amount of the Fee due plus interest pursuant to Section 408 of the Planning Code and Section 107.13.15 of the Building Code.

5.5.5 The Project Sponsor understands and agrees that any payments to be credited against the Project 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 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.

5.6 **Reimbursement of Waived Fee.** Project Sponsor acknowledges the ROW Improvements can only remain in the ROW Area pursuant to the applicable SFPW

Encroachment Permit. If such SFPW Encroachment Permit is terminated by Project Sponsor or revoked for cause by City before the twentieth (20th) anniversary of the Notice of Satisfaction (the end of the useful life of the ROW Improvements) and SFPW requires Project Sponsor to restore the ROW Area to City standards at such time, Project Sponsor or any successor interest in the Project at such time shall pay DBI's Development Fee Collection Unit an amount equal to (i) the In-Kind Value allocated to the ROW Improvements pursuant to Article 3 less (ii) the proportionate value of the ROW Improvements allocated to the period they were in the ROW Area after the Notice of Satisfaction. For purpose of this section, a revocation for cause shall be a revocation of the SFPW Encroachment Permit, based on an uncured default by Permittee, as defined in the SFPW Major Encroachment Permit. By way of example only, if the allocated In-Kind Value of the ROW Improvements was \$500,000 and Project Sponsor had to restore the ROW Area to City standards on the tenth anniversary of the Notice of Satisfaction due to a termination of the SFPW Encroachment Permit for the ROW Improvements, DBI's Development Fee Collection Unit would be owed \$250,000. If the Project Sponsor fails to pay such amount within thirty (30) days following notice by the City, DBI shall institute lien proceedings to recover the amount of the Fee due plus interest pursuant to Section 408 of the Planning Code and Section 107.13.15 of the Building Code.

ARTICLE 6 MAINTENANCE AND LIABILITY

6.1 Responsibility of Project Sponsor. The Project Sponsor acknowledges the SFPW Encroachment Permits, if any, will require that Project Sponsor maintain the ROW Improvements during the term of the SFPW Encroachment Permits and remove the ROW Improvements and return the ROW Area to City standards if the SFPW Encroachment Permits are terminated or revoked. Further, Project Sponsor, on behalf of itself and all future fee owners of the Land, agrees to assume full responsibility for the construction of In-Kind Improvements contemplated in this Agreement and all liability relating to such construction. Project Sponsor acknowledges this Agreement does not create any City responsibility or liability with respect to the construction or maintenance of the ROW Improvements. Project Sponsor shall obtain all permits and approvals from other affected departments that are necessary to implement this proposal, and shall abide by any conditions associated with such permits including the posting and maintenance of insurance and security. The City would not be willing to enter into this Agreement without this provision and the Project Sponsor's acceptance of all liability relating to construction of the In-Kind Improvements in accordance with this Article is a condition of the Planning Commission's approval of the terms of this Agreement. Project Sponsor acknowledges that City retains ownership of the City Property and retains the rights to manage and operate, or designate responsibility for such management and operation to any party, and Project Sponsor shall have no right to manage and operate the City Property.

6.2 Contracts for Maintenance. The City and the Planning Commission acknowledge that the Project Sponsor may hire third parties to perform Project Sponsor's maintenance obligations with respect to the In-Kind Improvements, if permitted under the SFPW Encroachment Permits, as long as Project Sponsor retains full responsibility at all times to perform such maintenance obligations to the standards required in such Encroachment Agreements and Maintenance Declaration, if any. Any such hiring is subject to the review and consent of the City departments with primary jurisdiction over the In-Kind Improvements in consultation with the Planning Director and shall comply with all applicable laws. The City may

condition such hiring in a manner that it deems reasonable.

**ARTICLE 7
NOTICES**

Except or as may otherwise be mutually agreed upon by the parties in writing, all notices 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
1660 Mission St.
San Francisco, CA 94103

with a copy to:

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

Deputy City Attorney

PROJECT SPONSOR:

Attn: Lou Vasquez
1532 Harrison Owner, LLC
315 Linden Street
San Francisco, CA 94102

with a copy to:

Reuben, Junius & Rose, LLP
One Bush Street, Suite 600
San Francisco, CA 94104
Attn: John Kevlin, 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 8
RUN WITH THE LAND**

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 shall record the Memorandum of Agreement on or before the Effective Date. On the Date of Satisfaction or the date this Agreement is terminated pursuant to Section 9.4 below, 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 9
ADDITIONAL TERMS**

9.1 This Agreement contemplates the installation and transfer of In-Kind Improvements as authorized under Article 4 of the Planning Code and is not intended to be a public works contract; provided, however, the Project Sponsor agrees to pay no less than the Prevailing Rate of Wage as set forth in Section 10.1 and otherwise comply with the requirements of applicable

State law as to the In-Kind Improvements work only. By entering this Agreement, the Project Sponsor is not obligated to pay prevailing wages for the construction of the Project.

9.2 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.

9.3 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.

9.4 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 Article 4 of the Planning Code are satisfied in another manner. Any material amendment shall require the approval of the City's Planning Commission, in its sole discretion.

9.5 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.

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

9.7 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.

9.8 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.

9.9 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.

9.10 The Project Sponsor, on behalf of itself and its successors, shall indemnify, defend, reimburse and hold the City 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 the site of the In-Kind Improvements during their construction, 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 or the SFPW Encroachment Permits, (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 under this Agreement, on the City Property, or under the SFPW Encroachment Permits. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigation. The Project Sponsor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City 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 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 10 CITY CONTRACTING PROVISIONS

10.1 The Project Sponsor agrees that any person performing labor in the construction of the In-Kind Improvements shall be paid not less than the Prevailing Rate of Wage (as defined in San Francisco Administrative Code Section 6.1) consistent with the requirements of Section 6.22(e) of the San Francisco Administrative Code, and shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco County. The Project Sponsor shall include, in any contract for construction of such In-Kind Improvements, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. The Project Sponsor shall require any contractor to maintain, and shall deliver to the City upon request, weekly certified payroll reports with respect to all persons performing labor in the construction of the In-Kind Improvements. The requirements of this Section 10.1 shall apply only to the In-Kind Improvements, and nothing in this Agreement obligates the Project Sponsor to pay the Prevailing Rate of Wage to any person performing labor in the construction of the Project.

10.2 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.

10.3 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.

10.4 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.

10.5 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.

10.6 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.

10.7 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.

10.8 If the City's Office of Economic and Workforce Development ("OEWD") determines that the In-Kind Improvements are subject to the requirements of San Francisco Local Hiring Policy for Construction set forth in Chapter 82 of the San Francisco Administrative Code, the Project Sponsor shall comply with such requirements and execute a Local Hire Agreement with OEWD, which shall be made an Exhibit to this In-Kind Agreement. The Project Sponsor's failure to comply with its obligations under Chapter 82 and the Local Hire Agreement shall constitute a material breach of this In-Kind Agreement and may subject the Project Sponsor and its contractors and subcontractors to the consequences of noncompliance specified in Chapter 82 and the Local Hire Agreement, including but not limited to penalties.

10.9 If OEWD determines that the In-Kind Improvements are subject to the First Source Hiring Program established in Chapter 83 of the San Francisco Administrative Code, the Project Sponsor shall comply with the requirements of Chapter 83 and execute a First Source

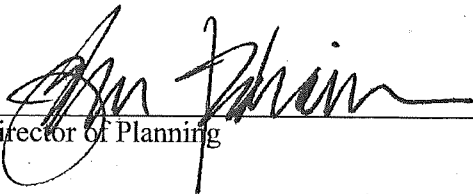
NOW THEREFORE, the parties hereto have executed this In-Kind Agreement as of the date set forth above.

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

PROJECT SPONSOR:

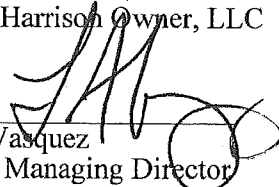
1532 Harrison Owner, LLC

By:



Director of Planning

By:



Lou Vasquez
Title: Managing Director

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

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: _____

Director of Planning

PROJECT SPONSOR:

1532 Harrison Owner, LLC

By: 

Lou Vasquez

Title: Managing Director

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

MS

Exhibit A

Memorandum of Agreement



RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City and County of San Francisco
Department of Planning
1660 Mission St.
San Francisco, CA 94103
Attn: Director

San Francisco Assessor-Recorder
Carmen Chu, Assessor-Recorder
DOC- 2018-K585478-00
Acct 40-SFCC Bureau Of Building Inspections
Tuesday, MAR 06, 2018 12:50:11
Ttl Pd \$0.00 Rcpt # 0005769883
0J1/JL/1-5

(Free Recording Requested Pursuant to
Government Code Section 27383)

APN: 3521-056

Address: 1532 Harrison Street, San Francisco

Memorandum of In-Kind Agreement

This Memorandum of In-Kind Agreement (this "Memorandum"), is dated as of February 8, 2018, and is by and between the City and County of San Francisco, a municipal corporation, acting and through the Planning Commission (the "City"), and 1532 Harrison Owner, LLC, a Delaware limited liability company (the "Project Sponsor").

1. The property described in Exhibit A attached hereto (the "Land") and generally known as 1532 Harrison Street, San Francisco, California is owned by Project Sponsor.
2. Under San Francisco Planning Code Section 423.3(e) ("Section"), the Project Sponsor must pay to the City a development 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 dated as of February 8, 2018 (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

1.

By: _____

2.

Name: Lou Vasquez

3.

Title: Managing Director, 1532 Harrison Owner, LLC

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Francisco)

On February 8, 2018 before me, Nora Priego-Ramos, Notary Public
(insert name and title of the officer)

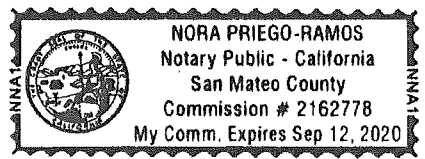
personally appeared John Rahaim
who proved to me on the basis of satisfactory evidence to be the person ~~(s)~~ whose name ~~(s)~~ ~~(is)~~ ~~(are)~~ subscribed to the within instrument and acknowledged to me that ~~(he)~~ ~~(she)~~ ~~(they)~~ executed the same in ~~(his)~~ ~~(her)~~ ~~(their)~~ authorized 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 Nora Priego-Ramos

(Seal)



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

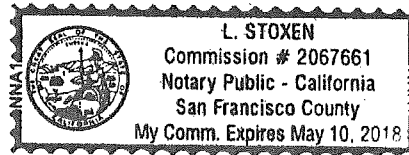
State of California)
) ss
County of San Francisco)

On February 3rd, 2018, before me, L. Stoxen, a notary public in and for said State, personally appeared Lou Vasquez, 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 L. Stoxen (Seal)



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of San Francisco)

On _____, before me, _____, a notary public in and for said State, 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 _____ (Seal)

Exhibit B

Legal Description of Land

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 ONE:

BEGINNING at the point of intersection of the Northeasterly line of 12th Street and the Northwesterly line of Harrison Street; running thence Northeasterly along said line of Harrison Street 101 feet and 6 inches to the Southwesterly line of Norfolk Street; thence Northwesterly along said line of Norfolk Street 192 feet and 6 inches; thence at a right angle Southwesterly 64 feet and 6 inches, more or less to a point in a line drawn Northwesterly from the Northwesterly line of Harrison Street, to the Southeasterly line of Folsom Street and equidistant from the Southwesterly line of Norfolk Street and the Northeasterly line of 12th Street; thence Southeasterly along said last described line 25 feet to a point distant thereon 175 feet Northwesterly from the Northwesterly line of Harrison Street; thence Southwesterly 62 feet and 3 inches, more or less, to a point on the Northeasterly line of 12th Street distant thereon 175 feet Northwesterly from the Northwesterly line of Harrison Street; thence Southeasterly along said line of Harrison Street 175 feet to the Point of Beginning.

BEING portion of Mission Block No. 9.

PARCEL TWO:

BEGINNING at a point on the Southwesterly line of Norfolk Street, distant thereon 192 feet and 6 inches Northwesterly from the Northwesterly line of Harrison Street; running thence Northwesterly along said line of Norfolk Street 22 feet and 4 inches; thence at a right angle Southwesterly 64 feet and 7 inches, more or less, to a line drawn Northwesterly from the Northwesterly line of Harrison Street to the Southeasterly line of Folsom Street equidistant from the Southwesterly line of Norfolk Street and the Northeasterly line of 12th Street; thence Southeasterly along the line so drawn 22 feet and 6 inches, more or less, to a line drawn at right angles to the Southwesterly line of Norfolk Street from the Point of Beginning; thence Northeasterly along the line so drawn 64 feet and 6 inches, more or less, to the Point of Beginning.

BEING portion of Mission Block No. 9.

Assessor's Lot 056; Block 3521

Exhibit C

In-Kind Improvements Description

Eagle Plaza proposes to convert approximately 16,525 square feet of the 12th Street public right-of-way (ROW) between Harrison and Bernice Streets into a new public pedestrian plaza. The proposed pedestrian plaza would reduce the existing, two-way, 46-foot-wide ROW on 12th Street into a single lane, one-way, 14-foot-wide travel lane providing southbound-only auto access from 12th Street to Harrison Street. 15 on-street, parallel public parking spaces would be eliminated because they are located within proposed plaza area. The plaza is designed for maximum flexibility in use, with areas that can function as small, independent enclaves for a range of active and passive uses but that, when closed to through-traffic can be converted into a large, unified space for special event programming.

The In-Kind Improvements will consist of the following:

- Conversion of the existing sidewalks and portions of the 12th Street right-of-way between Harrison St and Bernice Street into pedestrian only open space, and narrowing of the roadway into a one-way shared public way;
- Installation of landscaped areas with trees and plants;
- Extension of the existing pedestrian sidewalk on Bernice Street across the 12th Street ROW where the plaza ends, including a crosswalk where the sidewalk is intersected by the new shared way;
- Extension of the existing pedestrian sidewalk on Harrison Street across the 12th Street ROW where the plaza ends, including a crosswalk where the sidewalk is intersected by the new shared way;
- Moveable tables and chairs for public seating throughout the plaza.

Exhibit D

Calculation of Impact Fees

FEE TYPE	PLANNING CODE SECTION/FEE	AMOUNT
Eastern Neighborhoods Impact Fee (1,196 sq ft – Tier 2; Non-Residential)	423 (@ \$13.38)	\$16,002.48
Eastern Neighborhoods Impact Fee (112,424 sq ft – Tier 2; Residential)	423 (@ \$16.06)	\$1,805,529.44
Total		\$1,821,531.92

Exhibit E

Cost Documentation

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 north side of the sidewalk along 12th Street between Harrison Street and Bernice Street. Such improvement would likely consist of new curbs and gutters, new sidewalk with unit pavers, 8 street trees, and a new sidewalk ramp. The cost of these improvements is estimated at \$122,055.

Table 1 – Value of Required 1532 Harrison Street Sidewalk Improvements

Improvement	Amount	Unit	Unit Cost	Total Cost
Curb and Gutter	193	Feet	\$45/ft	\$8,685
Sidewalk	2,069	Square Feet	\$16/ft	\$33,104
Paver	1,027	Square Feet	\$20/ft	\$20,540
Street Trees	8	Each	\$1,500	\$12,000
New Sidewalk Ramp	1	Each	\$2,000	\$2,000
Total Hard Costs				\$76,329
Soft Costs	10% of plaza soft costs			\$45,726
Total Cost of Improvement				\$122,055

Determining the Value of Proposed Improvements

To help determine the value of the proposed improvements, the Project Sponsor provided three estimates of the anticipated hard costs (\$1,570,668, \$1,716,733 and \$1,875,655), attached as Schedules 2, 3 and 4. The Project Sponsor is confident it can deliver the In-Kind Improvements within this cost range, and acknowledges that it is responsible for any cost overruns.

The Project Sponsor calculated additional development costs, such as design and engineering fees, and site preparation, to determine the full value of the proposed improvements. This estimate for total soft costs came to \$457,265. Based on these calculations, the overall value of the In-Kind Improvements is estimated at \$2,027,933. These estimates are subject to change over time, but the Project Sponsor acknowledges that it is responsible for any cost overruns.

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 plaza on the 12th Street right-of-way. Therefore, the \$122,055 that the Project Sponsor would be required to contribute will instead be directed towards the construction of the plaza.

In addition, through this In-Kind Agreement the Project Sponsor would commit to \$1,505,878 in improvements in return for a reduction in its Eastern Neighborhoods Infrastructure Impact Fee of the same amount. Combined, that means that this In-Kind Agreement would enable \$1,627,933 towards the creation of a park along the 12th Street right-of-way.

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

The cost of the proposed improvements to Eagle Plaza (\$2,027,933) exceed the Project Sponsor's required contribution (\$122,055) and requested fee waiver (\$1,505,878) by \$405,878. Any additional costs for the improvements, including the estimated \$405,878, may be covered through third-party grants and contributions if necessary or desirable.

The Project Sponsor is proposing to gift to the City the excess value of these In-Kind Improvements, and to make a gift of maintaining Eagle Plaza in perpetuity. Such a gift would occur via a separate legal agreement with the City in a form acceptable to City, and Project Sponsor shall deliver an original, fully executed copy of such agreement to City on or before . 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.

EXHIBIT F

Form of Irrevocable Offer of Dedication

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City and County of San Francisco
Director of Public Works
City Hall, Room 348
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

IRREVOCABLE OFFER OF IMPROVEMENTS
(Portion of 12th Street)

1532 Harrison Owner, LLC, a Delaware limited liability company does hereby irrevocably offer to the City and County of San Francisco, a municipal corporation ("City"), and its successors and assigns, those certain public improvements [improvements to the 12th Street roadway] on 12th Street and adjacent to Assessor's Lot 056 in Block 3521 and Assessor's Lots 114-116, 014 of Block 3522 more particularly described and depicted in Public Works Permit No. _____ and as shown on site diagrams, attached as Exhibits F-1 and F-2, respectively, to this instrument.

With respect to this offer of improvements, it is understood and agreed that: (i) upon acceptance of this offer of public improvements, the City shall own and be responsible for public facilities and improvements, subject to the maintenance obligation of fronting property owners or other permittees pursuant to the Public Works Code, including, but not limited to, Public Works Code Sections 706 and 786, and (ii) the City and its successors and assigns shall incur no liability or obligation whatsoever hereunder with respect to such offer of public improvements, and, except as may be provided by separate instrument, shall not assume any responsibility for the offered improvements, unless and until such offer has been formally accepted by the Director of Public Works or the Board of Supervisors.

The provisions hereof shall inure to the benefit of and be binding upon the heirs, successors, assigns and personal representatives of the respective parties hereto.

IN WITNESS WHEREOF, the undersigned has executed this instrument this ___ day of _____, 20 .

1532 Harrison Owner, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

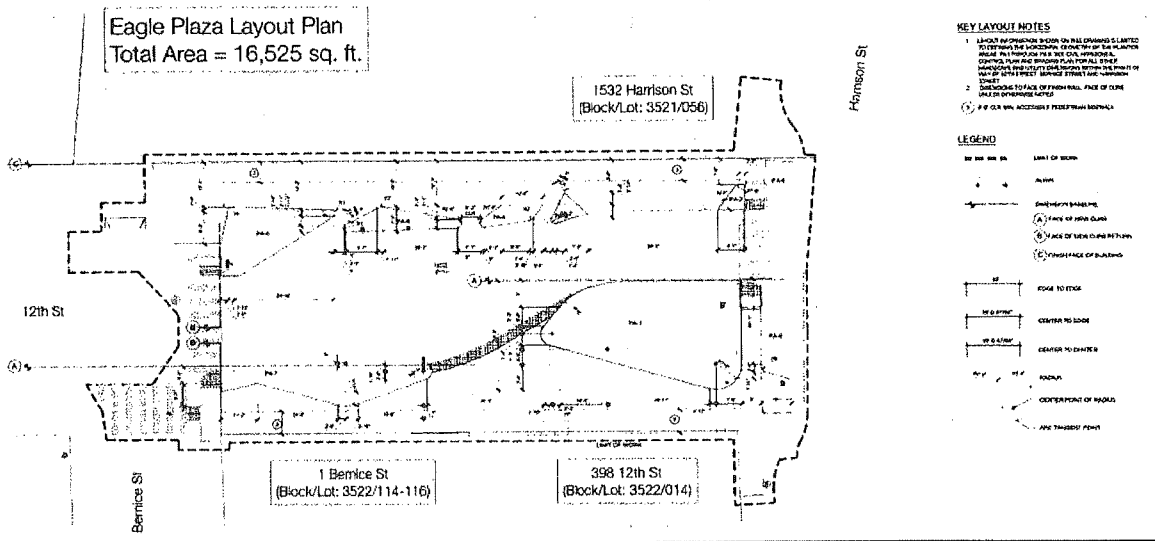
EXHIBIT F-1

Permit Information

Schedule 1

Description and Depiction of City Property

The City Property shall mean the 16,525 square foot portion of the 12th Street public right-of-way (ROW) between Harrison and Bernice Streets, for the full width of 12th Street ROW bound by Assessor's Lot 056 in Block 3521 and Assessor's Lots 114-116, 014 of Block 3522, as further shown below.



Schedule 2
Construction Cost Estimate – Build Inc

BUILDING

Eagle Plaza 30% Schematic Design Construction Estimate - Build Inc				
Item	Quantity	UOM	Unit Rate	Extension
Site Work				
Demolition	8,947	SF	\$5	\$44,735
Grading	994	SY	\$15	\$14,910
Water Meter Connection / Irrigation	1	EA	\$20,000	\$20,000
Drainage	1	LS	\$25,000	\$25,000
Connection to Storm	1	LS	\$6,000	\$6,000
			SUB TOTAL	\$110,645
Hardscape & Improvements				
Aggregate Base (6")	165	CY	\$175	\$28,875
Unit Pavers	8,947	SF	\$40	\$357,880
Vehicular structural concrete base (beneath slow street)	2,450	SF	\$10	\$24,500
Curb & Gutter	481	LF	\$45	\$21,645
Allowance to repair Harrison & 12th curb & gutter	1	LS	\$5,500	\$5,500
Speed Table Crosswalks	3	EA	\$8,500	\$25,500
Electrical Labor	1	LS	\$45,000	\$45,000
Bollards	6	EA	\$1,250	\$7,500
Tactile Warning Paving	1	LS	\$5,500	\$5,500
Caulking	1	LS	\$8,500	\$8,500
Striping	1	LS	\$9,500	\$9,500
Painting	1	LS	\$35,000	\$35,000
			SUB TOTAL	\$574,900
Site Furnishings				
Movable Tables	15	EA	\$550	\$8,250
Movable Chairs	43	EA	\$250	\$10,750
Flag Pole & Flag	1	EA	\$7,500	\$7,500
Footing for Flag Pole	1	EA	\$550	\$550
Mounts for movable poles	43	EA	\$450	\$19,350
Footings for movable poles	43	EA	\$350	\$15,050
Custom Perch Bike Racks	13	EA	\$1,200	\$15,600
Canopy Structure	1	EA	\$45,000	\$45,000
Mast Lights	27	EA	\$5,500	\$148,500
Mobile Benches	30	EA	\$3,000	\$90,000
Large Planter / Seating Areas	4	EA	\$30,000	\$120,000
Wood Deck / Stage	695	SF	\$65	\$45,175
			SUB TOTAL	\$525,725
Landscape				
Trees	21	EA	\$2,400	\$50,400
Plantings	1,574	SF	\$30	\$47,220
			SUB TOTAL	\$97,620
Direct Cost				\$1,308,890
GC Fees / Markup			10%	\$130,889.00
Hard Cost Contingency			10%	\$130,889
			GRAND TOTAL	\$1,570,668

Schedule 3
Construction Cost Estimate – Suffolk

BUILDING

build
smart

SUFFOLK

Eagle Plaza - Conceptual Estimate

October 20, 2015

Item	Quantity	UOM	Unit Rate	Extension
Site Work				
Demolition	12,371	SF	\$ 6.50	\$ 80,412
Grading	1,375	SY	\$ 15.00	\$ 20,625
Water Meter Connection / Irrigation	1	EA	\$ 20,000.00	\$ 20,000
Drainage	1	LS	\$ 18,000.00	\$ 18,000
Connection to Storm	1	LS	\$ 8,500.00	\$ 8,500
			SUB TOTAL	\$ 147,537
Hardscape & Improvements				
Aggregate Base (6")	229	CY	\$ 160.00	\$ 36,640
Pavers - Option 1 (See Below for Add Alternates)	9,809	SF	\$ 26.50	\$ 259,939
Curb and Gutter	221	LF	\$ 47.50	\$ 10,498
Allowance to repair Harrison & 12th curb and gutter	1	LS	\$ 5,500.00	\$ 5,500
Speed Table Crosswalks (including at Bernice Street)	3	EA	\$ 8,500.00	\$ 25,500
Allowance for Shared Street Signage	1	LS	\$ 1,000.00	\$ 1,000
Stop Sign at Bernice Street	1	EA	\$ 500.00	\$ 500
Electrical Labor	1	LS	\$ 45,000.00	\$ 45,000
Tactile Warning Paving (including ADA entries at Bernice Street)	1	LS	\$ 7,500.00	\$ 7,500
Caulking	1	LS	\$ 8,500.00	\$ 8,500
Striping (including at Bernice Street)	1	LS	\$ 10,000.00	\$ 10,000
Painting	1	LS	\$ 35,000.00	\$ 35,000
			SUB TOTAL	\$ 445,576
Site Furnishings				
Trash / Recycling Containers	2	SETS	\$ 800.00	\$ 1,600
Movable Tables per Program Areas (Event)	25	EA	\$ 550.00	\$ 13,750
Movable Chairs (Including 3 Footrests) per Program Areas (Event)	74	EA	\$ 250.00	\$ 18,500
Flag Pole & Flag	1	EA	\$ 7,500.00	\$ 7,500
Footing for Flag Pole	1	EA	\$ 550.00	\$ 550
Mounts for Movable Poles	23	EA	\$ 450.00	\$ 10,350
Footings for Movable Poles	23	EA	\$ 350.00	\$ 8,050
Custom Perch Bike Racks	14	EA	\$ 800.00	\$ 11,200
Mast Lights	25	EA	\$ 6,000.00	\$ 150,000
Directional Light	1	EA	\$ 8,500.00	\$ 8,500
Movable Benches	12	EA	\$ 3,000.00	\$ 36,000
Movable (Hex) Decks	3	EA	\$ 7,500.00	\$ 22,500
Movable Planters	10	EA	\$ 5,000.00	\$ 50,000
Large Planters (Hex Planter)	23	EA	\$ 7,500.00	\$ 172,500
Large Planters / Seating Areas (Hex Planter with Bench)	12	EA	\$ 10,000.00	\$ 120,000
Wood Deck / Stage for Events	695	SF	\$ 68.50	\$ 47,608
Removable Shade Canopy Structure	1	EA	\$ 45,000.00	\$ 45,000
Allowance for Program Elements Utilizing Movable Poles	1	LS	\$ 20,000.00	\$ 20,000
			SUB TOTAL	\$ 743,608
Landscape				
Work Around (E) Trees	10	EA	\$ 500.00	\$ 5,000
New Trees	13	EA	\$ 2,400.00	\$ 31,200
Plantings (including along Harrison Street)	1,696	SF	\$ 12.00	\$ 20,352
			SUB TOTAL	\$ 56,552
General Requirements				
General Requirements			3%	\$ 37,372
DIRECT COST				\$ 1,430,644
GC Fees / Markup			10%	\$ 143,064
Hard Cost Contingency			10%	\$ 143,064
GRAND TOTAL				\$ 1,716,773
Area of Construction (SF)				12,371
Cost / Square Foot (\$/SF)				\$ 138.77

Schedule 4
Construction Cost Estimate – Cannon

<p>Cannon Constructors North, Inc. 301 Howard Street, Suite 130 San Francisco, Ca. 94105 t (415) 546-5500 f (415) 546-5501 www.cannongroup.com</p>	<p>Eagle Plaza 12th & Harrison Street San Francisco, CA Cannon Proposal 15-2619 Prepared September 25, 2015</p>	
<p>Order of Magnitude Budget Summary By Division</p>		
<p>8/24/2015 30% Schematic Design</p>		
Division One - General Requirements	\$149,985	\$0
Division Two - Existing Conditions	\$32,916	\$0
Division Three - Concrete	\$0	\$0
Division Four - Masonry	\$0	\$0
Division Five - Metals	\$63,750	\$0
Division Six - Woods & Plastics	\$0	\$0
Division Seven - Thermal & Moisture Protection	\$0	\$0
Division Eight - Doors & Windows	\$0	\$0
Division Nine - Finishes	\$0	\$0
Division Ten - Specialties	\$20,000	\$0
Division Eleven - Equipment	\$0	\$0
Division Twelve - Furnishings	\$8,750	\$0
Division Thirteen - Special Construction	\$0	\$0
Division Fourteen - Conveying Systems	\$0	\$0
Division Twenty One - Fire Suppression	\$0	\$0
Division Twenty Two - Plumbing	\$0	\$0
Division Twenty Three - HVAC	\$0	\$0
Division Twenty Six - Electrical	\$232,750	\$0
Division Thirty One - Earthwork	\$58,167	\$0
Division Thirty Two - Exterior	\$954,226	\$0
Division Thirty Three - Utilities	\$36,000	\$0
Permit Allowance	0.00%	by owner \$0
Contractor Pricing Contingency	10.00%	\$155,554 \$0
Contractor Construction Contingency	2.00%	\$34,222 \$0
Design Contingency	0.00%	\$0 \$0
Sub-total	\$1,745,320	\$0
Gross Receipts Tax	0.33%	\$5,760 \$0
Off Premises & Automotive Insurance	0.90%	\$15,760 \$0
Sub Guard Premium or Bonding Allowance	1.20%	\$21,202 \$0
Fee	4.90%	\$87,614 \$0
Total	\$1,875,655	\$0