

**660-90 INDIANA STREET IN-KIND AGREEMENT
(PER PLANNING CODE SECTION 423.3)**

THIS IN-KIND AGREEMENT (the “Agreement”) is entered into as of August 1, 2014, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the Planning Commission (the “City”) and 650 Indiana Investment, LLC (“Project Sponsor”), with respect to the project approved for 660-90 Indiana 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 660-90 Indiana Street (Lot 009 in Assessor’s Block 4041) is owned by Project Sponsor. 650 Indiana Investment LLC, the Project Sponsor, submitted an application for the development of a mixed residential and commercial development on the Land, and the Planning Commission approved the Project on May 1, 2014 (Motion No. 19136).

D. The Central Waterfront Area Plan contains objectives and policies for the Central Waterfront Area, bounded by Interstate 280 to the west, Mariposa Street to the north, the San Francisco Bay to the east, and the Islais Creek Channel to the south.

E. The Project Sponsor has requested that the City enter into an In-Kind Agreement associated with development of Dogpatch Arts Plaza in order to reduce its Fee obligation per the terms of the Ordinance, provided the owner of the land upon which such improvements would be constructed timely and irrevocably consents to the construction and maintenance of such improvements. The In-Kind Improvements consist of the conversion of the dead-end portion of 19th Street (west of Indiana Street) into a 13,800 square foot arts-focused public pedestrian plaza, as more particularly described in Exhibit C (“In-Kind Improvements”).

F. The In-Kind Improvements meet an identified community need as analyzed in the Central Waterfront Area Plan and are not a physical improvement or provision of space otherwise required by the Project entitlements or other City Code.

G. On February 10, 2014, in Motion 2014-02-02, the Eastern Neighborhoods Citizens Advisory Committee passed a resolution supporting the proposed improvements for the 650 Indiana Street In-Kind Agreement in the amount of \$565,100. On June 16, 2014, in Motion 2014-05-02, the Eastern Neighborhoods Citizens Advisory Committee passed a resolution

supporting an additional fee waiver of \$284,900, bringing the total value of the in-kind improvements to \$850,000.

H. On May 15, 2014, the Planning Commission adopted Motion No. 19150 authorizing the Planning Director to execute this In-Kind Agreement for an impact fee waiver of \$850,000.

I. 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 4.9 below.

“**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 Section 5.1 below.

“**Final Inspection Notice**” shall have the meaning set forth in Section 4.7 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.

“**Inspection Notice**” shall have the meaning set forth in Section 4.7 below.

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

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

“**Operations Plan**” shall have the meaning set forth in Section 4.2 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 4.8 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.

“**Remainder Amount**” shall have the meaning set forth in Section 3.3 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 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 \$1,038,446.40 (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 \$850,000 (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 third-party 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 DBI \$188,446.40 (the "Remainder 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 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 **Operations Plan.** The non-profit organization designated the "Plaza Steward" for Dogpatch Arts Plaza pursuant to Administrative Code Chapter 94 shall prepare an Operations Plan to provide maintenance services for the life of Dogpatch Arts Plaza, including, but not limited to, gardening, and maintenance for Dogpatch Arts Plaza ("Operations Plan") prior to issuance of the first temporary certificate of occupancy for the Project. The Operations Plan shall ensure that Dogpatch Arts Plaza 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 Inspections. The Project Sponsor shall request the customary inspections of work by DBI during construction using applicable City procedures in accordance with the City's Building Code and other applicable law. Upon final completion of the work and the Project Sponsor's receipt of all final permit sign-offs, the Project Sponsor shall notify DPW that the In-Kind Improvements have been completed. DPW shall inspect the site to confirm compliance with DPW standards for streets, gutters and sidewalks. This condition will not be satisfied until the City Engineer certifies the improvements are complete and ready for their intended use. 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 (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.

4.7 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 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 4.7.

4.8 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.

4.9 Satisfaction of Obligations. 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 Article 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 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 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 MAINTENANCE AND LIABILITY

6.1 Project Sponsor, or its successor or assignee, shall assume full maintenance and liability responsibility in perpetuity for the In-Kind Improvements contemplated in this Agreement and acknowledges that the City shall bear no maintenance responsibility or liability for the construction, maintenance, or public use of such In-Kind Improvements. Project Sponsor shall obtain all permits and approvals from other affected departments that are necessary to implement this proposal, including a major street encroachment permit from DPW if applicable, 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 maintenance and liability responsibility in accordance with this Article is a condition of the Planning Commission's approval of the terms of this Agreement. The City and the Planning Commission acknowledge that the Project Sponsor's obligation to maintain and accept liability for the In-Kind Improvements may be assigned to a future Project tenant, tenants and/or owners, assessment districts, or other entities with the financial capacity to fulfill these obligations. Any such assignment is subject to the review and consent of the City departments with primary jurisdiction over the Improvements in consultation with the Planning Director. Such City review shall be timely and consent to the assignment not unreasonably withheld; provided, however, that the City may condition such assignment in a manner that it deems reasonable. Pursuant to Administrative Code Chapter 94, in the event a non-profit Plaza Steward is selected for Dogpatch Arts Plaza and become the licensee from DPW for use of the 19th Street right-of-way containing Dogpatch Arts Plaza, then all of the obligations and liabilities set forth in this Article 6 shall become the obligation and liabilities of the Plaza Steward and the Project Sponsor shall have no further obligations and liabilities pursuant to this Article 6.

ARTICLE 7 NOTICES

7.1 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
1660 Mission St.
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: Kate Herrmann Stacy

PROJECT SPONSOR:

Attn: Lou Vasquez
650 Indiana Investment LLC
315 Linden Street
San Francisco, CA 94102

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 8
RUN WITH THE LAND**

8.1 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 D (the "Memorandum of Agreement"). On the Date of Satisfaction or if this Agreement is terminated pursuant to Section 9.4, 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 9
ADDITIONAL TERMS**

9.1 This Agreement contemplates the acquisition of In-Kind Improvements as authorized under the Ordinance and is not intended to be a public works contract; provided, however, the Project Sponsor agrees to pay prevailing wages 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 the Ordinance 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 Dogpatch Arts Plaza, 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 Dogpatch Arts Plaza. 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 highest prevailing rate of wages 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 provide, and shall deliver to the City upon request, certified payroll reports with respect to all persons performing labor in the construction of the In-Kind Improvements. The Project Sponsor shall not be obligated to pay prevailing rates 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.

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:

Assessor's Block and Lot #: Block #4041, Lot #009.

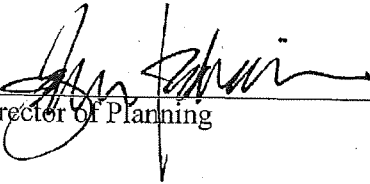
The proposed residential development is located at block 4041. lot 009. The proposed address of the development is 660-90 Indiana Street.

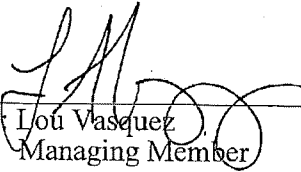
The proposed improvement, Dogpatch Arts Plaza, is proposed to be located on dead-end portion of 19th Street, west of Indiana Street, on 8,000 SF of public right-of-way. UP Urban is also working with Cal Trans to provide an additional 5,800 SF of landscape improvements and potential art exhibition space on the 1-280 embankment located directly west of the Plaza.

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

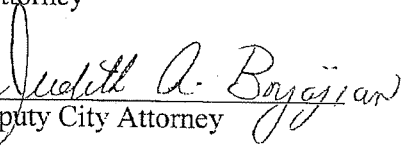
650 INDIANA INVESTMENT, LLC, a California limited liability company

By: 
Director of Planning

By: 
Name: Lou Vasquez
Title: Managing Member

APPROVED:

DENNIS J. HERRERA
City Attorney

By: 
Deputy City Attorney

APPROVED AS TO FORM:

FARELLA BRAUN & MARTEL, LLP

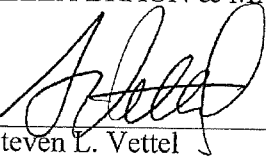
By: 
Steven L. Vettel

Exhibit B

Calculation of Impact Fees

DEVELOPMENT IMPACT FEE SUMMARY

Eastern Neighborhoods Infrastructure Impact Fee		
Replacement or Change of Use	\$61,482.00	
New Construction	\$976,964.40	
Total		\$1,038,446.40

Exhibit C

In-Kind Improvements Plans

The proposed Dogpatch Arts Plaza would convert the dead-end portion of 19th Street (west of Indiana Street) into a 13,800 square foot arts-focused public pedestrian plaza. Inspired by the popular Decompression Festival held on Indiana Street each year, the plaza would combine Burning Man's artistic spirit with the Dogpatch's industrial heritage to create an "outdoor gallery" for large-scale and industrial art.

The design of the plaza has been guided by the idea that this space should serve as the neighborhood's public living room. A bulb-out would invite pedestrian access from nearby Esprit Park and provide a buffer from Indiana Street traffic. Outside café seating and tables would fill the northern edge of the plaza, and benches would be sprinkled along its perimeter. Unique amphitheater-style seating on the west side of the plaza would create an iconic space for public events and performances and provide striking views down 19th Street. The southeast corner of the plaza would be home to a series of rotating public art pieces.

The adjacent proposed residential project at 650 Indiana includes a retail space that has been reserved for a future "art café," carefully designed to invite interaction between the new plaza and the development, bridging public and private space. UP Urban, an independent non-profit managing the development of the plaza, is working with CalTrans to provide 5,800 SF of landscape improvements and a location for additional rotating art installations on the I-280 embankment located directly to the west of the plaza.

The estimated development cost of DAP is \$1,496,919. Plant Construction Company and Nibbi Brothers General Contractors each provided professional estimates for the construction costs, based on the schematic design from CMG Landscape Architecture. UP Urban developed the full cost, adding in design, permitting, project management, contingency, and Year-1 operations costs as shown below. Note that the Year-1 Plaza Operations expenses *are not* included in the In-Kind Agreement request.

Construction costs (plaza)	\$940,932
Construction costs (CalTrans embankment)	\$247,100*
Design fees (10%) (<i>Landscape architecture, civil engineering, etc.</i>)	\$118,803
City Fees (1%) (<i>DPW Street Use and Major Encroachment Permits, etc.</i>)	\$11,880
Contingency (10%)	\$118,803
Project management (5%)	\$59,401
Total Development Cost	\$1,496,919
Year-1 Plaza Operations Estimated Expense	\$91,270**
Total Costs	\$1,588,189

* *in-kind fee waiver is applied towards the plaza, not the Caltrans embankment*

***not part of In-Kind Agreement request*

650 Indiana Investment LLC will contribute to the plaza the estimated \$270,000 that it would have otherwise used to design and construct the required Better Streets improvements along 19th Street, leaving a funding gap of \$1,221,919. UP and 650 Indiana Investment LLC came before the ENCAC in February 2014 to request that between 50%-99% of the residential project's EN infrastructure impact fees be converted into an in-kind donation towards the development of this plaza. At the conclusion of this meeting, the ENCAC voted to convert \$565,100 of the Project Sponsor's impact fees into an in-kind agreement, pending UP Urban's success in filling the remaining funding gap through a mix of foundation grants and crowd-sourced donations.

Further, in June 2014, the ENCAC passed a resolution supporting an additional fee waiver of \$284,900, bringing the total value of the in-kind improvements to \$850,000.

Exhibit D

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**

(Free Recording Requested Pursuant to
Government Code Section 27383)

Memorandum of In-Kind Agreement

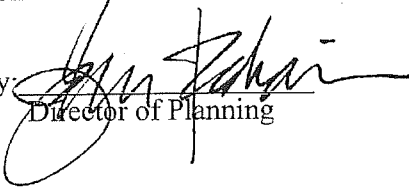
This Memorandum of In-Kind Agreement (this "Memorandum"), is dated as of August 1, 2014, and is by and between the City and County of San Francisco, a municipal corporation, acting and through the Planning Commission (the "City"), and 650 Indiana Investment LLC (the "Project Sponsor").

1. The property described in Exhibit A attached hereto (the "Land") and generally known as 660-90 Indiana 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.

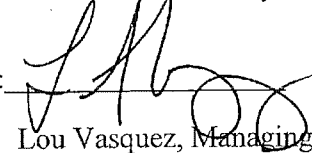
6. This Memorandum shall not be deemed to modify, alter or amend in any way the provisions of the In-Kind Agreement. In the event any conflict exists between the terms of the In-Kind Agreement and this Memorandum, the terms of the In-Kind Agreement shall govern.

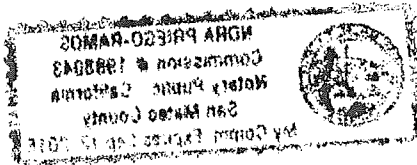
IN WITNESS WHEREOF, the undersigned have executed this Memorandum as of the date first written above.

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

By: 
Director of Planning

650 INDIANA INVESTMENT LLC, a California limited liability company

By: 
Lou Vasquez, Managing Member



CALIFORNIA ALL-PURPOSE
CERTIFICATE OF ACKNOWLEDGEMENT

State of California
County of San Francisco

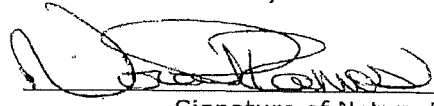
On July 22, 2014 before me,
Nora Priego-Ramos, Notary Public
(here insert name and title of the officer)

personally appeared John Pataima

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.

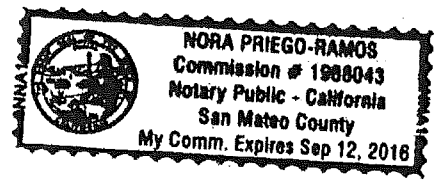
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature of Notary Public

(Notary Seal)



CALIFORNIA ALL-PURPOSE
CERTIFICATE OF ACKNOWLEDGEMENT

State of California
County of San Francisco

On 7/8/14 before me, L. Stoxen, Notary Public

(here insert name and title of the officer)

personally appeared Lou Vasquez

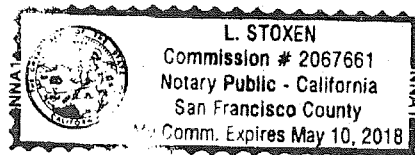
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s),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

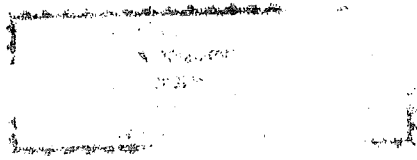
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

L. Stoxen
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)