

**30 OTIS STREET IN-KIND AGREEMENT
(PER ARTICLE 4 OF THE PLANNING CODE)**

THIS IN-KIND AGREEMENT (“**Agreement**”), dated for reference purposes only as September 10, 2019, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the Planning Commission (the “**City**”) and **Otis Property Owner, LLC** a Delaware limited liability company (“**Project Sponsor**”), with respect to a development project to be located at 30 Otis Street, San Francisco, California, and commonly known as 30 Otis (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, 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 74-90-98 12th Street and 14-18-30-32-38-40 Otis Street in San Francisco, California (Assessor’s Block Number 3505 Lots 010/012/013/016/018 (the “**Land**”) is owned by Project Sponsor. On March 8, 2018 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 421-421.6 and 424-424.5 of the Planning Code and is currently estimated to be \$7,042,403, (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 421-421.6 and 424-424.5 of the Planning Code. The in-kind improvements consist of certain open space improvements generally described in **Exhibit C**, (“**In-Kind Improvements**”), and which the Project Sponsor shall install on an approximately 12,165 square feet portion of the 12th Street public right-of-way between South Van Ness Avenue and Otis Street and 2,815 square feet portion of the west sidewalk along 12 Street north of 30 Otis (the “**ROW Area**”) as further described in Schedule 1 attached hereto (the “**City Property**”), if Project Sponsor receives all of the required approvals described in Section 4.2 below. The In-Kind Improvements do not include the Project’s public art under Section 429, the cost of which is not part of this In-Kind Agreement and is not included in the cost estimates provided but is generally described in **Exhibit C**.

E. The In-Kind Improvements meet the community needs as identified by the 2008 Market & Octavia Area Plan, are consistent with the 2008 Market & Octavia Area Plan, and the In-Kind Improvements for which the Project Sponsor is requesting an in-kind Fee Waiver are not a physical improvement or provision of space otherwise required by the Project entitlements or other City Code, including Planning Code Section 135 or 429.

F. On May 8, 2019, the Interagency Planning and Implementation Committee (IPIC) agreed to an In-Kind amount up to \$3,000,000.

G. On May 20th, 2019, in Motion 2019-05-20-01, the Market & Octavia Citizens Advisory Committee passed a resolution supporting the proposed In-Kind Improvements in the amount of \$3,000,000, and any eligible administrative and project management costs as to be determined with due diligence by the Planning Department.

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. The parties to this Agreement acknowledge that the Project should qualify for the annual occupancy fee waiver provision of Public Works Code Section 786.7(f).

I. On September 27, 2018 (Motion No 20293), the Planning Commission approved the Project, and on June 6, 2019 (Motion No 20457), the Planning Commission authorized the Director of Planning to enter into this 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 this Agreement, Project Sponsor has offered to make a gift of such excess cost as set forth in Section 5.2.1 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

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 421 of the Planning Code.

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

“**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.

“**RED**” shall mean the Real Estate Division of City’s Office of the City Administrator.

“**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.

“**SFPW**” shall mean the City’s Department of Public Works.

ARTICLE 2 PROJECT SPONSOR REPRESENTATIONS AND COVENANTS

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

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

2.2 Project Sponsor: (1) is a limited liability company duly organized and existing under the laws of the State of Delaware and authorized to own property and transact business in 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 421.3(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 421.3 and 424.3 of the Planning Code. Based on the Project approved by the Planning Commission, the Project Fee is estimated at \$7,042,403.16 (For the fee calculations, see **Exhibit D.**) The final Fee shall be calculated 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 set forth in Schedules 2 and 3 to this Agreement, the Director of Planning determines the In-Kind Improvements have a value of approximately \$3,000,000 (the “**In-Kind Value**”). 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**”). Should the relocation of existing utility infrastructure no longer be required or necessary, the In-Kind Value shall be proportionately reduced by the amount listed in the Giacalone Design Services, Inc. Dry Utility Budget included in Schedules 2 and 3. 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 421.3 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 \$4,042,403.16 (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 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 SFPW (each, a “**SFPW Encroachment Permit**” and collectively, the “**SFPW Encroachment Permits**”) for the construction and maintenance of the In-Kind Improvements in the ROW Area, and all other permits and approvals from other affected departments that are necessary to implement this proposal. The parties to this Agreement acknowledge that the Project should qualify for the annual occupancy fee waiver provision of Public Works Code Section 786.7(f). 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, which are consistent with the 2008 Market & Octavia Plan and approved as part of a Planning Commission approved In-Kind Agreement, and the SFPW 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 unless circumstances set forth in Section 5.4 have occurred and Security has been provided as set forth in Section 5.4. 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 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 In-Kind Improvements.** The Project Sponsor shall irrevocably offer the In-Kind 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 In-Kind Improvements in the ROW Area, 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 comparable projects, as selected by the City in its sole discretion, with prior consultation with the Project Sponsor.

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 comparable projects, as selected by the City in its sole discretion, with prior consultation with the Project Sponsor.

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 Irrevocable Offer of Improvements to 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, 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 In-Kind Improvements that have yet to have been determined to satisfy the obligations as set forth in Section 5.3 above (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 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 occurs due to unforeseen circumstances not the fault of the Project Sponsor including delay in issuance of permits or completion of inspections by the City or other regulatory agencies with oversight over the work, or 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 unless such delay is caused by the Project Sponsor’s failure to timely provide all items required in applying for such permit or inspection. In such an event the Security shall be delivered prior to the issuance of the first certificate of occupancy for the Project, including any temporary certificate of occupancy.

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), or Security pursuant to Section 5.4, above, before issuance of the first certificate of occupancy for the Project, including any temporary certificate of occupancy, subject to the delays in construction that occur due to unforeseen circumstances as provided in Section 5.4 above.

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 Payment Analysis in Section 5.2 determines a payment is required from the Project Sponsor for the difference between the In-Kind Value and the actual amount paid in respect of the In-Kind Improvements, and if thirty (30) days after payment is due following notice by the City the payment remains outstanding, 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 In-Kind 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 In-Kind 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 In-Kind Improvements pursuant to Article 3 less (ii) the proportionate value of the In-Kind 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 In-Kind Improvements was \$500,000 and on the tenth anniversary of the Notice of Satisfaction due to a termination of the SFPW Encroachment Permit for the In-Kind Improvements by the Project Sponsor or by the City, for cause, 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 **Management and Liability.** The Project Sponsor acknowledges the SFPW Encroachment Permits, if any, will require that Project Sponsor maintain the In-Kind Improvements during the term of the SFPW Encroachment Permits and remove the In-Kind 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. City agrees that the In-Kind Improvements contemplated in this Agreement are consistent with the 2008 Market & Octavia Plan, and were approved as part of a Planning Commission approved In-Kind Agreement. The parties to this Agreement acknowledge that the Project should qualify for the annual occupancy fee waiver provision of Public Works Code Section 786.7(f). Project Sponsor acknowledges this Agreement does not create any City responsibility or liability with respect to the construction or maintenance of the In-Kind 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 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 Permit, as long as Project Sponsor retains full responsibility at all times to perform such maintenance obligations to the standards required in such SFPW Encroachment Permit, 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 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:

Otis Property Owner, LLC
c/o Align Real Estate
255 California Street
Suite 525
San Francisco, CA 94111

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 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 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. The Planning Director may approve Non-Material Change to the In-Kind Value as set forth in Section 3.2 of this Agreement.

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 either party, the non-breaching party 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, (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. 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 only apply 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, a candidate for the office held by such individual, or a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until negotiations terminate or twelve (12) 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.

Project Sponsor further acknowledges that the **(i)** prohibition on contributions applies to Project Sponsor; each member of its board of directors, and its chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Project Sponsor; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Project Sponsor; and **(ii)** within thirty (30) days of the submission of a proposal for the contract, the City department with whom Project Sponsor is contracting was obligated to submit to the Ethics Commission the parties to the contract and any subcontractor. Additionally, Project Sponsor certifies that it has informed each of the persons described in the preceding sentence of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the Planning Department.

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 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, in a form mutually agreeable to the parties, before this In-Kind Agreement is fully executed. 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 Hiring Agreement with OEWD, in a form mutually agreeable to the parties, before this In-Kind Agreement is fully executed. The Project Sponsor's failure to comply with its obligations under Chapter 83 and the requirements of the First Source Hiring 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 83 and the First Source Hiring Agreement, including but not limited to liquidated damages.

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

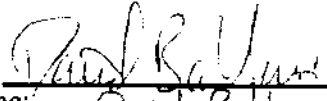
CITY:

PROJECT SPONSOR:

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


OTIS PROPERTY OWNER, LLC, a Delaware limited liability company

By:  _____
Director of Planning

By:  _____
Name: David Borkner
Title: Authorized Signatory

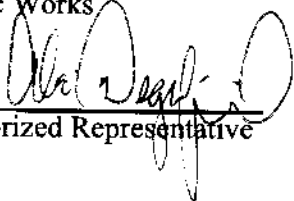
APPROVED:

DENNIS J. HERRERA
City Attorney

By:  _____
Deputy City Attorney

ACKNOWLEDGED:

Public Works

By:  _____
Authorized Representative

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City and County of San Francisco
Department of Planning
49 South Van Ness Ave, Suite 1400
San Francisco, CA 94103
Attn: Director

(Free Recording Requested Pursuant to
Government Code Section 27383)

APN: 3505-010, 3505-012, 3505-013, 3505-016, 3505-018
Address: 74-90-98 12th Street and 14-18-30-32-38-40 Otis Street; San Francisco

Memorandum of In-Kind Agreement

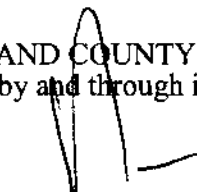
This Memorandum of In-Kind Agreement (this “Memorandum”), dated for reference purposes only as of September 10, 2019, is by and between the City and County of San Francisco, a municipal corporation, acting and through the Planning Commission (the “City”), and **Otis Property Owner, LLC**, a Delaware limited liability company (the “Project Sponsor”).

1. The property described in Exhibit A attached hereto (the “Land”) and generally known as 30 Otis Street, San Francisco, California, is owned by Project Sponsor.
2. Under San Francisco Planning Code Section 421 (“Section 421”) and Planning Code Section 424 (“Section 424”), 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 421.3(d) and 424.3(c) if the Project Sponsor enters into an agreement with the City to provide in-kind improvements.
3. In accordance with Section 421.3 and 424.3, the City and the Project Sponsor have entered into an in-kind agreement dated for reference purposes only as September 10, 2019 (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 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.

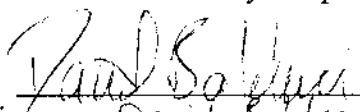
IN WITNESS WHEREOF, the undersigned have executed this Memorandum as of the date first written above.

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

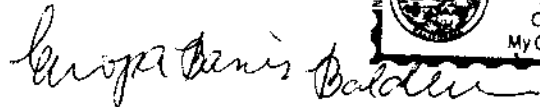
By: 

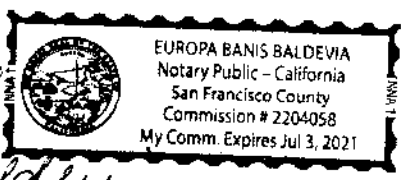
Director of Planning

PROJECT SPONSOR: OTIS PROPERTY OWNER, LLC,
a Delaware limited liability company

By: 
Name: David Baldeve
Title: Authorized Signatory

Name of Notary: Europa Banis Baldeve





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.

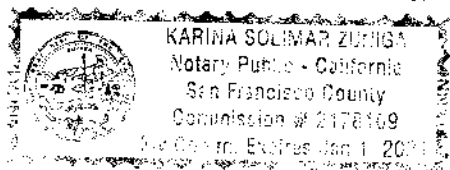
State of California)
) ss
County of San Francisco)

On 6/19/2020, before me, Karina Solimar Zuniga, a notary public in and for said State, personally appeared Richard Hillis, 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 *Karina Solimar Zuniga* (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 June 8, 2020, before me, Europa Banis Baldevia, a notary public in and for said State, personally appeared David Balducci, 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 Europa Banis Baldevia (Seal)

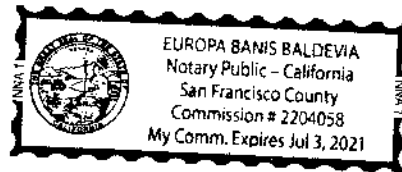


Exhibit B

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 A POINT ON THE SOUTHWESTERLY LINE OF 12TH STREET, DISTANT THEREON 100 FEET NORTHWESTERLY FROM THE NORTHWESTERLY LINE OF OTIS STREET, AND RUNNING THENCE NORTHWESTERLY ALONG SAID LINE OF 12TH STREET 50 FEET; THENCE SOUTHWESTERLY PARALLEL WITH SAID NORTHWESTERLY LINE OF OTIS STREET 156 FEET, 5 INCHES; THENCE EASTERLY 55 FEET, 2 INCHES TO THE INTERSECTION OF A LINE DRAWN SOUTHWESTERLY 133 FEET AND 1-1/4 INCHES FROM THE SOUTHWESTERLY LINE OF 12TH STREET, MEASURED AT RIGHT ANGLES THERETO FROM THE POINT OF BEGINNING; THENCE NORTHEASTERLY ALONG THE LINE SO DRAWN 133 FEET AND 1-1/4 INCHES TO THE POINT OF BEGINNING.

BEING A PORTION OF MISSION BLOCK NO. 13.

ASSESSOR'S LOT 010; BLOCK 3505

PARCEL TWO:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHWESTERLY LINE OF OTIS (FORMERLY WEST MISSION) STREET WITH THE SOUTHWESTERLY LINE OF TWELFTH STREET, AND RUNNING THENCE SOUTHWESTERLY ALONG SAID LINE OF OTIS STREET 66 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 100 FEET, THENCE AT A RIGHT ANGLE NORTHEASTERLY 66 FEET TO THE SOUTHWESTERLY LINE OF TWELFTH STREET; AND THENCE AT A RIGHT ANGLE SOUTHEASTERLY ALONG SAID LINE OF TWELFTH STREET 100 FEET TO THE POINT OF BEGINNING.

BEING A PART OF MISSION BLOCK NO. 13.

ASSESSOR'S LOT 012; BLOCK 3505

PARCEL THREE:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF OTIS STREET, DISTANT THEREON 66 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF 12TH STREET; RUNNING THENCE SOUTHWESTERLY ALONG SAID LINE OF OTIS STREET 50 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 100 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 50 FEET; AND THENCE AT A RIGHT ANGLE SOUTHEASTERLY 100 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF MISSION BLOCK NO. 13.

ASSESSOR'S LOT 013; BLOCK 3505

PARCEL FOUR:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF OTIS STREET, DISTANT THEREON 116 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF TWELFTH STREET; RUNNING THENCE SOUTHWESTERLY ALONG SAID NORTHWESTERLY LINE OF OTIS STREET 82 FEET; THENCE AT RIGHT ANGLE NORTHWESTERLY 150 FEET TO THE SOUTHEASTERLY LINE OF CHASE (FORMERLY COLTON) COURT; THENCE NORTHEASTERLY ALONG SAID SOUTHEASTERLY LINE OF CHASE COURT 47 FEET AND 1/2 OF AN INCH TO THE NORTHEASTERLY LINE OF COLUSA (FORMERLY COLTON) PLACE; THENCE NORTHWESTERLY ALONG SAID NORTHEASTERLY LINE OF COLUSA PLACE, 8 FEET TO A POINT THEREON WHICH IS 150 FEET AND 11 INCHES SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF TWELFTH STREET, MEASURED AT RIGHT ANGLES THERETO; THENCE SOUTHEASTERLY 42 FEET AND 1-3/4 INCHES, MORE OR LESS, TO A POINT WHICH IS 100 FEET NORTHWESTERLY FROM THE NORTHWESTERLY LINE OF OTIS STREET, MEASURED AT RIGHT ANGLES THERETO, AND DISTANT 133 FEET AND 1-1/4 INCHES SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF TWELFTH STREET MEASURED AT RIGHT ANGLES THERETO; THENCE NORTHEASTERLY PARALLEL WITH THE NORTHWESTERLY LINE OF OTIS STREET 17 FEET AND 1-1/4 INCHES TO A POINT WHICH IS 116 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF TWELFTH STREET, MEASURED AT RIGHT ANGLE THERETO; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 100 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF MISSION BLOCK NO. 13.

APN: LOT 016, BLOCK 3505

PARCEL FIVE:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF OTIS STREET DISTANT THEREON 198 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF TWELFTH STREET; RUNNING THENCE SOUTHWESTERLY AND ALONG SAID LINE OF OTIS STREET 53 FEET 1/2 OF AN INCH; THENCE AT A RIGHT ANGLE NORTHWESTERLY 81 FEET 2-3/8 INCHES; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 7 FEET 3-1/2 INCHES; THENCE AT A RIGHT ANGLE NORTHWESTERLY 48 FEET 9-5/8 INCHES TO THE SOUTHEASTERLY LINE OF CHASE COURT; THENCE NORTHEASTERLY AND ALONG SAID LINE OF CHASE COURT 60 FEET 4 INCHES; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 130 FEET TO THE POINT OF BEGINNING.

BEING A PART OF MISSION BLOCK NO. 13.

APN: LOT 018; BLOCK 3505

Exhibit C

In-Kind Improvements Description

The In-Kind Improvements consist of the following:

1. **Public Plaza (12,165 sq.ft.)**

A new public plaza will be created at the southern end of 12th Street, adjacent to the new 30 Otis building. The plaza will be created via the reconfiguration of the southern end of 12th Street where it meets South Van Ness Avenue as is consistent with the approved Van Ness Improvement and Bus Rapid Transit (BRT) Project design. The realignment consolidates the 12th Street intersection with South Van Ness eliminating the bifurcated access to 12th Street from South Van Ness and the separate exit from 12th Street to Otis Street that resulted from a large median island. This consolidation of realignment creates the space in the public right-of-way for the new plaza.

The plaza will also provide under Planning Code section 429 public art in the form of custom seating and a centerpiece sunken bowl, which may also serve as a small reflecting pool. The public art portion of the plaza is outside the scope of this IKA as shown on cost estimates for the work. Interlocking stone pavers will be the predominant paving material and will stretch from the property line to the South Van Ness and 12th Street curbs as a unifying design feature. Pedestrian throughway areas are provided along the South Van Ness and building edge. Stairs and an accessible ramp are provided to transition pedestrians from the plaza's two different elevations. Planted areas are provided throughout the plaza to provide dedicated green space with the South Van Ness edge densely planted to provide a green buffer from traffic and interspersed with bike racks, streetlights, and MUNI poles. The north edge of the plaza will be open which will allow vehicles to access the 30 Otis parking garage.

2. **West Sidewalk Repairs (2,815 sq.ft.)**

The deteriorating 12th Street sidewalk, north of the approved 30 Otis Street project to Stevenson Street will be removed and replaced in front of the existing 40 Otis, 42 Otis, and 68 Otis buildings. This will include planting areas and a new sidewalk.

Exhibit D

Calculation of Impact Fees

Development Impact Fees <i>(2019 fee register)</i>	Quantity	Rate	Fee	
Market & Octavia Community Infrastructure Fee (Sec. 421)				
New Residential	345,135 sf	\$13.49/sf	\$4,655,871.15	
Change of Use (Non-res to Res)	17,253 sf	\$8.40/sf	\$144,925.20	
Change of Use (Non-res to Res)	20,030 sf	\$10.95/sf	\$219,328.50	
Subtotal			\$5,020,124.85	
Van Ness & Market Infrastructure Fee (Sec. 424)				
FAR > 9:1	89,919 sf	\$22.49/sf	\$2,022,278.31	
Subtotal			\$2,022,278.31	
Total Infrastructure Impact Fees			\$7,042,403.16	

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 acknowledges the requirement to self-fund mandatory improvements on the Project site or used to meet Project Open Space requirements. Such improvements are required to comply with design standards for "Better Streets" and publicly accessible Open Space.

Determining the Value of Proposed Improvements

To help determine the value of the proposed In-Kind Improvements, the Project Sponsor provided two estimates of the anticipated hard costs \$1,954,247 and \$1,765,450 (attached as Schedules 2 and 3), and an estimate for the utility relocation \$1,748,695 and \$1,796,764.

The Project Sponsor calculated additional development costs, such as design and engineering fees, and site preparation, to determine the full value of the proposed In-Kind Improvements. This estimate for total soft costs came to \$504,281. Based on these calculations, the overall value of the In-Kind Improvement is estimated at between \$4,052,335.00 and \$4,255,291. 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 improving the City Property with the proposed In-Kind Improvements. Therefore, the \$3,000,000 that the Project Sponsor would be required to contribute will instead be directed towards the construction of the In-Kind Improvements in return for a reduction in the Project's Market & Octavia/Van Ness Market Street Infrastructure Impact Fee of the same amount.

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

(Free Recording Requested Pursuant to
Government Code Section 27383)

**IRREVOCABLE OFFER OF IMPROVEMENTS
(30 Otis Plaza)**

Otis Property Owner, LLC 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 comprised of a new publicly accessible Plaza on Otis Street and 12th Street and streetscape improvements on the west side of 12th Street between Stevenson Street and Otis Street and adjacent to Assessor’s Block-Lot 3505-012, 3505-010, 3505-009, 3505-005, 3505-004 more particularly described and depicted in Public Works Permit No. _____ and as shown on site diagrams, attached as **Exhibits A-1 and B-1**, 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 .

Otis Property Owner, LLC
a Delaware limited liability company

By: _____
Name: _____
Title: _____

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 A-1

Permit Information

EXHIBIT B-1

Diagram of Permit Location

Schedule 1

Description of the Property

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

The City Property shall mean 12,165 square feet of the existing 12th Street portion of the Right-of-Way (ROW) between South Van Ness Avenue and Otis Street and 2,815 square feet of the existing sidewalk portion of the ROW along 12 Street north of 30 Otis Street adjacent to Assessor's Block-Lot 3505-012, 3505-010, 3505-009, 3505-005, 3505-004.

Schedule 2

Cost Estimate (Build Group)



Build Group Inc.
San Francisco, CA

Project: 30 Otis Street **Project Type:** Plaza Construction **Build Group Inc**
Location: San Francisco, CA 457 Minna St, San Francisco, Ca
Owner: Align
Architect: SCB
Type: Sitework Budget **Total Gross SF** 12,200 **gsf**
Est. Date: 10/18/2018 - 5/1/19 Update
Drawings: IPIC 30 Otis Public Art Plaza dated 10.10.18, 4.23.19 Updated Drawings

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	Total Project	\$/sf	Notes
General Conditions		12,200	gsf	\$19.67	\$ 240,000		
01020	General Conditions	3	mo	\$75,000.00	\$ 225,000	\$18.44	Supervision/Temp Facilities
01020	Mobilization	1	ls	\$15,000.00	\$ 15,000	\$1.23	Supervision/Temp Facilities
Sitework		12,200	gsf	\$77.27	\$ 942,700		
02200	Demo Site	12,200	sf	\$7.00	\$ 85,400	\$7.00	
02200	Grade Site	12,200	sf	\$10.50	\$ 128,100	\$10.50	
02600	Underground Utilities Allowance	1	allw	\$125,000.00	\$ 125,000	\$10.25	
02710	Qty Curb and Gutter	280	lf	\$75.00	\$ 21,000	\$1.72	
02710	CIP Concrete Planter	15	lf	\$1,250.00	\$ 18,750	\$1.54	
02710	CIP Concrete Curb	182	lf	\$85.00	\$ 15,470	\$1.27	
02710	CIP Concrete Stairs	225	lf	\$350.00	\$ 78,750	\$6.45	
02740	Unit Pavers on Grade	4,024	sf	\$45.00	\$ 181,080	\$14.84	
02740	Concrete Paving	2,750	sf	\$38.00	\$ 104,500	\$8.57	
02750	Bollards	4	ea	\$4,500.00	\$ 18,000	\$1.48	
02750	Truncated Domes	75	lf	\$120.00	\$ 9,000	\$0.74	
02775	Relocate Muni Poles	0	ea	\$80,000.00	\$ -	\$0.00	
02775	Light Poles	0	ea	\$37,000.00	\$ -	\$0.00	
02800	Trees on Grade	12	ea	\$1,600.00	\$ 19,200	\$1.57	
02800	Trees Grates	12	ea	\$1,500.00	\$ 18,000	\$1.48	
02800	Planting Allowance	1,606	sf	\$50.00	\$ 80,300	\$6.58	
02800	Irrigation Allowance	1,606	sf	\$25.00	\$ 40,150	\$3.29	
Metals		12,200	gsf	\$6.45	\$ 78,650		
05510	Handrail at Stairs	187	lf	\$325.00	\$ 60,775	\$4.98	
05510	Handrail, other	55	lf	\$325.00	\$ 17,875	\$1.47	
General Requirements		12,200	gsf	\$26.75	\$ 326,389		
22000	General Requirements	12,200	gsf	\$25.00	\$ 305,000	\$25.00	
20000	Sub Guard Bonding	1	ls	\$21,389.06	\$ 21,389	\$1.75	1.35% of subcontractor costs
SUBTOTAL DIRECT CONSTRUCTION (W/GC'S)					\$ 1,587,739	\$130.14	
PERMITS AND ASSESSMENTS, UTILITY FEES						by owner	
BUSINESS TAX					\$ 6,510	\$0.53	
LIABILITY INSURANCE					\$ 19,847	\$1.63	
CONTINGENCY					\$ 158,774	\$13.01	
CONTRACTOR'S FEE					\$ 88,318	\$7.24	
ESCALATION					\$ 93,059		
TOTAL					1,954,247	\$160.18	

BID REQUESTED ALTERNATES:	QUANTITY	UNIT	UNIT PRICE	EXTENSION	\$/SF gross
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Alternates:

Qualifications:

- 1 Bonding is not included.
- 2 No Phase 1 or Phase 2 report provided
- 3 Assumes major utility upgrades are not required
- 4 Owner to provide all meters and utilities required for this space to complete work.
- 5 The cost for identifying or removal of any hazardous material is not included.
- 6 Price does not include unforeseen discovery or hidden defects/flaws.
- 7 Special Inspection Excluded. We will schedule and coordinate, but contract should be through owner



GIACALONE

DESIGN SERVICES, INC.

3/4/2019

Job #: 16-184

Re: Dry Utility Budget (REVISED)

Otis - Relocation And Temp Power Joint Trench Budget

Scope

1. Relocate Existing 4KV and 12KV primary electrical facilities to accommodate Plaza construction.
2. This budget also includes all equipment necessary for Temp Power scope. Because the two jobs need to be installed at the same time, I have combined the two scopes in one budget.
3. AT&T contract costs are associated with splicing (1) 300, (2) 100, (3) 50 pair copper cables a 48 fiber cable and a 24 fiber cable.

Contractor Costs

1. Trenching - 400 LF	\$180,000.00
2. Vaults and Splice Boxes (Supply, Install & Excavation UON)	\$204,900.00
a. PG&E	\$113,500.00
b. Telephone	\$89,400.00
c. CATV	\$2,000.00
3. Conduits - Supply and Install	\$220,000.00
a. PG&E	\$108,000.00
b. Telephone	\$84,000.00
c. CATV- Installed by CATV	\$28,000.00
4. PG&E Electrical System	\$362,000.00
5. PG&E Gas System	NIC

Total Construction Costs: \$966,900.00

Utility Contract Costs and Consulting Fees

1. PG&E Contract Costs - 10 Year Option	Low	High
2. AT&T Contract Costs	NA	\$481,795.00
	\$75,000.00	\$300,000.00

Total Utility Contract Costs and Consulting Fees: \$781,795.00

Total Construction and Utility Contract Costs/Fees: \$1,748,695.00

Budget Summary

Total Cost Per Foot - 400 Feet	\$4,371.74
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Schedule 3

Cost Estimate (Turner)

30 OTIS
Schematic Site Plan
Triangular Park Area



Item	IKA Qty	Unit	Unit Price	IKA Extension
General Conditions/General Requirements/ Precon	1,257,250	pct	20%	251,450
Clear Site	15,000	sf	6.00	90,000
Grade Site	15,000	sf	12.00	180,000
Mobilization	75%	allow	50,000	37,500
A - Tree Planting	12	ea	2,000	24,000
B - Planted Areas	1,451	sf	40	58,040
C - Concrete Planter - Seating	11	lf	1,000	11,000
J - Truncated Domes	73	sf	100	7,300
K - Curb	272	lf	80	21,760
M - Slot Drain	72	lf	250	18,000
P - Bollard	4	ea	1,500	6,000
S - Interlocking Stone Pavers on Grade	2,073	sf	80	165,840
T - Linear Interlocking Stone Pavers on Grade	542	sf	80	43,360
WW - Handrails	180	lf	250	45,000
W - Stairs	180	lf	300	54,000
X - Black Basalt Flamed Top Pavers on Grade	1,853	sf	100	185,300
Allow Utilities	75%	ls	100,000	75,000
Allow Irrigation	75%	ls	60,000	45,000
Pour in Place Concrete with Integral Color	2,543	sf	50	127,150
Curb or Wall for Stairs and Blackened Elements	180	lf	350	63,000
DIRECT COSTS				1,508,700
GENERAL CONDITIONS				0
Sub Guard	1.15%			17,350
General Liability	0.00%			0
Payment and Performance Bonds	0.00%			0
INSURANCE AND BONDS SUBTOTAL				17,350
SF Business Tax (.0035 thru GC's Books)	0.0035			4,461
GC Construction Contingency	12.00%			150,870
GENERAL MARKUPS SUBTOTAL				155,331
TOTAL HARD COSTS				1,681,381
Escalation (1 yr)	5.00%			84,069
TOTAL HARD COSTS (w/ Escalation)				1,765,450



GIACALONE

DESIGN SERVICES, INC.

3/4/2019

Job #: 16-184

Re: Dry Utility Budget (REVISED)

Otis - Relocation And Temp Power Joint Trench Budget

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Contractor Costs

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b. Telephone	\$89,400.00
c. CATV	\$2,000.00
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a. PG&E	\$108,000.00
b. Telephone	\$84,000.00
c. CATV- Installed by CATV	\$28,000.00
4. PG&E Electrical System	\$362,000.00
5. PG&E Gas System	NIC

Total Construction Costs: \$966,900.00

Utility Contract Costs and Consulting Fees

1. PG&E Contract Costs - 10 Year Option	Low	High
2. AT&T Contract Costs	NA	\$481,795.00
	\$75,000.00	\$300,000.00

Total Utility Contract Costs and Consulting Fees: \$781,795.00

Total Construction and Utility Contract Costs/Fees: \$1,748,695.00

Budget Summary

Total Cost Per Foot - 400 Feet	\$4,371.74
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