



# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary

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

HEARING DATE: NOVEMBER 29, 2012

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

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

## BACKGROUND

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

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

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

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

## PROPOSAL

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

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

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

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

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

## PROCESS

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

### Acquiring Land from the Port of San Francisco

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

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

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

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

### Entering into a Legal Agreement for the Gift

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

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

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

#### Completing an Operations Plan

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

#### Ensuring Park Completion

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

### **REQUIRED COMMISSION ACTION**

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

### **BASIS FOR RECOMMENDATION**

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

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

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

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

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

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

#### The Proposed Improvements is a Priority

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

#### The Project is Recommended

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

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

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

#### **Attachments:**

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

# **Attachment 1**

## Draft Planning Commission Motion



# SAN FRANCISCO PLANNING DEPARTMENT

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

### **PREAMBLE**

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

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

## **FINDINGS**

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

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

## **DECISION**

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

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

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

Jonas Ionin  
Acting Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED:

# **Attachment 2**

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

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

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

**RECITALS**

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

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

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

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

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

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

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

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

## **AGREEMENT**

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

### **ARTICLE 1 DEFINITIONS**

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

“**Agreement**” shall mean this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**“Ordinance”** shall have the meaning designated in Recital A.

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

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

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

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

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

**“Project Sponsor Fee”** shall mean the Project Sponsor’s share of the Fee, as calculated pursuant to Section 3.1 hereof.

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE 4 IN-KIND IMPROVEMENTS**

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE 5 PAYMENT AND SECURITY**

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

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

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

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

5.4 Notwithstanding anything in this Agreement to the contrary:

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

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

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

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

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

## **ARTICLE 6 NOTICES**

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

CITY:

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

with a copy to:

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

PROJECT SPONSOR:

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

with a copy to:

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

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

**ARTICLE 7  
RUN WITH THE LAND**

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

**ARTICLE 8  
ADDITIONAL TERMS**

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE 9 CITY CONTRACTING PROVISIONS**

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

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

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

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

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

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

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

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

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

ARCHSTONE DAGGETT PLACE LLC, a Delaware limited liability company

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

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

APPROVED:

APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney

FARELLA BRAUN & MARTEL, LLP

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

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

ACKNOWLEDGED:

Department of Building Inspection

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

ACKNOWLEDGED:

Department of Public Works

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

ACKNOWLEDGED:

Port of San Francisco

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

## **Exhibit A**

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

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

## Exhibit B

### Calculation of Impact Fees

#### North Building

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

#### South Building

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

**Total** **\$4,197,142**

## Exhibit C

### Calculation of In-Kind Value

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

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

#### Determining the Value of Required Improvements

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

Table 1 – Value of Required Improvements

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

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

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

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

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

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

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

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

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

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

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

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



**Daggett Place Park**

San Francisco, CA

3-20-12

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

SUBTOTAL \$ 1,717,147

City Tax 0.20% \$ 3,434

GC offsite Liability 0.50% \$ 8,603

Fee 3.50% \$ 60,521

G.C. Bond \$ 25,568

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

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

**\$ 1,906,038**

\*Based on OCIP insurance provided by owner



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

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

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

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

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

IN-KIND COST REVIEW

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

## **Exhibit D**

### Memorandum of Agreement

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

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

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(Free Recording Requested Pursuant to  
Government Code Section 27383)

#### **Memorandum of In-Kind Agreement**

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

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

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

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

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

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

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

ARCHSTONE DAGGETT PLACE LLC,  
a Delaware limited liability company

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

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

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

\_\_\_\_\_

CALIFORNIA ALL-PURPOSE  
CERTIFICATE OF ACKNOWLEDGEMENT

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

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

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

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

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

WITNESS my hand and official seal.

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

(Notary Seal)

CALIFORNIA ALL-PURPOSE  
CERTIFICATE OF ACKNOWLEDGEMENT

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

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

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

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

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WITNESS my hand and official seal.

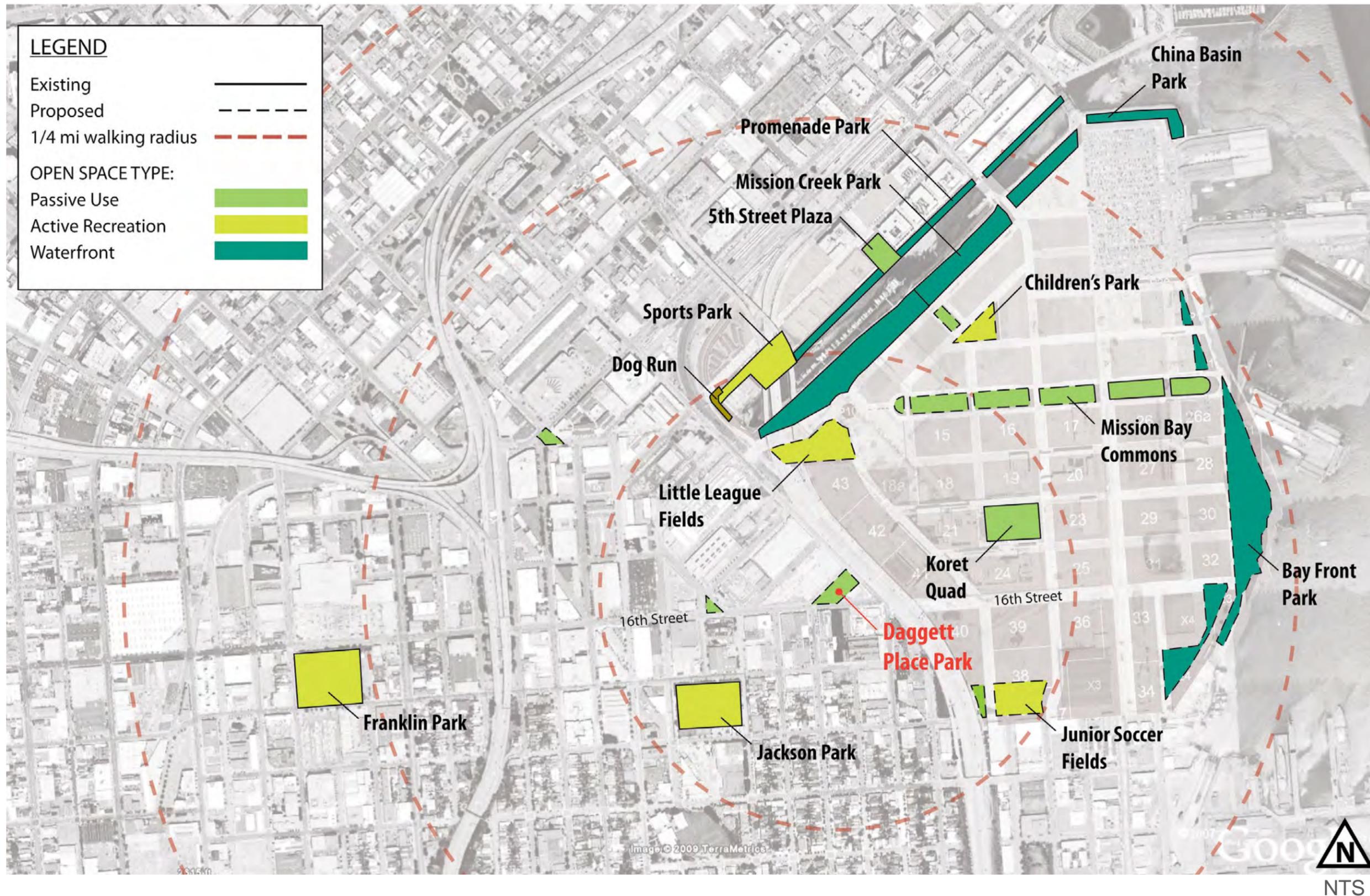
\_\_\_\_\_  
Signature of Notary Public

(Notary Seal)

# **Attachment 3**

Location of the Proposed  
Daggett Park

# OPEN SPACE CONTEXT



# AERIAL- EXISTING SITE



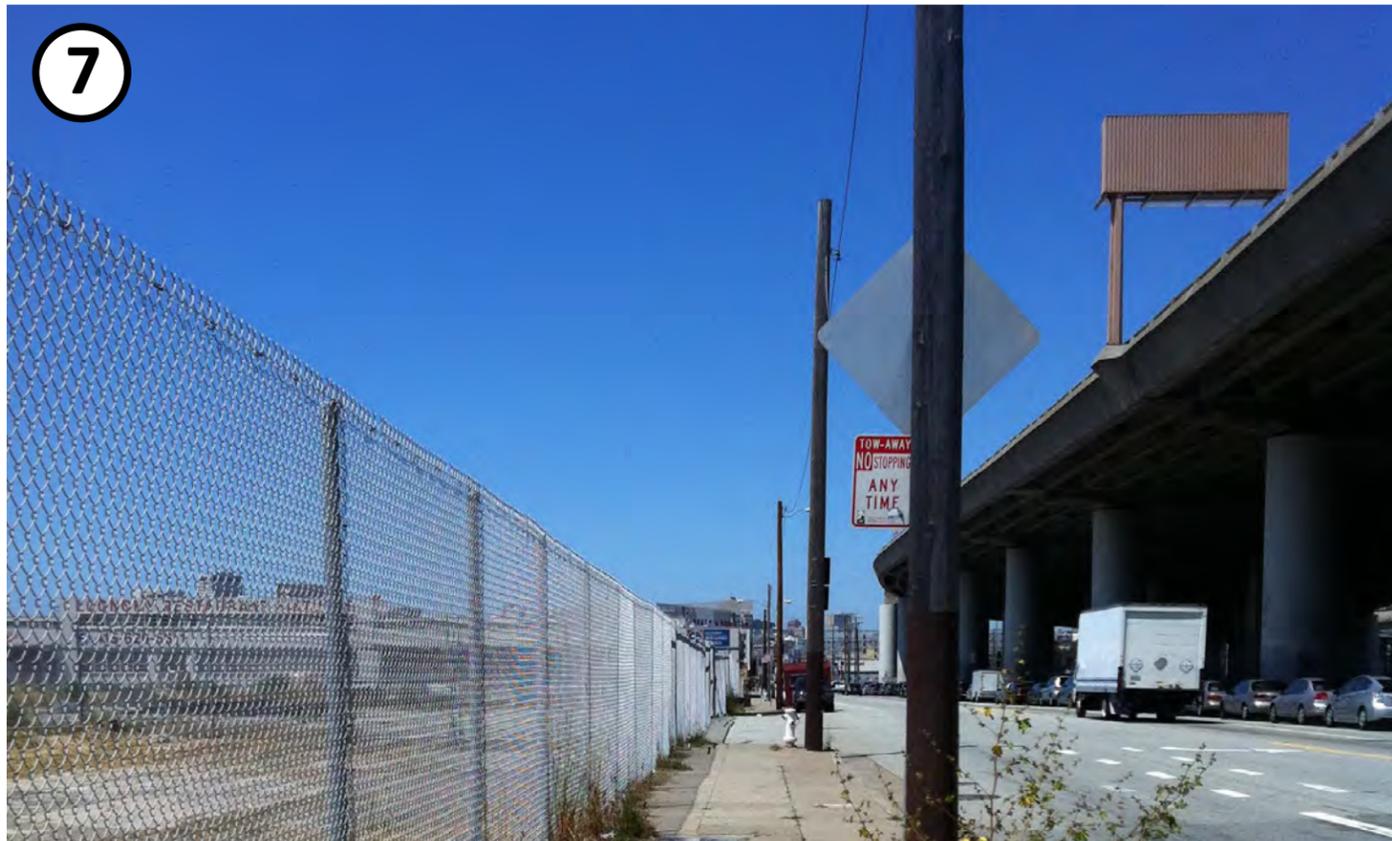
16TH STREET



# EXISTING SITE & SURROUNDING CONTEXT



# EXISTING SITE & SURROUNDING CONTEXT



# ILLUSTRATIVE CONTEXT PLAN



# **Attachment 4**

## Design and Images of the Proposed Daggett Park

# DESIGN DEVELOPMENT PLAN



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



\*Note: The site is essentially flat and all paths within the Park will be accessible.

# AERIAL FROM 16TH STREET



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

**CMG**  
ARCHSTONE  
CONGER MOSS GULLARD  
500 THIRD STREET SUITE 215  
SAN FRANCISCO, CA 94107  
TELEPHONE: 415/495-3070  
FACSIMILE: 415/495-3080

# VIEW FROM 16TH STREET



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

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# VIEW FROM DRIVE AISLE



# VIEW FROM TILTED LAWN

