



# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary

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

HEARING DATE: JULY 9, 2015

*Date:* July 2, 2015  
*Case No.:* 2003.0527U  
*Project Address:* 1000 16<sup>th</sup> Street/"Daggett Park"  
*Plan Area:* Showplace Square/Potrero Hill  
*Project Sponsor:* Archstone Daggett Place, LLC  
San Francisco, CA  
*Staff Contact:* Steve Wertheim (415-558-6612)  
[steve.wertheim@sfgov.org](mailto:steve.wertheim@sfgov.org)  
*Reviewed by:* Adam Varat, Senior Planner  
[adam.varat@sfgov.org](mailto:adam.varat@sfgov.org), 415-558-6405  
*Recommendation:* **Approval of the Fee Waiver**

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

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

## SUMMARY

The City and Project Sponsors are proposing to enter into an Updated and Amended In-Kind Agreement for the project at 1000 16th Street. The original In-Kind Agreement was approved by the Planning Commission in Motion 18752 on November 29, 2012, including a waiver for \$1,880,000 million of their Eastern Neighborhoods Infrastructure Impact Fees for the in-kind provision of a 0.9-acre public park along the Daggett Street right-of-way. The Updated and Amended In-Kind Agreement seeks to update circumstances since the original In-Kind Agreement (such as the transfer of the land from the Port to the Real Estate Division) and increase the fee waiver by \$489,144, to a total of \$2,369,144. Additionally, the Project Sponsor is proposing to increase their gift of improvements to the City by \$525,942, to a total of \$1,567,819. This gift would be addressed via a separate and subsequent legal agreement with the Board of Supervisors (as part of proposed ordinance BOS 150644).

## BACKGROUND

A primary goal of 2008's [Eastern Neighborhoods Plan](#) is to create complete mixed-use neighborhoods featuring 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".

In 2010, the predecessor to the project sponsor sought an In-Kind Agreement with the City to create a 0.9-acre public park along the right-of-way for Daggett Street, a “paper” street that has never functioned as a city street (for a map, see Attachment 3). This 2010 “original” In-Kind Agreement sought a \$1,880,000 reduction in the Eastern Neighborhoods Infrastructure Impact Fees due for the project sponsor’s 453-unit development at 1000 16<sup>th</sup> Street (located at the triangle created by 16<sup>th</sup>, 7<sup>th</sup>, and Hubbell Streets). The development project, Case 2003.0527, was entitled by the Planning Commission on July 21, 2011 in [Motion No. 18419](#).

The original In-Kind Agreement was supported unanimously by the Eastern Neighborhoods Citizens Advisory Committee in [Motion 2011-6-1](#) on July 18, 2011. The Planning Department unanimously voted to approve the original In-Kind Agreement in Motion 18752 on November 29, 2012.

Much has happened since the approval of the In-Kind Agreement to bring the park closer to implementation – and to create the need to update some of the information in the original In-Kind Agreement. These include:

- The City negotiated transfer of the land from the Port of San Francisco, and removal of the State’s “Public Trust” requirements (which precludes the creation of neighborhood-serving parks);
- The City received a grant from the State’s Housing-Related Parks Program to cover \$1,600,000 of the \$1,675,000 transfer cost;
- The remaining \$75,000 transfer cost was included in the City’s FY 2015-16 City Budget.
- The City created the Plaza’s Program, ensuring on-going stewardship for plazas and parks that are publicly owned but are not managed by the Recreation and Parks Department;
- Legislation was introduced to complete the myriad legal steps necessary to realize the park, including acquiring the land, vacating the street, rezoning the street to a park, granting an encroachment to the sponsor to maintain the park, and accepting the gift from the project sponsor (BOS 150586 and BOS 150644); and
- An increase to the cost of building the park, as discussed below.

## PROPOSED UPDATED AND AMENDED IN-KIND AGREEMENT

To reflect the changes that have occurred since the approval of the original In-Kind Agreement, the City and the Project Sponsor are seeking to enter an “Updated and Amended” In-Kind Agreement. The In-Kind Agreement would cover the same improvements as the original In-Kind Agreement – primarily, the proposed Daggett Park, which would be 0.88 acres in size. 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.
- 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 shared street is a requirement of the development project, and is not included in the costs for the in-kind agreement.

Between the approval of the original In-Kind Agreement and this time, the value of the proposed improvements has risen from \$3,724,407 to \$4,899,999 – an increase of \$1,175,592. The source of this increase is shown in Table 1, below.

**Table 1 – Daggett Park Cost Comparison, 2012 v. 2015**

	2012	2015	CHANGE	% INCREASE
Design Costs	\$ 294,500	\$ 294,500	\$ -	
Public Art	\$ 300,000	\$ 300,000	\$ -	
Offsite work	\$ 142,454	\$ 296,510	\$ 154,056	108%
Structures and Finishes	\$ 341,730	\$ 680,253	\$ 338,823	99%
Underground Utilities and Grading of Dirt	\$ 1,384,239	\$ 1,713,218	\$ 328,979	24%
Landscape, Hardscape and Furniture	\$ 960,178	\$ 1,210,159	\$ 249,981	26%
Fees, bonds, permits, tax, insurance, overhead	\$ 301,306	\$ 405,059	\$ 103,753	34%
TOTAL	\$ 3,724,407	\$ 4,899,999	\$ 1,175,592	32%

Planning Department staff has been working with the Project Sponsor to develop a proposal as to which of the additional costs would be sought as part of this Updated and Amended In-Kind Agreement, and which will be added to the project sponsor’s gift to the City. Table 2 contains a further breakdown of the cost increase, to help identify its source.

**Table 2 – Cost Increase Detail**

	Increase in Construction Costs	Prevailing Wage/ Local Hire	More Precise Drawings	Revised Paving Requirements	Percent of Other Costs
Design Costs	\$ -	\$ -	\$ -	\$ -	\$ -
Public Art	\$ -	\$ -	\$ -	\$ -	\$ -
Offsite work	\$ 28,063	\$ 30,811	\$ -	\$ 45,925	\$ -
Structures and Finishes	\$ 67,321	\$ 56,677	\$ -	\$ -	\$ -
Underground Utilities and Grading of Dirt	\$ 272,695	\$ 195,710	\$ 29,400	\$ -	\$ -
Landscape, Hardscape and Furniture	\$ 189,155	\$ 20,019	\$ -	\$ -	\$ -
Fees, bonds, permits, tax, insurance, overhead	\$ -	\$ -	\$ -	\$ -	\$ 103,753
<b>TOTAL</b>	<b>\$ 557,234</b>	<b>\$ 302,218</b>	<b>\$ 29,400</b>	<b>\$ 45,925</b>	<b>\$103,753</b>

Below is an analysis of how these new costs are proposed to be divided between this Updated and Amended In-Kind waiver and the Project Sponsor's contribution.

#### Increase in Construction Costs

The project is two years behind the anticipated schedule, which has led to an increase in construction costs. The City and sponsor have agreed that the preponderance of the \$557,234 increase is the responsibility of the Project Sponsor. However, complications in the process of acquiring the land from the Port – and thus enabling the sponsor to start work on the park – delayed by eight months the ability to prepare the site, in terms of undergrounding utilities and grading the dirt. The City feels that it is supportable to ask as part of this Updated and Amended In-Kind Agreement for the \$92,744 cost of undergrounding utilities and grading the dirt, commensurate with the 33% delay in this task (eight months out of two years).

#### Prevailing Wage/Local Hire

As stated above, between the completion of original In-Kind Agreement and now, the City Attorney's office made a decision that all improvements associated with In-Kind Agreements would be subject to prevailing wage and local hire requirements. These requirements add considerable cost to projects – especially in the less skilled professions.<sup>1</sup> As shown in Table 2, the project sponsor determined that the increased labor costs due to this decision were \$302,218. Planning Department staff reviewed Bureau of Labor Statistics data for the San Francisco metropolitan area to determine how much of that increase was due to wage inflation over that period. This analysis revealed that median wages in the construction

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<sup>1</sup> Prevailing wage information for San Francisco county for current and previous years is available from the California Department of Industrial Relations website: <http://www.dir.ca.gov/OPRL/PWD/>

sector increased 3.5% over that period, from \$28.05 to \$29.07.<sup>2</sup> Based on this analysis, the City and Project Sponsor have agreed to reduce the estimated cost of the prevailing wage and local hire requirements by 3.5%, to \$291,640. The City feels that it is supportable to ask for this amount as part of this Updated and Amended In-Kind Agreement.

#### Updated Costs based on Detailed Design

The original cost estimate for the park was based on conceptual drawings. At the time of the original In-Kind Agreement, the Project Sponsor provided two sets of cost estimates from local contracting firms, which then were vetted by staff at the Department of Public Works. In preparation for constructing the park, more precise construction drawings were developed by the Project Sponsor. These drawings determined that the conceptual drawings underestimated the cost of the new park by \$29,400. The City feels that it is supportable to ask for half of this cost, or \$14,700, to be part of the Updated and Amended In-Kind Agreement.

#### Revised Paving Requirement

The creation of the new park requires re-aligning a sewer line that runs under the current right-of-way so that it is accessible in the future (i.e., under the new single lane road being constructed next to the park). This relocation requires connecting to the existing lines on 16<sup>th</sup> and 7<sup>th</sup> Streets. Since the original cost estimate, the Department of Public Works has issued new guidelines that require project sponsors to repave to the midpoint of the street when such improvements are made, rather than just patching the street. The Project Sponsor determined that the additional cost of the revised paving requirement is \$45,925. The City feels that it is supportable to ask for this amount as part of the Updated and Amended In-Kind Agreement.

#### "Below the Line" Costs

Each of the costs above has associated fees, bonds, permits, taxes, insurance, and overhead. This adds about 8.5% to the total cost, as well as 8.5% of the new costs. The City feels that it is supportable to ask for the Updated and Amended In-Kind Agreement to include the proportion of these costs associated with the items above that were also proposed to be included as part of the Updated and Amended In-Kind Agreement. This works out to about 48% towards the In-Kind, and 52% towards the gift.

The results of the analysis above are contained below in Table 3.

**Table 3 – Summary of Proposed Additions to the In-Kind Waiver**

	Proposed Additions
Increase in Construction Costs	\$ 92,744

<sup>2</sup> For more information, 2011: [http://www.bls.gov/oes/2011/may/oes\\_41860.htm#47-00002014](http://www.bls.gov/oes/2011/may/oes_41860.htm#47-00002014) and 2014: [http://www.bls.gov/oes/current/oes\\_41860.htm#47-0000](http://www.bls.gov/oes/current/oes_41860.htm#47-0000)

Prevailing Wage	\$292,605
More Precise Drawings	\$ 14,700
Revised Paving Requirements	\$ 45,925
"Below the Line" Costs	\$ 43,170
<b>TOTAL</b>	<b>\$489,144</b>

## ENVIRONMENTAL REVIEW

California Environmental Quality Act ("CEQA") clearance under Planning Department Case No. 2003.0527E Daggett Place Final Environmental Impact Report. No further environmental review necessary.

## 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 \$2,369,144 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 recommended through a number of processes, including:

- Support by the 2009 Showplace Square Open Space Plan.
- Support by a community meeting held in early 2011.
- Unanimous support for the original In-Kind Agreement by the Eastern Neighborhoods Citizens Advisory Committee on July 18, 2011 in [Motion 2011-6-1](#).
- Unanimous support for the original In-Kind Agreement by the Planning Commission on November 29, 2012 in Resolution 18752.
- Unanimous support for the Updated and Amended In-Kind Agreement by the Eastern Neighborhoods Citizens Advisory Committee on June 15, 2015 in Motion 20150605.

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 Updated and Amended In-Kind Agreement.

**Attachments:**

- A. Draft Planning Commission Motion
- B. Draft Updated and Amended In-Kind Agreement for 1000 16<sup>th</sup> Street (including updated cost estimates)
- C. Location, Design, and Images of the Proposed Daggett Park

**Attachment A –  
Draft Planning Commission Motion**





# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Draft Motion

HEARING DATE JULY 9, 2015

*Project Name:* **1000 16<sup>th</sup> Street (Daggett Park) In-Kind Agreement**  
*Case No.:* 2003.0527U  
*Project Address:* **1000 16<sup>th</sup> Street/"Daggett Park"**  
*Plan Area:* Showplace Square/Potrero Hill  
*Project Sponsor:* Archstone Daggett Place, LLC  
San Francisco, CA  
*Staff Contact:* Steve Wertheim (415-558-6612)  
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1650 Mission St.  
Suite 400  
San Francisco,  
CA 94103-2479

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Fax:  
**415.558.6409**

Planning  
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**APPROVING AN IMPACT FEE WAIVER FOR 1000 16<sup>th</sup> STREET IN THE AMOUNT OF \$2,369,144 TO CONTRIBUTE TO THE CONSTRUCTION OF A PARK ALONG THE DAGGETT STREET RIGHT-OF-WAY BASED ON THE COMPLETION OF AN UPDATED AND AMENDED 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's predecessor, Archstone, 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.
- On November 29, 2012, in Motion No. 18752, the Planning Commission voted unanimously to approve the "original" In-Kind Agreement and fee waiver for \$1,880,000 for the construction of the new park.
- Much has happened since the approval of the In-Kind Agreement to bring the park closer to implementation – and to create the need to update some of the information in the original In-Kind Agreement. These include:
  - The City negotiated transfer of the land from the Port of San Francisco, and removal of the State's "Public Trust" requirements (which precludes the creation of neighborhood-serving parks);
  - The City received a grant from the State's Housing-Related Parks Program to cover \$1,600,000 of the \$1,675,000 transfer cost;
  - The remaining \$75,000 transfer cost was included in the City's FY 2015-16 City Budget.
  - The City created the Plaza's Program, ensuring on-going stewardship for plazas and parks that are publicly owned but are not managed by the Recreation and Parks Department;
  - Legislation was introduced to complete the myriad legal steps necessary to realize the park, including acquiring the land, vacating the street, rezoning the street to a park, granting an encroachment to the sponsor to maintain the park, and accepting the gift from the project sponsor (BOS 150586 and BOS 150644); and
  - An increase to the cost of building the park.
- Based on these changes, the Project Sponsor, Archstone Daggett Place, LLC, and the City sought to create an "Updated and Amended" In-Kind Agreement for the project, including an impact fee waiver for \$2,369,144 for construction of the new park.

**MOVED**, that the Commission hereby authorizes the Eastern Neighborhoods Impact Fee Waiver for 1000 16<sup>th</sup> Street in the amount of \$2,369,144.

## FINDINGS

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

1. The above recitals are accurate and constitute findings of this Commission.
2. The proposed In-Kind Agreement is consistent with the Planning Code Section 423.3.
3. 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 \$2,369,144.
4. 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.
5. 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 original In-Kind Agreement on July 18, 2011 in Motion 2011-6-1 and the Updated and Amended In-Kind Agreement on June 15, 2015 in Motion 20150605.
  - 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 2015 cost estimates provided by the Project Sponsor.
6. **General Plan Compliance.** The proposed Ordinance is consistent with the following Objectives and Policies of the General Plan

## RECREATION AND OPEN SPACE ELEMENT

### OBJECTIVE 2

INCREASE RECREATION AND OPEN SPACE TO MEET THE LONG-TERM NEEDS OF THE CITY AND BAY REGION

#### Policy 2.1

Prioritize acquisition of open space in high needs areas.

*Discussion: The project would create new open space in an area identified by the Eastern Neighborhoods Plan as an area of high need.*

## SHOWPLACE SQUARE/POTRERO HILL AREA PLAN

### OBJECTIVE 5.1

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

#### Policy 5.1

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

*Discussion: The project would create a new public park meeting the needs of the residents, workers, and visitors to Showplace Square and Potrero Hill.*

#### Policy 5.2

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

*Discussion: The project is an example of new residential development contributing directly to the creation of publicly accessible open space.*

7. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

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

*The proposed Ordinance would likely benefit neighborhood-serving retail, as the proposed Daggett Park would be a place for the community to congregate, and therefore may improve opportunities for resident employment in and ownership of neighborhood-serving retail.*

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

*The proposed Ordinance would improve neighborhood character by providing a new public park.*

3. That the City's supply of affordable housing be preserved and enhanced;

*The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.*

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

*The proposed Ordinance will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.*

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

*The proposed Ordinance would not adversely affect our industrial and service sectors or future opportunities for resident employment and ownership in these sectors.*

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

*The proposed Ordinance would not have an impact on City's preparedness against injury and loss of life in an earthquake.*

7. That the landmarks and historic buildings be preserved;

*The proposed Ordinance would not adversely affect the City's landmarks and historic buildings.*

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

*The proposed Ordinance would help facilitate the creation of a new City park, and would not have an impact on other parks and open spaces and their access to sunlight and vistas.*

## 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 July 9<sup>th</sup>, 2015.

Jonas Ionin  
Acting Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED:

**Attachment B –  
Draft Updated and Amended In-Kind  
Agreement for 1000 16th Street  
(including updated cost estimates)**

**AMENDED AND RESTATED IN-KIND AGREEMENT  
(PER ARTICLE 4 OF THE PLANNING CODE)**

**THIS AMENDED AND RESTATED IN-KIND AGREEMENT (“Agreement”)** is entered into as of \_\_\_\_\_, 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 a development project approved for 1000 16th Street, San Francisco, California 94107, San Francisco, California (the **“Project”**).

**RECITALS**

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

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

C. The property described in **Exhibit A** attached hereto 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) (the **“Land”**) 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 project on the Land that is subject to the Eastern Neighborhoods Infrastructure Impact Fee (the **“Fee”**).

D. Pursuant to the provisions of Article 4 of the Planning Code, the Project Sponsor has requested that the City enter into an In-Kind Agreement associated with the Project in order to reduce its Fee obligation under Section 423.3 of the Planning Code. The in-kind improvements consist of a 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,” as more particularly described in **Exhibit B** (**“In-Kind Improvements”**).

E. The cost of the In-Kind Improvements exceeds the amount of the Fee waiver that would be made by the City pursuant to this Agreement, and Project Sponsor has offered to make a gift of such excess cost. Project Sponsor has also offered to assume full physical maintenance responsibility for the In-Kind Improvements and liability relating to the construction and maintenance of the In-Kind Improvements in perpetuity, while the City would retain all right and responsibility for the operation of Daggett Park. The City’s Office of Economic and Workforce Development and the City’s Director of Property intend to request the City’s Board of

Supervisors to consider placing Daggett Park in the San Francisco Plaza Program under Chapter 94 of the San Francisco Administrative Code.

F. The In-Kind Improvements meet the following identified community need and are not a physical improvement or provision of space otherwise required by the Project entitlements or other City Code: 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.

G. On July 18, 2011, in Motion 2011-6-1, the Eastern Neighborhoods Citizens Advisory Committee passed a resolution supporting the proposed In-Kind Improvements in the amount of \$1,880,000.

H. On November 29, 2012 (Motion No. 18752), the Planning Commission approved the Fee waiver and authorized the Director of Planning to enter into an In-Kind Agreement and the parties executed an In-Kind Agreement effective on that date (the “**Original In-Kind Agreement**”). The Original In-Kind Agreement provided for the Developer to terminate the agreement in the event the Port of San Francisco (“**Port**”) did not consent to the In-Kind Improvements prior to March 1, 2013. The Developer elected not to terminate the agreement, despite the lack of consent from the Port prior to March 1, 2013.

I. On December 16, 2014, the Port Commission approved a jurisdictional transfer of the Daggett Street right-of-way to the City. On December 17, 2014, the California State Lands Commission affirmed the Port’s transfer of the Daggett Street right-of-way to the City free of the State’s public trust. City staff plans to submit legislation for consideration by the City’s Board of Supervisors to authorize the transfer of the Daggett Street right-of-way from the Port and vacating a portion of its right-of-way.

J. Since the approval of the Original In-Kind Agreement, the estimated cost for the In-Kind Improvements has increased substantially, due to the application of wage and hiring requirements (including “Prevailing Wage” and “Local Hire”), because of delays in commencing construction (due to the complicated inter-governmental process for City’s acquisition of the Daggett Street right-of-way free of the public trust), and because of the general rise in hard construction costs in the Bay Area.

K. The parties wish to now amend and restate the Original In-Kind Agreement to reflect the changes made since its approval in November, 2012.

L. The City and the Project Sponsor are willing to enter into this 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**

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

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

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

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

**“Development impact fee”** or **“Fee”** shall mean the fee charged to development projects under Article 4, Section 423.3 of the Planning Code.

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

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

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

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

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

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

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

**“Maintenance Declaration”** shall have the meaning set forth in Section 4.5 below.

**“Maintenance License”** shall have the meaning set forth in Section 4.5 below.

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

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

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

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

**“Plans”** shall have the meaning set forth in Section 4.2 below.

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

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

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

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

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

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

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

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

2.2 Project Sponsor: (1) is a limited liability company duly organized and existing under the laws of the State of 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 Land on which the Project is located.

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

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

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

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

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

3.1 The Project Fee has been calculated in accordance with Section 423.3 of the Planning Code. Based on the development project entitled by the First Construction Document, the Project Fee was determined to be \$4,431,216. (For the fee calculations, see Exhibit C.)

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 \$2,369,144 (the **"In-Kind Value"**); provided, however, if upon final completion the actual construction and development costs to the Project Sponsor of providing the In-Kind Improvements are lower than this amount, the provisions of Section 5.2 shall apply. Documentation establishing the estimated third-party eligible costs of providing the In-Kind Improvements in compliance with applicable City standards is attached hereto as Exhibit D (the **"Cost Documentation"**).

3.3 Pursuant to Section 423.3 of the Planning Code and Section 107A.13.3 of the San Francisco Building Code, the Project Sponsor shall pay to the Development Fee Collection Unit at DBI \$2,062,072 (the **"Remainder Amount"**), which is an amount equal to the Project Fee (see Exhibit C) minus the In-Kind Value (see Exhibit D), prior to issuance of the Project's First Certificate of Occupancy. 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, DPW 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 all permits and approvals from other affected departments that are necessary to implement this proposal, including the appropriate DPW permit required for Project Sponsor to use the Daggett Street right of way to construct the In-Kind Improvements. Review and approval of the plans and specifications of the In-Kind Improvements by the City's Planning Department 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 for the In-Kind Improvements and documentation of

any material changes or deviations therefrom that may occur during construction of the In-Kind Improvements.

4.3 **Construction.** All construction with respect to the In-Kind Improvements shall be accomplished prior to the first certificate of occupancy for the Project, including any temporary certificate of occupancy. The In-Kind Improvements shall be installed 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 the In-Kind Improvement work by DBI, DPW and all other applicable City departments or agencies during construction using applicable City procedures in accordance with the City's Building Code and other applicable law. Upon final completion of the work 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. The City departments or agencies shall inspect the site to confirm compliance with applicable City standards for the work. 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 site 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. If the Director of Planning approves the In-Kind Improvements as satisfactory, the Project Sponsor shall promptly deliver to the Director of Planning an original copy of the Declaration of Maintenance Obligations in the form attached to this Agreement as **Exhibit E** (the "**Maintenance Declaration**"), duly executed by Project Sponsor and notarized, and two original copies of the Maintenance License Agreement in the form attached to this Agreement as **Exhibit F** (the "**Maintenance License**"), duly executed by Project Sponsor

## **ARTICLE 5**

### **SATISFACTION OF OBLIGATIONS**

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

providing the In-Kind Improvements in the form of third-party checks and invoices and its or its general contractor's standard general conditions allocation (the "**Payment Documentation**"). The Payment Documentation shall include information necessary and customary in the construction industry to verify the Project Sponsor's costs and payments. The cost of providing the In-Kind Improvements shall not be significantly higher than the average capital costs for the City to provide comparable improvements, based on current value of recently completed projects, as selected by the City in its sole discretion.

5.2 **Payment Analysis.** The City shall provide the Project Sponsor with a written report of its review of the Payment Documentation ("**Payment Analysis**") within ten (10) business days of its receipt thereof, which review shall be conducted for the exclusive purpose of determining whether the Payment Documentation substantially and reasonably documents that the cost of providing the In-Kind Improvements shall not be significantly higher than the average capital costs for the City to provide comparable improvements, based on current value of recently completed projects, as selected by the City in its sole discretion.

5.2.1 If the Payment Analysis reasonably substantiates that the Project Sponsor made payments in respect of the In-Kind Improvements in an amount less than the In-Kind Value, the Project Sponsor shall, within sixty (60) days of the date of the Payment Analysis, pay the City an amount equal to the difference between the In-Kind Value and the actual amount paid in respect of the In-Kind Improvements by the Project Sponsor. If the Payment Analysis reasonably substantiates that the Project Sponsor made payments in respect of the In-Kind Improvements in an amount equal to or greater than the In-Kind Value, the Project Sponsor shall not be entitled to a refund of such overpayments and the City shall not be entitled to any additional funds related to the In-Kind Value.

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

5.3 **Satisfaction of Obligations.** Upon agreement of the Payment Analysis and completion of the In-Kind improvements, 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. The Project Sponsor shall not receive final credit for the In-Kind Improvements until the Notice of

Satisfaction is delivered, the Maintenance Declaration required by Article 8 is recorded, 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. The City may, in its sole discretion, waive the requirement for its issuance of the Notice of Satisfaction described in this Section 5.3 by providing written notice to the Project Sponsor.

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 (or waived the requirement for the Notice of Satisfaction) under Section 5.3 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 uncompleted In-Kind Improvements (the **“Security”**) to be held by the City until issuance of the Notice of Satisfaction, at which date it shall be returned to the Project Sponsor. If the Project Sponsor is required to post a bond for the Project with the Department of Public Works under the Subdivision Map Act or as a street improvement bond and that security covers the In-Kind Improvements to be provided under this Agreement, the Subdivision Map Act bond or street improvement bond may be substituted for the Security required by this Section 5.4 and the Project Sponsor is not required to provide additional Security for the In-Kind Improvements.

5.5 Notwithstanding anything in this Agreement to the contrary:

5.5.1 On and after the Effective Date, for so long as this Agreement remains in effect and the Project Sponsor is not in breach of this Agreement, the City’s Planning Department shall not withhold the issuance of any additional building or other permits necessary for the Project solely 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’s Planning Department 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) before issuance of the first certificate of occupancy for the Project, including any temporary certificate of occupancy.

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

5.5.4 If the In-Kind Improvements for any reason prove to be insufficient to provide payment for sums due from the Project Sponsor as and when required, and the Project Sponsor fails to pay such amount within thirty (30) days following notice by the City, DBI shall institute lien proceedings to recover the amount of the Project 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.

## **ARTICLE 6 MAINTENANCE AND LIABILITY**

6.1 **Maintenance and Liability Responsibility.** In consideration for the Project Fee waiver pursuant to this Agreement, Project Sponsor, on behalf of itself and all future fee owners of the Land, has agreed to assume full maintenance responsibility for the In-Kind Improvements contemplated in this Agreement and liability relating to construction and maintenance of the In-Kind Improvements in perpetuity after the Date of Satisfaction and the shared public right of way improvements that Project Sponsor is constructing on the Daggett Street right of way pursuant to Street Improvement Permit No. \_\_\_\_\_ issued to Project Sponsor by the City's DPW and a major street encroachment permit that Project Sponsor plans to obtain from City's DPW for such construction (the "**Right of Way Improvements**"). Project Sponsor acknowledges that the City shall bear no maintenance responsibility or liability for the construction or maintenance of such In-Kind Improvements or the Right of Way 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 maintenance responsibility and liability relating to construction and maintenance 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.

**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 or the Right of Way Improvements. Any such hiring is subject to the review and consent of the City departments with primary jurisdiction over the In-Kind Improvements and the Right of Way Improvements in consultation with the Planning Director. Such City review shall be timely and consent to the hiring shall not be unreasonably withheld; provided, however, that the City may condition such hiring in a manner that it deems reasonable. Notwithstanding Project Sponsor's use of third parties to perform such maintenance obligations, Project Sponsor shall have full responsibility at all times to perform such maintenance obligations to the standards required in the Maintenance Declaration and any agreements that Project Sponsor has with City for the entry on the Daggett Street right of way for the performance of such obligations.

## **ARTICLE 7 NOTICES**

Except as provided in Section 4.7, or as may otherwise be mutually agreed upon by the parties in writing, all notices given under this Agreement shall be effective only if in writing and given by delivering the notice in person or by sending it first-class mail or certified mail with a return receipt requested or by overnight courier, return receipt requested, addressed as follows:



CITY:

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

with a copy to:

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

and

City and County of San Francisco  
Real Estate Division  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102  
Attn: Director of Property  
Re: Daggett Park

PROJECT SPONSOR:

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

with a copy to:

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

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

**ARTICLE 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 agree to record a Memorandum of Amended Agreement in the form attached hereto as **Exhibit G** (the "**Memorandum of Amended Agreement**"). On the Date of Satisfaction or if this Agreement is terminated pursuant to Section 9.4, this Agreement shall terminate and the City shall execute and deliver to the Project Sponsor a release of the Memorandum of Amended Agreement, which the Project Sponsor may record.

## **ARTICLE 9 ADDITIONAL TERMS**

9.1 This Agreement contemplates the acquisition of In-Kind Improvements as authorized under Article 4 of the Planning Code and is not intended to be a public works contract; provided, however, the Project Sponsor agrees to pay prevailing wages as set forth in Section 10.1 and otherwise comply with the requirements of applicable State law as to the In-Kind Improvements work only. By entering this Agreement, the Project Sponsor is not obligated to pay prevailing wages for the construction of the Project.

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

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

9.4 This Agreement may be effectively amended, changed, modified, altered or terminated only by written instrument executed by the parties hereto except that the Project Sponsor may terminate this Agreement by written notice to the City at any time prior to issuance of the Project's First Construction Document, in which event the Project Sponsor shall have no obligations or liabilities under this Agreement and the City would have no obligation to issue the First Construction Document unless and until this Agreement is reinstated, another agreement is executed by the parties, or the Project Sponsor's obligations under Article 4 of the Planning Code are satisfied in another manner. Any material amendment shall require the approval of the City's Planning Commission, in its sole discretion.

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

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

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

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

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

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

## **ARTICLE 10**

### **CITY CONTRACTING PROVISIONS**

10.1 The Project Sponsor agrees that any person performing labor in the construction of the In-Kind Improvements shall be paid not less than the highest prevailing rate of wages consistent with the requirements of Section 6.22(E) of the San Francisco Administrative Code,

and shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco County. The Project Sponsor shall include, in any contract for construction of such In-Kind Improvements, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. The Project Sponsor shall require any contractor to provide, and shall deliver to the City upon request, certified payroll reports with respect to all persons performing labor in the construction of the In-Kind Improvements. The Project Sponsor shall not be obligated to pay prevailing rates of wage to any person performing labor in the construction of the Project.

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

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

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

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

are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

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

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

10.8 The In-Kind Improvements are subject to the San Francisco Local Hiring Policy for Construction set forth in San Francisco Administrative Code Section 6.22(G). The Project Sponsor shall comply with the requirements of Section 6.22(G) and execute a Local Hire Agreement with City's Office of Economic and Workforce Development ("OEWD"), is attached as **Exhibit H** to this Agreement. The Project Sponsor's failure to comply with its obligations under Section 6.22(G) and the requirements of 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 Section 6.22(G) and the Local Hire Agreement, including but not limited to penalties.

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

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

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

ARCHSTONE DAGGETT PLACE LLC,  
a Delaware limited liability company

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

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

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

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

Name:  
Title:

APPROVED:

DENNIS J. HERRERA  
City Attorney

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

APPROVED AS TO FORM:

FARELLA BRAUN & MARTEL, LLP

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

ACKNOWLEDGED:

Department of Building Inspection

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

ACKNOWLEDGED:

Department of Public Works

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

## **Exhibit A**

### **The 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 A:**

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

#### **PARCEL B:**

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

#### **PARCEL C:**

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



PARCEL D:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHWESTERLY LINE OF 7TH STREET AND THE SOUTHEASTERLY LINE OF DAGGETT STREET; RUNNING THENCE SOUTHEASTERLY, ALONG SAID LINE OF 7TH STREET, 170 FEET, 9- $\frac{3}{4}$  INCHES TO THE NORTHERLY LINE OF 16TH STREET; THENCE WESTERLY, ALONG SAID NORTHERLY LINE OF 16TH STREET, 262 FEET, 10- $\frac{1}{2}$  INCHES TO THE SOUTHEASTERLY LINE OF DAGGETT STREET; THENCE NORTHEASTERLY, ALONG SAID SOUTHEASTERLY LINE OF DAGGETT STREET, 199 FEET, 9- $\frac{7}{8}$  INCHES TO THE POINT OF BEGINNING. BEING SOUTH BEACH BLOCK NO. 35- $\frac{1}{2}$ .

Assessor's Lot 001; Block 3833

Assessor's Lot 002; Block 3833

Assessor's Lot 003; Block 3833

Assessor's Lot 001; Block 3834

## **Exhibit B**

### **In-Kind Improvements Description**

The proposed In-Kind Improvements include a 0.9-acre public park. The park would have a number of amenities and design features, 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 shared street is a requirement of the development project, and is not included in the costs for the in-kind agreement.

An image of the improvements is contained on the next page.

# 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 The Park Counter & Stools (Concrete & Steel)
- ⑲ C.I.P. Integral Color Conc. w/ Water Washed Finish or Unit Pavers, TBD
- ⑳ San Francisco Standard Park Entry Sign
- ㉑ 30" Conc. Wall w/42" Stainless Steel Picket Fence & Wood Bench
- ㉒ C.I.P. Integral Color Conc. w/Sandblast Finish
- ㉓ Driveway Curb Cut

㉔ Built in Bench w/36" Concrete Wall

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

## Exhibit C

### Calculation of Impact Fees

Type of Space	Amount of Space	Fee Per Square Foot	Total Fee
Residential	462,204 square feet	\$9.25	\$3,933,356
Non-residential	13,480 square feet	\$11.56	\$155,429
TOTAL			\$4,431,216

## Exhibit D

### Cost Documentation

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 in 2012 that such improvements would cost \$802,350. The costs of these required improvements in 2015 are estimated to total \$963,036, an increase of 20%.

Table 1 – Value of Required Improvements (2015 estimate)

	AMOUNT	UNIT	UNIT COST	TOTAL COST
Site remediation	1,048	Tons	\$174.00	\$182,352
Site engineering	43,400	Square Feet	\$0.48	\$20,832
Earthwork	43,400	Square Feet	\$2.40	\$104,160
Hydraulic engineering				\$90,000
Curb & gutter	654	Linear Feet	\$48.00	\$31,392
City Sidewalk	7,800	Square Feet	\$9.60	\$74,880
Ramps	8	Each	\$3,000.00	\$24,000
Paving material	34,100	Square Feet	\$4.80	\$163,680
Street trees	28	Each	\$3,918.00	\$109,704
Curbside planting	1,500	Square Feet	\$12.00	\$18,000
Traffic Striping	310	Linear Feet	3.60	\$1,116
Traffic Routing			18,000.00	\$18,000
Curbside Irrigation	1,500	Square Feet	12.00	\$18,000
Lighting	7	Each	9,600.00	\$67,200
<b>Subtotal</b>				<b>\$923,316</b>
City tax			0.12%	\$1,108
General Contractor insurance			0.35%	\$3,235
Fee			3.50%	\$32,468

Bonds				\$2,909
<b>Total</b>				<b>\$963,036</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. 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 \$4,899,999.

Table 2 – Cost of Daggett Park Improvements

Design Costs	\$294,500
Public Art	\$300,000
Offsite work	\$296,510
Structures and Finishes	\$680,253
Underground Utilities and Grading of Dirt	\$1,713,218
Landscape, Hardscape and Furniture	\$1,210,159
Fees, bonds, permits, tax, insurance, overhead	\$405,059
<b>TOTAL</b>	<b>\$4,899,999</b>

### **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 \$963,036 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 \$2,369,144 in improvements in return for a reduction in its Eastern Neighborhoods Infrastructure Impact Fee of the same amount. Combined, that means that this In-Kind Agreement would enable \$3,332,180 towards the creation of a park along the Daggett Street right-of-way.

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

The cost of the proposed improvements to the Daggett Street right-of-way (\$4,899,999) exceed the Project Sponsors required contribution (\$963,036) and requested fee waiver (\$2,369,144) by \$1,567,819. The Project Sponsor is proposing to gift the City the value of these improvements, and to make a gift of maintaining Daggett Park in perpetuity. 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.

**Exhibit E**

**Form of Maintenance Declaration**

To Be Attached

**Exhibit F**

**Form of Maintenance License**

To Be Attached



## **Exhibit G**

### **Memorandum of Amended Agreement**

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

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

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(Free Recording Requested Pursuant to  
Government Code Section 27383)

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

This Memorandum of Amended In-Kind Agreement (this “Memorandum”), is dated as of \_\_\_\_\_, 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, San Francisco, California is owned by Project Sponsor.

2. Under San Francisco Planning Code Section 423.3 (“Section”), the Project Sponsor must pay to the City a development impact fee (the “Fee”) on or before the issuance of the First Construction Document for the Land; provided, however, the City can reduce such payment under Section 423.3(d) if the Project Sponsor enters into an agreement with the City to provide in-kind improvements.

3. In accordance with Section 423.3(d), the City and the Project Sponsor previously entered into an in-kind agreement dated November 29, 2012 (the “Original In-Kind Agreement”), which permitted the Project Sponsor to receive a waiver of part of the Fee 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. The City and Project Sponsor have entered into an Amended and Restated In-Kind Agreement dated \_\_\_\_\_, 2015, which amends and restates the Original In-Kind Agreement in its entirety (the “Amended In-Kind Agreement”) and sets forth revised conditions.

4. Upon the Project Sponsor's satisfaction of the terms of the Amended In-Kind Agreement, the Amended 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 Amended In-Kind Agreement, and all of the terms and conditions of the Amended In-Kind Agreement are incorporated herein by reference as if they were fully set forth herein. Reference is made to the Amended 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 Amended In-Kind Agreement. In the event any conflict exists between the terms of the Amended In-Kind Agreement and this Memorandum, the terms of the Amended In-Kind Agreement shall govern.

7. On the recordation of this Memorandum, the Memorandum of In-Kind Agreement recorded in the Official Records of San Francisco County as Document No. \_\_\_\_\_ (the "Original Memorandum") shall be deemed to be replaced in its entirety by this Memorandum, and the Original Memorandum shall have no further force or effect.

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

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

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

ARCHSTONE DAGGETT PLACE LLC,  
a Delaware limited liability company

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

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

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

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

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

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

CALIFORNIA ALL-PURPOSE  
CERTIFICATE OF ACKNOWLEDGEMENT

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

State of California

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

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

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

State of California

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

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

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

personally appeared

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

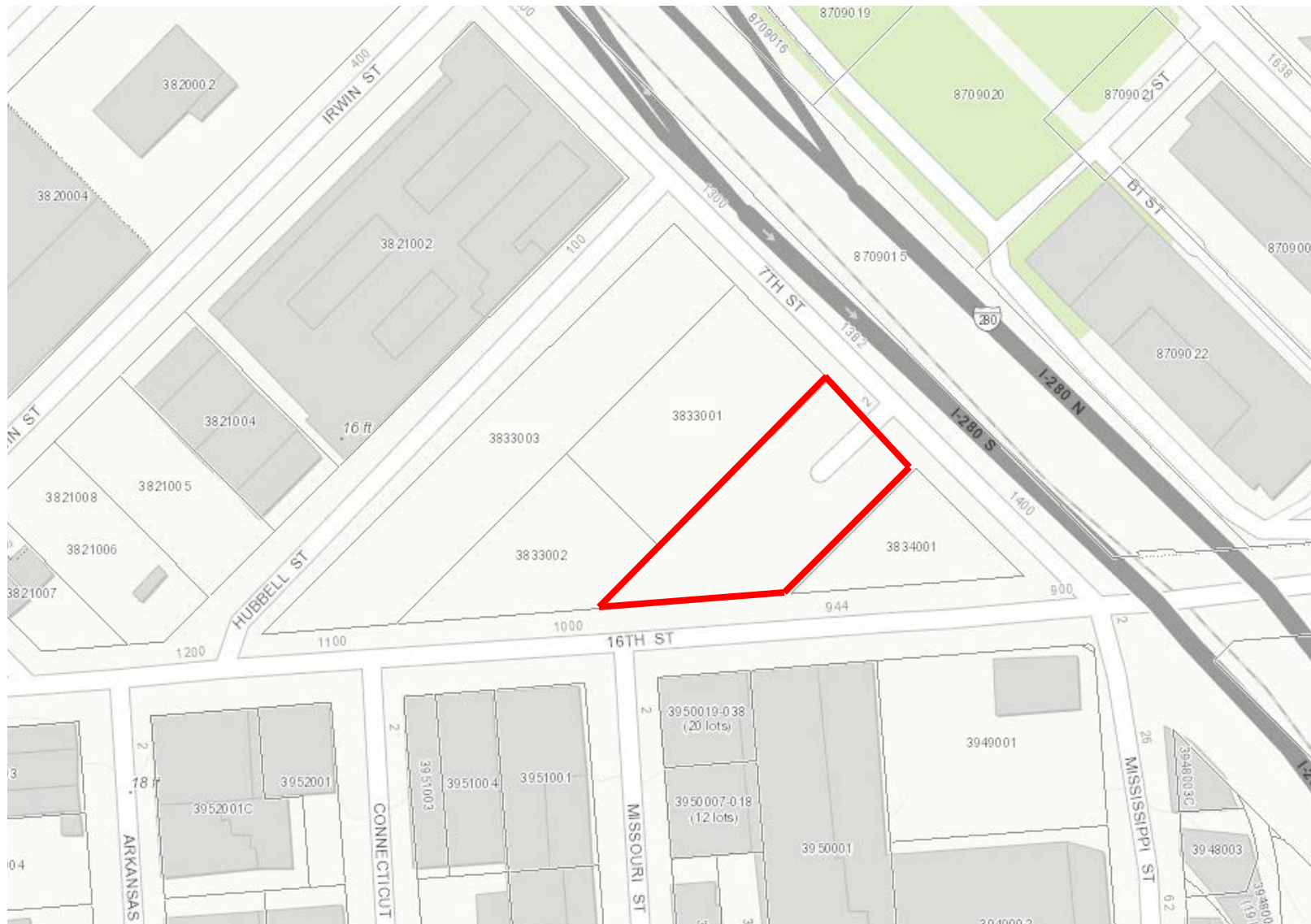
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

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

(Notary Seal)

**Attachment C –  
Location, Design, and Images of the  
Proposed Daggett Park**



Daggett Street Right-of-Way



# ILLUSTRATIVE CONTEXT PLAN





# 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 The Park Counter & Stools (Concrete & Steel)

⑲ C.I.P. Integral Color Conc. w/ Water Washed Finish or Unit Pavers, TBD

⑳ San Francisco Standard Park Entry Sign

㉑ 30” Conc. Wall w/42” Stainless Steel Picket Fence & Wood Bench

㉒ C.I.P. Integral Color Conc. w/Sandblast Finish

㉓ Driveway Curb Cut
- ㉔ Built in Bench w/36” Concrete Wall

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