



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary

Fee Waiver for the Rincon Hill Infrastructure Impact Fee

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Date: September 10, 2015
Case No.: 2011.0108U
Project Address: **45 Lansing Street In-Kind Agreement**
Plan Area: Rincon Hill Area Plan
Project Sponsor: Crescent Heights
Staff Contact: Kimia Haddadan (415-575-9068)
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Reviewed by: Adam Varat
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SUMMARY

The Project Sponsor of the development at 45 Lansing Street is seeking to enter an In-Kind Agreement with the City of San Francisco to provide streetscape improvements on Harrison Street west of the 45 Lansing property to Essex Street in return for a waiver of \$668,045 of their Rincon Hill Infrastructure Impact Fees.

BACKGROUND

On March 10, 2011, the Planning Commission granted approval¹ to the project proposed for 45 Lansing Street: a 400-foot high, 39-story, residential tower of 320 units, approximately 386,000 gross square foot (gsf) of residential space. The project is within the Rincon Hill Area Plan (Area Plan) and subject to Rincon Hill Community Improvement Funds per Section 418 of the Planning Code. The project is located on a through lot between Harrison and Lansing Streets between First and Essex Streets.

The Area Plan, adopted in 2005, reimagined the Rincon Hill area from a commercial and industrial area into a high-density residential neighborhood. This Plan enabled over 2,500 additional residential units, of which over 1,050 units has been completed, about 700 units are under construction, and over 1,200 additional units have been entitled by the Planning Commission.

The Area Plan called for streetscape improvements, pedestrian safety enhancements, and new public parks to accommodate the forthcoming growth and address the needs of existing residents. Responding to these policy recommendations, the Department drafted the Rincon Hill Streetscape Plan (Streetscape Plan) including detailed streetscape improvement designs for all streets and sidewalks within the 10 blocks in the Area Plan boundary. The Streetscape Plan also includes detailed guidelines and standards for curblines, landscaping, street trees, sidewalk bulbouts, lighting, paving, and street furniture. While

¹ Motion Number 18316

the Streetscape Plan was first drafted in 2006, it was not adopted until recently in July 2015. During this time, the improvements built in the area to date followed the proposals in the Streetscape Plans.

As residential buildings and towers rise within the ten blocks in the Rincon Hill Area boundary, the streetscape improvements called for in the Streetscape Plan come to fruition through different mechanisms:

- 1) **Conditions of Approval**-The Better Streets requirements of the Planning Code in Section 138 require development projects to improve sidewalk(s) fronting their properties. Developers satisfy this condition of approval for the project based on the detailed design and standards in the Streetscape Plan. In some cases, improvements are required as a part of other conditions of approval. For instance the subject project, 45 Lansing St., is making improvements to Lansing Street as a condition of approval for certain open space requirements. These improvements will create a curbless shared street on Lansing as called for in the Streetscape Plan.
- 2) **In Kind Agreements**- Instead of paying the impact fee directly to the City, project sponsors may request to directly provide infrastructure that is consistent with the proposals of the Streetscape Plan. Such direct provision of infrastructure requires approval of the City, in the form of a legally binding "In-Kind Agreement". The proposal in hand is seeking an In Kind agreement for improvements on portions of a block on Harrison Street.
- 3) **Public Improvements**- Lastly, the City is responsible to carry out the improvements adopted in the Streetscape Plan, using development project impact fees and other funding sources. Each year, the City updates the Interagency Plan Implementation Committee (IPIC) report: a five year Capital Plan for all Area Plans including the Rincon Hill. Within Rincon Hill, the City has prioritized improvements on Harrison Street (from Spear to Essex Streets) because the street has been identified as a high injury corridor and serves as the spine of the Rincon Hill neighborhood. Public Works has scheduled design and engineering for Harrison Street streetscape improvements in fiscal year 2016, and construction in fiscal year 2017. These improvements will come immediately after Folsom Street improvements² to allow for appropriate circulation in the neighborhood during construction.

PROPOSED PUBLIC IMPROVEMENTS

The project is subject to pay \$3,814,840 in Rincon Hill Community Improvements impact fees. The Project Sponsor, Crescent Heights, is seeking an In-Kind Agreement to provide streetscape improvements on Harrison Street as proposed in the Streetscape Plan. The proposed In-Kind Agreement would include:

- 1) Widening the sidewalk to 12' on the north side of Harrison Street, west of the 45 Lansing property frontage along Harrison Street to the intersection with Essex Street Sidewalk bulb-out on Harrison Street at Essex (Northeast corner)
- 2) New street trees, pedestrian lights, bike racks, and special paving.

The detailed design of such improvements is presented in Exhibit C of the In Kind Agreement. The proposed improvements would enhance pedestrian safety, particularly at the intersection of Harrison Street and Essex Street where the on-ramp to I-80 poses pedestrian safety challenges. SFMTA has also selected this intersection as one of the top 20 broadside injury intersections for signal changing

² Funded with the Transit Center Redevelopment Funds

improvements by February 2016. Shortening the crosswalk with a bulb out will create a safer intersection for pedestrians.

The project will also be making improvements to Harrison Street immediately in front of their property. Additionally, the project is required to improve Lansing Street as part of their conditions of approval. These improvements will not receive in-kind fee credit.

OUTREACH AND PUBLIC COMMENT

The proposal for pedestrian safety and public space improvements will implement the adopted proposals in the Rincon Hill Streetscape Plan. The Rincon Hill planning process relied on extensive multi-year outreach and engagement with the community to develop the streetscape design proposals. Most recently, in May 2015 the City held another community meeting in the neighborhood to gain community input on how to prioritize the streetscape improvements in the plan area, given the gradual available funding stream. At this meeting, the community fully supported prioritizing improvements on Harrison Street. The proposed In Kind Agreement would deliver improvements on Harrison Street over one year earlier than the City's timeline. This faster timeline aligns with the community's need and interest for safer intersections and better sidewalks as new buildings rise in the neighborhood.

DESIGN AND COST ESTIMATES

The project sponsor began conversations with the City on seeking an In-Kind Agreement early in the process of their project entitlements. Planning staff worked with the Project Sponsor to determine the scope and design of improvements. The Department received two cost estimates from the Project Sponsor, from JJ Albanese and Dolan Concrete, in the amount of \$668,045 and \$730,113 respectively. The Department and Public Works have reviewed these cost estimates, and the Project Sponsor has revised the estimates per their comments. Project designs are consistent with the Rincon Hill Streetscape Plan.

MAINTENANCE OF IMPROVEMENTS

Improvements will be maintained by the fronting property owners on Harrison Street. The project sponsor has informed the subject adjacent property owners. The City is also in the process of establishing a Community Benefits District for additional maintenance of streetscapes in the Rincon Hill area.

ENVIRONMENTAL REVIEW

The streetscape changes proposed in the Rincon Hill Area Plan were evaluated in the Rincon Hill Plan EIR in 2005 and were found to have no significant adverse impacts. The EIR was confirmed still valid in the recent adoption process of the Rincon Hill Streetscape Plan 2015. The proposed In Kind improvements are part of the Rincon Hill Streetscape Plan and therefore cleared as related to CEQA.

REQUIRED COMMISSION ACTION

The action before the Commission is to approve an impact fee waiver for the 45 Lansing Street project in the amount of \$668,045 in return for provision of 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 improvements would present a suitable priority for an In-Kind Agreement to satisfy portions of the Rincon Hill Streetscape Plan.

- The Proposed Improvements are Eligible for an In-Kind Agreement
- The Proposed Improvements are a Priority
- The Project is Recommended

ELIGIBILITY CRITERIA

1. Improvement Fulfills the Purpose of Community Improvements

The proposed improvement would realize the proposals of the Rincon Hill Streetscape Plan for Harrison Street on the subject block.

2. The Infrastructure Type is Identified in the Fee Ordinance

The improvements would include complete streets improvements as called for in the Rincon Hill Community Improvements Fund.

3. The Expenditure Category for Infrastructure Type is Not Exhausted

The improvements are accounted for in the Rincon Hill infrastructure capital plan in the Interagency Plan Implementation Committee Annual Report. There is sufficient funding to cover this improvement.

PRIORITIZATION CRITERIA

1) Improvement is identified in the Five Year Capital Plan

Harrison Street pedestrian and streetscape improvements are called out as the top priority in the Rincon Hill Capital Plan in the Annual IPIC report.

2) Improvement does not Compete with a CAC and IPIC Endorsed Improvement

The improvements are accounted for in the Rincon Hill infrastructure capital plan in the Interagency Plan Implementation Committee Annual Report. There is sufficient funding to cover this improvement.

3) CAC Supports the Proposed Improvement

The Rincon Hill Area does not involve a CAC; however, the most recent community outreach event found strong support for prioritizing improvements on Harrison Street.

4) Efficiencies are Gained Through Coordination with Development Project

Pursuing an In-Kind Agreement instead of payment of the impact fees would help realize the improvements proposed by the Streetscape Plan more time efficiently. Project sponsors can utilize the construction tools and labor already working on site for the 45 Lansing project to build the public improvements in a timelier and more economically efficient manner.

RECOMMENDATION

The proposed In Kind Agreement would realize the proposed improvements in the adopted Rincon Hill Streetscape Plan for the subject block. Harrison Street improvements are a high priority for the City and are scheduled for construction in 2017. The subject block and intersection (Harrison and Essex) is a challenging node along Harrison Street in the Rincon Hill boundary as it also intersects with the on ramp to the I-80 freeway. The proposed In-Kind improvements would bring pedestrian safety treatments in a timelier manner to this block in urgent need for safety improvements.

Pursuing this In-Kind Agreement would create an opportunity to capitalize on existing construction of an adjacent development to implement the public improvements proposed by Rincon Hill Streetscape Plan, resulting in efficiencies gained for the construction of the improvements.

The proposed Agreement would also help complete streetscape improvements on the majority of the northern sidewalk on the subject block. In the absence of this agreement, streetscape improvements would only be built for the portions of the sidewalk fronting the 45 Lansing property, while the rest of the block would remain unchanged until 2017, when the City starts construction for improvements on the full stretch Harrison Street in the Rincon Hill boundary.

Based on the public benefits generated, and review of the design, cost estimate, maintenance plan, and terms of the agreement, **the Planning Department recommends approval of this In-Kind Agreement.**

Attachments:

1. Draft Planning Commission Motion
2. Draft In-Kind Agreement for 45 Lansing



SAN FRANCISCO PLANNING DEPARTMENT

Draft Planning Commission Motion

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APPROVING AN IMPACT FEE WAIVER FOR 45 LANSING STREET IN THE AMOUNT OF \$668,045 TO CONTRIBUTE TO PROVIDE STREETScape IMPROVEMENTS ON HARRISON STREET BASED ON THE COMPLETION OF AN IN-KIND AGREEMENT BETWEEN THE PROJECT SPONSOR AND THE CITY.

PREAMBLE

- The Rincon Hill Area Plan, adopted in 2005, reimagined the Rincon Hill area from a commercial and industrial area into a high-density residential neighborhood. This Plan enabled over 2,500 additional residential units, of which over 1,050 units has been completed, about 700 units are under construction, and over 1,200 additional units have been entitled by the Planning Commission. The Area Plan in Section 418 of the Planning Code created the Rincon Hill Community Improvement Funds required development projects to pay infrastructure impacts fees towards this fund
- On March 10, 2011, the Planning Commission granted approval¹ to the project proposed for 45 Lansing Street: a 400-foot high, 39-story, residential tower of 320 units, approximately \$668,045 gross square foot (gsf) of residential space. The project is within the Rincon Hill Area Plan (Area Plan) and is located on a through lot between Harrison and Lansing Streets between First and Essex Streets.
- The Rincon Hill Area Plan called for streetscape improvements, pedestrian safety enhancements, and new public parks to accommodate the forthcoming growth and address the needs of existing residents. Responding to these policy recommendations, the Department drafted the Rincon Hill Streetscape Plan (Streetscape Plan) including detailed streetscape improvement designs for all streets and sidewalks within the 10 blocks in the Area Plan boundary. The Streetscape Plan also

¹ Motion Number 18316

includes detailed guidelines and standards for curblines, landscaping, street trees, sidewalk bulbouts, lighting, paving, and street furniture.

- On March 20, 2012, the Project Sponsor, the Crescent Heights, filed an application with the City for approval of an In-Kind Agreement to provide streetscape improvements on Harrison Street as proposed in the Rincon Hill Streetscape Plan. The proposed agreement would provide streetscape improvements including:
 - 1) Widening the sidewalk to 12' on the north side of Harrison Street, west of the 45 Lansing property frontage along Harrison Street to the intersection with Essex Street Sidewalk bulb-out on Harrison Street at Essex (Northeast corner)
 - 2) New street trees, pedestrian lights, bike racks, and special paving.

MOVED, that the Commission hereby authorizes the Rincon Hill Impact Fee Waiver for 45 Lansing Street in the amount of maximum \$668,045 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:

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 421.3 (d).
3. The proposed improvements would present a suitable priority for an In-Kind Agreement to satisfy portions of the Area Plan infrastructure impact fees as they meet the following criteria established in the Planning Commission approved "Procedures of In-Kind Agreements".
 - Improvement Fulfills the Purpose of Community Improvements: The proposed improvement would realize the proposals of the Rincon Hill Streetscape Plan for Harrison Street on the subject block.
 - The Infrastructure Type is Identified in the Fee Ordinance: The improvements would include complete streets improvements as called for in the Rincon Hill Community Improvements Fund.
 - The Expenditure Category for Infrastructure Type is Not Exhausted: The improvements are accounted for in the Rincon Hill infrastructure capital plan in the Interagency Plan Implementation Committee Annual Report. There is sufficient funding to cover this improvement.
4. The proposed improvements are a priority for the Plan Area as they meet the following criteria:
 - Improvement is identified in the Five Year Capital Plan: Harrison Street pedestrian and streetscape improvements are called out as the top priority in the Rincon Hill Capital Plan in the Annual IPIC report.
 - Improvement does not Compete with a CAC and IPIC Endorsed Improvement: The improvements are accounted for in the Rincon Hill infrastructure capital plan in the Interagency Plan Implementation Committee Annual Report. There is sufficient funding to cover this improvement.

- CAC Supports the Proposed Improvement: The Rincon Hill Area does not involve a CAC; however, the most recent community outreach event found strong support for prioritizing improvements on Harrison Street.
 - Efficiencies are Gained Through Coordination with Development Project: Pursuing an In-Kind Agreement instead of payment of the impact fees would help realize the improvements proposed by the Streetscape Plan more time efficiently. Project sponsors can utilize the construction tools and labor already working on site for the 45 Lansing project to build the public improvements in a timelier and more economically efficient manner.
5. The Project is recommended by the Planning Department and reviewed by other public agencies. The Market Octavia CAC also supports the proposed improvements in this project.
6. **General Plan Compliance.** The proposed Ordinance is, on balance, consistent with the following Objectives and Policies of the General Plan:

The proposed In-Kind improvements supports the Rincon Hill Area Plan and the Rincon Hill Streetscape Plan by implementing the below policies and objectives.

OBJECTIVE 5.1

CREATE SAFE AND PLEASANT PEDESTRIAN NETWORKS WITHIN THE RINCON HILL AREA, TO DOWNTOWN, AND TO THE BAY.

OBJECTIVE 5.2

WIDEN SIDEWALKS, REDUCE STREET WIDTHS, AND MAKE OTHER PEDESTRIAN AND STREET IMPROVEMENTS, WHILE RETAINING THE NECESSARY SPACE FOR TRAFFIC MOVEMENTS, PER THE RINCON HILL STREETScape PLAN.

OBJECTIVE 5.3

PRIORITIZE PEDESTRIAN SAFETY THROUGH STREET AND INTERSECTION IMPROVEMENTS, ESPECIALLY AT INTERSECTIONS ADJACENT TO FREEWAY RAMPS, AND INTERSECTIONS WITH A HISTORY OF VEHICLE/PEDESTRIAN COLLISIONS.

Policy 5.1

Implement the Rincon Hill Streetscape Plan

Policy 5.4

Widen sidewalks, narrow lanes and remove lanes, where feasible, on Harrison, First and Fremont Streets.

Discussion: The proposed In Kind Agreement would realize the proposed improvements in the adopted Rincon Hill Streetscape Plan for the subject block. Harrison Street improvements are a high priority for the City and are scheduled for construction in 2017. The subject block and intersection (Harrison and Essex) is a challenging node along Harrison Street in the Rincon Hill boundary as it also intersects with the on ramp to the I-80 freeway. The proposed In-Kind improvements would bring pedestrian safety treatments in a timelier manner to this block in urgent need for safety improvements.

7. **Planning Code Sections 101.1 Findings.** The proposed replacement project is generally consistent with the eight General Plan priority policies set forth in Section 101.1 in that:

A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

The proposed project will have a positive impact on existing neighborhood serving retail uses by providing pedestrian amenities and creating a safer and more pleasant environment for pedestrians.

B) The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:

The proposed project will protect and enhance the existing neighborhood character by improvement pedestrian safety and streetscape.

C) The City's supply of affordable housing will be preserved and enhanced:

The proposed project will have no adverse effects on the City's supply of affordable housing.

D) The commuter traffic will not impede MUNI transit service or overburden our streets or neighborhood parking:

The proposed project would not impede MUNI transit service.

E) A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:

The proposed project would not adversely affect the industrial or service sectors or future opportunities for resident employment or ownership in these sectors.

F) The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

The proposed project would not affect the preparedness against injury and loss of life in an earthquake is unaffected.

G) That landmark and historic buildings will be preserved:

The proposed project would not adversely affect landmark and historic buildings.

H) Parks and open space and their access to sunlight and vistas will be protected from development:

The proposed project will not affect access to sunlight and vistas in parks and open spaces. .

I hereby certify that the foregoing Motion was adopted by the Planning Commission on March 14th, 2013.

Jonas Ionin
Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED:

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

THIS IN-KIND AGREEMENT (“Agreement”) is entered into as of _____, 2015, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the Planning Commission (the “City”) and 45 Lansing Development LLC (“Project Sponsor”), with respect to a development project approved for 45 Lansing Street, San Francisco, California (the “Project”).

RECITALS

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

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

C. The property described in Exhibit B attached hereto and generally known as 45 Lansing Street (the “Land”) is owned by Project Sponsor. On November 18, 2010, the Project Sponsor submitted an application for the development of a project on the Land that is subject to the following development impact fee: Rincon Hill Community 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 418.3(e) of the Planning Code. The in-kind improvements consist of: improvements to the Harrison Street sidewalk, between the Project site and Essex Street, as more particularly described in Exhibit C (“In-Kind Improvements”). Which Project Sponsor shall install on the City property described in Schedule ___ attached hereto (the “City Property”).

E. 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: improvement identified in Rincon Hill Streetscape Plan.

F. On _____, 2015, (Motion No. _____), the Planning Commission approved the In-Kind Improvements and authorized the Director of Planning 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

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 418 of the Planning Code.

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

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

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

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

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

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

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

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

“**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 Corporation (LLC) 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 418.3(e)(5) of the Planning Code, the Project Sponsor shall reimburse all City agencies for their administrative and staff costs in negotiating, drafting, and monitoring compliance with this Agreement.

ARTICLE 3 CALCULATION OF FEE AND IN-KIND CREDIT

3.1 The Project Fee shall be calculated in accordance with Section 418.3(e) of the Planning Code. Based on the development project approved by the Planning Commission, the

Fee is calculated at \$3,814,840.37, based on the development project entitled by its First Construction Document. (For the fee calculations, see **Exhibit B**.)

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 \$668,045.00 (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 E** (the **“Cost Documentation”**). In the event of any increase in the scope or other material change in the plans or specifications for the In-Kind Improvements, including, but not limited to any change resulting from DPW’s review and approval thereof (collectively, a "Material Change"), the Planning Commission may adjust the In-Kind Value equitably to reflect the increased cost, if any, associated with such Material Change. The Director may approve any non-Material Change to the In-Kind Value.

3.3 The Project participated in the City’s fee deferral program. Pursuant to Section 418.3(g) of the Planning Code and Section 107A.13.3 of the San Francisco Building Code, the Project Sponsor paid the non-deferred portion of the Development Fee to the Development Fee Collection Unit at DBI prior to the First Construction Document and is required to pay the remainder of the Project Fee (see Exhibit D) minus the In-Kind Value (see Exhibit E), 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 and other applicable City departments or agencies in the ordinary course of the process of obtaining a permit for the In Kind Improvements (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. Such review and approval of the plans and specifications of the In-Kind Improvements by the City departments or agencies 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.** Unless security is provided pursuant to Section 5.4, all construction with respect to the In-Kind Improvements shall be accomplished prior to the first certificate of occupancy. The improvements shall be accomplished 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. Because the In-Kind Improvements are not expected to be completed prior to the initial certificate of occupancy, the Project Sponsor will provide security under Section 5.4.

4.4 **Inspections.** The Project Sponsor shall request the customary inspections of work by DBI and 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 if applicable.

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. Unless the Adjacent property (81 Lansing HOA) assumes maintenance obligations as set forth in Section 6.1. 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 F (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 G (the “Maintenance License”), duly executed by Project Sponsor, unless the Adjacent Property owner has assumed the maintenance obligations as set forth in Section 6.1.

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 Memorandum of Agreement 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 requirements of this Section 5.3.

5.3.2 The Project Sponsor assumes all risk of loss during construction, and shall not receive final credit for the In-Kind Improvements until the Date of Satisfaction.

5.4 Security. If the Planning Director has not issued the Notice of Satisfaction under Section 5.3 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 and that security covers the In-Kind Improvements to be provided under this Agreement, the Subdivision Map Act bond may be substituted for the Security required by this Section 5.4 and the Project Sponsor is not required to provide additional Security for the In-Kind Improvements.

5.5 Notwithstanding anything in this Agreement to the contrary:

5.5.1 On and after the Effective Date defined in Article 1, for so long as this Agreement remains in effect and the Project Sponsor is not in breach of this Agreement the City shall not withhold the issuance of any additional building or other permits necessary for the Project, or any certificate of occupancy, other than the final certificate of occupancy 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 In Kind Improvements are not anticipated to be completed until after the Project Sponsor has paid the full Project Fee (less the In Kind Value) and received at least its initial certificate of occupancy. The City shall not issue any temporary certificate of occupancy until the City received the Full Project Fee, less the In Kind Value, and Project Sponsor provides the Security as set forth in Section 5.4.

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

5.5.4 If the In-Kind Improvements for any reason prove to be insufficient to provide payment for sums due from the Project Sponsor as and when required, and the Project Sponsor fails to pay such amount within thirty (30) days following notice by the City, DBI shall institute lien proceedings to recover the amount of the Fee due plus interest pursuant to Section 408 of the Planning Code and Section 107.13.15 of the Building Code

5.5.5 The Project Sponsor understands and agrees that any payments to be credited against the Project Fee shall be subject to the provisions set forth in San Francisco Administrative Code Sections 6.80-6.83 relating to false claims. Pursuant to San Francisco Administrative Code Sections 6.80-6.83, a party who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A party who submits a false claim shall also be liable to the City for the cost of a civil action brought to recover any of those penalties or damages and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A party will be deemed to have submitted a false claim to the City if the party: (a) knowingly presents or causes to be presented to any officer or employee of the City a false claim; (b) knowingly makes, uses or causes to be made or used a false record or statement to get a false claim approved by the City; (c) conspires to defraud the City by getting a false claim allowed by the City; (d) knowingly makes, uses or causes to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the City; or (e) is beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim. The Project Sponsor shall include this provision in all contracts and subcontracts relating to the In-Kind Improvements, and shall take all necessary and appropriate steps to verify the accuracy of all payments made to any such contractors and subcontractors.

ARTICLE 6 MAINTENANCE AND LIABILITY

6.1 **Maintenance and Liability Responsibility.** The In Kind Improvements will be located along the Harrison Street frontage of the condominium building known as 81 Lansing Street. In discussions with the Project Sponsor, the 81 Lansing Street Homeowners Association [Confirm Name] ("Homeowners Association"), which currently has the responsibility under the Code for maintenance of the sidewalk in this frontage area, has agreed that in conjunction with

the permit that the Project Sponsor would secure for construction of the In Kind Improvements, the Homeowners Association would secure a permit from the Department of Public Works to document that the Homeowners Association would have responsibility for maintenance and liability of the In Kind Improvements (sidewalk improvements, trees and landscaping, and street lights) along its Harrison Street Frontage, including the sidewalk bulb out at the corner of Harrison Street and Essex Street. If the Homeowners Association does not secure such a permit to document its maintenance and liability responsibility, it is probable that the Project Sponsor will determine not to proceed with the In Kind Improvements (in which case Project Sponsor will promptly pay the In Kind Value for which the Project Sponsor had received a credit against the Project Fee.) However, if the Project Sponsor constructs the In Kind Improvements, and the Homeowners Association does not secure a permit documenting its responsibility for maintenance of the In Kind Improvements, then the Project Sponsor, or its successor(s) or assignee(s) shall assume full responsibility for maintenance and liability for the In Kind Improvements as contemplated in this Agreement.

6.2 Contracts for Maintenance. The City and the Planning Commission acknowledge that if the Project Sponsor ultimately has maintenance responsibility it may hire third parties to perform Project Sponsor's maintenance obligations with respect to the In-Kind Improvements. Any such hiring is subject to the review and consent of the City departments with primary jurisdiction over the In-Kind Improvements in consultation with the Planning Director. 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.

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
1650 Mission St.
San Francisco, CA 94103

with a copy to:

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

PROJECT SPONSOR:

45 Lansing Development LLC
c/o Crescent Heights
2200 Biscayne Blvd.
Miami, FL 33137
Attn: Michael Sheitelman
General Counsel

with a copy to:

Arent Fox, LLP
55 2nd Street, 21st Floor
San Francisco, CA 94104
Attn: Steve Atkinson

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

ARTICLE 9 ADDITIONAL TERMS

9.1 This Agreement contemplates the acquisition of In-Kind Improvements as authorized under 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. Any material amendment shall require the approval of the City's Planning Commission, in its sole discretion. The Planning Director may approve non-Material Change to the In-Kind Value as set forth in Section 3.2 of this Agreement.

9.5 No failure by the City to insist upon the strict performance of any obligation of Project Sponsor under this Agreement or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of payments during the continuance of any such breach, shall constitute a waiver of such breach or of the City's right to demand strict compliance with such term, covenant or condition. Any waiver must be in writing, and shall be limited to the terms or matters contained in such writing. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. In the event of any breach of this Agreement by 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 agrees, on behalf of itself and its successors, to 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, 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 and the DPW Permit (c) the condition of the In-Kind Improvements constructed by or on behalf of the Project Sponsor; and (d) any acts, omissions or negligence of the Project Sponsor or its agents under this Agreement, on City Property or under the DPW Permit. 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 If the In-Kind Improvements will be constructed on City property and the City's Office of Economic and Workforce Development ("OEWD") determines that 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 OEWD, which shall be made an Exhibit to this In-Kind 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.

10.9 If OEWD determines that the In-Kind Improvements are subject to the First Source Hiring Program established in Chapter 83 of the San Francisco Administrative Code, the Project Sponsor shall comply with the requirements of Chapter 83 and execute a First Source Hiring Agreement with OEWD. The Project Sponsor's failure to comply with its obligations under Chapter 83 and the requirements of the First Source Hiring Agreement shall constitute a material breach of this In-Kind Agreement and may subject the Project Sponsor and its contractors and subcontractors to the consequences of noncompliance specified in Chapter 83 and the First Source Hiring Agreement, including but not limited to liquidated damages.

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

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

PROJECT SPONSOR:

45 Lansing Development LLC

By: _____
Director of Planning

By: _____
Christopher Palermo
Title: Vice President

APPROVED:

DENNIS J. HERRERA
City Attorney

APPROVED AS TO FORM:

By: _____
Steve Atkinson
Arent Fox, LLP

By: _____
Deputy City Attorney

ACKNOWLEDGED:

Department of Building Inspection

By: _____
Authorized Representative

ACKNOWLEDGED:

Department of Public Works

By: _____
Authorized Representative

Exhibit A

Memorandum of Agreement

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

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

(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 _____, 2015, and is by and between the City and County of San Francisco, a municipal corporation, acting and through the Planning Commission (the “City”), and 45 Lansing Development LLC (the “Project Sponsor”).

1. The property described in Exhibit A attached hereto (the “Land”) and generally known as 45 Lansing Street (Lot 059 in Assessor’s Block 3749), San Francisco, California is owned by Project Sponsor.
2. Under San Francisco Planning Code Section 418.4(a) (“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 418.3(e) if the Project Sponsor enters into an agreement with the City to provide in-kind improvements. In this case, pursuant to the Fee Deferral Program, Project Sponsor has paid a portion of the Fee of First Construction Document while deferring the bulk of the fees to issuance of the first certificate of occupancy.
3. In accordance with Section 418.3(e), the City and the Project Sponsor have entered into an in-kind agreement (the “In-Kind Agreement”), which permits the Project Sponsor to receive temporary certificate of occupancy 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

45 LANSING DEVELOPMENT LLC

1. By: _____
2. Name: Christopher Palermo
3. Title: Vice President

Exhibit B
Legal Description of Land

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

Beginning at a point on the northwesterly line of Harrison Street, distant thereon 125 feet southwesterly from the southwesterly line of First Street; running thence southwesterly along said line of Harrison Street 100 feet; thence at a right angle northwesterly 150 feet to the southeasterly line of Lansing Street; thence at a right angle northeasterly along said line of Lansing Street 100 feet; thence at a right angle southeasterly 150 feet to the point of beginning.

Being portion of 100 Vara Block No. 349.

Assessor's Lot 059; Block 3749

Exhibit C

In-Kind Improvements Description

Scope of Work:

- 1) Demolish existing sidewalk on Harrison Street from west of property line of 45 Lansing to Essex Street; scope affects northern sidewalk only.
- 2) New sidewalk will have an extended width of 12', increasing to 18' at the bulb-out (corner of Harrison and Essex).
- 3) Half the width of the 12' sidewalk will be covered with planting, allowing for the remainder of the 6' for pedestrian traffic.
- 4) Trees and street lamps will be located to accommodate new street design.

* The design for this scope of work has been outlined in the Rincon Hill Streetscape Plan.

45 LANSING STREET RESIDENCES

45 LANSING STREET
SAN FRANCISCO, CA 94105

OWNER
45 LANSING DEVELOPMENT, LLC
A DELAWARE LIMITED LIABILITY COMPANY
2200 BISCAYNE BLVD.
MIAMI, FL 33137

INTERIOR ARCHITECT
STANLEY SATOWITZ | NATOMA ARCHITECTS INC.
1022 NATOMA ST. NO. 3
SAN FRANCISCO, CA 94103

MEP / FP DESIGN ASSIST SERVICES
CB ENGINEERS
449 10TH STREET
SAN FRANCISCO, CA 94103

DESIGN/BUILD SUBCONTRACTORS
MECHANICAL
CRITCHFIELD MECHANICAL, INC.
1961 JUNCTION AVENUE
SAN JOSE, CA 95131

ELECTRICAL
CUPERINO ELECTRIC INC
1746 CESAR CHAVEZ STREET
SAN FRANCISCO, CA 94124

PLUMBING
J.W. MCCLENNAN CO.
2301 PALM AVENUE
SAN MATEO, CA 94403

DATE SHOWN: 2/24/2015



REVISION

1	FINAL CONSTRUCTION DOC.	03/01/2013
2	PROGRESS PRINT	04/10/2013
3	PERMIT SUBMITTAL	09/20/2014
4	SEWALW CONSULTATION PERMIT SUBMITTAL	11/24/2014
5	PERMIT SUBMITTAL, REV 1	2/24/2015

HKS PROJECT NUMBER
#13850
DATE
2/24/2014
ISSUE
PERMIT SUBMITTAL, REV1
SHEET TITLE
HORIZONTAL CONTROL PLAN

SHEET NO.
C6.02

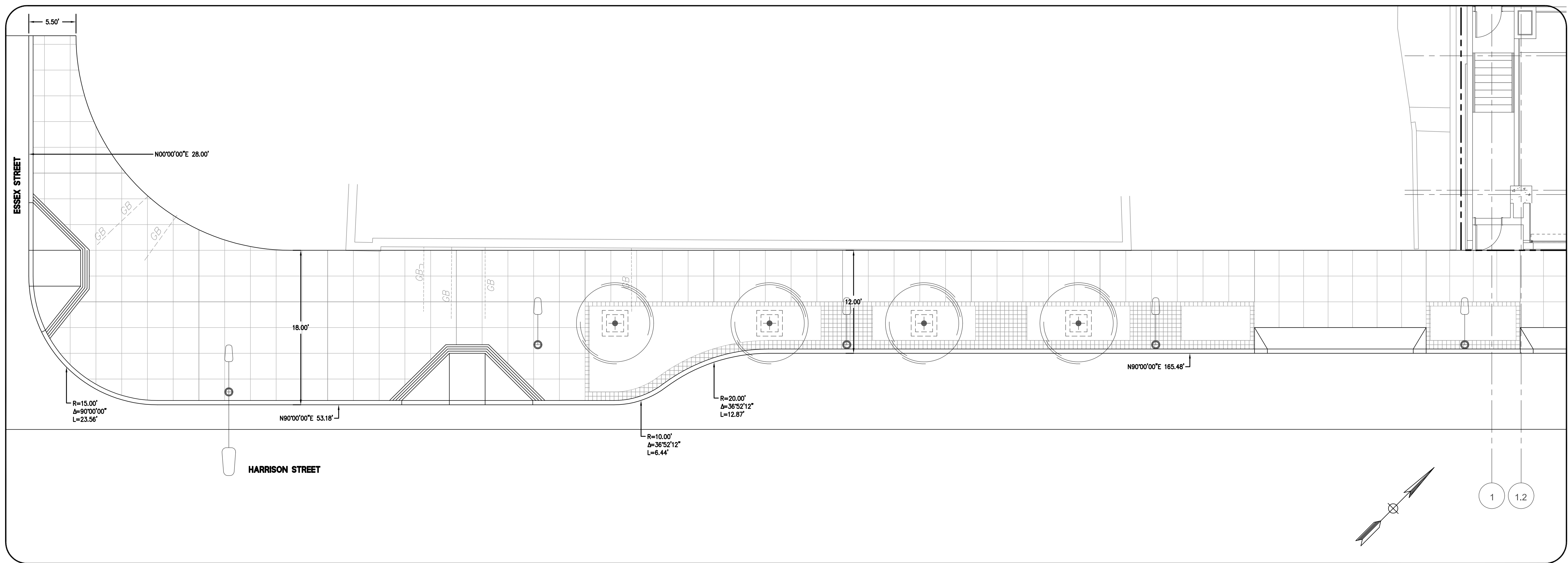
SCOPE OF WORK:

- 1) DEMOLISH EXISTING SIDEWALK ON HARRISON STREET FROM WEST OF PROPERTY LINE OF 45 LANSING TO ESSEX STREET; SCOPE AFFECTS NORTHERN SIDEWALK ONLY.
- 2) NEW SIDEWALK WILL HAVE AN EXTENDED WIDTH OF 12', INCREASING TO 18' AT THE BULB-OUT (CORNER OF HARRISON AND ESSEX).
- 3) HALF THE WIDTH OF THE 12' SIDEWALK WILL BE COVERED WITH PLANTING, ALLOWING FOR THE REMAINDER OF THE 6' FOR PEDESTRIAN TRAFFIC.
- 4) TREES AND STREET LAMPS WILL BE LOCATED TO ACCOMMODATE NEW STREET DESIGN.

*THE DESIGN FOR THIS SCOPE OF WORK HAS BEEN OUTLINED IN THE RINCON HILL STREETScape PLAN.

NOTE

1. SEE LANDSCAPE DRAWINGS FOR TREE WELL LAYOUTS, SITE FURNITURE, DETAILS AND PLANTING INFORMATION.
2. SEE LANDSCAPE DRAWINGS FOR MATERIAL FINISHES, CONCRETE COLOR, SIDEWALK SCORE PATTERN AND EXPANSION JOINT LAYOUT.
3. SIGN LOCATIONS SHOWN FOR REFERENCE ONLY. FINAL APPROVAL AND INSTALLATION BY CITY OF SAN FRANCISCO DEPARTMENT OF PUBLIC TRANSPORT GENERAL CONTRACTOR RESPONSIBLE FOR COORDINATION.



1 HARRISON STREET FRONTAGE
SCALE: 1"=5'



45 LANSING STREET RESIDENCES

45 LANSING STREET
SAN FRANCISCO, CA 94105

OWNER
45 LANSING DEVELOPMENT, LLC
A DELAWARE LIMITED LIABILITY COMPANY
2200 BISCAYNE BLVD.
MIAMI, FL 33137

INTERIOR ARCHITECT
STANLEY SARTOWITZ NATOMA ARCHITECTS INC.
1022 NATOMA ST. NO. 3
SAN FRANCISCO, CA 94103

MEP / FP DESIGN ASSIST SERVICES
CB ENGINEERS
449 10TH STREET
SAN FRANCISCO, CA 94103

DESIGN/BUILD SUBCONTRACTORS
MECHANICAL
CRITCHFIELD MECHANICAL, INC.
1901 JUNCTION AVENUE
SAN JOSE, CA 95131

ELECTRICAL
CUPERTINO ELECTRIC INC
1740 CESAR CHAVEZ STREET
SAN FRANCISCO, CA 94124

PLUMBING
JIM McLENNAN CO.
2301 PALM AVENUE
SAN MATEO, CA 94403

CLA
CLIFF LOWE
ASSOCIATES

CLIFF LOWE ASSOCIATES
1175 FOLSOM ST
SAN FRANCISCO, CA 94103

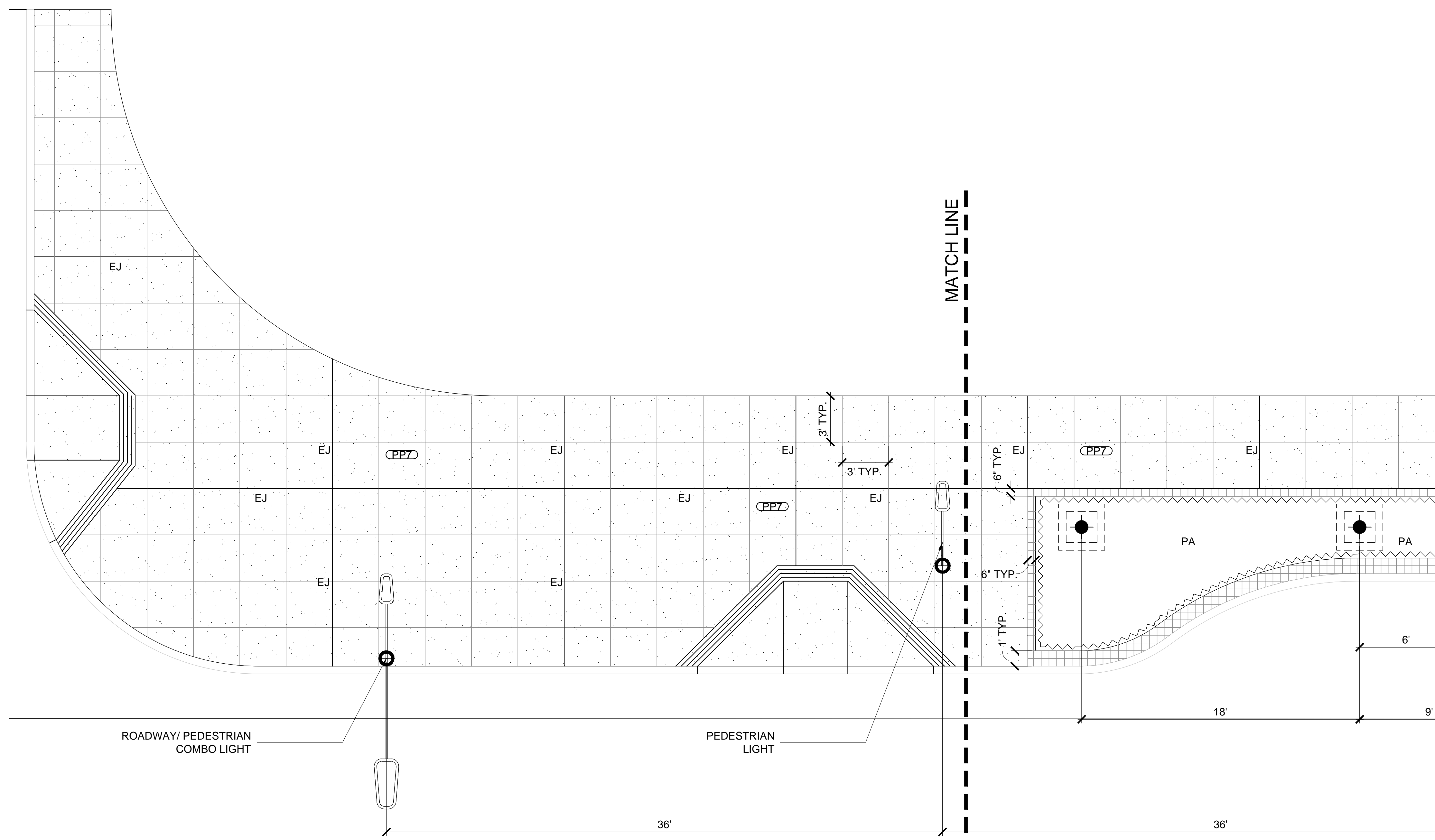
KEY PLAN

REVISION NO.	DESCRIPTION	DATE
1	FINAL CONSTRUCTION DOC.	03/01/2013
2	PERMIT SUBMITTAL	08/29/2014
3	PERMIT SUBMITTAL REV 1	12/15/2014
4	FINAL LANDSCAPE CONSTRUCTION SET	01/06/2015
5	PERMIT SUBMITTAL REV 1	02/24/2015

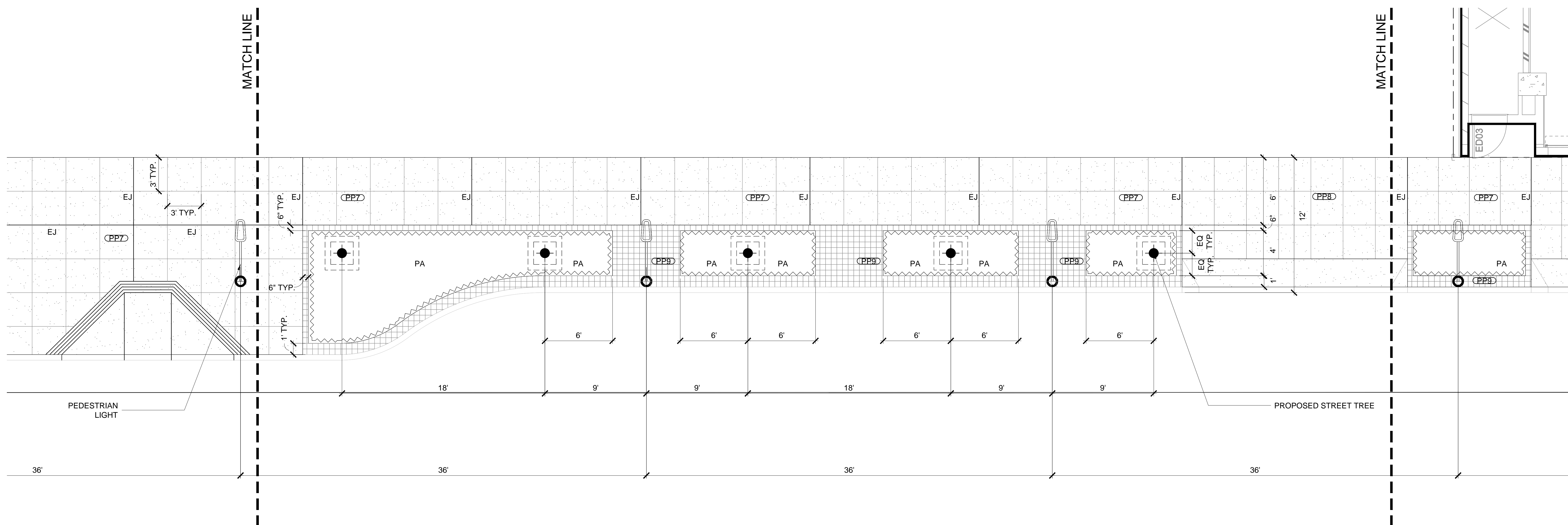
HKS PROJECT NUMBER
#13850
DATE
02/24/2015
ISSUE
**PERMIT SUBMITTAL
REV 1**
SHEET TITLE
**MATERIALS PLAN
HARRISON STREET**

SHEET NO.

L1.04



1 PLAN
1/4" = 1'-0"



2 PLAN
1/4" = 1'-0"



SEE SHEET L1.02

45 LANSING STREET RESIDENCES

45 LANSING STREET
SAN FRANCISCO, CA 94105

OWNER
45 LANSING DEVELOPMENT, LLC
A DELAWARE LIMITED LIABILITY COMPANY
2200 BISCAYNE BLVD.
MIAMI, FL 33137

INTERIOR ARCHITECT
STANLEY SALTOWITZ NATOMA ARCHITECTS INC.
1022 NATOMA ST. NO. 3
SAN FRANCISCO, CA 94103

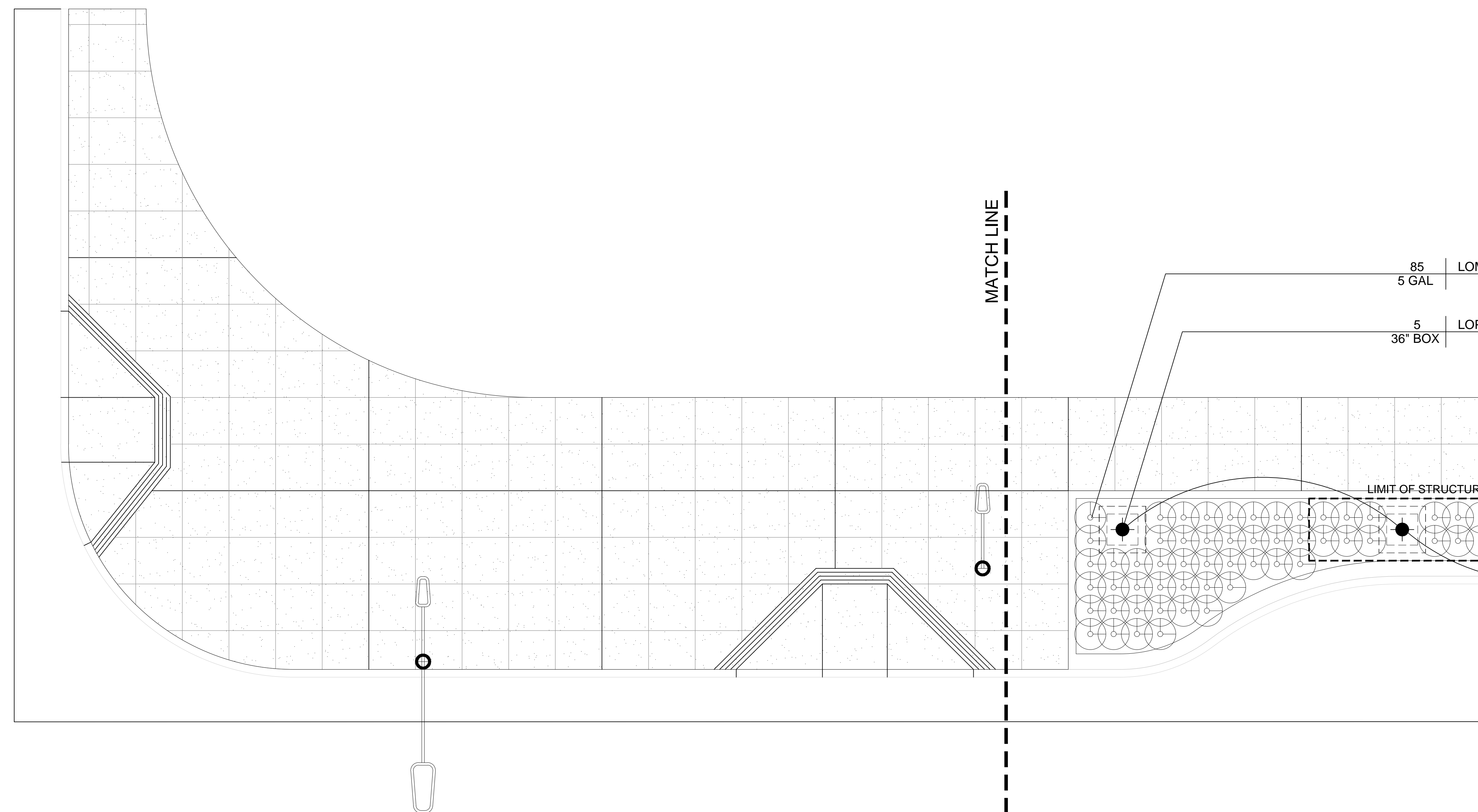
MEP / FP DESIGN ASSIST SERVICES
CB ENGINEERS
449 10TH STREET
SAN FRANCISCO, CA 94103

DESIGN/BUILD SUBCONTRACTORS
MECHANICAL
CRITCHFIELD MECHANICAL, INC.
1901 JUNCTION AVENUE
SAN JOSE, CA 95131

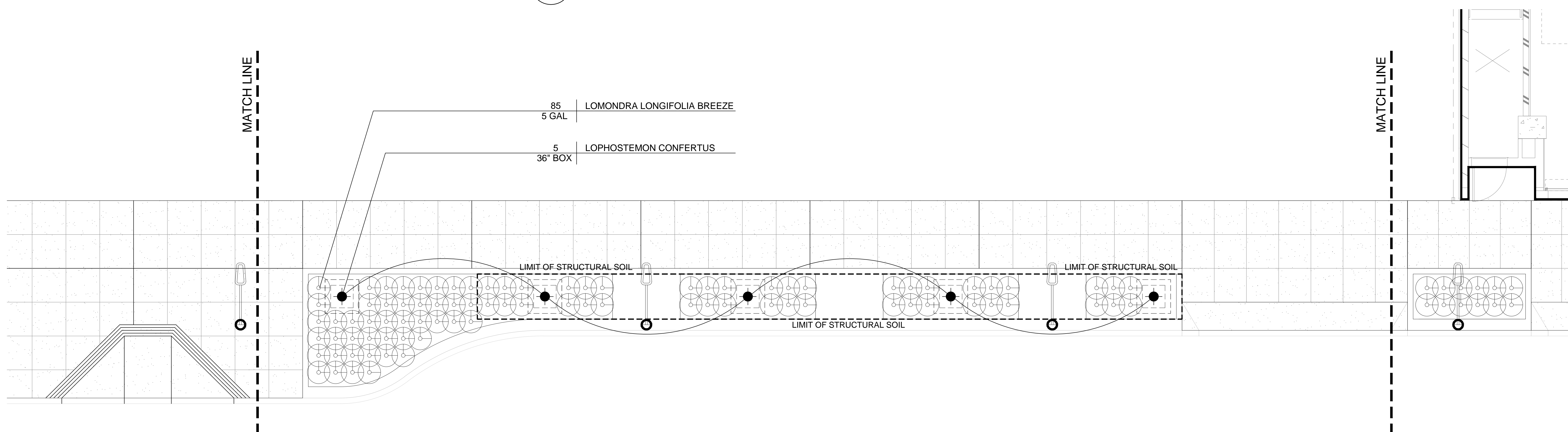
ELECTRICAL
CUPERTINO ELECTRIC INC
1740 CESAR CHAVEZ STREET
SAN FRANCISCO, CA 94124

PLUMBING
JIM MCLENNAN CO.
2301 PALM AVENUE
SAN MATEO, CA 94403

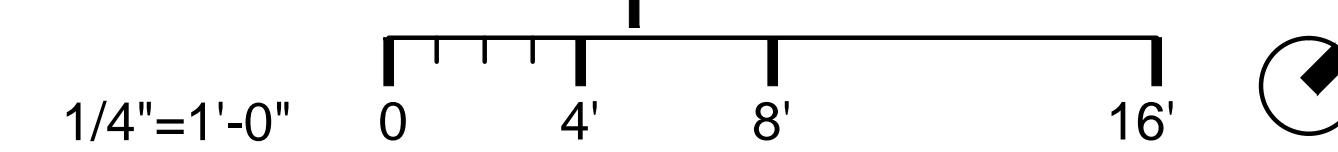
CLA
CLIFF LOWE
ASSOCIATES
CLIFF LOWE ASSOCIATES
1175 FOLSOM ST
SAN FRANCISCO, CA 94103
KEY PLAN



1 PLAN
1/4" = 1'-0"



2 PLAN
1/4" = 1'-0"



SEE SHEET L2.02 A

REVISION NO.	DESCRIPTION	DATE
1	FINAL CONSTRUCTION DOC	03/03/2015
2	PERMIT SUBMITTAL	08/25/2014
3	PERMIT SUBMITTAL REV 1	12/15/2014
4	FINAL LANDSCAPE	01/06/2015
5	CONSTRUCTION SET	
6	PERMIT SUBMITTAL REV 1	02/24/2015

HKS PROJECT NUMBER
13850
DATE
02/24/2015
ISSUE
**PERMIT SUBMITTAL
REV 1**
SHEET TITLE
**PLANTING PLAN
HARRISON STREET**

SHEET NO.
L2.04

Exhibit D

Calculation of Impact Fees

411,759 gsf x \$8.60 = \$3,541,127.40

Plus indexing
Adjustments:

\$126,988.34

\$146,724.63

Total: \$3,814,840.37

Exhibit E

Cost Documentation

	JJ Albanese	Dolan Concrete
	Victor Bustos	Joel Middleton
Description	408-210-5159	408-869-3250 x126

I. TRADE CONTRACTOR SCOPE		
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CCD 34 (Site Concrete Only)- Harrison to Essex		
Additional Mobilization if unable to start in August	\$30,000	\$30,000
Demo	\$7,450	\$15,000
Grading	\$21,725	\$35,000
Survey	\$3,000	\$7,000
Curb/Gutter	\$9,225	\$9,225
Install 2 Handicap Ramps	\$5,000	\$70,000
Sidewalk Finishes		
PP7	\$27,040	\$34,000
PP8	\$9,200	\$5,500
PP9 (mortar set)	\$10,098	\$10,098
PP9 Base	\$4,830	\$3,780
(5) Light Pole Footings	\$9,750	\$10,000
(5) Light Poles - Fixture and wiring	\$54,734	\$54,734
Reset Utility Boxes	inc	inc
Relocate Fire Hydrant, - Utility Work Allowance - Pending quote from DPW	\$50,000	\$50,000
Relocate Street Light - Utility Work Allowance	\$50,000	\$50,000
Bike Rack, Trash Bin	\$10,000	\$10,000
Street Paving	\$7,500	\$7,500
Street closure permits & traffic control	\$45,000	\$45,000
Landscaping	\$34,000	\$47,989
Safety and Street Cleaning	\$20,400	\$20,400
General Contractor Support and Supervision	\$46,800	\$11,300
BGI GC Mark Up for Ins, Fee and Bonding	\$21,420	\$24,747
Design - Civil, Landscape and Arch	\$75,000	\$75,000
CM Oversight/QA-QC		
Project Management 45 Lansing Dev LLC	\$9,600	\$9,600
Legal	\$7,500	\$7,500
Permit, including Permit Expeditor	\$25,000	\$25,000
Contingency	\$59,427	\$46,000
OCIP Insurance and Builders Risk	\$14,345	\$15,741
Total	\$668,045	\$730,113

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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Signature of Notary Public

(Notary Seal)