



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Fee Waiver for Residential Child Care Impact Fee

HEARING DATE: APRIL 9, 2020
CONTINUED FROM: OCTOBER 24, 2019, DECEMBER 12, 2019,
JANUARY 16, 2020, AND FEBRUARY 13, 2020

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Record No.: 2016-006860IKA
Project Address: 65 OCEAN AVENUE
Zoning: Excelsior Outer Mission NCD (Neighborhood Commercial) Zoning District
40-X Height and Bulk District
Block/Lot: 6954 / 018
Project Sponsor: K. Cyrus Sanandaji
Agrippa, LLC
1160 Battery Street, Suite 250
San Francisco, CA 94111
Property Owner: Agrippa, LLC
1160 Battery Street, Suite 250
San Francisco, CA 94111
Staff Contact: Veronica Flores – (415) 575-9173
veronica.flores@sfgov.org
Recommendation: **Approval with Conditions**

SUMMARY

The Project Sponsor of the development at 65 Ocean (“Project”) is seeking to enter an In-Kind Agreement with the City of San Francisco to provide an on-site child care facility in return for a waiver of the full amount (\$322,433.15) of their Residential Child Care Impact Fee obligations. The Project was approved by the Planning Commission in October 2019.

BACKGROUND

The Project proposes demolition of three existing commercial buildings (approximately 14,088 square feet) and new construction of a 55-foot-tall building with 193 dwelling units, and a basement-level garage with a total of 75 parking spaces and 149 Class 1 bicycle parking spaces. 25% of the units, or 48 homes, would be provided at below market rate. A 5,942 square foot child care facility would be provided at the ground level, accommodating up to 25 children.

On October 24, 2019, the project received HOME-SF Project Authorization, with the Planning Commission citing the increase in housing, increase of affordable housing, and support for the on-site child care facility. On November 15, 2019, an appeal on the HOME-SF Project Authorization was filed with the Board of Appeals (BOA). On January 15, 2020, the Board of Appeals denied the appeal and ordered that the issuance of the subject determination by the Planning Commission be upheld on the basis that the Planning Commission did not err or abuse its discretion and the determination was properly issued.

Per Section 414A of the Planning Code, the project is subject to \$322,433.15 in Residential Child Care Impact Fees. As per Section 414A.5(b) of the Planning Code, sponsors may be eligible for a credit for on-site child care facilities. Presidio Bay Ventures, the Project Sponsor for the 65 Ocean development, is seeking a fee credit of \$322,433.15, which is the full amount of the required Residential Child Care Impact Fee. To qualify for a credit, the child care facility must be open and available to the general public on the same terms and conditions as to residents of the residential development project in which the facilities are located. Such direct provision of the on-site child care facility requires approval of the City, in the form of a legally binding "In-Kind Agreement." The Project Sponsor is seeking such an In-Kind Agreement.

PROPOSED PUBLIC IMPROVEMENTS

A 5,942 square foot child care facility would be provided at the ground level, accommodating up to 25 children. This facility will be included in the Project and operational for the life of the project, subject to City and State licensing requirements, and shall participate in the Office of Early Care and Education's (OECE's) Early Learning Scholarship (ELS) or Preschool for All Programs (PFA). Additionally, child care facilities receiving grants through the Low Income Investment Fund (LIIF) with the City shall reserve a minimum of 20% of all eligible slots for low- and moderate-income households.

REQUIRED COMMISSION ACTION

In order for the Project to proceed, the Commission must approve an impact fee waiver for the 65 Ocean project in the amount of \$322,433.15 in return for provision of an on-site child care facility.

ISSUES AND OTHER CONSIDERATIONS

- **Racial and Social Equity Analysis**
 - Crayon Box, the former preschool that previously occupied the project site, vacated before the Project Sponsor took ownership of the property. The Project Sponsor is working closely with Crayon Box to invite them to return to the project site at a reduced rent. The child care facility provider will be registered with OECE under the ELS or PFA programs to be more inclusive. Additionally, Crayon Box is considering pursuing LIIF grant funding, which requires that at least 20% of the children the child care facility serves come from low-income families.
 - The Outer Mission Street neighborhood includes 352,490 households, 76% of which includes families¹. This is a much higher concentration compared to San Francisco in general, where 47% of the households includes families². Therefore, there is a larger concentration of families that may benefit from a new child care facility in the neighborhood. Additionally, the project site is served by nearby public transportation options. The Project is within walking distance of the Balboa Park BART Station. In addition, the Project is within one block of 14-Mission, 29-Sunset, 49-Van Ness/Mission bus routes. As such, the project site is in an ideal location for a new child care facility.
- **Cost Estimates**
 - For the construction cost of the child care facility to be funded by the fee waiver, the Department received two cost estimates from the project sponsor – from Build Group &

¹ U.S. Census Bureau: the 2016 Five Year American Community Survey (ACS), released in December 2017

² Ibid.

James E. Roberts-Obayashi Corporation – in the amount of \$2,334,839 and \$2,730,212, respectively. The cost estimates, which have been reviewed by the Planning Department and Office of Early Care and Education, support the fee waiver amount of \$322,433.15.

- According to the Build Group estimate, the total capital budget that is fundable by the in-kind fee waiver is \$2,334,839. The Project Sponsor is only eligible for a fee credit of \$322,433.15, which is the full amount of the required Residential Child Care Impact Fee. Therefore, the fee credit will be less than the completed cost estimates.
- **Public Comment & Outreach.**
 - The Department has received one letter of support after the October 24, 2019 hearing when the Project was approved and the environmental review document was upheld.

ENVIRONMENTAL REVIEW

On September 18, 2019, the Preliminary Mitigated Negative Declaration (PMND) for the Project was prepared and published for public review. On October 8, 2019, the PMND was appealed. The Commission held a duly noticed hearing on the appeal of the PMND, upheld the PMND, and approved the issuance of the Final Mitigated Negative Declaration on October 24, 2019. This document determined that there is no significant effect on the environment under California Environmental Quality Act Sections 15064, 15065, and 15070.

GENERAL PLAN CONSISTENCY

The Planning Commission found the Project to be in conformity with the General Plan. The Project will provide a substantial amount of new rental housing, including new on-site below-market rate units for rent, which is a goal for the City’s Housing Element. The Project will provide 57 two-bedroom units and 22 three-bedroom units which would be suitable for families with children. The Project is in an area where existing and planned infrastructure can support residential growth. The Project Site is located within walking distance to several public transit lines, including the Balboa Park BART Station. The Commission also found the project to be compatible with the surrounding neighborhood, and not to be detrimental to persons or adjacent properties in the vicinity.

The proposed on-site child care facility is also in conformance with the General Plan. This facility will serve approximately 25 children and provides approximately 2,289 square feet of open space dedicated to the child care.

RECOMMENDATION

The Project would provide an on-site child care facility that would accommodate up to 25 children. The project site is within walking distance to several public transit lines, including the Balboa Park BART Station. Based on the public benefits generated and review of the design, cost estimate, and terms of the agreement, **the Planning Department recommends approval of this impact fee waiver.**

ATTACHMENTS:

- Draft Motion – In-Kind Agreement for Impact Fee Waiver
- Exhibit A – Project Sponsor Brief
- Exhibit B – In-Kind Agreement

This page intentionally blank.



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Draft Motion

HEARING DATE: APRIL 9, 2020

Record No.: 2016-006860IKA
Project Address: 65 Ocean Avenue
Project Sponsor: K. Cyrus Sanandaji
Agrippa, LLC
1160 Battery Street, Suite 250
San Francisco, CA 94111
Staff Contact: Veronica Flores (415-575-9173)
Veronica.Flores@sfgov.org

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

APPROVING AN IMPACT FEE WAIVER FOR THE 65 OCEAN AVENUE PROJECT IN THE AMOUNT OF \$322,433.15 TO PROVIDE A NEW ON-SITE CHILD CARE FACILITY AT THE PROJECT SITE BASED ON THE COMPLETION OF AN IN-KIND AGREEMENT BETWEEN THE PROJECT SPONSOR AND THE CITY.

PREAMBLE

Per Section 414A of the Planning Code, the project is subject to \$322,433.15 in Residential Child Care Impact Fees. The Planning Code enables project sponsors to seek a waiver from the impact fees when providing public improvements through an In-Kind Agreement with the Planning Department.

In July 2019, the Project Sponsor, Presidio Bay Ventures, filed an application with the City for approval of an In-Kind Agreement for provision of a new on-site child care facility at the project site.

On October 24, 2019, the Planning Commission approved the HOME-SF Project Authorization for 65 Ocean Ave. The project includes demolition of three existing commercial buildings (approximately 14,088 square feet) and new construction of a 55-foot-tall building with 193 dwelling units, and a basement-level garage with a total of 75 parking spaces and 149 Class 1 bicycle parking spaces.

A 5,942 square foot child care facility would be provided at the ground level, accommodating up to 25 children. This facility will be included in the Project and operational for the life of the project, subject to City and State licensing requirements, and shall participate in Office of Early Care and Education's (OECE's) Early Learning Scholarship (ELS) or Preschool for All Programs (PFA). Additionally, child care facilities receiving grants through the Low Income Investment Fund (LIIF) with the City shall reserve a minimum of 20% of all eligible slots for low- and moderate-income households.

MOVED, that the Commission hereby authorizes the Residential Child Care Impact Fee Waiver for 65 Ocean Avenue in the amount of \$322,433.15 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 414A.
3. **In-Kind Agreement Approval Criteria.** 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: Per Planning Code Section 414A.5, the child care facility shall be open and available to the general public on the same terms and conditions as to residents of the residential development project in which the facilities are located. Additionally, the on-site child care facility shall participate in the Office of Early Care and Education's (OECE's) Early Learning Scholarship (ELS) or Preschool for All Programs (PFA)
 - The Infrastructure Type is identified in the Fee Ordinance: The on-site childcare facility is identified in Planning Code Section 414.A.5, and therefore is eligible.
 - The Expenditure Category for Infrastructure Type is Not Exhausted: The Residential Child Care Impact Fee funds have not been exhausted.
4. **Other City Agency Review.** The Project is recommended by the Planning Department and has been reviewed by other public agencies, including the Office of Early Care and Education (OECE).
5. **General Plan Compliance.** The Proposed Project is, on balance, consistent with the following Objectives and Policies of the General Plan. All required City approval actions where General Plan findings are required, including but not limited to a major encroachment permit and curb relocation legislation, may rely on findings below:

The proposed In-Kind improvements support the General Plan by implementing the below policies and objectives.

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 1

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITYLIVING AND WORKING ENVIRONMENT.

Policy 1.1

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.

OBJECTIVE 2

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.1

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

OBJECTIVE 3

PROVIDE EXPANDED EMPLOYMENT OPPORTUNITIES FOR CITY RESIDENTS, PARTICULARLY THE UNEMPLOYED AND ECONOMICALLY DISADVANTAGED.

Policy 3.1

Promote the attraction, retention and expansion of commercial and industrial firms which provide employment improvement opportunities for unskilled and semi-skilled workers.

The proposed on-site child care facility is in conformance with the Commerce and Industry Element of the General Plan. This facility will serve approximately 25 children and provides approximately 2,289 square feet of open space dedicated to the child care.

6. **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 no adverse effects on neighborhood-serving retail uses.

- 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 creating an on-site child care facility and improving the public life in the neighborhood.

- 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 April 9, 2020

Jonas P. Ionin
Director of Commission Affairs

AYES:

NAYS:

ABSENT:

ADOPTED: April 9, 2020

EXHIBIT A

REUBEN, JUNIUS & ROSE, LLP

Jody Knight
jknight@reubenlaw.com

January 3, 2020

Delivered via Email (veronica.flores@sfgov.org)

Myrna Melgar, Commission President
San Francisco Planning Commission
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Re: 65 Ocean Avenue
Planning Case Number: 2016-006860
Hearing Date: January 16, 2020
Our File: 7892.03

Dear President Melgar and Commissioners:

This office represents Presidio Bay Ventures (the “**Sponsor**”), which seeks to develop a family-friendly, 25% affordable, Home-SF residential building with child care at 65 Ocean Avenue in the Excelsior neighborhood (the “**Property**”). The Sponsor proposes to construct a building with 193 dwelling units and 5,942 square-feet of child care use plus a child care outdoor play area (the “**Project**”). Therefore, the Project proposes to add housing, below market rate units, child care, and union labor jobs, which are all desperately needed in the Excelsior.

This Commission approved the Home-SF Project on October 24, 2019. Approval of the In-Kind Agreement was continued to December 12, 2019 and then January 16, 2020 to finalize the Agreement for your consideration. Under the In-Kind Agreement, the Sponsor would invest in excess of \$2,000,000 more than would be required if it paid the child care residential impact fee. The Project Team seeks to make this investment to serve new families in the building and contribute to the neighborhood at large.

The Project as a whole is designed to be family-friendly, with 45% of units with one bedroom plus den or larger and family-friendly amenities, including: cargo bike and car seat storage; delivery lockers; gym; and community space. Notably, there will be 19 two- or three-bedroom affordable units, and a total of 48 affordable units.

The child care center will serve children from families of all income levels in a brand-new space that has been thoughtfully designed to provide a separate entrance space and outdoor play area. The child care space will be accessed from Alemany Avenue, which will have 44 feet of pedestrian loading to provide safe pickup and drop off for the children who do not walk to school from the neighborhood and ensure that the child care space will not impact neighborhood traffic. The

San Francisco Office
One Bush Street, Suite 600, San Francisco, CA 94104
tel: 415-567-9000 | fax: 415-399-9480

Oakland Office
827 Broadway, 2nd Floor, Oakland, CA 94607
tel: 510-527-5589

www.reubenlaw.com

President Myrna Melgar
San Francisco Planning Commission
January 3, 2020
Page 2

Property is also in a transit rich area approximately half a mile from the Balboa Park Bart Station and a block from multiple Mission Street bus lines for access by families without cars.

The child care space will be built out by the Sponsor and ready for the provider to move in as soon as construction of the building is complete. The Project is supported by many in the child care community, as can be seen by the previously provided support letters received from the Crayon Box Preschool, Golden Bridges School, Little Bear School, and Faces SF, as well as from seventy-one Crayon Box and Little Bear parents.

As was presented at the hearing on October 24, the Project Team has conducted extensive outreach over the past three years of the Planning process, during which the Project changed from a 105 unit project with 18% below market rate units to a 193 unit project with 25% below market rate units and child care space. The Project has received support letters from hundreds of local residents, merchants and child care providers, as well as from multiple trade unions, the Bay Area Council, UCSF, and the Housing Action Coalition. With approval of the In-Kind Agreement, the Project will be fully approved by this Commission.

The Project seeks to transform an underutilized lot into much-needed housing and child care space, including 19 family-sized below market rate units which the Sponsor hopes will attract to the development families in need of child care. The Project has received an outpouring of support in the Excelsior neighborhood and beyond, and the Team looks forward to an ongoing investment in the community, including through the proposed child care space.

Please let me know if you have any questions. I look forward to presenting this Project to you on January 16, 2020.

Very truly yours,

REUBEN, JUNIUS & ROSE, LLP



Jody Knight

cc: Joel Koppel, Commission Vice-President
Sue Diamond, Commissioner
Dennis Richards, Commissioner
Frank S. Fung, Commissioner
Kathrin Moore, Commissioner
Milicent Johnson, Commissioner

EXHIBIT B

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

THIS IN-KIND AGREEMENT (“**Agreement**”) is entered into as of [REDACTED], by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the Planning Commission (the “**City**”) and Agrippa, LLC (“**Project Sponsor**”), with respect to a development project to be located at 65 Ocean Avenue, San Francisco, California, and commonly known as 65 Ocean (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 until 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 65 Ocean in San Francisco, California (Assessor’s Block Number 6954 Lots 018) (the “**Land**”) is owned by Project Sponsor. On May 20, 2016, the Project Sponsor submitted an application for the development of a project on the Land. The Project proposes construction of a three- to six-story over garage building with a child care facility of approximately 5,942 square feet (the “**Project**”). The Project is subject to a development impact fee under Section 414A of the Planning Code that is currently estimated to be \$322,433.15 (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 414A of the Planning Code. The in-kind improvements consist of a child care facility as more particularly described in **Exhibit C** (“**In-Kind Improvements**”), which Project Sponsor shall construct as part of the Project if the Project receives all of the required approvals described in Section 4.2 below.

E. The In-Kind Improvements address the community need for child care and are not a physical improvement or provision of space otherwise required by the Project entitlements or other City Code.

F. On October 24, 2019, in Motion No. 20551, the Planning Commission approved the Project, and on [REDACTED], in Motion No. [REDACTED], the Planning Commission authorized the Director of Planning 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.

“**Adjusted Fee**” shall have the meaning set forth in Section 6.2, including any subpart thereof, below.

“**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 414A of the Planning Code.

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

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

“**Fee Payment Notice**” shall have the meaning set forth in Section 6.2, including any subpart thereof, below.

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

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

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

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

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

“**Memorandum of Agreement**” shall have the meaning set forth in Recital B.

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

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

“**Operations Plan**” shall have the meaning set forth in Section 6.2 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.

“**Pooled Interest Rate**” shall have the meaning set forth in Section 6.2, including any subpart thereof, 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 Development Impact Fee, as calculated pursuant to Section 3.1 below.

“**Prorated Fee**” shall have the meaning set forth in Section 6.2, including any subpart thereof, 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 and authorized to own property and transact business in the State of California, (2) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated to be conducted, (3) has the power to execute and perform all the undertakings of this Agreement, and (4) is the fee owner of the Land on which the Project is located.

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

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

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

2.6 Pursuant to Sections 414A.5(b) and 421.3(d)(5) of the Planning Code, the Project Sponsor shall reimburse all City agencies for their administrative and staff costs in negotiating, drafting, and monitoring compliance with this Agreement.

ARTICLE 3 CALCULATION OF FEE AND IN-KIND CREDIT

3.1 **Calculation of Fee.** The Project Fee shall be calculated in accordance with Section 414A of the Planning Code. Based on the Project approved by the Planning Commission, the Project Fee is estimated at \$322,433.15. (For the fee calculations, see **Exhibit D**.) The final Fee shall be calculated on the estimated cost of the Project at the time of its First Construction Document.

3.2 **Calculation of In-Kind Value.** Based on two estimates provided by independent sources, as set forth in Schedules 2 and 3 to this Agreement, the Director of Planning determines that the In-Kind Improvements have a value of approximately \$2,334,930 (the “**In-Kind Value**”). Documentation establishing the estimated third-party eligible costs of providing the In-Kind Improvements in compliance with applicable City standards is attached hereto as **Exhibit E** (the “**Cost Documentation**”). The Project Sponsor may request an increase in the In-Kind Value by delivering written notice of such request to the Director, together with reasonable documentation of the third-party eligible costs exceeding the In-Kind Value. The Director shall have the sole discretion to approve or disapprove a requested increase of up to 15% of the In-Kind Value (a “**Non-Material Change**”), and the Planning Commission shall have the sole discretion to approve or disapprove any higher requested increase (a “**Material Change**”). If upon final completion the actual construction and development costs to the Project Sponsor of providing the In-Kind Improvements are lower than this amount, the provisions of Section 5.2 below shall apply.

ARTICLE 4 CONSTRUCTION OF IN-KIND IMPROVEMENTS

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

4.2 **Plans and Permits.** The Project Sponsor shall cause an appropriate design professional to prepare detailed plans and specifications for the In-Kind Improvements, which plans and specifications shall be submitted for review and approval by DBI and other applicable City departments or agencies in the ordinary course of the process of obtaining a site or building permit(s) for the Project (upon such approval, the “**Plans**”). The Plans shall meet all licensing requirements of the California Department of Social Services’ (CDSS) Community Care Licensing program for Child Care Licensing, including compliance with CDSS Regulations for Physical Environment at Title 22 of the California Code of Regulations, Division 12, Chapter 1, Article 7, “Child Care Centers.” The Project Sponsor shall be responsible for obtaining, at its sole cost, all permits and approvals from affected departments that are necessary to implement this proposal. The Project Sponsor shall be responsible, at no cost to the City, for completing the In-Kind Improvements substantially 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 approved material changes or deviations therefrom that may occur during construction of the In-Kind Improvements.

4.3 **Construction.**

4.3.1 The Project Sponsor will deliver the child care facility in warm shell condition (for example, with the space demised to meet occupancy separation requirements [minus finishes on wall, floor and ceiling], stubs for standard utilities, path to a location for mechanical equipment, storefront and rear access as required, and other items required to obtain a temporary certificate of occupancy to allow tenant to proceed with their improvements).

4.3.2 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 improvements shall be accomplished in accordance with good construction and engineering practices and applicable laws, and shall be of the highest quality for similar child care facilities. 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 full release and indemnification for the benefit of the City.

4.4 **Inspections.** The Project Sponsor shall request the customary inspections of work by DBI and all other applicable City and State departments or agencies during construction using applicable City procedures in accordance with the City's Building Code and other applicable law. Upon final completion of the installation of the In-Kind Improvements and the Project Sponsor's receipt of all final permit sign-offs, the Project Sponsor shall notify all applicable City departments or agencies that the In-Kind Improvements have been completed. Such City departments or agencies shall inspect the site to confirm compliance with applicable City standards for such installation. This condition will not be satisfied until all applicable City and State departments and agencies have certified that the In-Kind Improvements are complete and ready for their intended use.

4.5 **Completion of In-Kind Improvements.** Upon final completion of the In-Kind Improvements and the Project Sponsor's receipt of all final permit sign-offs, the Project Sponsor shall notify the Director of Planning that the In-Kind Improvements have been completed. The Director of Planning, or his or her agent, shall inspect the In-Kind Improvements to confirm compliance with this Agreement, and shall promptly notify the Project Sponsor if there are any problems or deficiencies. The Project Sponsor shall correct any such problems or deficiencies and then request another inspection, repeating this process until the Director of Planning approves the In-Kind Improvements as satisfactory. Such approval shall be based on the requirements of this Agreement and shall not be unreasonably withheld.

ARTICLE 5 SATISFACTION OF OBLIGATIONS; PARTIAL REIMBURSEMENTS

5.1 **Evidence of Payment.** The Project Sponsor shall provide the Planning Department with documentation substantiating payment by the Project Sponsor of the cost of providing the In-Kind Improvements in the form of third-party checks and invoices and its or its general contractor's standard general conditions allocation (the "**Payment Documentation**"). The Payment Documentation shall include information necessary and customary in the construction industry to verify the Project Sponsor's costs and payments. The cost of providing the In-Kind Improvements shall not be significantly higher than the average capital costs for the City to provide comparable improvements, based on current value of recently completed 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 pursuant to Section 4.5 of this Agreement, 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 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 City receives any additional payments as may be required under this Article 5, and all other obligations of the Project Sponsor under this Agreement, except for the requirements of Section 6.2 of this Agreement, have been satisfied (the "**Date of Satisfaction**"). Issuance of the Notice of Satisfaction shall not indicate compliance with Section 6.2 of this Agreement.

5.3.1 Notwithstanding the provisions of Article 7 of this Agreement, the notices given by the parties under this Section 5.3 may be in the written form and delivered in the manner mutually agreed upon by the parties.

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

5.4 **Security.** If the Planning Director has not issued the Notice of Satisfaction under Section 5.3 above prior to issuance of the first certificate of occupancy for the Project, including any temporary certificate of occupancy, the Project Sponsor shall provide a letter of credit, surety bond, escrow account, or other security reasonably satisfactory to the Planning Director in the amount of one hundred percent (100%) of the Project Fee (the "**Security**") to be held by the City until issuance of the Notice of Satisfaction, at which date it shall be returned to the Project Sponsor. If the Project Sponsor is required to post a bond for the Project with the Department of Public Works under the Subdivision Map Act and that security covers the In-Kind Improvements to be provided under this Agreement, the Subdivision Map Act bond may be substituted for the Security required by this Section and the Project Sponsor is not required to provide additional Security for the In-Kind Improvements.

5.5 **Additional Obligations.** Notwithstanding anything in this Agreement to the contrary:

5.5.1 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, the Planning Department may request that DBI institute lien proceedings to recover the amount of the Fee due

plus interest pursuant to Section 408 of the Planning Code and Section 107A.13.15 of the Building Code.

5.5.2 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 that 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 Project Sponsor, on behalf of itself and all future fee owners of the Land, agrees to assume full responsibility for the construction of In-Kind Improvements contemplated in this Agreement and all liability relating to such construction. Project Sponsor acknowledges this Agreement does not create any City responsibility or liability with respect to the construction or maintenance of the Improvements. Project Sponsor shall obtain all permits and approvals from other affected departments that are necessary to implement this proposal, and shall abide by any conditions associated with such permits including the posting and maintenance of insurance and security. The City would not be willing to enter into this Agreement without this provision and the Project Sponsor's acceptance of all liability relating to construction of the In-Kind Improvements in accordance with this Article is a condition of the Planning Commission's approval of the terms of this Agreement.

6.2 **Operations Plan.** The child care facility shall be operated in compliance with the following requirements:

6.2.1 The operating term for the child care facility shall equal the life of the Project.

6.2.2 A State-licensed child care provider shall operate the facility under the following terms, provided that all applicable operating and licensing and other requirements as may be necessary are first obtained:

6.2.2.1 The child care facility operator ("**Child Care Operator**") shall comply with all applicable State and local laws and guidelines for operating a child care facility.

6.2.2.2 The number of children to be served by the Child Care Operator is to be determined based on state and any local licensing requirements.

6.2.2.3 The Child Care Operator shall participate in the Early Learning Scholarship and/or Preschool for All Tuition Credit programs, administered by the San Francisco

Office of Early Care and Education (OECE), and shall comply with OECE's Early Learning Scholarship and Preschool for All Program Operating Guidelines, as may be amended from time to time.

6.2.2.4 The Project Sponsor and any subsequent owner of the child care facility shall include, and require compliance with, a provision in its lease requiring any Child Care Operator receiving City-funded grants through the Low Income Investment Fund (LIIF) to comply with all requirements associated with that funding, including but not limited to any requirement to serve a minimum percentage or number of low- and moderate-income families.

6.2.2.5 Selection of any Child Care Operator shall be made as follows:.

For the initial selection of a Child Care Operator, within 180 days of the effective date of this Agreement, the Project Sponsor shall use all reasonable efforts to select a Child Care Operator and shall satisfy all minimum requirements for the Child Care Operator as determined by OECE. For all subsequent selections of a Child Care Operator, the Project Sponsor or subsequent owner of the child care facility shall use all reasonable efforts to select a Child Care Operator within 90 days after it receives notice that the current Child Care Operator intends to cease operation of the facility. In selecting a Child Care Operator, the Project Sponsor or subsequent owner of the child care facility shall comply with all minimum requirements for the Child Care Operator as determined by OECE, including but not limited to hours of operation and the range of ages of children to be served. Such minimum requirements shall be generally consistent with requirements for comparable child care centers monitored by OECE.

6.2.3 The Project Sponsor and any subsequent owner of the facility may not charge rent (including security, common building charges and utilities, etc.) to the Child Care Operator that exceeds prevailing market rent comparable to other similarly-sized and geographically proximate licensed child care facilities.

6.2.4 The Project Sponsor and any subsequent owner of the facility shall comply with the terms below during initial leasing and periods of operator turnover and/or vacancy periods.

6.2.4.1 For leasing of the facility to the initial Child Care Operator, if no lease to a Child Care Operator has been entered into prior to issuance of the first certificate of occupancy for the Project, no less than 15 business days before initially offering the child care facility for rent, and for leasing of the facility to subsequent Child Care Operators, within 15 business days following the expiration or termination of the prior Child Care Operator's lease for the facility, the owner of the facility shall notify governmental and nonprofit entities that can assist in publicizing the availability of the facility for lease, including, at a minimum, the following entities: the San Francisco Office of Early Care and Education (or any successor agency), the San Francisco Childcare Planning and Advisory Council, the Children's Council, and Wu Yee Children's Services.

6.2.4.2 If the child care facility remains unleased by an approved Child Care Operator for more than three years after DBI has issued a first certificate of occupancy (including any temporary certificate of occupancy) for the Project, then the City may, in its sole discretion, by issuance of a notice ("**Fee Payment Notice**"), require the Project Sponsor to pay the City an amount equal to the Project Fee, plus interest at the rate earned on the San Francisco Treasurer's Office Pooled Fund ("**Pooled Fund Rate**"). This Project Fee plus interest constitutes the "**Adjusted Fee.**" Interest shall be calculated from the date the Notice of Satisfaction was issued to the date the Fee Payment Notice is issued, at the Pooled Fund Rate(s) in effect during that time period. The Adjusted Fee payment shall be deposited in the Child Care Capital Fund established under Planning Code Section 414.14. Upon paying such amount to City under this subsection, the Project Sponsor may use the facility for any use permitted by the applicable zoning.

6.2.4.3 If after having been leased to at least one approved Child Care Operator, the child care facility is not leased to an approved Child Care Operator for more than three years after the termination or earlier expiration of the most recent approved Child Care Operator's lease, then the City may, at its sole discretion, by issuance of a Fee Payment Notice, require the Project Sponsor or subsequent owner of the child care facility to pay City the Project Fee plus interest at the Pooled Fund Rate. Interest shall be calculated from the date the Notice of Satisfaction was issued to the date of issuance of the Payment Notice, at the Pooled Fund Rate(s) in effect during that time period, with a credit for any time the child care facility was leased to an approved Child Care Operator in compliance with this agreement. This Project Fee plus interest constitutes the "Prorated Fee." Credit shall be calculated at a rate of 1/20 of the Project Fee for each year the facility is leased to an approved Child Care Operator. This Prorated Fee payment shall be deposited in the Child Care Capital Fund established pursuant to Planning Code Section 414.14. Upon paying such amount to City under this subsection 6.2.4.3, Project Sponsor may use the facility for any use permitted by the applicable zoning.

6.2.5 The child care facility shall be open and available to the general public on the same terms and conditions as to residents of the Project.

6.2.6 The Project Sponsor or subsequent owner of the child care facility shall require each Child Care Operator to be subject to monitoring and reporting requirements established by OECE regarding compliance with this Agreement.

6.2.7 The Project Sponsor or subsequent owner of the child care facility shall execute a Notice of Special Restrictions to dedicate the space for child care use ("NSR"). The NSR shall incorporate the requirements of this Section 6.2, be in a form approved by the Project Sponsor or subsequent owner and the City, which approval shall not be unreasonably withheld or conditioned, and recorded against the parcel on which the Project is located at the time the First Construction Document is issued for the Project.

ARTICLE 7 NOTICES

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

CITY:

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

with a copy to:

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

PROJECT SPONSOR:

Cyrus Sanandaji
Agrippa, LLC
1160 Battery Street, Suite 250
San Francisco, CA 94111

with a copy to:

John Kevlin
Jody Knight
Reuben, Junius & Rose, LLP
One Bush Street, Suite 600
San Francisco, CA 94104

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 Land, and shall burden and benefit every successor owner of the Land. The City would not be willing to enter into this Agreement without this provision, and the parties shall record the Memorandum of Agreement on or before the Effective Date. On the date on which all provisions of this Agreement have been satisfied, or the date that this Agreement is terminated pursuant to Section 9.3 below, this Agreement shall terminate and the City shall execute and deliver to the Project Sponsor a release of the Memorandum of Agreement, which the Project Sponsor may record.

ARTICLE 9 ADDITIONAL TERMS

9.1 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.

9.2 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.

9.3 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 shall have no obligation to issue the First Construction Document unless and until this Agreement is reinstated, another agreement is executed by the parties, or the Project Sponsor's obligations under Article 4 of the Planning Code are satisfied in another manner. Any material amendment shall require the approval of the City's Planning Commission, in its sole discretion. The Planning Director may approve Non-Material Change to the In-Kind Value as set forth in Section 3.2 of this Agreement.

9.4 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.

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

9.6 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.

9.7 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.

9.8 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 motion approving this Agreement, and it has been duly executed by the Director of Planning and approved as to form by the City Attorney.

9.9 The Project Sponsor, on behalf of itself and its successors, shall indemnify, defend, reimburse and hold the City harmless from and against any and all claims, demands, losses, liabilities, damages, injuries, penalties, lawsuits and other proceedings, judgments and awards and costs by or in favor of a third party, incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any accident, injury to or death of a person, or loss of or damage to property occurring in, on or about the site of the In-Kind Improvements during their construction, provided that such accident, injury, death, loss or damage does not result from the gross negligence of the City; (b) any default by the Project Sponsor under this Agreement; (c) the condition of the In-Kind Improvements constructed by or on behalf of the Project Sponsor; and (d) any acts, omissions or negligence of the Project Sponsor or its agents under this Agreement (“**Indemnity**”). 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 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.), apply to 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.

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

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

10.4 Through execution of this Agreement, the Project Sponsor acknowledges that it is familiar with Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer, a candidate for the office held by such individual, or a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until negotiations terminate or twelve (12) months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

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

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

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

10.7 If City's Office of Economic and Workforce Development ("OEWD") determines that the In-Kind Improvements are subject to the requirements of San Francisco Local Hiring Policy for Construction set forth in Chapter 82 of the San Francisco Administrative Code, the Project Sponsor shall comply with such requirements and execute a Local Hire Agreement with OEWD, which shall be made an Exhibit to this In-Kind Agreement. The Project Sponsor's failure to comply with its obligations under Chapter 82, and the Local Hire Agreement shall constitute a material breach of this In-Kind Agreement and may subject the Project Sponsor and its contractors and subcontractors to the consequences of noncompliance specified in Chapter 82, and the Local Hire Agreement, including but not limited to penalties.

10.8 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, which shall be made an Exhibit to this In-Kind Agreement. 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.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

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

CITY:

PROJECT SPONSOR:

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

Agrippa, LLC

By: _____
Director of Planning

By: _____
Cyrus Sanandaji
Authorized Representative

APPROVED:

DENNIS J. HERRERA
City Attorney

By: _____
Deputy City Attorney
Victoria Wong

Exhibit A

Memorandum of Agreement

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

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

(Free Recording Requested Pursuant to
Government Code Section 27383)

APN:
Address:

Memorandum of In-Kind Agreement

This Memorandum of In-Kind Agreement (this “**Memorandum**”), is dated as of [REDACTED], and is by and between the City and County of San Francisco, a municipal corporation, acting by and through the Planning Commission (the “**City**”), and Agrippa, LLC, a Delaware limited liability company (the “**Project Sponsor**”).

1. The property described in Exhibit A attached hereto (the “**Land**”) and generally known as 65 Ocean, San Francisco, California, is owned by Project Sponsor.
2. Under San Francisco Planning Code Section 414A (“**Section 414A**”), 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 414A if the Project Sponsor enters into an agreement with the City to provide in-kind improvements.
3. In accordance with Section 414A, the City and the Project Sponsor have entered into an In-Kind Agreement dated as of [REDACTED] (the “**In-Kind Agreement**”), which permits the Project Sponsor to receive construction documents with the satisfaction of certain conditions in return for the Project Sponsor’s agreement to provide certain in-kind improvements under the terms and conditions set forth therein.
4. Upon the Project Sponsor’s satisfaction of the terms of the In-Kind Agreement, including but not limited to all operating requirements in Section 6.2 of the 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: CITY AND COUNTY OF SAN FRANCISCO,
acting by and through its Planning Commission

By: _____
Director of Planning

PROJECT SPONSOR: Agrippa, LLC,
a limited liability company

By: _____
Cyrus Sanandaji, Authorized Representative

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

State of California)
) ss
County of San Francisco)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

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

State of California)
) ss
County of San Francisco)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

Exhibit B

Legal Description of Land

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

PARCEL 1

A PORTION OF LOT 32, BLOCK 13, AS SHOWN AND DESIGNATED ON THE MAP OF "WEST END MAP NO. 1", FILED MAY 1, 1863 IN BOOK 2 "A" AND "B" OF MAPS, PAGE 45, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, WHICH PORTION IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHERLY TANGENT LINE OF OCEAN AVENUE, DISTANT THEREON 246.302 FEET WESTERLY FROM THE NORTHWESTERLY LINE OF WATTSON PLACE; RUNNING THENCE WESTERLY, ALONG SAID LINE OF OCEAN AVENUE, 96.871 FEET TO THE SOUTHWESTERLY LINE OF SAID LOT 32; THENCE SOUTHEASTERLY, ALONG THE SOUTHWESTERLY LINE OF SAID LOT 32, A DISTANCE OF 82.678 FEET TO A LINE DRAWN FROM THE POINT OF BEGINNING PARALLEL WITH THE SOUTHEASTERLY LINE OF CAYUGA AVENUE PRODUCED NORTHEASTERLY; THENCE NORTHEASTERLY, ALONG THE LAST MENTIONED LINE SO DRAWN, 50.479 FEET TO THE POINT OF BEGINNING.

PARCEL 2

A PORTION OF LOT 1, BLOCK 13, AS SHOWN AND DESIGNATED ON THE MAP OF "WEST END MAP NO. 1", FILED MAY 1, 1863 IN BOOK 2 "A" AND "B" OF MAPS, PAGE 45, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, WHICH PORTION IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHERLY LINE OF OCEAN AVENUE WITH THE NORTHEASTERLY LINE OF SAID LOT 1; RUNNING THENCE WESTERLY, ALONG SAID LINE OF OCEAN AVENUE, 126.657 FEET TO THE SOUTHEASTERLY LINE OF CAYUGA AVENUE; THENCE SOUTHWESTERLY, ALONG SAID LINE OF CAYUGA AVENUE, 14.000 FEET TO THE SOUTHWESTERLY LINE OF SAID LOT 1; THENCE SOUTHEASTERLY, ALONG SAID LOT LINE, 200.000 FEET TO THE SOUTHEASTERLY LINE OF SAID LOT 1; THENCE NORTHEASTERLY, ALONG LAST SAID SOUTHEASTERLY LINE, 45.000 FEET, MORE OR LESS, TO A LINE DRAWN AT A RIGHT ANGLE TO THE NORTHEASTERLY PRODUCTION OF SAID LINE OF CAYUGA AVENUE FROM A POINT IN THE NORTHWESTERLY LINE OF ALEMANY BOULEVARD, DISTANT THEREON 125.000 FEET NORTHEASTERLY FROM THE SOUTHWESTERLY LINE OF LOT 15 IN SAID BLOCK 13; THENCE, AT A RIGHT ANGLE, NORTHWESTERLY, ALONG THE LINE SO DRAWN, 9.000 FEET, MORE OR LESS, TO A LINE DRAWN SOUTHWESTERLY, PARALLEL TO THE NORTHEASTERLY PROLONGATION OF SAID SOUTHEASTERLY LINE OF CAYUGA AVENUE, FROM A POINT DISTANT ON THE SOUTHERLY TANGENT LINE OF OCEAN AVENUE 246.302 FEET WESTERLY FROM THE NORTHWESTERLY LINE OF WATTSON PLACE; THENCE NORTHEASTERLY, ALONG LAST SAID LINE SO DRAWN, 39.521 FEET, MORE OR LESS, TO THE NORTHEASTERLY LINE OF SAID LOT 1; THENCE NORTHWESTERLY, ALONG LAST SAID LOT LINE, 82.678 FEET TO THE POINT OF BEGINNING.

PARCEL 3

ALL OF LOT 2 AND PORTIONS LOTS 15 AND 16, ALL IN BLOCK 13, AS SHOWN AND DESIGNATED ON THE MAP OF "WEST END MAP NO. 1", FILED MAY 1, 1863 IN BOOK 2 "A" AND "B" OF MAPS, PAGE 45, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF CAYUGA AVENUE AND THE NORTHEASTERLY LINE OF SAID LOT 2; RUNNING THENCE SOUTHWESTERLY, ALONG SAID LINE OF CAYUGA AVENUE, 80.000 FEET TO THE SOUTHWESTERLY LINE OF SAID LOT 2; THENCE SOUTHEASTERLY, ALONG THE SOUTHWESTERLY LINE OF SAID LOTS 2 AND 15, A DISTANCE OF 280.450 FEET, MORE OR LESS, TO THE NORTHWESTERLY LINE OF ALEMANY BOULEVARD; THENCE NORTHEASTERLY, ALONG THE LAST MENTIONED LINE, 125.000 FEET; THENCE NORTHWESTERLY, ALONG A LINE DRAWN AT A RIGHT ANGLE TO THE SOUTHEASTERLY LINE OF CAYUGA AVENUE PRODUCED, A DISTANCE OF 77.000 FEET, MORE OR LESS, TO THE NORTHWESTERLY LINE OF SAID LOT 16; THENCE SOUTHWESTERLY, ALONG THE NORTHWESTERLY LINE OF SAID LOT 16, A DISTANCE OF 45.000 FEET, MORE OR LESS, TO THE MOST EASTERLY CORNER OF SAID LOT 2; THENCE NORTHWESTERLY, ALONG THE NORTHEASTERLY LINE OF SAID LOT 2, A DISTANCE OF 200.00 FEET TO THE POINT OF BEGINNING.

PARCELS 1, 2 AND 3 TOGETHER COMPRISE ASSESSOR'S LOT 018, BLOCK 6954

Exhibit C

In-Kind Improvements Description

The In-Kind Improvements consist of the following:

Approximately 5,942 square feet of ground floor child care space in the project proposed at the property generally known as 65 Ocean in San Francisco, California (Assessor's Block Number 6954 Lot 018) (the "**Land**") pursuant to Planning File No 2016-006860AHB (the "**Project**"), with adjacent open space for child care use as required by state and/or local law, including but not limited to 22 Cal. Code of Regs. § 101238.2, and generally consistent with the plans approved by the Planning Commission on October 24, 2019, in Exhibit B of Planning Commission Motion No. M-20551, with additional tenant improvements as specified by the Child Care Operator and/or OECE.

Exhibit D

Calculation of Impact Fees

65 Ocean - Estimated Childcare Impact Fee

Use	GSF subject to fee	Rate (per sf)	Est. Total
Residential	14,088	\$0.33	\$4,649.04
	139,993	\$2.27	\$318,465.11
			\$322,433.15

Notes:

- \$0.33/gsf fee applies to change of use from existing 14,088 gsf to new residential.
- Total of 154,381 new residential gsf. 14,088 existing gsf eligible for a change of use credit.

Exhibit E

Cost Documentation

Item	5,451 gsf	
	TOTAL	\$/gsf
1 General Conditions	\$66,445	\$12.19
2 Sitework	\$381,570	\$70.00
3 Landscaping	\$54,510	\$10.00
4 Foundations	\$81,184	\$14.89
5 Structure	\$270,893	\$49.70
6 Exterior Envelope	\$308,291	\$56.56
7 Roofing/Waterproofing	\$66,545	\$12.21
8 Interiors	\$490,590	\$90.00
9 Specialties	\$3,717	\$0.68
10 Equipment	\$1,112	\$0.20
11 Elevators	\$21,042	\$3.86
12 Fire Sprinkler	\$17,438	\$3.20
13 Plumbing	\$54,410	\$9.98
14 HVAC	\$97,173	\$17.83
15 Electrical	\$144,092	\$26.43
17 Misc Expenses	\$14,987	\$2.75
20 Job Equipment	\$29,580	\$5.43
50 Subtotal	<u>\$2,103,578</u>	\$385.91
Construction Contingency	\$63,107	\$11.58
Subguard	\$26,000	\$4.77
GL Insurance	\$20,831	\$3.82
Fee	\$71,939	\$13.20
Gross Receipts Tax	\$49,475	\$9.08
	\$2,334,930	\$428.35

Pricing is for budgetary purposes only and based on historical \$/gsf.
Pricing is in current dollars and subject to change.



PRELIMINARY COST BREAKDOWN
65 Ocean Avenue-Daycare
San Francisco, CA

10/7/19

Item	Description	Sec #	Total
1	General Conditions	01100	\$ 358,994
2	Shoring and Underpinning	02150	\$ 97,248
3	Earthwork	02200	\$ 95,747
4	Site Concrete	02510	\$ 52,221
5	Storm Drainage	02640	\$ 15,678
6	Site Carpentry	02825	\$ 10,452
7	Landscaping	02900	\$ 20,904
8	Building Concrete	03300	\$ 413,925
9	Quartz Countertops	04455	\$ 5,000
10	Structural Steel	05100	\$ 257
11	Cold-Formed Metal Framing	05400	\$ 51,273
12	Metal Fabrication	05500	\$ 14,785
13	Prefabricated Metal Stairs	05710	\$ 18,500
14	Rough Carpentry	06100	\$ 28,864
15	Finish Carpentry	06200	\$ 43,601
16	Millwork	06201	\$ 5,737
17	Cabinets	06410	\$ 25,000
18	Waterproofing	07100	\$ 15,122
19	Weather Resistant Barrier	07190	\$ 6,080
20	Building Insulation	07200	\$ 13,080
21	Firestopping	07220	\$ 250
22	Flashing & Sheet Metal	07600	\$ 10,452
23	Joint Sealers	07900	\$ 1,100
24	Hollow Metal Doors & Frames	08100	\$ 25,114
25	Wood Doors	08210	\$ 1,000
26	Access Doors	08305	\$ 225
27	Entrance & Storefront	08400	\$ 85,790
28	Finish Hardware	08700	\$ 10,675
29	Glazing	08800	\$ 2,750
30	Gypsum Wall Board	09250	\$ 67,738
31	Ceramic Tile	09300	\$ 32,320
32	Acoustical Treatment	09500	\$ 66,190
33	Resilient Flooring	09650	\$ 46,350
34	Carpet	09680	\$ 27,224
35	Painting	09900	\$ 37,577
36	Identifying Devices	10400	\$ 1,000
37	Fire Extinguishers & Cabinets	10520	\$ 590
38	Toilet & Bath Accessories	10800	\$ 6,600
39	Mirrors	10820	\$ 320
40	Residential Equipment	11450	\$ 3,000
41	Window Treatments	12500	\$ 5,483
42	Floor Mats	12670	\$ 4,500
43	Scaffolding	14800	\$ 323,903
44	Plumbing	15400	\$ 141,715
45	Fire Protection	15500	\$ 51,633
46	H.V.A.C.	15800	\$ 133,704
47	Electrical	16100	\$ 155,449
48	Clean-up & Janitorial	17000	\$ 14,349
49			
50	Testing & Inspections	21000	By Owner
51	Building Permits & Fees	21020	By Owner
52	Street Permits	21040	By Owner
53	Water Fees	21060	By Owner
54	Sewer Fees	21080	By Owner
55	Security Cameras	21100	By Owner
56	PG&E Vault	21120	By Owner
57	Builders Risk	21040	By Owner
58	Sub Bonds	21060	N.I.C.
	SUBTOTAL		\$ 2,549,467
	City Tax	0.20%	\$ 5,099
	General Contractor Insurance (OCIP by Owner)	1.30%	\$ 33,209
	Fee	4.75%	\$ 122,919
	G.C. Bond	0.72%	\$ 19,517
	Current Market Total		\$ 2,730,212
	<i>Suggested Design / Escalation Contingency</i>	15.00%	\$ 409,532
			\$ 3,139,743