



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary

Fee Waiver for the Market Octavia Neighborhood Infrastructure Impact Fee

Date: March 14, 2013
Case No.: 2008.0550U
Project Address: **2001 Market Street In-Kind Agreement**
Plan Area: Market Octavia Area Plan
Project Sponsor: Prado Group

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SUMMARY

The Project Sponsor of the development at 2001 Market Street is seeking to enter an In-Kind Agreement with the City of San Francisco to provide streetscape, pedestrian safety, and public space improvements on Dolores Street and Market Street in return for a waiver of \$510,000 of their Market-Octavia Infrastructure Impact Fees.

PROJECT LOCATION

The project is located at the intersections of Dolores and Market Streets and Dolores and 14th Streets. Market and Dolores Streets are two of the iconic streets of San Francisco that help to define the City's urban pattern. The project is in the Northeast portion of San Francisco, adjacent to the Upper Market/Castro, Mission/Dolores, Hayes Valley, Duboce Triangle, and other neighborhoods. The project falls within the Market and Octavia neighborhood plan area, and was within the planning area for the Upper Market Community Design Plan.

BACKGROUND

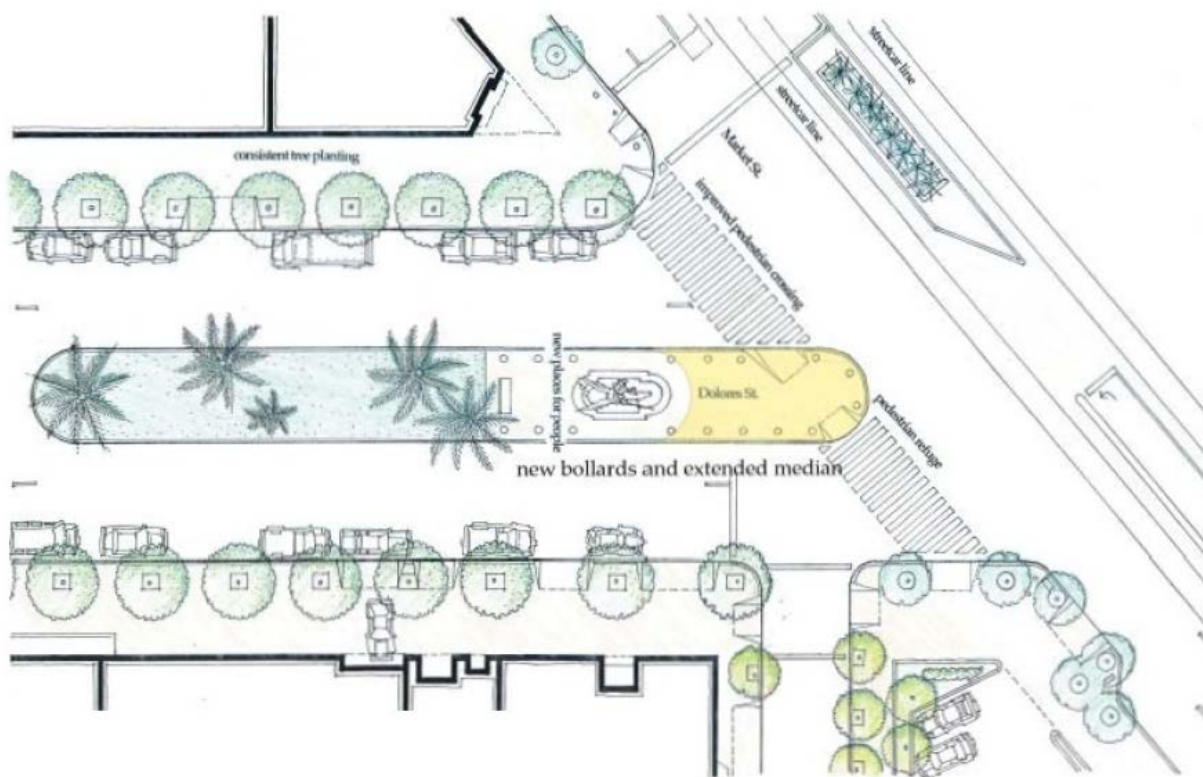
On December 18, 2010, the Planning Commission granted approval¹ to the project proposed for 2001 Market Street. This project will be an 85-foot high, eight-story, approximately 187,400-gross-square-foot (gsf) mixed-use residential-commercial building with 82 dwelling units, and an approximately 31,000 square foot retail grocery store (dba "Whole Foods"). Per Section 421 of the Planning Code, the project is subject to pay \$928,937 in Market and Octavia infrastructure impact fees, since the property falls within the Market and Octavia Area Plan area boundaries. Project sponsors may pay the impact fee directly to the City or may request to directly provide infrastructure that is consistent with the Community Improvements Program for the Market and Octavia Area Plan. Such direct provision of infrastructure requires approval of the City, in the form of a legally binding "In-Kind Agreement". The Project Sponsor for the 2001 Market Street development, the Prado Group, is seeking such In-Kind Agreement to provide

¹ Motion Number 18246

streetscape, pedestrian safety, and public space improvements at the intersections of Dolores and Market Streets and Dolores and 14th Streets. The improvements proposed for this agreement would support the policies established in the Market Octavia Area Plan (the Plan) and generally reflect the improvements proposed in that Plan.

The Market Octavia Area Plan centers on building good urban places. This Plan sets as one of its principles that streets with safe and ample space for pedestrians along with transit and bicycles contribute to a vibrant public life. The Plan was adopted in 2007, following eight years of community planning and numerous public workshops and meetings. The Plan promotes strategies such as widening sidewalks, shortening crosswalks, and celebrating corner plazas in order to improve the public life of the neighborhood. More specifically, the Plan calls for reinforcing the significance of the intersection of Dolores and Market Streets through extending the Dolores Street median to Market Street and creating a paved plaza at this intersection.

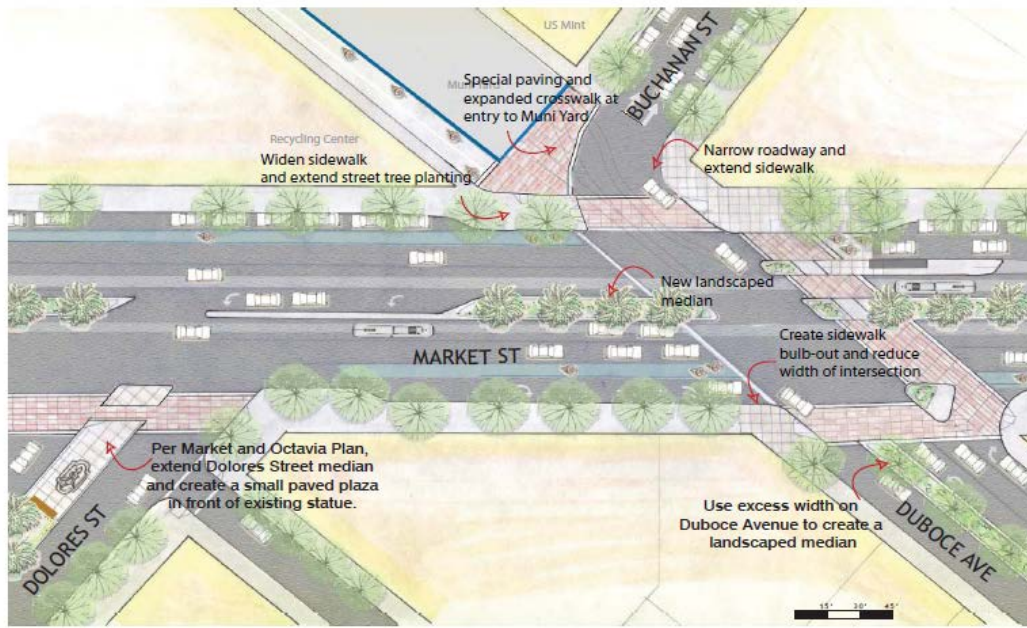
Figure 1- Proposed Improvements at Market Street and Dolores Street in the Market Octavia Area Plan



This project also falls within the study boundaries of the Upper Market Community Design Plan (“Upper Market Plan”), endorsed by the Planning Commission in 2008. The Upper Market Plan held a series of community workshops and meetings to arrive at a set of recommendations to be applied to private development and public realm improvements. The Upper Market Plan encourages “socially-engaging sidewalk design,” additional open spaces in the Upper Market area, and bulb-outs and extended public

spaces within the public right-of-way. The Upper Market Plan also provides concept designs for intersection improvements at Dolores and Market Streets.

Figure 2- Proposed Improvements for Market Street and Dolores Street Intersection in the Upper Market Community Plan



The Market and Octavia Plan adoptions included a Community Improvements Plan. This Plan specifically calls out implementation projects to complete the plan and address the impacts of new housing and commercial development in the Plan Area. The public plaza at the Dolores Street median shown above is one of the implementation projects highlighted in this plan. Additionally, the Interagency Plan Implementation Committee (IPIC) and the Market Octavia Citizen Advisory Committee (MO CAC) determine priorities for expenditure of Market and Octavia impact fees in an annual expenditure plan. An IPIC and CAC priority is the improvement of pedestrian safety at key plan intersections, including Upper Market intersections.

PROPOSED PUBLIC IMPROVEMENTS

Building on the Market Octavia Area Plan's proposals for the intersection of Market and Dolores Streets, the 2001 Market project sponsors propose to provide infrastructure improvements at this intersection to enhance public life and improve pedestrian safety. The proposed In-Kind Agreement would include:

- 1) Sidewalk bulb-outs (widened sidewalks) at Market Street and Dolores Street intersection on both southeast and southwest sides; and at Dolores Street and 14th Street on the North-West corner
- 2) A public plaza, including seating and landscaping on the southwest corner of Dolores Street and Market Street adjacent to the future Whole Foods grocery store
- 3) Extension of the Dolores Street median to Market Street
- 4) Special paving materials in the crosswalk across Dolores Street at Market Street
- 5) Raised crosswalk and bulb-outs on Clinton Park alley where it intersects Dolores Street on the east side

The detailed design of such improvements is presented in Exhibit C of Attachment 2. The proposed improvements would enhance pedestrian safety, calm traffic, and provide a new public open space. Dolores Street currently consists of four travel lanes (two northbound, two southbound) separated by a median. The adopted Area Plan calls for pedestrian safety improvements along Upper Market intersections, including the intersection of Dolores and Market Streets. Introduction of a new grocery store to this intersection would generate higher pedestrian traffic at this location.

The proposed improvements would help enhance pedestrian safety through calming traffic, shortening crossing distance, and increasing visibility of pedestrians crossing Dolores Street, through providing pedestrian amenities such as bulb-outs, a median extension, and reducing the number of travel lanes at the intersection of Dolores and Market Streets. Additionally, the proposed improvements would enhance the public life in this neighborhood by creating a public plaza with seating and landscaping for people to relax and mingle adjacent to the new development. The proposed public plaza in front of the future development would introduce an urban open space to this neighborhood that would supplement traditional open spaces in the neighborhood such as Dolores Park or Duboce Park, and is consistent with other urban plazas in the Upper Market area, such as Jane Warner Plaza at Castro and Market Streets. The plaza and all other improvements proposed in this In-Kind Agreement would be publicly accessible and located on public rights-of-way.

OUTREACH AND PUBLIC COMMENT

As mentioned, the proposal for pedestrian safety and public space improvements originated through the Market and Octavia community planning process, which spanned 8 years and included significant public outreach and hearings.

Additionally, the Market Octavia Citizen Advisory Committee (the CAC) reviewed various iterations of the proposed improvements at multiple committee meetings throughout 2011. The CAC approved a resolution in December 2011 supporting the improvements, and providing specific comments regarding the design, scope of work, a maximum cost of \$450,000, and relation to other priority improvements for the Market and Octavia area (Attachment 3).

The Department is aware of a petition from a number of residents of the neighborhood circulated by the Mission Dolores Neighborhood Association, opposing the removal of one vehicular traffic lane on Dolores Street for a portion of the block south of Market Street, and requesting the Project Sponsor to revise the proposal to remove this feature.

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 proposed design has been reviewed and commented on by multiple City agencies including the Department of Public Works, SFMTA, Fire Department, and the SFPUC to lay out a design for these improvements that reflects technical considerations from other city agencies.

The Department received two cost estimates from the Project Sponsor, from BKF Engineers and Webcor Builders, in the amount of \$486,727 and \$513,075, respectively. The Department has reviewed these cost

estimates with the Department of Public Works, and the Project Sponsor has revised the estimates per their comments.

The cost estimate includes \$29,000 for enhancement of the public plaza with significant seating and landscaping features, which the project sponsor included at the Department's request. The Department believes that this is essential to create an active and usable public space at this location. The Department and the Project Sponsor also met with DPW, which indicated a preference for Bomanite stamped concrete in the Market Street crosswalk, to be consistent with the design and materials of Market Street. This is also included in the cost estimate, at a cost of \$30,000 over standard stamped concrete. Discussions with DPW about the inclusion of this cost item are on-going. These two cost items bring the cost estimate from approximately \$450,000 to approximately \$510,000.

MAINTENANCE OF IMPROVEMENTS

Improvements will be maintained by a combination of the Project Sponsor, Department of Public Works, and other adjacent property owners. Similar to existing public infrastructure, improvements to the amenities on public right-of-way, including the median extension and crosswalk paving, would be maintained by Department of Public Works. Public sidewalks and sidewalk amenities are maintained by fronting properties. All sidewalks and sidewalk amenities fronting the 2001 Market Street project would be maintained by the Project Sponsors and their successors. The sidewalks on the Northeast side of Dolores Street would continue to be maintained by those fronting property owners.

ENVIRONMENTAL REVIEW AND TRANSPORTATION ANALYSIS

The proposed improvements were environmentally cleared as a part of the Mission District Streetscape Plan Mitigated Negative Declaration 2008.1075E, dated June 4 2010 (with an addendum March 24, 2011).

Additionally, the 2001 Market project analyzed the transportation impacts of the improvements (combined with the 2001 Market trips generated) as part of its transportation study 2008.0550E, which was finalized November 1, 2010.

In regards to the removal of a lane of traffic at the northern end of Dolores Street, staff conducted a detailed traffic analysis for this stretch of Dolores Street to evaluate the impact of the proposed lane removal. The results of this analysis indicated that the new development project along with the road diet would increase the Level of Service for vehicles by one second during the week and by four seconds on Saturday during peak hour. The transportation analysis found such impacts to be minor.

REQUIRED COMMISSION ACTION

The action before the Commission is to approve an impact fee waiver for the 2001 Market Street project in the amount of \$510,000 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 Area Plan infrastructure impact fees.

- 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 improvement would make street and pedestrian improvements, which is consistent with the intent of the Market and Octavia Community Improvements Program.

2. The Infrastructure Type is Identified in the Fee Ordinance

The improvements would be streetscape, greening, and transportation improvements, which are identified in the Market and Octavia Infrastructure Fee Ordinance.

3. The Expenditure Category for Infrastructure Type is Not Exhausted

The improvements are accounted for in the Market and Octavia 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

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

The improvements are accounted for in the Market and Octavia 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 CAC approved a resolution in December 2011 supporting the improvements, and providing specific comments regarding the design, maximum costs, and relation to other priority improvements for the Market and Octavia area (Attachment 3).

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 Area Plan more time efficiently. Project sponsors can utilize the construction tools and labor already working on site for the 2001 Market project to build the public improvements in a timelier and economically efficient manner.

RECOMMENDATION

The proposed streetscape improvements support the policies and projects established in the Market Octavia Area Plan and Upper Market Community Design Plan. These improvements align with the overall goal of the plan to create good urban life as well as specific objectives regarding pedestrian safety improvements and public life enhancement. The project would enhance pedestrian safety, calm traffic, provide additional public space in the Upper Market area, and aesthetically enhance the intersection of two of San Francisco's most iconic streets.

The Planning Department projects over \$17 million impact fee revenue over the next five years generated in the Market Octavia Area Plan. The 2013 Interagency Plan Implementation Report projects over \$5

million expenditure on transportation and streetscape projects over the next five years. This expenditure plan includes the proposed improvements for the 2001 Market In-Kind Agreement.

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 the adopted Area Plan, resulting in efficiencies gained for the construction of the improvements. The CAC has passed a resolution in support of this In-Kind Agreement for the scope of work described in this case report, for up to \$450,000.

Based on the public benefits generated, CAC support, 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 2001 Market Street
3. Market Octavia CAC Resolution



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Draft Motion

Date: March 14, 2013
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APPROVING AN IMPACT FEE WAIVER FOR 2001 MARKET STREET IN THE AMOUNT OF \$510,000 TO CONTRIBUTE TO PROVIDE STREETScape, PEDESTRIAN SAFETY, AND PUBLIC SPACE IMPROVEMENTS ON DOLORES STREET AND MARKET STREET BASED ON THE COMPLETION OF AN IN-KIND AGREEMENT BETWEEN THE PROJECT SPONSOR AND THE CITY.

PREAMBLE

- On May 31, 2007, the Market Octavia Area Plan became effective, including now Section 421 of the San Francisco Planning Code which established the Market Octavia Community Improvement Impact Fee. All projects in the plan area including the subject property are subject to this Impact Fee. The Planning Code also enabled project sponsors to seek a waiver from the impact fees when providing public improvements through an In-Kind Agreement with the Planning Department.
- On December 18, 2010, the Planning Commission granted approval to the project proposed for 2001 Market Street. This project will be an 85-foot high, eight-story, approximately 187,400-gross-square-foot (gsf) mixed-use residential-commercial building with 82 dwelling units, and an approximately 31,000 square foot Whole Foods grocery store.
- On February 23, 2011, the Project Sponsor, the Prado Group, filed an application with the City for approval of an In-Kind Agreement for provision of streetscape, pedestrian safety, and public space improvements at the intersection of Dolores Street and Market Street.
- The Market and Octavia Plan promotes strategies such as widening sidewalks, shortening crosswalks, and celebrating corner plazas in order to improve the public life of the neighborhood. More specifically, the Plan calls for reinforcing the significance of the intersection of Dolores and Market Streets through extending the Dolores Street median to Market Street and creating a paved plaza at this intersection.
- The Upper Market Community Design Plan ("Upper Market Plan"), endorsed by the Planning Commission in 2008. The Upper Market Plan encourages "socially-engaging sidewalk design," additional open spaces in the Upper Market area, and bulb-outs and extended public spaces within the public right-of-way. The Upper Market Plan also provides concept designs for intersection improvements at Dolores and Market Streets.

- On December 14, 2011, in Motion 2011-12-14, the Market Octavia Citizens Advisory Committee passed a resolution supporting the proposed improvements for the 2001 Market Street In-Kind Agreement.
- The proposed improvements would enhance pedestrian safety, calm traffic, and provide a new public open space in the Upper Market neighborhood, consistent with the Market and Octavia Area Plan.

MOVED, that the Commission hereby authorizes the Market Octavia Community Impact Fee Waiver for 2001 Market Street in the amount of maximum \$510,000 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 improvement would make street and pedestrian improvements, which is consistent with the intent of the Market and Octavia Community Improvements Program.
 - The Infrastructure Type is Identified in the Fee Ordinance: The improvements would be streetscape, greening, and transportation improvements, which are identified in the Market and Octavia Infrastructure Fee Ordinance.
 - The Expenditure Category for Infrastructure Type is Not Exhausted: The improvement would make street and pedestrian improvements, which is consistent with the intent of the Market and Octavia Community Improvements Program.
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
 - Improvement does not Compete with a CAC and IPIC Endorsed Improvement: The improvements are accounted for in the Market and Octavia 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 CAC approved a resolution in December 2011 supporting the improvements, and providing specific comments regarding the design, maximum costs, and relation to other priority improvements for the Market and Octavia area (Attachment 2).

- 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 Area Plan more time efficiently. Project sponsors can utilize the construction tools and labor already working on site for the 2001 Market project to build the public improvements in a timelier and 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 support the Market Octavia Area Plan by implementing the below policies and objectives.

OBJECTIVE 4.1

PROVIDE SAFE AND COMFORTABLE PUBLIC RIGHTS-OF-WAY FOR PEDESTRIAN USE AND IMPROVE THE PUBLIC LIFE OF THE NEIGHBORHOOD.

POLICY 4.1.1

Widen sidewalks and shorten pedestrian crossings with corner plazas and boldly marked crosswalks where possible without affecting traffic lanes. Where such improvements may reduce lanes, the improvements should first be studied.

POLICY 4.1.2

Enhance the pedestrian environment by planting trees along sidewalks, closely planted between pedestrians and vehicles.

POLICY 4.1.7

Introduce traffic-calming measures on residential alleys and consider making improvements to alleys with a residential character to create shared, multipurpose public space for the use of residents.

Discussion: The project would enhance the pedestrian conditions on Dolores and Market Streets, by widening sidewalks, shortening pedestrian crossings, increasing landscaping, and calming traffic. The project would also include a traffic calming measure on Clinton Park Alley. The project would reduce the number of lanes on Dolores Street. The Department has studied the effect of this improvement, and found impacts on traffic capacity to be minor.

OBJECTIVE 4.3

REINFORCE THE SIGNIFICANCE OF THE MARKET STREET STREETScape AND CELEBRATE ITS PROMINENCE AS SAN FRANCISCO'S SYMBOLIC "MAIN STREET."

POLICY 4.3.1

Recognize the importance of the entire Market Street corridor in any improvements to Market Street proposed for the plan area.

POLICY 4.3.3

Mark the intersections of Market Street with Van Ness Avenue, Octavia Boulevard, and Dolores Street with streetscape elements that celebrate their particular significance.

The designs for these principal intersections should include streetscape elements—such as special light fixtures, gateways, and public art pieces—that emphasize and celebrate the special significance of each intersection.

Discussion: The project would reinforce the importance of the intersection of Market and Dolores Streets by providing a visual gateway and memorable public space at this location.

Market and Dolores Streets

Dolores Street has special historic significance to the people of San Francisco and is one of the most visually memorable streets in the city, because of its palm tree lined central median. The intersection of Dolores Street and Market Street should be celebrated by extending the median to Market Street and creating a small paved plaza in front of the statue for people to meet, talk, and sit, and by announcing the presence of this significant city street, taking us to the location of Mission Dolores.

Discussion: This project carries out this recommendation from the Market and Octavia Area Plan

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 creating a public plaza 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. The Department conducted a detailed traffic analysis for this stretch of Dolores Street to evaluate the impact of the proposed lane removal, which found impacts to neighborhood traffic and parking to be minor.

- 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 November 29th, 2012.

Jonas Ionin
Acting Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED:

**IN-KIND AGREEMENT
(PER PLANNING CODE SECTION 421)**

THIS IN-KIND AGREEMENT ("*Agreement*") is entered into as of _____, 2013, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the San Francisco Planning Commission (the "*City*") and MARKET DOLORES LLC, a Delaware limited liability company (the "*Project Sponsor*") with respect to the project approved for 2001 Market Street, San Francisco, California (the "Project").

RECITALS

A. Article 4 of the Planning Code establishes the Market and Octavia Community Improvements Fund to support public improvements, pedestrian and streetscape improvements, and other facilities and services within the Market and Octavia Plan Area, a land use planning district within San Francisco. Any undefined term used herein shall have the meaning given to such term in Article 4 of the Planning Code, and all references to Section 421 or the following sections 421.1 through 421.6 shall mean Sections of the San Francisco Planning Code.

B. In order to mitigate the impacts from new mixed residential and commercial development permitted within the Market and Octavia Plan Area, the Ordinance imposed a Market and Octavia Community Improvements Impact Fee on new residential and commercial development (the "*Fee*"). As an alternative to payment of the Fee, the Ordinance provides that the City may reduce the Fee obligation applicable to a particular project if the Project Sponsor agrees to provide directly specified community improvements. In order for a Project Sponsor to satisfy its Fee obligation by providing such "*In-kind Improvements*", the Ordinance requires the City and the project sponsor to enter into an "*In-Kind Agreement*" as described in Section 421.3(d) of the Planning Code.

C. The Project Sponsor owns that certain real property commonly known as 2001 Market Street, in San Francisco, California, as more particularly described in Exhibit A, attached hereto (the "*Property*"). The Property is located within the Market and Octavia Plan Area. On December 16, 2010, the San Francisco Planning Commission approved the Project Sponsor's application for a mixed residential and commercial development on the Property (the "*Project*").

D. The Project Sponsor has requested that the City enter into an In-Kind Agreement to allow a portion of the Fee for the Project to be satisfied through the Project Sponsor's provision of sidewalk, pedestrian and other streetscape improvements adjacent to the Project, as described in Exhibit B. The City is willing to enter into an In-Kind Agreement, on the terms and conditions set forth below.

E. The In-Kind Improvements meet an identified community need and substitute for improvements that could be provided by the Market and Octavia Community Improvements

Fund, and they are not a physical improvement or provision of space otherwise required by the Planning Code or any other City Code.

DEFINITIONS

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

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

“**City**” shall have the meaning set forth in the preamble to this Agreement. “**Cost Documentation**” shall have the meaning set forth in Section 3.2 below.

“**Credit Amount**” shall have the meaning set forth in Section 3.5 below.

“**DBI**” shall mean San Francisco Department of Building Inspection.

“**Director**” shall mean the Director of San Francisco Planning Department.

“**DPW**” shall mean San Francisco Department Public Works.

“**Final Inspection Notice**” shall have the meaning set forth in Section 2.3 below.

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

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

“**Impact Fee**” or “**Fee**” shall mean the Community Improvements Impact Fee charged to all residential and commercial development projects in the Market and Octavia Plan Area under Section 421.3 of the Planning Code.

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

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

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

“**Inspection Notice**” shall have the meaning set forth in Section 2.3 below.

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

“**Memorandum of Agreement**” shall have the meaning set forth in Article 4 below.

“**Payment Analysis**” shall have the meaning set forth in Section 3.5 below.

“**Payment Documentation**” shall have the meaning set forth in Section 3.4 below.

“**Plans**” shall have the meaning set forth in Section 2.1 below.

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

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

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

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

“**Security**” shall have the meaning set forth in Section 3.7.

AGREEMENT

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

ARTICLE 1 PROJECT SPONSOR REPRESENTATIONS AND COVENANTS

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

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

1.2 The Project Sponsor: (a) is a limited liability company duly organized and existing under the laws of the State of Delaware, (b) 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, (c) has the power to execute and perform all the undertakings of this Agreement, and (d) is the fee owner the real property on which the Project is located.

1.3 The execution and delivery of this Agreement and other instruments required to be executed and delivered by the Project Sponsor pursuant to this Agreement: (a) have not violated and will not violate any provision of law, rule or regulation, any order of court or other agency or government, and (b) 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.

1.4 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.

1.5 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.

1.6 Pursuant to Section 421.3(d)(5), the Project Sponsor shall reimburse all City agencies for their administrative and staff costs in negotiating, drafting, and monitoring compliance with this Agreement

ARTICLE 2 IN-KIND IMPROVEMENTS

The Project Sponsor shall take all steps necessary to construct and provide, at the Project Sponsor's sole cost, the In-Kind Improvements described in Exhibit C, for the benefit of the City and the public, and the City shall accept the In-Kind Improvements in lieu of a portion of the Project Sponsor Fee under this Agreement if this Agreement is still in effect. In connection with the provision of the In-Kind Improvements and the reduction in the Project Sponsor Fee, the Project Sponsor must satisfy the following conditions:

2.1 Plans and Permits. The Project Sponsor shall cause its engineer to prepare detailed plans and specifications for the In-Kind Improvements, which plans and specifications shall be submitted for review and approval by Department of Public Works (“**DPW**”) in the ordinary course of the process of obtaining the necessary permits for the In-Kind Improvements (upon such approval, the “**Plans**”). Such review and approval of the Plans by DPW shall not be unreasonably withheld, delayed or conditioned. The Project Sponsor shall be responsible, at no cost to the City, for (a) obtaining all permits and licenses required in connection with the In-Kind Improvements, and (b) completing the In-Kind Improvements in accordance with the approved Plans. The Project Sponsor shall not make any material change to the approved Plans during the course of construction without first obtaining the Director of Planning’s (“**Director**”) written approval. No approval by the City for purposes of this Agreement shall be deemed to constitute approval by any federal, state or local regulatory authority with jurisdiction over the Project or the In-Kind Improvements, and nothing herein shall limit the Project Sponsor’s obligation to obtain all such regulatory approvals at no cost to the City.

2.2 Construction. All construction with respect to the In-Kind Improvements shall be accomplished prior to issuance of the First Certificate of Occupancy for the Project and in accordance with good construction and engineering practices and applicable laws, and shall be of the highest quality for similar street improvement construction projects. The Project Sponsor shall undertake commercially reasonable measures to minimize damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected by such work. Dust, noise and other effects of such work shall be controlled using commercially reasonable methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas and shall

comply with requirements of the San Francisco Building Code and other City Codes. The Project Sponsor, while performing any construction, 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 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.

2.3 Inspections. 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 that the In-Kind Improvements have been completed. The Director, or his or her agent, shall inspect the site to confirm compliance with this agreement, and shall promptly thereafter notify the Project Sponsor that the In-Kind Improvements have been completed in accordance with the requirements of this Agreement. If there are any problems or deficiencies, the Director shall notify the project sponsor of any such problems or deficiencies (the "**Inspection Notice**"). The Project Sponsor shall correct any such problems or deficiencies set forth in the Inspection Notice and then request another inspection, repeating this process until the Director approves the In-Kind Improvements as satisfactory. Such approval shall be based on the requirements of this Agreement and shall not be unreasonably withheld. This condition will not be satisfied until the Director certifies that the In-Kind Improvements are ready for use by the public, as determined by the Director based on current City standards, and constitute the full satisfaction of the obligation to provide In-Kind Improvements in the form required hereunder (the "**Final Inspection Notice**").

ARTICLE 3 CALCULATION AND PAYMENT OF FEE; CREDIT AMOUNT; SECURITY

3.1 The Project Sponsor Fee shall be calculated in accordance with Section 421.3(c) of the Planning Code. Based on the project entitled by the Planning Commission, the Fee is estimated \$928,937 (for the fee calculations, see Exhibit B). The final Fee shall be calculated based on the project entitled by its First Construction Document.

3.2 Two sets of cost estimates provided by independent sources establishing the estimated, third-party eligible costs of providing the In-Kind Improvements in compliance with the DPW standards for street, sidewalk and gutter improvements is attached hereto as Exhibit C (the "**Cost Documentation**"). Based on the Cost Documentation, the Director has determined that the In-Kind Improvements will have a maximum value of \$510,000 (the "**In-Kind Value**"). 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 Sponsor has paid to the City (through DBI) \$_____ (the "**Initial Amount**") prior to issuance of the Project's First Construction Document, pursuant

to Section 421.3 of the Planning Code and Section 107A.13.3 of the San Francisco Building Code. . The Initial Amount is an amount equal to 20% of total Project Impact Fees due, pursuant to Planning Code Section 421.3 and Section 107A.13.3 of the San Francisco Building Code.

3.4 No later than thirty (30) days after issuance of the Final Inspection Notice, the Project Sponsor shall provide to the Director documentation, in the form of invoices and copies of checks, substantiating payment by the Project Sponsor of the cost of providing the In-Kind Improvements (the "**Payment Documentation**"). The Payment Documentation shall include information necessary and customary in the construction industry to verify the Project Sponsor's costs and payments. The cost of providing the In-Kind Improvements shall be substantially similar to the average capital costs for the City to provide the same square feet of street improvements, based on current value of recently completed projects.

3.5 No later than thirty (30) days after receipt of the Payment Documentation, the Director shall provide the Project Sponsor with a written report of its review of the Payment Documentation (the "**Payment Analysis**"). The Payment Analysis shall be conducted for the exclusive purposes of (a) verifying the Project Sponsor's cost of providing the In-Kind Improvements, and (b) determining, based upon such costs, the amount of the credit against the Project Sponsor Fee that the Project Sponsor shall be entitled to receive (the "**Credit Amount**"). The Credit Amount shall be determined as follows.

3.5.1 If the Director determines in the Payment Analysis that the Project Sponsor made payments in respect of the In-Kind Improvements in an amount less than the In-Kind Value, then the Credit Amount shall be equal to such lesser amount, subject to Sections 3.5.3 and 3.6, below.

3.5.2 If the Director determines in the Payment Analysis 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, as determined or adjusted pursuant to Section 3.2 of this Agreement, then the Credit Amount shall be equal to the In-Kind Value.

3.5.3 The Director and Project Sponsor shall endeavor to agree upon the Payment Analysis and Credit Amount. If they are unable to so agree within thirty (30) days after receipt by Project Sponsor of the Payment Analysis, the parties shall mutually select a third-party engineer/cost consultant. The Director shall submit the Payment Analysis and the Project Sponsor shall submit the Cost Documentation, Payment Documentation and its determination of the Credit Amount to such engineer/cost consultant, at such time or times and in such manner as the Director and Project Sponsor shall agree (or as directed by the engineer/cost consultant if the City and Project Sponsor do not promptly agree). The Director and the Project Sponsor shall use good faith efforts to provide such other information as the engineer/cost consultant may reasonably request to assist in resolution of the dispute. Based on a reasoned evaluation of the respective parties' documentation and analyses, the engineer/cost consultant shall select either the City's determination of the Credit Amount or Project Sponsor's determination of the Credit Amount pursuant, and such determination shall be binding on the City and the Project Sponsor.

3.6 The Project Sponsor shall not receive final credit for the In-Kind Improvements until the Final Inspection Notice is delivered, the Memorandum of Agreement is recorded and

the City receives any additional payments as may be required under this Agreement, and all other obligations of the Project Sponsor under this Agreement have been satisfied. If the Credit Amount is less than the In-Kind Value, then the Project Sponsor shall, prior to issuance by DBI of the Project's First Certificate of Occupancy, pay to the City an amount equal to the difference between the In-Kind Value and the Credit Amount, together with any other amounts necessary to satisfy the Project Sponsor Fee.

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

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

3.9 The Project Sponsor assumes all risk of loss during construction and until issuance of the Final Inspection Notice. Notwithstanding the foregoing, for so long as this Agreement remains in effect and the Project Sponsor is not in breach hereof, the City shall not withhold the issuance of any additional building or other permits necessary for the Project due to the Project Sponsor's payment of less than the full Project Sponsor Fee amount in anticipation of the In-Kind Improvements ultimately being completed and credited against the Project Sponsor Fee under the terms and conditions set forth in this Agreement.

3.10 Notwithstanding anything in this Agreement to the contrary, the City shall not issue a First Certificate of Occupancy for the Project until the City receives payment of the full Project Sponsor Fee (in some combination of the payment of the Initial Amount, completion of the In-Kind Improvements having the value of the Credit Amount, as described in this Agreement, and other cash payments received by the City directly from Project Sponsor). In no event shall the City's issuance of a certificate of final completion or any other permit or approval for the Project release the Project Sponsor of its obligation to pay the full Project Sponsor Fee (with interest, if applicable), if such payment has not been made at the time the City issues such certificate of final completion.

3.11 The Project Sponsor understands and agrees and any payments to be credited against the Project Sponsor Fee shall be subject to the provisions set forth in San Francisco Administrative Code Sections 6.80-6.83 relating to false claims. Pursuant to San Francisco Administrative Code Sections 6.80-6.83, a party who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A

party who submits a false claim shall also be liable to the City for the cost, including attorney's fees, of a civil action brought to recover any of those penalties or damages and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A party will be deemed to have submitted a false claim to the City if the party: (a) knowingly presents or causes to be presented to any officer or employee of the City a false claim; (b) knowingly makes, uses or causes to be made or used a false record or statement to get a false claim approved by the City; (c) conspires to defraud the City by getting a false claim allowed by the City; (d) knowingly makes, uses or causes to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the City; or (e) is beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim. The Project Sponsor is responsible for verifying the accuracy of all payments to any contractor or subcontractor providing services related to the In-Kind improvements.

NOTICES

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

CITY:

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

with a copy to:

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

PROJECT SPONSOR:

Market Dolores LLC
150 Post Street, Suite 320
San Francisco, CA 94108
Attn: Dan Safier

with a copy to:

Coblentz, Patch, Duffy & Bass LLP
One Ferry Building, Suite 200
San Francisco, CA 94111
Attn: Charles J. Higley

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 4
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 Property. 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 D (the "*Memorandum of Agreement*"). On the Date of Satisfaction or if this Agreement is terminated pursuant to Section 6.5, 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 5
ADDITIONAL TERMS**

5.1 This Agreement shall not be effective until it has been: (a) approved by the Planning Commission, (b) signed by both the Project Sponsor and the City, and approved by the City Attorney.

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

5.3 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.

5.4 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.

5.5 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 by DPW of all required permit(s) for the In-Kind Improvements, in which event the Project Sponsor shall have no obligations or liabilities under this Agreement; provided, however, that timely termination of this Agreement shall not relieve the Project Sponsor of its obligations under the Planning Code. Any material amendment to this Agreement 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.

5.6 The City acknowledges that, if the Project Sponsor terminates this Agreement as contemplated under Section 6.5, the Project will nevertheless require certain related street and/or sidewalk improvements. Accordingly, the City (including but not limited to DBI and DPW) may not withhold or delay issuance of building permits or other permits, including but not limited to permits for street improvements associated with the Project, on account of this Agreement or any

pending permit application in connection with the In-Kind Agreements, except as required by Conditions of Approval for the Project's entitlements.

5.7 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.

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

5.9 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.

5.10 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.

5.11 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.

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

of the Project Sponsor; and (d) any acts, omissions or negligence of the Project Sponsor or its agents in, on or about the In-Kind Improvements. 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 the 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 the City and continues (with respect to such claim) at all times thereafter. The Project Sponsor's obligations under this Section with respect to all or a portion of the In-Kind Improvements shall terminate upon an irrevocable offer of dedication by the Project Sponsor to the City for any such portion of the In-Kind Improvements to the City and certification by the Director of Planning of the Final Inspection Notice, which certification shall not be unreasonably withheld.

5.13 The Project Sponsor will cooperate in good faith with the City to assist the City in pursuing warranty claims or similar claims against the Project Sponsor's contractor for construction defects in the In-Kind Improvements.

ARTICLE 6 CITY CONTRACTING PROVISIONS

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

6.2 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.

6.3 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.

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

6.5 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.

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

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

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

By: _____
Director of Planning

MARKET DOLORES LLC,
a Delaware limited liability company

By: PF Partners 2001 MKT LP,
a California limited partnership,
Its Managing Member

By: PGD 2001 MKT LLC,
a California limited liability company,
Its General Partner

By: _____
Daniel J. Safier
Its: Manager

APPROVED:

DENNIS J. HERRERA
City Attorney

By: _____
Deputy City Attorney

Exhibit A

Legal Description of the Property

All that certain land situated in the City and County of San Francisco, State of California, more particularly described as follows:

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:
BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF 14TH STREET WITH THE WESTERLY LINE OF DOLORES STREET; THENCE NORTHERLY ALONG SAID LINE OF DOLORES STREET 316.438 FEET TO THE SOUTHEASTERLY LINE OF MARKET STREET; THENCE AT AN ANGLE TO THE RIGHT OF 49° 28'30", ALONG SAID LINE OF MARKET STREET, 147 FEET; THENCE AT AN ANGLE TO THE RIGHT OF 125° 25'10", ALONG A LINE THAT INTERSECTS THE NORTHERLY LINE OF 14TH STREET AT A POINT DISTANT THEREON 92 FEET WESTERLY FROM THE WESTERLY LINE OF DOLORES STREET, 122.71 FEET TO A LINE THAT IS PERPENDICULARLY DISTANT 100 FEET SOUTHEASTERLY FROM THE SOUTHEASTERLY LINE OF MARKET STREET; THENCE AT AN ANGLE TO THE LEFT OF 125° 25'10", ALONG THE LAST SAID LINE, 52.825 FEET TO A LINE THAT IS PERPENDICULAR TO THE NORTHERLY LINE OF 14TH STREET, DISTANT THEREON 140.971 FEET WESTERLY FROM THE WESTERLY LINE OF DOLORES STREET; THENCE AT AN ANGLE TO THE RIGHT OF 130° 31'30", ALONG LAST SAID LINE, 64.373 FEET TO SAID NORTHERLY LINE OF 14TH STREET; THENCE AT A RIGHT ANGLE EASTERLY ALONG SAID LINE OF 14TH STREET 140.971 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF ASSESSOR'S BLOCK NO. 3535

Exhibit B

Fee Calculations

The total MO community infrastructure fee for 2001 Market Street is \$928,937 (+ 3.25% indexing adjustment) = \$959,127

Residential

\$9.27 per square foot X 100,209 square-feet of residential = \$928,937

Commercial

\$3.50 per square-foot X 31,000 square-feet of commercial = \$108,500

Subtract existing commercial

\$3.50 per square-foot X 42,460 square-feet of commercial = \$148,610

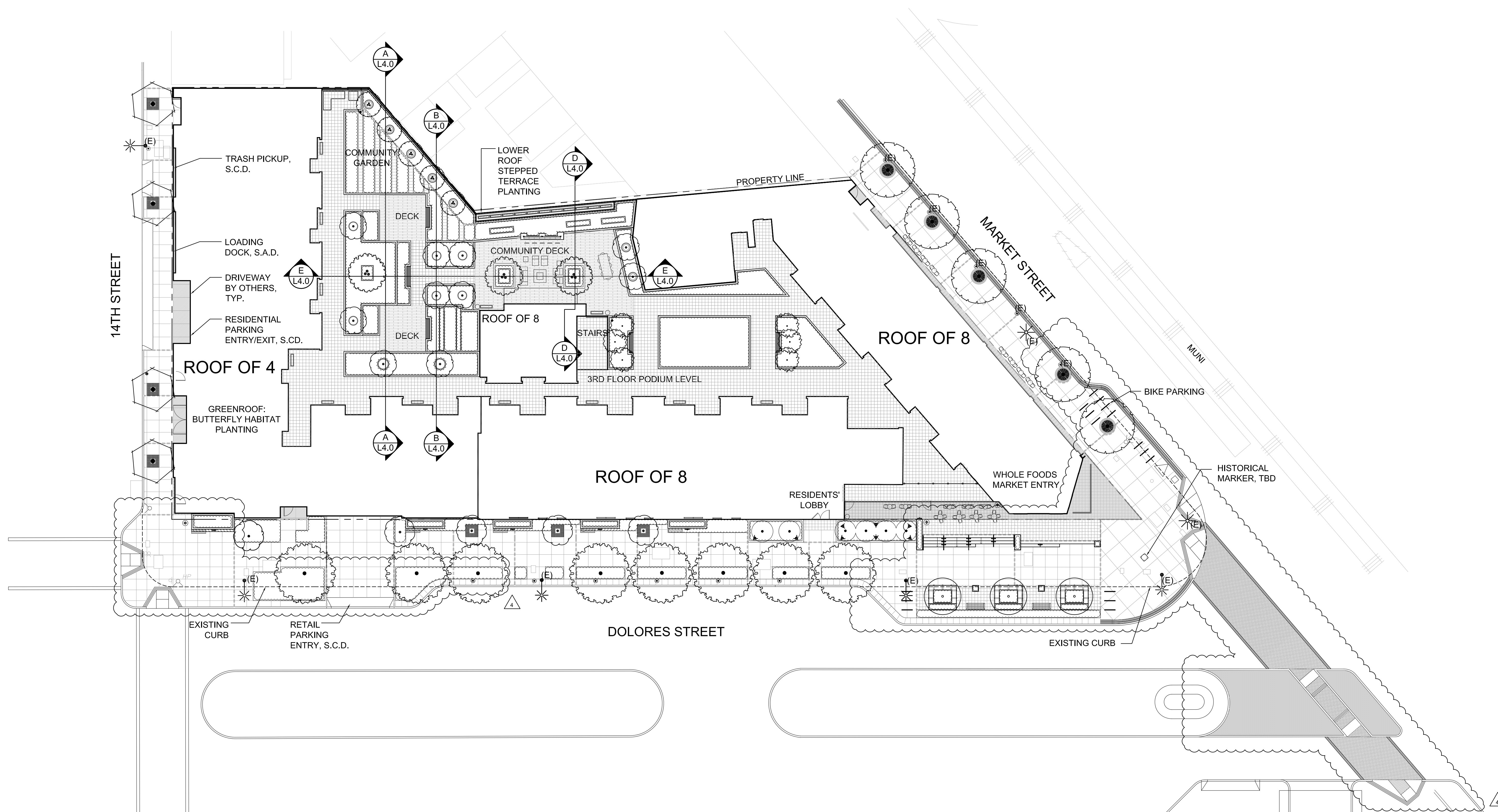
Attached is the project's 3/27/2012 Dev. Impact Fee report.

Exhibit C

In-Kind Improvements and Cost Documentation

Exhibit C
In-Kind Improvements

2001 MARKET / 38 DOLORES
San Francisco, CA



SYMBOLS & ABBREVIATIONS

	ALIGN
	BOTTOM OF WALL CENTERLINE
	DETAIL CALLOUT
	DIAMETER
	EQUAL
	EXISTING
	EXPANSION JOINT
	FACE OF WALL
	GROUND FAULT INTERRUPTER
	HOSE BIB
	HEIGHT
	NOT IN CONTRACT
	ON CENTER
	PLANTING AREA
	POURED IN PLACE
	POINT OF BEGINNING
	POINT OF CONNECTION
	PROPERTY LINE
	REVISION CLOUD
	REVISION DELTA
	RIGHT-OF-WAY
	SEE ARCHITECTURAL DRAWINGS
	SEE CIVIL DRAWINGS
	SIMILAR
	SPECIFICATIONS
	SEE STRUCTURAL DRAWINGS
	TO BE DETERMINED
	TOP OF WALL
	TYPICAL
	WATER PROOFING

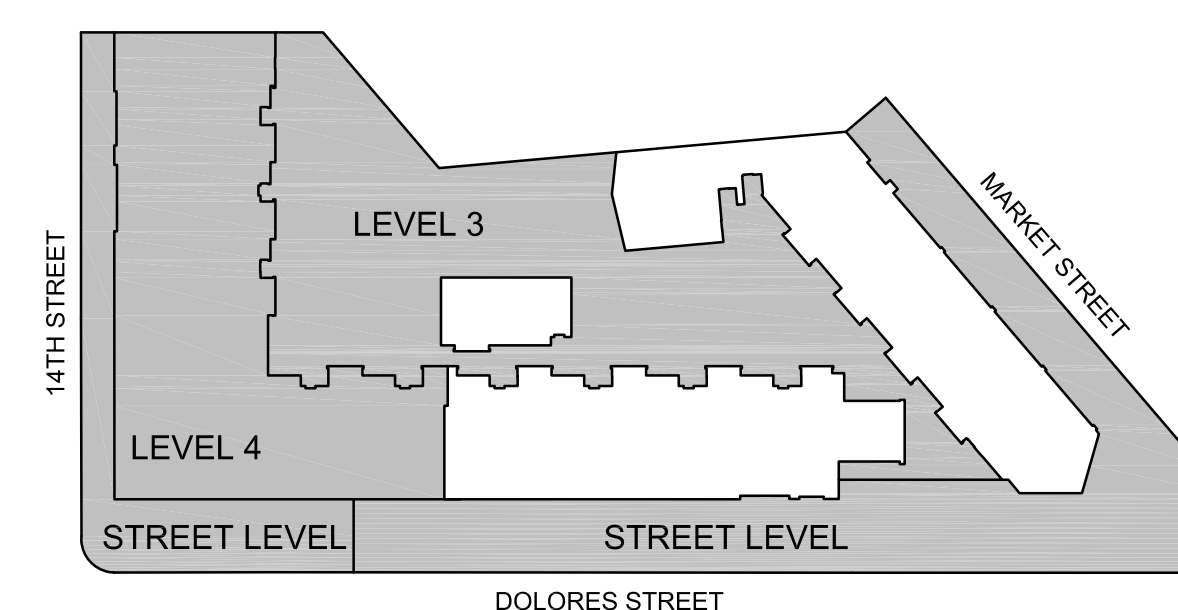
GENERAL NOTES

1. VERIFY EXISTING SITE INFORMATION, INCLUDING STREET GRADES, UTILITIES, PROPERTY LINES, LIMITS OF ROADWAYS, CURBS AND GUTTERS, TAKEN FROM THE CIVIL DRAWINGS.
2. FOR BUILDING INFORMATION, REFER TO THE ARCHITECT'S DRAWINGS.
3. PROVIDE WRITTEN NOTIFICATION OF ALL DISCREPANCIES BETWEEN EXISTING AND PROPOSED SITE IMPROVEMENTS.
4. REFERENCE TO NORTH REFERS TO TRUE NORTH. REFERENCE TO SCALE APPLIES TO FULL-SIZED DRAWINGS ONLY. DO NOT SCALE FROM REDUCED DRAWINGS.
5. INFORMATION ON THE DRAWINGS RELATIVE TO EXISTING CONDITIONS IS APPROXIMATE ONLY. DRAWINGS ARE GENERALLY DIAGRAMMATIC AND INDICATIVE OF THE WORK TO BE INSTALLED. BEFORE PROCEEDING WITH ANY WORK, THE CONTRACTOR SHALL CHECK AND VERIFY ALL EXISTING CONDITIONS AND INFORM THE LANDSCAPE ARCHITECT OF ANY DISCREPANCY BETWEEN THE DRAWINGS AND ACTUAL CONDITIONS. THE CONTRACTOR SHALL EXERCISE CARE IN EXCAVATING AND WORKING NEAR EXISTING UTILITIES AND STRUCTURES.
6. ALL EXISTING STREET LIGHTS ARE TO REMAIN AND BE PROTECTED DURING CONSTRUCTION.
7. ALL PARKING METERS ARE NEW UNLESS NOTED AS (E) EXISTING. PROTECT EXISTING METERS DURING CONSTRUCTION.
8. THIS PROJECT IS A SITES PILOT PROJECT. SITES IS A SUSTAINABLE RATING SYSTEM THAT IS BASED ON LANDSCAPE PERFORMANCE SIMILAR TO LEED. CONTRACTOR WILL WORK WITH LANDSCAPE ARCHITECT AND PROVIDE NECESSARY DATA AND MATERIALS FOR SITES SUBMISSION PROCESS BUT FOCUSED ON SITE SYSTEMS. PROJECT IS TARGETING A ONE STAR RATING. SEE SITES SPECIFICATIONS SECTION FOR SITES SUBMITTALS AND DOCUMENTATION REQUIREMENTS.

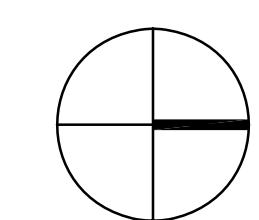
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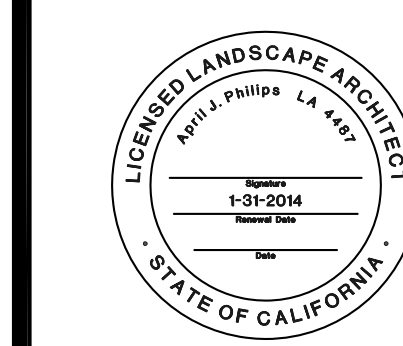
SITE SHEET MAP / KEY



SCALE: 1/16" = 1'-0"
0 8 16 32



DRAWN BY	
CHECKED BY	
PROJECT NO.	
DATE	ISSUE
01.27.11	25% CD SUBMITTAL
07.28.11	50% CD SUBMITTAL
09.15.11	ADDENDUM #2
10.21.11	GMP/ADD #2
08.16.12	Minor SW Encroach. Permit
11.26.12	Rev1 SW Encroach. Permit
01.18.13	In Kind CD Submittal
02.01.13	In Kind Pricing



SITE PLAN OVERALL

CONSTRUCTION SET

L1.0

In-Kind Estimate



STREET IMPROVEMENT PROJECT COST ESTIMATE - 2001 MARKET STREET					
PREPARED BY: BKF ENGINEERS					
DATE PREPARED: MAR-07-1012					
PROJECT NAME: 2001 Market Street In-Kind					
PROJECT ADDRESS: 2001 Market Street					
BLK: 3535 LOT: 001					

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL	NOTES
1	Concrete Curb	390	LF	30.00	\$ 11,700.00	Removed
2	Granite Curb - Bid Alternate	180	LF			
3	Sidewalk -- 3 1/2 "	5,800	SF	12.00	\$ 69,600.00	
4	Raised Driveway	700	SF	20.00	\$ 14,000.00	
5	Curb Ramps	3	EA	3,300.00	\$ 9,900.00	
	Concrete Work Bid Alternate Subtotal				\$ -	
	Concrete Work Subtotal				\$ 105,200.00	
6	Paving -- 2"ACWS on 8" Conc. Base	2,000	SF	12.00	\$ 24,000.00	
	Paving Work Subtotal				\$ 24,000.00	
7	Crosswalk striping	350	LF	6.39	\$ 2,236.50	
8	Decorative Crosswalk	940	SF	30.00	\$ 28,200.00	
	Finishing Work Subtotal				\$ 30,436.50	
9	Catch Basin -- Relocated	1	EA	5,000.00	\$ 5,000.00	Allowance - Utilized unit values provided by Webcor Builders
10	Reset Sewer Manhole	1	EA	1,000.00	\$ 1,000.00	
11	Relocate Low Pressure Fire Hydrant	1	EA	20,000.00	\$ 20,000.00	
12	12" VCP Sewer	15	LF	140.00	\$ 2,100.00	
13	8" LPDW	5	LF	150.00	\$ 750.00	
14	Hazardous soils removal	1	AL	10,000.00	\$ 10,000.00	
	Utility Work Subtotal				\$ 38,850.00	

In-Kind Estimate

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL	NOTES
15	Marin Metals custom planters (2sm, 3lg)	1	LS	15,000.00	\$ 15,000.00	Utilized unit values provided by subcontractor
16	Benches - Custom	2	EA	3,750.00	\$ 7,500.00	Utilized unit values provided by subcontractor
17	Irrigation - Quote	1	LS	4,500.00	\$ 4,500.00	Utilized unit values provided by subcontractor
18	Hoes Bibs	2	EA	0.00	\$ -	Utilized unit values provided by subcontractor
19	Sleeving	60	LF	0.00	\$ -	Utilized unit values provided by subcontractor
20	Irrigation main	200	LF	0.00	\$ -	Utilized unit values provided by subcontractor
21	Irrigation lateral	200	LF	0.00	\$ -	Utilized unit values provided by subcontractor
22	Irrigation drip line w/ ball valves	200	LF	0.00	\$ -	Utilized unit values provided by subcontractor
23	Landscape - Quote	1	LS	6,200.00	\$ 6,200.00	Utilized unit values provided by subcontractor
24	24" Box Trees	3	EA	0.00	\$ -	Utilized unit values provided by subcontractor
25	Shrubs - 5 gallon	60	EA	0.00	\$ -	Utilized unit values provided by subcontractor
26	Shrubs - 1 gallon	147	EA	0.00	\$ -	Utilized unit values provided by subcontractor
27	Prep & Mulch	500	SF	0.00	\$ -	Utilized unit values provided by subcontractor
Landscape Subtotal					\$ 33,200.00	BKF does not directly estimate landscape pricing
28	Supervision/Management	1	ls	31,994.00	\$ 31,994.00	Utilized unit values provided by Webcor Builders
29	Site Control / Maintenance	1	ls	56,071.00	\$ 56,071.00	Utilized unit values provided by Webcor Builders
30	Traffic Control	1	ls	25,000.00	\$ 25,000.00	
31	Mobilization	1	ls	15,000.00	\$ 15,000.00	
32	Temporary Construction Fencing	1	ls	5,000.00	\$ 5,000.00	
33	Construction/Survey Staking	1	ls	5,000.00	\$ 5,000.00	
Misc Items Subtotal					\$ 138,065.00	
TOTAL COST R-O-W WORK				BOND =	\$ 369,751.50	
TOTAL COST BID ALTERNATE WORK				BID ALT =	\$ -	
Inspection 5% Total Cost		0.05		FEE =	\$ 18,487.58	
Contignecy 5% Total Cost		0.05		FEE =	\$ 18,487.58	

Hard Cost Subtotal	\$ 369,751.50
INSPEC/CONTIG TOTAL	\$ 36,975.15

Surveyor	\$ 4,000	Utilized unit values provided by Developer
Civil Engineering	\$ 30,000	Utilized unit values provided by Developer
Landscape Architect	\$ 20,000	Utilized unit values provided by Developer
Legal Fees	\$ 10,000	Utilized unit values provided by Developer
City/DPW Permit Fees	\$ 16,000	Utilized unit values provided by Developer
Total Soft Costs	Soft Cost Subtotal	\$ 80,000

PROJECT TOTAL	\$ 486,727
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2001 Market Street- In Kind Improvements

Project Clarifications	<p>Clarifications & Descriptions: Summary pricing is NOT yet fully reviewed for subcontractor exclusions or qualifications. Scope is INCOMPLETE until this review occurs.</p> <p>ASSUMES that this work will occur during the current contract period, costs related to supervision overhead and other related GC expenses will need to be reevaluated if it is determined that this scope will occur outside of the contact period.</p> <p>ASSUMES SFMTA will allow for complete closure of dolores street WEST pedestrian access for the duration of the sitework and allow for interim closures of all driving lanes as required to complete the work.</p> <p>ASSUMES that there will be no work related to the relocation of pedestrian crosswalk signs or lights associated with this scope</p> <p>Granite curb re-installation is EXCLUDED, valued at ROM \$14,000 (subc quoted work at \$13,385).</p>	<p>LF = Linear Foot LS = Lum Sum WK = Week EA = Each MO = Month EXCL = EXCLUDED AL = Allowance INCL = Included ROM = Rough Order of Magnitude, work to be performed by others.</p>
Soft Costs		
Surveying	\$ 4,000	
Civil Engineering	\$ 30,000	
Landscape Architecture	\$ 20,000	
Legal Fees	\$ 10,000	
City/DPW Fees & Inspections	\$ 16,000	
Subtotal Soft Costs	\$ 80,000	
Hard Cost Subtotal	\$ 433,075	
GRAND TOTAL	\$ 513,075	

<u>Hard Cost Detail</u>	\$ 2,961	0.9% SubGuard (applied to 'S' category ONLY)
	\$ 3,563	0.9% Liability Insurance
	\$ 20,120	5.0% Contingency
	\$ 10,562.80	2.5% Fee

Summary Totals	\$ 395,869	Subtotal
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Line ID	Code Description	Scope Description	Qty	Unit	Total Amount	Notes
001	Webcor	INCLUDED SCOPE ITEMS				
002		WI-1. Overhead costs for coordination with SFDPW & SFMTA - APM	1	HR	\$ 5,620	
003		WI-2. Protect existing finishes - LABORER	1	HR	\$ 10,031	
004		WI-3. Cleanup - LABORER	20	DAYS	\$ 10,773	
005		WI-4. Traffic control	20	DAYS	\$ 32,062	
006		WI-5. Survey existing conditions JOURNEYMAN CARPENTER / F3	1	HR	\$ 3,204	
007		WI-6. Site supervision - Field	20	DAYS	\$ 18,882	
008		WI-7. Site supervision - Office	20	DAYS	\$ 7,493	
009		WI-8. Hazardous soils removal	1	AL	\$ 2,500	ALLOWANCE
010	Webcor	OWNER & CITY SCOPE ITEMS				ALLOWANCE values to be verified by SFDPW / SFMTA.
011		WE-01. Fire Hydrant & WV	1	AL	\$ 7,500	OWNER ALLOWANCE. Engineer estimate of ROM \$7,500 for work performed by SFDPW / SFMTA. Piping work/disconnection/connection
020		WE-10. Reset sewer manhole	1	AL	\$ 1,000	OWNER ALLOWANCE. Engineer estimate of ROM \$1,000 for work performed by SFDPW / SFMTA.
021		WE-11. 12" VCP Sewer (15 LF) - piping	1	AL	\$ 2,100	OWNER ALLOWANCE. Engineer estimate of ROM \$2,100 for work performed by SFDPW / SFMTA.
022		WE-12. 8" LPDW (5 LF) - piping	1	AL	\$ 500	OWNER ALLOWANCE. Engineer estimate of ROM \$500 for work performed by SFDPW / SFMTA.
023		WE-13. Crosswalk striping	1	AL	\$ 5,000	OWNER ALLOWANCE. Engineer estimate of ROM \$5,000 for work performed by SFDPW / SFMTA.
024		WE-14. Decorative crosswalk	1	AL	\$ 2,000	OWNER ALLOWANCE. Engineer estimate of ROM \$2,000 for work performed by SFDPW / SFMTA.
025	Electrical - DESIGN ELECTRIC	Pricing rec'd via DE/SFemWB/CA 2/14/2013	1	LS	\$ (280)	
026		a. Delete 3 qty light fixtures (BEGA22286P) at exterior steps - to 9 qty from 12 qty.		INCL	Included	
027	Site & Podium Concrete - J&J ALBANESE	Pricing rec'd via JJA/emWB/CA 2/19/2013			See below	
028		Off-Site Concrete. (Buyout Savings)		INCL	\$ (10,000)	
029		a. ADD: 470lf of Off Site Vertical Curbs.	1	LS	\$ 14,391	
030		b. ADD: 5 sf of Off Site Planter Walls per 3/L4.1	1	LS	\$ 249	
031		c. ADD: 5ea 2' Wide Concrete Fin Walls Per 7/L4.4	1	LS	\$ 7,376	

Line ID	Code Description	Scope Description	Qty	Unit	Total Amount	Notes
032		d. ADD: 60 sf of ADA Ramps and 15sf of truncated domes	1	LS	\$ 2,387	
033		e. ADD: 900 sf of 8" Concrete Lift at Street	1	LS	\$ 12,565	
034		f. ADD: 21 lf of Concrete Steps	1	LS	\$ 3,261	
035		g. ADD: 2,173 sf of Type A and B Off Site Flatwork	1	LS	\$ 40,743	
036		h. ADD: 100 sf or 3ea locations of Planter Wall per 4/L4.7	1	LS	\$ 22,679	
037		i. ADD: 2,160 sf of Bomanite Stamped Concrete Per 11/L4.5	1	LS	\$ 43,799	
038		j. DELETE: -45 sf of Off Site Raised Concrete Slabs	1	LS	\$ (1,113)	
039		k. DELETE: -10 lf of Concrete Fin Wall Footings per 6/L4.4	1	LS	\$ (737)	
040		l. DELETE: -8 sf of Off Site Planter Walls Per 6/L4.4	1	LS	\$ (388)	
041		Site Demo, Grading and Paving.		INCL	Included	
042		m. ADD: 10,335 sf of Rough and Fine Grading	1	LS	\$ 42,998	
043		n. ADD: 145 tons of Class II Base Rock	1	LS	\$ 3,465	
044		o. ADD: 20 tons of A.C. Paving	1	LS	\$ 6,200	
045		p. ADD: 105 cyds of Demolition	1	LS	\$ 16,175	
046	Landscaping - VALLEY CREST LANDSCAPE	Pricing rec'd via VCR/JLemWB/CA 2/18/2013			See below	
047		a. Addition of Marin Metals custom brush aluminum planters (2 small & 3 large brushed assemblies)		INCL	Included	
048		a1. Delete 1 qty 2'x13' brushed aluminum planter	1		\$ (7,200)	
049		a2. Add 3 qty 2'x9' brushed aluminum planters	3		\$ 15,900	
050		a3. Add 3 qty 2'x2' brushed aluminum planters	3		\$ 6,300	
051		b. Addition of 2 custom benches (benches by Landscape Forms)	1	LS	\$ 7,500	
052		c. Net changes to irrigation (2 hose bibs, 60' sleeving, 200' Main, 200' lateral, 200' drip with ball valves)		INCL	Included	
053		c1. Add sleeving	60	LF	\$ 600	
054		c2. Add main	200	LF	\$ 1,300	
055		c3. Add lateral	200	LF	\$ 1,000	
056		c4. Add drip	200	LF	\$ 600	
057		c5. Add hose bibs	2	EA	\$ 500	
058		c6. Add ball valves	8	EA	\$ 320	
059		c7. Controller upgrade	1	EA	\$ 180	
060		d. Net changes to landscape (3 qty 24" box trees, 60 qty 5-gal shrubs, 147 qty 1-gal shrubs, 500 sf prep & mulch)		INCL	Included	
061		d1. Add 24" Box Trees	3	LS	\$ 1,086	
062		d2. Add 5 gallon shrubs	60	LS	\$ 2,100	
063		d3. Add 1 gallon shrubs	147	LS	\$ 1,764	
064		d4. Add soil prep & mulch	500	LS	\$ 1,250	
065		e. Trash cans - qty did not change		EXCL	EXCLUDED	EXCLUDED. Qty did not change.
066		f. Bike racks - qty did not change		EXCL	EXCLUDED	EXCLUDED. Qty did not change.
067	Underground Utilities - J FLORES	Pricing rec'd via JFF/BGemWB/CA 2/15/2013			See below	
068		WATER LINE RELOCATION - Trenching Only		EXCL	EXCLUDED	Trenching scope only. All piping, systems shutdown by SFDPPW.
069		FIRE HYDRANT RELOCATION - Trenching Only		INCL	Included	Trenching scope only. All piping, systems shutdown by SFDPPW.
070		a. Water & FH: Excavate, backfill and shoring (for a maximum of 2 weeks) of ~50 lf of waterline trench for the water relocations. Include plate over exposed trenches for up to		EXCL	EXCLUDED	Trenching scope only.
071		b. Water & FH: Excavate, backfill and shoring (for a maximum of 2 weeks) of ~10 lf of waterline trench for the fire hydrant relocation. Include plate over exposed trenches for	1		\$ 2,892	Trenching scope only.
072		c. Water & FH: Include labor and equipment to remove and replace the plates for work by SEWD.	1		\$ 2,096	
073		d. Water & FH: Backfill using sand.	1		\$ 2,601	
074		f. Water & FH: Offhaul of certified clean dirt spoils.	1		\$ 669	
075		g. Water & FH: Work to be completed by 6/30/2013.		INCL	Included	
076		h. Water & FH: Piping and thrust blocks, etc.		EXCL	EXCLUDED	EXCLUDED. Assumed by Webcor that costs are incurred by SFDPPW.
077		i. Water & FH: 2 qty mobilizations are included.	1		\$ 2,893	
078		CATCH BASIN work		INCL	Included	
079		j. Catch Basin: Additional mobilizations are excluded (work to occur in conjunction with water work).		EXCL	EXCLUDED	

Line ID	Code Description	Scope Description	Qty	Unit	Total Amount	Notes
080		k. Catch Basin: Remove and replace concrete road base and AC wearing surface, includin SF req'd T-cut	1		\$ 17,607	
081		l. Catch Basin: Traffic control.	1		\$ 691	
082		m. Catch Basin: Offhaul of certified clean dirt spoils.	1		\$ 784	
083	Other Costs & Misc Allowances			INCL	Included	
084		Overtime Allowance for weekend and acceleration	1	AL	\$ 20,000	ALLOWANCE
Potential VE Items (included in the above)						
		Regular Stamped Concrete in lieu of Bomanite	1	ls	\$ (30,000)	ROM
		Replace Planters & Benches on L4.7 with bushes				
		- Landscape	1	ls	\$ (8,000)	ROM
		- site concrete	1	ls	\$ (21,000)	ROM

Exhibit D

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 _____, 2013, and is by and between the City and County of San Francisco, a municipal corporation, acting and through the Planning Commission (the "**City**"), and Market Dolores LLC (the "**Project Sponsor**").

1. Project Sponsor is the owner of the real property described in Exhibit A attached hereto (the "**Property**"). On December 16, 2010, the San Francisco Planning Commission approved the Project Sponsor's application for the development of a mixed residential and commercial development on the Property (the "**Project**").

2. Under San Francisco Planning Code Section 421.3 ("**Section 421.3**"), the Project Sponsor must pay to the City a Market and Octavia Community Improvements Impact Fee (the "**Fee**") on or before the issuance of the first certificate of occupancy for the Project; provided, however, the City can reduce such payment under Section 421.3 if the Project Sponsor enters into an agreement with the City to provide in-kind improvements.

3. In accordance with Section 421.3, the City and the Project Sponsor have entered into an in-kind agreement (the "**In-Kind Agreement**"), which permits the Project Sponsor to pay a reduced Fee 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

MARKET DOLORES LLC,
a Delaware limited liability company

By: PF Partners 2001 MKT LP,
a California limited partnership,
Its Managing Member

By: PGD 2001 MKT LLC,
a California limited liability company,
Its General Partner

By: _____
Daniel J. Safier
Its: Manager

Market/Octavia Community Advisory Committee
Resolution on In-kind Community Improvements Proposal for 2001 Market Street

WHEREAS in September 2010 the Planning Commission adopted new policies to guide the crafting and review of In-Kind Community Improvements proposals by project sponsors in the Market/Octavia and Eastern Neighborhoods Plan Areas,

WHEREAS this In-Kind Community Improvements Proposal related to the 2001 Market Street development is the first such proposal to come before the Market and Octavia CAC and the Planning Commission since the adoption of those new policies,

WHEREAS the Market and Octavia Community Advisory Committee has identified several Market Street intersections, including the Market/Dolores intersection and the adjacent Market/Buchanan and Market/Church intersections, as high-priority locations for pedestrian safety improvements that should be funded with Market/Octavia Fund revenues and/or In-Kind Improvements programs,

WHEREAS the Market and Octavia Plan's overall Community Improvements Program adopted at the time of the Area Plan adoption in April 2008 also indicates a need for improvement of pedestrian safety conditions on Market Street at the head of Dolores Street, as does the Upper Market Community Plan adopted in October provide recommendations for pedestrian safety improvements at the Market x Dolores intersection and several other major intersections along the Market Street corridor through the Market and Octavia Plan Area,

WHEREAS this In-Kind Community Improvements Proposal augments other community benefits this project sponsor has committed to, including the sponsor's commitment to pursue dedication of a land parcel for affordable housing development in the immediate neighborhood of the 2001 Market Street project site, as stated in the project sponsor's December 8, 2010 letter to the Planning Commission,

WHEREAS an inviting public realm, safe pedestrian conditions, and affordable housing are parts of a complete community, and the goal of the Market and Octavia Plan is to create complete communities.

WHEREAS the project was approved with requirements to mitigate any queuing on Dolores Street and that condition will not be changed as a result of any proposed streetscape improvements, including the improvements discussed in the in-kind agreement. The CAC urges that this condition must remain in effect.

BE IT RESOLVED that the Market and Octavia Community Advisory Committee supports the In-kind Community Improvements Program proposed by the sponsor of 2001 Market Street development project, as specifically defined in the schematic plan dated June 2011, with the exceptions being that the improvements proposed for the Dolores/14th Street intersection shall be

consistent with the November 2011 schematic plan, and that the Market Street crosswalk and associated improvements shall not be included in this improvements program. These exhibits are attached herein as reference to this Resolution. The project sponsor's preliminary estimate for constructing this improvements program is \$250,000, however the CAC supports the sponsor's request for allocating up to \$450,000 credit toward the sponsor's community improvements fee as may be needed for total costs to implement this in-kind improvement program, providing that the detailed cost estimate will be provided when the proposal is presented to the Planning Commission for final approval.

FURTHER BE IT RESOLVED that the Market and Octavia Community Advisory Committee supports the Planning Department staff's recommendation memo dated December 14, 2011, and attached herein as reference to this Resolution, that Metropolitan Transportation Agency give high priority to implementing the Market Street crosswalk improvements project that immediately abuts the in-kind improvements at 2001 Market Street. This discreet pedestrian safety project, which was originally incorporated into the 2001 Market in-kind proposal but proved logistically infeasible for the private sponsor to implement, is an important complement to the other improvements to be done at the Market x Dolores intersection. The CAC will identify the Market Street crosswalk project as a priority community improvement project for use of Market/Octavia Fund revenues. Moreover, this improvement measure should be implemented by the City simultaneously, or as close as possible, to the implementation of the in-kind improvements by the 2001 Market project sponsor, anticipated to be Spring 2013.

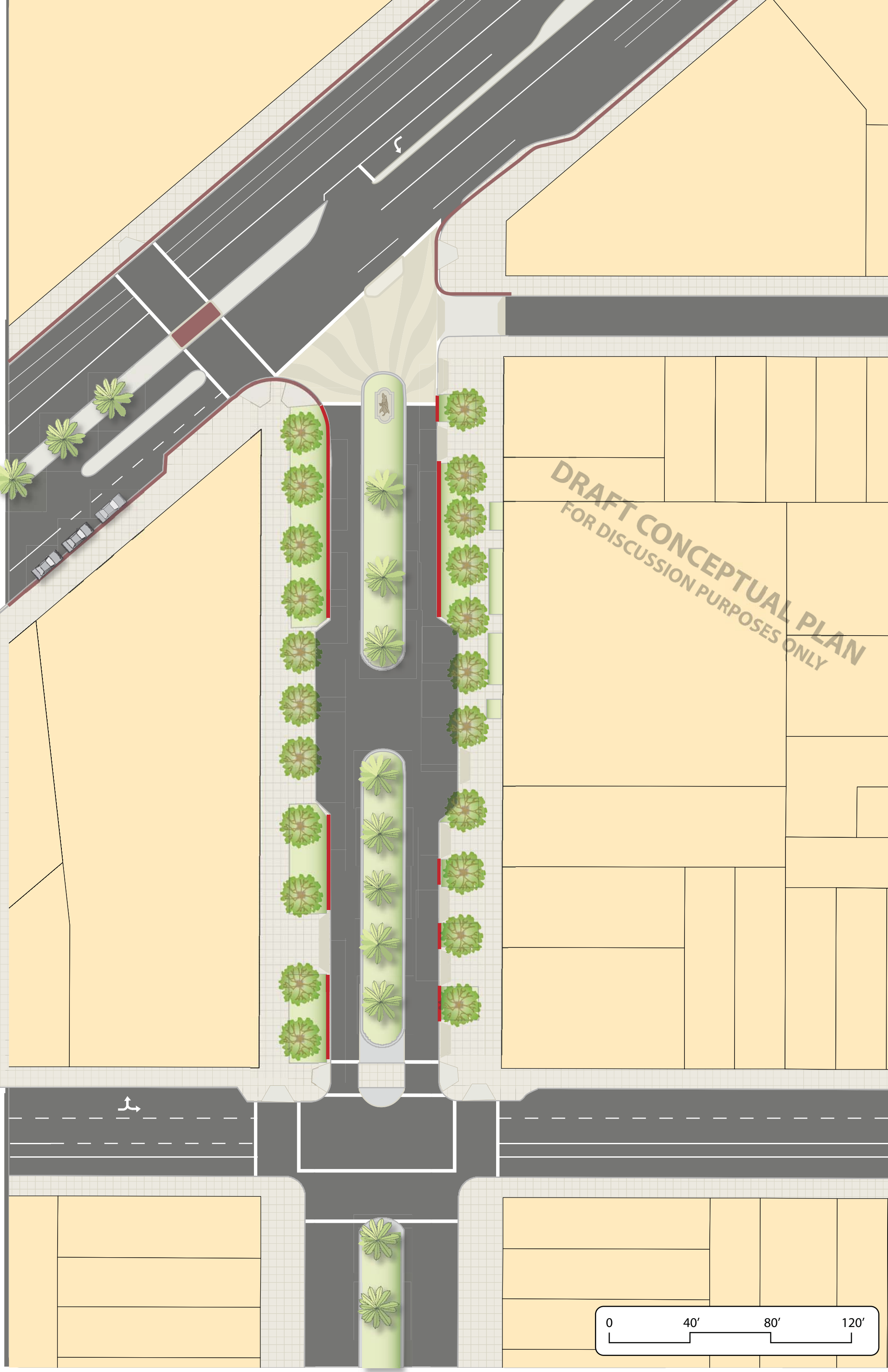
FURTHER BE IT RESOLVED that in addition to these in-kind pedestrian safety improvements focused at the Market x Dolores intersection, the Market and Octavia Community Advisory Committee strongly advises that the remaining portion of the project sponsor's community improvements fee be directed by the City for complementary pedestrian and bicycle safety improvements at the nearby intersections of Market x Buchanan x Duboce and Market x Church x 14th. The analyses and design work for these other two intersections should be timed such that specific improvement measures can be implemented by the City as close as possible to the completion and occupancy of the 2001 Market development. These improvements are not part of the 2001 Market project in-kind improvements.

FURTHER BE IT RESOLVED that the Market and Octavia Community Advisory Committee advises that the SFMTA pursue the following traffic controls for the Market and Dolores intersection: a "No Turn on Red" sign and markings to be placed on Market Street (south side) at the intersection of Dolores Street to prevent cars from trying to turn on the red (crosswalk) light onto Dolores. This situation could be confusing to cars especially if the crosswalk is "straightened" to be more in line with the corner of Dolores Street. If the crosswalk is straightened to align with the corner, the CAC calls for the signage/markings.

Approved by the Market and Octavia Community Advisory Committee on December 14th, 2011

AYE: Levitt, Henderson, Wingard
NO: Olsson, Starkey
ABSENT: Gold
ABSTAIN: Richards, Cohen

MOTION: 2011-12-14



DRAFT CONCEPTUAL PLAN
FOR DISCUSSION PURPOSES ONLY

