



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary In-Kind Agreement Amendment

HEARING DATE: DECEMBER 15, 2011

Date: December 8, 2011
Case No.: 2002.1302U
Project Address: **2235 3rd Street**
And
178 Townsend Street
Plan Area: Eastern Neighborhoods
Block/Lot: 4058/010
And
3788/012
Project Sponsor: Martin Building Company
54 Mint Street, 5th Floor
San Francisco, CA 94103
and
Katie O'Brien
178 Townsend Properties, LLC
54 Mint Street, 5th Floor
San Francisco, CA 94103

Staff Contact: Mat Snyder (575-6891)
Mathew.snyder@sfgov.org

Recommendation: Approval

SUMMARY

The proposal is to amend two in-kind agreements (per the Eastern Neighborhoods fee provisions) originally approved in 2010 to provide a child care center at 2235 third street by removing the infant care requirement.

BACKGROUND

On April 15, 2010, the Planning Commission adopted Motion No. 18073 approving an Eastern Neighborhoods Fee Waiver and associated In-Kind Agreement to establish a child care center at 2235 Third Street as part of the Potrero Launch Development Project.

The Project Sponsor and the City enter into two In-Kind Agreements relating to 2235 Third Street and 178 Townsend Street for the provision of a 6,260 square foot, on-site California Community Care Division licensed child care facility and an approximately 2,000 square foot private outdoor child care play area ("In-Kind Improvements"). The facility will be located at 2235 Third Street. The Agreement provides a \$997,608 waiver for 2235 Third Street and a \$917, 952 waiver for 178

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Townsend Street. A balance of \$299,752 is to be collected at when the first site or building permit is issued for 2235 Third Street.

Pursuant to the Agreement, a program operator, "Potrero Kids", was selected through a competitive bidding process conducted by the Project Sponsor under the guidance of Department of Children and their Families (DCYF). The Agreement currently stipulates that Program Operators be required to designate 10% of the child care "slots" to low-income households and serve a broad range of age groups, including *infants* and toddlers [emphasis added]. Proposals that ensure a higher proportion of low income slots, more closely reflect the needs of the neighborhood demographics for both those that work and live in the neighborhood, and prioritize serving households who live in or near the Eastern Neighborhoods, will be more competitive in the selection process.

Subsequent to finalizing the Agreement and choosing the operator, it was discovered that the outdoor area was not sufficient for licensed infant care.

In order to utilize the space for child care, the Project Sponsor is seeking to amend the In-Kind Agreements by removing the requirement for infant care programming. Specifically, the Project Sponsor seeks to amend Section 3.2.1 (p. 5) of the Agreement as follows:

3.2.1 ...*(3) child care programs must serve a broad range of age groups, including ~~infants and toddlers~~, proposals shall receive bonus score for proposals that more closely reflect the needs of the neighborhood demographics for both those that work and live in the neighborhood; and...*
[bold added for emphasis]

All other aspects of the In-Kind Agreement would remain in effect.

ISSUES AND CONSIDERATIONS

DCYF Participation and Support

DCYF oversees City-funded child care facilities, including the expenditure of public funds to support the development of new child care facilities, establishes standards for high quality child care, and provides technical assistance for the development of new child care facilities. DCYF worked closely with the Planning Department and Project Sponsor on the development of this in-kind proposal, including determining that the proposed In-Kind improvement meets the standards for high quality child care, calculating the value of the In-Kind improvement, determining the appropriate requirements for the Program Operator, and providing on-going technical support. DCYF endorses the proposed in-kind agreement and has committed to participate in the Program Operator selection process and on-going technical support.

DCYF support the amendments, citing the strong demand for child care at all ages and the immediate benefits that the project represents to meeting current need (see attached letter).

Eastern Neighborhoods CAC

On February 8, 2010, the Eastern Neighborhood Citizens Advisory Committee (EN CAC) passed a motion in support of the provision of a child care facility at 2234 Third Street in lieu of impact fee revenue. On November 21, 2011, the EN CAC passed a motion that supported the amendment as follows:

MOTION: Support the elimination of the infant care component of the In-Kind Agreement with the condition that the in-kind agreement amount be adjusted based on a

revised cost analysis incorporating cost savings associated with the elimination of the infant care component.

Cost Analysis

The Department determines the final value of the proposed 6,260 square foot child care facility with the finishes described above to be \$1,915,560, based on \$306 per gross square foot. The Citywide child care nexus study provides 13 case studies of child care facilities that were developed in San Francisco with public funds, to support programs equivalent to that identified as a community need by the Eastern Neighborhoods Nexus Study. These case studies found that the City spends an average of \$257 per gross square foot to build or rehab child care facilities. A subset of these projects that include new construction of a new facility rather than rehabilitation of an existing facility cost an average cost of \$306 per gross square foot.

Pursuant to the EN CAC's Motion, staff reviewed the original cost analysis to see if the Fee Waiver amounts could be reduced due to the elimination of the infant care provision. There was no differentiation between costs for infant care and other age groups on a per square footage basis. The Nexus Study did find that cost on a per child basis had equal costs for infants and toddlers (Table 10 Child Care Linkage Fee Nexus Study, May 30, 2007); therefore, a revised cost analysis taking out infant care does not reduce the cost of the child care center and, therefore the value of the Fee Waiver should remain the same.

It is important to note that the costs credited toward the Fee Waivers were based on interior square footage only, which will not change. Therefore, the lack of sufficient outdoor space for infants would not change the cost basis for the fee waiver. Moreover, the In-Kind Agreement requires that the waiver amount be justified with payment documentation. If costs turn out to be less than originally anticipated due to not having to make improvements specifically for infants (or other reasons), the waiver amounts are to be reduced accordingly (In-Kind Agreements Sections 3.1.5 and 5.3).

REQUIRED COMMISSION ACTION

The Project Sponsor has submitted a request for an amendment to partial fee waiver for 2235 Third Street and a fee waiver for 178 Townsend Street based on the draft In-Kind Agreement detailing the provision of 6,260 Child Care facility for 55 years. Because the Commission is approved the original Agreement, approval of the amendment to is also required.

BASIS FOR RECOMMENDATION

- The child care center will continue to respond to needs identified by the Eastern Neighborhoods Nexus Study and Public Benefits Program.
- While amending the program by taking out the infant care requirement is not ideal, assuring the viability of the center to address an immediate need to child care at other age groups is crucial.
- The child care center is proposed for a location identified by the Department of Children, Youth, and Their Family as 'high -need' for child care.
- The total impact fee waiver amount is less than the estimated total 5 year required expenditure on child care facilities in the Eastern Neighborhoods Plan Area. Taking out the infant care requirement does not reduce the overall cost; however, if cost saving are

realized in the end, the Fee Waivers will be reduced pursuant to the In-Kind Agreements.

- DCYF has coordinated with the Project Sponsor and believe the child care center creates space for much needed high quality child care. They are supportive of the amendment.
- The Eastern Neighborhoods Community Advisory Committee (CAC) endorsed an in-kind agreement for the provision of a child care facility. While they asked to have the Fee Waiver amount reduced commensurate with any cost saving associated with the removal of the infant care. However, no cost saving could be delineated.

RECOMMENDATION: Approve the Amendment to the In-Kind Agreements

Attachments:

1. Draft Planning Commission Motion
2. Plans
3. Draft In-kind agreement for 2235 Third Street, as amended (note: In-kind agreement for 178 Townsend is exactly the same except for Fee Waiver Amounts, which are noted here)
4. Letter from DCYF
5. Planning Commission Motion No. 18073



SAN FRANCISCO PLANNING DEPARTMENT

Draft Planning Commission Motion No.

HEARING DATE: DECEMBER 15, 2011

Date: April 8, 2011
Case No.: 2002.1302U
Project Address: **2235 3rd Street**
And
178 Townsend Street
Plan Area: Eastern Neighborhoods
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APPROVING AN AMENDMENT TO AN IN-KIND AGREEMENT AND IMPACT FEE WAIVER FOR 2235 THIRD STREET IN THE AMOUNT OF \$997,608 AND 178 TOWNSEND STREET IN THE AMOUNT OF \$917, 952 FOR THE PROVISION OF 6,260 SQUARE FEET OF INDOOR SPACE AND 2,000 SQUARE FEET OF OUTDOOR SPACE FOR A CHILDCARE FACILITY, FOR A TERM OF 55 YEARS, RENT FREE, AT 2235 THIRD STREET BY REMOVING THE INFANT CARE REQUIREMENT.

PREAMBLE

- The Project Sponsor has entered into an In-Kind Agreement and Fee Waiver with the City of San Francisco to provide a child care center at 2235 Third Street. The In-Kind Agreement was memorialized, in part, by Planning Motion No. 18073, adopted April 15, 2010. All of the materials laid out in the preamble of the original Motion remain the same and are incorporated here by reference. In summary, the In-Kind Agreement was for the amount of \$1,915,560, with \$997,608 credited toward the impact fee for 2235 Third Street and \$917,952 credited toward 178 Townsend Street. The Agreement enables a 6,260 square foot child care center at 2235 Third Street with approximately 2,000 square foot private outdoor area.

- The current In-Kind Agreement stipulates that: “A Program Operator has been selected through a competitive bidding process. Program Operators will be required to designate 10% of the child care ‘slots’ to low-income households and serve a broad range of age groups, including infants and toddlers. Proposals that ensure a higher proportion of low income slots, more closely reflect the needs of the neighborhood demographics for both those that work and live in the neighborhood, and prioritize serving households who live in or near the Eastern Neighborhoods, will be more competitive in the selection process.”
- Subsequent to selecting the Operator, it became apparent that the physical limits of the designated outdoor space was not sufficient to enable quality licensed space for infants while still offering adequate quality space for the older more mobile children. The Project Sponsor, therefore, has requested that the In-Kind Agreement be amended by eliminating the infant care requirement.
- The Eastern Neighborhoods Community Advisory Committee (EN CAC) passed a motion to support the amendment with a condition:

MOTION: Support the elimination of the infant care component of the In-Kind Agreement with the condition that the in-kind agreement amount be adjusted based on a revised cost analysis incorporating cost savings associated with the elimination of the infant care component.

Planning staff reviewed the cost analysis pursuant the EN CAC’s Motion.

MOVED, that the Commission hereby authorizes the an amendment to the Eastern Neighborhoods In-Kind Agreement and Impact Fee Waiver for 2235 Third Street and 178 Townsend Street to eliminate the infant care requirement based on the following findings:

FINDINGS

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

- The above recitals are accurate and constitute findings of this Commission.
- **Identified Plan Need.** The Eastern Neighborhoods need analysis identified child care facilities as needed infrastructure to support new development. Planning Code Section 423 (originally Section 327) designates 8% of all impact fee revenue shall be spent on child care facilities and library materials. The Planning Department projects approximately \$24.7 Million in impact fee revenue for infrastructure over the next five years. Accordingly, roughly \$2 Million dollars must be dedicated to child care facilities or library materials.
- **Interagency Support.** The Department of Children, Youth, and their Families (DCYF) oversees City funded child care facilities, including the expenditure of public funds to support the development of new child care facilities, establishing standards for high

quality child care, and providing technical assistance for the development of new child care facilities. DCYF worked closely with the Planning Department and Project Sponsor on the development of this in-kind proposal, including determining that the proposed In-Kind improvement meets the standards for high quality child care, determining the value of the In-Kind improvement, determining the appropriate terms for the Program Operator, and providing on-going technical support. DCYF endorses the proposed in-kind agreement and has committed to participate in the Program Operator selection process and on-going technical support. Furthermore, DCYF supports the amendment to In-Kind Agreement by eliminating the infant care requirement recognizing the physical limitations of the site to provide such care while citing the strong need for child care for all ages in San Francisco and the opportunity this project represents to bring child care on line as soon as possible.

- **In-Kind Improvement Valuation.** The Department determines the final value of the proposed 6,260 square foot child care facility with the finishes described above to be \$1,915,560, based on \$306 per gross square foot. The Citywide child care nexus study provides 13 case studies of child care facilities that were developed in San Francisco with public funds, to support programs equivalent to that identified as a community need by the Eastern Neighborhoods Nexus Study. These case studies found that the City spends an average of \$257 per gross square foot to build or rehab child care facilities. A subset of these projects that include new construction of a new facility rather than rehabilitation of an existing facility cost an average cost of \$306* per gross square foot. There was no differentiation between costs for infant care and other age groups on a per square footage basis. The Nexus Study did find that cost on a per child basis had equal costs for infants and toddlers (Table 10 Child Care Linkage Fee Nexus Study, May 30, 2007); therefore, a revised cost analysis taking out infant care does not reduce the cost of the child care center and, therefore the value of the Fee Waiver remains the consistent with the previous agreement.

DECISION

The Commission, after carefully balancing the competing public and private interests, and based upon the Recitals and Findings set forth above, in accordance with the standards specified in the Code, hereby approves the Amendment to the In-Kind Agreement and the impact fee waivers retaining the Fee Waiver amounts as previously established.

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

I hereby certify that the foregoing Motion was adopted by the Planning Commission on December 15, 2011.

Linda Avery
Commission Secretary

AYES:
NAYES:

Memo to the Planning Commission
Hearing Date: December 15, 2011

CASE NO. 2002.1302U
2235 3rd Street and 178 Townsend Street
In-Kind Agreement Amendment

ADOPTED: December, 15, 2011

Estimated Children	Classroom	Children	Subtotal	
2yr old	1	12	12	
3yr old	2	16	32	
4yr old	1	16	16	
Total:			60	

Outdoor Play Area	Gross SF	SF available for Landscape Elements & Play Equipment	net SF	Maximum Capacity (75 SF / Child)*
Area 1 (slot)	1813	313	1500	20
Outdoor Capacity x 3* = max. number of children enrolled in facility			Max. Capacity Area 1	60

* Indicates Title 22 Requirement

Indoor Classroom Area TEF Schematic

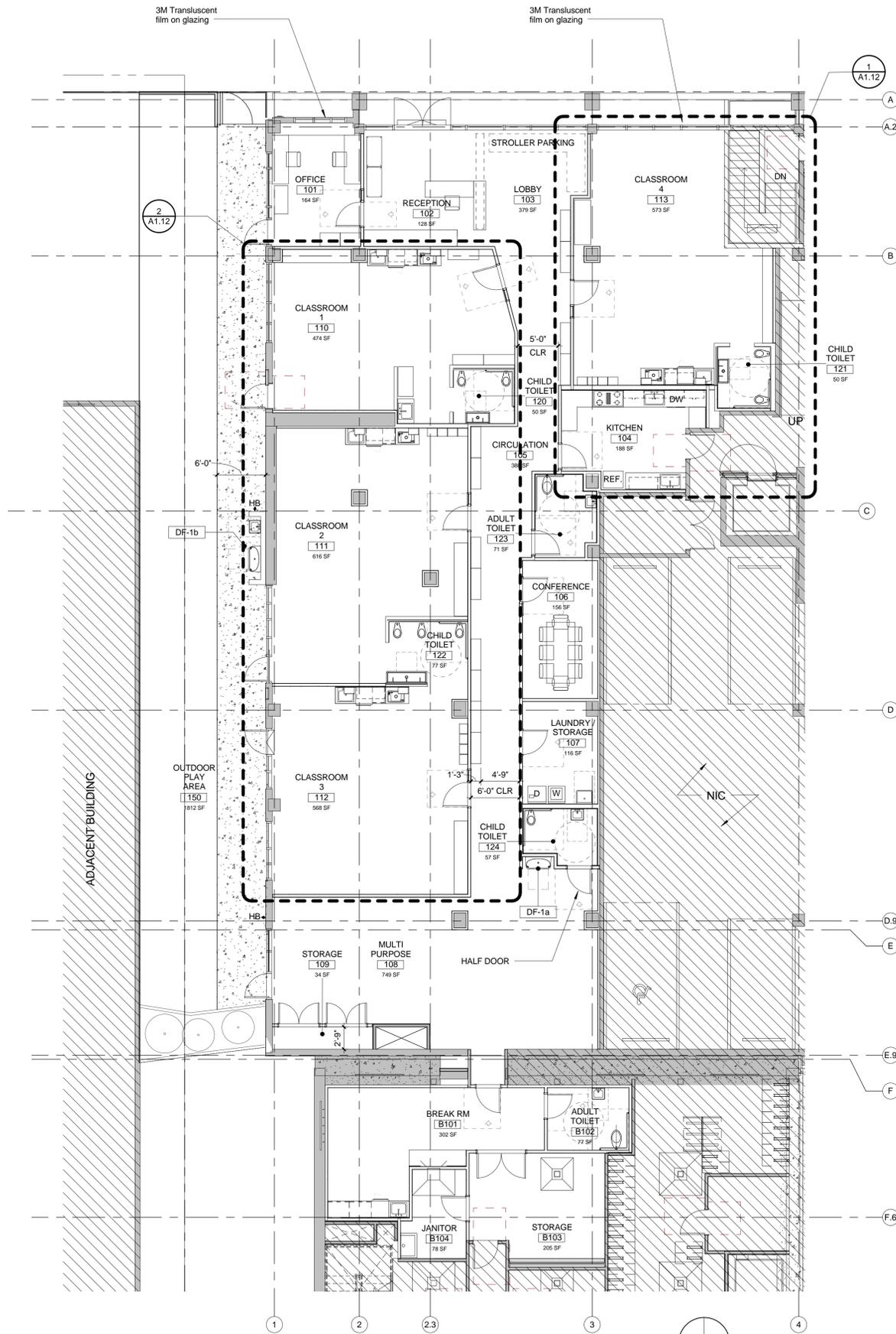
	net SF **	SF available for additional classroom storage	net SF	Capacity (35SF/child)*
classroom 1	474	54	420	12
classroom 2	616	56	560	16
classroom 3	573	13	560	16
classroom 4	568	8	560	16
TOTAL	2231	131	2100	60
Total Interior Area (gsf)	6112			
Total Classroom Area (gsf)	2517			
Remaining Usable Area (gsf)	3595			

* Indicates Title 22 Requirement

** Classroom furniture/millwork and plumbing fixtures shown in plan are not included in this number.



② Level P1 - Program Diagram
1/16" = 1'-0"



① Level P1
1/8" = 1'-0"

All drawings and written material appearing herein constitute original and unpublished work of the Architect and may not be duplicated, used or disclosed without consent of Architect.

If this drawing is not 30"x42", then the drawing has been revised from its original size. Note scales must be adjusted. This line should be equal to one inch.

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The Martin Building Company

Potrero Kids Daniel Webster

2235 Third Street
San Francisco, CA 94107

Project Number: 21157.00 Issue Date: 10/18/11
Scale: As indicated Phase: SD
Print Date: 10/27/2011 12:53:15 PM

No.	Date	Description

Level P1 Floor Plan

A1.01

PROGRESS SET

FLOOR FINISH LEGEND				
Type Mark	Item	Manufacturer	Type / Color	Comments
C-01	Stained Concrete		Building Standard	
CPT-01	Carpet Tile	Interface	Cubic Colors 1382902500 , 7251 Iridescent	GlasBac RE carpet tile with TacTile adhesive
RF-01	Sheet Linoleum	Forbo	Marmoleum, Real, 3126 Kyoto	Heat welded seams, Dark Orange
RF-02	Sheet Linoleum	Forbo	Marmoleum, Real, 3134 Azzuro	Heat welded seams, Blue
RF-03	Sheet Linoleum	Forbo	Marmoleum, Real, 3125 Golden Sunset	Sheet Linoleum, heat welded seams, Marigold
RF-04	Sheet Linoleum	Forbo	Marmoleum Fresco / 3825 African Desert	Heat welded seams, Orange
RF-05	Sheet Linoleum	Forbo	Marmoleum, Real, 3221 Hyacinth	Heat welded seams, Green
RF-06	Sheet Linoleum	Forbo	Marmoleum Real / 3224 Chartreuse	Heat welded seams, Lime Green
RF-10	Walk Off Mat	Dutro	TBD	
TI-01	Floor Tile	DaTile	Ceramic Mosaic- Keystones - D141 Garden Spot	1" x 2"
TI-02	Floor Tile	DaTile	Ceramic Mosaic- Keystones - D160 Cornsilk	1" x 2"

WALL BASE LEGEND					
Type Mark	Item	Manufacturer	Type / Color	Dimensions	Comments
B-01	Rubber Base	Johnsonite	186 Mousi WG	4"	Typical UON
B-02	Ceramic Wall Tile	DaTile	Semi Gloss, Mustard Q012	6" x 6"	Tile at child restroom
B-03	Wall Tile	DaTile	Semi Gloss, Key Lime	6" x 6"	Tile at child restroom
B-04	Ceramic Wall Tile	DaTile	Semi Gloss, Biscuit K175	6" x 6"	Tile at adult restroom

TILE					
Type Mark	Item	Manufacturer	Type / Color	Dimensions	Comments
TI-5	Ceramic Wall Tile	DaTile	Semi Gloss, Key Lime Q098	3" x 6"	Tile at child restroom
TI-6	Ceramic Wall Tile	DaTile	Semi Gloss, Mustard Q012	3" x 6"	Tile at child restroom
TI-7	Ceramic Wall Tile	DaTile	Semi Gloss, Biscuit K175	3" x 6"	Tile at adult restroom



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Potrero Kids Daniel Webster

2235 Third Street
San Francisco, CA 94107

Project Number: 21157.00 Issue Date: 10/18/11
Scale: 1/8" = 1'-0" Phase: SD
Print Date: 10/27/2011 12:53:34 PM

No.	Date	Description
PROGRESS SET		

Level P1 Finish Plan

A1.11

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**2235 THIRD STREET IN-KIND AGREEMENT AMENDED
(PER PLANNING CODE SECTION 327)**

THIS IN-KIND AGREEMENT (the "Agreement") is entered into as of April _____, 2010 by and between the City and County of San Francisco, a municipal corporation, acting by and through the Planning Commission (the "City") and Martin McNerney Properties, LLC, a California limited liability company (the "Project Sponsor") with respect to the project approved for 2235 Third Street, San Francisco, California 94107 (the "Project").

RECITALS

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

B. In order to address the impacts from the new mixed residential and commercial development permitted under the Eastern Neighborhoods Plan, the Ordinance also imposed an Impact Fee on new residential and non-residential development (the "Fee"). Under Section 327.3(c), the Fee is required to be paid to the City before issuance of the first site or building permit for a development project is issued. As an alternative to payment of the Fee, the Ordinance provides that the City may reduce the Fee obligation at that time if the project sponsor agrees to provide specified community improvements. In order for the project sponsor to satisfy its Fee obligation by providing such in-kind improvements, the Ordinance requires the City and the Project Sponsor to enter into an "In-Kind Agreement" described in Section 327.3(f).

C. The property described in Exhibit A attached hereto (the "Land") and generally known as 2235 Third Street is leased under a long-term ground lease by Project Sponsor. The Project Sponsor submitted an application for the development of a mixed residential and commercial development on the Land, and the Planning Commission approved the Project on August 14, 2008. The Project Sponsor submitted a revised project to the Planning Department for the development of a mixed residential and commercial development on the Land, and the Planning Commission reviewed the Project as part of an information hearing on September 3, 2009. A Letter of Determination was issued by the Planning Department on September 17, 2009 approving the revisions.

D. The Project Sponsor has requested that the City enter into an In-Kind Agreement relating to approximately 52.1 percent of the area of an approximately 6,260 square foot on-site California Community Care Division licensed child care facility and an approximately 2,000 square foot private outdoor child care play area ("In-Kind Improvements"), located at 2235 Third Street (Lot 010 in Assessor's Block 4058), in order to reduce its Fee obligation per the terms of the Ordinance. The Project Sponsor has also requested that the City enter into an In-Kind Agreement relating to the remaining 47.9 percent of the area of the same 6,260 square foot on-site California Community Care Division licensed child care facility for a separate development proposal at 178 Townsend Street. The City is willing to enter into an In-Kind Agreement, on the terms and conditions set forth below.

AGREEMENT

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

ARTICLE 1 DEFINITIONS

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

"**Agreement**" shall mean this Agreement.

"**Applicable Child care Facilities Law**" shall have the meaning set forth in Section 3.1.1 below.

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

"**Cost Documentation**" shall have the meaning set forth in Section 3.1.4 below.

"**Date of Satisfaction**" shall mean the date on which the 6,260 square foot childcare facility is completed, as described in Exhibit B, and a certificate of final completion has been issued for the Project.

"**DBI**" shall have the meaning set forth in Section 3.1.1 below.

"**DCYF**" shall have the meaning set forth in Section 3.2.1 below.

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

"**Final Inspection Notice**" shall have the meaning set forth in Section 3.1.3 below.

"**First Certificate of Occupancy**" shall mean the first Temporary Certificate of Occupancy or Certificate of Final Completion issued by the Department of Building Inspection for any element of the Project, whichever first occurs.

"**Impact Fee**" or "**Fee**" shall mean the fee charged to all residential and commercial development projects in the Eastern Neighborhoods Plan Areas under Section 327.3 of the Ordinance.

"**In-Kind Improvements**" shall mean the improvements and area to be dedicated as a 6,260 square foot on-site California Community Care Division licensed child care facility and an approximately 2,000 square foot private outdoor child care play area, including the specifications detailed in Exhibit B.

"**In-Kind Value**" shall have the meaning set forth in Section 4.2 below.

"**Initial Amount**" shall have the meaning set forth in Section 4.3 below.

"**Inspection Notice**" shall have the meaning set forth in Section 3.1.3 below.

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

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

"**Ordinance**" shall have the meaning designated in Recital A.

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

"**Payment Documentation**" shall have the meaning set forth in Section 3.1.5 below.

"**Plans**" shall have the meaning set forth in Section 3.1.1 below.

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

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

"**Project Sponsor Fee**" shall mean the Project Sponsor's share of the Fee, as calculated pursuant to Section 4.1 hereof.

"**Security**" shall mean a letter of credit, surety bond, escrow or other security as set forth in Section 5.2 below.

"**Selection Process**" shall have the meaning set forth in Section 3.2.1 below.

"**Service Provider**" shall have the meaning set forth in Section 3.2 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 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 real property on which the Project is located.

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

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

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

2.6 Pursuant to Section 327.3(f)(1), 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 IN-KIND IMPROVEMENTS

3.1 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. In connection with the provision of the In-Kind Improvements and the reduction in the Project Sponsor Fee described below, the Project Sponsor must satisfy the following conditions:

3.1.1 Plans and Permits. The Project Sponsor shall cause its architect 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 Building Inspection ("DBI") in the ordinary course of the process of obtaining a building permit for the Project (upon such approval, the "Plans"). Such review and approval of the plans and specifications of the In-Kind Improvements by DBI shall not be unreasonably withheld, delayed or conditioned. 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 written approval. Upon completion of the In-Kind Improvements, the Project Sponsor shall furnish the City with a copy of the final approved plans and specifications for the In-Kind Improvements and documentation of any material changes or deviations there from that may occur during construction of the In-Kind Improvements. The Project Sponsor shall be responsible, at no cost to the City, for (i) completing the In-Kind Improvements strictly in accordance with the approved Plans, and (ii) obtaining, without limitation, all permits, licenses and other certifications required under applicable Federal, State and local law in connection with the construction of the In-Kind Improvements (collectively the "Applicable Child care Facilities Law"). No approval by the City for purposes of this Agreement shall be deemed to constitute approval of any federal, state or local regulatory authority with jurisdiction over the Project, and nothing herein shall limit the Project Sponsor's obligation to obtain all such regulatory approvals at no cost to the City.

3.1.2 Construction. Construction of the In-Kind Improvements facility shall have two inspection targets for completion. The structural concrete systems (floors, ceilings and concrete sheer walls) for the child care facility must be complete prior to issuance of the First Certificate of Occupancy for the Project, including temporary Certificate of Occupancy, and in accordance with good construction and engineering practices and applicable laws, and shall be of the highest quality for similar child care facilities. All construction with respect to the In-Kind Improvements shall be accomplished prior to issuance of the Final Certificate of Occupancy. Until the Completion of the In-Kind improvement, the City shall hold 'the Security' described in Section 5.2. 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. 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.

3.1.3 Inspections for In-Kind Improvements. The Project Sponsor shall request the customary inspections of work by DBI during construction using applicable City procedures

in accordance with the City's Building Code and other applicable law. Upon final completion of the work and the Project Sponsor's receipt of all first Certificate of Occupancy 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, in coordination with the Department of Children Youth and their Families (DCYF) shall inspect the site to confirm compliance with this Agreement, and shall promptly thereafter notify the Project Sponsor that the In-Kind Improvements have been completed in accordance with the requirements of this Agreement, or, if there are any problems or deficiencies, shall notify the Project Sponsor of any such problems or deficiencies (the "Inspection Notice"). The Project Sponsor shall correct any such problems or deficiencies set forth in the Inspection Notice and then request another inspection, repeating this process until the Director of Planning approves the In-Kind Improvements as satisfactory. Such approval shall be based on the requirements of this Agreement, the Applicable Child care Facilities Law and all other applicable requirements and shall not be unreasonably withheld. This condition will not be satisfied until the Director of Planning delivers an Inspection Notice that certifies that the In-Kind Improvements are ready for use by the public, as determined by the Director of Planning based on current City standards, and constitute the full satisfaction of the obligation to provide In-Kind Improvements in the form required hereunder (the "Final Inspection Notice").

3.1.4 Eligibility of Costs. Documentation establishing the estimated, third-party eligible costs of providing the In-Kind Improvements in compliance with the DBI standards for child care facilities is attached hereto as Exhibit B (the "Cost Documentation").

3.1.5 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.

3.2 Upon completion of the In-Kind Improvements, the Project Sponsor agrees to make the facility available to a non-profit, or child care operator who has a 501(c)(3) fiscal sponsor child-care provider (the "Service Provider") for a term of at least 55 years rent-free including property taxes, property insurance, equipment maintenance (which shall be defined as heating, cooling, plumbing, electrical, weatherproofing and structural systems, but shall exclude interior finishes), and security costs above \$300 per month (adjusted by Consumer Price Index (CPI) from 2010). Service Provider will be responsible for water, garbage and recycling, electric, gas, communication services, and reimbursement to Project Sponsor for a pro-rata share of site security costs up to a maximum of \$300 per month (adjusted by CPI from 2010), and liability insurance as required by California Department of Social Services Community Care Licensing. The pro-rata share of site security expenses shall be determined by calculating the net occupancy square footage of the child care facility as a portion of the total net occupancy square footage of the Project, multiplied by the total site security expenses for the Project.

3.2.1 Selection Process. Within 60 Days of the effective date of this Agreement, the Service Provider shall be selected through a competitive request for proposal process (the "Selection Process") by the Project Sponsor in coordination with the Department of Children, Youth & Their Families ("DCYF"). A representative of DCYF shall sit on the panel that selects the Service Provider to ensure high quality child care programming. The Selection Process shall provide: (1) a minimum of 10% of all eligible slots shall be reserved for low income households with no government subsidies; (2) child care programs that ensure a higher proportion of low income slots shall receive a graduated bonus score; (3) child care programs must serve a broad range of age groups, including ~~infants and~~ toddlers, proposals shall receive bonus score for proposals that more closely reflect the needs of the neighborhood demographics

for both those that work and live in the neighborhood; and (4) points will be awarded for child-care programs that prioritize service for children of a variety of ages and area mean income who live in or near the Eastern Neighborhoods, including programs that create priorities based on zip code or other indicators. Whenever possible, the Project Sponsor and DCYF shall use best efforts to exceed the 10% minimum established in Section 3.2.1(1).

3.2.2 Determining final layout of Child Care facilities and related tenant improvements. Once a Service Provider is selected, through the process described in section 3.2.1, the Project Sponsor shall work with the provider to determine the final programming of the space, including location of partition walls, fixtures, and other amenities to be provided by the developer. Should the Project Sponsor fail to secure a Service Provider during the construction period, through no fault of their own, they shall seek technical advice from DCYF to complete tenant improvements to the extent necessary to be awarded Temporary Certificate of Occupancy (TCO). In this instance, the Project Sponsor would be required to complete final tenant improvements at the direction of DCYF.

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

ARTICLE 4 CALCULATION OF FEE AND IN-KIND CREDIT

4.1 The Project Sponsor Fee shall be calculated in accordance with Section 327.3(c) of the Ordinance. Accordingly, the Project Sponsor Fee shall be the net addition of gross square feet of use times the Impact Fee in place at the time of payment. In this instance, based upon the existing plans submitted by the Project Sponsor to the City:

Impact Fee for residential uses: \$8.00 (or such increased amount as may be charged by the City at the time of payment of the Fee, as set forth in Section 327.3) x 162,170 net new gross sq. ft. = \$1,297,360.

Impact Fee for commercial uses: \$6.00 (or such increased amount as may be charged by the City at the time of payment of the Fee, as set forth in Section 327.3) x 0 net new gross sq. ft. = \$0.

4.2 The Cost Documentation sets forth estimates of the cost of providing the In-Kind Improvements. Based on the Cost Documentation, the Director of Planning determines that the In-Kind Improvements have a value of approximately \$997,608, which is equivalent to 52.1% of the total construction and development value (the "In-Kind Value"); provided, however, if upon final completion the actual construction and development costs to the Project Sponsor of providing the In-Kind Improvements are lower than this amount, the provisions of Section 5.2 shall apply.

4.3 The Project Sponsor shall pay to the City \$299,752 (the "Initial Amount") before the issuance of the first site or building permit from the City's Building Department, which is an amount equal to the Project Sponsor Fee minus the In-Kind Value. On the Date of Satisfaction, the Project Sponsor shall receive a credit against the Project Sponsor Fee in the amount of the In-Kind Value, subject to Section 5.2 below.

ARTICLE 5 PAYMENT AND SECURITY

5.1 This Agreement shall not be effective until (a) this Agreement is signed by both the Project Sponsor and the City and is approved by the Planning Commission and (b) the Project Sponsor pays the Initial Amount. The date upon which the foregoing requirements have been satisfied shall be the "Effective Date".

5.2 If the Final Inspection Notice has not been satisfied Prior to issuance of the First Certificate of Occupancy, the Project Sponsor shall provide a letter of credit, surety bond, escrow account, or other security reasonably satisfactory to the Planning Department in the amount of fifteen percent (15%) of the Cost Documentation (the "Security").

5.3 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 satisfy the criteria set forth in the Cost Documentation. If the Payment Analysis reasonably substantiates the findings in the Cost Documentation that the Project Sponsor made payments in respect of the In-Kind Improvements in an amount less than the Project Sponsor Fee, the Project Sponsor shall, within sixty (60) days of the date of the Payment Analysis, pay the City in an amount equal to the difference between the Project Sponsor Fee and the amount paid in respect of the In-Kind Improvements by the Project Sponsor. If the Payment Analysis reasonably substantiates the findings in the Cost Documentation that the Project Sponsor made payments in respect of the improvements in an amount equal to or greater than the Project Sponsor Fee, and the Project Sponsor is not otherwise in default under this Agreement, 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.

5.4 The City and Project Sponsor shall endeavor to agree upon the Payment Analysis previous to the signing of this agreement. The amount will closely reflect, or exceed, the average capital costs for the City to provide the same square feet of child care space, based on current value of recently completed projects, especially those recently completed and included in the Citywide Child care Nexus Study.

5.5 Notwithstanding anything in this Agreement to the contrary:

5.5.1 The City shall not issue any certificate of final completion to the Project Sponsor until the City receives payment of the full Project Sponsor Fee (in some combination of the payment of the Initial Amount, the acceptance of In-Kind Improvements having the value described under this Agreement and other cash payments received by the City directly from Project Sponsor); provided, however, if the parties disagree as to the Payment Analysis pursuant to Section 5.3 above and a non-profit child-care provider has otherwise accepted the In-Kind Improvements, the City shall issue the certificate of final completion within thirty-five (35) days of the Payment Analysis notwithstanding the fact that the City has not received payment of the full Project Sponsor Fee.

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

5.5.3 If the portion of the facilities dedicated to the In-Kind Improvements is vacant for over a period of 6 months, and the vacancy is deemed by the City in its reasonable opinion to be the responsibility of the property management, building owner or their affiliates, the term of this Agreement shall be extended by 1.5 times that term of vacancy. Notice of these extensions should be recorded as part of a Notice of Special Restriction (NSR) on the property.

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

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

ARTICLE 6 NOTICES

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

CITY:

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

with a copy to:

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

PROJECT SPONSOR:

Martin McNerney Properties, LLC
c/o Martin Building Company
14 Mint Plaza, Fifth Floor
San Francisco, CA 94103
Attn: Katie O'Brien, Development Manager

with a copy to:

Farella Braun + Martel LLP
235 Montgomery Street, 17th Floor
San Francisco, CA 94104
Attn: Steven L. Vettel, Esq.

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

**ARTICLE 7
RUN WITH THE LAND**

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

**ARTICLE 8
ADDITIONAL TERMS**

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

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

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

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

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

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

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

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

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

8.10 The Project Sponsor, on behalf of itself and its successors, shall indemnify, defend, reimburse and hold the City 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 Project, provided that such accident, injury, death, loss or damage does not result from the gross negligence of the City; (b) any default by the Project Sponsor under this Agreement, (c) the condition of the In-Kind Improvements constructed by or on behalf of the Project Sponsor; and (d) any acts, omissions or negligence of the Project Sponsor or its agents in or about the Project. 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 9 CITY CONTRACTING PROVISIONS

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

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

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

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

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

The Project Sponsor acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

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

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

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

MARTIN MCNERNEY PROPERTIES,
LLC, a California limited liability company

By: _____
Director of Planning

By: _____
Name: Patrick McNerney
Its: Manager

APPROVED:

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

Farella Braun & Martel, LLP

By: _____
Kenneth Roux, Deputy City Attorney

By: _____
Steven L. Vettel

Exhibit A

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

A Leasehold estate as created by that certain Lease dated May 10, 2000, made by and between Max Levin, as Lessor, and Martin McNerney Properties, LLC, a California limited liability company, as Lessee, for the term and upon the terms and conditions contained in said lease, a Memorandum thereof recorded May 19, 2000 in Book H641 of Official Records, Page 267, under Recorder's Serial Number 2000-G775769-00, in and to the following:

LOT 10, as shown on the Map entitled, "Parcel Map, Being a Resubdivision of Lots 1, 1A, 1B, 1C, 6 and 7, Portion of Assessor's Block No. 4058, San Francisco, California", filed February 28, 1986, in the office of the Recorder of the City and County of San Francisco, State of California, in Parcel Map Book 32, Page 71.

Assessor's Lot 010; Block 4058

Exhibit B

Value Documentation Attached

Appendix B. Project Scope and Valuation

Potrero Launch

2235 Third Street, San Francisco

Project Scope, Child Care Facility Finishes

The child care center at Potrero Launch will include a full build out of the interior space and its adjacent outdoor space, ready for occupancy. The entire building, including the child care facility, will be certified LEED Gold. The following list of improvements and finishes, or their equivalent as agreed to by both parties, shall be constructed as part of the basic construction, as provided by the property owner. The project sponsor shall work with the program operator or DCYF to refine the draft layout, complete specific schematics, and possible substitute or equivalent substitutes to this program. Any improvements and/or finishes beyond these specifications are intended to be provided by the child care facility operator, such as furnishings, additional storage, or higher grade finishes.

Childcare Space Detail:

1. 4 individual classrooms with adjacent restrooms and washing facilities
2. An option for a 5th classroom that can be used for flexible child space (without an adjacent restroom)
3. 2 restroom banks including a combined: 4 "child size" toilets, 2 child size sinks, and 2 changing table and 2 adult sinks. Layout within the restroom banks will also include ½ height doors and walls where necessary.
4. 3 adult restrooms, each with a sink and toilet
5. 1 "Child size" and 1 adult sink located within each classroom (and close to the exits)
6. Clothes washer and dryer area
7. A proposed layout example is depicted within the attached sketch, this is a possible scenario

Interior Spaces include:

1. **Entry, classrooms, office, multi-purpose room**
 - a. Separate rooms as required for bathrooms (adult and child), classrooms (4), conference room, office, and kitchen.
 - b. Exterior glass and aluminum doors leading directly to adjacent fenced outdoor space
 - c. Heating, ventilation and air conditioning system, independent from the building systems and fully operational
 - d. Fire sprinklers and life safety systems as required by code
 - e. Recessed fluorescent light fixtures, or equivalent, with occupancy sensors
 - f. Level IV painted gypsum board wall finishes, and molding/trims
 - g. Level IV suspended gypsum board painted ceiling
 - h. Prefinished 8ft tall solid wood birch doors with stainless steel hardware
 - i. Glass and aluminum sidelights for viewing from hall into classrooms and changing areas

- j. Non-toxic carpeting for up to 75% of the floor area, soft surfacing linoleum or wood flooring for the balance.
- k. Recessed Dutro entry walk-off mat
- l. Engineered vertical grain Douglas Fir kitchen cabinets with concealed, soft closing hinges.

2. Restroom finishes

- a. American Standard white wall-mounted sinks with polished chrome faucets
- b. Kohler pressure-assist toilets
- c. Level IV painted gypsum board wall finishes
- d. Level IV suspended gypsum board painted ceiling
- e. Cotto Thailand GI Series matt finished ceramic wainscot tile on 'wet' walls
- f. Acid color stained and clear coated concrete floors, or linoleum if required for certification. Prefinished 8ft tall solid wood flush birch doors with stainless steel hardware
- g. Fluorescent wall sconce light fixtures with occupancy sensors
- h. Mirror mounted with (four each) Doug Mockett stainless steel mirror mounts
- i. Stainless steel wall-mounted soap, toilet seat cover and paper towel dispensers
- j. Engineered vertical grain Douglas Fir kitchen cabinets with concealed, soft closing hinges, for children's restroom banks
- k. One changing area with an adult sink

3. Kitchen finishes

- a. Level IV painted gypsum board wall finishes
- b. Level IV suspended gypsum board painted ceiling
- c. Engineered vertical grain Douglas Fir kitchen cabinets with concealed, soft closing hinges
- d. Sugatsune stainless steel linear pulls
- e. Tropical Green honed granite countertops with 2" mitered edges
- f. Large "Just Sinks" stainless steel undermount kitchen sink with Grohe polished chrome faucet and integral soap dispenser
- g. Cotto Thailand "Fabric Ivory" ceramic backsplash wall tile
- h. Acid color stained and clear coated concrete floor
- i. Fluorescent light fixtures with occupancy sensors
- j. Appliances:
 - i. Refrigerator: KitchenAid 36" wide
 - ii. Gas range: KitchenAid heavy duty 36" free-standing gas range and oven
 - iii. Dishwasher: KitchenAid heavy duty
 - iv. Hood: Zephyr
 - v. Commercial grade garbage disposal

Outdoor Space includes:

1. General

- a. Six foot tall perimeter wrought iron fencing with egress gates as required
- b. Concrete patios and walkways as necessary immediately outside the interior spaces
- c. Play areas with recycled rubber mulch as desired by the operator
- d. Lawn and sand play areas encompassing the balance of the outdoor space
- e. General illumination for functionality and safety
- f. Child size drinking fountain and sink.

**“In-Kind Value”
Valuation Analysis**

Per Section 327.3 the Planning Director must determine the value of an infrastructure project proposed in lieu of a cash payment of the Eastern Neighborhoods Public Benefits Fee.

The Project sponsor submitted three cost estimates to the Planning Department (attached), estimating the cost per square foot as \$305, \$312 and \$322.

The Citywide child care nexus study provides 13 case studies of child care facilities that were developed in San Francisco with public funds, to support programs equivalent to that identified as a community need by the Eastern Neighborhoods Nexus Study. These case studies found that the City spends an average of \$257¹ per gross square foot to build or rehab childcare facilities. A subset of these projects that include new construction of a new facility rather than rehabilitation of an existing facility cost an average cost of \$306* per gross square foot.

The Department determines the final value of the proposed 6,260 square foot childcare facility with the finishes described above to be \$1,915,560, based on \$306 per gross square foot.

Exhibit C

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**

¹ Inflated to 2010 dollars.

Memorandum of In-Kind Agreement

This Memorandum of In-Kind Agreement (this "Memorandum"), is dated as of _____, 2010, 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 Martin McNerney Properties, LLC, a California limited liability company (the "Project Sponsor").

1. The property described in Exhibit A attached hereto (the "Land") and generally known as 2235 Third Street, San Francisco, California 94107 is ground leased by Project Sponsor.
2. Under San Francisco Planning Code Section 327.3 ("Section 327.3"), the Project Sponsor must pay to the City an Impact Fee (the "Fee") on or before the issuance of the first site or building permit for the Land; provided, however, the City can reduce such payment under Section 327.3(f) if the Project Sponsor enters into an agreement with the City to provide in-kind improvements.
3. In accordance with Section 327.3(f), the City and the Project Sponsor have entered into an in-kind agreement (the "In-Kind Agreement"), which permits the Project Sponsor to receive a building permit with the satisfaction of certain conditions in return for the Project Sponsor's agreement to provide certain in-kind improvements under the terms and conditions set forth therein.
4. Upon the Project Sponsor's satisfaction of the terms of the In-Kind Agreement, the In-Kind Agreement shall terminate and the City will execute and deliver to the Project Sponsor a termination of this Memorandum in recordable form.
5. The Project Sponsor and the City have executed and recorded this Memorandum to give notice of the In-Kind Agreement, and all of the terms and conditions of the In-Kind Agreement are incorporated herein by reference as if they were fully set forth herein. Reference is made to the In-Kind Agreement itself for a complete and definitive statement of the rights and obligations of the Project Sponsor and the City thereunder.
6. This Memorandum shall not be deemed to modify, alter or amend in any way the provisions of the In-Kind Agreement. In the event any conflict exists between the terms of the In-Kind Agreement and this Memorandum, the terms of the In-Kind Agreement shall govern.

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

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

By: _____
Director of Planning

MARTIN MCNERNEY PROPERTIES, LLC,
a California limited liability company

By: _____
Name: Patrick McNerney
Its: Manager

CALIFORNIA ALL-PURPOSE
CERTIFICATE OF ACKNOWLEDGEMENT

State of California
County of _____

On _____ before me,

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

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

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

WITNESS my hand and official seal.

Signature of Notary Public

(Notary Seal)



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Motion No. 18073

HEARING DATE: APRIL 15, 2010

Date: April 8, 2010
Case No.: 2002.1302U
Project Address: **2235 03rd Street**
And
178 Townsend Street
Plan Area: Eastern Neighborhoods
Block/Lot: 4058/010
And
3788/012
Project Sponsor: Martin Building Company
54 Mint Street, 5th Floor
San Francisco, CA 94103
and
Katie O'Brien
178 Townsend Properties, LLC
54 Mint Street, 5th Floor
San Francisco, CA 94103

Staff Contact: Kearstin Dischinger (558-6284)
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APPROVING AN IMPACT FEE WAIVER FOR 2235 THIRD STREET IN THE AMOUNT OF \$997,608 AND 178 TOWNSEND STREET IN THE AMOUNT OF \$917,952 FOR THE PROVISION OF 6,260 SQUARE FEET OF INDOOR SPACE AND 2,000 SQUARE FEET OF OUTDOOR SPACE FOR A CHILDCARE FACILITY, FOR A TERM OF 55 YEARS, RENT FREE, AT 2235 THIRD STREET.

PREAMBLE

- The Project Sponsor submitted an application for the development of a mixed residential and commercial development at 2235 Third Street, and the Planning Commission approved the Project on August 14, 2008. The Project Sponsor submitted a revised project to the Planning Department for the development of a mixed residential and commercial development on the Land, and the Planning Commission reviewed the Project as part of an information hearing on September 3, 2009. A Letter of Determination was issued by the Planning Department on September 17, 2009 approving the revisions.
- The Project Sponsor submitted an application for the development of a mixed residential and commercial development at 178 Townsend Street, and the Planning Commission approved the Project on September 4, 2008. The Project Sponsor submitted a revised

application for the development of a mixed residential and commercial development on the Land, and the Planning Commission approved the Project on September 3, 2009. These approval actions are incorporated herein by reference.

- In order to address the impacts from the new mixed residential and commercial development permitted under the Eastern Neighborhoods Plan, the Ordinance also imposed an Impact Fee on new residential and non-residential development (the "Fee"). Under Section 327.3(c), the Fee is required to be paid to the City before issuance of the first site or building permit for a development project is issued. As an alternative to payment of the Fee, the Ordinance provides that the City may reduce the Fee obligation at that time if the Project Sponsor agrees to provide specified community improvements. In order for the Project Sponsor to satisfy its Fee obligation by providing such in-kind improvements, the Ordinance requires the City and the Project Sponsor to enter into an "In-Kind Agreement" described in Section 327.3(f).
- The Project Sponsor has requested that the City enter into two In-Kind Agreement relating to 2235 Third Street and 178 Townsend Street for the provision of a 6,260 square foot on-site California Community Care Division licensed child care facility and an approximately 2,000 square foot private outdoor child care play area ("In-Kind Improvements"), located at 2235 Third Street (described below). Specifically the Project Sponsor seeks a \$997,608 waiver for 2235 Third Street and a \$917,952 waiver for 178 Townsend Street. A balance of \$299,752 will be collected at when the first site or building permit is issued for 2235 Third Street.
- The Project Sponsors propose to dedicate 6,260 gross square feet of indoor space and 2,000 square feet of outdoor space of 2235 Third Street as a child care center, rent free, for 55 years. The child care center at Potrero Launch will include a full build out of the interior space and its adjacent outdoor space, ready for occupancy. The entire building, including the child care facility, will be certified LEED Gold. A list of improvements and finishes, or their equivalent as agreed to by both parties, shall be constructed as part of the basic construction, as provided by the property owner. The Project Sponsor shall work with the Program Operator or DCYF to refine the draft layout, complete specific schematics, and possible substitute or equivalent substitutes to this program. Any improvements and/or finishes beyond these specifications are intended to be provided by the child care facility operator, such as furnishings, additional storage, or higher grade finishes. The In-Kind Agreement describes the complete package.
- A Program Operator will be selected through a competitive bidding process. Program Operators will be required to designate 10% of the child care 'slots' to low-income households and serve a broad range of age groups, including infants and toddlers. Proposals that ensure a higher proportion of low income slots, more closely reflect the needs of the neighborhood demographics for both those that work and live in the neighborhood, and prioritize serving households who live in or near the Eastern Neighborhoods, will be more competitive in the selection process.

MOVED, that the Commission hereby authorizes the Eastern Neighborhoods Impact Fee Waiver for 2235 Third Street and 178 Townsend Street based on the following findings:

FINDINGS

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

- The above recitals are accurate and constitute findings of this Commission.
- **Identified Plan Need.** The Eastern Neighborhoods need analysis identified child care facilities as needed infrastructure to support new development. Planning Code Section 327 designates 8% of all impact fee revenue shall be spent on child care facilities and library materials. The Planning Department projects approximately \$24.7 Million in impact fee revenue for infrastructure over the next five years. Accordingly, roughly \$2 Million dollars must be dedicated to child care facilities or library materials.
- **Interagency Support.** The Department of Children, Youth, and their Families (DCYF) oversees City funded child care facilities, including the expenditure of public funds to support the development of new child care facilities, establishing standards for high quality child care, and providing technical assistance for the development of new child care facilities. DCYF worked closely with the Planning Department and Project Sponsor on the development of this in-kind proposal, including determining that the proposed In-Kind improvement meets the standards for high quality child care, determining the value of the In-Kind improvement, determining the appropriate terms for the Program Operator, and providing on-going technical support. DCYF endorses the proposed in-kind agreement and has committed to participate in the Program Operator selection process and on-going technical support.
- **In-Kind Improvement Valuation.** The Department determines the final value of the proposed 6,260 square foot child care facility with the finishes described above to be \$1,915,560, based on \$306 per gross square foot. The Citywide child care nexus study provides 13 case studies of child care facilities that were developed in San Francisco with public funds, to support programs equivalent to that identified as a community need by the Eastern Neighborhoods Nexus Study. These case studies found that the City spends an average of \$2571 per gross square foot to build or rehab child care facilities. A subset of these projects that include new construction of a new facility rather than rehabilitation of an existing facility cost an average cost of \$306* per gross square foot.
- On February 8, 2010, the Eastern Neighborhood Citizens Advisory Committee (CAC) passed a resolution in support of the provision of a child care facility at 2234 Third Street in lieu of impact fee revenue.

DECISION

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

¹ Inflated to 2010 dollars.

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

I hereby certify that the foregoing Motion was adopted by the Planning Commission on April 15, 2010.

Linda Avery
Commission Secretary

AYES: Borden, Lee, Moore, and Miguel
RECUSED: Antonini and Sugaya
NAYES: Olague
ADOPTED: April 15, 2010