



# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary

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

HEARING DATE: JUNE 26, 2014

*Date:* April 3, 2014  
*Case No.:* 2005.0694U  
*Project Address:* **Barlett Street between 21<sup>st</sup> and 22<sup>nd</sup> Street**  
*Plan Area:* Mission  
*Project Sponsor:* Dean Givas  
Oyster Development Corp.  
355 1st Street, #809  
San Francisco, CA 94105  
*Staff Contact:* Mat Snyder (415-575-6891)  
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#### SUMMARY

The Project Sponsor of the development at 2554-2558 Mission Street, Oyster Development, is seeking to enter an In-Kind Agreement with the City of San Francisco to provide eight pergola streetscape structures as a part of the Bartlett Street Improvement Project (BSIP), a DPW project, for a maximum value of \$500,000 of their Eastern Neighborhoods Infrastructure Impact Fees.

#### BACKGROUND

A primary goal of 2008's [Eastern Neighborhoods Plan](#) is to provide public improvements in association with increased development potential that enabled by the Plan. Such neighborhoods feature infrastructure such as public parks, efficient transit, affordable housing, safe and walkable streets, and child care. In order to help pay for such infrastructure, development projects within the Eastern Neighborhoods Plan Area are subject to the Eastern Neighborhoods Infrastructure Impact Fee. This impact fee varies by project, as it is based on the amount of development proposed. Project sponsors may pay the impact fee directly to the City. Alternatively, project sponsors may request to directly provide the infrastructure that supports complete neighborhoods. Such direct provision of infrastructure requires the approval of the City, in the form of a legally binding "In-Kind Agreement".

Such an In-Kind Agreement, as contained in Attachment 2, is being sought at this time by Oyster Development, the Project Sponsor at 2554-2558 Mission Street. The location of the proposed in-kind agreement is located on Bartlett Street between 21<sup>st</sup> Street and 22<sup>nd</sup> Street, in which the associated development project has a frontage. The associated development project was approved in December 2012 and will include approximately 114 dwelling units, 14,000 gsf of ground floor retail, and the

rehabilitation of the New Mission Theater. It is currently under construction. The project sponsor owes approximately \$1,410,000 in Eastern Neighborhoods Impact Fees. The development site borders Mission Street on its front and Bartlett Street on the rear.

As part of the development project, Oyster Development is proposing to participate with the City in creating a new plaza-like space on Bartlett Street; specifically, they are proposing to fabricate and install eight vertical pergola streetscape structures for the space. The construction of the Bartlett Street Improvement Project fulfills, in part, the vision of the Mission District Streetscape Plan, in which this project is included. The Mission District Streetscape Plan, in turn, is an implementing document of the Mission Area Plan and Eastern Neighborhood Plan, in that it lays out specific public benefit projects on behalf of the Mission District and the Eastern Neighborhoods.

## **THE MISSION DISTRICT STREETScape PLAN AND THE BARLETT STREET IMPROVEMENT PROJECT**

The Bartlett Street project is a component of the Mission District Streetscape Plan. The Planning Department developed the Mission District Streetscape Plan to help implement several objectives and policies of the Mission Area Plan including but not limited to: Objective 5.3: “create a network of green streets that connects open spaces and improves the walkability, aesthetics and ecological sustainability of the neighborhood”; Policy 5.3.7: “develop a comprehensive public realm plan for the Mission that reflects the differing needs of streets based upon their predominant land use, role in the transportation network, and building scale”.

Mission District Streetscape Plan re-imagines Mission District streets as vital public spaces that serve the needs and priorities of the community; it looks to create a system of neighborhood streets with safe and green sidewalks, well-marked crosswalks, widened sidewalks at corners, creative parking arrangements, bike paths and routes, close integration of transit, and roadways that accommodate automobile traffic but encourage appropriate speeds. The Streetscape Plan provides a design framework for street improvement, policies to guide the improvement of the public realm of the Mission District’s streets, and designs for 28 specific projects that can be built over.

The non-profit Mission Mercado Community Market was started July 2010 on Bartlett between 21<sup>st</sup> Street and 22<sup>nd</sup> Street and is run entirely by the local community. The Market hosts produce vendors, local crafts and prepared foods, music and youth activities. Broad design objectives were described in the Mission District Streetscape Plan to further accommodate the space for the Mission Mercado and other community events. The Streetscape Plan points out Bartlett as an ideal location for a community gathering place. Since 2010, the Mission Community Market, has engaged the community in a re-design process. They approached Oyster Development to participate in the creation of the street improvements as a part of its development at 2558 Mission Street. In 2012, the Bartlett Street Improvement Project was selected for funding through the 2011 Road Repaving & Street Safety Bond for the amount of \$1,600,000, \$500,000 less than the full budget.

## **PERGOLA STRUCTURES**

In seeking a way to participate in creating the Bartlett Street plaza, Oyster Development, the urban designers Rebar, and the Mission Community Market organization giving Oyster Development

responsibility for the fabrication and installation of the pergola structures, which are envisioned to be signature features for the project. By focusing on the pergola structures, the project sponsor is able to deliver a stand-alone feature that can be created separately, and therefore easily coordinated with the overall construction of the BSIP.

The pergolas would act as both gateway features into the block and as permanent market structures for street food and market vendors. Pergola structures would be installed on the south end of the block. Four structures would align each side of the street for the southern-most 85-feet of its length. Each structure would measure approximately 20-feet wide by 14-feet deep by 14-feet tall. They would be fabricated from metal and feature wood slat canopy roofs. They would each also feature internal lighting and electric outlets for vendors. The cost estimates are included as Exhibit B to the In-Kind Agreement.

Planning staff believes that assigning the fabrication and installation of the pergolas to the Project Sponsor is a good fit for an in-kind agreement: the pergolas are a stand-alone element that can be created separately from the larger construction activity of the BSIP, enabling easier coordination.

Because of potential timing and phasing issues between fabricating the pergolas, the anticipated completion of 2558 Mission Street and the completion of the overall BSIP, the In-Kind Agreement contains a clause that would enable the Project Sponsor to opt out of fabricating the pergolas and get credit for DPW approved construction drawings. DPW had indicated a willingness to have the pergolas fabricated under a separate contract.

## **MAINTENANCE**

As a component of a City project, the pergola structures will be accepted by the City per Public Works Code 791. The Department of Public Works has incorporated as a part of their construction contract that the contractor will maintain the new Bartlett Street improvements (the pergolas along with the other streetscape components for three years. Beyond that, the Mission Community Market organization intends to provide enhanced maintenance beyond baseline DPW maintenance. The Mission Community Market organization along with Planning staff is currently looking at possible ways enhanced maintenance could be funded including, but not limited to, expansion of a local business improvement district.

## **ENVIRONMENTAL REVIEW**

The proposed improvements were environmentally cleared as a part of 2558 Mission Street Final Mitigated Negative Declaration (FMND) 2005.0694, adopted by the Planning Commission January 10, 2013 .

## **REQUIRED COMMISSION ACTION**

To complete this In-Kind Agreement requires that the Planning Commission approve an impact fee waiver in return for the in-kind improvements discussed above.

## **BASIS FOR RECOMMENDATION**

In September of 2010, the Planning Commission endorsed 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.

Below is staff's analysis of how the project meets these criteria.

The criteria are divided into "eligibility criteria", which the project is required to meet to be eligible for an in-kind agreement and "priority criteria", for which the project sponsor is not required to meet all criteria. The proposed in-kind agreements meet these criteria as follows:

### Eligibility Criteria

1. The improvement fulfills the purpose of the community improvements. Improvements provided in-kind must be public infrastructure or facilities. In order to implement this requirement, the Planning Commission will require that all improvements provided in-kind must be available to the public to the same extent they would be if the City provided the improvement.

*Bartlett Street is a public street and the Bartlett Street improvements (including the pergolas) will be public improvements.*

The infrastructure type is identified in the fee ordinance.

*The streetscape project falls under the "Transportation and Streetscape" category of improvements and therefore is eligible.*

2. The expenditure category for infrastructure type is not exhausted.

*The funds for transportation and streetscape projects in the Eastern Neighborhoods is not exhausted. As of the 2014 Interagency Plan Implementation Committee Report, there is projected to be approximately \$26,000,000 for Transportation and Streetscape Projects between the years FY 15-19. The Bartlett Street Improvement in-kind is for \$500,000, which was included in the IPIC Report, represents approximately 2-percent of that total amount.*

**Priority Criteria** (A project does *not* need to meet every criterion to be recommended for approval to the Planning Commission. The CAC's input weighs heavily on how well a project meets these criteria. )

1. Improvement is identified in the Five Year Capital Plan [e.g. the IPIC Report].

*The project is identified in the Five Year Capital Plan.*

2. No funds would need to be reallocated from already identified funded (or partially funded) projects.

*As noted above, the subject project has been identified for spending in the Five-Year Capital Plan. It should be noted that at the time this project was before the CAC (March 2013), revenue was projected to be less than what they are now such that staff advised that funds would need to be reallocated from the 22-Fillmore / 16<sup>th</sup> Street streetscaping project. Even with this, the CAC recommended approval. Since that time, revenue projections have been updated and the revenue is now expected to be much more robust than originally anticipated. Therefore, the BSIP In-Kind can be funded without reallocating funds from other projects.*

3. The project is an Eastern neighborhood priority improvement.

*The subject project is not a "Priority Project" in that it is not an identified project in the MOU between Planning and the implementing agencies. However, as discussed above, it is an identified project in the Mission Streetscape Plan.*

4. The CAC supports the proposed improvement.

*The EN CAC supports the project as indicated in the attached motion.*

5. Efficiencies are gained through coordination with development project.

*The in-kind will enable the Project Sponsor fabricate the pergolas at the same time as the 2558 Mission Street development project, and the larger Bartlett Street Streetscape Project is under construction.*

Based on the community support, support of DPW, and a review of the value, and the terms of agreement contained in the In-Kind Agreement, the Planning Department recommends approval of this In-Kind Agreement.

**Attachments:**

1. Draft Planning Commission Motion
2. Draft In-Kind Agreement for the Bartlett Street Improvements
3. Design and Images of Bartlett Street Improvements and Pergolas



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission DRAFT Motion No.

*Date:* June 19, 2014  
*Case No.:* 2005.0694U  
*Project Address:* **Bartlett Street between 21<sup>st</sup> and 22<sup>nd</sup> Street**  
*Associated with 2558 Mission Street*  
*Plan Area:* Mission Area Plan  
*Project Sponsor:* Dean Givas

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**APPROVING AN IMPACT FEE WAIVER FOR 2558 MISSION STREET IN THE AMOUNT OF \$516,000 TO PROVIDE STREETScape IMPROVEMENTS ON BARLETT STREET BASED ON THE COMPLETION OF AN IN-KIND AGREEMENT BETWEEN THE PROJECT SPONSOR AND THE CITY.**

### PREAMBLE

- On January 19, 2009 the Eastern Neighborhoods Plan became effective, including now Section 423.3 of the San Francisco Planning Code, the Eastern Neighborhoods Infrastructure Impact Fee applicable to all projects in the plan area, including the subject property. 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 January 10, 2010, the Planning Commission granted approval to the project proposed for 2558 Mission Street which will include approximately 114 dwelling unit, 14,000 gsf of ground floor retail, and the rehabilitation of the New Mission Theater.
- On May 9, 2012, the Project Sponsor, Oyster Development., filed an application with the City for approval of an In-Kind Agreement for provision of streetscape improvement, specifically eight vertical pergola structures.
- The proposed pergola structures would be an element of the overall Bartlett Streetscape Improvement Project (BSIP). The BSIP, a City sponsored project, will redesign the entire block of Bartlett Street between 21<sup>st</sup> and 22<sup>nd</sup> Street. The overall project would include widening sidewalk, special paving, new street trees, lights and landscaping, along with the other improvements. The intent of these improvements to provide a special place for programmed events and community festivals, anchored by the Mission Community Market, a community-based weekly event. The pergolas will be two rows of four vertical canopy structures measuring 20 feet long by 14 deep by 14 feet tall each, constructed of metal and wood and feature built in lighting and utility outlets for street food and market vendors;

- On March 18, 2013, in Motion 2013-02-02, the Eastern Neighborhoods Citizens Advisory Committee passed a resolution supporting the proposed improvements for the Bartlett Street In-Kind Agreement.

**MOVED**, that the Commission hereby authorizes the Eastern Neighborhoods Community Impact Fee Waiver 2558 Mission Street in the amount of \$520,000.

## FINDINGS

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

1. The above recitals are accurate and constitute findings of this Commission.
2. The proposed In-Kind Agreement is consistent with the Planning Code Section 423.3.
3. The proposed improvements would present a suitable priority for an In-Kind Agreement to satisfy portions of the Area Plan infrastructure impact fees as they meet the following criteria established in the Planning Commission approved "Procedures of In-Kind Agreements".
  - Improvement Fulfills the Purpose of Community Improvements: Per Planning Code section 423.3(d) (which describes in-kind improvements under the EN Impact Fee Fund) streetscape projects, such as plaza-like improvements, are eligible for funding.
  - The Infrastructure Type is Identified in the Fee Ordinance: The plaza project falls under the "Transportation and Streetscape" category of improvements in the Eastern Neighborhoods Impact Fee Fund, and therefore is eligible.
  - The Expenditure Category for Infrastructure Type is Not Exhausted: The "Transportation and Streetscape" category of funds have not been exhausted.
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: This project is listed in the IPIC Report. Funds allocated here would not be removed from any specifically identified project.
  - CAC Supports the Proposed Improvement: The Eastern Neighborhoods CAC approved a resolution in February 2014 supporting the improvements in an amount up to \$500,000.
5. Efficiencies are Gained Through Coordination with Development Project: Through the in-kind agreement, the Project Sponsor will have eight pergola structures fabricated and installed. The pergola structures are considered a key signature element of the overall STIP. By fabricating and the pergola structures, the Project Sponsor is able to participate in creating the new Bartlett Street by creating a stand-alone feature that can be created separately and then easily integrated into the overall streetscape improvements. The pergolas can be fabricated at the same time as the development project at 2558 Mission Street and the overall Bartlett Street improvements. The pergolas will be completed and ready to install prior to the completion of the development project.
6. The Bartlett Street Improvement Project is a DPW sponsored project. The design, fabrication, and installation will occur under DPW staff's direction.

7. **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 Mission Area Plan by implementing the below policies and objectives.

OBJECTIVE 3.1

PROMOTE AN URBAN FORM THAT REINFORCES THE MISSION'S DISTINCTIVE PLACE IN THE CITY'S LARGER FORM AND STRENGTHENS ITS PHYSICAL FABRIC AND CHARACTER.

OBJECTIVE 3.2

PROMOTE AN URBAN FORM AND ARCHITECTURAL CHARACTER THAT SUPPORTS WALKING AND SUSTAINS A DIVERSE, ACTIVE AND SAFE PUBLIC REALM

POLICY 3.2.6

Sidewalks abutting new developments should be constructed in accordance with locally appropriate guidelines based on established best practices in streetscape design.

*Discussion: The overall BTIP would enhance the pedestrian conditions on Bartlett Street, by providing pedestrian amenities, including, but not limited to, widened sidewalks, enhanced paving and landscaping and unique streetscape elements such as the pergolas.*

OBJECTIVE 4.5

CONSIDER THE STREET NETWORK IN THE MISSION AS A CITY RESOURCE ESSENTIAL TO MULTI-MODAL MOVEMENT AND PUBLIC OPEN SPACE

OBJECTIVE 4.6

SUPPORT WALKING AS A KEY TRANSPORTATION MODE BY IMPROVING PEDESTRIAN CIRCULATION WITHIN THE MISSION AND TO OTHER PARTS OF THE CITY

POLICY 4.6.1

Implement recommendations from the Mission Public Realm Plan, Southeast Mission Pedestrian Safety Plan and established street design standards and guidelines to make the pedestrian environment safer and more comfortable for walk trips.

POLICY 4.6.2

Prioritize pedestrian safety improvements at intersections and in areas with historically high frequencies of pedestrian injury collisions.

*Discussion: The Bartlett Street improvements project is identified in the Mission District Streetscape Plan. By fabricating and installing the pergolas, the project sponsor will be contributing to this long-identified public improvement in the Mission.*

OBJECTIVE 4.9

FACILITATE MOVEMENT OF AUTOMOBILES WHILE STRIVING TO REDUCE NEGATIVE IMPACTS OF VEHICLE TRAFFIC

POLICY 4.9.1

Introduce traffic calming measures where warranted to improve pedestrian safety and comfort, reduce speeding and traffic spillover from arterial streets onto residential streets and alleyways.

*Discussion: The overall BSIP will calm traffic on this wide right-of-way by introducing wider sidewalks, and shared surfaces.*

OBJECTIVE 5.1

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

POLICY 5.1.1

Identify opportunities to create new public open spaces and provide at least one new public open space serving the Mission.

*Discussion: The project creates a new public open space in collaboration with new residential and commercial development.*

OBJECTIVE 5.3

CREATE A NETWORK OF GREEN STREETS THAT CONNECTS OPEN SPACES AND IMPROVES THE WALKABILITY, AESTHETICS, AND ECOLOGICAL SUSTAINABILITY OF THE NEIGHBORHOOD

POLICY 5.3.1

Redesign underutilized portions of streets as public open spaces, including widened sidewalks or medians, curb bulb-outs, "living streets" or green connector streets.

POLICY 5.3.2

Maximize sidewalk landscaping, street trees and pedestrian scale street furnishing to the greatest extent feasible.

*Discussion: The project will create a plaza-like space for this wide right-of-way in the heart of the Mission District. The pergola structures will be a key visual element for the plaza.*

8. **Planning Code Sections 101.1 Findings.** The proposed replacement project is generally consistent with the eight General Plan priority policies set forth in Section 101.1 in that:
  - A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

*The proposed project will have no adverse effects on neighborhood-serving retail uses. The BSIP will, in part, accommodate and enhance the Mission Public Market, which gives small businesses an opportunity to sell their goods to the local community.*

- 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.*

- 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 June 19<sup>th</sup>, 2014.

Jonas P. Ionin  
Director of Commission Affairs,  
Commission Secretary

AYES:

NAYS:

ABSENT:

ADOPTED:

**2554-2558 MISSION STREET IN-KIND AGREEMENT  
(PER PLANNING CODE SECTION 423.3)**

**THIS IN-KIND AGREEMENT** (the “Agreement”) is entered into as of [DATE], by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the Planning Commission (the “City”) and 2558 MISSION LLC, a California limited liability company (“Project Sponsor”), with respect to the approved residential project at 2554-2558 MISSION STREET, San Francisco, California 94110 (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 Section 327 to the San Francisco Planning Code (now Sections 423-423.5). Any undefined term used herein shall have the meaning given to such term in Article 4 of the Planning Code, and all references to Sections 423-423.5 shall mean Sections 423-423.5 of the San Francisco Planning Code.

B. In order to mitigate the impacts from the new mixed residential and commercial development permitted under the Eastern Neighborhoods Plan, the Ordinance imposed an Impact Fee on new residential and commercial development (the “Fee”). Under Section 423.3(e), the Fee is required to be paid to the City before issuance of the first construction document for a development project. 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 423.3(d).

C. The property described in Exhibit A attached hereto (the “Land”) and generally known as 2554-2558 Mission Street, Block 3616, Lot 84 is owned by 2558 Mission LLC. Project Sponsor has started construction of the approved mixed-use residential and commercial development on the land pursuant to the Planning Commission approval granted on January 10, 2013 (Motion No. 18775). In its approval motion, the Planning Commission acknowledged the Project Sponsor’s intent to pursue an In-Kind Agreement for various streetscape improvements along Bartlett Street. To date the Project Sponsor has paid \$283,408.31 of the Fee, with \$1,126,773.23 deferred.

D. The Mission Area Plan contains a variety of open space and streetscape improvement objectives and policies for improvements along both Mission Street and surrounding smaller streets. Bartlett Street is a public right-of-way parallel to Mission Street. The Project’s residential entrance fronts on Bartlett Street.

E. The Project Sponsor has requested that the City enter into an In-Kind Agreement associated with development of public streetscape improvements along a portion of Bartlett Street along 21<sup>st</sup> Street and 22<sup>nd</sup> Street in order to reduce its Fee obligation per the terms of the

Ordinance. The In-Kind Improvements consist of the construction, assembly and installation of no less than eight pergolas to be used as “market stalls” on Bartlett Street between 21<sup>st</sup> Street and 22<sup>nd</sup> Street, as more particularly described in Exhibit E. (“In-Kind Improvements”). Foundation work necessary for the installation shall be performed by the City. It is the intent of the Parties that the Project Sponsor construct, deliver and install the pergolas.

~~F. The In-Kind Improvements meet an identified community need as analyzed in the Eastern Neighborhoods Community Improvements Program and are not a physical improvement or provision of space otherwise required by the Planning Code or any other City Code.~~

G. On March 18, 2013, the Eastern Neighborhoods Citizens Advisory Committee voted in Motion 2013-03-02 to support use of Eastern Neighborhoods Public Benefit Funds for certain streetscape improvement along Bartlett Street via an In-Kind Agreement with the Project Sponsor.

H. 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.

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

“**Date of Satisfaction**” shall have the meaning set forth in Section 4.8 below.

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

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

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

“**Fabrication Completion Notice**” shall have the meaning set forth in Section 4.5 below.

“**Fabrication Inspection Notice**” shall have the meaning set forth in Section 4.5. below.

“**Fabrication Deficiency Notice**” shall have the meaning set forth in Section 4.5 below.

**"Final Inspection Notice"** shall have the meaning set forth in Section 4.6 below.

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

**"Impact Fee"** or **"Fee"** shall mean the fee charged to all residential and commercial development projects in the Eastern Neighborhoods Plan Areas under Section 423.3 of the Ordinance.

**"In-Kind Improvements"** shall have the meaning set forth in Recital E.

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

**"Installation Deficiency Notice"** shall have the meaning set forth in Section 4.6 below.

**"Installation Inspection Notice"** shall have the meaning set forth in Section 4.6 below.

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

**"Notice to Install"** shall have the meaning set forth in Section 4.5.1 below.

**"Notice to Proceed"** shall have the meaning set forth in Section 4.4 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 4.7 below.

**"Plans"** shall have the meaning set forth in Section 4.3 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 3.1 hereof.

**"Remainder Amount"** shall have the meaning set forth in Section 3.3 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 California limited liability company, (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) will be 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 principals or members, have been suspended, disciplined or debarred by, or prohibited from contracting with, the U.S. General Services Administration or any federal, state or local governmental agency during the past five (5) years.

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

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

3.1 The Project Sponsor Fee shall be calculated in accordance with Section 423.3(c) of the Ordinance. Based on the project entitled by the Planning Commission, the Fee has been established to be \$1,410,181.54 (for the fee calculations, see Exhibit B). The final Fee shall be calculated based on the project described in the First Construction Document. Of this total Fee due, Project Sponsor has paid \$283,408.31 with the remaining \$1,126,773.23 deferred under the fee deferral program ("Remaining Deferred Fee Amount").

3.2 Based on two estimates provided by independent sources, the Director of Planning determines that the In-Kind Improvements have a value of approximately \$520,000 (the "In-Kind Value"); provided, however, if upon final completion the actual construction and

development costs to the Project Sponsor of providing the In-Kind Improvements are lower than this amount, the provisions of Section 5.2 shall apply. Documentation establishing the estimated eligible costs of providing the In-Kind Improvements in compliance with applicable City standards is attached hereto as Exhibit C (the "Cost Documentation").

3.3 The Project Sponsor shall pay to the Development Fee Collection Unit at the Department of Building Inspection ("DBI") \$606,773.23 (the "Remainder Amount"), along with any applicable interest, which is an amount equal to the Project Sponsor Remaining Deferred Fee Amount (see Exhibit B) minus In-Kind Value (see Exhibit C), prior to issuance of the Project's First Construction Document, pursuant to Section 423.3 of the Planning Code and Section 107A.13.3 of the San Francisco Building Code. 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 4 IN-KIND IMPROVEMENTS**

4.1 Bartlett Street is a public right of way and currently under the jurisdiction of the City. The City, acting by and through its Planning Commission, hereby consents to allow the Project Sponsor to provide specific In-Kind Improvements along Bartlett Street between 21<sup>st</sup> and 22<sup>nd</sup> Streets as further described in this Agreement.

4.2 The redesign of the subject block is commonly referred to as the Bartlett Streetscape Improvement Project ("BSIP"). The BSIP was first conceived as part of the Mission Streetscape Plan, a two-year community-based effort led by the San Francisco Planning Department (2008-2010). More recent visioning and design for the space has been conducted by the community in association with the Mission Community Market ("Market") or Mission Mercado. The goal for the project is to create a flexible urban space that can provide opportunities for gathering and meeting neighbors. As a project chosen for funding by 2011 Road Bond, the Department of Public Works (DPW) will implement the improvements through the preparation of design document and construction. DPW has put out a bid for construction of the Bartlett Streetscape Improvement Project, which construction shall include the foundation work to be performed by DPW. Construction is scheduled to start summer 2014. One element of the proposed streetscape improvements is the creation and installation of permanent pergola structures ("pergolas") to be used, in part, as market stalls. It is the intent of the Parties that the Project Sponsor will provide the pergolas as in-kind improvements pursuant to this Agreement.

4.3 The Project Sponsor agrees to take all steps necessary to fabricate and install the assembled pergolas at the direction of DPW and will reasonably cooperate with DPW to that end. Project Sponsor shall provide final construction drawings ("Plans") to DPW as soon as reasonably possible of the Effective Date of this Agreement. The In-Kind Improvements are 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 and each of the following conditions are met:

4.3.1 The Project Sponsor has been working closely with the Mission Community Market and with the Department of Public Works with respect to the design of the In-Kind Improvements. It is the intent of the parties that the In-Kind Improvements will create not only a

more pleasing pedestrian experience overall, but will provide specific infrastructure for the continuation and improvement of the operation of the Market.

4.3.2 The In-Kind Improvements are located in the public right of way, and therefore, will be gifted by Project Sponsor and accepted by the City pursuant to Public Works Code Section 791. Upon acceptance of the In-Kind Improvements by the City as set forth in this Agreement, the City shall maintain the In-Kind Improvements as part of the City's regular street maintenance. DPW plans to include as part of its construction contract for the rest of the BSIP a requirement that the contractor maintain the new improvements, including the pergolas, for three years depending on the selected contractor and bid.

4.3.3 The Market has been in existence since 2010 and currently has an annual operational budget \$90,269 as well as a paid staff of 1.5 and numerous volunteers who organize and operate the market. The Market has acknowledged its commitment to assist in the regular cleaning and operation maintenance of the In-Kind Improvements, including but not limited to (a) trash removal and sweeping after every market day, (b) a schedule of regular trash sweeps throughout the month on non-market days, (c) graffiti removal, and (d) general cleaning of the pergolas and other hard-scape, and (e) repair and maintenance of the pergolas and hard-scape. It is the intent of the Farmers Market to find an additional revenue source and organization that can take over the maintenance of the pergola structures. It is understood that such a group would retain all necessary permissions from DPW to take on this responsibility.

4.3.4 The BSIP is a DPW project; therefore, DPW staff is acting as project manager for the construction of the BSIP. Because the pergolas are a feature of the BSIP, DPW shall take responsibility for all needed approvals and permits (if any) for the pergolas. DPW staff shall also direct, and ultimately approve the design, fabrication, and installation of the pergolas on behalf of the City as part of its role in managing the BSIP pursuant to Section 4.4, 4.5, and 4.6 below. Finally, the construction of the footings for the pergolas shall be incorporated into the overall BSIP construction contract and shall not be the responsibility of the Project Sponsor.

4.4 Fabrication; Notice to Proceed. At any time following the Effective Date of this Agreement and the approval by DPW of the final construction drawings for the Pergolas, City may deliver to Project Sponsor a Notice to Proceed with Fabrication ("Notice to Proceed"). The parties acknowledge that the In-Kind Improvements will take approximately four months from start of fabrication until they are ready for installation. It is the intent of the parties that the Project Sponsor begin fabrication of the In-Kind Improvements only after the City is irrevocably committed to carrying out the BSIP to completion. Upon receipt of the Notice to Proceed, Project Sponsor shall commence fabrication of the In-Kind Improvements and coordinate installation dates with the City.

4.4.1 If the Notice to Proceed is not given by July 30, 2014, the parties shall meet and confer to determine if any adjustments to this Agreement can be made to allow for fabrication and installation of the In-Kind Improvements. Following that meeting, Project Sponsor shall have the option in its sole and absolute discretion to elect to terminate this agreement and shall, within 30 days of written notice of such election to the City, shall pay the In-Kind Value to the City. Upon payment of the In-Kind Value this agreement shall terminate and be of no further force or effect.

4.4.2. If within four months of the Notice to Proceed, the Project Sponsor has not issued a Fabrication Inspection Notice pursuant to Section 4.5, the Parties shall meet and confer

and determine the appropriate course of action. If the Project Sponsor determines at that time in its sole discretion that fabrication will not proceed then the Project Sponsor shall within 30 days pay to the City the In-Kind Value and this agreement shall terminate and be of no further force or effect.

4.4.3 If DPW has approved the final construction drawings for the pergolas but the Project Sponsor determines that there is insufficient time have the pergolas fabricated in time for the anticipated TCO for 2558 Mission Street, the Project Sponsor may opt out of fabricating the pergolas. In such a case, the Project Sponsor may be given partial in-kind credit for a value of the design services as provided in the Calculation of In-Kind Value (Exhibit C). In such a case, the Project Sponsor agrees to provide DPW with the completed pergola construction drawings and DPW agrees to accept the completed pergola construction drawings and pursue the fabrication separately.

4.5. **Fabrication Inspection.** Upon fabrication of the In-Kind Improvements and prior to installation, the Project Sponsor shall notify the Director of Planning that the In-Kind Improvements have been completed and are ready to be installed ("Fabrication Inspection Notice"). The Director of Planning, or his or her agent, shall inspect the In-Kind Improvements to confirm compliance with this Agreement, and shall promptly thereafter notify the Project Sponsor that the In-Kind Improvements have been fabricated in accordance with the requirements of this Agreement ("Fabrication Completion Notice"), or, if there are any problems or deficiencies, shall notify the Project Sponsor of any such problems or deficiencies (the "Fabrication Deficiency Notice"). The Project Sponsor shall correct any such problems or deficiencies set forth in the Fabrication Deficiency Notice and then request another inspection, repeating this process until the Director of Planning approves the fabrication of 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 of Planning delivers a Fabrication Completion Notice or a Fabrication Deficiency Notice that certifies that the In-Kind Improvements have been fabricated in accordance with this Agreement, as determined by the Director of Planning based on current City standards.

4.5.1 Upon completion of the fabrication, Project Sponsor shall notify the City in writing that Project Sponsor is ready to install the In-Kind Improvements ("Notice to Install"). Thereafter, within 30 days of the Notice to Install, the City shall allow Project Sponsor to install the In-Kind Improvements. If following the issuance of the Notice to Install, the City does not allow installation, or otherwise informs the Project Sponsor that it will not accept the In-Kind Improvements or allow the installation of the In-Kind Improvements for any reason, the parties shall meet and confer as to the disposition of the In-Kind Improvements.

4.5.2 If within 90 days of the delivery of the Notice to Install to the City, the City has not provided Project Sponsor with instructions as to the disposition of the In-Kind Improvements, then Project Sponsor shall have the right in its sole discretion to dispose of the In-Kind Improvements in any manner. Regardless of the ultimate disposition of the In-Kind Improvements pursuant to this Section 4.4.3, this Agreement shall terminate 90 days following delivery of the Notice to Install and no further fees or costs shall be assessed against the Project Sponsor and the City shall acknowledge satisfaction of payment of the Project Sponsor Fee.

4.6 **Final Inspection (Installation).** Following the installation of the In-Kind Improvements the Project Sponsor shall notify the Director of Planning that the In-Kind Improvements have been installed ("Installation Inspection Notice"). The Director of Planning, or his or her agent, shall inspect the installed In-Kind Improvements to confirm compliance with this Agreement, and shall promptly thereafter notify the Project Sponsor that the In-Kind Improvements have been installed 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 "Installation Deficiency Notice"). The Project Sponsor shall correct any such problems or deficiencies set forth in the Installation Deficiency 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 and shall not be unreasonably withheld. This condition will not be satisfied until the Director of Planning delivers an Installation Deficiency Notice that certifies that the In-Kind Improvements have been installed 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"). The City may, in its sole discretion, waive the requirements of this Section 4.6.

**4.7 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. If the Project Sponsor chooses not to move forward with the fabrication of the pergolas, but has completed construction drawings and is therefore eligible for credit for such expenses pursuant to Section 4.4.3, the Payment Documentation shall include information for that stage only. 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 public open space, based on current value of recently completed projects.

**4.8 Satisfaction of Obligations.** 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 Article 5 below, and all other obligations of the Project Sponsor under this Agreement have been satisfied (the "Date of Satisfaction"). In the case where the Project Sponsor chooses to not move forward with fabricating the pergolas but has provided final construction drawings pursuant to section 4.4.3, the Project Sponsor shall not receive final partial credit under this In-Kind Agreement until final construction drawings are approved and have been accepted by DPW, the Memorandum of Agreement is recorded and the City receives any additional payments as may be required under Article 5 below, and all other obligations of the Project Sponsor under this Agreement have been satisfied (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, and has completed design and fabrication in accordance with Plan approved by the City pursuant to Sections 4.4 and 4.5 respectively, or completed the construction drawings and provided them to DPW pursuant to Section 4.4.3, the City shall not withhold the issuance of any building or other permits necessary for the Project, or any temporary certificate of occupancy (TCO), certificate of occupancy (CO), or any certificate of final completion (CFC) 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. In the event there is any delay in fabrication of the pergolas and the delay is in no way caused by the City, Project Sponsor shall provide the City with a letter of credit or other instrument until such time as the pergolas are fabricated and a Final Inspection Notice is delivered to the Project sponsor. It is expressly understood that "a delay in fabrication" not caused by the City includes errors in fabrication of the pergolas. The Project sponsor shall be responsible for corrective action in the event the pergola fabricator does not produce the pergolas in accordance with the approved Plans.

## ARTICLE 5 PAYMENT AND SECURITY

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

5.2 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 document that the cost of providing the In-Kind Improvements shall be substantially similar to the average capital costs for the City to provide the same type of public open space, with comparable improvements, based on current value of recently completed projects, as selected by the City in its sole discretion. If the Payment Analysis reasonably substantiates that the Project Sponsor made payments in respect of the In-Kind Improvements in an amount less than the In-Kind Value, the Project Sponsor shall, within sixty (60) days of the date of the Payment Analysis, pay the City in an amount equal to the difference between the In-Kind Value and the actual amount paid in respect of the In-Kind Improvements by the Project Sponsor. If the Payment Analysis reasonably substantiates that the Project Sponsor made payments in respect of the improvements in an amount equal to or greater than the In-Kind Value, the Project Sponsor shall not be entitled to a refund of such overpayments and the City shall not be entitled to any additional funds related to the In-Kind Value.

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

5.4 Notwithstanding anything in this Agreement to the contrary:

5.4.1 Except as otherwise provided in Article 4, the City shall not issue or renew any further certificates of occupancy 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) before issuance of the First Certificate of Occupancy for the Project.

5.4.2 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.

5.4.3 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 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 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.

5.5 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

Director of Public Works  
City and County of San Francisco  
1 Dr. Carlton B. Goodlett Place  
City Hall, Room 348  
San Francisco, CA 94102

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:

2558 Mission, LLC  
355 First Street, #809  
San Francisco, CA 94105  
Attn: Dean Givas

with a copy to:

Reuben, Junius & Rose, LLP  
One Bush Street, Suite 600  
San Francisco, CA 94104  
Attn: Andrew J. Junius

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**

[this article intentionally left blank]

## ARTICLE 8 ADDITIONAL TERMS

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

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

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

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

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

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

8.7 This Agreement does not create a partnership or joint venture between the City and the Project Sponsor as to any activity conducted by the Project Sponsor relating to this Agreement or otherwise. The Project Sponsor is not a state or governmental actor with respect

**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:

Lots XXX in Assessor's Block XXXX and XXXX

**Exhibit B**

**Calculation of Impact Fees**

**EXHIBIT B**  
2558 Mission Street Fee Calculation

<u>fee rate type</u>	<u>gsf</u>	<u>fee rate</u>	<u>fee</u>
Tier 2 - non-residential to resident	43,383	2.21 \$	95,876.43
Tier 2 - new residential	40,527	13.27 \$	537,793.29
Tier 3 - non-residential to residenti	182	2.21 \$	402.22
Tier 3 - new residential	43,848	17.7 \$	776,109.60
		<b>TOTAL</b> \$	1,410,181.54
		amount paid at first construction document issuance: \$	283,408.31
		remainder amount due: \$	1,126,773.23



## **Exhibit C**

### **Calculation of In-Kind Value**

#### **Determining the Value of Proposed Improvements**

To help determine the value of the proposed improvements, the Project Sponsor provided the following information with respect to the cost of the In-Kind Improvements. These estimates were reviewed and corroborated by staff at the Department of Public Works. Working with the Department of Public Works, it was estimated that such improvements would cost no more than \$520,000.



**2558 Mission In-Kind Improvements  
Project Budget**

Prepared by 2558 Mission LLC

March 26, 2013

<b>Soft Costs</b>	<b>Provider</b>	<b>Cost</b>	<b>Type</b>	<b>Comments</b>
Conceptual Design & Outreach	Rebar & Daedalus	\$ 24,070	actual	
DD through CD Fees	Rebar, Daedalus & Illiminosa	\$ 62,490	actual/quote	
Legal	Reuben, Junius & Rose	\$ 9,000	actual/estimate	
Plan Review Fee	DBI	\$ 4,259	estimate	
Issuance Fee	DBI	\$ 1,826	estimate	
Permit Expeditor	TBD	\$ 5,000	estimate	
Testing & Inspections	TBD	\$ 5,000	estimate	
Reimbursables		\$ 4,379	estimate	5%
Soft Cost Contingency		\$ 9,195	estimate	10%
		<u>\$ 125,219</u>	<b>Total Soft Cost Estimate</b>	
<b>Hard Costs</b>				
Budget Estimate 8/8/13	The Brock Co.	\$ 369,419	estimate	includes 10% for Builder Contingency & Escalation
Developer Hard Cost Contingency		\$ 36,942	estimate	10%
		<u>\$ 406,361</u>	<b>Total Hard Cost Estimate</b>	
		<u><u>\$ 531,580</u></u>	<b>Total Soft &amp; Hard Cost Estimate</b>	



**THE BROCK COMPANY**

350 TOWNSEND ST. SUITE 635 SAN FRANCISCO CA  
 O:415.547.0105 F: 925.887.6346

www.hcbrock.com



**PROJECT COST SUMMARY AND BREAKDOWN**

DATE: 08/08/13  
 PROPOSAL NO.: Oyster002  
 PROJECT NAME: Mercado Plaza Pergola  
 PROJECT LOCATION: Bartlett St. San Francisco

**PERGOLA STRUCTURES**

CONTACT: Mike McCone  
 ARCHITECT: Re Bar group  
 DRAWINGS REFERENCED: G0.0, L1.01,L1.00,L1.02, L2.00  
 L3.00 L4.0  
 ADDENDA ACKNOWLEDGED: S1, RFI 1 7/22/13 issue

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PROJECT COST SUMMARY		
ITEM	DESCRIPTION	TOTAL
1	GENERAL CONDITIONS: Site Supervision and traffic control and safety, day duration	\$31,800.00
2	SITWORK: Concrete Demolition, Trellis post base boring, 12 Locations	\$18,000.00
3	SITWORK: Trenching and sleaving conduit from Existing light box to posts Based on 125 LF	\$5,700.00
4	CONCRETE: Pour back at Trellis piers, Patch back around new trellis posts, 12 locations	\$26,000.00
5	METALS: Fabrication and installation of Pergolas on site by TC	\$95,462.00
6	WOODS & PLASTICS: Cedar supply and installation as per drawings using cedar not plastic spacer per RFI 1	\$44,300.00
7	WOODS AND PLASTICS: 1/2" Thin wall plastic covering 8 bays	\$12,100.00
8	FINISHES: Clear coating of Cedar in shop after fabrication before delivery	\$3,710.00
9	FINISHES: Priming of entire structure using Tnemec WB primer in white	\$4,500.00
10	FINISHES: Painting of structure using Tnemec 128 1X coat after prime	\$5,850.00
11	ELECTRICAL Conduit chases on each Pergola for the power supplies to the LED system	\$14,750.00
12	ELECTRICAL FIXTURE ALLOWANCE Based on 3 downlights and 2 uplights per bay LED	\$48,600.00
13	GENERAL CONTRACTOR COSTS: O/P Insurance based on 10%	\$27,927.20
14	CONTINGENCY: Based on 10%	\$30,719.92
<b>TOTAL</b>		<b>\$369,419.12</b>
<b>COST PER PERGOLA STRUCTURE</b>		<b>\$46,177.39</b>
13	DEDUCTIVE ALTERNATE OPTION: #1, Reduced scope credit 4,350.00,#2 Reduced concrete patch back exludes all trellis foundation locations. 18,000.00 #3 Excluded 5,700.00 #4 Excluded 26,000.00	\$54,050.00

Please Recycle all printed material





**Exhibit D**

Memorandum of Agreement

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

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

---

(Free Recording Requested Pursuant to  
Government Code Section 27383)

**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 XXXXXXXXX (the “Project Sponsor”).

1. The property described in Exhibit A attached hereto (the “Land”) and generally known as 2554-2558 Mission Street, San Francisco, California 94107 is owned by Project Sponsor.
2. Under San Francisco Planning Code Section 423.3 (“Section 423.3”), the Project Sponsor must pay to the City an Impact Fee (the “Fee”) on or before the issuance of the first construction document for the Land; provided, however, the City can reduce such payment under Section 423.3(d) if the Project Sponsor enters into an agreement with the City to provide in-kind improvements.
3. In accordance with Section 423.3(d), the City and the Project Sponsor have entered into an in-kind agreement (the “In-Kind Agreement”), which permits the Project Sponsor to receive construction documents with the satisfaction of certain conditions in return for the Project Sponsor’s agreement to provide certain in-kind improvements under the terms and conditions set forth therein.

4. Upon the Project Sponsor's satisfaction of the terms of the In-Kind Agreement, 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

[INSERT PROJECT SPONSOR NAME],  
a [ENTITY INFORMATION]

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

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

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

\_\_\_\_\_

CALIFORNIA ALL-PURPOSE  
CERTIFICATE OF ACKNOWLEDGEMENT

State of California  
County of \_\_\_\_\_

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

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

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

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

WITNESS my hand and official seal.

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

(Notary Seal)

CALIFORNIA ALL-PURPOSE  
CERTIFICATE OF ACKNOWLEDGEMENT

State of California  
County of \_\_\_\_\_

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

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

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

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)

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.

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

8.9 The Project Sponsor, on behalf of itself and its successors, shall indemnify, defend, reimburse and hold the City, including its 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 as a result of the gross negligence of Project Sponsor, or its agent or contractors, in connection with the fabrication of the In-Kind Improvements, provided that such accident, injury, death, loss or damage does not result from the gross negligence of the City; (b) any default by the Project Sponsor under this Agreement, and (c) any acts, omissions or gross negligence of the Project Sponsor or its agents in connection with fabrication of 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 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, except that the Project Sponsor's obligations hereunder shall terminate 24 months after the Effective Date of this Agreement.

## **ARTICLE 9 CITY CONTRACTING PROVISIONS**

9.1 "The Project Sponsor agrees that any person performing labor in the construction of the In-Kind Improvements shall be paid not less than the highest prevailing rate of wages consistent with the requirements of Section 6.22(E) of the San Francisco Administrative Code, and shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco County. The Project Sponsor shall include, in any contract for construction of such In-Kind Improvements, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. The Project Sponsor shall require any contractor to provide, and shall deliver to the City upon request, certified payroll reports with respect to all persons performing labor in the construction of the In-Kind Improvements."

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

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

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

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

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

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

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

2558 MISSION, LLC, a California limited liability company

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

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

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

APPROVED:

DENNIS J. HERRERA  
City Attorney

APPROVED AS TO FORM:

REUBEN, JUIUS & ROSE, LLP

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

By: \_\_\_\_\_  
Andrew J. Junius

APPROVED:

Department of Public Works

By: \_\_\_\_\_  
Director of Public Works

# MERCADO PLAZA PERGOLA STRUCTURES



## PROJECT LOCATION

Bartlett Street b/t 21st Street and 22nd Street

## PROJECT DESCRIPTION

The pergola structures are part of streetscape improvements on Bartlett Street. The pergolas provide sun, wind, and rain protection as well s utility connections for community events and markets.

## SYMBOLS AND ABBREVIATIONS

DIA	DIAMETER	NIC	NOT IN CONTRACT
DWG	DRAWING	NTS	NOT TO SCALE
(E)	EXISTING	OC	ON CENTER
MIN	MINIMUM	PIP	POURED IN PLACE
MAX	MAXIMUM	SE	STRUCTURAL ENGINEER
(N)	NEW	TYP	TYPICAL

## PROJECT DIRECTORY

### PERGOLA DESIGNER:

Rebar Art and Design Studio  
3330 20th Street  
San Francisco, CA 94110  
Contact: John Bela  
john@rebargroup.org  
415.400.5362

### CLIENT:

2558 Mission LLC  
355 1st Street, #809  
San Francisco, CA 94105  
415.298.3326  
dean@oysterdev.com

### STRUCTURAL ENGINEER:

Daedalus  
18805 Cox Avenue, Suite 230  
Saratoga, CA 95070  
Contact: Doug Robertson  
doug@daedalus-eng.com  
408.517.0373 Ext. 10

## SHEET INDEX

COVER SHEET	G0.00
AREA PLAN	L1.00
SITE PLAN	L1.01
SITE SECTION	L1.02
PERGOLA PLAN / ELEVATION	L2.00
PERGOLA SECTION	L3.00
PERGOLA DETAILS	L4.00

## CONTEXT PLAN



3330 20th ST  
San Francisco, CA 94110  
www.rebargroup.org

CONTACT: John Bela  
john@rebargroup.org



Project Name:

**Bartlett Street Streetscape Improvements  
PERGOLA/ VENDOR CANOPY**  
Bartlett Street between 21st and 22nd  
San Francisco, California

Drawing Phase

**30% DESIGN  
DEVELOPMENT SET**

Drawing Title

**COVER SHEET**

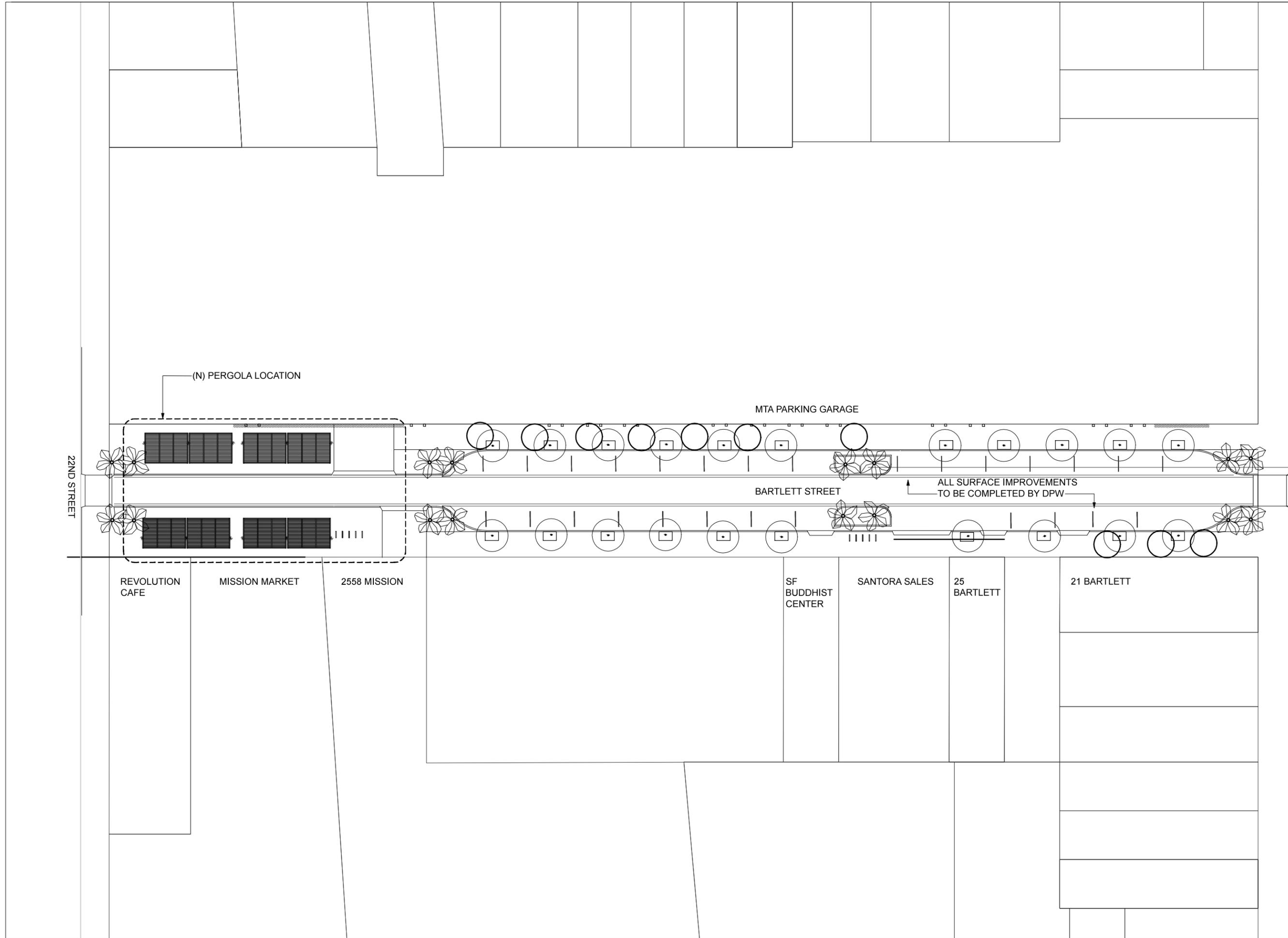
Scale

Issue Date

July 22, 2013

Sheet Number

**G0.0**



3330 20th ST  
 San Francisco, CA 94110  
[www.rebargroup.org](http://www.rebargroup.org)

CONTACT: John Bela  
[john@rebargroup.org](mailto:john@rebargroup.org)



Project Name:

**Bartlett Street Streetscape Improvements**  
**PERGOLA/ VENDOR CANOPY**  
 Bartlett Street between 21st and 22nd  
 San Francisco, California

Drawing Phase

**30% DESIGN  
 DEVELOPMENT SET**

Drawing Title

**AREA PLAN**

Scale

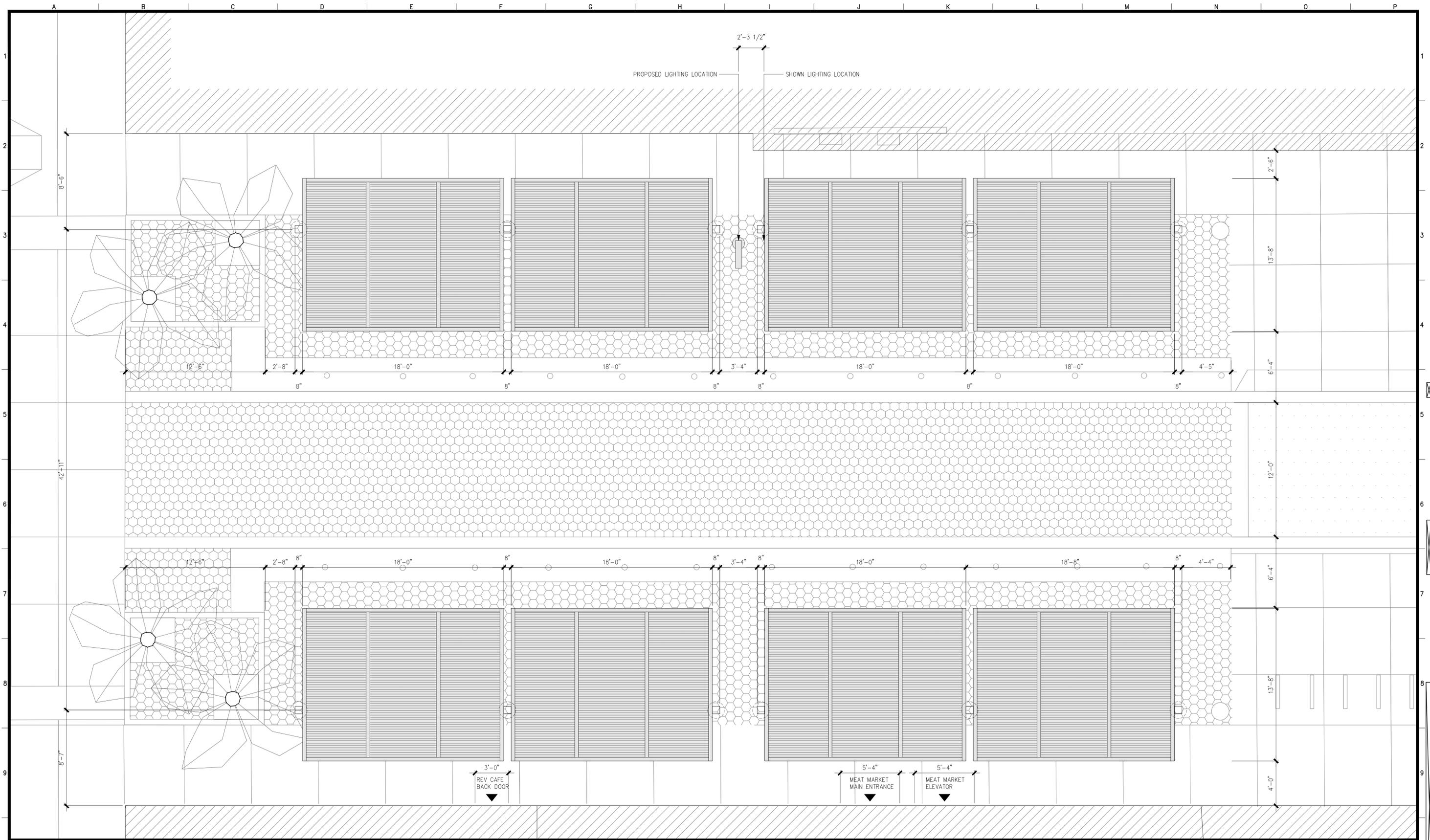
1" = 40'

Issue Date

July 22, 2013

Sheet Number

**L1.00**



NO.	DATE	DESCRIPTION	BY	APP.
TABLE OF REVISIONS				



3330 20th ST  
 San Francisco, CA 94110  
 www.rebargroup.org  
 CONTACT: John Bela  
 johnl@rebargroup.com

# Mercado Plaza

22nd and Bartlet Street  
 San Francisco, California

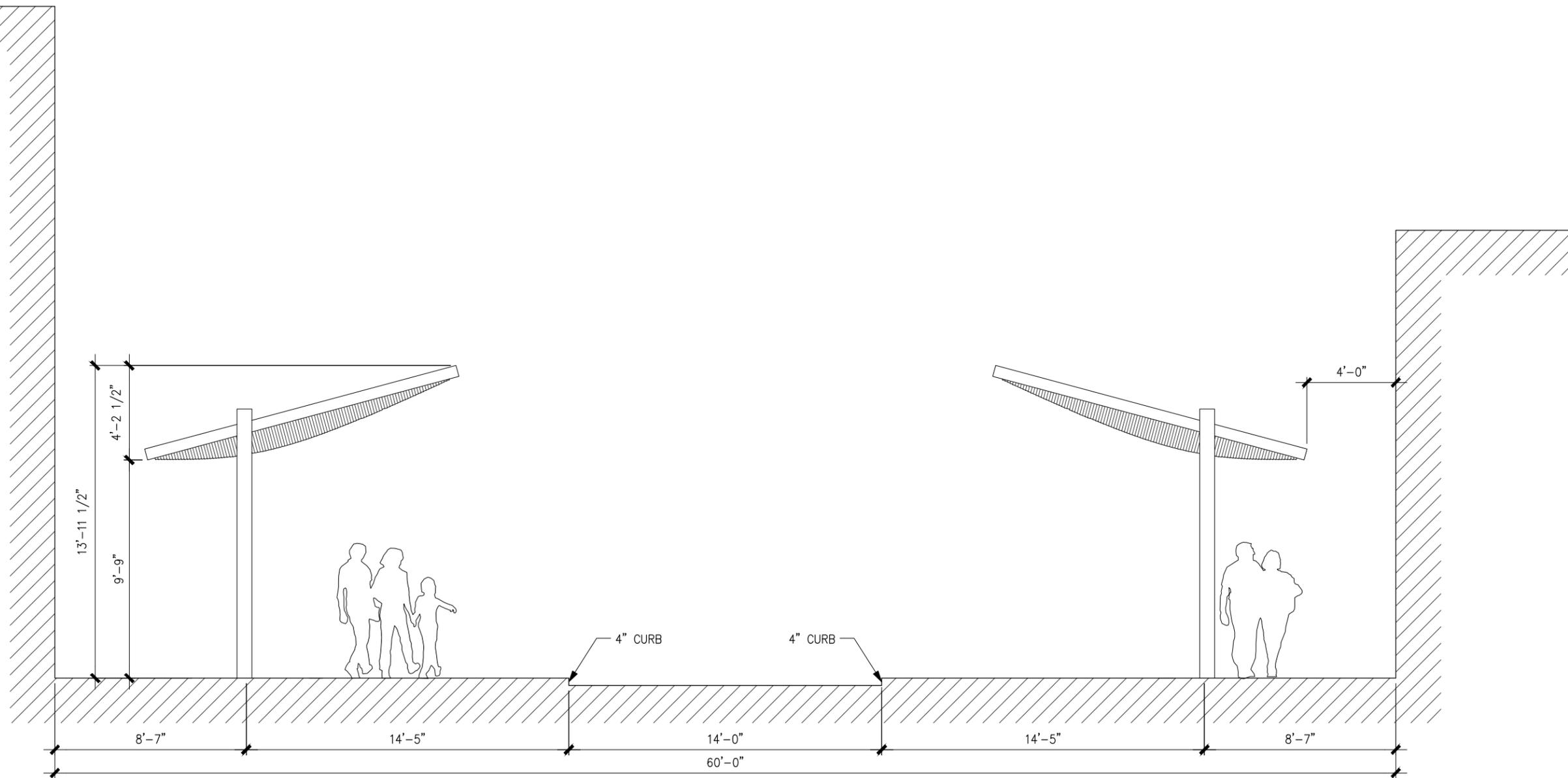


NOT FOR CONSTRUCTION  
 50% DD SUBMITTAL

SCALE:  
 1/4" = 1' - 0"  
 SHEET OF SHEETS  
 X OF X  
 ISSUE DATE  
 FEBRUARY 2014

# L1.01

PLAN  
 opt 3



**01** SITE SECTION  
3/16" = 1'-0"

3330 20th ST  
San Francisco, CA 94110  
www.rebargroup.org



CONTACT: John Bela  
john@rebargroup.org

Project Name:

**Bartlett Street Streetscape Improvements**  
**PERGOLA/ VENDOR CANOPY**  
Bartlett Street between 21st and 22nd  
San Francisco, California

Drawing Phase

**30% DESIGN  
DEVELOPMENT SET**

Drawing Title

**SITE SECTION**

Scale

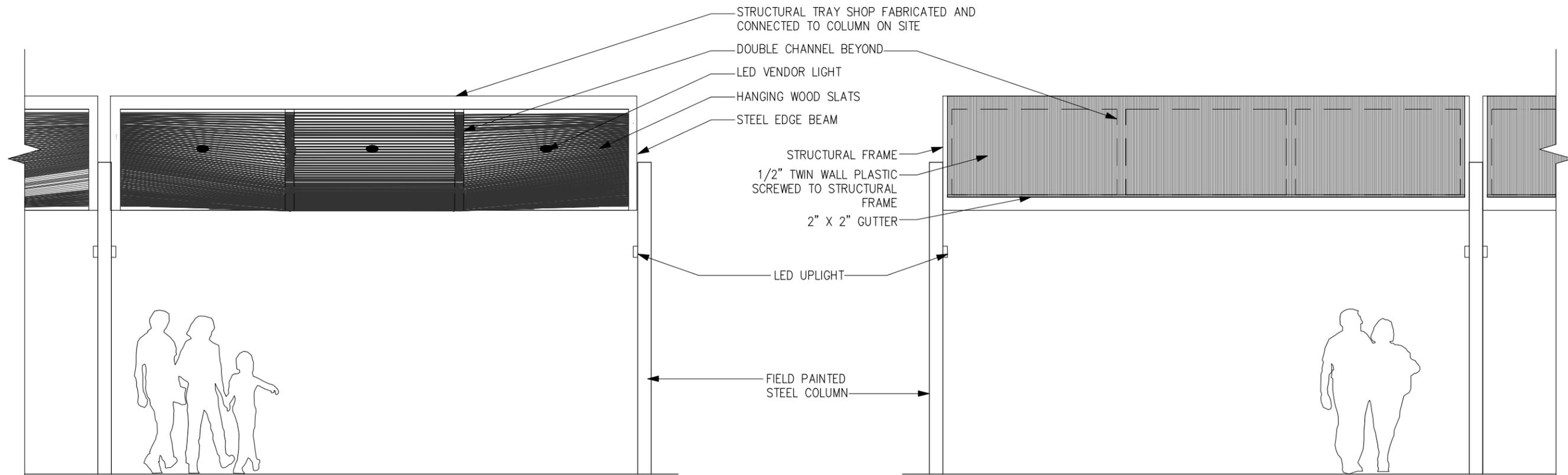
3/16" = 1'-0"

Issue Date

July 22, 2013

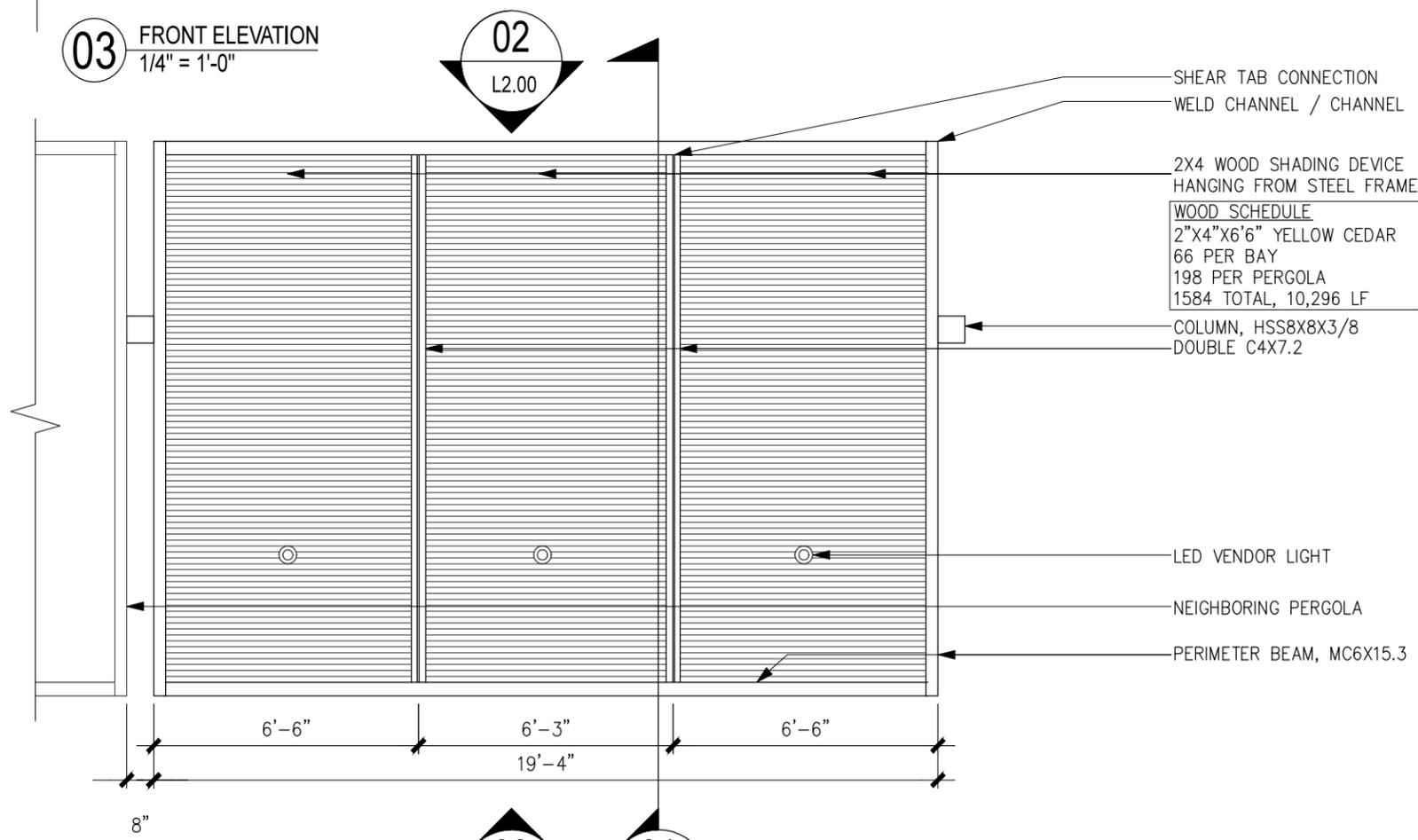
Sheet Number

**L1.02**



**03** FRONT ELEVATION  
1/4" = 1'-0"

**02** BACK ELEVATION  
1/4" = 1'-0"



**01** PERGOLA PLAN  
1/4" = 1'-0"

**03**  
L2.00

**01**  
L3.00

3330 20th ST  
San Francisco, CA 94110  
www.rebargroup.org  
CONTACT: John Bela  
john@rebargroup.org



Project Name:

**Bartlett Street Streetscape Improvements  
PERGOLA/ VENDOR CANOPY**  
Bartlett Street between 21st and 22nd  
San Francisco, California

Drawing Phase

**30% DESIGN  
DEVELOPMENT SET**

Drawing Title

**PERGOLA PLAN /  
ELEVATION**

Scale

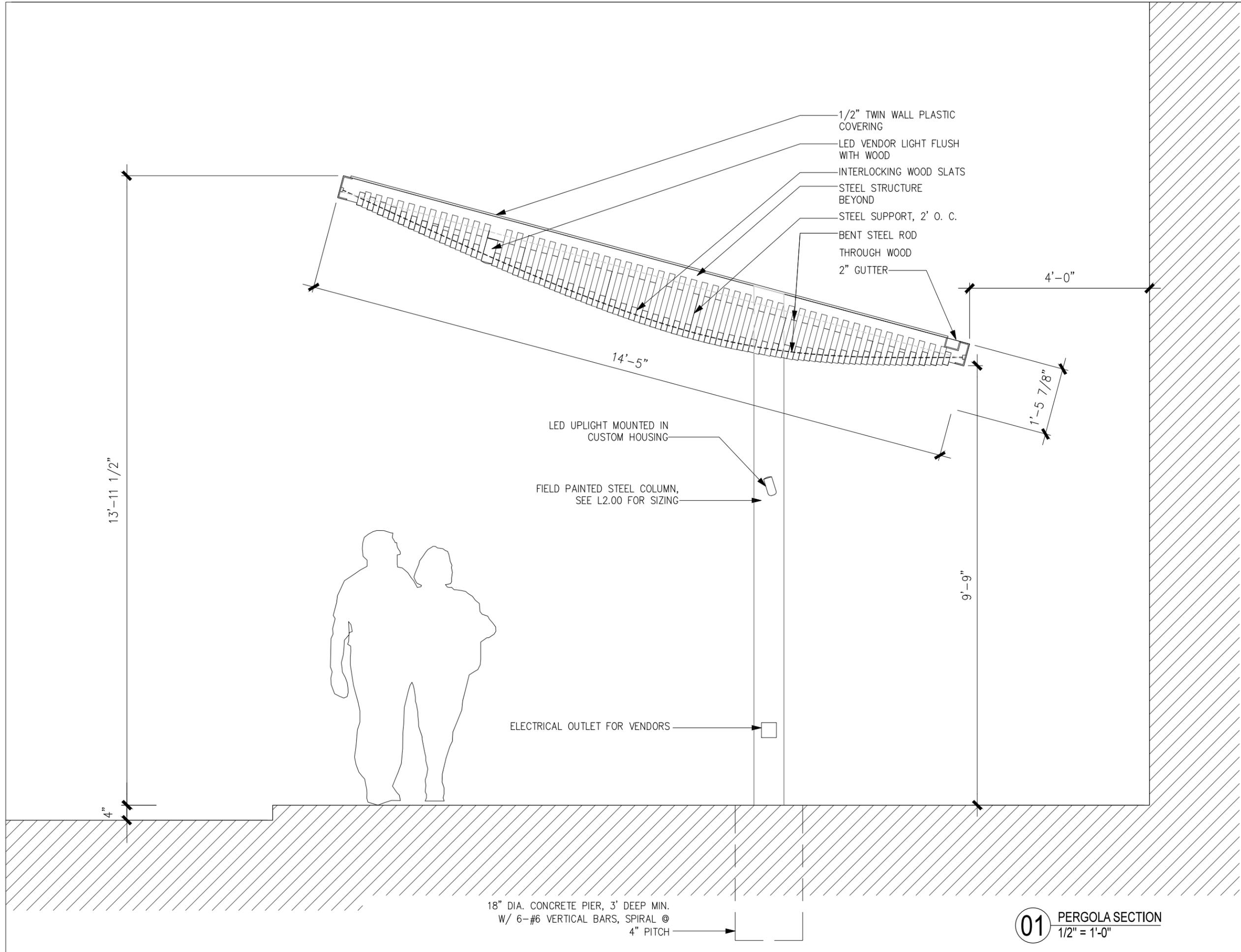
1/4" = 1'-0"

Issue Date

July 22, 2013

Sheet Number

**L2.00**



3330 20th ST  
 San Francisco, CA 94110  
 www.rebargroup.org

CONTACT: John Bela  
 john@rebargroup.org



Project Name:

**Bartlett Street Streetscape Improvements**  
**PERGOLA/ VENDOR CANOPY**  
 Bartlett Street between 21st and 22nd  
 San Francisco, California

Drawing Phase

**30% DESIGN DEVELOPMENT SET**

Drawing Title

**PERGOLA SECTION**

Scale

1/2" = 1'-0"

Issue Date

July 22, 2013

Sheet Number

**L3.00**



NO.	DATE	DESCRIPTION	BY	APP.
TABLE OF REVISIONS				



3330 20th ST  
 San Francisco, CA 94110  
 www.rebargroup.org  
 CONTACT: John Bela  
 johnl@rebargroup.com

# Mercado Plaza

22nd and Bartlet Street  
 San Francisco, California



NOT FOR CONSTRUCTION  
 50% DD SUBMITTAL

SCALE:  
 1/16" = 1'-0"  
 SHEET OF SHEETS  
 X OF X  
 ISSUE DATE  
 FEBRUARY 2014

# L3.01

STREET ELEVATIONS  
 opt 3

# 2558 MISSION IN-KIND PROPOSAL MERCADO PLAZA PERGOLA STRUCTURES

part of DPW Bartlett Streetscape Improvement Project\*

Daytime Event



Evening Market



Non-Event Day



\*note: future pergola area will be "shared street" condition, without curbs

# 2558 MISSION IN-KIND PROPOSAL MERCADO PLAZA PERGOLA STRUCTURES

part of DPW Bartlett Streetscape Improvement Project\*

DPW Bartlett Streetscape Improvement Plan

