



## IN-KIND AGREEMENT

### INFORMATIONAL AND SUPPLEMENTAL APPLICATION PACKET

**ATTENTION: A Project Application must be completed and/or attached prior to submitting this Supplemental Application. See the [Project Application](#) for instructions.**

A project sponsor may apply to satisfy relevant Area Plan Development Impact fees by providing public improvements through an in-kind agreement. The first pages consist of instructions which should be read carefully before the application form is completed.

For questions, you can call the Planning counter at 628.652.7300 or email [pic@sfgov.org](mailto:pic@sfgov.org) where planners are able to assist you.

**Español:** Si desea ayuda sobre cómo llenar esta solicitud en español, por favor llame al 628.652.7550. Tenga en cuenta que el Departamento de Planificación requerirá al menos un día hábil para responder.

**中文:** 如果您希望獲得使用中文填寫這份申請表的幫助，請致電628.652.7550。請注意，規劃部門需要至少一個工作日來回應。

**Filipino:** Kung gusto mo ng tulong sa pagkumpleto ng application na ito sa Filipino, paki tawagan ang 628.652.7550. Paki tandaan na mangangailangan ang Planning Department ng hindi kukulangin sa isang araw na pantrabaho para makasagot.

### WHAT IS AN IN-KIND AGREEMENT?

A Project Sponsor may apply to satisfy the requirements of the relevant Area Plan Development Impact Fee by providing public improvements through an in-kind agreement that has been reviewed by the Area Plans Citizen Advisory Committee (CAC) (when applicable) and authorized by the Planning Commission. The project sponsor, City, and CAC coordinate the design, valuation, and terms of the agreements. The project sponsor will return to the Planning Commission for approval of an in-kind agreement when the schematic design and an in-kind agreement are finalized.

### WHEN IS AN IN-KIND AGREEMENT NECESSARY?

For many of the Area Plans in San Francisco, a project sponsor may apply to satisfy applicable development fees through an in-kind agreement. This is not a required process; however, if an in-kind agreement is pursued, there are certain requirements that are outlined in the instructions portion of this document. An in-kind improvement must be determined to be eligible, be prioritized, and recommended by the Planning Department and relevant CAC.

### HOW DOES THE PROCESS WORK?

#### Initiate In-Kind Process

The Planning Department will inform the project sponsor of the option to pursue an in-kind agreement and the related procedures outlined in this policy, in the first formal communication after the sponsor files for entitlement. The project sponsor will coordinate with the Planning Department and CAC's (as relevant) and refer to the area plan and any related infrastructure or community plans to explore opportunities for in-kind improvements.

Once the project sponsor indicates interest in pursuing an in-kind agreement, the Planning Department will provide a courtesy notification at the next CAC meeting.

## **In-Kind Improvement Eligibility Determined**

The Planning Department will determine whether or not the proposed improvement is eligible based on the criteria described below. Planning Commission policy states that three eligibility criteria should be met before being deemed eligible for an in-kind agreement. If any of the criteria are not met, the proposal is deemed ineligible and the project sponsor can not make a request to the Commission for an in-kind agreement.

### **Eligibility Criteria:**

- 1. The Improvement Fulfills the Purpose of Community Improvements.** Improvements provided in-kind must be public infrastructure or facilities. (See, for example, Planning Code Sections 418.3(e), 421.3(d), 422.3(d), and 423.3(d)). 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. In-kind parks must be publicly owned and accessible at hours consistent with similar City owned parks, streetscapes must be publicly owned and childcare facilities must meet the same standards of access as childcare facilities that receive public funding from Department of Children Youth and their Families (DCYF). If the proposed improvement will be publicly accessible and available, then it is eligible for an in-kind provision.
- 2. The Infrastructure Type is Identified in the Fee Ordinance.** If a category of infrastructure, such as open space, was identified in the planning process and included as an expenditure category in the fee ordinance, then a new park is eligible for an in-kind provision. Infrastructure types not identified in the relevant fee ordinance, such as fire stations, are ineligible.
- 3. The Expenditure Category for Infrastructure Type is Not Exhausted.** The Planning Code provisions related to Area Plan impact fees generally require that the City spend the impact fees in proportion to impacts identified in each Area Plan. Accordingly, each impact fee ordinance designates a certain percentage of revenue to each infrastructure category. Thus, it is the Planning Commission's policy that community improvements funded by impact fees, or provided through in-kind agreements, must be expended consistent with these proportions every five years. If the expenditure category for a proposed improvement is exhausted for the 5 year period, the proposed improvement is not eligible for an in-kind agreement.

If a proposed improvement is deemed ineligible, a project sponsor may propose an alternative improvement or pay the required fees.

## **Determine Whether Proposed Improvement is a Priority**

Once deemed eligible for in-kind provision, the Department and CAC determine whether it is a priority. The criteria for a prioritization and recommendation noted below are more flexible than the eligibility criteria described above; therefore the priority and recommendation criteria below should be considered in balance. Meeting one criteria or failure to meet another does not determine the Department's recommendation.

### **Prioritization Criteria:**

- **Improvement is identified in the Five Year Capital Plan.** In instances where a project sponsor proposes an improvement that is identified in the Inter-agency and Implementation Committee (IPIC) and CAC endorsed five year capital plan as a priority project– the Planning Department should recommend the in-kind agreement.
- **Improvement does not Compete with a CAC and IPIC Endorsed Improvement.** If a proposed in-kind project competes for revenue with an IPIC and CAC prioritized project, especially if the City has invested resources in developing that project, the Planning Department should not recommend the proposed in-kind improvement. Capital planning efforts by the IPIC and CAC should accommodate smaller in-kind proposals when developing a capital plan, by not programming 100% of expected impact fee revenue in appropriate expenditure categories.

- **Eastern Neighborhood Priority Improvement.** The Eastern Neighborhoods plan includes legislated priority capital improvements including Townsend Street, Victoria Manalo Draves Park- Pedestrian Improvements, Folsom Street -Streetscape Improvements, 16th Street - Streetscape Improvements, 16th Street - Transit Improvements, New 17th & Folsom Park, and Showplace Square Open Space Plan (including implementation of one open space project). Project sponsors are encouraged to seek in-kind agreements for these priority improvements in Eastern Neighborhoods. The Department should not recommend projects that compete with these improvements for revenue.
- **CAC Supports the Proposed Improvement.** In some cases the established capital plan or other improvement prioritization processes do not provide clarity on whether a proposed improvement is a priority. In those cases the relevant CAC should evaluate the proposal to determine whether it is a priority. This could occur when priority projects are not identified for an expenditure category, or when the development projects offers a unique opportunity for a community improvement. For consistency, the CACs should use established evaluation criteria to review in-kind projects not already identified as a CAC priority.
- **Efficiencies are Gained Through Coordination with Development Project.** When an in-kind approval leverages efficiencies for the community improvements program this should impact prioritization. The Department should recommend proposed in-kind improvements that offer major efficiencies.
- Projects which are not determined to be a priority may still elect to pursue Planning Commission approval, they must still complete the review process as described below.

## Determine Whether Proposed Improvement is Recommended to the Planning Commission

Once an improvement is determined as a priority, the Planning Department and the CAC shall determine whether to recommend the specific in-kind improvement to the Planning Commission. To allow this evaluation, the proposed improvement must be defined including conceptual design, project maintenance, and cost/value. The project sponsors must also provide information regarding neighborhood support and proposed terms of agreement. These details, as described below, should inform the Department and CAC recommendations.

**The role of the CAC:** The relevant CAC should pass a resolution or recommendation on the proposed improvement the Commission will consider for an in-kind agreement. The CAC's are encouraged to draft detailed resolutions on specific components of the proposed improvement, rather than general "up or down" resolutions. The resolution or recommendation is considered by the Planning Department when determining whether the proposed improvement is recommended to the Planning Commission.

**Neighborhood Support for the Project:** Project sponsors are encouraged to coordinate with neighbors and the local community in the design and development process of the proposed improvements. A project that is well coordinated with neighbors and supported should receive Planning Department recommendation.

**Relevant City Agencies Review and Approve the Proposed Design:** A conceptual design of the proposed improvement is adequate at the initial phase of discussions with the Department and CAC. The schematic design must be complete (30% designed) before a formal recommendation from the Department and other City agencies is finalized. The Commission will not hear requests for in kind provision of improvements until the schematic design is complete. Relevant City agencies must review the proposed schematic design and provide formal comments to the Planning Department. The Department should base its recommendation on the feasibility of the project and City agency support.

**Maintenance Plan:** Proposed in-kind improvements must include maintenance plans. Possible maintenance strategies include: development of an assessment district to fund maintenance, commitment from the project sponsor or related home owners association to fund maintenance, commitment from a public agency to fund

maintenance, or any other committed source. Project sponsors cannot get credit for funding maintenance plans, as impact fee revenue is limited to capital expenditures. At a minimum new parks and other property that will become City responsibility require three years maintenance funding in hand or similar arrangement that insures appropriate maintenance of the park. The Department should only recommend in-kind projects that have developed maintenance plans that satisfy relevant City agencies.

**Value:** The project sponsor is required to provide two cost estimates for the proposed improvement. The project sponsor is encouraged to include known hard and soft costs, including City permits for the improvement (DPW or MTA). Project sponsors may not be credited for any improvements which are required as part of project entitlements or any city codes. Project sponsors cannot get credit for funding maintenance plans, as impact fee revenue is limited to capital expenditures. The Planning Department will work with the Department of Public Works and the Department of Real Estate to evaluate the appropriateness of these cost estimates and determine final value.

The Department is not required to base the final valuation of the project on cost estimates provided by the project sponsor, but must provide an explanation for the final value. In recommending a project, the Department should consider value provided by private delivery of the project as compared to the costs for the City to deliver the good as an outer limit.

In most cases a project sponsor will receive a credit for 100% of the improvement cost. In cases where the costs exceed the amount of fees due or expenditures available for the infrastructure type, the project sponsor must identify additional funding sources, or gift the balance to the City. Once the improvement is completed, the Planning Department, or other City Agencies may review actual costs.

**Terms of Agreement:** The Planning Department and the Project Sponsor will develop terms of agreement to govern provisions of the improvement. At a minimum, each in-kind agreement should include the following components:

- Approvals of Improvement by relevant City Agencies before first Construction document - Before new public infrastructure is built, City agencies must approve the final design. In-kind agreements shall include a term that requires all necessary City approvals prior to first construction document.
- Process for Validating Costs – In most cases the project sponsor will be required to submit invoices for expenditures related to the improvement, the Department will reconcile these costs with the original fee. Cost overruns are the responsibility of the developer, however if the project is completed for less money than the amount of fees waived, the balance must be contributed to the relevant infrastructure fund with no penalty.
- Timing of Project Completion – In most cases the improvement should be completed before the issuance of the first certificate of occupancy.
- Process for Validating Completion of Work – In most cases the relevant City agency, DPW, Park/Rec, MTA will inspect the work and verify previous to the Planning Department validating completion
- Expiration Date – In most cases the project sponsor will be required to complete the proposed in-kind improvement within in a certain time from approval of the in-kind agreement.
- Failure to fulfill Agreement – in most cases the project sponsor’s failure to fulfill the agreement will cause them to owe all fees plus interest before issuance of the first Certificate of Occupancy.

In kind agreements for specific infrastructure types should also include the following terms:

- Open Space - Three years of maintenance funding, or equivalent.
- Childcare - Required affordability for a portion of the spaces consistent with requirements to receive other City childcare funding, 55 year term with free rent, competitive process to identify program operator.
- Streetscape - Maintenance plan.

Projects which are not recommended may still elect to pursue Planning Commission approval, they must still complete the review process as described below.

## **Approval by the Planning Commission**

In-kind agreements require Planning Commission approval. As noted above, before the Planning Commission considers the request the following must be completed:

- The Commission requests staff to seek input from the relevant CAC and to present the proposed public improvement to the CAC for their review and consideration. The Commission strongly prefers that the CAC pass a resolution or recommendation on the proposed improvement the Commission will consider for an in-kind agreement.
- The Commission directs staff to seek input from the relevant City agencies, including requesting that those agencies make a formal recommendation on the improvement to the Planning Department in regards to the overall feasibility and desirability of the proposed improvements.
- The Planning Department determines the value of the in-kind improvement.
- A final in-kind agreement is drafted, including all relevant terms.

## **Joint Hearing: Project Entitlement and In-Kind Agreement**

If the improvement is well defined, supported, and will be completed within a defined period from entitlement, the project sponsor should seek project entitlement and approval of the in-kind agreement at the same hearing. This option is most efficient and preferred by the Planning Commission.

If the final design, cost, or terms of the in-kind agreement are not completed, the project sponsor may elect for two Commission hearings, one for the project entitlement and a second for the in-kind agreement. The project sponsor must declare their intent to pursue an in-kind agreement and submit a conceptual design of the improvement and initial feedback from the CAC and/or neighbors and local community before the entitlement hearing. At the entitlement hearing the Planning Commission may make a non-binding statement of intent to approve the in-kind agreement. The Commission's intent to approve is non-binding as additional considerations may arise as the proposal develops. Once the agreement is finalized, the Commission will take action at a separate hearing. The CAC will be given an opportunity to provide a second resolution for the second hearing. This option allows project sponsors to receive entitlements and initiate DBI review of projects while finalizing the design, costs, and terms of the in-kind agreement.

At the time of project approval, all project sponsors must declare whether they intend to fulfill their community improvement/public benefit obligations by paying the fee or pursuing an in-kind agreement. Should a project sponsor declare their intent to pay impact fees at entitlement, yet later decide to pursue an in-kind agreement, the project sponsor must still abide by the process outlined in this policy, including review by the relevant CAC, coordination with City agencies, demonstrated support by the local community and formal approval hearing at the Planning Commission.

If the in-kind provision of an improvement is approved by the Planning Commission, the project sponsor must have the final design completed and approved by the appropriate city agencies before the first construction permit for the development project is issued by the Department of Building Inspection.

## **When Public Improvements Only Cover a Portion of your Impact Fees**

Should a project sponsor proposes to waive a portion of their fee obligation based on an in-kind agreement, the balance of fees are due before the first construction permit for the development project is issued by the Department of Building Inspection. If the project sponsor chooses to participate in the fee deferral program, they must contribute the first 20% of impact fees owed before the first construction permit is issued, the amount established in the in-kind agreement should be considered 'collected' at first certificate of occupancy

For example if a project sponsor's total fee amount is \$1 Million, and they are granted an in-kind agreement for \$300K, they must contribute \$700K in cash at or before the first construction permit is issued. Should they elect to defer a portion of their fees (as permitted by the Planning Code), they must contribute the first 20%, or \$200K before the first construction permit is issued, and interest is accrued on the remaining 80% fee balance.

## **WHO MAY APPLY FOR AN IN-KIND AGREEMENT?**

The property owner or a party designated as the owner's agent may apply for an in-kind agreement. [A letter of agent authorization from the owner must be attached.]

## **FEES**

There is no set fee required. Time and materials charges will be calculated based upon hours spent processing the application.

## **ENVIRONMENTAL REVIEW**

The California Environmental Quality Act (CEQA) and Chapter 31 of the San Francisco Administrative Code implementing that act may require an Environmental Evaluation before the application may be considered. Please consult the Planning Department staff to determine if an Environmental Evaluation application must be submitted with this application. A separate fee is required for environmental review.


**IN-KIND AGREEMENT**  
**SUPPLEMENTAL APPLICATION**
**Property Information Associated with In-Kind Proposal**

Project Address: \_\_\_\_\_

Block/Lot(s): \_\_\_\_\_

**Proposed Public Improvement (if known):**

Public Improvement Classifications	
Streets	
Transit	
Parks and Open Spaces	
Community Facilities	
Community Services	
Other	

Please indicate estimated percentage of impact fees.

The project sponsor intends to use 100% or a portion of their impact fees toward the public improvement.

100%      Portion of Impact Fees \_\_\_\_\_ %      Estimated Cost of Public Improvement: \_\_\_\_\_  
 (indicate what percentage)

Please describe the in-kind proposal: (attach a separate sheet if more space is needed)

# APPLICANT'S AFFIDAVIT

Under penalty of perjury the following declarations are made:

- a) The undersigned is the owner or authorized agent of the owner of this property.
- b) The information presented is true and correct to the best of my knowledge.
- c) Other information or applications may be required.
- d) I hereby authorize City and County of San Francisco Planning staff to conduct a site visit of this property as part of the City's review of this application, making all portions of the interior and exterior accessible through completion of construction and in response to the monitoring of any condition of approval.
- e) I attest that personally identifiable information (PII) - i.e. social security numbers, driver's license numbers, bank accounts - have not been provided as part of this application. Furthermore, where supplemental information is required by this application, PII has been redacted prior to submittal to the Planning Department. I understand that any information provided to the Planning Department becomes part of the public record and can be made available to the public for review and/or posted to Department websites.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Relationship to Project  
(i.e. Owner, Architect, etc.)

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Email

For Department Use Only

Application received by Planning Department:

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

Date: \_\_\_\_\_