

AMENDMENT TO THE DOWNTOWN INFRASTRUCTURE INFILL INCENTIVE REIMBURSEMENT AGREEMENT

OPEN WINDOW PROJECT, LLC

This Amendment (the "Amendment") is entered into as of May 16, 2017 by and between Open Window Project, LLC, a California limited liability company (the "DEVELOPER") and the City of Stockton, a municipal corporation (the "CITY").

RECITALS

- A. In February 2016, CITY approved a Master Development Plan (MDP) and Development Agreement for the Open Window Project (Project), which encompasses approximately 15 square blocks within the Downtown Stockton core.
- B. Phase I of the Project consists of approximately 200 residential units and 92,000 s.f. of commercial space.
- C. In July 2015, the City Council approved a Downtown Infrastructure Infill Incentive Program to support infill development in the downtown core.
- D. On November 29, 2016, DEVELOPER entered into a Downtown Infrastructure Infill Incentive Reimbursement Agreement with CITY for up to \$3.8 million to assist with Phase I of the Project.
- E. DEVELOPER is in the process of securing financing to begin construction of Phase I and has requested that the CITY release \$760,000 of funding committed under the Downtown Infrastructure Infill Incentive Reimbursement Agreement and has agreed to provide real property as security for the release of funds.

AMENDMENT

The Downtown Infrastructure Infill Incentive Reimbursement Agreement is hereby amended as follows:

1. The CITY agrees to amend Section 2.C.i and 2.C.ii to allow for early payment of the first 20% of the \$3.8 million, which equals \$760,000, without the DEVELOPER first obtaining building permits for the public infrastructure improvements and Phase I of the Project.
2. In return for the release of the \$760,000, DEVELOPER agrees to allow the CITY to place a lien on the following seven (7) contiguous properties owned by the DEVELOPER as security. Together, these properties are appraised at \$1.85 million.
 - a. 510 East Miner Avenue
 - b. 532 East Miner Avenue
 - c. 544 East Miner Avenue
 - d. 221 North American Street
 - e. 617 East Channel Street
 - f. 621 East Channel Street
 - g. 210 North American Street

3. Said lien will remain in place until such time that the DEVELOPER has provided written verification from the lender, acceptable to the CITY, that it has secured financing for Phase I of the Project OR that building permits for both the public infrastructure improvements and Phase I has been issued, whichever occurs first.

4. All other terms and provisions of the original Downtown Infrastructure Infill Incentive Reimbursement Agreement are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the CITY and DEVELOPER have executed this Amendment as of the date first above written.

ATTEST:

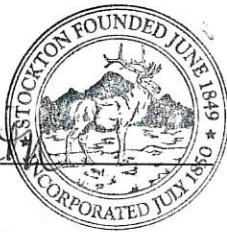
"CITY"

for BONNIE PAIGE
CITY CLERK

CITY OF STOCKTON, a municipal
corporation

BY

Carol Smith



BY

for *Samuel M. [Signature]*

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

"DEVELOPER"

BY

Ymif Azmei

OPEN WINDOW PROJECT, LLC, a
California limited liability company

By

[Signature]

Resolution No. 2017-05-09-1103

STOCKTON CITY COUNCIL

RESOLUTION AUTHORIZING AN AMENDMENT TO THE DOWNTOWN INFRASTRUCTURE INFILL INCENTIVE REIMBURSEMENT AGREEMENT WITH OPEN WINDOW PROJECT, LLC

The Stockton City Council identified economic development and fiscal sustainability as two key goals for the City; and

On July 7, 2015, the Council approved Resolution No. 2015-07-07-1502 adopting the Downtown Infrastructure Infill Incentive Program to encourage infill development and defray public infrastructure costs in Downtown Stockton; and

In February 2016, the Council approved a Master Development Plan and Development Agreement with Open Window Project, LLC for the Open Window Project ("Project") consisting of market-rate housing and retail/commercial space; and

Phase I of the Project consist of approximately 200 residential units, of which will include 150 market-rate housing units, and approximately 92,000 s.f. of commercial/retail space; and

On October 18, 2016, the Council approved a Downtown Infrastructure Infill Incentive Reimbursement Agreement with Open Window Project, LLC, of up to \$3.8 million to assist with Phase I of the Project; and

Open Window Project, LLC is in the process of securing financing to begin construction of Phase I of the Project and has requested an Amendment to the Downtown Infrastructure Infill Incentive Reimbursement Agreement in order for the City to release \$760,000 of funding committed under the Agreement; and

In return for the City's payment of \$760,000, Open Window Project, LLC, has agreed to allow that a lien be placed on seven properties it owns as security until such time that financing has been secured or building permits have been issued for both the public infrastructure improvements and Phase I of the Project; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The City Council hereby authorizes the City Manager to execute an Amendment to the Downtown Infrastructure Infill Incentive Reimbursement Agreement between the City of Stockton and Open Window Project, LLC, herein incorporated as Exhibit 1.

2. The City Manager is hereby authorized and directed to take all necessary and appropriate action to carry out the purpose and intent of this Resolution.

PASSED, APPROVED, and ADOPTED May 9, 2017.



MICHAEL D. TUBBS
Mayor of the City of Stockton

ATTEST:


BONNIE PAIGE
City Clerk of the City of Stockton

**AMENDMENT TO THE DOWNTOWN INFRASTRUCTURE INFILL INCENTIVE
REIMBURSEMENT AGREEMENT**

OPEN WINDOW PROJECT, LLC

This Amendment (the "Amendment") is entered into as of _____
by and between Open Window Project, LLC, a California limited liability company (the
"DEVELOPER") and the City of Stockton, a municipal corporation (the "CITY").

RECITALS

- A. In February 2016, CITY approved a Master Development Plan (MDP) and Development Agreement for the Open Window Project (Project), which encompasses approximately 15 square blocks within the Downtown Stockton core.
- B. Phase I of the Project consists of approximately 200 residential units and 92,000 s.f. of commercial space.
- C. In July 2015, the City Council approved a Downtown Infrastructure Infill Incentive Program to support infill development in the downtown core.
- D. On November 29, 2016, DEVELOPER entered into a Downtown Infrastructure Infill Incentive Reimbursement Agreement with CITY for up to \$3.8 million to assist with Phase I of the Project.
- E. DEVELOPER is in the process of securing financing to begin construction of Phase I and has requested that the CITY release \$760,000 of funding committed under the Downtown Infrastructure Infill Incentive Reimbursement Agreement and has agreed to provide real property as security for the release of funds.

AMENDMENT

The Downtown Infrastructure Infill Incentive Reimbursement Agreement is hereby amended as follows:

1. The CITY agrees to amend Section 2.C.i and 2.C.ii to allow for early payment of the first 20% of the \$3.8 million, which equals \$760,000, without the DEVELOPER first obtaining building permits for the public infrastructure improvements and Phase I of the Project.
2. In return for the release of the \$760,000, DEVELOPER agrees to allow the CITY to place a lien on the following seven (7) properties owned by the DEVELOPER as security. Together, these properties are appraised at \$1.85 million.
 - a. 510 East Miner Avenue
 - b. 532 East Miner Avenue
 - c. 544 East Miner Avenue
 - d. 221 North American Street
 - e. 617 East Channel Street
 - f. 621 East Channel Street
 - g. 210 North American Street

EXHIBIT 1

3. Said lien will remain in place until such time that the DEVELOPER has provided written verification from the lender, acceptable to the CITY, that it has secured financing for Phase I of the Project OR that building permits for both the public infrastructure improvements and Phase I has been issued, whichever occurs first.

4. All other terms and provisions of the original Downtown Infrastructure Infill Incentive Reimbursement Agreement are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the CITY and DEVELOPER have executed this Amendment as of the date first above written.

ATTEST:

BONNIE PAIGE
CITY CLERK

"CITY"

CITY OF STOCKTON, a municipal
corporation

BY _____

BY _____

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

"DEVELOPER"

OPEN WINDOW PROJECT, LLC, a
California limited liability company

BY _____

By _____



City of Stockton

Legislation Text

File #: 17-3582, Version: 1

AUTHORIZE AN AMENDMENT TO THE DOWNTOWN INFRASTRUCTURE INFILL INCENTIVE REIMBURSEMENT AGREEMENT WITH OPEN WINDOW PROJECT LLC

RECOMMENDATION

It is recommended that the City Council adopt a resolution:

1. Authorizing an Amendment to the Downtown Infrastructure Infill Incentive Reimbursement Agreement with Open Window Project, LLC; and
2. Authorizing the City Manager to take necessary and appropriate actions to carry out the purpose and intent of the resolution.

Summary

In October 2016, the City Council authorized a Downtown Infrastructure Infill Incentive Reimbursement Agreement with Open Window Project, LLC (OWP), of up to \$3.8 million to assist with Phase I of its Open Window Project Master Development Plan. The developer has spent significant funds in predevelopment efforts and is requesting that the City release \$760,000 of funding already committed pursuant to the Reimbursement Agreement. To release the funds, an Amendment to the Reimbursement Agreement is necessary. OWP will allow the City to place a lien on several properties it owns as security until it has obtained financing to commence construction of Phase I or until building permits have been issued for both the public infrastructure improvements and Phase I of the Project, whichever occurs first.

DISCUSSION

Background

In July 2015, the City Council approved the Downtown Infrastructure Infill Incentive Program, in an effort to encourage infill, mixed-use development in Downtown Stockton and to defray the cost of public infrastructure. The Program provides up to \$900,000 annually, on a reimbursement basis, for public offsite infrastructure improvements associated with eligible Downtown infill projects. Eligible projects must consist of a minimum of 35 market-rate housing units and/or a minimum of 30,000 s.f. of new, or newly renovated, retail or commercial space. The applicant must also make a capital investment of at least \$500,000, and eligible public infrastructure improvements must equal \$100,000 or more. The Program was approved for a ten-year period and will sunset in July 2025 unless extended by the City Council.

File #: 17-3582, Version: 1

In February 2016, the City Council approved a Master Development Plan (MDP) and Development Agreement with Open Window Project, LLC for its Open Window Project (Project), which encompasses approximately 15 square blocks within the Downtown Stockton core. The Open Window Project MDP is a mixed-use development that consists of approximately 1,000 residential units, 90,000 s.f. of commercial space, and 110,000 s.f. of industrial/art studio space.

In October 2016, the Council approved a Downtown Infrastructure Infill Reimbursement Agreement with OWP (Attachment A - Resolution 2016-10-1204), which provides for an initial reimbursement to OWP of up to \$1.8 million for public offsite infrastructure improvements. Per the Reimbursement Agreement and subject to future City Council appropriations of up to \$900,000 per fiscal year, the City Manager may authorize for additional reimbursement funds for a total not to exceed \$3.8 million.

Present Situation

The Reimbursement Agreement outlines specific thresholds that must be met for reimbursements to occur. The first payment of 20% of the \$3.8 million, which equals \$760,000, is made upon the issuance of building permits for both the public infrastructure improvements and Phase I of the Project. The balance is paid out in increments based upon completion of construction (20%), issuance of a Certificate of Occupancy (30%), and filing of a Notice of Completion of the infrastructure improvements (30%) as identified in the Reimbursement Agreement. Phase I consists 92,400 s.f. of commercial space and 200 residential units, of which 150 will be market rate, spanning four city blocks in Downtown Stockton.

Over the past year, the developer, OWP, has been working with its team of consultants to conduct studies and develop plans for the build out of Phase I. Recently, it has received financial backing for the build out of this initial phase and third party reports (appraisal, environmental, and market study) are currently underway. It is anticipated that OWP will break ground on Phase I later this year.

The team of consultants, including engineers, architects, and legal counsel, have been working diligently in preparing the necessary plans and drawings to meet the ground breaking timeline and, as such, significant capital outlay has occurred on the part of the developer. To date, OWP has expended more than \$2 million in predevelopment efforts, including entitlements, CEQA environmental review, legal services, and holding costs, and is requesting that the City assist with these upfront costs through the release of already approved Downtown Infrastructure Infill program funding. This assistance will allow the development team to fully fund these significant costs and ensure timely completion of construction documents to commence Phase I development.

It's important to note that the release of these funds does not change the original approved public infrastructure work to be completed and that all the improvements included in the original Reimbursement Agreement will be made as agreed upon.

As such, staff is requesting that the City Council approve an Amendment to the Reimbursement Agreement (Exhibit 1 to the Resolution) authorizing the release of \$760,000. Prior to the release of funds, the City will place a lien on the following seven (7) properties owned by OWP as security until such time that the developer has secured its financing or building permits have been issued for both the public infrastructure improvements and Phase I of the Project, whichever occurs first:

File #: 17-3582, Version: 1

- 510 East Miner Avenue
- 532 East Miner Avenue
- 544 East Miner Avenue
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- 617 East Channel Street
- 621 East Channel Street
- 210 North American Street

An appraisal prepared on November 7, 2016, by BAAR Realty Advisors values the seven properties at \$1.85 million. With only one lien currently placed on the subject properties in the amount of \$800,000, there is sufficient equity to secure the City's funding of \$760,000.

FINANCIAL SUMMARY

Sufficient funds are available in the FY 2016-17 Economic Development account number 010-1760-510 for the \$760,000 payment to Open Window Project, LLC.

Attachment A - Resolution No. 2016-10-18-1204

Resolution No. 2016-10-18-1204

STOCKTON CITY COUNCIL

RESOLUTION AUTHORIZING A DOWNTOWN INFRASTRUCTURE INFILL INCENTIVE REIMBURSEMENT AGREEMENT WITH OPEN WINDOW PROJECT, LLC

The Stockton City Council identified economic development and fiscal sustainability as two key goals for the City; and

On July 7, 2015, the Council approved Resolution No. 2015-07-07-1502 adopting the Downtown Infrastructure Infill Incentive Program to encourage infill development and defray public infrastructure costs in Downtown Stockton; and

In February 2016, the Council approved a Master Development Plan and Development Agreement with Open Window Project, LLC for the Open Window Project ("Project") consisting of market-rate housing and retail/commercial space; and

Open Window Project, LLC is ready to commence construction on Phase I of the Project, which will include 150 market-rate housing units, 62 affordable housing units, and approximately 92,400 s.f. of commercial/retail space, and has requested \$3.8 million in reimbursement funding under the Downtown Infrastructure Infill Incentive Program guidelines; and

Funding is available in fiscal year (FY) 2016-17 to reimburse Open Window Project, LLC for eligible public improvements in accordance with the Reimbursement Agreement and Downtown Infrastructure Infill Incentive Program guidelines of up to \$1.8 million. The remaining balance of \$2 million will be reimbursed in equal installments of \$900,000 in FY 2017-18 and FY 2018-19, with the remaining balance of \$200,000 reimbursed in FY 2019-20, in a total amount not to exceed \$3.8 million, subject to City Council appropriation during the normal annual budget approval process each FY and City Manager authorization; now, therefore,

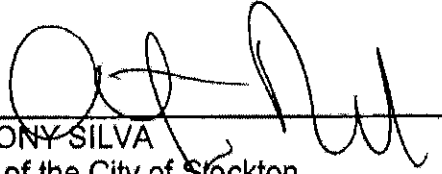
BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The City Council hereby authorizes the City Manager to execute a Downtown Infrastructure Infill Incentive Reimbursement Agreement between the City of Stockton and Open Window Project, LLC in the amount of \$1.8 million for construction of public infrastructure improvements relating to the Open Window Project, herein incorporated as Exhibit 1.

2. The City Manager is authorized to execute future reimbursements up to an additional \$2 million if appropriations are made to the downtown incentive program in subsequent years.

3. The City Manager is hereby authorized and directed to take all necessary and appropriate action to carry out the purpose and intent of this Resolution.

PASSED, APPROVED, and ADOPTED October 18, 2016.



ANTHONY SILVA
Mayor of the City of Stockton

ATTEST:



BONNIE PAIGE
City Clerk of the City of Stockton

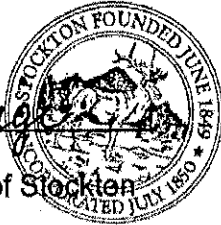


EXHIBIT 1

**DOWNTOWN INFRASTRUCTURE INFILL INCENTIVE
REIMBURSEMENT AGREEMENT
OPEN WINDOW PROJECT, LLC**

This Agreement is made and entered into by and between the CITY OF STOCKTON, herein referred to as "CITY", and OPEN WINDOW PROJECT, LLC, a California limited liability company, herein referred to as "DEVELOPER".

RECITALS

A. CITY has approved a Master Development Plan (MDP) and Development Agreement with DEVELOPER for the Open Window Project (Project) in February 2016 which encompasses approximately 15 square blocks within the Downtown Stockton core. The Open Window Project MDP plans for mixed-use development that consists of approximately 1,000 residential units and 200,000 s.f. of commercial space.

B. Phase I of the Project, which is depicted in Exhibit A, consists of approximately 200 residential units and approximately 92,000 s.f. of commercial space. This Project will stimulate and encourage business and job growth, provide market-rate housing, bring services to the area, and aid in the revitalization of Downtown Stockton.

C. CITY has approved the Downtown Infrastructure Infill Incentive program in July 2015, which provides up to \$900,000 annually, on a reimbursement basis, for public offsite infrastructure improvements associated with eligible Downtown Infill projects. Eligible projects must consist of a minimum of 35 market-rate housing units and/or a minimum of 30,000 s.f. of new, or newly renovated, retail or commercial space. The applicant must also make a capital investment of at least \$500,000. The DEVELOPER will be investing approximately \$53 million in connection with Phase I of the Project.

D. DEVELOPER desires to participate in the Downtown Infrastructure Infill Incentive program and requests that the CITY enter into this Agreement to reimburse it for the cost of certain public improvements located within the Open Window Project MDP boundary required by City as a condition of approval of Phase I of the Project. These Improvements are defined in Exhibit B, which is attached hereto and made a part hereof by this reference (the "Improvements"). The actual cost of the Improvements may include additional items of work not included in Exhibit B, but which are necessary or desirable to the Project. The maximum amount requested for reimbursement of the Improvements is \$3.8 million (Three million eight hundred thousand dollars).

E. CITY has identified the Improvements as being consistent with Downtown Infrastructure Infill Incentive program guidelines, as well as the Economic Development Strategic Plan (February 2015) and Urban Land Institute Report (February 2012) goals, and the type of Project that will encourage job growth and other development activities in the Downtown area.

F. DEVELOPER will secure all necessary permits and design and construct the Improvements in the manner required pursuant to applicable laws, including the City of Stockton Municipal Code and standards, all at DEVELOPER'S expense, subject to reimbursement as provided in this Agreement.

G. DEVELOPER will file a Notice of Completion upon completion of the Improvements, and obtain CITY acceptance of the Improvements.

For and in consideration of these promises, and for the mutual promises contained herein, the parties agree as follows:

AGREEMENTS

1. RECITALS: The parties represent and warrant each to the other, that the above recitals are true and correct.

2. REIMBURSEMENT:

A. Pursuant to the guidelines and regulations herein defined, and subject to the satisfaction of the conditions in this Section 2, CITY agrees to reimburse DEVELOPER for the cost of the Improvements up to \$1.8 million. \$1.8 million of the reimbursement funds have already been appropriated by City Council in prior fiscal years' budgets and are therefore available for reimbursement. Subject to City Council appropriation of up to \$900,000 per year in future fiscal years' budgets, the City Manager may authorize for reimbursement the additional funds (up to an additional \$2 million for a total not to exceed \$3.8 million) to DEVELOPER pursuant to this Agreement. Should the City Council fail to appropriate additional funds for reimbursement in one or more future fiscal years, the CITY shall have no obligation to reimburse more than \$1.8 million plus such additional funds, if any, as may have been appropriated by the City Council in such future fiscal year(s) budget(s).

B. DEVELOPER'S right to receive the reimbursement payments is subject to satisfaction of the following conditions:

i. DEVELOPER shall provide CITY documentation that, to the reasonable satisfaction of CITY, substantiates the cost of the Improvements and payment thereof.

ii. DEVELOPER shall have obtained all CITY permits and approvals required to commence construction of a Phase I project, which includes a minimum of 150 new market-rate residential units AND/OR a minimum of 90,000 s.f. of new/newly renovated commercial space.

C. Once the conditions in 2.B. above have been satisfied as determined by CITY and subject to the limitations in 2.A above, CITY shall provide reimbursement payments to DEVELOPER, in a total amount not to exceed \$3.8 million, subject to City Council appropriation and City Manager authorization from future budgets of funds in excess of \$1.8 million, in progress payments as follows:

i. The first payment of 10% (i.e. \$380,000) shall be due upon CITY's issuance of building permits for the public infrastructure Improvements.

ii. The second payment of 10% (i.e. \$380,000) shall be due upon CITY's issuance of building permits for a Phase I project which meets the minimum requirements in Section 2.B.ii above.

- iii. The third payment of 20% (i.e. \$760,000) shall be due once construction of a minimum of 150 new market-rate housing units and/or 90,000 s.f. of new/newly renovated commercial space is 50% complete.
 - iv. The fourth payment of 30% (i.e. \$1,140,000) shall be due upon CITY's issuance of the first temporary Certificate of Occupancy for the Phase I project, consisting of a minimum of 150 new market-rate housing units and/or 90,000 s.f. of new/newly renovated commercial space.
 - v. The CITY may make final payment of 30% (i.e. \$1,140,000) within sixty (60) days after recordation of the Notice of Completion of the Improvements and upon the City's acceptance of Improvements, providing there are no liens in place pertaining to the Improvements.
 - vi. Payments shall be paid in no less than thirty (30) day intervals upon CITY's receipt of requested documentation as noted in section 2.B.1 above.
3. **WAIVER OF INTEREST:** DEVELOPER agrees to waive any and all claims regarding interest to which it may be eligible to receive on unreimbursed amounts.
4. **ADDITIONAL PROVISIONS OF AGREEMENT:**
- A. DEVELOPER may, with CITY'S prior approval, assign the benefits of this Agreement and the receipt of payment to any successor in title.
 - B. This Agreement shall be binding upon the heirs, executors, administrators, successors and assignees of the parties hereto.
 - C. This Agreement constitutes the entire agreement between the parties pertaining to the subject matters contained herein. No supplement, modification, or amendment of this Agreement shall be effective unless it is set out in writing by both parties.
 - D. The title given to each of the paragraphs of this Agreement is for ease of reference only and shall not be relied upon or cited for any other purpose
5. **NOTICES:** All notices required shall be in writing and delivered in person or sent by registered mail, postage paid. Notices required to be given to CITY shall be addressed as follows:

City of Stockton
Economic Development Department
400 East Main Street, 4th Floor
Stockton, CA 95202
Attn: Director

And notices required to be given by DEVELOPER shall be addressed as follows:

Open Window Project, LLC
110 N. San Joaquin Street, 5th Floor
Stockton, CA 95202
Attn: Zachary Cort, President

Each party may change its address by notice in writing to the other party, and thereafter, notices shall be addressed and transmitted to the new address.

6. **AUDIT:** CITY or its designee shall have the right, during normal business hours and upon the giving of reasonable notice to DEVELOPER, to inspect and copy all books, records, accounts, and other written material of DEVELOPER pertaining to costs and expenses incurred by DEVELOPER in constructing any of the Improvements. DEVELOPER further agrees to maintain such records for a period of three years after final payment under this Agreement. Upon request, DEVELOPER agrees to furnish CITY, or its designated representative, with necessary information and assistance.
7. **INDEMNIFICATION AND HOLD HARMLESS:** Commencing with the start of work on the Improvements and continuing for a period of one-year following the CITY'S acceptance of the Improvements, DEVELOPER agrees to indemnify, save, hold harmless, and at City's request, defend the CITY, its officers, agents, and employees from any and all costs and expenses (including attorney and legal fees), damages, liabilities, claims, and losses occurring or resulting to the CITY in connection with the performance, or failure to perform, by DEVELOPER, its officers, agents, sub-contractors, employees, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable under this Agreement, and from any and all costs and expenses (including attorney and legal fees), damages, liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the performance, or failure to perform, of DEVELOPER, its officers, agents, or employees under this Agreement. The duty to defend and the duty to indemnify are separate and distinct obligations. gross negligence or willful misconduct of City or its officers, agents or employees.
8. **RELATIONSHIP TO PUBLIC WORKS:** The parties hereto agree that this Agreement is for the reimbursement to DEVELOPER by CITY for costs incurred to construct the Improvements and is not, nor is it intended to be a Public Works contract. In performing this Agreement, DEVELOPER is an independent contractor and not the agent of CITY. CITY shall not have the responsibility for payment to any contractor or supplier of DEVELOPER.
9. **REQUIREMENTS OF LAW – PREVAILING WAGES:** DEVELOPER shall construct the Improvements in all manner in accordance with applicable law, including the payment of prevailing wages. DEVELOPER and any subcontractor shall pay each employee engaged in the trade or occupation not less than the prevailing hourly wage rate. In accordance with the provisions of Section 1770 of the Labor Code, the California Department of Industrial Relations has determined the general prevailing wage rates and employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Section 1773.8, apprenticeship or other training programs. DEVELOPER shall obtain a copy of the current wage rate determination and shall distribute copies to each subcontractor. As the wage determination for each craft reflects an expiration date, it shall be the DEVELOPER and each subcontractor's responsibility to ensure that the prevailing wage rate of concern is current and paid to the employee.
10. **GOVERNING LAW:** This Agreement shall be governed by the laws of the State of California. Venue shall be in San Joaquin County, California.
11. **SEVERABILITY:** The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provisions.

12. NO WAIVER OF PERFORMANCE: The failure of either party to insist, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance.

13. EFFECTIVE DATE: This Agreement is effective on October ____, 2016.

14. RIGHTS AND REMEDIES CUMULATIVE: Except as otherwise provided, the rights and remedies of the parties are cumulative, and the exercise or failure to exercise any right or remedy shall not preclude the exercise, at the same time or different times, of any right or remedy for the same default or any other default.

15. TIME IS OF THE ESSENCE: It is understood and agreed by and between the parties hereto that time is of the essence of each and every term of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

ATTEST:

BONNIE PAIGE
CITY CLERK

"CITY"

CITY OF STOCKTON, a municipal
corporation

BY _____

BY _____
CITY MANAGER

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

BY _____

"DEVELOPER"

OPEN WINDOW PROJECT, LLC, a
California limited liability company

BY _____
Zachary Cort, President

Approve by City Council Resolution No. _____ on _____, 2016.

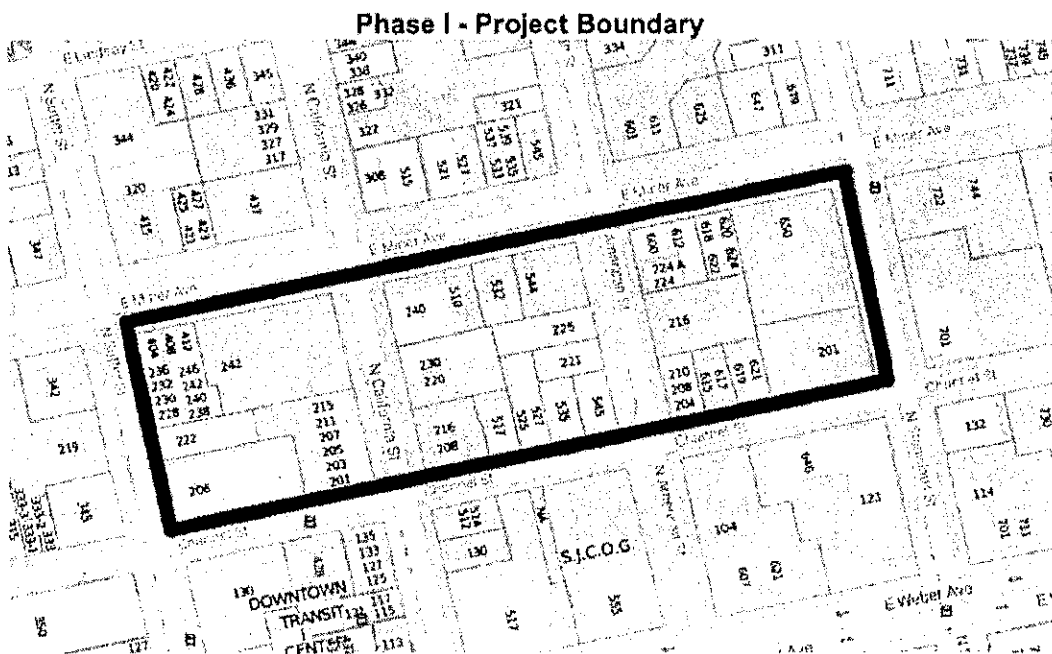
EXHIBIT A
PHASE I - PROJECT DESCRIPTION

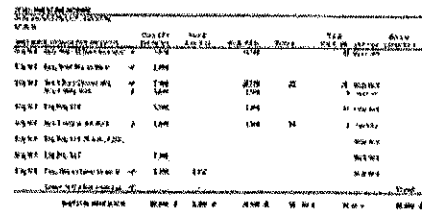


DEVELOPMENT BREAKDOWN

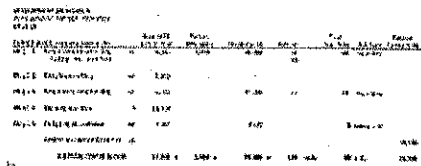
OPEN WINDOW MIXED USE PROJECT - STOCKTON
07.25.16

3 BLOCK SUMMARY:	Ground Flr Commercial	Tenant Amenities	Residential SF	Parking	Total Res. Units	Outdoor Center Walk
WEST BLOCK:	46,400		78,900	52	76	10,000
CENTER BLOCK:	37,000		78,800	129	99	10,500
EAST BLOCK:	9,000		18,700	31	25	5,000
TOTAL PROJECT:	92,400 sf	8,000 sf	176,400 sf	212 stalls	200 units	25,500 sf



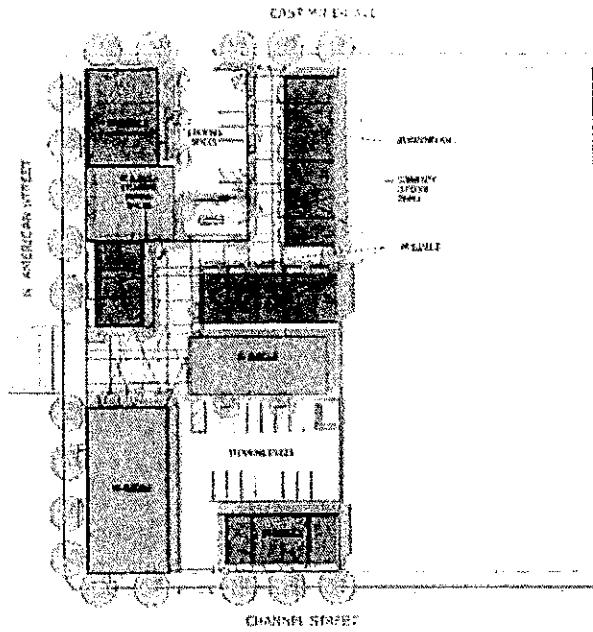
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WOLFE'S **WOLFE'S**



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PROPOSED DEVELOPMENT

PROPOSED DEVELOPMENT	AREA (SQ. FT.)	AREA (SQ. YD.)	AREA (SQ. AC.)	AREA (SQ. MI.)
EXISTING BUILDING	1,100	125	0.025	0.0006
NEW BUILDING	1,100	125	0.025	0.0006
TOTAL DEVELOPMENT	2,200	250	0.050	0.0012

PROPOSED DEVELOPMENT

PROPOSED DEVELOPMENT	AREA (SQ. FT.)	AREA (SQ. YD.)	AREA (SQ. AC.)	AREA (SQ. MI.)
EXISTING BUILDING	1,100	125	0.025	0.0006
NEW BUILDING	1,100	125	0.025	0.0006
TOTAL DEVELOPMENT	2,200	250	0.050	0.0012

SITE NOTES

- 1. EXISTING BUILDING
- 2. NEW BUILDING
- 3. EXISTING BUILDING
- 4. NEW BUILDING
- 5. EXISTING BUILDING
- 6. NEW BUILDING

East Block Site Plan

1/10/2018

0.000000

0.000000

EXHIBIT B
PUBLIC INFRASTRUCTURE IMPROVEMENTSDILLON & MURPHY
CONSULTING CIVIL ENGINEERS847 N. Cluff Avenue, Suite A-2 • Lodi, California 95240
P.O. Box • Lodi, California 95241
(209) 334-6613 • Fax (209) 334-0723August 3, 2016
Project No. 1625ENGINEER'S COST ESTIMATE
(Prevailing Wage Included)

WEST BLOCK

ITEM	DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL PRICE
A. STREET IMPROVEMENTS					
1.	CLEAR AND GRUB	LS	1	30,000.00	\$30,000
2.	EXCAVATION (REMOVE CURB, GUTTER AND SIDEWALK)	CYD	438	7.50	3,285
3.	AC SAWCUT	LF	1,315	1.25	1,644
4.	CONCRETE SUBGRADE COMPACTION	SF	17,734	1.00	17,734
5.	INSTALL 10' - 14' WIDE SIDEWALK	SF	14,876	20.00	293,520
6.	INSTALL VERTICAL CURB & GUTTER	LF	1,223	43.75	53,506
7.	INSTALL 25' WIDE COMMERCIAL DRIVEWAY	EA	2	10,000.00	20,000
8.	HANDICAP CURB RETURN (FULL)	EA	4	10,000.00	40,000
				SUBTOTAL	\$459,689
B. STORM DRAIN					
8.	REMOVE & REPLACE EXISTING CATCH BASIN	EA	6	6,250.00	\$37,500
				SUBTOTAL	\$37,500
C. SANITARY SEWER					
9.	4" SANITARY SEWER CONNECTION (1 PER BLDG)	EA	8	2,500.00	\$20,000
10.	SANITARY SEWER CLEAN OUT	EA	8	1,250.00	10,000
				SUBTOTAL	\$30,000
D. WATER SUPPLY					
11.	INSTALL FIRE HYDRANTS	EA	3	5,000.00	\$15,000
12.	2" WATER CONNECTION (1 PER BLDG.)	EA	8	3,000.00	24,000
13.	4" FIRE CONNECTION (1 PER BLDG.)	EA	8	5,500.00	44,000
14.	2" BACKFLOW PREVENTER	EA	8	6,250.00	50,000
15.	4" REDUCED PRESSURE DETECTOR ASSEMBLY	EA	8	6,250.00	50,000
16.	FIRE DEPARTMENT CONNECTOR WITH POST INDICATOR VALVE	EA	8	6,250.00	50,000
17.	2" WATER VALVE	EA	8	2,000.00	16,000
18.	WATER METER	EA	8	4,375.00	35,000
				SUBTOTAL	\$284,000

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QTY</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
<u>E. MISCELLANEOUS</u>					
19.	STRIPING	LS	1	8,000.00	\$8,000
20.	LANDSCAPING AND IRRIGATION	LS	1	35,000.00	35,000
21.	LIGHTING	LS	1	35,000.00	35,000
				SUBTOTAL	\$78,000
				WEST BLOCK TOTAL	\$879,189

CENTER BLOCK

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QTY</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
<u>A. STREET IMPROVEMENTS</u>					
1.	CLEAR AND GRUB	LS	1	30,000.00	\$30,000
2.	EXCAVATION (REMOVE CURB, GUTTER AND SIDEWALK)	CYD	400	7.50	3,000
3.	AC SAWCUT	LF	1,312	1.25	1,640
4.	CONCRETE SUBGRADE COMPACTION	SF	16,168	1.00	16,168
5.	INSTALL 10-14' WIDE SIDEWALK	SF	13,380	20.00	267,600
6.	INSTALL VERTICAL CURB & GUTTER	LF	1,115	43.75	48,781
7.	INSTALL 25' WIDE COMMERCIAL DRIVEWAY	EA	5	10,000.00	50,000
8.	HANDICAP CURB RETURN (FULL)	EA	4	10,000.00	40,000
				SUBTOTAL	\$457,189
<u>B. STORM DRAIN</u>					
8.	REMOVE & REPLACE EXISTING CATCH BASIN	EA	5	6,250.00	31,250
				SUBTOTAL	\$31,250
<u>C. SANITARY SEWER</u>					
9.	4" SANITARY SEWER CONNECTION (1 PER BLDG.)	EA	5	2,500.00	\$12,500
10.	SANITARY SEWER CLEAN OUT	EA	5	1,250.00	6,250
				SUBTOTAL	\$18,750
<u>D. WATER SUPPLY</u>					
11.	INSTALL FIRE HYDRANTS	EA	0	5,000.00	0
12.	2" WATER CONNECTION (1 PER BLDG.)	EA	5	3,000.00	15,000
13.	4" FIRE CONNECTION (1 PER BLDG.)	EA	5	5,500.00	27,500
14.	2" BACKFLOW PREVENTER	EA	5	6,250.00	31,250
16.	FIRE DEPARTMENT CONNECTOR WITH POST INDICATOR VALVE	EA	5	6,250.00	31,250
17.	2" WATER VALVE	EA	5	2,000.00	10,000
18.	WATER METER	EA	5	4,375.00	21,875
				SUBTOTAL	\$136,875

E. MISCELLANEOUS

19.	STRIPING	LS	1	8,000.00	\$8,000
20.	LANDSCAPING	LS	1	35,000.00	35,000
21.	LIGHTING	LS	1	35,000.00	35,000
22.	UNDERGROUND EXISTING OVERHEAD UTILITIES	LS	1	40,000.00	40,000
SUBTOTAL					\$118,000
CENTER BLOCK TOTAL					\$762,064

EAST BLOCK

ITEM	DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL PRICE
A. STREET IMPROVEMENTS					
1.	CLEAR AND GRUB	LS	1	15,000.00	\$15,000
2.	EXCAVATION (REMOVE CURB, GUTTER AND SIDEWALK)	CYD	221	7.50	1,658
3.	AC SAWCUT	LF	664	1.25	830
4.	CONCRETE SUBGRADE COMPACTION	SF	8,961	1.00	8,961
5.	INSTALL 10-14' WIDE SIDEWALK	SF	7,416	20.00	148,320
6.	INSTALL VERTICAL CURB & GUTTER	LF	618	43.75	27,038
7.	INSTALL 25' WIDE COMMERCIAL DRIVEWAY	EA	1	10,000.00	10,000
8.	HANDICAP CURB RETURN (FULL)	EA	2	10,000.00	20,000
SUBTOTAL					\$231,806
B. STORM DRAIN					
6.	REMOVE & REPLACE EXISTING CATCH BASIN	EA	2	6,250.00	\$12,500
SUBTOTAL					\$12,500
C. SANITARY SEWER					
9.	4" SANITARY SEWER CONNECTION (1 PER BLDG.)	EA	6	2,500.00	\$15,000
10.	SANITARY SEWER CLEAN OUT	EA	6	1,250.00	7,500
11.	SEWER LIFT STATION TO CONNECT TO MINER AVENUE SEWER MAIN (WESTBOUND) COMPLETE	EA	1	40,000.00	40,000
SUBTOTAL					\$62,500
D. WATER SUPPLY					
12.	INSTALL FIRE HYDRANTS	EA	2	5,000.00	\$10,000
13.	2" WATER CONNECTION (1 PER BLDG.)	EA	6	3,000.00	18,000
14.	4" FIRE CONNECTION (1 PER BLDG.)	EA	6	5,500.00	33,000
15.	2" BACKFLOW PREVENTOR	EA	6	6,250.00	37,500
16.	4" REDUCED PRESSURE DETECTOR ASSEMBLY	EA	6	6,250.00	37,500
17.	FIRE DEPARTMENT CONNECTION WITH POST INDICATOR VALVE	EA	6	6,250.00	37,500
18.	2" WATER VALVE	EA	6	2,000.00	12,000
19.	WATER METER	EA	6	4,375.00	26,250
SUBTOTAL					\$211,750

E. MISCELLANEOUS

20.	STRIPING	LS	1	4,000.00	4,000
21.	LANDSCAPING AND IRRIGATION	LS	1	17,500.00	17,500
22.	LIGHTING	LS	1	17,500.00	17,500
23.	UNDERGROUND EXISTING OVERHEAD UTILITIES	LS	1	60,000.00	60,000
SUBTOTAL					<u>\$99,000</u>
EAST BLOCK TOTAL					<u>\$617,556</u>

**REMOVE AND RELOCATE EXISTING
72" STORM DRAIN LINE**

ITEM	DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL PRICE
1.	REMOVE 72" STORM DRAIN	LF	215	\$80.00	\$17,200
2.	INSTALL 72" STORM DRAIN	LF	277	\$60.00	155,120
3.	STORM DRAIN STRUCTURE	EA	3	45,000.00	135,000
4.	POTHOLE UTILITIES	LS	1	5,000.00	5,000
72" STORM DRAIN IMPROVEMENTS					<u>\$312,320</u>

**OFFSITE SEWER IMPROVEMENTS
(EL DORADO ST. FROM MARKET ST.
TO 400 FEET SOUTH OF MARKET ST.)**

ITEM	DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL PRICE
1.	INSTALL 18" SANITARY SEWER	LF	400	\$400.00	\$160,000
2.	REMOVE AND REPLACE SEWER MANHOLE	EA	2	10,000.00	20,000
OFFSITE SEWER IMPROVEMENTS					<u>\$180,000</u>

**OFFSITE CAL WATER IMPROVEMENTS
(ASSUME THREE BLOCKS OF IMPROVEMENTS)**

ITEM	DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL PRICE
1.	INSTALL 12" WATER	LF	1200	\$130.00	\$156,000
2.	INSTALL 12" GATE VALVES	EA	6	1,500.00	9,000
3.	CONNECT TO EXISTING	EA	6	1,200.00	7,200
4.	REPLACE FIRE HYDRANTS	EA	4	5,000.00	20,000
OFFSITE CAL WATER IMPROVEMENTS					<u>\$192,200</u>

WEST BLOCK	\$889,189
CENTER BLOCK	\$762,064
EAST BLOCK	\$617,556
72" STORM DRAIN IMPROVEMENTS	\$312,320
OFFSITE SEWER IMPROVEMENTS	\$180,000
OFFSITE CAL WATER IMPROVEMENTS	<u>\$192,200</u>
SUBTOTAL	\$2,953,329
30% CONTINGENCY	<u>\$885,998</u>
GRAND TOTAL	\$3,839,328

MEMORANDUM

May 10, 2017

TO: Laurie Montes, Deputy City Manager
City Manager's Office

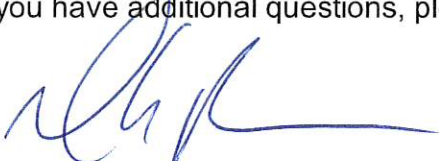
FROM: Micah Runner, Director
Economic Development Department

SUBJECT: **AMENDMENT TO THE DOWNTOWN INFRASTRUCTURE INFILL INCENTIVE
REIMBURSEMENT AGREEMENT**

The City Council authorized a Downtown Infrastructure Infill Incentive Reimbursement Agreement with Open Window Project, LLC (OWP) in October 2016, of up to \$3.8 million to assist with Phase I of its Open Window Project Master Development Plan.

On May 9, 2017, Council approved an Amendment authorizing the City to release \$760,000 of funding already committed pursuant to the Reimbursement Agreement. OWP will allow the City to place a lien on several properties it owns as security until it has obtained financing to commence construction of Phase I or until building permits have been issued for both the public infrastructure improvements and Phase I of the Project, whichever occurs first. A Deed of Trust will be recorded for the seven properties listed in the Amendment prior to the release of funds.

If you have additional questions, please contact me at extension 8694.



MICAH RUNNER, DIRECTOR
ECONOMIC DEVELOPMENT DEPARTMENT

MR:JM:NS
Attachments

RECEIVED

City Manager
Date Received MAY 16 2017

RECEIVED

City Clerk
Date Received MAY 16 2017

CONTRACT ROUTING FORM

City of Stockton
City Manager's Office

Contract Number 2011-10-13-1204 P Amendment
(For Clerk's Use)

CITY CLERK
CITY OF STOCKTON

CONTRACT TYPE (select one)

☒ Original ☐ Amendment/Renewal/Change Order ☐ Grant
☐ Subdivision Agreement ☐ Other _____

CONTRACT INFORMATION

Contract Amount: \$760,000

Contract Title: Amendment to the Downtown Infrastructure Infill Incentive Reimbursement Agreement

Vendor/Other Party: Open Window Project, LLC

Contract Start Date: _____ Contract End Date: _____ Contract Term: _____

COUNCIL APPROVAL REQUIRED? ☒ Yes ☐ No (provide account # if no)

Council approval required for contracts over \$ _____ for FISCAL YEAR: _____

Motion/Resolution/Ordinance No: 2017-05-09-1103

Must be Attached ☒

REQUIRED DOCUMENTS (The following documents shall be submitted with the signed contract when required):

Business License Required? ☒ Yes ☐ No Business License No. 16-00122136

Bonds Required? ☐ Yes ☐ No

Insurance Required? ☐ Yes ☐ No

Notary Required? ☐ Yes ☐ No Recordation Required? ☐ Yes ☐ No

Routing Order

1 DEPARTMENT: Economic Development

DEPARTMENT HEAD APPROVAL

Project Mgr: Janice Miller ext: 8802 date: 5/15/17 Staff: amanda Thomas ext: 7540

Forwarded to: City Attorney on: 5/15/17 by: A. Thomas

VENDOR/OTHER PARTY

Signed () originals on: _____

Forwarded to: _____ on: _____ by: _____

RISK SERVICES

Insurance approved on: _____ by: _____ Bonds approved on: _____ by: _____

Forwarded to: _____ on: _____ by: _____ RM #: _____

2 CITY ATTORNEY

Approved as to Form and Content on: 5/15/17 by: YA

Forwarded to: EDD on: 5-15-17 by: 2 Hant

4 CITY MANAGER

Signed by City Manager on: 5/16/17 Forwarded to: City Clerk on: 5/16/17 by: MS

5 CITY CLERK

City Clerk attested on: 5-16-17 Returned (all) original(s) to dept. on: 5-16-17 by: CSmith

Retained (pdf) original(s) for City's file. Hard Copy on file? Yes ☐ No ☒ OB # _____

6 ORIGINATING DEPARTMENT: Economic Development

Requisition No. _____ Original sent to vendor on: _____ by: _____

Copy of contract to be retained by department. Original on file in the Clerk's office.

Copy of contract sent to Purchasing on: _____ by: _____

PURCHASING: Purchase Order No. _____

PUR No. _____

2011-10-13-1204 P Amendment

