

Resolution No. 2019-07-30-1406

STOCKTON CITY COUNCIL

RESOLUTION AUTHORIZING A DOWNTOWN INFRASTRUCTURE INFILL INCENTIVE REIMBURSEMENT AGREEMENT WITH OWP PHASE 2, LP

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

In October 2016, the Council approved a Downtown Infrastructure Infill Incentive Reimbursement Agreement with Open Window Project, LLC for Phase I of the Project in the amount of \$3.8 million (Resolution No. 2016-10-18-1204), which was amended in October 2017 to increase the total reimbursement amount to \$6.18 million (Resolution No. 2017-10-03-1402), of which \$3.6 million has been allocated with the remaining balance of \$2.58 million being reimbursed in future years; and

OWP Phase 2, LP is ready to commence construction on Phase II of the Project, which will include 43 market-rate housing units and approximately 32,500 s.f. of commercial/retail space, and has requested \$1.8 million in reimbursement funding under the Downtown Infrastructure Infill Incentive Program guidelines; and

Future dollars received by the City through loan repayments of the Successor Agency to the CDBG fund and/or the City's annual allocation of CDBG funds will be used to fund the reimbursement agreement; 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 OWP Phase 2, LP in the amount of \$1.8 million for construction of public infrastructure improvements relating to Phase II of the Open Window Project, herein incorporated as Exhibit 1.

2. The City Manager is authorized to reimburse up to \$1.8 million in equal installments of \$900,000 in fiscal years 2019-20 and 2020-21 to be funded with future dollars received by the City through loan repayments of the Successor Agency to the

CDBG Fund and/or the City's annual allocation of CDBG funds for the OWP Phase 2, LLC Reimbursement Agreement should Council allocate funding through the annual budget process.

3. The City Manager is authorized to reimburse the balance of \$2.58 million of the overall \$6.18 million Open Window Project, LLC Reimbursement Agreement relating to Phase I of the Project in equal installments of \$900,000 in fiscal years 2021-22 and 2022-23, with the remaining balance of \$780,000 reimbursed in fiscal year 2023-24 to be funded with future dollars received by the City through loan repayments of the Successor Agency to the CDBG Fund and/or the City's annual allocation of CDBG funds.

4. Authorizing the City Manager to remove \$1.8M in Downtown Infrastructure Infill Incentive funding from Open Window Project, LLC (OWP LLC) that was allocated by Council to Phase I of the Open Window Project for fiscal years 2019-20 and 2020-21 and allocate those funds (\$1.8M) to OWP Phase 2, LP for Phase II.

5. Authorizing the City Manager to allocate \$1.8M in Downtown Infrastructure Infill Incentive funding to OWP LLC Phase 1 in fiscal years 2021-22 and 2022-23 and \$780,000 in fiscal year 2023-24

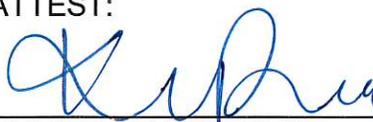
6. The City Manager is hereby authorized and directed to take all necessary and appropriate action to carry out the purpose and intent of this Resolution.

PASSED, APPROVED and ADOPTED July 30, 2019.



MICHAEL D. TUBBS
Mayor of the City of Stockton

ATTEST:



ELIZA R. GARZA, CMC
City Clerk of the City of Stockton



**DOWNTOWN INFRASTRUCTURE INFILL INCENTIVE
REIMBURSEMENT AGREEMENT
OWP PHASE 2, LP**

This Agreement is made and entered into by and between the CITY OF STOCKTON, herein referred to as "CITY", and OWP PHASE 2, LP, a California limited partnership, 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 II of the Project, which is depicted in Exhibit A, consists of approximately 43 residential units and approximately 32,500 s.f. of commercial/retail 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 for each \$900,000 sought. The applicant must also make a capital investment of at least \$500,000. The DEVELOPER will be investing approximately \$11.8 million in connection with Phase II 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 II 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 \$1.8 million (One million eight hundred thousand dollars). Of the \$1.8 million, \$900,000 in CDBG funds is available in FY2019-20. The remaining balance of \$900,000 will be available should Council allocate funding in FY2020-21.

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.

EXHIBIT 1

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. Of the \$1.8 million, \$900,000 in CDBG funds is available in FY2019-20. The remaining balance of \$900,000 will be available should Council allocate funding in FY2020-21 during the annual budget process.
 - 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 II project, which includes a minimum of 43 new market-rate residential units and a minimum of 32,500 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 \$1.8 million in progress payments as follows, contingent upon Council allocating \$900,000 in FY2020-21:
 - i. The first payment of 10% (i.e. \$180,000) shall be due upon CITY's issuance of building permits for the public infrastructure Improvements.
 - ii. The second payment of 10% (i.e. \$180,000) shall be due upon CITY's issuance of building permits for a Phase II project which meets the minimum requirements in Section 2.B.ii above.
 - iii. The third payment of 20% (i.e. \$360,000) shall be due once construction of a minimum of 43 new market-rate housing units and/or 32,500 s.f. of new/newly renovated commercial space is 50% complete.
 - iv. The fourth payment of 30% (i.e. \$540,000) shall be due upon CITY's issuance of the first temporary Certificate of Occupancy for the Phase II project, consisting of a minimum of 43 new market-rate housing units and 32,500 s.f. of new/newly renovated commercial space.

- v. The CITY may make final payment of 30% (i.e. \$540,000) 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.i 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:

OPW Phase 2, LP
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

EXHIBIT 1

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 _____, 2019.

EXHIBIT 1

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:

ELIZA R. GARZA, CMC
City Clerk of the City of Stockton

“CITY”

CITY OF STOCKTON, a municipal corporation

BY _____

BY _____
CITY MANAGER

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

“DEVELOPER”

BY _____

OWP PHASE 2, LP, a California limited partnership

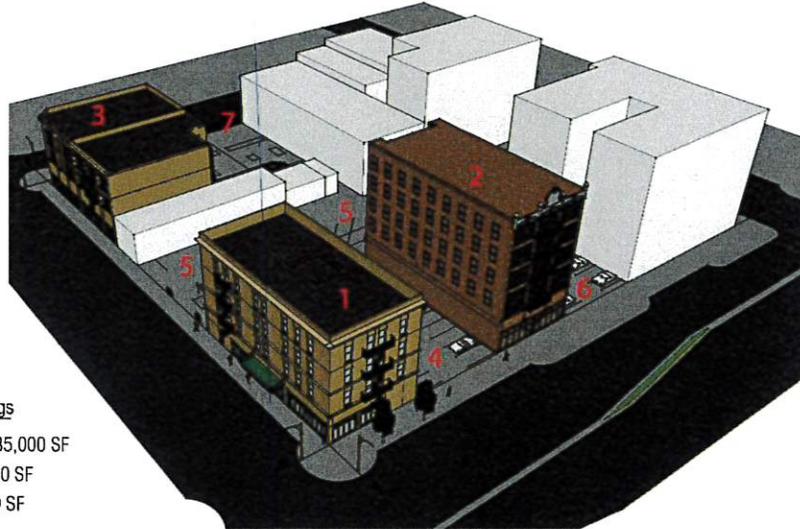
BY _____
Zachary Cort, President

Approve by City Council Resolution No. _____ on _____, 2019

**EXHIBIT A
PHASE II - PROJECT DESCRIPTION**

1 MICRO-PHASE 2 / Kendall Courts Downtown Stockton

- 1** ST. LEO BLDG - 21 dwellings
5000 SF commercial retail
- 2** KENDALL BLDG - 20,000 sq. ft comm. offices
5000 SF commercial retail.
- 3** MAIN HOTEL BLDG - 22 dwellings
2500 sq. ft. commercial retail.
- 4** PARKING - 20 parking spaces
- 5** PARKING - 40 parking spaces
- 6** PARKING - 20 parking spaces
- 7** PRIVATE COURTYARD

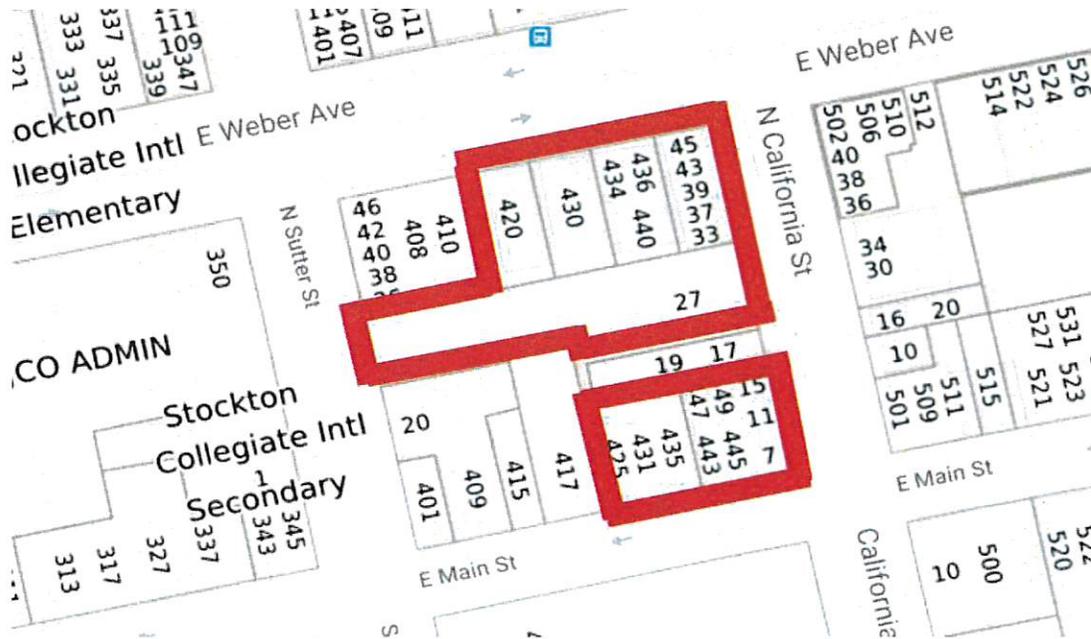


TOT. PROPOSED RESIDENTIAL UNITS = 43 dwellings
 GROSS RESIDENTIAL AREA - ADAPTIVE REUSE = 35,000 SF
 GROSS OFFICES AREA - ADAPTIVE REUSE = 20,000 SF
 GROSS RETAIL AREA - ADAPTIVE REUSE = 12,500 SF

WEBER AVE - BIRDS EYE PERSPECTIVE



PHASE II – PROJECT BOUNDARY



PHASE II – CONCEPTUAL RENDERING



Exhibit A

**EXHIBIT B
PUBLIC INFRASTRUCTURE IMPROVEMENTS**



847 N. Cluff Avenue, Suite A-2 • Lodi, California 95240
P.O. Box 2180 • Lodi, California 95241
(209) 334-6613 • Fax (209) 334-0723

February 8, 2019
Project No. JP 01-29-19

**OPEN WINDOW PROJECT
PHASE 2
PRELIMINARY ENGINEER'S COST ESTIMATE
(Prevailing Wage Included)**

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QTY</u>	<u>PRICE</u>	<u>TOTAL PRICE</u>
<u>A. STREET IMPROVEMENTS</u>					
1.	CLEAR AND GRUB	LS	1	\$62,000.00	\$97,000
2.	EXCAVATION (REMOVE CURB, GUTTER AND SIDEWALK)	CYD	872	10.00	8,720
3.	AC SAWCUT	LF	780	2.75	2,145
4.	CONCRETE SUBGRADE COMPACTION	SF	12,560	1.75	21,980
5.	INSTALL 10' - 14' WIDE SIDEWALK	SF	10,990	34.00	373,660
6.	INSTALL VERTICAL CURB & GUTTER	LF	785	53.00	41,605
7.	INSTALL 25' WIDE COMMERCIAL DRIVEWAY	EA	5	26,500.00	132,500
8.	HANDICAP CURB RETURN (FULL)	EA	4	14,250.00	57,000
9.	GRIND EXISTING ASPHALT	SF	25,575	3.40	86,955
10.	INSTALL FABRIC	SF	25575	2.50	63,937
11.	2" ASPHALT CONCRETE OVERLAY	TON	315	168.00	<u>52,920</u>
				Subtotal	\$938,422
<u>B. STORM DRAIN</u>					
12.	REMOVE & REPLACE EXISTING CATCH BASIN	EA	4	\$10,100.00	<u>\$40,400</u>
				Subtotal	\$40,400
<u>C. SANITARY SEWER</u>					
13.	4" SANITARY SEWER CONNECTION (1 PER BLDG)	EA	4	\$4,700.00	\$18,800
14.	SANITARY SEWER CLEAN OUT	EA	4	2,300.00	9,200
15.	INSTALL 8" SANITARY SEWER	LF	780	47.00	36,660
16.	SANITARY SEWER MANHOLES	EA	5	6,100.00	<u>30,500</u>
				Subtotal	\$95,160

D. WATER

17.	INSTALL FIRE HYDRANTS	EA	4	\$8,600.00	\$34,400
18	2" WATER CONNECTION (1 PER BLDG.)	EA	4	4,500.00	18,000
19.	4" FIRE CONNECTION (1 PER BLDG.)	EA	4	9,900.00	39,600
20.	2" BACKFLOW PREVENTER	EA	4	9,600.00	38,400
21.	4" REDUCED PRESSURE DETECTOR ASSEMBLY	EA	4	9,650.00	38,600
22.	FIRE DEPARTMENT CONNECTOR WITH POST INDICATOR VALVE	EA	4	11,300.00	45,200
23.	2" WATER VALVE	EA	4	3,200.00	12,800
24.	WATER METER	EA	4	5,600.00	22,400
25.	INSTALL 12" WATER	LF	565	65.00	36,725
26.	INSTALL 12" WATER VALVE	EA	2	4,400.00	8,800
				Subtotal	\$294,925

E. MISCELLANEOUS

27.	STRIPING	LS	1	\$17,350.00	\$17,350
28.	LANDSCAPING AND IRRIGATION	LS	1	55,500.00	\$55,500
29.	LIGHTING	LS	1	47,300.00	<u>\$47,300</u>
				Subtotal	\$120,150

Phase 2 Subtotal \$1,489,057

30% Contingency \$446,717

GRAND TOTAL **\$1,935,774**

