

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

OPEN WINDOW PROJECT, LLC

This Second Amendment (the "Second 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 originally consisted 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 (as amended, Agreement) with CITY for up to \$3.8 million to assist with Phase I of the Project.

E. On May 9, 2017, the City Council approved an Amendment to the Reimbursement Agreement authorizing the release of \$760,000 of funding to DEVELOPER and securing said funding with a lien on seven (7) properties owned by DEVELOPER.

F. The scope for Phase I of the Project has changed significantly from 200 residential units to 261 units, of which 231 will be market-rate housing, and encompasses an additional city block. This change in scope will require considerable infrastructure improvements above what Council initially approved in November 2016. As such, DEVELOPER is requesting an additional \$2.38 million in Downtown Infrastructure Infill Incentive funding for a total of \$6.18 million.

G. DEVELOPER is in the process of securing financing to begin construction of Phase I that will be insured by the U.S. Department of Housing and Urban Development (HUD) and has requested that CITY approve changes to the Agreement to comply with certain requirements of HUD.

AMENDMENT

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

EXHIBIT 1

1. The CITY and DEVELOPER agree to amend Sections 2.A and 2.C increasing the maximum reimbursement of funds to DEVELOPER from \$3.8 million to \$6.18 million (a full engineer's cost estimate, dated June 20, 2017, is herein incorporated as Attachment A).

2. The CITY and DEVELOPER agree to amend Section 2.A as follows: "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 Improvements in the total amount of \$6.18 million."

3. The CITY and DEVELOPER agree to amend Section 2.B increasing the minimum number of new market-rate residential units from 150 to 231.

4. The CITY and DEVELOPER agree to amend Section 2.C as follows: "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 the total amount of \$6.18 million, in progress payments as follows". The percentages of the progress payments identified in Section 2.C.i through 2.C.v will remain the same, with the actual dollar amount of each progress payment revised to reflect the new reimbursement total of \$6.18 million.

5. The CITY and DEVELOPER agree to amend Section 7 to include the following: "Notwithstanding the foregoing in its entirety, HUD shall have no indemnification obligations under this Section 7 in the case that it becomes the owner of the Property or the Project by deed in lieu of foreclosure or otherwise."

6. 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 Second Amendment as of the date first above written.

ATTEST:

"CITY"

BRET HUNTER, CMC
INTERIM CITY CLERK

CITY OF STOCKTON, a municipal
corporation

BY _____

BY _____

APPROVED AS TO FORM:

"DEVELOPER"

OFFICE OF THE CITY ATTORNEY

OPEN WINDOW PROJECT, LLC, a
California limited liability company

BY _____
DEPUTY CITY ATTORNEY

By _____



Attachment A

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June 20, 2017
 Project No. 1625

ENGINEER'S COST ESTIMATE
 (Prevailing Wage Included)

WEST 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, SIDEWALK AND 1' OF STREET SECTION)	CYD	438	7.50	3,285
3.	AC SAWCUT	LF	1,315	1.25	1,644
4.	AC DEEP LIFT	TON	50	150.00	7,500
5.	CONCRETE SUBGRADE COMPACTION	SF	17,734	1.00	17,734
6.	INSTALL 10' - 14' WIDE SIDEWALK	SF	14,676	23.00	337,548
7.	INSTALL VERTICAL CURB & GUTTER	LF	1,223	43.75	53,506
8.	INSTALL 25' WIDE COMMERCIAL DRIVEWAY	EA	2	10,000.00	20,000
9.	HANDICAP CURB RETURN (FULL)	EA	4	10,000.00	40,000
10.	GRIND 2" AC AND REPLACE WITH 2" AC OVERLAY	SF	36,243	1.75	63,425
11.	REMOVE AND REPLACE VERTICAL CURB AND GUTTER	LF	819	26.00	21,294
12.	SUBTERRANEAN SIDEWALK REINFORCEMENT DUE TO EXISTING BASEMENT	LS	1	80,000.00	80,000
13.	MID-BLOCK LIGHTED, RAISED CROSSWALK	EA	1	24,000.00	24,000
14.	DECORATIVE CURB RETURNS INCLUDING BOLLARDS	EA	4	8,500.00	34,000
				Subtotal A	\$733,936
<u>B. STORM DRAIN</u>					
15.	REMOVE & REPLACE EXISTING CATCH BASIN	EA	6	\$6,250.00	\$37,500
				Subtotal B	\$37,500
<u>C. SANITARY SEWER</u>					
16.	4" SANITARY SEWER CONNECTION (1 PER BLDG)	EA	8	\$2,500.00	\$20,000
17.	SANITARY SEWER CLEAN OUT	EA	8	1,250.00	10,000
				Subtotal C	\$30,000

Attachment A

D. WATER

18.	INSTALL FIRE HYDRANTS	EA	3	\$5,000.00	\$15,000
19.	2" WATER CONNECTION (1 PER BLDG.)	EA	8	3,000.00	24,000
20.	4" FIRE CONNECTION (1 PER BLDG.)	EA	8	5,500.00	44,000
21.	2" BACKFLOW PREVENTER	EA	8	6,250.00	50,000
22.	4" REDUCED PRESSURE DETECTOR ASSEMBLY	EA	8	6,250.00	50,000
23.	FIRE DEPARTMENT CONNECTOR WITH POST INDICATOR VALVE	EA	8	6,250.00	50,000
24.	2" WATER VALVE	EA	8	2,000.00	16,000
25.	WATER METER	EA	8	4,375.00	35,000
				Subtotal D	\$284,000

E. MISCELLANEOUS

26.	STRIPING	LS	1	\$8,000.00	8,000
27.	LANDSCAPING AND IRRIGATION	LS	1	35,000.00	35,000
28.	LIGHTING	LS	1	65,000.00	65,000
29.	TRAFFIC CONTROL	LS	1	22,000.00	22,000
30.	SWPPP MITIGATION	LS	1	17,500.00	17,500
31.	STREET FURNITURE	LS	1	21,600.00	21,600
32.	STREET ART	LS	1	25,000.00	25,000
33.	SOLAR TRASH COMPACTOR	EA	4	4,900.00	19,600
				Subtotal E	\$213,700

WEST BLOCK TOTAL \$1,299,136

CENTER 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, SIDEWALK AND 1' OF STREET SECTION)	CYD	400	7.50	3,000
3.	AC SAWCUT	LF	1,312	1.25	1,640
4.	AC DEEP LIFT	TON	50	150.00	7,500
5.	CONCRETE SUBGRADE COMPACTION	SF	16,168	1.00	16,168
6.	INSTALL 10-14' WIDE SIDEWALK	SF	13,380	23.00	307,740
7.	INSTALL VERTICAL CURB & GUTTER	LF	1,115	43.75	48,781
8.	INSTALL 25' WIDE COMMERCIAL DRIVEWAY	EA	5	10,000.00	50,000
9.	HANDICAP CURB RETURN (FULL)	EA	4	10,000.00	40,000
10.	GRIND 2" AC AND REPLACE WITH 2" AC OVERLAY	SF	36,243	1.75	63,425
11.	REMOVE AND REPLACE VERTICAL CURB AND GUTTER	LF	819	26.00	21,294
12.	SUBTERRANEAN SIDEWALK REINFORCEMENT DUE TO EXISTING BASEMENT	LS	1	80,000.00	80,000
13.	MID-BLOCK LIGHTED, RAISED CROSSWALK	EA	1	24,000.00	24,000
14.	DECORATIVE CURB RETURNS INCLUDING BOLLARDS	EA	4	8,500.00	34,000
				Subtotal A	\$727,549

EXHIBIT 1

Attachment A

B. STORM DRAIN

15.	REMOVE & REPLACE EXISTING CATCH BASIN	EA	5	\$6,250.00	<u>\$31,250</u>
				Subtotal B	\$31,250

C. SANITARY SEWER

16.	4" SANITARY SEWER CONNECTION (1 PER BLDG.)	EA	5	\$2,500.00	\$12,500
17.	SANITARY SEWER CLEAN OUT	EA	5	1,250.00	<u>6,250</u>
				Subtotal C	\$18,750

D. WATER

18.	INSTALL FIRE HYDRANTS	EA	3	\$5,000.00	\$15,000
19.	2" WATER CONNECTION (1 PER BLDG.)	EA	5	3,000.00	15,000
20.	4" FIRE CONNECTION (1 PER BLDG.)	EA	5	5,500.00	27,500
21.	2" BACKFLOW PREVENTER	EA	5	6,250.00	31,250
22.	4" REDUCED PRESSURE DETECTOR ASSEMBLY	EA	5	6,250.00	31,250
23.	FIRE DEPARTMENT CONNECTOR WITH POST INDICATOR VALVE	EA	5	6,250.00	31,250
24.	2" WATER VALVE	EA	5	2,000.00	10,000
25.	WATER METER	EA	5	4,375.00	<u>21,875</u>
				Subtotal D	\$183,125

E. MISCELLANEOUS

26.	STRIPING	LS	1	\$8,000.00	\$8,000
27.	LANDSCAPING AND IRRIGATION	LS	1	35,000.00	35,000
28.	LIGHTING	LS	1	65,000.00	65,000
29.	UNDERGROUND EXISTING OVERHEAD UTILITIES	LS	1	40,000.00	40,000
30.	TRAFFIC CONTROL	LS	1	22,000.00	22,000
31.	SWPPP MITIGATION	LS	1	17,500.00	17,500
32.	STREET FURNITURE	LS	1	21,600.00	21,600
33.	STREET ART	LS	1	25,000.00	25,000
34.	SOLAR TRASH COMPACTOR	EA	4	4,900.00	<u>19,600</u>
35.	REMEDIATE LEAKY UNDERGROUND STORAGE TANK	LS	1	100,000.00	<u>100,000</u>
				Subtotal E	\$353,700

CENTER BLOCK TOTAL \$1,314,373

EAST BLOCK

ITEM	DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL PRICE
<u>A. STREET IMPROVEMENTS</u>					
1.	CLEAR AND GRUB	LS	1	\$15,000.00	15,000
2.	EXCAVATION (REMOVE CURB, GUTTER, SIDEWALK AND 1' OF STREET SECTION)	CYD	221	7.50	1,658
3.	AC SAWCUT	LF	664	1.25	830
4.	AC DEEP LIFT	TON	26	150.00	3,900
5.	CONCRETE SUBGRADE COMPACTION	SF	8,961	1.00	8,961
6.	INSTALL 10-14' WIDE SIDEWALK	SF	7,416	23.00	170,568
7.	INSTALL VERTICAL CURB & GUTTER	LF	618	43.75	27,038
8.	INSTALL 25' WIDE COMMERCIAL DRIVEWAY	EA	1	10,000.00	10,000
9.	HANDICAP CURB RETURN (FULL)	EA	2	10,000.00	20,000
10.	GRIND 2" AC AND REPLACE WITH 2" AC OVERLAY	SF	11,520	1.75	20,160
11.	REMOVE AND REPLACE VERTICAL CURB AND GUTTER	LF	546	26.00	14,196
12.	DECORATIVE CURB RETURN INCLUDING BOLLARDS	EA	2	8,500.00	<u>17,000</u>
				Subtotal A	\$309,311

EXHIBIT 1

Attachment A

B. STORM DRAIN

13.	REMOVE & REPLACE EXISTING CATCH BASIN	EA	2	\$6,250.00	\$12,500
				Subtotal B	\$12,500

C. SANITARY SEWER

14.	4" SANITARY SEWER CONNECTION (1 PER BLDG.)	EA	6	\$2,500.00	\$15,000
15.	SANITARY SEWER CLEAN OUT	EA	6	1,250.00	7,500
16.	SEWER LIFT STATION TO CONNECT TO MINER AVENUE SEWER MAIN (WESTBOUND) COMPLETE	EA	1	40,000.00	40,000
				Subtotal C	\$62,500

D. WATER

17.	INSTALL FIRE HYDRANTS	EA	2	\$5,000.00	\$10,000
18.	2" WATER CONNECTION (1 PER BLDG.)	EA	6	3,000.00	18,000
19.	4" FIRE CONNECTION (1 PER BLDG.)	EA	6	5,500.00	33,000
20.	2" BACKFLOW PREVENTOR	EA	6	6,250.00	37,500
21.	4" REDUCED PRESSURE DETECTOR ASSEMBLY	EA	6	6,250.00	37,500
22.	FIRE DEPARTMENT CONNECTION WITH POST INDICATOR VALVE	EA	6	6,250.00	37,500
23.	2" WATER VALVE	EA	6	2,000.00	12,000
24.	WATER METER	EA	6	4,375.00	26,250
				Subtotal D	\$211,750

E. MISCELLANEOUS

25.	STRIPING	LS	1	\$4,000.00	\$4,000
26.	LANDSCAPING AND IRRIGATION	LS	1	17,500.00	17,500
27.	LIGHTING	LS	1	33,000.00	33,000
28.	UNDERGROUND EXISTING OVERHEAD UTILITIES	LS	1	60,000.00	60,000
29.	TRAFFIC CONTROL	LS	1	22,000.00	22,000
30.	SWPPP MITIGATION	LS	1	17,500.00	17,500
31.	STREET FURNITURE	LS	1	21,600.00	21,600
32.	STREET ART	LS	1	25,000.00	25,000
33.	SOLAR TRASH COMPACTOR	EA	2	4,900.00	9,800
				Subtotal E	\$210,400

EAST BLOCK TOTAL \$806,461

SOUTH 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	\$15,000.00	\$15,000
2.	EXCAVATION (REMOVE CURB, GUTTER, SIDEWALK AND 1' OF STREET SECTION)	CYD	115	7.50	863
3.	AC SAWCUT	LF	360	1.25	450
4.	AC DEEP LIFT	TON	14	150.00	2,100
5.	CONCRETE SUBGRADE COMPACTION	SF	360	1.00	360
6.	INSTALL 12' - 14' SIDEWALK	SF	5,040	23.00	115,920
7.	INSTALL VERTICAL CURB AND GUTTER	LF	360	43.75	15,750
8.	INSTALL 25' COMMERCIAL DRIVEWAY	EA	5	10,000.00	50,000
9.	HANDICAP RETURN (FULL)	EA	2	10,000.00	20,000
10.	GRIND 2" AC AND REPLACE WITH 2" AC OVERLAY	SF	15,012	1.75	26,271
11.	REMOVE AND REPLACE VERTICAL CURB AND GUTTER	LF	410	26.00	10,660
12.	DECORATIVE CURB RETURN INCLUDING BOLLARDS	EA	1	8,500.00	8,500
				Subtotal A	\$265,874

Attachment A

B. STORM DRAIN

13.	REMOVE AND REPLACE CATCH BASIN	EA	2	\$6,250.00	\$12,500
				Subtotal B	\$12,500

C. SANITARY SEWER

14.	SANITARY SEWER CONNECTIONS (ONE PER BUILDING)	EA	4	\$2,500.00	\$10,000
15.	CLEAN OUTS	EA	4	1,250.00	<u>5,000</u>
				Subtotal C	\$15,000

D. WATER

16.	INSTALL FIRE HYDRANTS	EA	2	\$5,000.00	\$10,000
17.	2" WATER CONNECTION (1 PER BUILDING)	EA	4	3,000.00	12,000
18.	4" FIRE CONNECTION (1 PER BUILDING)	EA	4	5,500.00	22,000
19.	2" BACKFLOW PREVENTOR	EA	4	6,250.00	25,000
20.	4" REDUCED PRESSURE DETECTOR ASSEMBLY		4	6,250.00	25,000
21.	FIRE DEPARTMENT CONNECTOR WITH POST INDICATOR VALVE		4	6,250.00	25,000
22.	2" WATER VALVE	EA	4	2,000.00	8,000
23.	WATER METER	EA	4	4,375.00	<u>17,500</u>
				Subtotal D	\$144,500

E. MISCELLANEOUS

24.	STRIPING	LS	1	\$3,000.00	\$3,000
25.	LANDSCAPING & IRRIGATION	LS	1	14,000.00	14,000
26.	LIGHTING	LS	1	33,000.00	33,000
27.	TRAFFIC CONTROL	LS	1	18,000.00	18,000
28.	SWPPP MITIGATION	LS	1	17,500.00	17,500
29.	STREET FURNITURE	LS	1	12,000.00	12,000
30.	UNDERGROUND OVERHEAD UTILITIES	LS	1	40,000.00	40,000
31.	STREET ART	LS	1	25,000.00	25,000
32.	SOLAR TRASH COMPACTOR	EA	2	4,900.00	<u>9,800</u>
				Subtotal E	\$172,300

South Block Total \$610,174

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

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QTY</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
1.	REMOVE 72" STORM DRAIN	LF	215	\$80.00	\$17,200
2.	INSTALL 72" STORM DRAIN	LF	277	560.00	155,120
3.	STORM DRAIN STRUCTURE	EA	3	55,000.00	165,000
4.	POTHOLE UTILITIES	LS	1	12,000.00	<u>12,000</u>
				72" STORM DRAIN IMPROVEMENTS	\$349,320

Attachment A

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

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QTY</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
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					\$180,000

OFFSITE CAL WATER IMPROVEMENTS (ASSUME THREE BLOCKS OF IMPROVEMENTS)

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>UNIT</u>	<u>QTY</u>	<u>UNIT PRICE</u>	<u>TOTAL PRICE</u>
1.	INSTALL 12" WATER	LF	1,200	\$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					\$192,200

SUMMARY

WEST BLOCK	\$1,299,136
CENTER BLOCK	1,314,373
EAST BLOCK	\$806,461
SOUTH BLOCK	\$610,174
72" STORM DRAIN IMPROVEMENTS	\$349,320
OFFSITE SEWER IMPROVEMENTS	\$180,000
OFFSITE CAL WATER IMPROVEMENTS	<u>\$192,200</u>
SUBTOTAL	\$4,751,664
30% CONTINGENCY	<u>\$1,425,499</u>
GRAND TOTAL	\$6,177,163