

**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 1 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.

2016-10-18-1204 P

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.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:

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 November 29 ~~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:

for BONNIE PAIGE
CITY CLERK



BY Candice Smith

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

BY Ym. Azmeri

"CITY"

CITY OF STOCKTON, a municipal
corporation

BY Samuel Smith

for CITY MANAGER

"DEVELOPER"

OPEN WINDOW PROJECT, LLC, a
California limited liability company

BY Zachary Cort

Zachary Cort, President

Approve by City Council Resolution No. 2016-10-18-1204 on October 18, 2016.

EXHIBIT A PHASE I - PROJECT DESCRIPTION

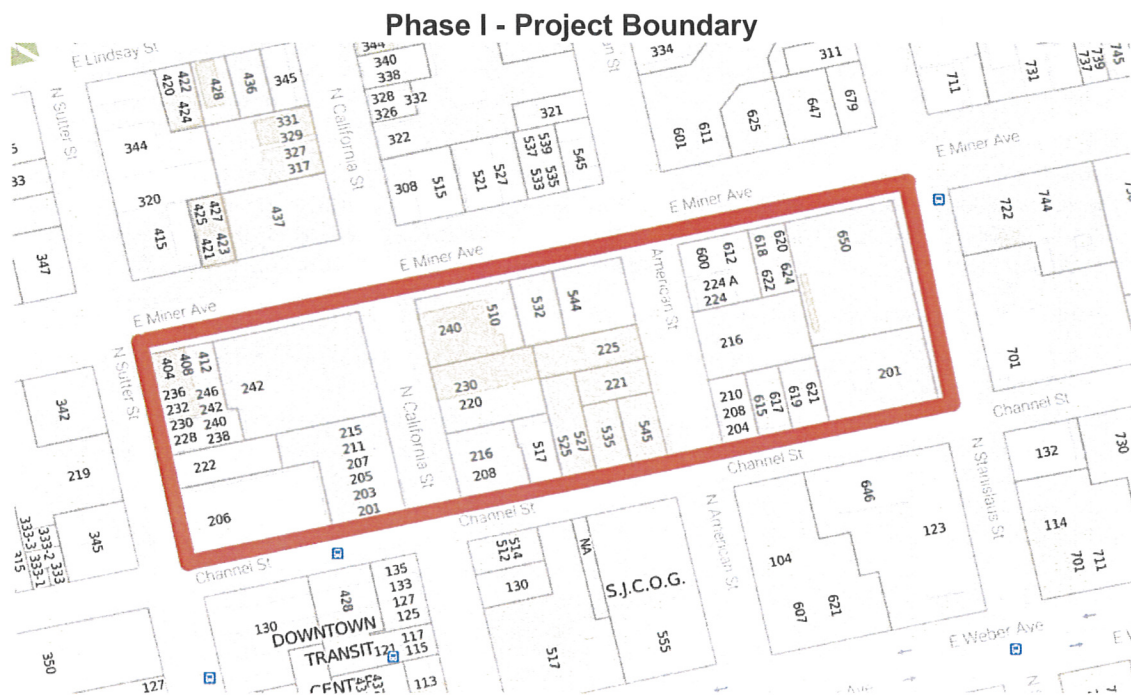


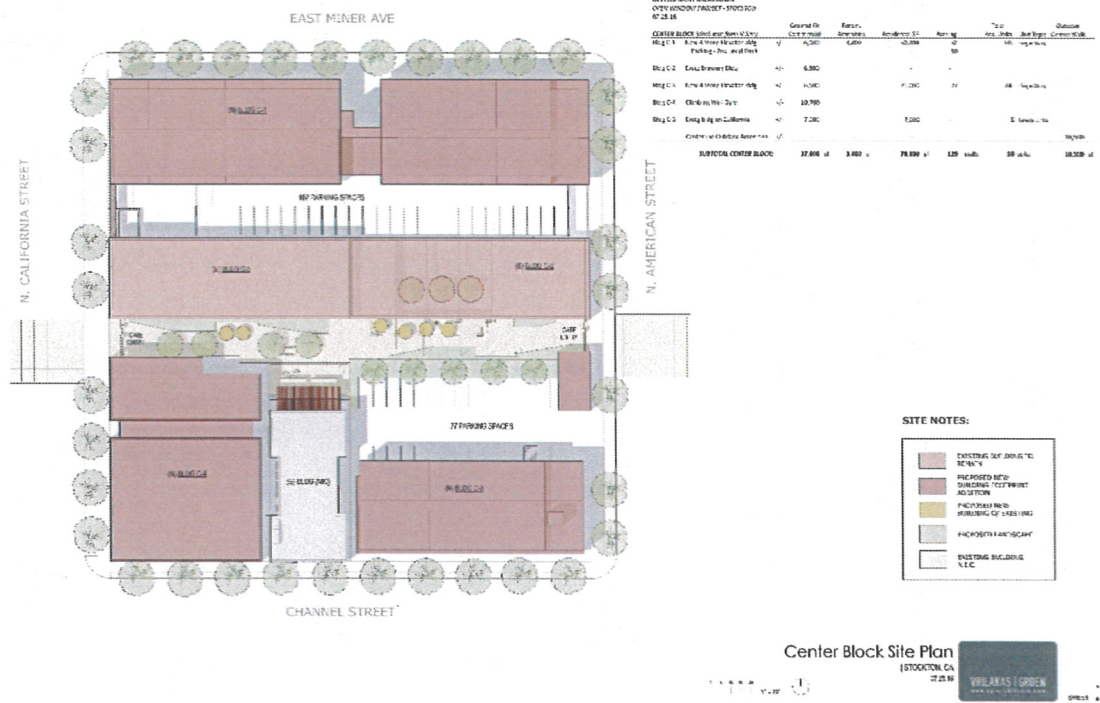
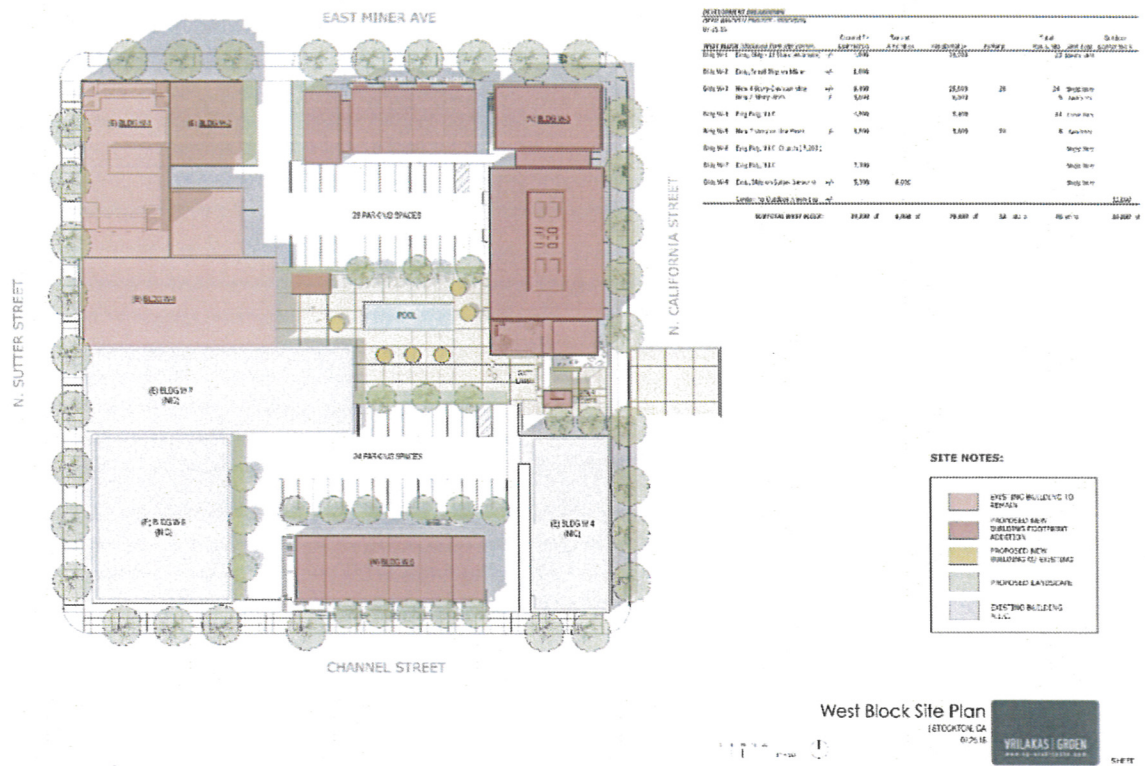
DEVELOPMENT BREAKDOWN

OPEN WINDOW MIXED USE PROJECT - STOCKTON

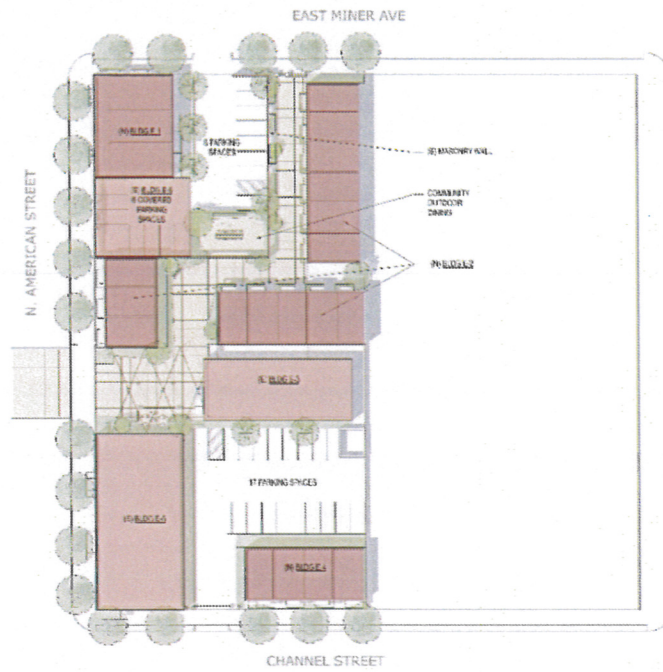
07.25.16

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





ATTACHMENT C

[illegible]

SITE NOTES:

-  EXISTING BUILDING FOOTPRINT
-  PROPOSED NEW BUILDING FOOTPRINT
-  PROPOSED NEW BUILDING OR EXISTING
-  PROPOSED LANDSCAPE

East Block Site Plan

STOCKTON, CA
97206



54-55

**EXHIBIT B
PUBLIC INFRASTRUCTURE IMPROVEMENTS**

**DILLON & MURPHY
CONSULTING CIVIL ENGINEERS**

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

August 3, 2016
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>
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	14,676	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	<u>40,000</u>

SUBTOTAL \$118,000
CENTER BLOCK TOTAL \$762,064

EAST 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 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	<u>\$231,806</u>
<u>B. STORM DRAIN</u>					
8.	REMOVE & REPLACE EXISTING CATCH BASIN	EA	2	6,250.00	\$12,500
				SUBTOTAL	<u>\$12,500</u>
<u>C. SANITARY SEWER</u>					
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	<u>\$62,500</u>
<u>D. WATER SUPPLY</u>					
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	<u>\$211,750</u>

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					\$99,000
EAST BLOCK TOTAL					\$617,556

REMOVE AND RELOCATE EXISTING 72" STORM DRAIN LINE
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<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	45,000.00	135,000
4.	POTHOLE UTILITIES	LS	1	5,000.00	5,000
72" STORM DRAIN IMPROVEMENTS					\$312,320

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	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	\$192,200
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WEST BLOCK	\$889,189
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CENTER BLOCK	\$762,064
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EAST BLOCK	\$617,556
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72" STORM DRAIN IMPROVEMENTS	\$312,320
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OFFSITE SEWER IMPROVEMENTS	\$180,000
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OFFSITE CAL WATER IMPROVEMENTS	\$192,200
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SUBTOTAL	\$2,953,329
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30% CONTINGENCY	\$885,999
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GRAND TOTAL	\$3,839,328
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City of Stockton

Legislation Text

File #: 16-3016, Version: 1

DOWNTOWN INFRASTRUCTURE INFILL INCENTIVE PROGRAM REIMBURSEMENT AGREEMENT WITH OPEN WINDOW PROJECT, LLC

RECOMMENDATION

It is recommended that the City Council adopt a resolution:

1. Authorizing a Downtown Infrastructure Infill Incentive Reimbursement Agreement with Open Window Project, LLC for \$1.8 million; and
2. Authorizing the City Manager to execute future reimbursements up to an additional \$2 million if appropriations are made to the downtown incentive program in subsequent fiscal years; and
3. Authorizing the City Manager to take necessary and appropriate actions to carry out the purpose and intent of the resolution.

Summary

The City Council identified economic development and downtown revitalization as key goals for the City of Stockton. To further those goals, the Council adopted the Downtown Infrastructure Infill Incentive Program in July 2015 to encourage infill development in Downtown Stockton and to help defray the cost of public infrastructure. Open Window Project, LLC is ready to begin construction of its Open Window Project (Project), consisting of market-rate housing and retail/commercial space, and has requested funding under the Downtown Infrastructure Infill Incentive Program. Staff is recommending that a Reimbursement Agreement for \$1.8 million, in accordance with the program guidelines, be executed with Open Window Project, LLC for Phase I of the Project, which will include 150 market-rate housing units, 62 affordable-housing units, and 92,400 s.f. of commercial space. Staff further recommends that the City Manager be authorized to approve future reimbursements, up to an additional \$2 million (for a total of \$3.8 million), should future funding be allocated through the annual budget to the Downtown Infrastructure Infill Incentive Program. The program criteria of a minimum of 35 market-rate housing units and/or 30,000 s.f. of new or renovated commercial space meets the program guidelines without the inclusion of the proposed affordable units.

DISCUSSION

Background

The City Council adopted two critical plans, the Urban Land Institute (ULI) Report (February 2012) and Economic Development Strategic Plan (February 2015) to guide the City in revitalizing Downtown Stockton and targeted neighborhoods, increasing employment opportunities, and attracting private investment throughout the community.

File #: 16-3016, Version: 1

In an effort to encourage infill, mixed-use development in Downtown Stockton and to defray the cost of public infrastructure, the City Council approved the Downtown Infrastructure Infill Incentive Program in July 2015 (Attachment A - Resolution No. 2015-07-07-1502). 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.

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, 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.

Present Situation

Open Window Project, LLC is prepared to begin Phase I of the Project and has submitted a request to participate in the City's Downtown Infrastructure Infill Incentive Program. Open Window Project, LLC has undertaken predevelopment activities, including design and engineering, towards the implementation of Phase I, which encompasses three blocks bound by Miner Avenue to the north, Sutter Street to the west, Channel Street to the south, and Stanislaus Street to the east (Attachment B - Project Description).

Phase I is comprised of 200 residential units, of which a minimum of 150 units will be market-rate. This total includes a diversity of housing options, including townhomes, lofts, apartments and live/work spaces in both new construction and adaptive reuse of existing structures. Phase I also includes approximately 92,400 s.f. of new commercial space and approximately 200 onsite parking spaces.

In addition, Phase I includes a 25,000 s.f. City Center Walk that features a park-like greenbelt that weaves through both new construction and historic buildings while incorporating art, outdoor amenities and access to retail/commercial spaces.

Open Window Project, LLC has requested a Reimbursement Agreement in accordance with the Downtown Infrastructure Infill Incentive Program guidelines in the amount of \$3.8 million for eligible public improvements associated with Phase I of the Open Window Project. Eligible improvements include, street improvements, storm drain, sanitary sewer and water supply projects required for the development of the project. The first \$1.8 million has been budgeted this fiscal year from fully funding the first two years of the downtown incentive program, however, the remaining balance of \$2 million will be dependent upon City Council appropriations in subsequent fiscal years. Should Council appropriate funds and subject to City Manager approval, a maximum of \$900,000 may be reimbursed to Open Window Project, LLC in fiscal years 2017-18 and 2018-19; the remaining \$200,000 would be reimbursed in fiscal year 2019-20. The City shall only be obligated to reimburse the \$1.8 million currently appropriated. The proposed resolution would also authorize the City Manager to approve up to \$2 million more (for a total of \$3.8 million) but only if future appropriations are made by the City Council in future fiscal year(s) budget(s).

File #: 16-3016, Version: 1

Open Window Project, LLC must meet the following conditions before the City will make a reimbursement payment:

1. Provide City with documentation that substantiates the cost of the public improvements and that such costs have been paid by Open Window Project, LLC.
2. Obtain all City permits and approvals required to commence construction of Phase I of the project.

Once the above conditions have been met, the City will reimburse Open Window Project, LLC in the following manner and contingent upon available funding:

1. The first payment of 10% (i.e. \$380,000) shall be due upon City's issuance of building permits for the public infrastructure improvements.
2. The second payment of 10% (i.e. \$380,000) shall be due upon City's issuance of building permits for Phase I of the Project.
3. 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.
4. 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 Phase I of the Project.
5. 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.

The Reimbursement Agreement and public infrastructure improvements are attached as Exhibit I to the resolution.

FINANCIAL SUMMARY

Sufficient funds are available in the FY 2016-17 Economic Development account number 010-1760-510 to reimburse up to \$1.8 million. The remaining balance of \$2 million may be reimbursed in equal installments of \$900,000 in fiscal years 2017-18 and 2018-19, with the remaining balance of \$200,000 reimbursed in fiscal year 2019-20, and will be contingent upon City Council appropriation during the normal annual budget approval process each fiscal year and City Manager authorization. Future funds are not part of the Long Range Financial Plan.

Attachment A - Resolution No. 2015-07-07-1502
Attachment B - Project Description

Resolution No. 2015-07-07-1502

STOCKTON CITY COUNCIL

RESOLUTION APPROVING THE DOWNTOWN INFRASTRUCTURE INFILL INCENTIVE PROGRAM

The Stockton City Council identified economic development and downtown revitalization as two key goals for the City; and

The City Council adopted two critical plans, the ULI Report (February 2012) and Economic Development Strategic Plan (February 2015) to guide the City in revitalizing Downtown Stockton, increasing employment opportunities, and attracting private investment throughout the community; and

To further enhance City of Stockton's economic development program and encourage infill mixed-use development in Downtown Stockton, a new Downtown Infrastructure Infill Incentive Program has been developed providing financial incentives to developers that create new market-rate housing and retail/commercial space in Downtown Stockton; and

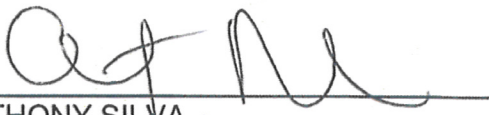
The Infrastructure Infill Incentive Program will support the city's business expansion efforts, bring private investment to Downtown Stockton, and generate additional jobs and revenue for the City; now, therefore,

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

1. The City Council hereby approves the Downtown Infrastructure Infill Incentive Program and Program Guidelines, attached hereto as Exhibit 1 and incorporated herein by this reference.

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 July 7, 2015.


ANTHONY SILVA
Mayor of the City of Stockton

ATTEST:


BONNIE PAIGE
City Clerk of the City of Stockton



Moved by: Christina Fugazi, seconded by Anthony Silva.
Vote: Motion carried 6-0

Yes: Christina Fugazi, Elbert Holman, Susan Lofthus, Michael Tubbs, Anthony Silva, and Daniel Wright.
Absent: Moses Zapien.

City of Stockton
ECONOMIC DEVELOPMENT
DOWNTOWN INFRASTRUCTURE INFILL INCENTIVE PROGRAM

Goals and Objectives

The purpose of the Downtown Infrastructure Infill Incentive Program is to serve as an additional tool in the City's economic development efforts to revitalize Downtown Stockton, generate new revenue, attract new business, and create additional jobs. The program provides financial incentives to eligible parties that are looking to develop new market-rate residential or mixed use projects in Downtown Stockton. The project must align with City Council goals, adopted Economic Development Strategic Plan (February 2015) and/or Urban Land Institute report (February 2012) and must help to meet infill development objectives for Downtown Stockton.

Program Guidelines

The Downtown Infrastructure Infill Incentive Program will be used to attract and support market-rate residential, commercial, and mixed use projects in Downtown Stockton. In order to qualify, a project must meet the following guidelines:

1. Program boundaries

Center Street to the west, Park Street to the north, ACE Rail/UPPR to the east, and Washington Street to the south (see Exhibit A - Program Boundary Map).

2. Eligible Improvements

The Downtown Infrastructure Infill Incentive Program would fund public off-site infrastructure associated with eligible Downtown infill projects. Qualifying improvements include, but not are limited to:

- Sewer
- Water
- Storm Drain
- Street Improvements, including crosswalks, bike lanes, striping, and medians
- Public Signage
- Traffic Signals
- Street Lights
- Curb, Gutter, Sidewalk
- Landscaping
- Other public improvements such as benches, trash receptacles, parklets, planters, and bike racks

3. Eligible Projects

In order to qualify for public infrastructure funding, a project must be located within the program boundaries identified above and consist of a minimum of 35 new market-rate residential units and/or a minimum of 30,000 s.f. of new, or newly renovated, retail or commercial space. In addition, the applicant must make a capital investment of a minimum

of \$500,000 and the public improvements eligible for reimbursement must equal a minimum of \$100,000 in order to qualify.

4. Application Process and Funding

A request for funding must be submitted to the Economic Development Department for review. Upon project approval by the City Manager, an Infill Infrastructure Reimbursement Agreement will be drafted between the City and applicant for Council consideration. The Reimbursement Agreement will detail the public improvements being constructed, cost, source of funds, and terms of the reimbursement.

The City will reimburse the applicant within 6 months of completion of public improvements that are eligible and included within the executed Reimbursement Agreement of up to \$900,000 annually. If improvements exceed the \$900,000 annual cap, reimbursements will occur in subsequent years. The City Council, at its sole discretion, may amend or cancel the program at any time.

The Downtown Infrastructure Infill Incentive Program will maintain an annual cap of \$900,000 and potentially be funded through various sources including, but not limited to, Successor Agency tax increment ("waterfall"), sales tax sharing agreements, Community Development Block Grant (CDBG) funds, Enhanced Infrastructure Finance Districts, Municipal Utilities capital improvement funds, gas tax revenues, and potential grant proceeds. The City will fund a total of \$9 million during the life of the program, which will be in effect for a period of 10 years from the date of approval, unless extended by the City Council.

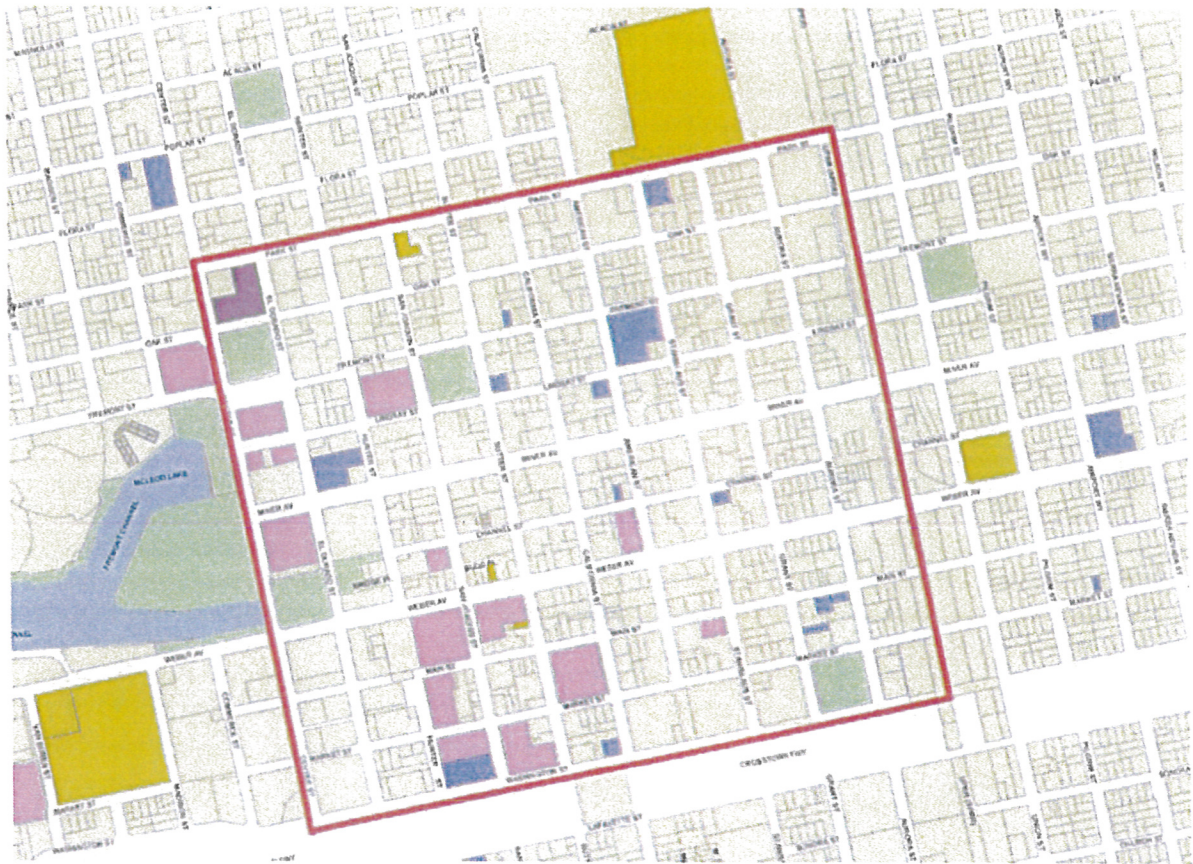
5. Council Review

All Infrastructure Reimbursement Agreements will be presented to the City Council for review and consideration based on the guidelines set forth above.

Adopted by the Stockton City Council
_____, 2015 – Resolution No. ____

EXHIBIT A

Downtown Infrastructure Infill Incentive Program Boundary Map



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,

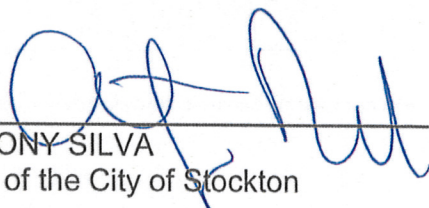
BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

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.

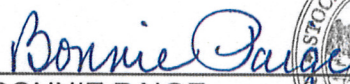
3. The City Manager is hereby authorized and directed to take all necessary and appropriate action to carry out the purpose and intent of this Resolution.

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

The seal of the City of Stockton is circular. The outer ring contains the text "STOCKTON FOUNDED JUNE 1849" at the top and "INCORPORATED JULY 1850" at the bottom, separated by two stars. The inner circle features a landscape scene with a river, a bridge, and a building.

MEMORANDUM

November 1, 2016

TO: Laurie Montes, Deputy City Manager

FROM: Micah Runner, Director
Economic Development Department**SUBJECT: DOWNTOWN INFRASTRUCTURE INFILL INCENTIVE PROGRAM
REIMBURSEMENT AGREEMENT WITH OPEN WINDOW, LLC**

The City Council made a motion to approve a resolution at its October 18, 2016 meeting, approving a Downtown Infrastructure Infill Incentive Reimbursement Agreement with Open Window, LLC for Phase 1 of the Open Window Project totaling \$3.8 million in eligible public improvement costs.

The reimbursement amounts are allocated as follows:

Fiscal Year	Allocation
FY 2016-17	\$1,800,000
FY 2017-18	\$900,000
FY 2018-19	\$900,000
FY 2019-20	\$200,000

Funding allocations per fiscal year for this reimbursement agreement would be subject to City Council appropriations during the normal annual budget approval process.

Phase 1 of the project consists of 150 market-rate housing units, 62 affordable housing units, and approximately 92,400 square feet of commercial and retail space.

Feel free to contact me at extension 8694 should you have any questions.



MICAH RUNNER, DIRECTOR
ECONOMIC DEVELOPMENT DEPARTMENT

cc: Janice Miller, Deputy Director

MR:JM:EL

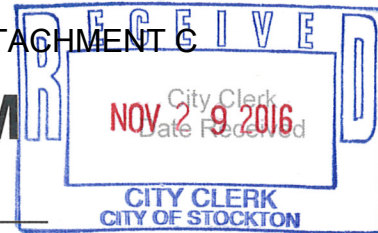
RECEIVED

City Manager's Office
Date Received

NOV 16 2016

ATTACHMENT C

CONTRACT ROUTING FORM



City Manager's Office

Contract Number

2016-10-18-1204 P

(For Clerk's Use)

CONTRACT TYPE (select one)

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

CONTRACT INFORMATION

Contract Amount: \$0

Contract Title: Downtown Infrastructure Infill Incentive Program Reimbursement Agreement - Open Window Project

Vendor/Other Party: Open Window, LLC

Contract Start Date: 10/19/16

Contract End Date: 6/30/20

Contract Term:

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

Council approval required for contracts over \$ 75,000 for FISCAL YEAR:

Motion/Resolution/Ordinance No: Resolution 2016-10-18-1204

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. 10-0012134

Bonds Required? ☐ Yes ☒ No

Insurance Required? ☐ Yes ☒ No

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

Routing Order

☐ DEPARTMENT: Economic Development Department

DEPARTMENT HEAD APPROVAL

Project Mgr: Ernesto Lucero ext: 7569

Staff: amanda Thomas ext: 7540

Forwarded to: City Attorney on: 11/2/16

by: A. Thomas

☒ VENDOR/OTHER PARTY to EDD

Signed () originals on:

Forwarded to: on: by:

☐ RISK SERVICES

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

Forwarded to: on: by: RM #:

☐ CITY ATTORNEY

Approved as to Form and Content on: 11/9/16 by: YH

Forwarded to: EDD on: 11/14/16 by: EG

☒ CITY MANAGER to CM 11/16/16

Signed by City Manager on: 11/28/16 Forwarded to: Clerk on: 11/29/16 by: [Signature]

☒ CITY CLERK

City Clerk attested on: 11-30-16 Returned (1) original(s) to dept. on: 11-30-16 by: C Smith

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

☒ ORIGINATING DEPARTMENT:

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.

2016-10-18-1204 P