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RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Stockton
Economic Development Department
400 E. Main Street, 4th Floor
Stockton, CA 95202

Attn: Assistant Director

APN: 155-480-18

DEED OF TRUST

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 8 and 15. Certain rules regarding the usage of words used in this document are also provided in Section 13.

(A) “Deed of Trust” means this document, which is dated ________________ together with all Riders to this document.

(B) “Borrower” is Community Alliance Neighborhood Development, LLC, a California limited liability company. Borrower is the trustor under this Deed of Trust.

(C) “Lender” is City of Stockton, a municipal corporation. Lender’s address is 425 N. El Dorado Street, Stockton, CA 95202. Lender is the beneficiary under this Deed of Trust.

(D) “Trustee” is City of Stockton, a municipal corporation.

(E) “Note” means the promissory note(s) signed by Borrower and dated __________. The Note(s) states that Borrower owes City $8,465.95. Borrower has promised to pay this debt in full not later than one year from the date of the note.

(F) “Property” means the property that is described below under the heading “Transfer of Rights in the Property.”

(G) “Loan” means the debt evidenced by the Note, plus all sums due under this Deed of Trust.

(H) “Applicable Law” means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(I) “Miscellaneous Proceeds” means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 4) for (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the
Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(J) “RESPA” means the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Deed of Trust, “RESPA” refers to all requirements and restrictions that are imposed in regard to a “federally related mortgage loan” even if the Loan does not qualify as a “federally related mortgage loan” under RESPA.

(K) “Successor in Interest of Borrower” means any party that has taken title to the Property, whether or not that party has assumed Borrower’s obligations under the Note and/or this Deed of Trust.

TRANSFER OF RIGHTS IN THE PROPERTY

This Deed of Trust secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower’s covenants and agreements under this Deed of Trust and the Note. The restrictions will automatically terminate if the title to the mortgaged property is transferred by foreclosure or deed-in-lieu of foreclosure. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the City of Stockton, County of San Joaquin, State of California:

See Attached Exhibit “A”

This currently has the address of 915 Burkett, Stockton, California 95205 (“Property Address”).

TOGETHER WITH all the improvements now or hereafter erected on the Property, and all easements, appurtenances, and fixtures now or hereafter a part of the Property. All replacements and additions shall also be covered by this Deed of Trust. All of the foregoing is referred to in this Deed of Trust as the “Property.”

Borrower covenants that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS DEED OF TRUST combines uniform covenants and non-uniform covenants with limited variations to constitute a uniform Deed of Trust covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal. Borrower shall pay when due the principal of the debt evidenced by the Note and any additional amounts due under the Note. Payment due under the Note and this Deed of Trust shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Deed of Trust is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Deed of Trust be made in one or more of the following forms, as selected by Lender: (a) money order; (b) certified check, bank check, treasurer’s check or cashier’s check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (c) Electronic Funds Transfer.
Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 12. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payment due under the Note and this Deed of Trust or performing the covenants and agreements secured by this Deed of Trust.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 4.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date.

3. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which can attain priority over this Deed of Trust, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any.

Borrower shall promptly discharge any lien which has priority over this Deed of Trust unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith, or defends against enforcement of the lien, in legal proceedings which in Lender’s opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Deed of Trust. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Deed of Trust, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 3.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

4. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term “extended coverage,” and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender’s right to disapprove Borrower’s choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time re-mappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender’s option and Borrower’s expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower’s equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 4 shall become additional debt of Borrower secured by this Deed of Trust. These amounts shall bear
interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender’s right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender’s security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender’s satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender’s security would be lessened, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, the Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 19 or otherwise, Borrower hereby assigns to Lender: (a) Borrower’s rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Deed of Trust, and (b) any other of Borrower’s rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Deed of Trust whether or not then due.

5. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 4 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the
insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower’s obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

6. Borrower’s Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower’s occupancy of the property as Borrower’s place of business.

7. Protection of Lender's Interest in the Property and Rights Under this Deed of Trust. If (a) Borrower fails to perform the covenants and agreements contained in this Deed of Trust, (b) there is a legal proceeding that might significantly affect Lender’s interest in the Property and/or rights under this Deed of Trust (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Deed of Trust or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender’s interest in the Property and rights under this Deed of Trust, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Deed of Trust; (b) appearing in court; and (c) paying reasonable attorneys’ fees to protect its interest in the Property and/or rights under this Deed of Trust, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 8, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 8.

Any amounts disbursed by Lender under this Section 7 shall become additional debt of Borrower secured by this Deed of Trust. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

8. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender’s security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender’s satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender’s security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured
by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Deed of Trust immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Deed of Trust shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Deed of Trust, whether or not then due. “Opposing Party” means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default in any action or proceeding, whether civil or criminal is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Deed of Trust. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 16, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Deed of Trust. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

9. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment of the sums secured by this Deed of Trust granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be require to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

10. Joint and Several Liability; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several.
Subject to the provisions of Section 16, any successor in Interest of Borrower who assumes Borrower’s obligations under this Deed of Trust in writing, and is approved by Lender, shall obtain all of Borrower’s rights and benefits under this Deed of Trust. Borrower shall not be released from Borrower’s obligations and liability under this Deed of Trust unless Lender agrees to such release in writing. The covenants and agreements of this Deed of Trust shall bind (except as provided in Section 15) and benefit the successors and assigns of Lender.

11. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower’s default for the purpose of protecting Lender’s interest in the Property and rights under this Deed of Trust including, but not limited to, attorneys’ fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Deed of Trust to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Deed of Trust or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower’s acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

12. Notices. All notices given by Borrower or Lender in connection with this Deed of Trust must be in writing. Any notice to Borrower in connection with this Deed of Trust shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower’s notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower’s change of address. If Lender specifies a procedure for reporting Borrower’s change of address, then Borrower shall only report a change of address through that specified procedure. There may be only once designated notice address under this Deed of Trust at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender’s address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Deed of Trust shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Deed of Trust is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Deed of Trust.

13. Governing Law; Severability; Rules of Construction. This Deed of Trust shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Deed of Trust are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as prohibition against agreement by contract. In the event that any provision or clause of this Deed of Trust or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision.

As used in this Deed of Trust: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and
include the plural and vice versa; and (c) the word “may” gives sole discretion without any obligation to take any action.

14. **Borrower’s Copy.** Borrower shall be given one copy of the Note and of this Deed of Trust.

15. **Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 15, “Interest in the Property” means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender’s prior written consent, Lender may require immediate payment in full of all sums secured by this Deed of Trust.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 12 within which Borrower must pay all sums secured by this Deed of Trust. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Deed of Trust without further notice or demand on Borrower.

16. **Borrower’s Right to Reinstate after Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Deed of Trust discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Deed of Trust; (b) such other period as Applicable Law might specify for the termination of Borrower’s right to reinstate; or (c) entry of a judgment enforcing this Deed of Trust. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Deed of Trust and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Deed of Trust, including, but not limited to, reasonable attorney’s fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender’s interest in the Property and rights under this Deed of Trust; and (d) takes such action as Lender may reasonably require to assure that Lender’s interest in the Property and rights under this Deed of Trust, and Borrower’s obligation to pay the sums secured by this Deed of Trust, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; or (c) certified check, bank check, treasurer’s check or cashier’s check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity. Upon reinstatement by Borrower, this Deed of Trust and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 15.

17. **Hazardous Substances.** As used in this Section 17: (a) “Hazardous Substances” are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) “Environmental Law” means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) “Environmental Cleanup” includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) “Environmental Condition” means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property.
Borrower shall not do, nor allow anyone else to do, anything affecting the property: (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of: (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM CONVENTIONS. Borrower and Lender further covenant and agree as follows:

18. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower’s breach of any covenant or agreement in this Deed of Trust (but not prior to acceleration under Section 15 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date; not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Deed of Trust without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 18, including, but not limited to, reasonable attorneys’ fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender’s election to cause the Property to be sold. Trustee shall cause this notice to be recorded in each county in which any part of the Property is located. Lender or Trustee shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the other persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee’s deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee’s deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to,
reasonable Trustee’s and attorneys’ fees; (b) to all sums secured by this Deed of Trust; and (c) any excess to the person or persons legally entitled to it.

19. Reconveyance. Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing debt secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Lender may charge such person or persons a reasonable fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law. If the fee charged does not exceed the fee set by Applicable Law, the fee is conclusively presumed to be reasonable.

20. Statement of Obligation Fee. Lender may collect a fee not to exceed the maximum amount permitted by Applicable Law for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Deed of Trust.

Approved as to form and content:

John M. Luebberke
City Attorney

BORROWER:

COMMUNITY ALLIANCE NEIGHBORHOOD DEVELOPMENT, LLC, a California limited liability company

By: ____________________________

Name: _________________________

Title: ___________________________

By: ____________________________

-10-
EXHIBIT “A”

LEGAL DESCRIPTION
DEED OF TRUST

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 8 and 15. Certain rules regarding the usage of words used in this document are also provided in Section 13.

(A) "Deed of Trust" means this document, which is dated May 16, 2017, together with all Riders to this document.

(B) "Borrower" is The Open Window Project, LLC, a California Limited Liability Company. Borrower is the trustor under this Deed of Trust.

(C) "Lender" is City of Stockton, a municipal corporation. Lender's address is 425 N. El Dorado Street, Stockton, CA 95202. Lender is the beneficiary under this Deed of Trust.

(D) "Trustee" is City of Stockton, a municipal corporation.

(E) "Agreement" means the Amendment to the Downtown Infrastructure Infill Incentive Reimbursement Agreement signed by Borrower and dated May 15, 2017. The Amended Agreement states that Borrower owes City seven-hundred sixty thousand and 00/100 Dollars ($760,000.00).

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Agreement, plus all sums due under this Deed of Trust.

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
(I) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 4) for (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(J) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Deed of Trust, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(K) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Agreement and/or this Deed of Trust.

TRANSFER OF RIGHTS IN THE PROPERTY

This Deed of Trust secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Agreement; and (ii) the performance of Borrower's covenants and agreements under this Deed of Trust and the Agreement. The restrictions will automatically terminate if the title to the mortgaged property is transferred by foreclosure or deed-in-lieu of foreclosure, or the mortgage is assigned to the Secretary of HUD. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the City of Stockton, County of San Joaquin, State of California:

See Attached Exhibit "A"

Which currently has the address of 532 E Miner Street, Stockton, California 95202 ("Property Address")

TOGETHER WITH all the improvements now or hereafter erected on the Property, and all easements, appurtenances and fixtures now or hereafter a part of the Property. All replacements and additions shall also be covered by this Deed of Trust. All of the foregoing is referred to in this Deed of Trust as the "Property."

Borrower covenants that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.
THIS DEED OF TRUST combines uniform covenants and non-uniform covenants with limited variations to constitute a uniform Deed of Trust covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal. Borrower shall pay when due the principal of the debt evidenced by the Agreement and any additional amounts due under the Agreement. Payment due under the Agreement and this Deed of Trust shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Agreement or this Deed of Trust is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Agreement and this Deed of Trust be made in one or more of the following forms, as selected by Lender: (a) money order; (b) certified check, bank check, treasurer’s check or cashier’s check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (c) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Agreement or at such other location as may be designated by Lender in accordance with the notice provisions in Section 12. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payment due under the Agreement and this Deed of Trust or performing the covenants and agreements secured by this Deed of Trust.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Agreement; (b) principal due under the Agreement; (c) amounts due under Section 4.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Agreement shall not extend or postpone the due date.

Borrower is allowed to submit early payment of the first 20% of the $3.8 million, which equals $760,000, without the Borrower first obtaining building permits for the public infrastructure improvements and Phase I of the Project.

3. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which can attain priority over this Deed of Trust, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any.

Borrower shall promptly discharge any lien which has priority over this Deed of Trust unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith, or defends against enforcement of the lien, in legal proceedings which in Lender’s opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Deed of Trust. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Deed of Trust, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 3.
Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

In return for releasing $760,000 of the approved funding, Borrower agrees that City may place liens on the seven (7) properties described in the Amended Agreement as security. Liens will remain in place until such time that the Borrower has provided written verification, acceptable to the Lender, 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. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term “extended coverage,” and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender’s right to disapprove Borrower’s choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time re-mappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender’s option and Borrower’s expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower’s equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 4 shall become additional debt of Borrower secured by this Deed of Trust. These amounts shall bear interest at the Agreement rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender’s right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Agreement up to the amount of the outstanding loan balance. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee and Borrower
further agrees to generally assign rights to insurance proceeds to the holder of the Agreement up to the amount of the outstanding loan balance.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender’s security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender’s satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender’s security would be lessened, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, the Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 19 or otherwise, Borrower hereby assigns to Lender: (a) Borrower’s rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Agreement or this Deed of Trust, and (b) any other of Borrower’s rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Agreement or this Deed of Trust whether or not then due.

5. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 4 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower’s obligation for the completion of such repair or restoration.
Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

6. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the property as Borrower's place of business.

7. Protection of Lender's Interest in the Property and Rights Under this Deed of Trust. If (a) Borrower fails to perform the covenants and agreements contained in this Deed of Trust, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Deed of Trust (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Deed of Trust or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Deed of Trust, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Deed of Trust; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Deed of Trust, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 8, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 8.

Any amounts disbursed by Lender under this Section 7 shall become additional debt of Borrower secured by this Deed of Trust. These amounts shall bear interest at the Agreement rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

8. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be
required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender’s security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Deed of Trust immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Deed of Trust shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Deed of Trust, whether or not then due. “Opposing Party” means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default in any action or proceeding, whether civil or criminal is begun that, in Lender’s judgment, could result in forfeiture of the Property or other material impairment of Lender’s interest in the Property or rights under this Deed of Trust. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 16, by causing the action or proceeding to be dismissed with a ruling that, in Lender’s judgment, precludes forfeiture of the Property or other material impairment of Lender’s interest in the Property or rights under this Deed of Trust. The proceeds of any award or claim for damages that are attributable to the impairment of Lender’s interest in the Property are hereby assigned and shall be to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

9. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment of the sums secured by this Deed of Trust granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to
commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

10. Joint and Several Liability; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several.

Subject to the provisions of Section 16, any successor in Interest of Borrower who assumes Borrower's obligations under this Deed of Trust in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Deed of Trust. Borrower shall not be released from Borrower's obligations and liability under this Deed of Trust unless Lender agrees to such release in writing. The covenants and agreements of this Deed of Trust shall bind (except as provided in Section 15) and benefit the successors and assigns of Lender.

11. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Deed of Trust, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Deed of Trust to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Deed of Trust or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Agreement or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Agreement). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

12. Notices. All notices given by Borrower or Lender in connection with this Deed of Trust must be in writing. Any notice to Borrower in connection with this Deed of Trust shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only once designated notice address
under this Deed of Trust at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender’s address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Deed of Trust shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Deed of Trust is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Deed of Trust.

13. Governing Law; Severability; Rules of Construction. This Deed of Trust shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Deed of Trust are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as prohibition against agreement by contract. In the event that any provision or clause of this Deed of Trust or the Agreement conflicts with Applicable Law, such conflict shall not affect other provisions of this Deed of Trust or the Agreement which can be given effect without the conflicting provision.

As used in this Deed of Trust: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word “may” gives sole discretion without any obligation to take any action.

14. Borrower’s Copy. Borrower shall be given one copy of the Agreement and of this Deed of Trust.

15. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 15, “Interest in the Property” means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender’s prior written consent, Lender may require immediate payment in full of all sums secured by this Deed of Trust.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 12 within which Borrower must pay all sums secured by this Deed of Trust. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Deed of Trust without further notice or demand on Borrower.

16. Borrower’s Right to Reinstates After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Deed of Trust discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Deed of Trust; (b) such other period as Applicable Law might specify for the termination of Borrower’s right to reinstate; or (c) entry of a judgment enforcing this Deed of Trust. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Deed of Trust and the
Agreement as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Deed of Trust, including, but not limited to, reasonable attorney's fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Deed of Trust; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Deed of Trust, and Borrower's obligation to pay the sums secured by this Deed of Trust, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; or (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity. Upon reinstatement by Borrower, this Deed of Trust and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 15.

17. **Hazardous Substances.** As used in this Section 17: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the property: (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of: (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.
NON-UNIFORM CONVENANTS. Borrower and Lender further covenant and agree as follows:

18. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower’s breach of any covenant or agreement in this Deed of Trust (but not prior to acceleration under Section 15 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date; not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Deed of Trust without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 18, including, but not limited to, reasonable attorneys’ fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender’s election to cause the Property to be sold. Trustee shall cause this notice to be recorded in each county in which any part of the Property is located. Lender or Trustee shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the other persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee’s deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee’s deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee’s and attorneys’ fees; (b) to all sums secured by this Deed of Trust; and (c) any excess to the person or persons legally entitled to it.

19. Reconveyance. Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all Agreements evidencing debt secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Lender may charge such person or persons a reasonable fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee)
for services rendered and the charging of the fee is permitted under Applicable Law. If the fee charged does not exceed the fee set by Applicable Law, the fee is conclusively presumed to be reasonable.

20. Statement of Obligation Fee. Lender may collect a fee not to exceed the maximum amount permitted by Applicable Law for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Deed of Trust.

THE OPEN WINDOW PROJECT, LLC, a California Limited Liability Company

BY: __________________________

Print Name: Zachary Cole

Title: President

APPROVED AS TO FORM:
JOHN M. LUEBBERKE
CITY ATTORNEY

BY: __________________________

DEPUTY CITY ATTORNEY
EXHIBIT "A"

LEGAL DESCRIPTION

APN: 139-250-08

Lot 5, except the West 40 feet (Carpenter's Measurement) and all of that portion of Lot 7 lying North of the South line of Miner Channel in Block 74 East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.
ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of ___________ San Joaquin ___________

On _______May 15, 2017_______ before me, ___________ Susan Lynn Will, Notary Public _________
(insert name and title of the officer)

personally appeared ___________ Zackary Cort ___________,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature ___________ Susan Lynn Will ___________ (Seal)
Attached is the termination of the agreement.

Amanda

---

**April R Smith**  
*Revenue Assistant II*  
*Administration Services*  
*City of Stockton*  
*209 937-8318*  
*april.smith@stocktonca.gov*

---

The agreement with Open Window was terminated last year.

Amanda

---

Good morning; I've been trying to find out who is handling the OPEN WINDOW PROJECT LLC that Jorge Barrera was handling before he left. We have not received a payment on this account since 04/05/2017 and
is wondering if they are still under contract with us and if not when did they terminate the contract. Could you please give me an update as to what is going on with this account. Thanks

April R Smith
Revenue Assistant II
Administration Services
City of Stockton
209 937-8318
april.smith@stocktonca.gov
ORDINANCE NO. 2022-01-11-1602

AN ORDINANCE APPROVING TERMINATION OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY AND OPEN WINDOW PROJECT LLC, FOR THE OPEN WINDOW PROJECT

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

SECTION 1. BACKGROUND AND INTENT

On February 23, 2016, the City Council approved the Open Window project, which proposed mixed-use development for revitalization and redevelopment of 11.88 acres and is comprised of 51 properties within an approximately 15 square block area of Downtown Stockton. As of 2021, only 34-units have been constructed within the Project boundary; and

On October 18, 2021, the Applicant, Zac Cort with Open Window, LLC., requested that the City of Stockton revoke an existing Master Development Plan and Terminate the Development Agreement (DA) for Open Window Project. The Applicant has verbally stated there is no benefit to either the DA or MDP for attracting development of the Project site. After consideration of the request, staff agrees that there is little benefit in the agreement and MDP beyond what is already required per local standards voted 6-0 (Commissioner Garcia Absent), recommending the City Council mutually terminate the Open Window Project DA and MDP; and

On January 11, 2022, the City Council conducted a public hearing on the application, in compliance with SMC Section 16.108.030 (A) (3), at which point all persons wishing to be heard were provided such opportunity; now, therefore,

SECTION II. DEVELOPMENT AGREEMENT

The City Council hereby approves the termination of the Development Agreement requested by Open Window Project LLC (as described in Exhibit 1), based on the above.

Pursuant to Stockton Municipal Code Section 16.128.120 (C) and Government Code section 65868, the City Council of the City of Stockton conducted a public hearing on January 11, 2022, and hereby terminates this Development Agreement, a copy of which is attached hereto as Exhibit 1, and incorporated by reference.

SECTION III. SEVERABILITY

If any part of this Ordinance is held invalid for any reason, such decision shall not affect the validity of the remaining portion of this Ordinance, and the City Council hereby declares that it would have passed the remainder of this Ordinance if such invalid portion thereof had been deleted.
SECTION IV. EFFECTIVE DATE

This Ordinance shall take effect and be in full force thirty (30) days after its passage.

ADOPTED: **January 11, 2022**

EFFECTIVE: **February 10, 2022**

ATTEST:

ELIZA R. GARZA, CMG
City Clerk of The City of Stockton

KEVIN J. LINCOLN II
Mayor of the City of Stockton
DEVELOPMENT AGREEMENT

by and between the

CITY OF STOCKTON,

a California municipal corporation

and

OPEN WINDOW PROJECT, LLC,

a California limited liability company

Dated: March 25, 2016
ARTICLE 1 DEFINITIONS .......................................................................................................... 3
  Section 1.1 Definitions ........................................................................................................ 3
ARTICLE 2 GENERAL PROVISIONS ........................................................................................ 8
  Section 2.1 Ownership of Property .................................................................................. 8
  Section 2.2 City Representations and Warranties ......................................................... 8
  Section 2.3 Developer Representations and Warranties .................................................. 8
ARTICLE 3 EFFECTIVE DATE AND TERM ............................................................................ 9
  Section 3.1 Effective Date ............................................................................................... 9
  Section 3.2 Term ............................................................................................................ 9
ARTICLE 4 DEVELOPMENT OF PROPERTY ........................................................................ 11
  Section 4.1 Vested Rights ............................................................................................... 11
  Section 4.2 Development and Design Standards ......................................................... 12
  Section 4.3 Reservations of Authority ......................................................................... 12
  Section 4.4 Regulation by Other Public Agencies ....................................................... 13
  Section 4.5 Life of Project Approvals ........................................................................... 13
  Section 4.6 Initiatives ...................................................................................................... 13
  Section 4.7 Timing of Development .............................................................................. 14
  Section 4.8 Changes in the Law ..................................................................................... 14
  Section 4.9 Expansion of Development Rights ............................................................... 14
  Section 4.10 Wastewater, Sanitary Sewer and Potable Water Capacity ....................... 15
  Section 4.11 Project Approvals and Applicable City Regulations .................................. 16
ARTICLE 5 OTHER RIGHTS AND OBLIGATIONS OF THE PARTIES ............................... 16
  Section 5.1 Developer Fees ............................................................................................ 16
  Section 5.2 Fee Credits .................................................................................................. 17
  Section 5.3 Financing Tools for Public Improvement Capital Costs ............................. 19
  Section 5.4 Public Improvement Obligations .................................................................. 19
  Section 5.5 Prevailing Wage Requirements .................................................................. 21
  Section 5.6 Taxes and Assessments .............................................................................. 22
  Section 5.7 Potential General Plan Density Increases .................................................... 23
ARTICLE 6 PUBLIC BENEFITS ............................................................................................ 23
ARTICLE 7 ANNUAL REVIEW ............................................................................................. 23
  Section 7.1 Periodic Review ............................................................................................ 23
ARTICLE 8 MORTGAGEE PROTECTION ............................................................................ 24
Section 8.1  Mortgagee Protection ................................................................. 24
Section 8.2  Mortgagee Not Obligated ....................................................... 24
Section 8.3  Notice of Default to Mortgagee; Right to Cure ....................... 24
Section 8.4  No Supersede ........................................................................ 25
Section 8.5  Technical Amendments to this Article 8 ................................. 25

ARTICLE 9 AMENDMENT OF AGREEMENT AND EXISTING APPROVALS ........ 25
Section 9.1  Amendment of Agreement by Mutual Consent ......................... 25
Section 9.2  Insufficient Amendments to Agreement ..................................... 25
Section 9.3  Requirement for Writing .......................................................... 25
Section 9.4  Amendments to Development Agreement Statute ..................... 26
Section 9.5  Amendments to Project Approvals .......................................... 26
Section 9.6  Administrative Amendments of Project Approvals ................. 26
Section 9.7  Operating Memoranda ............................................................. 27
Section 9.8  CEQA .................................................................................... 27

ARTICLE 10 COOPERATION AND IMPLEMENTATION ........................................... 27
Section 10.1  Subsequent Project Approvals ................................................ 27
Section 10.2  Scope of Review of Subsequent Project Approvals .................. 28
Section 10.3  Processing Applications for Subsequent Project Approvals ....... 28
Section 10.4  Other Agency Subsequent Project Approvals; Authority of City .. 28
Section 10.5  Implementation of Necessary Mitigation Measures ................. 29
Section 10.6  Cooperation in the Event of Legal Challenge ......................... 29
Section 10.7  Revision to Project ................................................................. 30
Section 10.8  State, Federal or Case Law ...................................................... 30
Section 10.9  Defense of Agreement ............................................................ 30
Section 10.10 Indemnity ............................................................................ 30

ARTICLE 11 ASSIGNMENT .................................................................................. 30
Section 11.1  Transfers and Assignments ...................................................... 30
Section 11.2  Release Upon Transfer ............................................................ 31

ARTICLE 12 DEFAULT; REMEDIES; TERMINATION ......................................... 32
Section 12.1  Breach and Default ................................................................. 32
Section 12.2  Termination .......................................................................... 32
Section 12.3  Legal Actions ......................................................................... 33
Section 12.4  Rights and Remedies Are Cumulative ...................................... 33
Section 12.5 No Consequential or Special Damages
Section 12.6 Resolution of Disputes
Section 12.7 Surviving Provisions
Section 12.8 Effects of Litigation
Section 12.9 California Claims Act

ARTICLE 13 MISCELLANEOUS PROVISIONS

Section 13.1 Incorporation of Recitals, Exhibits and Introductory Paragraph
Section 13.2 Severability
Section 13.3 Construction
Section 13.4 Covenants Running with the Land
Section 13.5 Notices
Section 13.6 Counterparts; Entire Agreement
Section 13.7 Recordation of Agreement
Section 13.8 No Joint Venture or Partnership
Section 13.9 Waivers
Section 13.10 California Law; Venue
Section 13.11 City Approvals and Actions
Section 13.12 Estoppel Certificates
Section 13.13 No Third Party Beneficiaries
Section 13.14 Signatures
Section 13.15 Further Actions and Instruments
Section 13.16 Attorneys’ Fees
Section 13.17 Limitation on Liability
## LIST OF EXHIBITS

<table>
<thead>
<tr>
<th>Exhibit</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exhibit A-1</td>
<td>Diagram Depicting Developer Parcels and City Parcels</td>
</tr>
<tr>
<td>Exhibit A-2</td>
<td>Legal Description of Developer Parcels</td>
</tr>
<tr>
<td>Exhibit A-3</td>
<td>Legal Description of City Parcels</td>
</tr>
<tr>
<td>Exhibit B</td>
<td>Impact Fees – FY 2015-16 Fee Schedule and City Council Resolution Approving Fee Schedule</td>
</tr>
<tr>
<td>Exhibit C</td>
<td>Intentionally Omitted</td>
</tr>
<tr>
<td>Exhibit D</td>
<td>Connection Fees – FY 2015-16 Fee Schedule and City Council Resolution Approving Fee Schedule</td>
</tr>
<tr>
<td>Exhibit E</td>
<td>Form of Assignment and Assumption Agreement</td>
</tr>
<tr>
<td>Exhibit F</td>
<td>Downtown Infrastructure Infill Incentive Program</td>
</tr>
<tr>
<td>Exhibit G</td>
<td>Assessments</td>
</tr>
<tr>
<td>Exhibit H</td>
<td>Downtown Financial Incentive Program Guidelines</td>
</tr>
<tr>
<td>Exhibit I</td>
<td>Public Facilities Fee Program Administrative Guidelines</td>
</tr>
</tbody>
</table>
DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") dated for reference purposes as of March 25, 2016 ("Agreement Date"), is entered into by and between OPEN WINDOW PROJECT, LLC, a California limited liability company ("Developer") and the CITY OF STOCKTON, a California municipal corporation ("City"). Developer and City are sometimes referred to individually herein as a "Party" and collectively as the "Parties."

REcITALS

The following recitals are a substantive part of this Agreement; capitalized terms used herein and not otherwise defined are defined in Section 1.1 of this Agreement.

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs and risk of development, the Legislature of the State of California enacted Section 65864 et seq. of the Government Code ("Development Agreement Statute") which authorizes a city and a developer having a legal or equitable interest in real property to enter into a binding, long-term development agreement, establishing certain development rights in the property.

B. In accordance with the Development Agreement Statute, the City has adopted a development agreement ordinance codified as Chapter 16.128 of the City's Municipal Code ("Development Agreement Ordinance"). The provisions of the Development Agreement Statute and the City's Development Agreement Ordinance are collectively referred to herein as the "Development Agreement Law." This Agreement has been drafted and processed pursuant to the Development Agreement Law.

C. Developer holds a legal or equitable interest in approximately 43 parcels comprising approximately 9.464 acres of land located in the City of Stockton, County of San Joaquin, in the downtown area bounded by East Miner Street to the north, Aurora Street to the east, East Main Street to the south, and North Sutter Street to the west. These parcels ("Developer Parcels") are depicted in Exhibit A-1 and more fully described in Exhibit A-2.

D. On or about March 24, 2015, the City, the Parking Authority of the City of Stockton ("Parking Authority") and Developer, entered into an Exclusive Negotiating Rights Agreement ("ENRA") with respect to Developer’s proposed acquisition of certain downtown parcels owned by City for incorporation into the development project that is the subject of this Agreement.

E. As contemplated by the ENRA, concurrently with the approval of this Agreement, City and the Parking Authority have approved the execution of a Purchase Option and Development Agreement ("City Option Agreement") pursuant to which Developer has the right to acquire five (5) City-owned parcels and three (3) Parking Authority-owned parcels collectively comprising approximately 2.42 acres of land and located within this same general area which are depicted in Exhibit A-1 and more particularly described in Exhibit A-3 ("City
Parcels”). The Developer Parcels and the City Parcels comprise approximately 11.884 acres of land and are collectively referred to herein as the “Property.”

F. Concurrently with the approval of this Agreement, City has approved a Master Development Plan for the Property (“Master Development Plan”) which sets forth the proposed development program, design guidelines, key development requirements and parameters for the Project (defined below), including without limitation setback requirements, permissible dwelling units per acre (DUA) and floor area ratio (FAR) ranges; development application review and approval provisions, and requirements for street trees, parking, sidewalks, public plazas and other amenities.

G. The Master Development Plan proposes a mixed-use development concept with up to 1,034 residential units, primarily built at higher densities as part of apartments or other multi-family unit developments, together with up to 200,000 square feet of retail space, up to 90,000 square feet of commercial space and up to 110,000 square feet of industrial/art studio space (collectively, the “Project”). The Master Development Plan may include residential development exceeding the 87 dwelling units on a parcel by parcel with an average density not exceeding 87 dwelling units per acre on any one block, consistent with current General Plan land use policies for density bonuses and consistent with other applicable general plan policies. However, the City is currently working on a General Plan update which is expected to address increased residential density in the downtown area. Therefore, for the purposes of the Project Initial Study, the analysis assumes that up to 1,400 residential units would be constructed, primarily built at higher densities as part of apartments or other multi-family unit developments.

H. This Agreement sets forth, among other things, the applicable fees, policies and zoning requirements that apply to development of the Project, and provides Developer with a vested right to develop the Project on the Property consistent with the Master Development Plan, the City’s General Plan, and the land use designations and zoning applicable to the Property, each as in effect as of the Effective Date.

I. The Project relies on the following analysis under the California Environmental Quality Act (“CEQA”) (set forth in Public Resources Code, section 21000 et seq.): a Mitigated Negative Declaration for the Master Development Plan adopted by the City Council on February 23, 2016 by Resolution No. 2016-02-23-1601-01 (“Mitigated Negative Declaration”) and corresponding Mitigation Monitoring and Reporting Plan. As part of the environmental review of the Project, the City, pursuant to SB 610 (codified at California Public Resources Code section 21151.9 and Water Code sections 10631 et seq.), requested and received from California Water Service Company a prepared by Yarne & Associates, Inc. (“Water Supply Assessment”), which Water Supply Assessment demonstrates that there will be adequate water supplies to meet the demands of the proposed Project, and the existing and other planned development within the City.

J. Prior to or concurrently with approval of this Agreement, the City has taken numerous actions in connection with the development of the Project on the Property, including adoption of the Master Development Plan by Resolution No. 2016-02-23-1601-01. The approvals described in Recital I and this Recital J, together with this Agreement, are collectively referred to herein as the “Existing Approvals.”
K. City has determined that by entering into this Agreement, City will further the purposes set forth in the Development Agreement Ordinance, and City will benefit from the increased range of housing options, retail establishments, employment opportunities, and renovation of abandoned and underdeveloped property, and publicly accessible civic and recreational space created by the Project for residents of City.

L. For the reasons recited herein, City and Developer have determined that the Project is a development for which this Agreement is appropriate. This Agreement will eliminate uncertainty regarding Existing Approvals and Subsequent Project Approvals, thereby encouraging planning for, investment in, and commitment to use and development of the Property. Continued use and development of the Property will in turn provide substantial employment, tax, and other public benefits to the City, contribute to the revitalization of downtown Stockton, and provide expanded housing, employment, retail and recreational opportunities for Stockton residents, thereby achieving the goals and purposes for which the Development Agreement Law was enacted.

M. The terms and conditions of this Agreement have undergone review by City staff, the Planning Commission and the City Council at publicly noticed meetings, and have been found to be fair, just and reasonable, in conformance with the Development Agreement Law and the goals, policies, standards and land use designations specified in the General Plan, and consistent with the requirement under Government Code Section 65867.5, and further, the City Council finds that the economic interests of City’s citizens and the public health, safety and welfare will be best served by entering into this Agreement.

N. On January 14, 2016, the Planning Commission, the initial hearing body for purposes of development agreement review, recommended approval of this Agreement to the City Council. On February 23, 2016, the City Council adopted Ordinance No. 2016-02-23-1601 approving this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and provisions set forth herein, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

**AGREEMENT**

**ARTICLE 1 DEFINITIONS**

Section 1.1 Definitions.

“Additional Benefitted Properties” is defined in Section 5.4D.

“Administrative Amendment” is defined in Section 9.6.

“Agreement” means this Development Agreement.

“Agreement Date” means the reference date identified in the preamble to this Agreement.
"Annual Review" is defined in Section 7.1A.

"Annual Review Form" is defined in Section 7.1B.

"Applicable City Regulations" means (a) the permitted uses of the Property, the maximum density and/or total number of residential units, the intensity of use, the maximum height and size of the proposed buildings, provisions for reservation or dedication of land for public purposes, the conditions, terms, restrictions, and requirements for subsequent discretionary actions, the provisions for public improvements and financing of public improvements, and other terms and conditions of development applicable to the Property as set forth in the General Plan on the Effective Date, the Master Development Plan on the Effective Date, the Municipal Code of the City on the Effective Date, and the other ordinances, policies, rules, regulations, standards and specifications of the City in effect on the Effective Date; (b) New City Laws that apply to the Property as set forth in Section 4.1, Section 4.3C or Section 4.3D herein; and (c) regulations that apply to the Property as set forth in Section 4.3A and 4.3B herein.

"Applicable Law" means (a) all State and Federal laws and regulations applicable to the Property and the Project as enacted, adopted and amended from time to time, and (b) the Applicable City Regulations.

"CEQA" is defined in Recital I.

"Changes in the Law" is defined in Section 4.8.

"City" means the City of Stockton, a California municipal corporation.

"City Option Agreement" is defined in Recital E.

"City Parcels" is defined in Recital E.

"City Parties" means City and its elected and appointed officials, officers, agents, employees, contractors and representatives.

"City Council" means the City Council of the City of Stockton.

"Connection Fees" means those fees charged by City or by a utility provider to utility users as a cost for connecting to water, sanitary sewer and other applicable utilities.

"Default" is defined in Section 12.1.

"Developer" means Open Window Project, LLC, a California limited liability company, and its permitted assignees and successors-in-interest under this Agreement.

"Developer Affiliate" means an entity which controls, is controlled by, or under common control with Developer.

"Developer Parcels" is defined in Recital C.
“Development Agreement Law” is defined in Recital B.

“Development Agreement Ordinance” is defined in Recital B.

“Development Agreement Statute” is defined in Recital A.

“Downtown Financial Incentive Program” means the program established by City Council Resolution No. 99-0583 for the rehabilitation and reuse of vacant buildings adopted on December 14, 1999. A copy of the Downtown Financial Incentive Program is attached hereto as Exhibit H.

“Effective Date” is defined in Section 3.1.

“Eligible Public Facilities” is defined in Section 5.2C.

“ENR Index” means the Construction Cost Index for San Francisco, as published from time to time by the Engineering News Record.

“ENRA” is defined in Recital D.

“Exactions” means exactions imposed by City as a condition of developing the Project, including requirements for acquisition, dedication or reservation of land, and obligations to construct on-site or off-site public and private infrastructure improvements such as roadways, utilities or other improvements necessary to support the Project, whether such exactions constitute subdivision improvements, mitigation measures in connection with environmental review of the Project, or impositions made under Applicable City Regulations. For purposes of this Agreement, Exactions do not include Impact Fees.

“Existing Approvals” is defined in Recital J.

“Extension Condition” is defined in Section 3.2A(3).

“Extension Request” is defined in Section 3.2A(3).

“Force Majeure Delay” is defined in Section 3.2D.

“General Plan” means the General Plan of the City of Stockton in effect as of the Effective Date.

“Home Price Index” is defined in Section 3.2D.

“Impact Fee Resolutions” means the following Stockton City Council Resolutions: Resolution No. 10-0309 (Resolution Reducing Certain Public Facilities Fees as Part of Stockton’s Economic Recovery Incentive Program) adopted on September 14, 2010, Resolution No. 2016-01-12-1206 adopted on January 12, 2016 (extending the period of fee reductions to December 31, 2018), and, to the extent future Impact Fees are less than the Impact Fees in effect as of the Effective Date, those future Stockton City Council Resolutions implementing the Impact Fee reductions.
“Impact Fees” means the monetary fees and impositions, other than taxes and assessments, and also referred to as “Public Facilities Fees,” charged by City in connection with a development project for the purpose of defraying all or a portion of the cost of mitigating the impacts of a development project or development of the public facilities and services related to a development project, including any “fee” as that term is defined by Government Code section 66000(b). For purposes of this Agreement, a monetary fee or imposition that meets both the definition of an Impact Fee and the definition of an Exaction will be considered an Impact Fee.

“Initial Term” is defined in Section 3.2A(1).

“Insubstantial Amendment” is defined in Section 9.2.

“Litigation Challenge” is defined in Section 10.6B.

“Master Development Plan” is defined in Recital F, and means the Master Development Plan for the Project approved by the City Council concurrently with this Agreement, as amended from time to time.

“Maximum City Reimbursement” is defined in Section 5.4B.

“Mitigated Negative Declaration” is defined in Recital I.

“MMRP” means the Mitigation Monitoring and Reporting Program adopted by the City Council in connection with its approval of the Mitigated Negative Declaration for the Project.

“Mortgage” is defined in Section 8.1.

“Mortgagee” is defined in Section 8.1.


“New City Laws” means and includes any ordinances, resolutions, orders, rules, official policies, standards, specifications, guidelines or other regulations, which are promulgated or adopted by the City (including but not limited to any City agency, body, department, officer or employee) or its electorate (through the power of initiative or otherwise) after the Effective Date.

“Non-Intended Prevailing Wage Requirement” is defined in Section 5.5B.

“Notice” is defined in Section 13.5.

“Other Agency Fees” is defined in Section 5.1D.

“Other Agency Subsequent Project Approvals” means Subsequent Project Approvals to be obtained from entities other than City or any City agency, body or department.

“Parking Authority” is defined in Recital D.
“Party/Parties” is defined in the introductory paragraph preceding the Recitals of this Agreement.

“Permitted Transfers” is defined in Section 11.1B.

“Planning Commission” means the Planning Commission of the City of Stockton.

“Prevailing Wage Components” is defined in Section 5.5A.

“Prevailing Wage Laws” is defined in Section 5.5A.

“Processing Fees” means all fees charged on a City-wide basis to cover the cost of City processing of development project applications, including plan checking (time and materials) and inspection and monitoring for land use approvals, design review, grading and building permits, General Plan maintenance fees, and other permits and entitlements required to implement the Project, which are in effect at the time those permits, approvals or entitlements are applied for, and which fees are intended to cover the City’s actual and reasonable costs of processing the foregoing.

“Project” is defined in Recital G.

“Project Approvals” means the Existing Approvals and, when and as approved in accordance with the terms of this Agreement, the Subsequent Project Approvals.

“Property” is defined in Recital E.

“Public Improvements” is defined in Section 5.4A.

“Public Facilities Fee Program Administrative Guidelines” means the Public Facilities Fee Program Administrative Guidelines adopted by the City Council to implement Municipal Code section 16.72.260 (as such guidelines were amended pursuant to City Council Resolution No. 11-0161 adopted June 21, 2011), as such guidelines are in effect as of the Effective Date. A copy of the Public Facilities Fee Program Administrative Guidelines is attached hereto as Exhibit I.

“Severe Economic Recession” is defined in Section 3.2D.

“Subsequent Project Approvals” is defined in Section 10.1.

“Term” is defined in Section 3.2.

“Transfer” is defined in Section 11.1A.

“Water Supply Assessment” is defined in Recital I.
ARTICLE 2 GENERAL PROVISIONS

Section 2.1 Ownership of Property. The Parties hereby acknowledge that, as of the Effective Date, Developer has either a fee interest or an equitable interest in all of the parcels comprising the Property by virtue of Developer's fee ownership thereof, or Developer's contractual rights to purchase the City Parcels pursuant to the City Option Agreement and certain of the Developer Parcels pursuant to private third-party agreements. If fee title to all of the parcels in which Developer has an equitable interest is not acquired by Developer or a Developer Affiliate by the fifth (5th) anniversary of the Effective Date or such later date as City and Developer may mutually agree, then those parcels as to which Developer or a Developer Affiliate has not acquired fee title shall be excluded from the definition of the "Property" and, upon request by either Party, City and Developer shall execute, acknowledge and record and amendment to this Agreement memorializing the deletion of such parcel or parcels from the Property that is the subject of this Agreement.

Section 2.2 City Representations and Warranties. City represents and warrants to Developer that:

A. City is a municipal corporation, validly existing and in good standing under the laws of the State of California, and has all necessary powers under the laws of the State of California to enter into and perform the undertakings and obligations of City under this Agreement.

B. The execution and delivery of this Agreement and the performance of the obligations of City hereunder have been duly authorized by all necessary City Council actions and all necessary approvals have been obtained.

C. This Agreement is a valid obligation of City and is enforceable in accordance with its terms.

The foregoing representations and warranties are made as of the Agreement Date. During the Term of this Agreement, City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.2 not to be true, immediately give written Notice of such fact or condition to Developer.

Section 2.3 Developer Representations and Warranties. Developer represents and warrants to City that:

A. Developer is duly organized, validly existing and in good standing under the laws of the State of California and has all necessary powers under the laws of the State of California to own property and in all other respects enter into and perform the undertakings and obligations of Developer under this Agreement.

B. The execution and delivery of this Agreement and the performance of the obligations of Developer hereunder have been duly authorized by all necessary corporate, partnership or company action and all necessary shareholder, member or partner approvals, as applicable, have been obtained.
C. This Agreement is a valid obligation of Developer and is enforceable in accordance with its terms.

D. Developer has a legal or equitable interest in each of the Parcels comprising the Property.

The foregoing representations and warranties are made as of the Agreement Date. During the Term of this Agreement, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.3 not to be true, immediately give written Notice of such fact or condition to City.

ARTICLE 3 EFFECTIVE DATE AND TERM

Section 3.1 Effective Date. This Agreement shall become effective upon the date that the ordinance approving this Agreement becomes effective ("Effective Date").

Section 3.2 Term.

A. Term of Agreement. Except as to those rights and obligations that expressly extend beyond the stated Term of this Agreement, the "Term" of this Agreement shall commence as of the Effective Date and shall continue for the Initial Term as defined in subsection (1) below, plus the duration of any extension as provided in subsection (2) below, or until earlier terminated by mutual consent of the Parties or as otherwise provided by this Agreement.

1. Initial Term of Agreement. The "Initial Term" of this Agreement shall be ten (10) years, commencing on the Effective Date and expiring on the tenth (10th) anniversary thereof.

2. Extensions. Subject to the terms and conditions in this Section 3.2, Developer shall have the right to seek extension of the Initial Term for two (2) additional five (5)-year terms. In order to obtain the first five-year extension, Developer must have substantially completed construction of at least three hundred (300) residential units on the Property, or portions thereof, by the end of the Initial Term. In order to obtain the second five-year extension, Developer must have substantially completed at least six hundred (600) residential units on the Property, or portions thereof, by the end of the first five-year extension.

3. Extension Request. If Developer desires to seek an extension, Developer must submit a letter addressed to the City Manager requesting such extension ("Extension Request"). The Extension Request shall include documentation in a form reasonably acceptable to City demonstrating that the applicable extension condition described in subsection (2) above ("Extension Condition") has been satisfied, or will be satisfied, prior to the date that the Initial Term or the first extension period, as applicable, would otherwise expire.

4. Extension Review. Within 30 days of receipt of the Extension Request and accompanying documentation, the City Manager shall determine whether the Extension Condition has been or will be satisfied. If the City Manager concludes that the Extension Condition has been or will be satisfied, then he or she shall grant the Extension
Request and provide written notice, in a recordable form, that the Agreement has been extended for the extension period, and the Initial Term shall be extended accordingly. If the City Manager determines the Extension Condition has not been satisfied or if there is any dispute regarding whether or not the Extension Condition will be satisfied by the date specified in subsection (2) above, then the Developer shall have 10 business days to present to the City Manager a letter providing written notice of the Developer's appeal of the City Manager's determination to the City Council. The City Council shall hear such an appeal within 30 days of City's receipt of the letter providing written notice of the appeal. If the City Council determines that the Extension Condition has been satisfied, then the City Council shall direct the City Manager to grant the Extension Request and provide Developer written notice, in a recordable form, that the applicable Extension Request has been granted and the Initial Term shall be extended accordingly. If the City Council determines that the Extension Condition has not been satisfied, then the City Council shall document such findings in its action denying the Extension Request. The City Council's decision shall be final, subject to Developer's ability to pursue available remedies as provided in Section 12.3 below.

(5) Memorandum of Extension. Within ten days after the written request of either Party, City and Developer agree to execute, acknowledge and record in the Official Records of San Joaquin County a memorandum evidencing any approved extension of the Term pursuant to this Section 3.2.

B. Termination Upon Expiration of Term. Upon the expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect, subject, however, to the provisions set forth in Section 3.2D and Section 12.7 below.

C. Termination Upon Completion of Project Components. This Agreement shall automatically terminate with respect to each completed Project component (including, without limitation, each completed residential unit, multi-family building, mixed-use building, non-residential building, or residential or commercial condominium unit), and the lots or parcels upon which such components have been constructed, and such lots, parcels and completed components shall be released and no longer be subject to this Agreement, without the execution or recordation of any further document, when a certificate of occupancy has been issued for the dwelling unit(s), commercial spaces or other structures constructed on such property, parcels or lots.

D. Force Majeure Delay; Extension of Times of Performance. The Term of this Agreement and the Project Approvals and the time within which either Party shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control of the Party seeking the delay by strikes, lock outs and other labor difficulties; Acts of God; inclement weather; failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body; changes in local, state or federal laws or regulations; any development moratorium or any action of other public agencies that regulate land use, development or the provision of services that prevents, prohibits or delays construction of the Project, including without limitation any extension authorized by Government Code Section 66463.5(d); enemy action; civil disturbances; wars; terrorist acts; fire; unavoidable casualties; mediation, arbitration, litigation or other administrative or judicial
proceeding involving this Agreement or the Project Approvals, including without limitation any extension authorized by Government Code Section 66463.5(e); Severe Economic Recessions; or other similar event beyond the reasonable control of the Party (each a "Force Majeure Delay"). An extension of time for any such cause shall be for the period of the Force Majeure Delay or longer, as may be mutually agreed upon by the Parties. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City Manager and Developer. "Severe Economic Recession" means a significant decline in the residential real estate market, as measured by a decline of more than four percent (4%) in the Home Price Index during the preceding twelve (12) month period. Severe Economic Recession shall continue prospectively on a quarterly basis and remain in effect until the Home Price Index increases for three (3) successive quarters. "Home Price Index" means the quarterly index published by the Federal Housing Finance Agency representing home price trends for the Stockton-Lodi Metropolitan Statistical Area. If the Home Price Index is discontinued, Developer and the City shall approve a substitute index that tracks the residential market with as close a geography to the Stockton-Lodi Metropolitan Statistical Area as possible.

E. Findings Regarding Duration of Term. The Term has been established by the Parties as a reasonable estimate of the time required to carry out the Project, develop the Property, and obtain the public benefits of the Project. City finds that a Term of such duration is reasonably necessary to assure City of the realization of the public benefits from the Project. In establishing and agreeing to such Term, City has determined that this Agreement incorporates sufficient provisions to permit City to monitor adequately and respond to changing circumstances and conditions in granting permits and approvals and undertaking regulatory actions to carry out the Project.

ARTICLE 4 DEVELOPMENT OF PROPERTY

Section 4.1 Vested Rights. City hereby grants to Developer a vested right to develop and construct the Project on the Property, including all on-site improvements and off-site improvements located within the public right-of-way authorized by, and in accordance with, the Project Approvals and this Agreement. As noted in Recital G, City is currently working on a General Plan update which is expected to address residential density in the downtown area, and it is anticipated that the downtown area may be identified for higher residential density limits than those allowed under the current General Plan. If the General Plan is amended to increase the downtown densities, the maximum residential densities for the Project, as set forth in the Existing Approvals, will be automatically increased (but in no event decreased) to the levels set forth in the General Plan as it may be amended in connection with such General Plan update review. Except as otherwise provided in this Agreement, no New City Laws that conflict with this Agreement, the Applicable City Regulations, or the Project Approvals shall apply to the Project or the Property. For purposes of this Section 4.1 and Sections 4.3 and 4.6, the word "conflict" means any modification that purports to: (i) limit the permitted uses of the Property, the maximum density and intensity of use (including but not limited to floor area ratios, dwelling units per acre or the overall maximum number of residential units), or the maximum height or size of proposed buildings in a manner that is inconsistent with the Existing Approvals; (ii) impose Exactions, other than as expressly provided in the Existing Approvals; (iii) impose conditions upon development of the Property other than as permitted by Applicable Law, Changes in the Law, and the Existing Approvals; (iv) limit the timing, phasing, sequencing, or
rate of development of the Property or delay in a more than insignificant way the development of the Project; (v) limit the location of building sites, grading or other improvements on the Property in a manner that is inconsistent with the Existing Approvals; (vi) limit or control the ability to obtain public utilities, services, infrastructure, or facilities (provided, however, nothing herein shall be deemed to exempt the Project or the Property from any water use rationing requirements that may be imposed on a City-wide basis from time to time in the future); (vii) require the issuance of additional permits or approvals by the City other than those required by Applicable Law and the Existing Approvals; (viii) limit the processing or procuring of applications and approvals of Subsequent Project Approvals; (ix) materially increase the cost of performance of, or preclude compliance with, the Project Approvals; (x) increase the permitted Impact Fees or add new Impact Fees; (xi) establish, enact, increase, or impose against the Project or the Property any fees, special taxes or assessments other than those specifically permitted by this Agreement, including Section 5.6; (xii) apply to the Project any New City Laws that are not uniformly applied on a City-wide basis to all substantially similar types of development projects and project sites (i.e., to all for sale residential projects, to all rental residential projects, to all office projects, to all mixed-use projects etc.); or (xiii) impose against the Project any condition, dedication or other Exaction not specifically authorized by Applicable Law or the Existing Approvals. To the extent that New City Laws conflict with the vested rights granted pursuant to this Agreement, they shall not apply to the Property or the Project, except as provided in Section 4.3, below.

Section 4.2 Development and Design Standards. The Project shall be developed in substantial conformance with the Existing Approvals and Applicable City Regulations, including the General Plan, the Master Development Plan, and the City Zoning Ordinance, each as in effect as of the Effective Date, and the yet-to-be adopted Subsequent Project Approvals. Except as otherwise provided in this Agreement, the City’s ordinances, resolutions, rules, regulations, and official policies governing the permitted uses of the Project, density and intensity of development, height and size of proposed buildings, and development standards shall be those in force on the Effective Date. Project design and materials will need to meet high-quality urban design standards which are outlined in general terms in the General Plan and specifically set forth in the Master Development Plan. City’s review of applications for design review of particular elements or phases of the Project shall be in accordance with the Existing Approvals and the Applicable City Regulations.

Section 4.3 Reservations of Authority. Notwithstanding any other provision of this Agreement to the contrary, the following regulations and provisions shall apply to the development of the Project:

A. Existing or new regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure, provided such procedures are applied on a city-wide basis to all substantially similar types of development projects and properties.

B. Existing or new regulations governing construction standards and specifications, including City’s building code, plumbing code, mechanical code, electrical code, fire code and grading code, and all other uniform construction codes then applicable in the City at the time of building permit application.
C. Any New City Laws applicable to the Property or Project, which do not
conflict with this Agreement or the Project Approvals.

D. New City Laws adopted on a uniformly applied, city-wide or area-wide
basis, which may be in conflict with this Agreement, but which are necessary to protect persons
or property from dangerous or hazardous conditions which create an immediate threat to the
public health or safety or create a physical risk, based on findings by the City Council identifying
the dangerous or hazardous conditions requiring such changes in the law, why there are no
feasible alternatives to the imposition of such changes, and how such changes would alleviate the
dangerous or hazardous condition, shall be applied to Developer in a uniform, equitable, and
proportionate manner along with all other properties, public and private, which are impacted by
that public health or safety concern.

Section 4.4 Regulation by Other Public Agencies. Developer acknowledges and
agrees that other public agencies not within the control of City possess authority to regulate
aspects of the development of the Property separately from or jointly with City, and this
Agreement does not limit the authority of such other public agencies. Developer shall, at the
time required by Developer in accordance with Developer’s construction schedule, apply for all
such other permits and approvals as may be required by other governmental or quasi-
governmental entities in connection with the development of, or the provision of services to, the
Project. City shall cooperate in good faith with Developer in Developer’s effort to obtain such
permits and approvals.

Section 4.5 Life of Project Approvals. The term of any and all Project Approvals
shall automatically be extended for the longer of the Term of this Agreement or the term
otherwise applicable to such Project Approvals. In the event that this Agreement is terminated
prior to the expiration of the Term, the term of any Project Approval and the vesting period for
any subdivision map approved as a Project Approval shall be the term otherwise applicable to
the approval, which shall commence to run on the date that the termination of this Agreement
takes effect.

Section 4.6 Initiatives. If any New City Law is enacted or imposed by an initiative or
referendum, which New City Law would conflict with the Project Approvals or this Agreement
or reduce the development rights or assurances provided by this Agreement, such New City Law
shall not apply to the Property or Project; provided, however, the Parties acknowledge that City’s
approval of this Agreement is a legislative action subject to referendum. Without limiting the
generality of the foregoing, no moratorium or other limitation (whether relating to the rate,
timing, phasing or sequencing of development, whether imposed by ordinance, initiative,
resolution, policy, order or otherwise, and whether enacted by the City Council, an agency of
City, the electorate, or otherwise) affecting subdivision maps, use permits, building permits,
occupancy permits, or other entitlements to use that are approved or to be approved, issued or
granted by City shall apply to the Property or Project. City shall cooperate in good faith with
Developer and undertake such actions as may be reasonably necessary to ensure this Agreement
remains in full force and effect. City, except to submit to vote of the electorate initiatives and
referendums required by law to be placed on a ballot and fulfill any legal responsibility to defend
a ballot measure passed by its voters, shall not support, adopt or enact any New City Law, or
take any other action which would violate the express provisions or spirit and intent of this Agreement.

Section 4.7 Timing of Development. City and Developer acknowledge that Developer cannot at this time predict which portions of the Project will be included within any particular phase of the Project, when or the rate at which the phases will be developed, or the order in which each phase will be developed. Such decisions depend on numerous factors that may not be fully within the control of Developer, such as market demand, interest rates, absorption, availability of financing and other similar factors. In particular, and not in limitation of any of the foregoing, since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo, 37 Cal. 3d 465 (1984), that the failure of the parties therein to consider, and expressly provide for, the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties’ agreement, it is the desire of the Parties hereto to avoid that result. Therefore, notwithstanding the adoption of an initiative after the Effective Date by City’s electorate to the contrary, the Parties acknowledge that Developer shall have the vested right (but not the obligation) to develop the Project in such order and at such rate and at such times as Developer deems appropriate in the exercise of its business judgment, consistent with the provisions of this Agreement and Project Approvals.

Section 4.8 Changes in the Law. As provided in Section 65869.5 of the Development Agreement Law, this Agreement shall not preclude the applicability to the Project of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by (i) changes in State or Federal laws or (ii) any regional governmental agency that, due to the operation of State law (and not the act of City through a memorandum of understanding, joint exercise of powers authority, or otherwise that is undertaken or entered into following the Effective Date) (“Changes in the Law”). In the event Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, the Parties shall meet and confer in good faith in order to determine whether such provisions of this Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with Changes in the Law. Following the meeting between the Parties, the provisions of this Agreement may, to the extent feasible, and upon mutual agreement of the Parties, be modified or suspended, but only to the minimum extent necessary to comply with such Changes in the Law. In such event, this Agreement together with any required modifications shall continue in full force and effect. In the event that the Changes in the Law operate to frustrate irremediably and materially the vesting of development rights to the Project as set forth in this Agreement, Developer may terminate this Agreement by Notice to City. Nothing in this Agreement shall preclude Developer from contesting by any available means (including administrative or judicial proceedings) such Changes in the Law or their applicability to the Project and, in the event that such challenge is successful, this Agreement shall remain unmodified and in full force and effect, the times of performance extended in accordance with Section 3.2D, and, if the Term of this Agreement would otherwise terminate during the period of any such challenge, the Term shall be extended for the period of any such challenge.

Section 4.9 Expansion of Development Rights. If any New City Laws or Changes in the Law expand, extend, enlarge or broaden Developer’s rights to develop the Project, then, (i) if such law is mandatory, the provisions of this Agreement shall be modified as may be necessary to comply or conform with such new law, and (ii) if such law is permissive, the provisions of this
Agreement may be modified, upon the mutual agreement of Developer and City. Immediately after enactment of any such new law, upon Developer's request, the Parties shall meet and confer in good faith to prepare such modification in the case of a mandatory law or to discuss whether to prepare a proposed modification in the case of a permissive law. Developer shall have the right to challenge City's refusal to apply any new law mandating expansion of Developer's rights under this Agreement, and in the event such challenge is successful, this Agreement shall be modified to comply with, or conform to, the new law.

Section 4.10 Wastewater, Sanitary Sewer and Potable Water Capacity. Based on the Water Supply Assessment and other relevant utility and resource capacity studies and planning documents, City has found the Project to be consistent with the General Plan which anticipates that there will be sufficient potable water, as provided by the California Water Service Company ("Cal Water"), and sanitary sewer capacity, as provided by the City's Municipal Utility Department ("MUD"), to serve future development contemplated by the General Plan, including the Project. However, as noted in Section 4.1 above, nothing in this Agreement is intended to exempt the Project or the Property from any water use rationing requirements that may be imposed on a City-wide basis from time to time in the future. In the event Developer's lenders or financing partners request issuance of sanitary sewer "will serve" letters as a condition of providing debt or equity financing for the Project, City agrees to issue such letters on terms reasonably acceptable to City consistent with Sections 4.10A and 4.10B.

A. Wastewater Provisions. The City agrees to the following allocations of wastewater as set forth below, which will constitute the "will serve" obligation of the City for the Project. Developer's rights to such allocations shall be vested for the Term of this Agreement.

Daily allocation of up to 578,000 gallons per day (gpd) of treatment capacity (inclusive of existing use), which includes a reserve of 80,000 gpd.

Wastewater connection fees will be the lower of (i) the rates in effect at the time of connection, or (ii) the FY 2015-16 rates as set forth in Exhibit D, in each case, subject to any generally applicable fee reductions.

Developer shall be entitled to purchase the entire wastewater allocation upon issuance of the first building permit for the Project, or in phases, as needed. The City will allow lot to lot and parcel to parcel transfer of credits.

Nothing herein shall be deemed to prohibit City from requiring sanitary sewer and/or storm water facility analysis to examine the anticipated sewer and storm water generation from each proposed building that contributes new flows to sanitary sewer lines and mains and/or storm water facilities in the Master Development Plan area and determine pipe and facility size capacities. Consistent with MMRP Mitigation Measures UTIL-1, if such analysis reveals that existing lines and/or mains are inadequate to handle the net new sanitary sewer output (gallons per day) or storm water flow of each such building, City may require as a condition of building approval that Developer cause the inadequate sanitary sewer lines and/or mains and/or storm water facilities, as applicable, to be replaced or upsized to support development of such building, including at downstream locations, either as part of the proposed building development or in
conjunction with any City plans for sanitary sewer line or storm water facility replacements or upsizing.

B. Potable Water Provisions. Developer shall be responsible for obtaining rights to an allocation from Cal Water for the Project of up to 1.77 acre feet (inclusive of existing use) of potable water, which includes a reserve of up to 0.24 acre feet to serve the Project. City, at Developer’s expense, will cooperate with Developer in its efforts to obtain vesting of such water rights.

Section 4.11 Project Approvals and Applicable City Regulations. Prior to the Effective Date, the Parties shall have prepared two (2) sets of the Existing Approvals and Applicable City Regulations, one (1) set for City and one (1) set for Developer, to which shall be added from time to time, Subsequent Project Approvals, so that if it becomes necessary in the future to refer to any of the Project Approvals or Applicable City Regulations, there will be a common set available to the Parties.

ARTICLE 5 OTHER RIGHTS AND OBLIGATIONS OF THE PARTIES

Section 5.1 Developer Fees.

A. Impact Fees. No Impact Fees shall be applicable to the Project except as provided in the Existing Approvals. City understands that the assurances by City concerning Impact Fees set forth below were a material consideration for Developer agreeing to pay the Impact Fees set forth in this Agreement and the Existing Approvals and provide the public benefits described in this Agreement and the Master Development Plan. Developer shall pay when due (subject to Section 5.2D below) all existing Impact Fees applicable to the Project (as shown in Exhibit B), if any, at the lower of (i) the rates in effect as of the Effective Date (including all fee reduction credits available pursuant to the Impact Fee Resolutions), or (ii) the rates in effect when such existing Impact Fees are due and payable. If, following the Effective Date, City should adopt an Impact Fee reduction program which temporarily reduces applicable Impact Fees below the Impact Fees in effect as of the Effective Date, Developer shall receive the benefit of the reduced Impact Fees only for so long as the temporary fee reduction remains in effect. Developer shall not be required to pay (a) any escalations in such Impact Fees, or (b) any new Impact Fees enacted or established after the Effective Date. The Impact Fees itemized on Exhibit B represent the Parties’ good faith effort to identify the Impact Fees applicable to the Project as of the Effective Date. Developer, at its option, may decline the protections from new Impact Fees afforded by this Section 5.1A and elect, if it so chooses, to pay some or all new Impact Fees that may be adopted by City after the Effective Date.

B. Processing Fees. Subject to Developer’s right to protest and/or pursue a challenge in law or equity to any applicable Processing Fees, City may charge, and Developer agrees to pay, all Processing Fees in effect on a City-wide basis from time to time at the rates in effect on the date the building, design review or other permit application is submitted to City.

C. Connection Fees. Developer shall pay Connection Fees assessed by third-party utility providers and other agencies assessing such fees at the rates in effect from time to time. The Connection Fees itemized on Exhibit D represent the Parties’ good faith effort to identify Connection Fees in effect as of the Effective Date.
D. **Other Agency Fees.** Nothing in this Agreement shall preclude City from collecting fees from Developer that are lawfully imposed on the Project by another agency having jurisdiction over the Project, which the City is required to collect pursuant to Applicable Law ("Other Agency Fees").

Section 5.2 Fee Credits. Developer shall receive credit for the payment of Impact Fees in accordance with the provisions of Municipal Code Section 16.72.260.D, the Public Facilities Fee Program Administrative Guidelines, and this Section 5.2.

A. Fees Credits Generally.

1. For each public facility for which Developer desires to receive a credit/reimbursement against Impact Fees, Developer shall submit to City a request for credit/reimbursement in accordance with Municipal Code Section 16.72.260.D and the Public Facilities Fee Program Administrative Guidelines. Developer shall then enter into an agreement for credit/reimbursement with City at the time specified in Section 16.72.260.D and the Public Facility Fee Program Administrative Guidelines. City shall not unreasonably withhold or delay its approval of any of Developer's fee credit/reimbursement requests, and shall specify in writing to Developer within forty-five (45) days after receipt of any such fee credit/reimbursement request any additional information required by City in order for Developer to obtain such credit/reimbursement.

2. For each public facility for which Developer desires to receive a fee credit/reimbursement against Impact Fees, Developer and City shall enter into an agreement in accordance with Municipal Code Section 16.72.260 and the Public Facilities Fee Program Administrative Guidelines, which shall specify the amount of the credit/reimbursement. The fee credit/reimbursement agreement shall be in a form reasonably acceptable to City Attorney and shall be entered into at the time of the improvement agreement covering the applicable public facility. In accordance with Municipal Code Section 16.72.260 and the Public Facilities Fee Program Administrative Guidelines, the amount of credit/reimbursement available to Developer for land dedication shall be equal to the amount identified under Municipal Code Section 16.72.260 and the Public Facilities Fee Program Administrative Guidelines, and the amount of credit/reimbursement available to Developer for facilities shall not exceed Developer's actual costs of providing the specified public facility, to be evidenced by the submittal of written documentation to the satisfaction of the City's Director of Community Development in accordance with the Public Facilities Fee Program Administrative Guidelines. Developer's costs shall include actual hard and soft out-of-pocket costs, including without limitation land use planning design and engineering costs and permit and construction fees. All such costs shall be evidenced by Developer's submission of paid invoices or other documentation reasonably acceptable to City. For purposes of Municipal Code Section 16.72.260 and the Public Facilities Fee Program Administrative Guidelines, City finds that it is in City's best interest to allow Developer to provide the Public Improvements.

3. City shall maintain a record of each fee credit for which City and Developer enter into a fee credit agreement. Each time an Impact Fee is due in accordance with Municipal Code Section 16.72.260, City shall determine if Developer has an applicable fee credit available, and if so, City shall apply the fee credit against the Impact Fees due, until the
applicable fee credit is exhausted. After an applicable fee credit is exhausted, Impact Fees shall be calculated in accordance with Section 5.1A, above.

B. Parkland Dedication Fees and Credits.

(1) In connection with subdivisions for residential development, Stockton Municipal Code Section 16.72.060.C, requires the dedication of parkland and/or the payment of parkland dedication Impact Fees in lieu thereof, sufficient to meet the City’s parkland requirement as calculated under the following formula:

\[ X = 0.003(\text{UP}) \]

with:

- \( X \) = Amount of park land required, in acres
- \( U \) = Total number of approved dwelling units in the subdivision
- \( P \) = The projected average number of residents per dwelling unit in the proposed subdivision, as determined by the Director.

(2) Given the urban infill nature of the Project, the Parties agree that parkland dedications will not be required. Rather, Developer shall be required to pay parkland dedication in lieu Impact Fees pursuant to Municipal Code Section 16.72.060.C.4 and the City’s parkland in lieu fee Administrative Guidelines, and in accordance with Section 5.1A above. Notwithstanding the foregoing, if (i) Developer and City mutually agree to include within the Project one or more public parklets, public mini parks or other similar public parkland areas; (ii) such areas are irrevocably offered for dedication, in fee or via easement, to the City; and (iii) such areas otherwise meet the requirements of City’s applicable park standards and guidelines, then Developer shall receive a credit against parkland dedication Impact Fees for the land on which such parklets, mini-parks or other similar parks facilities are located.

(3) In calculating the amount of the parkland dedication in lieu Impact Fees required in connection with the residential portion of the Project, Developer shall receive a credit for any residential units existing on the Property as of the Effective Date (regardless of whether such units are vacant or occupied, and regardless of whether such units will be demolished or renovated) so that only the net additional dwelling units to be added by the Project shall be subject to the parkland dedication in lieu Impact Fee.

C. Public Facilities Fees and Credits. Developer shall receive a credit against applicable public facilities Impact Fees, to the extent any are due, for the hard and soft costs of constructing all Eligible Public Facilities. “Eligible Public Facilities” means and includes that portion of the Public Improvements (defined in Section 5.4 below) that can be financed with public facilities Impact Fees assessed by City pursuant to Stockton Municipal Code section 16.72.260 and City’s implementing regulations. To the extent Developer pays for construction of Eligible Public Facilities but is unable to take advantage of Impact Fee credits because no Impact Fees are due and payable, City shall have no obligation to reimburse Developer from City general fund monies, but Developer shall be entitled to seek reimbursement from owners/developers of Additional Benefitted Properties as provided in Section 5.4D below.
D. **Fee Deferrals.** Notwithstanding any contrary provision of this Agreement, Developer may elect to apply for, and City shall consent to, deferred payment of all or a portion of Impact Fees, Processing Fees and/or Connection Fees in accordance with, and to the extent permitted by, the applicable provisions of the Public Facilities Fee Program Administrative Guidelines.

Section 5.3 **Financing Tools for Public Improvement Capital Costs.** Upon Developer's request, City will cooperate with Developer in the establishment of any mechanism that is legal and available to the City to aid in financing the construction of Project public facilities and infrastructure. These mechanisms may include, without limitation, direct funding of condemnation costs and construction costs, acquisition of improvements, establishing reserve accounts to fund capital improvement program projects, Mello-Roos Community Facilities Districts, Landscaping and Lighting Districts, Geological Hazard Abatement Districts, cooperation in connection with the issuance of tax-exempt financing, or other similar mechanisms. Any such request by Developer must be made to the City Manager in written form and must outline the purposes for which any such mechanism will be established or issued, the general terms and conditions upon which it will be established or issued and a proposed timeline for its establishment or issuance. City reserves discretion with respect to consideration of any proposed public funding mechanisms and nothing in this Agreement is intended to or shall limit City's ability to approve or disapprove such mechanisms in its sole reasonable discretion and nothing in this Agreement is intended to or shall prejudge or commit to City regarding the findings and determinations to be made with respect thereto. Developer shall bear the cost of establishing any Mello-Roos Community Facilities District, Landscaping and Lighting District, Geological Hazard Abatement District or similar financing district that Developer requests to be established to finance Project public facilities and infrastructure in proportion to the extent to which such district will benefit the Property and the Project.

Section 5.4 **Public Improvement Obligations.**

A. **In General.** Except as otherwise provided in Section 5.4C below, as a condition of approval of each phase of development of the Project, Developer shall construct or install, or cause the construction and installation of: (i) those infrastructure improvements, including water line up sizings, specifically identified in the MMRP, to the extent necessary to serve the applicable phase of development; (ii) public improvements fronting the various privately-owned components of the applicable phase of development, including all curbs, gutters, sidewalks, storm-drains, utility upgrades and replacements, including undergrounding work, street trees, street furniture, lighting, roadway repaving, bus shelters, bike lanes, and pedestrian cross walks located on, under and within the public rights-of-way areas; and (iii) upgrades, replacements and/or up sizings of sanitary sewer lines and/or mains and/or storm water facilities, if and to the extent a subsequent study prepared in implementation of MMRP Mitigation Measure UTIL-1 indicates that existing sanitary sewer lines and/or mains and/or storm water facilities are inadequate to handle the net new sanitary sewer output (gpd) and/or storm water flow of the applicable phase of development (collectively, "Public Improvements") at the time such phase is undertaken, all in accordance with the design, plan and material standards set forth in the Master Development Plan and Applicable City Regulations. Except as otherwise provided above, Developer shall not be obligated to construct or install any other on- or off-site public improvements in connection with development of the Project. City shall use good faith, diligent
efforts to work with Developer to ensure that each component of the Public Improvements required in connection with the Project is expeditiously reviewed and considered for acceptance by City on a phased basis as discrete components of the Public Improvements are completed. Developer may offer dedication of Public Improvements in phases consistent with City approvals for such Public Improvements, and City shall not unreasonably withhold, condition or delay acceptance of such phased dedications or refuse phased releases of bonds or other security so long as all other conditions for acceptance have been satisfied. Developer's obligation to construct the Public Improvements shall be set forth in one or more public improvement agreements to be entered into by the Parties on or before approval of a final subdivision map for the applicable portion of Project, or if no map is required, permit conditions of approval for the applicable portion of the Project. Upon acceptance of the public improvements, or components thereof, City shall release to Developer any bonds or other security posted in connection with performance thereof, other than warranty period security, as more fully provided in the applicable improvement agreements between City and Developer. Exept as otherwise provided in such improvement agreements with respect to Developer's warranty period obligations, Developer shall have no obligation to maintain the public infrastructure following City's acceptance thereof.

B. Downtown Infrastructure Infill Incentive Program. Developer has the right to participate in the City's Downtown Infrastructure Infill-Incentive Program adopted by the City Council on July 7, 2015 by Resolution No. 2015-07-07-1502, attached hereto as Exhibit F. Projects that qualify under the program guidelines are eligible to receive a "Maximum City Reimbursement" of up to $900,000 per year for qualifying public infrastructure improvements. If the cost of the Public Improvements exceeds the $900,000 annual cap, the City will reimburse the additional costs in subsequent years, subject to availability of funds in the Downtown Infrastructure Infill Incentive Program. One or more Infill Infrastructure Reimbursement Agreements approved by the City Council and detailing the Public Improvements to be constructed, the cost of such improvements, the source of funds, and the terms of City's reimbursement to Developer will be executed between the Developer and City for qualifying projects. The Infill Infrastructure Reimbursement Agreements and City's reimbursement obligations thereunder will remain effective notwithstanding any subsequent termination of the Downtown Infrastructure Infill Incentive Program.

C. City Option to Construct. In lieu of Developer's construction and installation of the Public Improvements as provided in Section 5.4A above, City, at its option, may construct and install some or all of the Public Improvements in advance of Developer's private development work using Impact Fee program monies or other funds, including State and/or Federal grant monies, that may be available to City. City will coordinate with Developer the phasing of construction and installation of any work of Public Improvements undertaken by City to ensure that substantial completion of applicable portions of the Public Improvements occurs no later than the date of substantial completion of the associated private improvements. If City opts to construct and install all or a portion of such Public Improvements in advance of Developer's work of private improvements, Developer shall have no obligation to construct or re-construc such Public Improvements, but Developer shall be obligated to repair any damage that may result from the private improvement work.
D. Potential Reimbursements to Developer. Other properties in downtown Stockton ("Additional Benefitted Properties") may be determined by City to benefit from Developer's dedication or construction of all or a portion of the Public Improvements. In such instances, City shall use reasonable efforts, consistent with applicable law and procedures, to identify such Additional Benefitted Properties and to cause the owners/developers of such Additional Benefitted Properties to reimburse to Developer, through City, their fair share of the costs incurred by Developer, based on a benefit formula approved by the City Council. Such benefit formula shall be based on ascertainable criteria, taking into account to the extent ascertainable, the proportionate benefit conferred on the Additional Benefitted Properties. The reimbursement may potentially be accomplished through inclusion in a Mello-Roos Community Facilities District, Landscaping and Lighting District, Geological Hazard Abatement District, or other similar district as described in Section 5.3 above. Consistent with applicable law and procedures, City, at Developer's expense, shall use good faith diligent efforts to collect, and establish a mechanism for future collection (irrespective of the term of this Agreement), any amounts reimbursable to Developer hereunder upon application to City by owners or developers of the Additional Benefitted Properties for land use and development entitlements. Developer agrees and acknowledges that City's obligation is limited to good faith diligent efforts and is subject to applicable laws and procedures as herein provided, and that City shall have no obligation to pay or reimburse Developer out of City's general fund for any portion of Developer's costs therefor.

Section 5.5 Prevailing Wage Requirements.

A. In General. Developer acknowledges and agrees that all Public Improvements required as a condition of approval for an individual phase of development and constructed by Developer or its contractors or subcontractors and paid for in whole or in part with public funds as provided in Section 5.4, above (collectively, the "Prevailing Wage Components") will constitute "public works" as defined in California Labor Code Section 1720(a)(1) and will be subject to prevailing wage requirements. Accordingly, Developer shall comply with, and cause its contractors and subcontractors to comply with, all State Labor Code requirements and implementing regulations of the Department of Industrial Relations pertaining to "public works," including the payment of prevailing wages (collectively, "Prevailing Wage Laws") in connection with such Prevailing Wage Components. City and Developer each acknowledge and agree that it is a condition of approval of the Project that Developer construct the Prevailing Wage Components.

B. Non-Intended Prevailing Wage Requirements. Except as provided in Section 5.5A above, nothing in this Agreement shall in any way require, or be construed to require, Developer to pay prevailing wages with respect to any work of construction or improvement within the Project (a "Non-Intended Prevailing Wage Requirement"). But for the understanding of the Parties as reflected in the immediately preceding sentence, the Parties would not have entered into this Agreement based upon the terms and conditions set forth herein. Developer and City have made every effort in reaching this Agreement to ensure that its terms and conditions will not result in a Non-Intended Prevailing Wage Requirement. If, despite such efforts, any provision of this Agreement shall be determined by any court of competent jurisdiction to result in a Non-Intended Prevailing Wage Requirement, such determination shall not invalidate or render unenforceable any provision hereof; provided, however, that the Parties
hereby agree that, in such event, this Agreement shall be reformed such that each provision of this Agreement that results in the Non-Intended Prevailing Wage Requirement will be removed from this Agreement as though such provisions were never a part of the Agreement, and, in lieu of such provision(s), replacement provisions shall be added as a part of this Agreement as similar in terms to such removed provision(s) as may be possible and legal, valid and enforceable but without resulting in the Non-Intended Prevailing Wage Requirement.

Section 5.6 Taxes and Assessments.

A. Limitation. The Parties agree that as of the Effective Date, the assessments listed in Exhibit G are the only City assessments applicable to the Property. As of the Effective Date, City is unaware of any pending efforts to initiate, or consider applications for new or increased special taxes or assessments covering the Property, or any portion thereof. City shall retain the ability to initiate or process applications for the formation of new assessment districts or imposition of new taxes covering all or any portion of the Property. City may impose new taxes and assessments, other than Impact Fees, on the Property in accordance with the then applicable laws, but only if such taxes or assessments are adopted by or after Citywide voter approval, or approval by landowners subject to such taxes or assessments, and are imposed on other land and projects of the same category within the jurisdiction of City in a reasonably proportional manner, and, as to assessments, only if the impact thereof does not fall disproportionately on the Property as compared to the benefits accruing to the Property as indicated in the engineer’s report for such assessment district. Nothing herein shall be construed so as to limit Developer from exercising whatever rights it may otherwise have in connection with protesting or otherwise objecting to the imposition of taxes or assessments on the Property. In the event an assessment district is lawfully formed to provide funding for services, improvements, maintenance or facilities which are substantially the same as those services, improvements, maintenance or facilities being funded by the Impact Fees to be paid by Developer under the Project Approvals or this Agreement, such Impact Fees to be paid by Developer shall be subject to reduction/credit in an amount equal to Developer’s new or increased assessment under the assessment district. Alternatively, the new assessment district shall reduce/credit Developer’s new assessment in an amount equal to such Impact Fees to be paid by Developer under the Project Approvals or this Agreement.

B. Mills Act Tax Reduction. City is not currently participating in the State’s Mills Act (Government Code Section 50280 et seq.) tax reduction program. Should City agree to participate in such program in the future, then, subject to Developer’s agreement to enter into a historical property contract in a form reasonably acceptable to City and in satisfaction of other applicable criteria set forth in the Mills Act, Developer will have the right, at its option, to receive a property tax reduction with respect to any historic building that Developer may wish to refurbish in connection with the Project.

C. New Tax Increment Districts. If City desires to adopt an enhanced infrastructure financing district pursuant to SB 628 (2014), a community redevelopment investment authority district pursuant to AB 2 (2015) or other tax increment financing district in the downtown Stockton area, and if the establishment of such district requires property owner approval, Developer shall consider in good faith City requests for approval of same.
Section 5.7 Potential General Plan Density Increases. The Parties acknowledge that the densities described in the Master Development Plan, as approved concurrently with this Agreement, conform to the maximum allowable densities set forth in the General Plan in effect as of the Effective Date. If and to the extent City’s comprehensive General Plan update process anticipated to be completed in 2016/17 increases the maximum allowable densities permitted in the area covered by the Master Development Plan, Developer may submit and City agrees to consider in good faith proposed amendments to the Master Development Plan to increase the maximum allowable densities of the properties subject to the Master Development Plan to be consistent with the increased density levels as set forth in the updated General Plan. The Parties acknowledge that CEQA compliance will be required in connection with any such amendment of the Master Development Plan, and City shall retain the discretion before action on any such amendment to (i) identify and impose mitigation measures to mitigate significant environmental impacts, (ii) select other feasible alternatives to avoid significant environmental impacts, (iii) balance the benefits of the Project, as modified by the proposed Master Development Plan amendment, against any significant environmental impacts prior to taking final action if such significant impacts cannot otherwise be avoided; or (iv) determine not to proceed with the proposed modifications to the Project.

ARTICLE 6 PUBLIC BENEFITS

The Parties acknowledge that development of the Property pursuant to this Agreement and the Master Development Plan will contribute to the revitalization of downtown Stockton and the elimination of blight, will create housing and job opportunities, and will result in increased property and sales tax revenue to the City.

ARTICLE 7 ANNUAL REVIEW

Section 7.1 Periodic Review.

A. As required by California Government Code Section 65865.1 and Section 16.128.110 of the Development Agreement Ordinance, the City of Stockton Planning Commission shall review this Agreement and all actions taken pursuant to the terms of this Agreement with respect to the development of the Project every twelve (12) months to determine good faith compliance with this Agreement (“Annual Review”). Specifically, the Annual Review shall be conducted for the purposes of determining good faith compliance with the terms and/or conditions of this Agreement. Each Annual Review shall also document the status of Project development.

B. The Annual Review shall be conducted pursuant to SMC Section 16.128.110; provided, however, Developer shall receive not less than ten (10) days’ prior written notice of any City Council or Planning Commission hearing conducted in connection with any Annual Review, and shall be permitted to present evidence at any such hearing.

C. Nothing in this Article 7 or in the Applicable City Regulations, including SMC Section 16.128.110, shall operate as, or be deemed to serve as, a substitute for the notice of default and cure provisions set forth in Article 12 below. Without limiting the generality of the foregoing, the Parties acknowledge and agree that the notice and cure procedures associated with
the Annual Review procedures described in this Article 7 are in addition to, and not in lieu of, the notice and cure provisions set forth in Article 12.

ARTICLE 8 MORTGAGEE PROTECTION

Section 8.1 Mortgagee Protection. This Agreement shall not prevent or limit Developer in any manner, at Developer’s sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property and/or the Project (“Mortgage”). This Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording the Agreement, including the lien of any Mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against and shall run to the benefit of any person or entity, including any deed of trust beneficiary or mortgagee (“Mortgage”), who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee’s sale, deed in lieu of foreclosure or otherwise.

Section 8.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 8.1 above, no Mortgagee shall have any obligation or duty under this Agreement, before or after foreclosure or a deed in lieu of foreclosure, to construct or complete the construction of the Project, or any portion thereof, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any use except in full compliance with the Project Approvals and this Agreement nor to construct any improvements thereon or institute any uses other than those uses and improvements provided for or authorized by this Agreement and the Project Approvals.

Section 8.3 Notice of Default to Mortgagee; Right to Cure. With respect to any Mortgage granted by Developer as provided herein, so long as any such Mortgage shall remain unsatisfied of record, the following provisions shall apply:

A. City, upon serving Developer any notice of Default, shall also serve a copy of such notice upon any Mortgagee at the address provided to City, and no notice by City to Developer hereunder shall affect any rights of a Mortgagee unless and until a copy thereof has been served on such Mortgagee; provided, however, that failure so to deliver any such notice shall in no way affect the validity of the notice sent to Developer as between Developer and City.

B. In the event of a Default by Developer, any Mortgagee shall have the right to remedy, or cause to be remedied, such Default within sixty (60) days following the later to occur of (i) the date of Mortgagee’s receipt of the notice referred to in Section 8.3A above, or (ii) the expiration of the period provided herein for Developer to remedy or cure such Default, and City shall accept such performance by or at the insistence of the Mortgagee as if the same had been timely made by Developer; provided, however, that (a) if such Default is not capable of being cured within the timeframes set forth in this Section 8.3B and Mortgagee commences to cure the Default within such timeframes, then Mortgagee shall have such additional time as is required to cure the Default so long as Mortgagee diligently prosecutes the cure to completion and (b) if possession of the Property (or portion thereof) is required to effectuate such cure or
remedy, the Mortgagee shall be deemed to have timely cured or remedied if it commences the proceedings necessary to obtain possession thereof within sixty (60) days after receipt of the copy of the notice, diligently pursues such proceedings to completion, and, after obtaining possession, diligently completes such cure or remedy.

C. Any notice or other communication which City shall desire or is required to give to or serve upon the Mortgagee shall be in writing and shall be served in the manner set forth in Section 13.5, addressed to the Mortgagee at the address provided by Mortgagee to City. Any notice or other communication which Mortgagee shall give to or serve upon City shall be deemed to have been duly given or served if sent in the manner and at City’s address as set forth in Section 13.5, or at such other address as shall be designated by City by notice in writing given to the Mortgagee in like manner.

Section 8.4 No Supersedure. Nothing in this Article 8 shall be deemed to supersede or release a Mortgagee or modify a Mortgagee’s obligations under any subdivision or public improvement agreement or other obligation incurred with respect to the Project outside this Agreement, nor shall any provision of this Article 8 constitute an obligation of City to such Mortgagee, except as to the notice requirements of Section 8.3.

Section 8.5 Technical Amendments to this Article 8. City agrees to reasonably consider and approve interpretations and/or technical amendments to the provisions of this Agreement that are required by lenders for the acquisition and construction of the Project on the Property or any refinancing thereof and to otherwise cooperate in good faith, at Developer’s expense, to facilitate Developer’s negotiations with lenders.

ARTICLE 9 AMENDMENT OF AGREEMENT AND EXISTING APPROVALS

Section 9.1 Amendment of Agreement by Mutual Consent. This Agreement may be amended in writing from time to time by mutual consent of the Parties hereto or their successors-in-interest or assigns.

Section 9.2 Insubstantial Amendments to Agreement. Any amendment to this Agreement which, in the context of the overall Project contemplated by this Agreement, does not substantially affect (i) the Term of this Agreement; (ii) permitted uses of the Property; (iii) provisions for the reservation or dedication of land; (iv) conditions, terms, restrictions or requirements for subsequent discretionary actions; (v) the density or intensity of use of the Property or the maximum height or size of proposed buildings; or (vi) the nature, timing of delivery, or scope of public improvements required by the Project Approvals, shall be deemed an “Insubstantial Amendment” and shall not, except to the extent otherwise required by law or this Agreement, require notice or public hearing before the Parties may execute an amendment hereto. The City Manager shall have the authority to execute an Insubstantial Amendment or, in his or her discretion, seek approval of an Insubstantial Amendment by City resolution.

Section 9.3 Requirement for Writing. No modification, amendment or other change to this Agreement or any provision hereof shall be effective for any purpose unless specifically set forth in a writing which refers expressly to this Agreement and is signed by duly authorized representatives of both Parties or their successors.
Section 9.4 Amendments to Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute as those provisions existed as of the Effective Date. No amendment or addition to those provisions which would materially affect the interpretation or enforceability of this Agreement shall be applicable to this Agreement, unless such amendment or addition is specifically required by the California State Legislature, or is mandated by a court of competent jurisdiction. In the event of the application of such a change in law, the Parties shall meet in good faith to determine the feasibility of any modification or suspension that may be necessary to comply with such new law or regulation and to determine the effect such modification or suspension would have on the purposes and intent of this Agreement. Following the meeting between the Parties, the provisions of this Agreement may, to the extent feasible, and upon mutual agreement of the Parties, be modified or suspended but only to the minimum extent necessary to comply with such new law or regulation. If such amendment or change is permissive (as opposed to mandatory), this Agreement shall not be affected by same unless the Parties mutually agree in writing to amend this Agreement to permit such applicability. Developer and/or City shall have the right to challenge any new law or regulation preventing compliance with the terms of this Agreement, and in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect. The Term of this Agreement may be extended for the duration of the period during which such new law or regulation precludes compliance with the provisions of this Agreement.

Section 9.5 Amendments to Project Approvals. Project Approvals (except for this Agreement for which the amendment process is set forth in Section 9.1 through 9.4) may be amended or modified from time to time, but only at the written request of Developer or with the written consent of Developer at its sole discretion. All amendments to the Project Approvals shall automatically become part of the Project Approvals. The permitted uses of the Property or portion thereof, the maximum density and/or number of residential units, the intensity of use, the maximum height and size of the proposed buildings, provisions for reservation or dedication of land for public purposes, the conditions, terms, restrictions and requirements for subsequent discretionary actions, the provisions for public improvements and financing of public improvements, and the other terms and conditions of development as set forth in all such amendments shall be automatically vested pursuant to this Agreement, without requiring an amendment to this Agreement. Amendments to the Project Approvals shall be governed by the Project Approvals and the Applicable Law. City shall not request, process or consent to any amendment to the Project Approvals that would affect the Property or the Project, or applicable portion thereof, without Developer’s prior written consent.

Section 9.6 Administrative Amendments of Project Approvals. Upon the request of Developer for an amendment or modification of any Project Approvals (except for this Agreement for which the amendment process is set forth in Section 9.1 through 9.4), the City Manager or his/her designee shall determine: (a) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (b) whether the requested amendment or modification substantially conforms with the material terms of this Agreement and the Applicable Law, and may be processed administratively. If the City Manager or his/her designee finds that the requested amendment or modification is both minor and substantially conforms with the material terms of this Agreement and the Applicable Law, the amendment or modification shall be determined to be an “Administrative Amendment,” and
the City Manager or his/her designee may approve the Administrative Amendment, without public notice or a public hearing. Any request of Developer for an amendment or modification to a Project Approval that is determined not to be an Administrative Amendment as set forth above shall be subject to review, consideration and action pursuant to the Applicable Law and this Agreement.

Section 9.7 Operating Memoranda. The provisions of this Agreement require a close degree of cooperation between City and Developer and development of the Property hereunder may demonstrate that refinements and clarifications are appropriate with respect to the details of performance of City and Developer. If and when, from time to time, during the Term of this Agreement, City and Developer agree that such clarifications are necessary or appropriate, City and Developer may effectuate such clarifications through operating memoranda approved by City and Developer, which, after execution, shall be attached hereto as addenda and become a part hereof, and may be further clarified from time to time as necessary with future approval by City and Developer. No such operating memoranda shall constitute an amendment to this Agreement requiring public notice or hearing. The City Manager, in consultation with the City Attorney, shall make the determination on behalf of City whether a requested clarification may be effectuated pursuant to this Section 9.7 or whether the requested clarification is of such a character to constitute an amendment hereof pursuant to Section 9.1 or Section 9.2 above. The City Manager shall be authorized to execute any operating memoranda hereunder on behalf of City.

Section 9.8 CEQA. In connection with its consideration and approval of the Master Development Plan, the City has prepared and approved the Mitigated Negative Declaration, which evaluates the environmental effects of the Project, and has imposed all feasible mitigation measures to reduce the significant environmental effects of the Project. Nothing contained in this Agreement is intended to prevent or limit the City from complying with CEQA. In acting on Subsequent Project Approvals, City will rely on the Mitigated Negative Declaration to the fullest extent permissible by CEQA as determined by City in its reasonable discretion. In the event supplemental or additional review is required for a Subsequent Project Approval, City shall limit such supplemental or additional review to the scope of analysis mandated by CEQA and shall not impose new mitigation measures except as legally required, all as determined by the City as the lead agency under CEQA in its reasonable discretion.

ARTICLE 10 COOPERATION AND IMPLEMENTATION

Section 10.1 Subsequent Project Approvals. Certain subsequent land use approvals, entitlements, and permits other than the Existing Approvals (collectively, "Subsequent Project Approvals"), will be necessary or desirable for implementation of the Project. The Subsequent Project Approvals may include the following ministerial and discretionary applications and permits: amendments of the Existing Approvals, grading permits, building permits, sewer and water connection permits, certificates of occupancy, lot line adjustments, site plans, development plans, land use plans, building plans and specifications, parcel maps and/or subdivision maps, conditional use permits, design review, demolition permits, improvement agreements, encroachment permits, and any amendments to, or repealing of, any of the foregoing. The parties agree that the Water Supply Assessment constitutes proof of availability of a sufficient water supply for the Project and approval of any tentative map prepared for the Project shall rely
on such assessment. Except as otherwise expressly provided herein, the City shall not impose requirements or conditions upon Project development and construction that are inconsistent with the Existing Approvals and the terms and conditions of this Agreement.

Section 10.2 Scope of Review of Subsequent Project Approvals. By approving the Existing Approvals, City has made a final policy decision that the Project is in the best interests of the public health, safety and general welfare. Accordingly, City shall not use its authority in considering any application for a discretionary Subsequent Project Approval to change the policy decisions reflected by the Existing Approvals or otherwise to prevent or delay development of the Project as set forth in the Existing Approvals. Instead, the Subsequent Project Approvals shall be deemed to be tools to implement those final policy decisions. The scope of review of applications for Subsequent Project Approvals shall be limited to a review of substantial conformity with the Project Approvals and compliance with the Applicable Law, including CEQA. Where such substantial conformity/compliance exists, City shall not deny an application for a Subsequent Project Approval for the Project. At such time as any Subsequent Project Approval applicable to the Property is approved by City, then such Subsequent Project Approval shall become subject to all the terms and conditions of this Agreement applicable to Project Approvals and shall be treated as a “Project Approval” under this Agreement.

Section 10.3 Processing Applications for Subsequent Project Approvals.

A. Developer acknowledges that City cannot begin processing applications for Subsequent Project Approvals until Developer submits complete applications on a timely basis. Developer shall use diligent good faith efforts to (i) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (ii) cause Developer’s planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other materials required under Applicable Law. It is the express intent of Developer and City to cooperate and diligently work to obtain any and all Subsequent Project Approvals.

B. Upon submission by Developer of all appropriate applications and Processing Fees for any pending Subsequent Project Approval, City shall, to the fullest extent allowed by Applicable Law, promptly and diligently, subject to City ordinances, policies and procedures regarding hiring and contracting, commence and complete all steps necessary to act on Developer’s currently pending Subsequent Project Approval applications including: (i) providing at Developer’s expense and subject to Developer’s request and prior approval, reasonable overtime staff assistance, additional staff and/or staff consultants for concurrent, expedited planning and processing of each pending Subsequent Project Approval application; (ii) if legally required, providing notice and holding public hearings; and (iii) acting on any such pending Subsequent Project Approval application.

Section 10.4 Other Agency Subsequent Project Approvals; Authority of City. Other public agencies not within the control of City may possess authority to regulate aspects of the development of the Property separately from or jointly with City, and this Agreement does not limit the authority of such other public agencies. Nevertheless, City shall be bound by, and shall abide by, its covenants and obligations under this Agreement in all respects when dealing with any such agency regarding the Property. City shall cooperate with Developer, to the extent
appropriate and as permitted by law, in Developer’s efforts to obtain, as may be required, Other Agency Subsequent Project Approvals.

Section 10.5 Implementation of Necessary Mitigation Measures. Developer shall, at its sole cost and expense, comply with the MMRP requirements as applicable to the Property and Project.

Section 10.6 Cooperation in the Event of Legal Challenge.

A. The filing of any third party lawsuit(s) against City or Developer relating to this Agreement, the Project Approvals or construction of the Project shall not delay or stop the development, processing or construction of the Project or approval of any Subsequent Project Approvals, unless the third party obtains a court order preventing the activity. City shall not stipulate to or cooperate in the issuance of any such order.

B. City and Developer shall cooperate in the defense of any court action or proceeding instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement or the Project Approvals ("Litigation Challenge"), and the Parties shall keep each other informed of all developments relating to such defense, subject only to confidentiality requirements that may prevent the communication of such information.

C. If Developer desires to contest or defend a Litigation Challenge and the Parties determine to undertake a joint defense or contest of such Litigation Challenge: (i) the Parties will cooperate in the joint defense or contest of such challenge; (ii) Developer shall select the attorney(s) to undertake such defense, subject to City’s approval, which shall not be unreasonably withheld; (iii) Developer will take the lead role in defending such Litigation Challenge; (iv) upon Developer’s request, City shall enter into a joint defense agreement in a form reasonably acceptable to the City Attorney to facilitate the sharing of materials and strategies related to the defense of such Litigation Challenge without waiver of attorney client privilege; (v) Developer shall reimburse City, within forty-five (45) days following City’s written demand therefor, which may be made from time to time during the course of such litigation, all reasonable costs incurred by City in connection with the Litigation Challenge;

D. If Developer desires to contest or defend any Litigation Challenge and if at any time one or both Parties determine that they require separate representation: (i) Developer shall take the lead role defending such Litigation Challenge; (ii) Developer shall be separately represented by the legal counsel of its choice; (iii) in any action or proceeding, City shall be separately represented by the legal counsel of its choice, selected after consultation with Developer, with the reasonable costs of such representation to be paid by Developer; (iv) Developer shall reimburse City, within forty-five (45) days following City’s written demand therefor, which may be made from time to time during the course of such litigation, all reasonable costs incurred by City in connection with the Litigation Challenge; and (v) upon Developer’s request, City shall enter into a joint defense agreement in a form reasonably acceptable to the City Attorney to facilitate the sharing of materials and strategies related to the defense of such Litigation Challenge without waiver of attorney client privilege.
E. Developer shall indemnify, defend, and hold harmless City Parties from and against any damages, attorneys’ fees or cost awards, assessed or awarded against City by way of judgment, settlement, or stipulation entered in connection with a Litigation Challenge. Any proposed settlement of a Litigation Challenge by a Party shall be subject to the approval of the other Party, such approval not to be unreasonably withheld, conditioned or delayed. If the terms of the proposed settlement would constitute an amendment or modification of this Agreement or any Project Approvals, the settlement shall not become effective unless such amendment or modification is approved by City in accordance with Applicable Law, and City reserves its full legislative discretion with respect thereto.

Section 10.7 Revision to Project. In the event of a court order issued as a result of a successful Litigation Challenge, City shall, to the extent permitted by law or court order, in good faith seek to comply with the court order in such a manner as will maintain the integrity of the Project Approvals and avoid or minimize to the greatest extent possible (i) any impact to the development of the Project as provided for in, and contemplated by, the Project Approvals, or (ii) any conflict with the Project Approvals or frustration of the intent or purpose of the Project Approvals.

Section 10.8 State, Federal or Case Law. Where any state, federal or case law allows City to exercise any discretion or take any act with respect to that law, City shall, in an expeditious and timely manner, at the earliest possible time, (i) exercise its discretion in such a way as to be consistent with, and carry out the terms of, this Agreement, and (ii) take such other actions as may be necessary to carry out in good faith the terms of this Agreement.

Section 10.9 Defense of Agreement. City, at Developer's expense, shall take all actions that are necessary or advisable to uphold the validity and enforceability of this Agreement. If this Agreement is adjudicated or determined to be invalid or unenforceable, City agrees, subject to all legal requirements, to consider modifications to this Agreement to render it valid and enforceable to the extent permitted by Applicable Law.

Section 10.10 Indemnity. Developer shall indemnify, at City's request defend, and hold the City Parties harmless from and against any and all costs and expenses (including attorney and legal fees), damages, liabilities, claims, and losses (all of the foregoing, collectively, “Claims”) arising directly as a result of Developer's negligence in connection with Developer's performance under this Agreement or arising directly as a result of Developer’s (or Developer’s contractors, subcontractors, agents, or employees) work performed in connection with the development of the Property or the Project, including without limitation, Claims involving bodily injury, death or property damage arising as a result of such negligence. Developer's indemnification obligations set forth in this Section shall not extend to Claims arising from the active negligence or willful misconduct of any City Party.

ARTICLE 11 ASSIGNMENT

Section 11.1 Transfers and Assignments.

A. Right to Transfer. With the written consent of City, which shall not be unreasonably withheld, conditioned, or delayed, Developer shall have the right to sell, assign or
transfer ("Transfer") in whole or in part its rights, duties and obligations under this Agreement; provided, however, in no event shall the rights, duties and obligations conferred or imposed upon Developer pursuant to this Agreement be at any time so transferred except through a transfer (including a sale or ground lease) of the Property or part thereof, and all such Transfers shall be made in accordance with the requirements of this Section 11.1. City shall not withhold consent to a Transfer to a transferee that has a net worth of at least $5 million and at least seven (7) years of demonstrated experience developing urban residential or commercial mixed-use projects of a type, size and complexity similar to the Project or portion thereof that is the subject of the proposed Transfer.

B. Permitted Transfers. The following Transfers shall be deemed "Permitted Transfers" that shall not require City consent or compliance with the procedures set forth in this Section: (i) assignments creating security interests for the purpose of financing the acquisition, construction or permanent financing of the Project or the Property or part thereof; (ii) Transfers to a Developer Affiliate formed to undertake development of individual phases of the Project; and (iii) the lease or sale of individual residences or commercial facilities constructed as part of the Project.

C. Partial Transfer. In the event of a conveyance of a portion of the Property, Developer shall have the right to Transfer its rights, duties and obligations under this Agreement that are applicable to the transferred portion, and retain all rights, duties and obligations applicable to the retained portions of the Property. Upon Developer's request, City shall cooperate with Developer and any proposed transferee to allocate rights, duties and obligations under this Development Agreement and the Project Approvals between the transferred Property and the retained Property.

D. Procedures. Developer shall notify City of any proposed Transfer at least thirty (30) days prior to completing such Transfer. At least twenty-one (21) days prior to the effective date of the Transfer, Developer shall deliver to City a draft of the proposed written assignment and assumption agreement in which the transferee expressly agrees to assume the rights and obligations of Developer under this Agreement being transferred. The assignment and assumption agreement shall be in substantially the form attached hereto as Exhibit E. No later than ten (10) business days after the date the Transfer becomes effective, Developer shall deliver to City a conformed copy of the fully executed and recorded assignment and assumption agreement.

E. City Consent. Consent to any proposed Transfer may be given by the City Manager unless the City Manager, in his or her discretion, refers the matter of approval to the City Council. If a proposed Transfer has not been approved in writing within thirty (30) days following City's receipt of written request by Developer, it shall be deemed approved.

Section 11.2 Release Upon Transfer. Upon the Transfer of Developer's rights and interests under this Agreement pursuant to this ARTICLE 11, Developer shall automatically be released from its obligations and liabilities under this Agreement with respect to that portion of the Property transferred, and any subsequent default or breach with respect to the transferred rights and/or obligations shall not constitute a default or breach with respect to the retained rights and/or obligations under this Agreement, provided that (i) Developer has provided to City
written Notice of such Transfer, and (ii) the transferee executes and delivers to City a written agreement in accordance with Section 11.1 above. Upon any Transfer of any portion of the Property and the express assumption of Developer's obligations under this Agreement by such transferee, City agrees to look solely to the transferee for compliance by such transferee with the provisions of this Agreement as such provisions relate to the portion of the Property acquired by such transferee. A default by any transferee shall only affect that portion of the Property owned by such transferee and shall not cancel or diminish in any way Developer's rights hereunder with respect to any portion of the Property not owned by such transferee. The transferor and the transferee shall each be solely responsible for the reporting and Annual Review requirements relating to the portion of the Property owned by each respective party, and any amendment to this Agreement between City and a transferor or a transferee shall only affect the portion of the Property owned by such transferor or transferee. Failure to deliver a written assumption agreement hereunder shall not affect the running of any covenants herein with the land, as provided in Section 13.4 below, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Agreement.

ARTICLE 12DEFAULT; REMEDIES; TERMINATION

Section 12.1 Breach and Default. Subject to extensions of time under Section 3.2D or by mutual consent in writing, and subject to a Mortgagee's right to cure under Section 8.3, failure by a Party to perform any material action or covenant required by this Agreement (not including any failure by Developer to perform any term or provision of any other Project Approval) within sixty (60) days following receipt of written Notice from the other Party specifying the failure shall constitute a "Default" under this Agreement; provided, however, that if the failure to perform cannot be reasonably cured within such sixty (60) day period, a Party shall be allowed additional time as is reasonably necessary to cure the failure so long as such Party commences to cure the failure within the sixty (60) day period and thereafter diligently prosecutes the cure to completion. Any Notice of Default given hereunder shall specify in detail the nature of the failures in performance that the noticing Party claims constitutes the Default, all facts constituting evidence of such failure, and the manner in which such failure may be satisfactorily cured in accordance with the terms and conditions of this Agreement. During the time periods herein specified for cure of a failure of performance, the Party charged therewith shall not be considered to be in Default for purposes of (i) termination of this Agreement, (ii) institution of legal proceedings with respect thereto, or (iii) issuance of any approval with respect to the Project. The waiver by either Party of any Default under this Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Agreement.

Section 12.2 Termination. In the event of a Default by a Party, the non-defaulting Party shall have the right to (i) waive in its sole and absolute discretion such Default as not material, (ii) institute legal proceedings pursuant to Section 12.3, and/or (iii) terminate this Agreement upon giving notice of intent to terminate pursuant to Government Code Section 65868. Following notice of intent to terminate, the matter shall be scheduled for consideration and review in the manner set forth in Government Code Section 65867. Following consideration of the evidence presented in said review before the City Council, a Party alleging Default by the other Party may give written notice of termination of this Agreement to the other Party. Termination of this Agreement shall be subject to the provisions of Section 12.7 hereof.
In the event that this Agreement is terminated pursuant to Section 7.1, or this Section 12.2 and the validity of such termination is challenged in a legal proceeding that results in a final decision that such termination was improper, then this Agreement shall immediately be reinstated as though it had never been terminated.

Section 12.3 Legal Actions.

A. Institution of Legal Actions. In addition to any other rights or remedies, a Party may institute legal action to cure, correct or remedy any Default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation thereof, or to obtain any other remedies consistent with the terms of this Agreement. Developer agrees that the primary remedy available to Developer in the event of any Default by City shall be specific performance, injunction or similar equitable relief and that recovery of action damages shall only be available in the event that the equitable remedies are inadequate to address the Default in question.

B. Acceptance of Service of Process. In the event that any legal action is commenced by Developer against City, service of process on City shall be made by personal service upon the City Clerk of City or in such other manner as may be provided by law. In the event that any legal action is commenced by City against Developer, service of process on Developer shall be made by personal service upon Developer’s registered agent for service of process, or in such other manner as may be provided by law.

Section 12.4 Rights and Remedies Are Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by a Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other Party, except as otherwise expressly provided herein.

Section 12.5 No Consequential or Special Damages. In no event shall a Party, or its boards, commissions, officers, agents or employees, be liable for any consequential, special or punitive damages for any Default under this Agreement. This limitation on damages shall not preclude actions by a Party to enforce payments of monies or the performance of obligations requiring an obligation of money from the other Party under the terms of this Agreement, including, but not limited to, obligations to pay actual damages, including attorneys’ fees and obligations to advance monies or reimburse monies.

Section 12.6 Resolution of Disputes. With regard to any dispute involving the Project, the resolution of which is not provided for by this Agreement or Applicable Law, a Party shall, at the request of the other Party, meet with designated representatives of the requesting Party promptly following its request. The Parties to any such meetings shall attempt in good faith to resolve any such disputes. Nothing in this Section 12.6 shall in any way be interpreted as requiring that Developer and City reach agreement with regard to those matters being addressed, nor shall the outcome of these meetings be binding in any way on City or Developer unless expressly agreed to in writing by the Parties to such meetings.

Section 12.7 Surviving Provisions. In the event this Agreement expires or is terminated, neither Party shall have any further rights or obligations hereunder, except for those
obligations of Developer set forth in Section 5.5 (Prevailing Wage Requirements), Section 10.6 (Cooperation in the Event of Legal Challenge) or expressly set forth herein as surviving the expiration or termination of this Agreement. The termination or expiration of this Agreement shall not affect the validity of the Project Approvals (other than this Agreement).

Section 12.8 Effects of Litigation. In the event litigation is timely instituted, and a final judgment is obtained, which invalidates in its entirety this Agreement, neither Party shall have any obligations whatsoever under this Agreement, except for those obligations which by their terms survive termination hereof. In the event that any payment(s) have been made by or on behalf of Developer to City pursuant to ARTICLE 5, City shall refund to Developer the monies remaining in any segregated City account, into which such payment(s) were deposited, if any, along with interest which has accrued, if any. To the extent the payment(s) made by or on behalf of Developer were not deposited, or no longer are, in the segregated City account, City shall give Developer a credit for the amount of said payment(s) as determined pursuant to this Section 12.8, along with interest, if any, that has accrued, which credit may be applied by Developer to any costs or fees imposed by City on Developer in connection with construction or development within or outside the Property. Developer shall be entitled to use all or any portion of the credit at its own discretion until such time as the credit has been depleted. Any credits due to Developer pursuant to this Section 12.8 may, at Developer's own discretion, be transferred by Developer to a third party for application by said third party to any costs or fees imposed by City on the third party in connection with construction or the development of property within City, whether or not related to the Project. This Section 12.8 shall survive the termination or expiration of this Agreement.

Section 12.9 California Claims Act. Compliance with the procedures set forth in this ARTICLE 12 shall be deemed full compliance with the requirements of the California Claims Act (Government Code Section 900 et seq.) including, but not limited to, the notice of an event of default hereunder constituting full compliance with the requirements of Government Code Section 910.

ARTICLE 13 MISCELLANEOUS PROVISIONS

Section 13.1 Incorporation of Recitals, Exhibits and Introductory Paragraph. The Recitals contained in this Agreement, the introductory paragraph preceding the Recitals and the Exhibits attached hereto are hereby incorporated into this Agreement as if fully set forth herein.

Section 13.2 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties.

Section 13.3 Construction. Each reference herein to this Agreement or any of the Existing Approvals or Subsequent Project Approvals shall be deemed to refer to the Agreement, Existing Approval or Subsequent Project Approval as it may be amended from time to time, whether or not the particular reference refers to such possible amendment. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or
construing the terms, covenants or conditions of this Agreement. This Agreement has been reviewed and revised by legal counsel for City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement. Unless the context clearly requires otherwise, (i) the plural and singular numbers shall each be deemed to include the other; (ii) the masculine, feminine, and neuter genders shall each be deemed to include the others; (iii) “shall,” “will,” or “agrees” are mandatory, and “may” is permissive; (iv) “or” is not exclusive; (v) “include,” “includes” and “including” are not limiting and shall be construed as if followed by the words “without limitation,” and (vi) “days” means calendar days unless specifically provided otherwise.

Section 13.4 Covenants Running with the Land. Except as otherwise more specifically provided herein, this Agreement and all of its provisions, rights, powers, standards, terms, covenants and obligations, shall be binding upon the Parties and their respective successors (by merger, consolidation, or otherwise) and assigns, and all other persons or entities acquiring the Property, or any interest therein or portion thereof, and shall inure to the benefit of the Parties and their respective successors and assigns, as provided in Government Code section 65868.5.

Section 13.5 Notices. Any notice or communication required hereunder between City and Developer (“Notice”) must be in writing, and may be given either personally, by registered or certified mail (return receipt requested), or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a Notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by registered or certified mail, such Notice shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom Notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such Notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a Notice shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written Notice to the other Party hereto, designate any other address in substitution of the address to which such Notice shall be given. Such Notices shall be given to the Parties at their respective addresses set forth below:

To City: City of Stockton
425 North El Dorado Street
Stockton, CA 95202
Attention: City Clerk
Tel: (209) 937-8458

with a copy to: City of Stockton
425 North El Dorado Street
Stockton, CA 95202
Attention: Community Development Director
Tel: (209) 937-8444
Section 13.6 Counterparts; Entire Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original. This Agreement, together with the Project Approvals and attached Exhibits, constitutes the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements of the Parties with respect to all or any part of the subject matter hereof.

Section 13.7 Recordation of Agreement. Pursuant to California Government Code Section 65868.5, no later than ten (10) days after the Effective Date, the City Clerk shall record an executed copy of this Agreement in the Official Records of San Joaquin County. Thereafter, if this Agreement is terminated, modified or amended, the City Clerk shall record notice of such action in the Official Records of San Joaquin County.

Section 13.8 No Joint Venture or Partnership. It is specifically understood and agreed to by and between the Parties hereto that: (i) the subject development is a private development; (ii) City has no interest or responsibilities for, or duty to, third parties concerning any public improvements until such time, and only until such time, that City accepts the same pursuant to the provisions of this Agreement or in connection with the various Existing Approvals or Subsequent Project Approvals; (iii) Developer shall have full power over and exclusive control of the Project herein described, subject only to the limitations and obligations of Developer under this Agreement, the Existing Approvals, Subsequent Project Approvals, and Applicable Law; and (iv) City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer.

Section 13.9 Waivers. Notwithstanding any other provision in this Agreement, any failures or delays by any Party in asserting any of its rights and remedies under this Agreement shall not operate as a waiver of any such rights or remedies, or deprive any such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. A Party may specifically and expressly waive in writing any condition or breach of this Agreement by the other Party, but no such waiver shall constitute a further or continuing waiver of any preceding or succeeding breach of the same or any other provision. Consent by one Party to any act by the other Party shall not be deemed to
imply consent or waiver of the necessity of obtaining such consent for the same or similar acts in
the future.

Section 13.10 California Law; Venue. This Agreement shall be construed and enforced
in accordance with the laws of the State of California, without reference to choice of law
provisions. The exclusive venue for any disputes or legal actions shall be the Superior Court of
California in and for the County of San Joaquin, except for actions that include claims in which
the Federal District Court for the Eastern District of the State of California has original
jurisdiction, in which case the Eastern District of the State of California shall be the proper
venue.

Section 13.11 City Approvals and Actions. Whenever reference is made herein to an
action or approval to be undertaken by City, the City Manager or his or her designee is
authorized to act on behalf of City, unless specifically provided otherwise or the context requires
otherwise.

Section 13.12 Estoppel Certificates. A Party may, at any time during the Term of this
Agreement, and from time to time, deliver written Notice to the other Party requesting such Party
to certify in writing, to the knowledge of the certifying Party, (i) this Agreement is in full
force and effect and a binding obligation of the Parties; (ii) this Agreement has not been
amended or modified either orally or in writing, or if amended, identifying the amendments;
(iii) the requesting Party is not in default in the performance of its obligations under this
Agreement, or if in default, to describe therein the nature and amount of any such defaults; and
(iv) any other information reasonably requested. The Party receiving a request hereunder shall
execute and return such certificate, within twenty (20) days following the receipt thereof. The
failure of either Party to provide the requested certificate within such twenty (20) day period
shall constitute a confirmation that this Agreement is in full force and effect and no modification
or default exists. The City Manager shall have the right to execute any certificate requested by
Developer hereunder. City acknowledges that a certificate hereunder may be relied upon by
transferees and Mortgagees.

Section 13.13 No Third Party Beneficiaries. City and Developer hereby renounce the
existence of any third party beneficiary to this Agreement and agree that nothing contained
herein shall be construed as giving any other person or entity third party beneficiary status.

Section 13.14 Signatures. The individuals executing this Agreement represent and
warrant that they have the right, power, legal capacity, and authority to enter into and to execute
this Agreement on behalf of the respective legal entities of Developer and City and that all
necessary board of directors’, shareholders’, partners’, city councils’ or other approvals have
been obtained.

Section 13.15 Further Actions and Instruments. Each Party to this Agreement shall
cooperate with and provide reasonable assistance to the other Party and take all actions necessary
to ensure that the Parties receive the benefits of this Agreement, subject to satisfaction of the
conditions of this Agreement. Upon the request of any Party, the other Party shall promptly
execute, with acknowledgment or affidavit if reasonably required, and file or record such
required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement.

Section 13.16 Attorneys' Fees. Should any legal action be brought by either Party because of any default under this Agreement or to enforce any provision of this Agreement, or to obtain a declaration of rights hereunder, the prevailing Party shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the Court. The standard of review for determining whether a default has occurred under this Agreement shall be the standard generally applicable to contractual obligations in California.

Section 13.17 Limitation on Liability. In no event shall: (i) any partner, officer, director, member, shareholder, employee, affiliate, manager, representative, or agent of Developer or any general partner of Developer or its general partners be personally liable for any breach of this Agreement by Developer, or for any amount which may become due to City under the terms of this Agreement; or (ii) any member, officer, agent or employee of City be personally liable for any breach of this Agreement by City or for any amount which may become due to Developer under the terms of this Agreement.
IN WITNESS WHEREOF, this Agreement has been entered into by and between Developer and City as of the day and year first above written.

CITY:

CITY OF STOCKTON, a California municipal corporation

By: Kurt O. Wilson, City Manager
   [signature must be notarized]

APPROVED AS TO FORM:

By: John Luebberke, City Attorney

ATTEST:

By: Bonnie Paige, City Clerk

DEVELOPER:

OPEN WINDOW PROJECT, LLC, a California limited liability company

By: Zachary Cort
   Name: Zachary Cort
   Title: Manager
   [signature must be notarized]
State of California )
) ss
County of San Joaquin

On June 29, 2016, before me, Esther F. Gilliland, Notary Public, (Name of Notary)

notary public, personally appeared Kurt Wilson who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Esther F. Gilliland
(Notary Signature)
ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Joaquin

On 6/23/2016 before me, Sylvia Lozano-Sandoval, Notary Public

personally appeared Zachary W. Cort who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she they executed the same in his/her their authorized capacity(ies), and that by his/her their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature (Seal)
EXHIBIT A-1
MAP OF DEVELOPER AND CITY PARCELS
EXHIBIT A-2

LEGAL DESCRIPTION OF DEVELOPER PARCELS

All that certain real property situated in the City of Stockton, County of San Joaquin, State of California, described as follows:

510 E MINER
532 E MINER
544 E MINER
225 N AMERICAN

Parcel 1: APN 139-250-06

Lots 1, 3 and the West 40 feet of Lot 5 in Block 74 East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Parcel 2: APN 139-250-12

Lot 5, except the West 40 feet (Carpenter’s Measurement) and all of that portion of Lot 7 lying North of the South line of Miner Channel in Block 74 East of Center Street, in the city of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Parcel 3: APN 139-250-12

Lot 15 in Block 74, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Parcel 4: APN 139-250-27

Parcel 4A:

That portion of Lots 9 and 11 in Block 74, East of Center Street in said City of Stockton according to the Official Map or Plat therefor, lying North of South Line of Miner Channel or Slough as shown on Map of H.T. Compton Jr, City Surveyor on file in the City Clerk’s Office of City of Stockton, County of San Joaquin, State of California

Parcel 4B:

A portion of Lot 11 in Block 74, East of Center Street, in said City of Stockton according to the Official Map or Plat thereof, commencing at the Northwest corner of said Lot; running thence South 40 feet; Thence Westerly parallel with Miner Avenue, 50 feet more or less to Bulkhead as per H.T. Compton Map; thence Northeasterly along line of Bulkhead to Miner Avenue, thence East along South line of Miner Avenue to place of beginning.
Parcel 4C:

A portion of Lots 9 and 11 in Block 74, East of Center Street in said City of Stockton, according to the Official Map or Plat thereof, described as that portion South 10 feet of the North 50 feet of each of Lots 9 and 11, lying South of line of waterway belonging to City of Stockton as established by H.T. Compton, City Surveyor in Plat Book on file in City Clerk’s Office.

Parcel 4D:

The South 12 of Lot 11 and all those portions of Lot 9 lying South of Miner Channel in Block 74, East of Center Street in said City of Stockton according to the Official Map or Plat thereof.

615 E CHANNEL

Lot 4 in Block 75, East of Center Street, according to the Office Map or Plat thereof in the Office of the Recorder, San Joaquin County.

619 E CHANNEL

Lot 6 in Block 75, East of Center Street in the said City of Stockton, according to the official Map or Plat thereof in the Office of the County Recorder of San Joaquin County.

APN: 139-290-06

11 N GRANT

Lot 12, Block 8, or Tract of East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof, County of San Joaquin Recorder, State of California.

Reserving unto Grantors herein all oil, gas, minerals and other hydrocarbon substances lying below a depth of 500 feet beneath the surface of said land, without however the right of surface entry.

Assessor’s Parcel Number(s): 149-180-22

612 E MINER

Lots 1 and 3 in Block 75, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof, County of San Joaquin Records.

622 E MINER

Lot Five (5) in Block Seventy-Five (75) East of Center Street, in the said City of Stockton, according to the Official Map or Plat thereof.
APN: 139-290-02
630 E WEBER
646 E WEBER
643 E MAIN

Lots 7, 9, 11 and 12 in Block 7, East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof, County of San Joaquin Records.

Assessor's Parcel Number(s):
149-180-03
149-180-04
149-180-09

635 E MAIN

Lot 10 in Block 7, “East of Center Street”, in the City of Stockton according to the Official Map thereof.

APN: 149-180-08
836 E CHANNEL

PARCEL ONE:

Lot 7 in Block 70, East of Center Street, in the said City of Stockton, County of San Joaquin, State of California according to the Official Map or Plat thereof.

APN: 139-280-04

PARCEL TWO:

Lot 9 in Block 70, East of Center Street, in the said City of Stockton, County of San Joaquin, State of California according to the Official Map or Plat thereof.

APN: 139-280-05

707 E MAIN

For APN/Parcel ID(s): 149-180-24

A portion of lots 4 and 6, in Block 8, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, more particularly described as follows:

Parcel B, as shown upon map filed in Book 8 of Parcel, Maps, Page 6, San Joaquin County Records.
206 N SUTTER

Lots 2, 4, 6 and 8 in Block 73, East of Center Street, in the said City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

201 N CALIFORNIA

For APN/Parcel ID(s): 139-250-040

Lots 10, 12 and 16 in Block 73, East of Center Street, in the said City of Stockton, according to the Official Map or Plat thereof, San Joaquin County Records.

242 N SUTTER

APN: 139-250-01/139-250-05

PARCEL ONE:

Lots nine (9) and eleven (11) and portion of Lots seven (7) and fifteen (15), in Block seventy-three (73) EAST OF CENTER STREET IN THE CITY OF STOCKTON according to the Official Map thereof, San Joaquin County Records, described as follows:

BEGINNING at the Northeast corner of said Block 13, being also the West line of California Street, 151.5 feet to the Southeast corner of said Lot 15; thence North 71°31' West, 52.23 feet to a point bearing 45.0 feet Westerly of said East line of Block 73 and 125.0 feet Southerly of the North line of said Block 73; thence South 78°00' West and parallel with said North Line of Block 73, 85.0 feet, thence North 12°02' West and parallel with said East line of Block 73, 800 feet; thence North 31°40' West, 49.3 feet to the Northwest corner of said Lot 7; thence North 78°00' East along said North line of Block 73, being also the South line of Miner Avenue, 151.6 feet to the point of beginning.

PARCEL TWO:

Lot five (5) and portion of Lots three (3) seven (7), thirteen (13) and fifteen (15) in Block seventy-three (73), EAST OF CENTER STREET, IN THE CITY OF STOCKTON, according to the Official Map thereof, San Joaquin County Records, and described as follows:

BEGINNING at the Southeast corner of said Lot 15 and ran North 71°31' West, 52.23 feet to a point being 45.0 feet Westerly of the East line of said Block 73 and 125.0 feet SOUTHERLY OF THE North line of said Block 73 thence South 78°00' West and parallel with said North line of Block 73, 85.0 feet; then North 12°02' West and parallel with said East line or Block 73, 80.00 feet; thence South 18°00' West along said North line of Block 73, being also the South line of Miner Avenue 59.4 feet; thence south 12°02' East and Parallel with said East line of Block 73, 101.0 feet to the North line of Lot 13; Thence North 78°00' East along said North line of Lot 73, 50.5 feet to the South line of Lot 15.
feet to the South line of said Lot 73; thence North 78°0' East along said South lines of Lots 13 and 15, 196.6 feet to the point of beginning.

SUBJECT to the right to use the existing fire escape passageway over the lying East of the West line of the above described parcel in said Lot 13

PARCEL THREE:

Lot one (1) and positions of Lots three (3) and thirteen (13), in Block seventy-three (73), EAST OF CENTER STREET, IN THE CITY OF STOCKTON, according to the Official Map thereof San Joaquin County Records and described as follows:

BEGINNING at the Northwest corner of said Block 73 and ran North 78°0' East along the North line of said Block 73, being also the South line of Miner Avenue, 92.2 feet to a point being 221.0 feet Westerly of the Northwest corner of said Block 73; thence South 12°02' East and parallel with the East line of said Block 73, 101.0 feet to the North of said lot 73; thence North 78°0' East along said North line of Lot 73, 14.4 feet; thence South 12°02' East, parallel with and distant 45.0 feet Westerly of the East line of said lot 13, 50.5 feet to the South line of said Lot 73; thence South 78°0' West along said South line of Lot 73, 106.6 feet to the Southwest corner of said Lot 13; thence North 12°02' West along the West line of said Block 73, being also the West line of Sutter Street, 151.1 feet to the point of beginning.

TOGETHER with the right to use the existing fire escape passageway over and lying East of the East line of the above described parcel in said Lot 73.

104 N AMERICAN

All that certain real property being a portion of Block 68, “East of Center Street,” City of Stockton, County of San Joaquin, State of California, according to the Official Map thereof, County of San Joaquin, State of California, being more particularly described as follows:

Beginning at the Northwesterly corner of said Block 68; thence along the Northerly line of said Block 68; also being the Southerly line of Channel Street (60°06' wide), North 78°23'35" East 102.30 feet; thence leaving aid Northerly line the following five (5) courses: (1) South 11°39'25" East 100.00 feet; (2) North 78°20'35" East 45.00 feet; (3) South 11°39'25" East 65.00 feet; (4) North 78°20'35" East 26.00 feet and (5) South 11°39'25" East 87.66 feet to the Southerly line of said Block 68, also being the Northerly line of Weber Avenue (11°10' wide); thence along said Southerly line South 78°22'35" West 173.23 feet to the Southwesterly corner of said Block 68; thence along the Westerly line of said Block 68, also being the Easterly line of American Street (80°08' wide) North 11°40'25" West 252.65 feet to the point of beginning.

The above legal description is also referred to as “0.8031- Acre Parcel” on Certificate of Lot Line adjustment contained in Corporation Grant Deed recorded on May 5, 1994, instrument No. 94057303, San Joaquin County Records.

APN: 139-270-14
210 N AMERICAN

For APN/Parcel ID(s): 139-290-04

Lot Two (2), in Block 75, East of Center Street, in the said City of Stockton, according to the official Map or Plat thereof, San Joaquin County Records.

221 N AMERICAN

The Easterly 100 feet of Lot 16 in Block 74 East of Center Street, in the said City of Stockton, according to the Official Map or Plat thereof, San Joaquin County Records.

Expecting therefrom all oil, gas, minerals, and other hydrocarbon substances lying below a depth of 500 feet beneath the surface of said land, without the right of surface entry, is reserved in the deed from the trustees for Iroquois Tribe No. 15, improved order of Redmen, recorded November 12, 1991 as Instrument No. 991110385, San Joaquin County Records.

Assessor’s Parcel Number(s): 139-250-23

525 E CHANNEL

Lot 8 and the Westerly 50 feet of Lot 16 in Block 75, East of Center Street, in the City of Stockton, County of San Joaquin, State of California as per the Official Map or Plat thereof

APN: 139-250-18

535 E CHANNEL

Lot ten (10) in Block seventy-four (74), East of Center Street, in the said City of Stockton, according Official Map or Plat thereof, San Joaquin County Records.

545 E CHANNEL

Lot 12 in Block 74 of “East of Center Street”, in the said City of Stockton, according to the Official Map or Plat thereof.

APN: 139-250-21

832 E WEBER

Parcel One:

Lot 5, Block 9, “East of Center Street” in the said City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof, San Joaquin County Records.
Parcel Two:

Lot 7, Block 9, "East of Center Street" in the said City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof, San Joaquin County Records.

Assessor’s Parcel Numbers(s):
149-190-03
149-190-04

843 E WEBER

For APN/Parcel ID(s): 139-280-07

PARCEL I:

Lots 10 and 12 in Block 70, East of Center Street, in the said City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

PARCEL II:

The East 2/3 of Lot 14 in Block 70, East of Center Street, in the said City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

800 E MAIN

APN: 149-210-01

Lots one (1), three (3) and thirteen (13) in Block eighteen (18) East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof, San Joaquin County Records.

29 N AURORA

Parcel 1:

Lot 11 in Block 9, East of Center Street, in the said City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof, San Joaquin County Records.

Parcel 2:

Lot sixteen (16) in Block Nine (9) East of Center Street, in the said City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof, San Joaquin County Records.
Parcel 3:
Lot fifteen (15), and the East 26 inches of Lot thirteen (13) in Block nine (9), East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof, San Joaquin County records, and more particularly described as follows:

Beginning at the Northeast corner of said lot Thirteen (13) thence Westerly along the North line of said lot thirteen (13), 26 inches to the center of a 13 inch Brick Wall thence continuing Easterly along the South line of said Lot fifteen (15) 151.68 feet to the Southeast corner of said lot fifteen (15) thence Northerly along the East line of said lot (15) thence Northerly along the East line of said Lot fifteen (15), 50.55 feet to the Northeast corner of said Lot fifteen (15) thence Westerly along the North line of said Lot fifteen (15), 151.68 feet to the point of beginning.

Parcel 4:
Lots 2, 4, 6, Block 9, East of Center Street in the City of Stockton according to the Official Map or Plat thereof, San Joaquin County records.

Assessor's Parcel Numbers(s): 149-190-06; 149-190-07; 149-190-08; 149-190-09; 149-190-10; 149-190-11

501 E MAIN
The South 65 feet of Lot 2 and the West ½ of Lot 4 in Block 6 of East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof, San Joaquin County Records, pursuant to Notice of Lot Merger recorded May 3, 1985, Document No. 85030031, Official Records.

APN: 149-170-27

11 N AURORA
Lots 9, 11 and 15, Block 18, East of Center Street in the City of Stockton according to the Official Map or Plat thereof, San Joaquin County Records.

EXCEPTING THEREFROM the northerly 59.80 feet of said Lots 9 and 11, being measured perpendicular to and parallel with the southerly line of Main Street.

831 E MAIN

APN: 149-190-13

The East ½ of Lot 8 in Block 9 EAST OF CENTER, according to the Official Map or Plat thereof, San Joaquin County Records.
20 N AURORA
APN: 151-190-08
Lot 13 and the West 125 feet of Lot 14 in Block 241 of West Center Street, in the City of Stockton, as per Official Map therefor, San Joaquin County Records.

915 E MARKET
929 E MARKET
937 E MARKET

PARCEL ONE:
All of Lots 8, 15 and 16 in Block 241, EAST OF CENTER STREET, in the City of Stockton, according to the Official Map thereof.

EXCEPTING THEREFROM that portion conveyed to the San Joaquin Regional Rail Commission by Deed recorded June 29, 1998, as Document No. 98-074242.

ALSO EXCEPTING THEREFROM all minerals and mineral rights, interests, and royalties, including without limiting the generality thereof, oil, gas, and other hydrocarbon substances, as well as metallic or other solid minerals, in and under said property.

PARCEL TWO:
Lot 6 and the East 25 feet of Lot 14 in Block 241, EAST OF CENTER STREET, in the City of Stockton, according to the Official Map or Plat thereof.

PARCEL THREE:
The East 40 feet (Carpenter's Measurement) of Lot 4, in Block 241, EAST OF CENTER STREET, in the City of Stockton, according to the Official Map or Plat thereof.

TOGETHER with all of the right, title and interest of the grantors herein and to that certain right of way to be used exclusively for foot passengers on, over and along the West 10 feet 6 inches of Lot 4, Block 241, East of Center Street, to be kept and maintained forever as an open areaway as conveyed in Deed dated October 29, 1925, executed by M.D. Dentoni, a single man and M Katten, a single man to George Heighiet and Sam Tager, recorded October 31, 1925 in Vol. 126 of Official Records, page 37, San Joaquin County Records.

216 N AMERICAN
Lots 13 and 14, Block 75 of East of Center Street, in the City of Stockton, as per Official Map thereof, SAN Joaquin county Records.

APN: 139-290-03
EXHIBIT A-3

LEGAL DESCRIPTION OF CITY PARCELS

That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

**Street Address:** 216 N. California Street, Stockton, California

Parcel 1:

The North 40 feet, 7 1/3 inches of each of lots two (2) and four (4) in block seventy-four (74) East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Parcel 2:

The South 60 feet 4 2/3 inches of each of lots two (2) and four (4); The South 60 feet 4 2/3 inches of the West 2 1/2 feet of lot six (6); all in block seventy-four (74), East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map of Plat thereof.

(ALL MEASUREMENTS UNITED STATES STANDARD MEASURE)

APN: 139-250-26

**Street Address:** 39 N. California Street, Stockton, California

Lot 11 in Block 5 East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof.

APN: 149-170-12

**Street Address:** 27 N. California Street, Stockton, California

Parcel 1:

The South 6 1/2 inches of the North one-half of the West 140 feet of Lot 13, the South one-half of Lot 13 and the North 10 feet of Lot 14 in Block 5, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Parcel 2:

The North one-half of Lot 13 in Block 5, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Excepting therefrom the South 6 1/2 inches of the North one-half of the West 140 feet of Lot 13.
Parcel 3:

All of Lots 15 and 16 in Block 5, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Excepting therefrom the South 26.33 feet of the East 141.00 feet of Lot 16.

APN: 149-170-25

Street Address: 431 E. Main Street, Stockton, California

Lot 8 and the west one-half of Lot 10 in Block 5 East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof.

APN: 149-170-08

Street Address: 445 E. Main Street, Stockton, California

The East one-half of Lot 10 and all of Lot 12 in Block 5, East of Center Street, in the said City of Stockton, according to the Official Map or Plat thereof, San Joaquin County Records.

APN: 149-170-09

Street Address: 24 N. American Street, Stockton, California

Lots 13, 14, 15 and 16 in Block 7, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof, San Joaquin County records.

APN: 149-180-05

Street Address: 725 E. Main Street, Stockton, California

All of Lots 8 and 10 in Block 8 East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof.

Also all that part of Lot 6 in Block 8 East of Center Street, being the East 46 1/2 feet thereof, more or less, bounded on the West by the centerline of a division wall running North and South between certain buildings, and being all of said Lot 6, except the part thereof conveyed by Rudolph Gnekow and wife to their sons and daughters by Deed dated February 3, 1913 and recorded in Book "A" of Deeds, Vol. 208, page 106, San Joaquin County Records.

APN: 149-180-21

Street Address: 25 N. Grant Street, Stockton, California

Lot 16 and the West 1/3 of Lot 15 in Block 8, East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof, San Joaquin County Records.

APN: 149-180-17
**EXHIBIT B**

**IMPACT FEES – CITY/MUD FEE SCHEDULE**

### Public Facility Fees

**Agricultural Land Mitigation**

(209) 937-8561

**FY 2015-16 Adopted Fee Schedule**

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**Division General Comments (Applicable to all Fees)**

All Fee Areas - Additional 3.5% Administrative Fee

### Public Facility Fees

**Air Quality**

(209) 937-8561

**FY 2015-16 Adopted Fee Schedule**

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**Division General Comments (Applicable to all Fees)**

All Fee Areas - Additional 3.5% Administrative Fee
## Public Facility Fees
### City Office Space
### (209) 937-8561

**FY 2015-16 Adopted Fee Schedule**

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**Division General Comments (Applicable to all Fees)**

All Fee Areas - Additional 1.5% Administrative Fee
Public Facility Fees
Community Recreation Centers
(209) 937-8561
FY 2015-16 Adopted Fee Schedule

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Division General Comments (Applicable to all Fees)
All Fee Areas - Additional 3.5% Administrative Fee

Public Facility Fees
County Facilities
(209) 937-8561
FY 2015-16 Adopted Fee Schedule

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Division General Comments (Applicable to all Fees)
All Fee Areas - Additional 3.5% Administrative Fee
# Public Facility Fees

**Fire Station**

(209) 937-8561

**FY 2015-16 Adopted Fee Schedule**

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**Division General Comments (Applicable to all Fees)**

- All Fee Areas: Additional 3.5% Administrative Fee
### Public Facility Fees

#### Libraries

(209) 937-8561

**FY 2015-16 Adopted Fee Schedule**

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<td>Office/High Density (per 1,000 sq. ft.)</td>
<td>$94.50</td>
</tr>
<tr>
<td>950-0000-344.44-00</td>
<td>7/1/2015</td>
<td>Retail/Medium Density (per 1,000 sq. ft.)</td>
<td>$48.50</td>
</tr>
<tr>
<td>950-0000-344.44-00</td>
<td>7/1/2015</td>
<td>Warehouse/Low Density (per 1,000 sq. ft.)</td>
<td>$55.00</td>
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<tr>
<td><strong>Residential - Existing City Limits</strong></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>950-0000-344.44-00</td>
<td>7/1/2015</td>
<td>Single Family Units (per unit)</td>
<td>EXEMPT</td>
</tr>
<tr>
<td>950-0000-344.44-00</td>
<td>7/1/2015</td>
<td>Multiple Family Units (per unit)</td>
<td>EXEMPT</td>
</tr>
<tr>
<td>950-0000-344.44-00</td>
<td>7/1/2015</td>
<td>Guest Rooms (per room)</td>
<td>$85.50</td>
</tr>
<tr>
<td><strong>Residential - Greater Downtown Area</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>950-0000-344.44-00</td>
<td>7/1/2015</td>
<td>Single Family Units (per unit)</td>
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</tr>
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<td>950-0000-344.44-00</td>
<td>7/1/2015</td>
<td>Multiple Family Units (per unit)</td>
<td>EXEMPT</td>
</tr>
<tr>
<td>950-0000-344.44-00</td>
<td>7/1/2015</td>
<td>Guest Rooms (per room)</td>
<td>$85.50</td>
</tr>
<tr>
<td><strong>Residential - Outside City Limits</strong></td>
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<tr>
<td>950-0000-344.44-00</td>
<td>7/1/2015</td>
<td>Single Family Units (per unit)</td>
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<td>Multiple Family Units (per unit)</td>
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<td>950-0000-334.44-00</td>
<td>7/1/2015</td>
<td>Guest Rooms (per room)</td>
<td>$171.00</td>
</tr>
</tbody>
</table>

*Division General Comments (Applicable to all Fees)*

All Fee Areas - Additional 3.5% Administrative Fee

### Public Facility Fees

#### Parkland

(209) 937-8349

**FY 2015-16 Adopted Fee Schedule**

<table>
<thead>
<tr>
<th>Account #</th>
<th>Effective Date</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Non-Residential</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>970-0000-344.46-00</td>
<td>7/1/2015</td>
<td>Office/High Density</td>
<td>EXEMPT</td>
</tr>
<tr>
<td>970-0000-344.46-00</td>
<td>7/1/2015</td>
<td>Retail/Medium Density</td>
<td>EXEMPT</td>
</tr>
<tr>
<td>970-0000-344.46-00</td>
<td>7/1/2015</td>
<td>Warehouse/Low Density</td>
<td>EXEMPT</td>
</tr>
<tr>
<td><strong>Residential</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>970-0000-344.46-00</td>
<td>7/1/2015</td>
<td>Single Family Units (per unit)</td>
<td>$2,748.00</td>
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<tr>
<td>970-0000-344.46-00</td>
<td>7/1/2015</td>
<td>Multiple Family Units (per unit)</td>
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<tr>
<td>970-0000-344.46-00</td>
<td>7/1/2015</td>
<td>Guest Rooms</td>
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</tbody>
</table>

*Division General Comments (Applicable to all Fees)*

All Fee Areas - Additional 3.5% Administrative Fee
## Public Facility Fees

### Police Station Expansion

(209) 937-8561

**FY 2015-16 Adopted Fee Schedule**

<table>
<thead>
<tr>
<th>Account #</th>
<th>Effective Date</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>960-0000-344.45-00</td>
<td>7/1/2015</td>
<td>Office/High Density (per 1,000 sq. ft.)</td>
<td>$105.50</td>
</tr>
<tr>
<td>960-0000-344.45-00</td>
<td>7/1/2015</td>
<td>Retail/Medium Density (per 1,000 sq. ft.)</td>
<td>$54.00</td>
</tr>
<tr>
<td>960-0000-344.45-00</td>
<td>7/1/2015</td>
<td>Warehouse/Low Density (per 1,000 sq. ft.)</td>
<td>$62.00</td>
</tr>
<tr>
<td><strong>Residential - Existing City Limits</strong></td>
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</tr>
<tr>
<td>960-0000-344.45-00</td>
<td>7/1/2015</td>
<td>Single Family Units (per unit)</td>
<td>$591.00</td>
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<tr>
<td>960-0000-344.45-00</td>
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<td>Multiple Family Units (per unit)</td>
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<tr>
<td>960-0000-344.45-00</td>
<td>7/1/2015</td>
<td>Guest Rooms (per room)</td>
<td>$99.50</td>
</tr>
<tr>
<td><strong>Residential - Greater Downtown Area</strong></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>960-0000-344.45-00</td>
<td>7/1/2015</td>
<td>Single Family Units (per unit)</td>
<td>EXEMPT</td>
</tr>
<tr>
<td>960-0000-344.45-00</td>
<td>7/1/2015</td>
<td>Multiple Family Units (per unit)</td>
<td>EXEMPT</td>
</tr>
<tr>
<td>960-0000-344.45-00</td>
<td>7/1/2015</td>
<td>Guest Rooms (per room)</td>
<td>$99.50</td>
</tr>
</tbody>
</table>

---

### Division General Comments (Applicable to all Fees)

- All Fee Areas - Additional 3.5% Administrative Fee

---

## Public Facility Fees

### Regional Transportation Impact Fee (RTIF)

(209) 937-8349

**FY 2015-16 Adopted Fee Schedule**

<table>
<thead>
<tr>
<th>Account #</th>
<th>Effective Date</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>917-0000-344.11-08</td>
<td>7/1/2015</td>
<td>Office/High Density/Guest Rooms (per 1,000 sq. ft.)</td>
<td>$1,580.00</td>
</tr>
<tr>
<td>917-0000-344.11-08</td>
<td>7/1/2015</td>
<td>Retail/Medium Density (per 1,000 sq. ft.)</td>
<td>$1,250.00</td>
</tr>
<tr>
<td>917-0000-344.11-08</td>
<td>7/1/2015</td>
<td>Commercial/Industrial (per 1,000 sq. ft.)</td>
<td>$950.00</td>
</tr>
<tr>
<td>917-0000-344.11-08</td>
<td>7/1/2015</td>
<td>High Cube Warehouse (per 1,000 sq. ft.)</td>
<td>$400.00</td>
</tr>
<tr>
<td><strong>Residential</strong></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>917-0000-344.11-08</td>
<td>7/1/2015</td>
<td>Single Family Units (per unit)</td>
<td>$3,141.34</td>
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<tr>
<td>917-0000-344.11-08</td>
<td>7/1/2015</td>
<td>Multiple Family Units (per unit)</td>
<td>$1,884.80</td>
</tr>
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### Division General Comments (Applicable to all Fees)

- All Fee Areas - Additional 3.5% Administrative Fee
## Public Facility Fees
### Street Improvements
(209) 937-8349
**FY 2015-16 Adopted Fee Schedule**

<table>
<thead>
<tr>
<th>Account #</th>
<th>Effective Date</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>910-0000-344.11-00</td>
<td>7/1/2015</td>
<td>Office/High Density, per 1,000 square feet</td>
<td>$2,412.00</td>
</tr>
<tr>
<td>910-0000-344.11-00</td>
<td>7/1/2015</td>
<td>Retail/Medium Density, per 1,000 square feet</td>
<td>$3,177.00</td>
</tr>
<tr>
<td>910-0000-344.11-00</td>
<td>7/1/2015</td>
<td>Warehouse/Low Density, per 1,000 square feet</td>
<td>$931.50</td>
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</table>

### Residential - Existing City Limits

<table>
<thead>
<tr>
<th>Account #</th>
<th>Effective Date</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>910-0000-344.11-00</td>
<td>7/1/2015</td>
<td>Single Family Units (per unit)</td>
<td>$6,613.00</td>
</tr>
<tr>
<td>910-0000-344.11-00</td>
<td>7/1/2015</td>
<td>Multiple Family Units (per unit)</td>
<td>$4,828.00</td>
</tr>
<tr>
<td>910-0000-344.11-00</td>
<td>7/1/2015</td>
<td>Guest Rooms (per room)</td>
<td>$5,157.50</td>
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</tbody>
</table>

### Residential - Greater Downtown Area

<table>
<thead>
<tr>
<th>Account #</th>
<th>Effective Date</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>910-0000-344.11-00</td>
<td>7/1/2015</td>
<td>Single Family Units (per unit)</td>
<td>EXEMPT</td>
</tr>
<tr>
<td>910-0000-344.11-00</td>
<td>7/1/2015</td>
<td>Multiple Family Units (per unit)</td>
<td>EXEMPT</td>
</tr>
<tr>
<td>910-0000-344.11-00</td>
<td>7/1/2015</td>
<td>Guest Rooms (per room)</td>
<td>$5,157.50</td>
</tr>
</tbody>
</table>

### Residential - Outside City Limits

<table>
<thead>
<tr>
<th>Account #</th>
<th>Effective Date</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>910-0000-344.11-00</td>
<td>7/1/2015</td>
<td>Single Family Units (per unit)</td>
<td>$13,226.00</td>
</tr>
<tr>
<td>910-0000-344.11-00</td>
<td>7/1/2015</td>
<td>Multiple Family Units (per unit)</td>
<td>$9,656.00</td>
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<tr>
<td>910-0000-344.11-00</td>
<td>7/1/2015</td>
<td>Guest Rooms (per room)</td>
<td>$10,315.00</td>
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</tbody>
</table>

**Division General Comments (Applicable to all Fees)**

All Fee Areas - Additional 3.5% Administrative Fee

## Public Facility Fees
### Street Trees
(209) 937-8561
**FY 2015-16 Adopted Fee Schedule**

<table>
<thead>
<tr>
<th>Account #</th>
<th>Effective Date</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>978-0000-344.15-00</td>
<td>7/1/2015</td>
<td>Tree without root barrier, per tree</td>
<td>$140.00</td>
</tr>
<tr>
<td>978-0000-344.15-00</td>
<td>7/1/2015</td>
<td>Tree wells with root barrier, per tree</td>
<td>$195.00</td>
</tr>
</tbody>
</table>

**Division General Comments (Applicable to all Fees)**

All Fee Areas - Additional 3.5% Administrative Fee
Public Facility Fees

Surface Water

(209) 937-8436

FY 2015-16 Adopted Fee Schedule

<table>
<thead>
<tr>
<th>Account #</th>
<th>Effective Date</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>687-0000-223.90-11</td>
<td>4/1/2016</td>
<td>Office/High density (per sq. ft. floor areas / 0.50)</td>
<td>$0.431</td>
</tr>
<tr>
<td>687-0000-223.90-11</td>
<td>4/1/2016</td>
<td>Retail/medium density (per sq. ft. floor areas / 0.30)</td>
<td>$0.259</td>
</tr>
<tr>
<td>687-0000-223.90-11</td>
<td>4/1/2016</td>
<td>Warehouse/Low density (per sq. ft. floor areas / 0.50)</td>
<td>$0.209</td>
</tr>
<tr>
<td>687-0000-223.90-11</td>
<td>4/1/2016</td>
<td>Single Family Unit (per unit)</td>
<td>$4.196.00</td>
</tr>
<tr>
<td>687-0000-223.90-11</td>
<td>4/1/2016</td>
<td>Multiple Family Units - First Unit</td>
<td>$4.195.00</td>
</tr>
<tr>
<td>687-0000-223.90-11</td>
<td>4/1/2016</td>
<td>Multiple Family Units - Each subsequent unit</td>
<td>$1.260.00</td>
</tr>
<tr>
<td>687-0000-223.90-11</td>
<td>4/1/2016</td>
<td>Guest Rooms</td>
<td>$985.00</td>
</tr>
<tr>
<td>687-0000-223.90-11</td>
<td>4/1/2016</td>
<td>Guest Rooms - Each subsequent guest room</td>
<td>$0.248</td>
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**Division General Comments (Applicable to all Fees)**

Surface Water Public Facility Fees are adjusted every April 1st per Resolution #95-0302 & #02-0131 to cover transfer to Stockton East Water District.

Please contact the Municipal Utilities Department for updated Fee information at (209) 937-8753.
## Public Facility Fees

**Traffic Signals**

**(209) 937-8349**

**FY 2015-16 Adopted Fee Schedule**

<table>
<thead>
<tr>
<th>Account #</th>
<th>Effective Date</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>7/1/2015</td>
<td>Single Family Detached (PURD SFI) per D.U. Units - 10 Trip Ends per Unit - 10 Trip Ends per unit</td>
<td>$110.00</td>
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</tr>
<tr>
<td>7/1/2015</td>
<td>Condominium (PURD SFA) per D.U. Units - 8.6 Trip Ends per unit</td>
<td>$94.20</td>
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<tr>
<td>7/1/2015</td>
<td>Mobile Home per D.U. Units - 5.4 Trip Ends per unit</td>
<td>$59.00</td>
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</tr>
<tr>
<td>7/1/2015</td>
<td>Apartment per D.U. Units - 6.1 Trip Ends per unit</td>
<td>$66.50</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Retirement Village per D.U. Units - 3.3 Trip Ends per unit</td>
<td>$36.00</td>
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<tr>
<td>7/1/2015</td>
<td>Hotel per Room Units - 11 Trip Ends per unit</td>
<td>$122.00</td>
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</tr>
<tr>
<td>7/1/2015</td>
<td>Motel per Room Units - 9.6 Trip Ends per unit</td>
<td>$106.00</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Daycare/Preschool per Student Units - 5 Trip Ends per unit</td>
<td>$55.00</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Daycare/Preschool per 1,000 sq. feet Units - 79 Trip Ends per unit</td>
<td>$866.00</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Elementary-Intermediate School per Student Units - 0.5 Trip Ends per unit</td>
<td>$5.50</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>High School per Student Units - 1.2 Trip Ends per unit</td>
<td>$13.25</td>
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<tr>
<td>7/1/2015</td>
<td>Junior College - Community College per Student Units - 1.6 Trip Ends per unit</td>
<td>$17.75</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>University per Student Units - 2.4 Trip Ends per unit</td>
<td>$26.50</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Church &amp; Accessory Use per 1,000 sq. feet Units - 7.7 Trip Ends per unit</td>
<td>$84.50</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Industrial-Warehouse-Manufacturer per 1,000 sq. feet Units - 7.6 Trip Ends per unit</td>
<td>$83.25</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Industrial-Warehouse-Manufacturer per Acre Units - 80.8 Trip Ends per unit</td>
<td>$885.00</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Industrial Service per 1,000 sq. feet Units - 20.25 Trip Ends per unit</td>
<td>$223.00</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Truck Terminal-Distribution Center per 1,000 sq. feet Units - 9.85 Trip Ends per unit</td>
<td>$108.00</td>
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<tr>
<td>7/1/2015</td>
<td>Mini/Self Storage per 1,000 sq. feet Units - 2.8 Trip Ends per unit</td>
<td>$30.75</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Lumber Yard per 1,000 sq. feet Units - 34.5 Trip Ends per unit</td>
<td>$379.00</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Lumber Yard w/open storage/sales per Acre Units - 148 Trip Ends per unit</td>
<td>$1,622.00</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Home Improvement Center per 1,000 sq. feet Units - 64.6 Trip Ends per unit</td>
<td>$709.00</td>
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</tr>
<tr>
<td>7/1/2015</td>
<td>Shopping Center by site (sq. ft.) - Less than 50,000 per 1,000 sq. feet Units - 116 Trip Ends per unit</td>
<td>$1,271.00</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Shopping Center by site (sq. ft.) - 50,000-99,999 per 1,000 sq. feet Units - 79.4 Trip Ends per unit</td>
<td>$865.00</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Shopping Center by site (sq. ft.) - 100,000-199,999 per 1,000 sq. feet Units - 50.4 Trip Ends per unit</td>
<td>$862.00</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Shopping Center by site (sq. ft.) - 200,000-299,999 per 1,000 sq. feet Units - 49.8 Trip Ends per unit</td>
<td>$547.00</td>
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</tr>
<tr>
<td>7/1/2015</td>
<td>Shopping Center by site (sq. ft.) - 300,000-399,999 per 1,000 sq. feet Units - 44.4 Trip Ends per unit</td>
<td>$486.00</td>
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</tr>
<tr>
<td>7/1/2015</td>
<td>Shopping Center by site (sq. ft.) - 400,000-499,999 per 1,000 sq. feet Units - 41.6 Trip Ends per unit</td>
<td>$456.00</td>
<td></td>
</tr>
</tbody>
</table>
### Public Facility Fees

**Traffic Signals**

**(209) 937-8349**

**FY 2015-16 Adopted Fee Schedule**

<table>
<thead>
<tr>
<th>Account #</th>
<th>Effective Date</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Shopping Center by size (sq. ft.) - 500,000-999,999 per 1,000 sq. feet Units - 35.5 Trip Ends per unit</td>
<td>$389.00</td>
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<tr>
<td>7/1/2015</td>
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<td>Shopping Center by size (sq. ft.) - 1,000,000-1,250,000 per 1,000 sq. feet Units - 31.5 Trip Ends per unit</td>
<td>$345.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Boat Launching Ramp per Space Units - 3 Trip Ends per unit</td>
<td>$33.50</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Free Standing Retail per 1,000 sq. feet Units - 73.7 Trip Ends per unit</td>
<td>$808.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Ambulance Dispatch per 1,000 sq. feet Units - 73.7 Trip Ends per unit</td>
<td>$808.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Service Station - more than 3 pumps or 4 nozzles per Site Units - 748 Trip Ends per unit</td>
<td>$8,193.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Truck Stop per Site Units - 825 Trip Ends per unit</td>
<td>$9,036.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Used Car (No service) per Acre Units - 55 Trip Ends per unit</td>
<td>$603.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>New Car/News Boat Dealer per 1,000 sq. feet Units - 44.3 Trip Ends per unit</td>
<td>$485.00</td>
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<tr>
<td>7/1/2015</td>
<td></td>
<td>Auto Center Dealership per 1,000 sq. feet Units - 31.25 Trip Ends per unit</td>
<td>$342.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>General Auto Repair/Body Shop per 1,000 sq. feet Units - 27.2 Trip Ends per unit</td>
<td>$298.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Self Service Car Wash per Stall Units - 52 Trip Ends per unit</td>
<td>$571.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Automatic Car Wash per Site Units - 90 Trip Ends per unit</td>
<td>$9,859.00</td>
</tr>
<tr>
<td>7/1/2015</td>
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<td>Auto Supply per 1,000 sq. feet Units - 39 Trip Ends per unit</td>
<td>$975.00</td>
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<tr>
<td>7/1/2015</td>
<td></td>
<td>Drug Store/Pharmacy per 1,000 sq. feet Units - 43.9 Trip Ends per unit</td>
<td>$482.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Discount Store per 1,000 sq. feet Units - 71.16 Trip Ends per unit</td>
<td>$780.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Supermarket per 1,000 sq. feet Units - 125.5 Trip Ends per unit</td>
<td>$1,373.00</td>
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<tr>
<td>7/1/2015</td>
<td></td>
<td>Convenience Market per 1,000 sq. feet Units - 574.48 Trip Ends per unit</td>
<td>$6,283.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Convenience Markets dispensing fuel—maximum of 2 pumps/4 nozzles per 1,000 sq. feet Units - 887.06 Trip Ends per unit</td>
<td>$9,718.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Clothing Store per 1,000 sq. feet Units - 31.3 Trip Ends per unit</td>
<td>$343.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Paint/Hardware Store per 1,000 sq. feet Units - 51.3 Trip Ends per unit</td>
<td>$562.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Variety Store per 1,000 sq. feet Units - 14.4 Trip Ends per unit</td>
<td>$157.00</td>
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<tr>
<td>7/1/2015</td>
<td></td>
<td>Video Rental Store per 1,000 sq. feet Units - 57.3 Trip Ends per unit</td>
<td>$628.00</td>
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<td>7/1/2015</td>
<td></td>
<td>Furniture/Appliance Store per 1,000 sq. feet Units - 43.5 Trip Ends per unit</td>
<td>$47.50</td>
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<td>7/1/2015</td>
<td></td>
<td>Department Store per 1,000 sq. feet Units - 35.8 Trip Ends per unit</td>
<td>$391.00</td>
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<tr>
<td>7/1/2015</td>
<td></td>
<td>Hair Salon/Dog Grooming per 1,000 sq. feet Units - 15.5 Trip Ends per unit</td>
<td>$279.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Bar/Tavern per 1,000 sq. feet Units - 40 Trip Ends per unit</td>
<td>$438.00</td>
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<td>7/1/2015</td>
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<td>Laundromat/Dry Cleaners per 1,000 sq. feet Units - 50 Trip Ends per unit</td>
<td>$548.00</td>
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<tr>
<td>7/1/2015</td>
<td></td>
<td>Bakery/Craft Store/Yogurt Shop per 1,000 sq. feet Units - 43.9 Trip Ends per unit</td>
<td>$482.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Carpet/Floor/Interior Decorator per 1,000 sq. feet Units - 5.6 Trip Ends per unit</td>
<td>$61.00</td>
</tr>
</tbody>
</table>
Public Facility Fees
Traffic Signals
(209) 937-8349
FY 2015-16 Adopted Fee Schedule

<table>
<thead>
<tr>
<th>Account #</th>
<th>Effective Date</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>7/1/2015</td>
<td>Bank per 1,000 sq. feet Units - 189.95 Trip Ends per unit</td>
<td>$2,081.00</td>
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<tr>
<td>7/1/2015</td>
<td>Banks with Drive-up Facilities per 1,000 sq. feet Units - 290 Trip Ends per unit</td>
<td>$3,178.00</td>
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</tr>
<tr>
<td>7/1/2015</td>
<td>Free Standing Automatic Teller per Unit Units - 160 Trip Ends per unit</td>
<td>$1,753.00</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Savings &amp; Loan/Mortgage Co. per 1,000 sq. feet Units - 60.4 Trip Ends per unit</td>
<td>$662.00</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Restaurant-Quality per 1,000 sq. feet Units - 95.62 Trip Ends per unit</td>
<td>$1,046.00</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Restaurant-Diner House per 1,000 sq. feet Units - 56.3 Trip Ends per unit</td>
<td>$617.00</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Restaurant-High Turnover/Sit Down per 1,000 sq. feet Units - 164.4 Trip Ends per unit</td>
<td>$1,801.00</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Restaurant-Fast Food per 1,000 sq. feet Units - 777.29 Trip Ends per unit</td>
<td>$8,514.00</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Restaurant-Fast Food with Drive-thru per 1,000 sq. feet Units - 680 Trip Ends per unit</td>
<td>$7,450.00</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Library per 1,000 sq. feet Units - 45.5 Trip Ends per unit</td>
<td>$497.00</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Hospital per bed Units - 12.2 Trip Ends per unit</td>
<td>$135.00</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Hospital per 1,000 sq. feet Units - 16.9 Trip Ends per unit</td>
<td>$186.00</td>
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</tr>
<tr>
<td>7/1/2015</td>
<td>Nursing Home per bed Units - 27 Trip Ends per unit</td>
<td>$310.00</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Clinic/Weight Loss/Aerobics/Karate/Dance per 1,000 sq. feet Units - 23.8 Trip Ends per unit</td>
<td>$262.00</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Medical Office per 1,000 sq. feet Units - 54.6 Trip Ends per unit</td>
<td>$597.00</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>General/Medical Office per 1,000 sq. feet Units - 36.9 Trip Ends per unit</td>
<td>$405.00</td>
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</tr>
<tr>
<td>7/1/2015</td>
<td>General Office (in square feet) - Less than 100,000 per 1,000 sq. feet Units - 17.70 Trip Ends per unit</td>
<td>$195.00</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>General Office (in square feet) - Over 100,000 per 1,000 sq. feet Units - 14.30 Trip Ends per unit</td>
<td>$156.00</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Office Park per 1,000 sq. feet Units - 11.4 Trip Ends per unit</td>
<td>$125.00</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Government Offices per 1,000 sq. feet Units - 68.9 Trip Ends per unit</td>
<td>$755.00</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Public Clubhouse/Meeting Rooms, Halls per 1,000 sq. feet Units - 19 Trip Ends per unit</td>
<td>$208.00</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Recreation Center (Private Dev.) per 1,000 sq. feet Units - 30 Trip Ends per unit</td>
<td>$338.00</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Family Recreation Center-Billiards, etc. per 1,000 sq. feet Units - 60.4 Trip Ends per unit</td>
<td>$662.00</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Batting Cages per Cage Units - 5 Trip Ends per unit</td>
<td>$45.50</td>
<td></td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Tennis/Racquetball Club per Court Units - 30 Trip Ends per unit</td>
<td>$328.00</td>
<td></td>
</tr>
</tbody>
</table>

Division General Comments (Applicable to all Fees)
All Fee Areas - Additional 3.5% Administrative Fee
EXHIBIT C

INTENTIONALLY OMITTED
## EXHIBIT D

**CONNECTION FEES – CITY FEE SCHEDULE**

**Municipal Utilities Department**

**Water**

(209) 937-8706

**FY 2015-16 Adopted Fee Schedule**

<table>
<thead>
<tr>
<th>Account #</th>
<th>Effective Date</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>424-0000-344.20-00</td>
<td>7/1/2015</td>
<td>Single Family</td>
<td>$2,170.01</td>
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<tr>
<td>424-0000-344.20-00</td>
<td>7/1/2015</td>
<td>Multi-Family - First meter</td>
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</tr>
<tr>
<td>424-0000-344.20-00</td>
<td>7/1/2015</td>
<td>Each Additional Unit(s) - Multi-Family</td>
<td>$1,750.84</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Residential Connections</th>
</tr>
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<tbody>
<tr>
<td>424-0000-344.20-00</td>
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<tr>
<td>424-0000-344.20-00</td>
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<tr>
<td>424-0000-344.20-00</td>
</tr>
<tr>
<td>424-0000-344.20-00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Non-Residential Connections</th>
</tr>
</thead>
<tbody>
<tr>
<td>425-0000-344.20-00</td>
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<td>425-0000-344.20-00</td>
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<td>425-0000-344.20-00</td>
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<tr>
<td>425-0000-344.20-00</td>
</tr>
<tr>
<td>425-0000-344.20-00</td>
</tr>
</tbody>
</table>
ASSIGNMENT OF RIGHTS AND OBLIGATIONS UNDER DEVELOPMENT AGREEMENT

This Assignment of Rights and Obligations Under Development Agreement (this "Assignment") is entered into this ____ day of __________, 20__ ("Effective Date"), by and between ____________________________, a __________________________ ("Assignor") and ____________________________, a __________________________ ("Assignee"). Assignor and Assignee are collectively referred to herein as the "Parties."

RECIPIENT

A. Assignor and the City of Stockton, a California municipal corporation ("City") have entered into that certain Development Agreement dated as of ________________, 2016 ("DA") which was recorded in the Official Records of San Joaquin County on __________, 2016 as Instrument No. ____________.

B. Assignor [has requested approval from the City of the assignment to Assignee described herein pursuant to Section 11.1A of the DA] [has the right to make the assignment to Assignee under Section 11.1B of the DA.]

C. [City has consented to the assignment described herein pursuant to Section 11.1A of the DA.] [Assignor has provided the City with documentation establishing that the assignment is appropriate pursuant to 11.1 of the DA because _________________.]

AGREEMENTS

NOW, THEREFORE, in exchange for the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:
1. **Assignment and Assumption of Interest.** Assignor hereby transfers, assigns and conveys to Assignee, all of Assignor's right, title and interest in and to, and all obligations, duties, responsibilities, conditions and restrictions under, the DA (the "Rights and Obligations"). Assignee, for itself and its successors and assigns, hereby accepts the foregoing assignment, assumes all such Rights and Obligations, and expressly agrees for the benefit of City, to pay, perform and discharge all obligations of Assignor under the DA and to comply with all covenants and conditions of Assignor arising from or under the DA.

2. **Governing Law; Venue.** This Assignment shall be interpreted and enforced in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Assignment shall be filed and litigated exclusively in the Superior Court of San Joaquin County, California or in the Federal District Court for the Eastern District of California.

3. **Entire Agreement/Amendment.** This Assignment constitutes the entire agreement among the Parties with respect to the subject matter hereof, and supersedes all prior written and oral agreements with respect to the matters covered by this Assignment. This Assignment may not be amended except by an instrument in writing signed by each of the Parties and consented to in writing by City.

4. **Further Assurances.** Each Party shall execute and deliver such other certificates, agreements and documents and take such other actions as may be reasonably required to consummate or implement the transactions contemplated by this Assignment and the DA.

5. **Benefit and Liability.** Subject to the restrictions on transfer set forth in the DA, this Assignment and all of the terms, covenants, and conditions hereof shall extend to the benefit of and be binding upon the respective successors and permitted assigns of the Parties.

6. **Rights of City.** All rights of City under the DA and all obligations to City under the DA which were enforceable by City against Assignor prior to the Effective Date of this Assignment shall be fully enforceable by City against Assignee from and after the Effective Date of this Assignment.

7. **Rights of Assignee.** All rights of Assignor and obligations to Assignor under the DA which were enforceable by Assignor against City prior to the Effective Date of this Assignment shall be fully enforceable by Assignee against City from and after the Effective Date of this Assignment.

8. **Release.** As of the Effective Date, Assignor hereby relinquishes all rights under the DA, and all obligations of Assignor under the DA shall be terminated as to, and shall have no more force or effect with respect to, Assignor.

9. **Attorneys’ Fees.** In the event of any litigation pertaining to this Assignment, the losing party shall pay the prevailing party’s litigation costs and expenses, including without limitation reasonable attorneys’ fees.

10. **City Consent; City is a Third-Party Beneficiary.** City’s countersignature below is for the limited purposes of indicating consent to the assignment and assumption set forth in this
Assignment (if necessary under the DA), and for clarifying that there is privity of contract between City and Assignee with respect to the DA. The City is an intended third-party beneficiary of this Assignment, and has the right, but not the obligation, to enforce the provisions hereof.

11. Recordation. Assignor shall cause this Assignment to be recorded in the Official Records of San Joaquin County, and shall promptly provide conformed copies of the recorded Assignment to City and Assignee.

12. Address for Notices. Assignee’s address for notices, demands and communications under Section 13.5 of the DA is as follows:

____________________________________

Attention: ________________________________

13. Captions; Interpretation. The section headings used herein are solely for convenience and shall not be used to interpret this Assignment. The Parties acknowledge that this Assignment is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both have participated in the negotiation and drafting of this Assignment, this Assignment shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

14. Severability. If any term, provision, condition or covenant of this Assignment or its application to any party or circumstances shall be held by a court of competent jurisdiction, to any extent, invalid or unenforceable, the remainder of this Assignment, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law unless the rights and obligations of the Parties have been materially altered or abridged thereby.

15. Counterparts. This Assignment may be executed in counterparts, each of which shall, irrespective of the date of its execution and delivery, be deemed an original, and the counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF Assignor and Assignee have executed this Assignment as of the date first set forth above.

ASSIGNOR:

__________________________________________

FORM -- DO NOT SIGN

By:

Name:

Its:
ASSIGNEE:

____________________________________, a

____________________________________

By: ____________________________ FORM – DO NOT SIGN
Name: ______________________________________________________________________
Its: ______________________________________________________________________

[NOTE: The presence of the signature blocks below in this form shall not be deemed to require
the consent of the City to any assignment that does not otherwise require the consent of City
under the DA.]

City of Stockton, a California municipal corporation,
hereby consents to the assignment and assumption
described in the foregoing Assignment and Assumption
Agreement.

CITY:

CITY OF STOCKTON, a
California municipal corporation

By: ____________________________ FORM – DO NOT SIGN
____________________________________, City Manager

ATTEST:

____________________________________, City Clerk

APPROVED AS TO FORM:

____________________________________, City Attorney
ACKNOWLEDGMENTS

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _________

On _________________, before me, ____________________ (Name of Notary), notary public, personally appeared ____________________ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

__________________________________________
(Notary Signature)

* * * * * * * * * * * * * * * *
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of ______________

On ______________, before me, __________________, notary public, personally appeared ____________________ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

__________________________
(Notary Signature)
EXHIBIT F

DOWNTOWN INFRASTRUCTURE INFILL INCENTIVE PROGRAM

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 are not 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.
EXHIBIT A

Downtown Infrastructure Infill Incentive Program Boundary Map
EXHIBIT G
ASSESSMENTS

Community Facilities District No. 2001-1 (Downtown Parking); and
Downtown Stockton Management District (Downtown Stockton Alliance)
EXHIBIT H

DOWNTOWN FINANCIAL INCENTIVE PROGRAM

CITY OF STOCKTON

DOWNTOWN FINANCIAL INCENTIVE PROGRAM (DFIP):
GUIDELINES AND PROCEDURES

1. PURPOSE

To eliminate blight and/or blighting influences and to encourage economic reuse of structures within Downtown Stockton that have been vacant for a period of six months or longer. The City of Stockton will grant to the owner of eligible structure a sum equal to certain City imposed fees required to be paid in order to secure a building permit for tenant improvements.

2. ADMINISTRATION

The DFIP is administered by the Economic Development Department. The City, with the assistance of the Downtown Stockton Alliance, will verify vacancy dates and determine eligibility. The City’s determination is final. Owner shall complete an application and provide all information necessary or requested to permit City to determine and/or confirm vacancy dates. City staff will verify that the proposed use is permitted, conduct an historic review of the property, and ensure that the applicant possesses a City of Stockton business license.

3. ELIGIBILITY

a. Program Boundary
   i. Structures located within the Downtown Stockton Management District (aka Downtown Stockton Alliance) are eligible to apply. A map of the program boundary is attached as Exhibit A.

b. Eligible Structures
   i. Residential or commercial buildings
   ii. Structures that have continuously been vacant for six (6) month or longer
   iii. Structures or portion(s) thereof located within the program boundary capable of being rehabilitated pursuant to applicable building codes.

c. Eligible Uses
   i. Any use permitted within the zoning applicable to the building/parcel, including uses requiring a conditional use permit.

4. ELIGIBLE FEES

Certain City imposed fees are eligible for payment as shown in Exhibit B. Fees are paid at the time of building permit issuance. Owner must secure verification of eligibility prior to the issuance of the building permit. Only fees applicable to tenant improvements/rehabilitation are eligible. Fees associated with building expansions or new construction are not eligible for payment under this program.
5. APPLICATION

Applicant must submit a completed Downtown Financial Incentive application, signed by the property owner and Downtown Stockton Alliance, to the City of Stockton’s Economic Development Department. City staff will review and determine eligibility. The property owner must agree to the following:

a. Keep the building free of graffiti and blight  
b. Complete tenant improvements within 180 days of permit issuance  
c. Possess a current City of Stockton Business License

The Economic Development Department will notify the Community Development Department once an application has been approved.

6. EFFECTIVE DATES

Program was originally adopted by the Stockton City Council on December 14, 1999 by Resolution No. 99-0583. Continuation of the program is dependent upon availability of funding.
EXHIBIT B
Eligible Fees

PUBLIC FACILITIES FEES
- City Office Space
- Fire Stations
- Libraries
- Police Station
- Street Improvements
- Surface Water
- Air Quality
- Conservation/Open Space
- Administration

SEWER CONNECTION FEES

SEWER ADMINISTRATION FEE

BUILDING FEES
- Plan Check
- Building Permits
- Strong Motion Instrument Program (SMIP)
- General Plan Maintenance and Implementation
- Miscellaneous Fees: Permit Tracking, Land Update, Microfilm, Green Building, Permit Issuance

FIRE PROTECTION FEES
- Plan Check: sprinkler systems fire alarm systems, hood and duct systems, others as deemed appropriate
- Permit: place of assembly

PUBLIC WORKS FEES
- Plan Check
- Permit
- Street Light “in lieu of”
- Flood Control
- Public Works Commercial Construction
EXHIBIT I
PUBLIC FACILITY FEE PROGRAM INCENTIVE GUIDELINES

PUBLIC FACILITIES FEES
Street Improvement Fee Zones

NORTH ZONE

CENTRAL ZONE

SOUTH ZONE
### consolidatIon of street improvement pef zones

#### Chart 1 - Citywide Nonresidential

<table>
<thead>
<tr>
<th>Zone</th>
<th>Current Fee (9/14/10)</th>
<th>Proposed Fee</th>
<th>Difference</th>
<th>Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>North Zone</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Office/High Density</td>
<td>$3,499.00</td>
<td>$2,412.00</td>
<td>$1,087.00</td>
<td>per 1000 sf</td>
</tr>
<tr>
<td>Retail/Medium Density</td>
<td>$3,460.50</td>
<td>$3,177.00</td>
<td>$283.50</td>
<td>per 1000 sf</td>
</tr>
<tr>
<td>Warehouse/Low Density</td>
<td>$1,236.50</td>
<td>$931.50</td>
<td>$305.00</td>
<td>per 1000 sf</td>
</tr>
<tr>
<td><strong>Central Zone</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Office/High Density</td>
<td>$2,412.00</td>
<td>$2,412.00</td>
<td>$0.00</td>
<td>per 1000 sf</td>
</tr>
<tr>
<td>Retail/Medium Density</td>
<td>$3,177.00</td>
<td>$3,177.00</td>
<td>$0.00</td>
<td>per 1000 sf</td>
</tr>
<tr>
<td>Warehouse/Low Density</td>
<td>$931.50</td>
<td>$931.50</td>
<td>$0.00</td>
<td>per 1000 sf</td>
</tr>
<tr>
<td><strong>South Zone</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Office/High Density</td>
<td>$3,613.00</td>
<td>$2,412.00</td>
<td>$1,201.00</td>
<td>per 1000 sf</td>
</tr>
<tr>
<td>Retail/Medium Density</td>
<td>$3,898.00</td>
<td>$3,177.00</td>
<td>$721.00</td>
<td>per 1000 sf</td>
</tr>
<tr>
<td>Warehouse/Low Density</td>
<td>$1,388.00</td>
<td>$931.50</td>
<td>$456.50</td>
<td>per 1000 sf</td>
</tr>
<tr>
<td><strong>South Zone - Weston Ranch</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Office/High Density</td>
<td>$3,600.50</td>
<td>$2,412.00</td>
<td>$1,188.50</td>
<td>per 1000 sf</td>
</tr>
<tr>
<td>Retail/Medium Density</td>
<td>$4,111.50</td>
<td>$3,177.00</td>
<td>$934.50</td>
<td>per 1000 sf</td>
</tr>
<tr>
<td>Warehouse/Low Density</td>
<td>$1,177.60</td>
<td>$931.50</td>
<td>$246.00</td>
<td>per 1000 sf</td>
</tr>
</tbody>
</table>

**NOTE:** Current Chart 1 Fees listed above were reduced 50% by Council on 9/14/10. Absent further Council action, these reductions will sunset on 12/31/15.

### consolidatIon of street improvement pef zones

#### Chart 2 - Greater Downtown Area Residential

<table>
<thead>
<tr>
<th>Zone</th>
<th>Current Fee (9/14/10)</th>
<th>Proposed Fee</th>
<th>Difference</th>
<th>Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family Units</td>
<td>EXEMPT</td>
<td>EXEMPT</td>
<td>$0.00</td>
<td>per unit</td>
</tr>
<tr>
<td>Multiple Family Units</td>
<td>EXEMPT</td>
<td>EXEMPT</td>
<td>$0.00</td>
<td>per unit</td>
</tr>
<tr>
<td>Guest Rooms</td>
<td>$5,167.50</td>
<td>$5,167.50</td>
<td>$0.00</td>
<td>per room</td>
</tr>
</tbody>
</table>

**NOTE:** "Greater Downtown Area" limits are 100% within Central zone. Current Chart 2 Guest Room Fees listed above were reduced 50% by Council on 9/14/10. Current Chart 2 Single and Multiple Family Fees were exempted by Council on 9/14/10. Absent further Council action, these reductions/exemptions will sunset on 12/31/15.
**CONSOLIDATION OF STREET IMPROVEMENT PEF ZONES**

**CHART 6 - Summary of Proposed New Fees**

<table>
<thead>
<tr>
<th><strong>Proposed Fee</strong></th>
<th><strong>Unit</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family Units</td>
<td>EXEMPT per unit</td>
</tr>
<tr>
<td>Greater Downtown Area*</td>
<td>per unit</td>
</tr>
<tr>
<td>10/14/2008 Citywide Except Downtown*</td>
<td>$6,613.00 per unit</td>
</tr>
<tr>
<td>Beyond 10/14/2008 City Limits</td>
<td>$13,226.00 per unit</td>
</tr>
<tr>
<td>Multiple Family Units</td>
<td>EXEMPT per unit</td>
</tr>
<tr>
<td>Greater Downtown Area*</td>
<td>per unit</td>
</tr>
<tr>
<td>10/14/2008 Citywide Except Downtown*</td>
<td>$4,828.00 per unit</td>
</tr>
<tr>
<td>Beyond 10/14/2008 City Limits</td>
<td>$9,856.00 per unit</td>
</tr>
<tr>
<td>Guest Rooms</td>
<td>per room</td>
</tr>
<tr>
<td>Greater Downtown Area*</td>
<td>$5,157.50 per room</td>
</tr>
<tr>
<td>10/14/2008 Citywide Except Downtown*</td>
<td>$5,157.50 per room</td>
</tr>
<tr>
<td>Beyond 10/14/2008 City Limits</td>
<td>$10,315.00 per room</td>
</tr>
<tr>
<td>Office/High Density - Citywide*</td>
<td>$2,412.00 per 1000 sf</td>
</tr>
<tr>
<td>Retail/Medium Density - Citywide*</td>
<td>$3,177.00 per 1000 sf</td>
</tr>
<tr>
<td>Warehouse/Low Density - Citywide*</td>
<td>$931.50 per 1000 sf</td>
</tr>
</tbody>
</table>

*Subject to sunset clauses adopted by Council 9/14/10 (see Charts 1 - 4)
### CONsolidation of Street Improvement PFP Zones

#### North Zone

<table>
<thead>
<tr>
<th></th>
<th>Current Fee (9/14/10)</th>
<th>Proposed Fee</th>
<th>Difference</th>
<th>Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family Units</td>
<td>$7,670.00</td>
<td>$6,613.00</td>
<td>$1,057.00</td>
<td>per unit</td>
</tr>
<tr>
<td>Multiple Family Units</td>
<td>$5,614.00</td>
<td>$4,828.00</td>
<td>$786.00</td>
<td>per unit</td>
</tr>
<tr>
<td>Guest Rooms</td>
<td>$5,999.00</td>
<td>$5,157.50</td>
<td>$841.50</td>
<td>per room</td>
</tr>
</tbody>
</table>

#### Central Zone

<table>
<thead>
<tr>
<th></th>
<th>Current Fee (9/14/10)</th>
<th>Proposed Fee</th>
<th>Difference</th>
<th>Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family Units</td>
<td>$6,613.00</td>
<td>$6,613.00</td>
<td>$0.00</td>
<td>per unit</td>
</tr>
<tr>
<td>Multiple Family Units</td>
<td>$4,828.00</td>
<td>$4,828.00</td>
<td>$0.00</td>
<td>per unit</td>
</tr>
<tr>
<td>Guest Rooms</td>
<td>$5,157.50</td>
<td>$5,157.50</td>
<td>$0.00</td>
<td>per room</td>
</tr>
</tbody>
</table>

#### South Zone (Inc. Weston Ranch)

<table>
<thead>
<tr>
<th></th>
<th>Current Fee (9/14/10)</th>
<th>Proposed Fee</th>
<th>Difference</th>
<th>Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family Units</td>
<td>$9,177.00</td>
<td>$6,613.00</td>
<td>$2,564.00</td>
<td>per unit</td>
</tr>
<tr>
<td>Multiple Family Units</td>
<td>$5,968.00</td>
<td>$4,828.00</td>
<td>$1,140.00</td>
<td>per unit</td>
</tr>
<tr>
<td>Guest Rooms</td>
<td>$8,378.00</td>
<td>$5,157.50</td>
<td>$3,220.50</td>
<td>per room</td>
</tr>
</tbody>
</table>

### CONSOLIDATION OF STREET IMPROVEMENT PFP ZONES

#### North Zone

<table>
<thead>
<tr>
<th></th>
<th>Current Fee (9/14/10)</th>
<th>Proposed Fee</th>
<th>Difference</th>
<th>Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family Units</td>
<td>$15,381.00</td>
<td>$13,226.00</td>
<td>$2,155.00</td>
<td>per unit</td>
</tr>
<tr>
<td>Multiple Family Units</td>
<td>$11,229.00</td>
<td>$9,956.00</td>
<td>$1,273.00</td>
<td>per unit</td>
</tr>
<tr>
<td>Guest Rooms</td>
<td>$11,928.00</td>
<td>$10,315.00</td>
<td>$1,613.00</td>
<td>per room</td>
</tr>
</tbody>
</table>

#### Central Zone

<table>
<thead>
<tr>
<th></th>
<th>Current Fee (9/14/10)</th>
<th>Proposed Fee</th>
<th>Difference</th>
<th>Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family Units</td>
<td>$13,226.00</td>
<td>$13,226.00</td>
<td>$0.00</td>
<td>per unit</td>
</tr>
<tr>
<td>Multiple Family Units</td>
<td>$9,856.00</td>
<td>$9,856.00</td>
<td>$0.00</td>
<td>per unit</td>
</tr>
<tr>
<td>Guest Rooms</td>
<td>$10,315.00</td>
<td>$10,315.00</td>
<td>$0.00</td>
<td>per room</td>
</tr>
</tbody>
</table>

#### South Zone (Inc. Weston Ranch)

<table>
<thead>
<tr>
<th></th>
<th>Current Fee (9/14/10)</th>
<th>Proposed Fee</th>
<th>Difference</th>
<th>Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family Units</td>
<td>$16,335.00</td>
<td>$13,226.00</td>
<td>$3,109.00</td>
<td>per unit</td>
</tr>
<tr>
<td>Multiple Family Units</td>
<td>$11,936.00</td>
<td>$9,856.00</td>
<td>$2,080.00</td>
<td>per unit</td>
</tr>
<tr>
<td>Guest Rooms</td>
<td>$12,758.00</td>
<td>$10,315.00</td>
<td>$2,443.00</td>
<td>per room</td>
</tr>
</tbody>
</table>

**Note:** Current Chart 3 Fees listed above were reduced 50% by Council on 9/14/10. Absent further Council action, these reductions will sunset on 12/31/12.

Current Chart 4 Fees listed above were NOT reduced on 9/14/10. However, practical application is nil at this point and expected to remain so until Chart 3 reductions sunset on 12/31/12.
I. FEE COLLECTION

These guidelines primarily apply to the implementation and administration of Stockton Municipal Code section 16.72.280, which imposes Public Facilities Fees on new development. When applicable, these guidelines shall also apply to the implementation and administration of all other code sections, which impose fees or mitigation measures on new development, including, but not limited to the following:

- Wastewater........... 13.12.010
- Water................... 13.04.010
- Traffic Signal........ 16.72.140
- Street Sign.......... 16.72.170
- Street Tree......... 16.72.180
- Parklands............ 16.72.060

Should any situations arise which are not covered by the guidelines set forth above, the City Manager shall have the authority to make a decision as to how the ordinance and any corresponding resolution are to be administered. Such decisions are to be in writing.

Any applicant dissatisfied with the decision of the City Manager may appeal such decision to the City Council by filing written notice thereof with the City Manager within 10 days of receipt of the City Manager's decision.

A. Fee Determination

The following paragraphs provide information as to which department determines the fee amounts for various types of development.

1. Fee Exemptions and Credits for Prior Use

Upon receipt of an application for a building permit, the Community Development Department (CDD) determines if it is a permit upon which fees are to be imposed. The fee is to be imposed on permits for the siting of a mobile home and the construction of buildings, specifically excluding any partial permits. The fees shall be charged and paid at the time of issuance of a building permit for development.

It is also imposed on applications for a building permit to add to or alter an existing building (with a credit for prior use). The amount of credit will be for the equivalent of the public facility fees that would currently be assessed against the existing building (as if a building permit for the existing building were pulled simultaneously with the permit for the alterations and/or additions). As an example, if the prior use of the property would have generated 10 Dwelling Unit Equivalents (DUE) and the new building will
generate 15 DUE, then the utilities and street improvement portion of the public facility fee would be based upon the cost of the additional 5 DUE.

The Public Facilities Fees resolution specifies exemptions (under certain conditions) for (1) residential additions, (2) non-residential additions of less than ten percent additional floor area or less than ten percent additional DUE, and (3) replacement construction. The exemption for replacement or reconstruction of buildings that have been destroyed or demolished applies so long as a new building permit is issued for the reconstruction within five years after the demolition. Thereafter, the amount of credit given against fees for the prior use declines 20 percent per year. It is the property owner's responsibility to provide sufficient proof to the City in establishing the date of demolition or destruction of the building and the prior use that existed. In order to be eligible, the property owner must request a credit for the prior use on or before the payment of fees and issuance of the building permit. The Public Facilities Fees are not imposed when to do so would be inconsistent with California law or any of the other provisions of the City of Stockton ordinances or resolutions cited above. The CDD determines if the project qualifies for an exemption under any of these exemption categories.

Any applicant dissatisfied with the decision of the CDD may appeal such decision to the City Manager by filing written notice with the CDD within 10 days of receipt of the CDD's decision.

2. Responsibility for Fee Calculation - Residential

Upon receipt of an application for a building permit for residential units (as defined in the resolution), the CDD determines the number of single-family units, multiple units, and/or guest rooms and adds this information to the application. The application is then circulated to other departments for their input and then back to CDD for calculation of the fees, except that the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) fee will be calculated by and collected by SJCOG, Inc.

3. Responsibility for Fee Calculation - Non-Residential

Parkland and community recreation fees are not imposed on non-residential development. The CDD has the responsibility for making the non-residential fee calculations, except for SJMSCP, wastewater, water, and surface water supply. The responsibility for determining SJMSCP, surface water supply, water, and wastewater fees are as noted below.

Employment is used as an indicator or service need and, hence, as a basis for the non-residential fees with the exception of street improvement, traffic signals, surface water supply, wastewater, and water. The guidelines for determining square footage and employment density are:

a. **Square Footage** - Upon receipt of an application for a building permit for non-residential development, the CDD footage is measured as defined in the California Building Code (CBC). For improvements where the square footage is not appropriately
defined by the CBC definition, e.g. gas stations, a co-generation plant, etc., the CDD develops appropriate square footage equivalents. As explained below, employment is used as the basis for the determination of most of the fees. The square footage equivalents are therefore based on projected employment (the employment typical for that type of development).

b. **Employment Density** - Except as noted above, employment is used as an indicator of service need and, hence, as a basis for all non-residential development fees. The CDD determines whether the typical use of the improvements will be characterized by high, medium, or low employment density and adds that information to the application. The high, medium, and low employment density ranges are less than 400 square feet, between 400 and 600 square feet, and greater than 600 square feet per employee respectively. Office space is categorized as high employment density, retail space as medium employment density, and warehouse and manufacturing space as low employment density. The characteristics of the space, along with the anticipated first use, are factors in the determination of the employment density.

If the space is divided among more than one type of space each with differing employment densities, then the square footage allocated to each type will be determined, except that any type of space constituting less than 25 percent of the total space will be included in the majority space type. As examples, offices in manufacturing plants will be part of the manufacturing space and storage space in retail stores will be retail space, as long as they are no more than 25 percent of the total space.

c. **Water, Wastewater, and Surface Water Supply Fees** - The application is circulated to the Municipal Utilities Department for determination of the water, wastewater, and surface water supply fees.

d. **Other Fees** - The CDD determines the remaining fees, except that the SJMSCP fee is determined by and collected by SJCOG, Inc.

e. **Fee Determination** - The above noted fees will be determined within 15 working days.

4. **Projects Not Requiring Building Permits**

The fee is also imposed to the extent permitted by law on any development which does not require a building permit from the City of Stockton (such as a hospital, which makes application to the State). Such a development will often be required to apply to the City for a permit other than a building permit, for example, use permit, encroachment, water, or sewer connection permit. Upon receipt of such an application, the issuing department follows essentially the same procedure as described above for building permits.
5. **SJMSCP Fee**

a. In order to implement the goals and objectives of the SJMSCP, and to mitigate the cumulative and site-specific impacts of new development on undeveloped lands within the City of Stockton and in San Joaquin County, the establishment of preserve lands will be necessary to compensate for impacts to threatened, endangered, rare, and unlisted SJMSCP Covered Species and other wildlife, and compensation for some non-wildlife related impacts to recreation, agriculture, scenic values, and other beneficial Open Space uses. While those undertaking new development pursuant to the SJMSCP may opt to dedicate lands consistent with the SJMSCP preserve designs or to purchase credits from mitigation banks, most of the contribution to the SJMSCP costs from new development will be in the form of SJMSCP fees.

b. The SJMSCP Fee shall be collected by SJICOG, Inc. The SJMSCP Fee supersedes and incorporates the City of Stockton’s pre-existing Habitat/Open Space Conservation Fee (established by Ordinance No. 029-94 and Resolution No. 94-0589). Such fees, along with any interest earnings, shall be used solely to pay for those uses(s) described in the SJMSCP which shall include the following:

   a. To pay for acquisition of preserve lands (and associated transaction costs);
   b. To pay for monitoring and restoration and/or enhancement of preserve lands;
   c. To pay for endowment for long-term management of preserve lands; and
   d. To pay for initial and on-going administration of the SJMSCP.

c. The SJMSCP Fees shall be as categorized, and in the sum of the amounts specified, in Sections 7.4.1, 7.4.1.1, 7.4.1.3, and 7.4.1.4 of the SJMSCP, with the exception that the fee established at the adoption of this ordinance shall be initially adjusted to 2002 dollars and re-adjusted annually thereafter in January of each year, based on SJCOG, Inc.’s annual index adjustment as specified in the SJMSCP Financial Analysis Update, dated November 2, 2006, or as amended. A summary of the SJMSCP Fees is attached hereto as Appendix D and incorporated herein by reference. The City’s pre-existing Habitat/Open Space Conservation Fee (Category F) shall remain fixed (not subject to adjustments) for applicable on-going developments. The fees described in Sections 7.4.1, 7.4.1.1, 7.4.1.3, and 7.4.1.4 of the SJMSCP shall be determined based on SJCOG, Inc., staff review of the SJMSCP Vegetation Map(s) and confirmed by aerial photo information (as of the effective date of the SJMSCP Fee) and/or a pre-construction field survey, if necessary, to verify vegetation types on the site. The Compensation Zone Map, as described in Section 8.2.5 of the SJMSCP, shall be used to determine if the property is subject to the SJMSCP Fees and/or to the City of Stockton’s pre-existing Habitat/Open Space Conservation Fee (Category F).

d. The SJMSCP Fee shall not be imposed on projects located in a “No Pay Zone” as established in the compensation zone maps. Project proponents may opt for only partial payment of the SJMSCP Fee if they choose to complete one or more of the following:
i. Dedicate, as conservation easement or fee title, habitat lands (in-lieu dedications) as specified in Sections 5.3.2.1 and 5.3.2.2 of the SJMSCP; or

ii. Purchase approved mitigation bank credits as specified in Section 5.3.2.4 of the SJMSCP; or

iii. Propose an alternative mitigation plan, consistent with the goals of the SJMSCP and equivalent or greater in biological value to option i or ii above, subject to approval by SJCOG, Inc.

e. The SJMSCP Fee shall be adjusted and implemented in January of each year as noted in Section c. above and/or in conformance with Section 7.5.2.2. of the SJMSCP. SJCOG, Inc., shall notify the City of Stockton in writing of proposed annual adjustments to the fees by October 1st of each year. SJCOG, Inc. shall be responsible for the implementation of the fee adjustment in January of each year.

6. Agricultural Land Mitigation Program (in-lieu fee and in-kind acquisition)

a. The purpose of the Agricultural Land Mitigation Program is to mitigate for the loss of agricultural land in the City of Stockton through conversion to private urban uses, including residential, commercial and industrial development.

b. The following words or phrases, when used in these Guidelines, shall have the following meanings:

(1) "Agricultural land or farmland" for the purposes of these Guidelines means important farmland, as defined by the California Department of Conservation's Farmland Monitoring and Mapping Program (FMMP) and as shown on the most recent available FMMP map of San Joaquin County. Important farmland includes prime farmland, farmland of statewide significance, and unique farmland. This definition is consistent with the purpose of the Fee, and with the definition of "agricultural land" found in the California Environmental Quality Act (Public Resources Code section 21060.1).

(2) "Agricultural mitigation land" means agricultural land encumbered by an agricultural conservation easement or such other conservation mechanism acceptable to the City.

(3) "Agricultural conservation easement" means an easement over agricultural land for the purpose of restricting its use to agriculture. The interest granted pursuant to an agricultural conservation easement is an interest in land which is less than fee simple. Agricultural conservation easements should be permanent.

(4) "Nexus Study" means the City of Stockton Agricultural Mitigation Fee Nexus Study, prepared June 21, 2006, as may be amended from time to time.
"Qualifying entity" means a nonprofit public benefit 501(c)3 corporation operating in San Joaquin County for the purpose of conserving and protecting land in its natural, rural or agricultural condition. A qualifying entity shall have suitable accounting and reporting procedures to assist the City in preparing the annual report described in Section g, below.

c. The Agricultural Land Mitigation Program shall apply to all projects under the jurisdiction of the City of Stockton that would result in the conversion of agricultural land, as defined in this section, to a non-agricultural use, including residential, commercial, and industrial development. The Agricultural Mitigation Program shall apply (whether through an in-lieu fee or in-kind direct purchase) to the acquisition of agricultural mitigation lands (of equal or better quality to the land that is being converted) within the "Central Zone" of San Joaquin County [as defined in the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) and excluding the Primary Zone of the Delta]. The Agricultural Mitigation Program shall not apply to agricultural activities and facilities as defined by the Development Code or projects within the SJMSCP "No Pay Zone" (see h.).

d. For projects of forty (40) acres or more, the in-kind direct purchase/acquisition of an agricultural mitigation easement at a 1:1 ratio and dedication to a qualifying entity shall be required. The Owner/Developer/Successor shall pay the associated administrative, monitoring, and contingency costs identified in the fee study, subject to any inflationary adjustments.  

For projects of less than forty (40) acres, the Owner/Developer/Successor shall have the option to pay an in-lieu agricultural mitigation fee. The fee shall be determined by the fee schedule in effect on the date the final subdivision map is filed, the vesting tentative map application is deemed complete, or the date a building permit is issued, as applicable.

e. Dedication of agricultural mitigation land, or payment of in-lieu fees, shall be made prior to the recording of a final subdivision map, except where a final map is processed to create parcels that are forty (40) acres or more in size for purposes of resale and not intended for development. Where a subdivision map is not required, the dedication shall occur or the fee shall be collected before the issuance of building permits. The filing of a parcel map, which does not result in the conversion of agricultural lands, does not require dedication or payment of in-lieu fees. However, it is the intent of this section that the division of property into parcels of less than forty (acres) shall not be used to avoid dedication of mitigation lands that would otherwise be required. Therefore, projects larger than forty (acres) that are subsequently divided into parcels less than forty (40) acres are not eligible to pay in-lieu fees.

f. Agricultural mitigation shall be at a ratio of 1:1 (1 acre of mitigation land per acre of agricultural land converted to any other land use). The size of the dedication or the amount of the in-lieu fee shall be calculated based on the acres within the subdivision classified as agricultural land. Where a subdivision map is not required, the fee shall be
calculated based on the acres classified as agricultural land within the parcel for which the building permit is issued.

g. Agricultural mitigation fees shall be placed in a separate Agricultural Mitigation Fee account to avoid commingling of the fees with the other funds of the City of Stockton. The fees may be temporarily invested. Such fees, along with any interest earnings, shall be used solely to pay for those uses described in the Nexus Study which shall include the following:

(1) To pay for acquisition of agricultural mitigation lands (of equal or better quality to the land that is being converted) within the "Central Zone" of San Joaquin County [as defined in the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) and excluding the Primary Zone of the Delta].

(2) To pay for transaction costs related to the acquisition of agricultural mitigation lands.

(3) To pay for ongoing monitoring and administrative costs related to the ongoing stewardship of agricultural mitigation lands.

(4) To provide a contingency for unexpected transaction costs or future legal costs required to maintain the terms of an agricultural conservation easement.

Agricultural conservation fees may be expended by the City of Stockton or transferred to the Central Valley Farmland Trust, or other qualifying entity as determined by City Council, for the purpose of acquiring agricultural mitigation land. For funds transferred to the Central Valley Farmland Trust, or a qualifying entity, the City shall transfer such funds quarterly, provided funds are available in the Agricultural Mitigation Fee Account. It is permissible to use agricultural mitigation fees in order to obtain agricultural mitigation lands in fee simple, provided the purpose is to place an agricultural conservation easement on such lands, and make the lands available by sale for agricultural use.

h. The Agricultural Mitigation Program shall not apply to projects located in the "No Pay Zone" as established in the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) compensation zone maps.

i. The specific parcel(s) containing a residential project that provides affordable housing and complies with the following (see Development Code chapter 16.40 for specific development requirements) shall be exempt from the Agricultural Land Mitigation Program:

Consist of five or more dwelling units;
Be available so that at least:

1. Twenty percent of the total number of proposed dwelling units are for lower-income households, as defined in Health and Safety Code section 50079.5; and/or

2. Ten percent of the total number of proposed dwelling units are for very low-income households, as defined in Health and Safety Code section 50105.

This exemption shall apply exclusively to the net parcel area on which the affordable housing project is located and shall not apply to any other parcels within the same subdivision, planned development. Master Development Plan, Specific Plan, or other commonly owned or planned areas.

j. Stacking of habitat easements on top of existing agricultural easements is allowable with concurrence from San Joaquin Council of Governments and the qualifying entity administering the agricultural easement.

k. Agricultural easements shall be established in perpetuity.

l. Projects that qualify to pay the in-lieu fee shall be subject to a 2.5% administration fee. In addition, agricultural mitigation fees shall not be eligible for the "Deferred Payment" option set forth in Section C.

m. The City shall report to the City Council once each fiscal year concerning the fees and accounts, including any portions of fees remaining unexpended or uncommitted five (5) or more years after deposit. The City Council shall make findings once each fiscal year with respect to any portion of the fee remaining unexpended or uncommitted in its account five (5) or more years after deposit of the fee, to identify the purpose to which the fee is put, and to demonstrate a reasonable relationship between the fee and the purpose for which it was charged.

A refund of unexpended or uncommitted fee revenue for which a need cannot be demonstrated, along with accrued interest may be made to the current owner(s) of the development project(s) by the City on a prorated basis. The City may refund unexpended and uncommitted fee revenue that has been found by the City Council to be no longer needed, by direct payment or by off-setting other obligations owed to the City by the current owner(s) of the development project(s).

If the administrative costs of refunding unexpended and uncommitted revenues collected pursuant to this program exceed the amount to be refunded, City, after a public hearing, for which notice has been published pursuant to Government Code Section 6061 and posted in three prominent places within the area of the development project, may determine that the revenues shall be allocated for some other purpose for which the fee is collected subject to this Chapter that serves the project on which the fee was originally imposed.
B. **Place of Collection**

The CDD totals the fees as determined by the appropriate departments and informs the applicant of the amounts of the total and its components. The applicant pays the SJMSCP fee directly to SJCOG, Inc. and then brings a receipt or voucher of payment to the City as proof of payment prior to the issuance of the building permit. The applicant pays all other fees simultaneously with the issuance of the permit unless the applicant qualifies for and elects to defer payment of the fees as explained below.

C. **Deferred Payment - Non-Residential**

Rather than paying "development fees" at the time a building permit is issued, the developer who has qualified the project as a "qualified project" with the City Manager's Office, Economic Development Division, may elect to defer payment of all or a portion of those fees with the exception of surface water supply fee, air quality mitigation fee, SJMSCP Fee, Regional Transportation Impact Fee, San Joaquin County Facilities Fee, and Agricultural Mitigation Fees.

1. **Definitions**

   a. A "qualified project" is defined as a commercial, office, or industrial/warehouse project on one parcel of land or a group of non-residential contiguous parcels under the same ownership; and

   b. An "Enterprise Zone project" is any project which is within the definition above and located within the boundaries of the Enterprise Zone as existing or hereafter amended.

   c. "Development fees" include the following:

      Public Facilities Fee (less Surface Water Supply Fee, Air Quality Mitigation Fee, SJMSCP Fee, Regional Transportation Impact Fee, San Joaquin County Facilities Fee, and Agricultural Mitigation Fee) (S.M.C. 16.72.260)
      Wastewater Fee (S.M.C. 13.12.010)
      Water Fee (S.M.C. 13.04.010)
      Traffic Signal Fee (S.M.C. 16.72.140)

2. **Deferral of Fees**

   a. For a "qualified project," if the total amount of "development fees" due and payable at the time of issuance of a building permit or multiple permits issued concurrently for a project exceeds $100,000, the property owner may enter into a Deferred Payment Agreement with the City to pay ten percent (10%) of those fees at the time the building permit is issued with the remaining ninety percent (90%) to be paid in equal installments over the next ten (10) years (or less at the property owner’s option except that wastewater and water fees shall be paid in full within five (5) years).
b. For an "Enterprise Zone project," if the total amount of "development fees" due and payable at the time of issuance of a building permit, or multiple permits issued concurrently for a project, exceeds $20,000, the property owner may enter into a Deferred Payment Agreement with the City for payment of any amount of "development fees" with an initial payment at time of issuance of the building permit of not less than twenty percent (20%) of those fees and the remaining eighty percent (80%) paid in equal annual installments over a period of five (5) years (or less, at the owner’s election) or pay ten percent (10%) of those fees at the time the building permit is issued with the remaining ninety percent (90%) to be paid in equal installments over the next ten (10) years (or less at the property owner’s option except that wastewater and water fees shall be paid in full within five (5) years).

c. There is also the possibility to defer fees if the total amount of "development fees" due and payable is $20,000 or greater but less than $100,000 as set forth in Appendix E attached hereto and incorporated herein.

3. **Security**

a. For a "qualified project," the property owner shall, as security for repayment, execute and deliver a deed of trust on qualified project property to be recorded in the San Joaquin County land records, and execute a promissory note evidencing the obligation and terms of repayment. On a case by case basis, adequate security acceptable to the City and equal to the unpaid balance may be provided.

b. For "Enterprise Zone projects," the property owner shall, as security for repayment, execute and deliver a deed of trust on qualified project property to be recorded in the San Joaquin County land records, and execute a promissory note evidencing the obligation and terms of repayment.

4. **Repayment Terms**

a. Interest: The unpaid balance of the fees shall be subject to interest and collection charges. The annual interest rate will be equal to the 11th District Cost of Funds plus 1% (100 basis points) adjusted every July. For "Enterprise Zone projects" with a five (5) year or less payback period, interest shall begin to accrue on the first anniversary of the agreement.

b. Due on Transfer: The unpaid balance together with accrued interest shall be due and payable in full upon the sale or any other transfer of the property.

c. Recording and Processing Fees: All such fees shall be paid by the owner or applicant.
5. **Processing Deferred Fee Requests**

   a. For "qualified projects," and "Enterprise Zone projects," an application shall be submitted to the Revitalization Department for review, processing, and determination of eligibility.

   b. The applicant shall provide, with the application, a preliminary title report, legal description of the property, and a brief description of the project.

   c. If the project is eligible, the Revitalization Department shall prepare the agreement and security documents for review and execution. The executed documents shall be returned to the Revitalization Department for processing. Once the deferral agreement is executed by the City and the security documents have been approved and/or recorded, the Revitalization Department will issue a notice to the CDD to proceed with issuance of the building permit(s), stating the amount of fees to be collected at issuance, and deferral of the balance of the development fees.

6. **Redevelopment Agency Deferral Authority for Nonresidential Governmental Uses/Tenancies**

   The Redevelopment Agency of the City of Stockton is authorized to offer additional fee deferral opportunities in connection with the redevelopment of the City's downtown for redevelopment projects involving government office uses/tenancies that meet all of the following criteria: Consist of office facilities of 25,000 square feet or greater; require a conditional use permit (i.e., for a use not permitted outright); are located along the Stockton Channel Area; and are constructed as a multiple (not single) story building. The deferral afforded the Redevelopment Agency pursuant to this provision shall allow for a deferral of up to 100% of the development fees (as defined in this section) for a maximum period of up to 55 years and shall include an option, as determined by staff on a case by case basis, of no required down payment and an interest rate as low as 0% on the deferred principal.

D. **Deferred Payment - Low/Moderate Income Residential**

   Rather than paying "development fees" at the time a building permit is issued, the developer, who has pre-qualified his "qualified residential project" with the Revitalization Department of the City, may elect to defer payment of all or a portion of those fees (except for the Regional Transportation Impact Fee, San Joaquin County Facilities Fee, Agricultural Mitigation Fee, Air Quality Mitigation Fee, Surface Water Supply Fee, and SJMSCP Fee).

1. **Definitions**

   A "qualified residential project," as certified by the Revitalization Department, is defined as either:
a. A single-family housing project consisting of one or more homes on one or more lots within an approved subdivision under the same ownership. Single-family home projects must be sold to owner-occupied, first-time home buyers whose combined family income is equal to or less than 100% of the median income for the Stockton Metropolitan Statistical Area as contained in HUD's Section 8 Housing Program Income Limits as adjusted from time to time. The home purchase price shall not exceed the FHA limit for home mortgages without mutual mortgage insurance as adjusted from time to time.

b. A multi-family housing project consisting of any new construction project meeting the definition of a "low rent housing project" as contained in Article XXXIV of the California Constitution requiring local voter approval or any other project utilizing local, state, and/or federal funds in whole or in part in the acquisition or construction of said project.

"Development Fees" shall be defined as:

- Public Facilities Fee (less Surface Water Supply Fee, Air Quality Mitigation Fee, SJMSPC Fee, Regional Transportation Impact Fee, San Joaquin County Facilities Fee, and Agricultural Mitigation Fee) (S.M.C. 16.72.260)
- Parkland Fee (S.M.C. 16.72.160)
- Traffic Signal Fee (S.M.C. 16.72.140)
- Wastewater Fee (S.M.C. 13.12.010)
- Water Connection Fee (S.M.C. 13.04.010)

2. **Deferral and Repayment**

Development fees for "qualified residential projects" shall be deferred during the period the project is under construction. In the case of a single-family project, fees deferred shall be collected without interest at the time permanent take-out financing is put in place as part of the closing transaction for the purchase of the home by the qualified buyer. In the case of multi-family projects, fees deferred shall be collected without interest prior to final approval of the Building Permit and issuance of a Certificate of Occupancy.

3. **Security**

All development fees deferred for "qualified residential projects" shall be secured by recorded liens or deeds of trust encumbering each lot of record involved with the project. Said liens or deeds of trust shall be recorded prior to issuance of Building Permits and shall be secondary only to deeds of trust associated with acquisition or construction financing. Full or partial reconveyance of encumbrances shall be issued by the City at the time "development fees" are paid. All document preparation and recording fees shall be paid by developer or property owner applying for the fee deferral.
4. **Penalty**

All development fees deferred pursuant to this program shall be subject to a penalty if the single-family home projects are not sold to buyers meeting the income qualifications or if the purchase price exceeds the maximum allowed. In the case of multi-family projects, a penalty will be assessed if, following initial approval, the project is restructured so as not to meet the definition of a low rent housing project or refinanced so as not to include public funds as contained in the definition of a "qualified residential project." The penalty assessed shall be in the form of an interest payment equal to the 11th District Cost of Funds plus 1% (100 basis points) adjusted every July computed from the date the fee is deferred until totally repaid.

5. **Processing Deferred Fee Requests**

Developers or owners of "qualified residential projects" shall make application for the deferment of fees to the Revitalization Department. In the case of single-family housing projects, the content of the application shall be a list of all fees applicable to the project as calculated by the CDD. In addition, the applicant shall submit a brief description of the project profiling the type of buyer expected to reside within the project. This shall include projected annual income of home buyers and projected sale prices.

For "qualified multi-family projects," the developer or applicant shall submit a project pro forma and financial feasibility analysis that includes sources of all financing associated with the project; projected rents for the project; operating maintenance; and debt service costs associated with the project. The application shall also include a preliminary title report and legal description. The Revitalization Department shall review the information submitted and make a determination as to whether the project meets the criteria for a deferral of fees. For those projects meeting the above-mentioned criteria, the Revitalization Department will prepare a Development Fee Deferral Agreement along with a security document consisting of a lien or deed of trust to be executed by the applicant and returned to the City for processing. Once the deferral agreement is executed by the City and the security document has been recorded, the Revitalization Department will issue a notice to the CDD to proceed with the deferral of the development fees and the issuance of the Building Permit.

6. **Collection**

In the case of single-family housing projects, development fees shall be collected as part of the sales transaction between developer and qualified home purchaser. Development fees shall be paid to the City out of the proceeds of the permanent take-out loan. At the time the sales transaction takes place, the developer or escrow company shall submit an appropriate document to the Revitalization Department evidencing that the proposed buyer meets the income qualifications and the purchase price of the home is within the maximum amount allowed. Evidence of satisfying this criteria will include a copy of the purchase agreement and copies of the buyer's last three years income tax returns. The Revitalization Department will review this information and make a final determination as to the buyer's eligibility. The Revitalization Department will determine whether the development fee repayment
amount will include an interest payment as a penalty and submit this demand to the escrow agent along with reconveyance documents. The escrow company will collect and remit to the appropriate demand and transmit it to the Revitalization Department for processing.

In the case of multi-family projects prior to the issuance of a Certificate of Occupancy or the placement of permanent take-out financing for the project, the developer shall submit evidence that long-term financing agreements have been executed with public entities that contain provisions and assurances that the project will remain affordable to lower-income tenants during the duration of the finance period. Upon review and approval of such documents, the Revitalization Department will calculate the appropriate repayment amount and follow the remainder of the procedures as described above.

E. **Refunds**

Refunds, less the administrative fee, will be made according to City procedures.

**II. EXPENDITURES**

A. **Capital Improvement Program**

State law requires that development fees be imposed only when the nature of the facilities to accommodate the development has been identified and the cost of these facilities estimated. Furthermore, the City must account for the use of the funds. In order to fulfill this requirement, the City has undertaken a number of studies analyzing public facility needs and/or the need for compensation measures to offset the impacts of future development. The intent of Appendix A is to list the various types of public facilities and compensations governed by these administrative guidelines and the respective authority that established the needs for facility type. The referenced authority does include specific public facilities scheduled for partial and/or full funding by the public facilities fee as well as guidelines for use of the SJMSCP fee component of the public facilities fees.

Projects to be constructed by the City in the next five years are included in the City's Capital Improvements Program (CIP). This includes projects to accommodate new development and to cure existing deficiencies.

Beginning with the 1990-91 fiscal year, the facilities listed in Appendix A (in its updated form) will be reviewed and those projects planned for construction within five years will be included in the City's CIP budget. The City's CIP budget will also include:

1. Projects scheduled for construction by developers within the next fiscal year and funded with a combination of developer and City funds.

2. Projects which have been constructed by the developer that have City Council approved reimbursement agreements and funds have been scheduled to be paid to the developer in the next fiscal year(s) based
upon available City funding. For reimbursement purposes, the City will set aside, for each fee area and facility type, 25 percent of the fees collected (minus credits) in the prior year. Any unexpended portion of the 25 percent reimbursement set aside will be carried over for one year only.

3. Projects which have been constructed by the developer that have City Council approved reimbursement agreements for which no funds have been scheduled to be paid to the developer in the next fiscal year due to lack of funds. It is the intent of this provision that all projects that have City Council approved reimbursement agreements shall be included in the City’s CIP budget and in order of priority based upon the effective date of the reimbursement agreement.

### B. Budgeting for Proposed Projects

At the time that an actual appropriation for a project is requested, either during the annual budget preparation or as an appropriation during the fiscal year, the following information must be provided as part of the request:

1. To insure satisfaction of the nexus requirement, identify the proposed project as being one of the Council projects intended to be provided by the public facilities fees or, within the adopted guidelines for use of SJMSCP fees. See Appendix A.

2. Document the percentage of cost, if any, of the proposed project that is to correct existing deficiencies. Reference to an analysis that may be included as part of Appendix A would satisfy this requirement.

3. Be specific in identifying the source of funding for the proposed project. For the percentage that is approved for expenditure of public facilities fees other than SJMSCP fees, it is necessary that the facility type and fee area be identified for each portion of the appropriation. This is necessary because the revenues are being collected by a particular fee area for each facility type and are being accounted for by specific facility type and fee area. For the percentage that is determined to correct existing deficiencies, identify specifically the other source of funds.

4. Check with the Administrative Services Department to determine if sufficient funds are available in the correct accounts for the necessary appropriations. The amount available will include the fund balance, less any amounts already appropriated or otherwise encumbered, plus estimated revenues. The CDD and Public Works Departments will provide the Administrative Services Department with projections of estimated revenues from public facilities fees by facility type and fee area.

5. Initiate a loan between fee areas if sufficient funds are not available in the correct accounts.
C. Existing Deficiencies

The adoption of the Public Facilities Fee program requires the City to correct existing deficiencies. It is the intention of the City to appropriate funds each year such that at the end of each year, the cumulative appropriations will meet a defined proportion of the total cost of correcting deficiencies. This proportion shall be calculated as the ratio of the number of years after 1987-88 (the number of years the fee program has been in effect) to the 20 years through the 2007-08 fiscal year. In other words, it is the City's intention that funds to correct the deficiencies will be provided by the 2007-08 fiscal year at an approximate rate of one-twentieth each year. Existing deficiencies will be funded by general funds and/or bond issues (net of issuance costs).

D. Zone Expenditure Guidelines

The principle that the fees collected from a development must be used for the facilities to accommodate that development is being further fulfilled by a guideline that the majority of the funds collected in each of three geographical zones of the City be used for facilities to serve that area. This restriction does not apply to the police station, surface water supply, and City office space fees, as these facilities are centrally located and serve the entire City. It also does not apply to the water, wastewater or the SJMSGP fees. It does apply to the fire station, library, community recreation center, street improvement, parklands and traffic signal fees.

For this purpose, the City is divided into three zones: North—generally north of the Calaveras River—equal-to-fee collection areas 1 and 2; Central—generally between Charter Way (now known as Martin Luther King Jr. Blvd.) and the Calaveras River—equal-to-fee collection areas 3 and 4; and South—generally south of Charter Way—equal-to-fee collection areas 5 and 6. For each of the fees, an account has been established for each area. Approximately eighty-five percent of each fee collected is credited to the account for the fee area from which it was collected. The funds in the accounts for fee areas 1 and 2 will be expended for projects in the North zone. The funds in the accounts for fee areas 3 and 4 will be expended for projects in the Central zone. The funds in the accounts for fee areas 5 and 6 will be expended for projects in the South zone.

Because some service demands are made across zones, the remaining 15 percent of the fee is deposited into a City-wide account for each fee, the contents of which may be expended anywhere in the City for facilities to accommodate new development.

The above percentages could vary depending on ordinances or based on additional analysis which identified alternate distribution.

E. Borrowing Among Fee Area Accounts

It would not well serve the City to have funds gradually building in all of the fee area accounts for an extended period of time without any one account having sufficient funds to provide a facility, thus depriving all areas of new facilities. Therefore, in order to
enable the provision of facilities as they are needed, loans can be made from one-fee area account to another.

The department initiating the request for an appropriation must also initiate the loan request. The loan would be required if sufficient funds are not available in the fee area accounts within the expenditure zone. Such borrowing may only take place, however, if it can be demonstrated that the account from which the funds are borrowed will have sufficient remaining funds to appropriate to projects scheduled within that zone. A financial plan must be prepared projecting anticipated revenues to the accounts for the fee areas within the zone and proposing a repayment schedule. All loans shall require loan documentation and approval by the City Council. The account from which the funds were borrowed shall receive interest on funds loaned equal to the City's average pooled investment earnings rate.

The possible need for a loan must be addressed at least twice during the life of a project.

1. It may be necessary to establish a loan at the time an appropriation for a specific project is requested. Depending on the estimated beginning date of the proposed project, the above appropriation and/or loan might be based largely on estimated revenues.

2. It may also be necessary to establish or amend the amount of a loan at the time a department issues a purchase order or requests City Council approval of a contract for an expenditure of funds from the project account. At the request of the department managing the project, the Administrative Services Department will re-evaluate the availability of funds by comparing actual revenues collected with estimated revenues (used in step 1 above) and indicate if there is an additional need for a loan at this time. If this is the case, then the loan must be approved by the City Council before the contract or purchase order can be executed.

F. Developer In Lieu Improvements

New development is responsible for all public facilities that are needed as a result of new development. This includes all improvements that are required by the subdivision and public improvement ordinances or identified as being necessary to satisfy mitigation measures for the project. There may be situations where a developer will incur the cost of a facility which corrects an existing City deficiency or serves other development. Therefore, under those conditions, developers will receive a reimbursement in the form of credits or cash, plus interest at the rate equal to the 11th District Cost of Funds from the date the improvements are accepted by the City, consistent with the City Council approved reimbursement agreement. Developers dedicating the land and/or constructing these facilities will be eligible for credit/reimbursement as outlined in these administrative guidelines. Construction costs, design costs, and fees for plan checking and inspection, etc., are eligible for credit/reimbursement.
A credit/reimbursement will be given to the developer to offset the public facilities fee for that type of facility imposed on subsequent development of the parcel. In other words, a street improvement cost will only be subject to credit/reimbursement against the street improvement fee.

The amount of credit/reimbursement shall be as outlined below for each of the appropriate fees:

**Libraries, Community Recreation Centers, Fire Stations, & Parks:**

If the developer only dedicates the land for these facilities, it is eligible for a partial credit/reimbursement equal to the percentage of the fee that is needed to acquire the land. As an example, if 50% of the parkland fee is to acquire land for parks, a developer that dedicates the land will be eligible for a 50% credit against its parkland fee for permits within its development. The developer is also eligible to be reimbursed for 50% of the parkland fees from other developments within the service area of the park.

In the case of parkland, the value of the land dedicated shall be the value of land used to calculate the parkland fee in effect on the date the land is accepted by the City Council.

If the developer also constructs one of these facilities, it is eligible for a full credit/reimbursement of the fee for permits within its development, and reimbursement of the fees from other developments within the service area of the facility.

**Wastewater:**

The sanitary sewer connection fee is composed of the following components: (1) treatment, (2) existing collection system, and (3) future collection systems.

If the developer constructs a completely new collection system in accordance with the Master Plan, conveying wastewater from the developed parcel to the City of Stockton Wastewater Control Facility on Navy Drive, without use of any portion of the existing City sanitary sewer system, developer is eligible for a full credit/reimbursement within its development of components (2) existing collection system and (3) future collection systems, of the connection fee. The developer is also eligible for reimbursement of a portion of the fee for both existing and future collection systems from other developments within the service area of the collection system improvements.

If the developer connects to the existing collection system and installs mains in accordance with the Master Plan, developer is eligible for a full credit/reimbursement within its development of component (3) of the connection fee-future collection systems. The developer is also eligible for reimbursement of
a portion of the fee for future collection systems from other developments within
the service area of the collection system improvement.

In no case will the reimbursement authorized under this section of the
Administrative Guidelines exceed the cost of the eligible sanitary sewer
improvements constructed by the developer.

Water:

If the developer constructs a portion of the water system in accordance with the
Master Plan, it is eligible for a full credit/reimbursement within its development for
the fee for that portion of the cost which represents water transmission mains
installed which exceed the requirements of the individual development as
determined by the City. The developer is also eligible for reimbursement in
accordance with the City's Water Rates and Regulations.

Street Improvements:

If the developer constructs a portion of the street improvements within and
adjacent to its project which are covered by the fee, it is eligible for a 50%
credit/reimbursement on building permits within its development until the full cost
of the improvements have been recovered. The 50% credit is necessary since
only approximately 33% of the total street improvements covered by the fee are
adjacent to or within undeveloped properties. The remaining improvements are
freeway-related improvements, railroad grade separations, and street
improvements adjacent to developed properties. Without the City retaining 50%
of the fees, sufficient revenue would not be generated to fund the necessary
freeway, railroad grade separations, and street improvements adjacent to
developed properties.

If the developer constructs a portion of the street improvements outside and not
adjacent to its development, it is eligible for a 100% credit/reimbursement on
building permits until the full cost of the improvement has been recovered.

Refer to Appendix B for specifics on reimbursements for developer constructed
street improvements. Also, refer to Appendix C on the procedures to be followed
where past developments made significant street improvements and the
development is not completely built out.

The developer shall submit a detailed cost breakdown of the public
facilities to be
constructed and/or the land to be dedicated for the public facilities. The cost breakdown
shall also include the timing of the various improvements. In addition, the developer
shall submit a yearly schedule of projected building permits through full build-out of the
project. The developer shall enter the projected building permits, applicable fees, cost
breakdown, interest and the proposed spread of credits/reimbursements into a
spreadsheet compatible with City-used software.
The spreadsheet shall be reviewed and approved by the Public Works Department. Upon approval, the developer shall provide a copy of the spreadsheet compatible with City-used software. The spreadsheet shall be updated by the developer and reviewed and approved by the Public Works Department at least once a year. The value of the land and improvements shall not be adjusted for inflation or deflation, but the applicable fees shall be adjusted to the current fee and projected ahead in constant dollars.

The City shall enter into a credit/reimbursement agreement with the developer. The agreement shall provide for the credit/reimbursement to the developer from fees generated within the project and that are citywide. The timing and method of payment (credit/reimbursement) will be negotiated and included as part of the subdivision agreement or as approved by the City Council when the improvements are accepted. If the improvements are financed by an assessment district (including Mello-Roos), credits may be given to the individual property owner and/or reimbursement shall be made to the district. The proposed spread of credits/reimbursement must also be approved by the City Council prior to the subdivision improvements being accepted by the City Council.

If the credit/reimbursement agreement is submitted for approval by the City Council prior to the installation of the improvements, the costs will be based upon estimates. Upon completion of the improvements, the credit/reimbursement agreement will be resubmitted to the City Council for approval prior to subdivision improvements being accepted.

If the developer has pulled building permits and paid public facility fees prior to the credits/reimbursement agreement being approved by the City Council, the developer will only receive credits/reimbursements on future permits. No refunds will be processed for the fees paid prior to the credit/reimbursement agreement being approved by the City Council.

When the various fees are adjusted by the City Council, the total amount to be credited/reimbursed does not change, but the amount of credit/reimbursement to be applied to an individual building permit will be adjusted. For example, if a fee was originally $1000 and the developer receives a 50% credit or reimbursement, when the fee increases to $1100, the developer will still receive a 50% credit or reimbursement but it will be $550 versus the original $500.

The developer has the option, to be determined at the time of the reimbursement agreement, of receiving credits when the building permits are issued or accumulating these credits and receiving a lump sum reimbursement at the end of each quarter, based upon claims made by the developer.

G. Use of Administrative Funds

The funds in the administrative account are not used for studies and/or administration for specific improvements or types of improvements. Such expenses are charged to the account for that type of facility, i.e., a traffic analysis charged to the Street Improvements accounts. However, administrative funds may be used for planning
studies, such as a City initiated general plan revision. The funds in the administrative account are not used to cover the cost of reviewing projects; nor are funds from any other fee account used for this purpose. The funds may be used for both consultant and staff costs. Staff costs are calculated based on time card entries.

III. ANNUAL REPORT

A. Fiscal Year Summary

An annual report on the development fee program is prepared. The first portion of the report, the fiscal year summary, is prepared reasonably soon after the end of the fiscal year, as accounting information becomes available. This portion of the report includes the following information.

1. Account Balances - The information includes fiscal year revenues and the accumulated balance for each account.

2. Improvements - The report includes, for each account and subaccount, except the SJMSCP Account, the following: the constructed improvements and a projection of the funds to be collected in each of the next five years; when the next project (or projects) will be able to be funded; and the proposed projects to be undertaken in the next five years. The latter information is in a form appropriate for integration into the Capital Improvements Program. For the SJMSCP Account, the annual report will be provided by SJCOG, Inc.

3. Administration Fund - The revenues to the administration account are compared with the administration expenses incurred, both for the past fiscal year and for an appropriate longer period of time. Both future projected revenues and expenses are also included in the report, along with a recommendation either to retain the current level of administrative component of the fee, or to adjust it up or down.

4. Existing Deficiencies - The expenditures to cure existing deficiencies are set forth, both for the fiscal year and cumulatively. These expenditures are compared with the commitment to cure existing deficiencies on at least a pro rata basis between 1988 and the present 2008.

5. Reimbursement Agreements - The report includes, for each agreement, the following: the constructed improvements; the total cost of the improvement including land; all accrued interest; the outstanding balance; and the projected credit/reimbursement and source of revenue.

B. Fee Review and Adjustment

The second portion of the annual report is prepared three or four months before the start of the calendar year. This report is submitted to the City Council along with recommendations so that action can be taken no later than 60 days before the start of the calendar year, allowing the adjusted fees to become effective on or about January 1. This portion of the report includes the following information.
1. **Inflation Adjustments** - The report presents information on the inflation rate during the prior calendar year as determined by the construction cost index of the Engineering News Record publication. The rate of inflation (or deflation) is applied to the fees to determine the fees for the subsequent year. A land cost index will be used to adjust the land cost portion of the fees.

2. **Reimbursement Agreements Adjustments** - The report presents information on the credits/reimbursements due developers for the subsequent year. Since the developers are eligible for credits/reimbursements plus interest, the fees shall be adjusted to cover this additional expense.

3. **Special Studies or Information** - From time to time, new information will be become available regarding the facilities needed to accommodate new development and their cost. If this information is different from that upon which the fees are currently based, the information should be documented along with calculations that determine the appropriate new fee level.

4. **Findings** - The report sets forth findings suitable for adoption by the City Council determining that, except for the adjustments listed, the prior findings on which the current fees are based are still sufficiently accurate.

Adopted Feb. 12, 1991 (Resolution No. 91-0119);
Amended Jan. 23, 2007 (Resolution No. 07-0040);
Amended ___________ (Resolution No. _____).
Resolution No. __________

STOCKTON CITY COUNCIL

RESOLUTION REVISIONING THE PUBLIC FACILITIES FEE FOR STREET IMPROVEMENTS BY CONSOLIDATING THE FEE AREAS INTO ONE CITY-WIDE ZONE

The City of Stockton Public Facilities Fee Program for Street Improvements is structured to include four zones: North, Central, South, and City-wide. Fees are collected in the North, Central, and South zones only. The City-wide zone receives 15% of the fees collected from the other three zones; and

This zone and fee structure has led to a program that does not accurately account for the complexity of traffic impacts across all zones, has unneeded administrative and accounting burdens, differing economic impacts due to fees that vary by location, and financial instability due to inter-zone loans and a November 2009 bond issuance in the North zone; and

Consolidation of the zones into one City-wide zone would resolve this financial instability, reduce the administrative and accounting burden, and provide a uniform fee structure that does not vary by location. The proposed fee would correspond to the Central zone fee which is the lowest of the zones; now, therefore,

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

1. The Public Facilities Fee for Street Improvements is revised by consolidating the fee areas into one City-wide zone.

2. The Public Facilities Fee for Street Improvements is hereby approved as set forth in Exhibit 1.

3. The City Manager is hereby authorized to take whatever actions are appropriate to carry out the purpose and intent of this resolution.

PASSED, APPROVED, and ADOPTED

ATTEST: ANN JOHNSTON, Mayor
of the City of Stockton

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton

City Atty Review
Date June 15, 2011
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<thead>
<tr>
<th>Proposed Fee</th>
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*Subject to sunset clauses adopted by Council 8/14/10 (see Charts 1 - 4)
Resolution No. __________

STOCKTON CITY COUNCIL

RESOLUTION AUTHORIZING THE AMENDMENT OF THE PUBLIC FACILITIES FEE PROGRAM ADMINISTRATIVE GUIDELINES TO CONSOLIDATE THE STREET IMPROVEMENT FEE INTO ONE CITY-WIDE ZONE

The Public Facilities Fee Program for Street Improvements is structured to include four zones: North, Central, South, and City-wide. This zone and fee structure has led to a program that does not accurately account for the complexity of traffic impacts across all zones, has unneeded administrative and accounting burdens, differing economic impacts due to fees that vary by location, and financial instability due to inter-zone loans and a November 2009 bond issuance in the North zone; and

Consolidation of the zones into one City-wide zone would resolve this financial instability, reduce the administrative and accounting burden, and provide a uniform fee structure that does not vary by location; now, therefore,

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

1. The City Manager is authorized to amend the Public Facilities Fee Program Administrative Guidelines to remove Section II. EXPENDITURES, D. Zone Expenditure Guidelines, and E. Borrowing Among Fee Area Accounts, and make other appropriate changes as indicated.

2. The Public Facilities Fee Program Administrative Guidelines are hereby amended and approved, a copy of which is attached as Exhibit 1 and incorporated by this reference.

3. The City Manager is hereby authorized to take whatever actions are appropriate to carry out the purpose and intent of this resolution.

PASSED, APPROVED, and ADOPTED ____________________________

ATTEST: 
KATHERINE GONG MEISSNER
City Clerk of the City of Stockton

ANN JOHNSTON, Mayor
of the City of Stockton

OAK #4830-7721-7314 v15
Exhibit I-29
PUBLIC FACILITIES FEE PROGRAM
ADMINISTRATIVE GUIDELINES

I. FEE COLLECTION

These guidelines primarily apply to the implementation and administration of Stockton Municipal Code section 16.72.260, which imposes Public Facilities Fees on new development. When applicable, these guidelines shall also apply to the implementation and administration of all other code sections, which impose fees or mitigation measures on new development, including, but not limited to the following:

- Wastewater........... 13.12.010
- Water.................... 13.04.010
- Traffic Signal........... 16.72.140
- Street Sign............... 16.72.170
- Street Tree............. 16.72.180
- Parklands............. 16.72.060

Should any situations arise which are not covered by the guidelines set forth above, the City Manager shall have the authority to make a decision as to how the ordinance and any corresponding resolution are to be administered. Such decisions are to be in writing.

Any applicant dissatisfied with the decision of the City Manager may appeal such decision to the City Council by filing written notice thereof with the City Manager within 10 days of receipt of the City Manager's decision.

A. Fee Determination

The following paragraphs provide information as to which department determines the fee amounts for various types of development.

1. Fee Exemptions and Credits for Prior Use

Upon receipt of an application for a building permit, the Community Development Department (CDD) determines if it is a permit upon which fees are to be imposed. The fee is to be imposed on permits for the siting of a mobile home and the construction of buildings, specifically excluding any partial permits. The fees shall be charged and paid at the time of issuance of a building permit for development.

It is also imposed on applications for a building permit to add to or alter an existing building (with a credit for prior use). The amount of credit will be for the equivalent of the public facility fees that would currently be assessed against the existing building (as if a building permit for the existing building were pulled simultaneously with the permit for the alterations and/or additions). As an example, if the prior use of the property would have generated 10 Dwelling Unit Equivalents (DUE) and the new building will
generate 15 DUE, then the utilities and street improvement portion of the public facility fee would be based upon the cost of the additional 5 DUE.

The Public Facilities Fees resolution specifies exemptions (under certain conditions) for (1) residential additions, (2) non-residential additions of less than ten percent additional floor area or less than ten percent additional DUE, and (3) replacement construction. The exemption for replacement or reconstruction of buildings that have been destroyed or demolished applies so long as a new building permit is issued for the reconstruction within five years after the demolition. Thereafter, the amount of credit given against fees for the prior use declines 20 percent per year. It is the property owner's responsibility to provide sufficient proof to the City in establishing the date of demolition or destruction of the building and the prior use that existed. In order to be eligible, the property owner must request a credit for the prior use on or before the payment of fees and issuance of the building permit. The Public Facilities Fees are not imposed when to do so would be inconsistent with California law or any of the other provisions of the City of Stockton ordinances or resolutions cited above. The CDD determines if the project qualifies for an exemption under any of these exemption categories.

Any applicant dissatisfied with the decision of the CDD may appeal such decision to the City Manager by filing written notice with the CDD within 10 days of receipt of the CDD's decision.

2. **Responsibility for Fee Calculation - Residential**

Upon receipt of an application for a building permit for residential units (as defined in the resolution), the CDD determines the number of single-family units, multiple units, and/or guest rooms and adds this information to the application. The application is then circulated to other departments for their input and then back to CDD for calculation of the fees, except that the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) fee will be calculated by and collected by SJCOG, Inc.

3. **Responsibility for Fee Calculation - Non-Residential**

Parkland and community recreation fees are not imposed on non-residential development. The CDD has the responsibility for making the non-residential fee calculations, except for SJMSCP, wastewater, water, and surface water supply. The responsibility for determining SJMSCP, surface water supply, water, and wastewater fees are as noted below.

Employment is used as an indicator or service need and, hence, as a basis for the non-residential fees with the exception of street improvement, traffic signals, surface water supply, wastewater, and water. The guidelines for determining square footage and employment density are:

a. **Square Footage** - Upon receipt of an application for a building permit for non-residential development, the CDD footage is measured as defined in the California Building Code (CBC). For improvements where the square footage is not appropriately
defined by the CBC definition, e.g. gas stations, a co-generation plant, etc., the CDD develops appropriate square footage equivalents. As explained below, employment is used as the basis for the determination of most of the fees. The square footage equivalents are therefore based on projected employment (the employment typical for that type of development).

b. Employment Density - Except as noted above, employment is used as an indicator of service need and, hence, as a basis for all non-residential development fees. The CDD determines whether the typical use of the improvements will be characterized by high, medium, or low employment density and adds that information to the application. The high, medium, and low employment density ranges are less than 400 square feet, between 400 and 600 square feet, and greater than 600 square feet per employee respectively. Office space is categorized as high employment density, retail space as medium employment density, and warehouse and manufacturing space as low employment density. The characteristics of the space, along with the anticipated first use, are factors in the determination of the employment density.

If the space is divided among more than one type of space each with differing employment densities, then the square footage allocated to each type will be determined, except that any type of space constituting less than 25 percent of the total space will be included in the majority space type. As examples, offices in manufacturing plants will be part of the manufacturing space and storage space in retail stores will be retail space, as long as they are no more than 25 percent of the total space.

c. Water, Wastewater, and Surface Water Supply Fees - The application is circulated to the Municipal Utilities Department for determination of the water, wastewater, and surface water supply fees.

d. Other Fees - The CDD determines the remaining fees, except that the SJMSCP fee is determined by and collected by SJCOG, Inc.

e. Fee Determination - The above noted fees will be determined within 15 working days.

4. Projects Not Requiring Building Permits

The fee is also imposed to the extent permitted by law on any development which does not require a building permit from the City of Stockton (such as a hospital, which makes application to the State). Such a development will often be required to apply to the City for a permit other than a building permit, for example, use permit, encroachment, water, or sewer connection permit. Upon receipt of such an application, the issuing department follows essentially the same procedure as described above for building permits.
5. **SJMSCP Fee**

a. In order to implement the goals and objectives of the SJMSCP, and to mitigate the cumulative and site-specific impacts of new development on undeveloped lands within the City of Stockton and in San Joaquin County, the establishment of preserve lands will be necessary to compensate for impacts to threatened, endangered, rare, and unlisted SJMSCP Covered Species and other wildlife, and compensation for some non-wildlife related impacts to recreation, agriculture, scenic values, and other beneficial Open Space uses. While those undertaking new development pursuant to the SJMSCP may opt to dedicate lands consistent with the SJMSCP preserve designs or to purchase credits from mitigation banks, most of the contribution to the SJMSCP costs from new development will be in the form of SJMSCP fees.

b. The SJMSCP Fee shall be collected by SJCOG, Inc. The SJMSCP Fee supersedes and incorporates the City of Stockton’s pre-existing Habitat/Open Space Conservation Fee (established by Ordinance No. 029-94 and Resolution No. 94-0589). Such fees, along with any interest earnings, shall be used solely to pay for those uses(s) described in the SJMSCP which shall include the following:

   a. To pay for acquisition of preserve lands (and associated transaction costs);
   b. To pay for monitoring and restoration and/or enhancement of preserve lands;
   c. To pay for endowment for long-term management of preserve lands; and
   d. To pay for initial and on-going administration of the SJMSCP.

c. The SJMSCP Fees shall be as categorized, and in the sum of the amounts specified, in Sections 7.4.1, 7.4.1.1, 7.4.1.3, and 7.4.1.4 of the SJMSCP, with the exception that the fee established at the adoption of this ordinance shall be initially adjusted to 2002 dollars and re-adjusted annually thereafter in January of each year, based on SJCOG, Inc.’s annual index adjustment as specified in the SJMSCP Financial Analysis Update, dated November 2, 2006, or as amended. A summary of the SJMSCP Fees is attached hereto as Appendix D and incorporated herein by reference. The City’s pre-existing Habitat/Open Space Conservation Fee (Category F) shall remain fixed (not subject to adjustments) for applicable on-going developments. The fees described in Sections 7.4.1, 7.4.1.1, 7.4.1.3, and 7.4.1.4 of the SJMSCP shall be determined based on SJCOG, Inc., staff review of the SJMSCP Vegetation Map(s) and confirmed by aerial photo information (as of the effective date of the SJMSCP Fee) and/or a pre-construction field survey, if necessary, to verify vegetation types on the site. The Compensation Zone Map, as described in Section 8.2.5 of the SJMSCP, shall be used to determine if the property is subject to the SJMSCP Fees and/or to the City of Stockton’s pre-existing Habitat/Open Space Conservation Fee (Category F).

d. The SJMSCP Fee shall not be imposed on projects located in a “No Pay Zone” as established in the compensation zone maps. Project proponents may opt for only partial payment of the SJMSCP Fee if they choose to complete one or more of the following:
i. Dedicate, as conservation easement or fee title, habitat lands (in-lieu dedications) as specified in Sections 5.3.2.1 and 5.3.2.2 of the SJMSCP; or

ii. Purchase approved mitigation bank credits as specified in Section 5.3.2.4 of the SJMSCP; or

iii. Propose an alternative mitigation plan, consistent with the goals of the SJMSCP and equivalent or greater in biological value to option i or ii above, subject to approval by SJCOG, Inc.

The SJMSCP Fee shall be adjusted and implemented in January of each year as noted in Section c. above and/or in conformance with Section 7.5.2.2. of the SJMSCP. SJCOG, Inc., shall notify the City of Stockton in writing of proposed annual adjustments to the fees by October 1st of each year. SJCOG, Inc. shall be responsible for the implementation of the fee adjustment in January of each year.

6. Agricultural Land Mitigation Program (in-lieu fee and in-kind acquisition)

a. The purpose of the Agricultural Land Mitigation Program is to mitigate for the loss of agricultural land in the City of Stockton through conversion to private urban uses, including residential, commercial and industrial development.

b. The following words or phrases, when used in these Guidelines, shall have the following meanings:

(1) "Agricultural land or farmland" for the purposes of these Guidelines means important farmland, as defined by the California Department of Conservation's Farmland Monitoring and Mapping Program (FMMP) and as shown on the most recent available FMMP map of San Joaquin County. Important farmland includes prime farmland, farmland of statewide significance, and unique farmland. This definition is consistent with the purpose of the Fee, and with the definition of "agricultural land" found in the California Environmental Quality Act (Public Resources Code section 21060.1).

(2) "Agricultural mitigation land" means agricultural land encumbered by an agricultural conservation easement or such other conservation mechanism acceptable to the City.

(3) "Agricultural conservation easement" means an easement over agricultural land for the purpose of restricting its use to agriculture. The interest granted pursuant to an agricultural conservation easement is an interest in land which is less than fee simple. Agricultural conservation easements should be permanent.

(4) "Nexus Study" means the City of Stockton Agricultural Mitigation Fee Nexus Study, prepared June 21, 2006, as may be amended from time to time.
(5) "Qualifying entity" means a nonprofit public benefit 501(c)3 corporation operating in San Joaquin County for the purpose of conserving and protecting land in its natural, rural or agricultural condition. A qualifying entity shall have suitable accounting and reporting procedures to assist the City in preparing the annual report described in Section g, below.

c. The Agricultural Land Mitigation Program shall apply to all projects under the jurisdiction of the City of Stockton that would result in the conversion of agricultural land, as defined in this section, to a non-agricultural use, including residential, commercial, and industrial development. The Agricultural Mitigation Program shall apply (whether through an in-lieu fee or in-kind direct purchase) to the acquisition of agricultural mitigation lands (of equal or better quality to the land that is being converted) within the "Central Zone" of San Joaquin County [as defined in the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) and excluding the Primary Zone of the Delta]. The Agricultural Mitigation Program shall not apply to agricultural activities and facilities as defined by the Development Code or projects within the SJMSCP "No Pay Zone" (see h.).

d. For projects of forty (40) acres or more, the in-kind direct purchase/acquisition of an agricultural mitigation easement at a 1:1 ratio and dedication to a qualifying entity shall be required. The Owner/Developer/Successor shall pay the associated administrative, monitoring, and contingency costs identified in the fee study, subject to any inflationary adjustments.

For projects of less than forty (40) acres, the Owner/Developer/Successor shall have the option to pay an in-lieu agricultural mitigation fee. The fee shall be determined by the fee schedule in effect on the date the final subdivision map is filed, the vesting tentative map application is deemed complete, or the date a building permit is issued, as applicable.

e. Dedication of agricultural mitigation land, or payment of in-lieu fees, shall be made prior to the recordation of a final subdivision map, except where a final map is processed to create parcels that are forty (40) acres or more in size for purposes of resale and not intended for development. Where a subdivision map is not required, the dedication shall occur or the fee shall be collected before the issuance of building permits. The filing of a parcel map, which does not result in the conversion of agricultural lands, does not require dedication or payment of in-lieu fees. However, it is the intent of this section that the division of property into parcels of less than forty (acres) shall not be used to avoid dedication of mitigation lands that would otherwise be required. Therefore, projects larger than forty (acres) that are subsequently divided into parcels less than forty (40) acres are not eligible to pay in-lieu fees.

f. Agricultural mitigation shall be at a ratio of 1:1 (1 acre of mitigation land per acre of agricultural land converted to any other land use). The size of the dedication or the amount of the in-lieu fee shall be calculated based on the acres within the subdivision classified as agricultural land. Where a subdivision map is not required, the fee shall be
calculated based on the acres classified as agricultural land within the parcel for which the building permit is issued.

g. Agricultural mitigation fees shall be placed in a separate Agricultural Mitigation Fee account to avoid commingling of the fees with the other funds of the City of Stockton. The fees may be temporarily invested. Such fees, along with any interest earnings, shall be used solely to pay for those uses described in the Nexus Study which shall include the following:

(1) To pay for acquisition of agricultural mitigation lands (of equal or better quality to the land that is being converted) within the "Central Zone" of San Joaquin County [as defined in the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) and excluding the Primary Zone of the Delta].

(2) To pay for transaction costs related to the acquisition of agricultural mitigation lands.

(3) To pay for ongoing monitoring and administrative costs related to the ongoing stewardship of agricultural mitigation lands.

(4) To provide a contingency for unexpected transaction costs or future legal costs required to maintain the terms of an agricultural conservation easement.

Agricultural conservation fees may be expended by the City of Stockton or transferred to the Central Valley Farmland Trust, or other qualifying entity as determined by City Council, for the purpose of acquiring agricultural mitigation land. For funds transferred to the Central Valley Farmland Trust, or a qualifying entity, the City shall transfer such funds quarterly, provided funds are available in the Agricultural Mitigation Fee Account. It is permissible to use agricultural mitigation fees in order to obtain agricultural mitigation lands in fee simple, provided the purpose is to place an agricultural conservation easement on such lands, and make the lands available by sale for agricultural use.

h. The Agricultural Mitigation Program shall not apply to projects located in the "No Pay Zone" as established in the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) compensation zone maps.

i. The specific parcel(s) containing a residential project that provides affordable housing and complies with the following (see Development Code chapter 16.40 for specific development requirements) shall be exempt from the Agricultural Land Mitigation Program:

Consist of five or more dwelling units;
Be available so that at least:

1. Twenty percent of the total number of proposed dwelling units are for lower-income households, as defined in Health and Safety Code section 50079.5; and/or

2. Ten percent of the total number of proposed dwelling units are for very low-income households, as defined in Health and Safety Code section 50105.

This exemption shall apply exclusively to the net parcel area on which the affordable housing project is located and shall not apply to any other parcels within the same subdivision, planned development. Master Development Plan, Specific Plan, or other commonly owned or planned areas.

j. Stacking of habitat easements on top of existing agricultural easements is allowable with concurrence from San Joaquin Council of Governments and the qualifying entity administering the agricultural easement.

k. Agricultural easements shall be established in perpetuity.

l. Projects that qualify to pay the in-lieu fee shall be subject to a 2.5% administration fee. In addition, agricultural mitigation fees shall not be eligible for the "Deferred Payment" option set forth in Section C.

m. The City shall report to the City Council once each fiscal year concerning the fees and accounts, including any portions of fees remaining unexpended or uncommitted five (5) or more years after deposit. The City Council shall make findings once each fiscal year with respect to any portion of the fee remaining unexpended or uncommitted in its account five (5) or more years after deposit of the fee, to identify the purpose to which the fee is put, and to demonstrate a reasonable relationship between the fee and the purpose for which it was charged.

A refund of unexpended or uncommitted fee revenue for which a need cannot be demonstrated, along with accrued interest may be made to the current owner(s) of the development project(s) by the City on a prorated basis. The City may refund unexpended and uncommitted fee revenue that has been found by the City Council to be no longer needed, by direct payment or by offsetting other obligations owed to the City by the current owner(s) of the development projects(s).

If the administrative costs of refunding unexpended and uncommitted revenues collected pursuant to this program exceed the amount to be refunded, City, after a public hearing, for which notice has been published pursuant to Government Code Section 6061 and posted in three prominent places within the area of the development project, may determine that the revenues shall be allocated for some other purpose for which the fee is collected subject to this Chapter that serves the project on which the fee was originally imposed.
B. **Place of Collection**

The CDD totals the fees as determined by the appropriate departments and informs the applicant of the amounts of the total and its components. The applicant pays the SJMSCP fee directly to SJCOG, Inc. and then brings a receipt or voucher of payment to the City as proof of payment prior to the issuance of the building permit. The applicant pays all other fees simultaneously with the issuance of the permit unless the applicant qualifies for and elects to defer payment of the fees as explained below.

C. **Deferred Payment - Non-Residential**

Rather than paying "development fees" at the time a building permit is issued, the developer who has qualified the project as a "qualified project" with the City Manager's Office, Economic Development Division, may elect to defer payment of all or a portion of those fees with the exception of surface water supply fee, air quality mitigation fee, SJMSCP Fee, Regional Transportation Impact Fee, San Joaquin County Facilities Fee, and Agricultural Mitigation Fees.

1. **Definitions**

   a. A "qualified project" is defined as a commercial, office, or industrial/warehouse project on one parcel of land or a group of non-residential contiguous parcels under the same ownership; and

   b. An "Enterprise Zone project" is any project which is within the definition above and located within the boundaries of the Enterprise Zone as existing or hereafter amended

   c. "Development fees" include the following:

      - Public Facilities Fee (less Surface Water Supply Fee, Air Quality Mitigation Fee, SJMSCP Fee, Regional Transportation Impact Fee, San Joaquin County Facilities Fee, and Agricultural Mitigation Fee) (S.M.C. 16.72.260)
      - Wastewater Fee (S.M.C. 13.12.010)
      - Water Fee (S.M.C. 13.04.010)
      - Traffic Signal Fee (S.M.C. 16.72.140)

2. **Deferral of Fees**

   a. For a "qualified project," if the total amount of "development fees" due and payable at the time of issuance of a building permit or multiple permits issued concurrently for a project exceeds $100,000, the property owner may enter into a Deferred Payment Agreement with the City to pay ten percent (10%) of those fees at the time the building permit is issued with the remaining ninety percent (90%) to be paid in equal installments over the next ten (10) years (or less at the property owner's option except that wastewater and water fees shall be paid in full within five (5) years).
b. For an "Enterprise Zone project," if the total amount of "development fees" due and payable at the time of issuance of a building permit, or multiple permits issued concurrently for a project, exceeds $20,000, the property owner may enter into a Deferred Payment Agreement with the City for payment of any amount of "development fees" with an initial payment at time of issuance of the building permit of not less than twenty percent (20%) of those fees and the remaining eighty percent (80%) paid in equal annual installments over a period of five (5) years (or less, at the owner's election) or pay ten percent (10%) of those fees at the time the building permit is issued with the remaining ninety percent (90%) to be paid in equal installments over the next ten (10) years (or less at the property owner's option except that wastewater and water fees shall be paid in full within five (5) years).

c. There is also the possibility to defer fees if the total amount of "development fees" due and payable is $20,000 or greater but less than $100,000 as set forth in Appendix E attached hereto and incorporated herein.

3. Security

a. For a "qualified project," the property owner shall, as security for repayment, execute and deliver a deed of trust on qualified project property to be recorded in the San Joaquin County land records, and execute a promissory note evidencing the obligation and terms of repayment. On a case by case basis, adequate security acceptable to the City and equal to the unpaid balance may be provided.

b. For "Enterprise Zone projects," the property owner shall, as security for repayment, execute and deliver a deed of trust on qualified project property to be recorded in the San Joaquin County land records, and execute a promissory note evidencing the obligation and terms of repayment.

4. Repayment Terms

a. Interest: The unpaid balance of the fees shall be subject to interest and collection charges. The annual interest rate will be equal to the 11th District Cost of Funds plus 1% (100 basis points) adjusted every July. For "Enterprise Zone projects" with a five (5) year or less payback period, interest shall begin to accrue on the first anniversary of the agreement.

b. Due on Transfer: The unpaid balance together with accrued interest shall be due and payable in full upon the sale or any other transfer of the property.

c. Recording and Processing Fees: All such fees shall be paid by the owner or applicant.
5. **Processing Deferred Fee Requests**

a. For "qualified projects," and "Enterprise Zone projects," an application shall be submitted to the Revitalization Department for review, processing, and determination of eligibility.

b. The applicant shall provide, with the application, a preliminary title report, legal description of the property, and a brief description of the project.

c. If the project is eligible, the Revitalization Department shall prepare the agreement and security documents for review and execution. The executed documents shall be returned to the Revitalization Department for processing. Once the deferral agreement is executed by the City and the security documents have been approved and/or recorded, the Revitalization Department will issue a notice to the CDD to proceed with issuance of the building permit(s), stating the amount of fees to be collected at issuance, and deferral of the balance of the development fees.

6. **Redevelopment Agency Deferral Authority for Nonresidential Governmental Uses/Tenancies**

The Redevelopment Agency of the City of Stockton is authorized to offer additional fee deferral opportunities in connection with the redevelopment of the City's downtown for redevelopment projects involving government office uses/tenancies that meet all of the following criteria: Consist of office facilities of 25,000 square feet or greater; require a conditional use permit (i.e., for a use not permitted outright); are located along the Stockton Channel Area; and are constructed as a multiple (not single) story building. The deferral afforded the Redevelopment Agency pursuant to this provision shall allow for a deferral of up to 100% of the development fees (as defined in this section) for a maximum period of up to 55 years and shall include an option, as determined by staff on a case by case basis, of no required down payment and an interest rate as low as 0% on the deferred principal.

D. **Deferred Payment - Low/Moderate Income Residential**

Rather than paying "development fees" at the time a building permit is issued, the developer, who has pre-qualified his "qualified residential project" with the Revitalization Department of the City, may elect to defer payment of all or a portion of those fees (except for the Regional Transportation Impact Fee, San Joaquin County Facilities Fee, Agricultural Mitigation Fee, Air Quality Mitigation Fee, Surface Water Supply Fee, and SJMSCP Fee).

1. **Definitions**

A "qualified residential project," as certified by the Revitalization Department, is defined as either:
a. A single-family housing project consisting of one or more homes on one or more lots within an approved subdivision under the same ownership. Single-family home projects must be sold to owner-occupied, first-time home buyers whose combined family income is equal to or less than 100% of the median income for the Stockton Metropolitan Statistical Area as contained in HUD's Section 8 Housing Program Income Limits as adjusted from time to time. The home purchase price shall not exceed the FHA limit for home mortgages without mutual mortgage insurance as adjusted from time to time.

b. A multi-family housing project consisting of any new construction project meeting the definition of a "low rent housing project" as contained in Article XXXIV of the California Constitution requiring local voter approval or any other project utilizing local, state, and/or federal funds in whole or in part in the acquisition or construction of said project.

"Development Fees" shall be defined as:

- Public Facilities Fee (less Surface Water Supply Fee, Air Quality Mitigation Fee, SJMSCP Fee, Regional Transportation Impact Fee, San Joaquin County Facilities Fee, and Agricultural Mitigation Fee) (S.M.C. 16.72.260)
- Parkland Fee (S.M.C. 16.72.160)
- Traffic Signal Fee (S.M.C. 16.72.140)
- Wastewater Fee (S.M.C. 13.12.010)
- Water Connection Fee (S.M.C. 13.04.010)

2. **Deferral and Repayment**

Development fees for "qualified residential projects" shall be deferred during the period the project is under construction. In the case of a single-family project, fees deferred shall be collected without interest at the time permanent take-out financing is put in place as part of the closing transaction for the purchase of the home by the qualified buyer. In the case of multi-family projects, fees deferred shall be collected without interest prior to final approval of the Building Permit and issuance of a Certificate of Occupancy.

3. **Security**

All development fees deferred for "qualified residential projects" shall be secured by recorded liens or deeds of trust encumbering each lot of record involved with the project. Said liens or deeds of trust shall be recorded prior to issuance of Building Permits and shall be secondary only to deeds of trust associated with acquisition or construction financing. Full or partial reconveyance of encumbrances shall be issued by the City at the time "development fees" are paid. All document preparation and recording fees shall be paid by developer or property owner applying for the fee deferral.
4. **Penalty**

All development fees deferred pursuant to this program shall be subject to a penalty if the single-family home projects are not sold to buyers meeting the income qualifications or if the purchase price exceeds the maximum allowed. In the case of multi-family projects, a penalty will be assessed if, following initial approval, the project is restructured so as not to meet the definition of a low rent housing project or refinanced so as not to include public funds as contained in the definition of a "qualified residential project." The penalty assessed shall be in the form of an interest payment equal to the 11th District Cost of Funds plus 1% (100 basis points) adjusted every July computed from the date the fee is deferred until totally repaid.

5. **Processing Deferred Fee Requests**

Developers or owners of "qualified residential projects" shall make application for the deferral of fees to the Revitalization Department. In the case of single-family housing projects, the content of the application shall be a list of all fees applicable to the project as calculated by the CDD. In addition, the applicant shall submit a brief description of the project profiling the type of buyer expected to reside within the project. This shall include projected annual income of home buyers and projected sale prices.

For "qualified multi-family projects," the developer or applicant shall submit a project proforma and financial feasibility analysis that includes sources of all financing associated with the project; projected rents for the project; operating maintenance; and debt service costs associated with the project. The application shall also include a preliminary title report and legal description. The Revitalization Department shall review the information submitted and make a determination as to whether the project meets the criteria for a deferral of fees. For those projects meeting the above-mentioned criteria, the Revitalization Department will prepare a Development Fee Deferral Agreement along with a security document consisting of a lien or deed of trust to be executed by the applicant and returned to the City for processing. Once the deferral agreement is executed by the City and the security document has been recorded, the Revitalization Department will issue a notice to the CDD to proceed with the deferral of the development fees and the issuance of the Building Permit.

6. **Collection**

In the case of single-family housing projects, development fees shall be collected as part of the sales transaction between developer and qualified home purchaser. Development fees shall be paid to the City out of the proceeds of the permanent take-out loan. At the time the sales transaction takes place, the developer or escrow company shall submit an appropriate document to the Revitalization Department evidencing that the proposed buyer meets the income qualifications and the purchase price of the home is within the maximum amount allowed. Evidence of satisfying this criteria will include a copy of the purchase agreement and copies of the buyer's last three years income tax returns. The Revitalization Department will review this information and make a final determination as to the buyer's eligibility. The Revitalization Department will determine whether the development fee repayment
amount will include an interest payment as a penalty and submit this demand to the escrow agent along with reconveyance documents. The escrow company will collect and remit to the appropriate demand and transmit it to the Revitalization Department for processing.

In the case of multi-family projects prior to the issuance of a Certificate of Occupancy or the placement of permanent take-out financing for the project, the developer shall submit evidence that long-term financing agreements have been executed with public entities that contain provisions and assurances that the project will remain affordable to lower-income tenants during the duration of the finance period. Upon review and approval of such documents, the Revitalization Department will calculate the appropriate repayment amount and follow the remainder of the procedures as described above.

E. Refunds

Refunds, less the administrative fee, will be made according to City procedures.

II. EXPENDITURES

A. Capital Improvement Program

State law requires that development fees be imposed only when the nature of the facilities to accommodate the development has been identified and the cost of these facilities estimated. Furthermore, the City must account for the use of the funds. In order to fulfill this requirement, the City has undertaken a number of studies analyzing public facility needs and/or the need for compensation measures to offset the impacts of future development. The intent of Appendix A is to list the various types of public facilities and compensations governed by these administrative guidelines and the respective authority that established the needs for facility type. The referenced authority does include specific public facilities scheduled for partial and/or full funding by the public facilities fee as well as guidelines for use of the SJMSCP fee component of the public facilities fees.

Projects to be constructed by the City in the next five years are included in the City's Capital Improvements Program (CIP). This includes projects to accommodate new development and to cure existing deficiencies.

Beginning with the 1990-91 fiscal year, the facilities listed in Appendix A (in its updated form) will be reviewed and those projects planned for construction within five years will be included in the City's CIP budget. The City's CIP budget will also include:

1. Projects scheduled for construction by developers within the next fiscal year and funded with a combination of developer and City funds.

2. Projects which have been constructed by the developer that have City Council approved reimbursement agreements and funds have been scheduled to be paid to the developer in the next fiscal year(s) based
upon available City funding. For reimbursement purposes, the City will set aside, for each fee area and facility type, 25 percent of the fees collected (minus credits) in the prior year. Any unexpended portion of the 25 percent reimbursement set aside will be carried over for one year only.

3. Projects which have been constructed by the developer that have City Council approved reimbursement agreements for which no funds have been scheduled to be paid to the developer in the next fiscal year due to lack of funds. It is the intent of this provision that all projects that have City Council approved reimbursement agreements shall be included in the City’s CIP budget and in order of priority based upon the effective date of the reimbursement agreement.

B. **Budgeting for Proposed Projects**

At the time that an actual appropriation for a project is requested, either during the annual budget preparation or as an appropriation during the fiscal year, the following information must be provided as part of the request:

1. To insure satisfaction of the nexus requirement, identify the proposed project as being one of the Council projects intended to be provided by the public facilities fees or, within the adopted guidelines for use of SJMSCP fees. See Appendix A.

2. Document the percentage of cost, if any, of the proposed project that is to correct existing deficiencies. Reference to an analysis that may be included as part of Appendix A would satisfy this requirement.

3. Be specific in identifying the source of funding for the proposed project. For the percentage that is approved for expenditure of public facilities fees other than SJMSCP fees, it is necessary that the facility type be identified for each portion of the appropriation. This is necessary because the revenues are being collected for each facility type and are being accounted for by specific facility type. For the percentage that is determined to correct existing deficiencies, identify specifically the other source of funds.

4. Check with the Administrative Services Department to determine if sufficient funds are available in the correct accounts for the necessary appropriations. The amount available will include the fund balance, less any amounts already appropriated or otherwise encumbered, plus estimated revenues. The CDD and Public Works Departments will provide the Administrative Services Department with projections of estimated revenues from public facilities fees by facility type and fee area.
C. **Existing Deficiencies**

The adoption of the Public Facilities Fee program requires the City to correct existing deficiencies. It is the intention of the City to appropriate funds each year such that at the end of each year, the cumulative appropriations will meet a defined proportion of the total cost of correcting deficiencies. This proportion shall be calculated as the ratio of the number of years after 1987-88 (the number of years the fee program has been in effect) to the 20 years through the 2007-08 fiscal year. In other words, it is the City's intention that funds to correct the deficiencies will be provided by the 2007-08 fiscal year at an approximate rate of one-twentieth each year. Existing deficiencies will be funded by general funds and/or bond issues (net of issuance costs).

D. **Developer in Lieu Improvements**

New development is responsible for all public facilities that are needed as a result of new development. This includes all improvements that are required by the subdivision and public improvement ordinances or identified as being necessary to satisfy mitigation measures for the project. There may be situations where a developer will incur the cost of a facility which corrects an existing City deficiency or serves other development. Therefore, under those conditions, developers will receive a reimbursement in the form of credits or cash, plus interest at the rate equal to the 11th District Cost of Funds from the date the improvements are accepted by the City, consistent with the City Council approved reimbursement agreement. Developers dedicating the land and/or constructing these facilities will be eligible for credit/reimbursement as outlined in these administrative guidelines. Construction costs, design costs, and fees for plan checking and inspection, etc., are eligible for credit/reimbursement.

A credit/reimbursement will be given to the developer to offset the public facilities fee for that type of facility imposed on subsequent development of the parcel. In other words, a street improvement cost will only be subject to credit/reimbursement against the street improvement fee.

The amount of credit/reimbursement shall be as outlined below for each of the appropriate fees:

- Libraries, Community Recreation Centers,
- Fire Stations, & Parks;

If the developer only dedicates the land for these facilities, it is eligible for a partial credit/reimbursement equal to the percentage of the fee that is needed to acquire the land. As an example, if 50% of the parkland fee is to acquire land for parks, a developer that dedicates the land will be eligible for a 50% credit against its parkland fee for permits within its development. The developer is also eligible to be reimbursed for 50% of the parkland fees from other developments within the service area of the park.
In the case of parkland, the value of the land dedicated shall be the value of land used to calculate the parkland fee in effect on the date the land is accepted by the City Council.

If the developer also constructs one of these facilities, it is eligible for a full credit/reimbursement of the fee for permits within its development, and reimbursement of the fees from other developments within the service area of the facility.

**Wastewater:**

The sanitary sewer connection fee is composed of the following components: (1) treatment, (2) existing collection system, and (3) future collection systems.

If the developer constructs a completely new collection system in accordance with the Master Plan, conveying wastewater from the developed parcel to the City of Stockton Wastewater Control Facility on Navy Drive, without use of any portion of the existing City sanitary sewer system, developer is eligible for a full credit/reimbursement within its development of components (2) existing collection system and (3) future collection systems, of the connection fee. The developer is also eligible for reimbursement of a portion of the fee for both existing and future collection systems from other developments within the service area of the collection system improvements.

If the developer connects to the existing collection system and installs mains in accordance with the Master Plan, developer is eligible for a full credit/reimbursement within its development of component (3) of the connection fee-future collection systems. The developer is also eligible for reimbursement of a portion of the fee for future collection systems from other developments within the service area of the collection system improvement.

In no case will the reimbursement authorized under this section of the Administrative Guidelines exceed the cost of the eligible sanitary sewer improvements constructed by the developer.

**Water:**

If the developer constructs a portion of the water system in accordance with the Master Plan, it is eligible for a full credit/reimbursement within its development for the fee for that portion of the cost which represents water transmission mains installed which exceed the requirements of the individual development as determined by the City. The developer is also eligible for reimbursement in accordance with the City's Water Rates and Regulations.

**Street Improvements:**

If the developer constructs a portion of the street improvements within and adjacent to its project which are covered by the fee, it is eligible for a 50%
credit/reimbursement on building permits within its development until the full cost of the improvements have been recovered. The 50% credit is necessary since only approximately 33% of the total street improvements covered by the fee are adjacent to or within undeveloped properties. The remaining improvements are freeway-related improvements, railroad grade separations, and street improvements adjacent to developed properties. Without the City retaining 50% of the fees, sufficient revenue would not be generated to fund the necessary freeway, railroad grade separations, and street improvements adjacent to developed properties.

If the developer constructs a portion of the street improvements outside and not adjacent to its development, it is eligible for a 100% credit/reimbursement on building permits until the full cost of the improvement has been recovered.

Refer to Appendix B for specifics on reimbursements for developer constructed street improvements. Also, refer to Appendix C on the procedures to be followed where past developments made significant street improvements and the development is not completely built out.

The developer shall submit a detailed cost breakdown of the public facilities to be constructed and/or the land to be dedicated for the public facilities. The cost breakdown shall also include the timing of the various improvements. In addition, the developer shall submit a yearly schedule of projected building permits through full build-out of the project. The developer shall enter the projected building permits, applicable fees, cost breakdown, interest and the proposed spread of credits/reimbursements into a spreadsheet compatible with City-used software.

The spreadsheet shall be reviewed and approved by the Public Works Department. Upon approval, the developer shall provide a copy of the spreadsheet compatible with City-used software. The spreadsheet shall be updated by the developer and reviewed and approved by the Public Works Department at least once a year. The value of the land and improvements shall not be adjusted for inflation or deflation, but the applicable fees shall be adjusted to the current fee and projected ahead in constant dollars.

The City shall enter into a credit/reimbursement agreement with the developer. The agreement shall provide for the credit/reimbursement to the developer from fees generated within the project and citywide. The timing and method of payment (credit/reimbursement) will be negotiated and included as part of the subdivision agreement or as approved by the City Council when the improvements are accepted. If the improvements are financed by an assessment district (including Mello-Roos), credits may be given to the individual property owner and/or reimbursement shall be made to the district. The proposed spread of credits/reimbursement must also be approved by the City Council prior to the subdivision improvements being accepted by the City Council.

If the credit/reimbursement agreement is submitted for approval by the City Council prior to the installation of the improvements, the costs will be based upon estimates. Upon completion of the improvements, the credit/reimbursement agreement will be
resubmitted to the City Council for approval prior to subdivision improvements being accepted.

If the developer has pulled building permits and paid public facility fees prior to the credits/reimbursement agreement being approved by the City Council, the developer will only receive credits/reimbursements on future permits. No refunds will be processed for the fees paid prior to the credit/reimbursement agreement being approved by the City Council.

When the various fees are adjusted by the City Council, the total amount to be credited/reimbursed does not change, but the amount of credit/reimbursement to be applied to an individual building permit will be adjusted. For example, if a fee was originally $1000 and the developer receives a 50% credit or reimbursement, when the fee increases to $1100, the developer will still receive a 50% credit or reimbursement but it will be $550 versus the original $500.

The developer has the option, to be determined at the time of the reimbursement agreement, of receiving credits when the building permits are issued or accumulating these credits and receiving a lump sum reimbursement at the end of each quarter, based upon claims made by the developer.

E. **Use of Administrative Funds**

The funds in the administrative account are not used for studies and/or administration for specific improvements or types of improvements. Such expenses are charged to the account for that type of facility, i.e., a traffic analysis charged to the Street Improvements account. However, administrative funds may be used for planning studies, such as a City initiated general plan revision. The funds in the administrative account are not used to cover the cost of reviewing projects; nor are funds from any other fee account used for this purpose. The funds may be used for both consultant and staff costs. Staff costs are calculated based on time card entries.

III. **ANNUAL REPORT**

A. **Fiscal Year Summary**

An annual report on the development fee program is prepared. The first portion of the report, the fiscal year summary, is prepared reasonably soon after the end of the fiscal year, as accounting information becomes available. This portion of the report includes the following information.

1. **Account Balances** - The information includes fiscal year revenues and the accumulated balance for each account.

2. **Improvements** - The report includes, for each account and subaccount, except the SJMSCP Account, the following: the constructed improvements and a projection of the funds to be collected in each of the next five years; when the next project (or projects) will be able to be funded; and the proposed projects to be undertaken in the
next five years. The latter information is in a form appropriate for integration into the Capital Improvements Program. For the SJMSCP Account, the annual report will be provided by SJCOG, Inc.

3. **Administration Fund** - The revenues to the administration account are compared with the administration expenses incurred, both for the past fiscal year and for an appropriate longer period of time. Both future projected revenues and expenses are also included in the report, along with a recommendation either to retain the current level of administrative component of the fee, or to adjust it up or down.

4. **Existing Deficiencies** - The expenditures to cure existing deficiencies are set forth, both for the fiscal year and cumulatively. These expenditures are compared with the commitment to cure existing deficiencies on at least a pro rata basis between 1988 and the present.

5. **Reimbursement Agreements** - The report includes, for each agreement, the following: the constructed improvements; the total cost of the improvement including land; all accrued interest; the outstanding balance; and the projected credit/reimbursement and source of revenue.

**B. Fee Review and Adjustment**

The second portion of the annual report is prepared three or four months before the start of the calendar year. This report is submitted to the City Council along with recommendations so that action can be taken no later than 60 days before the start of the calendar year, allowing the adjusted fees to become effective on or about January 1. This portion of the report includes the following information.

1. **Inflation Adjustments** - The report presents information on the inflation rate during the prior calendar year as determined by the construction cost index of the Engineering News Record publication. The rate of inflation (or deflation) is applied to the fees to determine the fees for the subsequent year. A land cost index will be used to adjust the land cost portion of the fees.

2. **Reimbursement Agreements Adjustments** - The report presents information on the credits/reimbursements due developers for the subsequent year. Since the developers are eligible for credits/reimbursements plus interest, the fees shall be adjusted to cover this additional expense.

3. **Special Studies or Information** - From time to time, new information will be come available regarding the facilities needed to accommodate new development and their cost. If this information is different from that upon which the fees are currently based, the information should be documented along with calculations that determine the appropriate new fee level.
4. **Findings** - The report sets forth findings suitable for adoption by the City Council determining that, except for the adjustments listed, the prior findings on which the current fees are based are still sufficiently accurate.

Adopted Feb. 12, 1991 (Resolution No. 91-0119);
Amended Jan. 23, 2007 (Resolution No. 07-0040);
Amended ____________ (Resolution No. ____-____).
Connie Cochran

From: Amanda Thomas  
Sent: Thursday, July 28, 2022 2:45 PM  
To: Carrie Wright  
Subject: FW: OWP Map  
Attachments: map; Re: Miner Avenue

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Eric Alvarez  
Deputy Public Works Director/City Engineer  
City of Stockton  
Public Works Department  
22 E. Weber Avenue, Room 301  
Stockton, CA 95202  
Office: 209-937-8228  
Eric.alvarez@stocktonca.gov

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From: Amanda Thomas <Amanda.Thomas@stocktonca.gov>  
Sent: Wednesday, October 13, 2021 3:26 PM  
To: Eric Alvarez <Eric.Alvarez@stocktonca.gov>  
Subject: OWP Map

Can you send Janice, Nicole and I the map Zac sent you. Thanks.
From: Zac Cort <zcort@tenspacedev.com>
Sent: Wednesday, October 13, 2021 2:12 PM
To: Eric Alvarez
Subject: map
Attachments: Murphy Dillion.pdf

CAUTION: This email originated from outside the City of Stockton. Do not click any links or open attachments if this is unsolicited email.

Zac Cort
President & CEO
zcort@tenspacedev.com

110 N. San Joaquin St. 5th Floor
Stockton, CA 95202
office | 209.469.2678
www.tenspacedev.com
Eric,

Attached you will find our site (corner of Miner ave and California). I have also attached a quick sketch I did to show the areas we are proposing to upgrade as well.

As you will see we are proposing the areas from Miner ave down California, from California down channel to Sutter st. Also down channel to American and American up to Miner ave.

We are not bound to do all of that work but thought we might as well clean up that whole area instead of piece mailing everything.

Can we jump on a call to discuss so I can understand what is needed and what's not. We are perfectly happy not tackling everything but also if our team is out there lets get it done.

Tomorrow morning at 830 work?

Zac Cort
President & CEO
zcort@tenspacedev.com

110 N. San Joaquin St. 5th Floor
Stockton, CA 95202
office | 209.469.2678
www.tenspacedev.com

On Tue, Oct 5, 2021 at 4:21 PM Eric Alvarez <Eric.Alvarez@stocktonca.gov> wrote:

Send me the phase 1 area improvements and any particular concerns and I’ll see if I can manage something. We have several CIP projects in downtown that we may have to discuss. One along California which is going to construction soon

Sent from my iPhone
On Oct 5, 2021, at 2:58 PM, Zac Cort <zcort@tenspacedev.com> wrote:

CAUTION: This email originated from outside the City of Stockton. Do not click any links or open attachments if this is unsolicited email.

Hi Eric,

Hope this email finds you well. I'm sure you heard but we are moving our "phase 1" project forward... finally. You know these things take some time unfortunately. I know we have a call set up next week but I'd like to chat prior as I am coordinating some items with the lender and Dillion Murphy. Do you have time for a quick call tomorrow afternoon or Thursday?

Let me know what works.

Thanks.
Zac

Zac Cort
President & CEO
zcort@tenspacedev.com

On Mon, Jan 4, 2021 at 1:32 PM Eric Alvarez <Eric.Alvarez@stocktonca.gov> wrote:

Zac,

Checking in. We should have a conversation ASAP regarding your potential delivery schedule. We need to coordinate service connections at a minimum prior to us building the street section and avoid cutting into street later with any of your improvements if possible. Can we do a conference call at least?
Hi Eric,

Sorry been so slammed trying to get all these to the finish line. I’ll know more in the next week or so and I’ll make sure www connect on timing.

Hope all is well and look forward to talking soon.

Thanks.

Zac

Zac Cort
President & CEO
209-986-2831
www.tenspacedev.com

On Oct 22, 2020, at 8:44 AM, Eric Alvarez <Eric.Alvarez@stocktonca.gov> wrote:

Zac, missed touching basis with you. We are all busy so thought I would just inquire as to a status of your phase I project and the soonest you may be submitting for any building and/or encroachment permits? Any hint as to timing would be very helpful in trying to avoid conflicts with our Miner Avenue or other downtown projects that are currently in progress. Hope all is well. Take Care
CALIFORNIA+MINER
STOCKTON, CA
PROJECT SUMMARY

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OPEN SPACE

| PRIVATE PATIO | 5,300 SF |
| ROOF DECK    | 3,300 SF |
| SKY DECK @ LVL4 | 1,800 SF |
| TOTAL        | 10,400 SF |

AMENITY SPACE

| RETAIL       | 1,500 SF |
| LEASING/FITNESS | 2,500 SF |
| L2-LOUNGE    | 400 SF   |
| L3-LOUNGE    | 400 SF   |
| L4-LOUNGE    | 400 SF   |
| SUB TOTAL    | 3,700 SF |
| TOTAL        | 5,200 SF |

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<td>39,500</td>
<td>58,220</td>
<td>68%</td>
</tr>
</tbody>
</table>

UNIT AREA = +/- 300SF
Attached
ORDINANCE NO. 2022-01-11-1602

AN ORDINANCE APPROVING TERMINATION OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY AND OPEN WINDOW PROJECT LLC, FOR THE OPEN WINDOW PROJECT

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

SECTION 1. BACKGROUND AND INTENT

On February 23, 2016, the City Council approved the Open Window project, which proposed mixed-use development for revitalization and redevelopment of 11.88 acres and is comprised of 51 properties within an approximately 15 square block area of Downtown Stockton. As of 2021, only 34-units have been constructed within the Project boundary; and

On October 18, 2021, the Applicant, Zac Cort with Open Window, LLC., requested that the City of Stockton revoke an existing Master Development Plan and Terminate the Development Agreement (DA) for Open Window Project. The Applicant has verbally stated there is no benefit to either the DA or MDP for attracting development of the Project site. After consideration of the request, staff agrees that there is little benefit in the agreement and MDP beyond what is already required per local standards voted 6-0 (Commissioner Garcia Absent), recommending the City Council mutually terminate the Open Window Project DA and MDP; and

On January 11, 2022, the City Council conducted a public hearing on the application, in compliance with SMC Section 16.108.030 (A) (3), at which point all persons wishing to be heard were provided such opportunity; now, therefore,

SECTION II. DEVELOPMENT AGREEMENT

The City Council hereby approves the termination of the Development Agreement requested by Open Window Project LLC (as described in Exhibit 1), based on the above.

Pursuant to Stockton Municipal Code Section 16.128.120 (C) and Government Code section 65868, the City Council of the City of Stockton conducted a public hearing on January 11, 2022, and hereby terminates this Development Agreement, a copy of which is attached hereto as Exhibit 1, and incorporated by reference.

SECTION III. SEVERABILITY

If any part of this Ordinance is held invalid for any reason, such decision shall not affect the validity of the remaining portion of this Ordinance, and the City Council hereby declares that it would have passed the remainder of this Ordinance if such invalid portion thereof had been deleted.
SECTION IV. EFFECTIVE DATE

This Ordinance shall take effect and be in full force thirty (30) days after its passage.

ADOPTED: January 11, 2022

EFFECTIVE: February 10, 2022

ATTEST:

KEVIN J. LINCOLN II
Mayor of the City of Stockton

ELIZA R. GARZA, CMG
City Clerk of The City of Stockton
DEVELOPMENT AGREEMENT

by and between the

CITY OF STOCKTON,
a California municipal corporation

and

OPEN WINDOW PROJECT, LLC,
a California limited liability company

Dated: March 25, 2016
Section 8.1  Mortgagee Protection ................................................................. 24
Section 8.2  Mortgagee Not Obligated ..................................................... 24
Section 8.3  Notice of Default to Mortgagee; Right to Cure .................... 24
Section 8.4  No Supersedure ................................................................. 25
Section 8.5  Technical Amendments to this Article 8 ............................ 25

ARTICLE 9 AMENDMENT OF AGREEMENT AND EXISTING APPROVALS 25
Section 9.1  Amendment of Agreement by Mutual Consent ........................ 25
Section 9.2  Insubstantial Amendments to Agreement ............................. 25
Section 9.3  Requirement for Writing ...................................................... 25
Section 9.4  Amendments to Development Agreement Statute ................ 26
Section 9.5  Amendments to Project Approvals ..................................... 26
Section 9.6  Administrative Amendments of Project Approvals ............... 26
Section 9.7  Operating Memoranda .......................................................... 27
Section 9.8  CEQA ......................................................... 27

ARTICLE 10 COOPERATION AND IMPLEMENTATION ................................. 27
Section 10.1  Subsequent Project Approvals ........................................... 27
Section 10.2  Scope of Review of Subsequent Project Approvals .............. 28
Section 10.3  Processing Applications for Subsequent Project Approvals ... 28
Section 10.4  Other Agency Subsequent Project Approvals; Authority of City 28
Section 10.5  Implementation of Necessary Mitigation Measures .............. 29
Section 10.6  Cooperation in the Event of Legal Challenge ....................... 29
Section 10.7  Revision to Project ............................................................. 30
Section 10.8  State, Federal or Case Law .................................................. 30
Section 10.9  Defense of Agreement ......................................................... 30
Section 10.10  Indemnity ................................................................. 30

ARTICLE 11 ASSIGNMENT ..................................................................... 30
Section 11.1  Transfers and Assignments .............................................. 30
Section 11.2  Release Upon Transfer ....................................................... 31

ARTICLE 12 DEFAULT; REMEDIES; TERMINATION ..................................... 32
Section 12.1  Breach and Default ............................................................. 32
Section 12.2  Termination ................................................................. 32
Section 12.3  Legal Actions ................................................................. 33
Section 12.4  Rights and Remedies Are Cumulative ............................... 33
Section 12.5
No Consequential or Special Damages .............................................. 33
Section 12.6
Resolution of Disputes ....................................................................... 33
Section 12.7
Surviving Provisions .......................................................................... 33
Section 12.8
Effects of Litigation ........................................................................... 34
Section 12.9
California Claims Act ........................................................................ 34

ARTICLE 13 MISCELLANEOUS PROVISIONS ............................................. 34
Section 13.1
Incorporation of Recitals, Exhibits and Introductory Paragraph ...... 34
Section 13.2
Severability ....................................................................................... 34
Section 13.3
Construction ..................................................................................... 34
Section 13.4
Covenants Running with the Land ..................................................... 35
Section 13.5
Notices ............................................................................................. 35
Section 13.6
Counterparts; Entire Agreement ........................................................ 36
Section 13.7
Recordation of Agreement ................................................................. 36
Section 13.8
No Joint Venture or Partnership ........................................................ 36
Section 13.9
Waivers ............................................................................................ 36
Section 13.10
California Law; Venue ....................................................................... 37
Section 13.11
City Approvals and Actions ............................................................... 37
Section 13.12
Estoppel Certificates ......................................................................... 37
Section 13.13
No Third Party Beneficiaries ............................................................. 37
Section 13.14
Signatures .......................................................................................... 37
Section 13.15
Further Actions and Instruments ........................................................ 37
Section 13.16
Attorneys’ Fees .................................................................................. 38
Section 13.17
Limitation on Liability ....................................................................... 38
LIST OF EXHIBITS

Exhibit A-1  Diagram Depicting Developer Parcels and City Parcels
Exhibit A-2  Legal Description of Developer Parcels
Exhibit A-3  Legal Description of City Parcels
Exhibit B   Impact Fees – FY 2015-16 Fee Schedule and City Council Resolution Approving Fee Schedule
Exhibit C   Intentionally Omitted
Exhibit D   Connection Fees – FY 2015-16 Fee Schedule and City Council Resolution Approving Fee Schedule
Exhibit E   Form of Assignment and Assumption Agreement
Exhibit F   Downtown Infrastructure Infill Incentive Program
Exhibit G   Assessments
Exhibit H   Downtown Financial Incentive Program Guidelines
Exhibit I   Public Facilities Fee Program Administrative Guidelines
DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") dated for reference purposes as of March 25, 2016 ("Agreement Date"), is entered into by and between OPEN WINDOW PROJECT, LLC, a California limited liability company ("Developer") and the CITY OF STOCKTON, a California municipal corporation ("City"). Developer and City are sometimes referred to individually herein as a "Party" and collectively as the "Parties."

RECITALS

The following recitals are a substantive part of this Agreement; capitalized terms used herein and not otherwise defined are defined in Section 1.1 of this Agreement.

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs and risk of development, the Legislature of the State of California enacted Section 65864 et seq. of the Government Code ("Development Agreement Statute") which authorizes a city and a developer having a legal or equitable interest in real property to enter into a binding, long-term development agreement, establishing certain development rights in the property.

B. In accordance with the Development Agreement Statute, the City has adopted a development agreement ordinance codified as Chapter 16.128 of the City's Municipal Code ("Development Agreement Ordinance"). The provisions of the Development Agreement Statute and the City's Development Agreement Ordinance are collectively referred to herein as the "Development Agreement Law." This Agreement has been drafted and processed pursuant to the Development Agreement Law.

C. Developer holds a legal or equitable interest in approximately 43 parcels comprising approximately 9.464 acres of land located in the City of Stockton, County of San Joaquin, in the downtown area bounded by East Miner Street to the north, Aurora Street to the east, East Main Street to the south, and North Sutter Street to the west. These parcels ("Developer Parcels") are depicted in Exhibit A-1 and more fully described in Exhibit A-2.

D. On or about March 24, 2015, the City, the Parking Authority of the City of Stockton ("Parking Authority") and Developer, entered into an Exclusive Negotiating Rights Agreement ("ENRA") with respect to Developer's proposed acquisition of certain downtown parcels owned by City for incorporation into the development project that is the subject of this Agreement.

E. As contemplated by the ENRA, concurrently with the approval of this Agreement, City and the Parking Authority have approved the execution of a Purchase Option and Development Agreement ("City Option Agreement") pursuant to which Developer has the right to acquire five (5) City-owned parcels and three (3) Parking Authority-owned parcels collectively comprising approximately 2.42 acres of land and located within this same general area which are depicted in Exhibit A-1 and more particularly described in Exhibit A-3 ("City
Parcels”). The Developer Parcels and the City Parcels comprise approximately 11.884 acres of land and are collectively referred to herein as the “Property.”

F. Concurrently with the approval of this Agreement, City has approved a Master Development Plan for the Property ("Master Development Plan") which sets forth the proposed development program, design guidelines, key development requirements and parameters for the Project (defined below), including without limitation setback requirements, permissible dwelling units per acre (DUA) and floor area ratio (FAR) ranges; development application review and approval provisions, and requirements for street trees, parking, sidewalks, public plazas and other amenities.

G. The Master Development Plan proposes a mixed-use development concept with up to 1,034 residential units, primarily built at higher densities as part of apartments or other multi-family unit developments, together with up to 200,000 square feet of retail space, up to 90,000 square feet of commercial space and up to 110,000 square feet of industrial/art studio space (collectively, the “Project”). The Master Development Plan may include residential development exceeding the 87 dwelling units on a parcel by parcel with an average density not exceeding 87 dwelling units per acre on any one block, consistent with current General Plan land use policies for density bonuses and consistent with other applicable general plan policies. However, the City is currently working on a General Plan update which is expected to address increased residential density in the downtown area. Therefore, for the purposes of the Project Initial Study, the analysis assumes that up to 1,400 residential units would be constructed, primarily built at higher densities as part of apartments or other multi-family unit developments.

H. This Agreement sets forth, among other things, the applicable fees, policies and zoning requirements that apply to development of the Project, and provides Developer with a vested right to develop the Project on the Property consistent with the Master Development Plan, the City’s General Plan, and the land use designations and zoning applicable to the Property, each as in effect as of the Effective Date.

I. The Project relies on the following analysis under the California Environmental Quality Act ("CEQA") (set forth in Public Resources Code, section 21000 et seq.): a Mitigated Negative Declaration for the Master Development Plan adopted by the City Council on February 23, 2016 by Resolution No. 2016-02-23-1601-01 ("Mitigated Negative Declaration") and corresponding Mitigation Monitoring and Reporting Plan. As part of the environmental review of the Project, the City, pursuant to SB 610 (codified at California Public Resources Code section 21151.9 and Water Code sections 10631 et seq.), requested and received from California Water Service Company a prepared by Yarne & Associates, Inc. (“Water Supply Assessment”), which Water Supply Assessment demonstrates that there will be adequate water supplies to meet the demands of the proposed Project, and the existing and other planned development within the City.

J. Prior to or concurrently with approval of this Agreement, the City has taken numerous actions in connection with the development of the Project on the Property, including adoption of the Master Development Plan by Resolution No. 2016-02-23-1601-01. The approvals described in Recital I and this Recital J, together with this Agreement, are collectively referred to herein as the “Existing Approvals.”
K. City has determined that by entering into this Agreement, City will further the purposes set forth in the Development Agreement Ordinance, and City will benefit from the increased range of housing options, retail establishments, employment opportunities, and renovation of abandoned and underdeveloped property, and publicly accessible civic and recreational space created by the Project for residents of City.

L. For the reasons recited herein, City and Developer have determined that the Project is a development for which this Agreement is appropriate. This Agreement will eliminate uncertainty regarding Existing Approvals and Subsequent Project Approvals, thereby encouraging planning for, investment in, and commitment to use and development of the Property. Continued use and development of the Property will in turn provide substantial employment, tax, and other public benefits to the City, contribute to the revitalization of downtown Stockton, and provide expanded housing, employment, retail and recreational opportunities for Stockton residents, thereby achieving the goals and purposes for which the Development Agreement Law was enacted.

M. The terms and conditions of this Agreement have undergone review by City staff, the Planning Commission and the City Council at publicly noticed meetings, and have been found to be fair, just and reasonable, in conformance with the Development Agreement Law and the goals, policies, standards and land use designations specified in the General Plan, and consistent with the requirement under Government Code Section 65867.5, and further, the City Council finds that the economic interests of City's citizens and the public health, safety and welfare will be best served by entering into this Agreement.

N. On January 14, 2016, the Planning Commission, the initial hearing body for purposes of development agreement review, recommended approval of this Agreement to the City Council. On February 23, 2016, the City Council adopted Ordinance No. 2016-02-23-1601 approving this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and provisions set forth herein, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

ARTICLE 1 DEFINITIONS

Section 1.1 Definitions.

"Additional Benefitted Properties" is defined in Section 5.4D.

"Administrative Amendment" is defined in Section 9.6.

"Agreement" means this Development Agreement.

"Agreement Date" means the reference date identified in the preamble to this Agreement.
"Annual Review" is defined in Section 7.1BA.

"Annual Review Form" is defined in Section 7.1B.

"Applicable City Regulations" means (a) the permitted uses of the Property, the maximum density and/or total number of residential units, the intensity of use, the maximum height and size of the proposed buildings, provisions for reservation or dedication of land for public purposes, the conditions, terms, restrictions, and requirements for subsequent discretionary actions, the provisions for public improvements and financing of public improvements, and other terms and conditions of development applicable to the Property as set forth in the General Plan on the Effective Date, the Master Development Plan on the Effective Date, the Municipal Code of the City on the Effective Date, and the other ordinances, policies, rules, regulations, standards and specifications of the City in effect on the Effective Date; (b) New City Laws that apply to the Property as set forth in Section 4.1, Section 4.3C or Section 4.3D herein; and (c) regulations that apply to the Property as set forth in Section 4.3A and 4.3B herein.

"Applicable Law" means (a) all State and Federal laws and regulations applicable to the Property and the Project as enacted, adopted and amended from time to time, and (b) the Applicable City Regulations.

"CEQA" is defined in Recital I.

"Changes in the Law" is defined in Section 4.8.

"City" means the City of Stockton, a California municipal corporation.

"City Option Agreement" is defined in Recital E.

"City Parcels" is defined in Recital E.

"City Parties" means City and its elected and appointed officials, officers, agents, employees, contractors and representatives.

"City Council" means the City Council of the City of Stockton.

"Connection Fees" means those fees charged by City or by a utility provider to utility users as a cost for connecting to water, sanitary sewer and other applicable utilities.

"Default" is defined in Section 12.1.

"Developer" means Open Window Project, LLC, a California limited liability company, and its permitted assignees and successors-in-interest under this Agreement.

"Developer Affiliate" means an entity which controls, is controlled by, or under common control with Developer.

"Developer Parcels" is defined in Recital C.
“Development Agreement Law” is defined in Recital B.

“Development Agreement Ordinance” is defined in Recital B.

“Development Agreement Statute” is defined in Recital A.

“Downtown Financial Incentive Program” means the program established by City Council Resolution No. 99-0583 for the rehabilitation and reuse of vacant buildings adopted on December 14, 1999. A copy of the Downtown Financial Incentive Program is attached hereto as Exhibit H.

“Effective Date” is defined in Section 3.1.

“Eligible Public Facilities” is defined in Section 5.2C.

“ENR Index” means the Construction Cost Index for San Francisco, as published from time to time by the Engineering News Record.

“ENRA” is defined in Recital D.

“Exactions” means exactions imposed by City as a condition of developing the Project, including requirements for acquisition, dedication or reservation of land, and obligations to construct on-site or off-site public and private infrastructure improvements such as roadways, utilities or other improvements necessary to support the Project, whether such exactions constitute subdivision improvements, mitigation measures in connection with environmental review of the Project, or impositions made under Applicable City Regulations. For purposes of this Agreement, Exactions do not include Impact Fees.

“Existing Approvals” is defined in Recital J.

“Extension Condition” is defined in Section 3.2A(3).

“Extension Request” is defined in Section 3.2A(3).

“Force Majeure Delay” is defined in Section 3.2D.

“General Plan” means the General Plan of the City of Stockton in effect as of the Effective Date.

“Home Price Index” is defined in Section 3.2D.

“Impact Fee Resolutions” means the following Stockton City Council Resolutions: Resolution No. 10-0309 (Resolution Reducing Certain Public Facilities Fees as Part of Stockton’s Economic Recovery Incentive Program) adopted on September 14, 2010, Resolution No. 2016-01-12-1206 adopted on January 12, 2016 (extending the period of fee reductions to December 31, 2018), and, to the extent future Impact Fees are less than the Impact Fees in effect as of the Effective Date, those future Stockton City Council Resolutions implementing the Impact Fee reductions.
"Impact Fees" means the monetary fees and impositions, other than taxes and assessments, and also referred to as “Public Facilities Fees,” charged by City in connection with a development project for the purpose of defraying all or a portion of the cost of mitigating the impacts of a development project or development of the public facilities and services related to a development project, including any “fee” as that term is defined by Government Code section 66000(b). For purposes of this Agreement, a monetary fee or imposition that meets both the definition of an Impact Fee and the definition of an Exaction will be considered an Impact Fee.

"Initial Term" is defined in Section 3.2A(1).

"Insubstantial Amendment" is defined in Section 9.2.

"Litigation Challenge" is defined in Section 10.6B.

"Master Development Plan" is defined in Recital F, and means the Master Development Plan for the Project approved by the City Council concurrently with this Agreement, as amended from time to time.

"Maximum City Reimbursement" is defined in Section 5.4B.

"Mitigated Negative Declaration" is defined in Recital I.

"MMRP" means the Mitigation Monitoring and Reporting Program adopted by the City Council in connection with its approval of the Mitigated Negative Declaration for the Project.

"Mortgage" is defined in Section 8.1.

"Mortgagee" is defined in Section 8.1.

"Municipal Code" means the Municipal Code of the City of Stockton in effect as of the Effective Date.

"New City Laws" means and includes any ordinances, resolutions, orders, rules, official policies, standards, specifications, guidelines or other regulations, which are promulgated or adopted by the City (including but not limited to any City agency, body, department, officer or employee) or its electorate (through the power of initiative or otherwise) after the Effective Date.

"Non-Intended Prevailing Wage Requirement" is defined in Section 5.5B.

"Notice" is defined in Section 13.5.

"Other Agency Fees" is defined in Section 5.1D.

"Other Agency Subsequent Project Approvals" means Subsequent Project Approvals to be obtained from entities other than City or any City agency, body or department.

"Parking Authority" is defined in Recital D.
"Party/Parties" is defined in the introductory paragraph preceding the Recitals of this Agreement.

"Permitted Transfers" is defined in Section 11.1B.

"Planning Commission" means the Planning Commission of the City of Stockton.

"Prevailing Wage Components" is defined in Section 5.5A.

"Prevailing Wage Laws" is defined in Section 5.5A.

"Processing Fees" means all fees charged on a City-wide basis to cover the cost of City processing of development project applications, including plan checking (time and materials) and inspection and monitoring for land use approvals, design review, grading and building permits, General Plan maintenance fees, and other permits and entitlements required to implement the Project, which are in effect at the time those permits, approvals or entitlements are applied for, and which fees are intended to cover the City’s actual and reasonable costs of processing the foregoing.

"Project" is defined in Recital G.

"Project Approvals" means the Existing Approvals and, when and as approved in accordance with the terms of this Agreement, the Subsequent Project Approvals.

"Property" is defined in Recital E.

"Public Improvements" is defined in Section 5.4A.

"Public Facilities Fee Program Administrative Guidelines" means the Public Facilities Fee Program Administrative Guidelines adopted by the City Council to implement Municipal Code section 16.72.260 (as such guidelines were amended pursuant to City Council Resolution No. 11-0161 adopted June 21, 2011), as such guidelines are in effect as of the Effective Date. A copy of the Public Facilities Fee Program Administrative Guidelines is attached hereto as Exhibit I.

"Severe Economic Recession" is defined in Section 3.2D.

"Subsequent Project Approvals" is defined in Section 10.1.

"Term" is defined in Section 3.2.

"Transfer" is defined in Section 11.1A.

"Water Supply Assessment" is defined in Recital I.
ARTICLE 2 GENERAL PROVISIONS

Section 2.1 Ownership of Property. The Parties hereby acknowledge that, as of the Effective Date, Developer has either a fee interest or an equitable interest in all of the parcels comprising the Property by virtue of Developer's fee ownership thereof, or Developer's contractual rights to purchase the City Parcels pursuant to the City Option Agreement and certain of the Developer Parcels pursuant to private third-party agreements. If fee title to all of the parcels in which Developer has an equitable interest is not acquired by Developer or a Developer Affiliate by the fifth (5th) anniversary of the Effective Date or such later date as City and Developer may mutually agree, then those parcels as to which Developer or a Developer Affiliate has not acquired fee title shall be excluded from the definition of the "Property" and, upon request by either Party, City and Developer shall execute, acknowledge and record and amendment to this Agreement memorializing the deletion of such parcel or parcels from the Property that is the subject of this Agreement.

Section 2.2 City Representations and Warranties. City represents and warrants to Developer that:

A. City is a municipal corporation, validly existing and in good standing under the laws of the State of California, and has all necessary powers under the laws of the State of California to enter into and perform the undertakings and obligations of City under this Agreement.

B. The execution and delivery of this Agreement and the performance of the obligations of City hereunder have been duly authorized by all necessary City Council actions and all necessary approvals have been obtained.

C. This Agreement is a valid obligation of City and is enforceable in accordance with its terms.

The foregoing representations and warranties are made as of the Agreement Date. During the Term of this Agreement, City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.2 not to be true, immediately give written Notice of such fact or condition to Developer.

Section 2.3 Developer Representations and Warranties. Developer represents and warrants to City that:

A. Developer is duly organized, validly existing and in good standing under the laws of the State of California and has all necessary powers under the laws of the State of California to own property and in all other respects enter into and perform the undertakings and obligations of Developer under this Agreement.

B. The execution and delivery of this Agreement and the performance of the obligations of Developer hereunder have been duly authorized by all necessary corporate, partnership or company action and all necessary shareholder, member or partner approvals, as applicable, have been obtained.
C. This Agreement is a valid obligation of Developer and is enforceable in accordance with its terms.

D. Developer has a legal or equitable interest in each of the Parcels comprising the Property.

The foregoing representations and warranties are made as of the Agreement Date. During the Term of this Agreement, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.3 not to be true, immediately give written Notice of such fact or condition to City.

ARTICLE 3 EFFECTIVE DATE AND TERM

Section 3.1 Effective Date. This Agreement shall become effective upon the date that the ordinance approving this Agreement becomes effective ("Effective Date").

Section 3.2 Term.

A. Term of Agreement. Except as to those rights and obligations that expressly extend beyond the stated Term of this Agreement, the "Term" of this Agreement shall commence as of the Effective Date and shall continue for the Initial Term as defined in subsection (1) below, plus the duration of any extension as provided in subsection (2) below, or until earlier terminated by mutual consent of the Parties or as otherwise provided by this Agreement.

(1) Initial Term of Agreement. The "Initial Term" of this Agreement shall be ten (10) years, commencing on the Effective Date and expiring on the tenth (10th) anniversary thereof.

(2) Extensions. Subject to the terms and conditions in this Section 3.2, Developer shall have the right to seek extension of the Initial Term for two (2) additional five (5)-year terms. In order to obtain the first five-year extension, Developer must have substantially completed construction of at least three hundred (300) residential units on the Property, or portions thereof, by the end of the Initial Term. In order to obtain the second five-year extension, Developer must have substantially completed at least six hundred (600) residential units on the Property, or portions thereof, by the end of the first five-year extension.

(3) Extension Request. If Developer desires to seek an extension, Developer must submit a letter addressed to the City Manager requesting such extension ("Extension Request"). The Extension Request shall include documentation in a form reasonably acceptable to City demonstrating that the applicable extension condition described in subsection (2) above ("Extension Condition") has been satisfied, or will be satisfied, prior to the date that the Initial Term or the first extension period, as applicable, would otherwise expire.

(4) Extension Review. Within 30 days of receipt of the Extension Request and accompanying documentation, the City Manager shall determine whether the Extension Condition has been or will be satisfied. If the City Manager concludes that the Extension Condition has been or will be satisfied, then he or she shall grant the Extension
Request and provide written notice, in a recordable form, that the Agreement has been extended for the extension period, and the Initial Term shall be extended accordingly. If the City Manager determines the Extension Condition has not been satisfied or if there is any dispute regarding whether or not the Extension Condition will be satisfied by the date specified in subsection (2) above, then the Developer shall have 10 business days to present to the City Manager a letter providing written notice of the Developer's appeal of the City Manager's determination to the City Council. The City Council shall hear such an appeal within 30 days of City's receipt of the letter providing written notice of the appeal. If the City Council determines that the Extension Condition has been satisfied, then the City Council shall direct the City Manager to grant the Extension Request and provide Developer written notice, in a recordable form, that the applicable Extension Request has been granted and the Initial Term shall be extended accordingly. If the City Council determines that the Extension Condition has not been satisfied, then the City Council shall document such findings in its action denying the Extension Request. The City Council’s decision shall be final, subject to Developer’s ability to pursue available remedies as provided in Section 12.3 below.

(5) Memorandum of Extension. Within ten days after the written request of either Party, City and Developer agree to execute, acknowledge and record in the Official Records of San Joaquin County a memorandum evidencing any approved extension of the Term pursuant to this Section 3.2.

B. Termination Upon Expiration of Term. Upon the expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect, subject, however, to the provisions set forth in Section 3.2D and Section 12.7 below.

C. Termination Upon Completion of Project Components. This Agreement shall automatically terminate with respect to each completed Project component (including, without limitation, each completed residential unit, multi-family building, mixed-use building, non-residential building, or residential or commercial condominium unit), and the lots or parcels upon which such components have been constructed, and such lots, parcels and completed components shall be released and no longer be subject to this Agreement, without the execution or recordation of any further document, when a certificate of occupancy has been issued for the dwelling unit(s), commercial spaces or other structures constructed on such property, parcels or lots.

D. Force Majeure Delay; Extension of Times of Performance. The Term of this Agreement and the Project Approvals and the time within which either Party shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control of the Party seeking the delay by strikes, lock outs and other labor difficulties; Acts of God; inclement weather; failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body; changes in local, state or federal laws or regulations; any development moratorium or any action of other public agencies that regulate land use, development or the provision of services that prevents, prohibits or delays construction of the Project, including without limitation any extension authorized by Government Code Section 66463.5(d); enemy action; civil disturbances; wars; terrorist acts; fire; unavoidable casualties; mediation, arbitration, litigation or other administrative or judicial
proceeding involving this Agreement or the Project Approvals, including without limitation any extension authorized by Government Code Section 66463.5(e); Severe Economic Recessions; or other similar event beyond the reasonable control of the Party (each a “Force Majeure Delay”). An extension of time for any such cause shall be for the period of the Force Majeure Delay or longer, as may be mutually agreed upon by the Parties. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City Manager and Developer. “Severe Economic Recession” means a significant decline in the residential real estate market, as measured by a decline of more than four percent (4%) in the Home Price Index during the preceding twelve (12) month period. Severe Economic Recession shall continue prospectively on a quarterly basis and remain in effect until the Home Price Index increases for three (3) successive quarters. “Home Price Index” means the quarterly index published by the Federal Housing Finance Agency representing home price trends for the Stockton-Lodi Metropolitan Statistical Area. If the Home Price Index is discontinued, Developer and the City shall approve a substitute index that tracks the residential market with as close a geography to the Stockton-Lodi Metropolitan Statistical Area as possible.

E. Findings Regarding Duration of Term. The Term has been established by the Parties as a reasonable estimate of the time required to carry out the Project, develop the Property, and obtain the public benefits of the Project. City finds that a Term of such duration is reasonably necessary to assure City of the realization of the public benefits from the Project. In establishing and agreeing to such Term, City has determined that this Agreement incorporates sufficient provisions to permit City to monitor adequately and respond to changing circumstances and conditions in granting permits and approvals and undertaking regulatory actions to carry out the Project.

ARTICLE 4 DEVELOPMENT OF PROPERTY

Section 4.1 Vested Rights. City hereby grants to Developer a vested right to develop and construct the Project on the Property, including all on-site improvements and off-site improvements located within the public right-of-way authorized by, and in accordance with, the Project Approvals and this Agreement. As noted in Recital G, City is currently working on a General Plan update which is expected to address residential density in the downtown area, and it is anticipated that the downtown area may be identified for higher residential density limits than those allowed under the current General Plan. If the General Plan is amended to increase the downtown densities, the maximum residential densities for the Project, as set forth in the Existing Approvals, will be automatically increased (but in no event decreased) to the levels set forth in the General Plan as it may be amended in connection with such General Plan update review. Except as otherwise provided in this Agreement, no New City Laws that conflict with this Agreement, the Applicable City Regulations, or the Project Approvals shall apply to the Project or the Property. For purposes of this Section 4.1 and Sections 4.3 and 4.6, the word “conflict” means any modification that purports to: (i) limit the permitted uses of the Property, the maximum density and intensity of use (including but not limited to floor area ratios, dwelling units per acre or the overall maximum number of residential units), or the maximum height or size of proposed buildings in a manner that is inconsistent with the Existing Approvals; (ii) impose Exactions, other than as expressly provided in the Existing Approvals; (iii) impose conditions upon development of the Property other than as permitted by Applicable Law, Changes in the Law, and the Existing Approvals; (iv) limit the timing, phasing, sequencing, or
rate of development of the Property or delay in a more than insignificant way the development of the Project; (v) limit the location of building sites, grading or other improvements on the Property in a manner that is inconsistent with the Existing Approvals; (vi) limit or control the ability to obtain public utilities, services, infrastructure, or facilities (provided, however, nothing herein shall be deemed to exempt the Project or the Property from any water use rationing requirements that may be imposed on a City-wide basis from time to time in the future); (vii) require the issuance of additional permits or approvals by the City other than those required by Applicable Law and the Existing Approvals; (viii) limit the processing or procuring of applications and approvals of Subsequent Project Approvals; (ix) materially increase the cost of performance of, or preclude compliance with, the Project Approvals; (x) increase the permitted Impact Fees or add new Impact Fees; (xi) establish, enact, increase, or impose against the Project or the Property any fees, special taxes or assessments other than those specifically permitted by this Agreement, including Section 5.6; (xii) apply to the Project any New City Laws that are not uniformly applied on a City-wide basis to all substantially similar types of development projects and project sites (i.e., to all for sale residential projects, to all rental residential projects, to all office projects, to all mixed-use projects etc.); or (xiii) impose against the Project any condition, dedication or other Exaction not specifically authorized by Applicable Law or the Existing Approvals. To the extent that New City Laws conflict with the vested rights granted pursuant to this Agreement, they shall not apply to the Property or the Project, except as provided in Section 4.3, below.

Section 4.2 Development and Design Standards. The Project shall be developed in substantial conformance with the Existing Approvals and Applicable City Regulations, including the General Plan, the Master Development Plan, and the City Zoning Ordinance, each as in effect as of the Effective Date, and the yet-to-be adopted Subsequent Project Approvals. Except as otherwise provided in this Agreement, the City’s ordinances, resolutions, rules, regulations, and official policies governing the permitted uses of the Project, density and intensity of development, height and size of proposed buildings, and development standards shall be those in force on the Effective Date. Project design and materials will need to meet high-quality urban design standards which are outlined in general terms in the General Plan and specifically set forth in the Master Development Plan. City’s review of applications for design review of particular elements or phases of the Project shall be in accordance with the Existing Approvals and the Applicable City Regulations.

Section 4.3 Reservations of Authority. Notwithstanding any other provision of this Agreement to the contrary, the following regulations and provisions shall apply to the development of the Project:

A. Existing or new regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure, provided such procedures are applied on a city-wide basis to all substantially similar types of development projects and properties.

B. Existing or new regulations governing construction standards and specifications, including City’s building code, plumbing code, mechanical code, electrical code, fire code and grading code, and all other uniform construction codes then applicable in the City at the time of building permit application.
C. Any New City Laws applicable to the Property or Project, which do not conflict with this Agreement or the Project Approvals.

D. New City Laws adopted on a uniformly applied, city-wide or area-wide basis, which may be in conflict with this Agreement, but which are necessary to protect persons or property from dangerous or hazardous conditions which create an immediate threat to the public health or safety or create a physical risk, based on findings by the City Council identifying the dangerous or hazardous conditions requiring such changes in the law, why there are no feasible alternatives to the imposition of such changes, and how such changes would alleviate the dangerous or hazardous condition, shall be applied to Developer in a uniform, equitable, and proportionate manner along with all other properties, public and private, which are impacted by that public health or safety concern.

Section 4.4 Regulation by Other Public Agencies. Developer acknowledges and agrees that other public agencies not within the control of City possess authority to regulate aspects of the development of the Property separately from or jointly with City, and this Agreement does not limit the authority of such other public agencies. Developer shall, at the time required by Developer in accordance with Developer’s construction schedule, apply for all such other permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to, the Project. City shall cooperate in good faith with Developer in Developer’s effort to obtain such permits and approvals.

Section 4.5 Life of Project Approvals. The term of any and all Project Approvals shall automatically be extended for the longer of the Term of this Agreement or the term otherwise applicable to such Project Approvals. In the event that this Agreement is terminated prior to the expiration of the Term, the term of any Project Approval and the vesting period for any subdivision map approved as a Project Approval shall be the term otherwise applicable to the approval, which shall commence to run on the date that the termination of this Agreement takes effect.

Section 4.6 Initiatives. If any New City Law is enacted or imposed by an initiative or referendum, which New City Law would conflict with the Project Approvals or this Agreement or reduce the development rights or assurances provided by this Agreement, such New City Law shall not apply to the Property or Project; provided, however, the Parties acknowledge that City’s approval of this Agreement is a legislative action subject to referendum. Without limiting the generality of the foregoing, no moratorium or other limitation (whether relating to the rate, timing, phasing or sequencing of development, whether imposed by ordinance, initiative, resolution, policy, order or otherwise, and whether enacted by the City Council, an agency of City, the electorate, or otherwise) affecting subdivision maps, use permits, building permits, occupancy permits, or other entitlements to use that are approved or to be approved, issued or granted by City shall apply to the Property or Project. City shall cooperate in good faith with Developer and undertake such actions as may be reasonably necessary to ensure this Agreement remains in full force and effect. City, except to submit to vote of the electorate initiatives and referendums required by law to be placed on a ballot and fulfill any legal responsibility to defend a ballot measure passed by its voters, shall not support, adopt or enact any New City Law, or
take any other action which would violate the express provisions or spirit and intent of this Agreement.

Section 4.7 Timing of Development. City and Developer acknowledge that Developer cannot at this time predict which portions of the Project will be included within any particular phase of the Project, when or the rate at which the phases will be developed, or the order in which each phase will be developed. Such decisions depend on numerous factors that may not be fully within the control of Developer, such as market demand, interest rates, absorption, availability of financing and other similar factors. In particular, and not in limitation of any of the foregoing, since the California Supreme Court held in Pardee Construction Co. v. City of Camarillo, 37 Cal. 3d 465 (1984), that the failure of the parties therein to consider, and expressly provide for, the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the desire of the Parties hereto to avoid that result. Therefore, notwithstanding the adoption of an initiative after the Effective Date by City's electorate to the contrary, the Parties acknowledge that Developer shall have the vested right (but not the obligation) to develop the Project in such order and at such rate and at such times as Developer deems appropriate in the exercise of its business judgment, consistent with the provisions of this Agreement and Project Approvals.

Section 4.8 Changes in the Law. As provided in Section 65869.5 of the Development Agreement Law, this Agreement shall not preclude the applicability to the Project of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by (i) changes in State or Federal laws or (ii) any regional governmental agency that, due to the operation of State law (and not the act of City through a memorandum of understanding, joint exercise of powers authority, or otherwise that is undertaken or entered into following the Effective Date) ("Changes in the Law"). In the event Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, the Parties shall meet and confer in good faith in order to determine whether such provisions of this Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with Changes in the Law. Following the meeting between the Parties, the provisions of this Agreement may, to the extent feasible, and upon mutual agreement of the Parties, be modified or suspended, but only to the minimum extent necessary to comply with such Changes in the Law. In such event, this Agreement together with any required modifications shall continue in full force and effect. In the event that the Changes in the Law operate to frustrate irremediably and materially the vesting of development rights to the Project as set forth in this Agreement, Developer may terminate this Agreement by Notice to City. Nothing in this Agreement shall preclude Developer from contesting by any available means (including administrative or judicial proceedings) such Changes in the Law or their applicability to the Project and, in the event that such challenge is successful, this Agreement shall remain unmodified and in full force and effect, the times of performance extended in accordance with Section 3.2D, and, if the Term of this Agreement would otherwise terminate during the period of any such challenge, the Term shall be extended for the period of any such challenge.

Section 4.9 Expansion of Development Rights. If any New City Laws or Changes in the Law expand, extend, enlarge or broaden Developer's rights to develop the Project, then, (i) if such law is mandatory, the provisions of this Agreement shall be modified as may be necessary to comply or conform with such new law, and (ii) if such law is permissive, the provisions of this
Agreement may be modified, upon the mutual agreement of Developer and City. Immediately after enactment of any such new law, upon Developer’s request, the Parties shall meet and confer in good faith to prepare such modification in the case of a mandatory law or to discuss whether to prepare a proposed modification in the case of a permissive law. Developer shall have the right to challenge City’s refusal to apply any new law mandating expansion of Developer’s rights under this Agreement, and in the event such challenge is successful, this Agreement shall be modified to comply with, or conform to, the new law.

Section 4.10 Wastewater, Sanitary Sewer and Potable Water Capacity. Based on the Water Supply Assessment and other relevant utility and resource capacity studies and planning documents, City has found the Project to be consistent with the General Plan which anticipates that there will be sufficient potable water, as provided by the California Water Service Company ("Cal Water"), and sanitary sewer capacity, as provided by the City’s Municipal Utility Department ("MUD"), to serve future development contemplated by the General Plan, including the Project. However, as noted in Section 4.1 above, nothing in this Agreement is intended to exempt the Project or the Property from any water use rationing requirements that may be imposed on a City-wide basis from time to time in the future. In the event Developer’s lenders or financing partners request issuance of sanitary sewer “will serve” letters as a condition of providing debt or equity financing for the Project, City agrees to issue such letters on terms reasonably acceptable to City consistent with Sections 4.10A and 4.10B.

A. Wastewater Provisions. The City agrees to the following allocations of wastewater as set forth below, which will constitute the “will serve” obligation of the City for the Project. Developer’s rights to such allocations shall be vested for the Term of this Agreement.

Daily allocation of up to 578,000 gallons per day (gpd) of treatment capacity (inclusive of existing use), which includes a reserve of 80,000 gpd.

Wastewater connection fees will be the lower of (i) the rates in effect at the time of connection, or (ii) the FY 2015-16 rates as set forth in Exhibit D, in each case, subject to any generally applicable fee reductions.

Developer shall be entitled to purchase the entire wastewater allocation upon issuance of the first building permit for the Project, or in phases, as needed. The City will allow lot to lot and parcel to parcel transfer of credits.

Nothing herein shall be deemed to prohibit City from requiring sanitary sewer and/or storm water facility analysis to examine the anticipated sewer and storm water generation from each proposed building that contributes new flows to sanitary sewer lines and mains and/or storm water facilities in the Master Development Plan area and determine pipe and facility size capacities. Consistent with MMRP Mitigation Measures UTIL-1, if such analysis reveals that existing lines and/or mains are inadequate to handle the net new sanitary sewer output (gallons per day) or storm water flow of each such building, City may require as a condition of building approval that Developer cause the inadequate sanitary sewer lines and/or mains and/or storm water facilities, as applicable, to be replaced or upsized to support development of such building, including at downstream locations, either as part of the proposed building development or in
conjunction with any City plans for sanitary sewer line or storm water facility replacements or upsizing.

B. **Potable Water Provisions.** Developer shall be responsible for obtaining rights to an allocation from Cal Water for the Project of up to 1.77 acre feet (inclusive of existing use) of potable water, which includes a reserve of up to 0.24 acre feet to serve the Project. City, at Developer's expense, will cooperate with Developer in its efforts to obtain vesting of such water rights.

Section 4.11 **Project Approvals and Applicable City Regulations.** Prior to the Effective Date, the Parties shall have prepared two (2) sets of the Existing Approvals and Applicable City Regulations, one (1) set for City and one (1) set for Developer, to which shall be added from time to time, Subsequent Project Approvals, so that if it becomes necessary in the future to refer to any of the Project Approvals or Applicable City Regulations, there will be a common set available to the Parties.

**ARTICLE 5 OTHER RIGHTS AND OBLIGATIONS OF THE PARTIES**

Section 5.1 **Developer Fees.**

A. **Impact Fees.** No Impact Fees shall be applicable to the Project except as provided in the Existing Approvals. City understands that the assurances by City concerning Impact Fees set forth below were a material consideration for Developer agreeing to pay the Impact Fees set forth in this Agreement and the Existing Approvals and provide the public benefits described in this Agreement and the Master Development Plan. Developer shall pay when due (subject to Section 5.2D below) all existing Impact Fees applicable to the Project (as shown in Exhibit B), if any, at the lower of (i) the rates in effect as of the Effective Date (including all fee reduction credits available pursuant to the Impact Fee Resolutions), or (ii) the rates in effect when such existing Impact Fees are due and payable. If, following the Effective Date, City should adopt an Impact Fee reduction programs which temporarily reduces applicable Impact Fees below the Impact Fees in effect as of the Effective Date, Developer shall receive the benefit of the reduced Impact Fees only for so long as the temporary fee reduction remains in effect. Developer shall not be required to pay (a) any escalations in such Impact Fees, or (b) any new Impact Fees enacted or established after the Effective Date. The Impact Fees itemized on Exhibit B represent the Parties' good faith effort to identify the Impact Fees applicable to the Project as of the Effective Date. Developer, at its option, may decline the protections from new Impact Fees afforded by this Section 5.1A and elect, if it so chooses, to pay some or all new Impact Fees that may be adopted by City after the Effective Date.

B. **Processing Fees.** Subject to Developer's right to protest and/or pursue a challenge in law or equity to any applicable Processing Fees, City may charge, and Developer agrees to pay, all Processing Fees in effect on a City-wide basis from time to time at the rates in effect on the date the building, design review or other permit application is submitted to City.

C. **Connection Fees.** Developer shall pay Connection Fees assessed by third-party utility providers and other agencies assessing such fees at the rates in effect from time to time. The Connection Fees itemized on Exhibit D represent the Parties' good faith effort to identify Connection Fees in effect as of the Effective Date.
D. Other Agency Fees. Nothing in this Agreement shall preclude City from collecting fees from Developer that are lawfully imposed on the Project by another agency having jurisdiction over the Project, which the City is required to collect pursuant to Applicable Law ("Other Agency Fees").

Section 5.2 Fee Credits. Developer shall receive credit for the payment of Impact Fees in accordance with the provisions of Municipal Code Section 16.72.260.D, the Public Facilities Fee Program Administrative Guidelines, and this Section 5.2.

A. Fees Credits Generally.

(1) For each public facility for which Developer desires to receive a credit/reimbursement against Impact Fees, Developer shall submit to City a request for credit/reimbursement in accordance with Municipal Code Section 16.72.260.D and the Public Facilities Fee Program Administrative Guidelines. Developer shall then enter into an agreement for credit/reimbursement with City at the time specified in Section 16.72.260.D and the Public Facility Fee Program Administrative Guidelines. City shall not unreasonably withhold or delay its approval of any of Developer's fee credit/reimbursement requests, and shall specify in writing to Developer within forty-five (45) days after receipt of any such fee credit/reimbursement request any additional information required by City in order for Developer to obtain such credit/reimbursement.

(2) For each public facility for which Developer desires to receive a fee credit/reimbursement against Impact Fees, Developer and City shall enter into an agreement in accordance with Municipal Code Section 16.72.260 and the Public Facilities Fee Program Administrative Guidelines, which shall specify the amount of the credit/reimbursement. The fee credit/reimbursement agreement shall be in a form reasonably acceptable to City Attorney and shall be entered into at the time of the improvement agreement covering the applicable public facility. In accordance with Municipal Code Section 16.72.260 and the Public Facilities Fee Program Administrative Guidelines, the amount of credit/reimbursement available to Developer for land dedication shall be equal to the amount identified under Municipal Code Section 16.72.260 and the Public Facilities Fee Program Administrative Guidelines, and the amount of credit/reimbursement available to Developer for facilities shall not exceed Developer's actual costs of providing the specified public facility, to be evidenced by the submittal of written documentation to the satisfaction of the City’s Director of Community Development in accordance with the Public Facilities Fee Program Administrative Guidelines. Developer’s costs shall include actual hard and soft out-of-pocket costs, including without limitation land use planning design and engineering costs and permit and construction fees. All such costs shall be evidenced by Developer’s submission of paid invoices or other documentation reasonably acceptable to City. For purposes of Municipal Code Section 16.72.260 and the Public Facilities Fee Program Administrative Guidelines, City finds that it is in City’s best interest to allow Developer to provide the Public Improvements.

(3) City shall maintain a record of each fee credit for which City and Developer enter into a fee credit agreement. Each time an Impact Fee is due in accordance with Municipal Code Section 16.72.260, City shall determine if Developer has an applicable fee credit available, and if so, City shall apply the fee credit against the Impact Fees due, until the
applicable fee credit is exhausted. After an applicable fee credit is exhausted, Impact Fees shall be calculated in accordance with Section 5.1A, above.

B. Parkland Dedication Fees and Credits.

(1) In connection with subdivisions for residential development, Stockton Municipal Code Section 16.72.060.C, requires the dedication of parkland and/or the payment of parkland dedication Impact Fees in lieu thereof, sufficient to meet the City’s parkland requirement as calculated under the following formula:

\[ X = 0.003(UP) \]

- \( X = \text{Amount of park land required, in acres} \)
- \( U = \text{Total number of approved dwelling units in the subdivision} \)
- \( P = \text{The projected average number of residents per dwelling unit in the proposed subdivision, as determined by the Director.} \)

(2) Given the urban infill nature of the Project, the Parties agree that parkland dedications will not be required. Rather, Developer shall be required to pay parkland dedication in lieu Impact Fees pursuant to Municipal Code Section 16.72.060.C.4 and the City’s parkland in lieu fee Administrative Guidelines, and in accordance with Section 5.1A above. Notwithstanding the foregoing, if (i) Developer and City mutually agree to include within the Project one or more public parklets, public mini parks or other similar public parkland areas; (ii) such areas are irrevocably offered for dedication, in fee or via easement, to the City; and (iii) such areas otherwise meet the requirements of City’s applicable park standards and guidelines, then Developer shall receive a credit against parkland dedication Impact Fees for the land on which such parklets, mini-parks or other similar parks facilities are located.

(3) In calculating the amount of the parkland dedication in lieu Impact Fees required in connection with the residential portion of the Project, Developer shall receive a credit for any residential units existing on the Property as of the Effective Date (regardless of whether such units are vacant or occupied, and regardless of whether such units will be demolished or renovated) so that only the net additional dwelling units to be added by the Project shall be subject to the parkland dedication in lieu Impact Fee.

C. Public Facilities Fees and Credits. Developer shall receive a credit against applicable public facilities Impact Fees, to the extent any are due, for the hard and soft costs of constructing all Eligible Public Facilities. “Eligible Public Facilities” means and includes that portion of the Public Improvements (defined in Section 5.4 below) that can be financed with public facilities Impact Fees assessed by City pursuant to Stockton Municipal Code section 16.72.260 and City’s implementing regulations. To the extent Developer pays for construction of Eligible Public Facilities but is unable to take advantage of Impact Fee credits because no Impact Fees are due and payable, City shall have no obligation to reimburse Developer from City general fund monies, but Developer shall be entitled to seek reimbursement from owners/developers of Additional Benefitted Properties as provided in Section 5.4D below.
D. **Fee Deferrals.** Notwithstanding any contrary provision of this Agreement, Developer may elect to apply for, and City shall consent to, deferred payment of all or a portion of Impact Fees, Processing Fees and/or Connection Fees in accordance with, and to the extent permitted by, the applicable provisions of the Public Facilities Fee Program Administrative Guidelines.

Section 5.3 **Financing Tools for Public Improvement Capital Costs.** Upon Developer’s request, City will cooperate with Developer in the establishment of any mechanism that is legal and available to the City to aid in financing the construction of Project public facilities and infrastructure. These mechanisms may include, without limitation, direct funding of condemnation costs and construction costs, acquisition of improvements, establishing reserve accounts to fund capital improvement program projects, Mello-Roos Community Facilities Districts, Landscaping and Lighting Districts, Geological Hazard Abatement Districts, cooperation in connection with the issuance of tax-exempt financing, or other similar mechanisms. Any such request by Developer must be made to the City Manager in written form and must outline the purposes for which any such mechanism will be established or issued, the general terms and conditions upon which it will be established or issued and a proposed timeline for its establishment or issuance. City reserves discretion with respect to consideration of any proposed public funding mechanisms and nothing in this Agreement is intended to or shall limit City’s ability to approve or disapprove such mechanisms in its sole reasonable discretion and nothing in this Agreement is intended to or shall prejudge or commit to City regarding the findings and determinations to be made with respect thereto. Developer shall bear the cost of establishing any Mello-Roos Community Facilities District, Landscaping and Lighting District, Geological Hazard Abatement District or similar financing district that Developer requests to be established to finance Project public facilities and infrastructure in proportion to the extent to which such district will benefit the Property and the Project.

Section 5.4 **Public Improvement Obligations.**

A. **In General.** Except as otherwise provided in Section 5.4C below, as a condition of approval of each phase of development of the Project, Developer shall construct or install, or cause the construction and installation of: (i) those infrastructure improvements, including water line up sizings, specifically identified in the MMRP, to the extent necessary to serve the applicable phase of development; (ii) public improvements fronting the various privately-owned components of the applicable phase of development, including all curbs, gutters, sidewalks, storm-drains, utility upgrades and replacements, including undergrounding work, street trees, street furniture, lighting, roadway repaving, bus shelters, bike lanes, and pedestrian cross walks located on, under and within the public rights-of-way areas; and (iii) upgrades, replacements and/or up sizings of sanitary sewer lines and/or mains and/or storm water facilities, if and to the extent a subsequent study prepared in implementation of MMRP Mitigation Measure UTIL-1 indicates that existing sanitary sewer lines and/or mains and/or storm water facilities are inadequate to handle the net new sanitary sewer output (gpd) and/or storm water flow of the applicable phase of development (collectively, “**Public Improvements**”) at the time such phase is undertaken, all in accordance with the design, plan and material standards set forth in the Master Development Plan and Applicable City Regulations. Except as otherwise provided above, Developer shall not be obligated to construct or install any other on- or off-site public improvements in connection with development of the Project. City shall use good faith, diligent
efforts to work with Developer to ensure that each component of the Public Improvements required in connection with the Project is expeditiously reviewed and considered for acceptance by City on a phased basis as discrete components of the Public Improvements are completed. Developer may offer dedication of Public Improvements in phases consistent with City approvals for such Public Improvements, and City shall not unreasonably withhold, condition or delay acceptance of such phased dedications or refuse phased releases of bonds or other security so long as all other conditions for acceptance have been satisfied. Developer's obligation to construct the Public Improvements shall be set forth in one or more public improvement agreements to be entered into by the Parties on or before approval of a final subdivision map for the applicable portion of Project, or if no map is required, permit conditions of approval for the applicable portion of the Project. Upon acceptance of the public improvements, or components thereof, City shall release to Developer any bonds or other security posted in connection with performance thereof, other than warranty period security, as more fully provided in the applicable improvement agreements between City and Developer. Except as otherwise provided in such improvement agreements with respect to Developer's warranty period obligations, Developer shall have no obligation to maintain the public infrastructure following City’s acceptance thereof.

B. Downtown Infrastructure Infill Incentive Program. Developer has the right to participate in the City’s Downtown Infrastructure Infill-Incentive Program adopted by the City Council on July 7, 2015 by Resolution No. 2015-07-07-1502, attached hereto as Exhibit F. Projects that qualify under the program guidelines are eligible to receive a “Maximum City Reimbursement” of up to $900,000 per year for qualifying public infrastructure improvements. If the cost of the Public Improvements exceeds the $900,000 annual cap, the City will reimburse the additional costs in subsequent years, subject to availability of funds in the Downtown Infrastructure Infill Incentive Program. One or more Infill Infrastructure Reimbursement Agreements approved by the City Council and detailing the Public Improvements to be constructed, the cost of such improvements, the source of funds, and the terms of City’s reimbursement to Developer will be executed between the Developer and City for qualifying projects. The Infill Infrastructure Reimbursement Agreements and City’s reimbursement obligations thereunder will remain effective notwithstanding any subsequent termination of the Downtown Infrastructure Infill Incentive Program.

C. City Option to Construct. In lieu of Developer’s construction and installation of the Public Improvements as provided in Section 5.4A above, City, at its option, may construct and install some or all of the Public Improvements in advance of Developer’s private development work using Impact Fee program monies or other funds, including State and/or Federal grant monies, that may be available to City. City will coordinate with Developer the phasing of construction and installation of any work of Public Improvements undertaken by City to ensure that substantial completion of applicable portions of the Public Improvements occurs no later than the date of substantial completion of the associated private improvements. If City opts to construct and install all or a portion of such Public Improvements in advance of Developer’s work of private improvements, Developer shall have no obligation to construct or re-construct such Public Improvements, but Developer shall be obligated to repair any damage that may result from the private improvement work.
D. Potential Reimbursements to Developer. Other properties in downtown Stockton ("Additional Benefitted Properties") may be determined by City to benefit from Developer's dedication or construction of all or a portion of the Public Improvements. In such instances, City shall use reasonable efforts, consistent with applicable law and procedures, to identify such Additional Benefited Properties and to cause the owners/developers of such Additional Benefited Properties to reimburse to Developer, through City, their fair share of the costs incurred by Developer, based on a benefit formula approved by the City Council. Such benefit formula shall be based on ascertainable criteria, taking into account to the extent ascertainable, the proportionate benefit conferred on the Additional Benefitted Properties. The reimbursement may potentially be accomplished through inclusion in a Mello-Roos Community Facilities District, Landscaping and Lighting District, Geological Hazard Abatement District, or other similar district as described in Section 5.3 above. Consistent with applicable law and procedures, City, at Developer's expense, shall use good faith diligent efforts to collect, and establish a mechanism for future collection (irrespective of the term of this Agreement), any amounts reimbursable to Developer hereunder upon application to City by owners or developers of the Additional Benefitted Properties for land use and development entitlements. Developer agrees and acknowledges that City's obligation is limited to good faith diligent efforts and is subject to applicable laws and procedures as herein provided, and that City shall have no obligation to pay or reimburse Developer out of City's general fund for any portion of Developer's costs therefor.

Section 5.5 Prevailing Wage Requirements.

A. In General. Developer acknowledges and agrees that all Public Improvements required as a condition of approval for an individual phase of development and constructed by Developer or its contractors or subcontractors and paid for in whole or in part with public funds as provided in Section 5.4, above (collectively, the "Prevailing Wage Components") will constitute "public works" as defined in California Labor Code Section 1720(a)(1) and will be subject to prevailing wage requirements. Accordingly, Developer shall comply with, and cause its contractors and subcontractors to comply with, all State Labor Code requirements and implementing regulations of the Department of Industrial Relations pertaining to "public works," including the payment of prevailing wages (collectively, "Prevailing Wage Laws") in connection with such Prevailing Wage Components. City and Developer each acknowledge and agree that it is a condition of approval of the Project that Developer construct the Prevailing Wage Components.

B. Non-Intended Prevailing Wage Requirements. Except as provided in Section 5.5A above, nothing in this Agreement shall in any way require, or be construed to require, Developer to pay prevailing wages with respect to any work of construction or improvement within the Project (a "Non-Intended Prevailing Wage Requirement"). But for the understanding of the Parties as reflected in the immediately preceding sentence, the Parties would not have entered into this Agreement based upon the terms and conditions set forth herein. Developer and City have made every effort in reaching this Agreement to ensure that its terms and conditions will not result in a Non-Intended Prevailing Wage Requirement. If, despite such efforts, any provision of this Agreement shall be determined by any court of competent jurisdiction to result in a Non-Intended Prevailing Wage Requirement, such determination shall not invalidate or render unenforceable any provision hereof; provided, however, that the Parties
hereby agree that, in such event, this Agreement shall be reformed such that each provision of this Agreement that results in the Non-Intended Prevailing Wage Requirement will be removed from this Agreement as though such provisions were never a part of the Agreement, and, in lieu of such provision(s), replacement provisions shall be added as a part of this Agreement as similar in terms to such removed provision(s) as may be possible and legal, valid and enforceable but without resulting in the Non-Intended Prevailing Wage Requirement.

Section 5.6 Taxes and Assessments.

A. Limitation. The Parties agree that as of the Effective Date, the assessments listed in Exhibit G are the only City assessments applicable to the Property. As of the Effective Date, City is unaware of any pending efforts to initiate, or consider applications for new or increased special taxes or assessments covering the Property, or any portion thereof. City shall retain the ability to initiate or process applications for the formation of new assessment districts or imposition of new taxes covering all or any portion of the Property. City may impose new taxes and assessments, other than Impact Fees, on the Property in accordance with the then applicable laws, but only if such taxes or assessments are adopted by or after Citywide voter approval, or approval by landowners subject to such taxes or assessments, and are imposed on other land and projects of the same category within the jurisdiction of City in a reasonably proportional manner, and, as to assessments, only if the impact thereof does not fall disproportionately on the Property as compared to the benefits accruing to the Property as indicated in the engineers report for such assessment district. Nothing herein shall be construed so as to limit Developer from exercising whatever rights it may otherwise have in connection with protesting or otherwise objecting to the imposition of taxes or assessments on the Property. In the event an assessment district is lawfully formed to provide funding for services, improvements, maintenance or facilities which are substantially the same as those services, improvements, maintenance or facilities being funded by the Impact Fees to be paid by Developer under the Project Approvals or this Agreement, such Impact Fees to be paid by Developer shall be subject to reduction/credit in an amount equal to Developer’s new or increased assessment under the assessment district. Alternatively, the new assessment district shall reduce/credit Developer’s new assessment in an amount equal to such Impact Fees to be paid by Developer under the Project Approvals or this Agreement.

B. Mills Act Tax Reduction. City is not currently participating in the State’s Mills Act (Government Code Section 50280 et seq.) tax reduction program. Should City agree to participate in such program in the future, then, subject to Developer’s agreement to enter into a historical property contract in a form reasonably acceptable to City and in satisfaction of other applicable criteria set forth in the Mills Act, Developer will have the right, at its option, to receive a property tax reduction with respect to any historic building that Developer may wish to refurbish in connection with the Project.

C. New Tax Increment Districts. If City desires to adopt an enhanced infrastructure financing district pursuant to SB 628 (2014), a community redevelopment investment authority district pursuant to AB 2 (2015) or other tax increment financing district in the downtown Stockton area, and if the establishment of such district requires property owner approval, Developer shall consider in good faith City requests for approval of same.
Section 5.7 Potential General Plan Density Increases. The Parties acknowledge that the densities described in the Master Development Plan, as approved concurrently with this Agreement, conform to the maximum allowable densities set forth in the General Plan in effect as of the Effective Date. If and to the extent City’s comprehensive General Plan update process anticipated to be completed in 2016/17 increases the maximum allowable densities permitted in the area covered by the Master Development Plan, Developer may submit and City agrees to consider in good faith proposed amendments to the Master Development Plan to increase the maximum allowable densities of the properties subject to the Master Development Plan to be consistent with the increased density levels as set forth in the updated General Plan. The Parties acknowledge that CEQA compliance will be required in connection with any such amendment of the Master Development Plan, and City shall retain the discretion before action on any such amendment to (i) identify and impose mitigation measures to mitigate significant environmental impacts, (ii) select other feasible alternatives to avoid significant environmental impacts, (iii) balance the benefits of the Project, as modified by the proposed Master Development Plan amendment, against any significant environmental impacts prior to taking final action if such significant impacts cannot otherwise be avoided; or (iv) determine not to proceed with the proposed modifications to the Project.

ARTICLE 6 PUBLIC BENEFITS

The Parties acknowledge that development of the Property pursuant to this Agreement and the Master Development Plan will contribute to the revitalization of downtown Stockton and the elimination of blight, will create housing and job opportunities, and will result in increased property and sales tax revenue to the City.

ARTICLE 7 ANNUAL REVIEW

Section 7.1 Periodic Review.

A. As required by California Government Code Section 65865.1 and Section 16.128.110 of the Development Agreement Ordinance, the City of Stockton Planning Commission shall review this Agreement and all actions taken pursuant to the terms of this Agreement with respect to the development of the Project every twelve (12) months to determine good faith compliance with this Agreement (“Annual Review”). Specifically, the Annual Review shall be conducted for the purposes of determining good faith compliance with the terms and/or conditions of this Agreement. Each Annual Review shall also document the status of Project development.

B. The Annual Review shall be conducted pursuant to SMC Section 16.128.110; provided, however, Developer shall receive not less than ten (10) days’ prior written notice of any City Council or Planning Commission hearing conducted in connection with any Annual Review, and shall be permitted to present evidence at any such hearing.

C. Nothing in this Article 7 or in the Applicable City Regulations, including SMC Section 16.128.110, shall operate as, or be deemed to serve as, a substitute for the notice of default and cure provisions set forth in Article 12 below. Without limiting the generality of the foregoing, the Parties acknowledge and agree that the notice and cure procedures associated with
the Annual Review procedures described in this Article 7 are in addition to, and not in lieu of, the notice and cure provisions set forth in Article 12.

ARTICLE 8 MORTGAGEE PROTECTION

Section 8.1 Mortgagee Protection. This Agreement shall not prevent or limit Developer in any manner, at Developer's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property and/or the Project ("Mortgage"). This Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording the Agreement, including the lien of any Mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against and shall run to the benefit of any person or entity, including any deed of trust beneficiary or mortgagee ("Mortgagee"), who acquires title or possession to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

Section 8.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 8.1 above, no Mortgagee shall have any obligation or duty under this Agreement, before or after foreclosure or a deed in lieu of foreclosure, to construct or complete the construction of the Project, or any portion thereof, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any use except in full compliance with the Project Approvals and this Agreement nor to construct any improvements thereon or institute any uses other than those uses and improvements provided for or authorized by this Agreement and the Project Approvals.

Section 8.3 Notice of Default to Mortgagee; Right to Cure. With respect to any Mortgage granted by Developer as provided herein, so long as any such Mortgage shall remain unsatisfied of record, the following provisions shall apply:

A. City, upon serving Developer any notice of Default, shall also serve a copy of such notice upon any Mortgagee at the address provided to City, and no notice by City to Developer hereunder shall affect any rights of a Mortgagee unless and until a copy thereof has been so served on such Mortgagee; provided, however, that failure so to deliver any such notice shall in no way affect the validity of the notice sent to Developer as between Developer and City.

B. In the event of a Default by Developer, any Mortgagee shall have the right to remedy, or cause to be remedied, such Default within sixty (60) days following the later to occur of (i) the date of Mortgagee’s receipt of the notice referred to in Section 8.3A above, or (ii) the expiration of the period provided herein for Developer to remedy or cure such Default, and City shall accept such performance by or at the insistence of the Mortgagee as if the same had been timely made by Developer; provided, however, that (a) if such Default is not capable of being cured within the timeframes set forth in this Section 8.3B and Mortgagee commences to cure the Default within such timeframes, then Mortgagee shall have such additional time as is required to cure the Default so long as Mortgagee diligently prosecutes the cure to completion and (b) if possession of the Property (or portion thereof) is required to effectuate such cure or
remedy, the Mortgagor shall be deemed to have timely cured or remedied if it commences the proceedings necessary to obtain possession thereof within sixty (60) days after receipt of the copy of the notice, diligently pursues such proceedings to completion, and, after obtaining possession, diligently completes such cure or remedy.

C. Any notice or other communication which City shall desire or is required to give to or serve upon the Mortgagor shall be in writing and shall be served in the manner set forth in Section 13.5, addressed to the Mortgagor at the address provided by Mortgagor to City. Any notice or other communication which Mortgagor shall give to or serve upon City shall be deemed to have been duly given or served if sent in the manner and at City’s address as set forth in Section 13.5, or at such other address as shall be designated by City by notice in writing given to the Mortgagor in like manner.

Section 8.4 No Supersedure. Nothing in this Article 8 shall be deemed to supersede or release a Mortgagor or modify a Mortgagor’s obligations under any subdivision or public improvement agreement or other obligation incurred with respect to the Project outside this Agreement, nor shall any provision of this Article 8 constitute an obligation of City to such Mortgagor, except as to the notice requirements of Section 8.3.

Section 8.5 Technical Amendments to this Article 8. City agrees to reasonably consider and approve interpretations and/or technical amendments to the provisions of this Agreement that are required by lenders for the acquisition and construction of the Project on the Property or any refinancing thereof and to otherwise cooperate in good faith, at Developer’s expense, to facilitate Developer’s negotiations with lenders.

ARTICLE 9 AMENDMENT OF AGREEMENT AND EXISTING APPROVALS

Section 9.1 Amendment of Agreement by Mutual Consent. This Agreement may be amended in writing from time to time by mutual consent of the Parties hereto or their successors-in-interest or assigns.

Section 9.2 Insustantial Amendments to Agreement. Any amendment to this Agreement which, in the context of the overall Project contemplated by this Agreement, does not substantially affect (i) the Term of this Agreement; (ii) permitted uses of the Property; (iii) provisions for the reservation or dedication of land; (iv) conditions, terms, restrictions or requirements for subsequent discretionary actions; (v) the density or intensity of use of the Property or the maximum height or size of proposed buildings; or (vi) the nature, timing of delivery, or scope of public improvements required by the Project Approvals, shall be deemed an "Insustantial Amendment" and shall not, except to the extent otherwise required by law or this Agreement, require notice or public hearing before the Parties may execute an amendment hereto. The City Manager shall have the authority to execute an Insustantial Amendment or, in his or her discretion, seek approval of an Insustantial Amendment by City resolution.

Section 9.3 Requirement for Writing. No modification, amendment or other change to this Agreement or any provision hereof shall be effective for any purpose unless specifically set forth in a writing which refers expressly to this Agreement and is signed by duly authorized representatives of both Parties or their successors.
Section 9.4 Amendments to Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute as those provisions existed as of the Effective Date. No amendment or addition to those provisions which would materially affect the interpretation or enforceability of this Agreement shall be applicable to this Agreement, unless such amendment or addition is specifically required by the California State Legislature, or is mandated by a court of competent jurisdiction. In the event of the application of such a change in law, the Parties shall meet in good faith to determine the feasibility of any modification or suspension that may be necessary to comply with such new law or regulation and to determine the effect such modification or suspension would have on the purposes and intent of this Agreement. Following the meeting between the Parties, the provisions of this Agreement may, to the extent feasible, and upon mutual agreement of the Parties, be modified or suspended but only to the minimum extent necessary to comply with such new law or regulation. If such amendment or change is permissive (as opposed to mandatory), this Agreement shall not be affected by same unless the Parties mutually agree in writing to amend this Agreement to permit such applicability. Developer and/or City shall have the right to challenge any new law or regulation preventing compliance with the terms of this Agreement, and in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect. The Term of this Agreement may be extended for the duration of the period during which such new law or regulation precludes compliance with the provisions of this Agreement.

Section 9.5 Amendments to Project Approvals. Project Approvals (except for this Agreement for which the amendment process is set forth in Section 9.1 through 9.4) may be amended or modified from time to time, but only at the written request of Developer or with the written consent of Developer at its sole discretion. All amendments to the Project Approvals shall automatically become part of the Project Approvals. The permitted uses of the Property or portion thereof, the maximum density and/or number of residential units, the intensity of use, the maximum height and size of the proposed buildings, provisions for reservation or dedication of land for public purposes, the conditions, terms, restrictions and requirements for subsequent discretionary actions, the provisions for public improvements and financing of public improvements, and the other terms and conditions of development as set forth in all such amendments shall be automatically vested pursuant to this Agreement, without requiring an amendment to this Agreement. Amendments to the Project Approvals shall be governed by the Project Approvals and the Applicable Law. City shall not request, process or consent to any amendment to the Project Approvals that would affect the Property or the Project, or applicable portion thereof, without Developer’s prior written consent.

Section 9.6 Administrative Amendments of Project Approvals. Upon the request of Developer for an amendment or modification of any Project Approvals (except for this Agreement for which the amendment process is set forth in Section 9.1 through 9.4), the City Manager or his/her designee shall determine: (a) whether the requested amendment or modification is minor when considered in light of the Project as a whole; and (b) whether the requested amendment or modification substantially conforms with the material terms of this Agreement and the Applicable Law, and may be processed administratively. If the City Manager or his/her designee finds that the requested amendment or modification is both minor and substantially conforms with the material terms of this Agreement and the Applicable Law, the amendment or modification shall be determined to be an "Administrative Amendment," and
the City Manager or his/her designee may approve the Administrative Amendment, without public notice or a public hearing. Any request of Developer for an amendment or modification to a Project Approval that is determined not to be an Administrative Amendment as set forth above shall be subject to review, consideration and action pursuant to the Applicable Law and this Agreement.

Section 9.7 Operating Memoranda. The provisions of this Agreement require a close degree of cooperation between City and Developer and development of the Property hereunder may demonstrate that refinements and clarifications are appropriate with respect to the details of performance of City and Developer. If and when, from time to time, during the Term of this Agreement, City and Developer agree that such clarifications are necessary or appropriate, City and Developer may effectuate such clarifications through operating memoranda approved by City and Developer, which, after execution, shall be attached hereto as addenda and become a part hereof, and may be further clarified from time to time as necessary with future approval by City and Developer. No such operating memoranda shall constitute an amendment to this Agreement requiring public notice or hearing. The City Manager, in consultation with the City Attorney, shall make the determination on behalf of City whether a requested clarification may be effectuated pursuant to this Section 9.7 or whether the requested clarification is of such a character to constitute an amendment hereof pursuant to Section 9.1 or Section 9.2 above. The City Manager shall be authorized to execute any operating memoranda hereunder on behalf of City.

Section 9.8 CEQA. In connection with its consideration and approval of the Master Development Plan, the City has prepared and approved the Mitigated Negative Declaration, which evaluates the environmental effects of the Project, and has imposed all feasible mitigation measures to reduce the significant environmental effects of the Project. Nothing contained in this Agreement is intended to prevent or limit the City from complying with CEQA. In acting on Subsequent Project Approvals, City will rely on the Mitigated Negative Declaration to the fullest extent permissible by CEQA as determined by City in its reasonable discretion. In the event supplemental or additional review is required for a Subsequent Project Approval, City shall limit such supplemental or additional review to the scope of analysis mandated by CEQA and shall not impose new mitigation measures except as legally required, all as determined by the City as the lead agency under CEQA in its reasonable discretion.

ARTICLE 10 COOPERATION AND IMPLEMENTATION

Section 10.1 Subsequent Project Approvals. Certain subsequent land use approvals, entitlements, and permits other than the Existing Approvals (collectively, "Subsequent Project Approvals"), will be necessary or desirable for implementation of the Project. The Subsequent Project Approvals may include the following ministerial and discretionary applications and permits: amendments of the Existing Approvals, grading permits, building permits, sewer and water connection permits, certificates of occupancy, lot line adjustments, site plans, development plans, land use plans, building plans and specifications, parcel maps and/or subdivision maps, conditional use permits, design review, demolition permits, improvement agreements, encroachment permits, and any amendments to, or repealing of, any of the foregoing. The parties agree that the Water Supply Assessment constitutes proof of availability of a sufficient water supply for the Project and approval of any tentative map prepared for the Project shall rely
on such assessment. Except as otherwise expressly provided herein, the City shall not impose requirements or conditions upon Project development and construction that are inconsistent with the Existing Approvals and the terms and conditions of this Agreement.

Section 10.2 Scope of Review of Subsequent Project Approvals. By approving the Existing Approvals, City has made a final policy decision that the Project is in the best interests of the public health, safety and general welfare. Accordingly, City shall not use its authority in considering any application for a discretionary Subsequent Project Approval to change the policy decisions reflected by the Existing Approvals or otherwise to prevent or delay development of the Project as set forth in the Existing Approvals. Instead, the Subsequent Project Approvals shall be deemed to be tools to implement those final policy decisions. The scope of review of applications for Subsequent Project Approvals shall be limited to a review of substantial conformity with the Project Approvals and compliance with the Applicable Law, including CEQA. Where such substantial conformity/compliance exists, City shall not deny an application for a Subsequent Project Approval for the Project. At such time as any Subsequent Project Approval applicable to the Property is approved by City, then such Subsequent Project Approval shall become subject to all the terms and conditions of this Agreement applicable to Project Approvals and shall be treated as a “Project Approval” under this Agreement.

Section 10.3 Processing Applications for Subsequent Project Approvals.

A. Developer acknowledges that City cannot begin processing applications for Subsequent Project Approvals until Developer submits complete applications on a timely basis. Developer shall use diligent good faith efforts to (i) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (ii) cause Developer’s planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other materials required under Applicable Law. It is the express intent of Developer and City to cooperate and diligently work to obtain any and all Subsequent Project Approvals.

B. Upon submission by Developer of all appropriate applications and Processing Fees for any pending Subsequent Project Approval, City shall, to the fullest extent allowed by Applicable Law, promptly and diligently, subject to City ordinances, policies and procedures regarding hiring and contracting, commence and complete all steps necessary to act on Developer’s currently pending Subsequent Project Approval applications including: (i) providing at Developer’s expense and subject to Developer’s request and prior approval, reasonable overtime staff assistance, additional staff and/or staff consultants for concurrent, expedited planning and processing of each pending Subsequent Project Approval application; (ii) if legally required, providing notice and holding public hearings; and (iii) acting on any such pending Subsequent Project Approval application.

Section 10.4 Other Agency Subsequent Project Approvals; Authority of City. Other public agencies not within the control of City may possess authority to regulate aspects of the development of the Property separately from or jointly with City, and this Agreement does not limit the authority of such other public agencies. Nevertheless, City shall be bound by, and shall abide by, its covenants and obligations under this Agreement in all respects when dealing with any such agency regarding the Property. City shall cooperate with Developer, to the extent
appropriate and as permitted by law, in Developer’s efforts to obtain, as may be required, Other Agency Subsequent Project Approvals.

Section 10.5 Implementation of Necessary Mitigation Measures. Developer shall, at its sole cost and expense, comply with the MMRP requirements as applicable to the Property and Project.

Section 10.6 Cooperation in the Event of Legal Challenge.

A. The filing of any third party lawsuit(s) against City or Developer relating to this Agreement, the Project Approvals or construction of the Project shall not delay or stop the development, processing or construction of the Project or approval of any Subsequent Project Approvals, unless the third party obtains a court order preventing the activity. City shall not stipulate to or cooperate in the issuance of any such order.

B. City and Developer shall cooperate in the defense of any court action or proceeding instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement or the Project Approvals ("Litigation Challenge"), and the Parties shall keep each other informed of all developments relating to such defense, subject only to confidentiality requirements that may prevent the communication of such information.

C. If Developer desires to contest or defend a Litigation Challenge and the Parties determine to undertake a joint defense or contest of such Litigation Challenge: (i) the Parties will cooperate in the joint defense or contest of such challenge; (ii) Developer shall select the attorney(s) to undertake such defense, subject to City’s approval, which shall not be unreasonably withheld; (iii) Developer will take the lead role in defending such Litigation Challenge; (iv) upon Developer’s request, City shall enter into a joint defense agreement in a form reasonably acceptable to the City Attorney to facilitate the sharing of materials and strategies related to the defense of such Litigation Challenge without waiver of attorney client privilege; (v) Developer shall reimburse City, within forty-five (45) days following City’s written demand therefor, which may be made from time to time during the course of such litigation, all reasonable costs incurred by City in connection with the Litigation Challenge;

D. If Developer desires to contest or defend any Litigation Challenge and if at any time one or both Parties determine that they require separate representation: (i) Developer shall take the lead role defending such Litigation Challenge; (ii) Developer shall be separately represented by the legal counsel of its choice; (iii) in any action or proceeding, City shall be separately represented by the legal counsel of its choice, selected after consultation with Developer, with the reasonable costs of such representation to be paid by Developer; (iv) Developer shall reimburse City, within forty-five (45) days following City’s written demand therefor, which may be made from time to time during the course of such litigation, all reasonable costs incurred by City in connection with the Litigation Challenge; and (v) upon Developer’s request, City shall enter into a joint defense agreement in a form reasonably acceptable to the City Attorney to facilitate the sharing of materials and strategies related to the defense of such Litigation Challenge without waiver of attorney client privilege.
E. Developer shall indemnify, defend, and hold harmless City Parties from and against any damages, attorneys’ fees or cost awards, assessed or awarded against City by way of judgment, settlement, or stipulation entered in connection with a Litigation Challenge. Any proposed settlement of a Litigation Challenge by a Party shall be subject to the approval of the other Party, such approval not to be unreasonably withheld, conditioned or delayed. If the terms of the proposed settlement would constitute an amendment or modification of this Agreement or any Project Approvals, the settlement shall not become effective unless such amendment or modification is approved by City in accordance with Applicable Law, and City reserves its full legislative discretion with respect thereto.

Section 10.7 Revision to Project. In the event of a court order issued as a result of a successful Litigation Challenge, City shall, to the extent permitted by law or court order, in good faith seek to comply with the court order in such a manner as will maintain the integrity of the Project Approvals and avoid or minimize to the greatest extent possible (i) any impact to the development of the Project as provided for in, and contemplated by, the Project Approvals, or (ii) any conflict with the Project Approvals or frustration of the intent or purpose of the Project Approvals.

Section 10.8 State, Federal or Case Law. Where any state, federal or case law allows City to exercise any discretion or take any act with respect to that law, City shall, in an expeditious and timely manner, at the earliest possible time, (i) exercise its discretion in such a way as to be consistent with, and carry out the terms of, this Agreement, and (ii) take such other actions as may be necessary to carry out in good faith the terms of this Agreement.

Section 10.9 Defense of Agreement. City, at Developer's expense, shall take all actions that are necessary or advisable to uphold the validity and enforceability of this Agreement. If this Agreement is adjudicated or determined to be invalid or unenforceable, City agrees, subject to all legal requirements, to consider modifications to this Agreement to render it valid and enforceable to the extent permitted by Applicable Law.

Section 10.10 Indemnity. Developer shall indemnify, at City’s request defend, and hold the City Parties harmless from and against any and all costs and expenses (including attorney and legal fees), damages, liabilities, claims, and losses (all of the foregoing, collectively, “Claims”) arising directly as a result of Developer’s negligence in connection with Developer’s performance under this Agreement or arising directly as a result of Developer’s (or Developer’s contractors, subcontractors, agents, or employees) work performed in connection with the development of the Property or the Project, including without limitation, Claims involving bodily injury, death or property damage arising as a result of such negligence. Developer’s indemnification obligations set forth in this Section shall not extend to Claims arising from the active negligence or willful misconduct of any City Party.

ARTICLE 11 ASSIGNMENT

Section 11.1 Transfers and Assignments.

A. Right to Transfer. With the written consent of City, which shall not be unreasonably withheld, conditioned, or delayed, Developer shall have the right to sell, assign or
transfer ("Transfer") in whole or in part its rights, duties and obligations under this Agreement; provided, however, in no event shall the rights, duties and obligations conferred or imposed upon Developer pursuant to this Agreement be at any time so transferred except through a transfer (including a sale or ground lease) of the Property or part thereof, and all such Transfers shall be made in accordance with the requirements of this Section 11.1. City shall not withhold consent to a Transfer to a transferee that has a net worth of at least $5 million and at least seven (7) years of demonstrated experience developing urban residential or commercial mixed-use projects of a type, size and complexity similar to the Project of portion thereof that is the subject of the proposed Transfer.

B. **Permitted Transfers.** The following Transfers shall be deemed "Permitted Transfers" that shall not require City consent or compliance with the procedures set forth in this Section: (i) assignments creating security interests for the purpose of financing the acquisition, construction or permanent financing of the Project or the Property or part thereof; (ii) Transfers to a Developer Affiliate formed to undertake development of individual phases of the Project; and (iii) the lease or sale of individual residences or commercial facilities constructed as part of the Project.

C. **Partial Transfer.** In the event of a conveyance of a portion of the Property, Developer shall have the right to Transfer its rights, duties and obligations under this Agreement that are applicable to the transferred portion, and retain all rights, duties and obligations applicable to the retained portions of the Property. Upon Developer’s request, City shall cooperate with Developer and any proposed transferee to allocate rights, duties and obligations under this Development Agreement and the Project Approvals between the transferred Property and the retained Property.

D. **Procedures.** Developer shall notify City of any proposed Transfer at least thirty (30) days prior to completing such Transfer. At least twenty-one (21) days prior to the effective date of the Transfer, Developer shall deliver to City a draft of the proposed written assignment and assumption agreement in which the transferee expressly agrees to assume the rights and obligations of Developer under this Agreement being transferred. The assignment and assumption agreement shall be in substantially the form attached hereto as Exhibit E. No later than ten (10) business days after the date the Transfer becomes effective, Developer shall deliver to City a conformed copy of the fully executed and recorded assignment and assumption agreement.

E. **City Consent.** Consent to any proposed Transfer may be given by the City Manager unless the City Manager, in his or her discretion, refers the matter of approval to the City Council. If a proposed Transfer has not been approved in writing within thirty (30) days following City’s receipt of written request by Developer, it shall be deemed approved.

Section 11.2 Release Upon Transfer. Upon the Transfer of Developer’s rights and interests under this Agreement pursuant to this ARTICLE 11, Developer shall automatically be released from its obligations and liabilities under this Agreement with respect to that portion of the Property transferred, and any subsequent default or breach with respect to the transferred rights and/or obligations shall not constitute a default or breach with respect to the retained rights and/or obligations under this Agreement, provided that (i) Developer has provided to City
written Notice of such Transfer, and (ii) the transferee executes and delivers to City a written agreement in accordance with Section 11.1 above. Upon any Transfer of any portion of the Property and the express assumption of Developer's obligations under this Agreement by such transferee, City agrees to look solely to the transferee for compliance by such transferee with the provisions of this Agreement as such provisions relate to the portion of the Property acquired by such transferee. A default by any transferee shall only affect that portion of the Property owned by such transferee and shall not cancel or diminish in any way Developer's rights hereunder with respect to any portion of the Property not owned by such transferee. The transferor and the transferee shall each be solely responsible for the reporting and Annual Review requirements relating to the portion of the Property owned by such transferor/transferee, and any amendment to this Agreement between City and a transferor or a transferee shall only affect the portion of the Property owned by such transferor or transferee. Failure to deliver a written assumption agreement hereunder shall not affect the running of any covenants herein with the land, as provided in Section 13.4 below, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Agreement.

ARTICLE 12 DEFAULT; REMEDIES; TERMINATION

Section 12.1 Breach and Default. Subject to extensions of time under Section 3.2D or by mutual consent in writing, and subject to a Mortgagee's right to cure under Section 8.3, failure by a Party to perform any material action or covenant required by this Agreement (not including any failure by Developer to perform any term or provision of any other Project Approval) within sixty (60) days following receipt of written Notice from the other Party specifying the failure shall constitute a "Default" under this Agreement; provided, however, that if the failure to perform cannot be reasonably cured within such sixty (60) day period, a Party shall be allowed additional time as is reasonably necessary to cure the failure so long as such Party commences to cure the failure within the sixty (60) day period and thereafter diligently prosecutes the cure to completion. Any Notice of Default given hereunder shall specify in detail the nature of the failures in performance that the noticing Party claims constitutes the Default, all facts constituting evidence of such failure, and the manner in which such failure may be satisfactorily cured in accordance with the terms and conditions of this Agreement. During the time periods herein specified for cure of a failure of performance, the Party charged therewith shall not be considered to be in Default for purposes of (i) termination of this Agreement, (ii) institution of legal proceedings with respect thereto, or (iii) issuance of any approval with respect to the Project. The waiver by either Party of any Default under this Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Agreement.

Section 12.2 Termination. In the event of a Default by a Party, the non-defaulting Party shall have the right to (i) waive in its sole and absolute discretion such Default as not material, (ii) institute legal proceedings pursuant to Section 12.3, and/or (iii) terminate this Agreement upon giving notice of intent to terminate pursuant to Government Code Section 65868. Following notice of intent to terminate, the matter shall be scheduled for consideration and review in the manner set forth in Government Code Section 65867. Following consideration of the evidence presented in said review before the City Council, a Party alleging Default by the other Party may give written notice of termination of this Agreement to the other Party. Termination of this Agreement shall be subject to the provisions of Section 12.7 hereof.
In the event that this Agreement is terminated pursuant to Section 7.1, or this Section 12.2 and the validity of such termination is challenged in a legal proceeding that results in a final decision that such termination was improper, then this Agreement shall immediately be reinstated as though it had never been terminated.

Section 12.3 Legal Actions.

A. Institution of Legal Actions. In addition to any other rights or remedies, a Party may institute legal action to cure, correct or remedy any Default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation thereof, or to obtain any other remedies consistent with the terms of this Agreement. Developer agrees that the primary remedy available to Developer in the event of any Default by City shall be specific performance, injunction or similar equitable relief and that recovery of action damages shall only be available in the event that the equitable remedies are inadequate to address the Default in question.

B. Acceptance of Service of Process. In the event that any legal action is commenced by Developer against City, service of process on City shall be made by personal service upon the City Clerk of City or in such other manner as may be provided by law. In the event that any legal action is commenced by City against Developer, service of process on Developer shall be made by personal service upon Developer's registered agent for service of process, or in such other manner as may be provided by law.

Section 12.4 Rights and Remedies Are Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by a Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other Party, except as otherwise expressly provided herein.

Section 12.5 No Consequential or Special Damages. In no event shall a Party, or its boards, commissions, officers, agents or employees, be liable for any consequential, special or punitive damages for any Default under this Agreement. This limitation on damages shall not preclude actions by a Party to enforce payments of monies or the performance of obligations requiring an obligation of money from the other Party under the terms of this Agreement, including, but not limited to, obligations to pay actual damages, including attorneys' fees and obligations to advance monies or reimburse monies.

Section 12.6 Resolution of Disputes. With regard to any dispute involving the Project, the resolution of which is not provided for by this Agreement or Applicable Law, a Party shall, at the request of the other Party, meet with designated representatives of the requesting Party promptly following its request. The Parties to any such meetings shall attempt in good faith to resolve any such disputes. Nothing in this Section 12.6 shall in any way be interpreted as requiring that Developer and City reach agreement with regard to those matters being addressed, nor shall the outcome of these meetings be binding in any way on City or Developer unless expressly agreed to in writing by the Parties to such meetings.

Section 12.7 Surviving Provisions. In the event this Agreement expires or is terminated, neither Party shall have any further rights or obligations hereunder, except for those
obligations of Developer set forth in Section 5.5 (Prevailing Wage Requirements), Section 10.6 (Cooperation in the Event of Legal Challenge) or expressly set forth herein as surviving the expiration or termination of this Agreement. The termination or expiration of this Agreement shall not affect the validity of the Project Approvals (other than this Agreement).

Section 12.8 Effects of Litigation. In the event litigation is timely instituted, and a final judgment is obtained, which invalidates in its entirety this Agreement, neither Party shall have any obligations whatsoever under this Agreement, except for those obligations which by their terms survive termination hereof. In the event that any payment(s) have been made by or on behalf of Developer to City pursuant to ARTICLE 5, City shall refund to Developer the monies remaining in any segregated City account, into which such payment(s) were deposited, if any, along with interest which has accrued, if any. To the extent the payment(s) made by or on behalf of Developer were not deposited, or no longer are, in the segregated City account, City shall give Developer a credit for the amount of said payment(s) as determined pursuant to this Section 12.8, along with interest, if any, that has accrued, which credit may be applied by Developer to any costs or fees imposed by City on Developer in connection with construction or development within or outside the Property. Developer shall be entitled to use all or any portion of the credit at its own discretion until such time as the credit has been depleted. Any credits due to Developer pursuant to this Section 12.8 may, at Developer’s own discretion, be transferred by Developer to a third party for application by said third party to any costs or fees imposed by City on the third party in connection with construction or the development of property within City, whether or not related to the Project. This Section 12.8 shall survive the termination or expiration of this Agreement.

Section 12.9 California Claims Act. Compliance with the procedures set forth in this ARTICLE 12 shall be deemed full compliance with the requirements of the California Claims Act (Government Code Section 900 et seq.) including, but not limited to, the notice of an event of default hereunder constituting full compliance with the requirements of Government Code Section 910.

ARTICLE 13 MISCELLANEOUS PROVISIONS

Section 13.1 Incorporation of Recitals, Exhibits and Introductory Paragraph. The Recitals contained in this Agreement, the introductory paragraph preceding the Recitals and the Exhibits attached hereto are hereby incorporated into this Agreement as if fully set forth herein.

Section 13.2 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties.

Section 13.3 Construction. Each reference herein to this Agreement or any of the Existing Approvals or Subsequent Project Approvals shall be deemed to refer to the Agreement, Existing Approval or Subsequent Project Approval as it may be amended from time to time, whether or not the particular reference refers to such possible amendment. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or
construing the terms, covenants or conditions of this Agreement. This Agreement has been
reviewed and revised by legal counsel for City and Developer, and no presumption or rule that
ambiguities shall be construed against the drafting party shall apply to the interpretation or
enforcement of this Agreement. Unless the context clearly requires otherwise, (i) the plural and
singular numbers shall each be deemed to include the other; (ii) the masculine, feminine, and
neuter genders shall each be deemed to include the others; (iii) “shall,” “will,” or “agrees” are
mandatory, and “may” is permissive; (iv) “or” is not exclusive; (v) “include,” “includes” and
“including” are not limiting and shall be construed as if followed by the words “without
limitation,” and (vi) “days” means calendar days unless specifically provided otherwise.

Section 13.4 Covenants Running with the Land. Except as otherwise more
specifically provided herein, this Agreement and all of its provisions, rights, powers, standards,
terms, covenants and obligations, shall be binding upon the Parties and their respective
successors (by merger, consolidation, or otherwise) and assigns, and all other persons or entities
acquiring the Property, or any interest therein or portion thereof, and shall inure to the benefit of
the Parties and their respective successors and assigns, as provided in Government Code section
65868.5.

Section 13.5 Notices. Any notice or communication required hereunder between City
and Developer (“Notice”) must be in writing, and may be given either personally, by registered
or certified mail (return receipt requested), or by Federal Express or other similar courier
promising overnight delivery. If personally delivered, a Notice shall be deemed to have been
given when delivered to the Party to whom it is addressed. If given by registered or certified
mail, such Notice shall be deemed to have been given and received on the first to occur of
(i) actual receipt by any of the addressees designated below as the Party to whom Notices are to
be sent, or (ii) five (5) days after a registered or certified letter containing such Notice, properly
addressed, with postage prepaid, is deposited in the United States mail. If given by Federal
Express or similar courier, a Notice shall be deemed to have been given and received on the date
delivered as shown on a receipt issued by the courier. Any Party hereto may at any time, by
giving ten (10) days written Notice to the other Party hereto, designate any other address in
substitution of the address to which such Notice shall be given. Such Notices shall be given to
the Parties at their respective addresses set forth below:

To City:  City of Stockton
        425 North El Dorado Street
        Stockton, CA 95202
        Attention: City Clerk
        Tel: (209) 937-8458

with a copy to: City of Stockton
        425 North El Dorado Street
        Stockton, CA 95202
        Attention: Community Development Director
        Tel: (209) 937-8444
Section 13.6 Counterparts; Entire Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original. This Agreement, together with the Project Approvals and attached Exhibits, constitutes the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements of the Parties with respect to all or any part of the subject matter hereof.

Section 13.7 Recordation of Agreement. Pursuant to California Government Code Section 65868.5, no later than ten (10) days after the Effective Date, the City Clerk shall record an executed copy of this Agreement in the Official Records of San Joaquin County. Thereafter, if this Agreement is terminated, modified or amended, the City Clerk shall record notice of such action in the Official Records of San Joaquin County.

Section 13.8 No Joint Venture or Partnership. It is specifically understood and agreed to by and between the Parties hereto that: (i) the subject development is a private development; (ii) City has no interest or responsibilities for, or duty to, third parties concerning any public improvements until such time, and only until such time, that City accepts the same pursuant to the provisions of this Agreement or in connection with the various Existing Approvals or Subsequent Project Approvals; (iii) Developer shall have full power over and exclusive control of the Project herein described, subject only to the limitations and obligations of Developer under this Agreement, the Existing Approvals, Subsequent Project Approvals, and Applicable Law; and (iv) City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer.

Section 13.9 Waivers. Notwithstanding any other provision in this Agreement, any failures or delays by any Party in asserting any of its rights and remedies under this Agreement shall not operate as a waiver of any such rights or remedies, or deprive any such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. A Party may specifically and expressly waive in writing any condition or breach of this Agreement by the other Party, but no such waiver shall constitute a further or continuing waiver of any preceding or succeeding breach of the same or any other provision. Consent by one Party to any act by the other Party shall not be deemed to
imply consent or waiver of the necessity of obtaining such consent for the same or similar acts in
the future.

Section 13.10 California Law; Venue. This Agreement shall be construed and enforced in accordance
with the laws of the State of California, without reference to choice of law provisions. The exclusive
venue for any disputes or legal actions shall be the Superior Court of California in and for the County
of San Joaquin, except for actions that include claims in which the Federal District Court for the
Eastern District of the State of California has original jurisdiction, in which case the Eastern District
of the State of California shall be the proper venue.

Section 13.11 City Approvals and Actions. Whenever reference is made herein to an action or approval
to be undertaken by City, the City Manager or his or her designee is authorized to act on behalf of
City, unless specifically provided otherwise or the context requires otherwise.

Section 13.12 Estoppel Certificates. A Party may, at any time during the Term of this Agreement,
and from time to time, deliver written Notice to the other Party requesting such Party to certify in
writing that, to the knowledge of the certifying Party, (i) this Agreement is in full force and effect
and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified
either orally or in writing, or if amended, identifying the amendments; (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults; and (iv) any other information reasonably requested. The Party receiving a request hereunder shall execute and return such certificate, within twenty (20) days following the receipt thereof. The failure of either Party to provide the requested certificate within such twenty (20) day period shall constitute a confirmation that this Agreement is in full force and effect and no modification or default exists. The City Manager shall have the right to execute any certificate requested by Developer hereunder. City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees.

Section 13.13 No Third Party Beneficiaries. City and Developer hereby renounce the existence of any third party beneficiary to this Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status.

Section 13.14 Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City and that all necessary board of directors’, shareholders’, partners’, city councils’ or other approvals have been obtained.

Section 13.15 Further Actions and Instruments. Each Party to this Agreement shall cooperate with and provide reasonable assistance to the other Party and take all actions necessary to ensure that the Parties receive the benefits of this Agreement, subject to satisfaction of the conditions of this Agreement. Upon the request of any Party, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such
required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement.

Section 13.16 Attorneys’ Fees. Should any legal action be brought by either Party because of any default under this Agreement or to enforce any provision of this Agreement, or to obtain a declaration of rights hereunder, the prevailing Party shall be entitled to reasonable attorneys’ fees, court costs, and such other costs as may be fixed by the Court. The standard of review for determining whether a default has occurred under this Agreement shall be the standard generally applicable to contractual obligations in California.

Section 13.17 Limitation on Liability. In no event shall: (i) any partner, officer, director, member, shareholder, employee, affiliate, manager, representative, or agent of Developer or any general partner of Developer or its general partners be personally liable for any breach of this Agreement by Developer, or for any amount which may become due to City under the terms of this Agreement; or (ii) any member, officer, agent or employee of City be personally liable for any breach of this Agreement by City or for any amount which may become due to Developer under the terms of this Agreement.
IN WITNESS WHEREOF, this Agreement has been entered into by and between
Developer and City as of the day and year first above written.

CITY:

CITY OF STOCKTON, a California
municipal corporation

By: Kurt O. Wilson, City Manager
   [signature must be notarized]

APPROVED AS TO FORM:

By: John Luebberke, City Attorney

ATTEST:

By: Bonnie Paige, City Clerk

DEVELOPER:

OPEN WINDOW PROJECT, LLC, a
California limited liability company

By: Zachary Cort
   Name: Zachary Cort
   Title: Manager
   [signature must be notarized]
ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )
) ss

County of San Joaquin

On June 29, 2016, before me, Esther F. Gilliland, Notary Public,
(Name of Notary)

notary public, personally appeared Kurt Wilson who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Esther F. Gilliland
(Notary Signature)
ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Joaquin

On 6/23/2016 before me, Sylvia Lozano-Sandoval, Notary Public

personally appeared Zachary E. Cort who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature (Seal)
EXHIBIT A-1

MAP OF DEVELOPER AND CITY PARCELS
EXHIBIT A-2

LEGAL DESCRIPTION OF DEVELOPER PARCELS

All that certain real property situated in the City of Stockton, County of San Joaquin, State of California, described as follows:

510 E MINER
532 E MINER
544 E MINER
225 N AMERICAN

Parcel 1: APN 139-250-06

Lots 1, 3 and the West 40 feet of Lot 5 in Block 74 East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Parcel 2: APN 139-250-12

Lot 5, except the West 40 feet (Carpenter’s Measurement) and all of that portion of Lot 7 lying North of the South line of Miner Channel in Block 74 East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Parcel 3: APN 139-250-12

Lot 15 in Block 74, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Parcel 4: APN 139-250-27

Parcel 4A:

That portion of Lots 9 and 11 in Block 74, East of Center Street in said City of Stockton according to the Official Map or Plat therefor, lying North of South Line of Miner Channel or Slough as shown on Map of H.T. Compton Jr, City Surveyor on file in the City Clerk’s Office of City of Stockton, County of San Joaquin, State of California

Parcel 4B:

A portion of Lot 11 in Block 74, East of Center Street, in said City of Stockton according to the Official Map or Plat thereand, commencing at the Northwest corner of said Lot; running thence South 40 feet; Thence Westerly parallel with Miner Avenue, 50 feet more or less to Bulkhead as per H.T. Compton Map; thence Northeasterly along line of Bulkhead to Miner Avenue, thence East along South line of Miner Avenue to place of beginning.
Parcel 4C:

A portion of Lots 9 and 11 in Block 74, East of Center Street in said City of Stockton, according to the Official Map or Plat thereof, described as that portion South 10 feet of the North 50 feet of each of Lots 9 and 11, lying South of line of waterway belonging to City of Stockton as established by H.T. Compton, City Surveyor in Plat Book on file in City Clerk’s Office.

Parcel 4D:

The South 12 of Lot 11 and all those portions of Lot 9 lying South of Miner Channel in Block 74, East of Center Street in said City of Stockton according to the Official Map or Plat thereof.

615 E CHANNEL

Lot 4 in Block 75, East of Center Street, according to the Office Map or Plat thereof in the Office of the Recorder, San Joaquin County.

619 E CHANNEL

Lot 6 in Block 75, East of Center Street in the said City of Stockton, according to the official Map or Plat thereof in the Office of the County Recorder of San Joaquin County.

APN: 139-290-06

11 N GRANT

Lot 12, Block 8, or Tract of East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof, County of San Joaquin Recorder, State of California.

Reserving unto Grantors herein all oil, gas, minerals and other hydrocarbon substances lying below a depth of 500 feet beneath the surface of said land, without however the right of surface entry.

Assessor’s Parcel Number(s): 149-180-22

612 E MINER

Lots 1 and 3 in Block 75, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof, County of San Joaquin Records.

622 E MINER

Lot Five (5) in Block Seventy-Five (75) East of Center Street, in the said City of Stockton, according to the Official Map or Plat thereof.
APN: 139-290-02
630 E WEBER
646 E WEBER
643 E MAIN

Lots 7, 9, 11 and 12 in Block 7, East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof, County of San Joaquin Records.

Assessor's Parcel Number(s):
149-180-03
149-180-04
149-180-09

635 E MAIN

Lot 10 in Block 7, “East of Center Street”, in the City of Stockton according to the Official Map thereof.

APN: 149-180-08

836 E CHANNEL

PARCEL ONE:

Lot 7 in Block 70, East of Center Street, in the said City of Stockton, County of San Joaquin, State of California according to the Official Map or Plat thereof.

APN: 139-280-04

PARCEL TWO:

Lot 9 in Block 70, East of Center Street, in the said City of Stockton, County of San Joaquin, State of California according to the Official Map or Plat thereof.

APN: 139-280-05

707 E MAIN

For APN/Parcel ID(s): 149-180-24

A portion of lots 4 and 6, in Block 8, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, more particularly described as follows:

Parcel B, as shown upon map filed in Book 8 of Parcel, Maps, Page 6, San Joaquin County Records.
206 N SUTTER
Lots 2, 4, 6 and 8 in Block 73, East of Center Street, in the said City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

201 N CALIFORNIA
For APN/Parcel ID(s): 139-250-040
Lots 10, 12 and 16 in Block 73, East of Center Street, in the said City of Stockton, according to the Official Map or Plat thereof, San Joaquin County Records.

242 N SUTTER
APN: 139-250-01/139-250-05

PARCEL ONE:
Lots nine (9) and eleven (11) and portion of Lots seven (7) and fifteen (15), in Block seventy-three (73) EAST OF CENTER STREET IN THE CITY OF STOCKTON according to the Official Map thereof, San Joaquin County Records, described as follows:

BEGINNING at the Northeast corner of said Block 13, being also the West line of California Street, 151.5 feet to the Southeast corner of said Lot 15; thence North 71°31' West, 52.23 feet to a point bearing 45.0 feet Westerly of said East line of Block 73 and 125.0 feet Southerly of the North line of said Block 73; thence South 78°00' West and parallel with said North line of Block 73, 85.0 feet, thence North 12°02' West and parallel with said East line of Block 73, 800 feet; thence North 31°40' West, 49.3 feet to the Northwest corner of said Lot 7; thence North 78°00' East along said North line of Block 73, being also the South line of Miner Avenue, 151.6 feet to the point of beginning.

PARCEL TWO:
Lot five (5) and portion of Lots three (3) seven (7), thirteen (13) and fifteen (15) in Block seventy three (73), EAST OF CENTER STREET, IN THE CITY OF STOCKTON, according to the Official Map thereof, San Joaquin County Records, and described as follows:

BEGINNING at the Southeast corner of said Lot 15 and ran North 71°31' West, 52.23 feet to a point being 45.0 feet Westerly of the East line of said Block 73 and 125.0 feet SOUTHERLY OF THE North line of said Block 73 thence South 78°00' West and parallel with said North line of Block 73, 85.0 feet; then North 12°02' West and parallel with said East line of Block 73, 80.00 feet; thence south 18°00' West along said North line of Block 73, being also the South line of Miner Avenue 59.4 feet; thence South 12°02' East and Parallel with said East line of Block 73, 101.0 feet to the North line of Lot 13; Thence North 78°00’ East along said North line of Lot 73, 50.5
feet to the South line of said Lot 73; thence North 78°0' East along said South lines of Lots 13 and 15, 196.6 feet to the point of beginning.

SUBJECT to the right to use the existing fire escape passageway over the lying East of the West line of the above described parcel in said Lot 13

PARCEL THREE:

Lot one (1) and positions of Lots three (3) and thirteen (13), in Block seventy-three (73), EAST OF CENTER STREET, IN THE CITY OF STOCKTON, according to the Official Map thereof San Joaquin County Records and described as follows:

BEGINNING at the Northwest corner of said Block 73 and ran North 78°0' East along the North line of said Block 73, being also the South line of Miner Avenue, 92.2 feet to a point being 221.0 feet Westerly of the Northwest corner of said Block 73; thence South 12°02' East and parallel with the East line of said Block 73, 101.0 feet to the North of said lot 73; thence North 78°0' East along said North line of Lot 73, 14.4 feet; thence South 12°02' East, parallel with and distant 45.0 feet Westerly of the East line of said lot 13, 50.5 feet to the South line of said Lot 73; thence South 78°0' West along said South line of Lot 73, 106.6 feet to the Southwest corner of said Lot 13; thence North 12°02' West along the West line of said Block 73, being also the East line of Sutter Street, 151.1 feet to the point of beginning.

TOGETHER with the right to use the existing fire escape passageway over and lying East of the East line of the above described parcel in said Lot 73.

104 N AMERICAN

All that certain real property being a portion of Block 68, “East of Center Street,” City of Stockton, County of San Joaquin, State of California, according to the Official Map thereof, County of San Joaquin, State of California, being more particularly described as follows:

Beginning at the Northwesterly corner of said Block 68; thence along the Northerly line of said Block 68; also being the Southerly line of Channel Street (60°06' wide), North 78°23'35" East 102.30 feet; thence leaving aid Northerly line the following five (5) courses: (1) South 11°39'25" East 100.00 feet; (2) North 78°20'35" East 45.00 feet; (3) South 11°39'25" East 65.00 feet; (4) North 78°20'35" East 26.00 feet and (5) South 11°39'25" East 87.66 feet to the Southerly line of said Block 68, also being the Northerly line of Weber Avenue (11°10' wide); thence along said Southerly line South 78°22'35" West 173.23 feet to the Southwesterly corner of said Block 68; thence along the Westerly line of said Block 68, also being the Easterly line of American Street (80°08' wide) North 11°40'25" West 252.65 feet to the point of beginning.

The above legal description is also referred to as “0.8031- Acre Parcel” on Certificate of Lot Line adjustment contained in Corporation Grant Deed recorded on May 5, 1994, instrument No. 94057303, San Joaquin County Records.

APN: 139-270-14
210 N AMERICAN

For APN/Parcel ID(s): 139-290-04

Lot Two (2), in Block 75, East of Center Street, in the said City of Stockton, according to the official Map or Plat thereof, San Joaquin County Records.

221 N AMERICAN

The Easterly 100 feet of Lot 16 in Block 74 East of Center Street, in the said City of Stockton, according to the Official Map or Plat thereof, San Joaquin County Records.

Expecting therefrom all oil, gas, minerals, and other hydrocarbon substances lying below a depth of 500 feet beneath the surface of said land, without the right of surface entry, is reserved in the deed from the trustees for Iroquois Tribe No. 15, improved order of Redmen, recorded November 12, 1991 as Instrument No. 99110385, San Joaquin County Records.

Assessor’s Parcel Number(s): 139-250-23

525 E CHANNEL

Lot 8 and the Westerly 50 feet of Lot 16 in Block 75, East of Center Street, in the City of Stockton, County of San Joaquin, State of California as per the Official Map or Plat thereof

APN: 139-250-18

535 E CHANNEL

Lot ten (10) in Block seventy-four (74), East of Center Street, in the said City of Stockton, according Official Map or Plat thereof, San Joaquin County Records.

545 E CHANNEL

Lot 12 in Block 74 of “East of Center Street”, in the said City of Stockton, according to the Official Map or Plat thereof.

APN: 139-250-21

832 E WEBER

Parcel One:

Lot 5, Block 9, “East of Center Street” in the said City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof, San Joaquin County Records.
Parcel Two:

Lot 7, Block 9, “East of Center Street” in the said City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof, San Joaquin County Records.

Assessor’s Parcel Numbers(s):
149-190-03
149-190-04

843 E WEBER

For APN/Parcel ID(s): 139-280-07

PARCEL I:

Lots 10 and 12 in Block 70, East of Center Street, in the said City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

PARCEL II:

The East 2/3 of Lot 14 in Block 70, East of Center Street, in the said City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

800 E MAIN

APN: 149-210-01

Lots one (1), three (3) and thirteen (13) in Block eighteen (18) East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof, San Joaquin County Records.

29 N AURORA

Parcel 1:

Lot 11 in Block 9, East of Center Street, in the said City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof, San Joaquin County Records.

Parcel 2:

Lot sixteen (16) in Block Nine (9) East of Center Street, in the said City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof, San Joaquin County Records.
Parcel 3:

Lot fifteen (15), and the East 26 inches of Lot thirteen (13) in Block nine (9), East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof, San Joaquin County records, and more particularly described as follows:

Beginning at the Northeast corner of said lot Thirteen (13) thence Westerly along the North line of said lot thirteen (13), 26 inches to the center of a 13 inch Brick Wall thence continuing Easterly along the South line of said Lot fifteen (15) 151.68 feet to the Southeast corner of said lot fifteen (15) thence Northerly along the East line of said lot (15) thence Northerly along the East line of said Lot fifteen (15), 50.55 feet to the Northeast corner of said Lot fifteen (15) thence Westerly along the North line of said Lot fifteen (15), 151.68 feet to the point of beginning.

Parcel 4:

Lots 2, 4, 6, Block 9, East of Center Street in the City of Stockton according to the Official Map or Plat thereof, San Joaquin County records.

Assessor's Parcel Numbers(s): 149-190-06; 149-190-07; 149-190-08; 149-190-09; 149-190-10; 149-190-11

501 E MAIN

The South 65 feet of Lot 2 and the West ½ of Lot 4 in Block 6 of East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof, San Joaquin County Records, pursuant to Notice of Lot Merger recorded May 3, 1985, Document No. 85030031, Official Records.

APN: 149-170-27

11 N AURORA

Lots 9, 11 and 15, Block 18, East of Center Street in the City of Stockton according to the Official Map or Plat thereof, San Joaquin County Records.

EXCEPTING THEREFROM the northerly 59.80 feet of said Lots 9 and 11, being measured perpendicular to and parallel with the southerly line of Main Street.

831 E MAIN

APN: 149-190-13

The East ½ of Lot 8 in Block 9 EAST OF CENTER, according to the Official Map or Plat thereof, San Joaquin County Records.
20 N AURORA

APN: 151-190-08

Lot 13 and the West 125 feet of Lot 14 in Block 241 of West Center Street, in the City of Stockton, as per Official Map therefor, San Joaquin County Records.

915 E MARKET
929 E MARKET
937 E MARKET

PARCEL ONE:

All of Lots 8, 15 and 16 in Block 241, EAST OF CENTER STREET, in the City of Stockton, according to the Official Map thereof.

EXCEPTING THEREFROM that portion conveyed to the San Joaquin Regional Rail Commission by Deed recorded June 29, 1998, as Document No. 98-074242.

ALSO EXCEPTING THEREFROM all minerals and mineral rights, interests, and royalties, including without limiting the generality thereof, oil, gas, and other hydrocarbon substances, as well as metallic or other solid minerals, in and under said property.

PARCEL TWO:

Lot 6 and the East 25 feet of Lot 14 in Block 241, EAST OF CENTER STREET, in the City of Stockton, according to the Official Map or Plat thereof.

PARCEL THREE:

The East 40 feet (Carpenter’s Measurement) of Lot 4, in Block 241, EAST OF CENTER STREET, in the City of Stockton, according to the Official Map or Plat thereof.

TOGETHER with all of the right, title and interest of the grantors herein and to that certain right of way to be used exclusively for foot passengers on, over and along the West 10 feet 6 inches of Lot 4, Block 241, East of Center Street, to be kept and maintained forever as an open areaway as conveyed in Deed dated October 29, 1925, executed by M.D. Dentoni, a single man and M Katten, a single man to George Heighiet and Sam Tager, recorded October 31, 1925 in Vol. 126 of Official Records, page 37, San Joaquin County Records.

216 N AMERICAN

Lots 13 and 14, Block 75 of East of Center Street, in the City of Stockton, as per Official Map thereof, SAN Joaquin county Records.

APN: 139-290-03
EXHIBIT A-3

LEGAL DESCRIPTION OF CITY PARCELS

That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

Street Address: 216 N. California Street, Stockton, California

Parcel 1:

The North 40 feet, 7 1/3 inches of each of lots two (2) and four (4) in block seventy-four (74) East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Parcel 2:

The South 60 feet 4 2/3 inches of each of lots two (2) and four (4); The South 60 feet 4 2/3 inches of the West 2 1/2 feet of lot six (6); all in block seventy-four (74), East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map of Plat thereof.

(ALL MEASUREMENTS UNITED STATES STANDARD MEASURE)

APN: 139-250-26

Street Address: 39 N. California Street, Stockton, California

Lot 11 in Block 5 East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof.

APN: 149-170-12

Street Address: 27 N. California Street, Stockton, California

Parcel 1:

The South 6 1/2 inches of the North one-half of the West 140 feet of Lot 13, the South one-half of Lot 13 and the North 10 feet of Lot 14 in Block 5, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Parcel 2:

The North one-half of Lot 13 in Block 5, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Excepting therefrom the South 6 1/2 inches of the North one-half of the West 140 feet of Lot 13.
Parcel 3:

All of Lots 15 and 16 in Block 5, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Excepting therefrom the South 26.33 feet of the East 141.00 feet of Lot 16.

APN: 149-170-25

Street Address: 431 E. Main Street, Stockton, California

Lot 8 and the west one-half of Lot 10 in Block 5 East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof.

APN: 149-170-08

Street Address: 445 E. Main Street, Stockton, California

The East one-half of Lot 10 and all of Lot 12 in Block 5, East of Center Street, in the said City of Stockton, according to the Official Map or Plat thereof, San Joaquin County Records.

APN: 149-170-09

Street Address: 24 N. American Street, Stockton, California

Lots 13, 14, 15 and 16 in Block 7, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof, San Joaquin County records.

APN: 149-180-05

Street Address: 725 E. Main Street, Stockton, California

All of Lots 8 and 10 in Block 8 East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof.

Also all that part of Lot 6 in Block 8 East of Center Street, being the East 46 1/2 feet thereof, more or less, bounded on the West by the centerline of a division wall running North and South between certain buildings, and being all of said Lot 6, except the part thereof conveyed by Rudolph Gnekow and wife to their sons and daughters by Deed dated February 3, 1913 and recorded in Book "A" of Deeds, Vol. 208, page 106, San Joaquin County Records.

APN: 149-180-21

Street Address: 25 N. Grant Street, Stockton, California

Lot 16 and the West 1/3 of Lot 15 in Block 8, East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof, San Joaquin County Records.

APN: 149-180-17
### EXHIBIT B

**IMPACT FEES – CITY/MUD FEE SCHEDULE**

#### Public Facility Fees

**Agricultural Land Mitigation**

**(209) 937-8561**

**FY 2015-16 Adopted Fee Schedule**

<table>
<thead>
<tr>
<th>Account #</th>
<th>Effective Date</th>
<th>Description</th>
<th>Amount</th>
</tr>
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<tr>
<td>687-0000-223.90-18</td>
<td>7/1/2015</td>
<td>Office/High Density (per acre of net parcel area)</td>
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<td>Guest Rooms (per acre of net parcel area)</td>
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**Division General Comments (Applicable to all Fees)**

All Fee Areas - Additional 3.5% Administrative Fee

#### Public Facility Fees

**Air Quality**

**(209) 937-8561**

**FY 2015-16 Adopted Fee Schedule**

<table>
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**Division General Comments (Applicable to all Fees)**

All Fee Areas - Additional 3.5% Administrative Fee
## Public Facility Fees

City Office Space  
(209) 937-8561

**FY 2015-16 Adopted Fee Schedule**

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**Division General Comments:** (Applicable to all Fees)

All Fee Areas - Additional 3.5% Administrative Fee
### Public Facility Fees

**Community Recreation Centers**

(209) 937-8561

**FY 2015-16 Adopted Fee Schedule**

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<td>7/1/2015</td>
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<td><strong>APPENDIX IV-B</strong></td>
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**Division General Comments (Applicable to all Fees)**

All Fee Areas - Additional 3.5% Administrative Fee

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**Public Facility Fees**

**County Facilities**

(209) 937-8561

**FY 2015-16 Adopted Fee Schedule**

<table>
<thead>
<tr>
<th>Account #</th>
<th>Effective Date</th>
<th>Description</th>
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<tr>
<td><strong>All &quot;Fee Areas&quot; - Non-Residential</strong></td>
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<tr>
<td>897-0000-223.90-15</td>
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**Division General Comments (Applicable to all Fees)**

All Fee Areas - Additional 3.5% Administrative Fee
### Public Facility Fees

**Fire Station**

(209) 937-8561

**FY 2015-16 Adopted Fee Schedule**

<table>
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<th>Description</th>
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**Residential - Greater Downtown Area**

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**Division General Comments (Applicable to all Fees)**

All Fee Areas - Additional 3.5% Administrative Fee
# Public Facility Fees

## Libraries
(209) 937-8561

**FY 2015-16 Adopted Fee Schedule**

<table>
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<th>Account #</th>
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## Non-Residential

### Residential - Existing City Limits

- **Account #** 950-0000-344.44-00
- **Effective Date** 7/1/2015
- **Description** Single Family Units (per unit)
- **Amount** $451.00

- **Account #** 950-0000-344.44-00
- **Effective Date** 7/1/2015
- **Description** Multiple Family Units (per unit)
- **Amount** $390.50

- **Account #** 950-0000-344.44-00
- **Effective Date** 7/1/2015
- **Description** Guest Rooms (per room)
- **Amount** $85.50

### Residential - Greater Downtown Area

- **Account #** 950-0000-344.44-00
- **Effective Date** 7/1/2015
- **Description** Single Family Units (per unit)
- **Amount** EXEMPT

- **Account #** 950-0000-344.44-00
- **Effective Date** 7/1/2015
- **Description** Multiple Family Units (per unit)
- **Amount** EXEMPT

- **Account #** 950-0000-344.44-00
- **Effective Date** 7/1/2015
- **Description** Guest Rooms (per room)
- **Amount** $85.50

### Residential - Outside City Limits

- **Account #** 950-0000-344.44-00
- **Effective Date** 7/1/2015
- **Description** Single Family Units (per unit)
- **Amount** $962.00

- **Account #** 950-0000-344.44-00
- **Effective Date** 7/1/2015
- **Description** Multiple Family Units (per unit)
- **Amount** $761.00

- **Account #** 950-0000-334.44-00
- **Effective Date** 7/1/2015
- **Description** Guest Rooms (per room)
- **Amount** $171.00

### Division General Comments (Applicable to all Fees)
All Fee Areas - Additional 3.5% Administrative Fee

---

# Public Facility Fees

## Parkland
(209) 937-8349

**FY 2015-16 Adopted Fee Schedule**

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## Non-Residential

### Residential

- **Account #** 970-0000-344.46-00
- **Effective Date** 7/1/2015
- **Description** Single Family Units (per unit)
- **Amount** $2,793.00

- **Account #** 970-0000-344.46-00
- **Effective Date** 7/1/2015
- **Description** Multiple Family Units (per unit)
- **Amount** $1,712.00

- **Account #** 970-0000-344.46-00
- **Effective Date** 7/1/2015
- **Description** Guest Rooms
- **Amount** EXEMPT

### Division General Comments (Applicable to all Fees)
All Fee Areas - Additional 3.5% Administrative Fee
## Public Facility Fees

### Police Station Expansion

(209) 937-8561

**FY 2015-16 Adopted Fee Schedule**

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### Residential - Existing City Limits

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<td>960-0000-344.45-00</td>
<td>7/1/2015</td>
<td>Single Family Units (per unit)</td>
<td>$591.00</td>
</tr>
<tr>
<td>960-0000-344.45-00</td>
<td>7/1/2015</td>
<td>Multiple Family Units (per unit)</td>
<td>$497.00</td>
</tr>
<tr>
<td>960-0000-344.45-00</td>
<td>7/1/2015</td>
<td>Guest Rooms (per room)</td>
<td>$99.50</td>
</tr>
</tbody>
</table>

### Residential - Greater Downtown Area

<table>
<thead>
<tr>
<th>Account #</th>
<th>Effective Date</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>960-0000-344.45-00</td>
<td>7/1/2015</td>
<td>Single Family Units (per unit)</td>
<td>EXEMPT</td>
</tr>
<tr>
<td>960-0000-344.45-00</td>
<td>7/1/2015</td>
<td>Multiple Family Units (per unit)</td>
<td>EXEMPT</td>
</tr>
<tr>
<td>960-0000-344.45-00</td>
<td>7/1/2015</td>
<td>Guest Rooms (per room)</td>
<td>$99.50</td>
</tr>
</tbody>
</table>

### Division General Comments (Applicable to all Fees)

*All Fee Areas - Additional 3.5% Administrative Fee*

## Public Facility Fees

### Regional Transportation Impact Fee (RTIF)

(209) 937-8349

**FY 2015-16 Adopted Fee Schedule**

<table>
<thead>
<tr>
<th>Account #</th>
<th>Effective Date</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>917-0000-344.11-08</td>
<td>7/1/2015</td>
<td>Office/High Density/Guest Rooms (per 1,000 sq. ft.)</td>
<td>$1,580.00</td>
</tr>
<tr>
<td>917-0000-344.11-08</td>
<td>7/1/2015</td>
<td>Retail/Medium Density (per 1,000 sq. ft.)</td>
<td>$1,250.00</td>
</tr>
<tr>
<td>917-0000-344.11-08</td>
<td>7/1/2015</td>
<td>Commercial/Industrial (per 1,000 sq. ft.)</td>
<td>$950.00</td>
</tr>
<tr>
<td>917-0000-344.11-08</td>
<td>7/1/2015</td>
<td>High Cube Warehouse (per 1,000 sq. ft.)</td>
<td>$400.00</td>
</tr>
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### Residential

<table>
<thead>
<tr>
<th>Account #</th>
<th>Effective Date</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>917-0000-344.11-08</td>
<td>7/1/2015</td>
<td>Single Family Units (per unit)</td>
<td>$3,141.34</td>
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<tr>
<td>917-0000-344.11-08</td>
<td>7/1/2015</td>
<td>Multiple Family Units (per unit)</td>
<td>$1,884.50</td>
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</table>

### Division General Comments (Applicable to all Fees)

*All Fee Areas - Additional 3.5% Administrative Fee*
## Public Facility Fees

### Street Improvements

(209) 937-8349

**FY 2015-16 Adopted Fee Schedule**

<table>
<thead>
<tr>
<th>Account #</th>
<th>Effective Date</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Residential</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>910-0000-344.11-00</td>
<td>7/1/2015</td>
<td>Office/High Density, per 1,000 square feet</td>
<td>$2,412.00</td>
</tr>
<tr>
<td>910-0000-344.11-00</td>
<td>7/1/2015</td>
<td>Retail/Medium Density, per 1,000 square feet</td>
<td>$3,177.00</td>
</tr>
<tr>
<td>910-0000-344.11-00</td>
<td>7/1/2015</td>
<td>Warehouse/Low Density, per 1,000 square feet</td>
<td>$931.50</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Residential - Existing City Limits</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>910-0000-344.11-00</td>
<td>7/1/2015</td>
<td>Single Family Units (per unit)</td>
<td>$6,613.00</td>
</tr>
<tr>
<td>910-0000-344.11-00</td>
<td>7/1/2015</td>
<td>Multiple Family Units (per unit)</td>
<td>$4,828.00</td>
</tr>
<tr>
<td>910-0000-344.11-00</td>
<td>7/1/2015</td>
<td>Guest Rooms (per room)</td>
<td>$5,157.50</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Residential - Greater Downtown Area</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>910-0000-344.11-00</td>
<td>7/1/2015</td>
<td>Single Family Units (per unit)</td>
<td>EXEMPT</td>
</tr>
<tr>
<td>910-0000-344.11-00</td>
<td>7/1/2015</td>
<td>Multiple Family Units (per unit)</td>
<td>EXEMPT</td>
</tr>
<tr>
<td>910-0000-344.11-00</td>
<td>7/1/2015</td>
<td>Guest Rooms (per room)</td>
<td>$5,157.50</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Residential - Outside City Limits</th>
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<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>910-0000-344.11-00</td>
<td>7/1/2015</td>
<td>Single Family Units (per unit)</td>
<td>$13,226.00</td>
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<tr>
<td>910-0000-344.11-00</td>
<td>7/1/2015</td>
<td>Multiple Family Units (per unit)</td>
<td>$9,556.00</td>
</tr>
<tr>
<td>910-0000-344.11-00</td>
<td>7/1/2015</td>
<td>Guest Rooms (per room)</td>
<td>$10,315.00</td>
</tr>
</tbody>
</table>

**Division General Comments (Applicable to all Fees)**

- All Fee Areas - Additional 3.5% Administrative Fee

## Public Facility Fees

### Street Trees

(209) 937-8561

**FY 2015-16 Adopted Fee Schedule**

<table>
<thead>
<tr>
<th>Account #</th>
<th>Effective Date</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>978-0000-344.15-00</td>
<td>7/1/2015</td>
<td>Tree without root barrier, per tree</td>
<td>$140.00</td>
</tr>
<tr>
<td>978-0000-344.15-00</td>
<td>7/1/2015</td>
<td>Tree wells with root barrier, per tree</td>
<td>$195.00</td>
</tr>
</tbody>
</table>

**Division General Comments (Applicable to all Fees)**

- All Fee Areas - Additional 3.5% Administrative Fee
Public Facility Fees
Surface Water
(209) 937-8436
FY 2015-16 Adopted Fee Schedule

<table>
<thead>
<tr>
<th>Account #</th>
<th>Effective Date</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>687-0000-223.90-11</td>
<td>4/1/2016</td>
<td>Office/High density (per sq. ft. floor areas / 0.50)</td>
<td>$0.431</td>
</tr>
<tr>
<td>687-0000-223.90-11</td>
<td>4/1/2016</td>
<td>Retail/medium density (per sq. ft. floor areas / 0.30)</td>
<td>$0.259</td>
</tr>
<tr>
<td>687-0000-223.90-11</td>
<td>4/1/2016</td>
<td>Warehouse/Low density (per sq. ft. floor areas / 0.50)</td>
<td>$0.209</td>
</tr>
<tr>
<td>587-0000-223.90-11</td>
<td>4/1/2016</td>
<td>Single Family Unit (per unit)</td>
<td>$4,196.00</td>
</tr>
<tr>
<td>687-0000-223.90-11</td>
<td>4/1/2016</td>
<td>Multiple Family Units - First Unit</td>
<td>$4,195.00</td>
</tr>
<tr>
<td>587-0000-223.90-11</td>
<td>4/1/2016</td>
<td>Multiple Family Units - Each subsequent unit</td>
<td>$1,260.00</td>
</tr>
<tr>
<td>587-0000-223.90-11</td>
<td>4/1/2016</td>
<td>Guest Rooms</td>
<td>$985.00</td>
</tr>
<tr>
<td>687-0000-223.90-11</td>
<td>4/1/2016</td>
<td>Guest Rooms - Each subsequent guest room</td>
<td>$0.248</td>
</tr>
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</table>

Surface Water Public Facility Fees are adjusted every April 1st per Resolution #95-0302 & #02-0131 to cover transfer to Stockton East Water District. Please contact the Municipal Utilities Department for updated Fee information at (209) 937-8753.
## Public Facility Fees

### Traffic Signals

(209) 937-8349

### FY 2015-16 Adopted Fee Schedule

<table>
<thead>
<tr>
<th>Account #</th>
<th>Effective Date</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>7/1/2015</td>
<td>Single Family Detached (PURD SFT) per D.U. Units</td>
<td>10 Trip Ends per Unit per D.U. Units</td>
<td>$110.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Condominium (PURD SFA) per D.U. Units</td>
<td>8.6 Trip Ends per unit</td>
<td>$94.20</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Mobile Home per D.U. Units</td>
<td>5.4 Trip Ends per unit</td>
<td>$59.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Apartment per D.U. Units</td>
<td>6.1 Trip Ends per unit</td>
<td>$66.60</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Retirement Village per D.U. Units</td>
<td>3.3 Trip Ends per unit</td>
<td>$36.60</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Hotel per Room Units</td>
<td>1.1 Trip Ends per unit</td>
<td>$122.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Motel per Room Units</td>
<td>9.6 Trip Ends per unit</td>
<td>$106.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Daycare/Preschool per Student Units</td>
<td>2.4 Trip Ends per unit</td>
<td>$55.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Daycare/Preschool per 1,000 sq. feet Units</td>
<td>79 Trip Ends per unit</td>
<td>$866.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Elementary–Intermediate School per Student Units</td>
<td>0.5 Trip Ends per unit</td>
<td>$5.50</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>High School per Student Units</td>
<td>1.2 Trip Ends per unit</td>
<td>$13.25</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Junior College–Community College per Student Units</td>
<td>1.6 Trip Ends per unit</td>
<td>$17.75</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>University per Student Units</td>
<td>2.4 Trip Ends per unit</td>
<td>$26.50</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Church &amp; Accessory Use per 1,000 sq. feet Units</td>
<td>7.7 Trip Ends per unit</td>
<td>$84.50</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Industrial-Warehouse-Manufacturer per 1,000 sq. feet Units</td>
<td>7.6 Trip Ends per unit</td>
<td>$83.25</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Industrial-Warehouse-Manufacturer per Acre Units</td>
<td>80.8 Trip Ends per unit</td>
<td>$885.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Industrial Service per 1,000 sq. feet Units</td>
<td>20.26 Trip Ends per unit</td>
<td>$223.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Truck Terminal–Distribution Center per 1,000 sq. feet Units</td>
<td>9.86 Trip Ends per unit</td>
<td>$108.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Mini-Self Storage per 1,000 sq. feet Units</td>
<td>2.8 Trip Ends per unit</td>
<td>$30.75</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Lumber Yard per 1,000 sq. feet Units</td>
<td>34.5 Trip Ends per unit</td>
<td>$379.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Lumber Yard w/open storage/sales per Acre Units</td>
<td>148 Trip Ends per unit</td>
<td>$1,622.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Home Improvement Center per 1,000 sq. feet Units</td>
<td>64.6 Trip Ends per unit</td>
<td>$709.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Shopping Center by size (sq. ft.)</td>
<td>Less than 50,000 per 1,000 sq. feet Units</td>
<td>116 Trip Ends per unit</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Shopping Center by size (sq. ft.)</td>
<td>50,000-99,999 per 1,000 sq. feet Units</td>
<td>79.1 Trip Ends per unit</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Shopping Center by size (sq. ft.)</td>
<td>100,000-199,999 per 1,000 sq. feet Units</td>
<td>50.4 Trip Ends per unit</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Shopping Center by size (sq. ft.)</td>
<td>200,000-299,999 per 1,000 sq. feet Units</td>
<td>49.9 Trip Ends per unit</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Shopping Center by size (sq. ft.)</td>
<td>300,000-399,999 per 1,000 sq. feet Units</td>
<td>44.4 Trip Ends per unit</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>Shopping Center by size (sq. ft.)</td>
<td>400,000-499,999 per 1,000 sq. feet Units</td>
<td>41.6 Trip Ends per unit</td>
</tr>
</tbody>
</table>
# Public Facility Fees

## Traffic Signals

(209) 937-8349

**FY 2015-16 Adopted Fee Schedule**

<table>
<thead>
<tr>
<th>Account #</th>
<th>Effective Date</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Shopping Center by size (sq. ft.) - 500,000-999,999 per 1,000 sq. feet Units - $5.5 Trip Ends per unit</td>
<td>$389.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Shopping Center by size (sq. ft.) - 1,000,000-1,250,000 per 1,000 sq. feet Units - $11.5 Trip Ends per unit</td>
<td>$345.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Boat Launching Ramp per Space Units - 3 Trip Ends per unit</td>
<td>$33.50</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Free Standing Retail per 1,000 sq. feet Units - 73.7 Trip Ends per unit</td>
<td>$808.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Ambulance Dispatch per 1,000 sq. feet Units - 73.7 Trip Ends per unit</td>
<td>$808.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Service Station - more than 3 pumps or 4 nozzles per Site Units - 748 Trip Ends per unit</td>
<td>$8,193.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Truck Stop per Site Units - 825 Trip Ends per unit</td>
<td>$9,036.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Used Car (No service) per Acre Units - $5 Trip Ends per unit</td>
<td>$603.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>New Car/New Boat Dealer per 1,000 sq. feet Units - 44.3 Trip Ends per unit</td>
<td>$485.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Auto Center Dealership per 1,000 sq. feet Units - 31.2 Trip Ends per unit</td>
<td>$342.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>General Auto Repair/Body Shop per 1,000 sq. feet Units - 27.2 Trip Ends per unit</td>
<td>$298.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Self Service Car Wash per Stall Units - 57 Trip Ends per unit</td>
<td>$571.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Automatic Car Wash per Site Units - 90 Trip Ends per unit</td>
<td>$9,859.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Auto Supply per 1,000 sq. feet Units - 89 Trip Ends per unit</td>
<td>$976.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Drug Store/Pharmacy per 1,000 sq. feet Units - 43.9 Trip Ends per unit</td>
<td>$482.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Discount Store per 1,000 sq. feet Units - 71.16 Trip Ends per unit</td>
<td>$780.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Supermarket per 1,000 sq. feet Units - 125.5 Trip Ends per unit</td>
<td>$1,373.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Convenience Market per 1,000 sq. feet Units - 574.48 Trip Ends per unit</td>
<td>$6,283.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Convenience Market dispensing fuel - maximum of 2 pumps/4 nozzles per 1,000 sq. feet Units - 887.06 Trip Ends per unit</td>
<td>$9,718.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Clothing Store per 1,000 sq. feet Units - 31.3 Trip Ends per unit</td>
<td>$343.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Paint/Hardware Store per 1,000 sq. feet Units - 51.3 Trip Ends per unit</td>
<td>$562.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Variety Store per 1,000 sq. feet Units - 14.4 Trip Ends per unit</td>
<td>$157.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Video Rental Store per 1,000 sq. feet Units - 57.3 Trip Ends per unit</td>
<td>$628.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Furniture/Appliance Store per 1,000 sq. feet Units - 43.5 Trip Ends per unit</td>
<td>$475.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Department Store per 1,000 sq. feet Units - 35.8 Trip Ends per unit</td>
<td>$391.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Hair Salon/Dog Grooming per 1,000 sq. feet Units - 15.5 Trip Ends per unit</td>
<td>$279.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Bar/Tavern per 1,000 sq. feet Units - 40 Trip Ends per unit</td>
<td>$438.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Laundromat/Dry Cleaners per 1,000 sq. feet Units - 50 Trip Ends per unit</td>
<td>$548.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Bakery/Craft Store/Yogurt Shop per 1,000 sq. feet Units - 43.9 Trip Ends per unit</td>
<td>$482.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td></td>
<td>Carpet/Floor/Interior Decorator per 1,000 sq. feet Units - 5.5 Trip Ends per unit</td>
<td>$61.00</td>
</tr>
</tbody>
</table>
Public Facility Fees
Traffic Signals
(209) 937-8349

FY 2015-16 Adopted Fee Schedule

<table>
<thead>
<tr>
<th>Account #</th>
<th>Effective Date</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>7/1/2015</td>
<td>7/1/2015</td>
<td>Bank per 1,000 sq. feet Units - 189.95 Trip Ends per unit</td>
<td>$2,081.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>7/1/2015</td>
<td>Banks with Drive-up Facilities per 1,000 sq. feet Units - 290 Trip Ends per unit</td>
<td>$3,178.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>7/1/2015</td>
<td>Free Standing Automatic Teller per Unit Units - 160 Trip Ends per unit</td>
<td>$1,753.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>7/1/2015</td>
<td>Savings &amp; Loan/Mortgage Co. per 1,000 sq. feet Units - 60.4 Trip Ends per unit</td>
<td>$662.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>7/1/2015</td>
<td>Restaurant-Quality per 1,000 sq. feet Units - 95.62 Trip Ends per unit</td>
<td>$1,046.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>7/1/2015</td>
<td>Restaurant-Dinner House per 1,000 sq. feet Units - 56.3 Trip Ends per unit</td>
<td>$617.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>7/1/2015</td>
<td>Restaurant-High Turnover/Sit Down per 1,000 sq. feet Units - 164.4 Trip Ends per unit</td>
<td>$1,801.00</td>
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<tr>
<td>7/1/2015</td>
<td>7/1/2015</td>
<td>Restaurant-Fast Food per 1,000 sq. feet Units - 777.99 Trip Ends per unit</td>
<td>$8,514.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>7/1/2015</td>
<td>Restaurant-Fast Food with Drive-thru per 1,000 sq. feet Units - 680 Trip Ends per unit</td>
<td>$7,450.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>7/1/2015</td>
<td>Library per 1,000 sq. feet Units - 45.5 Trip Ends per unit</td>
<td>$497.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>7/1/2015</td>
<td>Hospital per bed Units - 12.2 Trip Ends per unit</td>
<td>$135.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>7/1/2015</td>
<td>Hospital per 1,000 sq. feet Units - 16.9 Trip Ends per unit</td>
<td>$186.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>7/1/2015</td>
<td>Nursing Home per bed Units - 2.7 Trip Ends per unit</td>
<td>$30.00</td>
</tr>
<tr>
<td>7/1/2015</td>
<td>7/1/2015</td>
<td>Clinic/Weight Loss/Aerobics/Karate/Dance per 1,000 sq. feet Units - 23.9 Trip Ends per unit</td>
<td>$262.00</td>
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<tr>
<td>7/1/2015</td>
<td>7/1/2015</td>
<td>Medical Office per 1,000 sq. feet Units - 54.5 Trip Ends per unit</td>
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<tr>
<td>7/1/2015</td>
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<td>General/Medical Office per 1,000 sq. feet Units - 36.9 Trip Ends per unit</td>
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<td>7/1/2015</td>
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<td>General Office (in square feet) - Less than 100,000 per 1,000 sq. feet Units - 17.70 Trip Ends per unit</td>
<td>$195.00</td>
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<tr>
<td>7/1/2015</td>
<td>7/1/2015</td>
<td>General Office (in square feet) - Over 100,000 per 1,000 sq. feet Units - 17.30 Trip Ends per unit</td>
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<td>7/1/2015</td>
<td>7/1/2015</td>
<td>Office Park per 1,000 sq. feet Units - 11.4 Trip Ends per unit</td>
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<tr>
<td>7/1/2015</td>
<td>7/1/2015</td>
<td>Government Offices per 1,000 sq. feet Units - 68.9 Trip Ends per unit</td>
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<tr>
<td>7/1/2015</td>
<td>7/1/2015</td>
<td>Public Clubhouse/Meeting Rooms, Halls per 1,000 sq. feet Units - 19 Trip Ends per unit</td>
<td>$708.00</td>
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<tr>
<td>7/1/2015</td>
<td>7/1/2015</td>
<td>Recreation Center (Private Dev.) per 1,000 sq. feet Units - 30 Trip Ends per unit</td>
<td>$338.00</td>
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<tr>
<td>7/1/2015</td>
<td>7/1/2015</td>
<td>Family Recreation Center-Billiards, etc. per 1,000 sq. feet Units - 60.4 Trip Ends per unit</td>
<td>$662.00</td>
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<td>7/1/2015</td>
<td>7/1/2015</td>
<td>Batting Cages per Cage Units - 5 Trip Ends per unit</td>
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<td>7/1/2015</td>
<td>7/1/2015</td>
<td>Tennis/Racquetball Club per Court Units - 30 Trip Ends per unit</td>
<td>$323.00</td>
</tr>
</tbody>
</table>

Division General Comments (Applicable to all Fees)
All Fee Areas - Additional 3.5% Administrative Fee
EXHIBIT C

INTENTIONALLY OMITTED
# EXHIBIT D

## CONNECTION FEES – CITY FEE SCHEDULE

**Municipal Utilities Department**

**Water**

(209) 937-8706

**FY 2015-16 Adopted Fee Schedule**

<table>
<thead>
<tr>
<th>Account #</th>
<th>Effective Date</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>424-0000-344.20-00</td>
<td>7/1/2015</td>
<td>Single Family</td>
<td>$2,170.01</td>
</tr>
<tr>
<td>424-0000-344.20-00</td>
<td>7/1/2015</td>
<td>Multi-Family - First meter</td>
<td>$2,170.01</td>
</tr>
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<td>Each Additional Unit(s) - Multi-Family</td>
<td>$1,750.84</td>
</tr>
<tr>
<td>424-0000-344.20-00</td>
<td>7/1/2015</td>
<td>5/8 &amp; 3/4 inch meter</td>
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</tr>
<tr>
<td>424-0000-344.20-00</td>
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<td>$4,287.84</td>
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<tr>
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<td>1 1/2 inch meter</td>
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<td>2 inch meter</td>
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<tr>
<td>424-0000-344.20-00</td>
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<tr>
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<td>6 inch meter</td>
<td>$100,448.93</td>
</tr>
<tr>
<td>424-0000-344.20-00</td>
<td>7/1/2015</td>
<td>10 inch meter (1)</td>
<td>See Formula</td>
</tr>
<tr>
<td>424-0000-344.20-00</td>
<td>7/1/2015</td>
<td>12 inch meter (2)</td>
<td>See Formula</td>
</tr>
<tr>
<td>425-0000-344.20-00</td>
<td>7/1/2015</td>
<td>3/4 inch meter</td>
<td>$4,946.00</td>
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<tr>
<td>425-0000-344.20-00</td>
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<td>1 inch meter</td>
<td>$8,359.82</td>
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<tr>
<td>425-0000-344.20-00</td>
<td>7/1/2015</td>
<td>1 1/2 inch meter</td>
<td>$19,784.00</td>
</tr>
<tr>
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<tr>
<td>425-0000-344.20-00</td>
<td>7/1/2015</td>
<td>10 inch meter (5)</td>
<td>See Formula</td>
</tr>
<tr>
<td>425-0000-344.20-00</td>
<td>7/1/2015</td>
<td>12 inch meter (6)</td>
<td>See Formula</td>
</tr>
</tbody>
</table>
ASSIGNMENT OF RIGHTS AND OBLIGATIONS UNDER DEVELOPMENT AGREEMENT

This Assignment of Rights and Obligations Under Development Agreement (this "Assignment") is entered into this ___ day of ____________, 20___ ("Effective Date"), by and between ____________________________, a ________________ ("Assignor") and ____________________________, a ________________ ("Assignee"). Assignor and Assignee are collectively referred to herein as the "Parties."

RECEITALS

A. Assignor and the City of Stockton, a California municipal corporation ("City") have entered into that certain Development Agreement dated as of ____________, 2016 ("DA") which was recorded in the Official Records of San Joaquin County on ____________, 2016 as Instrument No. ____________.

B. Assignor [has requested approval from the City of the assignment to Assignee described herein pursuant to Section 11.1A of the DA] [has the right to make the assignment to Assignee under Section 11.1B of the DA.]

C. [City has consented to the assignment described herein pursuant to Section 11.1A of the DA.] [Assignor has provided the City with documentation establishing that the assignment is appropriate pursuant to 11.1 of the DA because ____________.]

AGREEMENTS

NOW, THEREFORE, in exchange for the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:
1. **Assignment and Assumption of Interest.** Assignor hereby transfers, assigns and conveys to Assignee, all of Assignor's right, title and interest in and to, and all obligations, duties, responsibilities, conditions and restrictions under, the DA (the "Rights and Obligations"). Assignee, for itself and its successors and assigns, hereby accepts the foregoing assignment, assumes all such Rights and Obligations, and expressly agrees for the benefit of City, to pay, perform and discharge all obligations of Assignor under the DA and to comply with all covenants and conditions of Assignor arising from or under the DA.

2. **Governing Law; Venue.** This Assignment shall be interpreted and enforced in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Assignment shall be filed and litigated exclusively in the Superior Court of San Joaquin County, California or in the Federal District Court for the Eastern District of California.

3. **Entire Agreement/Amendment.** This Assignment constitutes the entire agreement among the Parties with respect to the subject matter hereof, and supersedes all prior written and oral agreements with respect to the matters covered by this Assignment. This Assignment may not be amended except by an instrument in writing signed by each of the Parties and consented to in writing by City.

4. **Further Assurances.** Each Party shall execute and deliver such other certificates, agreements and documents and take such other actions as may be reasonably required to consummate or implement the transactions contemplated by this Assignment and the DA.

5. **Benefit and Liability.** Subject to the restrictions on transfer set forth in the DA, this Assignment and all of the terms, covenants, and conditions hereof shall extend to the benefit of and be binding upon the respective successors and permitted assigns of the Parties.

6. **Rights of City.** All rights of City under the DA and all obligations to City under the DA which were enforceable by City against Assignor prior to the Effective Date of this Assignment shall be fully enforceable by City against Assignee from and after the Effective Date of this Assignment.

7. **Rights of Assignee.** All rights of Assignor and obligations to Assignor under the DA which were enforceable by Assignor against City prior to the Effective Date of this Assignment shall be fully enforceable by Assignee against City from and after the Effective Date of this Assignment.

8. **Release.** As of the Effective Date, Assignor hereby relinquishes all rights under the DA, and all obligations of Assignor under the DA shall be terminated as to, and shall have no more force or effect with respect to, Assignor.

9. **Attorneys' Fees.** In the event of any litigation pertaining to this Assignment, the losing party shall pay the prevailing party's litigation costs and expenses, including without limitation reasonable attorneys' fees.

10. **City Consent; City is a Third-Party Beneficiary.** City's countersignature below is for the limited purposes of indicating consent to the assignment and assumption set forth in this Assignment.
Assignment (if necessary under the DA), and for clarifying that there is privity of contract between City and Assignee with respect to the DA. The City is an intended third-party beneficiary of this Assignment, and has the right, but not the obligation, to enforce the provisions hereof.

11. Recordation. Assignor shall cause this Assignment to be recorded in the Official Records of San Joaquin County, and shall promptly provide conformed copies of the recorded Assignment to City and Assignee.

12. Address for Notices. Assignee’s address for notices, demands and communications under Section 13.5 of the DA is as follows:

____________________________________
Attention: ____________________________

13. Captions; Interpretation. The section headings used herein are solely for convenience and shall not be used to interpret this Assignment. The Parties acknowledge that this Assignment is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both have participated in the negotiation and drafting of this Assignment, this Assignment shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

14. Severability. If any term, provision, condition or covenant of this Assignment or its application to any party or circumstances shall be held by a court of competent jurisdiction, to any extent, invalid or unenforceable, the remainder of this Assignment, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law unless the rights and obligations of the Parties have been materially altered or abridged thereby.

15. Counterparts. This Assignment may be executed in counterparts, each of which shall, irrespective of the date of its execution and delivery, be deemed an original, and the counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF Assignor and Assignee have executed this Assignment as of the date first set forth above.

ASSIGNOR:
____________________________________

____________________________________, a

____________________________________

By: FORM - DO NOT SIGN

Name: __________________________________

Its: ____________________________________
ASSIGNEE:

_________________________________________, a

_________________________________________

By: _____________________________________ FORM – DO NOT SIGN

Name: ____________________________________

Its: _____________________________________

[NOTE: The presence of the signature blocks below in this form shall not be deemed to require
the consent of the City to any assignment that does not otherwise require the consent of City
under the DA.]

City of Stockton, a California municipal corporation,
hereby consents to the assignment and assumption
described in the foregoing Assignment and Assumption
Agreement.

CITY:

CITY OF STOCKTON, a
California municipal corporation

By: _____________________________________ FORM – DO NOT SIGN

____________________________, City Manager

ATTEST:

____________________________, City Clerk

APPROVED AS TO FORM:

____________________________, City Attorney
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
) ss
County of _________  
On __________________, before me, ____________________________ (Name of Notary) notary public, personally appeared ____________________________________________ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

______________________________ (Notary Signature)

* * * * * * * * * * * * * * * * *
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )
                   ) ss
County of __________ )

On __________________, before me, _______________________, (Name of Notary)
notary public, personally appeared ______________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

___________________________
(Notary Signature)
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 are not 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.
EXHIBIT A

Downtown Infrastructure Infill Incentive Program Boundary Map
EXHIBIT G

ASSESSMENTS

Community Facilities District No. 2001-1 (Downtown Parking); and
Downtown Stockton Management District (Downtown Stockton Alliance)
EXHIBIT H

DOWNTOWN FINANCIAL INCENTIVE PROGRAM

CITY OF STOCKTON

DOWNTOWN FINANCIAL INCENTIVE PROGRAM (DFIP):
GUIDELINES AND PROCEDURES

1. PURPOSE

To eliminate blight and/or blighting influences and to encourage economic reuse of structures within Downtown Stockton that have been vacant for a period of six months or longer. The City of Stockton will grant to the owner of eligible structure a sum equal to certain City imposed fees required to be paid in order to secure a building permit for tenant improvements.

2. ADMINISTRATION

The DFIP is administered by the Economic Development Department. The City, with the assistance of the Downtown Stockton Alliance, will verify vacancy dates and determine eligibility. The City’s determination is final. Owner shall complete an application and provide all information necessary or requested to permit City to determine and/or confirm vacancy dates. City staff will verify that the proposed use is permitted, conduct an historic review of the property, and ensure that the applicant possesses a City of Stockton business license.

3. ELIGIBILITY

a. Program Boundary
   i. Structures located within the Downtown Stockton Management District (aka Downtown Stockton Alliance) are eligible to apply. A map of the program boundary is attached as Exhibit A.

b. Eligible Structures
   i. Residential or commercial buildings
   ii. Structures that have continuously been vacant for six (6) month or longer
   iii. Structures or portion(s) thereof located within the program boundary capable of being rehabilitated pursuant to applicable building codes.

c. Eligible Uses
   i. Any use permitted within the zoning applicable to the building/parcel, including uses requiring a conditional use permit.

4. ELIGIBLE FEES

Certain City imposed fees are eligible for payment as shown in Exhibit B. Fees are paid at the time of building permit issuance. Owner must secure verification of eligibility prior to the issuance of the building permit. Only fees applicable to tenant improvements/rehabilitation are eligible. Fees associated with building expansions or new construction are not eligible for payment under this program.
5. APPLICATION

Applicant must submit a completed Downtown Financial Incentive application, signed by the property owner and Downtown Stockton Alliance, to the City of Stockton's Economic Development Department. City staff will review and determine eligibility. The property owner must agree to the following:

a. Keep the building free of graffiti and blight
b. Complete tenant improvements within 180 days of permit issuance
c. Possess a current City of Stockton Business License

The Economic Development Department will notify the Community Development Department once an application has been approved.

6. EFFECTIVE DATES

Program was originally adopted by the Stockton City Council on December 14, 1999 by Resolution No. 99-0583. Continuation of the program is dependent upon availability of funding.
EXHIBIT B
Eligible Fees

PUBLIC FACILITIES FEES
- City Office Space
- Fire Stations
- Libraries
- Police Station
- Street Improvements
- Surface Water
- Air Quality
- Conservation/Open Space
- Administration

SEWER CONNECTION FEES

SEWER ADMINISTRATION FEE

BUILDING FEES
- Plan Check
- Building Permits
- Strong Motion Instrument Program (SMIP)
- General Plan Maintenance and Implementation
- Miscellaneous Fees: Permit Tracking, Land Update, Microfilm, Green Building, Permit Issuance

FIRE PROTECTION FEES
- Plan Check: sprinkler systems fire alarm systems, hood and duct systems, others as deemed appropriate
- Permit: place of assembly

PUBLIC WORKS FEES
- Plan Check
- Permit
- Street Light “in lieu of”
- Flood Control
- Public Works Commercial Construction
EXHIBIT I
PUBLIC FACILITY FEE PROGRAM INCENTIVE GUIDELINES

PUBLIC FACILITIES FEES
Street Improvement Fee Zones
### CONSOLIDATION OF STREET IMPROVEMENT PEF ZONES

#### NORTH ZONE

<table>
<thead>
<tr>
<th>Current Fee</th>
<th>Proposed Fee</th>
<th>Difference</th>
<th>Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Office/High Density</td>
<td>$2,412.00</td>
<td>$2,412.00</td>
<td>$0.00 per 1000 sf</td>
</tr>
<tr>
<td>Retail/Medium Density</td>
<td>$3,177.00</td>
<td>$3,177.00</td>
<td>$0.00 per 1000 sf</td>
</tr>
<tr>
<td>Warehouse/Low Density</td>
<td>$931.50</td>
<td>$931.50</td>
<td>$0.00 per 1000 sf</td>
</tr>
</tbody>
</table>

#### CENTRAL ZONE

<table>
<thead>
<tr>
<th>Current Fee</th>
<th>Proposed Fee</th>
<th>Difference</th>
<th>Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Office/High Density</td>
<td>$3,600.50</td>
<td>$2,412.00</td>
<td>$1,188.50 per 1000 sf</td>
</tr>
<tr>
<td>Retail/Medium Density</td>
<td>$4,111.50</td>
<td>$3,177.00</td>
<td>$934.50 per 1000 sf</td>
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<tr>
<td>Warehouse/Low Density</td>
<td>$1,177.60</td>
<td>$931.50</td>
<td>$246.10 per 1000 sf</td>
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NOTE: Current Chart 1 Fees listed above were reduced 50% by Council on 9/14/10. Absent further Council action, these reductions will sunset on 12/31/15.

#### SOUTH ZONE - WESTON RANCH

<table>
<thead>
<tr>
<th>Current Fee</th>
<th>Proposed Fee</th>
<th>Difference</th>
<th>Unit</th>
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</thead>
<tbody>
<tr>
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<tr>
<td>Retail/Medium Density</td>
<td>$3,886.00</td>
<td>$3,177.00</td>
<td>$709.00 per 1000 sf</td>
</tr>
<tr>
<td>Warehouse/Low Density</td>
<td>$1,388.00</td>
<td>$931.50</td>
<td>$456.50 per 1000 sf</td>
</tr>
</tbody>
</table>

NOTE: “Greater Downtown Area” limits are 100% within Central Zone.

### CONSOLIDATION OF STREET IMPROVEMENT PEF ZONES

#### CENTRAL ZONE

<table>
<thead>
<tr>
<th>Current Fee</th>
<th>Proposed Fee</th>
<th>Difference</th>
<th>Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family Units</td>
<td>EXEMPT</td>
<td>EXEMPT</td>
<td>$0.00 per unit</td>
</tr>
<tr>
<td>Multiple Family Units</td>
<td>EXEMPT</td>
<td>EXEMPT</td>
<td>$0.00 per unit</td>
</tr>
<tr>
<td>Guest Rooms</td>
<td>$5,157.50</td>
<td>$5,157.50</td>
<td>$0.00 per room</td>
</tr>
</tbody>
</table>

NOTE: "Greater Downtown Area" limits are 100% within Central Zone.

Current Chart 2 Guest Room Fees listed above were reduced 50% by Council on 9/14/10. Current Chart 2 Single and Multiple Family Fees were exempted by Council on 9/14/10. Absent further Council action, these reductions/exemptions will sunset on 12/31/15.
<table>
<thead>
<tr>
<th>Area Description</th>
<th>Proposed Fee</th>
<th>Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family Units</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Greater Downtown Area*</td>
<td>EXEMPT</td>
<td>per unit</td>
</tr>
<tr>
<td>10/14/2008 Citywide Except Downtown*</td>
<td>$6,613.00</td>
<td>per unit</td>
</tr>
<tr>
<td>Beyond 10/14/2008 City Limits</td>
<td>$13,226.00</td>
<td>per unit</td>
</tr>
<tr>
<td>Multiple Family Units</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Greater Downtown Area*</td>
<td>EXEMPT</td>
<td>per unit</td>
</tr>
<tr>
<td>10/14/2008 Citywide Except Downtown*</td>
<td>$4,828.00</td>
<td>per unit</td>
</tr>
<tr>
<td>Beyond 10/14/2008 City Limits</td>
<td>$9,056.00</td>
<td>per unit</td>
</tr>
<tr>
<td>Guest Rooms</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Greater Downtown Area*</td>
<td>$5,157.50</td>
<td>per room</td>
</tr>
<tr>
<td>10/14/2008 Citywide Except Downtown*</td>
<td>$5,157.50</td>
<td>per room</td>
</tr>
<tr>
<td>Beyond 10/14/2008 City Limits</td>
<td>$10,315.00</td>
<td>per room</td>
</tr>
<tr>
<td>Office/High Density - Citywide*</td>
<td>$2,412.00</td>
<td>per 1000 sf</td>
</tr>
<tr>
<td>Retail/Medium Density - Citywide*</td>
<td>$3,177.00</td>
<td>per 1000 sf</td>
</tr>
<tr>
<td>Warehouse/Low Density - Citywide*</td>
<td>$931.50</td>
<td>per 1000 sf</td>
</tr>
</tbody>
</table>

*Subject to sunset clauses adopted by Council 9/14/10 (see Charts 1 - 4)
### CONsolidation of street improvement fees by zones

#### North Zone

<table>
<thead>
<tr>
<th></th>
<th>Current Fee (9/14/10)</th>
<th>Proposed Fee (9/14/10)</th>
<th>Difference</th>
<th>Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family Units</td>
<td>$7,690.50</td>
<td>$6,613.00</td>
<td>$1,077.50</td>
<td>per unit</td>
</tr>
<tr>
<td>Multiple Family Units</td>
<td>$5,614.50</td>
<td>$4,828.00</td>
<td>$786.50</td>
<td>per unit</td>
</tr>
<tr>
<td>Guest Rooms</td>
<td>$5,999.00</td>
<td>$5,157.50</td>
<td>$841.50</td>
<td>per room</td>
</tr>
</tbody>
</table>

#### Central Zone

<table>
<thead>
<tr>
<th></th>
<th>Current Fee (9/14/10)</th>
<th>Proposed Fee (9/14/10)</th>
<th>Difference</th>
<th>Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family Units</td>
<td>$6,613.00</td>
<td>$6,613.00</td>
<td>$0.00</td>
<td>per unit</td>
</tr>
<tr>
<td>Multiple Family Units</td>
<td>$4,828.00</td>
<td>$4,828.00</td>
<td>$0.00</td>
<td>per unit</td>
</tr>
<tr>
<td>Guest Rooms</td>
<td>$5,157.50</td>
<td>$5,157.50</td>
<td>$0.00</td>
<td>per room</td>
</tr>
</tbody>
</table>

#### South Zone (Incl. Weston Ranch)

<table>
<thead>
<tr>
<th></th>
<th>Current Fee (9/14/10)</th>
<th>Proposed Fee (9/14/10)</th>
<th>Difference</th>
<th>Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family Units</td>
<td>$9,177.60</td>
<td>$6,613.00</td>
<td>$2,564.60</td>
<td>per unit</td>
</tr>
<tr>
<td>Multiple Family Units</td>
<td>$5,960.00</td>
<td>$4,828.00</td>
<td>$1,132.00</td>
<td>per unit</td>
</tr>
<tr>
<td>Guest Rooms</td>
<td>$8,378.00</td>
<td>$5,157.50</td>
<td>$3,220.50</td>
<td>per room</td>
</tr>
</tbody>
</table>

**NOTE:** Current Chart 3 Fees listed above were reduced 50% by Council on 9/14/10. Absent further Council action, these reductions will sunset on 12/31/12.

---

### Consolidation of street improvement fees in zones

#### North Zone

<table>
<thead>
<tr>
<th></th>
<th>Current Fee (9/14/10)</th>
<th>Proposed Fee (9/14/10)</th>
<th>Difference</th>
<th>Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family Units</td>
<td>$15,381.00</td>
<td>$13,226.00</td>
<td>$2,155.00</td>
<td>per unit</td>
</tr>
<tr>
<td>Multiple Family Units</td>
<td>$11,229.00</td>
<td>$9,856.00</td>
<td>$1,373.00</td>
<td>per unit</td>
</tr>
<tr>
<td>Guest Rooms</td>
<td>$11,998.00</td>
<td>$10,315.00</td>
<td>$1,683.00</td>
<td>per room</td>
</tr>
</tbody>
</table>

#### Central Zone

<table>
<thead>
<tr>
<th></th>
<th>Current Fee (9/14/10)</th>
<th>Proposed Fee (9/14/10)</th>
<th>Difference</th>
<th>Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family Units</td>
<td>$13,226.00</td>
<td>$13,226.00</td>
<td>$0.00</td>
<td>per unit</td>
</tr>
<tr>
<td>Multiple Family Units</td>
<td>$9,856.00</td>
<td>$9,856.00</td>
<td>$0.00</td>
<td>per unit</td>
</tr>
<tr>
<td>Guest Rooms</td>
<td>$10,315.00</td>
<td>$10,315.00</td>
<td>$0.00</td>
<td>per room</td>
</tr>
</tbody>
</table>

#### South Zone (Incl. Weston Ranch)

<table>
<thead>
<tr>
<th></th>
<th>Current Fee (9/14/10)</th>
<th>Proposed Fee (9/14/10)</th>
<th>Difference</th>
<th>Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family Units</td>
<td>$15,355.00</td>
<td>$13,226.00</td>
<td>$2,129.00</td>
<td>per unit</td>
</tr>
<tr>
<td>Multiple Family Units</td>
<td>$11,938.00</td>
<td>$9,856.00</td>
<td>$2,082.00</td>
<td>per unit</td>
</tr>
<tr>
<td>Guest Rooms</td>
<td>$12,768.00</td>
<td>$10,315.00</td>
<td>$2,453.00</td>
<td>per room</td>
</tr>
</tbody>
</table>

Current Chart 4 Fees listed above were NOT reduced on 9/14/10. However, practical application is nil at this point and expected to remain so until Chart 3 reductions sunset on 12/31/12.
PUBLIC FACILITIES FEE PROGRAM
ADMINISTRATIVE GUIDELINES

I. FEE COLLECTION

These guidelines primarily apply to the implementation and administration of Stockton Municipal Code section 16.72.280, which imposes Public Facilities Fees on new development. When applicable, these guidelines shall also apply to the implementation and administration of all other code sections, which impose fees or mitigation measures on new development, including, but not limited to the following:

- Wastewater .......... 13.12.010
- Water ................. 13.04.010
- Traffic Signal ....... 16.72.140
- Street Sign .......... 16.72.170
- Street Tree .......... 16.72.180
- Parklands ............ 16.72.060

Should any situations arise which are not covered by the guidelines set forth above, the City Manager shall have the authority to make a decision as to how the ordinance and any corresponding resolution are to be administered. Such decisions are to be in writing.

Any applicant dissatisfied with the decision of the City Manager may appeal such decision to the City Council by filing written notice thereof with the City Manager within 10 days of receipt of the City Manager's decision.

A. Fee Determination

The following paragraphs provide information as to which department determines the fee amounts for various types of development.

1. Fee Exemptions and Credits for Prior Use

Upon receipt of an application for a building permit, the Community Development Department (CDD) determines if it is a permit upon which fees are to be imposed. The fee is to be imposed on permits for the siting of a mobile home and the construction of buildings, specifically excluding any partial permits. The fees shall be charged and paid at the time of issuance of a building permit for development.

It is also imposed on applications for a building permit to add to or alter an existing building (with a credit for prior use). The amount of credit will be for the equivalent of the public facility fees that would currently be assessed against the existing building (as if a building permit for the existing building were pulled simultaneously with the permit for the alterations and/or additions). As an example, if the prior use of the property would have generated 10 Dwelling Unit Equivalents (DUE) and the new building will
generate 15 DUE, then the utilities and street improvement portion of the public facility fee would be based upon the cost of the additional 5 DUE.

The Public Facilities Fees resolution specifies exemptions (under certain conditions) for (1) residential additions, (2) non-residential additions of less than ten percent additional floor area or less than ten percent additional DUE, and (3) replacement construction. The exemption for replacement or reconstruction of buildings that have been destroyed or demolished applies so long as a new building permit is issued for the reconstruction within five years after the demolition. Thereafter, the amount of credit given against fees for the prior use declines 20 percent per year. It is the property owner's responsibility to provide sufficient proof to the City in establishing the date of demolition or destruction of the building and the prior use that existed. In order to be eligible, the property owner must request a credit for the prior use on or before the payment of fees and issuance of the building permit. The Public Facilities Fees are not imposed when to do so would be inconsistent with California law or any of the other provisions of the City of Stockton ordinances or resolutions cited above. The CDD determines if the project qualifies for an exemption under any of these exemption categories.

Any applicant dissatisfied with the decision of the CDD may appeal such decision to the City Manager by filing written notice with the CDD within 10 days of receipt of the CDD's decision.

2. Responsibility for Fee Calculation - Residential

Upon receipt of an application for a building permit for residential units (as defined in the resolution), the CDD determines the number of single-family units, multiple units, and/or guest rooms and adds this information to the application. The application is then circulated to other departments for their input and then back to CDD for calculation of the fees, except that the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) fee will be calculated by and collected by SJCOG, Inc.

3. Responsibility for Fee Calculation - Non-Residential

Parkland and community recreation fees are not imposed on non-residential development. The CDD has the responsibility for making the non-residential fee calculations, except for SJMSCP, wastewater, water, and surface water supply. The responsibility for determining SJMSCP, surface water supply, water, and wastewater fees are as noted below.

Employment is used as an indicator or service need and, hence, as a basis for the non-residential fees with the exception of street improvement, traffic signals, surface water supply, wastewater, and water. The guidelines for determining square footage and employment density are:

a. Square Footage - Upon receipt of an application for a building permit for non-residential development, the CDD footage is measured as defined in the California Building Code (CBC). For improvements where the square footage is not appropriately
defined by the CBC definition, e.g. gas stations, a co-generation plant, etc., the CDD develops appropriate square footage equivalents. As explained below, employment is used as the basis for the determination of most of the fees. The square footage equivalents are therefore based on projected employment (the employment typical for that type of development).

b. **Employment Density** - Except as noted above, employment is used as an indicator of service need and, hence, as a basis for all non-residential development fees. The CDD determines whether the typical use of the improvements will be characterized by high, medium, or low employment density and adds that information to the application. The high, medium, and low employment density ranges are less than 400 square feet, between 400 and 600 square feet, and greater than 600 square feet per employee respectively. Office space is categorized as high employment density, retail space as medium employment density, and warehouse and manufacturing space as low employment density. The characteristics of the space, along with the anticipated first use, are factors in the determination of the employment density.

If the space is divided among more than one type of space each with differing employment densities, then the square footage allocated to each type will be determined, except that any type of space constituting less than 25 percent of the total space will be included in the majority space type. As examples, offices in manufacturing plants will be part of the manufacturing space and storage space in retail stores will be retail space, as long as they are no more than 25 percent of the total space.

c. **Water, Wastewater, and Surface Water Supply Fees** - The application is circulated to the Municipal Utilities Department for determination of the water, wastewater, and surface water supply fees.

d. **Other Fees** - The CDD determines the remaining fees, except that the SJMSCP fee is determined by and collected by SJCOG, Inc.

e. **Fee Determination** - The above noted fees will be determined within 15 working days.

4. **Projects Not Requiring Building Permits**

The fee is also imposed to the extent permitted by law on any development which does not require a building permit from the City of Stockton (such as a hospital, which makes application to the State). Such a development will often be required to apply to the City for a permit other than a building permit, for example, use permit, encroachment, water, or sewer connection permit. Upon receipt of such an application, the issuing department follows essentially the same procedure as described above for building permits.
5. **SJMSCP Fee**

a. In order to implement the goals and objectives of the SJMSCP, and to mitigate the cumulative and site-specific impacts of new development on undeveloped lands within the City of Stockton and in San Joaquin County, the establishment of preserve lands will be necessary to compensate for impacts to threatened, endangered, rare, and unlisted SJMSCP Covered Species and other wildlife, and compensation for some non-wildlife related impacts to recreation, agriculture, scenic values, and other beneficial Open Space uses. While those undertaking new development pursuant to the SJMSCP may opt to dedicate lands consistent with the SJMSCP preserve designs or to purchase credits from mitigation banks, most of the contribution to the SJMSCP costs from new development will be in the form of SJMSCP fees.

b. The SJMSCP Fee shall be collected by SJCOG, Inc. The SJMSCP Fee supersedes and incorporates the City of Stockton's pre-existing Habitat/Open Space Conservation Fee (established by Ordinance No. 029-94 and Resolution No. 94-0589). Such fees, along with any interest earnings, shall be used solely to pay for those uses(s) described in the SJMSCP which shall include the following:

a. To pay for acquisition of preserve lands (and associated transaction costs);

b. To pay for monitoring and restoration and/or enhancement of preserve lands;

c. To pay for endowment for long-term management of preserve lands; and

d. To pay for initial and on-going administration of the SJMSCP.

c. The SJMSCP Fees shall be as categorized, and in the sum of the amounts specified, in Sections 7.4.1, 7.4.1.1, 7.4.1.3, and 7.4.1.4 of the SJMSCP, with the exception that the fee established at the adoption of this ordinance shall be initially adjusted to 2002 dollars and re-adjusted annually thereafter in January of each year, based on SJCOG, Inc.'s annual index adjustment as specified in the SJMSCP Financial Analysis Update, dated November 2, 2006, or as amended. A summary of the SJMSCP Fees is attached hereto as Appendix D and incorporated herein by reference. The City's pre-existing Habitat/Open Space Conservation Fee (Category F) shall remain fixed (not subject to adjustments) for applicable on-going developments. The fees described in Sections 7.4.1, 7.4.1.1, 7.4.1.3, and 7.4.1.4 of the SJMSCP shall be determined based on SJCOG, Inc., staff review of the SJMSCP Vegetation Map(s) and confirmed by aerial photo information (as of the effective date of the SJMSCP Fee) and/or a pre-construction field survey, if necessary, to verify vegetation types on the site. The Compensation Zone Map, as described in Section 8.2.5 of the SJMSCP, shall be used to determine if the property is subject to the SJMSCP Fees and/or to the City of Stockton's pre-existing Habitat/Open Space Conservation Fee (Category F).

d. The SJMSCP Fee shall not be imposed on projects located in a "No Pay Zone" as established in the compensation zone maps. Project proponents may opt for only partial payment of the SJMSCP Fee if they choose to complete one or more of the following:
i. Dedicate, as conservation easement or fee title, habitat lands (in-lieu dedications) as specified in Sections 5.3.2.1 and 5.3.2.2 of the SJMSCP; or 

ii. Purchase approved mitigation bank credits as specified in Section 5.3.2.4 of the SJMSCP; or 

iii. Propose an alternative mitigation plan, consistent with the goals of the SJMSCP and equivalent or greater in biological value to option i or ii above, subject to approval by SJCOG, Inc.

e. The SJMSCP Fee shall be adjusted and implemented in January of each year as noted in Section c. above and/or in conformance with Section 7.5.2.2. of the SJMSCP. SJCOG, Inc., shall notify the City of Stockton in writing of proposed annual adjustments to the fees by October 1st of each year. SJCOG, Inc. shall be responsible for the implementation of the fee adjustment in January of each year.

6. Agricultural Land Mitigation Program (in-lieu fee and In-kind acquisition)

a. The purpose of the Agricultural Land Mitigation Program is to mitigate for the loss of agricultural land in the City of Stockton through conversion to private urban uses, including residential, commercial and industrial development.

b. The following words or phrases, when used in these Guidelines, shall have the following meanings:

(1) "Agricultural land or farmland" for the purposes of these Guidelines means important farmland, as defined by the California Department of Conservation's Farmland Monitoring and Mapping Program (FMMP) and as shown on the most recent available FMMP map of San Joaquin County. Important farmland includes prime farmland, farmland of statewide significance, and unique farmland. This definition is consistent with the purpose of the Fee, and with the definition of "agricultural land" found in the California Environmental Quality Act (Public Resources Code section 21060.1).

(2) "Agricultural mitigation land" means agricultural land encumbered by an agricultural conservation easement or such other conservation mechanism acceptable to the City.

(3) "Agricultural conservation easement" means an easement over agricultural land for the purpose of restricting its use to agriculture. The interest granted pursuant to an agricultural conservation easement is an interest in land which is less than fee simple. Agricultural conservation easements should be permanent.

(4) "Nexus Study" means the City of Stockton Agricultural Mitigation Fee Nexus Study, prepared June 21, 2006, as may be amended from time to time.
"Qualifying entity" means a nonprofit public benefit 501(c)3 corporation operating in San Joaquin County for the purpose of conserving and protecting land in its natural, rural or agricultural condition. A qualifying entity shall have suitable accounting and reporting procedures to assist the City in preparing the annual report described in Section g, below.

c. The Agricultural Land Mitigation Program shall apply to all, projects under the jurisdiction of the City of Stockton that would result in the conversion of agricultural land, as defined in this section, to a non-agricultural use, including residential, commercial, and industrial development. The Agricultural Mitigation Program shall apply (whether through an in-lieu fee or in-kind direct purchase) to the acquisition of agricultural mitigation lands (of equal or better quality to the land that is being converted) within the "Central Zone" of San Joaquin County [as defined in the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) and excluding the Primary Zone of the Delta]. The Agricultural Mitigation Program shall not apply to agricultural activities and facilities as defined by the Development Code or projects within the SJMSCP "No Pay Zone" (see h.).

d. For projects of forty (40) acres or more, the in-kind direct purchase/acquisition of an agricultural mitigation easement at a 1:1 ratio and dedication to a qualifying entity shall be required. The Owner/Developer/Successor shall pay the associated administrative, monitoring, and contingency costs identified in the fee study, subject to any inflationary adjustments.

For projects of less than forty (40) acres, the Owner/Developer/Successor shall have the option to pay an in-lieu agricultural mitigation fee. The fee shall be determined by the fee schedule in effect on the date the final subdivision map is filed, the vesting tentative map application is deemed complete, or the date a building permit is issued, as applicable.

e. Dedication of agricultural mitigation land, or payment of in-lieu fees, shall be made prior to the recording of a final subdivision map, except where a final map is processed to create parcels that are forty (40) acres or more in size for purposes of resale and not intended for development. Where a subdivision map is not required, the dedication shall occur or the fee shall be collected before the issuance of building permits. The filing of a parcel map, which does not result in the conversion of agricultural lands, does not require dedication or payment of in-lieu fees. However, it is the intent of this section that the division of property into parcels of less than forty (acres) shall not be used to avoid dedication of mitigation lands that would otherwise be required. Therefore, projects larger than forty (acres) that are subsequently divided into parcels less than forty (40) acres are not eligible to pay in-lieu fees.

f. Agricultural mitigation shall be at a ratio of 1:1 (1 acre of mitigation land per acre of agricultural land converted to any other land use). The size of the dedication or the amount of the in-lieu fee shall be calculated based on the acres within the subdivision classified as agricultural land. Where a subdivision map is not required, the fee shall be
calculated based on the acres classified as agricultural land within the parcel for which the building permit is issued.

g. Agricultural mitigation fees shall be placed in a separate Agricultural Mitigation Fee account to avoid commingling of the fees with the other funds of the City of Stockton. The fees may be temporarily invested. Such fees, along with any interest earnings, shall be used solely to pay for those uses described in the Nexus Study which shall include the following:

(1) To pay for acquisition of agricultural mitigation lands (of equal or better quality to the land that is being converted) within the "Central Zone" of San Joaquin County [as defined in the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) and excluding the Primary Zone of the Delta].

(2) To pay for transaction costs related to the acquisition of agricultural mitigation lands.

(3) To pay for ongoing monitoring and administrative costs related to the ongoing stewardship of agricultural mitigation lands.

(4) To provide a contingency for unexpected transaction costs or future legal costs required to maintain the terms of an agricultural conservation easement.

Agricultural conservation fees may be expended by the City of Stockton or transferred to the Central Valley Farmland Trust, or other qualifying entity as determined by City Council, for the purpose of acquiring agricultural mitigation land. For funds transferred to the Central Valley Farmland Trust, or a qualifying entity, the City shall transfer such funds quarterly, provided funds are available in the Agricultural Mitigation Fee Account. It is permissible to use agricultural mitigation fees in order to obtain agricultural mitigation lands in fee simple, provided the purpose is to place an agricultural conservation easement on such lands, and make the lands available by sale for agricultural use.

h. The Agricultural Mitigation Program shall not apply to projects located in the "No Pay Zone" as established in the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) compensation zone maps.

i. The specific parcel(s) containing a residential project that provides affordable housing and complies with the following (see Development Code chapter 16.40 for specific development requirements) shall be exempt from the Agricultural Land Mitigation Program:

Consist of five or more dwelling units;
Be available so that at least:

1. Twenty percent of the total number of proposed dwelling units are for lower-income household, as defined in Health and Safety Code section 50079.5; and/or

2. Ten percent of the total number of proposed dwelling units are for very low-income households, as defined in Health and Safety Code section 50105.

This exemption shall apply exclusively to the net parcel area on which the affordable housing project is located and shall not apply to any other parcels within the same subdivision, planned development, Master Development Plan, Specific Plan, or other commonly owned or planned areas.

j. Stacking of habitat easements on top of existing agricultural easements is allowable with concurrence from San Joaquin Council of Governments and the qualifying entity administering the agricultural easement.

k. Agricultural easements shall be established in perpetuity.

l. Projects that qualify to pay the in-lieu fee shall be subject to a 2.5% administration fee. In addition, agricultural mitigation fees shall not be eligible for the "Deferred Payment" option set forth in Section C.

m. The City shall report to the City Council once each fiscal year concerning the fees and accounts, including any portions of fees remaining unexpended or uncommitted five (5) or more years after deposit. The City Council shall make findings once each fiscal year with respect to any portion of the fee remaining unexpended or uncommitted in its account five (5) or more years after deposit of the fee, to identify the purpose to which the fee is put, and to demonstrate a reasonable relationship between the fee and the purpose for which it was charged.

A refund of unexpended or uncommitted fee revenue for which a need cannot be demonstrated, along with accrued interest may be made to the current owner(s) of the development project(s) by the City on a prorated basis. The City may refund unexpended and uncommitted fee revenue that has been found by the City Council to be no longer needed, by direct payment or by off-setting other obligations owed to the City by the current owner(s) of the development projects(s).

If the administrative costs of refunding unexpended and uncommitted revenues collected pursuant to this program exceed the amount to be refunded, City, after a public hearing, for which notice has been published pursuant to Government Code Section 6061 and posted in three prominent places within the area of the development project, may determine that the revenues shall be allocated for some other purpose for which the fee is collected subject to this Chapter that serves the project on which the fee was originally imposed.
B. **Place of Collection**

The COD totals the fees as determined by the appropriate departments and informs the applicant of the amounts of the total and its components. The applicant pays the SJMSCP fee directly to SJCOG, Inc. and then brings a receipt or voucher of payment to the City as proof of payment prior to the issuance of the building permit. The applicant pays all other fees simultaneously with the issuance of the permit unless the applicant qualifies for and elects to defer payment of the fees as explained below.

C. **Deferred Payment - Non-Residential**

Rather than paying "development fees" at the time a building permit is issued, the developer who has qualified the project as a "qualified project" with the City Manager's Office, Economic Development Division, may elect to defer payment of all or a portion of those fees with the exception of surface water supply fee, air quality mitigation fee, SJMSCP Fee, Regional Transportation Impact Fee, San Joaquin County Facilities Fee, and Agricultural Mitigation Fees.

1. **Definitions**

   a. A "qualified project" is defined as a commercial, office, or industrial/warehouse project on one parcel of land or a group of non-residential contiguous parcels under the same ownership; and

   b. An "Enterprise Zone project" is any project which is within the definition above and located within the boundaries of the Enterprise Zone as existing or hereafter amended.

   c. "Development fees" include the following:

      - Public Facilities Fee (less Surface Water Supply Fee, Air Quality Mitigation Fee, SJMSCP Fee, Regional Transportation Impact Fee, San Joaquin County Facilities Fee, and Agricultural Mitigation Fee) (S.M.C. 16.72.260)
      - Wastewater Fee (S.M.C. 13.12.010)
      - Water Fee (S.M.C. 13.04.010)
      - Traffic Signal Fee (S.M.C. 16.72.140)

2. **Deferral of Fees**

   a. For a "qualified project," if the total amount of "development fees" due and payable at the time of issuance of a building permit or multiple permits issued concurrently for a project exceeds $100,000, the property owner may enter into a Deferred Payment Agreement with the City to pay ten percent (10%) of those fees at the time the building permit is issued with the remaining ninety percent (90%) to be paid in equal installments over the next ten (10) years (or less at the property owner's option except that wastewater and water fees shall be paid in full within five (5) years).
b. For an "Enterprise Zone project," if the total amount of "development fees" due and payable at the time of issuance of a building permit, or multiple permits issued concurrently for a project, exceeds $20,000, the property owner may enter into a Deferred Payment Agreement with the City for payment of any amount of "development fees" with an initial payment at time of issuance of the building permit of not less than twenty percent (20%) of those fees and the remaining eighty percent (80%) paid in equal annual installments over a period of five (5) years (or less, at the owner’s election) or pay ten percent (10%) of those fees at the time the building permit is issued with the remaining ninety percent (90%) to be paid in equal installments over the next ten (10) years (or less at the property owner’s option except that wastewater and water fees shall be paid in full within five (5) years).

c. There is also the possibility to defer fees if the total amount of "development fees" due and payable is $20,000 or greater but less than $100,000 as set forth in Appendix E attached hereto and incorporated herein.

3. **Security**

a. For a "qualified project," the property owner shall, as security for repayment, execute and deliver a deed of trust on qualified project property to be recorded in the San Joaquin County land records, and execute a promissory note evidencing the obligation and terms of repayment. On a case by case basis, adequate security acceptable to the City and equal to the unpaid balance may be provided.

b. For "Enterprise Zone projects," the property owner shall, as security for repayment, execute and deliver a deed of trust on qualified project property to be recorded in the San Joaquin County land records, and execute a promissory note evidencing the obligation and terms of repayment.

4. **Repayment Terms**

a. Interest: The unpaid balance of the fees shall be subject to interest and collection charges. The annual interest rate will be equal to the 11th District Cost of Funds plus 1% (100 basis points) adjusted every July. For "Enterprise Zone projects" with a five (5) year or less payback period, interest shall begin to accrue on the first anniversary of the agreement.

b. Due on Transfer: The unpaid balance together with accrued interest shall be due and payable in full upon the sale or any other transfer of the property.

c. Recording and Processing Fees: All such fees shall be paid by the owner or applicant.
5. **Processing Deferred Fee Requests**

a. For "qualified projects," and "Enterprise Zone projects," an application shall be submitted to the Revitalization Department for review, processing, and determination of eligibility.

b. The applicant shall provide, with the application, a preliminary title report, legal description of the property, and a brief description of the project.

c. If the project is eligible, the Revitalization Department shall prepare the agreement and security documents for review and execution. The executed documents shall be returned to the Revitalization Department for processing. Once the deferral agreement is executed by the City and the security documents have been approved and/or recorded, the Revitalization Department will issue a notice to the CDD to proceed with issuance of the building permit(s), stating the amount of fees to be collected at issuance, and deferral of the balance of the development fees.

6. **Redevelopment Agency Deferral Authority for Nonresidential Governmental Uses/Tenancies**

The Redevelopment Agency of the City of Stockton is authorized to offer additional fee deferral opportunities in connection with the redevelopment of the City's downtown for redevelopment projects involving government office uses/tenancies that meet all of the following criteria: Consist of office facilities of 25,000 square feet or greater; require a conditional use permit (i.e., for a use not permitted outright); are located along the Stockton Channel Area; and are constructed as a multiple (not single) story building. The deferral afforded the Redevelopment Agency pursuant to this provision shall allow for a deferral of up to 100% of the development fees (as defined in this section) for a maximum period of up to 55 years and shall include an option, as determined by staff on a case by case basis, of no required down payment and an interest rate as low as 0% on the deferred principal.

D. **Deferred Payment - Low/Moderate Income Residential**

Rather than paying "development fees" at the time a building permit is issued, the developer, who has pre-qualified his "qualified residential project" with the Revitalization Department of the City, may elect to defer payment of all or a portion of those fees (except for the Regional Transportation Impact Fee, San Joaquin County Facilities Fee, Agricultural Mitigation Fee, Air Quality Mitigation Fee, Surface Water Supply Fee, and SJMSCP Fee).

1. **Definitions**

A "qualified residential project," as certified by the Revitalization Department, is defined as either:
a. A single-family housing project consisting of one or more homes on one or more lots within an approved subdivision under the same ownership. Single-family home projects must be sold to owner-occupied, first-time home buyers whose combined family income is equal to or less than 100% of the median income for the Stockton Metropolitan Statistical Area as contained in HUD's Section 8 Housing Program Income Limits as adjusted from time to time. The home purchase price shall not exceed the FHA limit for home mortgages without mutual mortgage insurance as adjusted from time to time.

b. A multi-family housing project consisting of any new construction project meeting the definition of a "low rent housing project" as contained in Article XXXIV of the California Constitution requiring local voter approval or any other project utilizing local, state, and/or federal funds in whole or in part in the acquisition or construction of said project.

"Development Fees" shall be defined as:

- Public Facilities Fee (less Surface Water Supply Fee, Air Quality Mitigation Fee, SJMSFCP Fee, Regional Transportation Impact Fee, San Joaquin County Facilities Fee, and Agricultural Mitigation Fee) (S.M.C. 16.72.260)
- Parkland Fee (S.M.C. 16.72.160)
- Traffic Signal Fee (S.M.C. 16.72.140)
- Wastewater Fee (S.M.C. 13.12.010)
- Water Connection Fee (S.M.C. 13.04.010)

2. **Deferral and Repayment**

Development fees for "qualified residential projects" shall be deferred during the period the project is under construction. In the case of a single-family project, fees deferred shall be collected without interest at the time permanent take-out financing is put in place as part of the closing transaction for the purchase of the home by the qualified buyer. In the case of multi-family projects, fees deferred shall be collected without interest prior to final approval of the Building Permit and issuance of a Certificate of Occupancy.

3. **Security**

All development fees deferred for "qualified residential projects" shall be secured by recorded liens or deeds of trust encumbering each lot of record involved with the project. Said liens or deeds of trust shall be recorded prior to issuance of Building Permits and shall be secondary only to deeds of trust associated with acquisition or construction financing. Full or partial reconveyance of encumbrances shall be issued by the City at the time "development fees" are paid. All document preparation and recording fees shall be paid by developer or property owner applying for the fee deferral.
4. **Penalty**

All development fees deferred pursuant to this program shall be subject to a penalty if the single-family home projects are not sold to buyers meeting the income qualifications or if the purchase price exceeds the maximum allowed. In the case of multi-family projects, a penalty will be assessed if, following initial approval, the project is restructured so as not to meet the definition of a low rent housing project or refinanced so as not to include public funds as contained in the definition of a "qualified residential project." The penalty assessed shall be in the form of an interest payment equal to the 11th District Cost of Funds plus 1% (100 basis points) adjusted every July computed from the date the fee is deferred until totally repaid.

5. **Processing Deferred Fee Requests**

Developers or owners of "qualified residential projects" shall make application for the deferment of fees to the Revitalization Department. In the case of single-family housing projects, the content of the application shall be a list of all fees applicable to the project as calculated by the CDD. In addition, the applicant shall submit a brief description of the project profiling the type of buyer expected to reside within the project. This shall include projected annual income of home buyers and projected sale prices.

For "qualified multi-family projects," the developer or applicant shall submit a project proforma and financial feasibility analysis that includes sources of all financing associated with the project; projected rents for the project; operating maintenance; and debt service costs associated with the project. The application shall also include a preliminary title report and legal description. The Revitalization Department shall review the information submitted and make a determination as to whether the project meets the criteria for a deferral of fees. For those projects meeting the above-mentioned criteria, the Revitalization Department will prepare a Development Fee Deferral Agreement along with a security document consisting of a lien or deed of trust to be executed by the applicant and returned to the City for processing. Once the deferral agreement is executed by the City and the security document has been recorded, the Revitalization Department will issue a notice to the CDD to proceed with the deferral of the development fees and the issuance of the Building Permit.

6. **Collection**

In the case of single-family housing projects, development fees shall be collected as part of the sales transaction between developer and qualified home purchaser. Development fees shall be paid to the City out of the proceeds of the permanent take-out loan. At the time the sales transaction takes place, the developer or escrow company shall submit an appropriate document to the Revitalization Department evidencing that the proposed buyer meets the income qualifications and the purchase price of the home is within the maximum amount allowed. Evidence of satisfying this criteria will include a copy of the purchase agreement and copies of the buyer's last three years' income tax returns. The Revitalization Department will review this information and make a final determination as to the buyer's eligibility. The Revitalization Department will determine whether the development fee repayment
amount will include an interest payment as a penalty and submit this demand to the escrow agent along with reconveyance documents. The escrow company will collect and remit to the appropriate demand and transmit it to the Revitalization Department for processing.

In the case of multi-family projects prior to the issuance of a Certificate of Occupancy or the placement of permanent take-out financing for the project, the developer shall submit evidence that long-term financing agreements have been executed with public entities that contain provisions and assurances that the project will remain affordable to lower-income tenants during the duration of the finance period. Upon review and approval of such documents, the Revitalization Department will calculate the appropriate repayment amount and follow the remainder of the procedures as described above.

E. Refunds

Refunds, less the administrative fee, will be made according to City procedures.

II. EXPENDITURES

A. Capital Improvement Program

State law requires that development fees be imposed only when the nature of the facilities to accommodate the development has been identified and the cost of these facilities estimated. Furthermore, the City must account for the use of the funds. In order to fulfill this requirement, the City has undertaken a number of studies analyzing public facility needs and/or the need for compensation measures to offset the impacts of future development. The intent of Appendix A is to list the various types of public facilities and compensations governed by these administrative guidelines and the respective authority that established the needs for facility type. The referenced authority does include specific public facilities scheduled for partial or full funding by the public facilities fee as well as guidelines for use of the SJMSCP fee component of the public facilities fees.

Projects to be constructed by the City in the next five years are included in the City's Capital Improvements Program (CIP). This includes projects to accommodate new development and to cure existing deficiencies.

Beginning with the 1990-91 fiscal year, the facilities listed in Appendix A (in its updated form) will be reviewed and those projects planned for construction within five years will be included in the City's CIP budget. The City's CIP budget will also include:

1. Projects scheduled for construction by developers within the next fiscal year and funded with a combination of developer and City funds.

2. Projects which have been constructed by the developer that have City Council approved reimbursement agreements and funds have been scheduled to be paid to the developer in the next fiscal year(s) based
B. Budgeting for Proposed Projects

At the time that an actual appropriation for a project is requested, either during the annual budget preparation or as an appropriation during the fiscal year, the following information must be provided as part of the request:

1. To insure satisfaction of the nexus requirement, identify the proposed project as being one of the Council projects intended to be provided by the public facilities fees or, within the adopted guidelines for use of SJMSCP fees. See Appendix A.

2. Document the percentage of cost, if any, of the proposed project that is to correct existing deficiencies. Reference to an analysis that may be included as part of Appendix A would satisfy this requirement.

3. Be specific in identifying the source of funding for the proposed project. For the percentage that is approved for expenditure of public facilities fees other than SJMSCP fees, it is necessary that the facility type and fee area be identified for each portion of the appropriation. This is necessary because the revenues are being collected by a particular fee area for each facility type and are being accounted for by specific facility type and fee area. For the percentage that is determined to correct existing deficiencies, identify specifically the other source of funds.

4. Check with the Administrative Services Department to determine if sufficient funds are available in the correct accounts for the necessary appropriations. The amount available will include the fund balance, less any amounts already appropriated or otherwise encumbered, plus estimated revenues. The CDD and Public Works Departments will provide the Administrative Services Department with projections of estimated revenues from public facilities fees by facility type and fee area.

5. Initiate a loan between fee areas if sufficient funds are not available in the correct accounts.

upon available City funding. For reimbursement purposes, the City will set aside, for each fee area and facility type, 25 percent of the fees collected (minus credits) in the prior year. Any unexpended portion of the 25 percent reimbursement set aside will be carried over for one year only.

3. Projects which have been constructed by the developer that have City Council approved reimbursement agreements for which no funds have been scheduled to be paid to the developer in the next fiscal year due to lack of funds. It is the intent of this provision that all projects that have City Council approved reimbursement agreements shall be included in the City’s CIP budget and in order of priority based upon the effective date of the reimbursement agreement.
C. Existing Deficiencies

The adoption of the Public Facilities Fee program requires the City to correct existing deficiencies. It is the intention of the City to appropriate funds each year such that at the end of each year, the cumulative appropriations will meet a defined proportion of the total cost of correcting deficiencies. This proportion shall be calculated as the ratio of the number of years after 1987-88 (the number of years the fee program has been in effect) to the 20 years through the 2007-08 fiscal year. In other words, it is the City’s intention that funds to correct the deficiencies will be provided by the 2007-08 fiscal year at an approximate rate of one-twentieth each year. Existing deficiencies will be funded by general funds and/or bond issues (net of issuance costs).

D. Zone Expenditure Guidelines

The principle that the fees collected from a development must be used for the facilities to accommodate that development is being further fulfilled by a guideline that the majority of the funds collected in each of three geographical zones of the City be used for facilities to serve that area. This restriction does not apply to the police station, surface water supply, and City office space fees, as these facilities are centrally located and serve the entire City. It also does not apply to the water, wastewater or the SJMSCP fees. It does apply to the fire station, library, community recreation center, street improvement, parklands and traffic signal fees.

For this purpose, the City is divided into three zones: North—generally north of the Calaveras River—equal to fee collection areas 1 and 2; Central—generally between Charter Way (now known as Martin Luther King Jr. Blvd.) and the Calaveras River—equal to fee collection areas 3 and 4; and South—generally south of Charter Way—equal to fee collection areas 5 and 6. For each of the fees, an account has been established for each area. Approximately eighty-five percent of each fee collected is credited to the account for the fee area from which it was collected. The funds in the accounts for fee areas 1 and 2 will be expended for projects in the North zone. The funds in the accounts for fee areas 3 and 4 will be expended for projects in the Central zone. The funds in the accounts for fee areas 5 and 6 will be expended for projects in the South zone.

Because some service demands are made across zones, the remaining fifteen percent of the fee is deposited into a City-wide account (for each fee), the contents of which may be expended anywhere in the City for facilities to accommodate new development.

The above percentages could vary depending on ordinances or based on additional analysis which identified alternate distribution.

E. Borrowing Among Fee Area Accounts

It would not well serve the City to have funds gradually building in all of the fee area accounts for an extended period of time without any one account having sufficient funds to provide a facility, thus depriving all areas of new facilities. Therefore, in order to
enable the provision of facilities as they are needed, loans can be made from one-fee area account to another.

The department initiating the request for an appropriation must also initiate the loan request. The loan would be required if sufficient funds are not available in the fee area accounts within the expenditure zone. Such borrowing may only take place, however, if it can be demonstrated that the account from which the funds are borrowed will have sufficient remaining funds to appropriate to projects scheduled within that zone. A financial plan must be prepared projecting anticipated revenues to the accounts for the fee areas within the zone and proposing a repayment schedule. All loans shall require loan documentation and approval by the City Council. The account from which the funds were borrowed shall receive interest on funds loaned equal to the City’s average pooled investment earnings rate.

The possible need for a loan must be addressed at least twice during the life of a project.

1. It may be necessary to establish a loan at the time an appropriation for a specific project is requested. Depending on the estimated beginning date of the proposed project, the above appropriation and/or loan might be based largely on estimated revenues.

2. It may also be necessary to establish or amend the amount of a loan at the time the department issues a purchase order or requests City Council approval of a contract for an expenditure of funds from the project account. At the request of the department managing the project, the Administrative Services Department will re-evaluate the availability of funds by comparing actual revenues collected with estimated revenues (used in step 1 above) and indicate if there is an additional need for a loan at this time. If this is the case, then the loan must be approved by the City Council before the contract or purchase order can be executed.

F. Developer In Lieu Improvements

New development is responsible for all public facilities that are needed as a result of new development. This includes all improvements that are required by the subdivision and public improvement ordinances or identified as being necessary to satisfy mitigation measures for the project. There may be situations where a developer will incur the cost of a facility which corrects an existing City deficiency or serves other development. Therefore, under those conditions, developers will receive a reimbursement in the form of credits or cash, plus interest at the rate equal to the 11th District Cost of Funds from the date the improvements are accepted by the City, consistent with the City Council approved reimbursement agreement. Developers dedicating the land and/or constructing these facilities will be eligible for credit/reimbursement as outlined in those administrative guidelines. Construction costs, design costs, and fees for plan checking and inspection, etc., are eligible for credit/reimbursement.
A credit/reimbursement will be given to the developer to offset the public facilities fee for that type of facility imposed on subsequent development of the parcel. In other words, a street improvement cost will only be subject to credit/reimbursement against the street improvement fee.

The amount of credit/reimbursement shall be as outlined below for each of the appropriate fees:

**Libraries, Community Recreation Centers, Fire Stations, & Parks:**

If the developer only dedicates the land for these facilities, it is eligible for a partial credit/reimbursement equal to the percentage of the fee that is needed to acquire the land. As an example, if 50% of the parkland fee is to acquire land for parks, a developer that dedicates the land will be eligible for a 50% credit against its parkland fee for permits within its development. The developer is also eligible to be reimbursed for 50% of the parkland fees from other developments within the service area of the park.

In the case of parkland, the value of the land dedicated shall be the value of land used to calculate the parkland fee in effect on the date the land is accepted by the City Council.

If the developer also constructs one of these facilities, it is eligible for a full credit/reimbursement of the fee for permits within its development, and reimbursement of the fees from other developments within the service area of the facility.

**Wastewater:**

The sanitary sewer connection fee is composed of the following components: (1) treatment, (2) existing collection system, and (3) future collection systems.

If the developer constructs a completely new collection system in accordance with the Master Plan, conveying wastewater from the developed parcel to the City of Stockton Wastewater Control Facility on Navy Drive, without use of any portion of the existing City sanitary sewer system, developer is eligible for a full credit/reimbursement within its development of components (2) existing collection system and (3) future collection systems, of the connection fee. The developer is also eligible for reimbursement of a portion of the fee for both existing and future collection systems from other developments within the service area of the collection system improvements.

If the developer connects to the existing collection system and installs mains in accordance with the Master Plan, developer is eligible for a full credit/reimbursement within its development of component (3) of the connection fee-future collection systems. The developer is also eligible for reimbursement of
a portion of the fee for future collection systems from other developments within the service area of the collection system improvement.

In no case will the reimbursement authorized under this section of the Administrative Guidelines exceed the cost of the eligible sanitary sewer improvements constructed by the developer.

**Water:**

If the developer constructs a portion of the water system in accordance with the Master Plan, it is eligible for a full credit/reimbursement within its development for the fee for that portion of the cost which represents water transmission mains installed which exceed the requirements of the individual development as determined by the City. The developer is also eligible for reimbursement in accordance with the City’s Water Rates and Regulations.

**Street Improvements:**

If the developer constructs a portion of the street improvements within and adjacent to its project which are covered by the fee, it is eligible for a 50% credit/reimbursement on building permits within its development until the full cost of the improvements have been recovered. The 50% credit is necessary since only approximately 33% of the total street improvements covered by the fee are adjacent to or within undeveloped properties. The remaining improvements are freeway-related improvements, railroad grade separations, and street improvements adjacent to developed properties. Without the City retaining 50% of the fees, sufficient revenue would not be generated to fund the necessary freeway, railroad grade separations, and street improvements adjacent to developed properties.

If the developer constructs a portion of the street improvements outside and not adjacent to its development, it is eligible for a 100% credit/reimbursement on building permits until the full cost of the improvement has been recovered.

Refer to Appendix B for specifics on reimbursements for developer constructed street improvements. Also, refer to Appendix C on the procedures to be followed where past developments made significant street improvements and the development is not completely built out.

The developer shall submit a detailed cost breakdown of the public facilities to be constructed and/or the land to be dedicated for the public facilities. The cost breakdown shall also include the timing of the various improvements. In addition, the developer shall submit a yearly schedule of projected building permits through full build-out of the project. The developer shall enter the projected building permits, applicable fees, cost breakdown, interest and the proposed spread of credits/reimbursements into a spreadsheet compatible with City-used software.
The spreadsheet shall be reviewed and approved by the Public Works Department. Upon approval, the developer shall provide a copy of the spreadsheet compatible with City-used software. The spreadsheet shall be updated by the developer and reviewed and approved by the Public Works Department at least once a year. The value of the land and improvements shall not be adjusted for inflation or deflation, but the applicable fees shall be adjusted to the current fee and projected ahead in constant dollars.

The City shall enter into a credit/reimbursement agreement with the developer. The agreement shall provide for the credit/reimbursement to the developer from fees generated within the project and that are citywide. The timing and method of payment (credit/reimbursement) will be negotiated and included as part of the subdivision agreement or as approved by the City Council when the improvements are accepted. If the improvements are financed by an assessment district (including Mello-Roos), credits may be given to the individual property owner and/or reimbursement shall be made to the district. The proposed spread of credits/reimbursement must also be approved by the City Council prior to the subdivision improvements being accepted by the City Council.

If the credit/reimbursement agreement is submitted for approval by the City Council prior to the installation of the improvements, the costs will be based upon estimates. Upon completion of the improvements, the credit/reimbursement agreement will be resubmitted to the City Council for approval prior to subdivision improvements being accepted.

If the developer has pulled building permits and paid public facility fees prior to the credits/reimbursement agreement being approved by the City Council, the developer will only receive credits/reimbursements on future permits. No refunds will be processed for the fees paid prior to the credit/reimbursement agreement being approved by the City Council.

When the various fees are adjusted by the City Council, the total amount to be credited/reimbursed does not change, but the amount of credit/reimbursement to be applied to an individual building permit will be adjusted. For example, if a fee was originally $1000 and the developer receives a 50% credit or reimbursement, when the fee increases to $1100, the developer will still receive a 50% credit or reimbursement but it will be $550 versus the original $500.

The developer has the option, to be determined at the time of the reimbursement agreement, of receiving credits when the building permits are issued or accumulating these credits and receiving a lump sum reimbursement at the end of each quarter, based upon claims made by the developer.

G. Use of Administrative Funds

The funds in the administrative account are not used for studies and/or administration for specific improvements or types of improvements. Such expenses are charged to the account for that type of facility, i.e., a traffic analysis charged to the Street Improvements accounts. However, administrative funds may be used for planning
studies, such as a City initiated general plan revision. The funds in the administrative account are not used to cover the cost of reviewing projects; nor are funds from any other fee account used for this purpose. The funds may be used for both consultant and staff costs. Staff costs are calculated based on time card entries.

III. ANNUAL REPORT

A. Fiscal Year Summary

An annual report on the development fee program is prepared. The first portion of the report, the fiscal year summary, is prepared reasonably soon after the end of the fiscal year, as accounting information becomes available. This portion of the report includes the following information.

1. Account Balances - The information includes fiscal year revenues and the accumulated balance for each account.

2. Improvements - The report includes, for each account and subaccount, except the SJMSCP Account, the following: the constructed improvements and a projection of the funds to be collected in each of the next five years; when the next project (or projects) will be able to be funded; and the proposed projects to be undertaken in the next five years. The latter information is in a form appropriate for integration into the Capital Improvements Program. For the SJMSCP Account, the annual report will be provided by SJCOG, Inc.

3. Administration Fund - The revenues to the administration account are compared with the administration expenses incurred, both for the past fiscal year and for an appropriate longer period of time. Both future projected revenues and expenses are also included in the report, along with a recommendation either to retain the current level of administrative component of the fee, or to adjust it up or down.

4. Existing Deficiencies - The expenditures to cure existing deficiencies are set forth, both for the fiscal year and cumulatively. These expenditures are compared with the commitment to cure existing deficiencies on at least a pro rata basis between 1988 and the present 2008.

5. Reimbursement Agreements - The report includes, for each agreement, the following: the constructed improvements; the total cost of the improvement including land; all accrued interest; the outstanding balance; and the projected credit/reimbursement and source of revenue.

B. Fee Review and Adjustment

The second portion of the annual report is prepared three or four months before the start of the calendar year. This report is submitted to the City Council along with recommendations so that action can be taken no later than 60 days before the start of the calendar year, allowing the adjusted fees to become effective on or about January 1. This portion of the report includes the following information.
1. **Inflation Adjustments** - The report presents information on the inflation rate during the prior calendar year as determined by the construction cost index of the Engineering News Record publication. The rate of inflation (or deflation) is applied to the fees to determine the fees for the subsequent year. A land cost index will be used to adjust the land cost portion of the fees.

2. **Reimbursement Agreements Adjustments** - The report presents information on the credits/reimbursements due developers for the subsequent year. Since the developers are eligible for credits/reimbursements plus interest, the fees shall be adjusted to cover this additional expense.

3. **Special Studies or Information** - From time to time, new information will be come available regarding the facilities needed to accommodate new development and their cost. If this information is different from that upon which the fees are currently based, the information should be documented along with calculations that determine the appropriate new fee level.

4. **Findings** - The report sets forth findings suitable for adoption by the City Council determining that, except for the adjustments listed, the prior findings on which the current fees are based are still sufficiently accurate.

Adopted Feb. 12, 1991 (Resolution No. 91-0119);
Amended Jan. 23, 2007 (Resolution No. 07-0040);
Amended __________ (Resolution No. ______)
RESOLUTION REVISING THE PUBLIC FACILITIES FEE FOR STREET IMPROVEMENTS BY CONSOLIDATING THE FEE AREAS INTO ONE CITY-WIDE ZONE

The City of Stockton Public Facilities Fee Program for Street Improvements is structured to include four zones: North, Central, South, and City-wide. Fees are collected in the North, Central, and South zones only. The City-wide zone receives 15% of the fees collected from the other three zones; and

This zone and fee structure has led to a program that does not accurately account for the complexity of traffic impacts across all zones, has unneeded administrative and accounting burdens, differing economic impacts due to fees that vary by location, and financial instability due to inter-zone loans and a November 2009 bond issuance in the North zone; and

Consolidation of the zones into one City-wide zone would resolve this financial instability, reduce the administrative and accounting burden, and provide a uniform fee structure that does not vary by location. The proposed fee would correspond to the Central zone fee which is the lowest of the zones; now, therefore,

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

1. The Public Facilities Fee for Street Improvements is revised by consolidating the fee areas into one City-wide zone.

2. The Public Facilities Fee for Street Improvements is hereby approved as set forth in Exhibit 1.

3. The City Manager is hereby authorized to take whatever actions are appropriate to carry out the purpose and intent of this resolution.

PASSED, APPROVED, and ADOPTED

ATTEST: ANN JOHNSTON, Mayor
of the City of Stockton

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton
### Consolidation of Street Improvement PEF Zones

**Summary of Proposed New Fees**

<table>
<thead>
<tr>
<th>Single Family Units</th>
<th>Proposed Fee</th>
<th>Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Greater Downtown Area</td>
<td>EXEMPT</td>
<td>per unit</td>
</tr>
<tr>
<td>10/14/2008 Citywide Except Downtown</td>
<td>$9,613.00</td>
<td>per unit</td>
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<td>Beyond 10/14/2008 City Limits</td>
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<th>Multiple Family Units</th>
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<td>Greater Downtown Area</td>
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<td>Greater Downtown Area</td>
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<tr>
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<td>$331.50</td>
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*Subject to sunset clauses adopted by Council 8/14/10 (see Charts 1 - 4)*
Resolution No. __________________

STOCKTON CITY COUNCIL

RESOLUTION AUTHORIZING THE AMENDMENT OF THE PUBLIC FACILITIES FEE PROGRAM ADMINISTRATIVE GUIDELINES TO CONSOLIDATE THE STREET IMPROVEMENT FEE INTO ONE CITY-WIDE ZONE

The Public Facilities Fee Program for Street Improvements is structured to include four zones: North, Central, South, and City-wide. This zone and fee structure has led to a program that does not accurately account for the complexity of traffic impacts across all zones, has unneeded administrative and accounting burdens, differing economic impacts due to fees that vary by location, and financial instability due to inter-zone loans and a November 2009 bond issuance in the North zone; and

Consolidation of the zones into one City-wide zone would resolve this financial instability, reduce the administrative and accounting burden, and provide a uniform fee structure that does not vary by location; now, therefore,

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

1. The City Manager is authorized to amend the Public Facilities Fee Program Administrative Guidelines to remove Section II. EXPENDITURES, D. Zone Expenditure Guidelines, and E. Borrowing Among Fee Area Accounts, and make other appropriate changes as indicated.

2. The Public Facilities Fee Program Administrative Guidelines are hereby amended and approved, a copy of which is attached as Exhibit 1 and incorporated by this reference.

3. The City Manager is hereby authorized to take whatever actions are appropriate to carry out the purpose and intent of this resolution.

PASSED, APPROVED, and ADOPTED ____________________________

ATTEST:  ANN JOHNSTON, Mayor

of the City of Stockton

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton

OAK #4850-7721-7314 v15  Exhibit I-29
I. FEE COLLECTION

These guidelines primarily apply to the implementation and administration of Stockton Municipal Code section 16.72.260, which imposes Public Facilities Fees on new development. When applicable, these guidelines shall also apply to the implementation and administration of all other code sections, which impose fees or mitigation measures on new development, including, but not limited to the following:

- Wastewater ........... 13.12.010
- Water .................... 13.04.010
- Traffic Signal....... 16.72.140
- Street Sign .......... 16.72.170
- Street Tree .......... 16.72.180
- Parklands .......... 16.72.060

Should any situations arise which are not covered by the guidelines set forth above, the City Manager shall have the authority to make a decision as to how the ordinance and any corresponding resolution are to be administered. Such decisions are to be in writing.

Any applicant dissatisfied with the decision of the City Manager may appeal such decision to the City Council by filing written notice thereof with the City Manager within 10 days of receipt of the City Manager's decision.

A. Fee Determination

The following paragraphs provide information as to which department determines the fee amounts for various types of development.

1. Fee Exemptions and Credits for Prior Use

Upon receipt of an application for a building permit, the Community Development Department (CDD) determines if it is a permit upon which fees are to be imposed. The fee is to be imposed on permits for the siting of a mobile home and the construction of buildings, specifically excluding any partial permits. The fees shall be charged and paid at the time of issuance of a building permit for development.

It is also imposed on applications for a building permit to add to or alter an existing building (with a credit for prior use). The amount of credit will be for the equivalent of the public facility fees that would currently be assessed against the existing building (as if a building permit for the existing building were pulled simultaneously with the permit for the alterations and/or additions). As an example, if the prior use of the property would have generated 10 Dwelling Unit Equivalents (DUE) and the new building will
generate 15 DUE, then the utilities and street improvement portion of the public facility fee would be based upon the cost of the additional 5 DUE.

The Public Facilities Fees resolution specifies exemptions (under certain conditions) for (1) residential additions, (2) non-residential additions of less than ten percent additional floor area or less than ten percent additional DUE, and (3) replacement construction. The exemption for replacement or reconstruction of buildings that have been destroyed or demolished applies so long as a new building permit is issued for the reconstruction within five years after the demolition. Thereafter, the amount of credit given against fees for the prior use declines 20 percent per year. It is the property owner's responsibility to provide sufficient proof to the City in establishing the date of demolition or destruction of the building and the prior use that existed. In order to be eligible, the property owner must request a credit for the prior use on or before the payment of fees and issuance of the building permit. The Public Facilities Fees are not imposed when to do so would be inconsistent with California law or any of the other provisions of the City of Stockton ordinances or resolutions cited above. The CDD determines if the project qualifies for an exemption under any of these exemption categories.

Any applicant dissatisfied with the decision of the CDD may appeal such decision to the City Manager by filing written notice with the CDD within 10 days of receipt of the CDD's decision.

2. **Responsibility for Fee Calculation - Residential**

Upon receipt of an application for a building permit for residential units (as defined in the resolution), the CDD determines the number of single-family units, multiple units, and/or guest rooms and adds this information to the application. The application is then circulated to other departments for their input and then back to CDD for calculation of the fees, except that the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) fee will be calculated by and collected by SJCOG, Inc.

3. **Responsibility for Fee Calculation - Non-Residential**

Parkland and community recreation fees are not imposed on non-residential development. The CDD has the responsibility for making the non-residential fee calculations, except for SJMSCP, wastewater, water, and surface water supply. The responsibility for determining SJMSCP, surface water supply, water, and wastewater fees are as noted below.

Employment is used as an indicator or service need and, hence, as a basis for the non-residential fees with the exception of street improvement, traffic signals, surface water supply, wastewater, and water. The guidelines for determining square footage and employment density are:

a. **Square Footage** - Upon receipt of an application for a building permit for non-residential development, the CDD footage is measured as defined in the California Building Code (CBC). For improvements where the square footage is not appropriately
defined by the CBC definition, e.g. gas stations, a co-generation plant, etc., the CDD develops appropriate square footage equivalents. As explained below, employment is used as the basis for the determination of most of the fees. The square footage equivalents are therefore based on projected employment (the employment typical for that type of development).

b. Employment Density - Except as noted above, employment is used as an indicator of service need and, hence, as a basis for all non-residential development fees. The CDD determines whether the typical use of the improvements will be characterized by high, medium, or low employment density and adds that information to the application. The high, medium, and low employment density ranges are less than 400 square feet, between 400 and 600 square feet, and greater than 600 square feet per employee respectively. Office space is categorized as high employment density, retail space as medium employment density, and warehouse and manufacturing space as low employment density. The characteristics of the space, along with the anticipated first use, are factors in the determination of the employment density.

If the space is divided among more than one type of space each with differing employment densities, then the square footage allocated to each type will be determined, except that any type of space constituting less than 25 percent of the total space will be included in the majority space type. As examples, offices in manufacturing plants will be part of the manufacturing space and storage space in retail stores will be retail space, as long as they are no more than 25 percent of the total space.

c. Water, Wastewater, and Surface Water Supply Fees - The application is circulated to the Municipal Utilities Department for determination of the water, wastewater, and surface water supply fees.

d. Other Fees - The CDD determines the remaining fees, except that the SJMSCP fee is determined by and collected by SJCOG, Inc.

e. Fee Determination - The above noted fees will be determined within 15 working days.

4. Projects Not Requiring Building Permits

The fee is also imposed to the extent permitted by law on any development which does not require a building permit from the City of Stockton (such as a hospital, which makes application to the State). Such a development will often be required to apply to the City for a permit other than a building permit, for example, use permit, encroachment, water, or sewer connection permit. Upon receipt of such an application, the issuing department follows essentially the same procedure as described above for building permits.
5. **SJMSCP Fee**

a. In order to implement the goals and objectives of the SJMSCP, and to mitigate the cumulative and site-specific impacts of new development on undeveloped lands within the City of Stockton and in San Joaquin County, the establishment of preserve lands will be necessary to compensate for impacts to threatened, endangered, rare, and unlisted SJMSCP Covered Species and other wildlife, and compensation for some non-wildlife related impacts to recreation, agriculture, scenic values, and other beneficial Open Space uses. While those undertaking new development pursuant to the SJMSCP may opt to dedicate lands consistent with the SJMSCP preserve designs or to purchase credits from mitigation banks, most of the contribution to the SJMSCP costs from new development will be in the form of SJMSCP fees.

b. The SJMSCP Fee shall be collected by SJCOG, Inc. The SJMSCP Fee supersedes and incorporates the City of Stockton’s pre-existing Habitat/Open Space Conservation Fee (established by Ordinance No. 029-94 and Resolution No. 94-0589). Such fees, along with any interest earnings, shall be used solely to pay for those uses(s) described in the SJMSCP which shall include the following:

a. To pay for acquisition of preserve lands (and associated transaction costs);
b. To pay for monitoring and restoration and/or enhancement of preserve lands;
c. To pay for endowment for long-term management of preserve lands; and
d. To pay for initial and on-going administration of the SJMSCP.

c. The SJMSCP Fees shall be as categorized, and in the sum of the amounts specified, in Sections 7.4.1, 7.4.1.1, 7.4.1.3, and 7.4.1.4 of the SJMSCP, with the exception that the fee established at the adoption of this ordinance shall be initially adjusted to 2002 dollars and re-adjusted annually thereafter in January of each year, based on SJCOG, Inc.’s annual index adjustment as specified in the SJMSCP Financial Analysis Update, dated November 2, 2006, or as amended. A summary of the SJMSCP Fees is attached hereto as Appendix D and incorporated herein by reference. The City’s pre-existing Habitat/Open Space Conservation Fee (Category F) shall remain fixed (not subject to adjustments) for applicable on-going developments. The fees described in Sections 7.4.1, 7.4.1.1, 7.4.1.3, and 7.4.1.4 of the SJMSCP shall be determined based on SJCOG, Inc., staff review of the SJMSCP Vegetation Map(s) and confirmed by aerial photo information (as of the effective date of the SJMSCP Fee) and/or a pre-construction field survey, if necessary, to verify vegetation types on the site. The Compensation Zone Map, as described in Section 8.2.5 of the SJMSCP, shall be used to determine if the property is subject to the SJMSCP Fees and/or to the City of Stockton’s pre-existing Habitat/Open Space Conservation Fee (Category F).

d. The SJMSCP Fee shall not be imposed on projects located in a “No Pay Zone” as established in the compensation zone maps. Project proponents may opt for only partial payment of the SJMSCP Fee if they choose to complete one or more of the following:
i. Dedicate, as conservation easement or fee title, habitat lands (in-lieu dedications) as specified in Sections 5.3.2.1 and 5.3.2.2 of the SJMSCP; or

ii. Purchase approved mitigation bank credits as specified in Section 5.3.2.4 of the SJMSCP; or

iii. Propose an alternative mitigation plan, consistent with the goals of the SJMSCP and equivalent or greater in biological value to option i or ii above, subject to approval by SJCOG, Inc.

e. The SJMSCP Fee shall be adjusted and implemented in January of each year as noted in Section c. above and/or in conformance with Section 7.5.2.2. of the SJMSCP. SJCOG, Inc., shall notify the City of Stockton in writing of proposed annual adjustments to the fees by October 1st of each year. SJCOG, Inc. shall be responsible for the implementation of the fee adjustment in January of each year.

6. Agricultural Land Mitigation Program (in-lieu fee and in-kind acquisition)

a. The purpose of the Agricultural Land Mitigation Program is to mitigate for the loss of agricultural land in the City of Stockton through conversion to private urban uses, including residential, commercial and industrial development.

b. The following words or phrases, when used in these Guidelines, shall have the following meanings:

(1) "Agricultural land or farmland" for the purposes of these Guidelines means important farmland, as defined by the California Department of Conservation's Farmland Monitoring and Mapping Program (FMMP) and as shown on the most recent available FMMP map of San Joaquin County. Important farmland includes prime farmland, farmland of statewide significance, and unique farmland. This definition is consistent with the purpose of the Fee, and with the definition of "agricultural land" found in the California Environmental Quality Act (Public Resources Code section 21060.1).

(2) "Agricultural mitigation land" means agricultural land encumbered by an agricultural conservation easement or such other conservation mechanism acceptable to the City.

(3) "Agricultural conservation easement" means an easement over agricultural land for the purpose of restricting its use to agriculture. The interest granted pursuant to an agricultural conservation easement is an interest in land which is less than fee simple. Agricultural conservation easements should be permanent.

(4) "Nexus Study" means the City of Stockton Agricultural Mitigation Fee Nexus Study, prepared June 21, 2006, as may be amended from time to time.
(5) "Qualifying entity" means a nonprofit public benefit 501(c)3 corporation operating in San Joaquin County for the purpose of conserving and protecting land in its natural, rural or agricultural condition. A qualifying entity shall have suitable accounting and reporting procedures to assist the City in preparing the annual report described in Section g, below.

c. The Agricultural Land Mitigation Program shall apply to all projects under the jurisdiction of the City of Stockton that would result in the conversion of agricultural land, as defined in this section, to a non-agricultural use, including residential, commercial, and industrial development. The Agricultural Mitigation Program shall apply (whether through an In-lieu fee or in-kind direct purchase) to the acquisition of agricultural mitigation lands (of equal or better quality to the land that is being converted) within the "Central Zone" of San Joaquin County [as defined in the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) and excluding the Primary Zone of the Delta]. The Agricultural Mitigation Program shall not apply to agricultural activities and facilities as defined by the Development Code or projects within the SJMSCP "No Pay Zone" (see h.).

d. For projects of forty (40) acres or more, the in-kind direct purchase/acquisition of an agricultural mitigation easement at a 1:1 ratio and dedication to a qualifying entity shall be required. The Owner/Developer/Successor shall pay the associated administrative, monitoring, and contingency costs identified in the fee study, subject to any inflationary adjustments. For projects of less than forty (40) acres, the Owner/Developer/Successor shall have the option to pay an in-lieu agricultural mitigation fee. The fee shall be determined by the fee schedule in effect on the date the final subdivision map is filed, the vesting tentative map application is deemed complete, or the date a building permit is issued, as applicable.

e. Dedication of agricultural mitigation land, or payment of in-lieu fees, shall be made prior to the recording of a final subdivision map, except where a final map is processed to create parcels that are forty (40) acres or more in size for purposes of resale and not intended for development. Where a subdivision map is not required, the dedication shall occur or the fee shall be collected before the issuance of building permits. The filing of a parcel map, which does not result in the conversion of agricultural lands, does not require dedication or payment of in-lieu fees. However, it is the intent of this section that the division of property into parcels of less than forty (acres) shall not be used to avoid dedication of mitigation lands that would otherwise be required. Therefore, projects larger than forty (acres) that are subsequently divided into parcels less than forty (40) acres are not eligible to pay in-lieu fees.

f. Agricultural mitigation shall be at a ratio of 1:1 (1 acre of mitigation land per acre of agricultural land converted to any other land use). The size of the dedication or the amount of the in-lieu fee shall be calculated based on the acres within the subdivision classified as agricultural land. Where a subdivision map is not required, the fee shall be
calculated based on the acres classified as agricultural land within the parcel for which the building permit is issued.

g. Agricultural mitigation fees shall be placed in a separate Agricultural Mitigation Fee account to avoid commingling of the fees with the other funds of the City of Stockton. The fees may be temporarily invested. Such fees, along with any interest earnings, shall be used solely to pay for those uses described in the Nexus Study which shall include the following:

(1) To pay for acquisition of agricultural mitigation lands (of equal or better quality to the land that is being converted) within the "Central Zone" of San Joaquin County [as defined in the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) and excluding the Primary Zone of the Delta].

(2) To pay for transaction costs related to the acquisition of agricultural mitigation lands.

(3) To pay for ongoing monitoring and administrative costs related to the ongoing stewardship of agricultural mitigation lands.

(4) To provide a contingency for unexpected transaction costs or future legal costs required to maintain the terms of an agricultural conservation easement.

Agricultural conservation fees may be expended by the City of Stockton or transferred to the Central Valley Farmland Trust, or other qualifying entity as determined by City Council, for the purpose of acquiring agricultural mitigation land. For funds transferred to the Central Valley Farmland Trust, or a qualifying entity, the City shall transfer such funds quarterly, provided funds are available in the Agricultural Mitigation Fee Account. It is permissible to use agricultural mitigation fees in order to obtain agricultural mitigation lands in fee simple, provided the purpose is to place an agricultural conservation easement on such lands, and make the lands available by sale for agricultural use.

h. The Agricultural Mitigation Program shall not apply to projects located in the "No Pay Zone" as established in the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP) compensation zone maps.

i. The specific parcel(s) containing a residential project that provides affordable housing and complies with the following (see Development Code chapter 16.40 for specific development requirements) shall be exempt from the Agricultural Land Mitigation Program:

Consist of five or more dwelling units;
Be available so that at least:

1. Twenty percent of the total number of proposed dwelling units are for lower-income households, as defined in Health and Safety Code section 50079.5; and/or

2. Ten percent of the total number of proposed dwelling units are for very low-income households, as defined in Health and Safety Code section 50105.

This exemption shall apply exclusively to the net parcel area on which the affordable housing project is located and shall not apply to any other parcels within the same subdivision, planned development, Master Development Plan, Specific Plan, or other commonly owned or planned areas.

J. Stacking of habitat easements on top of existing agricultural easements is allowable with concurrence from San Joaquin Council of Governments and the qualifying entity administering the agricultural easement.

K. Agricultural easements shall be established in perpetuity.

l. Projects that qualify to pay the in-lieu fee shall be subject to a 2.5% administration fee. In addition, agricultural mitigation fees shall not be eligible for the "Deferred Payment" option set forth in Section C.

m. The City shall report to the City Council once each fiscal year concerning the fees and accounts, including any portions of fees remaining unexpended or uncommitted five (5) or more years after deposit. The City Council shall make findings once each fiscal year with respect to any portion of the fee remaining unexpended or uncommitted in its account five (5) or more years after deposit of the fee, to identify the purpose to which the fee is put, and to demonstrate a reasonable relationship between the fee and the purpose for which it was charged.

A refund of unexpended or uncommitted fee revenue for which a need cannot be demonstrated, along with accrued interest may be made to the current owner(s) of the development project(s) by the City on a prorated basis. The City may refund unexpended and uncommitted fee revenue that has been found by the City Council to be no longer needed, by direct payment or by off-setting other obligations owed to the City by the current owner(s) of the development projects(s).

If the administrative costs of refunding unexpended and uncommitted revenues collected pursuant to this program exceed the amount to be refunded, City, after a public hearing, for which notice has been published pursuant to Government Code Section 6061 and posted in three prominent places within the area of the development project, may determine that the revenues shall be allocated for some other purpose for which the fee is collected subject to this Chapter that serves the project on which the fee was originally imposed.
B. **Place of Collection**

The CDD totals the fees as determined by the appropriate departments and informs the applicant of the amounts of the total and its components. The applicant pays the SJMSCP fee directly to SJCOG, Inc. and then brings a receipt or voucher of payment to the City as proof of payment prior to the issuance of the building permit. The applicant pays all other fees simultaneously with the issuance of the permit unless the applicant qualifies for and elects to defer payment of the fees as explained below.

C. **Deferred Payment - Non-Residential**

Rather than paying "development fees" at the time a building permit is issued, the developer who has qualified the project as a "qualified project" with the City Manager's Office, Economic Development Division, may elect to defer payment of all or a portion of those fees with the exception of surface water supply fee, air quality mitigation fee, SJMSCP Fee, Regional Transportation Impact Fee, San Joaquin County Facilities Fee, and Agricultural Mitigation Fees.

1. **Definitions**

   a. A "qualified project" is defined as a commercial, office, or industrial/warehouse project on one parcel of land or a group of non-residential contiguous parcels under the same ownership; and

   b. An "Enterprise Zone project" is any project which is within the definition above and located within the boundaries of the Enterprise Zone as existing or hereafter amended.

   c. "Development fees" include the following:

      - Public Facilities Fee (less Surface Water Supply Fee, Air Quality Mitigation Fee, SJMSCP Fee, Regional Transportation Impact Fee, San Joaquin County Facilities Fee, and Agricultural Mitigation Fee) (S.M.C. 16.72.260)
      - Wastewater Fee (S.M.C. 13.12.010)
      - Water Fee (S.M.C. 13.04.010)
      - Traffic Signal Fee (S.M.C. 16.72.140)

2. **Deferral of Fees**

   a. For a "qualified project," if the total amount of "development fees" due and payable at the time of issuance of a building permit or multiple permits issued concurrently for a project exceeds $100,000, the property owner may enter into a Deferred Payment Agreement with the City to pay ten percent (10%) of those fees at the time the building permit is issued with the remaining ninety percent (90%) to be paid in equal installments over the next ten (10) years (or less at the property owner's option except that wastewater and water fees shall be paid in full within five (5) years).
b. For an "Enterprise Zone project," if the total amount of "development fees" due and payable at the time of issuance of a building permit, or multiple permits issued concurrently for a project, exceeds $20,000, the property owner may enter into a Deferred Payment Agreement with the City for payment of any amount of "development fees" with an initial payment at time of issuance of the building permit of not less than twenty percent (20%) of those fees and the remaining eighty percent (80%) paid in equal annual installments over a period of five (5) years (or less, at the owner's election) or pay ten percent (10%) of those fees at the time the building permit is issued with the remaining ninety percent (90%) to be paid in equal installments over the next ten (10) years (or less at the property owner's option except that wastewater and water fees shall be paid in full within five (5) years).

c. There is also the possibility to defer fees if the total amount of "development fees" due and payable is $20,000 or greater but less than $100,000 as set forth in Appendix E attached hereto and incorporated herein.

3. **Security**

a. For a "qualified project," the property owner shall, as security for repayment, execute and deliver a deed of trust on qualified project property to be recorded in the San Joaquin County land records, and execute a promissory note evidencing the obligation and terms of repayment. On a case by case basis, adequate security acceptable to the City and equal to the unpaid balance may be provided.

b. For "Enterprise Zone projects," the property owner shall, as security for repayment, execute and deliver a deed of trust on qualified project property to be recorded in the San Joaquin County land records, and execute a promissory note evidencing the obligation and terms of repayment.

4. **Repayment Terms**

a. **Interest:** The unpaid balance of the fees shall be subject to interest and collection charges. The annual interest rate will be equal to the 11th District Cost of Funds plus 1% (100 basis points) adjusted every July. For "Enterprise Zone projects" with a five (5) year or less payback period, interest shall begin to accrue on the first anniversary of the agreement.

b. **Due on Transfer:** The unpaid balance together with accrued interest shall be due and payable in full upon the sale or any other transfer of the property.

c. **Recording and Processing Fees:** All such fees shall be paid by the owner or applicant.
5. **Processing Deferred Fee Requests**

a. For "qualified projects," and "Enterprise Zone projects," an application shall be submitted to the Revitalization Department for review, processing, and determination of eligibility.

b. The applicant shall provide, with the application, a preliminary title report, legal description of the property, and a brief description of the project.

c. If the project is eligible, the Revitalization Department shall prepare the agreement and security documents for review and execution. The executed documents shall be returned to the Revitalization Department for processing. Once the deferral agreement is executed by the City and the security documents have been approved and/or recorded, the Revitalization Department will issue a notice to the CDD to proceed with issuance of the building permit(s), stating the amount of fees to be collected at issuance, and deferral of the balance of the development fees.

6. **Redevelopment Agency Deferral Authority for Nonresidential Governmental Uses/Tenancies**

The Redevelopment Agency of the City of Stockton is authorized to offer additional fee deferral opportunities in connection with the redevelopment of the City’s downtown for redevelopment projects involving government office uses/tenancies that meet all of the following criteria: Consist of office facilities of 25,000 square feet or greater; require a conditional use permit (i.e., for a use not permitted outright); are located along the Stockton Channel Area; and are constructed as a multiple (not single) story building. The deferral afforded the Redevelopment Agency pursuant to this provision shall allow for a deferral of up to 100% of the development fees (as defined in this section) for a maximum period of up to 55 years and shall include an option, as determined by staff on a case by case basis, of no required down payment and an interest rate as low as 0% on the deferred principal.

D. **Deferred Payment - Low/Moderate Income Residential**

Rather than paying "development fees" at the time a building permit is issued, the developer, who has pre-qualified his "qualified residential project" with the Revitalization Department of the City, may elect to defer payment of all or a portion of those fees (except for the Regional Transportation Impact Fee, San Joaquin County Facilities Fee, Agricultural Mitigation Fee, Air Quality Mitigation Fee, Surface Water Supply Fee, and SJMSCP Fee).

1. **Definitions**

A "qualified residential project," as certified by the Revitalization Department, is defined as either:
a. A single-family housing project consisting of one or more homes on one or more lots within an approved subdivision under the same ownership. Single-family home projects must be sold to owner-occupied, first-time home buyers whose combined family income is equal to or less than 100% of the median income for the Stockton Metropolitan Statistical Area as contained in HUD's Section 8 Housing Program Income Limits as adjusted from time to time. The home purchase price shall not exceed the FHA limit for home mortgages without mutual mortgage insurance as adjusted from time to time.

b. A multi-family housing project consisting of any new construction project meeting the definition of a "low rent housing project" as contained in Article XXXIV of the California Constitution requiring local voter approval or any other project utilizing local, state, and/or federal funds in whole or in part in the acquisition or construction of said project.

"Development Fees" shall be defined as:

- Public Facilities Fee (less Surface Water Supply Fee, Air Quality Mitigation Fee, SJMSCP Fee, Regional Transportation Impact Fee, San Joaquin County Facilities Fee, and Agricultural Mitigation Fee) (S.M.C. 16.72.260)
- Parkland Fee (S.M.C. 16.72.160)
- Traffic Signal Fee (S.M.C. 16.72.140)
- Wastewater Fee (S.M.C. 13.12.010)
- Water Connection Fee (S.M.C. 13.04.010)

2. **Deferral and Repayment**

Development fees for "qualified residential projects" shall be deferred during the period the project is under construction. In the case of a single-family project, fees deferred shall be collected without interest at the time permanent take-out financing is put in place as part of the closing transaction for the purchase of the home by the qualified buyer. In the case of multi-family projects, fees deferred shall be collected without interest prior to final approval of the Building Permit and issuance of a Certificate of Occupancy.

3. **Security**

All development fees deferred for "qualified residential projects" shall be secured by recorded liens or deeds of trust encumbering each lot of record involved with the project. Said liens or deeds of trust shall be recorded prior to issuance of Building Permits and shall be secondary only to deeds of trust associated with acquisition or construction financing. Full or partial reconveyance of encumbrances shall be issued by the City at the time "development fees" are paid. All document preparation and recording fees shall be paid by developer or property owner applying for the fee deferral.
4. **Penalty**

All development fees deferred pursuant to this program shall be subject to a penalty if the single-family home projects are not sold to buyers meeting the income qualifications or if the purchase price exceeds the maximum allowed. In the case of multi-family projects, a penalty will be assessed if, following initial approval, the project is restructured so as not to meet the definition of a low rent housing project or refinanced so as not to include public funds as contained in the definition of a "qualified residential project." The penalty assessed shall be in the form of an interest payment equal to the 11th District Cost of Funds plus 1% (100 basis points) adjusted every July computed from the date the fee is deferred until totally repaid.

5. **Processing Deferred Fee Requests**

Developers or owners of "qualified residential projects" shall make application for the deferment of fees to the Revitalization Department. In the case of single-family housing projects, the content of the application shall be a list of all fees applicable to the project as calculated by the CDD. In addition, the applicant shall submit a brief description of the project profiling the type of buyer expected to reside within the project. This shall include projected annual income of home buyers and projected sale prices.

For "qualified multi-family projects," the developer or applicant shall submit a project proforma and financial feasibility analysis that includes sources of all financing associated with the project; projected rents for the project; operating maintenance; and debt service costs associated with the project. The application shall also include a preliminary title report and legal description. The Revitalization Department shall review the information submitted and make a determination as to whether the project meets the criteria for a deferral of fees. For those projects meeting the above-mentioned criteria, the Revitalization Department will prepare a Development Fee Deferral Agreement along with a security document consisting of a lien or deed of trust to be executed by the applicant and returned to the City for processing. Once the deferral agreement is executed by the City and the security document has been recorded, the Revitalization Department will issue a notice to the CDD to proceed with the deferral of the development fees and the issuance of the Building Permit.

6. **Collection**

In the case of single-family housing projects, development fees shall be collected as part of the sales transaction between developer and qualified home purchaser. Development fees shall be paid to the City out of the proceeds of the permanent take-out loan. At the time the sales transaction takes place, the developer or escrow company shall submit an appropriate document to the Revitalization Department evidencing that the proposed buyer meets the income qualifications and the purchase price of the home is within the maximum amount allowed. Evidence of satisfying this criteria will include a copy of the purchase agreement and copies of the buyer's last three years income tax returns. The Revitalization Department will review this information and make a final determination as to the buyer's eligibility. The Revitalization Department will determine whether the development fee repayment
amount will include an interest payment as a penalty and submit this demand to the escrow agent along with reconveyance documents. The escrow company will collect and remit to the appropriate demand and transmit it to the Revitalization Department for processing.

In the case of multi-family projects prior to the issuance of a Certificate of Occupancy or the placement of permanent take-out financing for the project, the developer shall submit evidence that long-term financing agreements have been executed with public entities that contain provisions and assurances that the project will remain affordable to lower-income tenants during the duration of the finance period. Upon review and approval of such documents, the Revitalization Department will calculate the appropriate repayment amount and follow the remainder of the procedures as described above.

E. Refunds

Refunds, less the administrative fee, will be made according to City procedures.

II. EXPENDITURES

A. Capital Improvement Program

State law requires that development fees be imposed only when the nature of the facilities to accommodate the development has been identified and the cost of these facilities estimated. Furthermore, the City must account for the use of the funds. In order to fulfill this requirement, the City has undertaken a number of studies analyzing public facility needs and the need for compensation measures to offset the impacts of future development. The intent of Appendix A is to list the various types of public facilities and compensations governed by these administrative guidelines and the respective authority that established the needs for facility type. The referenced authority does include specific public facilities scheduled for partial and/or full funding by the public facilities fee as well as guidelines for use of the SJMSCP fee component of the public facilities fees.

Projects to be constructed by the City in the next five years are included in the City's Capital Improvements Program (CIP). This includes projects to accommodate new development and to cure existing deficiencies.

Beginning with the 1990-91 fiscal year, the facilities listed in Appendix A (in its updated form) will be reviewed and those projects planned for construction within five years will be included in the City's CIP budget. The City's CIP budget will also include:

1. Projects scheduled for construction by developers within the next fiscal year and funded with a combination of developer and City funds.

2. Projects which have been constructed by the developer that have City Council approved reimbursement agreements and funds have been scheduled to be paid to the developer in the next fiscal year(s) based
upon available City funding. For reimbursement purposes, the City will set aside, for each fee area and facility type, 25 percent of the fees collected (minus credits) in the prior year. Any unexpended portion of the 25 percent reimbursement set aside will be carried over for one year only.

3. Projects which have been constructed by the developer that have City Council approved reimbursement agreements for which no funds have been scheduled to be paid to the developer in the next fiscal year due to lack of funds. It is the intent of this provision that all projects that have City Council approved reimbursement agreements shall be included in the City's CIP budget and in order of priority based upon the effective date of the reimbursement agreement.

B. Budgeting for Proposed Projects

At the time that an actual appropriation for a project is requested, either during the annual budget preparation or as an appropriation during the fiscal year, the following information must be provided as part of the request:

1. To insure satisfaction of the nexus requirement, identify the proposed project as being one of the Council projects intended to be provided by the public facilities fees or, within the adopted guidelines for use of SJMSCP fees. See Appendix A.

2. Document the percentage of cost, if any, of the proposed project that is to correct existing deficiencies. Reference to an analysis that may be included as part of Appendix A would satisfy this requirement.

3. Be specific in identifying the source of funding for the proposed project. For the percentage that is approved for expenditure of public facilities fees other than SJMSCP fees, it is necessary that the facility type be identified for each portion of the appropriation. This is necessary because the revenues are being collected for each facility type and are being accounted for by specific facility type. For the percentage that is determined to correct existing deficiencies, identify specifically the other source of funds.

4. Check with the Administrative Services Department to determine if sufficient funds are available in the correct accounts for the necessary appropriations. The amount available will include the fund balance, less any amounts already appropriated or otherwise encumbered, plus estimated revenues. The CDD and Public Works Departments will provide the Administrative Services Department with projections of estimated revenues from public facilities fees by facility type and fee area.
C. **Existing Deficiencies**

The adoption of the Public Facilities Fee program require the City to correct existing deficiencies. It is the intention of the City to appropriate funds each year such that at the end of each year, the cumulative appropriations will meet a defined proportion of the total cost of correcting deficiencies. This proportion shall be calculated as the ratio of the number of years after 1987-88 (the number of years the fee program has been in effect) to the 20 years through the 2007-08 fiscal year. In other words, it is the City's intention that funds to correct the deficiencies will be provided by the 2007-08 fiscal year at an approximate rate of one-twentieth each year. Existing deficiencies will be funded by general funds and/or bond issues (net of issuance costs).

D. **Developer in Lieu Improvements**

New development is responsible for all public facilities that are needed as a result of new development. This includes all improvements that are required by the subdivision and public improvement ordinances or identified as being necessary to satisfy mitigation measures for the project. There may be situations where a developer will incur the cost of a facility which corrects an existing City deficiency or serves other development. Therefore, under those conditions, developers will receive a reimbursement in the form of credits or cash, plus interest at the rate equal to the 11th District Cost of Funds from the date the improvements are accepted by the City, consistent with the City Council approved reimbursement agreement. Developers deducing the land and/or constructing these facilities will be eligible for credit/reimbursement as outlined in these administrative guidelines. Construction costs, design costs, and fees for plan checking and inspection, etc., are eligible for credit/reimbursement.

A credit/reimbursement will be given to the developer to offset the public facilities fee for that type of facility imposed on subsequent development of the parcel. In other words, a street improvement cost will only be subject to credit/reimbursement against the street improvement fee.

The amount of credit/reimbursement shall be as outlined below for each of the appropriate fees:

- Libraries, Community Recreation Centers, Fire Stations, & Parks:

  If the developer only dedicates the land for these facilities, it is eligible for a partial credit/reimbursement equal to the percentage of the fee that is needed to acquire the land. As an example, if 50% of the parkland fee is to acquire land for parks, a developer that dedicates the land will be eligible for a 50% credit against its parkland fee for permits within its development. The developer is also eligible to be reimbursed for 50% of the parkland fees from other developments within the service area of the park.
In the case of parkland, the value of the land dedicated shall be the value of land used to calculate the parkland fee in effect on the date the land is accepted by the City Council.

If the developer also constructs one of these facilities, it is eligible for a full credit/reimbursement of the fee for permits within its development, and reimbursement of the fees from other developments within the service area of the facility.

Wastewater:

The sanitary sewer connection fee is composed of the following components: (1) treatment, (2) existing collection system, and (3) future collection systems.

If the developer constructs a completely new collection system in accordance with the Master Plan, conveying wastewater from the developed parcel to the City of Stockton Wastewater Control Facility on Navy Drive, without use of any portion of the existing City sanitary sewer system, developer is eligible for a full credit/reimbursement within its development of components (2) existing collection system and (3) future collection systems, of the connection fee. The developer is also eligible for reimbursement of a portion of the fee for both existing and future collection systems from other developments within the service area of the collection system improvements.

If the developer connects to the existing collection system and installs mains in accordance with the Master Plan, developer is eligible for a full credit/reimbursement within its development of component (3) of the connection fee-future collection systems. The developer is also eligible for reimbursement of a portion of the fee for future collection systems from other developments within the service area of the collection system improvement.

In no case will the reimbursement authorized under this section of the Administrative Guidelines exceed the cost of the eligible sanitary sewer improvements constructed by the developer.

Water:

If the developer constructs a portion of the water system in accordance with the Master Plan, it is eligible for a full credit/reimbursement within its development for the fee for that portion of the cost which represents water transmission mains installed which exceed the requirements of the individual development as determined by the City. The developer is also eligible for reimbursement in accordance with the City's Water Rates and Regulations.

Street Improvements:

If the developer constructs a portion of the street improvements within and adjacent to its project which are covered by the fee, it is eligible for a 50%
credit/reimbursement on building permits within its development until the full cost of the improvements have been recovered. The 50% credit is necessary since only approximately 33% of the total street improvements covered by the fee are adjacent to or within undeveloped properties. The remaining improvements are freeway-related improvements, railroad grade separations, and street improvements adjacent to developed properties. Without the City retaining 50% of the fees, sufficient revenue would not be generated to fund the necessary freeway, railroad grade separations, and street improvements adjacent to developed properties.

If the developer constructs a portion of the street improvements outside and not adjacent to its development, it is eligible for a 100% credit/reimbursement on building permits until the full cost of the improvement has been recovered.

Refer to Appendix B for specifics on reimbursements for developer constructed street improvements. Also, refer to Appendix C on the procedures to be followed where past developments made significant street improvements and the development is not completely built out.

The developer shall submit a detailed cost breakdown of the public facilities to be constructed and/or the land to be dedicated for the public facilities. The cost breakdown shall also include the timing of the various improvements. In addition, the developer shall submit a yearly schedule of projected building permits through full build-out of the project. The developer shall enter the projected building permits, applicable fees, cost breakdown, interest and the proposed spread of credits/reimbursements into a spreadsheet compatible with City-used software.

The spreadsheet shall be reviewed and approved by the Public Works Department. Upon approval, the developer shall provide a copy of the spreadsheet compatible with City-used software. The spreadsheet shall be updated by the developer and reviewed and approved by the Public Works Department at least once a year. The value of the land and improvements shall not be adjusted for inflation or deflation, but the applicable fees shall be adjusted to the current fee and projected ahead in constant dollars.

The City shall enter into a credit/reimbursement agreement with the developer. The agreement shall provide for the credit/reimbursement to the developer from fees generated within the project and citywide. The timing and method of payment (credit/reimbursement) will be negotiated and included as part of the subdivision agreement or as approved by the City Council when the improvements are accepted. If the improvements are financed by an assessment district (including Mello-Roos), credits may be given to the individual property owner and/or reimbursement shall be made to the district. The proposed spread of credits/reimbursement must also be approved by the City Council prior to the subdivision improvements being accepted by the City Council.

If the credit/reimbursement agreement is submitted for approval by the City Council prior to the installation of the improvements, the costs will be based upon estimates. Upon completion of the improvements, the credit/reimbursement agreement will be
resubmitted to the City Council for approval prior to subdivision improvements being accepted.

If the developer has pulled building permits and paid public facility fees prior to the credits/reimbursement agreement being approved by the City Council, the developer will only receive credits/reimbursements on future permits. No refunds will be processed for the fees paid prior to the credit/reimbursement agreement being approved by the City Council.

When the various fees are adjusted by the City Council, the total amount to be credited/reimbursed does not change, but the amount of credit/reimbursement to be applied to an individual building permit will be adjusted. For example, if a fee was originally $1000 and the developer receives a 50% credit or reimbursement, when the fee increases to $1100, the developer will still receive a 50% credit or reimbursement but it will be $550 versus the original $500.

The developer has the option, to be determined at the time of the reimbursement agreement, of receiving credits when the building permits are issued or accumulating these credits and receiving a lump sum reimbursement at the end of each quarter, based upon claims made by the developer.

E. Use of Administrative Funds

The funds in the administrative account are not used for studies and/or administration for specific improvements or types of improvements. Such expenses are charged to the account for that type of facility, i.e., a traffic analysis charged to the Street improvements accounts. However, administrative funds may be used for planning studies, such as a City initiated general plan revision. The funds in the administrative account are not used to cover the cost of reviewing projects; nor are funds from any other fee account used for this purpose. The funds may be used for both consultant and staff costs. Staff costs are calculated based on time card entries.

III. ANNUAL REPORT

A. Fiscal Year Summary

An annual report on the development fee program is prepared. The first portion of the report, the fiscal year summary, is prepared reasonably soon after the end of the fiscal year, as accounting information becomes available. This portion of the report includes the following information.

1. Account Balances - The information includes fiscal year revenues and the accumulated balance for each account.

2. Improvements - The report includes, for each account and subaccount, except the SJMSCP Account, the following: the constructed improvements and a projection of the funds to be collected in each of the next five years; when the next project (or projects) will be able to be funded; and the proposed projects to be undertaken in the
next five years. The latter information is in a form appropriate for integration into the Capital Improvements Program. For the SJMSCP Account, the annual report will be provided by SJCOG, Inc.

3. **Administration Fund** - The revenues to the administration account are compared with the administration expenses incurred, both for the past fiscal year and for an appropriate longer period of time. Both future projected revenues and expenses are also included in the report, along with a recommendation either to retain the current level of administrative component of the fee, or to adjust it up or down.

4. **Existing Deficiencies** - The expenditures to cure existing deficiencies are set forth, both for the fiscal year and cumulatively. These expenditures are compared with the commitment to cure existing deficiencies on at least a pro rata basis between 1988 and the present.

5. **Reimbursement Agreements** - The report includes, for each agreement, the following: the constructed improvements; the total cost of the improvement including land; all accrued interest; the outstanding balance; and the projected credit/reimbursement and source of revenue.

**B. Fee Review and Adjustment**

The second portion of the annual report is prepared three or four months before the start of the calendar year. This report is submitted to the City Council along with recommendations so that action can be taken no later than 60 days before the start of the calendar year, allowing the adjusted fees to become effective on or about January 1. This portion of the report includes the following information.

1. **Inflation Adjustments** - The report presents information on the inflation rate during the prior calendar year as determined by the construction cost index of the Engineering News Record publication. The rate of inflation (or deflation) is applied to the fees to determine the fees for the subsequent year. A land cost index will be used to adjust the land cost portion of the fees.

2. **Reimbursement Agreements Adjustments** - The report presents information on the credits/reimbursements due developers for the subsequent year. Since the developers are eligible for credits/reimbursements plus interest, the fees shall be adjusted to cover this additional expense.

3. **Special Studies or Information** - From time to time, new information will be come available regarding the facilities needed to accommodate new development and their cost. If this information is different from that upon which the fees are currently based, the information should be documented along with calculations that determine the appropriate new fee level.
4. **Findings** - The report sets forth findings suitable for adoption by the City Council determining that, except for the adjustments listed, the prior findings on which the current fees are based are still sufficiently accurate.

Adopted Feb. 12, 1991 (Resolution No. 91-0119);
Amended Jan. 23, 2007 (Resolution No. 07-0040);
Amended ___________ (Resolution No. ___-___).
Let’s discuss at our meeting.

Hi Janice (Nicole and Amanda as well),

We had picked up OWP phase 1 a few months back and just late last week learned our financing was approved by loan committee.
We are now going to move towards closing.
I am currently gathering loan payoffs and getting title all squared away.

With that said we have the City’s lien still attached to the miner ave properties. Those sites will initially be used for commercial and parking for the building portion which will be located at 242 n. Sutter St. parking lot.

Per our agreement with the City the lien can be removed with either permits or loan approval. In this case we will have loan approval first as they will be funding the remainder of the building sets and then ultimately permits as well.

What is the next step to get this handled?

Please advise.

Thanks.
Zac

Zac Cort
President & CEO
209-469-2678
www.tenspacedev.com
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:

BONNIE PAIGE
CITY CLERK

BY

“CITY”

CITY OF STOCKTON, a municipal corporation

BY

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

BY

“DEVELOPER”

OPEN WINDOW PROJECT, LLC, a California limited liability company

By
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 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
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 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

BY________________________

“CITY”
CITY OF STOCKTON, a municipal corporation

BY________________________

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

BY________________________

“DEVELOPER”
OPEN WINDOW PROJECT, LLC, a California limited liability company

By________________________
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.
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 of 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 groundbreaking 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.
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 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.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 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

BY________________________

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

BY________________________

“CITY”  
CITY OF STOCKTON, a municipal corporation

BY________________________  CITY MANAGER

“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

<table>
<thead>
<tr>
<th>Block</th>
<th>Ground Flr Commercial</th>
<th>Tenant Amenities</th>
<th>Residential SF</th>
<th>Parking</th>
<th>Total Res. Units</th>
<th>Outdoor</th>
<th>Center Walk</th>
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<td>West Block</td>
<td>46,400</td>
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<td>78,900</td>
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<td>78,800</td>
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<td>East Block</td>
<td>9,000</td>
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<td>18,700</td>
<td>31</td>
<td>25</td>
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<td>5,000</td>
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**TOTAL PROJECT:** 92,400 sf  8,000 sf  176,400 sf  212 stalls  200 units  25,500 sf

---

**Phase I - Project Boundary**
## 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) 334-6813 • Fax (209) 334-0723

August 3, 2016  
Project No. 1625

**ENGINEER’S COST ESTIMATE**  
(Prevailing Wage Included)

### WEST BLOCK

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>QTY</th>
<th>PRICE</th>
<th>PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A. STREET IMPROVEMENTS</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>CLEAR AND GRUB</td>
<td>LS</td>
<td>1</td>
<td>30,000.00</td>
<td>$30,000</td>
</tr>
<tr>
<td>2.</td>
<td>EXCAVATION (REMOVE CURB, GUTTER AND SIDEWALK)</td>
<td>CYD</td>
<td>438</td>
<td>7.50</td>
<td>3,265</td>
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<tr>
<td>3.</td>
<td>AC SAWCUT</td>
<td>LF</td>
<td>1,315</td>
<td>1.25</td>
<td>1,644</td>
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<td>4.</td>
<td>CONCRETE SUBGRADE COMPACTION</td>
<td>SF</td>
<td>17,734</td>
<td>1.00</td>
<td>17,734</td>
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<td>5.</td>
<td>INSTALL 10'-14' WIDE SIDEWALK</td>
<td>SF</td>
<td>14,876</td>
<td>20.00</td>
<td>297,520</td>
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<tr>
<td>6.</td>
<td>INSTALL VERTICAL CURB &amp; GUTTER</td>
<td>LF</td>
<td>1,223</td>
<td>43.75</td>
<td>53,605</td>
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<td>7.</td>
<td>INSTALL 25' WIDE COMMERCIAL DRIVEWAY</td>
<td>EA</td>
<td>2</td>
<td>10,000.00</td>
<td>20,000</td>
</tr>
<tr>
<td>8.</td>
<td>HANDICAP CURB RETURN (FULL)</td>
<td>EA</td>
<td>4</td>
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<td><strong>SUBTOTAL</strong></td>
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<td><strong>$459,689</strong></td>
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<td><strong>B. STORM DRAIN</strong></td>
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<td></td>
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<tr>
<td>9.</td>
<td>REMOVE &amp; REPLACE EXISTING CATCH BASIN</td>
<td>EA</td>
<td>6</td>
<td>6,250.00</td>
<td>$37,500</td>
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<td><strong>SUBTOTAL</strong></td>
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<td></td>
<td><strong>$37,500</strong></td>
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</tr>
<tr>
<td><strong>C. SANITARY SEWER</strong></td>
<td></td>
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<td></td>
<td></td>
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<tr>
<td>9.</td>
<td>4&quot; SANITARY SEWER CONNECTION (1 PER BLDG.)</td>
<td>EA</td>
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<td>2,500.00</td>
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<td>10.</td>
<td>SANITARY SEWER CLEAN OUT</td>
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<td>10,000</td>
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<td><strong>SUBTOTAL</strong></td>
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<td></td>
<td><strong>$30,000</strong></td>
<td></td>
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<tr>
<td><strong>D. WATER SUPPLY</strong></td>
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<tr>
<td>11.</td>
<td>INSTALL FIRE HYDRANTS</td>
<td>EA</td>
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<td>5,000.00</td>
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<td>12.</td>
<td>2&quot; WATER CONNECTION (1 PER BLDG.)</td>
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<td>13.</td>
<td>4&quot; FIRE CONNECTION (1 PER BLDG.)</td>
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<td>5,600.00</td>
<td>44,000</td>
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<td>14.</td>
<td>2&quot; BACKFLOW PREVENTER</td>
<td>EA</td>
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<td>6,250.00</td>
<td>50,000</td>
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<td>15.</td>
<td>4&quot; REDUCED PRESSURE DETECTOR ASSEMBLY</td>
<td>EA</td>
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<td>6,250.00</td>
<td>50,000</td>
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<td>16.</td>
<td>FIRE DEPARTMENT CONNECTOR WITH POST INDICATOR VALVE</td>
<td>EA</td>
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<td>6,250.00</td>
<td>50,000</td>
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<td>17.</td>
<td>2&quot; WATER VALVE</td>
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<td>18.</td>
<td>WATER METER</td>
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<td>4,375.00</td>
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<td><strong>SUBTOTAL</strong></td>
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<td></td>
<td><strong>$284,000</strong></td>
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Exhibit B
### E. MISCELLANEOUS

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<th>ITEM</th>
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<td>19.</td>
<td>STRIPING</td>
<td>LS</td>
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<td>20.</td>
<td>LANDSCAPING AND IRRIGATION</td>
<td>LS</td>
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<td>21.</td>
<td>LIGHTING</td>
<td>LS</td>
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**SUBTOTAL** | **$78,000**

**WEST BLOCK TOTAL** | **$879,189**

### CENTER BLOCK

#### A. STREET IMPROVEMENTS

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<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
<th>UNIT</th>
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<th>PRICE</th>
<th>TOTAL PRICE</th>
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<tbody>
<tr>
<td>1.</td>
<td>CLEAR AND GRUB</td>
<td>LS</td>
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<td>30,000.00</td>
<td>$30,000</td>
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<tr>
<td>2.</td>
<td>EXCAVATION (REMOVE CURB, GUTTER AND SIDEWALK)</td>
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<td>3,000</td>
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<tr>
<td>3.</td>
<td>AC SAWCUT</td>
<td>LF</td>
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<td>1,640</td>
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<td>4.</td>
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<td>5.</td>
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<td>13,380</td>
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<td>6.</td>
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<td>1,115</td>
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<td>49,781</td>
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<td>7.</td>
<td>INSTALL 25' WIDE COMMERCIAL DRIVEWAY</td>
<td>EA</td>
<td>5</td>
<td>10,000.00</td>
<td>50,000</td>
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<td>8.</td>
<td>HANDICAP CURB RETURN (FULL)</td>
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**SUBTOTAL** | **$457,189**

#### B. STORM DRAIN

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<th>ITEM</th>
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<th>PRICE</th>
<th>TOTAL PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.</td>
<td>REMOVE &amp; REPLACE EXISTING CATCH BASIN</td>
<td>EA</td>
<td>6</td>
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**SUBTOTAL** | **$31,250**

#### C. SANITARY SEWER

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<th>TOTAL PRICE</th>
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<td>10.</td>
<td>SANITARY SEWER CLEAN OUT</td>
<td>EA</td>
<td>5</td>
<td>1,250.00</td>
<td>6,250</td>
</tr>
</tbody>
</table>

**SUBTOTAL** | **$18,750**

#### D. WATER SUPPLY

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>QTY</th>
<th>PRICE</th>
<th>TOTAL PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>11.</td>
<td>INSTALL FIRE HYDRANTS</td>
<td>EA</td>
<td>0</td>
<td>6,000.00</td>
<td>0</td>
</tr>
<tr>
<td>12.</td>
<td>2&quot; WATER CONNECTION (1 PER BLDG.)</td>
<td>EA</td>
<td>5</td>
<td>3,000.00</td>
<td>15,000</td>
</tr>
<tr>
<td>13.</td>
<td>4&quot; FIRE CONNECTION (1 PER BLDG.)</td>
<td>EA</td>
<td>6</td>
<td>5,600.00</td>
<td>27,500</td>
</tr>
<tr>
<td>14.</td>
<td>2&quot; BACKFLOW PREVENTER</td>
<td>EA</td>
<td>5</td>
<td>6,250.00</td>
<td>31,250</td>
</tr>
<tr>
<td>15.</td>
<td>FIRE DEPARTMENT CONNECTOR WITH POST INDICATOR VALVE</td>
<td>EA</td>
<td>5</td>
<td>6,250.00</td>
<td>31,250</td>
</tr>
<tr>
<td>16.</td>
<td>2&quot; WATER VALVE</td>
<td>EA</td>
<td>6</td>
<td>2,000.00</td>
<td>10,000</td>
</tr>
<tr>
<td>17.</td>
<td>WATER METER</td>
<td>EA</td>
<td>5</td>
<td>4,375.00</td>
<td>21,875</td>
</tr>
</tbody>
</table>

**SUBTOTAL** | **$135,875**

---

Exhibit B
### E. MISCELLANEOUS

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Unit</th>
<th>Qty</th>
<th>Unit Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>19</td>
<td>STRIPING</td>
<td>LS</td>
<td>1</td>
<td>8,000.00</td>
<td>8,000</td>
</tr>
<tr>
<td>20</td>
<td>LANDSCAPING</td>
<td>LS</td>
<td>1</td>
<td>35,000.00</td>
<td>35,000</td>
</tr>
<tr>
<td>21</td>
<td>LIGHTING</td>
<td>LS</td>
<td>1</td>
<td>35,000.00</td>
<td>35,000</td>
</tr>
<tr>
<td>22</td>
<td>UNDERGROUND EXISTING OVERHEAD UTILITIES</td>
<td>LS</td>
<td>1</td>
<td>40,000.00</td>
<td>40,000</td>
</tr>
</tbody>
</table>

**SUBTOTAL** $118,000

**CENTER BLOCK TOTAL** $762,084

---

### EAST BLOCK

#### A. STREET IMPROVEMENTS

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Unit</th>
<th>Qty</th>
<th>Unit Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>CLEAR AND GRUB</td>
<td>LS</td>
<td>1</td>
<td>16,000.00</td>
<td>16,000</td>
</tr>
<tr>
<td>2</td>
<td>EXCAVATION (REMOVE CURB, GUTTER AND SIDEWALK)</td>
<td>CYD</td>
<td>221</td>
<td>7.50</td>
<td>1,665</td>
</tr>
<tr>
<td>3</td>
<td>AC SAWCUT</td>
<td>LF</td>
<td>664</td>
<td>1.25</td>
<td>830</td>
</tr>
<tr>
<td>4</td>
<td>CONCRETE SUBGRADE COMPACTION</td>
<td>SF</td>
<td>8,901</td>
<td>1.00</td>
<td>8,981</td>
</tr>
<tr>
<td>5</td>
<td>INSTALL 10'-14' WIDE SIDEWALK</td>
<td>SF</td>
<td>7,419</td>
<td>20.00</td>
<td>148,320</td>
</tr>
<tr>
<td>6</td>
<td>INSTALL VERTICAL CURB &amp; GUTTER</td>
<td>LF</td>
<td>618</td>
<td>43.75</td>
<td>27,038</td>
</tr>
<tr>
<td>7</td>
<td>INSTALL 25' WIDE COMMERCIAL DRIVEWAY</td>
<td>EA</td>
<td>1</td>
<td>10,000.00</td>
<td>10,000</td>
</tr>
<tr>
<td>8</td>
<td>HANDICAP CURB RETURN (FULL)</td>
<td>EA</td>
<td>2</td>
<td>10,000.00</td>
<td>20,000</td>
</tr>
</tbody>
</table>

**SUBTOTAL** $231,806

#### B. STORM DRAIN

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Unit</th>
<th>Qty</th>
<th>Unit Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>REMOVE &amp; REPLACE EXISTING CATCH BASIN</td>
<td>EA</td>
<td>2</td>
<td>6,250.00</td>
<td>12,500</td>
</tr>
</tbody>
</table>

**SUBTOTAL** $12,500

#### C. SANITARY SEWER

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Unit</th>
<th>Qty</th>
<th>Unit Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>4&quot; SANITARY SEWER CONNECTION (1 PER BLDG.)</td>
<td>EA</td>
<td>6</td>
<td>2,500.00</td>
<td>15,000</td>
</tr>
<tr>
<td>10</td>
<td>SANITARY SEWER CLEAN OUT</td>
<td>EA</td>
<td>6</td>
<td>1,250.00</td>
<td>7,500</td>
</tr>
<tr>
<td>11</td>
<td>SEWER LIFT STATION TO CONNECT TO MINER AVENUE SEWER MAIN (WESTBOUND) COMPLETE</td>
<td>EA</td>
<td>1</td>
<td>40,000.00</td>
<td>40,000</td>
</tr>
</tbody>
</table>

**SUBTOTAL** $62,500

#### D. WATER SUPPLY

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Unit</th>
<th>Qty</th>
<th>Unit Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>INSTALL FIRE HYDRANTS</td>
<td>EA</td>
<td>2</td>
<td>5,000.00</td>
<td>10,000</td>
</tr>
<tr>
<td>13</td>
<td>2&quot; WATER CONNECTION (1 PER BLDG.)</td>
<td>EA</td>
<td>6</td>
<td>3,000.00</td>
<td>18,000</td>
</tr>
<tr>
<td>14</td>
<td>4&quot; FIRE CONNECTION (1 PER BLDG.)</td>
<td>EA</td>
<td>6</td>
<td>5,000.00</td>
<td>30,000</td>
</tr>
<tr>
<td>15</td>
<td>2&quot; BACKFLOW PREVENTOR</td>
<td>EA</td>
<td>6</td>
<td>6,250.00</td>
<td>37,500</td>
</tr>
<tr>
<td>16</td>
<td>4&quot; REDUCED PRESSURE DETECTOR ASSEMBLY</td>
<td>EA</td>
<td>6</td>
<td>6,250.00</td>
<td>37,500</td>
</tr>
<tr>
<td>17</td>
<td>FIRE DEPARTMENT CONNECTION WITH POST INDICATOR VALVE</td>
<td>EA</td>
<td>6</td>
<td>6,250.00</td>
<td>37,500</td>
</tr>
<tr>
<td>18</td>
<td>2&quot; WATER VALVE</td>
<td>EA</td>
<td>6</td>
<td>2,000.00</td>
<td>12,000</td>
</tr>
<tr>
<td>19</td>
<td>WATER METER</td>
<td>EA</td>
<td>6</td>
<td>4,375.00</td>
<td>26,250</td>
</tr>
</tbody>
</table>

**SUBTOTAL** $211,750
**E. MISCELLANEOUS**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Unit</th>
<th>QTY</th>
<th>Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>20.</td>
<td>Striping</td>
<td>LS</td>
<td>1</td>
<td>4,000.00</td>
<td>4,000</td>
</tr>
<tr>
<td>21.</td>
<td>Landscaping and Irrigation</td>
<td>LS</td>
<td>1</td>
<td>17,600.00</td>
<td>17,600</td>
</tr>
<tr>
<td>22.</td>
<td>Lighting</td>
<td>LS</td>
<td>1</td>
<td>17,500.00</td>
<td>17,500</td>
</tr>
<tr>
<td>23.</td>
<td>Underground Existing Overhead Utilities</td>
<td>LS</td>
<td>1</td>
<td>60,000.00</td>
<td>60,000</td>
</tr>
</tbody>
</table>

**SUBTOTAL** $95,000

**EAST BLOCK TOTAL** $617,556

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

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Unit</th>
<th>QTY</th>
<th>Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Remove 72&quot; Storm Drain</td>
<td>LF</td>
<td>215</td>
<td>$80.00</td>
<td>$17,200</td>
</tr>
<tr>
<td>2.</td>
<td>Install 72&quot; Storm Drain</td>
<td>LF</td>
<td>277</td>
<td>$60.00</td>
<td>135,120</td>
</tr>
<tr>
<td>3.</td>
<td>Storm Drain Structure</td>
<td>EA</td>
<td>3</td>
<td>45,000.00</td>
<td>135,000</td>
</tr>
<tr>
<td>4.</td>
<td>Pothole Utilities</td>
<td>LS</td>
<td>1</td>
<td>6,000.00</td>
<td>5,000</td>
</tr>
</tbody>
</table>

72" STORM DRAIN IMPROVEMENTS $312,320

**OFFSITE SEWER IMPROVEMENTS**

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

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Unit</th>
<th>QTY</th>
<th>Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Install 18&quot; Sanitary Sewer</td>
<td>LF</td>
<td>400</td>
<td>$400.00</td>
<td>$160,000</td>
</tr>
<tr>
<td>2.</td>
<td>Remove and Replace Sewer Manhole</td>
<td>EA</td>
<td>2</td>
<td>10,000.00</td>
<td>20,000</td>
</tr>
</tbody>
</table>

OFFSITE SEWER IMPROVEMENTS $180,000

**OFFSITE CAL WATER IMPROVEMENTS**

(ASSUME THREE BLOCKS OF IMPROVEMENTS)

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Unit</th>
<th>QTY</th>
<th>Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Install 12&quot; Water</td>
<td>LF</td>
<td>1200</td>
<td>$130.00</td>
<td>$156,000</td>
</tr>
<tr>
<td>2.</td>
<td>Install 12&quot; Gate Valves</td>
<td>EA</td>
<td>6</td>
<td>1,500.00</td>
<td>9,000</td>
</tr>
<tr>
<td>3.</td>
<td>Connect to Existing</td>
<td>EA</td>
<td>6</td>
<td>1,200.00</td>
<td>7,200</td>
</tr>
<tr>
<td>4.</td>
<td>Replace Fire Hydrants</td>
<td>EA</td>
<td>4</td>
<td>6,000.00</td>
<td>20,000</td>
</tr>
</tbody>
</table>

OFFSITE CAL WATER IMPROVEMENTS $192,200

WEST BLOCK $869,189
CENTER BLOCK $762,064
EAST BLOCK $617,556

72" STORM DRAIN IMPROVEMENTS $312,320
OFFSITE SEWER IMPROVEMENTS $180,000
OFFSITE CAL WATER IMPROVEMENTS $192,200

**SUBTOTAL** $2,953,329

30% CONTINGENCY $885,999

**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.

[Signature]

MICAH RUNNER, DIRECTOR
ECONOMIC DEVELOPMENT DEPARTMENT

MR:JM:NS
Attachments
**CONTRACT ROUTING FORM**

**Contract Number:** 2016-10-18-1204 P Amendment

---

**CONTRACT TYPE (select one):**
- [ ] Original
- [ ] Amendment/Renewal/Change Order
- [ ] Grant
- [ ] Subdivision Agreement
- [ ] Other

**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

**Council approval required for contracts over $**

**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

- Recoduration Required?
  - [ ] Yes
  - [ ] No

---

**Routing Order**

1. **DEPARTMENT:** Economic Development

   **DEPARTMENT HEAD APPROVAL**
   - Project Mgr.: Janice Miller
   - ext.: 8842
   - Staff: Amanda Thomas
   - ext.: 2540

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

2. **VENDOR/OTHER PARTY**

   Signed ( ) originals on:
   Forwarded to:
   on:
   by:

3. **RISK SERVICES**

   Insurance approved on:
   Forwarded to:
   on:
   by:
   Bonds approved on:
   Forwarded to:
   on:
   by:
   RM #:

4. **CITY ATTORNEY**

   Approved as to Form and Content on: 5/15/17
   Forwarded to EDD
   on: 5-15-17
   by: L. Pharm

5. **CITY MANAGER**

   Signed by City Manager on: 5/16/17
   Forwarded to City Clerk
   on: 5/16/17
   by: M.G.

6. **CITY CLERK**

   City Clerk attested on: 5-16-17
   Returned (all) original(s) to dept. on: 5-16-17
   Retained (all) original(s) for City's file. Hard Copy on file? Yes [ ] No [ ]
   OB #

7. **ORIGINATING DEPARTMENT:** Economic Development

   Requisition No.
   Original sent to vendor on:
   Copy of contract to be retained by department. Original on file in the Clerk's office.
   Copy of contract sent to Purchasing on:

---

[ ] PURCHASING: Purchase Order No. PUR No.
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.
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 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

BY

CITY OF STOCKTON, a municipal corporation

CITY

“CITY”

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. 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

<table>
<thead>
<tr>
<th>BLOCK SUMMARY</th>
<th>Ground Flr Commercial</th>
<th>Tenant Amenities</th>
<th>Residential SF</th>
<th>Parking</th>
<th>Total Res. Units</th>
<th>Outdoor Center Walk</th>
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<tr>
<td>WEST BLOCK:</td>
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<td></td>
<td>78,900</td>
<td>52</td>
<td>76</td>
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<td>CENTER BLOCK:</td>
<td>37,000</td>
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<td>78,800</td>
<td>129</td>
<td>99</td>
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<td>18,700</td>
<td>31</td>
<td>25</td>
<td>5,000</td>
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<tr>
<td>TOTAL PROJECT:</td>
<td>92,400 sf</td>
<td>8,000 sf</td>
<td>176,400 sf</td>
<td>212 stalls</td>
<td>200 units</td>
<td>25,500 sf</td>
</tr>
</tbody>
</table>

Phase I - Project Boundary

Exhibit A
# 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)

<table>
<thead>
<tr>
<th>WEST BLOCK</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>QTY</th>
<th>PRICE</th>
<th>TOTAL PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A. STREET IMPROVEMENTS</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>CLEAR AND GRUB</td>
<td>LS</td>
<td>1</td>
<td>30,000.00</td>
<td>$30,000</td>
</tr>
<tr>
<td>2.</td>
<td>EXCAVATION (REMOVE CURB, GUTTER AND SIDEWALK)</td>
<td>CYD</td>
<td>438</td>
<td>7.50</td>
<td>3,285</td>
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<tr>
<td>3.</td>
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<td>LF</td>
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<td>1,644</td>
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<td>4.</td>
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<td>SF</td>
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<td>17,734</td>
</tr>
<tr>
<td>5.</td>
<td>INSTALL 10’ - 14’ WIDE SIDEWALK</td>
<td>SF</td>
<td>14,676</td>
<td>20.00</td>
<td>293,520</td>
</tr>
<tr>
<td>6.</td>
<td>INSTALL VERTICAL CURB &amp; GUTTER</td>
<td>LF</td>
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<td>53,506</td>
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<td>7.</td>
<td>INSTALL 25’ WIDE COMMERCIAL DRIVEWAY</td>
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<td>2</td>
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<td>20,000</td>
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<tr>
<td>8.</td>
<td>HANDICAP CURB RETURN (FULL)</td>
<td>EA</td>
<td>4</td>
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<td><strong>SUBTOTAL</strong></td>
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<td>$459,589</td>
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<tr>
<td><strong>B. STORM DRAIN</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>REMOVE &amp; REPLACE EXISTING CATCH BASIN</td>
<td>EA</td>
<td>6</td>
<td>6,250.00</td>
<td>$37,500</td>
</tr>
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<td><strong>SUBTOTAL</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$37,500</td>
</tr>
<tr>
<td><strong>C. SANITARY SEWER</strong></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>4” SANITARY SEWER CONNECTION (1 PER BLDG)</td>
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<tr>
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<td>SANITARY SEWER CLEAN OUT</td>
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<td>10,000</td>
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<td><strong>SUBTOTAL</strong></td>
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</tr>
<tr>
<td><strong>D. WATER SUPPLY</strong></td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>11.</td>
<td>INSTALL FIRE HYDRANTS</td>
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<td>5,000.00</td>
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<td>12.</td>
<td>2” WATER CONNECTION (1 PER BLDG.)</td>
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<td>24,000</td>
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<td>13.</td>
<td>4” FIRE CONNECTION (1 PER BLDG.)</td>
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<td>44,000</td>
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<td>14.</td>
<td>2” BACKFLOW PREVENTER</td>
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<td>6,250.00</td>
<td>50,000</td>
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<td>4” REDUCED PRESSURE DETECTOR ASSEMBLY</td>
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<td>50,000</td>
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<tr>
<td>16.</td>
<td>FIRE DEPARTMENT CONNECTOR WITH POST INDICATOR VALVE</td>
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<td>6,250.00</td>
<td>50,000</td>
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<td>17.</td>
<td>2” WATER VALVE</td>
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<td>2,000.00</td>
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<td>18.</td>
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Exhibit B
### E. MISCELLANEOUS

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Unit</th>
<th>Qty</th>
<th>Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>19.</td>
<td>STRIPING</td>
<td>LS</td>
<td>1</td>
<td>8,000.00</td>
<td>$8,000</td>
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<tr>
<td>20.</td>
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<td>LS</td>
<td>1</td>
<td>35,000.00</td>
<td>35,000</td>
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<tr>
<td>21.</td>
<td>LIGHTING</td>
<td>LS</td>
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<td>35,000.00</td>
<td>35,000</td>
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<tr>
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<td></td>
<td>WEST BLOCK TOTAL</td>
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<td></td>
<td><strong>$879,189</strong></td>
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### CENTER BLOCK

#### A. STREET IMPROVEMENTS

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Unit</th>
<th>Qty</th>
<th>Price</th>
<th>Total Price</th>
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</thead>
<tbody>
<tr>
<td>1.</td>
<td>CLEAR AND GRUB</td>
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<td>30,000.00</td>
<td>$30,000</td>
</tr>
<tr>
<td>2.</td>
<td>EXCAVATION (REMOVE CURB, GUTTER AND SIDEWALK)</td>
<td>CYD</td>
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<td>3,000</td>
</tr>
<tr>
<td>3.</td>
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<td>LF</td>
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<td>1,640</td>
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<tr>
<td>4.</td>
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<td>16,168</td>
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<td>16,168</td>
</tr>
<tr>
<td>5.</td>
<td>INSTALL 10-14' WIDE SIDEWALK</td>
<td>SF</td>
<td>13,380</td>
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</tr>
<tr>
<td>6.</td>
<td>INSTALL VERTICAL CURB &amp; GUTTER</td>
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<td>1,115</td>
<td>43.75</td>
<td>48,781</td>
</tr>
<tr>
<td>7.</td>
<td>INSTALL 25' WIDE COMMERCIAL DRIVEWAY</td>
<td>EA</td>
<td>5</td>
<td>10,000.00</td>
<td>50,000</td>
</tr>
<tr>
<td>8.</td>
<td>HANDICAP CURB RETURN (FULL)</td>
<td>EA</td>
<td>4</td>
<td>10,000.00</td>
<td>40,000</td>
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<tr>
<td></td>
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#### B. STORM DRAIN

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<th>Unit</th>
<th>Qty</th>
<th>Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.</td>
<td>REMOVE &amp; REPLACE EXISTING CATCH BASIN</td>
<td>EA</td>
<td>5</td>
<td>6,250.00</td>
<td>31,250</td>
</tr>
<tr>
<td></td>
<td><strong>SUBTOTAL</strong></td>
<td></td>
<td></td>
<td><strong>$31,250</strong></td>
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#### C. SANITARY SEWER

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Unit</th>
<th>Qty</th>
<th>Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>9.</td>
<td>4&quot; SANITARY SEWER CONNECTION (1 PER BLDG.)</td>
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<tr>
<td>10.</td>
<td>SANITARY SEWER CLEAN OUT</td>
<td>EA</td>
<td>5</td>
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<td>6,250</td>
</tr>
<tr>
<td></td>
<td><strong>SUBTOTAL</strong></td>
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#### D. WATER SUPPLY

<table>
<thead>
<tr>
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<th>Unit</th>
<th>Qty</th>
<th>Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>11.</td>
<td>INSTALL FIRE HYDRANTS</td>
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<tr>
<td>12.</td>
<td>2&quot; WATER CONNECTION (1 PER BLDG.)</td>
<td>EA</td>
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<td>3,000.00</td>
<td>15,000</td>
</tr>
<tr>
<td>13.</td>
<td>4&quot; FIRE CONNECTION (1 PER BLDG.)</td>
<td>EA</td>
<td>5</td>
<td>5,500.00</td>
<td>27,500</td>
</tr>
<tr>
<td>14.</td>
<td>2&quot; BACKFLOW PREVENTER</td>
<td>EA</td>
<td>5</td>
<td>6,250.00</td>
<td>31,250</td>
</tr>
<tr>
<td>16.</td>
<td>FIRE DEPARTMENT CONNECTOR WITH POST INDICATOR VALVE</td>
<td>EA</td>
<td>5</td>
<td>6,250.00</td>
<td>31,250</td>
</tr>
<tr>
<td>17.</td>
<td>2&quot; WATER VALVE</td>
<td>EA</td>
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<td>2,000.00</td>
<td>10,000</td>
</tr>
<tr>
<td>18.</td>
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Exhibit B
### E. MISCELLANEOUS

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<th>UNIT</th>
<th>QTY</th>
<th>PRICE</th>
<th>TOTAL PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>19.</td>
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<td>1</td>
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<td>$8,000</td>
</tr>
<tr>
<td>20.</td>
<td>LANDSCAPING</td>
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<td>1</td>
<td>35,000.00</td>
<td>35,000</td>
</tr>
<tr>
<td>21.</td>
<td>LIGHTING</td>
<td>LS</td>
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<td>35,000.00</td>
<td>35,000</td>
</tr>
<tr>
<td>22.</td>
<td>UNDERGROUND EXISTING OVERHEAD UTILITIES</td>
<td>LS</td>
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</table>

**SUBTOTAL** $118,000

**CENTER BLOCK TOTAL** $762,084

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### EAST BLOCK

#### A. STREET IMPROVEMENTS

<table>
<thead>
<tr>
<th></th>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>QTY</th>
<th>PRICE</th>
<th>TOTAL PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>CLEAR AND GRUB</td>
<td>LS</td>
<td>1</td>
<td>15,000.00</td>
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</tr>
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<td>2.</td>
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<td>CYD</td>
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</tr>
<tr>
<td>3.</td>
<td>AC SAWCUT</td>
<td>LF</td>
<td>664</td>
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<td>830</td>
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<td>5.</td>
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<td>148,320</td>
</tr>
<tr>
<td>6.</td>
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<td>LF</td>
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<td>43.75</td>
<td>27,038</td>
</tr>
<tr>
<td>7.</td>
<td>INSTALL 25’ WIDE COMMERCIAL DRIVEWAY</td>
<td>EA</td>
<td>1</td>
<td>10,000.00</td>
<td>10,000</td>
</tr>
<tr>
<td>8.</td>
<td>HANDICAP CURB RETURN (FULL)</td>
<td>EA</td>
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<td>10,000.00</td>
<td>20,000</td>
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**SUBTOTAL** $231,806

#### B. STORM DRAIN

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<th>UNIT</th>
<th>QTY</th>
<th>PRICE</th>
<th>TOTAL PRICE</th>
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</thead>
<tbody>
<tr>
<td>8.</td>
<td>REMOVE &amp; REPLACE EXISTING CATCH BASIN</td>
<td>EA</td>
<td>2</td>
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<td>$12,500</td>
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**SUBTOTAL** $12,500

#### C. SANITARY SEWER

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<th>DESCRIPTION</th>
<th>UNIT</th>
<th>QTY</th>
<th>PRICE</th>
<th>TOTAL PRICE</th>
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<td>9.</td>
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<td>2,500.00</td>
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<tr>
<td>10.</td>
<td>SANITARY SEWER CLEAN OUT</td>
<td>EA</td>
<td>6</td>
<td>1,250.00</td>
<td>7,500</td>
</tr>
<tr>
<td>11.</td>
<td>SEWER LIFT STATION TO CONNECT TO MINER AVENUE SEWER MAIN (WESTBOUND) COMPLETE</td>
<td>EA</td>
<td>1</td>
<td>40,000.00</td>
<td>40,000</td>
</tr>
</tbody>
</table>

**SUBTOTAL** $62,500

#### D. WATER SUPPLY

<table>
<thead>
<tr>
<th></th>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>QTY</th>
<th>PRICE</th>
<th>TOTAL PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>12.</td>
<td>INSTALL FIRE HYDRANTS</td>
<td>EA</td>
<td>2</td>
<td>5,000.00</td>
<td>$10,000</td>
</tr>
<tr>
<td>13.</td>
<td>2” WATER CONNECTION (1 PER BLDG.)</td>
<td>EA</td>
<td>6</td>
<td>3,000.00</td>
<td>18,000</td>
</tr>
<tr>
<td>14.</td>
<td>4” FIRE CONNECTION (1 PER BLDG.)</td>
<td>EA</td>
<td>6</td>
<td>5,500.00</td>
<td>33,000</td>
</tr>
<tr>
<td>15.</td>
<td>2” BACKFLOW PREVENTOR</td>
<td>EA</td>
<td>6</td>
<td>6,250.00</td>
<td>37,500</td>
</tr>
<tr>
<td>16.</td>
<td>4” REDUCED PRESSURE DETECTOR ASSEMBLY</td>
<td>EA</td>
<td>6</td>
<td>6,250.00</td>
<td>37,500</td>
</tr>
<tr>
<td>17.</td>
<td>FIRE DEPARTMENT CONNECTION WITH POST INDICATOR VALVE</td>
<td>EA</td>
<td>6</td>
<td>6,250.00</td>
<td>37,500</td>
</tr>
<tr>
<td>18.</td>
<td>2” WATER VALVE</td>
<td>EA</td>
<td>6</td>
<td>2,000.00</td>
<td>12,000</td>
</tr>
<tr>
<td>19.</td>
<td>WATER METER</td>
<td>EA</td>
<td>6</td>
<td>4,375.00</td>
<td>26,250</td>
</tr>
</tbody>
</table>

**SUBTOTAL** $211,750

---

Exhibit B
## E. MISCELLANEOUS

<table>
<thead>
<tr>
<th>20.</th>
<th>STRIPING</th>
<th>LS</th>
<th>1</th>
<th>4,000.00</th>
<th>4,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>21.</td>
<td>LANDSCAPING AND IRRIGATION</td>
<td>LS</td>
<td>1</td>
<td>17,500.00</td>
<td>17,500</td>
</tr>
<tr>
<td>22.</td>
<td>LIGHTING</td>
<td>LS</td>
<td>1</td>
<td>17,500.00</td>
<td>17,500</td>
</tr>
<tr>
<td>23.</td>
<td>UNDERGROUND EXISTING OVERHEAD UTILITIES</td>
<td>LS</td>
<td>1</td>
<td>60,000.00</td>
<td>60,000</td>
</tr>
</tbody>
</table>

**SUBTOTAL** $99,000
**EAST BLOCK TOTAL** $617,556

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

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>QTY</th>
<th>PRICE</th>
<th>PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>REMOVE 72&quot; STORM DRAIN</td>
<td>LF</td>
<td>215</td>
<td>$80.00</td>
<td>$17,200</td>
</tr>
<tr>
<td>2.</td>
<td>INSTALL 72&quot; STORM DRAIN</td>
<td>LF</td>
<td>277</td>
<td>$56.00</td>
<td>$15,120</td>
</tr>
<tr>
<td>3.</td>
<td>STORM DRAIN STRUCTURE</td>
<td>EA</td>
<td>3</td>
<td>$45,000.00</td>
<td>135,000</td>
</tr>
<tr>
<td>4.</td>
<td>POTHOLE UTILITIES</td>
<td>LS</td>
<td>1</td>
<td>$5,000.00</td>
<td>5,000</td>
</tr>
</tbody>
</table>

**72" STORM DRAIN IMPROVEMENTS** $312,320

### OFFSITE SEWER IMPROVEMENTS

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

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>QTY</th>
<th>PRICE</th>
<th>PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>INSTALL 18&quot; SANITARY SEWER</td>
<td>LF</td>
<td>400</td>
<td>$400.00</td>
<td>$160,000</td>
</tr>
<tr>
<td>2.</td>
<td>REMOVE AND REPLACE SEWER MANHOLE</td>
<td>EA</td>
<td>2</td>
<td>$10,000.00</td>
<td>20,000</td>
</tr>
</tbody>
</table>

**OFFSITE SEWER IMPROVEMENTS** $180,000

### OFFSITE CAL WATER IMPROVEMENTS

(ASSUME THREE BLOCKS OF IMPROVEMENTS)

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>QTY</th>
<th>PRICE</th>
<th>PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>INSTALL 12&quot; WATER</td>
<td>LF</td>
<td>1200</td>
<td>$130.00</td>
<td>$156,000</td>
</tr>
<tr>
<td>2.</td>
<td>INSTALL 12&quot; GATE VALVES</td>
<td>EA</td>
<td>6</td>
<td>$1,500.00</td>
<td>9,000</td>
</tr>
<tr>
<td>3.</td>
<td>CONNECT TO EXISTING</td>
<td>EA</td>
<td>6</td>
<td>$1,200.00</td>
<td>7,200</td>
</tr>
<tr>
<td>4.</td>
<td>REPLACE FIRE HYDRANTS</td>
<td>EA</td>
<td>4</td>
<td>$5,000.00</td>
<td>20,000</td>
</tr>
</tbody>
</table>

**OFFSITE CAL WATER IMPROVEMENTS** $192,200

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 $192,200

**SUBTOTAL** $2,953,329

30% CONTINGENCY $886,999

**GRAND TOTAL** $3,839,328
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.
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).
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 Helman, Susan Lothhus, Michael Tubbs, Anthony Silva, and Daniel Wright.
Absent: Moses Zaplen.
City of Stockton
ECONOMIC DEVELOPMENT
DOWNTOWN INFILL 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. ___

::ODMAGRPWSEVC01801803_library:1182921
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
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:

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Allocation</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY 2016-17</td>
<td>$1,800,000</td>
</tr>
<tr>
<td>FY 2017-18</td>
<td>$900,000</td>
</tr>
<tr>
<td>FY 2018-19</td>
<td>$900,000</td>
</tr>
<tr>
<td>FY 2019-20</td>
<td>$200,000</td>
</tr>
</tbody>
</table>

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
CONTRACT ROUTING FORM

CONTRACT NUMBER: 2016-10-18-1204

CONTRACT TYPE (select one)

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

Contract Amount: $0

CONTRACT INFORMATION
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 $15,000 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. 110-001212-1204
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
Signed ( ) originals on: ____________________________
Forwarded to: ____________________________  by: ____________________________

RISK SERVICES
Insurance approved on: ____________________________  by: ____________________________
Bonds approved on: ____________________________  by: ____________________________
Forwarded to: ____________________________  by: ____________________________  RM #: ____________________________

CITY ATTORNEY
Approved as to Form and Content on: 11/9/16  by: ____________________________
Forwarded to: EDD on: ____________________________  by: ____________________________

CITY MANAGER
Signed by City Manager on: 11/28/16  Forwarded to: Clerk on: 11/29/16  by: ____________________________

CITY CLERK
City Clerk attested on: 11/30/16  Returned ( ) original(s) to dept. on: 11/30/16  by: ____________________________
Retained ( ) 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.
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:
BONNIE PAIGE
CITY CLERK

“CITY”
CITY OF STOCKTON, a municipal corporation

BY

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

“DEVELOPER”
OPEN WINDOW PROJECT, LLC, a California limited liability company

BY
RESOLUTION AUTHORIZING AN AMENDMENT TO THE DOWNTOWN INFILL 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 Tubbs
MICHAEL D. TUBBS
Mayor of the City of Stockton

ATTEST:

BONNIE PAIGE
BONNIE PAIGE
City Clerk of the City of Stockton
AMENDMENT TO THE DOWNTOWN INFILL 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 Streetf. 621 East Channel Streetg. 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:
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 ________________________________
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.
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.
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

DOWN TOWN 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".

RE C ITALS

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.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 assigns 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

BY_______________________________________________

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

BY_______________________________________________

“CITY”
CITY OF STOCKTON, a municipal corporation

BY_______________________________________________

CITY MANAGER

“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

<table>
<thead>
<tr>
<th>Block Summary</th>
<th>Ground Floor Commercial</th>
<th>Tenant Amenities</th>
<th>Residential SF</th>
<th>Parking</th>
<th>Total Res. Units</th>
<th>Outdoor Center Walk</th>
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<tr>
<td>WEST BLOCK</td>
<td>46,400</td>
<td></td>
<td>78,900</td>
<td>52</td>
<td>76</td>
<td>10,000</td>
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<tr>
<td>CENTER BLOCK</td>
<td>37,000</td>
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<td>78,800</td>
<td>129</td>
<td>59</td>
<td>10,500</td>
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<td>EAST BLOCK</td>
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<td>18,700</td>
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<td>TOTAL PROJECT</td>
<td>92,400 sf</td>
<td>8,000 sf</td>
<td>176,400 sf</td>
<td>212</td>
<td>200 units</td>
<td>25,5000 sf</td>
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</table>

Phase I - Project Boundary
# 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) 334-6813 • Fax (209) 334-0723

August 3, 2016  
Project No. 1625

**ENGINEER’S COST ESTIMATE**  
(Prevailing Wage Included)

<table>
<thead>
<tr>
<th>WEST BLOCK</th>
<th>ITEM</th>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>QTY</th>
<th>PRICE</th>
<th>TOTAL</th>
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<tbody>
<tr>
<td>A. STREET IMPROVEMENTS</td>
<td>CLEAR AND GRUB</td>
<td>LS</td>
<td>1</td>
<td>30,000.00</td>
<td>$30,000</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>EXCAVATION (REMOVE CURB, GUTTER AND SIDEWALK)</td>
<td>CYD</td>
<td>438</td>
<td>7.60</td>
<td>3,285</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>AC SAWCUT</td>
<td>LF</td>
<td>1,315</td>
<td>1.25</td>
<td>1,644</td>
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<tr>
<td>4</td>
<td>CONCRETE SUBGRADE COMPACTION</td>
<td>SF</td>
<td>17,734</td>
<td>1.00</td>
<td>17,734</td>
<td></td>
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<tr>
<td>5</td>
<td>INSTALL 10' - 14' WIDE SIDEWALK</td>
<td>SF</td>
<td>14,676</td>
<td>20.00</td>
<td>293,520</td>
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<tr>
<td>6</td>
<td>INSTALL VERTICAL CURB &amp; GUTTER</td>
<td>LF</td>
<td>1,223</td>
<td>43.75</td>
<td>53,605</td>
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<tr>
<td>7</td>
<td>INSTALL 26' WIDE COMMERCIAL DRIVEWAY</td>
<td>EA</td>
<td>2</td>
<td>10,000.00</td>
<td>20,000</td>
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<tr>
<td>8</td>
<td>HANDICAP CURB RETURN (FULL)</td>
<td>EA</td>
<td>4</td>
<td>10,000.00</td>
<td>40,000</td>
<td></td>
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<tr>
<td></td>
<td><strong>SUBTOTAL</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>$459,689</strong></td>
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</table>

B. STORM DRAIN  
6. 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 | 5,600.00 | 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 | 34,000 |
| | **SUBTOTAL** | | | **$284,000** |

Exhibit B
### E. MISCELLANEOUS

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>QTY</th>
<th>PRICE</th>
<th>TOTAL PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>19.</td>
<td>STRIPING</td>
<td>LS</td>
<td>1</td>
<td>8,000.00</td>
<td>$8,000</td>
</tr>
<tr>
<td>20.</td>
<td>LANDSCAPING AND IRRIGATION</td>
<td>LS</td>
<td>1</td>
<td>35,000.00</td>
<td>35,000</td>
</tr>
<tr>
<td>21.</td>
<td>LIGHTING</td>
<td>LS</td>
<td>1</td>
<td>35,000.00</td>
<td>35,000</td>
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<td></td>
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<td></td>
<td><strong>$78,000</strong></td>
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<tr>
<td></td>
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<td></td>
<td></td>
<td><strong>$879,189</strong></td>
<td></td>
</tr>
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</table>

### CENTER BLOCK

#### A. STREET IMPROVEMENTS

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>QTY</th>
<th>PRICE</th>
<th>TOTAL PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>CLEAR AND GRUB</td>
<td>LS</td>
<td>1</td>
<td>30,000.00</td>
<td>$30,000</td>
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<tr>
<td>2.</td>
<td>EXCAVATION (REMOVE CURB, GUTTER AND SIDEWALK)</td>
<td>CYD</td>
<td>400</td>
<td>7.50</td>
<td>3,000</td>
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<tr>
<td>3.</td>
<td>AC SAWCUT</td>
<td>LF</td>
<td>1,312</td>
<td>1.25</td>
<td>1,640</td>
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<tr>
<td>4.</td>
<td>CONCRETE SUBGRADE COMPACTION</td>
<td>SF</td>
<td>16,168</td>
<td>1.00</td>
<td>16,168</td>
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<tr>
<td>5.</td>
<td>INSTALL 10-14' WIDE SIDEWALK</td>
<td>SF</td>
<td>13,380</td>
<td>20.00</td>
<td>267,600</td>
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<tr>
<td>6.</td>
<td>INSTALL VERTICAL CURB &amp; GUTTER</td>
<td>LF</td>
<td>1,115</td>
<td>43.75</td>
<td>48,781</td>
</tr>
<tr>
<td>7.</td>
<td>INSTALL 25' WIDE COMMERCIAL DRIVEWAY</td>
<td>EA</td>
<td>5</td>
<td>10,000.00</td>
<td>50,000</td>
</tr>
<tr>
<td>8.</td>
<td>HANDICAP CURB RETURN (FULL)</td>
<td>EA</td>
<td>4</td>
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<td><strong>SUBTOTAL</strong></td>
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#### B. STORM DRAIN

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<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
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<th>QTY</th>
<th>PRICE</th>
<th>TOTAL PRICE</th>
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</thead>
<tbody>
<tr>
<td>8.</td>
<td>REMOVE &amp; REPLACE EXISTING CATCH BASIN</td>
<td>EA</td>
<td>6</td>
<td>6,250.00</td>
<td>31,250</td>
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<tr>
<td></td>
<td><strong>SUBTOTAL</strong></td>
<td></td>
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<td><strong>$31,250</strong></td>
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#### C. SANITARY SEWER

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>QTY</th>
<th>PRICE</th>
<th>TOTAL PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>9.</td>
<td>4&quot; SANITARY SEWER CONNECTION (1 PER BLDG.)</td>
<td>EA</td>
<td>5</td>
<td>2,500.00</td>
<td>$12,500</td>
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<tr>
<td>10.</td>
<td>SANITARY SEWER CLEAN OUT</td>
<td>EA</td>
<td>5</td>
<td>1,250.00</td>
<td>6,250</td>
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<tr>
<td></td>
<td><strong>SUBTOTAL</strong></td>
<td></td>
<td></td>
<td><strong>$18,750</strong></td>
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#### D. WATER SUPPLY

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>QTY</th>
<th>PRICE</th>
<th>TOTAL PRICE</th>
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</thead>
<tbody>
<tr>
<td>11.</td>
<td>INSTALL FIRE HYDRANTS</td>
<td>EA</td>
<td>0</td>
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<td>0</td>
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<tr>
<td>12.</td>
<td>2&quot; WATER CONNECTION (1 PER BLDG.)</td>
<td>EA</td>
<td>5</td>
<td>3,000.00</td>
<td>15,000</td>
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<tr>
<td>13.</td>
<td>4&quot; FIRE CONNECTION (1 PER BLDG.)</td>
<td>EA</td>
<td>5</td>
<td>5,500.00</td>
<td>27,500</td>
</tr>
<tr>
<td>14.</td>
<td>2&quot; BACKFLOW PREVENTER</td>
<td>EA</td>
<td>5</td>
<td>6,250.00</td>
<td>31,250</td>
</tr>
<tr>
<td>15.</td>
<td>FIRE DEPARTMENT CONNECTOR WITH POST INDICATOR VALVE</td>
<td>EA</td>
<td>5</td>
<td>6,250.00</td>
<td>31,250</td>
</tr>
<tr>
<td>16.</td>
<td>2&quot; WATER VALVE</td>
<td>EA</td>
<td>5</td>
<td>2,000.00</td>
<td>10,000</td>
</tr>
<tr>
<td>17.</td>
<td>WATER METER</td>
<td>EA</td>
<td>5</td>
<td>4,375.00</td>
<td>21,875</td>
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### E. MISCELLANEOUS

<table>
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<th>Unit</th>
<th>Qty</th>
<th>Unit Price</th>
<th>Total Price</th>
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<tbody>
<tr>
<td>19.</td>
<td>STRIPING</td>
<td>LS</td>
<td>1</td>
<td>8,000.00</td>
<td>$8,000</td>
</tr>
<tr>
<td>20.</td>
<td>LANDSCAPING</td>
<td>LS</td>
<td>1</td>
<td>35,000.00</td>
<td>35,000</td>
</tr>
<tr>
<td>21.</td>
<td>LIGHTING</td>
<td>LS</td>
<td>1</td>
<td>35,000.00</td>
<td>35,000</td>
</tr>
<tr>
<td>22.</td>
<td>UNDERGROUND EXISTING OVERHEAD UTILITIES</td>
<td>LS</td>
<td>1</td>
<td>40,000.00</td>
<td>40,000</td>
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</table>

**SUBTOTAL** $118,000

**CENTER BLOCK TOTAL** $762,084

---

### EAST BLOCK

#### A. STREET IMPROVEMENTS

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Unit</th>
<th>Qty</th>
<th>Unit Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>CLEAR AND GRUB</td>
<td>LS</td>
<td>1</td>
<td>16,000.00</td>
<td>$16,000</td>
</tr>
<tr>
<td>2.</td>
<td>EXCAVATION (REMOVE CURB, GUTTER AND SIDEWALK)</td>
<td>CYD</td>
<td>221</td>
<td>7.50</td>
<td>1,658</td>
</tr>
<tr>
<td>3.</td>
<td>AC SAWCUT</td>
<td>LF</td>
<td>684</td>
<td>1.25</td>
<td>830</td>
</tr>
<tr>
<td>4.</td>
<td>CONCRETE SUBGRADE COMPACTION</td>
<td>SF</td>
<td>6,901</td>
<td>1.00</td>
<td>6,901</td>
</tr>
<tr>
<td>5.</td>
<td>INSTALL 10-14' WIDE SIDEWALK</td>
<td>SF</td>
<td>7,419</td>
<td>20.00</td>
<td>148,320</td>
</tr>
<tr>
<td>6.</td>
<td>INSTALL VERTICAL CURB &amp; GUTTER</td>
<td>LF</td>
<td>818</td>
<td>43.75</td>
<td>27,038</td>
</tr>
<tr>
<td>7.</td>
<td>INSTALL 25' WIDE COMMERCIAL DRIVEWAY</td>
<td>EA</td>
<td>1</td>
<td>10,000.00</td>
<td>10,000</td>
</tr>
<tr>
<td>8.</td>
<td>HANDICAP CURB RETURN (FULL)</td>
<td>EA</td>
<td>2</td>
<td>10,000.00</td>
<td>20,000</td>
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**SUBTOTAL** $231,836

#### B. STORM DRAIN

<table>
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<th>Unit Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.</td>
<td>REMOVE &amp; REPLACE EXISTING CATCH BASIN</td>
<td>EA</td>
<td>2</td>
<td>6,250.00</td>
<td>$12,500</td>
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**SUBTOTAL** $12,500

#### C. SANITARY SEWER

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Unit</th>
<th>Qty</th>
<th>Unit Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>9.</td>
<td>4&quot; SANITARY SEWER CONNECTION (1 PER BLDG.)</td>
<td>EA</td>
<td>6</td>
<td>2,500.00</td>
<td>$15,000</td>
</tr>
<tr>
<td>10.</td>
<td>SANITARY SEWER CLEAN OUT</td>
<td>EA</td>
<td>6</td>
<td>1,250.00</td>
<td>7,500</td>
</tr>
<tr>
<td>11.</td>
<td>SEWER LIFT STATION TO CONNECT TO MINER AVENUE SEWER MAIN (WESTBOUND) COMPLETE</td>
<td>EA</td>
<td>1</td>
<td>40,000.00</td>
<td>40,000</td>
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**SUBTOTAL** $62,500

#### D. WATER SUPPLY

<table>
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<tr>
<th>Item</th>
<th>Description</th>
<th>Unit</th>
<th>Qty</th>
<th>Unit Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>12.</td>
<td>INSTALL FIRE HYDRANTS</td>
<td>EA</td>
<td>2</td>
<td>5,000.00</td>
<td>$10,000</td>
</tr>
<tr>
<td>13.</td>
<td>2&quot; WATER CONNECTION (1 PER BLDG.)</td>
<td>EA</td>
<td>6</td>
<td>3,000.00</td>
<td>18,000</td>
</tr>
<tr>
<td>14.</td>
<td>4&quot; FIRE CONNECTION (1 PER BLDG.)</td>
<td>EA</td>
<td>6</td>
<td>5,600.00</td>
<td>33,000</td>
</tr>
<tr>
<td>15.</td>
<td>2&quot; BACKFLOW PREVENTOR</td>
<td>EA</td>
<td>6</td>
<td>6,250.00</td>
<td>37,500</td>
</tr>
<tr>
<td>16.</td>
<td>4&quot; REDUCED PRESSURE DETECTOR ASSEMBLY</td>
<td>EA</td>
<td>6</td>
<td>6,250.00</td>
<td>37,500</td>
</tr>
<tr>
<td>17.</td>
<td>FIRE DEPARTMENT CONNECTION WITH POST INDICATOR VALVE</td>
<td>EA</td>
<td>6</td>
<td>6,250.00</td>
<td>37,500</td>
</tr>
<tr>
<td>18.</td>
<td>2&quot; WATER VALVE</td>
<td>EA</td>
<td>6</td>
<td>2,000.00</td>
<td>12,000</td>
</tr>
<tr>
<td>19.</td>
<td>WATER METER</td>
<td>EA</td>
<td>6</td>
<td>4,375.00</td>
<td>26,250</td>
</tr>
</tbody>
</table>

**SUBTOTAL** $211,750

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Exhibit A
### E. MISCELLANEOUS

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Unit</th>
<th>Qty</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>20</td>
<td>STRIPING</td>
<td>LS</td>
<td>1</td>
<td>4,000.00</td>
</tr>
<tr>
<td>21</td>
<td>LANDSCAPING AND IRRIGATION</td>
<td>LS</td>
<td>1</td>
<td>17,600.00</td>
</tr>
<tr>
<td>22</td>
<td>LIGHTING</td>
<td>LS</td>
<td>1</td>
<td>17,500.00</td>
</tr>
<tr>
<td>23</td>
<td>UNDERGROUND EXISTING OVERHEAD UTILITIES</td>
<td>LS</td>
<td>1</td>
<td>60,000.00</td>
</tr>
</tbody>
</table>

**SUBTOTAL** $95,000

**EAST BLOCK TOTAL** $617,556

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

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Unit</th>
<th>Qty</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>REMOVE 72&quot; STORM DRAIN</td>
<td>LF</td>
<td>215</td>
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<tr>
<td>2</td>
<td>INSTALL 72&quot; STORM DRAIN</td>
<td>LF</td>
<td>277</td>
<td>$500.00</td>
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<tr>
<td>3</td>
<td>STORM DRAIN STRUCTURE</td>
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<td>45,000.00</td>
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<tr>
<td>4</td>
<td>POTHOLE UTILITIES</td>
<td>LS</td>
<td>1</td>
<td>6,000.00</td>
</tr>
</tbody>
</table>

**72" STORM DRAIN IMPROVEMENTS** $312,320

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

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Unit</th>
<th>Qty</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
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<td>INSTALL 18&quot; SANITARY SEWER</td>
<td>LF</td>
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<td>$400.00</td>
</tr>
<tr>
<td>2</td>
<td>REMOVE AND REPLACE SEWER MANHOLE</td>
<td>EA</td>
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<td>10,000.00</td>
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</table>

**OFFSITE SEWER IMPROVEMENTS** $180,000

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

<table>
<thead>
<tr>
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<th>Price</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>INSTALL 12&quot; WATER</td>
<td>LF</td>
<td>1200</td>
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<tr>
<td>2</td>
<td>INSTALL 12&quot; GATE VALVES</td>
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<td>6</td>
<td>1,500.00</td>
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<tr>
<td>3</td>
<td>CONNECT TO EXISTING</td>
<td>EA</td>
<td>6</td>
<td>1,200.00</td>
</tr>
<tr>
<td>4</td>
<td>REPLACE FIRE HYDRANTS</td>
<td>EA</td>
<td>4</td>
<td>5,000.00</td>
</tr>
</tbody>
</table>

**OFFSITE CAL WATER IMPROVEMENTS** $192,200

<table>
<thead>
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<th>Unit</th>
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<td>CENTER BLOCK</td>
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<td>$762,064</td>
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<tr>
<td>EAST BLOCK</td>
<td></td>
<td>$617,556</td>
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<tr>
<td>72&quot; STORM DRAIN IMPROVEMENTS</td>
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<td>$312,320</td>
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<tr>
<td>OFFSITE SEWER IMPROVEMENTS</td>
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<td>OFFSITE CAL WATER IMPROVEMENTS</td>
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<td><strong>SUBTOTAL</strong></td>
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<td>30% CONTINGENCY</td>
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<td>$885,999</td>
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**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
CONTRACT ROUTING FORM

Contract Number: 2010-10-18-1204 P Amendment
(For Clerk's Use)

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: 2017-05-09-1103
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: Janice Miller ext: 8862 Staff: Amanda Thomas ext: 7540
   Forwarded to: City Attorney on: 5/15/17 by: alanomas

2. VENDOR/OTHER PARTY
   Signed ( ) originals on: ___________ Forwarded to: ___________ by: ___________

3. RISK SERVICES
   Insurance approved on: ___________ by: ___________ Bonds approved on: ___________ by: ___________
   Forwarded to: ___________ by: ___________ RM #: ___________

4. CITY ATTORNEY
   Approved as to Form and Content on: 5/15/17 by: YV
   Forwarded to: EDD on: 5/15/17 by: LHPW

5. CITY MANAGER
   Signed by City Manager on: 5/15/17 Forwarded to City Clerk on: 5/15/17 by: MG

6. CITY CLERK
   City Clerk attested on: 5.11.17 Returned (all) original(s) to dept. on: 5.11.17 by
   Retained (all) original(s) for City's file. Hard Copy on file? Yes ☐ No ☐ OB # ___________

7. 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: ___________

8. PURCHASING: Purchase Order No. ___________ PUR No. ___________
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 October 19, 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 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 and will be funded as follows: $2.7 million from General Fund and $3.48 million from the Community Development Block Grant.

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:
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:

BRET HUNTER, CMC
INTERIM CITY CLERK

BY

"CITY"

CITY OF STOCKTON, a municipal corporation

BY

"DEVELOPER"

OPEN WINDOW PROJECT, LLC, a California limited liability company

By

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

BY

DEPUTY CITY ATTORNEY

BY
### WEST BLOCK

#### A. STREET IMPROVEMENTS

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>QTY</th>
<th>UNIT PRICE</th>
<th>TOTAL PRICE</th>
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<tbody>
<tr>
<td>1.</td>
<td>CLEAR AND GRUB</td>
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<td>1</td>
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<tr>
<td>2.</td>
<td>EXCAVATION (REMOVE CURB, GUTTER, SIDEWALK AND 1' OF STREET SECTION)</td>
<td>CYD</td>
<td>436</td>
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<td>3.</td>
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<td>5.</td>
<td>CONCRETE SUBGRADE COMPACTION</td>
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<td>17,734</td>
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<td>8.</td>
<td>INSTALL 25' WIDE COMMERCIAL DRIVEWAY</td>
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<td>9.</td>
<td>HANDICAP CURB RETURN (FULL)</td>
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<td>10.</td>
<td>GRIND 2&quot; AC AND REPLACE WITH 2&quot; AC OVERLAY</td>
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<td>11.</td>
<td>REMOVE AND REPLACE VERTICAL CURB AND GUTTER</td>
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<td>12.</td>
<td>SUBTERRANEAN SIDEWALK REINFORCEMENT DUE TO EXISTING BASEMENT</td>
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<td>80,000.00</td>
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<td>13.</td>
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**Subtotal A** $725,936

#### B. STORM DRAIN

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<td>15.</td>
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**Subtotal B** $37,500

#### C. SANITARY SEWER

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**Subtotal C** $30,000
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<td>2&quot; BACKFLOW PREVENTER</td>
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<td>22</td>
<td>4&quot; REDUCED PRESSURE DETECTOR ASSEMBLY</td>
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<td>23</td>
<td>FIRE DEPARTMENT CONNECTOR WITH POST INDICATOR VALVE</td>
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<td>2&quot; WATER VALVE</td>
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<td>WATER METER</td>
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Subtotal: $284,000

### E. MISCELLANEOUS

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<td>TRAFFIC CONTROL</td>
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<td>SWPPP MITIGATION</td>
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<td>31</td>
<td>STREET FURNITURE</td>
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<td>32</td>
<td>STREET ART</td>
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<td>SOLAR TRASH COMPACTOR</td>
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Subtotal: $213,700

**WEST BLOCK TOTAL**: $1,299,136

### CENTER BLOCK

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<tr>
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<th>Quantity</th>
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<tr>
<td>A. STREET IMPROVEMENTS</td>
<td>CLEAR AND GRUB</td>
<td>LS</td>
<td>1</td>
<td>$30,000.00</td>
<td>$30,000</td>
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<tr>
<td>B. CENTER BLOCK</td>
<td>EXCAVATION (REMOVE CURB, GUTTER, SIDEWALK AND 1' OF STREET SECTION)</td>
<td>CYD</td>
<td>400</td>
<td>7.50</td>
<td>3,000</td>
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<tr>
<td>C. STREET IMPROVEMENTS</td>
<td>AC SAWCUT</td>
<td>LF</td>
<td>1,312</td>
<td>1.25</td>
<td>1,640</td>
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<td>D. STREET IMPROVEMENTS</td>
<td>AC DEEP LIFT</td>
<td>TON</td>
<td>50</td>
<td>150.00</td>
<td>7,500</td>
</tr>
<tr>
<td>E. STREET IMPROVEMENTS</td>
<td>CONCRETE SUBGRADE COMPACTION</td>
<td>SF</td>
<td>16,158</td>
<td>1.00</td>
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<tr>
<td>F. STREET IMPROVEMENTS</td>
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<td>SF</td>
<td>13,380</td>
<td>32.50</td>
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<td>G. STREET IMPROVEMENTS</td>
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<td>LF</td>
<td>1,115</td>
<td>49.75</td>
<td>55,075</td>
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<td>H. STREET IMPROVEMENTS</td>
<td>INSTALL 25' WIDE COMMERCIAL DRIVEWAY</td>
<td>EA</td>
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<td>10,000.00</td>
<td>50,000</td>
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<tr>
<td>I. STREET IMPROVEMENTS</td>
<td>HANDICAP CURB RETURN (FULL)</td>
<td>EA</td>
<td>4</td>
<td>10,000.00</td>
<td>40,000</td>
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<tr>
<td>J. STREET IMPROVEMENTS</td>
<td>GRIND 2' AC AND REPLACE WITH 2' AC OVERLAY</td>
<td>SF</td>
<td>36,243</td>
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<td>63,425</td>
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<td>K. STREET IMPROVEMENTS</td>
<td>REMOVE AND REPLACE VERTICAL CURB AND GUTTER</td>
<td>LF</td>
<td>819</td>
<td>28.00</td>
<td>23,294</td>
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<tr>
<td>L. STREET IMPROVEMENTS</td>
<td>SUBTERRANEAN SIDEWALK REINFORCEMENT DUE TO EXISTING BASEMENT</td>
<td>LS</td>
<td>1</td>
<td>80,000.00</td>
<td>80,000</td>
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<td>M. STREET IMPROVEMENTS</td>
<td>MID-BLOCK LIGHTED, RAISED CROSSWALK</td>
<td>EA</td>
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<td>24,000.00</td>
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<td>N. STREET IMPROVEMENTS</td>
<td>DECORATIVE CURB RETURNS INCLUDING BOLLARDS</td>
<td>EA</td>
<td>4</td>
<td>8,500.00</td>
<td>34,000</td>
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</table>

Subtotal: $727,549

**Total**: $1,299,136

Attachment A
### B. STORM DRAIN
15. REMOVE & REPLACE EXISTING CATCH BASIN  
   EA  5  $8,250.00  $41,250  
   **Subtotal B**  $41,250

### 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  $6,250  
   **Subtotal C**  $18,750

### D. WATER
18. INSTALL FIRE HYDRANTS  
   EA  2  $5,000.00  $10,000
19. 2" WATER CONNECTION (1 PER BLDG.)  
   EA  5  $3,000.00  $15,000
20. 4" FIRE CONNECTION (1 PER BLDG.)  
   EA  5  $5,600.00  $28,000
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  $21,875  
   **Subtotal D**  $183,125

### E. MISCELLANEOUS
26. STRIPPING  
   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  $19,600
35. REMEDIATE LEAKY UNDERGROUND STORAGE TANK  
   LS  1  $100,000.00  $100,000  
   **Subtotal E**  $353,700

**CENTER BLOCK TOTAL**  $1,314,373

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<tr>
<th>ITEM</th>
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<th>UNIT</th>
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<tr>
<td>2.</td>
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<td>5.</td>
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<td>6.</td>
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<td>9.</td>
<td>HANDicap CURB RETURN (FULL)</td>
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**Subtotal A**  $309,311

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*ATTACHMENT A*
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<tr>
<td>7.</td>
<td>INSTALL VERTICAL CURB AND GUTTER</td>
<td>LF</td>
<td>360</td>
<td>43.75</td>
<td>15,750</td>
</tr>
<tr>
<td>8.</td>
<td>INSTALL 25' COMMERCIAL DRIVEWAY</td>
<td>EA</td>
<td>5</td>
<td>10,000.00</td>
<td>50,000</td>
</tr>
<tr>
<td>9.</td>
<td>HANDICAP RETURN (FULL)</td>
<td>EA</td>
<td>2</td>
<td>10,000.00</td>
<td>20,000</td>
</tr>
<tr>
<td>10.</td>
<td>GRIND 2' AC AND REPLACE WITH 2' AC OVERLAY</td>
<td>SF</td>
<td>15,012</td>
<td>1.75</td>
<td>26,271</td>
</tr>
<tr>
<td>11.</td>
<td>REMOVE AND REPLACE VERTICAL CURB AND GUTTER</td>
<td>LF</td>
<td>410</td>
<td>20.00</td>
<td>8,200</td>
</tr>
<tr>
<td>12.</td>
<td>DECORATIVE CURB RETURN INCLUDING BOLLARDS</td>
<td>EA</td>
<td>1</td>
<td>8,500.00</td>
<td>8,500</td>
</tr>
</tbody>
</table>

**Total for South Block:** $265,874
### B. STORM DRAIN

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Unit</th>
<th>Quantity</th>
<th>Unit Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>13.</td>
<td>REMOVE AND REPLACE CATCH BASIN</td>
<td>EA</td>
<td>2</td>
<td>$6,250.00</td>
<td>$12,500</td>
</tr>
</tbody>
</table>

**Subtotal B** $12,500

### C. SANITARY SEWER

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Unit</th>
<th>Quantity</th>
<th>Unit Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>14.</td>
<td>SANITARY SEWER CONNECTIONS (ONE PER BUILDING)</td>
<td>EA</td>
<td>4</td>
<td>$2,500.00</td>
<td>$10,000</td>
</tr>
<tr>
<td>15.</td>
<td>CLEAN OUTS</td>
<td>EA</td>
<td>4</td>
<td>$1,250.00</td>
<td>$5,000</td>
</tr>
</tbody>
</table>

**Subtotal C** $15,000

### D. WATER

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Unit</th>
<th>Quantity</th>
<th>Unit Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>16.</td>
<td>INSTALL FIRE HYDRANTS</td>
<td>EA</td>
<td>2</td>
<td>$5,000.00</td>
<td>$10,000</td>
</tr>
<tr>
<td>17.</td>
<td>2&quot; WATER CONNECTION (1 PER BUILDING)</td>
<td>EA</td>
<td>4</td>
<td>$3,000.00</td>
<td>$12,000</td>
</tr>
<tr>
<td>18.</td>
<td>4&quot; FIRE CONNECTION (1 PER BUILDING)</td>
<td>EA</td>
<td>4</td>
<td>$5,000.00</td>
<td>$22,000</td>
</tr>
<tr>
<td>19.</td>
<td>2&quot; BACKFLOW PREVENTOR</td>
<td>EA</td>
<td>4</td>
<td>$6,250.00</td>
<td>$25,000</td>
</tr>
<tr>
<td>20.</td>
<td>4&quot; REDUCED PRESSURE DETECTOR ASSEMBLY</td>
<td></td>
<td>4</td>
<td>$6,250.00</td>
<td>$25,000</td>
</tr>
<tr>
<td>21.</td>
<td>FIRE DEPARTMENT CONNECTOR WITH POST INDICATOR VALVE</td>
<td></td>
<td>4</td>
<td>$6,250.00</td>
<td>$25,000</td>
</tr>
<tr>
<td>22.</td>
<td>2&quot; WATER VALVE</td>
<td>EA</td>
<td>4</td>
<td>$2,000.00</td>
<td>$8,000</td>
</tr>
<tr>
<td>23.</td>
<td>WATER METER</td>
<td>EA</td>
<td>4</td>
<td>$4,375.00</td>
<td>$17,500</td>
</tr>
</tbody>
</table>

**Subtotal D** $144,500

### E. MISCELLANEOUS

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Unit</th>
<th>Quantity</th>
<th>Unit Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>24.</td>
<td>STRIPING</td>
<td>LS</td>
<td>1</td>
<td>$3,000.00</td>
<td>$3,000</td>
</tr>
<tr>
<td>25.</td>
<td>LANDSCAPING &amp; IRRIGATION</td>
<td>LS</td>
<td>1</td>
<td>$14,000.00</td>
<td>$14,000</td>
</tr>
<tr>
<td>26.</td>
<td>LIGHTING</td>
<td>LS</td>
<td>1</td>
<td>$33,000.00</td>
<td>$33,000</td>
</tr>
<tr>
<td>27.</td>
<td>TRAFFIC CONTROL</td>
<td>LS</td>
<td>1</td>
<td>$16,000.00</td>
<td>$16,000</td>
</tr>
<tr>
<td>28.</td>
<td>SWPPP MITIGATION</td>
<td>LS</td>
<td>1</td>
<td>$17,500.00</td>
<td>$17,500</td>
</tr>
<tr>
<td>29.</td>
<td>STREET FURNITURE</td>
<td>LS</td>
<td>1</td>
<td>$12,000.00</td>
<td>$12,000</td>
</tr>
<tr>
<td>30.</td>
<td>UNDERGROUND OVERHEAD UTILITIES</td>
<td>LS</td>
<td>1</td>
<td>$40,000.00</td>
<td>$40,000</td>
</tr>
<tr>
<td>31.</td>
<td>STREET ART</td>
<td>LS</td>
<td>1</td>
<td>$25,000.00</td>
<td>$25,000</td>
</tr>
<tr>
<td>32.</td>
<td>SOLAR TRASH COMPACTOR</td>
<td>EA</td>
<td>2</td>
<td>$4,600.00</td>
<td>$9,200</td>
</tr>
</tbody>
</table>

**Subtotal E** $172,300

**South Block Total** $610,174

---

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

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Unit</th>
<th>Quantity</th>
<th>Unit Price</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>REMOVE 72&quot; STORM DRAIN</td>
<td>LF</td>
<td>215</td>
<td>$80.00</td>
<td>$17,200</td>
</tr>
<tr>
<td>2.</td>
<td>INSTALL 72&quot; STORM DRAIN</td>
<td>LF</td>
<td>277</td>
<td>$60.00</td>
<td>$16,220</td>
</tr>
<tr>
<td>3.</td>
<td>STORM DRAIN STRUCTURE</td>
<td>EA</td>
<td>3</td>
<td>$55,000.00</td>
<td>$165,000</td>
</tr>
<tr>
<td>4.</td>
<td>POTHOLE UTILITIES</td>
<td>LS</td>
<td>1</td>
<td>$12,000.00</td>
<td>$12,000</td>
</tr>
</tbody>
</table>

**72" STORM DRAIN IMPROVEMENTS** $349,320
### Offsite Sewer Improvements
(El Dorado St. from Market St. to 400 Feet South of Market St.)

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>QTY</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Install 18&quot; Sanitary Sewer</td>
<td>LF</td>
<td>400</td>
<td>$400.00</td>
<td>$160,000</td>
</tr>
<tr>
<td>2.</td>
<td>Remove and Replace Sewer Manhole</td>
<td>EA</td>
<td>2</td>
<td>10,000.00</td>
<td>20,000</td>
</tr>
</tbody>
</table>

OFFSITE SEWER IMPROVEMENTS $180,000

### Offsite Cal Water Improvements
(Assume Three Blocks of Improvements)

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>QTY</th>
<th>PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Install 12&quot; Water</td>
<td>LF</td>
<td>1,200</td>
<td>$130.00</td>
<td>$156,000</td>
</tr>
<tr>
<td>2.</td>
<td>Install 12&quot; Gate Valves</td>
<td>EA</td>
<td>6</td>
<td>1,500.00</td>
<td>9,000</td>
</tr>
<tr>
<td>3.</td>
<td>Connect to Existing</td>
<td>EA</td>
<td>6</td>
<td>1,200.00</td>
<td>7,200</td>
</tr>
<tr>
<td>4.</td>
<td>Replace Fire Hydrants</td>
<td>EA</td>
<td>4</td>
<td>5,000.00</td>
<td>20,000</td>
</tr>
</tbody>
</table>

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** $348,320
- **Offsite Sewer Improvements** $180,000
- **Offsite Cal Water Improvements** $192,200
- **Subtotal** $4,751,864
- **30% Contingency** $1,425,559
- **Grand Total** $6,177,423
MEMORANDUM

October 4, 2017

TO:    Laurie Montes, Deputy City Manager

FROM: Micah Runner, Director
       Economic Development Department

SUBJECT: SECOND AMENDMENT OPEN WINDOWS CONTRACT

Attached is the Second Amendment to the Downtown Infrastructure Infill Incentive Reimbursement Agreement for the Open Windows Project for your signature.

In October 2016, the City Council authorized a Downtown Infrastructure Infill Incentive Reimbursement Agreement (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. Of this amount, $2.7 million is allocated to the project and $1.1 million is approved for the project but subject to Council allocating the funds in the annual budget process. The developer has spent significant funds in predevelopment efforts and requested that the City release $760,000 of funding already committed pursuant to the Reimbursement Agreement. To release the funds, the City Council authorized an amendment to the Reimbursement Agreement on May 9, 2017.

OWP requested a Second Amendment to the Reimbursement Agreement (Second Amendment) that was approved by the City Council on October 3, 2017 (Resolution 2017-10-03-1402). With the Second Amendment, OWP will receive an additional $2.38 million, for a total of $6.18 million, to offset the increase in public infrastructure improvements due to a larger project scope for Phase I. The Second Amendment is necessary to approve this additional funding request, as well as to make modifications to comply with certain requirements the U.S. Department of Housing and Urban Development (HUD) is requesting of the developer, OWP. Those modifications include removing the contingency that funding be based on the City’s annual budget approval process.

For your reference, Resolution 2017-10-03-1402 is attached. If you have additional questions, please contact me at extension 8694.

MICAH RUNNER, DIRECTOR
ECONOMIC DEVELOPMENT DEPARTMENT

MR:JM:slw

Attachments
RESOLUTION AUTHORIZING A SECOND 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 originally consisted 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

On May 9, 2017, the City Council approved an Amendment to the Reimbursement Agreement authorizing the release of $760,000 of funding to Open Window Project, LLC and securing said funding with a lien on seven (7) properties owned by Open Window Project, LLC; and

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, Open Window Project, LLC, is requesting an additional $2.38 million in Downtown Infrastructure Infill Incentive funding for a total of $6.18 million; and

The remaining balance of $3.48 million ($1.1 million of previously approved funds but subject to the annual budget process and the new request of $2.38 million) will be funded with future Community Development Block Grant (CDBG) 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; and
2. The City Manager is hereby authorized to take whatever actions are necessary and appropriate to carry out the purpose and intent of this Resolution.

PASSED, APPROVED, and ADOPTED _______ October 3, 2017 _______.

MICHAEL D. TUBBS
Mayor of the City of Stockton

ATTEST:

BRET HUNTER, CMC
Interim City Clerk of the City of Stockton
# CONTRACT ROUTING FORM

**Contract Number:** 2016-10-13-1204 F  
**Contractor:** Amendment 2

## CONTRACT TYPE (select one)
- [ ] Original
- [ ] Amendment/Renewal/Change Order
- [ ] Grant
- [ ] Subdivision Agreement
- [ ] Other

## CONTRACT INFORMATION
- **Contract Amount:** $6.18 Million
  
- **Contract Title:** Second Amendment to the Downtown Infrastructure Infill Incentive Reimbursement Agreement
  
- **Vendor/Other Party:** Open Window Project, LLC
  
- **Contract Start Date:** 10/3/17  
- **Contract End Date:**  
- **Contract Term:**

## COUNCIL APPROVAL REQUIRED?  
- [ ] Yes  
- [ ] No (provide account # if no)

- Council approval required for contracts over $6.18M for FISCAL YEAR:

- **Motion/Resolution/Ordinance No:** 2017-10-03-1402
  
- **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.:**

- **Bonds Required?**  
- [ ] Yes  
- [ ] No

- **Insurance Required?**  
- [ ] Yes  
- [ ] No

- **Notary Required?**  
- [ ] Yes  
- [ ] No
- **Recordation Required?**  
- [ ] Yes  
- [ ] No

## Routing Order

### 1. DEPARTMENT: Economic Development Department

**DEPARTMENT HEAD APPROVAL**
- **Project Mgr:** Janice Miller  
  **ext:** 8826  
  **Staff:** Susan Will  
  **ext:** 8810
- **Forwarded to:** City Attorney  
  **on:** 10/4/17  
  **by:**

### 4. 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:** 10/4/17  
  **by:**
- **Forwarded to:**  
  **on:**  
  **by:**

### 5. CITY MANAGER

- **Signed by City Manager on:** 10/4/17  
  **Forwarded to:**  
  **on:**  
  **by:**

### 6. CITY CLERK

- **City Clerk attested on:** 10/4/17  
  **Returned ( ) original(s) to dept. on:** 10/4/17  
  **by:**
- **Retained ( ) original(s) for City’s file. Hard Copy on file?**  
  [ ] Yes  
  [ ] No  
  **OB #**

### 9. ORIGINATING DEPARTMENT: Economic Development 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:**
- **PURCHASED: Purchase Order No.:**
  **PUR No.:**
From: Amanda Thomas
Sent: Wednesday, January 12, 2022 12:18 PM
To: Jordan Peterson
Subject: OWP option agreement & LRPMP
Attachments: 2016-02-23 - Open Window Option Agreement.pdf; Legislation Text - 2016-02-23 - Open Window Option Agreement.pdf; Exhibit 1 - Amended LRPMP.pdf

Attached
OPTION AGREEMENT

This Option Agreement ("Agreement"), dated as of February 23, 2016 (the "Effective Date," which is the date this Agreement has been approved by both the City and Authority), is entered into by and among OPEN WINDOW PROJECT, LLC, a California limited liability company ("Buyer"), CITY OF STOCKTON, a California municipal corporation ("City") and PARKING AUTHORITY OF THE CITY OF STOCKTON, a public body corporate and politic organized and existing under and by virtue of the laws of the State of California ("Authority"). City and Authority are sometimes collectively referred to herein as the "Seller".

1. **Option.** City and Authority hereby grants to Buyer, for the Option Term and upon the terms and conditions set forth in this Agreement, an exclusive and irrevocable right (the "Option") to acquire fee title to the real property located in the City of Stockton, San Joaquin County, California, as identified in Exhibit A and more particularly described in Exhibit B attached hereto and incorporated herein, together with all of City and Authority's respective right, title and interest in and to any and all improvements located on such real property, and any and all easements, mineral rights, water rights and other rights appurtenant to such real property (all such real property, improvements, easements and rights are hereinafter collectively referred to as the "Property"). The approximately 2.42 acre Property consists of eight (8) parcels, three of which are owned by Authority and five (5) of which are owned by City (referred to individually herein as a "Parcel" and, collectively, as the "Parcels"), as identified in Exhibit A.

   (a) **Term of Option.** The term of the Option ("Option Term") shall commence on the Effective Date, and shall terminate on the fifth (5th) anniversary of the Effective Date.

   (b) **Exercise of Option.** If Buyer elects to exercise the Option to purchase one or more Parcels, Buyer shall send City and Authority written notice(s) of exercise of the Option ("Exercise Notice") indicating which Parcel(s) Buyer intends to acquire. Upon the purchase of any one of the following two (2) Authority-owned Parcels, specifically 27 N. California Street (APN 149-170-25) and 24 N. American Street (APN 149-180-05), the Buyer shall concurrently purchase all three (3) City-owned hotels, specifically 39 N. California Street (St. Leo Hotel), 431 E. Main Street (Commercial Hotel), and 445 E. Main Street (Main Hotel). Upon such exercise, City and/or Authority, as applicable, shall be obligated to sell the Parcels identified in the Exercise Notice to Buyer, and Buyer shall be obligated to purchase such Parcels from City and/or Authority, as applicable, in accordance with and subject to the terms set forth in this Agreement. The sale of the
three (3) Parcels owned by the Parking Authority will be contingent upon the approval of the National Public Finance Guarantee Corporation ("NPFG"). At any time prior to the expiration of the Option Term, Buyer shall have the right to deliver one or more Exercise Notices, each addressing one or more Parcels.

(c) **Option Fee.** As consideration for the Option, Buyer shall pay to City, for the benefit of both City and Authority, the payments described in this Paragraph 1(c) (collectively, the "**Option Fees**"). Upon execution of this Agreement, Buyer shall pay to City the sum of Ten Thousand Dollars ($10,000) (the "**Initial Option Fee Payment**"). By not later than each anniversary of the Effective Date, commencing on the first anniversary of the Effective Date and continuing for each remaining year of the Option Term until Buyer either exercises the Option for all Parcels or Buyer gives written notice to Seller that Buyer elects to terminate this Agreement, Buyer shall make a payment to City in the amount of Ten Thousand Dollars ($10,000) (collectively, the "**Annual Option Fee Payments**"). One-half of the Initial Option Fee Payment (the "**Independent Consideration**") shall be nonrefundable, and shall not be credited toward the Purchase Price. All other Option Fees (other than the Independent Consideration) paid by Buyer shall be credited toward the Purchase Price of the Parcels that Buyer elects to purchase. Upon the expiration of the Option Term, Seller shall retain the balance (if any) of all Option Fees that Buyer has paid but that have not been credited toward the Purchase Price for one or more Parcels. If Buyer fails to make any Annual Option Fee Payment by the due date for such payment (or, in the event of an inadvertent failure to timely make such payment, such later date as City Manager may agree), Buyer shall have no right to purchase any Parcels for which Escrow has not been opened, and this Agreement shall terminate.

2. **Purchase Price.** The purchase price for each Parcel ("**Purchase Price**") shall be the "**FMV Purchase Price**" for such Parcel as listed in Exhibit A, increased by a factor of two percent (2%) per year on each anniversary of the Effective Date. At the Closing for the first Parcel(s) that Buyer elects to purchase ("**First Closing**"), Buyer will pay to City and/or Authority, as applicable, the Purchase Price for such Parcel(s) less the following sums: (i) an amount equal to one-half of the Initial Option Fee Payment (the "**Option Fee Credit**"), (ii) an amount equal to the sum of all Annual Option Fee Payments paid to the date of Closing, (iii) the sum of Ten Thousand One Hundred Dollars ($10,100) (the "**HRE Credit**"), and (iv) applicable prorations as set forth in this Agreement. The HRE Credit represents Buyer’s out-of-pocket costs incurred in connection with preparation of historic resources evaluations for the three City-owned hotels located on certain Parcels, which reports have been provided by Buyer to Seller for its use and benefit. The sums specified in clauses (i), (ii) and (iii) above are collectively referred to herein as the "**Credits**". The Credits may be allocated between City and Authority as they may agree. If the aggregate amount of the Credits exceeds the Purchase Price for the Parcel(s) to be conveyed at the First Closing, any excess amount shall be credited toward Buyer’s subsequent purchase of additional Parcels.

3. **Escrow.** The parties acknowledge that Buyer may elect to purchase one or more Parcels at different times during the Option Term, and that the provisions of this Section 3 shall apply to the First Closing and to each subsequent Closing for additional Parcels Buyer elects to acquire. With the exception that upon the purchase of any one of the following two (2) Parking Authority-owned Parcels, specifically 27 N. California Street (APN 149-170-25) and 24 N. American Street (APN 149-180-05), the Buyer shall concurrently purchase all three (3) City-
owned hotels, specifically 39 N. California Street (St. Leo Hotel), 431 E. Main Street (Commercial Hotel) and 445 E. Main Street (Main Hotel). Within five (5) business days after Buyer's exercise of the Option as to one or more Parcels, Buyer will open escrow ("Escrow") with a title company mutually agreeable to the parties ("Escrow Agent" or "Title Company").

(a) Closing and Closing Date. Subject to satisfaction of the Conditions Precedent (defined below), for each Parcel Buyer elects to acquire, the purchase and sale shall occur, and Escrow shall close ("Closing") within 45 days of Buyer's exercise of the Option for such Parcel(s), or such other date prior to the expiration of the Option Term as agreed upon by the parties (the "Closing Date").

(b) Delivery of Deed and Possession. At least three (3) business days prior to the Closing Date, City and/or Authority, as applicable, shall execute and deliver to Escrow Agent grant deed(s) for the Parcel(s) Buyer elects to acquire using the Title Company's standard form of grant deed. Upon the Closing for each Parcel Buyer elects to acquire, the grant deed(s) shall be recorded in the official records of San Joaquin County, and City and/or Authority, as applicable, shall deliver to Buyer exclusive possession of the acquired Parcel(s), free and clear of all leases, tenancies, encumbrances, liens and title exceptions other than those approved by Buyer.

(c) Deposit of Funds. On or before the Closing Date, Buyer will deliver to Escrow Agent the Purchase Price for the Parcel(s) Buyer has elected to acquire, minus the Credits (or, if applicable, the balance of the Credits remaining following any prior Closing) and Buyer’s share of charges pursuant to Paragraphs 3(e) and 3(f). On or before the Closing Date, City and/or Authority, as applicable, will deliver to Escrow Agent, City and/or Authority’s share of charges pursuant to Paragraphs 3(e) and 3(f).

(d) Supplemental Escrow Instructions. Escrow Agent shall close Escrow for each Parcel Buyer elects to acquire in accordance with supplemental escrow instructions mutually acceptable to Buyer and City and/or Authority, as applicable, which instructions shall be consistent with this Agreement.

(e) Closing Costs. For each Parcel that Buyer elects to acquire, Buyer on the one hand, and City and/or Authority, as applicable, on the other shall each pay fifty percent (50%) of all escrow charges, recording fees, transfer taxes, documentary transfer taxes, and premiums for Buyer’s Title Policy (as defined in Section 4 below) for each Parcel Buyer elects to acquire. Buyer shall pay the cost of any survey required in connection with the issuance of the Title Policy.

(f) Prorations. All real estate taxes, assessments and utility charges relating to the Parcel(s) that Buyer elects to acquire shall be prorated between City and/or Authority, as applicable, and Buyer as of the Closing, and shall be debited from or credited to cash payable by Buyer at the Closing for the applicable Parcel(s).

4. Title. For each Parcel Buyer elects to acquire, Buyer will obtain a preliminary title report ("Preliminary Report") from Title Company, and will review the Preliminary Report and title matters. By not later than 20 days prior to the Closing Date for each Parcel Buyer elects to acquire, Buyer shall provide written notice to Seller specifying which, if any, title exceptions affecting such Parcel(s) that Buyer approves (the "Permitted Exceptions"). Title Company’s commitment to issue to Buyer an ALTA owner’s policy of title insurance in the
amount of the applicable Purchase Price, insuring Buyer's fee interest in the Parcel(s) subject only to the Permitted Exceptions ("Title Policy") shall be a condition to Closing for such Parcel(s).

5. Feasibility Investigations. Prior to the expiration of the Option Term, Buyer shall have the right to enter onto the Property to conduct any inspections and tests that Buyer deems necessary, including, without limitation, Phase 1 and Phase 2 evaluations, soils tests, surveys, engineering studies, environmental studies, and other evaluations as Buyer deems necessary in Buyer's discretion. Prior to entry upon the Property, Buyer shall provide notice to City and/or Authority, as applicable, regarding the nature of the tests to be performed, the entity that will perform the tests, and the time and date of the testing. Buyer will execute a Right of Entry Agreement in form reasonably acceptable to Buyer and Seller, pursuant to which Buyer will provide proof of insurance acceptable to the Seller and indemnify, Seller from and against any claims, expenses and liabilities that arise from Buyer's and Buyer's employees, contractors or agents entry onto the Property, except to the extent any such claims, expenses or liabilities result from the sole or active negligence of Seller or Seller's employees, contractors or agents, or result from the mere discovery of hazardous materials or other conditions in, on, under or about the Property.

6. AS-IS Condition; Demolition; Relocation. Buyer's acquisition of one or more Parcels pursuant to this Agreement shall be on an AS-IS basis. Following the Closing Date for the applicable Parcels, Buyer shall have the right to demolish the improvements located thereon at Buyer's sole expense and in compliance with all applicable laws and regulations. Buyer shall have no obligation to pay relocation benefits, assistance and/or payments of any kind to, or on behalf of, any person or entity occupying the Property or part thereof, it being understood that Seller shall have the sole responsibility for payment of any such benefits, assistance and/or payments that may be required under the Federal Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Public Law 91-646) or California Government Code Section 7260 et seq.

7. Conditions Precedent to Buyer's Obligations. Following Buyer's exercise of the Option with respect to one or more Parcels, Buyer's obligation to purchase such Parcels is subject to satisfaction of all of the following conditions precedent ("Conditions Precedent"):

(a) The Title Company's irrevocable commitment to issue the Title Policy to Buyer for each Parcel Buyer elects to acquire;

(b) No adverse change to the physical or entitlement status of the Parcels) shall have occurred between the date of Buyer's exercise of the Option and the Closing Date; and

(c) Seller's performance of its obligations under this Agreement, and the continued truth and accuracy of Seller's representations and warranties set forth in this Agreement.

8. Seller's Representations and Warranties. Seller hereby represents and warrants to Buyer as of the Effective Date and as of the Closing Date for each Parcel:

(a) Prior to the Closing Date for each Parcel, City and Authority have delivered true and complete copies of all Due Diligence Information with respect to the
Parcels. "Due Diligence Information" means all material information relating to the Parcels (including, without limitation, title information, surveys, environmental reports, engineering studies, legal notices, permits, and approvals), which information is in City and/or Authority's possession or under City and/or Authority’s control.

(b) This Agreement and all documents delivered by City and/or Authority to Buyer, now or at the Closing, have been freely negotiated by City and Authority, and neither City nor Authority is under any duress or compulsion, and each has entered into this Agreement as a considered business decision that City and Authority has each determined to be in its best interest.

(c) This Agreement and all documents delivered by City and/or Authority to Buyer, now or at the Closing, have been, or shall be, duly authorized and executed and delivered by City and/or Authority, are legal, valid and binding obligations of City and/or Authority, and do not violate any agreement to which City and/or Authority is a party or any order by which City and/or Authority is bound.

(d) There are no lawsuits, claims, suits, proceedings or investigations, pending or threatened, affecting or relating to the Property or part thereof, or affecting the legality or propriety of the transactions contemplated by this Agreement.

(e) Seller has not alienated, encumbered, transferred, optioned, leased, assigned, transferred or otherwise conveyed its interest or any portion of its interest in the Property or any portion thereof, nor has Seller entered into any agreement (other than this Agreement) to do so.

(f) There are no encroachments, conflicts in boundary lines or ownership interests claimed by any person affecting the Property or any portion thereof except as disclosed in writing to Buyer.

(g) The Property is free and clear of all leases, tenancies and occupancies.

(h) Seller has not dealt with any real estate broker or finder, or incurred any liability for any commission or fee to any real estate broker or finder, in connection with this Agreement or the sale of the Property to Buyer.

(i) Prior to the Closing Date, NPFG and all other third parties whose approval of the sale of one or more of the Parcels is required to be obtained by City or Authority, have approved this Agreement and each of the transactions provided herein.

9. Buyer's Representations and Warranties. Buyer hereby represents and warrants to Seller as of the Effective Date and as of the Closing Date for each Parcel:

(a) Buyer is a corporation, duly organized and validly existing under the laws of the State of California. Buyer has full power and authority to enter into this Agreement and to perform its obligations under this Agreement. The execution, delivery and performance of this Agreement and all documents required hereunder by Buyer have been duly and validly authorized by all necessary action on the part of Buyer, and all required consents and approvals have been duly obtained, and do not violate any agreement to which Buyer is a party, or any order by which Buyer is bound.
(b) Buyer has not dealt with any real estate broker or finder, or incurred any liability for any commission or fee to any real estate broker or finder, in connection with this Agreement or the sale of the Property to Buyer.

(c) Buyer on behalf of itself and its successors and assigns agrees not to develop any of the subject Parcels for the sole purpose of offering paid public parking. Any parking facilities developed on the subject Parcels will be solely for the use of homeowners or residential or commercial tenants, including their respective invitees and customers, of the development project or portion thereof, which Buyer intends to develop on the Parcels and other properties as provided in the Development Agreement between Buyer and City dated February 23, 2016, recorded in the Official Records on ______________, as Instrument No. ______________ ("Development Agreement"). The obligations of Buyer under this Section 9(c), shall survive the Closing and continue in effect until the date which is ten (10) years following the applicable Closing Date for sale of the Parcel(s).

10. Seller's Covenants. Seller covenants and agrees with Buyer as follows:

(a) Between the Effective Date and the Closing Date for sale of applicable Parcel(s), City and/or Authority shall maintain the Parcel(s) and the improvements thereon in accordance with sound property management practice, comply in all material respects with all covenants, conditions, restrictions, laws, statutes, rules, regulations and ordinances applicable to the Property, and immediately give Buyer copies of all notices received by Seller asserting any violation of any covenants, conditions, restrictions, laws, statutes, rules, regulations or ordinances applicable to the Property.

(b) Seller shall not use, produce, process, manufacture, generate, treat, handle, store or dispose of any hazardous substances in, on or under the Property, or use the Property for any such purposes, or release any hazardous substances into any air, soil, surface water or groundwater comprising the Property, or permit any person using or occupying the Property or any part thereof to do any of the foregoing, provided, however, Seller may use, handle and store hazardous substances of types and in quantities typically used in or around residential and commercial properties in accordance with all applicable laws. Between the Effective Date and the expiration of the Option Term, Seller shall comply, and shall use reasonable efforts to cause all persons using or occupying the Property or any part thereof to comply, with all environmental laws applicable to the Property, or the use or occupancy thereof, or any operations or activities therein or thereon.

(c) Between the date of this Agreement and the expiration of the Option Term, Seller shall not in any manner sell, convey, assign, transfer, encumber or otherwise dispose of the Property or any part thereof or interest therein; provided, however, may remove any tangible personal property. Without limiting the foregoing, Seller shall not enter into any agreement or alter the condition of title to the Property if the same would affect the Property or Buyer after the Closing for the applicable Parcel(s) without Buyer's prior consent. If Buyer so consents, such encumbrance shall become Permitted Exceptions (as provided in Section 4).
(d) Seller has provided, or within five (5) business days following the Effective Date, shall provide to Buyer all surveys, studies, reports and analyses applicable to the Property or part thereof in Seller's possession or control.

11. **Entitlements.** Buyer may process any entitlements that Buyer deems necessary or appropriate for its proposed development of the Property or part thereof. Seller shall fully cooperate with Buyer, in the processing of all entitlements sought by Buyer, including signing any and all applications Buyer may request within five business days after Seller receives the request.

12. **Allocation of Environmental Liabilities.** The parties agree that the Purchase Price for each Parcel is based on an assumption that there are no adverse environmental conditions on the Property or any part thereof. The parties acknowledge that if Buyer determines, in Buyer’s reasonable judgment, that adverse environmental conditions do exist on the Property or any part thereof, the parties shall negotiate in good faith, prior to the expiration of the Option Term, the manner in which such conditions will be remedied and/or compensated, including, without limitation, adjustment to the Purchase Price and/or allocation of responsibility for potential liabilities, remediation, removal, and/or the costs incurred thereby.

13. **LiquiDated DAMAGES.** If the purchase and sale of any parcel does not occur as required by this Agreement after Buyer exercises its option solely as a result of Buyer’s default, Seller’s damages incurred by reason thereof are and will be extremely difficult and impractical to ascertain. In a reasonable effort to ascertain what Seller’s damages would be in the event of Buyer’s breach or default, Seller and Buyer agree that an amount equal to the sum of the Option Fees (not to exceed $5,000) that would otherwise be credited to the Purchase Price for the applicable parcel(s) shall be liquidated damages (the “Liquidated Damages”) for such default, which liquidated damages shall be Seller’s sole remedy at law or in equity in the event of and for such default. Seller waives any and all right to seek other rights or remedies against Buyer, including without limitation, the rights and remedies set forth in California Civil Code Section 3389 to a remedy of specific performance. The payment and retention of the liquidated damages is not intended as a forfeiture or penalty within the meaning of California Civil Code Sections 3275 or 3369, but is intended to constitute liquidated damages to Seller pursuant to California Civil Code Sections 1671, 1676 and 1677. City and Authority may allocate between them as they may agree any liquidated damages retained by Seller under this section.

(Seller’s Initials) (Buyer’s Initials)

14. **Notices.** Any notice or communication required hereunder between Seller and Buyer (“Notice”) must be in writing, and may be given either personally, by registered or certified mail (return receipt requested), or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a Notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by registered or certified mail, such
Notice shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom Notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such Notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a Notice shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any party hereto may at any time, by giving ten (10) days written Notice to the other party hereto, designate any other address in substitution of the address to which such Notice shall be given. Such Notices shall be given to the parties at their respective addresses set forth below:

To City: City of Stockton  
425 North El Dorado Street  
Stockton, CA 95202  
Attention: City Clerk  
Tel: (209) 937-8458

with a copy to: City of Stockton  
425 North El Dorado Street  
Stockton, CA 95202  
Attention: Economic Development Director  
Tel: (209) 937-8539

To Authority: Parking Authority  
425 North El Dorado Street  
Stockton, CA 95202  
Attn: Parking Manager

To Buyer: Open Window Project, LLC  
115 N. Sutter Street, Suite 307  
Stockton, CA 95202  
Attention: Zachary Corts  
Tel: (209) 469-2678

with a copy to: Gerald J. Ramiza, Esq.  
Burke Williams & Sorensen LLP  
1901 Harrison Street, 9th Floor  
Oakland, CA 94501  
Tel: (510) 273-8780

15. **Attorneys' Fees.** If an action is brought to enforce the rights of a party under this Agreement, the prevailing party shall be entitled to recover its costs of enforcement, including reasonable attorneys' fees and court costs.

16. **Binding Agreement.** This Agreement supersedes all prior and contemporaneous discussions, agreements and understandings between Seller and Buyer with respect to the subject matter of this Agreement, and constitutes the entire agreement between Seller and Buyer with respect thereto.
17. Amendments. This Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

18. Seller Option to Repurchase, Reenter and Repossess. Subject to the notice and reasonable opportunity to cure, City and/or Authority, as applicable, shall have the additional right, at its option, to repurchase, reenter and take possession of one or more Parcel(s) if:

(a) Subject to Force Majeure Delay (as defined in Section 7.2 of the Development Agreement), Buyer fails to submit a complete application for an architectural review permit to construct a development project or portion thereof on the Parcel(s) in question by the date which is 5 years following conveyance of title to such Parcel(s) to Buyer and thereafter diligently pursue issuance of a building permit; or

(b) Subject to Force Majeure Delay, after obtaining a building permit for construction of such development project or portion thereof, Buyer fails to commence construction thereof within 6 months after obtaining such permit.

Such right to repurchase, reenter and repossess, to the extent provided in this Agreement, shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

(i) Any mortgage, deed of trust or other security instrument recorded against such Parcel(s); or

(ii) Any rights or interests provided in the Development Agreement for the protection of the holder of such mortgages, deeds of trust or other security instruments.

To exercise its right to repurchase, reenter and take possession with respect to the Parcel(s) in question, City or Authority, as applicable, shall pay to Buyer in cash an amount equal to:

(1) The Purchase Price paid by Buyer for the Parcel(s) in question; less

(2) The total amount of any mortgages, deeds of trust or other liens encumbering the Parcel(s) in question at the time of the repurchase, reentry and repossession.

In order to exercise such purchase option, City and/or Authority, as applicable, shall give Buyer written notice of such exercise. City and/or Authority, as applicable, within thirty (30) days thereafter, shall pay to Buyer in cash all sums owing pursuant to this Section 18, and Buyer shall thereupon execute and deliver to City or Authority, as applicable, a grant deed transferring to City or Authority, as applicable, all of Buyer’s interest in the Parcel(s) in question.

Seller’s rights under this Section 18 shall automatically terminate as of the date of issuance of a building permit for construction of the 400th residential unit within the Downtown Stockton Open Window Project Master Development Plan boundary. Upon Buyer’s request made at any time following issuance of the building permit for such 400th residential unit, Seller shall execute, acknowledge and deliver to Seller for recordation in the Official Records, an instrument memorializing termination of Seller’s option to repurchase, reenter and repossess.
19. **Buyer Remedies.** Subject to the notice and reasonable opportunity to cure not to exceed 30 calendar days, upon the occurrence of a default by City and/or Authority, as applicable, Buyer shall have the right, in addition to any other rights or remedies, to institute any action at law or in equity to cure, correct, prevent or remedy any such default, or to recover actual damages. Notwithstanding any other provisions of this Agreement to the contrary, Buyer shall not be entitled to recover any consequential, special or punitive damages against Seller.

20. **Assignment by Buyer.** Buyer shall have the right to assign this Agreement without Seller consent to any entity which controls, is controlled by, or under common control with Buyer (each, an “Affiliate”). In addition, upon the Closing for any Parcel(s), Buyer shall have the right to direct Seller to convey title to any Affiliate entity designated by Buyer. Buyer will give Seller written notice of any such assignment. Except as otherwise provided above, this Agreement may not be assigned by Buyer to any person or entity without Seller’s consent, which may be granted or denied in Seller’s sole discretion.

21. **Governing Law; Venue.** This Agreement shall be governed and construed in accordance with the laws of the State of California, without reference to its choice of law rules. The exclusive venue for any disputes or legal actions shall be the Superior Court of California in and for the County of San Joaquin, except for actions that include claims in which the Federal District Court for the Eastern District of the State of California has original jurisdiction, in which case the Eastern District of the State of California shall be the proper venue.

22. **Waivers.** No waiver of any provision of this Agreement or any breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving party, and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other or subsequent breach of this Agreement.

23. **Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns.

24. **Severability.** If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties.

25. **Construction.** Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Agreement. This Agreement has been reviewed and revised by legal counsel for Seller and Buyer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement. Unless the context clearly requires otherwise, (i) the plural and singular numbers shall each be deemed to include the other; (ii) the masculine, feminine, and neuter genders shall each be deemed to include the others; (iii) “shall,” “will,” or “agrees” are mandatory, and “may” is permissive; (iv) “or” is not exclusive; (v) “include,” “includes” and “including” are not limiting and shall be construed as if followed by the words “without limitation,” and (vi) “days” means calendar days unless specifically provided otherwise.
26. **No Joint Venture.** Seller and Buyer hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Buyer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between Seller and Buyer.

27. **Survival of Terms.** Any indemnity provided for herein, and any other provision of this Agreement which, by its terms, is to be performed after the Closing, shall survive the Closing until full performance thereof. The representations, warranties, covenants, terms and conditions of this Agreement shall also survive the Closing.

28. **Time.** Time is of the essence of this Agreement and of the performance of all the terms, covenants and conditions contained in this Agreement.

29. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one agreement.

30. **Seller Approvals and Actions.** Whenever a reference is made herein to an action or approval to be undertaken by Seller, the City Manager or his/her designee is authorized to act on behalf of Seller, unless specifically provided otherwise or the context requires otherwise.

31. **Recording.** This Agreement shall be recorded in the Official Records of San Joaquin County within ten (10) days following the Effective Date.

[Remainder of page intentionally left blank]
IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the Effective Date.

SELLER:

CITY OF STOCKTON, a municipal corporation
By: Kurt O. Wilson, City Manager 3/15/16
Date

and

PARKING AUTHORITY OF THE CITY OF STOCKTON,
a public body corporate and politic organized and existing under
and by virtue of the laws of the State of California
By: Kurt O. Wilson, Executive Director 3/15/16
Deputy City Manager

APPROVED AS TO FORM:

John Luebberke, City Attorney

ATTEST:

Zachary Cort

BUYER:

OPEN WINDOW PROJECT, LLC,
a California limited liability company
By: Zachary Cort

Its: Manager
### Exhibit A

**PROPERTY**

<table>
<thead>
<tr>
<th>Property Address</th>
<th>APN</th>
<th>City or Parking Authority Owned</th>
<th>FMV Purchase Price</th>
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<tr>
<td>216 N California</td>
<td>139-250-26</td>
<td>Parking Authority</td>
<td>$88,500</td>
</tr>
<tr>
<td>39 N California – St. Leo Hotel</td>
<td>149-170-12</td>
<td>City</td>
<td>$20,000</td>
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<td>149-170-25</td>
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<tr>
<td>25 N Grant</td>
<td>149-180-17</td>
<td>City</td>
<td>$60,000</td>
</tr>
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</table>
Exhibit B

PARCEL LEGAL DESCRIPTIONS

Street Address: 216 N. California Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

Parcel 1:

The North 40 feet, 7 1/3 inches of each of lots two (2) and four (4) in block seventy-four (74) East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Parcel 2:

The South 60 feet 4 2/3 inches of each of lots two (2) and four (4); The South 60 feet 4 2/3 inches of the West 2 1/2 feet of Lot six (6); all in block seventy-four (74), East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map of Plat thereof.

(ALL MEASUREMENTS UNITED STATES STANDARD MEASURE)

APN: 139-250-26

Street Address: 39 N. California Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

Lot 11 in Block 5 East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof.

APN: 149-170-12

Street Address: 27 N. California Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

Parcel 1:

The South 6 1/2 inches of the North one-half of the West 140 feet of Lot 13, the South one-half of Lot 13 and the North 10 feet of Lot 14 in Block 5, East of Center Street, in the City of
Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Parcel 2:
The North one-half of Lot 13 in Block 5, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Excepting therefrom the South 6 1/2 inches of the North one-half of the West 140 feet of Lot 13.

Parcel 3:
All of Lots 15 and 16 in Block 5, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Excepting therefrom the South 26.33 feet of the East 141.00 feet of Lot 16.

APN: 149-170-25

**Street Address:** 431 E. Main Street, Stockton, California

**Legal Description:** That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

Lot 8 and the west one-half of Lot 10 in Block 5 East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof.

APN: 149-170-08

**Street Address:** 445 E. Main Street, Stockton, California

**Legal Description:** That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

The East one-half of Lot 10 and all of Lot 12 in Block 5, East of Center Street, in the said City of Stockton, according to the Official Map or Plat thereof, San Joaquin County Records.

APN: 149-170-09

**Street Address:** 24 N. American Street, Stockton, California

**Legal Description:** That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:
Lots 13, 14, 15 and 16 in Block 7, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof, San Joaquin County records.

APN: 149-180-05

**Street Address:** 725 E. Main Street, Stockton, California

**Legal Description:** That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

All of Lots 8 and 10 in Block 8 East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof.

Also all that part of Lot 6 in Block 8 East of Center Street, being the East 46 1/2 feet thereof, more or less, bounded on the West by the centerline of a division wall running North and South between certain buildings, and being all of said Lot 6, except the part thereof conveyed by Rudolph Gnekow and wife to their sons and daughters by Deed dated February 3, 1913 and recorded in Book "A" of Deeds, Vol. 208, page 106, San Joaquin County Records.

APN: 149-180-21

**Street Address:** 25 N. Grant Street, Stockton, California

**Legal Description:** That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

Lot 16 and the West 1/3 of Lot 15 in Block 8, East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof, San Joaquin County Records.

APN: 149-180-17
CONSIDERATION OF THE DOWNTOWN STOCKTON OPEN WINDOW DEVELOPMENT PROJECT

RECOMMENDATION

City of Stockton

It is recommended that the City Council adopt two resolutions and an ordinance as follows:

Resolution 1

1. Adopting a Mitigated Negative Declaration and Mitigation Monitoring Report;

2. Approving a Master Development Plan; and

3. Approving a Water Supply Assessment Report (SB610) for the Open Window project in Downtown Stockton, in accordance with the Findings for Decision and Conditions of Approval detailed herein (MDP1-14).

Resolution 2

1. Approving an Option Agreement between the City of Stockton and Open Window Project LLC, for the disposition of City-owned properties; and


Ordinance

1. Approving a Development Agreement

Parking Authority

It is recommended that the Parking Authority adopt a resolution as follows:

1. Approving an Option Agreement between the Parking Authority and Open Window Project LLC, for the disposition of Parking Authority-owned properties; and

2. Making a Finding of conformity with the General Plan in accordance with California Government Code 65402.
Summary

The Open Window project proposes a Master Development Plan (MDP) and accompanying Development Agreement that would provide for revitalization and redevelopment of 11.88 acres and is comprised of 51 properties within an approximately 15 square block area of downtown Stockton (Attachment A - Location Map). The project consists of 43 privately owned properties, with developer options to acquire 8 properties owned by the City of Stockton and Parking Authority.

In addition to the Master Development Plan and Development Agreement, an Option Agreement with Open Window Project LLC is proposed for the disposition of five (5) City-owned parcels and three (3) Parking Authority-owned parcels to the developer. Therefore, staff is also requesting that the City Council make a General Plan Conformity Finding with the City General Plan in accordance with California Government Code 65402 and Stockton Development Code section 16.72.030.D.

The MDP (Attachment B - Master Development Plan with Elevations and Site Improvement Renderings) proposes a mixed-use development concept. Up to 1,034 residential units would be constructed, primarily at higher densities as part of apartments or other multi-family unit developments. The MDP may include development exceeding the 87 dwelling units on a parcel by parcel evaluation with an average density not exceeding 87 dwelling units per acre on any one block, consistent with current General Plan land use policies. This will be on evaluated on a case by case basis. The City is currently working on a General Plan update, and it is important to note the amendment could include increased residential density in the downtown area. The project’s Initial Study (Attachment C - Initial Study/Proposed Mitigated Negative Declaration) analyzed the impact of constructing up to 1,400 residential units, primarily built at higher densities as part of apartments or other multi-family unit developments. If the General Plan is amended to allow higher densities, subsequent entitlements would be streamlined as the necessary approvals to increase from the current limit of 1,034 units to 1,400 units analyzed would already be in place. A subsequent entitlement could take the form of a minor amendment to the MDP as long as subsequent projects are consistent with prior approvals.

The project will also include construction of up to 200,000 square feet of retail space, 90,000 square feet of commercial space, and 110,000 square feet of industrial/art studio space. These spaces may be built as stand-alone developments, or combined in a mixed-use format with residential uses, as noted above.

The MDP prescribes land uses, development standards, design, and other parameters for development; each development project under the MDP would be reviewed to ensure consistency with the MDP as part of the City’s review process. The project may also include corollary replacement or construction of existing wastewater conveyance lines in the project area in response to any necessary upsizing of existing lines and mains, along with any necessary upgrades to water and storm drain systems.

Development of the project would occur in many phases over several years, in response to market demand and development interests. No specific development of these properties is proposed at this time. Rather, the MDP would create a procedural framework by which the participating properties in Open Window could develop over time. These spaces may be built as stand-alone developments, or combined in a mixed-use format.
An accompanying Development Agreement (DA) (Attachment D) and Option Agreement (Attachment E) are also proposed that would, with the MDP and the California Environmental Quality Act (CEQA) documentation, provide for future development.

In addition, staff is requesting City Council approve a Water Supply Assessment Report (WSA) (Attachment F) for the Open Window Project under Senate Bill (SB) 610. SB 610 requires that projects with more than 500 units and office developments of more than 250,000 square feet, or mixed use developments of more than 250,000 square feet to prepare a WSA.

DISCUSSION

Background

This item was considered by the Planning Commission at a public hearing held on January 14, 2016. The Planning Commission unanimously voted to approve Resolution 2016-01-14-0503, recommending to the City Council 1) adoption of a Mitigated Negative Declaration and mitigation monitoring report, 2) approval of a Master Development Plan, 3) approval of a Development Agreement and 4) approval of an Option Agreement, 5) making a Finding of Conformity with the General Plan in accordance with California Government Code 65402, and 6) Approval of a Water Supply Assessment Report (SB610) for the Open Window project in Downtown Stockton, in accordance with the Findings for Decision and Conditions of Approval contained in the Resolution (MDP1-14).


An MDP is intended “to provide flexibility in the planning review process so that land use requirements are identified in a master development plan and there is minimal review of subsequent approvals if they are consistent with the adopted plan…” and “to provide a process for reviewing, processing, and approving master development plan applications which are intended to provide a comprehensive framework for the development of property which have a mixed use or university designation on the General Plan or for a specified geographical area that will be developed as a single concept.” (Stockton Municipal Code Sections 16.140.010.A and B). In this instance, the Open Window project provides for a single-concept, comprehensive development approach to the 51 participating properties over an approximately 15 square block area in Downtown Stockton.

An MDP is required to identify the following (per SMC Section 16.140.070):

- Development requirements and standards.
- Proposed land uses, including density and intensity of uses.
- Infrastructure components.
- Implementation measures, including environmental mitigation measures.
- Discussion of the relationship to the General Plan.

The Open Window MDP identifies development standards and design guidelines; land uses and residential density and non-residential intensity of uses; infrastructure requirements; implementation measures; and a discussion of the project’s consistency with the General Plan.
The MDP also identifies the following underlying principles of the project:

- Revitalize downtown.
- Build community.
- Create identity.
- Improve safety.
- Connect open spaces.
- Promote walkability and biking.
- Provide a flexible approach to mixed use development.

Additionally, a DA is required to implement the MDP, to be processed concurrently with the MDP. A draft DA has been completed for the project, based on a series of discussions with the applicant and the City.

Existing land uses and MDP participating parcels are shown on the attached exhibits from the Open Window MDP (Attachment G - Existing and Proposed Land Use Conditions).

Master Development Plan Details

Project Proposal

The Open Window project proposes a MDP and accompanying DA that would provide for revitalization and redevelopment of 11.88 acres and comprised of 51 properties within an approximately 15 square block area of Downtown Stockton. The project consists of 43 privately owned properties, with developer options to acquire 8 properties owned by the City of Stockton and Parking Authority.

The MDP proposes a mixed-use development concept. Up to 1,034 residential units would be constructed, primarily built at higher densities as part of apartments or other multi-family unit developments. The MDP may include development exceeding the 87 dwelling units on a parcel by parcel evaluation with an average density not exceeding 87 dwelling units per acre on any one block, consistent with current General Plan land use policies. This will be on evaluated on a case by case basis. The City is currently working on a General Plan update which is expected to address residential density in the downtown area. The downtown area could be identified for higher residential density limits than those allowed under the current General Plan. If such changes to the General Plan are ultimately adopted as part of the General Plan update review, increased residential densities would be an option for the Open Window properties. Therefore, for the purposes of the project Initial Study, the analysis assumes that up to 1,400 residential units would be constructed, primarily built at higher densities as part of apartments or other multi-family unit developments. If the recommended approvals are adopted, subsequent entitlements would be streamlined as the necessary approvals to increase from the current allowed density of 1,034 would already be in place. The maximum number of units could not exceed the 1,400 units analyzed in the Initial Study. A subsequent entitlement could take the form of a minor amendment to the MDP as long as subsequent projects are consistent with prior approvals.

The project will also include construction of up to 200,000 square feet of retail space, 90,000 square feet of commercial space and 110,000 square feet of industrial/art studio space. These spaces may
be built as stand-alone developments, or combined in a mixed-use format with residential uses, as noted above.

The MDP prescribes land uses, development standards, design and other parameters for development; each development project under the MDP would be reviewed to ensure consistency with the MDP as part of the City’s review process. Development may also include use of parking garages, surface parking areas, plazas, frontage and other improvement features, and would include site grading, consistent with the MDP.

As part of the project, the MDP indicates that several buildings may be demolished or remodeled. This will likely depend upon market conditions and specific developer requirements for a particular property. A specific list of properties that may be demolished or remodeled is included within Appendix 1 of the MDP.

The project may also include corollary replacement of existing wastewater conveyance lines in the project area in response to any necessary upsizing of existing lines and mains, along with any necessary upgrades to water and storm drain systems. These types of improvements could include short-term construction impacts within public street rights-of-way related to installation of new or upsized pipes and related equipment.

Development of the project would occur in many phases over several years, in response to market demand and development interests. No specific development of these properties is proposed at this time. Rather, the MDP would create a procedural framework by which the participating properties in Open Window could develop over time. These spaces may be built as stand-alone developments, or combined in a mixed-use format.

An accompanying DA and Option Agreement are also proposed that would, with the MDP and the project underlying CEQA documentation, provide for future development.

**Project Phasing**

The MDP indicates that development of parcels, including potential rehabilitation of certain existing buildings, could occur in a variety of ways, from parcel-by-parcel to block-by-block, or multiple blocks at one-time. The MDP assumes that development would be likely to occur over a substantial period of time in partial block increments.

**Open Window and the General Plan**

The project is subject to the 2035 General Plan. The entire project site is designated as Commercial in the General Plan, as illustrated below.
The General Plan prescribes a multitude of policies that encourage infill development, high density residential development, and commercial revitalization, including, but not limited to, the following:

LU-3.2 Residential Infill Densities - The City shall encourage higher residential densities at appropriate infill locations through the design flexibility made possible by the Planned Development provisions of the Development Code.

LU-4.1 Commercial Revitalization - The City shall encourage the upgrading, beautification, revitalization, and appropriate reuse of existing commercial areas and shopping centers.

DV-2.1 Revitalize Downtown Stockton - The City shall promote the revitalization of Downtown Stockton, including increased employment opportunities, expanded private investment, construction of new housing, and the provisions of various services to address existing social problems.

DV-2.2 High-Density Residential Development - The City shall encourage high-density residential uses to locate in the downtown area and along transit corridors (such as a BRT corridor) to support the area's commercial activities.

DV-2.3 Downtown Housing Goals - The City shall actively pursue short- and long-term housing goals for the downtown area. The short-term goal shall be the construction or rehabilitation of at least 1,000 housing units in the first seven years of the General Plan (by 2014). The long-term goal is to create a total of 3,000 new units in the downtown by 2035.

DV-2.4 Incentives to Create Downtown Housing - The City shall review and revise, as necessary, its redevelopment/revitalization strategy and programs for downtown and other redevelopment areas to ensure they adequately implement the downtown infill and redevelopment policies of the General Plan. The City shall establish a schedule of reduced public facilities fees for new development in the central city areas as an encouragement to develop vacant or under-utilized parcels. The City shall adopt density bonus standards to encourage the intensification of housing and promote affordable housing opportunities in the downtown.

DV-2.13 Building Rehabilitation - The City shall encourage and assist in the rehabilitation of
existing buildings in downtown and use historic buildings as resources for future development.

The project is consistent with these applicable policies of the 2035 General Plan. Additionally, the project will help implement City vision for downtown development through its adopted Climate Action Plan and Sustainable Communities Strategy by providing for dense residential and mixed-use land uses in the downtown core area, allowing for reduced vehicle trips while encouraging and providing for pedestrian and bicycle movements between residences, places of employment, shopping and entertainment venues.

The project is designated Commercial under the General Plan, which supports residential and mixed residential/commercial uses. The project includes an MDP, which is authorized by Stockton Municipal Code Section 16.140.

Land Use and Development Plan

Land uses and density:

The MDP identifies a range of land uses that would be complementary to a mixed use, downtown development. Primary permitted uses would include residential (multi-family housing, townhouses, duplexes and triplexes, and live/work spaces), wide range of retail and commercial uses (including retail stores, restaurants, banks and offices), and support services.

Up to 1,034 residential units would be constructed, primarily built at higher densities as part of apartments or other multi-family unit developments. The MDP may include development exceeding the 87 dwelling units on a parcel by parcel evaluation with an average density not exceeding 87 dwelling units per acre on any one block, consistent with current General Plan land use policies for density bonuses. This will be on evaluated on a case by case basis. As noted above, the City is currently working on a General Plan update, which is expected to address residential density in the downtown area. Staff anticipates that the downtown area would be identified for higher residential density limits than those allowed under the current General Plan. If such changes to the General Plan are adopted as part of the General Plan update, increased residential densities would be an option for the Open Window properties. The project Initial Study therefore addressed potential impacts based on up to 1,400 residential units.

Building bulk controls:

A building floor area ratio (FAR) of 5.0 is proposed, consistent with General Plan policy for downtown development.

Building heights:

Consistent with Commercial zoning, there would be no height limit for new buildings. Instead, building bulk and design criteria would apply in determining final building design.

Building setbacks:

New buildings would be allowed to the front property line with no setbacks, though townhouses or ground-floor flats would have a required five-foot front yard setback to accommodate stairways or
stoops. Non-residential and mixed-use spaces may match this setback in order to maintain a consistent building façade along the street frontage. Any front yard setback area would be required to include landscaping. A mid-rise residential building (6 to 8 story buildings) would require a 10 foot setback where residential units face a rear or side yard.

Signage:

All signs would be required to comply with existing City signage requirements in the Zoning Ordinance.

Proposed Design:

The MDP includes a series of prototypical designs that would apply to each type of building that may be developed as part of Open Window. These include design details on façade and wall treatment, building massing, parking areas, screening of mechanical equipment, treatment of open space and walkway areas, and similar design considerations.

The overall design intent is to ensure new buildings are designed consistent with the overall themes contained in the MDP.

Examples of illustrative designs and examples of building articulation details from the MDP, with recessed notches and projecting bays, are provided (Attachment H- Illustrative Examples of MDP Area).

Parking:

The MDP proposes the following maximum parking standards:

- Residential: 1 space/dwelling unit
- Commercial and Light Industrial: 2 spaces/1,000 sq. ft. gross floor area
- Retail: None required for spaces less than 5,000 sq. ft. gross floor area; otherwise, 2 spaces/1,000 sq. ft. gross floor area
- All other uses: per SMC.

Staff recommends that the MDP identify the parking standards as base requirements and not the “maximum” parking standards, which could imply parking standards less restrictive than those identified above. Appropriate on-site parking, even in recognition of the mixed-use concept of Open Window, still is advisable to ensure other land uses in the immediate area are not adversely impacted. A condition of approval is attached addressing this concern.

Landscaping:

General landscape guidelines are included in the MDP, addressing location, plant selection, water usage, maintenance, and similar considerations. The MDP also addresses potential use of widened sidewalks, traffic calming, retail, and greenway streets, including planting of street trees. Landscaping would be subject to use of drought-tolerant species.
Circulation, Bicycle and Pedestrian Access

The Open Window properties would utilize access directly from the adjoining City streets. Residential alleyways could also be utilized, including for townhouses that would have garages facing the alleys.

Bicycle access and walkability of the project area is stressed through the various Street Types contained in the MDP, including extended sidewalks, potential for reduced-width travel lanes to reduce vehicle speeds and create a safer bicycle and pedestrian environment, potential use of bulb-outs, and similar design features. Site planning would also stress pedestrian accessibility as a means of further reducing project vehicle trips.

Public Facilities and Services

Development of the Open Window MDP would result in an increase in the population in downtown Stockton, which would result in increases in demand for police and fire protection services, school and solid waste disposal services as well as the infrastructure for water, sewer, and stormwater systems.

The Open Window project would be served by the following service providers:

- Police protection - City of Stockton Police Department
- Fire protection - City of Stockton Fire Department
- School - Stockton Unified School District
- Solid waste - Sunrise Sanitation
- Water - California Water Company
- Sanitary sewer and storm drainage - Stockton Municipal Utilities Department

The project Initial Study further discusses the range of necessary public facilities and services for the project. These will include possible replacement and/or upsizing of sanitary sewer and storm drainage lines in the area, to be determined on a project-by-project basis by the City’s Municipal Utility Department in reviewing project plans and technical studies submitted for each development proposal. The project also will participate in the City’s recently adopted Downtown Infrastructure Infill Incentive Program, which provides financial incentives for development of identified land uses, including residential and retail development, to help offset costs for infrastructure construction. California Water would provide potable water to the project, and conducted a Water Supply Assessment to determine long-term ability to serve the project. The project would be required to pay applicable school fees in support of school facility needs generated by new development. City Fire and Police services would be available, though additional requirements could be imposed in response to review of individual development projects related to equipment and other City Fire and Police Department needs.

Utilities

Public facilities to be constructed as a part of the project would include electricity, natural gas, telephone/fiber optics and cable television service extensions, where necessary to serve new development. The Open Window area is within a Pacific Gas & Electric Company service area, who
also currently provides natural gas service to the area. Telephone service to the area is currently available. Comcast is the current provider for cable television services in the Stockton area and would provide cable television to the project area.

**Development Agreement**

The project DA identifies a range of developer and City responsibilities for how Open Window development may occur in the coming years. The DA addresses issues such as infrastructure construction, payment of applicable fees, and similar issues.

**Option Agreement**

On March 24, 2015 the City Council authorized an Exclusive Negotiating Rights Agreement (ENRA) with Open Window Project LLC to negotiate the acquisition of several City and Parking Authority-owned properties in Downtown Stockton. Below are the subject parcels (Attachment I - Vicinity Map):

<table>
<thead>
<tr>
<th>City-owned Property</th>
<th>Parking Authority-owned Property</th>
</tr>
</thead>
<tbody>
<tr>
<td>149-170-08 - Commercial Hotel</td>
<td>139-250-26 - Paved Lot</td>
</tr>
<tr>
<td>149-170-09 - Main Hotel</td>
<td>149-170-25 - Paved Lot</td>
</tr>
<tr>
<td>149-170-12 - St. Leo Hotel</td>
<td>149-180-05 - Paved Lot</td>
</tr>
<tr>
<td>149-180-21 - Dirt Lot</td>
<td></td>
</tr>
<tr>
<td>149-180-17 - Paved Lot</td>
<td></td>
</tr>
</tbody>
</table>

City staff has completed its negotiations for the disposition of the subject parcels and is requesting that Council approve the execution of a market rate purchase Option Agreement with the developer. These parcels will be combined with those controlled by the developer to maximize the ability to construct new or rehab existing residential and commercial structures as part of the MDP. Key terms of the POA are outlined below:

- **5 year term**
- **Upon purchase of any one of two Parking Authority Parcels, specifically APN 149-170-25 and APN 149-180-05, the developer must concurrently purchase all three City-owned hotels (St. Leo, Commercial, and Main)**
- **Sale of Parking Authority property is contingent upon approval by National Public Finance Guarantee Corporation (NPFG).**
- **Upon execution of the Option Agreement, developer shall pay $10,000 to the City as initial payment. Each year thereafter, or until developer elects to purchase all parcels or terminates the agreement, developer shall make a $10,000 payment to the City. A portion of the payments will be applied to the purchase price of parcels the developer elects to purchase.**
- **Properties will be sold as is with a fair market value (FMV) purchase price for each parcel noted below. The FMV purchase price will be increased by 2% each year until parcels have been sold or the agreement terminates. An appraisal was prepared by The Bramwell-Smith Company on April 14, 2015 to determine the FMV purchase price.**
It’s important to note that the Open Window project aligns with the City Council’s goal of revitalizing Downtown Stockton. It also has the potential to serve several key Downtown Stockton objectives, as well as supporting recommendations included in the 2012 Urban Land Institute report and the Economic Development Strategic Plan adopted February 2015, namely the attraction of private investment in the downtown core, generation of jobs through business expansion to the area, attraction of new residents downtown, and quality urban design.

Notification of Option Agreement

As required, a “Notice of Intent to Grant or Sell Real Property Interest” in accordance with the provisions of Article V, Section 510, of the Charter of the City of Stockton, was advertised in the legal notice section of The Record on February 10, 2016.

Environmental Clearance of Option Agreement

The Initial Study/Mitigated Negative Declaration evaluated the impacts of development of 1,400 units on the 51 parcels within the Open Window project boundary, including the 8 identified City/Parking Authority owned parcels within this Option Agreement and within the Open Window Project boundary.

As a result of the disposition of real property, the City is asked to make a finding of General Plan Conformity. In accordance with Section 65402 of the Government Code and Stockton Development Code section 16.72.030.D the Planning Commission also recommends that the City Council find that this project conforms to the City’s General Plan and with the General Plan Policy Document.

Development Review Process

The MDP will serve as the basis for reviewing individual development proposals for the Open Window project.

As noted above, pursuant to SMC Section 16.140.010.A, the intent of a MDP is to provide flexibility in the planning review process so that land use requirements and development standards, as well as design and architectural parameters, are identified in a MDP, necessitating only minimal review of subsequent approvals to ensure consistency with the adopted MDP. The proposed MDP identifies the maximum number of residential units and maximum commercial floor area, prescribes site
development standards, and addresses site planning, architectural design and related improvement requirements. This thereby reduces the need for subsequent reviews and discretionary approvals for the implementation of the MDP, though certain uses and design features may trigger review by the Planning Commission.

Individual development plan proposals would be submitted to the Community Development Department. Site plan and design review would be required for all projects involving alterations to the exteriors of existing buildings or new construction. Projects may require Planning Commission review if determined that such review is warranted based on issues of site design, architecture, land use, parking and other related development issues. Project plan review would be performed by Planning staff, along with review and input from other City departments, including MUD, Public Works, Fire and Police. Subdivision of any properties would be subject to State Map Act and City regulations and processes.

Neighborhood Meeting

The applicant conducted outreach to downtown property owners and groups, and held a neighborhood meeting at 225 North American Street on November 5, 2015. The meeting was noticed by the applicant through direct mailings to property owners and businesses within 300 feet of the project properties. The meeting began at 5:30 p.m. and was attended by approximately 80 people, plus the project applicants and City staff. The applicant provided an informational presentation to meeting attendees on the Open Window project, and responded to questions from the audience.

Environmental Review

Staff prepared, circulated and is recommending approval of an Initial Study/Proposed Mitigated Negative Declaration. Pursuant to Sections 15071 and 15074 of the CEQA Guidelines, the Initial Study/Mitigated Negative Declaration must be adopted prior to any approval for the proposed project. Mitigation measures would be incorporated as part of the project Open Windows Project conditions and agreements.

PRESENT SITUATION

With the Planning Commission having recommended this project for approval at its January 14, 2016 meeting, the matter is ready for City Council action.

Options for Council’s consideration are:

1) Approve the Open Window project as submitted to the Council,

2) Approve the Open Window project with any Council-directed changes to the proposed Master Development Plan and Development Agreement, or

3) Vote to deny the Open Window project.

The Open Window development presents significant opportunity, over time, to implement City of Stockton goals with respect to downtown development, creation of more housing opportunities in the downtown area, and creation of jobs for Stockton residents.
FINANCIAL IMPACTS

Costs for processing the Open Window Master Development Plan and Development Agreement, along with the corollary CEQA document, have been fully paid to the City by the project applicants. There is no General Fund impact.

Costs for development of the Open Window project will be borne by each development project as they come forward, including payment of applicable City impact fees.

Proceeds from the sale of City-owned parcels, less normal closing costs, will be deposited into the City Disposition/Sale of Fixed Assets Account No. 010-0000-461, and approximately $500 will be allocated from 010-0000-461 for advertising expenses. Proceeds from the sale of Parking Authority parcels, less normal closing costs, will be deposited into Parking Authority Account No. 418-0000-461.

RECOMMENDATIONS

City Council

Resolution 1

CEQA Document: It is recommended that the City Council adopt the project Initial Study and Mitigated Negative Declaration, finding that environmental assessment has been prepared in accordance with the provisions of the California Environmental Quality Act and addresses the environmental review required for the Master Development Plan, Development Agreement, Option Agreement, and Water Supply Assessment Report (SB 610) in that:

a. The Project initial study identified potentially significant effects of the Project. Revisions to the Project made by or agreed to by the Project applicant before the proposed mitigated negative declaration (MND) and initial study were released for public review and were determined by the City to avoid or reduce the potentially significant effects to a less than significant level, and, therefore, there was no substantial evidence that the Project as revised and conditioned would have a significant effect on the environment.

b. A Notice of Intent to Adopt the MND (NOI) was circulated for public comment for 30 days (December 4, 2015 through January 4, 2016). The NOI was sent to those public agencies that have jurisdiction by law with respect to the proposed project and to other interested parties and agencies. The comments of such persons and agencies were sought.

c. The NOI was published in the Stockton Record, a newspaper of general circulation, and the NOI was posted in the office of the San Joaquin County Clerk.

d. The Planning Commission and City Council have reviewed and considered the information contained in the MND, including the initial study, the revisions and conditions incorporated into the Project, and the comments received during the public review process and the hearing on the Project. The Planning Commission and City Council have determined that the MND constitutes an adequate, accurate, objective and complete review of the environmental effects of the proposed project.
e. Based on its review of the MND and on the basis of the whole record, the Planning Commission and City Council find that the MND reflects the City’s independent judgment and analysis and that there is no substantial evidence that the Project will have a significant effect on the environment.

Master Development Plan: It is recommended that the City Council adopt the Open Window Master Development Plan, based on the following findings:

a. The proposed master development plan would be consistent with the objectives, policies, general land uses, programs, and actions of all applicable elements of the General Plan. The Open Window MDP provides for a range of mixed use development in downtown Stockton, consistent with General Plan goals and policies, including provision of new housing and creation of jobs.

b. The master development plan would adequately address the physical development characteristics of the subject site(s). The Open Window MDP includes development standards and guidelines for the comprehensive development of the participating properties.

c. The development standards identified in the master development plan would serve to protect the public convenience, health, safety, and general welfare. The Open Window MDP will provide for safe and efficient site planning, building construction and regulation of land use. Additionally, the project includes the Initial Study/Mitigated Negative Declaration mitigation measures as part of the project, ensuring protection of the environment from significant environmental effects of the project.

d. Development of the subject site(s) covered by the master development plan would ensure a compatible land use relationship with the surrounding neighborhood. The Open Window MDP provides for mixed uses in downtown Stockton, and would be compatible with the range of existing uses in the area, which include commercial, residential, office, and light industrial uses.

e. The master development plan would be in compliance with all applicable requirements of this Development Code, local ordinances, and State law. The Open Window MDP complies with provisions of the SMC, Chapter 16.140, regarding establishment of a master development plan, as well as other applicable local ordinances and provisions of state law.

Water Supply Assessment Report (SB 610): It is recommended that the City Council adopt the resolution for Water Supply Assessment Report for the Open Window Project, based on the following findings:

1. State law requires a water supply and demand analysis (Water Supply Assessment) for development projects of a certain size or type, which would include the Open Window Project,

2. The Water Supply Assessment evaluates project water supplies, determined to be available by the City and Cal Water for the project during normal, single dry and multiple dry years over a 20 year period. Cal Water, Stockton District prepared the Water Supply Assessment for the City for the Open Window Project.
3. On January, 14, 2016, the City Planning Commission held a noticed public hearing on the Open Window Project, received and considered evidence, and forwarded to the City Council a recommendation to adopt the entitlements for the project.

4. On February 23, 2016, the City Council conducted a noticed public hearing, considered the Mitigated Negative Declaration, and received and considered evidence concerning the entitlements for the project. Based on the verbal and documentary evidence at the hearings on the Open Window Project, the City Council approves the Water Supply Assessment Report.

Resolution 2

Option Agreement: It is recommended that the City Council approve an Option Agreement between the City of Stockton and Open Window Project LLC, for the disposition of City-owned properties.

General Plan Conformity Finding: In accordance with Section 65402 of the Government Code and Stockton Development Code section 16.72.030.D, the Planning Commission also recommends that the City Council find that this action/project conforms to the City’s General Plan and with the General Plan Policy Document.

Ordinance

Development Agreement: It is recommended that the City Council adopt the Ordinance for the Open Window Development Agreement, based on the following findings:

a. The Development Agreement is in the best interests of the City, as it would promote the revitalization of Downtown Stockton by facilitating new and rehabilitated housing, retail, office, and commercial development, remove blight, and increase the downtown population and employment.

b. The Development Agreement complies with the City Development Code and other applicable ordinances and regulations, particularly the regulations of Chapter 16.128 pertaining to development agreements.

c. The Development Agreement is consistent with the general land uses, objectives, policies, and programs of the General Plan, any applicable specific plan or master development plan. The Open Window Project Master Development Plan and Development Agreement provide for a range of mixed use development in downtown Stockton, consistent with the General Plan goals and policies, including the provision of new housing and creation of jobs.

d. The Development Agreement will not endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare in that projects constructed pursuant to it are required to comply with all health and safety regulations, zoning requirements, infrastructure provision, and General Plan policies.

e. The Development Agreement complies with the conditions, requirements, restrictions, and terms of Section 16.128.060(B) (Preparation and Content - Proposed Development Agreement).
f. The Development Agreement complies with the provisions of the California Environmental Quality Act (CEQA) and the City’s CEQA Guidelines in that evaluations of potential impacts have been completed and mitigation measures have been incorporated to mitigate all identified impacts to a less-than-significant level.

Proposed Conditions:

Pursuant to SMC, Section 16.140.100, in approving or amending a master development plan, the City Council may impose specific development conditions relating to the construction (both on- and off-site improvements), establishment, location, maintenance, and operation of the proposed activities, as it finds are reasonable and necessary to ensure that the approval would be in compliance with the above-listed findings, and to carry out the purpose and requirements of the applicable General Plan designation and this Development Code. The following conditions are therefore imposed for the Open Window MDP:

1. The Open Window project shall be developed consistent with the provisions of the MDP and the Open Window Development Agreement except as noted in the conditions herein.

2. Mitigation Measures contained in the project Mitigated Negative Declaration are hereby incorporated into the Open Window project.

3. All development projects within the Open Window Project shall be subject to review and approval by the Community Development Department, consistent with operational provisions contained within the MDP. This shall include project plan review, revisions and attachment of project conditions of approval, as necessary to ensure MDP consistency, prior to permit issuance. Plan review shall include other City departments and agencies, as appropriate. The City may require development submittal of technical and related studies and information to assist in project plan review and permit issuances.

4. All development projects shall be subject to obtaining all necessary local, regional and state agency approvals and permits, as may be required.

5. There shall be a limit of up to 1,034 residential units for the Open Window project, and with a residential density not to exceed 87 dwelling units per acre as measured for any Open Window developments located within any one square block within the project development area. However, the City is currently working on a General Plan update which is expected to address residential density in the downtown area. It is anticipated that the downtown area would be identified for higher residential density limits than those allowed under the current General Plan. If such changes to the General Plan are ultimately adopted as part of the General Plan update review, increased residential densities would be an option for the Open Window properties. Therefore, the project Initial Study analysis assumed that up to 1,400 residential units would be constructed, primarily built at higher densities as part of apartments or other multi-family unit developments.

6. The developer of a master development plan shall establish a homeowner’s association (HOA) for residential areas within the master development plan for the purpose of maintaining common areas and enforcing the required covenants, conditions and restrictions (CC&R).
HOA’s shall be formed and recorded prior to issuance of residential building permits.

7. All subsequent land owners and tenants occupying property within the area covered by the adopted MDP shall sign a document specifying that they have received and reviewed a copy of the approved MDP and/or the recorded development agreement which identifies the provisions, regulations, requirements, and standards governing the development and ongoing operation of the sites covered by the MDP. Copies of completed acknowledgements shall be provided by the developer to the Community Development Department.

8. The Director shall have the authority to interpret the precise language of the MDP to determine if a proposed use, while not specifically listed as an allowable use, would be consistent with and share the same or similar characteristics of an allowed use identified in the adopted MDP.

9. The Director shall review the adopted MDP every five (5) years to ensure compliance by the applicant or the successor(s)-in-interest. During this review, the applicant, or the successor(s)-in-interest, shall demonstrate compliance with the terms of the MDP to the satisfaction of the Director.

10. Parking: The MDP shall identify the parking standards as base requirements and not the “maximum” parking standards. Appropriate on-site parking, even in recognition of the mixed-use concept of Open Window, is required to ensure appropriate on-site project parking is provided and other land uses in the immediate area are not adversely impacted.

Parking Authority

Option Agreement: It is recommended that the Parking Authority approve an Option Agreement between the Parking Authority and Open Window Project LLC, for the disposition of Parking Authority-owned properties.

General Plan Conformity Finding: In accordance with Section 65402 of the Government Code, the Planning Commission also recommends that the City Council find that this action/project conforms to the City’s General Plan and with the General Plan Policy Document.

Attachment A - Location Map
Attachment B - Master Development Plan with Elevations and Site Improvement Renderings
Attachment C - Initial Study / Proposed Mitigated Negative Declaration
Attachment D - Development Agreement
Attachment E - Purchase Option Agreement
Attachment F - Water Supply Assessment Report
Attachment G - Existing and Proposed Land Use Conditions
Attachment H - Illustrative Examples of MDP Area
Attachment I - Vicinity Map
Amended
Long Range Property Management Plan

Successor Agency to the
Former Redevelopment Agency of the
City of Stockton

December 2015
INTRODUCTION

On June 27, 2012, the Governor signed into law Assembly Bill 1484 (AB1484), a budget trailer bill that made substantial changes to the redevelopment agency dissolution process implemented by Assembly Bill 1X 26. One of the key components of AB1484 is the requirement that successor agencies develop a Long Range Property Management Plan that governs the disposition and use of the former non-housing redevelopment agency properties. This document is the Long Range Property Management Plan (LRPMP) for the Successor Agency to the Former Redevelopment Agency of the City of Stockton (Successor Agency).

SUMMARY OF SUCCESSOR AGENCY OWNED PROPERTIES AND DISPOSITION PLANS

There are fifty (50) parcels divided amongst thirteen (13) sites that are owned by the Successor Agency.

<table>
<thead>
<tr>
<th>NO.</th>
<th>SITE NAME</th>
<th>ADDRESS</th>
<th>APN</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Children's Museum</td>
<td>448 W. Weber Avenue</td>
<td>137-260-05, 07, 26, 31, 32 &amp; 33</td>
</tr>
<tr>
<td>3</td>
<td>Bob Hope Theater</td>
<td>242 E. Main Street</td>
<td>149-140-27</td>
</tr>
<tr>
<td>4</td>
<td>833 W. Weber Avenue</td>
<td>833 W. Weber Avenue</td>
<td>145-190-03, 145-270-06, 09 &amp; 10</td>
</tr>
<tr>
<td>5</td>
<td>Lincoln Street &amp; Weber Avenue</td>
<td>504 W. Weber Avenue, 666 W. Weber Avenue</td>
<td>137-370-03, 137-370-02</td>
</tr>
<tr>
<td>6</td>
<td>Airport Way &amp; Second Street</td>
<td>1670 S. Union Street, 1501 S. Airport W</td>
<td>169-030-13, 169-020-11</td>
</tr>
<tr>
<td>7</td>
<td>Airport Way &amp; Eighth Street</td>
<td>2222 &amp; 2244 S. Airport Way</td>
<td>169-163-01 &amp; 169-151-01</td>
</tr>
<tr>
<td>8</td>
<td>Airport Way &amp; Folsom Street</td>
<td>1805 &amp; 1814 S. Airport Way</td>
<td>169-020-02 &amp; 169-040-09</td>
</tr>
<tr>
<td>9</td>
<td>Airport Way - Option</td>
<td>2110 S. Airport Way</td>
<td>169-162-01</td>
</tr>
<tr>
<td>11</td>
<td>Lincoln Street &amp; Horton Avenue</td>
<td>No Situs Address</td>
<td>175-260-34 &amp; 175-070-08</td>
</tr>
<tr>
<td>12</td>
<td>Henery Apartments</td>
<td>119 S. Sutter Street</td>
<td>149-120-10</td>
</tr>
</tbody>
</table>
AB 1484 allows successor agencies to sell or retain properties for governmental use or future development with the approval of the Oversight Board. Based on that premise, all of the properties have been determined to be used or disposed by the following categories:

- Retention of the property for a governmental use pursuant to subdivision (a) of Section 34181;
- Retention of the property for future development; or
- Sale of the property

**GOVERNMENTAL USE**

Health & Safety Code Section 34181(a) states that the Oversight Board may have the successor agency transfer ownership of those assets that were constructed and used for a governmental purpose, such as roads, school buildings, parks, police and fire stations, libraries, and local agency administrative buildings, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction of use of an asset.

The following properties have been identified to be transferred to the City and retained for a governmental purpose pursuant to HSC Section 34181:

- Site No. 2 - Children’s Museum
- Site No. 3 - Bob Hope Theater

By retaining these properties for a governmental purpose, the City will be able to continue providing services to the public by increasing and strengthening the presence of government functions within the downtown while providing recreational, cultural, and civic uses.

**FUTURE DEVELOPMENT**

In order to retain property for future development the use and disposition of the property should be consistent with and be identified in an approved redevelopment plan, or specific, community or general plan. AB 471 clarifies that “identified in an approved redevelopment plan” includes identification in a community plan or a five-year implementation plan. DOF interprets that the redevelopment plan could also be a strategic plan, general plan or other plan that directs the use of property. Therefore, as long as the project is identified in any existing plan, the requirements are met.

The following properties have been identified to be transferred to the City and retained for future development pursuant to HSC Section 34191.5 (c)(2)(A):

- Site No. 1 – Van Buren, Washington, Market, Madison & Monroe Street
- Site No. 4 – 833 W. Weber Avenue
- Site No. 5 - Lincoln Street & Weber Avenue
- Site No. 6 - Airport Way & Second Street; and
- Site No. 7 - Airport Way & Eighth Street

In accordance with HSC Section 34180 (f), since the City wishes to retain these properties for future redevelopment activities, funded from its own funds and under its own auspices, it will reach a compensation agreement with the other taxing entities pursuant to HSC Section 34188, for the property or properties retained.

By retaining these properties for future development, the City will be able to achieve the former Redevelopment Agency’s plans for the site. The City will also be able to ensure that a project is
developed that meets the City General Plan and zoning guidelines and meets the objectives of the projects in the various plans discussed in each property inventory.

In addition, by retaining the property, the City can identify a developer with the necessary experience and expertise to complete a development project in a realistic timeframe while avoiding a buyer who is interested in a more speculative real estate investment.

The site will be disposed of to a qualified developer who will acquire and develop the property in a timely manner in accordance with an approved Disposition and Development Agreement (DDA), which will set the terms of the land acquisition between the City and the selected developer. The developer will be selected through an application process involving solicitation of interested prospective developers with a Request for Qualification (RFQ), Request for Proposals (RFP), qualified bid, or similar means. Net unrestricted sales proceeds will be remitted to the county auditor-controller for distribution to taxing entities pursuant to HSC section 34180(f).

SALE OF PROPERTY

The following properties have been identified to be sold:

- Site No. 8 - Airport Way & Folsom Street
- Site No. 9 – 2110 S. Airport Way – Purchase Option (expires in 2018)
- Site No. 10 - Airport Way & Ninth Street
- Site No. 11 - Lincoln Street & Horton Avenue
- Site No. 12 - Henery Apartments (119 S. Sutter Street)
- Site No. 13 - Waterfront Office Towers Parking Lot

The properties will be sold at a determined market rate. An agreement with affected taxing entities may be required, and the use of any sales proceeds will be determined in accordance with the requirements of AB 1484. If deemed necessary by the Successor Agency, a real estate broker may be hired to list the properties for sale.

PROPERTY INVENTORY INFORMATION

The following pages contain property inventory information for each property in accordance with the information required under AB 1484 regarding the parcel information contained in the Long Range Property Management Plan.

The property inventory consists of the following information for each property:

- The date of the acquisition of the property and the value of the property at the time, and an estimate of the current value of the property;
- The purpose for which the property was acquired;
- Parcel date, including address, lot size, and current zoning in the former agency redevelopment plan or specific, community, or general plan;
- An estimate of the current value of the parcel including, if available, any appraisal information;
- An estimate of any lease, rental, or any other revenue generated by the property, and a description of the contractual requirements for the disposition of those funds;
- The history of environmental contamination, including designation as a brownfield site, any related environmental studies, and history of any remediation efforts;
- A description of the property’s potential for transit-oriented development (TOD) and the advancement of the planning objectives of the successor agency; and
- A brief history of previous development proposals and activity, including the rental or lease of property.
LISTING OF FORMER REDEVELOPMENT AGENCY PROPERTY
BY PROPOSED DISPOSITION CATEGORY

GOVERNMENTAL USE

- Site No. 2 - Children’s Museum
- Site No. 3 - Bob Hope Theater

FUTURE DEVELOPMENT

- Site No. 1 - Van Buren, Washington, Market, Madison & Monroe Street
- Site No. 4 - 833 W. Weber Avenue
- Site No. 5 - Lincoln Street & Weber Avenue
- Site No. 6 - Airport Way & Second Street
- Site No. 7 - Airport Way & Eighth Street

SALE OF PROPERTY

- Site No. 8 – Airport Way & Folsom Street
- Site No. 9 - 2110 S. Airport Way – Purchase Option
- Site No. 10 - Airport Way & Ninth Street
- Site No. 11 - Lincoln Street & Horton Avenue
- Site No. 12 - Henery Apartments (119 S. Sutter Street)
- Site No. 13 - Waterfront Office Towers Parking Lot
PROPERTY INVENTORY INFORMATION

Site No. 1

109 S. VAN BUREN STREET
Stockton, CA 95202
APN(s): 137-360-24, 26, 27, 28 & 39

Summary
This site contains several vacant parcels and is located at Lincoln Street and Washington Street.

Parcel Data
- General Plan Designation: Commercial
- Zoning: Commercial, Office
- Existing Use: Vacant Lot/Land
- Lot Size: 24 - .09, 26 - .54, 27 - .30, 28 - .13, 39 - .21 (1.27 total) acres
- Acquisition Date: 1981
- Estimated Acquisition Value: $31,000
- Acquisition Purpose: office/government facility

Current Value and Revenue Generation
Date/Value Basis for Estimate: March 2015/Market
Estimated Site Value: $768,932
Revenue Generated by Property: This property is currently vacant and does not generate revenue. Conversely, the site incurs an annual assessment in the amount of $1,274 assessed by the Downtown Stockton Alliance.
Requirements for Revenue Use: N/A

Environmental Information
As part of the effort to redevelop the waterfront area, the City hired several consultants over the last decades to investigate the condition of waterfront area properties. On August 21, 2000, the Stockton Waterfront Brownfields Project Environmental Master Plan was prepared by Black & Veatch to provide prospective developers and lenders, and the general public with a summary of information available in numerous environmental documents regarding Stockton Waterfront Brownfields properties.
According to this plan which refers to this property as Area 4, there were no volatile organic compounds detected in the soil; however, diesel was detected in one of ten soil samples, and gasoline was detected in one soil boring. Several semi-volatile organic compounds were detected in one of seven soil samples analyzed. Lead was detected in three of thirteen soil samples. No volatile organic compounds or significant metals concentrations were detected in the groundwater sample. Verification showing that groundwater potentially entering the site from the NW has not been adversely impacted by Area 2A needs to be completed.

**Potential for TOD and Advancement of Planning Objectives**
The site has some potential for transit oriented development, as the site is served and near a variety of transportation systems.

The San Joaquin Regional Transit District (SJRTD) is the primary public transportation system operating in Stockton and serves the site. Greyhound Bus Lines also has a station in the area located near the site. The Altamont Commuter Express (ACE) provides services that connect the Central Valley with the Silicon Valley and other destinations in the San Francisco Bay Area at the Robert J. Cabral ACE Station located in downtown. This station also serves as the terminus for Amtrak trains between Sacramento and Bakersfield.

Future development of the site would further the City’s planning objectives as outlined in the ACE Planning and Parking Strategy prepared on August 23, 2010 by Fehr & Peers, Bay Area Economics, Gensler and Davis Langdon, and the Climate Action Plan – Transit Plan/Program prepared August 2, 2011 by Nelson Nygaard, as both these plans recommend focus on transit oriented development for the downtown area.

**Development Plans and Activity**
On January 16, 1996, Council adopted Resolution No. 96-0016 approving The Stockton Waterfront Revival Vision & Action Plan. The plan identifies this particular area as the South Shore of the Marina District.

The Downtown Stockton Strategic Action Plan dated October 2001 also identifies this area as the South Shore. This plans directs the use of this particular property as office and financial. In fact, there is a project identified as the Washington Street Office Project in the existing plan. Although this project was not completed the property remains viable for such development including a governmental use.

A primary goal of the Downtown Stockton Strategic Action Plan is the importance of creating additional government office in downtown. The goal of increasing and strengthening the presence of government functions within the downtown is paramount as it is ranked second in priority; only after addressing safety and security. This is evident as there are existing state and county offices in the immediate area as the Stockton California Department of Motor Vehicles located at 55 South Lincoln Street is across the street from this site and San Joaquin County Work Net at 56 South Lincoln Street is located on the adjacent parcel. Moreover, Commercial, Downtown (CD) zoning designations which identify governmental facilities as an appropriate use are also established in the immediate area.

Today, government functions are the most visible and successful elements in Downtown Stockton and a prerequisite in the Downtown’s continued success will be the ability to retain and attract new government office uses. In furtherance of spawning a distinct and vital Government Center as identified in the Downtown Strategic Action Plan, this site naturally serves for the construction of possible City facilities or government offices as referenced in previous planning documents.

**Property Disposition**
The Agency recommends the property be transferred to the City and retained for future development pursuant to HSC Section 34191.5 (c)(2)(A).
PROPERTY INVENTORY INFORMATION

333 W. WASHINGTON STREET
Stockton, CA  95202
APN(s): 137-330-01, 02, 03, 04 & 20

Summary
This site is located in the South Shore District and contains multiple lots located between Van Buren and Monroe Streets on Washington Street north of Crosstown Freeway. There are a total of five lots consisting of one large lot and four smaller lots.

Parcel Data
- General Plan Designation: Commercial
- Zoning: Commercial, Office
- Existing Use: Vacant Lot/Land
- Lot Size: 01 - .11, 02 - .11, 03 - .11, 04 - .11, 20 - .73 acres
- Acquisition Date: 1981-1988
- Estimated Acquisition Value: $134,900
- Acquisition Purpose: office/government facility

Current Value and Revenue Generation
Date/Value Basis for Estimate: March 2015/Market
Estimated Site Value: Provided on page 7
Revenue Generated by Property: This property is currently vacant and does not generate revenue. Conversely, the site incurs an annual assessment in the amount of $1,191 assessed by the Downtown Stockton Alliance.
Requirements for Revenue Use: N/A

Environmental Information
As part of the effort to redevelop the waterfront area, the City hired several consultants over the last decades to investigate the condition of waterfront area properties. On August 21, 2000, the Stockton Waterfront Brownfields Project Environmental Master Plan was prepared by Black & Veatch to provide prospective developers and lenders, and the general public with a summary of information available in numerous environmental documents regarding Stockton Waterfront Brownfields properties.
According to this plan, which refers to this property as Areas 5 and 6, from at least 1895 to the present, Areas 5 and 6 have been occupied by either residential dwellings, a school, shops, or vacant land. No industrial land use, underground storage tanks, or other environmental concerns were identified on the subject properties. No underground storage tanks, potential underground tanks, or underground storage tanks remain were identified at Areas 5 or 6 during a ground penetrating radar survey. No offsite environmental concerns were identified for Areas 5 and 6. No further action is recommended at Areas 5 or 6.

**Potential for TOD and Advancement of Planning Objectives**

The site has some potential for transit oriented development, as the site is served and near a variety of transportation systems.

The San Joaquin Regional Transit District is the primary public transportation system operating in Stockton and serves the site. Greyhound Bus Lines also has a station in the area located near the site. The Altamont Commuter Express (ACE) provides services that connect the Central Valley with the Silicon Valley and other destinations in the San Francisco Bay Area at the Robert J. Cabral ACE Station located in downtown. This station also serves as the terminus for Amtrak trains between Sacramento and Bakersfield.

Future development of the site would further the City's planning objectives as outlined in the ACE Planning and Parking Strategy prepared on August 23, 2010 by Fehr & Peers, Bay Area Economics, Gensler and Davis Langdon, and the Climate Action Plan – Transit Plan/Program prepared August 2, 2011 by Nelson Nygaard, as both these plans recommend focus on transit oriented development for the downtown area.

**Development Plans and Activity**

On January 16, 1996, Council adopted Resolution No. 96-0016 approving The Stockton Waterfront Revival Vision & Action Plan. The plan identifies this particular area as the South Shore of the Marina District.

The Downtown Stockton Strategic Action Plan dated October 2001 also identifies this area as the South Shore. This plan directs the use of this particular property as office and financial. In fact, there is a project identified as the Washington Street Office Project in the existing plan. Although this project was not completed the property remains viable for such development including a governmental use.

A primary goal of the Downtown Stockton Strategic Action Plan is the importance of creating additional government office in downtown. The goal of increasing and strengthening the presence of government functions within the downtown is paramount as it is ranked second in priority; only after addressing safety and security. This is evident as there are existing state and county offices in the immediate area as the Stockton California Department of Motor Vehicles located at 55 South Lincoln Street and San Joaquin County WorkNet is located at 56 South Lincoln Street. Moreover, Commercial, Downtown (CD) zoning designations which identify governmental facilities as an appropriate use are also established in the immediate area.

Today, government functions are the most visible and successful elements in Downtown Stockton and a prerequisite in the Downtown’s continued success will be the ability to retain and attract new government office uses. In furtherance of spawning a distinct and vital Government Center as identified in the Downtown Strategic Action Plan, this site naturally serves for the construction of possible City facilities or government offices which will be a new government office use.

**Property Disposition**

The Agency recommends the property be transferred to the City and retained for future development pursuant to HSC Section 34191.5 (c)(2)(A).
PROPERTY INVENTORY INFORMATION

Site No. 1 - continued

214, 220, 226, 240 & 248 MARKET; 103, 115, 119, 125 MADISON; 124 & 126 MONROE
Stockton, CA 95202
APN(s): 137-330-08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18 & 19

Summary
This site contains multiple vacant lots between Monroe Street and Madison Street just north of Crosstown Freeway ranging in size from 2,000 square feet to 7,500 square feet.

Parcel Data
- General Plan Designation: Commercial
- Zoning: Commercial, Downtown
- Existing Use: Vacant Lot/Land
- Lot Size: 1.35 acres
- Acquisition Date: 1981-1983
- Estimated Acquisition Value: $187,448
- Acquisition Purpose: Public use and necessity

Current Value and Revenue Generation
Date/Value Basis for Estimate: March 2015/Market
Estimated Site Value: Provided on page 7
Revenue Generated by Property: This property is currently vacant and does not generate revenue.
Conversely, the site incurs an annual assessment in the amount of $1,360 assessed by the Downtown Stockton Alliance.
Requirements for Revenue Use: N/A

Environmental Information
As part of the effort to redevelop the waterfront area, the City hired several consultants over the last decades to investigate the condition of waterfront area properties. On August 21, 2000, the Stockton Waterfront Brownfields Project Environmental Master Plan was prepared by Black & Veatch to provide prospective developers and lenders, and the general public with a summary of information available in numerous environmental documents regarding Stockton Waterfront Brownfields properties.
According to this plan, which refers to this property as Areas 5 and 6, from at least 1895 to the present, Areas 5 and 6 have been occupied by either residential dwellings, a school, shops, or vacant land. No industrial land use, underground storage tanks, or other environmental concerns were identified on the subject properties. No underground storage tanks, potential underground storage tanks, or underground storage tank remains were identified at Areas 5 or 6 during a ground penetrating radar
survey. No offsite environmental concerns were identified for Areas 5 and 6. No further action is recommended at Areas 5 or 6.

**Potential for TOD and Advancement of Planning Objectives**
The site has some potential for transit oriented development, as the site is served and near a variety of transportation systems.

The San Joaquin Regional Transit District is the primary public transportation system operating in Stockton and serves the site. Greyhound Bus Lines also has a station in the area located near the site. The Altamont Commuter Express (ACE) provides services that connect the Central Valley with the Silicon Valley and other destinations in the San Francisco Bay Area at the Robert J. Cabral ACE Station located in downtown. This station also serves as the terminus for Amtrak trains between Sacramento and Bakersfield.

Future development of the site would further the City’s planning objectives as outlined in the ACE Planning and Parking Strategy prepared on August 23, 2010 by Fehr & Peers, Bay Area Economics, Gensler and Davis Langdon, and the Climate Action Plan – Transit Plan/Program prepared August 2, 2011 by Nelson Nygaard, as both these plans recommend focus on transit oriented development for the downtown area.

**Development Plans and Activity**
On January 16, 1996, Council adopted Resolution No. 96-0016 approving The Stockton Waterfront Revival Vision & Action Plan. The plan identifies this particular area as the South Shore of the Marina District.

The Downtown Stockton Strategic Action Plan dated October 2001 also identifies this area as the South Shore. This plans directs the use of this particular property as office and financial. In fact, there is a project identified as the Washington Street Office Project in the existing plan. Although this project was not completed the property remains viable for such development including a governmental use since this site is zoned Commercial, Downtown (CD) which identifies governmental facilities as an appropriate use on the site.

A primary goal of the Downtown Stockton Strategic Action Plan is the importance of creating additional government office in downtown. The goal of increasing and strengthening the presence of government functions within the downtown is paramount as it is ranked second in priority; only after addressing safety and security. This is evident as there are existing state and county offices in the immediate area as the Stockton California Department of Motor Vehicles located at 55 South Lincoln Street and San Joaquin County Work Net is located at 56 South Lincoln Street. Moreover, as previously stated, Commercial, Downtown (CD) zoning designations which identify governmental facilities as an appropriate use are also established in the immediate area. Additionally, when the Agency purchased a portion of this site from the Stockton Unified School District, the property was acquired for a public use and necessity.

Today, government functions are the most visible and successful elements in Downtown Stockton and a prerequisite in the Downtown’s continued success will be the ability to retain and attract new government office uses. In furtherance of spawning a distinct and vital Government Center as identified in the Downtown Strategic Action Plan, this site naturally serves for the construction of possible City facilities or government offices which will be a new government office use.

**Property Disposition**
The Agency recommends the property be transferred to the City and retained for future development pursuant to HSC Section 34191.5 (c)(2)(A).
PROPERTY INVENTORY INFORMATION

Site No. 2
Summary
This site contains the Children’s Museum which is operated by Children’s Museum of Stockton, a nonprofit organization, through an agreement with the City of Stockton. The Museum came as a result of the tragic 1989 Cleveland School shootings in which five (5) children were killed and thirty (30) others were wounded, including a teacher, by a gunman firing an assault weapon. The wounded teacher was the Founding Director of the Museum and through support from the private and public sectors, the Museum was established.

Parcel Data
- General Plan Designation: Commercial
- Zoning: Industrial, General
- Existing Use: Children’s Museum
- Lot Size: 2.37 acres
- Acquisition Date: 1981-1992
- Estimated Acquisition Value: $202,052
- Acquisition Purpose: Educational and cultural public use

Current Value and Revenue Generation
Date/Value Basis for Estimate: March 2015/Market
Estimated Site Value: $1,459,480
Revenue Generated by Property: This property does not generate revenue as it is subsidized by the City and incurs an annual assessment in the amount of $949 by the Downtown Stockton Alliance.
Requirements for Revenue Use: N/A

Environmental Information
As a part of the environmental contamination at 504 Weber Avenue, identified as Area 2A in the Stockton Waterfront Brownfields Project Environmental Master Plan prepared by Black & Veatch on August 21, 2000, this site contains groundwater monitoring wells since it is considered to be in the surrounding area of Area 2A.

Potential for TOD and Advancement of Planning Objectives
The site has some potential for transit oriented development, as the site is served and near a variety of transportation systems.

The San Joaquin Regional Transit District is the primary public transportation system operating in Stockton and serves the site. Greyhound Bus Lines also has a station in the area located near the site. The Altamont Commuter Express (ACE) provides services that connect the Central Valley with the Silicon Valley and other destinations in the San Francisco Bay Area at the Robert J. Cabral ACE Station located in downtown. This station also serves as the terminus for Amtrak trains between Sacramento and Bakersfield.

**Development Plans and Activity**

The Implementation Plan for the Stockton Redevelopment Project Areas – Stockton Redevelopment Agency (December 1994) identified this site as being in the West End Project Area. The Project Area contained approximately 642 acres and included the City's historic downtown commercial area and public and private marinas along the Stockton Channel.

The West End Project Area was originally established in the Official Redevelopment Plan for West End Urban Renewal Project No. 1 (the “West End Plan”), adopted on October 9, 1961 with territory added by amendments in 1974, 1980, and 1991.

The major Agency goals and objectives for the West End Project Area for the Implementation Plan included the promotion and creation of an attractive and animated “Downtown/Waterfront” area which would serve as a destination for greater Stockton and which would have a diverse set of employment, recreational, cultural, civic, retail, visitor, and residential uses that mutually support each other.

In fact, in an effort to implement these goals the Agency sponsored a business retention and attraction program. The purpose of the business retention and attraction program was to assist the commercial revitalization of the existing retail and commercial areas within the West End Project Area, while at the same time provide significant incentives for existing business to remain and new businesses to locate within the project area. In keeping with the goals and objectives for the West End Project Area, the Agency efforts were directed toward the promotion and marketing of Agency-owned property in the South Shore, as well as preparation of development strategies for the Children’s Museum.

The Agency committed funds directed to projects for marketing strategies to encourage business retention that included lease and rehabilitation of an existing warehouse building of the Children’s Museum in the old waterfront area; and development of a childcare facility near the Children’s Museum.

On January 16, 1996, Council adopted Resolution No. 96-0016 approving The Stockton Waterfront Revival Vision & Action Plan. The plan identifies this particular area as the South Shore of the Marina District.

The South Shore of the Waterfront is envisioned to be appropriate for a mix of retail and entertainment uses along the Stockton Channel with an emphasis on cultural and educational uses adjoining the Children’s Museum.

The Children’s Museum of Stockton Board of Directors is a non-profit group that started the museum in 1989 as a result of the 1989 Cleveland School massacre. In 2002, the Board approached the City to manage the day-to-day operations as a part of the Community Services Department which it did until 2010. In 2010, the City entered into an operation agreement with the Board for the operation of the Children’s Museum.

The Children’s Museum is subsidized by the City of Stockton in that they pay a one dollar per year lease rate to the City in order to operate a museum that serves as an educational and cultural resource.
with over 40 exhibits. The City’s intent is that the Children’s Museum continues to be used to serve the families and schools in the community. The programs and educational exhibits offered at the Museum have served as a governmental public use since 1994 to great success with considerable City investment, which is why it is important that it remains available for the residents of the City of Stockton.

Property Disposition
The Agency recommends the property be transferred to the City and retained for governmental purpose pursuant to HSC Section 34181.
PROPERTY INVENTORY INFORMATION

Site No. 3

242 E. MAIN STREET
Stockton, CA 95202
APN(s): 149-140-27

Summary
This site contains the Bob Hope Theatre (previously Fox Theatre) which is presently in use by the City and under contract with SMG. City funds, grant funding, and pledged donations were obtained by the Agency to purchase and renovate the facility.

Parcel Data
- General Plan Designation: Commercial
- Zoning: Commercial, Downtown
- Existing Use: Theater
- Lot Size: .54 acres land
- Acquisition Date: 5/15/2000
- Estimated Acquisition Value: $1,200,000
- Acquisition Purpose: Public use

Current Value and Revenue Generation
Date/Value Basis for Estimate: March 2015/Market
Estimated Site Value: $3,306,000
Revenue Generated by Property: This property does not generate revenue as it is subsidized by the City and incurs an annual assessment in the amount of $3,782 by the Downtown Stockton Alliance.
Requirements for Revenue Use: N/A

Environmental Information
The Successor Agency has no knowledge of environmental contamination on this property and has not performed any environmental studies, nor has the property been classified as a brownfield site.

Potential for TOD and Advancement of Planning Objectives
The site has some potential for transit oriented development, as the site is served and near a variety of transportation systems.
The San Joaquin Regional Transit District is the primary public transportation system operating in Stockton and serves the site. Greyhound Bus Lines also has a station in the area located near the site. The Altamont Commuter Express (ACE) provides service that connects the Central Valley with the Silicon Valley and other destinations in the San Francisco Bay Area at the Robert J. Cabral ACE Station located in downtown. This station also serves as the terminus for Amtrak trains between Sacramento and Bakersfield.

**Development Plans and Activity**
The Implementation Plan for the Stockton Redevelopment Project Areas – Stockton Redevelopment Agency (December 1994) identified this site as being in the West End Project Area. The Project Area contained approximately 642 acres and included the City’s historic downtown commercial area and public and private marinas along the Stockton Channel.

The West End Project Area was originally established in the Official Redevelopment Plan for West End Urban Renewal Project No. 1 (the "West End Plan"), adopted on October 9, 1961 with territory added by amendments in 1974, 1980, and 1991.

The major Agency goals and objectives for the West End Project Area for the Implementation Plan included the promotion and creation of an attractive and animated “Downtown/Waterfront” area which would serve as a destination for greater Stockton and which would have a diverse set of employment, recreational, cultural, civic, retail, visitor, and residential uses that mutually support each other.

In fact, in an effort to implement these goals the Agency sponsored a business retention and attraction program. The purpose of the business retention and attraction program was to assist the commercial revitalization of the existing retail and commercial areas within the West End Project Area, while at the same time providing significant incentives for existing business to remain and new businesses to locate within the project area. In keeping with the goals and objectives for the West End Project Area, the Agency efforts were directed toward the promotion and marketing of the Fox Theater. The Agency committed funds directed to projects for marketing strategies to encourage business retention that included the lease and development of a theater at the historic Fox Theater.

The Bob Hope Theater (previously Fox Theater) was built by Fox West Coast Theaters in 1930. The Fox was the largest vaudeville house in California, with 2,170 seats. In 1973, the theater closed its doors due to decline in business. In 1979, efforts were made to save the historic structure and the Fox Theatre was placed on the National Register of Historical Places. Today, it is one of only two movie palaces left in the Central Valley. In 1991, the Agency included the Fox as part of an effort to revitalize the downtown area and other parts of the city. In the late 1990s, the City began a large scale renovation of the Fox. After closing for renovations in 2002, the Fox was reopened in September 2004 as the Bob Hope Theatre. The theater is used for live performances, cinema, private parties, and other special events and is currently managed for the City by SMG through a management agreement.

According to an independent auditor’s report prepared for the City by Bowman & Company, LLP, on September 16, 2014, operational costs at the Bob Hope Theater have been heavily subsidized for several years in an amount in excess of approximately $400,000. Additionally, in 2000 and 2002, the City made two substantial loans totaling over $4,000,000 to the Agency for acquisition and construction costs associated with the renovation of the theater. The City has made a substantial investment in the construction of the Bob Hope Theater in an effort to create an attractive and animated Downtown as identified in the previously referenced plan. The theater has served as a public use for several years as it serves as a destination for greater Stockton and provides employment, recreational, cultural, civic, retail, and visitor uses.

**Property Disposition**
The Agency recommends the property be transferred to the City and retained for governmental purpose pursuant to HSC Section 34181.
Summary
This site contains four vacant contiguous parcels known located on Weber Avenue and the deep water channel, East of Interstate 5.

Parcel Data
- General Plan Designation:
  - 145-270-06, 09 & 10: Commercial
  - 145-190-03: Parks/Rec.
- Zoning: Industrial, General
- Existing Use: Vacant Lot/Land
- Lot Size: 03 – 1.97, 06 – 3.73, 09 – 3.08, 10 - .29 acres
- Acquisition Date: 1980-1984
- Estimated Acquisition Value: $4,260,000
- Acquisition Purpose: Mixed use development

Current Value and Revenue Generation
Date/Value Basis for Estimate: March 2015/Market
Estimated Site Value: $1,185,268
Revenue Generated by Property: This property is currently vacant and does not generate revenue. Conversely, the site incurs an annual assessment in the amount of $9,122 assessed by the Downtown Stockton Alliance.
Requirements for Revenue Use: N/A

Environmental Information
As part of the effort to redevelop the waterfront area, the City hired several consultants over the last decades to investigate the condition of waterfront area properties. On August 21, 2000, the Stockton Waterfront Brownfields Project Environmental Master Plan was prepared by Black & Veatch to provide prospective developers and lenders, and the general public with a summary of information available in numerous environmental documents regarding Stockton Waterfront Brownfields properties.
According to this plan, which refers to this property as Area 1, the site was occupied primarily by warehouses used for grain, fertilizer, and produce storage from at least 1895 to sometime after 1979 when the structures were demolished and removed. No visible evidence of contamination or other potential environmental concerns were observed at this property during site visits conducted in 1993 and 1997. In 1994, an environmental study was performed with no further action recommended.

However, as a part of the environmental contamination at 504 Weber Avenue, identified as Area 2A in the Stockton Waterfront Brownfields Project Environmental Master Plan prepared by Black & Veatch on August 21, 2000, this site contains groundwater monitoring wells since it is considered to be in the surrounding area of Area 2A.

**Potential for TOD and Advancement of Planning Objectives**

The site has some potential for transit oriented development, as the site is served and near a variety of transportation systems.

The San Joaquin Regional Transit District is the primary public transportation system operating in Stockton and serves the site. Greyhound Bus Lines also has a station in the area located near the site. The Altamont Commuter Express (ACE) provides service that connects the Central Valley with the Silicon Valley and other destinations in the San Francisco Bay Area at the Robert J. Cabral ACE Station located in downtown. This station also serves as the terminus for Amtrak trains between Sacramento and Bakersfield.

Future development of the site would further the City’s planning objectives as outlined in the ACE Planning and Parking Strategy prepared on August 23, 2010 by Fehr & Peers, Bay Area Economics, Gensler and Davis Langdon, and the Climate Action Plan – Transit Plan/Program prepared August 2, 2011 by Nelson Nygaard, as both these plans recommend focus on transit oriented development for the downtown area.

**Development Plans and Activity**

On January 16, 1996, Council adopted Resolution No. 96-0016 approving The Stockton Waterfront Revival Vision & Action Plan. The plan identifies this particular area as the South Shore of the Marina District. The South Shore of the Waterfront is envisioned to be appropriate for a mix of retail and entertainment uses along the Stockton Channel.

The Downtown Stockton Strategic Action Plan dated October 2001 also identifies this area as the South Shore. This plan directs the use of this particular property as a future development site consisting of a mixed use waterfront development. Although a project was not completed the property remains viable for such development especially since the City has a vested interest in ensuring the Marina remains a viable enterprise and major contributor to the overall success of the Downtown Waterfront and subsequent new development.

**Property Disposition**

The Agency recommends the property be transferred to the City and retained for future development pursuant to HSC Section 34191.5 (c)(2)(A).
Long Range Property Management Plan  December 2015  Stockton Successor Agency

PROPERTY INVENTORY INFORMATION

Site No. 5

504 W WEBER AVENUE
Stockton, CA  95202
APN(s): 137-370-03

Summary
This site contains a vacant parcel fronting Weber Avenue and Lincoln Street with a history of contamination mediation.

Parcel Data
- General Plan Designation: Commercial
- Zoning: Commercial, Downtown
- Existing Use: Vacant Lot/Land
- Lot Size: 2.86 acres
- Acquisition Date: 6/20/1980
- Estimated Acquisition Value: $1,685,719
- Acquisition Purpose: Mixed use development

Current Value and Revenue Generation
Date/Value Basis for Estimate: March 2015/Market  Estimated Site Value: $746,963
Revenue Generated by Property: This property is currently vacant and does not generate revenue.
Conversely, the site incurs an annual assessment in the amount of $2,865 assessed by the Downtown Stockton Alliance.
Requirements for Revenue Use: N/A

Environmental Information
As part of the effort to redevelop the waterfront area, the City hired several consultants over the last decades to investigate the condition of waterfront area properties. On August 21, 2000, the Stockton Waterfront Brownfields Project Environmental Master Plan was prepared by Black & Veatch to provide prospective developers and lenders, and the general public with a summary of information available in numerous environmental documents regarding Stockton Waterfront Brownfields properties.

According to this plan, which refers to this property as Area 2A, there are potential environmental concerns based on previous land use involving bulk storage of petroleum hydrocarbons and/or possible hazardous substances. The most recent study performed at this site (L&M Petroleum) showed that soil on site had concentrations of total petroleum hydrocarbons as gasoline and diesel. Immediately offsite
in Weber Avenue, the soil also had concentrations of total petroleum hydrocarbons as gasoline and diesel. Based on available information, the vertical and lateral extent of petroleum hydrocarbon-impacted soil and groundwater at the property has not been adequately characterized. Additional soil and groundwater sampling should be performed to the north, west and south of the site to further assess vertical and lateral extent of petroleum hydrocarbon-impacted soil and groundwater beneath the property.

The Union Oil Company site has not been adequately characterized specifically along the western property boundary. A test pit opened in the general area of the western property boundary exhibited a strong hydrocarbon odor from approximately 2 to 10 feet below ground surface. Also, several fuel-related volatile organic compounds were detected at a well along the western property boundary. Additional soil and groundwater sampling should be performed to further assess the vertical and lateral extent of petroleum hydrocarbon impacted soil and groundwater beneath the property.

Because the maximum depth sampled in most soil borings at the former Morton Paint Company property was only 6.5 feet below ground surface (bgs), the presence of petroleum hydrocarbon-impacted soil beneath the former underground storage tanks has not been adequately characterized. Also, the lateral extent of hydrocarbon-impacted ground water east and south of monitoring well MW-6 has not been assessed. With the exception of total petroleum hydrocarbons as motor oil, significant concentrations of petroleum fuel hydrocarbons were not detected in soil collected at this site. Two test pits were opened in the area of the geophysical anomalies found on the property during a previous geophysical survey. While debris and utility lines were uncovered, there was no evidence of underground storage tanks. Additional soil and groundwater sampling is recommended in these areas to fully characterize this property.

Currently, Stantec Consulting Services, Inc. provides remedial summary and groundwater monitoring reports for this site. According to the Stockton Waterfront Brownfields Project Environmental Master Plan, the cost range for remediation and investigation for this site ranges from $500,000-$2,200,000, or more.

**Potential for TOD and Advancement of Planning Objectives**

The site has some potential for transit oriented development, as the site is served and near a variety of transportation systems.

The San Joaquin Regional Transit District is the primary public transportation system operating in Stockton and serves the site. Greyhound Bus Lines also has a station in the area located near the site. The Altamont Commuter Express (ACE) provides service that connects the Central Valley with the Silicon Valley and other destinations in the San Francisco Bay Area at the Robert J. Cabral ACE Station located in downtown. This station also serves as the terminus for Amtrak trains between Sacramento and Bakersfield.

Future development of the site would further the City’s planning objectives as outlined in the ACE Planning and Parking Strategy prepared on August 23, 2010 by Fehr & Peers, Bay Area Economics, Gensler and Davis Langdon, and the Climate Action Plan – Transit Plan/Program prepared August 2, 2011 by Nelson Nygaard, as both these plans recommend focus on transit oriented development for the downtown area.

**Development Plans and Activity**

On January 16, 1996, Council adopted Resolution No. 96-0016 approving The Stockton Waterfront Revival Vision & Action Plan. The plan identifies this particular area as the South Shore of the Marina District. The South Shore of the Waterfront is envisioned to be appropriate for a mix of retail and entertainment uses along the Stockton Channel.
The Downtown Stockton Strategic Action Plan dated October 2001 also identifies this area as the South Shore. This plan directs the use of this particular property as a future development site consisting of a mixed use waterfront development. Although a project was not completed, the property remains viable for such development especially since the City has a vested interest in ensuring the Marina remains a viable enterprise and major contributor to the overall success of the Downtown Waterfront and subsequent new development.

**Property Disposition**
The Agency recommends the property be transferred to the City and retained for future development pursuant to HSC Section 34191.5 (c)(2)(A).
PROPERTY INVENTORY INFORMATION
666 W. WEBER AVENUE
Stockton, CA 95202
APN(s): 137-370-02

Site No. 5 - continued

Summary
This site contains a vacant parcel fronting Weber Avenue west of Lincoln Street.

Parcel Data
- General Plan Designation: Commercial
- Zoning: Commercial, Downtown
- Existing Use: Vacant Lot/Land
- Lot Size: .88 acres
- Acquisition Date: 6/14/1990
- Estimated Acquisition Value: Provided on page 26
- Acquisition Purpose: Mixed use development

Current Value and Revenue Generation
Date/Value Basis for Estimate: March 2015/Market
Estimated Site Value: Provided on page 26
Revenue Generated by Property: This property is currently vacant and does not generate revenue.
Conversely, the site incurs an annual assessment in the amount of $881 assessed by the Downtown Stockton Alliance.
Requirements for Revenue Use: N/A

Environmental Information
As part of the effort to redevelop the waterfront area, the City hired several consultants over the last decades to investigate the condition of waterfront area properties. On August 21, 2000, the Stockton Waterfront Brownfields Project Environmental Master Plan was prepared by Black & Veatch to provide prospective developers and lenders, and the general public with a summary of information available in numerous environmental documents regarding Stockton Waterfront Brownfields properties.

According to this plan which refers to this property as Area 2A, there are potential environmental concerns based on previous land use involving bulk storage of petroleum hydrocarbons and/or possible hazardous substances. The most recent study performed at this site (L&M Petroleum) showed that soil...
on site had concentrations of total petroleum hydrocarbons as gasoline and diesel. Immediately offsite in Weber Avenue, the soil also had concentrations of total petroleum hydrocarbons as gasoline and diesel. Based on available information, the vertical and lateral extent of petroleum hydrocarbon-impacted soil and groundwater at the property has not been adequately characterized. Additional soil and groundwater sampling should be performed to the north, west and south of the site to further assess vertical and lateral extent of petroleum hydrocarbon-impacted soil and groundwater beneath the property. The Union Oil Company site has not been adequately characterized specifically along the western property boundary. A test pit opened in the general area of the western property boundary exhibited a strong hydrocarbon odor from approximately 2 to 10 feet below ground surface. Also, several fuel-related volatile organic compounds were detected at a well along the western property boundary. Additional soil and groundwater sampling should be performed to further assess the vertical and lateral extent of petroleum hydrocarbon impacted soil and groundwater beneath the property.

Because the maximum depth sampled in most soil borings at the former Morton Paint Company property was only 6.5 feet below ground surface (bgs), the presence of petroleum hydrocarbon-impacted soil beneath the former underground storage tanks has not been adequately characterized. Also, the lateral extent of hydrocarbon-impacted ground water east and south of monitoring well MW-6 has not been assessed. With the exception of total petroleum hydrocarbons as motor oil, significant concentrations of petroleum fuel hydrocarbons were not detected in soil collected at this site. Two test pits were opened in the area of the geophysical anomalies found on the property during a previous geophysical survey. While debris and utility lines were uncovered, there was no evidence of underground storage tanks. Additional soil and groundwater sampling is recommended in these areas to fully characterize this property.

Currently, Stantec Consulting Services, Inc. provides remedial summary and groundwater monitoring reports for this site. According to the Stockton Waterfront Brownfields Project Environmental Master Plan, the cost range for remediation and investigation for this site ranges from $500,000-$2,200,000, or more.

**Potential for TOD and Advancement of Planning Objectives**

The site has some potential for transit oriented development, as the site is served and near a variety of transportation systems.

The San Joaquin Regional Transit District is the primary public transportation system operating in Stockton and serves the site. Greyhound Bus Lines also has a station in the area located near the site. The Altamont Commuter Express (ACE) provides service that connects the Central Valley with the Silicon Valley and other destinations in the San Francisco Bay Area at the Robert J. Cabral ACE Station located in downtown. This station also serves as the terminus for Amtrak trains between Sacramento and Bakersfield.

Future development of the site would further the City’s planning objectives as outlined in the ACE Planning and Parking Strategy prepared on August 23, 2010 by Fehr & Peers, Bay Area Economics, Gensler and Davis Langdon, and the Climate Action Plan – Transit Plan/Program prepared August 2, 2011 by Nelson Nygaard, as both these plans recommend focus on transit oriented development for the downtown area.

**Development Plans and Activity**

On January 16, 1996, Council adopted Resolution No. 96-0016 approving The Stockton Waterfront Revival Vision & Action Plan. The plan identifies this particular area as the South Shore of the Marina District. The South Shore of the Waterfront is envisioned to be appropriate for a mix of retail and entertainment uses along the Stockton Channel.
The Downtown Stockton Strategic Action Plan dated October 2001 also identifies this area as the South Shore. This plan directs the use of this particular property as a future development site consisting of a mixed use waterfront development.

Although a project was not completed, the property remains viable for such development especially since the City has a vested interest in ensuring the Marina remains a viable enterprise and major contributor to the overall success of the Downtown Waterfront and subsequent new development.

**Property Disposition**

The Agency recommends the property be transferred to the City and retained for future development pursuant to HSC Section 34191.5 (c)(2)(A).
PROPERTY INVENTORY INFORMATION

1670 S. UNION STREET Stockton, CA 95206
APN(s): 169-030-13

Site No. 6

Summary
This site contains a lot at the corner of Second Street and Union Street.

Parcel Data
- General Plan Designation: Commercial
- Zoning: Commercial, General
- Existing Use: Vacant Lot/Land
- Lot Size: .68 acres
- Acquisition Date: 1/17/2008
- Estimated Acquisition Value: $225,000
- Acquisition Purpose: Land Assembly

Current Value and Revenue Generation
Date/Value Basis for Estimate: March 2015/Market
Estimated Site Value: $719,413
Revenue Generated by Property: This property is currently vacant and does not generate revenue.
Requirements for Revenue Use: N/A

Environmental Information
The Successor Agency has no knowledge of environmental contamination on this property and has not performed any environmental studies, nor has the property been classified as a brownfield site.

Potential for TOD and Advancement of Planning Objectives
The site has some potential for transit oriented development, as the site is served and near a variety of transportation systems.

The San Joaquin Regional Transit District is the primary public transportation system operating in Stockton and serves the site. Greyhound Bus Lines also has a station in the area located near the site. The Altamont Commuter Express (ACE) provides service that connects the Central Valley with the Silicon Valley and other destinations in the San Francisco Bay Area at the Robert J. Cabral ACE Station located in downtown. This station also serves as the terminus for Amtrak trains between Sacramento and Bakersfield.
Future development of the site would further the City’s planning objectives as outlined in the ACE Planning and Parking Strategy prepared on August 23, 2010 by Fehr & Peers, Bay Area Economics, Gensler and Davis Langdon, and the Climate Action Plan – Transit Plan/Program prepared August 2, 2011 by Nelson Nygaard, as both these plans recommend focus on transit oriented development.

Development Plans and Activity
In 2002, The Redevelopment Agency created the South Stockton Redevelopment area, which includes the Airport Corridor. The Airport Corridor is an area that was intended to benefit from citywide and local revitalization. It is the gateway leading to a successful industrial area and the Stockton Metropolitan Airport. Some improvements have been made as a part of these revitalization efforts including the Airport Way Corridor Project which included a streetscape beautification project focused on improving the aesthetics, and pedestrian-friendliness of the area. Also completed was the realignment of Airport Way and Second Street with traffic signals, intersection improvements, and extension of Second Street between Airport Way and Union Street. These improvements are a component of the strategic plan which also includes the development of this site. To continue efforts of revitalizing City involvement is necessary for the future commercial development of Airport Way and on this site.

Property Disposition
The Agency recommends the property be transferred to the City and retained for future development pursuant to HSC Section 34191.5 (c)(2)(A).
PROPERTY INVENTORY INFORMATION

1501 S. AIRPORT WAY
Stockton, CA 95206
APN(s): 169-020-11

Summary
This site contains a vacant lot located between First Street and Second Street fronting Airport Way.

Parcel Data
- General Plan Designation: Commercial
- Zoning: Commercial, General
- Existing Use: Vacant Lot/Land
- Lot Size: 2.53 acres
- Acquisition Date: 3/11/2003
- Estimated Acquisition Value: $290,000
- Acquisition Purpose: Land Assembly

Current Value and Revenue Generation
Date/Value Basis for Estimate: March 2015/Market
Estimated Site Value: Provided on page 34
Revenue Generated by Property: This property is currently vacant and does not generate revenue.
Requirements for Revenue Use: N/A

Environmental Information
The Successor Agency has no knowledge of environmental contamination on this property and has not performed any environmental studies, nor has the property been classified as a brownfield site.

Potential for TOD and Advancement of Planning Objectives
The site has some potential for transit oriented development, as the site is served and near a variety of transportation systems.

The San Joaquin Regional Transit District is the primary public transportation system operating in Stockton and serves the site. Greyhound Bus Lines also has a station located approximately three miles from the site.
The Altamont Commuter Express (ACE) provides service that connects the Central Valley with the Silicon Valley and other destinations in the San Francisco Bay Area at the Robert J. Cabral ACE Station and is located approximately two miles from the site in downtown. This station also serves as the terminus for Amtrak trains between Sacramento and Bakersfield.

Future development of the site would further the City’s planning objectives as outlined in the ACE Planning and Parking Strategy prepared on August 23, 2010 by Fehr & Peers, Bay Area Economics, Gensler and Davis Langdon, and the Climate Action Plan – Transit Plan/Program prepared August 2, 2011 by Nelson Nygaard, as both these plans recommend focus on transit oriented development.

**Development Plans and Activity**

In 2002, The Redevelopment Agency created the South Stockton Redevelopment area, which includes the Airport Corridor. The Airport Corridor is an area that was intended to benefit from citywide and local revitalization. It is the gateway leading to a successful industrial area and the Stockton Metropolitan Airport. Some improvements have been made as a part of these revitalization efforts including the Airport Way Corridor Project which included a streetscape beautification project focused on improving the aesthetics, and pedestrian-friendliness of the area. Also completed was the realignment of Airport Way and Second Street with traffic signals, intersection improvements, and extension of Second Street between Airport Way and Union Street. These improvements are a component of the strategic plan which also includes the development of this site. To continue efforts of revitalizing City involvement is necessary for the future commercial development of Airport Way and on this site.

**Property Disposition**

The Agency recommends the property be transferred to the City and retained for future development pursuant to HSC Section 34191.5 (c)(2)(A).
PROPERTY INVENTORY INFORMATION

Site No. 7

2222 & 2244 S. AIRPORT WAY
Stockton, CA 95206
APN(s): 169-163-01 & 169-151-01

Summary
This site contains a vacant lot and is located at the corner of Eighth Street and Airport Way and at the time of purchase included an option to purchase a third parcel. The property was originally purchased with a building, which has since been demolished for blight removal purposes.

Parcel Data
- General Plan Designation: Commercial
- Zoning: Commercial, General
- Existing Use: Vacant Lot/Land
- Lot Size: 169-163-01 - .71 acres; 169-151-01 - .89 acre
- Acquisition Date: 12/29/08
- Estimated Acquisition Value: $1,900,000 plus $100,000 for option purchase of a third parcel.
- Acquisition Purpose: Blight removal; demolition

Current Value and Revenue Generation
Date/Value Basis for Estimate: March 2015/Market
Estimated Site Value: $360,827
Revenue Generated by Property: This property is currently vacant and does not generate revenue.
Requirements for Revenue Use: N/A

Environmental Information
The Successor Agency has no knowledge of environmental contamination on this property and has not performed any environmental studies, nor has the property been classified as a brownfield site.

Potential for TOD and Advancement of Planning Objectives
The site has some potential for transit oriented development, as the site is served and near a variety of transportation systems.

The San Joaquin Regional Transit District is the primary public transportation system operating in Stockton and serves the site. Greyhound Bus Lines also has a station located approximately three miles from the site.
The Altamont Commuter Express (ACE) provides service that connects the Central Valley with the Silicon Valley and other destinations in the San Francisco Bay Area at the Robert J. Cabral ACE Station and is located approximately two miles from the site in downtown. This station also serves as the terminus for Amtrak trains between Sacramento and Bakersfield.

Future development of the site would further the City’s planning objectives as outlined in the ACE Planning and Parking Strategy prepared on August 23, 2010 by Fehr & Peers, Bay Area Economics, Gensler and Davis Langdon, and the Climate Action Plan – Transit Plan/Program prepared August 2, 2011 by Nelson Nygaard, as both these plans recommend focus on transit oriented development.

**Development Plans and Activity**
In 2002, The Redevelopment Agency created the South Stockton Redevelopment area, which includes the Airport Corridor. The Airport Corridor is an area that was intended to benefit from citywide and local revitalization. It is the gateway leading to a successful industrial area and the Stockton Metropolitan Airport. Some improvements have been made as a part of these revitalization efforts including the Airport Way Corridor Project which included a streetscape beautification project focused on improving the aesthetics, and pedestrian-friendliness of the area. Also completed was the realignment of Airport Way and Second Street with traffic signals, intersection improvements, and extension of Second Street between Airport Way and Union Street. These improvements are a component of the strategic plan which also includes the development of this site. To continue efforts of revitalizing City involvement is necessary for the future commercial development of Airport Way and on this site.

**Property Disposition**
The Agency recommends the property be transferred to the City and retained for future development pursuant to HSC Section 34191.5 (c)(2)(A).
Summary
This site contains parcels located at the corner of South Airport Way and Folsom Street with a communications site lease agreement.

Parcel Data
- General Plan Designation: 02 – Heavy Industrial; 09 - Commercial
- Zoning: Commercial, General
- Existing Use: Vacant Lot/Land
- Lot Size: 02 - .33, 09 - .17 acres
- Acquisition Date: 10/25/07
- Estimated Acquisition Value: $350,000
- Acquisition Purpose: Land Assembly

Current Value and Revenue Generation
Date/Value Basis for Estimate: March 2015/Market
Estimated Site Value: $95,815
Revenue Generated by Property: This property contains a communications site lease agreement scheduled to expire on September 30, 2017. Rent payable under the terms of the lease is four hundred and sixty dollars ($460.00) per month, subject to adjustments as provided in the agreement.
Requirements for Revenue Use: N/A

Environmental Information
The Successor Agency has no knowledge of environmental contamination on this property and has not performed any environmental studies, nor has the property been classified as a brownfield site.

Potential for TOD and Advancement of Planning Objectives
The site has some potential for transit oriented development, as the site is served and near a variety of transportation systems.

The San Joaquin Regional Transit District is the primary public transportation system operating in Stockton and serves the site.
Greyhound Bus Lines also has a station located approximately three miles from the site. The Altamont Commuter Express (ACE) provides service that connects the Central Valley with the Silicon Valley and other destinations in the San Francisco Bay Area at the Robert J. Cabral ACE Station and is located approximately two miles from the site in downtown. This station also serves as the terminus for Amtrak trains between Sacramento and Bakersfield.

Future development of the site would further the City’s planning objectives as outlined in the ACE Planning and Parking Strategy prepared on August 23, 2010 by Fehr & Peers, Bay Area Economics, Gensler and Davis Langdon, and the Climate Action Plan – Transit Plan/Program prepared August 2, 2011 by Nelson Nygaard, as both these plans recommend focus on transit oriented development.

**Development Plans and Activity**

In 2002, The Redevelopment Agency created the South Stockton Redevelopment area, which includes the Airport Corridor. The Airport Corridor is an area that was intended to benefit from citywide and local revitalization. It is the gateway leading to a successful industrial area and the Stockton Metropolitan Airport. Some improvements have been made as a part of these revitalization efforts including the Airport Way Corridor Project which included a streetscape beautification project focused on improving the aesthetics, and pedestrian-friendliness of the area. Also completed was the realignment of Airport Way and Second Street with traffic signals, intersection improvements, and extension of Second Street between Airport Way and Union Street.

**Property Disposition**

The Agency recommends the property be sold.
**Summary**
This site contains a property that is not owned by the Redevelopment Agency. The Agency interest on the site is an option to purchase the property. The site currently consists of a mini market; however, in previous years it was a gas station. Should the option become available, the price to purchase is $750,000. The option term expires July 1, 2018.

**Parcel Data**
- General Plan Designation: Commercial
- Zoning: Commercial, General
- Existing Use: Commercial, Office
- Lot Size: .97 acres
- Acquisition Date: Option purchased 12/29/08
- Estimated Acquisition Value: Option-$100,000
- Acquisition Purpose: Land Assembly

**Current Value and Revenue Generation**
Date/Value Basis for Estimate: March 2015/Market
Estimated Site Value: $180,574
Revenue Generated by Property: N/A
Requirements for Revenue Use: N/A

**Environmental Information**
The Successor Agency has no knowledge of environmental contamination on this property and has not performed any environmental studies, nor has the property been classified as a brownfield site. However, given the previous use as a gas station some contamination on the site is possible.
Potential for TOD and Advancement of Planning Objectives

The site has some potential for transit oriented development, as the site is served and near a variety of transportation systems.

The San Joaquin Regional Transit District is the primary public transportation system operating in Stockton and serves the site. Greyhound Bus Lines also has a station located approximately three miles from the site. The Altamont Commuter Express (ACE) provides service that connects the Central Valley with the Silicon Valley and other destinations in the San Francisco Bay Area at the Robert J. Cabral ACE Station and is located approximately two miles from the site in downtown. This station also serves as the terminus for Amtrak trains between Sacramento and Bakersfield.

Future development of the site would further the City’s planning objectives as outlined in the ACE Planning and Parking Strategy prepared on August 23, 2010 by Fehr & Peers, Bay Area Economics, Gensler and Davis Langdon, and the Climate Action Plan – Transit Plan/Program prepared August 2, 2011 by Nelson Nygaard, as both these plans recommend focus on transit oriented development.

Development Plans and Activity

In 2002, The Redevelopment Agency created the South Stockton Redevelopment area, which includes the Airport Corridor. The Airport Corridor is an area that was intended to benefit from citywide and local revitalization. It is the gateway leading to a successful industrial area and the Stockton Metropolitan Airport. Some improvements have been made as a part of these revitalization efforts including the Airport Way Corridor Project which included a streetscape beautification project focused on improving the aesthetics, and pedestrian-friendliness of the area. Also completed was the realignment of Airport Way and Second Street with traffic signals, intersection improvements, and extension of Second Street between Airport Way and Union Street.

Property Disposition

The Agency recommends the option be sold or allowed to expire.
PROPERTY INVENTORY INFORMATION

Site No. 10

2319 & 2333 S AIRPORT WAY
Stockton, CA 95206
APN(s): 169-090-49 & 169-090-50

Summary
This site was previously a self-service car wash and contains two contiguous vacant parcels and is located on Airport Way south of East Ninth Street.

Parcel Data
- General Plan Designation: Low/Med Density Residential
- Zoning: Commercial, General
- Existing Use: Vacant Lot/Land
- Lot Size: 169-090-49 -.15, 50 -.16 acres
- Acquisition Date: 6/25/07
- Estimated Acquisition Value: $250,000
- Acquisition Purpose: Blight removal

Current Value and Revenue Generation
Date/Value Basis for Estimate: March 2015/Market
Estimated Site Value: $241,379
Revenue Generated by Property: This property is currently vacant and does not generate revenue.
Requirements for Revenue Use: N/A

Environmental Information
The Successor Agency has no knowledge of environmental contamination on this property and has not performed any environmental studies, nor has the property been classified as a brownfield site. However, given the previous use as a car wash some contamination on the site is possible.

Potential for TOD and Advancement of Planning Objectives
The site has some potential for transit oriented development, as the site is served and near a variety of transportation systems.

The San Joaquin Regional Transit District is the primary public transportation system operating in Stockton and serves the site. Greyhound Bus Lines also has a station located approximately three miles from the site.
The Altamont Commuter Express (ACE) provides service that connects the Central Valley with the Silicon Valley and other destinations in the San Francisco Bay Area at the Robert J. Cabral ACE Station and is located approximately two miles from the site in downtown. This station also serves as the terminus for Amtrak trains between Sacramento and Bakersfield.

Future development of the site would further the City’s planning objectives as outlined in the ACE Planning and Parking Strategy prepared on August 23, 2010 by Fehr & Peers, Bay Area Economics, Gensler and Davis Langdon, and the Climate Action Plan – Transit Plan/Program prepared August 2, 2011 by Nelson Nygaard, as both these plans recommend focus on transit oriented development.

**Development Plans and Activity**
In 2002, The Redevelopment Agency created the South Stockton Redevelopment area, which includes the Airport Corridor. The Airport Corridor is an area that was intended to benefit from citywide and local revitalization. It is the gateway leading to a successful industrial area and the Stockton Metropolitan Airport. Some improvements have been made as a part of these revitalization efforts including the Airport Way Corridor Project which included a streetscape beautification project focused on improving the aesthetics, and pedestrian-friendliness of the area. Also completed was the realignment of Airport Way and Second Street with traffic signals, intersection improvements, and extension of Second Street between Airport Way and Union Street.

**Property Disposition**
The Agency recommends the property be sold.
PROPERTY INVENTORY INFORMATION

UNASSIGNED ADDRESS
Stockton, CA 95206
APN(s): 175-260-34 & 175-070-08

Summary
This site contains two vacant parcels with varying grade separations that is located at the end of Lincoln Street and Horton Avenue. The property borders Walker Slough to the west and once served as a chemical injection site to City of Stockton Municipal Utilities Department.

Parcel Data
- General Plan Designation: Low/Med Density Residential
- Zoning: Residential, Low Density
- Existing Use: Vacant Lot/Land
- Lot Size: 175-260-34 - .17, 175-070-08 – 2.73 acres
- Acquisition Date: 06/1982
- Estimated Acquisition Value: $25,000
- Acquisition Purpose: RDA housing project remnant

Current Value and Revenue Generation
Date/Value Basis for Estimate: March 2015/Market
Estimated Site Value: $392,550
Revenue Generated by Property: This property is currently vacant and does not generate revenue.
Requirements for Revenue Use: N/A

Environmental Information
The Successor Agency has no knowledge of environmental contamination on this property and has not performed any environmental studies, nor has the property been classified as a brownfield site.

Potential for TOD and Advancement of Planning Objectives
The site has some potential for transit oriented development, as the site is served and near a variety of transportation systems.

The San Joaquin Regional Transit District is the primary public transportation system operating in Stockton and serves the site. Greyhound Bus Lines also has a station located approximately four miles from the site.
The Altamont Commuter Express (ACE) provides service that connects the Central Valley with the Silicon Valley and other destinations in the San Francisco Bay Area at the Robert J. Cabral ACE Station and is located approximately three miles from the site in downtown. This station also serves as the terminus for Amtrak trains between Sacramento and Bakersfield.

Future development of the site would further the City’s planning objectives as outlined in the ACE Planning and Parking Strategy prepared on August 23, 2010 by Fehr & Peers, Bay Area Economics, Gensler and Davis Langdon, and the Climate Action Plan – Transit Plan/Program prepared August 2, 2011 by Nelson Nygaard, as both these plans recommend focus on transit oriented development.

**Development Plans and Activity**
The Implementation Plan for the Stockton Redevelopment Project Areas – Stockton Redevelopment Agency (December 1994) identifies this property being located in the McKinley Project Area which contains approximately 345 acres and is located generally in the southwestern portion of the City.

**Property Disposition**
The Agency recommends the property be sold.
Summary
This site contains the Henery Apartments which was used as a single room occupancy hotel that closed prior to 1993.

Parcel Data
- General Plan Designation: Commercial
- Zoning: Commercial
- Existing Use: Vacant Hotel
- Lot/Building Size: 5,700 sq. ft. lot; 9,400 sq. ft. building
- Acquisition Date: 10/11/1995
- Estimated Acquisition Value: $300,000
- Acquisition Purpose: Blight removal

Current Value and Revenue Generation
Date/Value Basis for Estimate: March 2015/Market
Estimated Site Value: $493,500
Revenue Generated by Property: This property does not generate revenue as it is vacant. Conversely, the site incurs an annual assessment in the amount of $1,778 by the Downtown Stockton Alliance.
Requirements for Revenue Use: N/A

Environmental Information
The Successor Agency has no knowledge of environmental contamination on this property and has not performed any environmental studies, nor has the property been classified as a brownfield site.

Potential for TOD and Advancement of Planning Objectives
The site has some potential for transit oriented development, as the site is served and near a variety of transportation systems.
The San Joaquin Regional Transit District is the primary public transportation system operating in Stockton and serves the site. Greyhound Bus Lines also has a station in the area located near the site. The Altamont Commuter Express (ACE) provides services that connect the Central Valley with the Silicon Valley and other destinations in the San Francisco Bay Area at the Robert J. Cabral ACE Station located in downtown. This station also serves as the terminus for Amtrak trains between Sacramento and Bakersfield.

Future development of the site would further the City’s planning objectives as outlined in the ACE Planning and Parking Strategy prepared on August 23, 2010 by Fehr & Peers, Bay Area Economics, Gensler and Davis Langdon, and the Climate Action Plan – Transit Plan/Program prepared August 2, 2011 by Nelson Nygaard, as both these plans recommend focus on transit oriented development for the downtown area.

**Development Plans and Activity**

The Implementation Plan for the Stockton Redevelopment Project Areas – Stockton Redevelopment Agency (December 1994) identified this site as being in the West End Project Area. The Project Area contained approximately 642 acres and included the City’s historic downtown commercial area and public and private marinas along the Stockton Channel.

The West End Project Area was originally established in the Official Redevelopment Plan for West End Urban Renewal Project No. 1 (the “West End Plan”), adopted on October 9, 1961 with territory added by amendments in 1974, 1980, and 1991.

The major Agency goals and objectives for the West End Project Area for the Implementation Plan included the promotion and creation of an attractive and animated “Downtown/Waterfront” area which would serve as a destination for greater Stockton and which would have a diverse set of employment, recreational, cultural, civic, retail, visitor, and residential uses that mutually support each other. In fact, in 1994, request for proposals were solicited for the renovation and adaptive reuse of this property including securing the historic preservation certificate.

**Property Disposition**

The Agency recommends the property be sold.
PROPERTY INVENTORY INFORMATION

517 & 605 W. WEBER AVENUE
Stockton, CA 95203
APN(s): 137-260-35, 16 & 17

Site No. 13

Summary
This site contains parcels that are part of a planned office tower project with a portion of the parcels representing the parking area at the Waterfront Towers Office condominiums. Parcel 137-260-15 is an undivided 50% interest with the Waterfront Office Towers Owners’ Association holding the remaining undivided 50% interest.

Parcel Data
- General Plan Designation: Commercial
- Zoning: Commercial, Downtown
- Existing Use: Parking Lot
- Lot Size: 3.94 acres total; 35 - 3.24, 16 - .38, 17 - .32 acres
- Estimated Acquisition Value: $250,500
- Acquisition Purpose: Mixed use development

Current Value and Revenue Generation
Date/Value Basis for Estimate: March 2015/Market
Estimated Site Value: $204,488
Revenue Generated by Property: This property is currently vacant and does not generate revenue. Conversely, the site incurs an annual assessment in the amount of $641 assessed by the Downtown Stockton Alliance.
Requirements for Revenue Use: N/A

Environmental Information
As part of the effort to redevelop the waterfront area, the City hired several consultants over the last decades to investigate the condition of waterfront area properties. On August 21, 2000, the Stockton Waterfront Brownfields Project Environmental Master Plan was prepared by Black & Veatch to provide prospective developers and lenders, and the general public, with a summary of information available in numerous environmental documents regarding Stockton Waterfront Brownfields properties.
As a part of the environmental contamination at 504 Weber Avenue, identified as Area 2A in the Stockton Waterfront Brownfields Project Environmental Master Plan this site contains groundwater monitoring wells since it is considered to be in the surrounding area of Area 2A.

**Potential for TOD and Advancement of Planning Objectives**
The site has some potential for transit oriented development, as the site is served and near a variety of transportation systems.

The San Joaquin Regional Transit District is the primary public transportation system operating in Stockton and serves the site. Greyhound Bus Lines also has a station in the area located near the site. The Altamont Commuter Express (ACE) provides services that connect the Central Valley with the Silicon Valley and other destinations in the San Francisco Bay Area at the Robert J. Cabral ACE Station located in downtown. This station also serves as the terminus for Amtrak trains between Sacramento and Bakersfield.

Future development of the site would further the City’s planning objectives as outlined in the ACE Planning and Parking Strategy prepared on August 23, 2010 by Fehr & Peers, Bay Area Economics, Gensler and Davis Langdon, and the Climate Action Plan – Transit Plan/Program prepared August 2, 2011 by Nelson Nygaard, as both these plans recommend focus on transit oriented development for the downtown area.

**Development Plans and Activity**
On January 16, 1996, Council adopted Resolution No. 96-0016 approving The Stockton Waterfront Revival Vision & Action Plan. The plan identifies this particular area as the South Shore of the Marina District. The South Shore of the Waterfront is envisioned to be appropriate for a mix of retail and entertainment uses along the Stockton Channel.

The Downtown Stockton Strategic Action Plan dated October 2001 also identifies this area as the South Shore. This plan directs the use of this particular property as a future development site consisting of a mixed use waterfront development. Although a project was not completed the property remains viable for such development especially since the City has a vested interest in ensuring the Marina remains a viable enterprise and major contributor to the overall success of the Downtown Waterfront and subsequent new development.

**Property Disposition**
The Agency recommends the property be sold.
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<th>No.</th>
<th>Description</th>
<th>Address</th>
<th>Site APN (s)</th>
<th>City</th>
<th>Property Type</th>
<th>Approximate Acres/SF</th>
<th>Zoning</th>
<th>Suggested Value</th>
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<tr>
<td>1</td>
<td>Van Buren, Washington, Market, Madison &amp; Monroe Street</td>
<td>109 S. Van Bure</td>
<td>137-360-24, 26, 27, 28 &amp; 39</td>
<td>Stockton</td>
<td>Vacant Lot/Land</td>
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<td>333 W. Washington Street</td>
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<td></td>
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<td>214, 220, 226, 240 &amp; 248 Market Street; 103, 115, 119 &amp; 125 Madison Street; 129 &amp; 126 Monroe Street</td>
<td>137-330-08 thru 137-330-19</td>
<td>Stockton</td>
<td>Vacant Lot/Land</td>
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<td>2</td>
<td>Children's Museum</td>
<td>448 W. Weber Avenue</td>
<td>137-260-05, 07, 26, 31, 32 &amp; 33</td>
<td>Stockton</td>
<td>Other</td>
<td>0.11</td>
<td>21,969.49$</td>
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TOTAL: 3.79 AC $766,932.01

**ZONING KEY:**
- CO = Commercial Office
- IG = Industrial General
- CD = Commercial Downtown
- RM = Residential Medium Density
- RL = Residential Low Density
- Undetermined

** denotes different ownership name

**This valuation analysis or broker opinion or report is not an appraisal and has not been performed in accordance with the Uniform Standards of Professional Appraisal Practice. Neither the Issuer, Investors, nor any party to the analysis or broker opinions, estimates, projections, or any other material hereafter relies on your direct use in connection with a contemplated transaction. The information has been obtained from sources believed reliable. While we do not doubt its accuracy, we have not verified it and make no guarantee, warranty or representation about it. Any projections, opinions, assumptions or estimates used are for example only and do not represent the current or future performance of the property.**
<table>
<thead>
<tr>
<th>No.</th>
<th>Description</th>
<th>Address</th>
<th>Site APN (s)</th>
<th>City</th>
<th>Property Type</th>
<th>Approximate Acres/SF</th>
<th>Zoning</th>
<th>Suggested Value</th>
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<tr>
<td>3</td>
<td>Bob Hope Theater</td>
<td>242 E. Main Street</td>
<td>149-140-27</td>
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<td>Commercial</td>
<td>0.54 AC</td>
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<td>833 W. Weber Avenue</td>
<td>145-190-03: 146-270-06, 09, &amp;10</td>
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<td>Vacant Lot/Land</td>
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<td>1.97</td>
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<td>5</td>
<td>Lincoln Street &amp; Weber Avenue</td>
<td>504 W. Weber Avenue</td>
<td>137-370-02 &amp; 03</td>
<td>Stockton</td>
<td>Vacant Lot/Land</td>
<td>256,439.60</td>
<td>CD</td>
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<tr>
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<td>666 W. Weber Avenue</td>
<td>137-370-02 &amp; 03</td>
<td>Stockton</td>
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<td>6</td>
<td>Airport Way &amp; Second Street</td>
<td>1570 S. Union 1501 S. Airport Way</td>
<td>169-030-11 &amp; 169-020-11</td>
<td>Stockton</td>
<td>Vacant Lot/Land</td>
<td>3.74 AC</td>
<td>$746,962.52</td>
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<td>7</td>
<td>Airport Way &amp; Eighth Street</td>
<td>2222 S. Airport Way 2244 S. Airport Way</td>
<td>169-163-01 &amp; 169-151-01</td>
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<td>Vacant Lot/Land</td>
<td>3.21 AC</td>
<td>$719,413.00</td>
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<td>8</td>
<td>Airport Way &amp; Folsom Street</td>
<td>1805 S. Airport Way 1814 S. Airport Way</td>
<td>169-020-02 &amp; 169-040-09</td>
<td>Stockton</td>
<td>Vacant Lot/Land</td>
<td>1.61 AC</td>
<td>$360,827.08</td>
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<td>9</td>
<td>2110 S. Airport Way - Purchase Option</td>
<td>2110 S. Airport Way (purchase option)**</td>
<td>169-162-01</td>
<td>Stockton</td>
<td>Commercial</td>
<td>0.52 AC</td>
<td>$95,814.56</td>
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<td>Airport Way &amp; Ninth Street</td>
<td>2319 S. Airport Way 2333 S. Airport Way</td>
<td>169-090-49 &amp; 50</td>
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<td>Vacant Lot/Land</td>
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<td>11</td>
<td>Lincoln Street &amp; Horton Avenue</td>
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<td>Vacant Lot/Land</td>
<td>0.33 AC</td>
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<td>Henery Apartments</td>
<td>119 S. Sutter Street</td>
<td>149-120-10</td>
<td>Stockton</td>
<td>Other</td>
<td>2.79 AC</td>
<td>$392,550.00</td>
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<td>13</td>
<td>Waterfront Office Towers Parking Lot</td>
<td>517 W. Weber Avenue 605 W. Weber Avenue</td>
<td>137-260-16, 17, 35</td>
<td>Stockton</td>
<td>Parking Lot/Structure</td>
<td>0.63 AC</td>
<td>$204,488</td>
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</tbody>
</table>

ZONING KEY:

CO=Commercial Office
IG=Industrial General
CD=Commercial Downtown
RM=Residential Medium Density
RL=Residential Low Density
Undetermined=Undetermined
** denotes different ownership name

Note #1 This analysis does not include an assessment of the environmental conditions or other unknown factors which may adversely affect the estimated values provided.

Note #2 The suggested value of Site No. 8 is based upon the underlying land value, not the value of the Purchase Option which may or may not reflect market pricing.

Note #3 The suggested value of Site No. 11 does not include grade separations.

Note #4 The suggested value of Site No. 13, Parcel 137-260-15 includes only 30% undivided ownership interest.

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This valuation analysis or broker opinion of value is not an appraisal and has not been performed in accordance with the standards and guidelines of the Appraisal Foundation. Neither the Long Range Property Management Plan nor any third parties may rely on this analysis for any purpose, including litigation, leasing or any other manner of transfer of title. This information has been obtained from sources believed reliable. While we do not doubt its accuracy, we have not verified it and make no guarantee, warranty or representation about it. Any projections, opinions, assumptions or estimates used are for example only and do not represent the current or future performance of the property.

Long Range Property Management Plan
Stockton Successor Agency
April 2015
ENVIRONMENTAL MASTER PLAN &
PARCEL 2A & SURROUNDING AREAS
MONITORING WELL MAP
## Long Range Property Management Tracking Worksheet & Long Range Property Management Checklist

| EXHIBIT 1 |
### HBC DEPS A (LOT#)  |  APN  | Property Name  | Property Type   | State of Property  | Valuation Method  | Purpose of Sale  | Purpose of Property Value  | Proprietor's Basis  | Sales Value  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant Lot/Land  | Vacant 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LONG-RANGE PROPERTY MANAGEMENT PLAN CHECKLIST

Instructions: Please use this checklist as a guide to ensure you have completed all the required components of your Long-Range Property Management Plan. Upon completion of your Long-Range Property Management Plan, email a PDF version of this document and your plan to:

Redevelopment_Administration@dof.ca.gov

The subject line should state “[Agency Name] Long-Range Property Management Plan”. The Department of Finance (Finance) will contact the requesting agency for any additional information that may be necessary during our review of your Long-Range Property Management Plan. Questions related to the Long-Range Property Management Plan process should be directed to (916) 445-1546 or by email to Redevelopment_Administration@dof.ca.gov.

Pursuant to Health and Safety Code 34191.5, within six months after receiving a Finding of Completion from Finance, the Successor Agency is required to submit for approval to the Oversight Board and Finance a Long-Range Property Management Plan that addresses the disposition and use of the real properties of the former redevelopment agency.

GENERAL INFORMATION:

Agency Name: Successor Agency to the Former Stockton Redevelopment Agency of the City of Stockton

Date Finding of Completion Received: October 30, 2014

Date Oversight Board Approved LRPMP: April 8, 2015
Date Oversight Board Approved Amended LRPMP: December 16, 2015

Long-Range Property Management Plan Requirements

For each property the plan includes the date of acquisition, value of property at time of acquisition, and an estimate of the current value.

☒ Yes ☐ No

For each property the plan includes the purpose for which the property was acquired.

☒ Yes ☐ No

For each property the plan includes the parcel data, including address, lot size, and current zoning in the former agency redevelopment plan or specific, community, or general plan.
For each property the plan includes an estimate of the current value of the parcel including, if available, any appraisal information.

For each property the plan includes an estimate of any lease, rental, or any other revenues generated by the property, and a description of the contractual requirements for the disposition of those funds.

For each property the plan includes the history of environmental contamination, including designation as a brownfield site, any related environmental studies, and history of any remediation efforts.

For each property the plan includes a description of the property’s potential for transit-oriented development and the advancement of the planning objectives of the successor agency.

For each property the plan includes a brief history of previous development proposals and activity, including the rental or lease of the property.

For each property the plan identifies the use or disposition of the property, which could include 1) the retention of the property for governmental use, 2) the retention of the property for future development, 3) the sale of the property, or 4) the use of the property to fulfill an enforceable obligation.

The plan separately identifies and list properties dedicated to governmental use purposes and properties retained for purposes of fulfilling an enforceable obligation.

### ADDITIONAL INFORMATION

- If applicable, please provide any additional pertinent information that we should be aware of during our review of your Long-Range Property Management Plan.
<table>
<thead>
<tr>
<th>Name</th>
<th>Micah Runner</th>
<th>LaVerna Blanco</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title</td>
<td>Director</td>
<td>Program Manager II</td>
</tr>
<tr>
<td>Phone</td>
<td>(209) 937-8694</td>
<td>(209) 937-8794</td>
</tr>
<tr>
<td>Email</td>
<td><a href="mailto:micah.runner@stocktongov.com">micah.runner@stocktongov.com</a></td>
<td><a href="mailto:laverna.blanco@stocktongov.com">laverna.blanco@stocktongov.com</a></td>
</tr>
<tr>
<td>Date</td>
<td>April 8, 2015 (LRPMP)</td>
<td>April 8, 2015 (LRPMP)</td>
</tr>
<tr>
<td></td>
<td>December 16, 2015 (Amended)</td>
<td>December 16, 2015 (Amended)</td>
</tr>
</tbody>
</table>

**DETERMINATION ON LRPMP:** ☐ APPROVED ☐ DENIED

**APPROVAL OR DENIAL LETTER PROVIDED:** ☐ YES

**DATE AGENCY NOTIFIED:** __________

Form DF-LRPMP (11/15/12)
From: John Chang <John.Chang@stocktonca.gov>
Sent: Tuesday, December 21, 2021 10:25 AM
To: Amanda Thomas <Amanda.Thomas@stocktonca.gov>
Subject: RE: Right of Entry - Sharlene's Contact info

Please have your CA (Ryan) approve and initial the form, and I will route it to Jodi for signature. Thanks.

From: Amanda Thomas <Amanda.Thomas@stocktonca.gov>
Sent: Tuesday, December 21, 2021 9:39 AM
To: John Chang <John.Chang@stocktonca.gov>
Subject: FW: Right of Entry - Sharlene's Contact info

Can you ask Jodi to sign? Do you want Ryan our CA to approve as to form? Or the PW CA?

From: Sharlene McLemore <sharlene7889@gmail.com>
Sent: Tuesday, December 21, 2021 9:31 AM
To: Amanda Thomas <Amanda.Thomas@stocktonca.gov>
Cc: John Chang <John.Chang@stocktonca.gov>
Subject: Re: Right of Entry - Sharlene's Contact info

CAUTION: This email originated from outside the City of Stockton. Do not click any links or open attachments if this is unsolicited email.

Thank you Amanda. See attached. Please send back a fully executed copy.

Have a great day!

On Mon, Dec 20, 2021 at 8:38 AM Amanda Thomas <Amanda.Thomas@stocktonca.gov> wrote:

Sorry about that. Correction made.

Amanda
CAUTION: This email originated from outside the City of Stockton. Do not click any links or open attachments if this is unsolicited email.

Good morning Amanda,

I have reviewed the document and the language appears fine, but you have the owner as The Open Window Project. The Open Window Project no longer owns the property.

The property is owned by Newberry 1, LLC. Are you able to make the correction and resend?

Please advise.

On Thu, Dec 16, 2021 at 9:53 AM Amanda Thomas <Amanda.Thomas@stocktonca.gov> wrote:

Sharlene,

Attached is the Right of Entry for 216 N. California. Let me know if you have any questions or need more information. Thank you.
From: Sharlene <sharlene7889@gmail.com>
Sent: Wednesday, December 15, 2021 2:50 PM
To: John Chang <John.Chang@stocktonca.gov>
Cc: Amanda Thomas <Amanda.Thomas@stocktonca.gov>
Subject: Re: Right of Entry - Sharlene's Contact info

CAUTION: This email originated from outside the City of Stockton. Do not click any links or open attachments if this is unsolicited email.

Thank you Johnny

Thank you,
Sharlene McLemore
209-337-5135

On Dec 15, 2021, at 2:33 PM, John Chang <John.Chang@stocktonca.gov> wrote:

Hi Amanda

Sharlene’s email address is sharlene7889@gmail.com and her current number is 209-337-5135. She is currently working with Newberry and also overseeing the parcel. PG&E may start working next to the site on Monday. Thanks.
Permit to Enter

Permission is hereby granted to City of Stockton, its agents, employees and contractors, to enter upon the property described as 216 North California Street, Stockton CA, APN 139-250-26. Said permission is granted for the purpose of placing containers on the property for the excavation of dirt for the PG & E project along Channel Street.

This permission is granted in consideration of the benefits which may accrue to my property and in consideration of the location, improvement, and construction of the project.

It is understood and agreed that the City shall indemnify and hold Grantor harmless from any and all liability resulting from the use and occupancy of said property under this Right of Entry by the City, its agents, employees and contractors. It is further understood that the City shall return the property to its original or better condition immediately upon completion of work.

The right of the City to enter and occupy said property shall commence upon receipt of this signed Right of Entry and terminate upon completion of the project but no later than January 31, 2022. Before starting construction and entering the property, City and or contractor shall give Grantor 24-hour notice by phone, e-mail or by notice on the property, providing that such contact information is supplied below.

DATED: ____________________

CITY OF STOCKTON

JODI ALMASSY, DIRECTOR
PUBLIC WORKS DEPARTMENT

GRANTOR

By: _______________________
NEWBERRY 1, LLC, OWNER
Dated: 12/20/21
Phone: 209-337-5135

APPROVED AS TO FORM AND CONTENT:
OFFICE OF THE CITY ATTORNEY

BY: _______________________
Deputy City Attorney
Permit to Enter

Permission is hereby granted to City of Stockton, its agents, employees and contractors, to enter upon the property described as 216 North California Street, Stockton CA, APN 139-250-26. Said permission is granted for the purpose of placing containers on the property for the excavation of dirt for the PG & E project along Channel Street.

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DATED:____________________

CITY OF STOCKTON

JODI ALMASSY, DIRECTOR
PUBLIC WORKS DEPARTMENT

GRANTOR

By: ____________________________
NEWBERRY 1, LLC, OWNER

Dated: ____________

Phone: ____________

APPROVED AS TO FORM AND CONTENT:
OFFICE OF THE CITY ATTORNEY

BY: ____________________________
Sorry about that. Correction made.

Amanda

---

CAUTION: This email originated from outside the City of Stockton. Do not click any links or open attachments if this is unsolicited email.

Good morning Amanda,

I have reviewed the document and the language appears fine, but you have the owner as The Open Window Project. The Open Window Project no longer owns the property. The property is owned by Newberry 1, LLC. Are you able to make the correction and resend?

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Sent: Wednesday, December 15, 2021 2:50 PM
To: John Chang <John.Chang@stocktonca.gov>
Cc: Amanda Thomas <Amanda.Thomas@stocktonca.gov>
Subject: Re: Right of Entry - Sharlene's Contact info

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Thank you Johnny

Thank you,

Sharlene McLemore

209-337-5135

---

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DATED:____________________

CITY OF STOCKTON

JODI ALMASSY, DIRECTOR
PUBLIC WORKS DEPARTMENT

GRANTOR

By: ________________________
NEWBERRY 1, LLC, OWNER

Dated: ________________________

Phone: ________________________

APPROVED AS TO FORM AND CONTENT:
OFFICE OF THE CITY ATTORNEY

BY: ________________________
Sharlene,

Attached is the Right of Entry for 216 N. California. Let me know if you have any questions or need more information. Thank you.

Amanda Thomas
Real Property Agent
City of Stockton - Economic Development Department
400 E. Main Street, 4th Floor, Stockton, CA 95202
amanda.thomas@stocktonca.gov | 209.937.7540

---

From: Sharlene <sharlene7889@gmail.com>
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To: John Chang <John.Chang@stocktonca.gov>
Cc: Amanda Thomas <Amanda.Thomas@stocktonca.gov>
Subject: Re: Right of Entry - Sharlene’s Contact info

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DATED:____________________

CITY OF STOCKTON

JODI ALMASSY, DIRECTOR
PUBLIC WORKS DEPARTMENT

GRANTOR

By: __________________________
OPEN WINDOW PROJECT, LLC, OWNER

Dated: _________________________

Phone: _________________________

APPROVED AS TO FORM AND CONTENT:
OFFICE OF THE CITY ATTORNEY

BY: ___________________________
I combined the two maps into one PDF. Let me know if you need more info.

**Block One**
OWP Project parcel - 139-250-05 242 N Sutter St.
Notice of Trustee sale recorded 11/3/2021; Sale date 11/29/2021

APN 139-250-03 & 04 – 201-216 N California owned by Star Property LB
Parcel Code Stack is interested in purchasing

**Block Two**
OWP APN 139-250-06, 08 & 27 – 510, 550 & 590 Miner - $760K lien
EDD received request for demand 10/18/2021

OWP 139-250-23 221 N American – $760K lien

OWP did own the rest of the block, now sold or foreclosed.

In 10/19 e-mail to me Zac stated the Miner/Channel and American properties were in escrow. He didn’t state which parcels., but we have only received the one demand for the Miner St. properties.

**Block Three**
OWP APN 139-290-05 & 06 - $760k lien

---

**From:** Amanda Thomas  
**Sent:** Wednesday, November 10, 2021 10:42 AM  
**To:** Janice Miller <Janice.Miller@stocktonca.gov>  
**Cc:** Nicole Snyder <Nicole.Snyder@stocktonca.gov>  
**Subject:** RE: Follow up

Working on it. I will have it to you today.

---

**From:** Janice Miller <Janice.Miller@stocktonca.gov>  
**Sent:** Wednesday, November 10, 2021 10:35 AM  
**To:** Amanda Thomas <Amanda.Thomas@stocktonca.gov>  
**Cc:** Nicole Snyder <Nicole.Snyder@stocktonca.gov>  
**Subject:** FW: Follow up

Hi there, what’s the status on this item? Thanks.
Amanda, can you please review the attached map and verify ownership?

Note the property that Code Stack Academy is considering purchasing too. Thanks!

———

Hi Janice, as a follow up to our meeting I have put together the following for review:

A map showing the boundaries and the scope of work of the proposed offsite work that would accompany our submittal. Our proposed scope would be to overlay all of those streets and complete curb, gutter and sidewalks. Along with some of the underground utilities needed for our specific new build.

Based on our current approval it states that we are developing 129 units and about 55,000 of commercial space. Our new scope will consist of 100 new residential units and over 52,500 of commercial space. This does NOT include the other properties that we do not control. Those buildings would total another 50k in commercial space and over 26 residential units.

Based on our updated project we would be eligible for the following:

\[
\begin{align*}
100 \text{ residential units} / 35 &= 2.86 \times 900,000 = $2,571,429 \\
52,500 \text{ sq ft. of commercial space} / 30,000 &= 1.75 \times 900,000 = $1,575,000 \\
\end{align*}
\]

Total: $4,146,429

Janice, we want the path of least resistance and don't want to have to make any changes to the current program. Although it could be very difficult to do all of the proposed streets and sidewalks etc with that amount. This doesn't include the direct underground items for our new residential development that we have to account for.

My question to you would be (in your opinion), is it better to maybe just scale back our proposed scope and stay within the current programmatic guidelines? OR do you think we should look to do all of this scope and get some type of variance or exception to keep the full dollar amount we are currently approved for?

Just so you know I am leaning towards staying within the guidelines and potentially scaling back the scope of work a bit. I'd like your thoughts as we need to keep this project moving along.

Let me know your thoughts and if you want to jump on a call to discuss.
Thanks.
Zac
Attached is the updated OWP ownership list. Matt, please let me know if your info differs from the list. Thanks.

Amanda

Can you please get the updated list to me and Matt as soon as possible? Thanks!!

I figured it could be old and sometimes our land transaction data moves faster than our county data. Just let me know as I am writing up their review now and ownership is one of our noncompliant items.

Matt Diaz, AICP
ADVANCED PLANNING MANAGER
Office: 209.937.8561 Direct: 209.937.8598

For the City of Stockton Updates on COVID-19, please visit:
Twitter @stocktonUpdates
Facebook @CityofStockton
City Website http://www.stocktonca.gov
Thanks Matt, I noticed that the date on the OWP ownership list is dated October 6, 2020. I’ll coordinate with Amanda to get you an updated list. I know there has been more properties sold since then.

From: Matt Diaz <Matt.Diaz@stocktonca.gov>
Sent: Tuesday, October 5, 2021 9:40 AM
To: Carrie Wright <Carrie.Wright@stocktonca.gov>; Janice Miller <Janice.Miller@stocktonca.gov>
Subject: OWP ownership

Carrie/Janice,

Please look at the OWP owner list and let me know if you have questions. I used your owner list to determine how many properties OWP LLC owns now compared to the time the DA was adopted. Your list did not match some of the land master ownership data from the assessor’s office, but that could be older info.

I also include a rough draft of our active DA map. I am working to polish this up for PC and place the data on land master, but since I shared it with my team, I thought I would pass it along. This map only shows active DAs.

Matt Diaz, AICP
ADVANCED PLANNING MANAGER
Community Development Department
345 N. El Dorado Street, Stockton CA 95202
Office: 209.937.8561  Direct: 209.937.8598

For the City of Stockton Updates on COVID-19, please visit:
Twitter @stocktonUpdates
Facebook @CityofStockton
City Website http://www.stocktonca.gov
### Development Agreement Properties Currently Owned by OWP

<table>
<thead>
<tr>
<th>Owner Name</th>
<th>Address</th>
<th>APN</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Open Window Project LLC</td>
<td>242 N Sutter St</td>
<td>139-250-05</td>
<td></td>
</tr>
<tr>
<td>Open Window Project LLC</td>
<td>510 E Miner Ave</td>
<td>139-250-06</td>
<td>Default notice recorded by lender 9/10/2021; City has lien as security for $760k advancement</td>
</tr>
<tr>
<td>Open Window Project LLC</td>
<td>550 E Miner Ave</td>
<td>139-250-08</td>
<td>Default notice recorded by lender 9/10/2021; City has lien as security for $760k advancement</td>
</tr>
<tr>
<td>Open Windows Project LLC</td>
<td>221 N American St</td>
<td>139-250-23</td>
<td>Default notice recorded by lender 9/10/2021; City has lien as security for $760k advancement</td>
</tr>
<tr>
<td>Open Window Project LLC</td>
<td>590 E Miner Ave</td>
<td>139-250-27</td>
<td>Default notice recorded by lender 9/10/2021; City has lien as security for $760k advancement</td>
</tr>
<tr>
<td>The Cort Group Inc.</td>
<td>164/190 N. American</td>
<td>139-270-14</td>
<td>Default recorded by lender 4/6/2011; Power to sell issued 7/8/21</td>
</tr>
<tr>
<td>Open Window Project LLC</td>
<td>615 E Channel St</td>
<td>139-290-05</td>
<td>Default notice recorded by lender 9/10/2021; City has lien as security for $760k advancement</td>
</tr>
<tr>
<td>Open Window Project LLC</td>
<td>621 E Channel St</td>
<td>139-290-06</td>
<td>Default notice recorded by lender 9/10/2021; City has lien as security for $760k advancement</td>
</tr>
<tr>
<td>OWP Phase II LP</td>
<td>431 E Main</td>
<td>149-170-08</td>
<td>6/1/2020 Trustee sale cancelled; Re-financed 5/29/2020</td>
</tr>
<tr>
<td>OWP Phase II LP</td>
<td>445 E Main</td>
<td>149-170-09</td>
<td>6/1/2020 Trustee sale cancelled; Re-financed 5/29/2020 &amp; 3/17/21</td>
</tr>
<tr>
<td>OWP Phase II LP</td>
<td>33, 37, 39, 43, 45 N. California</td>
<td>149-170-12</td>
<td>6/1/2020 Trustee sale cancelled; Re-financed 5/29/2020 &amp; 3/17/21</td>
</tr>
<tr>
<td>Open Window Project LLC</td>
<td>11 N Grant St</td>
<td>149-180-22</td>
<td>Building has been demolished; Power to sell issued 7/8/21</td>
</tr>
<tr>
<td>OWP Phase II LP</td>
<td>431 E Main</td>
<td>149-170-08</td>
<td>6/1/2020 Trustee sale cancelled; Re-financed 5/29/2020</td>
</tr>
<tr>
<td>OWP Phase II LP</td>
<td>445 E Main</td>
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</tr>
<tr>
<td>OWP Phase II LP</td>
<td>33, 37, 39, 43, 45 N. California</td>
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</tr>
<tr>
<td>Open Window Project LLC</td>
<td>11 N Grant St</td>
<td>149-180-22</td>
<td>Building has been demolished; Power to sell issued 7/8/21</td>
</tr>
</tbody>
</table>

### Development Agreement Properties Sold by OWP

<table>
<thead>
<tr>
<th>Owner Name</th>
<th>Address</th>
<th>APN</th>
<th>Date Sold</th>
</tr>
</thead>
<tbody>
<tr>
<td>Star Property LB Invs, LLC</td>
<td>206 N Sutter St</td>
<td>139-250-03</td>
<td>8/7/2020</td>
</tr>
<tr>
<td>Star Property LB Invs, LLC</td>
<td>201 N California</td>
<td>139-250-04</td>
<td>8/7/2020</td>
</tr>
<tr>
<td>Evelyn Navarrow</td>
<td>225 North American</td>
<td>139-250-12</td>
<td>9/20/2016</td>
</tr>
<tr>
<td>PSF Reo, LLC</td>
<td>525 E Channel</td>
<td>139-250-18</td>
<td>Transferred from Open Window Project LLC 8/22/2019; Default notice recorded by lender 1/14/2021; Foreclosed by lender 6/11/21</td>
</tr>
<tr>
<td>Varga Zoltoan &amp; Young</td>
<td>545 East Channel Street</td>
<td>139-250-21</td>
<td>5/31/2019</td>
</tr>
<tr>
<td>PSF Reo, LLC</td>
<td>535 E Channel</td>
<td>139-250-24</td>
<td>Transferred from Open Window Project LLC 8/22/2019; Default notice recorded by lender 1/14/2021; Foreclosed by lender 6/11/21</td>
</tr>
<tr>
<td>Star Property LB Invs, LLC</td>
<td>216 N California St</td>
<td>139-250-26</td>
<td>8/7/2020</td>
</tr>
<tr>
<td>Open Window Project LLC</td>
<td>828 E Channel St</td>
<td>139-280-04</td>
<td>Sold to Star Property LB Invs, LLC in September 2020, then sold to 843 East Weber LLC 4/7/21</td>
</tr>
<tr>
<td>Open Window Project LLC</td>
<td>836 E Channel St</td>
<td>139-280-05</td>
<td>Sold to Star Property LB Invs, LLC in September 2020, then sold to 843 East Weber LLC 4/7/21</td>
</tr>
<tr>
<td>Star Property LB Invs, LLC</td>
<td>843 E Weber Ave</td>
<td>139-280-07</td>
<td>9/24/2020</td>
</tr>
<tr>
<td>PSF Reo, LLC</td>
<td>612 E. Miner</td>
<td>139-290-01</td>
<td>Transferred from Open Window Project LLC 8/22/2019; Default notice recorded by lender 1/14/2021; Foreclosed by lender 6/11/21</td>
</tr>
<tr>
<td>PSF Reo, LLC</td>
<td>622 E. Miner</td>
<td>139-290-02</td>
<td>Transferred from Open Window Project LLC 8/22/2019; Default notice recorded by lender 1/14/2021; Foreclosed by lender 6/11/21</td>
</tr>
<tr>
<td>One Beat Project LLC</td>
<td>210 North American</td>
<td>139-290-04</td>
<td>8/7/2019; approved by Council</td>
</tr>
<tr>
<td>Julian &amp; Alicia Guerrero</td>
<td>630 E Weber Ave</td>
<td>149-180-03</td>
<td>12/20/2019</td>
</tr>
<tr>
<td>Julian &amp; Alicia Guerrero</td>
<td>646 E Weber Ave</td>
<td>149-180-04</td>
<td>12/20/2019</td>
</tr>
<tr>
<td>Luxe Estates, LLC</td>
<td>635 E Main St</td>
<td>149-180-08</td>
<td>Foreclosed by lender 11/20/2020; New owner out of North Hollywood</td>
</tr>
<tr>
<td>Luxe Estates, LLC</td>
<td>643 E Main St</td>
<td>149-180-09</td>
<td>Foreclosed by lender 11/20/2020; New owner out of North Hollywood</td>
</tr>
<tr>
<td>RVDF LLC</td>
<td>No address</td>
<td>149-190-04</td>
<td>4/2/2021; New owner from Chino Hills</td>
</tr>
<tr>
<td>RVDF LLC</td>
<td>832 E Weber</td>
<td>149-190-04</td>
<td>4/2/2021; New owner from Chino Hills</td>
</tr>
<tr>
<td>KPA Cal LLC</td>
<td>29 N Aurora</td>
<td>149-190-06</td>
<td>ERC 5/13/20 to convert to residential; was told property sold in May 2020 to KPA Cal LLC; Recorded deed 2020-057859 in SJ Recorder. 2nd ERC 11/12/20; Default notice recorded by lender 11/23/2020</td>
</tr>
<tr>
<td>RVDF LLC</td>
<td>25 N Aurora St</td>
<td>149-190-07</td>
<td>4/2/2021; New owner from Chino Hills</td>
</tr>
<tr>
<td>Luxe Estates, LLC</td>
<td>803 E Main St</td>
<td>149-190-09</td>
<td>Foreclosed by lender 11/20/2020; New owner out of North Hollywood</td>
</tr>
<tr>
<td>Luxe Estates, LLC</td>
<td>811 E Main St</td>
<td>149-190-10</td>
<td>Foreclosed by lender 11/20/2020; New owner out of North Hollywood</td>
</tr>
<tr>
<td>Luxe Estates, LLC</td>
<td>819 E Main St</td>
<td>149-190-11</td>
<td>Foreclosed by lender 11/20/2020; New owner out of North Hollywood</td>
</tr>
<tr>
<td>WC800Main, LLC</td>
<td>800 East Main Street</td>
<td>149-210-01</td>
<td>Transferred from Open Window Project LLC on 8/28/2018; Zac Cort is still the primary owner. Currently occupied by CAPC.</td>
</tr>
</tbody>
</table>

### Development Agreement Properties NOT owned by OWP

<table>
<thead>
<tr>
<th>Owner Name</th>
<th>Address</th>
<th>APN</th>
<th>Date Sold</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vinetta &amp; Sanjay Bhandari</td>
<td>216 N American</td>
<td>139-290-03</td>
<td></td>
</tr>
<tr>
<td>CKC Main Street</td>
<td>510, 511, 509 Main Street</td>
<td>149-170-27</td>
<td></td>
</tr>
<tr>
<td>Carlos Jimenez</td>
<td>707 E Main</td>
<td>149-180-24</td>
<td></td>
</tr>
<tr>
<td>Beverly Castle</td>
<td>22 N. Grant</td>
<td>149-190-08</td>
<td>Open Window/Gassner Investment LLC</td>
</tr>
<tr>
<td>Gassner Investment, LLC</td>
<td>831 E. Main Street</td>
<td>149-190-13</td>
<td></td>
</tr>
<tr>
<td>Gassner Investment, LLC</td>
<td>921 E. Market</td>
<td>151-190-05</td>
<td></td>
</tr>
<tr>
<td>Gassner Investment, LLC</td>
<td>915 East Market</td>
<td>151-190-06</td>
<td></td>
</tr>
<tr>
<td>Owner Name</td>
<td>Address</td>
<td>APN</td>
<td>Notes</td>
</tr>
<tr>
<td>-------------------</td>
<td>-----------------</td>
<td>---------</td>
<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>WPRD LLC</td>
<td>430 E Weber</td>
<td>149-170-30</td>
<td>Kendall Bldg; Default notice recorded by lender 11/23/2020; Mechanics lien filed 3/5/21; Notice of Trustees Sale recorded 9/22/21</td>
</tr>
<tr>
<td>WPRD LLC</td>
<td>420 E Weber</td>
<td>149-170-29</td>
<td>Empty lot adjacent to Kendall Bldg; Default notice recorded by lender 11/23/2020; Notice of Trustees Sale recorded 9/22/21</td>
</tr>
<tr>
<td>WPRD LLC</td>
<td>436 E Weber</td>
<td>149-170-11</td>
<td>Building to the east of Kendall Bldg; planning rec’d demo permit on 5/20/20; Default notice recorded by lender 11/23/2020; Mechanics lien filed 3/5/21; Notice of Trustees Sale recorded 9/22/21</td>
</tr>
<tr>
<td>Aegis Asset Backed Securities</td>
<td>235 N San Joaquin</td>
<td>139-130-05</td>
<td>Occupied by Realty Church; Foreclosed 3/30/20</td>
</tr>
</tbody>
</table>

As of October 6, 2021
The attached Deed of Trust is for a Lien Forgiveness at 615 & 617 E Channel. The title co is saying it was paid in 2016 with the attached check copy. Can you confirm it was paid? Thanks!

Amanda

Dear Nicole,

By way of introduction, I am an attorney with Old Republic National Title Insurance Company (ORNTIC). I am contacting you to request a reconveyance of the attached satisfied City of Stockton (“City”) Deed of Trust recorded on 1/14/2016 as doc. no. 2016-005398 in the Official Records (“DOT,” copy attached).

The DOT was fully satisfied in connection with a refinance of your borrower, Open Window Project, LLC which closed in January 2016. Specifically, the City was paid the payoff funds of $14,506.50 via the attached check dated 1/14/2016 payable to “City of Stockton Neighborhood Services Division” (“Payoff Check,” copy attached) for the full satisfaction of the DOT. However, we recently discovered that for one reason or another, a reconveyance of the DOT was never recorded as required by California Civil Code (CCP) §§ 2941, 2943 et. seq.

I trust after you review the enclosed documents and your records, you will confirm that a Reconveyance of the satisfied DOT needs to be recorded without further hesitation.

To that end, please cause to be recorded a Reconveyance as required by California law and send me evidence of the recording. Alternatively, you may prefer to send a recordable Reconveyance (notarized) to my attention and ORNTIC will absorb the cost and expense of recording said Reconveyance; or ORNTIC can prepare the Reconveyance for the City.

If you have any questions or need further information, please do not hesitate to contact me. Thank you in advance for your attention to this matter.

Regards,

Jane

Jane H. Ikegami
Vice President/Counsel | Legal & Rate Department

T: 415.421.3500 | F: 415.398.5813 | Mitel: 47139
This message may contain confidential or proprietary information intended only for the use of the addressee(s) named above or may contain information that is legally privileged, confidential and/or personal which is protected under federal and state law. Delivery of this email to anyone other than the intended recipient shall not be construed as a waiver of any privilege or exemption applicable to this communication.

If the reader of this email is not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, any review, use, dissemination, distribution, or copying of this email is strictly prohibited. If you have received this message in error, please immediately notify us by replying to the message and delete the original message and any copies immediately thereafter.
RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Stockton
Economic Development Department
425 N. El Dorado Street, Room 317
Stockton, CA 95202

Attn: Deputy Director

APN: 139-290-05
Government Code § 27383

DEED OF TRUST

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 8 and 15. Certain rules regarding the usage of words used in this document are also provided in Section 13.

(A) "Deed of Trust" means this document, which is dated 11-10-15 together with all Riders to this document.

(B) "Borrower" is Open Window Project, LLC, a limited liability company. Borrower is the trustor under this Deed of Trust.

(C) "Lender" is City of Stockton, a municipal corporation. Lender's address is 425 N. El Dorado Street, Stockton, CA 95202. Lender is the beneficiary under this Deed of Trust.

(D) "Trustee" is City of Stockton, a municipal corporation.

(E) "Note" means the promissory note(s) signed by Borrower and dated 11-10-15. The Note(s) states that Borrower owes City $13,504.54. Borrower has promised to pay this debt in full not later than __July 1, 2021__.

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus all sums due under this Deed of Trust.

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
(I) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 4) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(J) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Deed of Trust, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(K) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Deed of Trust.

TRANSFER OF RIGHTS IN THE PROPERTY

This Deed of Trust secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Deed of Trust and the Note. The restrictions will automatically terminate if the title to the mortgaged property is transferred by foreclosure or deed-in-lieu of foreclosure. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the City of Stockton, County of San Joaquin, State of California:

See Attached Exhibit "1"

This currently has the address of 615 & 617 E. CHANNEL STREET, Stockton, California 95202 ("Property Address").

TOGETHER WITH all the improvements now or hereafter erected on the Property, and all easements, appurtenances, and fixtures now or hereafter a part of the Property. All replacements and additions shall also be covered by this Deed of Trust. All of the foregoing is referred to in this Deed of Trust as the "Property."

Borrower covenants that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.
THIS DEED OF TRUST combines uniform covenants and non-uniform covenants with limited variations to constitute a uniform Deed of Trust covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal. Borrower shall pay when due the principal of the debt evidenced by the Note and any additional amounts due under the Note. Payment due under the Note and this Deed of Trust shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Deed of Trust is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Deed of Trust be made in one or more of the following forms, as selected by Lender: (a) money order; (b) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (c) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 12. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payment due under the Note and this Deed of Trust or performing the covenants and agreements secured by this Deed of Trust.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 4.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date.

3. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which can attain priority over this Deed of Trust, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any.

Borrower shall promptly discharge any lien which has priority over this Deed of Trust unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith, or defends against enforcement of the lien, in legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Deed of Trust. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Deed of Trust, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 3.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.
4. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time re-mappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 4 shall become additional debt of Borrower secured by this Deed of Trust. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for
the repairs and restoration in a single payment or in a series of progress payments as
the work is completed. Unless an agreement is made in writing or Applicable Law
requires interest to be paid on such insurance proceeds, Lender shall not be required to
pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or
other third parties, retained by Borrower shall not be paid out of the insurance proceeds
and shall be the sole obligation of Borrower. If the restoration or repair is not
economically feasible or Lender's security would be lessened, the insurance proceeds
shall be applied to the sums secured by this Deed of Trust, whether or not then due,
with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in
the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any
available insurance claim and related matters. If Borrower does not respond within 30
days to a notice from Lender that the insurance carrier has offered to settle a claim, the
Lender may negotiate and settle the claim. The 30-day period will begin when the
notice is given. In either event, or if Lender acquires the Property under Section 19 or
otherwise, Borrower hereby assigns to Lender: (a) Borrower's rights to any insurance
proceeds in an amount not to exceed the amounts unpaid under the Note or this Deed
of Trust, and (b) any other of Borrower's rights (other than the right to any refund of
unearned premiums paid by Borrower) under all insurance policies covering the
Property, insofar as such rights are applicable to the coverage of the Property. Lender
may use the insurance proceeds either to repair or restore the Property or to pay
amounts unpaid under the Note or this Deed of Trust whether or not then due.

5. Preservation, Maintenance and Protection of the Property; Inspections.
Borrower shall not destroy damage or impair the Property, allow the Property to
deteriorate, or commit waste on the Property. Borrower shall maintain the Property in
order to prevent the Property from deteriorating or decreasing in value due to its
condition. Unless it is determined pursuant to Section 4 that repair or restoration is not
economically feasible, Borrower shall promptly repair the Property if damaged to avoid
further deterioration or damage. If insurance or condemnation proceeds are paid in
connection with damage to, or taking of, the Property, Borrower shall be responsible for
repairing or restoring the Property only if Lender has released proceeds for such
purposes. Lender may disburse proceeds for the repairs and restoration in a single
payment or in a series of progress payments as the work is completed. If the insurance
or condemnation proceeds are not sufficient to repair or restore the Property, Borrower
is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the
Property. If it has reasonable cause, Lender may inspect the interior of the
improvements on the Property. Lender shall give Borrower notice at the time of or prior
to such an interior inspection specifying such reasonable cause.

6. Borrower's Loan Application. Borrower shall be in default if, during the
Loan application process, Borrower or any persons or entities acting at the direction of
Borrower or with Borrower's knowledge or consent gave materially false, misleading, or
inaccurate information or statements to Lender (or failed to provide Lender with material
information) in connection with the Loan. Material representations include, but are not
limited to, representations concerning Borrower's occupancy of the property as
Borrower's place of business.
7. Protection of Lender's Interest in the Property and Rights Under this Deed of Trust. If (a) Borrower fails to perform the covenants and agreements contained in this Deed of Trust, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Deed of Trust (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Deed of Trust or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Deed of Trust, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Deed of Trust; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Deed of Trust, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 8, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 8.

Any amounts disbursed by Lender under this Section 7 shall become additional debt of Borrower secured by this Deed of Trust. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

8. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Deed of Trust immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Deed
of Trust shall be reduced by the amount of the Miscellaneous Proceeds multiplied by
the following fraction: (a) the total amount of the sums secured immediately before
the partial taking, destruction, or loss in value divided by (b) the fair market value of the
Property immediately before the partial taking, destruction, or loss in value. Any
balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in
which the fair market value of the Property immediately before the partial taking,
destruction, or loss in value is less than the amount of the sums secured immediately
before the partial taking, destruction, or loss in value, unless Borrower and Lender
otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums
secured by this Deed of Trust whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to
Borrower that the Opposing Party (as defined in the next sentence) offers to make an
award to settle a claim for damages, Borrower fails to respond to Lender within 30 days
after the date the notice is given, Lender is authorized to collect and apply the
Miscellaneous Proceeds either to restoration or repair of the Property or to the sums
secured by this Deed of Trust, whether or not then due. "Opposing Party" means the
third party that owes Borrower Miscellaneous Proceeds or the party against whom
Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default in any action or proceeding, whether civil or criminal
is begun that, in Lender's judgment, could result in forfeiture of the Property or other
material impairment of Lender's interest in the Property or rights under this Deed of
Trust. Borrower can cure such a default and, if acceleration has occurred, reinstate as
provided in Section 16, by causing the action or proceeding to the dismissed with a
ruling that, in Lender's judgment, precludes forfeiture of the Property or other material
impairment of Lender's interest in the Property or rights under this Deed of Trust. The
proceeds of any award or claim for damages that are attributable to the impairment of
Lender's interest in the Property are hereby assigned and shall be to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the
Property shall be applied in the order provided for in Section 2.

9. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension
of the time for payment of the sums secured by this Deed of Trust granted by Lender to
Borrower or any Successor in Interest of Borrower shall not operate to release the
liability of Borrower or any Successors in Interest of Borrower. Lender shall not be
required to commence proceedings against any Successor in Interest of Borrower or to
refuse to extend time for payment or otherwise modify amortization of the sums secured
by this Deed of Trust by reason of any demand made by the original borrower or any
Successors in Interest of Borrower. Any forbearance by Lender in exercising any right
or remedy including, without limitation, Lender's acceptance of payments from third
persons, entities or Successors in Interest of Borrower or in amounts less than the
amount then due, shall not be a waiver of or preclude the exercise of any right or
remedy.

10. Joint and Several Liability; Successors and Assigns Bound. Borrower
covenants and agrees that Borrower's obligations and liability shall be joint and several.
Subject to the provisions of Section 16, any successor in Interest of Borrower
who assumes Borrower's obligations under this Deed of Trust in writing, and is
approved by Lender, shall obtain all of Borrower's rights and benefits under this Deed of
Trust. Borrower shall not be released from Borrower's obligations and liability under this Deed of Trust unless Lender agrees to such release in writing. The covenants and agreements of this Deed of Trust shall bind (except as provided in Section 15) and benefit the successors and assigns of Lender.

11. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default for the purpose of protecting Lender's interest in the Property and rights under this Deed of Trust including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Deed of Trust to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Deed of Trust or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

12. Notices. All notices given by Borrower or Lender in connection with this Deed of Trust must be in writing. Any notice to Borrower in connection with this Deed of Trust shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only once designated notice address under this Deed of Trust at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Deed of Trust shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Deed of Trust is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Deed of Trust.

13. Governing Law; Severability; Rules of Construction. This Deed of Trust shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Deed of Trust are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as prohibition against agreement by contract. In the event that
any provision or clause of this Deed of Trust or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision.

As used in this Deed of Trust: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

14. **Borrower’s Copy.** Borrower shall be given one copy of the Note and of this Deed of Trust.

15. **Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 15, “interest in the Property” means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender’s prior written consent, Lender may require immediate payment in full of all sums secured by this Deed of Trust.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 12 within which Borrower must pay all sums secured by this Deed of Trust. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Deed of Trust without further notice or demand on Borrower.

16. **Borrower’s Right to Reinstatement after Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Deed of Trust discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Deed of Trust; (b) such other period as Applicable Law might specify for the termination of Borrower’s right to reinstate; or (c) entry of a judgment enforcing this Deed of Trust. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Deed of Trust and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Deed of Trust, including, but not limited to, reasonable attorney’s fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender’s interest in the Property and rights under this Deed of Trust; and (d) takes such action as Lender may reasonably require to assure that Lender’s interest in the Property and rights under this Deed of Trust, and Borrower’s obligation to pay the sums secured by this Deed of Trust, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; or (c) certified check, bank check, treasurer’s check or cashier’s check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity. Upon reinstatement by Borrower, this Deed of Trust and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 15.
17. Hazardous Substances. As used in this Section 17: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the property: (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of: (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM CONVENANTS. Borrower and Lender further covenant and agree as follows:

18. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Deed of Trust (but not prior to acceleration under Section 15 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date; not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may
require immediate payment in full of all sums secured by this Deed of Trust without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 18, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee shall cause this notice to be recorded in each county in which any part of the Property is located. Lender or Trustee shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the other persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Deed of Trust; and (c) any excess to the person or persons legally entitled to it.

19. Reconveyance. Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing debt secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Lender may charge such person or persons a reasonable fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law. If the fee charged does not exceed the fee set by Applicable Law, the fee is conclusively presumed to be reasonable.
20. **Statement of Obligation—Fee.** Lender may collect a fee not to exceed the maximum amount permitted by Applicable Law for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Deed of Trust.

**CITY OF STOCKTON:**

APPROVED AS TO FORM AND CONTENT:

JOHN M. LUEBBERKE

CITY ATTORNEY

By: [Signature]

DEPUTY CITY ATTORNEY

**BORROWER:**

OPEN WINDOW PROJECT, LLC,

a Limited Liability Company

By: [Signature]

ZACHARY CORT, Authorized Signer
ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Joaquin

On before me, (insert name and title of the officer),

personally appeared Zachary Cort, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature (Seal)
EXHIBIT "1"

LEGAL DESCRIPTION

All that certain real property situated in the City of Stockton, County of San Joaquin, State of California, described as follows:

Lot Four (4) in Block Seventy-Five (75) East of Center Street, in the said City of Stockton, according to the Official Map of Plat thereof.

APN: 139-290-05
LIEN FORGIVENESS INCENTIVE AGREEMENT

This agreement ("Agreement") is entered into and effective on November 10, 2020, by and between the City of Stockton ("City"), a municipal corporation, and Open Window Project, LLC, ("Applicant"), a limited liability company; on the terms and conditions set forth below:

RECITALS

Applicant is the owner of the property known as 615 & 617 E. Channel Street, Stockton, California (the "Property") described more particularly in Exhibit "A" attached hereto and incorporated by this reference;

City has imposed on the Property numerous code enforcement charges due to the prior substandard condition of the Property which total $27,278.04 (the "Code Enforcement Charges"), the entirety of which remains due and owing.

City desires that the Property be redeveloped in a manner consistent with City standards and codes, and that the Property remain free of blight. Certain delinquent taxes and assessments that are a lien against the Property, including the Code Enforcement Charges, presently limit the marketability of the Property.

City has incentive programs that authorize the City Manager to forgive certain liens previously imposed by the City, and which are under the Council limit. Only soft costs, such as fines, interest, and late fees may be forgiven (the "Soft Costs"). Hard costs, such as abatement costs, recording fees, or any actual expenditure of City funds (the "Hard Costs"), cannot be forgiven.

This Agreement is intended to facilitate the marketability of the Property and does not obligate City to take any actions or incur any obligations other than those specifically contained herein.

The parties hereto acknowledge that they are not partners or involved in a joint venture and, other than as specifically set forth herein, City is not contractually involved with this Property.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

TERMS AND CONDITIONS

1. Applicant shall successfully invest in, improve, and/or perform blight abatement on the subject property in accordance with applicable City standards and agrees to keep the Property in acceptable condition for no less than five (5) years following project completion ("Five-Year Monitoring Period"). For purposes of this Agreement, the Five-Year Monitoring Period shall commence upon the successful investment, improvements, and/or blight abatement of the subject property as detailed in the project timeline (Exhibit B) approved by the City.
2. If Applicant fails to successfully invest in, improve, and/or perform blight abatement on the subject property as detailed in Exhibit B, Applicant shall be considered in default and the Note, with retroactively applied interest and penalties, shall be immediately due and payable.

3. Applicant shall properly maintain the subject property, as determined by the City, during the Five-Year Monitoring Period following the successful investment, improvement, and/or blight abatement of the subject property. Failure to do so shall be considered a default and the City will reinstate the subordinated liens and retroactively apply all applicable interest and penalties.

4. At the close of escrow for transfer of the Property, Applicant shall pay to the City through escrow the amount of $13,773.50, which represents the Hard Costs portion of the Code Enforcement Charges levied on the Property.

5. At close of escrow, City agrees to request that the San Joaquin County Treasurer/Tax Collector remove the Hard Costs and Soft Costs from the Property’s liability stated on the tax roll. City shall hold in abeyance the remainder of the Code Enforcement Charges (the “Soft Costs”), until such time as those charges are forgiven pursuant to this agreement or are rendered due and payable by Applicant’s default.

6. At the close of escrow for transfer of the Property, Applicant shall pay through escrow any and all other amounts required to bring all taxes current on the Property, including but not limited to current property taxes, general and special taxes, assessments and supplemental taxes (if any), delinquent taxes and interest, fines and penalties assessed by San Joaquin County on said delinquent taxes, and any processing charges required by San Joaquin County.

7. Applicant shall execute a Promissory Note (the “Note”) (in the form provided herein as Exhibit “C” which is attached hereto and incorporated by this reference), payable to City in the amount of $13,504.54 which shall be secured by a Deed of Trust on the Property and be recorded in the Office of the San Joaquin County Recorder, at close of escrow.

8. If the subject property meets all of the requirements specified in this Agreement following the successful investment, improvement, and/or blight abatement of the Property, at the end of the Five-Year Monitoring Period, the Applicant may request that the City remove the applicable lien from the property. If the City determines that the Applicant has met all applicable requirements, the City may forgive the Promissory Note and re-convey the Deed of Trust. If Applicant fails to meet all applicable requirements or fails to maintain the Property to the satisfaction of the City, the Note shall be called and the lien amounts reinstated, including the retroactive application of all applicable interest and penalties.

9. Before commencement of any work on the Property, Applicant shall secure or shall cause to be secured, and at all times maintain, any and all permits, approvals and reviews which may be required by City or any other governmental agency. Applicant shall pay such fees as may be required in connection therewith and
nothing in this Agreement shall be interpreted in such a way as to hinder, limit or condition any permit, approval or review processes applicable thereto.

10. City will cease the assessment of Civil Penalties on the Property, as of the close of escrow date. If escrow does not close, Civil Penalties will be retroactively applied to the Property.

11. Applicant agrees to comply with all insurance requirements contained in the Deed of Trust, attached hereto as Exhibit "D" and incorporated by this reference.

12. Miscellaneous

   a. Applicable Law. This Agreement shall be construed and interpreted under, and governed and enforced according to the laws of the State of California.

   b. Entire Agreement. This Agreement supersedes any prior agreement, oral or written and, together with the exhibits hereto, contains the entire agreement between City and Applicant on the subject matter. No subsequent agreement, representation or promise made by either party, or by or to any employee, officer, agent or representative of either party shall be of any effect unless it is in writing and executed by the party to be bound thereby. No person is authorized to make, and by execution hereof City and Applicant acknowledge that no person has made, any representation, warranty, guaranty or promise except as set forth herein; and no agreement, statement, representation or promise made by any such person that is not contained herein shall be valid or binding on City or Applicant.

   c. Modification. This Agreement may be supplemented, amended or modified only by the mutual written agreement of both parties. No supplement, amendment, or modification of this agreement shall be binding unless it is in writing and signed by both parties.

   d. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto. The Note can be assumed or be subordinated, however, Applicant has not made or created, and shall not, prior to the completion of the project as evidenced by a recorded Certificate of Project Completion, make or permit any sale, assignment, conveyance, lease, or other transfer of this Loan Agreement, of the property, without the prior written consent of City. City shall give its consent to a sale, transfer, or conveyance provided that all of the following conditions are met: (a) Applicant is in compliance with the Loan Documents, or the sale, transfer, or conveyance will result in the cure of any existing violations of the Loan Documents; (b) the transferee agrees to expressly assume all obligations of Applicant imposed by the Loan Documents; (c) the transferee demonstrates to City's sole satisfaction that it is capable of and intends to maintain the property in full compliance with the Loan Documents; and (d) the terms of the sale, transfer, or conveyance shall not jeopardize City’s security interest in the property and are in full compliance with all standards, including eligibility requirements, and other conditions imposed by any funding sources for the project and the Loan.
e. Interpretation and Construction. The parties agree that each party has reviewed Agreement and that each has had the opportunity to have their counsel and real estate advisors review and revise this agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of Agreement or any amendments or exhibits thereto.

f. Severability. Should any provision of this Agreement or portion thereof be rendered or declared invalid, illegal, or unenforceable by a Court of competent jurisdiction in the State of California, the remainder of the Agreement's provisions shall remain valid and in full force and effect.

g. Attorneys' Fees. If either party hereto incurs attorneys' fees in order to enforce, defend or interpret any of the terms, provisions or conditions of this Agreement, or because of a breach of this Agreement by the other party, the prevailing party, whether by suit, negotiation, arbitration or settlement shall be entitled to recover reasonable attorneys' fees from the other party.

13. The undersigned represent and warrant that they are each authorized to execute this Agreement by the party on whose behalf they have signed.

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

CITY OF STOCKTON:  
CITY OF STOCKTON, a Municipal Corporation  

By: Laurie Montes  
DEPUTY CITY MANAGER

APPLICANT:  
OPEN WINDOW PROJECT, LLC, a Limited Liability Company  

By: Zachary Corte

ATTEST:  
By: BONNIE PAIGE  
CITY CLERK OF THE CITY OF STOCKTON

APPROVED AS TO FORM AND CONTENT:  
JOHN M. LUEBBERKE  
CITY ATTORNEY  

By:  
DEPUTY CITY ATTORNEY
EXHIBIT "A"

LEGAL DESCRIPTION

All that certain real property situated in the City of Stockton, County of San Joaquin, State of California, described as follows:

Lot Four (4) in Block Seventy-Five (75) East of Center Street, in the said City of Stockton, according to the Official Map of Plat thereof.

APN: 139-290-05
EXHIBIT “B”

PROJECT TIMELINE

Project Description: Performance and completion of blight abatement including demolition of any and all existing structures located at 615 & 617 E. Channel Street.

Project Commencement: June 1, 2016
Project Completion: July 1, 2016
EXHIBIT “C”

PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned ("BORROWER") promises to pay to the City of Stockton ("LENDER"), a municipal corporation, or its successors, the principal sum of $13,504.54 with interest at the annual rate of ten percent, with payment in full due on July 1, 2021 (the “Payment Due Date”), unless otherwise forgiven as provided herein.

All principal and interest shall be payable to the City at: City of Stockton Economic Development Department, City Hall, Room 317, Stockton, CA 95202 or at such other place as shall be designated by LENDER.

This Note evidences a debt by BORROWER to LENDER, which may be forgiven if BORROWER engages in certain conduct that will result in the preservation and maintenance of certain real property (the “Property”) located at and commonly known as:

615 & 617 E. CHANNEL STREET, STOCKTON, CALIFORNIA

This Note is secured by a Deed of Trust on the Property in favor of LENDER.

The parties hereto have entered into an agreement, attached hereto as Exhibit “1” and incorporated by this reference (the “Agreement”). The Agreement contains various terms and conditions upon which LENDER has conditioned the forgiveness of the debt evidenced by this Note.

Unless the debt evidenced by this Note is forgiven pursuant to the terms of the Agreement, the debt shall be paid in full, together with all interest and penalties, on the Payment Due Date.

In the event of any transfer, sale or assignment of the Property or any interest therein, the entire balance of the principal and interest shall become immediately due and payable. Solely at the option of LENDER, this Note may be assigned, subordinated and/or assumed, providing that any and all terms and conditions shall remain in full force and effect and such assignee or successor shall assume in writing all duties and obligations of BORROWER. Any successor(s) to or assignee(s) of BORROWER shall execute and deliver to LENDER a Deed of Trust on the Property to secure repayment of this Note.

In the event the undersigned fails to comply with the terms of the Agreement, the debt evidenced hereby, together with interest, shall become immediately due and payable, at the option of LENDER without notice to the undersigned. Failure of LENDER to exercise such option shall not constitute a waiver of any default.
If suit is instituted by LENDER to enforce or recover on this Note, the undersigned agree(s) to pay all costs of such collection including reasonable attorney's fees and court costs.

Any forbearance by LENDER with respect to any of the terms and conditions of this Note shall in no way constitute a waiver of any of LENDER'S rights or privileges. Any written notice or payment of one party to the other shall be addressed to the parties as follows:

LENDER:  
City of Stockton  
Economic Development Department  
City Hall, Room 317  
Stockton, CA 95202

BORROWER:  
Open Window Project, LLC  
Attn: Zachary Cort  
115 N. Sutter Street, #307  
Stockton, CA 95202

This Note shall be binding on the heirs, executors, administrators, successors and assigns of the respective parties.

BORROWER reserves the right to prepay at any time all or any part of the remaining balance of this Note without the payment of penalties or premiums.

If any term of this note conflicts with any term or provision of the Agreement, the terms and provisions of the Agreement shall control to the extent of such conflict.

IN WITNESS WHEREOF, this Note has been duly executed by the undersigned, as of its date.

CITY OF STOCKTON:

APPROVED AS TO FORM AND CONTENT:  
JOHN M. LUEBBERKE  
CITY ATTORNEY

By: [Signature]  
DEPUTY CITY ATTORNEY

BORROWER:

OPEN WINDOW PROJECT, LLC,  
a Limited Liability Company

By: [Signature]  
ZACHARY CORT

Dated: 1.11.16
EXHIBIT "1"

LIEN FORGIVENESS INCENTIVE AGREEMENT

This agreement ("Agreement") is entered into and effective on November 10, 2015 by and between the City of Stockton ("City"), a municipal corporation, and Open Window Project, LLC, ("Applicant"), a limited liability company; on the terms and conditions set forth below:

RECITALS

Applicant is the owner of the property known as 615 & 617 E. Channel Street, Stockton, California (the "Property") described more particularly in Exhibit "A" attached hereto and incorporated by this reference;

City has imposed on the Property numerous code enforcement charges due to the prior substandard condition of the Property which total $27,278.04 (the "Code Enforcement Charges"), the entirety of which remains due and owing.

City desires that the Property be redeveloped in a manner consistent with City standards and codes, and that the Property remain free of blight. Certain delinquent taxes and assessments that are a lien against the Property, including the Code Enforcement Charges, presently limit the marketability of the Property.

City has incentive programs that authorize the City Manager to forgive certain liens previously imposed by the City, and which are under the Council limit. Only soft costs, such as fines, interest, and late fees may be forgiven (the "Soft Costs"). Hard costs, such as abatement costs, recording fees, or any actual expenditure of City funds (the "Hard Costs"), cannot be forgiven.

This Agreement is intended to facilitate the marketability of the Property and does not obligate City to take any actions or incur any obligations other than those specifically contained herein.

The parties hereto acknowledge that they are not partners or involved in a joint venture and, other than as specifically set forth herein, City is not contractually involved with this Property.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

TERMS AND CONDITIONS

14. Applicant shall successfully invest in, improve, and/or perform blight abatement on the subject property in accordance with applicable City standards and agrees to keep the Property in acceptable condition for no less than five (5) years following project completion ("Five-Year Monitoring Period"). For purposes of this Agreement, the Five-Year Monitoring Period shall commence upon the successful investment, improvements, and/or blight abatement of the subject property as detailed in the project timeline (Exhibit B) approved by the City.
15. If Applicant fails to successfully invest in, improve, and/or perform blight abatement on the subject property as detailed in Exhibit B, Applicant shall be considered in default and the Note, with retroactively applied interest and penalties, shall be immediately due and payable.

16. Applicant shall properly maintain the subject property, as determined by the City, during the Five-Year Monitoring Period following the successful investment, improvement, and/or blight abatement of the subject property. Failure to do so shall be considered a default and the City will reinstate the subordinated liens and retroactively apply all applicable interest and penalties.

17. At the close of escrow for transfer of the Property, Applicant shall pay to the City through escrow the amount of $13,773.50, which represents the Hard Costs portion of the Code Enforcement Charges levied on the Property.

18. At close of escrow, City agrees to request that the San Joaquin County Treasurer/Tax Collector remove the Hard Costs and Soft Costs from the Property’s liability stated on the tax roll. City shall hold in abeyance the remainder of the Code Enforcement Charges (the “Soft Costs”), until such time as those charges are forgiven pursuant to this agreement or are rendered due and payable by Applicant’s default.

19. At the close of escrow for transfer of the Property, Applicant shall pay through escrow any and all other amounts required to bring all taxes current on the Property, including but not limited to current property taxes, general and special taxes, assessments and supplemental taxes (if any), delinquent taxes and interest, fines and penalties assessed by San Joaquin County on said delinquent taxes, and any processing charges required by San Joaquin County.

20. Applicant shall execute a Promissory Note (the “Note”) (in the form provided herein as Exhibit “C” which is attached hereto and incorporated by this reference), payable to City in the amount of $13,504.54 which shall be secured by a Deed of Trust on the Property and be recorded in the Office of the San Joaquin County Recorder, at close of escrow.

21. If the subject property meets all of the requirements specified in this Agreement following the successful investment, improvement, and/or blight abatement of the Property, at the end of the Five-Year Monitoring Period, the Applicant may request that the City remove the applicable lien from the property. If the City determines that the Applicant has met all applicable requirements, the City may forgive the Promissory Note and re-convey the Deed of Trust. If Applicant fails to meet all applicable requirements or fails to maintain the Property to the satisfaction of the City, the Note shall be called and the lien amounts reinstated, including the retroactive application of all applicable interest and penalties.

22. Before commencement of any work on the Property, Applicant shall secure or shall cause to be secured, and at all times maintain, any and all permits, approvals and reviews which may be required by City or any other governmental agency. Applicant shall pay such fees as may be required in connection therewith and
nothing in this Agreement shall be interpreted in such a way as to hinder, limit or 
condition any permit, approval or review processes applicable thereto.

23. City will cease the assessment of Civil Penalties on the Property, as of the 
close of escrow date. If escrow does not close, Civil Penalties will be retroactively 
applied to the Property.

24. Applicant agrees to comply with all insurance requirements contained in 
the Deed of Trust, attached hereto as Exhibit "D" and incorporated by this reference.

25. Miscellaneous

h. Applicable Law. This Agreement shall be construed and 
interpreted under, and governed and enforced according to the laws of the State of 
California.

i. Entire Agreement. This Agreement supersedes any prior 
agreement, oral or written and, together with the exhibits hereto, contains the entire 
agreement between City and Applicant on the subject matter. No subsequent 
agreement, representation or promise made by either party, or by or to any employee, 
officer, agent or representative of either party shall be of any effect unless it is in writing 
and executed by the party to be bound thereby. No person is authorized to make, and 
by execution hereof City and Applicant acknowledge that no person has made, any 
representation, warranty, guaranty or promise except as set forth herein; and no 
agreement, statement, representation or promise made by any such person that is not 
contained herein shall be valid or binding on City or Applicant.

j. Modification. This Agreement may be supplemented, 
amended or modified only by the mutual written agreement of both parties. No 
supplement, amendment, or modification of this agreement shall be binding unless it is 
in writing and signed by both parties.

k. Successors and Assigns. This Agreement shall be binding upon 
and inure to the benefit of the heirs, executors, administrators, successors and assigns 
of the parties hereto. The Note can be assumed or be subordinated, however, Applicant 
has not made or created, and shall not, prior to the completion of the project as 
evidenced by a recorded Certificate of Project Completion, make or permit any sale, 
assignment, conveyance, lease, or other transfer of this Loan Agreement, of the 
property, without the prior written consent of City. City shall give its consent to a sale, 
transfer, or conveyance provided that all of the following conditions are met: (a) 
Applicant is in compliance with the Loan Documents, or the sale, transfer, or 
conveyance will result in the cure of any existing violations of the Loan Documents; (b) 
the transferee agrees to expressly assume all obligations of Applicant imposed by the 
Loan Documents; (c) the transferee demonstrates to City's sole satisfaction that it is 
capable of and intends to maintain the property in full compliance with the Loan 
Documents; and (d) the terms of the sale, transfer, or conveyance shall not jeopardize 
City's security interest in the property and are in full compliance with all standards, 
including eligibility requirements, and other conditions imposed by any funding sources 
for the project and the Loan.
I. **Interpretation and Construction.** The parties agree that each party has reviewed Agreement and that each has had the opportunity to have their counsel and real estate advisors review and revise this agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of Agreement or any amendments or exhibits thereto.

m. **Severability.** Should any provision of this Agreement or portion thereof be rendered or declared invalid, illegal, or unenforceable by a Court of competent jurisdiction in the State of California, the remainder of the Agreement's provisions shall remain valid and in full force and effect.

n. **Attorneys' Fees.** If either party hereto incurs attorneys' fees in order to enforce, defend or interpret any of the terms, provisions or conditions of this Agreement, or because of a breach of this Agreement by the other party, the prevailing party, whether by suit, negotiation, arbitration or settlement shall be entitled to recover reasonable attorneys' fees from the other party.

26. The undersigned represent and warrant that they are each authorized to execute this Agreement by the party on whose behalf they have signed.

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

**CITY OF STOCKTON:**

CITY OF STOCKTON,  
a Municipal Corporation  

By: [Signature]

LAURIE MONTES  
DEPUTY CITY MANAGER  

**APPLICANT:**

OPEN WINDOW PROJECT, LLC,  
a Limited Liability Company  

By: [Signature]

ZACHARY CORT  

**ATTEST:**

By: [Signature]

BONNIE PAIGE  
CITY CLERK OF THE CITY OF STOCKTON  

**APPROVED AS TO FORM AND CONTENT:**

JOHN M. LUEBBERKE  
CITY ATTORNEY  

By: [Signature]

DEPUTY CITY ATTORNEY
RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Stockton
Economic Development Department
425 N. El Dorado Street, Room 317
Stockton, CA 95202

Attn: Deputy Director

APN: 139-290-05
Government Code § 27383

No Fee Document

DEED OF TRUST

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 8 and 15. Certain rules regarding the usage of words used in this document are also provided in Section 13.

(A) “Deed of Trust” means this document, which is dated 11-10-15 together with all Riders to this document.

(B) “Borrower” is Open Window Project, LLC, a limited liability company. Borrower is the trustor under this Deed of Trust.

(C) “Lender” is City of Stockton, a municipal corporation. Lender’s address is 425 N. El Dorado Street, Stockton, CA 95202. Lender is the beneficiary under this Deed of Trust.

(D) “Trustee” is City of Stockton, a municipal corporation.

(E) “Note” means the promissory note(s) signed by Borrower and dated 11-10-15. The Note(s) states that Borrower owes City $13,504.54. Borrower has promised to pay this debt in full not later than July 1, 2021.

(F) “Property” means the property that is described below under the heading “Transfer of Rights in the Property.”

(G) “Loan” means the debt evidenced by the Note, plus all sums due under this Deed of Trust.

(H) “Applicable Law” means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Stockton
Economic Development Department
425 N. El Dorado Street, Room 317
Stockton, CA 95202

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(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
(I) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 4) for (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(J) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Deed of Trust, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(K) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Deed of Trust.

TRANSFER OF RIGHTS IN THE PROPERTY

This Deed of Trust secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Deed of Trust and the Note. The restrictions will automatically terminate if the title to the mortgaged property is transferred by foreclosure or deed-in-lieu of foreclosure. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the City of Stockton, County of San Joaquin, State of California:

See Attached Exhibit "1"

This currently has the address of 615 & 617 E. CHANNEL STREET, Stockton, California 95202 ("Property Address").

TOGETHER WITH all the improvements now or hereafter erected on the Property, and all easements, appurtenances, and fixtures now or hereafter a part of the Property. All replacements and additions shall also be covered by this Deed of Trust. All of the foregoing is referred to in this Deed of Trust as the "Property."

Borrower covenants that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.
THIS DEED OF TRUST combines uniform covenants and non-uniform covenants with limited variations to constitute a uniform Deed of Trust covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal. Borrower shall pay when due the principal of the debt evidenced by the Note and any additional amounts due under the Note. Payment due under the Note and this Deed of Trust shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Deed of Trust is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Deed of Trust be made in one or more of the following forms, as selected by Lender: (a) money order; (b) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (c) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 12. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payment due under the Note and this Deed of Trust or performing the covenants and agreements secured by this Deed of Trust.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 4.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date.

3. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which can attain priority over this Deed of Trust, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any.

Borrower shall promptly discharge any lien which has priority over this Deed of Trust unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith, or defends against enforcement of the lien, in legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Deed of Trust. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Deed of Trust, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 3.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.
4. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time re-mappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 4 shall become additional debt of Borrower secured by this Deed of Trust. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for
the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, the Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 19 or otherwise, Borrower hereby assigns to Lender: (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Deed of Trust, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Deed of Trust whether or not then due.

5. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 4 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

6. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the property as Borrower's place of business.
7. **Protection of Lender’s Interest in the Property and Rights Under this Deed of Trust.** If (a) Borrower fails to perform the covenants and agreements contained in this Deed of Trust, (b) there is a legal proceeding that might significantly affect Lender’s interest in the Property and/or rights under this Deed of Trust (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Deed of Trust or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender’s interest in the Property and rights under this Deed of Trust, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender’s actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Deed of Trust; (b) appearing in court; and (c) paying reasonable attorneys’ fees to protect its interest in the Property and/or rights under this Deed of Trust, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 8, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 8.

Any amounts disbursed by Lender under this Section 7 shall become additional debt of Borrower secured by this Deed of Trust. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

8. **Assignment of Miscellaneous Proceeds; Forfeiture.** All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender’s security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender’s satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender’s security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Deed of Trust immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Deed
of Trust shall be reduced by the amount of the Miscellaneous Proceeds multiplied by
the following fraction: (a) the total amount of the sums secured immediately before the
partial taking, destruction, or loss in value divided by (b) the fair market value of the
Property immediately before the partial taking, destruction, or loss in value. Any
balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in
which the fair market value of the Property immediately before the partial taking,
destruction, or loss in value is less than the amount of the sums secured immediately
before the partial taking, destruction, or loss in value, unless Borrower and Lender
otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums
secured by this Deed of Trust whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to
Borrower that the Opposing Party (as defined in the next sentence) offers to make an
award to settle a claim for damages, Borrower fails to respond to Lender within 30 days
after the date the notice is given, Lender is authorized to collect and apply the
Miscellaneous Proceeds either to restoration or repair of the Property or to the sums
secured by this Deed of Trust, whether or not then due. “Opposing Party” means the
third party that owes Borrower Miscellaneous Proceeds or the party against whom
Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default in any action or proceeding, whether civil or criminal
is begun that, in Lender’s judgment, could result in forfeiture of the Property or other
material impairment of Lender’s interest in the Property or rights under this Deed of
Trust. Borrower can cure such a default and, if acceleration has occurred, reinstate as
provided in Section 16, by causing the action or proceeding to the dismissed with a
ruling that, in Lender’s judgment, precludes forfeiture of the Property or other material
impairment of Lender’s interest in the Property or rights under this Deed of Trust. The
proceeds of any award or claim for damages that are attributable to the impairment of
Lender’s interest in the Property are hereby assigned and shall be to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the
Property shall be applied in the order provided for in Section 2.

9. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension
of the time for payment of the sums secured by this Deed of Trust granted by Lender to
Borrower or any Successor in Interest of Borrower shall not operate to release the
liability of Borrower or any Successors in Interest of Borrower. Lender shall not be
require to commence proceedings against any Successor in Interest of Borrower or to
refuse to extend time for payment or otherwise modify amortization of the sums secured
by this Deed of Trust by reason of any demand made by the original borrower or any
Successors in Interest of Borrower. Any forbearance by Lender in exercising any right
or remedy including, without limitation, Lender’s acceptance of payments from third
persons, entities or Successors in Interest of Borrower or in amounts less than the
amount then due, shall not be a waiver of or preclude the exercise of any right or
remedy.

10. Joint and Several Liability; Successors and Assigns Bound. Borrower
covenants and agrees that Borrower’s obligations and liability shall be joint and several.

Subject to the provisions of Section 16, any successor in Interest of Borrower
who assumes Borrower’s obligations under this Deed of Trust in writing, and is
approved by Lender, shall obtain all of Borrower’s rights and benefits under this Deed of
Trust. Borrower shall not be released from Borrower's obligations and liability under this Deed of Trust unless Lender agrees to such release in writing. The covenants and agreements of this Deed of Trust shall bind (except as provided in Section 15) and benefit the successors and assigns of Lender.

11. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default for the purpose of protecting Lender's interest in the Property and rights under this Deed of Trust including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Deed of Trust to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Deed of Trust or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

12. Notices. All notices given by Borrower or Lender in connection with this Deed of Trust must be in writing. Any notice to Borrower in connection with this Deed of Trust shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only once designated notice address under this Deed of Trust at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Deed of Trust shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Deed of Trust is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Deed of Trust.

13. Governing Law; Severability; Rules of Construction. This Deed of Trust shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Deed of Trust are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as prohibition against agreement by contract. In the event that
any provision or clause of this Deed of Trust or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision.

As used in this Deed of Trust: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

14. **Borrower’s Copy.** Borrower shall be given one copy of the Note and of this Deed of Trust.

15. **Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 15, “Interest in the Property” means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender’s prior written consent, Lender may require immediate payment in full of all sums secured by this Deed of Trust.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 12 within which Borrower must pay all sums secured by this Deed of Trust. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Deed of Trust without further notice or demand on Borrower.

16. **Borrower’s Right to Reinstatement after Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Deed of Trust discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Deed of Trust; (b) such other period as Applicable Law might specify for the termination of Borrower’s right to reinstate; or (c) entry of a judgment enforcing this Deed of Trust. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Deed of Trust and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Deed of Trust, including, but not limited to, reasonable attorney’s fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender’s interest in the Property and rights under this Deed of Trust; and (d) takes such action as Lender may reasonably require to assure that Lender’s interest in the Property and rights under this Deed of Trust, and Borrower’s obligation to pay the sums secured by this Deed of Trust, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; or (c) certified check, bank check, treasurer’s check or cashier’s check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity. Upon reinstatement by Borrower, this Deed of Trust and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 15.
17. Hazardous Substances. As used in this Section 17: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the property: (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of: (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM CONVENANTS. Borrower and Lender further covenant and agree as follows:

18. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Deed of Trust (but not prior to acceleration under Section 15 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date; not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may
require immediate payment in full of all sums secured by this Deed of Trust
without further demand and may invoke the power of sale and any other remedies
permitted by Applicable Law. Lender shall be entitled to collect all expenses
incurred in pursuing the remedies provided in this Section 18, including, but not
limited to, reasonable attorneys’ fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee
to execute a written notice of the occurrence of an event of default and of
Lender's election to cause the Property to be sold. Trustee shall cause this
notice to be recorded in each county in which any part of the Property is located.
Lender or Trustee shall mail copies of the notice as prescribed by Applicable Law
to Borrower and to the other persons prescribed by Applicable Law. Trustee
shall give public notice of sale to the persons and in the manner prescribed by
Applicable Law. After the time required by Applicable Law, Trustee, without
demand on Borrower, shall sell the Property at public auction to the highest
bidder at the time and place and under the terms designated in the notice of sale
in one or more parcels and in any order Trustee determines. Trustee may
postpone sale of all or any parcel of the Property by public announcement at the
time and place of any previously scheduled sale. Lender or its designee may
purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee’s deed conveying the
Property without any covenant or warranty, expressed or implied. The recitals in
the Trustee’s deed shall be prima facie evidence of the truth of the statements
made therein. Trustee shall apply the proceeds of the sale in the following order:
(a) to all expenses of the sale, including, but not limited to, reasonable Trustee’s
and attorneys’ fees; (b) to all sums secured by this Deed of Trust; and (c) any
excess to the person or persons legally entitled to it.

19. Reconveyance. Upon payment of all sums secured by this Deed of Trust,
Lender shall request Trustee to reconvey the Property and shall surrender this Deed of
Trust and all notes evidencing debt secured by this Deed of Trust to Trustee. Trustee
shall reconvey the Property without warranty to the person or persons legally entitled to
it. Lender may charge such person or persons a reasonable fee for reconveying the
Property, but only if the fee is paid to a third party (such as the Trustee) for services
rendered and the charging of the fee is permitted under Applicable Law. If the fee
charged does not exceed the fee set by Applicable Law, the fee is conclusively
presumed to be reasonable.
20. Statement of Obligation Fee. Lender may collect a fee not to exceed the maximum amount permitted by Applicable Law for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Deed of Trust.

CITY OF STOCKTON:

APPROVED AS TO FORM AND CONTENT:
JOHN M. LUEMBERG
CITY ATTORNEY

By: ________________________________
   DEPUTY CITY ATTORNEY

BORROWER:

OPEN WINDOW PROJECT, LLC,
a Limited Liability Company

By: ________________________________
   ZACHARY CORT, Authorized Signer
ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of ________ San Joaquin _________)

On ________ before me, ________ Notary Public
(insert name and title of the officer)

personally appeared ________ Zachary Cort

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ________ (Seal)
EXHIBIT "1"

LEGAL DESCRIPTION

All that certain real property situated in the City of Stockton, County of San Joaquin, State of California, described as follows:

Lot Four (4) in Block Seventy-Five (75) East of Center Street, in the said City of Stockton, according to the Official Map of Plat thereof.

APN: 139-290-05
Deed of Trust for $760k lien.

Coming over to talk to you about this.

Jacque: Can you find where this Deed of Trust belongs (which program)? I think they are confusing this DOT with a lien paid to Code, but I can’t be sure. Let me know of any information you can find. Thanks!

CAUTION: This email originated from outside the City of Stockton. Do not click any links or open attachments if this is unsolicited email.

Dear Nicole,

By way of introduction, I am an attorney with Old Republic National Title Insurance Company (ORNTIC). I am contacting you to request a reconveyance of the attached satisfied City of Stockton (“City’) Deed of Trust recorded on 1/14/2016 as doc. no. 2016-005398 in the Official Records (“DOT,” copy attached).
The DOT was fully satisfied in connection with a refinance of your borrower, Open Window Project, LLC which closed in January 2016. Specifically, the City was paid the payoff funds of $14,506.50 via the attached check dated 1/14/2016 payable to “City of Stockton Neighborhood Services Division” (“Payoff Check,” copy attached) for the full satisfaction of the DOT. However, we recently discovered that for one reason or another, a reconveyance of the DOT was never recorded as required by California Civil Code (CCP) §§ 2941, 2943 et. seq.

I trust after you review the enclosed documents and your records, you will confirm that a Reconveyance of the satisfied DOT needs to be recorded without further hesitation.

To that end, please cause to be recorded a Reconveyance as required by California law and send me evidence of the recording. Alternatively, you may prefer to send a recordable Reconveyance (notarized) to my attention and ORNTIC will absorb the cost and expense of recording said Reconveyance; or ORNTIC can prepare the Reconveyance for the City.

If you have any questions or need further information, please do not hesitate to contact me. Thank you in advance for your attention to this matter.

Regards,

Jane

Jane H. Ikegami
Vice President/Counsel | Legal & Rate Department
T: 415.421.3500 | F: 415.398.5813 | Mitel: 47139
jikegami@ortc.com
Old Republic Title | Old Republic Insurance Group
275 Battery Street, Suite 1500 | San Francisco, CA 94111
ortc.com

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RECORDING REQUESTED BY
AND WHENRecorded MAIL TO:

City of Stockton
Economic Development Department
425 N. El Dorado Street
Stockton, CA 95202

Attn: Janice Miller

APN: 139-290-04, -05, &-06

DEED OF TRUST

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 8 and 15. Certain rules regarding the usage of words used in this document are also provided in Section 13.

(A) “Deed of Trust” means this document, which is dated May 16, 2017, together with all Riders to this document.

(B) “Borrower” is The Open Window Project, LLC, a California Limited Liability Company. Borrower is the trustor under this Deed of Trust.

(C) “Lender” is City of Stockton, a municipal corporation. Lender’s address is 425 N. El Dorado Street, Stockton, CA 95202. Lender is the beneficiary under this Deed of Trust.

(D) “Trustee” is City of Stockton, a municipal corporation.

(E) “Agreement” means the Amendment to the Downtown Infrastructure Infill Incentive Reimbursement Agreement signed by Borrower and dated May 15, 2017. The Amended Agreement states that Borrower owes City seven-hundred sixty thousand and 00/100 Dollars ($760,000.00).

(F) “Properties” means the properties that is described below under the heading “Transfer of Rights in the Properties.”

(G) “Loan” means the debt evidenced by the Agreement, plus all sums due under this Deed of Trust.

(H) “Applicable Law” means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
(i) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 4) for (i) damage to, or destruction of, the Properties; (ii) condemnation or other taking of all or any part of the Properties; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Properties.

(J) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Deed of Trust, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(K) "Successor in Interest of Borrower" means any party that has taken title to the Properties, whether or not that party has assumed Borrower's obligations under the Agreement and/or this Deed of Trust.

TRANSFER OF RIGHTS IN PROPERTIES

This Deed of Trust secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Agreement; and (ii) the performance of Borrower's covenants and agreements under this Deed of Trust and the Agreement. The restrictions will automatically terminate if the title to the mortgaged properties is transferred by foreclosure or deed-in-lieu of foreclosure, or the mortgage is assigned to the Secretary of HUD. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described three properties located in the City of Stockton, County of San Joaquin, State of California:

See Attached Exhibit "A"

Which currently has the addresses of 210 North American Street, 617 & 621 East Channel Street, Stockton, California 95202 ("Property Addresses")

TOGETHER WITH all the improvements now or hereafter erected on the Properties, and all easements, appurtenances, and fixtures now or hereafter a part of the Properties. All replacements and additions shall also be covered by this Deed of Trust. All of the foregoing is referred to in this Deed of Trust as the "Properties."

Borrower covenants that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Properties and that the Properties is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Properties against all claims and demands, subject to any encumbrances of record.
THIS DEED OF TRUST combines uniform covenants and non-uniform covenants with limited variations to constitute a uniform Deed of Trust covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal. Borrower shall pay when due the principal of the debt evidenced by the Agreement and any additional amounts due under the Agreement. Payment due under the Agreement and this Deed of Trust shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Agreement or this Deed of Trust is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Agreement and this Deed of Trust be made in one or more of the following forms, as selected by Lender: (a) money order; (b) certified check, bank check, treasurer’s check or cashier’s check, provided any such check is drawn on an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (c) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Agreement or at such other location as may be designated by Lender in accordance with the notice provisions in Section 12. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payment due under the Agreement and this Deed of Trust or performing the covenants and agreements secured by this Deed of Trust.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Agreement; (b) principal due under the Agreement; (c) amounts due under Section 4.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Agreement shall not extend or postpone the due date.

Borrower is allowed to submit early payment of the first 20% of the $3.8 million, which equals $760,000, without the Borrower first obtaining building permits for the public infrastructure improvements and Phase I of the Project.

3. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Properties which can attain priority over this Deed of Trust, leasehold payments or ground rents on the Properties, if any, and Community Association Dues, Fees, and Assessments, if any.

Borrower shall promptly discharge any lien which has priority over this Deed of Trust unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith, or defends against enforcement of the lien, in legal proceedings which in Lender’s opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Deed of Trust. If Lender determines that any part of the Properties is subject to a lien which can attain priority over this Deed of Trust, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 3.
Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

In return for releasing $760,000 of the approved funding, Borrower agrees that City may place liens on the seven (7) properties described in the Amended Agreement as security. Liens will remain in place until such time that the Borrower has provided written verification, acceptable to the Lender, 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. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Properties insured against loss by fire, hazards included within the term “extended coverage,” and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender’s right to disapprove Borrower’s choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time re-mappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender’s option and Borrower’s expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower’s equity in the Properties, or the contents of the Properties, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 4 shall become additional debt of Borrower secured by this Deed of Trust. These amounts shall bear interest at the Agreement rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender’s right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Agreement up to the amount of the outstanding loan balance. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Properties, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee and Borrower.
further agrees to generally assign rights to insurance proceeds to the holder of the Agreement up to the amount of the outstanding loan balance.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Properties, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Properties to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Properties, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, the Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Properties under Section 19 or otherwise, Borrower hereby assigns to Lender: (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Agreement or this Deed of Trust, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Properties, insofar as such rights are applicable to the coverage of the Properties. Lender may use the insurance proceeds either to repair or restore the Properties or to pay amounts unpaid under the Agreement or this Deed of Trust whether or not then due.

5. Preservation, Maintenance and Protection of the Properties; Inspections. Borrower shall not destroy damage or impair the Properties, allow the Properties to deteriorate or commit waste on the Properties. Borrower shall maintain the Properties in order to prevent the Properties from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 4 that repair or restoration is not economically feasible, Borrower shall promptly repair the Properties if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or taking of, the Properties, Borrower shall be responsible for repairing or restoring the Properties only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Properties, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.
Lender or its agent may make reasonable entries upon and inspections of the Properties. If it has reasonable cause, Lender may inspect the interior of the improvements on the Properties. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

6. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Properties as Borrower's place of business.

7. Protection of Lender's Interest in the Properties and Rights Under this Deed of Trust. If (a) Borrower fails to perform the covenants and agreements contained in this Deed of Trust, (b) there is a legal proceeding that might significantly affect Lender's interest in the Properties and/or rights under this Deed of Trust (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Deed of Trust or to enforce laws or regulations), or (c) Borrower has abandoned the Properties, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Properties and rights under this Deed of Trust, including protecting and/or assessing the value of the Properties, and securing and/or repairing the Properties. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Deed of Trust; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Properties and/or rights under this Deed of Trust, including its secured position in a bankruptcy proceeding. Securing the Properties includes, but is not limited to, entering the Properties to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 8, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 8.

Any amounts disbursed by Lender under this Section 7 shall become additional debt of Borrower secured by this Deed of Trust. These amounts shall bear interest at the Agreement rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

8. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Properties is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Properties, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Properties to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable
Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Properties, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Properties in which the fair market value of the Properties immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Deed of Trust immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Deed of Trust shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Properties immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Properties in which the fair market value of the Properties immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Deed of Trust whether or not the sums are then due.

If the Properties is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Properties or to the sums secured by this Deed of Trust, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default in any action or proceeding, whether civil or criminal is begun that, in Lender's judgment, could result in forfeiture of the Properties or other material impairment of Lender's interest in the Properties or rights under this Deed of Trust. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 16, by causing the action or proceeding to the dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Properties or other material impairment of Lender's interest in the Properties or rights under this Deed of Trust. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Properties are hereby assigned and shall be to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Properties shall be applied in the order provided for in Section 2.

9. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment of the sums secured by this Deed of Trust granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability
of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender’s acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

10. Joint and Several Liability; Successors and Assigns Bound. Borrower covenants and agrees that Borrower’s obligations and liability shall be joint and several. Subject to the provisions of Section 16, any successor in Interest of Borrower who assumes Borrower’s obligations under this Deed of Trust in writing, and is approved by Lender, shall obtain all of Borrower’s rights and benefits under this Deed of Trust. Borrower shall not be released from Borrower’s obligations and liability under this Deed of Trust unless Lender agrees to such release in writing. The covenants and agreements of this Deed of Trust shall bind (except as provided in Section 15) and benefit the successors and assigns of Lender.

11. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower’s default, for the purpose of protecting Lender’s interest in the Properties and rights under this Deed of Trust, including, but not limited to, attorneys’ fees, property inspections and valuation fees. In regard to any other fees, the absence of express authority in this Deed of Trust to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Deed of Trust or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Agreement or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Agreement). Borrower’s acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

12. Notices. All notices given by Borrower or Lender in connection with this Deed of Trust must be in writing. Any notice to Borrower in connection with this Deed of Trust shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower’s notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Addresses unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower’s change of address. If Lender specifies a procedure for reporting Borrower’s change of address, then Borrower shall only report a change of address
through that specified procedure. There may be only once designated notice address under this Deed of Trust at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Deed of Trust shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Deed of Trust is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Deed of Trust.

13. Governing Law; Severability; Rules of Construction. This Deed of Trust shall be governed by federal law and the law of the jurisdiction in which the Properties are located. All rights and obligations contained in this Deed of Trust are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as prohibition against agreement by contract. In the event that any provision or clause of this Deed of Trust or the Agreement conflicts with Applicable Law, such conflict shall not affect other provisions of this Deed of Trust or the Agreement which can be given effect without the conflicting provision.

As used in this Deed of Trust: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word “may” gives sole discretion without any obligation to take any action.

14. Borrower's Copy. Borrower shall be given one copy of the Agreement and of this Deed of Trust.

15. Transfer of the Properties or a Beneficial Interest in Borrower. As used in this Section 15, "Interest in the Property" means any legal or beneficial interest in the Properties, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Properties or any Interest in the Properties is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Deed of Trust.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 12 within which Borrower must pay all sums secured by this Deed of Trust. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Deed of Trust without further notice or demand on Borrower.

16. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Deed of Trust discontinued at any time prior to the earliest of: (a) five days before sale of the Properties pursuant to any power of sale contained in this Deed of Trust; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Deed of Trust. Those conditions are that Borrower: (a)
pays Lender all sums which then would be due under this Deed of Trust and the Agreement as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Deed of Trust, including, but not limited to, reasonable attorney’s fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender’s interest in the Properties and rights under this Deed of Trust; and (d) takes such action as Lender may reasonably require to assure that Lender’s interest in the Properties and rights under this Deed of Trust, and Borrower’s obligation to pay the sums secured by this Deed of Trust, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; or (c) certified check, bank check, treasurer’s check or cashier’s check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity. Upon reinstatement by Borrower, this Deed of Trust and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 15.

17. Hazardous Substances. As used in this Section 17: (a) “Hazardous Substances” are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) “Environmental Law” means federal laws and laws of the jurisdiction where the Properties is located that relate to health, safety or environmental protection; (c) “Environmental Cleanup” includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) “Environmental Condition” means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Properties. Borrower shall not do, nor allow anyone else to do, anything affecting the Properties: (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Properties. The preceding two sentences shall not apply to the presence, use or storage on the Properties of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Properties (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of: (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Properties and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Properties. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Properties is necessary, Borrower shall promptly take all necessary remedial actions in accordance with
Environmental law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM CONVENANTS. Borrower and Lender further covenant and agree as follows:

18. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower’s breach of any covenant or agreement in this Deed of Trust (but not prior to acceleration under Section 15 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date; not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Properties. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Deed of Trust without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 18, including, but not limited to, reasonable attorneys’ fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender’s election to cause the Properties to be sold. Trustee shall cause this notice to be recorded in each county in which any part of the Properties are located. Lender or Trustee shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the other persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Properties at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Properties by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Properties at any sale.

Trustee shall deliver to the purchaser Trustee’s deed conveying the Properties without any covenant or warranty, expressed or implied. The recitals in the Trustee’s deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee’s and attorneys’ fees; (b) to all sums secured by this Deed of Trust; and (c) any excess to the person or persons legally entitled to it.

19. Reconveyance. Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Properties and shall surrender this Deed of Trust and all Agreements evidencing debt secured by this Deed of Trust to Trustee. Trustee shall reconvey the Properties without warranty to the person or persons legally
entitled to it. Lender may charge such person or persons a reasonable fee for reconveying the Properties, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law. If the fee charged does not exceed the fee set by Applicable Law, the fee is conclusively presumed to be reasonable.

20. Statement of Obligation Fee. Lender may collect a fee not to exceed the maximum amount permitted by Applicable Law for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Deed of Trust.

THE OPEN WINDOW PROJECT, LLC,
a California Limited Liability Company

BY: ____________________________

Print Name: Zachary Cont

Title: President

APPROVED AS TO FORM:
JOHN M. LUEBBERKE
CITY ATTORNEY

BY: ____________________________

DEPUTY CITY ATTORNEY
EXHIBIT “A”

LEGAL DESCRIPTION

APN: 139-290-04, -05, -06

Lots 2, 4 and 6 in Block 75, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof, San Joaquin County Records.
ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Joaquin

On May 15, 2017, before me, Susan Lynn Will, Notary Public
(ininsert name and title of the officer)

personally appeared ________________
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: ____________________________
(Seal)

[Notary Seal Signature]
SUSAN LYNN WILL
Notary Public - California
San Joaquin County
Commission # 2150618
My Comm. Expires Apr 28, 2020
Matt,

Attached is the spreadsheet. Let me know if you have any questions.

Amanda

From: Janice Miller <Janice.Miller@stocktonca.gov>
Sent: Tuesday, May 11, 2021 2:29 PM
To: Amanda Thomas <Amanda.Thomas@stocktonca.gov>
Cc: Matt Diaz <Matt.Diaz@stocktonca.gov>
Subject: FW: OWP owners

Amanda, can you please email the spreadsheet to Matt when you get a chance? Thanks.

From: Matt Diaz <Matt.Diaz@stocktonca.gov>
Sent: Tuesday, May 11, 2021 1:11 PM
To: Carrie Wright <Carrie.Wright@stocktonca.gov>; Janice Miller <Janice.Miller@stocktonca.gov>
Subject: OWP owners

Carrie/Janice,

Do you have an updated OWP owner list? Your team sent the PDF, so I am interested in parcels in the DA area not owned by OWP LLC. I want to give them a nudge, so if you can send me an updated property list in excel, I would appreciate it.

Matt Diaz, AICP
ADVANCED PLANNING MANAGER
Community Development Department
345 N. El Dorado Street, Stockton CA 95202
Office: 209.937.8561  Direct: 209.937.8598

For the City of Stockton Updates on COVID-19, please visit:
Twitter @stocktonUpdates
Facebook @CityofStockton
City Website http://www.stocktonca.gov
## Development Agreement Properties Currently Owned by OWP

<table>
<thead>
<tr>
<th>Owner Name</th>
<th>Address</th>
<th>APN</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Open Window Project LLC</td>
<td>242 N Sutter St</td>
<td>139-250-05</td>
<td>Default notice recorded by lender 10/26/2020; City has lien as security for $760k advancement</td>
</tr>
<tr>
<td>Open Window Project LLC</td>
<td>510 E Miner Ave</td>
<td>139-250-06</td>
<td>Default notice recorded by lender 10/26/2020; City has lien as security for $760k advancement</td>
</tr>
<tr>
<td>Open Window Project LLC</td>
<td>550 E Miner Ave</td>
<td>139-250-08</td>
<td>Default notice recorded by lender 10/26/2020; City has lien as security for $760k advancement</td>
</tr>
<tr>
<td>Downtown Open Window LLC</td>
<td></td>
<td>139-250-18</td>
<td>Transferred from Open Window Project LLC 8/22/2019; Default notice recorded by lender 1/14/2021</td>
</tr>
<tr>
<td>Open Windows Project LLC</td>
<td>221 N American St</td>
<td>139-250-23</td>
<td>Default notice recorded by lender 10/26/2020; City has lien as security for $760k advancement</td>
</tr>
<tr>
<td>Downtown Open Window LLC</td>
<td></td>
<td>139-250-24</td>
<td>Transferred from Open Window Project LLC 8/22/2019; Default notice recorded by lender 1/14/2021</td>
</tr>
<tr>
<td>Open Window Project LLC</td>
<td>590 E Miner Ave</td>
<td>139-250-27</td>
<td>Default notice recorded by lender 10/26/2020; City has lien as security for $760k advancement</td>
</tr>
<tr>
<td>The Cort Group Inc</td>
<td>104/190 N. American</td>
<td>139-270-14</td>
<td>Default recorded by lender 4/6/2021</td>
</tr>
<tr>
<td>Open Window Project LLC</td>
<td>828 E Channel St</td>
<td>139-280-04</td>
<td></td>
</tr>
<tr>
<td>Open Window Project LLC</td>
<td>836 E Channel St</td>
<td>139-280-05</td>
<td></td>
</tr>
<tr>
<td>Downtown Open Window LLC</td>
<td></td>
<td>139-290-01</td>
<td>Transferred from Open Window Project LLC 8/22/2019; Default notice recorded by lender 1/14/2021</td>
</tr>
<tr>
<td>Downtown Open Window LLC</td>
<td></td>
<td>139-290-02</td>
<td>Transferred from Open Window Project LLC 8/22/2019; Default notice recorded by lender 1/14/2021</td>
</tr>
<tr>
<td>Open Window Project LLC</td>
<td>615 E Channel St</td>
<td>139-290-05</td>
<td>Default notice recorded by lender 10/26/2020; City has lien as security for $760k advancement</td>
</tr>
<tr>
<td>Open Window Project LLC</td>
<td>621 E Channel St</td>
<td>139-290-06</td>
<td>Default notice recorded by lender 10/26/2020; City has lien as security for $760k advancement</td>
</tr>
<tr>
<td>OWP Phase II LP</td>
<td>431 E Main</td>
<td>149-170-08</td>
<td>6/1/2020 Trustee sale cancelled; Re-financed 5/29/2020</td>
</tr>
<tr>
<td>OWP Phase II LP</td>
<td>445 E Main</td>
<td>149-170-09</td>
<td>6/1/2020 Trustee sale cancelled; Re-financed 5/29/2020</td>
</tr>
<tr>
<td>OWP Phase II LP</td>
<td>33, 37, 39, 43, 45 N. California</td>
<td>149-170-12</td>
<td>6/1/2020 Trustee sale cancelled; Re-financed 5/29/2020</td>
</tr>
<tr>
<td>Open Window Project LLC</td>
<td>635 E Main St</td>
<td>149-180-08</td>
<td>Default notice recorded by lender 11/20/2020;</td>
</tr>
<tr>
<td>Open Window Project LLC</td>
<td>643 E Main St</td>
<td>149-180-09</td>
<td>Default notice recorded by lender 11/20/2020;</td>
</tr>
<tr>
<td>Open Window Project LLC</td>
<td>11 N Grant St</td>
<td>149-180-22</td>
<td></td>
</tr>
<tr>
<td>Open Window Project LLC</td>
<td>803 E Main St</td>
<td>149-190-09</td>
<td>Default notice recorded by lender 11/20/2020;</td>
</tr>
<tr>
<td>Open Window Project LLC</td>
<td>811 E Main St</td>
<td>149-190-10</td>
<td>Default notice recorded by lender 11/20/2020;</td>
</tr>
<tr>
<td>Open Window Project LLC</td>
<td>819 E Main St</td>
<td>149-190-11</td>
<td>Default notice recorded by lender 11/20/2020;</td>
</tr>
<tr>
<td>WCB800Main, LLC</td>
<td>800 East Main Street</td>
<td>149-210-01</td>
<td>Transferred from Open Window Project LLC on 8/28/2018; Zac Cort is still the primary owner. Currently occupied by CAPC.</td>
</tr>
</tbody>
</table>

## Development Agreement Properties Sold by OWP

<table>
<thead>
<tr>
<th>Owner Name</th>
<th>Address</th>
<th>APN</th>
<th>Date Sold</th>
</tr>
</thead>
<tbody>
<tr>
<td>Star Property LB Invs, LLC</td>
<td>206 N Sutter St</td>
<td>139-250-03</td>
<td>8/7/2020</td>
</tr>
<tr>
<td>Star Property LB Invs, LLC</td>
<td>201 N California</td>
<td>139-250-04</td>
<td>8/7/2020</td>
</tr>
<tr>
<td>Evelyn Navarow</td>
<td>225 North American</td>
<td>139-250-12</td>
<td>9/20/2016</td>
</tr>
<tr>
<td>Varga Zoltan &amp; Young</td>
<td>545 East Channel Street</td>
<td>139-250-21</td>
<td>5/31/2019; approved by Council</td>
</tr>
<tr>
<td>One Beat Project LLC</td>
<td>210 North American</td>
<td>139-290-04</td>
<td>8/7/2019; approved by Council</td>
</tr>
<tr>
<td>Julian &amp; Alicia Guerrero</td>
<td>630 E Weber Ave</td>
<td>149-180-03</td>
<td>12/20/2019</td>
</tr>
<tr>
<td>Julian &amp; Alicia Guerrero</td>
<td>646 E Weber Ave</td>
<td>149-180-04</td>
<td>12/20/2019</td>
</tr>
<tr>
<td>Star Property LB Invs, LLC</td>
<td>216 N California St</td>
<td>139-250-26</td>
<td>8/7/2020</td>
</tr>
<tr>
<td>Star Property LB Invs, LLC</td>
<td>843 E Weber Ave</td>
<td>149-280-07</td>
<td>9/24/2020</td>
</tr>
<tr>
<td>KPA Cal LLC</td>
<td>29 N Aurora</td>
<td>149-190-06</td>
<td>ERC 5/13/20 to convert to residential; was told property sold in May 2020 to KPA Cal LLC; Recorded deed 2020-057859 in SJ Recorder. 2nd ERC 11/12/20; Default notice recorded by lender 11/23/2020</td>
</tr>
<tr>
<td>RVDF LLC</td>
<td>No address</td>
<td>149-190-03</td>
<td>4/2/2021</td>
</tr>
<tr>
<td>RVDF LLC</td>
<td>832 E Weber</td>
<td>149-190-04</td>
<td>4/2/2021</td>
</tr>
<tr>
<td>RVDF LLC</td>
<td>25 N Aurora St</td>
<td>149-190-07</td>
<td>4/2/2021</td>
</tr>
</tbody>
</table>

## Development Agreement Properties NOT owned by OWP

<table>
<thead>
<tr>
<th>Owner Name</th>
<th>Address</th>
<th>APN</th>
<th>Date Sold</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vinetta &amp; Sanjay Bhandari</td>
<td>216 N American</td>
<td>139-290-03</td>
<td></td>
</tr>
<tr>
<td>CKC Main Street</td>
<td>510, 511, 509 Main Street</td>
<td>149-170-27</td>
<td></td>
</tr>
<tr>
<td>Carlos Jimenez</td>
<td>707 E Main</td>
<td>149-180-24</td>
<td></td>
</tr>
<tr>
<td>Beverly Castle</td>
<td>22 N. Grant</td>
<td>149-190-08</td>
<td>Open Window/Gassner Investment LLC</td>
</tr>
<tr>
<td>Gassner Investment, LLC</td>
<td>831 E. Main Street</td>
<td>149-190-13</td>
<td></td>
</tr>
<tr>
<td>Owner Name</td>
<td>Address</td>
<td>APN</td>
<td>Notes</td>
</tr>
<tr>
<td>--------------</td>
<td>-----------------</td>
<td>----------</td>
<td>-----------------------------------------------------------------------</td>
</tr>
<tr>
<td>WPRD LLC</td>
<td>430 E Weber</td>
<td>149-170-30</td>
<td>Kendall Bldg; Default notice recorded by lender 11/23/2020</td>
</tr>
<tr>
<td>WPRD LLC</td>
<td>420 E Weber</td>
<td>149-170-29</td>
<td>Empty lot adjacent to Kendall Bldg; Default notice recorded by lender 11/23/2020</td>
</tr>
<tr>
<td>WPRD LLC</td>
<td>436 E Weber</td>
<td>149-170-11</td>
<td>Building to the east of Kendall Bldg; planning rec’d demo permit on 5/20/20; Default notice recorded by lender 11/23/2020</td>
</tr>
<tr>
<td>235 N San Joaquin</td>
<td>235 N San Joaquin</td>
<td>139-130-05</td>
<td>Occupied by Realty Church</td>
</tr>
</tbody>
</table>

As of April 5, 2021
Donna,

Thank you for your assistance.

Diana,

I need to know the status of this asap. Has an escrow account been opened and if so, when and have any funds been deposited? Our demand letter indicated that escrow was to close the end of November on 27 N California; that did not occur. If escrow is open what is the anticipated closing date? Thank you.

Amanda

What is the status on this? Thanks.

Hi Diana,

Just checking in on the status and see if you need anything else from me. Thanks!

Amanda
Attached is the Option Agreement.

From: Amanda Thomas  
Sent: Thursday, October 15, 2020 4:35 PM  
To: dcontreras@ortc.com  
Subject: RE: 27 N California payoff demand - APN 149-170-25

Diana,

I am sorry, I had the wrong date to close escrow, the date should read November 20, 2020. Please see revised letter. Please confirm receipt. Thank you.

Amanda

From: Amanda Thomas  
Sent: Thursday, October 15, 2020 4:27 PM  
To: dcontreras@ortc.com  
Subject: RE: 27 N California payoff demand - APN 149-170-25

Diana,

Please let revised demand letter. Please confirm receipt. Thank you.

Amanda

From: Amanda Thomas  
Sent: Thursday, October 15, 2020 8:34 AM  
To: dcontreras@ortc.com  
Subject: RE: 27 N California payoff demand

Hi Diana,

Just following up on this. What is the status, expected close date and have funds been deposited? Thank you.

Amanda

From: Amanda Thomas  
Sent: Tuesday, October 6, 2020 10:56 AM  
To: dcontreras@ortc.com  
Cc: Janice Miller <Janice.Miller@stocktonca.gov>; Zac Cort <zcort@tenspacedev.com>  
Subject: 27 N California payoff demand

Diana,

Attached is the payoff demand for 27 N. California. Please let me know if you have any questions. Thank you.
OPTION AGREEMENT

This Option Agreement ("Agreement"), dated as of __February 23, 2016__ (the "Effective Date," which is the date this Agreement has been approved by both the City and Authority), is entered into by and among OPEN WINDOW PROJECT, LLC, a California limited liability company ("Buyer"), CITY OF STOCKTON, a California municipal corporation ("City") and PARKING AUTHORITY OF THE CITY OF STOCKTON, a public body corporate and politic organized and existing under and by virtue of the laws of the State of California ("Authority"). City and Authority are sometimes collectively referred to herein as the "Seller".

1. **Option.** City and Authority hereby grants to Buyer, for the Option Term and upon the terms and conditions set forth in this Agreement, an exclusive and irrevocable right (the "Option") to acquire fee title to the real property located in the City of Stockton, San Joaquin County, California, as identified in Exhibit A and more particularly described in Exhibit B attached hereto and incorporated herein, together with all of City and Authority’s respective right, title and interest in and to any and all improvements located on such real property, and any and all easements, mineral rights, water rights and other rights appurtenant to such real property (all such real property, improvements, easements and rights are hereinafter collectively referred to as the "Property"). The approximately 2.42 acre Property consists of eight (8) parcels, three of which are owned by Authority and five (5) of which are owned by City (referred to individually herein as a "Parcel" and, collectively, as the "Parcels"), as identified in Exhibit A.

   (a) **Term of Option.** The term of the Option ("Option Term") shall commence on the Effective Date, and shall terminate on the fifth (5th) anniversary of the Effective Date.

   (b) **Exercise of Option.** If Buyer elects to exercise the Option to purchase one or more Parcels, Buyer shall send City and Authority written notice(s) of exercise of the Option ("Exercise Notice") indicating which Parcel(s) Buyer intends to acquire. Upon the purchase of any one of the following two (2) Authority-owned Parcels, specifically 27 N. California Street (APN 149-170-25) and 24 N. American Street (APN 149-180-05), the Buyer shall concurrently purchase all three (3) City-owned hotels, specifically 39 N. California Street (St. Leo Hotel), 431 E. Main Street (Commercial Hotel), and 445 E. Main Street (Main Hotel). Upon such exercise, City and/or Authority, as applicable, shall be obligated to sell the Parcels identified in the Exercise Notice to Buyer, and Buyer shall be obligated to purchase such Parcels from City and/or Authority, as applicable, in accordance with and subject to the terms set forth in this Agreement. The sale of the
three (3) Parcels owned by the Parking Authority will be contingent upon the approval of the National Public Finance Guarantee Corporation ("NPFG"). At any time prior to the expiration of the Option Term, Buyer shall have the right to deliver one or more Exercise Notices, each addressing one or more Parcels.

(c) **Option Fee.** As consideration for the Option, Buyer shall pay to City, for the benefit of both City and Authority, the payments described in this Paragraph 1(c) (collectively, the "**Option Fees**"). Upon execution of this Agreement, Buyer shall pay to City the sum of Ten Thousand Dollars ($10,000) (the "**Initial Option Fee Payment**"). By not later than each anniversary of the Effective Date, commencing on the first anniversary of the Effective Date and continuing for each remaining year of the Option Term until Buyer either exercises the Option for all Parcels or Buyer gives written notice to Seller that Buyer elects to terminate this Agreement, Buyer shall make a payment to City in the amount of Ten Thousand Dollars ($10,000) (collectively, the "**Annual Option Fee Payments**"). One-half of the Initial Option Fee Payment (the "**Independent Consideration**") shall be nonrefundable, and shall not be credited toward the Purchase Price. All other Option Fees (other than the Independent Consideration) paid by Buyer shall be credited toward the Purchase Price of the Parcels that Buyer elects to purchase. Upon the expiration of the Option Term, Seller shall retain the balance (if any) of all Option Fees that Buyer has paid but that have not been credited toward the Purchase Price for one or more Parcels. If Buyer fails to make any Annual Option Fee Payment by the due date for such payment (or, in the event of an inadvertent failure to timely make such payment, such later date as City Manager may agree), Buyer shall have no right to purchase any Parcels for which Escrow has not been opened, and this Agreement shall terminate.

2. **Purchase Price.** The purchase price for each Parcel ("**Purchase Price**") shall be the "**FMV Purchase Price**" for such Parcel as listed in Exhibit A, increased by a factor of two percent (2%) per year on each anniversary of the Effective Date. At the Closing for the first Parcel(s) that Buyer elects to purchase ("**First Closing**"), Buyer will pay to City and/or Authority, as applicable, the Purchase Price for such Parcel(s) less the following sums: (i) an amount equal to one-half of the Initial Option Fee Payment (the "**Option Fee Credit**"), (ii) an amount equal to the sum of all Annual Option Fee Payments paid to the date of Closing, (iii) the sum of Ten Thousand One Hundred Dollars ($10,100) (the "**HRE Credit**"), and (iv) applicable prorations as set forth in this Agreement. The HRE Credit represents Buyer’s out-of-pocket costs incurred in connection with preparation of historic resources evaluations for the three City-owned hotels located on certain Parcels, which reports have been provided by Buyer to Seller for its use and benefit. The sums specified in clauses (i), (ii) and (iii) above are collectively referred to herein as the "**Credits**". The Credits may be allocated between City and Authority as they may agree. If the aggregate amount of the Credits exceeds the Purchase Price for the Parcel(s) to be conveyed at the First Closing, any excess amount shall be credited toward Buyer’s subsequent purchase of additional Parcels.

3. **Escrow.** The parties acknowledge that Buyer may elect to purchase one or more Parcels at different times during the Option Term, and that the provisions of this Section 3 shall apply to the First Closing and to each subsequent Closing for additional Parcels Buyer elects to acquire. With the exception that upon the purchase of any one of the following two (2) Parking Authority-owned Parcels, specifically 27 N. California Street (APN 149-170-25) and 24 N. American Street (APN 149-180-05), the Buyer shall concurrently purchase all three (3) City-
owned hotels, specifically 39 N. California Street (St. Leo Hotel), 431 E. Main Street (Commercial Hotel) and 445 E. Main Street (Main Hotel). Within five (5) business days after Buyer’s exercise of the Option as to one or more Parcels, Buyer will open escrow ("Escrow") with a title company mutually agreeable to the parties ("Escrow Agent" or "Title Company").

(a) Closing and Closing Date. Subject to satisfaction of the Conditions Precedent (defined below), for each Parcel Buyer elects to acquire, the purchase and sale shall occur, and Escrow shall close ("Closing") within 45 days of Buyer’s exercise of the Option for such Parcel(s), or such other date prior to the expiration of the Option Term as agreed upon by the parties (the “Closing Date”).

(b) Delivery of Deed and Possession. At least three (3) business days prior to the Closing Date, City and/or Authority, as applicable, shall execute and deliver to Escrow Agent grant deed(s) for the Parcel(s) Buyer elects to acquire using the Title Company’s standard form of grant deed. Upon the Closing for each Parcel Buyer elects to acquire, the grant deed(s) shall be recorded in the official records of San Joaquin County, and City and/or Authority, as applicable, shall deliver to Buyer exclusive possession of the acquired Parcel(s), free and clear of all leases, tenancies, encumbrances, liens and title exceptions other than those approved by Buyer.

(c) Deposit of Funds. On or before the Closing Date, Buyer will deliver to Escrow Agent the Purchase Price for the Parcel(s) Buyer has elected to acquire, minus the Credits (or, if applicable, the balance of the Credits remaining following any prior Closing) and Buyer’s share of charges pursuant to Paragraphs 3(e) and 3(f). On or before the Closing Date, City and/or Authority, as applicable, will deliver to Escrow Agent, City and/or Authority’s share of charges pursuant to Paragraphs 3(e) and 3(f).

(d) Supplemental Escrow Instructions. Escrow Agent shall close Escrow for each Parcel Buyer elects to acquire in accordance with supplemental escrow instructions mutually acceptable to Buyer and City and/or Authority, as applicable, which instructions shall be consistent with this Agreement.

(e) Closing Costs. For each Parcel that Buyer elects to acquire, Buyer on the one hand, and City and/or Authority, as applicable, on the other shall each pay fifty percent (50%) of all escrow charges, recording fees, transfer taxes, documentary transfer taxes, and premiums for Buyer’s Title Policy (as defined in Section 4 below) for each Parcel Buyer elects to acquire. Buyer shall pay the cost of any survey required in connection with the issuance of the Title Policy.

(f) Prorations. All real estate taxes, assessments and utility charges relating to the Parcel(s) that Buyer elects to acquire shall be prorated between City and/or Authority, as applicable, and Buyer as of the Closing, and shall be debited from or credited to cash payable by Buyer at the Closing for the applicable Parcel(s).

4. Title. For each Parcel Buyer elects to acquire, Buyer will obtain a preliminary title report ("Preliminary Report") from Title Company, and will review the Preliminary Report and title matters. By not later than 20 days prior to the Closing Date for each Parcel Buyer elects to acquire, Buyer shall provide written notice to Seller specifying which, if any, title exceptions affecting such Parcel(s) that Buyer approves (the "Permitted Exceptions"). Title Company’s commitment to issue to Buyer an ALTA owner’s policy of title insurance in the
amount of the applicable Purchase Price, insuring Buyer’s fee interest in the Parcel(s) subject only to the Permitted Exceptions ("Title Policy") shall be a condition to Closing for such Parcel(s).

5. **Feasibility Investigations.** Prior to the expiration of the Option Term, Buyer shall have the right to enter onto the Property to conduct any inspections and tests that Buyer deems necessary, including, without limitation, Phase 1 and Phase 2 evaluations, soils tests, surveys, engineering studies, environmental studies, and other evaluations as Buyer deems necessary in Buyer’s discretion. Prior to entry upon the Property, Buyer shall provide notice to City and/or Authority, as applicable, regarding the nature of the tests to be performed, the entity that will perform the tests, and the time and date of the testing. Buyer will execute a Right of Entry Agreement in form reasonably acceptable to Buyer and Seller, pursuant to which Buyer will provide proof of insurance acceptable to the Seller and indemnify, Seller from and against any claims, expenses and liabilities that arise from Buyer’s and Buyer’s employees, contractors or agents entry onto the Property, except to the extent any such claims, expenses or liabilities result from the sole or active negligence of Seller or Seller’s employees, contractors or agents, or result from the mere discovery of hazardous materials or other conditions in, on, under or about the Property.

6. **AS-IS Condition; Demolition; Relocation.** Buyer’s acquisition of one or more Parcels pursuant to this Agreement shall be on an AS-IS basis. Following the Closing Date for the applicable Parcels, Buyer shall have the right to demolish the improvements located thereon at Buyer’s sole expense and in compliance with all applicable laws and regulations. Buyer shall have no obligation to pay relocation benefits, assistance and/or payments of any kind to, or on behalf of, any person or entity occupying the Property or part thereof, it being understood that Seller shall have the sole responsibility for payment of any such benefits, assistance and/or payments that may be required under the Federal Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Public Law 91-646) or California Government Code Section 7260 et seq.

7. **Conditions Precedent to Buyer’s Obligations.** Following Buyer’s exercise of the Option with respect to one or more Parcels, Buyer’s obligation to purchase such Parcels is subject to satisfaction of all of the following conditions precedent ("Conditions Precedent"): 

   (a) The Title Company’s irrevocable commitment to issue the Title Policy to Buyer for each Parcel Buyer elects to acquire;

   (b) No adverse change to the physical or entitlement status of the Parcels) shall have occurred between the date of Buyer’s exercise of the Option and the Closing Date; and

   (c) Seller’s performance of its obligations under this Agreement, and the continued truth and accuracy of Seller’s representations and warranties set forth in this Agreement.

8. **Seller’s Representations and Warranties.** Seller hereby represents and warrants to Buyer as of the Effective Date and as of the Closing Date for each Parcel:

   (a) Prior to the Closing Date for each Parcel, City and Authority have delivered true and complete copies of all Due Diligence Information with respect to the
Parcels. "Due Diligence Information" means all material information relating to the Parcels (including, without limitation, title information, surveys, environmental reports, engineering studies, legal notices, permits, and approvals), which information is in City and/or Authority's possession or under City and/or Authority’s control.

(b) This Agreement and all documents delivered by City and/or Authority to Buyer, now or at the Closing, have been freely negotiated by City and Authority, and neither City nor Authority is under any duress or compulsion, and each has entered into this Agreement as a considered business decision that City and Authority has each determined to be in its best interest.

(c) This Agreement and all documents delivered by City and/or Authority to Buyer, now or at the Closing, have been, or shall be, duly authorized and executed and delivered by City and/or Authority, are legal, valid and binding obligations of City and/or Authority, and do not violate any agreement to which City and/or Authority is a party or any order by which City and/or Authority is bound.

(d) There are no lawsuits, claims, suits, proceedings or investigations, pending or threatened, affecting or relating to the Property or part thereof, or affecting the legality or propriety of the transactions contemplated by this Agreement.

(e) Seller has not alienated, encumbered, transferred, optioned, leased, assigned, transferred or otherwise conveyed its interest or any portion of its interest in the Property or any portion thereof, nor has Seller entered into any agreement (other than this Agreement) to do so.

(f) There are no encroachments, conflicts in boundary lines or ownership interests claimed by any person affecting the Property or any portion thereof except as disclosed in writing to Buyer.

(g) The Property is free and clear of all leases, tenancies and occupancies.

(h) Seller has not dealt with any real estate broker or finder, or incurred any liability for any commission or fee to any real estate broker or finder, in connection with this Agreement or the sale of the Property to Buyer.

(i) Prior to the Closing Date, NPFG and all other third parties whose approval of the sale of one or more of the Parcels is required to be obtained by City or Authority, have approved this Agreement and each of the transactions provided herein.

9. Buyer's Representations and Warranties. Buyer hereby represents and warrants to Seller as of the Effective Date and as of the Closing Date for each Parcel:

(a) Buyer is a corporation, duly organized and validly existing under the laws of the State of California. Buyer has full power and authority to enter into this Agreement and to perform its obligations under this Agreement. The execution, delivery and performance of this Agreement and all documents required hereunder by Buyer have been duly and validly authorized by all necessary action on the part of Buyer, and all required consents and approvals have been duly obtained, and do not violate any agreement to which Buyer is a party, or any order by which Buyer is bound.
(b) Buyer has not dealt with any real estate broker or finder, or incurred any liability for any commission or fee to any real estate broker or finder, in connection with this Agreement or the sale of the Property to Buyer.

(c) Buyer on behalf of itself and its successors and assigns agrees not to develop any of the subject Parcels for the sole purpose of offering paid public parking. Any parking facilities developed on the subject Parcels will be solely for the use of homeowners or residential or commercial tenants, including their respective invitees and customers, of the development project or portion thereof, which Buyer intends to develop on the Parcels and other properties as provided in the Development Agreement between Buyer and City dated February 23, 2016, recorded in the Official Records on __________, as Instrument No. __________ (“Development Agreement”). The obligations of Buyer under this Section 9(c), shall survive the Closing and continue in effect until the date which is ten (10) years following the applicable Closing Date for sale of the Parcel(s).

10. Seller’s Covenants. Seller covenants and agrees with Buyer as follows:

(a) Between the Effective Date and the Closing Date for sale of applicable Parcel(s), City and/or Authority shall maintain the Parcel(s) and the improvements thereon in accordance with sound property management practice, comply in all material respects with all covenants, conditions, restrictions, laws, statutes, rules, regulations and ordinances applicable to the Property, and immediately give Buyer copies of all notices received by Seller asserting any violation of any covenants, conditions, restrictions, laws, statutes, rules, regulations or ordinances applicable to the Property.

(b) Seller shall not use, produce, process, manufacture, generate, treat, handle, store or dispose of any hazardous substances in, on or under the Property, or use the Property for any such purposes, or release any hazardous substances into any air, soil, surface water or groundwater comprising the Property, or permit any person using or occupying the Property or any part thereof to do any of the foregoing, provided, however, Seller may use, handle and store hazardous substances of types and in quantities typically used in or around residential and commercial properties in accordance with all applicable laws. Between the Effective Date and the expiration of the Option Term, Seller shall comply, and shall use reasonable efforts to cause all persons using or occupying the Property or any part thereof to comply, with all environmental laws applicable to the Property, or the use or occupancy thereof, or any operations or activities therein or thereon.

(c) Between the date of this Agreement and the expiration of the Option Term, Seller shall not in any manner sell, convey, assign, transfer, encumber or otherwise dispose of the Property or any part thereof or interest therein; provided, however, may remove any tangible personal property. Without limiting the foregoing, Seller shall not enter into any agreement or alter the condition of title to the Property if the same would affect the Property or Buyer after the Closing for the applicable Parcel(s) without Buyer’s prior consent. If Buyer so consents, such encumbrance shall become Permitted Exceptions (as provided in Section 4).
(d) Seller has provided, or within five (5) business days following the Effective Date, shall provide to Buyer all surveys, studies, reports and analyses applicable to the Property or part thereof in Seller’s possession or control.

11. Entitlements. Buyer may process any entitlements that Buyer deems necessary or appropriate for its proposed development of the Property or part thereof. Seller shall fully cooperate with Buyer, in the processing of all entitlements sought by Buyer, including signing any and all applications Buyer may request within five business days after Seller receives the request.

12. Allocation of Environmental Liabilities. The parties agree that the Purchase Price for each Parcel is based on an assumption that there are no adverse environmental conditions on the Property or any part thereof. The parties acknowledge that if Buyer determines, in Buyer’s reasonable judgment, that adverse environmental conditions do exist on the Property or any part thereof, the parties shall negotiate in good faith, prior to the expiration of the Option Term, the manner in which such conditions will be remedied and/or compensated, including, without limitation, adjustment to the Purchase Price and/or allocation of responsibility for potential liabilities, remediation, removal, and/or the costs incurred thereby.

13. LIQUIDATED DAMAGES. IF THE PURCHASE AND SALE OF ANY PARCEL DOES NOT OCCUR AS REQUIRED BY THIS AGREEMENT AFTER BUYER EXERCISES ITS OPTION SOLELY AS A RESULT OF BUYER’S DEFAULT, SELLER’S DAMAGES INCURRED BY REASON THEREOF ARE AND WILL BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN. IN A REASONABLE EFFORT TO ASCERTAIN WHAT SELLER’S DAMAGES WOULD BE IN THE EVENT OF BUYER’S BREACH OR DEFAULT, SELLER AND BUYER AGREE THAT AN AMOUNT EQUAL TO THE SUM OF THE OPTION FEES (NOT TO EXCEED $5,000) THAT WOULD OTHERWISE BE CREDITED TO THE PURCHASE PRICE FOR THE APPLICABLE PARCEL(S) SHALL BE LIQUIDATED DAMAGES (THE “LIQUIDATED DAMAGES”) FOR SUCH DEFAULT, WHICH LIQUIDATED DAMAGES SHALL BE SELLER’S SOLE REMEDY AT LAW OR IN EQUITY IN THE EVENT OF AND FOR SUCH DEFAULT. SELLER WAIVES ANY AND ALL RIGHT TO SEEK OTHER RIGHTS OR REMEDIES AGAINST BUYER, INCLUDING WITHOUT LIMITATION, THE RIGHTS AND REMEDIES SET FORTH IN CALIFORNIA CIVIL CODE SECTION 3389 TO A REMEDY OF SPECIFIC PERFORMANCE. THE PAYMENT AND RETENTION OF THE LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. CITY AND AUTHORITY MAY ALLOCATE BETWEEN THEM AS THEY MAY AGREE ANY LIQUIDATED DAMAGES RETAINED BY SELLER UNDER THIS SECTION.

(Seller’s Initials)  (Buyer’s Initials)

14. Notices. Any notice or communication required hereunder between Seller and Buyer ("Notice") must be in writing, and may be given either personally, by registered or certified mail (return receipt requested), or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a Notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by registered or certified mail, such
Notice shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom Notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such Notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a Notice shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any party hereto may at any time, by giving ten (10) days written Notice to the other party hereto, designate any other address in substitution of the address to which such Notice shall be given. Such Notices shall be given to the parties at their respective addresses set forth below:

To City: City of Stockton
425 North El Dorado Street
Stockton, CA 95202
Attention: City Clerk
Tel: (209) 937-8458

with a copy to: City of Stockton
425 North El Dorado Street
Stockton, CA 95202
Attention: Economic Development Director
Tel: (209) 937-8539

To Authority: Parking Authority
425 North El Dorado Street
Stockton, CA 95202
Attn: Parking Manager

To Buyer: Open Window Project, LLC
115 N. Sutter Street, Suite 307
Stockton, CA 95202
Attention: Zachary Cort
Tel: (209) 469-2678

with a copy to: Gerald J. Ramiza, Esq.
Burke Williams & Sorensen LLP
1901 Harrison Street, 9th Floor
Oakland, CA 94501
Tel: (510) 273-8780

15. Attorneys’ Fees. If an action is brought to enforce the rights of a party under this Agreement, the prevailing party shall be entitled to recover its costs of enforcement, including reasonable attorneys’ fees and court costs.

16. Binding Agreement. This Agreement supersedes all prior and contemporaneous discussions, agreements and understandings between Seller and Buyer with respect to the subject matter of this Agreement, and constitutes the entire agreement between Seller and Buyer with respect thereto.
17. Amendments. This Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

18. Seller Option to Repurchase, Reenter and Repossess. Subject to the notice and reasonable opportunity to cure, City and/or Authority, as applicable, shall have the additional right, at its option, to repurchase, reenter and take possession of one or more Parcel(s) if:

(a) Subject to Force Majeure Delay (as defined in Section 7.2 of the Development Agreement), Buyer fails to submit a complete application for an architectural review permit to construct a development project or portion thereof on the Parcel(s) in question by the date which is 5 years following conveyance of title to such Parcel(s) to Buyer and thereafter diligently pursue issuance of a building permit; or

(b) Subject to Force Majeure Delay, after obtaining a building permit for construction of such development project or portion thereof, Buyer fails to commence construction thereof within 6 months after obtaining such permit.

Such right to repurchase, reenter and repossess, to the extent provided in this Agreement, shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

(i) Any mortgage, deed of trust or other security instrument recorded against such Parcel(s); or

(ii) Any rights or interests provided in the Development Agreement for the protection of the holder of such mortgages, deeds of trust or other security instruments.

To exercise its right to repurchase, reenter and take possession with respect to the Parcel(s) in question, City or Authority, as applicable, shall pay to Buyer in cash an amount equal to:

(1) The Purchase Price paid by Buyer for the Parcel(s) in question; less

(2) The total amount of any mortgages, deeds of trust or other liens encumbering the Parcel(s) in question at the time of the repurchase, reentry and repossession.

In order to exercise such purchase option, City and/or Authority, as applicable, shall give Buyer written notice of such exercise. City and/or Authority, as applicable, within thirty (30) days thereafter, shall pay to Buyer in cash all sums owing pursuant to this Section 18, and Buyer shall thereupon execute and deliver to City or Authority, as applicable, a grant deed transferring to City or Authority, as applicable, all of Buyer’s interest in the Parcel(s) in question.

Seller’s rights under this Section 18 shall automatically terminate as of the date of issuance of a building permit for construction of the 400th residential unit within the Downtown Stockton Open Window Project Master Development Plan boundary. Upon Buyer’s request made at any time following issuance of the building permit for such 400th residential unit, Seller shall execute, acknowledge and deliver to Seller for recordation in the Official Records, an instrument memorializing termination of Seller’s option to repurchase, reenter and repossess.
19. **Buyer Remedies.** Subject to the notice and reasonable opportunity to cure not to exceed 30 calendar days, upon the occurrence of a default by City and/or Authority, as applicable, Buyer shall have the right, in addition to any other rights or remedies, to institute any action at law or in equity to cure, correct, prevent or remedy any such default, or to recover actual damages. Notwithstanding any other provisions of this Agreement to the contrary, Buyer shall not be entitled to recover any consequential, special or punitive damages against Seller.

20. **Assignment by Buyer.** Buyer shall have the right to assign this Agreement without Seller consent to any entity which controls, is controlled by, or under common control with Buyer (each, an “Affiliate”). In addition, upon the Closing for any Parcel(s), Buyer shall have the right to direct Seller to convey title to any Affiliate entity designated by Buyer. Buyer will give Seller written notice of any such assignment. Except as otherwise provided above, this Agreement may not be assigned by Buyer to any person or entity without Seller’s consent, which may be granted or denied in Seller’s sole discretion.

21. **Governing Law; Venue.** This Agreement shall be governed and construed in accordance with the laws of the State of California, without reference to its choice of law rules. The exclusive venue for any disputes or legal actions shall be the Superior Court of California in and for the County of San Joaquin, except for actions that include claims in which the Federal District Court for the Eastern District of the State of California has original jurisdiction, in which case the Eastern District of the State of California shall be the proper venue.

22. **Waivers.** No waiver of any provision of this Agreement or any breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving party, and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other or subsequent breach of this Agreement.

23. **Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns.

24. **Severability.** If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties.

25. **Construction.** Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Agreement. This Agreement has been reviewed and revised by legal counsel for Seller and Buyer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement. Unless the context clearly requires otherwise, (i) the plural and singular numbers shall each be deemed to include the other; (ii) the masculine, feminine, and neuter genders shall each be deemed to include the others; (iii) “shall,” “will,” or “agrees” are mandatory, and “may” is permissive; (iv) “or” is not exclusive; (v) “include,” “includes” and “including” are not limiting and shall be construed as if followed by the words “without limitation,” and (vi) “days” means calendar days unless specifically provided otherwise.

26. **No Joint Venture.** Seller and Buyer hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Buyer and agree that nothing
contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between Seller and Buyer.

27. **Survival of Terms.** Any indemnity provided for herein, and any other provision of this Agreement which, by its terms, is to be performed after the Closing, shall survive the Closing until full performance thereof. The representations, warranties, covenants, terms and conditions of this Agreement shall also survive the Closing.

28. **Time.** Time is of the essence of this Agreement and of the performance of all the terms, covenants and conditions contained in this Agreement.

29. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one agreement.

30. **Seller Approvals and Actions.** Whenever a reference is made herein to an action or approval to be undertaken by Seller, the City Manager or his/her designee is authorized to act on behalf of Seller, unless specifically provided otherwise or the context requires otherwise.

31. **Recording.** This Agreement shall be recorded in the Official Records of San Joaquin County within ten (10) days following the Effective Date.

[Remainder of page intentionally left blank]
IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the Effective Date.

SELLER:

CITY OF STOCKTON, a municipal corporation

By: Kurt O. Wilson, City Manager

Date: 9/19/16

ATTEST:

Bonnie Paige, City Clerk

APPROVED AS TO FORM:

Deputy City Attorney

and

PARKING AUTHORITY OF THE CITY OF STOCKTON,
a public body corporate and politic organized and existing under
and by virtue of the laws of the State of California

By: Kurt O. Wilson, Executive Director

Date: 9/19/16

APPROVED AS TO FORM:

Deputy General Counsel for Parking Authority
of City of Stockton

ATTEST:

Secretary for the Parking Authority

BUYER:

OPEN WINDOW PROJECT, LLC
a California limited liability company

By: Zachary Cort

Its: ___________________________
ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Joaquin

On May 19, 2016 before me, Karen A. Costa, Notary Public
(insert name and title of the officer)

personally appeared Laurie Montes
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Karen A. Costa

(Seal)
# Exhibit A

## PROPERTY

<table>
<thead>
<tr>
<th>Property Address</th>
<th>APN</th>
<th>City or Parking Authority Owned</th>
<th>FMV Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>216 N California</td>
<td>139-250-26</td>
<td>Parking Authority</td>
<td>$88,500</td>
</tr>
<tr>
<td>39 N California – St. Leo Hotel</td>
<td>149-170-12</td>
<td>City</td>
<td>$20,000</td>
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<td>149-170-25</td>
<td>Parking Authority</td>
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<td>149-170-08</td>
<td>City</td>
<td>$20,000</td>
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<td>445 E Main – Main Hotel</td>
<td>149-170-09</td>
<td>City</td>
<td>$20,000</td>
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<td>24 N American</td>
<td>149-180-05</td>
<td>Parking Authority</td>
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<tr>
<td>25 N Grant</td>
<td>149-180-17</td>
<td>City</td>
<td>$60,000</td>
</tr>
</tbody>
</table>
Exhibit B

PARCEL LEGAL DESCRIPTIONS

Street Address: 216 N. California Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

Parcel 1:

The North 40 feet, 7 1/3 inches of each of lots two (2) and four (4) in block seventy-four (74) East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Parcel 2:

The South 60 feet 4 2/3 inches of each of lots two (2) and four (4); The South 60 feet 4 2/3 inches of the West 2 1/2 feet of lot six (6); all in block seventy-four (74), East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map of Plat thereof.

(ALL MEASUREMENTS UNITED STATES STANDARD MEASURE)

APN: 139-250-26

Street Address: 39 N. California Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

Lot 11 in Block 5 East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof.

APN: 149-170-12

Street Address: 27 N. California Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

Parcel 1:

The South 6 1/2 inches of the North one-half of the West 140 feet of Lot 13, the South one-half of Lot 13 and the North 10 feet of Lot 14 in Block 5, East of Center Street, in the City of
Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Parcel 2:

The North one-half of Lot 13 in Block 5, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Excepting therefrom the South 6 1/2 inches of the North one-half of the West 140 feet of Lot 13.

Parcel 3:

All of Lots 15 and 16 in Block 5, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Excepting therefrom the South 26.33 feet of the East 141.00 feet of Lot 16.

APN: 149-170-25

**Street Address:** 431 E. Main Street, Stockton, California

**Legal Description:** That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

Lot 8 and the west one-half of Lot 10 in Block 5 East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof.

APN: 149-170-08

**Street Address:** 445 E. Main Street, Stockton, California

**Legal Description:** That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

The East one-half of Lot 10 and all of Lot 12 in Block 5, East of Center Street, in the said City of Stockton, according to the Official Map or Plat thereof, San Joaquin County Records.

APN: 149-170-09

**Street Address:** 24 N. American Street, Stockton, California

**Legal Description:** That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:
Lots 13, 14, 15 and 16 in Block 7, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof, San Joaquin County records.

APN: 149-180-05

Street Address: 725 E. Main Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

All of Lots 8 and 10 in Block 8 East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof.

Also all that part of Lot 6 in Block 8 East of Center Street, being the East 46 1/2 feet thereof, more or less, bounded on the West by the centerline of a division wall running North and South between certain buildings, and being all of said Lot 6, except the part thereof conveyed by Rudolph Gnekow and wife to their sons and daughters by Deed dated February 3, 1913 and recorded in Book "A" of Deeds, Vol. 208, page 106, San Joaquin County Records.

APN: 149-180-21

Street Address: 25 N. Grant Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

Lot 16 and the West 1/3 of Lot 15 in Block 8, East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof, San Joaquin County Records.

APN: 149-180-17
ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _______________ San Joaquin _______________

On May 17, 2016 before me, Audrey E. Ogden, Notary Public
(insert name and title of the officer)

personally appeared Zachary Cort
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature __________________________ (Seal)
October 15, 2020

Diana Contreras  
Old Republic Title Company  
3425 Brookside Road, Suite C  
Stockton, CA  95219

REVISED PAYOFF DEMAND FOR 27 NORTH CALIFORNIA STREET, STOCKTON CA

In response to your request for a payoff demand for the above referenced property being acquired from the City of Stockton Parking Authority by Zac Cort of Ten Space, our records indicate $194,297 is due for 27 North California Street.

In addition, please include a deed restriction on the parcel indicating the property cannot be used for general public parking per the Option Agreement dated February 23, 2016 between Open Window Project, LLC and City of Stockton and Parking Authority of the City of Stockton; Section 9(c) of the agreement states:

(c) Buyer on behalf of itself and its successors and assigns agrees not to develop any of the subject Parcels for the sole purpose of offering paid parking. Any parking facilities developed on the subject Parcels will be solely for the use of the homeowners or residential or commercial tenants, including their respective invitees and customers, of the development project or portion thereof, which Buyer intends to develop on the Parcels and other properties as provided in the Development Agreement between Buyer and City dated February 23, 2016 recorded in the Official Records on July 20, 2016, as Instrument No. 2016-084447 (“Development Agreement”). The obligations of Buyer under this Section 9(c), shall survive the Closing and continue in effect until the date which is ten (10) years following the applicable Closing date for sale of the Parcel(s).

Further, per Section 3(a) of the Option Agreement, escrow is to close within 45 days of Buyer’s exercise of the Option. In accordance with the agreement, the City expects escrow to close no later than November 20, 2020, and funds received the same day.

If you have any questions, please call Amanda Thomas, Real Property Agent, at (209) 937-7540 or e-mail at amanda.thomas@stocktonca.gov.

Thank you.

JANICE MILLER, ASSISTANT DIRECTOR  
ECONOMIC DEVELOPMENT DEPARTMENT

JM:AT  
Enclosure
Hi Deb,

Can someone on Diana’s team answer some questions for me regarding an escrow at 27 N California with Open Window? I’ve tried e-mailing and calling, but her voicemail is full. I’ve also tried e-mailing teamcontreras but that came back undeliverable. Thanks so much. Hope everything is well. I am working at home this week, if its easier to call please have someone call me on my cell [redacted].
Connie Cochran

From: Amanda Thomas
Sent: Tuesday, December 15, 2020 3:38 PM
To: dcontreras@ortc.com; teamcontreras@ortc.com
Subject: RE: 27 N California payoff demand - APN 149-170-25

Hi Diana,

I really need an answer on this. I am working from home this week, please call me on my cell at 209-601-1777 if that is easier. I tried leaving you a voicemail but your mailbox is full. Thank you!

From: Amanda Thomas
Sent: Monday, December 14, 2020 1:56 PM
To: dcontreras@ortc.com
Subject: RE: 27 N California payoff demand - APN 149-170-25
Importance: High

Diana,

I need to know the status of this asap. Has an escrow account been opened and if so, when and have any funds been deposited? Our demand letter indicated that escrow was to close the end of November on 27 N California; that did not occur. If escrow is open what is the anticipated closing date? Thank you.

Amanda

From: Amanda Thomas
Sent: Monday, November 23, 2020 11:37 AM
To: dcontreras@ortc.com
Subject: RE: 27 N California payoff demand - APN 149-170-25

What is the status on this? Thanks.

From: Amanda Thomas
Sent: Tuesday, November 3, 2020 7:57 AM
To: dcontreras@ortc.com
Subject: RE: 27 N California payoff demand - APN 149-170-25

Hi Diana,

Just checking in on the status and see if you need anything else from me. Thanks!

Amanda

From: Amanda Thomas
Sent: Thursday, October 15, 2020 4:46 PM
To: dcontreras@ortc.com
Subject: RE: 27 N California payoff demand - APN 149-170-25
Attached is the Option Agreement.

From: Amanda Thomas  
Sent: Thursday, October 15, 2020 4:35 PM  
To: dcontreras@ortc.com  
Subject: RE: 27 N California payoff demand - APN 149-170-25

Diana,

I am sorry, I had the wrong date to close escrow, the date should read November 20, 2020. Please see revised letter. Please confirm receipt. Thank you.

Amanda

From: Amanda Thomas  
Sent: Thursday, October 15, 2020 4:27 PM  
To: dcontreras@ortc.com  
Subject: RE: 27 N California payoff demand - APN 149-170-25

Diana,

Please let revised demand letter. Please confirm receipt. Thank you.

Amanda

From: Amanda Thomas  
Sent: Thursday, October 15, 2020 8:34 AM  
To: dcontreras@ortc.com  
Subject: RE: 27 N California payoff demand

Hi Diana,

Just following up on this. What is the status, expected close date and have funds been deposited? Thank you.

Amanda

From: Amanda Thomas  
Sent: Tuesday, October 6, 2020 10:56 AM  
To: dcontreras@ortc.com  
Cc: Janice Miller <Janice.Miller@stocktonca.gov>; Zac Cort <zcort@tenspacedev.com>  
Subject: 27 N California payoff demand

Diana,

Attached is the payoff demand for 27 N. California. Please let me know if you have any questions. Thank you.

Amanda Thomas, Real Property Agent  
City of Stockton - Economic Development Department  
400 E. Main Street, 4th Floor, Stockton, CA 95202  
amanda.thomas@stocktonca.gov | 209.937.7540
Attached is the Option Agreement.

From: Amanda Thomas  
Sent: Thursday, October 15, 2020 4:35 PM  
To: dcontreras@ortc.com  
Subject: RE: 27 N California payoff demand - APN 149-170-25  

Diana,

I am sorry, I had the wrong date to close escrow, the date should read November 20, 2020. Please see revised letter. Please confirm receipt. Thank you.

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From: Amanda Thomas  
Sent: Thursday, October 15, 2020 4:27 PM  
To: dcontreras@ortc.com  
Subject: RE: 27 N California payoff demand - APN 149-170-25  

Diana,

Please let revised demand letter. Please confirm receipt. Thank you.

Amanda

From: Amanda Thomas  
Sent: Thursday, October 15, 2020 8:34 AM  
To: dcontreras@ortc.com  
Subject: RE: 27 N California payoff demand  

Hi Diana,

Just following up on this. What is the status, expected close date and have funds been deposited? Thank you.

Amanda

From: Amanda Thomas  
Sent: Tuesday, October 6, 2020 10:56 AM  
To: dcontreras@ortc.com  
Cc: Janice Miller <Janice.Miller@stocktonca.gov>; Zac Cort <zcort@tenspacedev.com>  
Subject: 27 N California payoff demand
Diana,

Attached is the payoff demand for 27 N. California. Please let me know if you have any questions. Thank you.

Amanda Thomas, Real Property Agent
City of Stockton - Economic Development Department
400 E. Main Street, 4th Floor, Stockton, CA 95202
amanda.thomas@stocktonca.gov | 209.937.7540
OPTION AGREEMENT

This Option Agreement ("Agreement"), dated as of February 23, 2016 (the "Effective Date," which is the date this Agreement has been approved by both the City and Authority), is entered into by and among OPEN WINDOW PROJECT, LLC, a California limited liability company ("Buyer"), CITY OF STOCKTON, a California municipal corporation ("City") and PARKING AUTHORITY OF THE CITY OF STOCKTON, a public body corporate and politic organized and existing under and by virtue of the laws of the State of California ("Authority"). City and Authority are sometimes collectively referred to herein as the "Seller".

1. **Option.** City and Authority hereby grants to Buyer, for the Option Term and upon the terms and conditions set forth in this Agreement, an exclusive and irrevocable right (the "Option") to acquire fee title to the real property located in the City of Stockton, San Joaquin County, California, as identified in Exhibit A and more particularly described in Exhibit B attached hereto and incorporated herein, together with all of City and Authority’s respective right, title and interest in and to any and all improvements located on such real property, and any and all easements, mineral rights, water rights and other rights appurtenant to such real property (all such real property, improvements, easements and rights are hereinafter collectively referred to as the "Property"). The approximately 2.42 acre Property consists of eight (8) parcels, three of which are owned by Authority and five (5) of which are owned by City (referred to individually herein as a "Parcel" and, collectively, as the "Parcels"), as identified in Exhibit A.

   a) **Term of Option.** The term of the Option ("Option Term") shall commence on the Effective Date, and shall terminate on the fifth (5th) anniversary of the Effective Date.

   b) **Exercise of Option.** If Buyer elects to exercise the Option to purchase one or more Parcels, Buyer shall send City and Authority written notice(s) of exercise of the Option ("Exercise Notice") indicating which Parcel(s) Buyer intends to acquire. Upon the purchase of any one of the following two (2) Authority-owned Parcels, specifically 27 N. California Street (APN 149-190-25) and 24 N. American Street (APN 149-180-05), the Buyer shall concurrently purchase all three (3) City-owned hotels, specifically 39 N. California Street (St. Leo Hotel), 431 E. Main Street (Commercial Hotel), and 445 E. Main Street (Main Hotel). Upon such exercise, City and/or Authority, as applicable, shall be obligated to sell the Parcels identified in the Exercise Notice to Buyer, and Buyer shall be obligated to purchase such Parcels from City and/or Authority, as applicable, in accordance with and subject to the terms set forth in this Agreement. The sale of the
three (3) Parcels owned by the Parking Authority will be contingent upon the approval of the National Public Finance Guarantee Corporation ("NPFG"). At any time prior to the expiration of the Option Term, Buyer shall have the right to deliver one or more Exercise Notices, each addressing one or more Parcels.

(c) **Option Fee.** As consideration for the Option, Buyer shall pay to City, for the benefit of both City and Authority, the payments described in this Paragraph 1(c) (collectively, the "Option Fees"). Upon execution of this Agreement, Buyer shall pay to City the sum of Ten Thousand Dollars ($10,000) (the "Initial Option Fee Payment"). By not later than each anniversary of the Effective Date, commencing on the first anniversary of the Effective Date and continuing for each remaining year of the Option Term until Buyer either exercises the Option for all Parcels or Buyer gives written notice to Seller that Buyer elects to terminate this Agreement, Buyer shall make a payment to City in the amount of Ten Thousand Dollars ($10,000) (collectively, the "Annual Option Fee Payments"). One-half of the Initial Option Fee Payment (the "Independent Consideration") shall be nonrefundable, and shall not be credited toward the Purchase Price. All other Option Fees (other than the Independent Consideration) paid by Buyer shall be credited toward the Purchase Price of the Parcels that Buyer elects to purchase. Upon the expiration of the Option Term, Seller shall retain the balance (if any) of all Option Fees that Buyer has paid but that have not been credited toward the Purchase Price for one or more Parcels. If Buyer fails to make any Annual Option Fee Payment by the due date for such payment (or, in the event of an inadvertent failure to timely make such payment, such later date as City Manager may agree), Buyer shall have no right to purchase any Parcels for which Escrow has not been opened, and this Agreement shall terminate.

2. **Purchase Price.** The purchase price for each Parcel ("Purchase Price") shall be the "FMV Purchase Price" for such Parcel as listed in Exhibit A, increased by a factor of two percent (2%) per year on each anniversary of the Effective Date. At the Closing for the first Parcel(s) that Buyer elects to purchase ("First Closing"), Buyer will pay to City and/or Authority, as applicable, the Purchase Price for such Parcel(s) less the following sums: (i) an amount equal to one-half of the Initial Option Fee Payment (the "Option Fee Credit"), (ii) an amount equal to the sum of all Annual Option Fee Payments paid to the date of Closing, (iii) the sum of Ten Thousand One Hundred Dollars ($10,100) (the "HRE Credit"), and (iv) applicable prorations as set forth in this Agreement. The HRE Credit represents Buyer’s out-of-pocket costs incurred in connection with preparation of historic resources evaluations for the three City-owned hotels located on certain Parcels, which reports have been provided by Buyer to Seller for its use and benefit. The sums specified in clauses (i), (ii) and (iii) above are collectively referred to herein as the "Credits". The Credits may be allocated between City and Authority as they may agree. If the aggregate amount of the Credits exceeds the Purchase Price for the Parcel(s) to be conveyed at the First Closing, any excess amount shall be credited toward Buyer’s subsequent purchase of additional Parcels.

3. **Escrow.** The parties acknowledge that Buyer may elect to purchase one or more Parcels at different times during the Option Term, and that the provisions of this Section 3 shall apply to the First Closing and to each subsequent Closing for additional Parcels Buyer elects to acquire. With the exception that upon the purchase of any one of the following two (2) Parking Authority-owned Parcels, specifically 27 N. California Street (APN 149-170-25) and 24 N. American Street (APN 149-180-05), the Buyer shall concurrently purchase all three (3) City-
owned hotels, specifically 39 N. California Street (St. Leo Hotel), 431 E. Main Street (Commercial Hotel) and 445 E. Main Street (Main Hotel). Within five (5) business days after Buyer’s exercise of the Option as to one or more Parcels, Buyer will open escrow (“Escrow”) with a title company mutually agreeable to the parties (“Escrow Agent” or “Title Company”).

(a) Closing and Closing Date. Subject to satisfaction of the Conditions Precedent (defined below), for each Parcel Buyer elects to acquire, the purchase and sale shall occur, and Escrow shall close (“Closing”) within 45 days of Buyer’s exercise of the Option for such Parcel(s), or such other date prior to the expiration of the Option Term as agreed upon by the parties (the “Closing Date”).

(b) Delivery of Deed and Possession. At least three (3) business days prior to the Closing Date, City and/or Authority, as applicable, shall execute and deliver to Escrow Agent grant deed(s) for the Parcel(s) Buyer elects to acquire using the Title Company’s standard form of grant deed. Upon the Closing for each Parcel Buyer elects to acquire, the grant deed(s) shall be recorded in the official records of San Joaquin County, and City and/or Authority, as applicable, shall deliver to Buyer exclusive possession of the acquired Parcel(s), free and clear of all leases, tenancies, encumbrances, liens and title exceptions other than those approved by Buyer.

(c) Deposit of Funds. On or before the Closing Date, Buyer will deliver to Escrow Agent the Purchase Price for the Parcel(s) Buyer has elected to acquire, minus the Credits (or, if applicable, the balance of the Credits remaining following any prior Closing) and Buyer’s share of charges pursuant to Paragraphs 3(e) and 3(f). On or before the Closing Date, City and/or Authority, as applicable, will deliver to Escrow Agent, City and/or Authority’s share of charges pursuant to Paragraphs 3(e) and 3(f).

(d) Supplemental Escrow Instructions. Escrow Agent shall close Escrow for each Parcel Buyer elects to acquire in accordance with supplemental escrow instructions mutually acceptable to Buyer and City and/or Authority, as applicable, which instructions shall be consistent with this Agreement.

(e) Closing Costs. For each Parcel that Buyer elects to acquire, Buyer on the one hand, and City and/or Authority, as applicable, on the other shall each pay fifty percent (50%) of all escrow charges, recording fees, transfer taxes, documentary transfer taxes, and premiums for Buyer’s Title Policy (as defined in Section 4 below) for each Parcel Buyer elects to acquire. Buyer shall pay the cost of any survey required in connection with the issuance of the Title Policy.

(f) Prorations. All real estate taxes, assessments and utility charges relating to the Parcel(s) that Buyer elects to acquire shall be prorated between City and/or Authority, as applicable, and Buyer as of the Closing, and shall be debited from or credited to cash payable by Buyer at the Closing for the applicable Parcel(s).

4. **Title.** For each Parcel Buyer elects to acquire, Buyer will obtain a preliminary title report (“Preliminary Report”) from Title Company, and will review the Preliminary Report and title matters. By not later than 20 days prior to the Closing Date for each Parcel Buyer elects to acquire, Buyer shall provide written notice to Seller specifying which, if any, title exceptions affecting such Parcel(s) that Buyer approves (the “Permitted Exceptions”). Title Company’s commitment to issue to Buyer an ALTA owner’s policy of title insurance in the
amount of the applicable Purchase Price, insuring Buyer’s fee interest in the Parcel(s) subject only to the Permitted Exceptions (“Title Policy”) shall be a condition to Closing for such Parcel(s).

5. **Feasibility Investigations.** Prior to the expiration of the Option Term, Buyer shall have the right to enter onto the Property to conduct any inspections and tests that Buyer deems necessary, including, without limitation, Phase 1 and Phase 2 evaluations, soils tests, surveys, engineering studies, environmental studies, and other evaluations as Buyer deems necessary in Buyer’s discretion. Prior to entry upon the Property, Buyer shall provide notice to City and/or Authority, as applicable, regarding the nature of the tests to be performed, the entity that will perform the tests, and the time and date of the testing. Buyer will execute a Right of Entry Agreement in form reasonably acceptable to Buyer and Seller, pursuant to which Buyer will provide proof of insurance acceptable to the Seller and indemnify, Seller from and against any claims, expenses and liabilities that arise from Buyer’s and Buyer’s employees, contractors or agents entry onto the Property, except to the extent any such claims, expenses or liabilities result from the sole or active negligence of Seller or Seller’s employees, contractors or agents, or result from the mere discovery of hazardous materials or other conditions in, on, under or about the Property.

6. **AS-IS Condition; Demolition; Relocation.** Buyer’s acquisition of one or more Parcels pursuant to this Agreement shall be on an AS-IS basis. Following the Closing Date for the applicable Parcels, Buyer shall have the right to demolish the improvements located thereon at Buyer’s sole expense and in compliance with all applicable laws and regulations. Buyer shall have no obligation to pay relocation benefits, assistance and/or payments of any kind to, or on behalf of, any person or entity occupying the Property or part thereof, it being understood that Seller shall have the sole responsibility for payment of any such benefits, assistance and/or payments that may be required under the Federal Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Public Law 91-646) or California Government Code Section 7260 et seq.

7. **Conditions Precedent to Buyer’s Obligations.** Following Buyer’s exercise of the Option with respect to one or more Parcels, Buyer’s obligation to purchase such Parcels is subject to satisfaction of all of the following conditions precedent (“Conditions Precedent”):

   (a) The Title Company’s irrevocable commitment to issue the Title Policy to Buyer for each Parcel Buyer elects to acquire;

   (b) No adverse change to the physical or entitlement status of the Parcels) shall have occurred between the date of Buyer’s exercise of the Option and the Closing Date; and

   (c) Seller’s performance of its obligations under this Agreement, and the continued truth and accuracy of Seller’s representations and warranties set forth in this Agreement.

8. **Seller’s Representations and Warranties.** Seller hereby represents and warrants to Buyer as of the Effective Date and as of the Closing Date for each Parcel:

   (a) Prior to the Closing Date for each Parcel, City and Authority have delivered true and complete copies of all Due Diligence Information with respect to the
Parcels. “Due Diligence Information” means all material information relating to the Parcels (including, without limitation, title information, surveys, environmental reports, engineering studies, legal notices, permits, and approvals), which information is in City and/or Authority’s possession or under City and/or Authority’s control.

(b) This Agreement and all documents delivered by City and/or Authority to Buyer, now or at the Closing, have been freely negotiated by City and Authority, and neither City nor Authority is under any duress or compulsion, and each has entered into this Agreement as a considered business decision that City and Authority has each determined to be in its best interest.

(c) This Agreement and all documents delivered by City and/or Authority to Buyer, now or at the Closing, have been, or shall be, duly authorized and executed and delivered by City and/or Authority, are legal, valid and binding obligations of City and/or Authority, and do not violate any agreement to which City and/or Authority is a party or any order by which City and/or Authority is bound.

(d) There are no lawsuits, claims, suits, proceedings or investigations, pending or threatened, affecting or relating to the Property or part thereof, or affecting the legality or propriety of the transactions contemplated by this Agreement.

(e) Seller has not alienated, encumbered, transferred, optioned, leased, assigned, transferred or otherwise conveyed its interest or any portion of its interest in the Property or any portion thereof, nor has Seller entered into any agreement (other than this Agreement) to do so.

(f) There are no encroachments, conflicts in boundary lines or ownership interests claimed by any person affecting the Property or any portion thereof except as disclosed in writing to Buyer.

(g) The Property is free and clear of all leases, tenancies and occupancies.

(h) Seller has not dealt with any real estate broker or finder, or incurred any liability for any commission or fee to any real estate broker or finder, in connection with this Agreement or the sale of the Property to Buyer.

(i) Prior to the Closing Date, NPFG and all other third parties whose approval of the sale of one or more of the Parcels is required to be obtained by City or Authority, have approved this Agreement and each of the transactions provided herein.

9. Buyer’s Representations and Warranties. Buyer hereby represents and warrants to Seller as of the Effective Date and as of the Closing Date for each Parcel:

(a) Buyer is a corporation, duly organized and validly existing under the laws of the State of California. Buyer has full power and authority to enter into this Agreement and to perform its obligations under this Agreement. The execution, delivery and performance of this Agreement and all documents required hereunder by Buyer have been duly and validly authorized by all necessary action on the part of Buyer, and all required consents and approvals have been duly obtained, and do not violate any agreement to which Buyer is a party, or any order by which Buyer is bound.
(b) Buyer has not dealt with any real estate broker or finder, or incurred any liability for any commission or fee to any real estate broker or finder, in connection with this Agreement or the sale of the Property to Buyer.

(c) Buyer on behalf of itself and its successors and assigns agrees not to develop any of the subject Parcels for the sole purpose of offering paid public parking. Any parking facilities developed on the subject Parcels will be solely for the use of homeowners or residential or commercial tenants, including their respective invitees and customers, of the development project or portion thereof, which Buyer intends to develop on the Parcels and other properties as provided in the Development Agreement between Buyer and City dated February 23, 2016, recorded in the Official Records on __________, as Instrument No. __________ ("Development Agreement"). The obligations of Buyer under this Section 9(c), shall survive the Closing and continue in effect until the date which is ten (10) years following the applicable Closing Date for sale of the Parcel(s).

10. Seller’s Covenants. Seller covenants and agrees with Buyer as follows:

   (a) Between the Effective Date and the Closing Date for sale of applicable Parcel(s), City and/or Authority shall maintain the Parcel(s) and the improvements thereon in accordance with sound property management practice, comply in all material respects with all covenants, conditions, restrictions, laws, statutes, rules, regulations and ordinances applicable to the Property, and immediately give Buyer copies of all notices received by Seller asserting any violation of any covenants, conditions, restrictions, laws, statutes, rules, regulations or ordinances applicable to the Property.

   (b) Seller shall not use, produce, process, manufacture, generate, treat, handle, store or dispose of any hazardous substances in, on or under the Property, or use the Property for any such purposes, or release any hazardous substances into any air, soil, surface water or groundwater comprising the Property, or permit any person using or occupying the Property or any part thereof to do any of the foregoing, provided, however, Seller may use, handle and store hazardous substances of types and in quantities typically used in or around residential and commercial properties in accordance with all applicable laws. Between the Effective Date and the expiration of the Option Term, Seller shall comply, and shall use reasonable efforts to cause all persons using or occupying the Property or any part thereof to comply, with all environmental laws applicable to the Property, or the use or occupancy thereof, or any operations or activities therein or thereon.

   (c) Between the date of this Agreement and the expiration of the Option Term, Seller shall not in any manner sell, convey, assign, transfer, encumber or otherwise dispose of the Property or any part thereof or interest therein; provided, however, may remove any tangible personal property. Without limiting the foregoing, Seller shall not enter into any agreement or alter the condition of title to the Property if the same would affect the Property or Buyer after the Closing for the applicable Parcel(s) without Buyer’s prior consent. If Buyer so consents, such encumbrance shall become Permitted Exceptions (as provided in Section 4).
(d) Seller has provided, or within five (5) business days following the Effective Date, shall provide to Buyer all surveys, studies, reports and analyses applicable to the Property or part thereof in Seller’s possession or control.

11. Entitlements. Buyer may process any entitlements that Buyer deems necessary or appropriate for its proposed development of the Property or part thereof. Seller shall fully cooperate with Buyer, in the processing of all entitlements sought by Buyer, including signing any and all applications Buyer may request within five business days after Seller receives the request.

12. Allocation of Environmental Liabilities. The parties agree that the Purchase Price for each Parcel is based on an assumption that there are no adverse environmental conditions on the Property or any part thereof. The parties acknowledge that if Buyer determines, in Buyer’s reasonable judgment, that adverse environmental conditions do exist on the Property or any part thereof, the parties shall negotiate in good faith, prior to the expiration of the Option Term, the manner in which such conditions will be remedied and/or compensated, including, without limitation, adjustment to the Purchase Price and/or allocation of responsibility for potential liabilities, remediation, removal, and/or the costs incurred thereby.

13. LIQUIDATED DAMAGES. IF THE PURCHASE AND SALE OF ANY PARCEL DOES NOT OCCUR AS REQUIRED BY THIS AGREEMENT AFTER BUYER EXERCISES ITS OPTION SOLELY AS A RESULT OF BUYER’S DEFAULT, SELLER’S DAMAGES INCURRED BY REASON THEREOF ARE AND WILL BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN. IN A REASONABLE EFFORT TO ASCERTAIN WHAT SELLER’S DAMAGES WOULD BE IN THE EVENT OF BUYER’S BREACH OR DEFAULT, SELLER AND BUYER AGREE THAT AN AMOUNT EQUAL TO THE SUM OF THE OPTION FEES (NOT TO EXCEED $5,000) THAT WOULD OTHERWISE BE CREDITED TO THE PURCHASE PRICE FOR THE APPLICABLE PARCEL(S) SHALL BE LIQUIDATED DAMAGES (THE “LIQUIDATED DAMAGES”) FOR SUCH DEFAULT, WHICH LIQUIDATED DAMAGES SHALL BE SELLER’S SOLE REMEDY AT LAW OR IN EQUITY IN THE EVENT OF AND FOR SUCH DEFAULT. SELLER WAIVES ANY AND ALL RIGHT TO SEEK OTHER RIGHTS OR REMEDIES AGAINST BUYER, INCLUDING WITHOUT LIMITATION, THE RIGHTS AND REMEDIES SET FORTH IN CALIFORNIA CIVIL CODE SECTION 3389 TO A REMEDY OF SPECIFIC PERFORMANCE. THE PAYMENT AND RETENTION OF THE LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. CITY AND AUTHORITY MAY ALLOCATE BETWEEN THEM AS THEY MAY AGREE ANY LIQUIDATED DAMAGES RETAINED BY SELLER UNDER THIS SECTION.

(Seller’s Initials)  (Buyer’s Initials)

14. Notices. Any notice or communication required hereunder between Seller and Buyer (“Notice”) must be in writing, and may be given either personally, by registered or certified mail (return receipt requested), or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a Notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by registered or certified mail, such
Notice shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom Notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such Notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a Notice shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any party hereto may at any time, by giving ten (10) days written Notice to the other party hereto, designate any other address in substitution of the address to which such Notice shall be given. Such Notices shall be given to the parties at their respective addresses set forth below:

To City: City of Stockton
425 North El Dorado Street
Stockton, CA 95202
Attention: City Clerk
Tel: (209) 937-8458

with a copy to: City of Stockton
425 North El Dorado Street
Stockton, CA 95202
Attention: Economic Development Director
Tel: (209) 937-8539

To Authority: Parking Authority
425 North El Dorado Street
Stockton, CA 95202
Attn: Parking Manager

To Buyer: Open Window Project, LLC
115 N. Sutter Street, Suite 307
Stockton, CA 95202
Attention: Zachary Cort
Tel: (209) 469-2678

with a copy to: Gerald J. Ramiza, Esq.
Burke Williams & Sorensen LLP
1901 Harrison Street, 9th Floor
Oakland, CA 94501
Tel: (510) 273-8780

15. **Attorneys’ Fees.** If an action is brought to enforce the rights of a party under this Agreement, the prevailing party shall be entitled to recover its costs of enforcement, including reasonable attorneys’ fees and court costs.

16. **Binding Agreement.** This Agreement supersedes all prior and contemporaneous discussions, agreements and understandings between Seller and Buyer with respect to the subject matter of this Agreement, and constitutes the entire agreement between Seller and Buyer with respect thereto.
17. **Amendments.** This Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

18. **Seller Option to Repurchase, Reenter and Repossess.** Subject to the notice and reasonable opportunity to cure, City and/or Authority, as applicable, shall have the additional right, at its option, to repurchase, reenter and take possession of one or more Parcel(s) if:

(a) Subject to Force Majeure Delay (as defined in Section 7.2 of the Development Agreement), Buyer fails to submit a complete application for an architectural review permit to construct a development project or portion thereof on the Parcel(s) in question by the date which is 5 years following conveyance of title to such Parcel(s) to Buyer and thereafter diligently pursue issuance of a building permit; or

(b) Subject to Force Majeure Delay, after obtaining a building permit for construction of such development project or portion thereof, Buyer fails to commence construction thereof within 6 months after obtaining such permit.

Such right to repurchase, reenter and repossess, to the extent provided in this Agreement, shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

(i) Any mortgage, deed of trust or other security instrument recorded against such Parcel(s); or

(ii) Any rights or interests provided in the Development Agreement for the protection of the holder of such mortgages, deeds of trust or other security instruments.

To exercise its right to repurchase, reenter and take possession with respect to the Parcel(s) in question, City or Authority, as applicable, shall pay to Buyer in cash an amount equal to:

1. The Purchase Price paid by Buyer for the Parcel(s) in question; less

2. The total amount of any mortgages, deeds of trust or other liens encumbering the Parcel(s) in question at the time of the repurchase, reentry and repossession.

In order to exercise such purchase option, City and/or Authority, as applicable, shall give Buyer written notice of such exercise. City and/or Authority, as applicable, within thirty (30) days thereafter, shall pay to Buyer in cash all sums owing pursuant to this Section 18, and Buyer shall thereupon execute and deliver to City or Authority, as applicable, a grant deed transferring to City or Authority, as applicable, all of Buyer’s interest in the Parcel(s) in question.

Seller’s rights under this Section 18 shall automatically terminate as of the date of issuance of a building permit for construction of the 400th residential unit within the Downtown Stockton Open Window Project Master Development Plan boundary. Upon Buyer’s request made at any time following issuance of the building permit for such 400th residential unit, Seller shall execute, acknowledge and deliver to Seller for recordation in the Official Records, an instrument memorializing termination of Seller’s option to repurchase, reenter and repossess.
19. **Buyer Remedies.** Subject to the notice and reasonable opportunity to cure not to exceed 30 calendar days, upon the occurrence of a default by City and/or Authority, as applicable, Buyer shall have the right, in addition to any other rights or remedies, to institute any action at law or in equity to cure, correct, prevent or remedy any such default, or to recover actual damages. Notwithstanding any other provisions of this Agreement to the contrary, Buyer shall not be entitled to recover any consequential, special or punitive damages against Seller.

20. **Assignment by Buyer.** Buyer shall have the right to assign this Agreement without Seller consent to any entity which controls, is controlled by, or under common control with Buyer (each, an “Affiliate”). In addition, upon the Closing for any Parcel(s), Buyer shall have the right to direct Seller to convey title to any Affiliate entity designated by Buyer. Buyer will give Seller written notice of any such assignment. Except as otherwise provided above, this Agreement may not be assigned by Buyer to any person or entity without Seller’s consent, which may be granted or denied in Seller’s sole discretion.

21. **Governing Law; Venue.** This Agreement shall be governed and construed in accordance with the laws of the State of California, without reference to its choice of law rules. The exclusive venue for any disputes or legal actions shall be the Superior Court of California in and for the County of San Joaquin, except for actions that include claims in which the Federal District Court for the Eastern District of the State of California has original jurisdiction, in which case the Eastern District of the State of California shall be the proper venue.

22. **Waivers.** No waiver of any provision of this Agreement or any breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving party, and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other or subsequent breach of this Agreement.

23. **Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns.

24. **Severability.** If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties.

25. **Construction.** Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Agreement. This Agreement has been reviewed and revised by legal counsel for Seller and Buyer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement. Unless the context clearly requires otherwise, (i) the plural and singular numbers shall each be deemed to include the other; (ii) the masculine, feminine, and neuter genders shall each be deemed to include the others; (iii) “shall,” “will,” or “agrees” are mandatory, and “may” is permissive; (iv) “or” is not exclusive; (v) “include,” “includes” and “including” are not limiting and shall be construed as if followed by the words “without limitation,” and (vi) “days” means calendar days unless specifically provided otherwise.

26. **No Joint Venture.** Seller and Buyer hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Buyer and agree that nothing
contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between Seller and Buyer.

27. **Survival of Terms.** Any indemnity provided for herein, and any other provision of this Agreement which, by its terms, is to be performed after the Closing, shall survive the Closing until full performance thereof. The representations, warranties, covenants, terms and conditions of this Agreement shall also survive the Closing.

28. **Time.** Time is of the essence of this Agreement and of the performance of all the terms, covenants and conditions contained in this Agreement.

29. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one agreement.

30. **Seller Approvals and Actions.** Whenever a reference is made herein to an action or approval to be undertaken by Seller, the City Manager or his/her designee is authorized to act on behalf of Seller, unless specifically provided otherwise or the context requires otherwise.

31. **Recording.** This Agreement shall be recorded in the Official Records of San Joaquin County within ten (10) days following the Effective Date.

[Remainder of page intentionally left blank]
IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the Effective Date.

SELLER:

CITY OF STOCKTON, a municipal corporation

By:  

Kurt O. Wilson, City Manager  

Date

ATTEST:

Bonnie Paige, City Clerk

APPROVED AS TO FORM:

Deputy City Attorney

and

PARKING AUTHORITY OF THE CITY OF STOCKTON, a public body corporate and politic organized and existing under and by virtue of the laws of the State of California

By:  

Kurt O. Wilson, Executive Director  

Date

APPROVED AS TO FORM:

Deputy General Counsel for Parking Authority of City of Stockton

ATTEST:

Secretary for the Parking Authority

BUYER:

OPEN WINDOW PROJECT, LLC, a California limited liability company

By:  

Zachary Cort

Its:  


ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Joaquin

On May 19, 2016 before me, Karen A. Costa, Notary Public

(insert name and title of the officer)

personally appeared Laurie Montes
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ___________________ (Seal)
**Exhibit A**

**PROPERTY**

<table>
<thead>
<tr>
<th>Property Address</th>
<th>APN</th>
<th>City or Parking Authority Owned</th>
<th>FMV Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>216 N California</td>
<td>139-250-26</td>
<td>Parking Authority</td>
<td>$88,500</td>
</tr>
<tr>
<td>39 N California – St. Leo Hotel</td>
<td>149-170-12</td>
<td>City</td>
<td>$20,000</td>
</tr>
<tr>
<td>27 N California</td>
<td>149-170-25</td>
<td>Parking Authority</td>
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<tr>
<td>431 E Main - Commercial Hotel</td>
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<td>725 E Main</td>
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<td>City</td>
<td>$60,000</td>
</tr>
<tr>
<td>25 N Grant</td>
<td>149-180-17</td>
<td>City</td>
<td>$60,000</td>
</tr>
</tbody>
</table>
Exhibit B

PARCEL LEGAL DESCRIPTIONS

Street Address: 216 N. California Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

Parcel 1:

The North 40 feet, 7 1/3 inches of each of lots two (2) and four (4) in block seventy-four (74) East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Parcel 2:

The South 60 feet 4 2/3 inches of each of lots two (2) and four (4); The South 60 feet 4 2/3 inches of the West 2 1/2 feet of lot six (6); all in block seventy-four (74), East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map of Plat thereof.

(ALL MEASUREMENTS UNITED STATES STANDARD MEASURE)

APN: 139-250-26

Street Address: 39 N. California Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

Lot 11 in Block 5 East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof.

APN: 149-170-12

Street Address: 27 N. California Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

Parcel 1:

The South 6 1/2 inches of the North one-half of the West 140 feet of Lot 13, the South one-half of Lot 13 and the North 10 feet of Lot 14 in Block 5, East of Center Street, in the City of
Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Parcel 2:

The North one-half of Lot 13 in Block 5, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Excepting therefrom the South 6 1/2 inches of the North one-half of the West 140 feet of Lot 13.

Parcel 3:

All of Lots 15 and 16 in Block 5, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Excepting therefrom the South 26.33 feet of the East 141.00 feet of Lot 16.

APN: 149-170-25

Street Address: 431 E. Main Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

Lot 8 and the west one-half of Lot 10 in Block 5 East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof.

APN: 149-170-08

Street Address: 445 E. Main Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

The East one-half of Lot 10 and all of Lot 12 in Block 5, East of Center Street, in the said City of Stockton, according to the Official Map or Plat thereof, San Joaquin County Records.

APN: 149-170-09

Street Address: 24 N. American Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:
Lots 13, 14, 15 and 16 in Block 7, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof, San Joaquin County records.

APN: 149-180-05

Street Address: 725 E. Main Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

All of Lots 8 and 10 in Block 8 East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof.

Also all that part of Lot 6 in Block 8 East of Center Street, being the East 46 1/2 feet thereof, more or less, bounded on the West by the centerline of a division wall running North and South between certain buildings, and being all of said Lot 6, except the part thereof conveyed by Rudolph Gnekow and wife to their sons and daughters by Deed dated February 3, 1913 and recorded in Book "A" of Deeds, Vol. 208, page 106, San Joaquin County Records.

APN: 149-180-21

Street Address: 25 N. Grant Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

Lot 16 and the West 1/3 of Lot 15 in Block 8, East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof, San Joaquin County Records.

APN: 149-180-17
ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Joaquin

On May 17, 2016 before me, Audrey E. Ogden, Notary Public
(insert name and title of the officer)

personally appeared Zachary Cort
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature] (Seal)
Diana,

I am sorry, I had the wrong date to close escrow, the date should read November 20, 2020. Please see revised letter. Please confirm receipt. Thank you.

Amanda

Diana,

Please let revised demand letter. Please confirm receipt. Thank you.

Amanda

Hi Diana,

Just following up on this. What is the status, expected close date and have funds been deposited? Thank you.

Amanda

Diana,

Attached is the payoff demand for 27 N. California. Please let me know if you have any questions. Thank you.
October 15, 2020

Diana Contreras
Old Republic Title Company
3425 Brookside Road, Suite C
Stockton, CA  95219

REVISED PAYOFF DEMAND FOR 27 NORTH CALIFORNIA STREET, STOCKTON CA

In response to your request for a payoff demand for the above referenced property being acquired from the City of Stockton Parking Authority by Zac Cort of Ten Space, our records indicate $194,297 is due for 27 North California Street.

In addition, please include a deed restriction on the parcel indicating the property cannot be used for general public parking per the Option Agreement dated February 23, 2016 between Open Window Project, LLC and City of Stockton and Parking Authority of the City of Stockton; Section 9(c) of the agreement states:

(c) Buyer on behalf of itself and its successors and assigns agrees not to develop any of the subject Parcels for the sole purpose of offering paid parking. Any parking facilities developed on the subject Parcels will be solely for the use of the homeowners or residential or commercial tenants, including their respective invitees and customers, of the development project or portion thereof, which Buyer intends to develop on the Parcels and other properties as provided in the Development Agreement between Buyer and City dated February 23, 2016 recorded in the Official Records on July 20, 2016, as Instrument No. 2016-084447 (“Development Agreement”). The obligations of Buyer under this Section 9(c), shall survive the Closing and continue in effect until the date which is ten (10) years following the applicable Closing date for sale of the Parcel(s).

Further, per Section 3(a) of the Option Agreement, escrow is to close within 45 days of Buyer’s exercise of the Option. In accordance with the agreement, the City expects escrow to close no later than November 20, 2020, and funds received the same day.

If you have any questions, please call Amanda Thomas, Real Property Agent, at (209) 937-7540 or e-mail at amanda.thomas@stocktonca.gov.

Thank you.

JANICE MILLER, ASSISTANT DIRECTOR
ECONOMIC DEVELOPMENT DEPARTMENT

JM:AT
Enclosure
Diana,

Please let revised demand letter. Please confirm receipt. Thank you.

Amanda

---

From: Amanda Thomas  
Sent: Thursday, October 15, 2020 8:34 AM  
To: dcontreras@ortc.com  
Subject: RE: 27 N California payoff demand

Hi Diana,

Just following up on this. What is the status, expected close date and have funds been deposited? Thank you.

Amanda

---

From: Amanda Thomas  
Sent: Tuesday, October 6, 2020 10:56 AM  
To: dcontreras@ortc.com  
Cc: Janice Miller <Janice.Miller@stocktonca.gov>; Zac Cort <zcort@tenspacedev.com>  
Subject: 27 N California payoff demand

Diana,

Attached is the payoff demand for 27 N. California. Please let me know if you have any questions. Thank you.

---

Amanda Thomas, Real Property Agent
City of Stockton - Economic Development Department
400 E. Main Street, 4th Floor, Stockton, CA 95202
amanda.thomas@stocktonca.gov | 209.937.7540
October 15, 2020

Diana Contreras  
Old Republic Title Company  
3425 Brookside Road, Suite C  
Stockton, CA 95219

REVISED PAYOFF DEMAND FOR 27 NORTH CALIFORNIA STREET, STOCKTON CA

In response to your request for a payoff demand for the above referenced property being acquired from the City of Stockton Parking Authority by Zac Cort of Ten Space, our records indicate $194,297 is due for 27 North California Street.

In addition, please include a deed restriction on the parcel indicating the property cannot be used for general public parking per the Option Agreement dated February 23, 2016 between Open Window Project, LLC and City of Stockton and Parking Authority of the City of Stockton; Section 9(c) of the agreement states:

(c) Buyer on behalf of itself and its successors and assigns agrees not to develop any of the subject Parcels for the sole purpose of offering paid parking. Any parking facilities developed on the subject Parcels will be solely for the use of the homeowners or residential or commercial tenants, including their respective invitees and customers, of the development project or portion thereof, which Buyer intends to develop on the Parcels and other properties as provided in the Development Agreement between Buyer and City dated February 23, 2016 recorded in the Official Records on July 20, 2016, as Instrument No. 2016-084447 ("Development Agreement"). The obligations of Buyer under this Section 9(c), shall survive the Closing and continue in effect until the date which is ten (10) years following the applicable Closing date for sale of the Parcel(s).

Further, per Section 3(a) of the Option Agreement, escrow is to close within 45 days of Buyer’s exercise of the Option. In accordance with the agreement, the City expects escrow to close no later than November 20, 2020, and funds received the same day.

If you have any questions, please call Amanda Thomas, Real Property Agent, at (209) 937-7540 or e-mail at amanda.thomas@stocktonca.gov.

Thank you.

[Signature]

JANICE MILLER, ASSISTANT DIRECTOR  
ECONOMIC DEVELOPMENT DEPARTMENT

JM:AT  
Enclosure
From: Janice Miller <Janice.Miller@stocktonca.gov>
Sent: Thursday, October 15, 2020 12:51 PM
To: Amanda Thomas <Amanda.Thomas@stocktonca.gov>
Subject: RE: 27 N California payoff demand

Amanda, I just thought of another item we need to include in the demand letter.

We need to ensure that there is a deed restriction indicating that the property cannot be used for general public parking and compete with the Stockton Parking Authority. The lot may only be used to provide parking to tenants of OWP/Ten Space’s development projects for that block (see page 6, item 9.c. for specific language).

I’d like to review the escrow instructions before they are final too.

Can you please draft an amended payoff demand to include this language? Let’s include the Option Agreement as an attachment as well. Thanks!

From: Amanda Thomas <Amanda.Thomas@stocktonca.gov>
Sent: Thursday, October 15, 2020 10:15 AM
To: Janice Miller <Janice.Miller@stocktonca.gov>
Subject: RE: 27 N California payoff demand

E-mail sent to Diana for status update.

From: Janice Miller <Janice.Miller@stocktonca.gov>
Sent: Wednesday, October 14, 2020 5:09 PM
To: Amanda Thomas <Amanda.Thomas@stocktonca.gov>
Subject: FW: 27 N California payoff demand

Can you please check in with Diana tomorrow on the status of this transaction? When is it expected to close escrow? Have any funds been deposited? Thanks.

From: Amanda Thomas <Amanda.Thomas@stocktonca.gov>
Sent: Tuesday, October 6, 2020 10:56 AM
To: dcontreras@ortc.com
Cc: Janice Miller <Janice.Miller@stocktonca.gov>; Zac Cort <zcort@tenspacedev.com>
Subject: 27 N California payoff demand
Diana,

Attached is the payoff demand for 27 N. California. Please let me know if you have any questions. Thank you.

Amanda Thomas
Real Property Agent
City of Stockton - Economic Development Department
400 E. Main Street, 4\textsuperscript{th} Floor, Stockton, CA 95202
amanda.thomas@stocktonca.gov | 209.937.7540
October 15, 2020

Diana Contreras
Old Republic Title Company
3425 Brookside Road, Suite C
Stockton, CA 95219

REVISED PAYOFF DEMAND FOR 27 NORTH CALIFORNIA STREET, STOCKTON CA

In response to your request for a payoff demand for the above referenced property being acquired from the City of Stockton Parking Authority by Zac Cort of Ten Space, our records indicate $194,297 is due for 27 North California Street.

In addition, please include a deed restriction on the parcel indicating the property cannot be used for general public parking per the Option Agreement dated February 23, 2016 between Open Window Project, LLC and City of Stockton and Parking Authority of the City of Stockton; Section 9(c) of the agreement states:

    (c) Buyer on behalf of itself and its successors and assigns agrees not to develop any of the subject Parcels for the sole purpose of offering paid parking. Any parking facilities developed on the subject Parcels will be solely for the use of the homeowners or residential or commercial tenants, including their respective invitees and customers, of the development project or portion thereof, which Buyer intends to develop on the Parcels and other properties as provided in the Development Agreement between Buyer and City dated February 23, 2016 recorded in the Official Records on July 20, 2016, as Instrument No. 2016-084447 ("Development Agreement"). The obligations of Buyer under this Section 9(c), shall survive the Closing and continue in effect until the date which is ten (10) years following the applicable Closing date for sale of the Parcel(s).

Further, per Section 3(a) of the Option Agreement, escrow is to close within 45 days of Buyer's exercise of the Option. In accordance with the agreement, the City expects escrow to close no later than November 20, 2020, and funds received the same day.

If you have any questions, please call Amanda Thomas, Real Property Agent, at (209) 937-7540 or e-mail at amanda.thomas@stocktonca.gov.

Thank you.

JANICE MILLER, ASSISTANT DIRECTOR
ECONOMIC DEVELOPMENT DEPARTMENT

JM:AT
Enclosure
Diana,

Attached is the payoff demand for 27 N. California. Please let me know if you have any questions. Thank you.

Amanda Thomas, Real Property Agent
City of Stockton - Economic Development Department
400 E. Main Street, 4th Floor, Stockton, CA 95202
amanda.thomas@stocktonca.gov | 209.937.7540
October 6, 2020

Diana Contreras  
Old Republic Title Company  
3425 Brookside Road, Suite C  
Stockton, CA 95219

PAYOFF DEMAND FOR 27 NORTH CALIFORNIA STREET, STOCKTON CA

In response to your request for a payoff demand for the above referenced property being acquired from the City of Stockton Parking Authority by Zac Cort of Ten Space, our records indicate $194,297 is due for 27 North California Street.

If you have any questions, please call Amanda Thomas, Real Property Agent, at (209) 937-7540 or e-mail at amanda.thomas@stocktonca.gov.

Thank you.

JANICE MILLER, ASSISTANT DIRECTOR  
ECONOMIC DEVELOPMENT DEPARTMENT

JM:AT
Janice Miller  
Assistant Economic Development Director  
City of Stockton

Zac Cort
President & CEO
209-986-2831
www.tenspacedev.com

On Oct 2, 2020, at 2:51 PM, Janice Miller <Janice.Miller@stocktonca.gov> wrote:

---

CAUTION: This email originated from outside the City of Stockton. Do not click any links or open attachments if this is unsolicited email.

Hi Janice,

As you know we will be closing on the parking lot (27 N. California st) through this transaction. Can you please forward me the demand so that I can send to escrow.
Please advise when you will be able to send that over so I can inform escrow.

Thanks.

Zac
Hi Zac, the current purchase price for 27 N. California is $194,297. This doesn’t include the option fee credit. That will be applied once the $20,000 has cleared the bank.

Have a good weekend,
Janice

From: Zac Cort <zcort@tenspacedev.com>
Sent: Wednesday, September 30, 2020 1:17 PM
To: Janice Miller <Janice.Miller@stocktonca.gov>
Cc: Amanda Thomas <Amanda.Thomas@stocktonca.gov>; sharlene@tenspacedev.com
Subject: Re: Option Fees Past Due

OK understood.
We will drop off a check today so you have but please just hang on to it until this time next week. I already assumed with my lender I was paying full price so it’s already built into our loan. As I mentioned if they take longer to close than you can just deposit the check and I’ll get the credit when we close.

Tnks.
Zac

Zac Cort
President & CEO
209-986-2831
www.tenspacedev.com

On Sep 30, 2020, at 12:57 PM, Janice Miller <Janice.Miller@stocktonca.gov> wrote:

Zac, unfortunately, the Option Agreement stipulates that Ten Space is to pay the City $10K each year by February 23. I need a check for $20,000 for the City to deposit to cover 2019 and 2020. If we don’t receive the funds, you won’t receive credit when you acquire the property.

From: Zac Cort <zcort@tenspacedev.com>
Sent: Wednesday, September 30, 2020 12:43 PM
To: Janice Miller <Janice.Miller@stocktonca.gov>
Cc: Amanda Thomas <Amanda.Thomas@stocktonca.gov>; sharlene@tenspacedev.com
Subject: Re: Option Fees Past Due

Hi Janice,

Of course I will absolutely get you ample time to come. This initial piece will be for the interiors demo of all those old hotels... pretty big undertaking as they are pretty nasty on the Inside as you know.
As for the credit it’s not really necessary is what I’m saying. I’d just like to use the lenders loan since those funds are already dedicated instead of consuming more of my own cash seeing as we are closing next week. You can keep the check and if for some reason it gets tripped up then just deposit the check and I’ll get credit when it closes.

Thanks.
Zac

Zac Cort
President & CEO
209-986-2831
www.tenspacedev.com

On Sep 30, 2020, at 12:33 PM, Janice Miller <Janice.Miller@stocktonca.gov> wrote:

Hi Zac, excited to hear that you’re close to finalizing the financing for OPW Phase 2. Can you let me know when the ground breaking is scheduled? I would love to participate.

Also, the City will need to make sure the $20,000 check clears before it can provide credit towards the purchase of 27 N California. I’ll get you an updated purchase price later this week.

Thanks,
Janice

From: Zac Cort <zcort@tenspacedev.com>
Sent: Wednesday, September 30, 2020 12:22 PM
To: Janice Miller <Janice.Miller@stocktonca.gov>; sharlene@tenspacedev.com; Amanda Thomas <Amanda.Thomas@stocktonca.gov>
Subject: Fwd: Option Fees Past Due

CAUTION: This email originated from outside the City of Stockton. Do not click any links or open attachments if this is unsolicited email.
I’m resending this as you had Sharlene email address as the Cort group still and it looks to have been kicked back..

Shar please see below,

Zac Cort
President & CEO
209.986.2831
zcort@tenspacedev.com
Hi Janice,

We will drop off a check to your office today but please hold onto that until the end of next week. We are wrapping up our funding for OWP phase 2 (also breaking ground) which will include the purchase of the 27 N. California st parking lot and the associated "Option fee". Since we have planned for this we would like to have this come out at closing next week along with the money for the purchase of that lot. Which also brings me to the point that we will need a payoff demand from the City for that lot. You can send directly to escrow but they have asked for this so please gather and send over as soon as possible.

Please advise.
Thanks.
Zac

Zac Cort
President & CEO
209.986.2831
zcor@tenspacedev.com
From: Zac Cort <zcort@tenspacedev.com>
Sent: Wednesday, September 16, 2020 11:43 AM
To: Janice Miller <Janice.Miller@stocktonca.gov>
Cc: Amanda Thomas <Amanda.Thomas@stocktonca.gov>
Subject: Re: Option Fees Past Due

CAUTION: This email originated from outside the City of Stockton. Do not click any links or open attachments if this is unsolicited email.

Got it, sorry for some reason we thought if we purchased it would be credited (Nit waived) and that years payment did not have to be made.
Can you send me the document you are looking at?

Either way we will get this handled I just want to make sure sharlene has this.

Zac Cort
President & CEO
209-986-2831
www.tenspacedev.com

On Sep 16, 2020, at 11:41 AM, Janice Miller <Janice.Miller@stocktonca.gov> wrote:

No fees are waived, the $10k will be credited towards the purchase price. Fees are still due by February 23rd of each year.

From: Zac Cort <zcort@tenspacedev.com>
Sent: Wednesday, September 16, 2020 11:38 AM
To: Janice Miller <Janice.Miller@stocktonca.gov>
Cc: Amanda Thomas <Amanda.Thomas@stocktonca.gov>
Subject: Re: Option Fees Past Due

CAUTION: This email originated from outside the City of Stockton. Do not click any links or open attachments if this is unsolicited email.

Hi Janice,
Sorry for the confusion on this. Although I believe that if we purchased a property in that year the 10k annual option fee was waived. Could you please confirm that?

Thanks.
Zac

Zac Cort
On Sep 16, 2020, at 11:30 AM, Janice Miller <Janice.Miller@stocktonca.gov> wrote:

Hi Zac, in reviewing the Option Agreement between the City and OWP it has come to my attention that the City has not received the $10,000 annual option fee for 2019 nor 2020. Per the agreement, the annual option fee is due by February 23 of each year. Can you please remit payment as soon as possible for $20,000 to the City? Please send it to my attention.

Thanks,
Janice
October 6, 2020

Diana Contreras  
Old Republic Title Company  
3425 Brookside Road, Suite C  
Stockton, CA 95219

PAYOFF DEMAND FOR 27 NORTH CALIFORNIA STREET, STOCKTON CA

In response to your request for a payoff demand for the above referenced property being acquired from the City of Stockton Parking Authority by Zac Cort of Ten Space, our records indicate $194,297 is due for 27 North California Street.

If you have any questions, please call Amanda Thomas, Real Property Agent, at (209) 937-7540 or e-mail at amanda.thomas@stocktonca.gov.

Thank you.

Janice Miller, Assistant Director  
Economic Development Department

JM:AT
Attached are the grant deeds and info for the three hotels, I am looking for the grant deed for 216 California. I wasn’t in this position at that time. Thanks.

Amanda
RECORDING REQUESTED BY:
Orange Coast Title Company of Northern California

When Recorded Mail Document To:
OWP Phase II L.P.
39 North California
Stockton, CA 95202

Escrow No.: 525-SAC-18203466-61 -
LH
Title No.: 525-1967798-62

APN: 149-170-12, 149-170-08 and 149-170-09

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

The undersigned grantor(s) declare(s) The undersigned Grantor(s) declare(s) that the DOCUMENTARY TRANSFER TAX is: $57.75, City tax is $0.00.

☐ computed on full value of property conveyed, or
☐ computed on full value less value of liens or encumbrances remaining at time of sale,
☒ The property is located in the of Stockton

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

City of Stockton, a Municipal Corporation

hereby GRANT(S) to

OWP Phase II L.P.

the following described real property in the County of San Joaquin, State of California:

See Exhibit A attached hereto and made a part hereof.

Commonly known as: 39 North California, Stockton, CA 95202
431 East Main Street (Commercial Hotel), Stockton, CA 95202
445 East Main Street (Main Hotel), Stockton, CA 95202

APN: 149-170-12, 149-170-08 and 149-170-09
Dated: September 5, 2018

City of Stockton, a Municipal Corporation
BY:

APPROVED AS TO FORM AND CONTENT

By
City Attorney

ATTEST:
CLERK OF THE CITY OF STOCKTON

MAIL TAX STATEMENTS AS DIRECTED ABOVE
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Joaquin

On September 10, 2018 before me, Esther F. Gilliland, Notary Public,

personally appeared Laurie Montes

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Esther F. Gilliland (Seal)

MAIL TAX STATEMENTS AS DIRECTED ABOVE
EXHIBIT "A"

LEGAL DESCRIPTION

That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

Street Address: 39 N. California Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

Lot 11 in Block 5 East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof.

APN: 149-170-12

Street Address: 431 E. Main Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

Lot 8 and the west one-half of Lot 10 in Block 5 East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof.

APN: 149-170-08

Street Address: 445 E. Main Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

The East one-half of Lot 10 and all of Lot 12 in Block 5, East of Center Street, in the said City of Stockton, according to the Official Map or Plat thereof, San Joaquin County Records.

APN: 149-170-09
OPTION AGREEMENT

This Option Agreement ("Agreement"), dated as of February  23, 2016 (the "Effective Date," which is the date this Agreement has been approved by both the City and Authority), is entered into by and among OPEN WINDOW PROJECT, LLC, a California limited liability company ("Buyer"), CITY OF STOCKTON, a California municipal corporation ("City") and PARKING AUTHORITY OF THE CITY OF STOCKTON, a public body corporate and politic organized and existing under and by virtue of the laws of the State of California ("Authority"). City and Authority are sometimes collectively referred to herein as the "Seller".

1. **Option.** City and Authority hereby grants to Buyer, for the Option Term and upon the terms and conditions set forth in this Agreement, an exclusive and irrevocable right (the "Option") to acquire fee title to the real property located in the City of Stockton, San Joaquin County, California, as identified in Exhibit A and more particularly described in Exhibit B attached hereto and incorporated herein, together with all of City and Authority's respective right, title and interest in and to any and all improvements located on such real property, and all and all easements, mineral rights, water rights and other rights appurtenant to such real property (all such real property, improvements, easements and rights are hereinafter collectively referred to as the "Property"). The approximately 2.42 acre Property consists of eight (8) parcels, three of which are owned by Authority and five (5) of which are owned by City (referred to individually herein as a "Parcel" and, collectively, as the "Parcels"), as identified in Exhibit A.

   (a) **Term of Option.** The term of the Option ("Option Term") shall commence on the Effective Date, and shall terminate on the fifth (5th) anniversary of the Effective Date.

   (b) **Exercise of Option.** If Buyer elects to exercise the Option to purchase one or more Parcels, Buyer shall send City and Authority written notice(s) of exercise of the Option ("Exercise Notice") indicating which Parcel(s) Buyer intends to acquire. Upon the purchase of any one of the following two (2) Authority-owned Parcels, specifically 27 N. California Street (APN 149-170-25) and 24 N. American Street (APN 149-180-05), the Buyer shall concurrently purchase all three (3) City-owned hotels, specifically 39 N. California Street (St. Leo Hotel), 431 E. Main Street (Commercial Hotel), and 445 E. Main Street (Main Hotel). Upon such exercise, City and/or Authority, as applicable, shall be obligated to sell the Parcels identified in the Exercise Notice to Buyer, and Buyer shall be obligated to purchase such Parcels from City and/or Authority, as applicable, in accordance with and subject to the terms set forth in this Agreement. The sale of the
three (3) Parcels owned by the Parking Authority will be contingent upon the approval of the National Public Finance Guarantee Corporation ("NPFG"). At any time prior to the expiration of the Option Term, Buyer shall have the right to deliver one or more Exercise Notices, each addressing one or more Parcels.

(c) **Option Fee.** As consideration for the Option, Buyer shall pay to City, for the benefit of both City and Authority, the payments described in this Paragraph 1(c) (collectively, the "Option Fees"). Upon execution of this Agreement, Buyer shall pay to City the sum of Ten Thousand Dollars ($10,000) (the "Initial Option Fee Payment"). By not later than each anniversary of the Effective Date, commencing on the first anniversary of the Effective Date and continuing for each remaining year of the Option Term until Buyer either exercises the Option for all Parcels or Buyer gives written notice to Seller that Buyer elects to terminate this Agreement, Buyer shall make a payment to City in the amount of Ten Thousand Dollars ($10,000) (collectively, the "Annual Option Fee Payments"). One-half of the Initial Option Fee Payment (the "Independent Consideration") shall be nonrefundable, and shall not be credited toward the Purchase Price. All other Option Fees (other than the Independent Consideration) paid by Buyer shall be credited toward the Purchase Price of the Parcels that Buyer elects to purchase. Upon the expiration of the Option Term, Seller shall retain the balance (if any) of all Option Fees that Buyer has paid but that have not been credited toward the Purchase Price for one or more Parcels. If Buyer fails to make any Annual Option Fee Payment by the due date for such payment (or, in the event of an inadvertent failure to timely make such payment, such later date as City Manager may agree), Buyer shall have no right to purchase any Parcels for which Escrow has not been opened, and this Agreement shall terminate.

2. **Purchase Price.** The purchase price for each Parcel ("Purchase Price") shall be the "FMV Purchase Price" for such Parcel as listed in Exhibit A, increased by a factor of two percent (2%) per year on each anniversary of the Effective Date. At the Closing for the first Parcel(s) that Buyer elects to purchase ("First Closing"), Buyer will pay to City and/or Authority, as applicable, the Purchase Price for such Parcel(s) less the following sums: (i) an amount equal to one-half of the Initial Option Fee Payment (the "Option Fee Credit"), (ii) an amount equal to the sum of all Annual Option Fee Payments paid to the date of Closing, (iii) the sum of Ten Thousand One Hundred Dollars ($10,100) (the "HRE Credit"), and (iv) applicable prorations as set forth in this Agreement. The HRE Credit represents Buyer's out-of-pocket costs incurred in connection with preparation of historic resources evaluations for the three City-owned hotels located on certain Parcels, which reports have been provided by Buyer to Seller for its use and benefit. The sums specified in clauses (i), (ii) and (iii) above are collectively referred to herein as the "Credits". The Credits may be allocated between City and Authority as they may agree. If the aggregate amount of the Credits exceeds the Purchase Price for the Parcel(s) to be conveyed at the First Closing, any excess amount shall be credited toward Buyer's subsequent purchase of additional Parcels.

3. **Escrow.** The parties acknowledge that Buyer may elect to purchase one or more Parcels at different times during the Option Term, and that the provisions of this Section 3 shall apply to the First Closing and to each subsequent Closing for additional Parcels Buyer elects to acquire. With the exception that upon the purchase of any one of the following two (2) Parking Authority-owned Parcels, specifically 27 N. California Street (APN 149-170-25) and 24 N. American Street (APN 149-180-05), the Buyer shall concurrently purchase all three (3) City-
owned hotels, specifically 39 N. California Street (St. Leo Hotel), 431 E. Main Street (Commercial Hotel) and 445 E. Main Street (Main Hotel). Within five (5) business days after Buyer's exercise of the Option as to one or more Parcels, Buyer will open escrow ("Escrow") with a title company mutually agreeable to the parties ("Escrow Agent" or "Title Company").

(a) Closing and Closing Date. Subject to satisfaction of the Conditions Precedent (defined below), for each Parcel Buyer elects to acquire, the purchase and sale shall occur, and Escrow shall close ("Closing") within 45 days of Buyer's exercise of the Option for such Parcel(s), or such other date prior to the expiration of the Option Term as agreed upon by the parties (the "Closing Date").

(b) Delivery of Deed and Possession. At least three (3) business days prior to the Closing Date, City and/or Authority, as applicable, shall execute and deliver to Escrow Agent grant deed(s) for the Parcel(s) Buyer elects to acquire using the Title Company's standard form of grant deed. Upon the Closing for each Parcel Buyer elects to acquire, the grant deed(s) shall be recorded in the official records of San Joaquin County, and City and/or Authority, as applicable, shall deliver to Buyer exclusive possession of the acquired Parcel(s), free and clear of all leases, tenancies, encumbrances, liens and title exceptions other than those approved by Buyer.

(c) Deposit of Funds. On or before the Closing Date, Buyer will deliver to Escrow Agent the Purchase Price for the Parcel(s) Buyer has elected to acquire, minus the Credits (or, if applicable, the balance of the Credits remaining following any prior Closing) and Buyer's share of charges pursuant to Paragraphs 3(e) and 3(f). On or before the Closing Date, City and/or Authority, as applicable, will deliver to Escrow Agent, City and/or Authority's share of charges pursuant to Paragraphs 3(e) and 3(f).

(d) Supplemental Escrow Instructions. Escrow Agent shall close Escrow for each Parcel Buyer elects to acquire in accordance with supplemental escrow instructions mutually acceptable to Buyer and City and/or Authority, as applicable, which instructions shall be consistent with this Agreement.

(e) Closing Costs. For each Parcel that Buyer elects to acquire, Buyer on the one hand, and City and/or Authority, as applicable, on the other shall each pay fifty percent (50%) of all escrow charges, recording fees, transfer taxes, documentary transfer taxes, and premiums for Buyer's Title Policy (as defined in Section 4 below) for each Parcel Buyer elects to acquire. Buyer shall pay the cost of any survey required in connection with the issuance of the Title Policy.

(f) Prorations. All real estate taxes, assessments and utility charges relating to the Parcel(s) that Buyer elects to acquire shall be prorated between City and/or Authority, as applicable, and Buyer as of the Closing, and shall be debited from or credited to cash payable by Buyer at the Closing for the applicable Parcel(s).

4. Title. For each Parcel Buyer elects to acquire, Buyer will obtain a preliminary title report ("Preliminary Report") from Title Company, and will review the Preliminary Report and title matters. By not later than 20 days prior to the Closing Date for each Parcel Buyer elects to acquire, Buyer shall provide written notice to Seller specifying which, if any, title exceptions affecting such Parcel(s) that Buyer approves (the "Permitted Exceptions"). Title Company's commitment to issue to Buyer an ALTA owner's policy of title insurance in the
amount of the applicable Purchase Price, insuring Buyer's fee interest in the Parcel(s) subject only to the Permitted Exceptions ("Title Policy") shall be a condition to Closing for such Parcel(s).

5. Feasibility Investigations. Prior to the expiration of the Option Term, Buyer shall have the right to enter onto the Property to conduct any inspections and tests that Buyer deems necessary, including, without limitation, Phase 1 and Phase 2 evaluations, soils tests, surveys, engineering studies, environmental studies, and other evaluations as Buyer deems necessary in Buyer's discretion. Prior to entry upon the Property, Buyer shall provide notice to City and/or Authority, as applicable, regarding the nature of the tests to be performed, the entity that will perform the tests, and the time and date of the testing. Buyer will execute a Right of Entry Agreement in form reasonably acceptable to Buyer and Seller, pursuant to which Buyer will provide proof of insurance acceptable to the Seller and indemnify, Seller from and against any claims, expenses and liabilities that arise from Buyer's and Buyer's employees, contractors or agents entry onto the Property, except to the extent any such claims, expenses or liabilities result from the sole or active negligence of Seller or Seller's employees, contractors or agents, or result from the mere discovery of hazardous materials or other conditions in, on, under or about the Property.

6. AS-IS Condition; Demolition; Relocation. Buyer's acquisition of one or more Parcels pursuant to this Agreement shall be on an AS-IS basis. Following the Closing Date for the applicable Parcels, Buyer shall have the right to demolish the improvements located thereon at Buyer's sole expense and in compliance with all applicable laws and regulations. Buyer shall have no obligation to pay relocation benefits, assistance and/or payments of any kind to, or on behalf of, any person or entity occupying the Property or part thereof, it being understood that Seller shall have the sole responsibility for payment of any such benefits, assistance and/or payments that may be required under the Federal Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Public Law 91-646) or California Government Code Section 7260 et seq.

7. Conditions Precedent to Buyer's Obligations. Following Buyer's exercise of the Option with respect to one or more Parcels, Buyer's obligation to purchase such Parcels is subject to satisfaction of all of the following conditions precedent ("Conditions Precedent"): 

(a) The Title Company's irrevocable commitment to issue the Title Policy to Buyer for each Parcel Buyer elects to acquire;

(b) No adverse change to the physical or entitlement status of the Parcels) shall have occurred between the date of Buyer's exercise of the Option and the Closing Date; and

(c) Seller's performance of its obligations under this Agreement, and the continued truth and accuracy of Seller's representations and warranties set forth in this Agreement.

8. Seller's Representations and Warranties. Seller hereby represents and warrants to Buyer as of the Effective Date and as of the Closing Date for each Parcel:

(a) Prior to the Closing Date for each Parcel, City and Authority have delivered true and complete copies of all Due Diligence Information with respect to the
Parcels. "Due Diligence Information" means all material information relating to the 
Parcels (including, without limitation, title information, surveys, environmental reports, 
engineering studies, legal notices, permits, and approvals), which information is in City 
and/or Authority's possession or under City and/or Authority's control.

(b) This Agreement and all documents delivered by City and/or Authority to 
Buyer, now or at the Closing, have been freely negotiated by City and Authority, and 
neither City nor Authority is under any duress or compulsion, and each has entered into 
this Agreement as a considered business decision that City and Authority has each 
determined to be in its best interest.

(c) This Agreement and all documents delivered by City and/or Authority to 
Buyer, now or at the Closing, have been, or shall be, duly authorized and executed and 
delivered by City and/or Authority, are legal, valid and binding obligations of City and/or 
Authority, and do not violate any agreement to which City and/or Authority is a party or 
any order by which City and/or Authority is bound.

(d) There are no lawsuits, claims, suits, proceedings or investigations, pending 
or threatened, affecting or relating to the Property or part thereof, or affecting the legality 
or propriety of the transactions contemplated by this Agreement.

(e) Seller has not alienated, encumbered, transferred, optioned, leased, 
assigned, transferred or otherwise conveyed its interest or any portion of its interest in the 
Property or any portion thereof, nor has Seller entered into any agreement (other than this 
Agreement) to do so.

(f) There are no encroachments, conflicts in boundary lines or ownership 
interests claimed by any person affecting the Property or any portion thereof except as 
disclosed in writing to Buyer.

(g) The Property is free and clear of all leases, tenancies and occupancies.

(h) Seller has not dealt with any real estate broker or finder, or incurred any 
liability for any commission or fee to any real estate broker or finder, in connection with 
this Agreement or the sale of the Property to Buyer.

(i) Prior to the Closing Date, NPFG and all other third parties whose approval 
of the sale of one or more of the Parcels is required to be obtained by City or Authority, 
have approved this Agreement and each of the transactions provided herein.

9. Buyer's Representations and Warranties. Buyer hereby represents and warrants 
to Seller as of the Effective Date and as of the Closing Date for each Parcel:

(a) Buyer is a corporation, duly organized and validly existing under the laws 
of the State of California. Buyer has full power and authority to enter into this Agreement 
and to perform its obligations under this Agreement. The execution, delivery and 
performance of this Agreement and all documents required hereunder by Buyer have 
been duly and validly authorized by all necessary action on the part of Buyer, and all 
required consents and approvals have been duly obtained, and do not violate any 
agreement to which Buyer is a party, or any order by which Buyer is bound.
(b) Buyer has not dealt with any real estate broker or finder, or incurred any liability for any commission or fee to any real estate broker or finder, in connection with this Agreement or the sale of the Property to Buyer.

(c) Buyer on behalf of itself and its successors and assigns agrees not to develop any of the subject Parcels for the sole purpose of offering paid public parking. Any parking facilities developed on the subject Parcels will be solely for the use of homeowners or residential or commercial tenants, including their respective invitees and customers, of the development project or portion thereof, which Buyer intends to develop on the Parcels and other properties as provided in the Development Agreement between Buyer and City dated February 23, 2016, recorded in the Official Records on ___________, as Instrument No. __________ (“Development Agreement”). The obligations of Buyer under this Section 9(c), shall survive the Closing and continue in effect until the date which is ten (10) years following the applicable Closing Date for sale of the Parcel(s).

10. Seller’s Covenants. Seller covenants and agrees with Buyer as follows:

(a) Between the Effective Date and the Closing Date for sale of applicable Parcel(s), City and/or Authority shall maintain the Parcel(s) and the improvements thereon in accordance with sound property management practice, comply in all material respects with all covenants, conditions, restrictions, laws, statutes, rules, regulations and ordinances applicable to the Property, and immediately give Buyer copies of all notices received by Seller asserting any violation of any covenants, conditions, restrictions, laws, statutes, rules, regulations or ordinances applicable to the Property.

(b) Seller shall not use, produce, process, manufacture, generate, treat, handle, store or dispose of any hazardous substances in, on or under the Property, or use the Property for any such purposes, or release any hazardous substances into any air, soil, surface water or groundwater comprising the Property, or permit any person using or occupying the Property or any part thereof to do any of the foregoing, provided, however, Seller may use, handle and store hazardous substances of types and in quantities typically used in or around residential and commercial properties in accordance with all applicable laws. Between the Effective Date and the expiration of the Option Term, Seller shall comply, and shall use reasonable efforts to cause all persons using or occupying the Property or any part thereof to comply, with all environmental laws applicable to the Property, or the use or occupancy thereof, or any operations or activities therein or thereon.

(c) Between the date of this Agreement and the expiration of the Option Term, Seller shall not in any manner sell, convey, assign, transfer, encumber or otherwise dispose of the Property or any part thereof or interest therein; provided, however, may remove any tangible personal property. Without limiting the foregoing, Seller shall not enter into any agreement or alter the condition of title to the Property if the same would affect the Property or Buyer after the Closing for the applicable Parcel(s) without Buyer’s prior consent. If Buyer so consents, such encumbrance shall become Permitted Exceptions (as provided in Section 4).
(d) Seller has provided, or within five (5) business days following the Effective Date, shall provide to Buyer all surveys, studies, reports and analyses applicable to the Property or part thereof in Seller’s possession or control.

11. **Entitlements.** Buyer may process any entitlements that Buyer deems necessary or appropriate for its proposed development of the Property or part thereof. Seller shall fully cooperate with Buyer, in the processing of all entitlements sought by Buyer, including signing any and all applications Buyer may request within five business days after Seller receives the request.

12. **Allocation of Environmental Liabilities.** The parties agree that the Purchase Price for each Parcel is based on an assumption that there are no adverse environmental conditions on the Property or any part thereof. The parties acknowledge that if Buyer determines, in Buyer’s reasonable judgment, that adverse environmental conditions do exist on the Property or any part thereof, the parties shall negotiate in good faith, prior to the expiration of the Option Term, the manner in which such conditions will be remedied and/or compensated, including, without limitation, adjustment to the Purchase Price and/or allocation of responsibility for potential liabilities, remediation, removal, and/or the costs incurred thereby.

13. **LIQUIDATED DAMAGES.** IF THE PURCHASE AND SALE OF ANY PARCEL DOES NOT OCCUR AS REQUIRED BY THIS AGREEMENT AFTER BUYER EXERCISES ITS OPTION SOLELY AS A RESULT OF BUYER’S DEFAULT, SELLER’S DAMAGES INCURRED BY REASON THEREOF ARE AND WILL BE EXTREMELY DIFFICULT AND IMPrACTICAL TO ASCERTAIN. IN A REASONABLE EFFORT TO ASCERTAIN WHAT SELLER’S DAMAGES WOULD BE IN THE EVENT OF BUYER’S BREACH OR DEFAULT, SELLER AND BUYER AGREE THAT AN AMOUNT EQUAL TO THE SUM OF THE OPTION FEES (NOT TO EXCEED $5,000) THAT WOULD OTHERWISE BE CREDITED TO THE PURCHASE PRICE FOR THE APPLICABLE PARCEL(S) SHALL BE LIQUIDATED DAMAGES (THE “LIQUIDATED DAMAGES”) FOR SUCH DEFAULT, WHICH LIQUIDATED DAMAGES SHALL BE SELLER’S SOLE REMEDY AT LAW OR IN EQUITY IN THE EVENT OF AND FOR SUCH DEFAULT. SELLER WAIVES ANY AND ALL RIGHT TO SEEK OTHER RIGHTS OR REMEDIES AGAINST BUYER, INCLUDING WITHOUT LIMITATION, THE RIGHTS AND REMEDIES SET FORTH IN CALIFORNIA CIVIL CODE SECTION 3389 TO A REMEDY OF SPECIFIC PERFORMANCE. THE PAYMENT AND RETENTION OF THE LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. CITY AND AUTHORITY MAY ALLOCATE BETWEEN THEM AS THEY MAY AGREE ANY LIQUIDATED DAMAGES RETAINED BY SELLER UNDER THIS SECTION.

(Seller’s Initials) ______ (Buyer’s Initials)

14. **Notices.** Any notice or communication required hereunder between Seller and Buyer (“Notice”) must be in writing, and may be given either personally, by registered or certified mail (return receipt requested), or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a Notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by registered or certified mail, such
Notice shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom Notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such Notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a Notice shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any party hereto may at any time, by giving ten (10) days written Notice to the other party hereto, designate any other address in substitution of the address to which such Notice shall be given. Such Notices shall be given to the parties at their respective addresses set forth below:

To City: City of Stockton
425 North El Dorado Street
Stockton, CA 95202
Attention: City Clerk
Tel: (209) 937-8458

with a copy to: City of Stockton
425 North El Dorado Street
Stockton, CA 95202
Attention: Economic Development Director
Tel: (209) 937-8539

To Authority: Parking Authority
425 North El Dorado Street
Stockton, CA 95202
Attn: Parking Manager

To Buyer: Open Window Project, LLC
115 N. Sutter Street, Suite 307
Stockton, CA 95202
Attention: Zachary Cort
Tel: (209) 469-2678

with a copy to: Gerald J. Ramiza, Esq.
Burke Williams & Sorensen LLP
1901 Harrison Street, 9th Floor
Oakland, CA 94501
Tel: (510) 273-8780

15. **Attorneys’ Fees.** If an action is brought to enforce the rights of a party under this Agreement, the prevailing party shall be entitled to recover its costs of enforcement, including reasonable attorneys’ fees and court costs.

16. **Binding Agreement.** This Agreement supersedes all prior and contemporaneous discussions, agreements and understandings between Seller and Buyer with respect to the subject matter of this Agreement, and constitutes the entire agreement between Seller and Buyer with respect thereto.
17. **Amendments.** This Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

18. **Seller Option to Repurchase, Reenter and Repossess.** Subject to the notice and reasonable opportunity to cure, City and/or Authority, as applicable, shall have the additional right, at its option, to repurchase, reenter and take possession of one or more Parcel(s) if:

   (a) Subject to Force Majeure Delay (as defined in Section 7.2 of the Development Agreement), Buyer fails to submit a complete application for an architectural review permit to construct a development project or portion thereof on the Parcel(s) in question by the date which is 5 years following conveyance of title to such Parcel(s) to Buyer and thereafter diligently pursue issuance of a building permit; or

   (b) Subject to Force Majeure Delay, after obtaining a building permit for construction of such development project or portion thereof, Buyer fails to commence construction thereof within 6 months after obtaining such permit.

Such right to repurchase, reenter and repossess, to the extent provided in this Agreement, shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

   (i) Any mortgage, deed of trust or other security instrument recorded against such Parcel(s); or

   (ii) Any rights or interests provided in the Development Agreement for the protection of the holder of such mortgages, deeds of trust or other security instruments.

To exercise its right to repurchase, reenter and take possession with respect to the Parcel(s) in question, City or Authority, as applicable, shall pay to Buyer in cash an amount equal to:

1. The Purchase Price paid by Buyer for the Parcel(s) in question; less

2. The total amount of any mortgages, deeds of trust or other liens encumbering the Parcel(s) in question at the time of the repurchase, reentry and repossession.

In order to exercise such purchase option, City and/or Authority, as applicable, shall give Buyer written notice of such exercise. City and/or Authority, as applicable, within thirty (30) days thereafter, shall pay to Buyer in cash all sums owing pursuant to this Section 18, and Buyer shall thereupon execute and deliver to City or Authority, as applicable, a grant deed transferring to City or Authority, as applicable, all of Buyer's interest in the Parcel(s) in question.

Seller's rights under this Section 18 shall automatically terminate as of the date of issuance of a building permit for construction of the 400th residential unit within the Downtown Stockton Open Window Project Master Development Plan boundary. Upon Buyer's request made at any time following issuance of the building permit for such 400th residential unit, Seller shall execute, acknowledge and deliver to Seller for recordation in the Official Records, an instrument memorializing termination of Seller's option to repurchase, reenter and repossess.
19. **Buyer Remedies.** Subject to the notice and reasonable opportunity to cure not to exceed 30 calendar days, upon the occurrence of a default by City and/or Authority, as applicable, Buyer shall have the right, in addition to any other rights or remedies, to institute any action at law or in equity to cure, correct, prevent or remedy any such default, or to recover actual damages. Notwithstanding any other provisions of this Agreement to the contrary, Buyer shall not be entitled to recover any consequential, special or punitive damages against Seller.

20. **Assignment by Buyer.** Buyer shall have the right to assign this Agreement without Seller consent to any entity which controls, is controlled by, or under common control with Buyer (each, an “Affiliate”). In addition, upon the Closing for any Parcel(s), Buyer shall have the right to direct Seller to convey title to any Affiliate entity designated by Buyer. Buyer will give Seller written notice of any such assignment. Except as otherwise provided above, this Agreement may not be assigned by Buyer to any person or entity without Seller’s consent, which may be granted or denied in Seller’s sole discretion.

21. **Governing Law; Venue.** This Agreement shall be governed and construed in accordance with the laws of the State of California, without reference to its choice of law rules. The exclusive venue for any disputes or legal actions shall be the Superior Court of California in and for the County of San Joaquin, except for actions that include claims in which the Federal District Court for the Eastern District of the State of California has original jurisdiction, in which case the Eastern District of the State of California shall be the proper venue.

22. **Waivers.** No waiver of any provision of this Agreement or any breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving party, and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other or subsequent breach of this Agreement.

23. **Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns.

24. **Severability.** If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties.

25. **Construction.** Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Agreement. This Agreement has been reviewed and revised by legal counsel for Seller and Buyer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement. Unless the context clearly requires otherwise, (i) the plural and singular numbers shall each be deemed to include the other; (ii) the masculine, feminine, and neuter genders shall each be deemed to include the others; (iii) “shall,” “will,” or “agrees” are mandatory, and “may” is permissive; (iv) “or” is not exclusive; (v) “include,” “includes” and “including” are not limiting and shall be construed as if followed by the words “without limitation,” and (vi) “days” means calendar days unless specifically provided otherwise.
26. **No Joint Venture.** Seller and Buyer hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Buyer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between Seller and Buyer.

27. **Survival of Terms.** Any indemnity provided for herein, and any other provision of this Agreement which, by its terms, is to be performed after the Closing, shall survive the Closing until full performance thereof. The representations, warranties, covenants, terms and conditions of this Agreement shall also survive the Closing.

28. **Time.** Time is of the essence of this Agreement and of the performance of all the terms, covenants and conditions contained in this Agreement.

29. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one agreement.

30. **Seller Approvals and Actions.** Whenever a reference is made herein to an action or approval to be undertaken by Seller, the City Manager or his/her designee is authorized to act on behalf of Seller, unless specifically provided otherwise or the context requires otherwise.

31. **Recording.** This Agreement shall be recorded in the Official Records of San Joaquin County within ten (10) days following the Effective Date.

[Remainder of page intentionally left blank]
IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the Effective Date.

SELLER:

CITY OF STOCKTON, a municipal corporation

By: Kurt O. Wilson, City Manager

3/15/16

Date

and

PARKING AUTHORITY OF THE CITY OF STOCKTON,
a public body corporate and politic organized and existing under
and by virtue of the laws of the State of California

By: Kurt O. Wilson, Executive Director

3/15/16

Date

APPROVED AS TO FORM:

John Luebberke, City Attorney

ATTEST:

CITY CLERK

BUYER:

OPEN WINDOW PROJECT, LLC,
a California limited liability company

By: Zachary Cort

Its: Manager
### Exhibit A

**PROPERTY**

<table>
<thead>
<tr>
<th>Property Address</th>
<th>APN</th>
<th>City or Parking Authority Owned</th>
<th>FMV Purchase Price</th>
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<tr>
<td>216 N California</td>
<td>139-250-26</td>
<td>Parking Authority</td>
<td>$88,500</td>
</tr>
<tr>
<td>39 N California – St. Leo Hotel</td>
<td>149-170-12</td>
<td>City</td>
<td>$20,000</td>
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<td>149-170-25</td>
<td>Parking Authority</td>
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<tr>
<td>431 E Main - Commercial Hotel</td>
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<tr>
<td>25 N Grant</td>
<td>149-180-17</td>
<td>City</td>
<td>$60,000</td>
</tr>
</tbody>
</table>
Exhibit B

PARCEL LEGAL DESCRIPTIONS

Street Address: 216 N. California Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

Parcel 1:

The North 40 feet, 7 1/3 inches of each of lots two (2) and four (4) in block seventy-four (74) East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Parcel 2:

The South 60 feet 4 2/3 inches of each of lots two (2) and four (4); The South 60 feet 4 2/3 inches of the West 2 1/2 feet of lot six (6); all in block seventy-four (74), East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map of Plat thereof.

(ALL MEASUREMENTS UNITED STATES STANDARD MEASURE)

APN: 139-250-26

Street Address: 39 N. California Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

Lot 11 in Block 5 East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof.

APN: 149-170-12

Street Address: 27 N. California Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

Parcel 1:

The South 6 1/2 inches of the North one-half of the West 140 feet of Lot 13, the South one-half of Lot 13 and the North 10 feet of Lot 14 in Block 5, East of Center Street, in the City of
Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Parcel 2:

The North one-half of Lot 13 in Block 5, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Excepting therefrom the South 6 1/2 inches of the North one-half of the West 140 feet of Lot 13.

 Parcel 3:

All of Lots 15 and 16 in Block 5, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Excepting therefrom the South 26.33 feet of the East 141.00 feet of Lot 16.

APN: 149-170-25

Street Address: 431 E. Main Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

Lot 8 and the west one-half of Lot 10 in Block 5 East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof.

APN: 149-170-08

Street Address: 445 E. Main Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

The East one-half of Lot 10 and all of Lot 12 in Block 5, East of Center Street, in the said City of Stockton, according to the Official Map or Plat thereof, San Joaquin County Records.

APN: 149-170-09

Street Address: 24 N. American Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

OAK #4820-6916-2020 v11

Exhibit B-2
Lots 13, 14, 15 and 16 in Block 7, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof, San Joaquin County records.

APN: 149-180-05

Street Address: 725 E. Main Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

All of Lots 8 and 10 in Block 8 East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof.

Also all that part of Lot 6 in Block 8 East of Center Street, being the East 46 1/2 feet thereof, more or less, bounded on the West by the centerline of a division wall running North and South between certain buildings, and being all of said Lot 6, except the part thereof conveyed by Rudolph Gnekow and wife to their sons and daughters by Deed dated February 3, 1913 and recorded in Book "A" of Deeds, Vol. 208, page 106, San Joaquin County Records.

APN: 149-180-21

Street Address: 25 N. Grant Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

Lot 16 and the West 1/3 of Lot 15 in Block 8, East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof, San Joaquin County Records.

APN: 149-180-17
CONSIDERATION OF THE DOWNTOWN STOCKTON OPEN WINDOW DEVELOPMENT PROJECT

RECOMMENDATION

City of Stockton

It is recommended that the City Council adopt two resolutions and an ordinance as follows:

Resolution 1

1. Adopting a Mitigated Negative Declaration and Mitigation Monitoring Report;

2. Approving a Master Development Plan; and

3. Approving a Water Supply Assessment Report (SB610) for the Open Window project in Downtown Stockton, in accordance with the Findings for Decision and Conditions of Approval detailed herein (MDP1-14).

Resolution 2

1. Approving an Option Agreement between the City of Stockton and Open Window Project LLC, for the disposition of City-owned properties; and


Ordinance

1. Approving a Development Agreement

Parking Authority

It is recommended that the Parking Authority adopt a resolution as follows:

1. Approving an Option Agreement between the Parking Authority and Open Window Project LLC, for the disposition of Parking Authority-owned properties; and

2. Making a Finding of conformity with the General Plan in accordance with California Government Code 65402.
Summary

The Open Window project proposes a Master Development Plan (MDP) and accompanying Development Agreement that would provide for revitalization and redevelopment of 11.88 acres and is comprised of 51 properties within an approximately 15 square block area of downtown Stockton (Attachment A - Location Map). The project consists of 43 privately owned properties, with developer options to acquire 8 properties owned by the City of Stockton and Parking Authority.

In addition to the Master Development Plan and Development Agreement, an Option Agreement with Open Window Project LLC is proposed for the disposition of five (5) City-owned parcels and three (3) Parking Authority-owned parcels to the developer. Therefore, staff is also requesting that the City Council make a General Plan Conformity Finding with the City General Plan in accordance with California Government Code 65402 and Stockton Development Code section 16.72.030.D.

The MDP (Attachment B - Master Development Plan with Elevations and Site Improvement Renderings) proposes a mixed-use development concept. Up to 1,034 residential units would be constructed, primarily at higher densities as part of apartments or other multi-family unit developments. The MDP may include development exceeding the 87 dwelling units on a parcel by parcel evaluation with an average density not exceeding 87 dwelling units per acre on any one block, consistent with current General Plan land use policies. This will be on evaluated on a case by case basis. The City is currently working on a General Plan update, and it is important to note the amendment could include increased residential density in the downtown area. The project’s Initial Study (Attachment C - Initial Study/Proposed Mitigated Negative Declaration) analyzed the impact of constructing up to 1,400 residential units, primarily built at higher densities as part of apartments or other multi-family unit developments. If the General Plan is amended to allow higher densities, subsequent entitlements would be streamlined as the necessary approvals to increase from the current limit of 1,034 units to 1,400 units analyzed would already be in place. A subsequent entitlement could take the form of a minor amendment to the MDP as long as subsequent projects are consistent with prior approvals.

The project will also include construction of up to 200,000 square feet of retail space, 90,000 square feet of commercial space, and 110,000 square feet of industrial/art studio space. These spaces may be built as stand-alone developments, or combined in a mixed-use format with residential uses, as noted above.

The MDP prescribes land uses, development standards, design, and other parameters for development; each development project under the MDP would be reviewed to ensure consistency with the MDP as part of the City’s review process. The project may also include corollary replacement or construction of existing wastewater conveyance lines in the project area in response to any necessary upsizing of existing lines and mains, along with any necessary upgrades to water and storm drain systems.

Development of the project would occur in many phases over several years, in response to market demand and development interests. No specific development of these properties is proposed at this time. Rather, the MDP would create a procedural framework by which the participating properties in Open Window could develop over time. These spaces may be built as stand-alone developments, or combined in a mixed-use format.
An accompanying Development Agreement (DA) (Attachment D) and Option Agreement (Attachment E) are also proposed that would, with the MDP and the California Environmental Quality Act (CEQA) documentation, provide for future development.

In addition, staff is requesting City Council approve a Water Supply Assessment Report (WSA) (Attachment F) for the Open Window Project under Senate Bill (SB) 610. SB 610 requires that projects with more than 500 units and office developments of more than 250,000 square feet, or mixed use developments of more than 250,000 square feet to prepare a WSA.

DISCUSSION

Background

This item was considered by the Planning Commission at a public hearing held on January 14, 2016. The Planning Commission unanimously voted to approve Resolution 2016-01-14-0503, recommending to the City Council 1) adoption of a Mitigated Negative Declaration and mitigation monitoring report, 2) approval of a Master Development Plan, 3) approval of a Development Agreement and 4) approval of an Option Agreement, 5) making a Finding of Conformity with the General Plan in accordance with California Government Code 65402, and 6) Approval of a Water Supply Assessment Report (SB610) for the Open Window project in Downtown Stockton, in accordance with the Findings for Decision and Conditions of Approval contained in the Resolution (MDP1-14).


An MDP is intended “to provide flexibility in the planning review process so that land use requirements are identified in a master development plan and there is minimal review of subsequent approvals if they are consistent with the adopted plan…” and “to provide a process for reviewing, processing, and approving master development plan applications which are intended to provide a comprehensive framework for the development of property which have a mixed use or university designation on the General Plan or for a specified geographical area that will be developed as a single concept.” (Stockton Municipal Code Sections 16.140.010.A and B). In this instance, the Open Window project provides for a single-concept, comprehensive development approach to the 51 participating properties over an approximately 15 square block area in Downtown Stockton.

An MDP is required to identify the following (per SMC Section 16.140.070):

- Development requirements and standards.
- Proposed land uses, including density and intensity of uses.
- Infrastructure components.
- Implementation measures, including environmental mitigation measures.
- Discussion of the relationship to the General Plan.

The Open Window MDP identifies development standards and design guidelines; land uses and residential density and non-residential intensity of uses; infrastructure requirements; implementation measures; and a discussion of the project’s consistency with the General Plan.
The MDP also identifies the following underlying principles of the project:

- Revitalize downtown.
- Build community.
- Create identity.
- Improve safety.
- Connect open spaces.
- Promote walkability and biking.
- Provide a flexible approach to mixed use development.

Additionally, a DA is required to implement the MDP, to be processed concurrently with the MDP. A draft DA has been completed for the project, based on a series of discussions with the applicant and the City.

Existing land uses and MDP participating parcels are shown on the attached exhibits from the Open Window MDP (Attachment G - Existing and Proposed Land Use Conditions).

Master Development Plan Details

Project Proposal

The Open Window project proposes a MDP and accompanying DA that would provide for revitalization and redevelopment of 11.88 acres and comprised of 51 properties within an approximately 15 square block area of Downtown Stockton. The project consists of 43 privately owned properties, with developer options to acquire 8 properties owned by the City of Stockton and Parking Authority.

The MDP proposes a mixed-use development concept. Up to 1,034 residential units would be constructed, primarily built at higher densities as part of apartments or other multi-family unit developments. The MDP may include development exceeding the 87 dwelling units on a parcel by parcel evaluation with an average density not exceeding 87 dwelling units per acre on any one block, consistent with current General Plan land use policies. This will be on evaluated on a case by case basis. The City is currently working on a General Plan update which is expected to address residential density in the downtown area. The downtown area could be identified for higher residential density limits than those allowed under the current General Plan. If such changes to the General Plan are ultimately adopted as part of the General Plan update review, increased residential densities would be an option for the Open Window properties. Therefore, for the purposes of the project Initial Study, the analysis assumes that up to 1,400 residential units would be constructed, primarily built at higher densities as part of apartments or other multi-family unit developments. If the recommended approvals are adopted, subsequent entitlements would be streamlined as the necessary approvals to increase from the current allowed density of 1,034 would already be in place. The maximum number of units could not exceed the 1,400 units analyzed in the Initial Study. A subsequent entitlement could take the form of a minor amendment to the MDP as long as subsequent projects are consistent with prior approvals.

The project will also include construction of up to 200,000 square feet of retail space, 90,000 square feet of commercial space and 110,000 square feet of industrial/art studio space. These spaces may
be built as stand-alone developments, or combined in a mixed-use format with residential uses, as noted above.

The MDP prescribes land uses, development standards, design and other parameters for development; each development project under the MDP would be reviewed to ensure consistency with the MDP as part of the City’s review process. Development may also include use of parking garages, surface parking areas, plazas, frontage and other improvement features, and would include site grading, consistent with the MDP.

As part of the project, the MDP indicates that several buildings may be demolished or remodeled. This will likely depend upon market conditions and specific developer requirements for a particular property. A specific list of properties that may be demolished or remodeled is included within Appendix 1 of the MDP.

The project may also include corollary replacement of existing wastewater conveyance lines in the project area in response to any necessary upsizing of existing lines and mains, along with any necessary upgrades to water and storm drain systems. These types of improvements could include short-term construction impacts within public street rights-of-way related to installation of new or upsized pipes and related equipment.

Development of the project would occur in many phases over several years, in response to market demand and development interests. No specific development of these properties is proposed at this time. Rather, the MDP would create a procedural framework by which the participating properties in Open Window could develop over time. These spaces may be built as stand-alone developments, or combined in a mixed-use format.

An accompanying DA and Option Agreement are also proposed that would, with the MDP and the project underlying CEQA documentation, provide for future development.

Project Phasing

The MDP indicates that development of parcels, including potential rehabilitation of certain existing buildings, could occur in a variety of ways, from parcel-by-parcel to block-by-block, or multiple blocks at one-time. The MDP assumes that development would be likely to occur over a substantial period of time in partial block increments.

Open Window and the General Plan

The project is subject to the 2035 General Plan. The entire project site is designated as Commercial in the General Plan, as illustrated below.
The General Plan prescribes a multitude of policies that encourage infill development, high density residential development, and commercial revitalization, including, but not limited to, the following:

LU-3.2 Residential Infill Densities - The City shall encourage higher residential densities at appropriate infill locations through the design flexibility made possible by the Planned Development provisions of the Development Code.

LU-4.1 Commercial Revitalization - The City shall encourage the upgrading, beautification, revitalization, and appropriate reuse of existing commercial areas and shopping centers.

DV-2.1 Revitalize Downtown Stockton - The City shall promote the revitalization of Downtown Stockton, including increased employment opportunities, expanded private investment, construction of new housing, and the provisions of various services to address existing social problems.

DV-2.2 High-Density Residential Development - The City shall encourage high-density residential uses to locate in the downtown area and along transit corridors (such as a BRT corridor) to support the area’s commercial activities.

DV-2.3 Downtown Housing Goals - The City shall actively pursue short- and long-term housing goals for the downtown area. The short-term goal shall be the construction or rehabilitation of at least 1,000 housing units in the first seven years of the General Plan (by 2014). The long-term goal is to create a total, of 3,000 new units in the downtown by 2035.

DV-2.4 Incentives to Create Downtown Housing - The City shall review and revise, as necessary, its redevelopment/revitalization strategy and programs for downtown and other redevelopment areas to ensure they adequately implement the downtown infill and redevelopment policies of the General Plan. The City shall establish a schedule of reduced public facilities fees for new development in the central city areas as an encouragement to develop vacant or under-utilized parcels. The City shall adopt density bonus standards to encourage the intensification of housing and promote affordable housing opportunities in the downtown.

DV-2.13 Building Rehabilitation - The City shall encourage and assist in the rehabilitation of
existing buildings in downtown and use historic buildings as resources for future development.

The project is consistent with these applicable policies of the 2035 General Plan. Additionally, the project will help implement City vision for downtown development through its adopted Climate Action Plan and Sustainable Communities Strategy by providing for dense residential and mixed-use land uses in the downtown core area, allowing for reduced vehicle trips while encouraging and providing for pedestrian and bicycle movements between residences, places of employment, shopping and entertainment venues.

The project is designated Commercial under the General Plan, which supports residential and mixed residential/commercial uses. The project includes an MDP, which is authorized by Stockton Municipal Code Section 16.140.

**Land Use and Development Plan**

### Land uses and density:

The MDP identifies a range of land uses that would be complementary to a mixed use, downtown development. Primary permitted uses would include residential (multi-family housing, townhouses, duplexes and triplexes, and live/work spaces), wide range of retail and commercial uses (including retail stores, restaurants, banks and offices), and support services.

Up to 1,034 residential units would be constructed, primarily built at higher densities as part of apartments or other multi-family unit developments. The MDP may include development exceeding the 87 dwelling units on a parcel by parcel evaluation with an average density not exceeding 87 dwelling units per acre on any one block, consistent with current General Plan land use policies for density bonuses. This will be on evaluated on a case by case basis. As noted above, the City is currently working on a General Plan update, which is expected to address residential density in the downtown area. Staff anticipates that the downtown area would be identified for higher residential density limits than those allowed under the current General Plan. If such changes to the General Plan are adopted as part of the General Plan update, increased residential densities would be an option for the Open Window properties. The project Initial Study therefore addressed potential impacts based on up to 1,400 residential units.

### Building bulk controls:

A building floor area ratio (FAR) of 5.0 is proposed, consistent with General Plan policy for downtown development.

### Building heights:

Consistent with Commercial zoning, there would be no height limit for new buildings. Instead, building bulk and design criteria would apply in determining final building design.

### Building setbacks:

New buildings would be allowed to the front property line with no setbacks, though townhouses or ground-floor flats would have a required five-foot front yard setback to accommodate stairways or
stoops. Non-residential and mixed-use spaces may match this setback in order to maintain a consistent building façade along the street frontage. Any front yard setback area would be required to include landscaping. A mid-rise residential building (6 to 8 story buildings) would require a 10 foot setback where residential units face a rear or side yard.

Signage:

All signs would be required to comply with existing City signage requirements in the Zoning Ordinance.

Proposed Design:

The MDP includes a series of prototypical designs that would apply to each type of building that may be developed as part of Open Window. These include design details on façade and wall treatment, building massing, parking areas, screening of mechanical equipment, treatment of open space and walkway areas, and similar design considerations.

The overall design intent is to ensure new buildings are designed consistent with the overall themes contained in the MDP.

Examples of illustrative designs and examples of building articulation details from the MDP, with recessed notches and projecting bays, are provided (Attachment H- Illustrative Examples of MDP Area).

Parking:

The MDP proposes the following maximum parking standards:

- Residential: 1 space/dwelling unit
- Commercial and Light Industrial: 2 spaces/1,000 sq. ft. gross floor area
- Retail: None required for spaces less than 5,000 sq. ft. gross floor area; otherwise, 2 spaces/1,000 sq. ft. gross floor area
- All other uses: per SMC.

Staff recommends that the MDP identify the parking standards as base requirements and not the “maximum” parking standards, which could imply parking standards less restrictive than those identified above. Appropriate on-site parking, even in recognition of the mixed-use concept of Open Window, still is advisable to ensure other land uses in the immediate area are not adversely impacted. A condition of approval is attached addressing this concern.

Landscaping:

General landscape guidelines are included in the MDP, addressing location, plant selection, water usage, maintenance, and similar considerations. The MDP also addresses potential use of widened sidewalks, traffic calming, retail, and greenway streets, including planting of street trees. Landscaping would be subject to use of drought-tolerant species.
Circulation, Bicycle and Pedestrian Access

The Open Window properties would utilize access directly from the adjoining City streets. Residential alleyways could also be utilized, including for townhouses that would have garages facing the alleys.

Bicycle access and walkability of the project area is stressed through the various Street Types contained in the MDP, including extended sidewalks, potential for reduced-width travel lanes to reduce vehicle speeds and create a safer bicycle and pedestrian environment, potential use of bulb-outs, and similar design features. Site planning would also stress pedestrian accessibility as a means of further reducing project vehicle trips.

Public Facilities and Services

Development of the Open Window MDP would result in an increase in the population in downtown Stockton, which would result in increases in demand for police and fire protection services, school and solid waste disposal services as well as the infrastructure for water, sewer, and stormwater systems.

The Open Window project would be served by the following service providers:

- Police protection - City of Stockton Police Department
- Fire protection - City of Stockton Fire Department
- School - Stockton Unified School District
- Solid waste - Sunrise Sanitation
- Water - California Water Company
- Sanitary sewer and storm drainage - Stockton Municipal Utilities Department

The project Initial Study further discusses the range of necessary public facilities and services for the project. These will include possible replacement and/or upsizing of sanitary sewer and storm drainage lines in the area, to be determined on a project-by-project basis by the City’s Municipal Utility Department in reviewing project plans and technical studies submitted for each development proposal. The project also will participate in the City’s recently adopted Downtown Infrastructure Infill Incentive Program, which provides financial incentives for development of identified land uses, including residential and retail development, to help offset costs for infrastructure construction. California Water would provide potable water to the project, and conducted a Water Supply Assessment to determine long-term ability to serve the project. The project would be required to pay applicable school fees in support of school facility needs generated by new development. City Fire and Police services would be available, though additional requirements could be imposed in response to review of individual development projects related to equipment and other City Fire and Police Department needs.

Utilities

Public facilities to be constructed as a part of the project would include electricity, natural gas, telephone/fiber optics and cable television service extensions, where necessary to serve new development. The Open Window area is within a Pacific Gas & Electric Company service area, who
also currently provides natural gas service to the area. Telephone service to the area is currently available. Comcast is the current provider for cable television services in the Stockton area and would provide cable television to the project area.

Development Agreement

The project DA identifies a range of developer and City responsibilities for how Open Window development may occur in the coming years. The DA addresses issues such as infrastructure construction, payment of applicable fees, and similar issues.

Option Agreement

On March 24, 2015 the City Council authorized an Exclusive Negotiating Rights Agreement (ENRA) with Open Window Project LLC to negotiate the acquisition of several City and Parking Authority-owned properties in Downtown Stockton. Below are the subject parcels (Attachment I - Vicinity Map):

<table>
<thead>
<tr>
<th>City-owned Property</th>
<th>Parking Authority-owned Property</th>
</tr>
</thead>
<tbody>
<tr>
<td>149-170-08 - Commercial Hotel</td>
<td>139-250-26 - Paved Lot</td>
</tr>
<tr>
<td>149-170-09 - Main Hotel</td>
<td>149-170-25 - Paved Lot</td>
</tr>
<tr>
<td>149-170-12 - St. Leo Hotel</td>
<td>149-180-05 - Paved Lot</td>
</tr>
<tr>
<td>149-180-21 - Dirt Lot</td>
<td></td>
</tr>
<tr>
<td>149-180-17 - Paved Lot</td>
<td></td>
</tr>
</tbody>
</table>

City staff has completed its negotiations for the disposition of the subject parcels and is requesting that Council approve the execution of a market rate purchase Option Agreement with the developer. These parcels will be combined with those controlled by the developer to maximize the ability to construct new or rehab existing residential and commercial structures as part of the MDP. Key terms of the POA are outlined below:

- 5 year term
- Upon purchase of any one of two Parking Authority Parcels, specifically APN 149-170-25 and APN 149-180-05, the developer must concurrently purchase all three City-owned hotels (St. Leo, Commercial, and Main)
- Sale of Parking Authority property is contingent upon approval by National Public Finance Guarantee Corporation (NPFG).
- Upon execution of the Option Agreement, developer shall pay $10,000 to the City as initial payment. Each year thereafter, or until developer elects to purchase all parcels or terminates the agreement, developer shall make a $10,000 payment to the City. A portion of the payments will be applied to the purchase price of parcels the developer elects to purchase.
- Properties will be sold as is with a fair market value (FMV) purchase price for each parcel noted below. The FMV purchase price will be increased by 2% each year until parcels have been sold or the agreement terminates. An appraisal was prepared by The Bramwell-Smith Company on April 14, 2015 to determine the FMV purchase price.
File #: 16-2371, Version: 1

<table>
<thead>
<tr>
<th>Property Address</th>
<th>APN</th>
<th>City or Parking Authority Owned</th>
<th>FMV Purchase Price</th>
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<tr>
<td>216 N California</td>
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<tr>
<td>39 N California - St Leo Hotel</td>
<td>149-170-12</td>
<td>City</td>
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<tr>
<td>27 N California</td>
<td>149-170-25</td>
<td>Parking Authority</td>
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<tr>
<td>431 E Main - Commercial Hotel</td>
<td>149-170-08</td>
<td>City</td>
<td>$20,000</td>
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<tr>
<td>445 E Main - Main Hotel</td>
<td>149-170-09</td>
<td>City</td>
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<td>24 N American</td>
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<tr>
<td>25 N Grant</td>
<td>149-180-17</td>
<td>City</td>
<td>$60,000</td>
</tr>
</tbody>
</table>

It's important to note that the Open Window project aligns with the City Council’s goal of revitalizing Downtown Stockton. It also has the potential to serve several key Downtown Stockton objectives, as well as supporting recommendations included in the 2012 Urban Land Institute report and the Economic Development Strategic Plan adopted February 2015, namely the attraction of private investment in the downtown core, generation of jobs through business expansion to the area, attraction of new residents downtown, and quality urban design.

Notification of Option Agreement

As required, a “Notice of Intent to Grant or Sell Real Property Interest” in accordance with the provisions of Article V, Section 510, of the Charter of the City of Stockton, was advertised in the legal notice section of The Record on February 10, 2016.

Environmental Clearance of Option Agreement

The Initial Study/Mitigated Negative Declaration evaluated the impacts of development of 1,400 units on the 51 parcels within the Open Window project boundary, including the 8 identified City/Parking Authority owned parcels within this Option Agreement and within the Open Window Project boundary.

As a result of the disposition of real property, the City is asked to make a finding of General Plan Conformity. In accordance with Section 65402 of the Government Code and Stockton Development Code section 16.72.030.D the Planning Commission also recommends that the City Council find that this project conforms to the City’s General Plan and with the General Plan Policy Document.

Development Review Process

The MDP will serve as the basis for reviewing individual development proposals for the Open Window project.

As noted above, pursuant to SMC Section 16.140.010.A, the intent of a MDP is to provide flexibility in the planning review process so that land use requirements and development standards, as well as design and architectural parameters, are identified in a MDP, necessitating only minimal review of subsequent approvals to ensure consistency with the adopted MDP. The proposed MDP identifies the maximum number of residential units and maximum commercial floor area, prescribes site
development standards, and addresses site planning, architectural design and related improvement requirements. This thereby reduces the need for subsequent reviews and discretionary approvals for the implementation of the MDP, though certain uses and design features may trigger review by the Planning Commission.

Individual development plan proposals would be submitted to the Community Development Department. Site plan and design review would be required for all projects involving alterations to the exteriors of existing buildings or new construction. Projects may require Planning Commission review if determined that such review is warranted based on issues of site design, architecture, land use, parking and other related development issues. Project plan review would be performed by Planning staff, along with review and input from other City departments, including MUD, Public Works, Fire and Police. Subdivision of any properties would be subject to State Map Act and City regulations and processes.

Neighborhood Meeting

The applicant conducted outreach to downtown property owners and groups, and held a neighborhood meeting at 225 North American Street on November 5, 2015. The meeting was noticed by the applicant through direct mailings to property owners and businesses within 300 feet of the project properties. The meeting began at 5:30 p.m. and was attended by approximately 80 people, plus the project applicants and City staff. The applicant provided an informational presentation to meeting attendees on the Open Window project, and responded to questions from the audience.

Environmental Review

Staff prepared, circulated and is recommending approval of an Initial Study/Proposed Mitigated Negative Declaration. Pursuant to Sections 15071 and 15074 of the CEQA Guidelines, the Initial Study/Mitigated Negative Declaration must be adopted prior to any approval for the proposed project. Mitigation measures would be incorporated as part of the project Open Windows Project conditions and agreements.

PRESENT SITUATION

With the Planning Commission having recommended this project for approval at its January 14, 2016 meeting, the matter is ready for City Council action.

Options for Council's consideration are:

1) Approve the Open Window project as submitted to the Council,

2) Approve the Open Window project with any Council-directed changes to the proposed Master Development Plan and Development Agreement, or

3) Vote to deny the Open Window project.

The Open Window development presents significant opportunity, over time, to implement City of Stockton goals with respect to downtown development, creation of more housing opportunities in the downtown area, and creation of jobs for Stockton residents.
FINANCIAL IMPACTS

Costs for processing the Open Window Master Development Plan and Development Agreement, along with the corollary CEQA document, have been fully paid to the City by the project applicants. There is no General Fund impact.

Costs for development of the Open Window project will be borne by each development project as they come forward, including payment of applicable City impact fees.

Proceeds from the sale of City-owned parcels, less normal closing costs, will be deposited into the City Disposition/Sale of Fixed Assets Account No. 010-0000-461, and approximately $500 will be allocated from 010-0000-461 for advertising expenses. Proceeds from the sale of Parking Authority parcels, less normal closing costs, will be deposited into Parking Authority Account No. 418-0000-461.

RECOMMENDATIONS

City Council

Resolution 1

CEQA Document: It is recommended that the City Council adopt the project Initial Study and Mitigated Negative Declaration, finding that environmental assessment has been prepared in accordance with the provisions of the California Environmental Quality Act and addresses the environmental review required for the Master Development Plan, Development Agreement, Option Agreement, and Water Supply Assessment Report (SB 610) in that:

a. The Project initial study identified potentially significant effects of the Project. Revisions to the Project made by or agreed to by the Project applicant before the proposed mitigated negative declaration (MND) and initial study were released for public review and were determined by the City to avoid or reduce the potentially significant effects to a less than significant level, and, therefore, there was no substantial evidence that the Project as revised and conditioned would have a significant effect on the environment.

b. A Notice of Intent to Adopt the MND (NOI) was circulated for public comment for 30 days (December 4, 2015 through January 4, 2016). The NOI was sent to those public agencies that have jurisdiction by law with respect to the proposed project and to other interested parties and agencies. The comments of such persons and agencies were sought.

c. The NOI was published in the Stockton Record, a newspaper of general circulation, and the NOI was posted in the office of the San Joaquin County Clerk.

d. The Planning Commission and City Council have reviewed and considered the information contained in the MND, including the initial study, the revisions and conditions incorporated into the Project, and the comments received during the public review process and the hearing on the Project. The Planning Commission and City Council have determined that the MND constitutes an adequate, accurate, objective and complete review of the environmental effects of the proposed project.
Based on its review of the MND and on the basis of the whole record, the Planning Commission and City Council find that the MND reflects the City’s independent judgment and analysis and that there is no substantial evidence that the Project will have a significant effect on the environment.

**Master Development Plan:** It is recommended that the City Council adopt the Open Window Master Development Plan, based on the following findings:

a. The proposed master development plan would be consistent with the objectives, policies, general land uses, programs, and actions of all applicable elements of the General Plan. The Open Window MDP provides for a range of mixed use development in downtown Stockton, consistent with General Plan goals and policies, including provision of new housing and creation of jobs.

b. The master development plan would adequately address the physical development characteristics of the subject site(s). The Open Window MDP includes development standards and guidelines for the comprehensive development of the participating properties.

c. The development standards identified in the master development plan would serve to protect the public convenience, health, safety, and general welfare. The Open Window MDP will provide for safe and efficient site planning, building construction and regulation of land use. Additionally, the project includes the Initial Study/Mitigated Negative Declaration mitigation measures as part of the project, ensuring protection of the environment from significant environmental effects of the project.

d. Development of the subject site(s) covered by the master development plan would ensure a compatible land use relationship with the surrounding neighborhood. The Open Window MDP provides for mixed uses in downtown Stockton, and would be compatible with the range of existing uses in the area, which include commercial, residential, office, and light industrial uses.

e. The master development plan would be in compliance with all applicable requirements of this Development Code, local ordinances, and State law. The Open Window MDP complies with provisions of the SMC, Chapter 16.140, regarding establishment of a master development plan, as well as other applicable local ordinances and provisions of state law.

**Water Supply Assessment Report (SB 610):** It is recommended that the City Council adopt the resolution for Water Supply Assessment Report for the Open Window Project, based on the following findings:

1. State law requires a water supply and demand analysis (Water Supply Assessment) for development projects of a certain size or type, which would include the Open Window Project.

2. The Water Supply Assessment evaluates project water supplies, determined to be available by the City and Cal Water for the project during normal, single dry and multiple dry years over a 20 year period. Cal Water, Stockton District prepared the Water Supply Assessment for the City for the Open Window Project.
3. On January, 14, 2016, the City Planning Commission held a noticed public hearing on the Open Window Project, received and considered evidence, and forwarded to the City Council a recommendation to adopt the entitlements for the project.

4. On February 23, 2016, the City Council conducted a noticed public hearing, considered the Mitigated Negative Declaration, and received and considered evidence concerning the entitlements for the project. Based on the verbal and documentary evidence at the hearings on the Open Window Project, the City Council approves the Water Supply Assessment Report.

Resolution 2

Option Agreement: It is recommended that the City Council approve an Option Agreement between the City of Stockton and Open Window Project LLC, for the disposition of City-owned properties.

General Plan Conformity Finding: In accordance with Section 65402 of the Government Code and Stockton Development Code section 16.72.030.D, the Planning Commission also recommends that the City Council find that this action/project conforms to the City’s General Plan and with the General Plan Policy Document.

Ordinance

Development Agreement: It is recommended that the City Council adopt the Ordinance for the Open Window Development Agreement, based on the following findings:

a. The Development Agreement is in the best interests of the City, as it would promote the revitalization of Downtown Stockton by facilitating new and rehabilitated housing, retail, office, and commercial development, remove blight, and increase the downtown population and employment.

b. The Development Agreement complies with the City Development Code and other applicable ordinances and regulations, particularly the regulations of Chapter 16.128 pertaining to development agreements.

c. The Development Agreement is consistent with the general land uses, objectives, policies, and programs of the General Plan, any applicable specific plan or master development plan. The Open Window Project Master Development Plan and Development Agreement provide for a range of mixed use development in downtown Stockton, consistent with the General Plan goals and policies, including the provision of new housing and creation of jobs.

d. The Development Agreement will not endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare in that projects constructed pursuant to it are required to comply with all health and safety regulations, zoning requirements, infrastructure provision, and General Plan policies.

e. The Development Agreement complies with the conditions, requirements, restrictions, and terms of Section 16.128.060(B) (Preparation and Content - Proposed Development Agreement).
f. The Development Agreement complies with the provisions of the California Environmental Quality Act (CEQA) and the City's CEQA Guidelines in that evaluations of potential impacts have been completed and mitigation measures have been incorporated to mitigate all identified impacts to a less-than-significant level.

Proposed Conditions:

Pursuant to SMC, Section 16.140.100, in approving or amending a master development plan, the City Council may impose specific development conditions relating to the construction (both on- and off-site improvements), establishment, location, maintenance, and operation of the proposed activities, as it finds are reasonable and necessary to ensure that the approval would be in compliance with the above-listed findings, and to carry out the purpose and requirements of the applicable General Plan designation and this Development Code. The following conditions are therefore imposed for the Open Window MDP:

1. The Open Window project shall be developed consistent with the provisions of the MDP and the Open Window Development Agreement except as noted in the conditions herein.

2. Mitigation Measures contained in the project Mitigated Negative Declaration are hereby incorporated into the Open Window project.

3. All development projects within the Open Window Project shall be subject to review and approval by the Community Development Department, consistent with operational provisions contained within the MDP. This shall include project plan review, revisions and attachment of project conditions of approval, as necessary to ensure MDP consistency, prior to permit issuance. Plan review shall include other City departments and agencies, as appropriate. The City may require development submittal of technical and related studies and information to assist in project plan review and permit issuances.

4. All development projects shall be subject to obtaining all necessary local, regional and state agency approvals and permits, as may be required.

5. There shall be a limit of up to 1,034 residential units for the Open Window project, and with a residential density not to exceed 87 dwelling units per acre as measured for any Open Window developments located within any one square block within the project development area. However, the City is currently working on a General Plan update which is expected to address residential density in the downtown area. It is anticipated that the downtown area would be identified for higher residential density limits than those allowed under the current General Plan. If such changes to the General Plan are ultimately adopted as part of the General Plan update review, increased residential densities would be an option for the Open Window properties. Therefore, the project Initial Study analysis assumed that up to 1,400 residential units would be constructed, primarily built at higher densities as part of apartments or other multi-family unit developments.

6. The developer of a master development plan shall establish a homeowner's association (HOA) for residential areas within the master development plan for the purpose of maintaining common areas and enforcing the required covenants, conditions and restrictions (CC&R).
HOA’s shall be formed and recorded prior to issuance of residential building permits.

7. All subsequent land owners and tenants occupying property within the area covered by the adopted MDP shall sign a document specifying that they have received and reviewed a copy of the approved MDP and/or the recorded development agreement which identifies the provisions, regulations, requirements, and standards governing the development and ongoing operation of the sites covered by the MDP. Copies of completed acknowledgements shall be provided by the developer to the Community Development Department.

8. The Director shall have the authority to interpret the precise language of the MDP to determine if a proposed use, while not specifically listed as an allowable use, would be consistent with and share the same or similar characteristics of an allowed use identified in the adopted MDP.

9. The Director shall review the adopted MDP every five (5) years to ensure compliance by the applicant or the successor(s)-in-interest. During this review, the applicant, or the successor(s)-in-interest, shall demonstrate compliance with the terms of the MDP to the satisfaction of the Director.

10. Parking: The MDP shall identify the parking standards as base requirements and not the “maximum” parking standards. Appropriate on-site parking, even in recognition of the mixed-use concept of Open Window, is required to ensure appropriate on-site project parking is provided and other land uses in the immediate area are not adversely impacted.

Parking Authority

Option Agreement: It is recommended that the Parking Authority approve an Option Agreement between the Parking Authority and Open Window Project LLC, for the disposition of Parking Authority-owned properties.

General Plan Conformity Finding: In accordance with Section 65402 of the Government Code, the Planning Commission also recommends that the City Council find that this action/project conforms to the City’s General Plan and with the General Plan Policy Document.

Attachment A - Location Map
Attachment B - Master Development Plan with Elevations and Site Improvement Renderings
Attachment C - Initial Study / Proposed Mitigated Negative Declaration
Attachment D - Development Agreement
Attachment E - Purchase Option Agreement
Attachment F - Water Supply Assessment Report
Attachment G - Existing and Proposed Land Use Conditions
Attachment H - Illustrative Examples of MDP Area
Attachment I - Vicinity Map
RESOLUTION APPROVING THE EXECUTION OF AN OPTION AGREEMENT FOR THE SALE AND CONVEYANCE, VIA GRANT DEED, OF CITY-OWNED REAL PROPERTY AND FINDING THAT THIS ACTIVITY/PROJECT CONFORMS TO THE CITY’S GENERAL PLAN DESIGNATION IN ACCORDANCE WITH GOVERNMENT CODE SECTION 65402 AND STOCKTON DEVELOPMENT CODE SECTION 16.72.030.D

The City of Stockton ("City") owns property in Downtown Stockton, inclusive of County Assessor Parcel Numbers 149-170-08, and 09 and 149-180-21 and 17; and

On March 24, 2015, the City Council authorized the execution of an Exclusive Negotiating Rights Agreement (ENRA) with Open Window Project LLC for the potential acquisition of the following City-owned parcels noted below; and

<table>
<thead>
<tr>
<th>City-owned Property</th>
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</thead>
<tbody>
<tr>
<td>149-170-08 – Commercial Hotel</td>
</tr>
<tr>
<td>149-170-09 – Main Hotel</td>
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<tr>
<td>149-170-12 – St. Leo Hotel</td>
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<td>149-180-21 – Dirt Lot</td>
</tr>
<tr>
<td>149-180-17 – Paved Lot</td>
</tr>
</tbody>
</table>

City staff has completed negotiations for the subject parcels and would now like to enter into an Option Agreement between the City of Stockton, Open Window Project LLC setting the terms and fair market value purchase price; and

On January 14, 2016, the Stockton Planning Commission approved a resolution recommending that the City Council approve the Open Window Master Development Plan and Development Agreement that would provide for revitalization of approximately 15 square blocks of Downtown Stockton; and

The subject parcels will be combined with those controlled by the developer of the Open Window Project to maximize the ability to construct new or rehab existing residential and commercial structures as part of the Master Development Plan; and

The Open Window Project aligns with Council’s goal of revitalizing Downtown Stockton and has the potential to meet several key Downtown Stockton objectives, such as attracting private investment, generating jobs and business expansion, and attracting new residents; now, therefore,

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

1. The City Manager is authorized to execute an Option Agreement, attached hereto as Exhibit 1 and incorporated by this reference, with Open Window Project LLC for
the potential sale and conveyance of the subject properties, as described in the Agreement.

2. It is declared that notice of the intention to sell or dispose of City-owned property, as more particularly described, was duly published in accordance with the provisions of Article V, section 510 of the Charter of the City.

3. The total selling price of the subject parcels is as follows:

<table>
<thead>
<tr>
<th>Property Address</th>
<th>APN</th>
<th>City or Parking Authority Owned</th>
<th>FMV Purchase Price</th>
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<td>39 N California – St Leo Hotel</td>
<td>149-170-12</td>
<td>City</td>
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<td>431 E Main – Commercial Hotel</td>
<td>149-170-08</td>
<td>City</td>
<td>$20,000</td>
</tr>
<tr>
<td>445 E Main – Main Hotel</td>
<td>149-170-09</td>
<td>City</td>
<td>$20,000</td>
</tr>
<tr>
<td>725 E Main</td>
<td>149-180-21</td>
<td>City</td>
<td>$60,000</td>
</tr>
<tr>
<td>25 N Grant</td>
<td>149-180-17</td>
<td>City</td>
<td>$60,000</td>
</tr>
</tbody>
</table>

4. The City Attorney of the City is authorized to execute deeds and/or other instrument of conveyance at such time that Open Window Project LLC exercises in right to purchase subject property under the terms of the Option Agreement, and the City Manager is authorized to execute the Agreement and any other documents necessary to carry out the purposes hereof.

5. In accordance with Government Code section 65402 and Stockton Development Code section 16.72.030.D, this activity/project has been determined to conform to the City’s General Plan designation.

6. The environmental assessment has been prepared in accordance with the provisions of the California Environmental Quality Act. An Initial Study/Mitigated Negative Declaration (MND) was conducted as part of the larger Open Window Project Master Development Plan and Development Agreement, which evaluated the impacts of development of the project, including the five City-owned properties included in the Option Agreement, and based on its review of the MND and on the basis of the whole record, the City Council finds that there is no substantial evidence that the project will have a significant effect on the environment.

PASSED, APPROVED and ADOPTED February 23, 2016

ANTHONY SILVA
Mayor of the City of Stockton

ATTEST:

BONNIE PAIGE
City Clerk of the City of Stockton
OPTION AGREEMENT

This Option Agreement ("Agreement"), dated as of ________________, 2016 (the "Effective Date," which is the date this Agreement has been approved by both the City and Authority), is entered into by and among OPEN WINDOW PROJECT, LLC, a California limited liability company ("Buyer"), CITY OF STOCKTON, a California municipal corporation ("City") and PARKING AUTHORITY OF THE CITY OF STOCKTON, a public body corporate and politic organized and existing under and by virtue of the laws of the State of California ("Authority"). City and Authority are sometimes collectively referred to herein as the "Seller".

1. Option. City and Authority hereby grants to Buyer, for the Option Term and upon the terms and conditions set forth in this Agreement, an exclusive and irrevocable right (the "Option") to acquire fee title to the real property located in the City of Stockton, San Joaquin County, California, as identified in Exhibit A and more particularly described in Exhibit B attached hereto and incorporated herein, together with all of City and Authority's respective right, title and interest in and to any and all improvements located on such real property, and any and all easements, mineral rights, water rights and other rights appurtenant to such real property (all such real property, improvements, easements and rights are hereinafter collectively referred to as the "Property"). The approximately 2.42 acre Property consists of eight (8) parcels, three of which are owned by Authority and five (5) of which are owned by City (referred to individually herein as a "Parcel" and, collectively, as the "Parcels"), as identified in Exhibit A.

   (a) Term of Option. The term of the Option ("Option Term") shall commence on the Effective Date, and shall terminate on the fifth (5th) anniversary of the Effective Date.

   (b) Exercise of Option. If Buyer elects to exercise the Option to purchase one or more Parcels, Buyer shall send City and Authority written notice(s) of exercise of the Option ("Exercise Notice") indicating which Parcel(s) Buyer intends to acquire. Upon the purchase of any one of the following two (2) Authority-owned Parcels, specifically 27 N. California Street (APN 149-170-25) and 24 N. American Street (APN 149-180-05), the Buyer shall concurrently purchase all three (3) City-owned hotels, specifically 39 N. California Street (St. Leo Hotel), 431 E. Main Street (Commercial Hotel), and 445 E. Main Street (Main Hotel). Upon such exercise, City and/or Authority, as applicable, shall be obligated to sell the Parcels identified in the Exercise Notice to Buyer, and Buyer shall be obligated to purchase such Parcels from City and/or Authority, as applicable, in accordance with and subject to the terms set forth in this Agreement. The sale of the
three (3) Parcels owned by the Parking Authority will be contingent upon the approval of the National Public Finance Guarantee Corporation ("NPFG"). At any time prior to the expiration of the Option Term, Buyer shall have the right to deliver one or more Exercise Notices, each addressing one or more Parcels.

(c) Option Fee. As consideration for the Option, Buyer shall pay to City, for the benefit of both City and Authority, the payments described in this Paragraph 1(c) (collectively, the "Option Fees"). Upon execution of this Agreement, Buyer shall pay to City the sum of Ten Thousand Dollars ($10,000) (the "Initial Option Fee Payment"). By not later than each anniversary of the Effective Date, commencing on the first anniversary of the Effective Date and continuing for each remaining year of the Option Term until Buyer either exercises the Option for all Parcels or Buyer gives written notice to Seller that Buyer elects to terminate this Agreement, Buyer shall make a payment to City in the amount of Ten Thousand Dollars ($10,000) (collectively, the "Annual Option Fee Payments"). One-half of the Initial Option Fee Payment (the "Independent Consideration") shall be nonrefundable, and shall not be credited toward the Purchase Price. All other Option Fees (other than the Independent Consideration) paid by Buyer shall be credited toward the Purchase Price of the Parcels that Buyer elects to purchase. Upon the expiration of the Option Term, Seller shall retain the balance (if any) of all Option Fees that Buyer has paid but that have not been credited toward the Purchase Price for one or more Parcels. If Buyer fails to make any Annual Option Fee Payment by the due date for such payment (or, in the event of an inadvertent failure to timely make such payment, such later date as City Manager may agree), Buyer shall have no right to purchase any Parcels for which Escrow has not been opened, and this Agreement shall terminate.

2. Purchase Price. The purchase price for each Parcel ("Purchase Price") shall be the "FMV Purchase Price" for such Parcel as listed in Exhibit A, increased by a factor of two percent (2%) per year on each anniversary of the Effective Date. At the Closing for the first Parcel(s) that Buyer elects to purchase ("First Closing"), Buyer will pay to City and/or Authority, as applicable, the Purchase Price for such Parcel(s) less the following sums: (i) an amount equal to one-half of the Initial Option Fee Payment (the "Option Fee Credit"), (ii) an amount equal to the sum of all Annual Option Fee Payments paid to the date of Closing, (iii) the sum of Ten Thousand One Hundred Dollars ($10,100) (the "HRE Credit"), and (iv) applicable prorations as set forth in this Agreement. The HRE Credit represents Buyer’s out-of-pocket costs incurred in connection with preparation of historic resources evaluations for the three City-owned hotels located on certain Parcels, which reports have been provided by Buyer to Seller for its use and benefit. The sums specified in clauses (i), (ii) and (iii) above are collectively referred to herein as the "Credits". The Credits may be allocated between City and Authority as they may agree. If the aggregate amount of the Credits exceeds the Purchase Price for the Parcel(s) to be conveyed at the First Closing, any excess amount shall be credited toward Buyer’s subsequent purchase of additional Parcels.

3. Escrow. The parties acknowledge that Buyer may elect to purchase one or more Parcels at different times during the Option Term, and that the provisions of this Section 3 shall apply to the First Closing and to each subsequent Closing for additional Parcels Buyer elects to acquire. With the exception that upon the purchase of any one of the following two (2) Parking Authority-owned Parcels, specifically 27 N. California Street (APN 149-170-25) and 24 N. American Street (APN 149-180-05), the Buyer shall concurrently purchase all three (3) City-
owned hotels, specifically 39 N. California Street (St. Leo Hotel), 431 E. Main Street (Commercial Hotel) and 445 E. Main Street (Main Hotel). Within five (5) business days after Buyer’s exercise of the Option as to one or more Parcels, Buyer will open escrow ("Escrow") with a title company mutually agreeable to the parties ("Escrow Agent" or "Title Company").

(a) Closing and Closing Date. Subject to satisfaction of the Conditions Precedent (defined below), for each Parcel Buyer elects to acquire, the purchase and sale shall occur, and Escrow shall close ("Closing") within 45 days of Buyer’s exercise of the Option for such Parcel(s), or such other date prior to the expiration of the Option Term as agreed upon by the parties (the "Closing Date").

(b) Delivery of Deed and Possession. At least three (3) business days prior to the Closing Date, City and/or Authority, as applicable, shall execute and deliver to Escrow Agent grant deed(s) for the Parcel(s) Buyer elects to acquire using the Title Company’s standard form of grant deed. Upon the Closing for each Parcel Buyer elects to acquire, the grant deed(s) shall be recorded in the official records of San Joaquin County, and City and/or Authority, as applicable, shall deliver to Buyer exclusive possession of the acquired Parcel(s), free and clear of all leases, tenancies, encumbrances, liens and title exceptions other than those approved by Buyer.

(c) Deposit of Funds. On or before the Closing Date, Buyer will deliver to Escrow Agent the Purchase Price for the Parcel(s) Buyer has elected to acquire, minus the Credits (or, if applicable, the balance of the Credits remaining following any prior Closing) and Buyer’s share of charges pursuant to Paragraphs 3(e) and 3(f). On or before the Closing Date, City and/or Authority, as applicable, will deliver to Escrow Agent, City and/or Authority’s share of charges pursuant to Paragraphs 3(e) and 3(f).

(d) Supplemental Escrow Instructions. Escrow Agent shall close Escrow for each Parcel Buyer elects to acquire in accordance with supplemental escrow instructions mutually acceptable to Buyer and City and/or Authority, as applicable, which instructions shall be consistent with this Agreement.

(e) Closing Costs. For each Parcel that Buyer elects to acquire, Buyer on the one hand, and City and/or Authority, as applicable, on the other shall each pay fifty percent (50%) of all escrow charges, recording fees, transfer taxes, documentary transfer taxes, and premiums for Buyer’s Title Policy (as defined in Section 4 below) for each Parcel Buyer elects to acquire. Buyer shall pay the cost of any survey required in connection with the issuance of the Title Policy.

(f) Prorations. All real estate taxes, assessments and utility charges relating to the Parcel(s) that Buyer elects to acquire shall be prorated between City and/or Authority, as applicable, and Buyer as of the Closing, and shall be debited from or credited to cash payable by Buyer at the Closing for the applicable Parcel(s).

4. Title. For each Parcel Buyer elects to acquire, Buyer will obtain a preliminary title report ("Preliminary Report") from Title Company, and will review the Preliminary Report and title matters. By not later than 20 days prior to the Closing Date for each Parcel Buyer elects to acquire, Buyer shall provide written notice to Seller specifying which, if any, title exceptions affecting such Parcel(s) that Buyer approves (the "Permitted Exceptions"). Title Company’s commitment to issue to Buyer an ALTA owner’s policy of title insurance in the
amount of the applicable Purchase Price, insuring Buyer’s fee interest in the Parcel(s) subject only to the Permitted Exceptions (”Title Policy”) shall be a condition to Closing for such Parcel(s).

5. Feasibility Investigations. Prior to the expiration of the Option Term, Buyer shall have the right to enter onto the Property to conduct any inspections and tests that Buyer deems necessary, including, without limitation, Phase 1 and Phase 2 evaluations, soils tests, surveys, engineering studies, environmental studies, and other evaluations as Buyer deems necessary in Buyer’s discretion. Prior to entry upon the Property, Buyer shall provide notice to City and/or Authority, as applicable, regarding the nature of the tests to be performed, the entity that will perform the tests, and the time and date of the testing. Buyer will execute a Right of Entry Agreement in form reasonably acceptable to Buyer and Seller, pursuant to which Buyer will provide proof of insurance acceptable to the Seller and indemnify, Seller from and against any claims, expenses and liabilities that arise from Buyer’s and Buyer’s employees, contractors or agents entry onto the Property, except to the extent any such claims, expenses or liabilities result from the sole or active negligence of Seller or Seller’s employees, contractors or agents, or result from the mere discovery of hazardous materials or other conditions in, on, under or about the Property.

6. AS-IS Condition; Demolition; Relocation. Buyer’s acquisition of one or more Parcels pursuant to this Agreement shall be on an AS-IS basis. Following the Closing Date for the applicable Parcels, Buyer shall have the right to demolish the improvements located thereon at Buyer’s sole expense and in compliance with all applicable laws and regulations. Buyer shall have no obligation to pay relocation benefits, assistance and/or payments of any kind to, or on behalf of, any person or entity occupying the Property or part thereof, it being understood that Seller shall have the sole responsibility for payment of any such benefits, assistance and/or payments that may be required under the Federal Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Public Law 91-646) or California Government Code Section 7260 et seq.

7. Conditions Precedent to Buyer’s Obligations. Following Buyer’s exercise of the Option with respect to one or more Parcels, Buyer’s obligation to purchase such Parcels is subject to satisfaction of all of the following conditions precedent (“Conditions Precedent”):

(a) The Title Company’s irrevocable commitment to issue the Title Policy to Buyer for each Parcel Buyer elects to acquire;

(b) No adverse change to the physical or entitlement status of the Parcels shall have occurred between the date of Buyer’s exercise of the Option and the Closing Date; and

(c) Seller’s performance of its obligations under this Agreement, and the continued truth and accuracy of Seller’s representations and warranties set forth in this Agreement.

8. Seller’s Representations and Warranties. Seller hereby represents and warrants to Buyer as of the Effective Date and as of the Closing Date for each Parcel:

(a) Prior to the Closing Date for each Parcel, City and Authority have delivered true and complete copies of all Due Diligence Information with respect to the
Parcels. “Due Diligence Information” means all material information relating to the Parcels (including, without limitation, title information, surveys, environmental reports, engineering studies, legal notices, permits, and approvals), which information is in City and/or Authority’s possession or under City and/or Authority’s control.

(b) This Agreement and all documents delivered by City and/or Authority to Buyer, now or at the Closing, have been freely negotiated by City and Authority, and neither City nor Authority is under any duress or compulsion, and each has entered into this Agreement as a considered business decision that City and Authority has each determined to be in its best interest.

(c) This Agreement and all documents delivered by City and/or Authority to Buyer, now or at the Closing, have been, or shall be, duly authorized and executed and delivered by City and/or Authority, are legal, valid and binding obligations of City and/or Authority, and do not violate any agreement to which City and/or Authority is a party or any order by which City and/or Authority is bound.

(d) There are no lawsuits, claims, suits, proceedings or investigations, pending or threatened, affecting or relating to the Property or part thereof, or affecting the legality or propriety of the transactions contemplated by this Agreement.

(e) Seller has not alienated, encumbered, transferred, optioned, leased, assigned, transferred or otherwise conveyed its interest or any portion of its interest in the Property or any portion thereof, nor has Seller entered into any agreement (other than this Agreement) to do so.

(f) There are no encroachments, conflicts in boundary lines or ownership interests claimed by any person affecting the Property or any portion thereof except as disclosed in writing to Buyer.

(g) The Property is free and clear of all leases, tenancies and occupancies.

(h) Seller has not dealt with any real estate broker or finder, or incurred any liability for any commission or fee to any real estate broker or finder, in connection with this Agreement or the sale of the Property to Buyer.

(i) Prior to the Closing Date, NPFG and all other third parties whose approval of the sale of one or more of the Parcels is required to be obtained by City or Authority, have approved this Agreement and each of the transactions provided herein.

9. Buyer’s Representations and Warranties. Buyer hereby represents and warrants to Seller as of the Effective Date and as of the Closing Date for each Parcel:

(a) Buyer is a corporation, duly organized and validly existing under the laws of the State of California. Buyer has full power and authority to enter into this Agreement and to perform its obligations under this Agreement. The execution, delivery and performance of this Agreement and all documents required hereunder by Buyer have been duly and validly authorized by all necessary action on the part of Buyer, and all required consents and approvals have been duly obtained, and do not violate any agreement to which Buyer is a party, or any order by which Buyer is bound.
(b) Buyer has not dealt with any real estate broker or finder, or incurred any liability for any commission or fee to any real estate broker or finder, in connection with this Agreement or the sale of the Property to Buyer.

(c) Buyer on behalf of itself and its successors and assigns agrees not to develop any of the subject Parcels for the sole purpose of offering paid public parking. Any parking facilities developed on the subject Parcels will be solely for the use of homeowners or residential or commercial tenants, including their respective invitees and customers, of the development project or portion thereof, which Buyer intends to develop on the Parcels and other properties as provided in the Development Agreement between Buyer and City dated _______________, 2016, recorded in the Official Records on _______________, as Instrument No. _______________ ("Development Agreement"). The obligations of Buyer under this Section 9(c), shall survive the Closing and continue in effect until the date which is ten (10) years following the applicable Closing Date for sale of the Parcel(s).

10. Seller’s Covenants. Seller covenants and agrees with Buyer as follows:

   (a) Between the Effective Date and the Closing Date for sale of applicable Parcel(s), City and/or Authority shall maintain the Parcel(s) and the improvements thereon in accordance with sound property management practice, comply in all material respects with all covenants, conditions, restrictions, laws, statutes, rules, regulations and ordinances applicable to the Property, and immediately give Buyer copies of all notices received by Seller asserting any violation of any covenants, conditions, restrictions, laws, statutes, rules, regulations or ordinances applicable to the Property.

   (b) Seller shall not use, produce, process, manufacture, generate, treat, handle, store or dispose of any hazardous substances in, on or under the Property, or use the Property for any such purposes, or release any hazardous substances into any air, soil, surface water or groundwater comprising the Property, or permit any person using or occupying the Property or any part thereof to do any of the foregoing, provided, however, Seller may use, handle and store hazardous substances of types and in quantities typically used in or around residential and commercial properties in accordance with all applicable laws. Between the Effective Date and the expiration of the Option Term, Seller shall comply, and shall use reasonable efforts to cause all persons using or occupying the Property or any part thereof to comply, with all environmental laws applicable to the Property, or the use or occupancy thereof, or any operations or activities therein or thereon.

   (c) Between the date of this Agreement and the expiration of the Option Term, Seller shall not in any manner sell, convey, assign, transfer, encumber or otherwise dispose of the Property or any part thereof or interest therein; provided, however, may remove any tangible personal property. Without limiting the foregoing, Seller shall not enter into any agreement or alter the condition of title to the Property if the same would affect the Property or Buyer after the Closing for the applicable Parcel(s) without Buyer’s prior consent. If Buyer so consents, such encumbrance shall become Permitted Exceptions (as provided in Section 4).
(d) Seller has provided, or within five (5) business days following the Effective Date, shall provide to Buyer all surveys, studies, reports and analyses applicable to the Property or part thereof in Seller’s possession or control.

11. Entitlements. Buyer may process any entitlements that Buyer deems necessary or appropriate for its proposed development of the Property or part thereof. Seller shall fully cooperate with Buyer, in the processing of all entitlements sought by Buyer, including signing any and all applications Buyer may request within five business days after Seller receives the request.

12. Allocation of Environmental Liabilities. The parties agree that the Purchase Price for each Parcel is based on an assumption that there are no adverse environmental conditions on the Property or any part thereof. The parties acknowledge that if Buyer determines, in Buyer’s reasonable judgment, that adverse environmental conditions do exist on the Property or any part thereof, the parties shall negotiate in good faith, prior to the expiration of the Option Term, the manner in which such conditions will be remedied and/or compensated, including, without limitation, adjustment to the Purchase Price and/or allocation of responsibility for potential liabilities, remediation, removal, and/or the costs incurred thereby.

13. LIQUIDATED DAMAGES. IF THE PURCHASE AND SALE OF ANY PARCEL DOES NOT OCCUR AS REQUIRED BY THIS AGREEMENT AFTER BUYER EXERCISES ITS OPTION SOLELY AS A RESULT OF BUYER’S DEFAULT, SELLER’S DAMAGES INCURRED BY REASON THEREOF ARE AND WILL BE EXTREMELY DIFFICULT AND IMPractical TO ASCERTAIN. IN A REASONABLE EFFORT TO ASCERTAIN WHAT SELLER’S DAMAGES WOULD BE IN THE EVENT OF BUYER’S BREACH OR DEFAULT, SELLER AND BUYER AGREE THAT AN AMOUNT EQUAL TO THE SUM OF THE OPTION FEES (NOT TO EXCEED $5,000) THAT WOULD OTHERWISE BE CREDITED TO THE PURCHASE PRICE FOR THE APPLICABLE PARCEL(S) SHALL BE LIQUIDATED DAMAGES (THE “LIQUIDATED DAMAGES”) FOR SUCH DEFAULT, WHICH LIQUIDATED DAMAGES SHALL BE SELLER’S SOLE REMEDY AT LAW OR IN EQUITY IN THE EVENT OF AND FOR SUCH DEFAULT. SELLER WAIVES ANY AND ALL RIGHT TO SEEK OTHER RIGHTS OR REMEDIES AGAINST BUYER, INCLUDING WITHOUT LIMITATION, THE RIGHTS AND REMEDIES SET FORTH IN CALIFORNIA CIVIL CODE SECTION 3389 TO A REMEDY OF SPECIFIC PERFORMANCE. THE PAYMENT AND RETENTION OF THE LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. CITY AND AUTHORITY MAY ALLOCATE BETWEEN THEM AS THEY MAY AGREE ANY LIQUIDATED DAMAGES RETAINED BY SELLER UNDER THIS SECTION.

_____ (Seller’s Initials)  _____ (Buyer’s Initials)

14. Notices. Any notice or communication required hereunder between Seller and Buyer (“Notice”) must be in writing, and may be given either personally, by registered or certified mail (return receipt requested), or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a Notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by registered or certified mail, such
Notice shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom Notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such Notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a Notice shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any party hereto may at any time, by giving ten (10) days written Notice to the other party hereto, designate any other address in substitution of the address to which such Notice shall be given. Such Notices shall be given to the parties at their respective addresses set forth below:

To City: City of Stockton  
425 North El Dorado Street  
Stockton, CA 95202  
Attention: City Clerk  
Tel: (209) 937-8458

with a copy to: City of Stockton  
425 North El Dorado Street  
Stockton, CA 95202  
Attention: Economic Development Director  
Tel: (209) 937-8539

To Authority: Parking Authority  
425 North El Dorado Street  
Stockton, CA 95202  
Attn: Parking Manager

To Buyer: Open Window Project, LLC  
115 N. Sutter Street, Suite 307  
Stockton, CA 95202  
Attention: Zachary Cort  
Tel: (209) 469-2678

with a copy to: Gerald J. Ramiza, Esq.  
Burke Williams & Sorensen LLP  
1901 Harrison Street, 9th Floor  
Oakland, CA 94501  
Tel: (510) 273-8780

15. **Attorneys’ Fees.** If an action is brought to enforce the rights of a party under this Agreement, the prevailing party shall be entitled to recover its costs of enforcement, including reasonable attorneys’ fees and court costs.

16. **Binding Agreement.** This Agreement supersedes all prior and contemporaneous discussions, agreements and understandings between Seller and Buyer with respect to the subject matter of this Agreement, and constitutes the entire agreement between Seller and Buyer with respect thereto.
17. **Amendments.** This Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

18. **Seller Option to Repurchase, Reenter and Repossess.** Subject to the notice and reasonable opportunity to cure, City and/or Authority, as applicable, shall have the additional right, at its option, to repurchase, reenter and take possession of one or more Parcel(s) if:

(a) Subject to Force Majeure Delay (as defined in Section 7.2 of the Development Agreement), Buyer fails to submit a complete application for an architectural review permit to construct a development project or portion thereof on the Parcel(s) in question by the date which is 5 years following conveyance of title to such Parcel(s) to Buyer and thereafter diligently pursue issuance of a building permit; or

(b) Subject to Force Majeure Delay, after obtaining a building permit for construction of such development project or portion thereof, Buyer fails to commence construction thereof within 6 months after obtaining such permit.

Such right to repurchase, reenter and repossess, to the extent provided in this Agreement, shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

(i) Any mortgage, deed of trust or other security instrument recorded against such Parcel(s); or

(ii) Any rights or interests provided in the Development Agreement for the protection of the holder of such mortgages, deeds of trust or other security instruments.

To exercise its right to repurchase, reenter and take possession with respect to the Parcel(s) in question, City or Authority, as applicable, shall pay to Buyer in cash an amount equal to:

1. The Purchase Price paid by Buyer for the Parcel(s) in question; **less**

2. The total amount of any mortgages, deeds of trust or other liens encumbering the Parcel(s) in question at the time of the repurchase, reentry and repossession.

In order to exercise such purchase option, City and/or Authority, as applicable, shall give Buyer written notice of such exercise. City and/or Authority, as applicable, within thirty (30) days thereafter, shall pay to Buyer in cash all sums owing pursuant to this Section 18, and Buyer shall thereupon execute and deliver to City or Authority, as applicable, a grant deed transferring to City or Authority, as applicable, all of Buyer’s interest in the Parcel(s) in question.

Seller’s rights under this Section 18 shall automatically terminate as of the date of issuance of a building permit for construction of the 400th residential unit within the Downtown Stockton Open Window Project Master Development Plan boundary. Upon Buyer’s request made at any time following issuance of the building permit for such 400th residential unit, Seller shall execute, acknowledge and deliver to Seller for recordation in the Official Records, an instrument memorializing termination of Seller’s option to repurchase, reenter and repossess.
19. **Buyer Remedies.** Subject to the notice and reasonable opportunity to cure not to exceed 30 calendar days, upon the occurrence of a default by City and/or Authority, as applicable, Buyer shall have the right, in addition to any other rights or remedies, to institute any action at law or in equity to cure, correct, prevent or remedy any such default, or to recover actual damages. Notwithstanding any other provisions of this Agreement to the contrary, Buyer shall not be entitled to recover any consequential, special or punitive damages against Seller.

20. **Assignment by Buyer.** Buyer shall have the right to assign this Agreement without Seller consent to any entity which controls, is controlled by, or under common control with Buyer (each, an “Affiliate”). In addition, upon the Closing for any Parcel(s), Buyer shall have the right to direct Seller to convey title to any Affiliate entity designated by Buyer. Buyer will give Seller written notice of any such assignment. Except as otherwise provided above, this Agreement may not be assigned by Buyer to any person or entity without Seller’s consent, which may be granted or denied in Seller’s sole discretion.

21. **Governing Law; Venue.** This Agreement shall be governed and construed in accordance with the laws of the State of California, without reference to its choice of law rules. The exclusive venue for any disputes or legal actions shall be the Superior Court of California in and for the County of San Joaquin, except for actions that include claims in which the Federal District Court for the Eastern District of the State of California has original jurisdiction, in which case the Eastern District of the State of California shall be the proper venue.

22. **Waivers.** No waiver of any provision of this Agreement or any breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving party, and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other or subsequent breach of this Agreement.

23. **Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns.

24. **Severability.** If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties.

25. **Construction.** Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Agreement. This Agreement has been reviewed and revised by legal counsel for Seller and Buyer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement. Unless the context clearly requires otherwise, (i) the plural and singular numbers shall each be deemed to include the other; (ii) the masculine, feminine, and neuter genders shall each be deemed to include the others; (iii) “shall,” “will,” or “agrees” are mandatory, and “may” is permissive; (iv) “or” is not exclusive; (v) “include,” “includes” and “including” are not limiting and shall be construed as if followed by the words “without limitation,” and (vi) “days” means calendar days unless specifically provided otherwise.
26. **No Joint Venture.** Seller and Buyer hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Buyer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between Seller and Buyer.

27. **Survival of Terms.** Any indemnity provided for herein, and any other provision of this Agreement which, by its terms, is to be performed after the Closing, shall survive the Closing until full performance thereof. The representations, warranties, covenants, terms and conditions of this Agreement shall also survive the Closing.

28. **Time.** Time is of the essence of this Agreement and of the performance of all the terms, covenants and conditions contained in this Agreement.

29. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one agreement.

30. **Seller Approvals and Actions.** Whenever a reference is made herein to an action or approval to be undertaken by Seller, the City Manager or his/her designee is authorized to act on behalf of Seller, unless specifically provided otherwise or the context requires otherwise.

31. **Recording.** This Agreement shall be recorded in the Official Records of San Joaquin County within ten (10) days following the Effective Date.

[Remainder of page intentionally left blank]
IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the Effective Date.

SELLER:

CITY OF STOCKTON, a municipal corporation

By: ________________
    Kurt O. Wilson, City Manager

and

PARKING AUTHORITY OF THE CITY OF STOCKTON, a public body corporate and politic organized and existing under and by virtue of the laws of the State of California

By: ________________
    Kurt O. Wilson, Executive Director

APPROVED AS TO FORM:

John Luebberke, City Attorney

ATTEST:

CITY CLERK

BUYER:

OPEN WINDOW PROJECT, LLC, a California limited liability company

By: ________________
    Zachary Cort

Its: Manager
**Exhibit A**

**PROPERTY**

<table>
<thead>
<tr>
<th>Property Address</th>
<th>APN</th>
<th>City or Parking Authority Owned</th>
<th>FMV Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>216 N California</td>
<td>139-250-26</td>
<td>Parking Authority</td>
<td>$88,500</td>
</tr>
<tr>
<td>39 N California – St. Leo Hotel</td>
<td>149-170-12</td>
<td>City</td>
<td>$20,000</td>
</tr>
<tr>
<td>27 N California</td>
<td>149-170-25</td>
<td>Parking Authority</td>
<td>$179,500</td>
</tr>
<tr>
<td>431 E Main - Commercial Hotel</td>
<td>149-170-08</td>
<td>City</td>
<td>$20,000</td>
</tr>
<tr>
<td>445 E Main – Main Hotel</td>
<td>149-170-09</td>
<td>City</td>
<td>$20,000</td>
</tr>
<tr>
<td>24 N American</td>
<td>149-180-05</td>
<td>Parking Authority</td>
<td>$193,200</td>
</tr>
<tr>
<td>725 E Main</td>
<td>149-180-21</td>
<td>City</td>
<td>$60,000</td>
</tr>
<tr>
<td>25 N Grant</td>
<td>149-180-17</td>
<td>City</td>
<td>$60,000</td>
</tr>
</tbody>
</table>
Exhibit B

PARCEL LEGAL DESCRIPTIONS

Street Address: 216 N. California Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

Parcel 1:

The North 40 feet, 7 1/3 inches of each of lots two (2) and four (4) in block seventy-four (74) East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Parcel 2:

The South 60 feet 4 2/3 inches of each of lots two (2) and four (4); The South 60 feet 4 2/3 inches of the West 2 1/2 feet of lot six (6); all in block seventy-four (74), East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map of Plat thereof.

(ALL MEASUREMENTS UNITED STATES STANDARD MEASURE)

APN: 139-250-26

Street Address: 39 N. California Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

Lot 11 in Block 5 East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof.

APN: 149-170-12

Street Address: 27 N. California Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

Parcel 1:

The South 6 1/2 inches of the North one-half of the West 140 feet of Lot 13, the South one-half of Lot 13 and the North 10 feet of Lot 14 in Block 5, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

APN: 208-007-00
Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Parcel 2:

The North one-half of Lot 13 in Block 5, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Excepting therefrom the South 6 1/2 inches of the North one-half of the West 140 feet of Lot 13.

Parcel 3:

All of Lots 15 and 16 in Block 5, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof.

Excepting therefrom the South 26.33 feet of the East 141.00 feet of Lot 16.

APN: 149-170-25

Street Address: 431 E. Main Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

Lot 8 and the west one-half of Lot 10 in Block 5 East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof.

APN: 149-170-08

Street Address: 445 E. Main Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

The East one-half of Lot 10 and all of Lot 12 in Block 5, East of Center Street, in the said City of Stockton, according to the Official Map or Plat thereof, San Joaquin County Records.

APN: 149-170-09

Street Address: 24 N. American Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:
Lots 13, 14, 15 and 16 in Block 7, East of Center Street, in the City of Stockton, County of San Joaquin, State of California, according to the Official Map or Plat thereof, San Joaquin County records.

APN: 149-180-05

Street Address: 725 E. Main Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

All of Lots 8 and 10 in Block 8 East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof.

Also all that part of Lot 6 in Block 8 East of Center Street, being the East 46 1/2 feet thereof, more or less, bounded on the West by the centerline of a division wall running North and South between certain buildings, and being all of said Lot 6, except the part thereof conveyed by Rudolph Gnekow and wife to their sons and daughters by Deed dated February 3, 1913 and recorded in Book "A" of Deeds, Vol. 208, page 106, San Joaquin County Records.

APN: 149-180-21

Street Address: 25 N. Grant Street, Stockton, California

Legal Description: That certain real property situated in the State of California, County of San Joaquin, City of Stockton, more particularly described as follows:

Lot 16 and the West 1/3 of Lot 15 in Block 8, East of Center Street, in the City of Stockton, according to the Official Map or Plat thereof, San Joaquin County Records.

APN: 149-180-17
This is related to 115 N Sutter, so I’ve asked Amanda to look into it too. May not be parking related.

Is there any way to get more description... I’m thinking you are asking me because the invoice is tied to Parking? If that is the case then I think the invoice was generated as the first/down payment for purchasing J lot as they had an option to buy within the first 2 years of their project. It never materialized and the option has long since expired and I do not support selling that lot strategically, today. If my hunch is right, then yes, the AR can be written off as we are no longer due the monies. However if it is for something else, then I need more info...
From: Jose Jimenez <Jose.Jimenez@stocktonca.gov>
Sent: Wednesday, April 20, 2022 9:32 AM
To: Tina McCarty <Tina.McCarty@stocktonca.gov>
Cc: Jacque Crisostomo <Jacque.Crisostomo@stocktonca.gov>; Raquel Chavarria <Raquel.Chavarria@stocktonca.gov>
Subject: FW: Fiscal year end write off

Tina,

What about the Open Window Project LLC account for $10k?

Are you ok if that account also get written off?

Jose Jimenez, Administrative Analyst II
City of Stockton - Economic Development Department
400 E. Main Street, 4th Floor, Stockton, CA 95202
Jose.Jimenez@stocktonca.gov | 209.937.8794
http://www.advantagestockton.com/

From: Monique Harris <Monique.Harris@stocktonca.gov>
Sent: Wednesday, April 20, 2022 9:29 AM
To: Jacque Crisostomo <Jacque.Crisostomo@stocktonca.gov>
Cc: Raquel Chavarria <Raquel.Chavarria@stocktonca.gov>; Jose Jimenez <Jose.Jimenez@stocktonca.gov>; Alisha Singh <Alisha.Singh@stocktonca.gov>
Subject: Re: Fiscal year end write off
Good morning,

For clarification, you would like the customer account 88799 for Open Window Project LLC included in the Write Off? Or just the current eligible accounts?

Thank you

Monique Harris
Revenue Collector
City of Stockton
Administrative Services
Ph: 209.937.7179 | Fax: 209.937.8051
Monique.harris@stocktonca.gov

Hi Monique,

We are good on writing off this account.

Thank you.
Jacque

Monique Harris

I apologize, I forgot the attachment.

Monique Harris
Hi Monique,

Can you provide any details for this amount?

Jacque

---

Hello,

Finance will perform the annual write off of your accounts receivable. As of today your estimated write off total is $2,090.00. If you have any questions or concerns please let me know by April 29th, 2022.

If you have a separate billing system or a third party processor, please send me the receivables aging report and amount of planned write off.

Thank you,
Monique Harris
Revenue Collector
City of Stockton
Administrative Services
Ph: 209.937.7179 | Fax: 209.937.8051
Monique.harris@stocktonca.gov
UTILITY USERS’ TAX REMITTANCE FORM

To be completed by utility service provider

Utility Service Provider: ____________________________________________

Billing Agent (if applicable): ________________________________________

Mailing Address: __________________________________________________

Type of Utility Service(s): __________________________________________

[Gas, electric, video, wired or wireless telephone, private communications services, water or bundled services thereof. Prepaid wireless by direct sellers per – Rev. and Tax. Code Sec. 42010(f)(3)]

Provider FEIN: _________________________________________________

Applicable tax rate: 6% or 5.5% for Prepaid Wireless (Stockton Municipal Code sections 3.24 and 3.100)

Note: The information provided in this remittance form will be maintained as confidential under Revenue and Taxation Code §7284.6.

Tax Period (Month, Year): ____________________________

**Please prepare a separate remittance form for each tax period. Do not combine tax periods.**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross Charges</td>
<td>$</td>
</tr>
<tr>
<td>Deductions (Taxes, Resale sales, Exempt Accounts)</td>
<td>$</td>
</tr>
<tr>
<td>Non-standard Adjustments (Describe below)</td>
<td>$</td>
</tr>
<tr>
<td>Net Taxable Charges</td>
<td>$</td>
</tr>
<tr>
<td>Tax Percentage Applied: 6%</td>
<td>$</td>
</tr>
<tr>
<td>Prepaid Wireless: 5.5%</td>
<td>$</td>
</tr>
<tr>
<td>Penalties: 15% penalty due on the date remittance first became delinquent.</td>
<td>$</td>
</tr>
<tr>
<td>Interest: Additional 0.75% interest per month will accrue monthly on the amount of tax owed.</td>
<td>$</td>
</tr>
<tr>
<td><strong>Total Remittance (Make check payable to City of Stockton)</strong></td>
<td>$</td>
</tr>
</tbody>
</table>

REMIT PAYMENT AND THIS FORM TO: City of Stockton UUT P.O. Box 2107, Stockton, CA 95201

Due Date: The City must receive payment no later than the twentieth (20th) day of the following month for telecommunications/video, and the twenty-eighth (28th) day for gas, electricity and water. Late payments are subject to a 15 percent (15%) penalty and 75/100ths percent (0.75%) interest.

I declare, under penalty of perjury, that to the best of my knowledge and belief the information provided herein is true and correct.

___________________________________________  ____________________________________________  __________
Signature                     Print Name                     Date

__________________________________________  ________________________________
Email address                     Phone Number
Are you able to look up these items (12-14)? I believe #14 is the Façade. Is there anything else you see in this report on the City’s side?

---

**From:** Scott Anderson <scanderson@sjcoe.net>  
**Sent:** Wednesday, May 25, 2022 2:58 PM  
**To:** Nicole Snyder <Nicole.Snyder@stocktonca.gov>  
**Cc:** Carrie Wright <Carrie.Wright@stocktonca.gov>  
**Subject:** RE: Updates

---

**CAUTION:** This email originated from outside the City of Stockton. Do not click any links or open attachments if this is unsolicited email.

Hi Nicole. We are moving forward with the purchase of 201 N California and 206 N Sutter for our CodeStack department and will be opening escrow tomorrow. We discovered late in the game Mr. Cort is not the owners of these properties any longer. They have been owned by Star Property LB Investment since 2020.

Attached is the prelim title report. We will obviously object to items 12, 13 and 14 and require they be removed. Would you mind scanning this report to see if anything else jumps out at you? We have researched the other items and haven’t seen anything else concerning but given some of these items are old and some have to do directly with the city, I thought you might be able to spot things we can’t.

Also, since we are now moving forward, has anything changed since we last met regarding any possible help SJCOE may be able to tap to offset required infrastructure improvements downtown?

We have not formally announced our intention to purchase these properties so please keep that in mind.

Thank you. –Scott

Scott Anderson  
Deputy Superintendent, Business Services  
San Joaquin County Office of Education  
scanderson@sjcoe.net  
(209) 468-4807 (office)

---

**From:** Nicole Snyder <Nicole.Snyder@stocktonca.gov>  
**Sent:** Wednesday, November 17, 2021 12:53 PM  
**To:** Scott Anderson <scanderson@sjcoe.net>  
**Cc:** Janice Miller <Janice.Miller@stocktonca.gov>  
**Subject:** RE: Updates
Hello Scott,

Janice Miller asked that I reply to your email on her behalf. The below incentive programs that Janice provided would be applicable to the project at the California property with a few caveats relating to the Façade program, as listed below. I’ve been in communication with your architect for 201 N. California and have provided information to him for SJCOE to review for purchase considerations, see email below:

From: Nicole Snyder
Sent: Thursday, November 4, 2021 3:44 PM
To: Tim Dearborn <Tim@architechnica.net>
Cc: Ben Simonson <ben@architechnica.net>
Subject: RE: 201 N California Street - Building Evaluation Meeting with City of Stockton

Hi Tim, see my answers below.

From: Tim Dearborn <Tim@architechnica.net>
Sent: Thursday, November 4, 2021 9:52 AM
To: Nicole Snyder <Nicole.Snyder@stocktonca.gov>
Cc: Ben Simonson <ben@architechnica.net>
Subject: RE: 201 N California Street - Building Evaluation Meeting with City of Stockton

CAUTION: This email originated from outside the City of Stockton. Do not click any links or open attachments if this is unsolicited email.

Nicole,

Thank you.

Did you ever find out how much money the city contributed to the Façade Loan for 201 N. California that was never completed? I can’t speak specific to the loan status, you would have to obtain that from the property owner to confirm. I can provide the PO a payoff at their request so that you can obtain that from them in order to complete due diligence based on costs related to the project. However I can tell you the two options, current property owner can close the current Façade loan out before the purchase to remove the lien or the buyer would have to assume the loan and finish the work as is. With the first option, the new owners can reapply for the program and complete the façade based on the project needs. Hope that helps.

If SJCOE buys the building, would they as a government agency be allowed to apply for a façade loan on that building? They can apply as long as the use is not primarily for a government agency, so for instance, CodeStack is available to the public, not just for the agency’s use.

From the meeting it sounds like the damage to the sidewalk will essentially be resolved because the city is requiring SJCOE to replace all of the sidewalks around the two properties. Am I correct in that assessment? That’s what it sounded like to me, but I would leave it to the experts.

Thanks,

TIMOTHY L. DEARBORN AIA | LEED AP
Principal Architect | Managing Partner
CA Architect License # C-25928
As for the property at 110 E Weber, we have reached out to the broker and the property is available and owner is motivated, see attached for broker contact information, pics and floorplans. I’ve actually been in the building recently, as the Courthouse is using this for overflow jurors. Per the broker: The Court System has a short term lease due to COVID for jury expansion, she is pretty sure it does not have to be renewed. I hope this helps with your search for a new “downtown” home for CodeStack, we are very anxious and excited to have them in the Downtown area. Please let me know if you have any further questions.

Regards,

Nicole R. Snyder, Economic Development Manager
City of Stockton, Economic Development Department
400 E. Main Street, 4th Floor, Stockton, CA 95202
nicole.snyder@stocktonca.gov | 209.937.5359
www.advantagestockton.com

Please use this link for a City calendar of closed days and holidays: http://www.stocktongov.com/events/cityCal.html

From: Scott Anderson <scanderson@sjcoe.net>
Sent: Monday, November 8, 2021 12:47 PM
To: Janice Miller <Janice.Miller@stocktonca.gov>
Subject: RE: Updates

CAUTION: This email originated from outside the City of Stockton. Do not click any links or open attachments if this is unsolicited email.

Hi Janice,

We are still searching for a new home for our CodeStack department. Recently, we have been taking a look at 201 N. California Street and the adjacent lot at 206 N. Sutter Street. Mr. Cort asserts that he owns both of these properties. The building on 201 CA Street is merely a shell as I’m sure you know and would need a complete (and expensive) renovation. The adjacent lot would be reconditioned as a supporting parking lot. If SJCOE ultimately purchases these properties and proceeds with renovation, might the incentive programs below (or any others you are aware of) be available to SJCOE to help with what will surely be a very expensive project?

Also, the 100 E Weber Ave property included on the list you sent me back in March appears to still be on the market. If this is true, have you seen the inside of this building? It’s much larger than we need for CodeStack but this building is interesting, especially given the included parking.

Thank you. –Scott

Scott Anderson
From: Janice Miller <Janice.Miller@stocktonca.gov>
Sent: Tuesday, March 2, 2021 2:15 PM
To: Scott Anderson <scanderson@sjcoe.net>
Subject: Updates

Hi Scott, wanted to provide you with a couple of updates:

1. An application for a Façade Improvement Forgivable Loan was submitted by Mr. Cort and has been reviewed by SHPO (State Historic Preservation Office). The City is awaiting construction bids from Mr. Cort before it can proceed with approving funds, executing loan documents, and issuing a notice to proceed.

2. City staff has researched potential sites in Downtown Stockton that may be suitable as an alternate location for CodeStack Academy and other SJCOE functions. The list is attached for your review.

3. Following are City incentives in which the project may be eligible:
   a. Commercial Façade Improvement Forgivable Loan Program
      Designed to assist property owners in eligible areas to make exterior cosmetic improvements to commercial properties with forgivable loans up to $100,000.
      View the Commercial Façade Improvement Forgivable Loan Program Guidelines.
      Apply for a Commercial Façade Improvement Forgivable Loan.
   b. Downtown Financial Incentive Program
      Reduces or eliminates the cost of building permits and certain public facility fees for the rehabilitation or reuse projects of an existing vacant space in the downtown area through a grant reimbursement.
      View the Downtown Financial Incentive Program Guidelines.
      Apply for the Downtown Financial Incentive Program.
   c. Economic Review Committee and Project Coordinator (ERC)
      In order to provide feedback on preliminary site plans and potential project requirements/permits, the City can schedule an informal meeting with you. Representatives from various City departments attend so that we can provide relevant information about possible project challenges. Additionally, an Economic Development staffer will assigned as a "Project Coordinator" who will track your project through the permitting process until completion.
      View the Economic Review Committee (ERC) Service.

4. The Planning Commission denied the appeal and upheld the Community Development Director’s determination that demolition of 434, 436, 440 E Weber Avenue (structure adjacent to the Kendall Building) does not concern a historic resource at its February 25, 2021 meeting. This should clear the way to demolish the referenced structure to provide additional parking for the Kendall Building.

Feel free to reach out if you have any questions or need further assistance.

Best regards,
Janice Miller, Assistant Director
City of Stockton, Economic Development Department
400 E. Main Street, 4th Floor, Stockton, CA 95202
janice.miller@stocktonca.gov | 209.937.8862
www.advantagestockton.com
Preliminary Report Dated as of May 4, 2022 at 12:00 AM.

IN RESPONSE TO THE ABOVE REFERENCED APPLICATION FOR A POLICY OF TITLE INSURANCE,

North American Title Insurance Company

Hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said Policy forms.

The printed Exceptions and Exclusions from the coverage and limitations on covered risks of said Policy or Policies are set forth in Exhibit A attached. The Policy to be issued may contain an Arbitration Clause. When the amount of insurance is less than that set forth in the Arbitration Clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the Parties. Limitations on covered risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a deductible amount and a maximum dollar limit of liability for certain coverages are also set forth in Exhibit A. Copies of the Policy forms should be read. They are available from the office which issued this report.

Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit A of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

The form of Policy of title insurance contemplated by this report is:
ALTA Loan Policy
America First Homeowner Policy (ALTA/CLTA Homeowner's Policy of Title Insurance)

Please note that the America First Homeowner's Policy (CLTA/ ALTA Homeowner's Policy) can only be issued on transactions involving individuals as purchasers and residential 1-4 properties. Any indication that the America First Homeowner's Policy (CLTA/ ALTA Homeowner's Policy) will be issued in a transaction that does not meet these criteria is hereby revised to state that the policy contemplated is a Standard Coverage Policy.

Sue Bulhoes, Title Officer I-NP
SCHEDULE A

1. The estate or interest in the land herein after described or referred to covered by this report is:
   Fee Simple

2. Title to said estate or interest at the date hereof is vested in:
   Star Property LB Investment LLC, a California limited liability company

3. Real Property in the City of Stockton, County of San Joaquin, State of California, described as follows:

   See attached Legal Description
LEGAL DESCRIPTION

Real Property in the City of Stockton, County of San Joaquin, State of California, described as follows:

PARCEL ONE:

LOTS 2, 4, 6 AND 8 IN BLOCK 73, EAST OF CENTER STREET, IN THE CITY OF STOCKTON, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL MAP OR PLAT THEREOF, SAN JOAQUIN COUNTY RECORDS.

APN: 139-250-03

PARCEL TWO:

LOTS 10, 12 AND 16 IN BLOCK 73, EAST OF CENTER STREET, IN THE CITY OF STOCKTON, ACCORDING TO THE OFFICIAL MAP OR PLAT THEREOF, SAN JOAQUIN COUNTY RECORDS.

APN: 139-250-04
SCHEDULE B

At the date hereof exceptions to coverage in addition to the printed exceptions and exclusions in the policy form designated on the face page of this report would be as follows:

1. General and special taxes and assessments for the fiscal year 2022-2023, a lien not yet due or payable.
2. Taxes for proration purposes only for the fiscal year 2021-2022.
   - First Installment: $7,708.32 PAID
   - Second Installment: $7,708.32 PAID
   - Tax Rate Area: 003-286
   - APN: 139-250-03
   Affects PARCEL ONE.
3. Taxes for proration purposes only for the fiscal year 2021-2022.
   - First Installment: $4,283.60 PAID
   - Second Installment: $4,283.60 PAID
   - Tax Rate Area: 003-286
   - APN: 139-250-04
   Affects PARCEL TWO.
4. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.
5. Assessment liens, if applicable, collected with the general and special taxes, including but not limited to those disclosed by the reflection of the following on the tax roll:
   - 1915 Bond for CENTRAL PARKING 2 (B).
6. The lien of bonds and assessment liens, if applicable, collected with the general and special taxes.
7. Assessments or charges that may be levied, of record or not, by the City of Stockton. Further information on said assessments may be obtained by contacting the City at (209) 937-8295. Specifically request current and delinquent charges.
   - In Favor of: City of Stockton
   - Affects: as described therein
   Affects PARCEL TWO.
10. The fact that the land lies within the boundaries of the WATERFRONT MERGER Redevelopment Project Area, as disclosed by various documents of record.
In Favor of: Pacific Gas and Electric Company, a California Corporation
Affects: Westerly 20 Feet of the Northerly 10 feet
Affects PARCEL ONE.

12. Lien for NOTICE OF CODE ENFORCEMENT LIEN in favor of POLICE DEPARTMENT OF THE CITY OF STOCKTON

Against: Open Window Project LLC
Amount: $343.00
Affects PARCEL ONE.

13. A Deed of Trust to secure an original indebtedness of $1,750,000.00 recorded August 7, 2020 as/in Instrument No. 2020-097059 of Official Records.

Dated: July 27, 2020
Trustor: Star Property LB Investment, LLC, a California Limited Liability Company
Trustee: First American Title Company, a California Corporation
Beneficiary: Concourse Buildings, LLC, a California Limited Liability Company

Please obtain written verification from the borrower that no forbearance or modification agreement is in effect.
Affects: The land and other property.

A document recorded August 3, 2021 as/in Instrument No. 2021-129627 of Official Records provides that Concourse Buildings, LLC, a California Limited Liability Company was substituted as trustee under the deed of trust.


Dated: January 26, 2021
Trustor: Star Property LB Investment, LLC, a Limited Liability Company
Trustee: City of Stockton, a municipal corporation
Beneficiary: City of Stockton, a municipal corporation

Please obtain written verification from the borrower that no forbearance or modification agreement is in effect.
Affects PARCEL TWO.

15. With respect to Star Property LB Investment, LLC, a limited liability company:
   a. A copy of its operating agreement and any amendments thereto;
   b. If it is a California limited liability company, that a certified copy of its articles of organization (LLC-1) and any certificate of correction (LLC-11), certificate of amendment (LLC-2), or restatement of articles of organization (LLC-10) be recorded in the public records;
   c. If it is a foreign limited liability company, that a certified copy of its application for registration (LLC-5) be recorded in the public records;
   d. With respect to any deed, deed of trust, lease, subordination agreement or other document or instrument executed by such limited liability company and presented for recordation by the Company or upon which the Company is asked to rely, that such document or instrument be executed in accordance with one of the following, as appropriate:
(i) If the limited liability company properly operates through officers appointed or elected pursuant to the
terms of a written operating agreement, such document must be executed by at least two duly elected or
appointed officers, as follows: the chairman of the board, the president or any vice president, and any
secretary, assistant secretary, the chief financial officer or any assistant treasurer;
(ii) If the limited liability company properly operates through a manager or managers identified in the
articles of organization and/or duly elected pursuant to the terms of a written operating agreement, such
document must be executed by at least two such managers or by one manager if the limited liability
company properly operates with the existence of only one manager.
e. Other requirements which the Company may impose following its review of the material required herein
and other information which the Company may require

16. Any rights, interests, or claims of parties in possession of the land not shown by the public records.

***********************END OF REPORT***********************
A. NOTICE OF RECORDING PROCEDURE

Pursuant to Cal. Revenue & Tax Code §480.3, all Deeds and other Documents that reflect a change in ownership must be accompanied by a Preliminary Change of Ownership Report to be completed by the transferee. If this special report is not presented at the time of recording, an additional recording fee of $20.00, as required by law, will be charged. Preliminary Change in Ownership forms, instructions on how to complete them, and a nonexclusive list of documents that are affected by this change, are available from the County Recorder's Office or the Office of the County Assessor.

Effective January 1, 2018, Cal. Government Code §27388.1 imposes an additional fee of $75.00 to be paid at the time of recording for every real estate instrument, paper, or notice required or permitted by law to record, except those expressly exempted from payment.

B. GOOD FUNDS LAW

Under Section 12413.1 of the California Insurance Code, Doma Title of California, Inc. may only make funds available for disbursement in accordance with the following rules:

Same day availability. Disbursement on the date of deposit is allowed only when funds are deposited to Doma Title of California, Inc. by Cash or Electronic Transfer (Wire). Cash will be accepted only under special circumstances and upon approval by management.

Next business day availability. If funds are deposited to Doma Title of California, Inc. by cashier's checks, certified checks or teller's checks, disbursement may be on the next business day following deposit. A “teller's check” is one drawn by an insured financial institution against another insured financial institution (e.g., a savings and loan funding with a check drawn against a FDIC insured bank).

Second business day availability. If the deposit is made by checks other than those described in paragraphs 1 and 2 above, disbursement may occur on the day when funds must be made available to depositors under Federal Reserve Regulation CC. In most cases, these checks will be available on the second business day following deposit. (For further details, consult California Insurance Code Section 12413, et seq. and Regulation CC).

These are the minimum periods before funds will be made available. Doma Title of California, Inc. is not obligated to disburse funds at the expiration of the time periods above, and expressly reserves the right to require additional time before disbursing on deposited funds. Close of escrow and final disbursement will not be made based on deposits in the form of personal checks, corporate checks, credit union checks, money market checks, travelers checks and official checks until confirmation of final clearance of the funds.

Doma Title of California, Inc. will not be responsible for accruals of interest or other charges resulting from compliance with the disbursement restrictions imposed by state law.

Doma Title of California, Inc. charges for recording the transaction documents include charges for services performed by Doma Title of California, Inc., in addition to an estimate of payments to be made to governmental agencies.

Note: The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than the certain dollar amount set forth in any applicable arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. If you desire to review the terms of the policy, including any arbitration clause that may be included, contact the office that issued this Commitment or Report to obtain a sample of the policy jacket for the policy that is to be issued in connection with your transaction.
C. The map attached, if any, may or may not be a survey of the land depicted hereon. Doma Title of California, Inc. expressly disclaims any liability for loss or damage which may result from reliance on this map except to the extent coverage for such loss or damage is expressly provided by the terms and provisions of the title insurance policy, if any, to which this map is attached.
AFFILIATED BUSINESS ARRANGEMENT DISCLOSURE


This is to give notice that Doma has a business relationship with North American Title Insurance Company ("NATIC"). Doma and NATIC, directly or indirectly, are wholly owned subsidiaries of States Title Holding, Inc. Because of this relationship, this referral of services may provide Doma a financial or other benefit.

Set forth below are the estimated charges or range of charges for the settlement services provided by NATIC. You are NOT required to use NATIC as a condition for closing your transaction.

THERE ARE FREQUENTLY OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES.

<table>
<thead>
<tr>
<th>Title Insurance Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>NAT provides closing services and title insurance through numerous title insurance underwriters, one of which is NATIC. If NATIC is selected as the title insurer, the following fees apply:</td>
</tr>
<tr>
<td>10% - 40% of costs for lender’s and/or owner’s title insurance, as applicable, depending on the property state, and as shown on the Loan Estimate and/or Closing Disclosure provided by your lender.</td>
</tr>
<tr>
<td>Contact your local Doma representative for a more detailed title insurance quote based on your specific transaction.</td>
</tr>
</tbody>
</table>

ACKNOWLEDGMENT

I/we have read this disclosure form, and understand that NAT is referring me/us to purchase the above-described settlement service and may receive a financial or other benefit as the result of this referral.

Buyer/Borrower: ____________________________________

__________________________________

__________________________________

__________________________________

Buyer/Borrower: ____________________________________

__________________________________

__________________________________

__________________________________

Date: ___________________________ Date: ___________________________

Prelim 55807-22-04362
LENDERS SUPPLEMENTAL REPORT

Dated as of May 4, 2022 at 12:00 AM.

Title Officer: Sue Bulhoes

The above numbered report (including any supplements or amendments thereto) is hereby modified and/or supplemented in order to reflect the following additional items relating to the issuance of an American Land Title Association loan form policy of Title Insurance:

Our ALTA Loan Policy, when issued, will contain Endorsement Nos. 100 and 116.

There is located on said land Commercial (Hotel)
Known as: 201 North California Street, Stockton, CA 95202
City of Stockton
County of San Joaquin
State of California.

There is located on said land Unimproved (Vacant)
Known as: 206 North Sutter Street, Stockton, CA 95202
City of Stockton
County of San Joaquin
State of California.

According to the public records, there has been no conveyance of the land within a period of twenty-four months prior to the date of this report, except as follows:


From:
The Open Window Project LLC, a California limited liability company, as to Parcels 1, 2 and 5 and The Open Window Project LLC, a California limited liability company who acquired title as Open Window Project LLC, a California limited liability company, as to Parcels 3 and 4

To:
Star Property LB Investment LLC, a California limited liability company
**Privacy Notice**

**The Doma Family of Companies**

<table>
<thead>
<tr>
<th>FACTS</th>
<th>WHAT DOES THE DOMA FAMILY OF COMPANIES DO WITH YOUR PERSONAL INFORMATION?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Why?</td>
<td>Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some, but not all, sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.</td>
</tr>
</tbody>
</table>
| What? | The types of personal information we collect and share depend on the product or service you have with us. This information can include:  
- Social Security number and income  
- Transaction history and payment history  
- Purchase history and account balances |
| How?  | All financial companies need to share customers’ personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers’ personal information, the reasons the Doma Family of Companies chooses to share, and whether you can limit this sharing. |

<table>
<thead>
<tr>
<th>Reasons we can share your personal information</th>
<th>Does Doma share?</th>
<th>Can you limit this sharing?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>For our everyday business purposes</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td><strong>For our marketing purposes</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>To offer our products and services to you</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td><strong>For joint marketing with other financial companies</strong></td>
<td>No</td>
<td>We don’t share</td>
</tr>
<tr>
<td><strong>For our affiliates’ everyday business purposes</strong></td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Information about your transactions and experiences</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>For our affiliates’ everyday business purposes</strong></td>
<td>No</td>
<td>We don’t share</td>
</tr>
<tr>
<td>Information about your creditworthiness</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>For our affiliates to market to you</strong></td>
<td>No</td>
<td>We don’t share</td>
</tr>
<tr>
<td><strong>For nonaffiliates to market to you</strong></td>
<td>No</td>
<td>We don’t share</td>
</tr>
</tbody>
</table>

**Other important information**

*California Residents – Effective January 1, 2020, the California Consumer Privacy Act allows California residents, upon a verifiable consumer request, to request that a business that collects consumers’ personal information give consumers access, in a portable and (if technically feasible) readily usable form, to the specific pieces and categories of personal information that the business has collected about the consumer, the categories of sources for that information, the business or commercial purposes for collecting the information, and the categories of third parties with which the information was shared. California residents also have the right to submit a request for deletion of information under certain circumstances. If a business does not produce the information or delete the consumer’s personal information as requested, it must provide an explanation in terms of the exemptions and exceptions provided under the CCPA. To contact us with questions about our compliance with the CCPA, call 1 (650) 419-3827 or email info@doma.com.*

Questions? Call 1 (855) 306-0237
### Who we are

| Who is providing this notice? | The Doma Family of Companies (identified below), which offers title insurance and settlement services. |

### What we do

| How does Doma protect my personal information? | To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secure files and buildings. |
| How does Doma collect my personal information? | We collect your personal information, for example, when you apply for insurance; apply for financing; give us your contact information; provide your mortgage information; and show your government-issued ID. We also collect your personal information from others, such as credit bureaus, affiliates, or other companies. |

### Why can’t I limit all sharing?

| Why can’t I limit all sharing? | Federal law gives you the right to limit only sharing for: (a) sharing for affiliates’ everyday business purposes—information about your creditworthiness; (b) affiliates from using your information to market to you; and (c) sharing for nonaffiliates to market to you. State laws and individual companies may give you additional rights to limit sharing. |

### What happens when I limit sharing for an account I hold jointly with someone else?

| What happens when I limit sharing for an account I hold jointly with someone else? | Your choices will apply to everyone on your account – unless you tell us otherwise. |

### Definitions

| Affiliates | Companies related by common ownership or control. They can be financial and nonfinancial companies. |
| Nonaffiliates | Companies not related by common ownership or control. They can be financial and nonfinancial companies. Nonaffiliates we share with can include collection agencies, IT service providers, companies that perform marketing services on our behalf, and consumer reporting agencies. |
| Joint marketing | A formal agreement between nonaffiliated financial companies that together market financial products or services to you. Doma doesn’t jointly market. |

The Doma Family of Companies consists of the following entities:

- Doma Holdings, Inc.
- States Title Holding, Inc.
- Doma Corporate, LLC
- Doma Customer Financing LLC
- Doma Home Insurance Services, LLC
- Doma Insurance Agency, Inc.
- Doma Insurance Agency of Arizona, Inc.
- Doma Insurance Agency of Colorado, Inc.
- Doma Insurance Agency of Florida, Inc.
- Doma Insurance Agency of Illinois, Inc.
- Doma Title Agency of Nevada, Inc.
- Doma Insurance Agency of New Jersey, Inc.
- Doma Insurance Agency of Texas, Inc.
- Doma Insurance Agency of Utah, LLC
- Doma Title Insurance, Inc.
- Doma Trustee Services, LLC
- Doma Title of California, Inc.
- NASSA LLC
- North American Title Insurance Company
- North American Asset Development, LLC
| Doma Insurance Agency of Indiana, LLC |
| Doma Insurance Agency of Louisiana, LLC |
| Doma Insurance Agency of Minnesota, Inc. |
| North American Services, LLC |
| Spear Agency Acquisition Inc. |
| States Title, LLC |
| Title Agency Holdco, LLC |
CLTA STANDARD COVERAGE POLICY - 1990

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys’ fees or expenses which arise by reason of:

1. Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien, or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

   (a) Unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.

   (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.

3. Defects, liens, encumbrances, adverse claims or other matters:

   (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;

   (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;

   (c) resulting in no loss or damage to the insured claimant;

   (d) attaching or created subsequent to Date of Policy; or

   (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.

4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.

5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.

6. Any claim, which arises out of the transaction vesting in the insured the estate of interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors’ rights laws.

EXCEPTIONS FROM COVERAGE - SCHEDULE B, PART I

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys’ fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.

2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.

3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.

4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.

5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

6. Any lien or right to a lien for services, labor or material not shown by the public records.

CLTA/ALTA HOMEOWNER’S POLICY OF TITLE INSURANCE (12-02-13)

EXCLUSIONS

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys’ fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:

   a. building;

   b. zoning;

   c. land use;

   d. improvements on the Land;

   e. land division; and

   f. environmental protection.

   This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.

2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.

3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.

4. Risks:
a. that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;
c. that result in no loss to You; or
d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8, e., 25, 26, 27 or 28.
5. Failure to pay value for Your Title.
6. Lack of a right:
   a. to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
   b. in streets, alleys, or waterways that touch the Land.
This Exclusion does not limit the coverage described in Covered Risk 11 or 21.
7. The transfer of the Title to You is invalid as a preferential transfer or as a fraudulent transfer or conveyance under federal bankruptcy, state insolvency, or similar creditors’ rights laws.
8. Contamination, explosion, fire, flooding, vibration, fracturing, earthquake, or subsidence.
9. Negligence by a person or an Entity exercising a right to extract or develop minerals, water, or any other substances.

LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

For Covered Risk 16, 18, 19, and 21 Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

<table>
<thead>
<tr>
<th>Covered Risk</th>
<th>Your Deductible Amount</th>
<th>Our Maximum Dollar Limit of Liability</th>
</tr>
</thead>
<tbody>
<tr>
<td>16</td>
<td>1% of Policy Amount Shown in Schedule A or $2,500 (whichever is less)</td>
<td>$10,000</td>
</tr>
<tr>
<td>18</td>
<td>1% of Policy Amount Shown in Schedule A or $5,000 (whichever is less)</td>
<td>$25,000</td>
</tr>
<tr>
<td>19</td>
<td>1% of Policy Amount Shown in Schedule A or $5,000 (whichever is less)</td>
<td>$25,000</td>
</tr>
<tr>
<td>21</td>
<td>1% of Policy Amount Shown in Schedule A or $2,500 (whichever is less)</td>
<td>$5,000</td>
</tr>
</tbody>
</table>

2006 ALTA LOAN POLICY (06-17-06)
EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to:
   (i) the occupancy, use, or enjoyment of the Land;
   (ii) the character, dimensions, or location of any improvement erected on the Land;
   (iii) the subdivision of land; or
   (iv) environmental protection;
   or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 8.
   (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 22.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
   (a) created, suffered, assumed, or agreed to by the Insured Claimant;
   (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
   (c) resulting in no loss or damage to the Insured Claimant;
   (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14);
   or
   (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors’ rights laws, that the transaction creating the lien of the Insured Mortgage, is
   (a) a fraudulent conveyance or fraudulent transfer, or
   (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:
EXCEPTIONS FROM COVERAGE

[Except as provided in Schedule B - Part II,[ 1] or T]his policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses, that arise by reason of:

[PART I]

[The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the Public Records.

PART II

In addition to the matters set forth in Part I of this Schedule, the Title is subject to the following matters, and the Company insures against loss or damage sustained in the event that they are not subordinate to the lien of the Insured Mortgage:

2006 ALTA OWNER'S POLICY (06-17-06)

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
   (i) the occupancy, use, or enjoyment of the Land;
   (ii) the character, dimensions, or location of any improvement erected on the Land;
   (iii) the subdivision of land; or
   (iv) environmental protection;
   or the effect of any violation of these laws, ordinances, or governmental regulations. This exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
   (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
   (a) created, suffered, assumed, or agreed to by the Insured Claimant;
   (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
   (c) resulting in no loss or damage to the Insured Claimant;
   (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
   (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors’ rights laws, that the transaction vesting the Title as shown in Schedule A, is
   (a) a fraudulent conveyance or fraudulent transfer; or
   (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses, that arise by reason of:
[The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown in the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and that are not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the Public Records.
7. [Variable exceptions such as taxes, easements, CC&R's, etc. shown here.]
EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character, dimensions, or location of any improvement erected on the Land; (iii) the subdivision of land; or (iv) environmental protection;
   or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
   (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.

2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.

3. Defects, liens, encumbrances, adverse claims, or other matters
   (a) created, suffered, assumed, or agreed to by the Insured Claimant;
   (b) not known to the Company, not recorded in the Public Records at Date of Policy, but known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
   (c) resulting in no loss or damage to the Insured Claimant;
   (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or
   (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.

4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.

5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.

6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.

7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.

8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.

9. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
   (a) a fraudulent conveyance or fraudulent transfer, or
   (b) a preferential transfer for any reason not stated in Covered Risk 27(b) of this policy.

10. Contamination, explosion, fire, flooding, vibration, fracturing, earthquake, or subsidence.

11. Negligence by a person or an Entity exercising a right to extract or develop minerals, water, or any other substances.
OWNER'S DECLARATION

The undersigned Owner(s) of legal age, being duly sworn, deposes and states under penalty of perjury under the laws of the State of California.

1. That certain real property (the "Property") as described in that certain Commitment of Title Insurance/Preliminary Report No. 55807-22-04362 dated as of ("Commitment/Report") issued by or on behalf of Doma Title of California, Inc. is improved by the following (check all that apply)

- Single family residences
- Apartment building
- Commercial building
- Industrial building
- Other:

2. WORK OF IMPROVEMENT: Please respond to A, B and C below:

   A. For the period of 90-days prior to the date of this Affidavit, no repairs or work of improvement has been conducted on, nor any materials supplied to, the Property except as follows:

      (Enter "None" if such is true.)

      If you have described any work of improvement above, please complete the following:

      - Started on ________________, 20__.
      - Completed on ________________, 20__.
      - Will be completed on ____________________, 20__.

   B. Cessation of Labor (Please place an "X" by 1 or 2 below):

      - 1. There has been a cessation of labor where a work of Improvement was discontinued before completion within 150 days of the date of this Affidavit.
         PLEASE DESCRIBE THE NATURE OF THE WORK THAT DISCONTINUED:

         (Enter "None" if such is true.)

      - 2. There has not been a cessation of labor where a work of improvement was discontinued before completion within 150 days of the date of this Affidavit.

   C. There are no unpaid bills for labor or material because of any improvements made to the Property except:

      (Enter "None" if such is true.)

3. No one is in possession of, or has any right to possession of, the Property except:

   - Declarant as owner.
Tenants based only on month-to-month rental agreements.
Tenants based upon existing leases as listed on the Rent Roll attached hereto as Exhibit A and incorporated herein by reference.
Other: 

4. No person(s) or entitles, have (i) any options to purchase or rights of first refusal, including but not limited to lessees under any leases referred to in Paragraph 3 above, and/or (ii) easements, licenses, agreements or other rights allowing them to use, encroach on, or access to the Property except (i) as shown in the Commitment/Report, and (ii) 

(Enter "None" if such is true.)

5. Those certain lease(s) shown as exception number(s) ___________ in the Commitment/Report have either: (a) expired by their own terms, or (b) if they have not expired, the lessee(s) have vacated the Property and Declarant has been notified of the vacation of the Property either by correspondence from the lessee or by physical inspection of the property.

6. To the best of Declarant’s knowledge, there are no unrecorded real property taxes or assessments against the Property.

The undersigned is not aware of any release reports or commitment statements which have been issued pertaining to any environmental issues or liens.

7. This Affidavit is given for the purpose of inducing Doma Title of California, Inc. and its agents to issue policy(ies) of title insurance which may provide coverage with respect to all matters set forth herein. If Doma Title of California, Inc. elects, in its discretion, to (a) accept this Affidavit, and (b) issue title insurance policy(ies) to third parties, Doma Title of California, Inc. will do so in material reliance on this Affidavit and the representation and covenants in this Affidavit.

8. Declarant acknowledges that he/she has read this Affidavit, that all the statements made in this Affidavit are true and correct of his/her own actual knowledge, and fully understands the legal aspects of any misrepresentations or untrue statements made in this Affidavit. Declarant, both personally and on behalf of Owner, covenants and agrees to defend, indemnify, and hold Doma Title of California, Inc. harmless from and against any and all claims, actions, suits (including arbitration), liabilities, losses, damages, costs, charges, attorney’s fees and other expenses of every nature and character as a result of its reliance on this Affidavit.

Executed on ______________________, 20____, at ______________________, ______________________
(City) (State)

“Declarant”

________________________
Owner

________________________
Owner
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA ) SS
COUNTY OF ____________________ )

On _______________________, before me,
, Notary Public, personally appeared ____________________________________________

_________________________________________, who proved to me on the basis of satisfactory
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me
that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s)
on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is
true and correct.

WITNESS my hand and official seal.

Signature

_________________________________________  This area for official notarial seal
CITY OF STOCKTON
Assessor's Map Bk.139 Pg.25
County of San Joaquin, Calif.
Order: 55807-22-04362  Comment:
Amanda,

I have prepared a power point to assist in presenting my offer.

Please see attached.

Thank you.

Respectfully,

Dru Vincent Hunt
Attorney at Law

Law Office of Dru Vincent Hunt
2001 Pacific Avenue
Stockton, CA 95204
Ph.: (209) 948-3177
Fax: (209) 249-5342

dru@druhuntlaw.com
www.druhuntlaw.com

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Dru,

I think we can make this work. I will prepare an agenda item for City Council, it would be pending approval from the City Manager and City Council. I may need some more information from you about your project to include in the staff report or any additional conceptual drawings you may have. Thank you for your patience.
From: dru hunt <dru@druhuntlaw.com>
Sent: Thursday, September 16, 2021 3:25 PM
To: Amanda Thomas <Amanda.Thomas@stocktonca.gov>
Subject: RE: Follow-Up

**CAUTION:** This email originated from outside the City of Stockton. Do not click any links or open attachments if this is unsolicited email.

I would be willing to go $30,000 per lot.

Respectfully,

Dru Vincent Hunt

*Attorney at Law*

**Law Office of Dru Vincent Hunt**
2001 Pacific Avenue
Stockton, CA 95204
Ph.: (209) 948-3177
Fax: (209) 249-5342

dru@druhuntlaw.com
www.druhuntlaw.com

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From: Amanda Thomas <Amanda.Thomas@stocktonca.gov>
Sent: Thursday, September 16, 2021 2:59 PM
To: dru hunt <dru@druhuntlaw.com>
Subject: RE: Follow-Up

I think we are good with the $30,000 offer for 725 E. Main. The option agreement we had with Open Window Project had 725 E. Main at $30,000 and 25 N. Grant at $60,000. If we can get closer to the $60,000 number for 25 N. Grant I think we can make a deal. We will take into account the work that 25 N. Grant requires and can make the justification of your project. We would really like to make something work and EDD is excited for your project, I just know the price needs to come up to make the City folks happy. I will be out of the office starting this afternoon returning October 4. I will check my e-mail the week of 9/27. Let me know your thoughts on pricing. Sorry for the delay, we have had several people out of the office.

Amanda

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From: dru hunt <dru@druhuntlaw.com>
Sent: Wednesday, September 15, 2021 4:32 PM
To: Amanda Thomas <Amanda.Thomas@stocktonca.gov>
Subject: Follow-Up

CAUTION: This email originated from outside the City of Stockton. Do not click any links or open attachments if this is unsolicited email.

Amanda,

Just following up seeing where we are at with the Grant and Main Street properties.

Thank you.

Respectfully,

Dru Vincent Hunt
Attorney at Law

Law Office of Dru Vincent Hunt
2001 Pacific Avenue
Stockton, CA 95204
Ph.: (209) 948-3177
Fax: (209) 249-5342

dru@druhuntlaw.com
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Who We Are

• Founded in 2017, The Art Lab was established to provide a safe and creative environment for children to come paint and draw with their friends and family.

• We also offer our venue for community meetings, gatherings, and private events.
What We Offer:

- Art Classes
- Community Events
- Support for Local Community
- Private Events
Art Classes:

- We offer hour long group art classes with an instructor and a set painting or drawing for the group to complete. We encourage family members to sit and paint with their children.
- We provide the canvas, paint, and supplies. All the children need to bring is their creativity!
Community Events:

• Open Mic Experience by Vibe Worldwide.
• Live Music
  • Drum Circles
  • Traditional Polynesian Song
• Paint a’ Pumpkin during Halloween
  • Over 1500 Pumpkins painted.
Support for Local Community:

• KVSJ Voice of Stockton Fundraiser – Christmas in July
• Peace and Justice League – Annual Meeting
• Stockton’s Arts Commission - Sub-Committee Meetings
• Emerge America: Local Woman in Office – District Event
• Public Murals Preservation Society – Annual Meeting
• Local Campaign Fundraiser Events
Private Events:

- Birthday Parties
- Paint Night Parties
- Family Reunions
- Baby Showers
- Bridal Showers
- Anniversaries
- Corporate Events
What We Have Accomplished

• Over 10,000 children and family members have participated in Art Projects at the The Stockton Art Lab on The Miracle Mile.
• We have provided free Art Classes for over 3,000 children.
• Over 50 private events.
Where We Are Heading

• It is time to expand The Stockton Art Lab and move it into a larger venue to grow the potential size and magnitude of events.

• At the new location downtown in addition to the brand new 3,000 square foot Stockton Art Lab there will be:
  • On-site secured private parking
  • An outdoor area for larger events:
    • Food Truck Park
    • Farmer’s Market
    • Holiday Events
    • Indoor/Outdoor Private Events
Our Ultimate Goal

• Revitalize the corner of Grant and Main Street in the heart of Downtown Stockton and turn it into a vibrant Art Center that caters to the community and our children.