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C-05-540 (NRP)

**PUBLIC INFRASTRUCTURE PROJECTS FUNDING AGREEMENT
NORTH STOCKTON REDEVELOPMENT PROJECT AREA**

This Public Infrastructure Projects Funding Agreement (the "Agreement") is entered into by and between the Redevelopment Agency of the City of Stockton (the "Agency"), a public body, corporate and politic, and the City of Stockton, a municipal corporation (the "City") as of DEC 13 2005, 2005, with reference to the following facts and intentions:

RECITALS

A. The Agency is vested with the responsibility for formulating and carrying out necessary redevelopment projects within the North Stockton Redevelopment Project Area (the "Project Area") established by the Amended and Restated Redevelopment Plan for the North Stockton Redevelopment Project (the "Redevelopment Plan"), adopted by the Stockton City Council by Ordinance # 012-04, adopted on July 13, 2004, and as amended by Ordinance # 017-05 adopted on November 15, 2005.

B. Major goals of the Redevelopment Plan include the upgrading and the provision of public improvements to the Project Area.

C. The City has identified necessary public infrastructure needs in its current capital improvement plan.

D. The Agency desires that the City administer certain programs of improvement identified in the City's capital improvement plan to be carried out in and for the benefit of the Project Area in furtherance of the Redevelopment Plan.

E. The City is willing to administer these programs of improvements, provided that the Agency provides the funding for these improvements.

NOW, THEREFORE, the Agency and the City, for and in consideration of the mutual promises and agreements herein contained do agree as follows:

1. **IDENTIFIED PROJECTS**

The City and the Agency have identified a list of potential projects from the City's capital improvement budget and estimated costs that may be administered and funded through this Agreement as set forth in the attached Exhibit A. The Agency and the City shall meet annually during the term of this Agreement to determine which projects will be funded during the next fiscal year thorough this Agreement. Both parties recognize that certain legal findings, financial analyses and environmental review processes may be required before work may commence on any of the listed improvements. Therefore, neither the Agency nor the City shall make any commitments to third parties regarding

05-0554

improvements to be funded pursuant to this Agreement until all necessary environmental review is completed, any necessary legal findings made, and until both the Agency and the City have agreed to proceed with those particular improvements at that specific time. Each party retains discretion to not approve a particular project.

2. FUNDING FOR PROJECT AREA IMPROVEMENTS

The Agency agrees to fund from tax increment revenues received by the Agency from the Project Area up to an amount not to exceed the estimated cost for that improvement as shown on the attached Exhibit A. The amount of estimated cost listed for each improvement may be increased or decreased by ten percent (10%) provided that corresponding adjustments are made in other line items so that the total potential commitment under this Agreement does not exceed Ten Million Dollars (\$10,000,000).

3. PROCEDURE FOR PAYMENT

By May 31st of each year, the City shall submit to the Agency cost certification statements bearing the signature of a duly authorized agent of the City, describing in detail the costs that the City has incurred in making the improvements jointly approved by the Agency and the City pursuant to Section 1 of this Agreement, including any applicable third party invoices and including an explanation of how the costs set forth on the statement do not exceed the limitations set forth in Section 2 of this Agreement. The Agency shall pay to the City, as soon as tax increment funds become available from the Project Area which are not needed for other Agency obligations (regardless of when those other Agency obligations are incurred), the amounts set forth in the statements delivered by City to Agency, provided the amount set forth in the statement will not cause the limitations set forth in Section 2 to be exceeded and provided such amount has not already been previously paid by the Agency.

4. AUDIT RIGHTS

Once every year during the term of this Agreement, the Agency or any designated agent or employee of the Agency shall be entitled to audit all the books, records and accounts of the City pertaining to the improvements installed pursuant to this Agreement (the "Improvements") to ensure the appropriate amounts have been paid to the City pursuant to this Agreement. Such audit shall be conducted during normal business hours upon forty-eight (48) hours notice at the principal place of business of City and other places where records are kept. Any audit undertaken under this Section shall be completed within sixty (60) days of the commencement thereof, subject to extensions of time for any periods of delay due to no fault of Agency or its auditors. If it shall be determined as a result of such audit that there has been an overpayment by the Agency for the Improvements, such overpayment shall become immediately due and payable by the City with interest at the then applicable Local Agency Investment Fund interest rate, determined as of and accruing from the date that said overpayment(s) was made. In addition, if overpayments made by the Agency based on the statements provided by the City exceed by five percent (5%) or more the

amount of the actual payments to be made and the Agency is correspondingly entitled to reimbursement from the City as a result thereof, then the City shall pay, in addition to the interest charges referenced hereinabove, all of Agency's reasonable costs and expenses connected with any audit or review of City's accounts and records. All such payments shall be paid within ten (10) days of receipt of written notice to City of such overpayment. Until the City has reimbursed such overpayments, the Agency shall have no further obligation to make further disbursements under this Agreement.

5. **TERM OF AGREEMENT**

Unless sooner terminated pursuant to Section 9, this Agreement shall be in full force and effect for a period beginning as of the date first above written and continuing until the later to occur of the date five (5) years after the date of this Agreement or Agency payment of all obligations under this Agreement.

6. **INDEBTEDNESS**

It is understood by the Agency and the City the payments to be made by the Agency under this Agreement, shall be a debt of the Agency and shall be paid solely from the tax increment revenue generated within the Project Area, after making any payments to affected taxing agencies as statutorily required, after setting aside the amount required by statute or other governing policy into the Agency's Low and Moderate Income Housing Fund, and after paying all other Agency obligations (regardless of when those other Agency obligations are incurred).

7. **SUBORDINATION**

It is agreed by the parties hereto that payments to the City pursuant to this Agreement are hereby subordinated to any and all payments necessary to satisfy the Agency's obligations in connection with any existing or future bonded indebtedness or other obligation which may be incurred by the Agency for the benefit of the redevelopment program or to the extent necessary for any bonded indebtedness or other obligation for which the Agency has pledged as a security or source of repayment tax increment generated within the Project Area.

8. **AMENDMENTS**

The Agency may, from time to time, request changes in the scope of the services provided by the City or to the terms and conditions of this Agreement. Such changes, which are mutually agreed upon by and between the City and Agency, shall be incorporated in written amendments to this Agreement.

9. **TERMINATION OF AGREEMENT**

If the City fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the City violates any of the covenants, stipulations, or provisions of this

Agreement, the Agency thereupon shall have the right to terminate this Agreement by providing the City written notification and specifying the effective date of the termination. In such event, all finished and unfinished documents, data, studies, and reports prepared by the City under this Agreement shall, at the option of the Agency, become its property and the City shall be entitled to receive just and equitable compensation deemed by the Agency for any work completed on such documents.

If the Agency fails to maintain its obligation to the City, the City thereupon shall have the right to terminate this Agreement by providing the Agency written notification and specifying the effective date of the termination. In such event, all finished and unfinished documents, data, studies, and reports prepared by the City under this Agreement shall, at the option of the Agency, become its property and the City shall be entitled to receive just and equitable compensation deemed by the Agency for any work completed on such documents.

Either party, City or Agency, may terminate this Agreement at any time and for any reason on the condition that the party wishing to terminate the Agreement provide written notification to the other party specifying the effective date of the termination of the Agreement.

10. **VALIDITY OF AGREEMENT**

If any provisions of this Agreement, or the application thereof to any person, party, transaction, or circumstance, is held invalid, the remainder of this Agreement, or the application of such provision to other persons, parties, transactions or circumstances, shall not be affected thereby.

11. **NOTICES**

Formal notices, demands, and communications between the Agency and the City shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, return receipt requested, or delivered by an express delivery service with a receipt showing date of delivery to the principal offices of the parties as follows:

Agency: Redevelopment Agency of the City of Stockton
425 North El Dorado Street, 3rd Floor
Stockton, CA 95202
Attn: Executive Director

City: City of Stockton
425 North El Dorado Street, 2nd Floor
Stockton, CA 95202
Attn: City Manager

Such written notices, demands and communications may be sent in the same manner to such other addresses as any party may from time to time designate by mail as

provided in this Section 11. Delivery shall be deemed to have occurred at the time indicated on the receipt for delivery or refusal of delivery.

12. **APPLICABLE LAW**

This Agreement shall be interpreted under and pursuant to the laws of the State of California.

13. **LEGAL ACTIONS**

In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the party prevailing in any such action shall be entitled to recover against the party not prevailing all reasonable attorneys' fees and costs incurred in such action.

In the event legal action is commenced by a third party or parties, the effect of which is to directly or indirectly challenge or compromise the enforceability, validity, or legality of this Agreement and/or the power of the Agency or the City to enter into this Agreement or perform its obligations hereunder, both the Agency or the City shall each in good faith defend and seek to uphold the Agreement. Upon commencement of any such third party action, the Agency and the City shall meet in good faith and seek to establish a mutually acceptable method of defending such action.

14. **ENTIRE UNDERSTANDING OF THE PARTIES**

This Agreement constitutes the entire understanding and agreement of the City and the Agency with regard to the subject matter of this Agreement.

15. **NO THIRD PARTY BENEFICIARIES**

No person or entity other than the City and the Agency, and their permitted successors and assignees, shall have any right of actions under this Agreement.

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BY SIGNING BELOW, the parties agree to this Agreement as of the date first written above.

ATTEST:

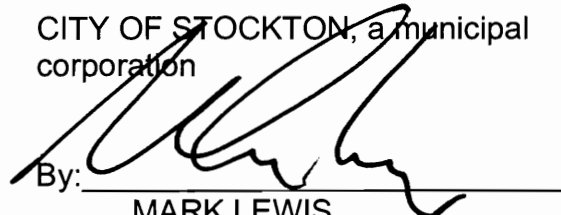
By:  

APPROVED AS TO FORM:
RICHARD E. NOSKY, JR.
CITY ATTORNEY

By: 

CITY:

CITY OF STOCKTON, a municipal corporation

By: 
MARK LEWIS
CITY MANAGER

AGENCY:

REDEVELOPMENT AGENCY OF
THE CITY OF STOCKTON, a public
body, corporate and politic

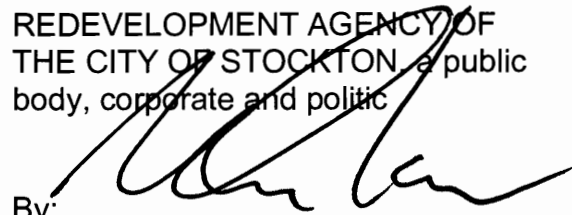
By: 
MARK LEWIS
EXECUTIVE DIRECTOR

EXHIBIT A

Budget and Estimated Costs

<u>Improvement</u>	<u>Estimated Cost</u>
1. Hammer Lane Street Widening – p.94 of CIP	<u>\$ 4,260,000*</u>
<i>*Reflects 60% of total amount budgeted of \$7.1 Million</i>	
TOTAL	\$ 4,260,000