

**CITY-DEVELOPER COOPERATIVE AGREEMENT
FOR THE
HUNTER STREET APARTMENTS PROJECT**

THIS COOPERATIVE AGREEMENT FOR FUNDING OF TRANSPORTATION IMPROVEMENTS ("Agreement") is made and entered into this _____ day of _____, 2016, by and between the CITY OF STOCKTON, a Municipal Corporation to the State of California, ("CITY") and Visionary Home Builders of California, Inc. ("DEVELOPER").

WHEREAS, CITY and DEVELOPER desire to enter into a Cooperative Agreement (Agreement) for funding of transportation improvements along Hunter Street; and

WHEREAS, the CITY desires to receive funding from the DEVELOPER, or directly from the funder, from the Affordable Housing and Sustainable Communities Program for particular transportation improvements along Hunter Street between Harding Way and Miner Avenue as part of the Hunter Street Apartments ("PROJECT"); and

WHEREAS, the CITY and the DEVELOPER have agreed to form an Agreement and submit a single application as provided for under the Affordable Housing and Sustainable Communities (AHSC) Program; and,

WHEREAS, the DEVELOPER will submit the application to AHSC for the Hunter Street Apartments project and, if selected for funding, execute the Full Application Agreement with AHSC, and;

WHEREAS, the CITY is willing to cooperate with the DEVELOPER in constructing the transportation improvements along Hunter Street for PROJECT (Exhibit A); and;

WHEREAS, the DEVELOPER agrees to provide funding for the transportation improvements of the CITY's Project according to the terms and conditions set forth herein; and,

NOW, THEREFORE, in consideration of the mutual promises and undertakings herein made and the mutual benefits to be derived therefrom, the parties hereto represent, covenant, and agree as follows:

1. Services to be Performed. Design, environmental clearance, permitting, public outreach, advertising, construction and construction management for the improvements along Hunter Street from Harding Way to Miner Avenue.

2. Indemnity. With the exception that this section shall in no event be construed to require indemnification by Developer to a greater extent than permitted under the public policy of the State of California, Developer shall, indemnify, protect, defend with counsel approved by City, in its reasonable discretion, and at Developer's sole cost and expense, and hold harmless City, its Mayor, Council, officials, representatives, agents employees and volunteers ("City Parties") from and against any and all claims, causes of action, liabilities, judgments, awards, losses, liens, claims, stop notices, damages, expenses, and costs (including without limitation reasonable attorneys' fees, expert and consultant fees, and other expenses of litigation) of every nature, including, but not limited to, death or injury to persons, or damage to property, which arise out of or are in any way connected with the work performed, materials furnished, or services provided under this Agreement, or from any violation of any federal, state, or municipal law or ordinance, or City Policy, by Developer or Developer's officers, agents, employees, volunteers or subcontractors. Developer shall not be obligated to indemnify or defend City for claims finally determined by a court of law or arbitrator to arise from the active negligence or willful misconduct of the City Parties. To the extent California Civil Code sections 2782, et seq., limit the defense or indemnity obligations of Developer to City, the intent hereunder is to provide the maximum defense and indemnity obligations allowed by Developer under the law. The indemnity set forth in this section shall not be limited by insurance requirements or by any other provision of this Agreement.

With the exception that this section shall in no event be construed to require indemnification, including the duty to defend, by Developer to a greater extent than permitted under the public policy of the State of California, the parties agree that Developer's duty to defend City is immediate and arises upon the filing of any claim against the City for damages which arise out of or are in any way connected with the work performed, materials furnished, or services provided under this Agreement by Developer or Developer's officers, agents, employees, volunteers or subcontractors. Developer's duties and obligations to defend the City shall apply regardless of whether the issue of the City's liability, breach of this Agreement, or other obligation or fault has been determined. Developer shall be immediately obligated to pay for City's defense costs of the claim, including, but not limited to, court costs, attorney's fees and costs, expert consultant and witness fees and costs, other reasonable witness fees, document reproduction costs, arbitration fees, and, if after final judgment an appeal is pursued, all of such costs for the appeal. At the conclusion of the claim, if there is any determination or finding of sole active negligence or willful misconduct on the part of the City Parties, City will then reimburse Developer for amounts paid in excess of Developer's proportionate share of responsibility for the damages within 30 days after Developer provides City with copies of all bills and expenses incurred in the defense of the claim(s). It is agreed between the parties that this reimbursement provision assures Developer is not obligated to defend or indemnify

City in an amount greater than provided for under California law, including, without limitation, California Civil Code sections 2782, 2782.6, and 2782.8.

With the exception that this section shall in no event be construed to require indemnification by Developer to a greater extent than permitted under the public policy of the State of California, and in addition to the other indemnity obligations in this Agreement, Developer shall indemnify, defend, and hold harmless City its Mayor, Council, officials, representatives, agents employees and volunteers from and against all claims, losses, expenses, and costs including but not limited to attorneys' fees, arising out of any claim brought against the City by an employee, office, agent, or volunteer of Developer, regardless of whether such claim may be covered by any applicable workers compensation insurance. Developer's indemnification obligation is not limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Developer under workers' compensation acts, disability acts, or other employee benefit acts but Developer shall have no obligation to indemnify any City Party to the extent of the active negligence or willful misconduct of any City Party.

Developer's responsibility for such defense and indemnity obligations shall survive the termination or completion of this agreement for the full period of time allowed by law.

The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this agreement.

3. Business License. Prior to its execution of this Agreement, Developer shall obtain a City business license.
4. Audit. City reserves the right to periodically audit all charges for goods and services provided by Developer.
5. Changes to the Agreement. This Agreement may not be modified except in writing by both parties. In the event that funds are not secured through the Affordable Housing and Sustainable Communities Program, this agreement between the City and Developer becomes void.
6. Applicable Law. This Agreement shall be governed by the laws of the State of California and venue for any action brought in state court shall be in the Superior Court, County of San Joaquin, and Stockton Branch or, for actions brought in federal court, the United States District Court for the Eastern District of California, Sacramento Division.

7. Non-Assignability. Developer shall not assign or transfer this Agreement or any interest or obligation in this Agreement without the prior written consent of the City and then only upon such terms and conditions as City may set forth in writing.

8. Notices. All notices herein required shall be in writing and shall be sent certified or registered mail, postage prepaid, addressed as follows:

Visionary Home Builders of California, Inc. 315 N. San Joaquin Street Stockton, CA 95202 Carol Ornelas	CITY OF STOCKTON 22 E. Weber Avenue, Room 301 Stockton, CA 95202 Kurt Wilson
---	---

9. Conformance to Applicable Laws. Developer shall comply with all applicable Federal, State and Municipal laws, rules and ordinances. Developer shall not discriminate in the employment of persons or in providing services under this Agreement on the basis of any legally protected classification including race, color, national origin, sex or religion of such person.

MISCELLANEOUS PROVISIONS

10. The work to be performed includes, but is not limited to: design, environmental clearance, permitting, public outreach, advertising, construction and construction management for the improvements along Hunter Street from Harding Way to Miner Avenue.

11. The parties agree that the CITY is the lead agency responsible for completion of the design, and construction of street related portions of the PROJECT.

12. CITY will hire a Professional Engineering Firm to prepare the Plans, Specifications, Estimates, and permitting for street related portions of the PROJECT.

13. DEVELOPER shall cooperate with CITY's efforts to deliver the street related portions of the PROJECT so as to comply with the schedule and/or conditions prescribed by the CITY and/or its funding source.

14. DEVELOPER shall provide information and consultation to CITY to facilitate delivery of the PROJECT.

15. CITY shall coordinate with DEVELOPER any change orders that affect construction of improvements within PROJECT.

16. DEVELOPER shall assist in discussions with Residents and Property Owners as needed to resolve project issues or impacts.
17. DEVELOPER shall pay CITY actual costs of PROJECT. The estimated cost is attached (Exhibit B).
18. DEVELOPER acknowledges that Exhibit B represents the best known estimate at the time of Agreement.
19. CITY shall make available to DEVELOPER all documents and/or information which pertain to PROJECT.
20. CITY hereby represents and warrants that the letting of street related portions of the PROJECT contracts and construction will be done pursuant to the laws of the State of California.

IN WITNESS WHEREOF, this agreement has been executed by the respective parties hereto through their respective authorized officers at Stockton, California, the day and year first above written.

CITY OF STOCKTON

VISIONARY HOME BUILDERS OF CALIFORNIA, INC.

BY: _____
KURT O. WILSON
CITY MANAGER

BY: _____
Signature

ATTEST:

Carol J. Ornelas
Print Name

BY: _____
BONNIE PAIGE
CITY CLERK

Title: Chief Executive Officer

APPROVED AS TO FORM:

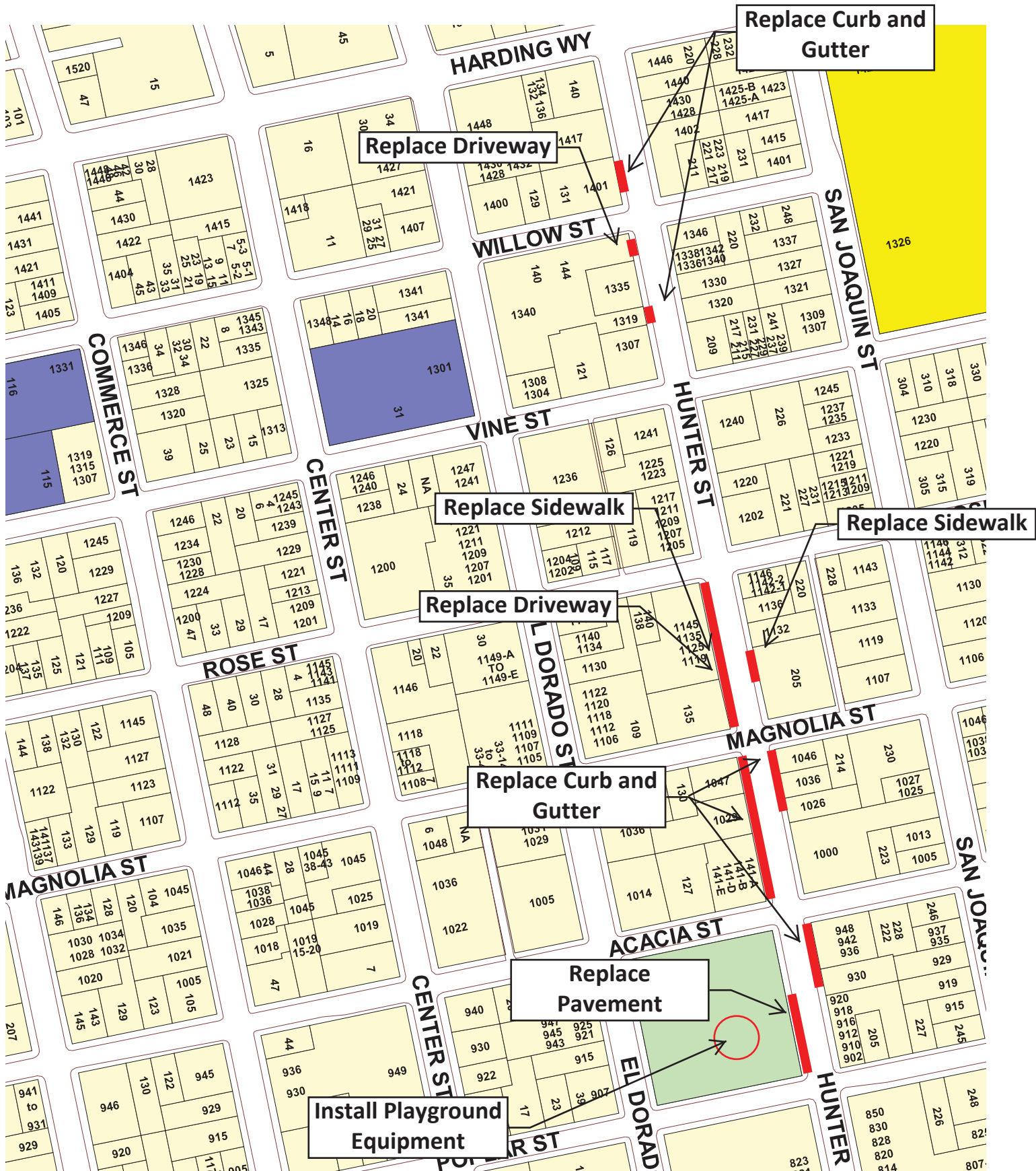
BY: _____
DEPUTY CITY ATTORNEY

City-Developer Cooperative Agreement – CITY OF STOCKTON AND VISIONARY HOME BUILDERS OF CALIFORNIA, INC.

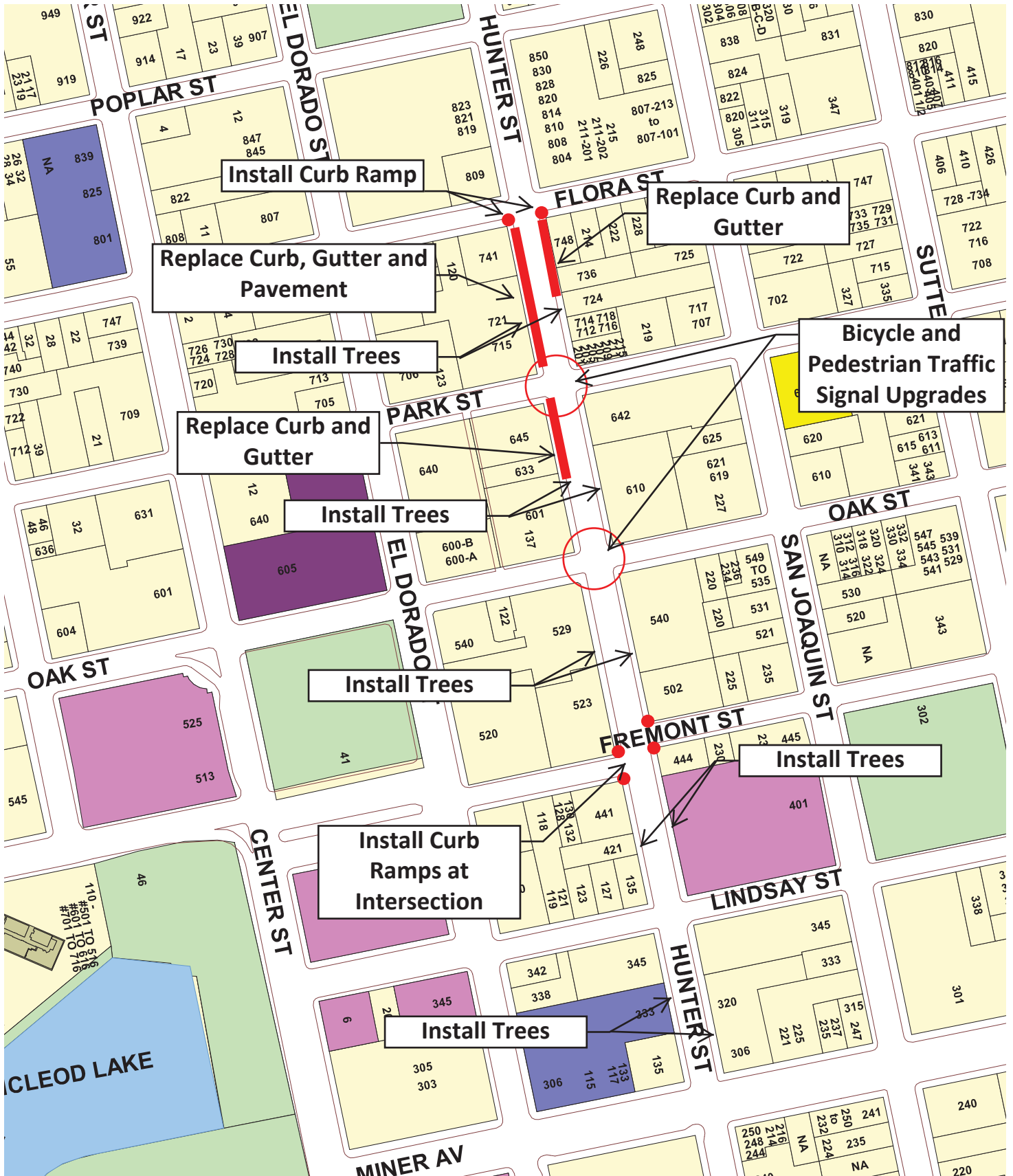
HUNTER STREET BETWEEN HARDING WAY AND MINER AVENUE

EXHIBIT 1

EXHIBIT A



HUNTER STREET BETWEEN HARDING WAY AND MINER AVENUE



HUNTER STREET BETWEEN HARDING WAY AND MINER AVENUE

Engineer's Estimate

Item No.	Description	Unit	Estimated Qty	Unit Price	Total
1	Demolition AC	SF	6,000	\$ 35.00	\$ 210,000.00
2	Demolition Curb and Gutter	LF	880	\$ 15.00	\$ 13,200.00
3	Demolition Sidewalk	SF	750	\$ 3.00	\$ 2,250.00
4	Demo Curb Ramp	EA	6	\$ 300.00	\$ 1,800.00
5	Demo Driveway	EA	2	\$ 650.00	\$ 1,300.00
6	Curb Ramp	EA	6	\$ 5,000.00	\$ 30,000.00
7	Sidewalk	SF	2,250	\$ 15.00	\$ 33,750.00
8	Curb and Gutter	LF	975	\$ 35.00	\$ 34,125.00
9	Driveway	EA	2	\$ 6,500.00	\$ 13,000.00
10	Street Lights	EA	5	\$ 5,000.00	\$ 25,000.00
11	Pavement	SF	6,000	\$ 10.00	\$ 60,000.00
12	Bicycle and Pedestrian Upgrades	LS	1	\$ 175,000.00	\$ 175,000.00
13	Tree - 24" Box	EA	30	\$ 300.00	\$ 9,000.00
14	Landscape Irrigation	SF	800	\$ 6.00	\$ 4,800.00
				Total	\$ 613,225.00