

**COST REIMBURSEMENT AGREEMENT
BETWEEN THE CITY OF SUNNYVALE
AND THE NEW HOME COMPANY NORTHERN CALIFORNIA LLC
FOR THE CONSTRUCTION OF MEDIAN IMPROVEMENTS**

**777 SUNNYVALE SARATOGA ROAD
SD-26-02**

THIS COST REIMBURSEMENT AGREEMENT ("Reimbursement Agreement" or "Agreement") is entered into as of _____, 2026, by and between THE NEW HOME COMPANY NORTHERN CALIFORNIA LLC ("DEVELOPER"), and the CITY OF SUNNYVALE, a California chartered municipal corporation ("CITY"). CITY and DEVELOPER are referred to herein individually as a "Party" or collectively as the "Parties."

RECITALS

- A. DEVELOPER is constructing an 80 townhome unit development at 777 Sunnyvale Saratoga Road, APN 201-36-002, in the City of Sunnyvale, County of Santa Clara (hereinafter referred to as "the Project") pursuant to Planning Application PLNG-2023-0807.
- B. The Conditions of Approval ("COAs") and Standard Development Requirements for the Project were approved by the Planning Commission on April 28, 2025 and subsequently by City Council on June 17, 2025, and EP-25 of the COAs required DEVELOPER to design and construct the public median on Sunnyvale Saratoga Road between El Camino Real and Mathilda Avenue (the "Improvements", as more fully described in Exhibit "A").
- C. The COAs stipulated that DEVELOPER is responsible for its fair share contribution of 22% of the cost of the design and construction of the Improvements. DEVELOPER would be reimbursed for such cost exceeding 22%.
- D. DEVELOPER's estimated total design and construction cost breakdown for the median is \$285,000.00.
- E. Pursuant to the COAs, DEVELOPER's fair share contribution is \$62,700.00. CITY shall reimburse DEVELOPER in an amount not to exceed \$222,300.00 for the design and construction of the Improvements, which is the difference between DEVELOPER's fair share and the estimated design and construction cost breakdown. any costs exceeding the estimated design and construction cost shall be the responsibility of DEVELOPER.
- F. The Parties now desire to enter into this Agreement for funds to reimburse DEVELOPER for the portions of design and construction beyond DEVELOPER's fair share contribution.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

AGREEMENT

1. INCORPORATION OF RECITALS

The Parties agree that the foregoing Recitals are true and correct and incorporated into this Agreement.

2. TERM OF AGREEMENT

CITY required, as a Condition of Approval for the Project, and DEVELOPER agreed, to the design, permitting, construction, and completion of the Improvements.

The term of this Agreement shall commence on the date that this Agreement is fully executed by the Parties and shall terminate when all work required by DEVELOPER relating to the Improvements pursuant to the COAs and this Agreement has been completed, and all Parties have satisfied all of their obligations under this Agreement including, without limitation, CITY's obligation to reimburse DEVELOPER as stated herein. Neither Party may terminate this Agreement except as otherwise expressly set forth herein; provided, however, in no event shall termination relieve either Party of its responsibilities pursuant to this Agreement prior to the effective date of termination.

3. COST

The Parties agree that the total cost breakdown of the design and construction of the Improvements shall be \$285,000.00, which generally includes the following: (1) direct construction costs thereof including prevailing wages, (2) related general contractor's general conditions, overhead and general contractor's other indirect costs thereof (with respect to which DEVELOPER shall provide CITY with reasonable supporting documentation for CITY's confirmation, not to be unreasonably withheld, conditioned, or delayed, and (3) the general contractor's fee. The specific breakdown of the total cost breakdown is attached hereto and incorporated herein as Exhibit "B."

4. DEVELOPER RESPONSIBILITIES

4.1 Design and Construction. DEVELOPER prepared the design plans and specifications of the Improvements and CITY approved such plans and specifications with necessary modifications, thereafter referred to as the "Approved Plans."

4.2 Permits. DEVELOPER obtained all necessary permits required for the Improvements.

4.3 Compliance with Law and Indemnification for Prevailing Wages. DEVELOPER used its own contract forms to award the contract for the construction of the Improvements, and complied with all laws, ordinances and regulations applicable to the work (including, but not limited to, all applicable prevailing wage requirements of the California Labor Code). DEVELOPER shall indemnify, defend and hold harmless CITY, its employees, officers and agents, from any and all third-party liability, damages, claims or causes of action brought for the payment

of prevailing wages on all work associated with the Improvements, and for the construction of the Improvements. DEVELOPER shall provide invoice documentation for CITY's review and concurrence for all work to be reimbursed, and CITY's concurrence shall not be unreasonably withheld, conditioned, or delayed.

- 4.4 Warranty. DEVELOPER hereby warrants to CITY for a period of one (1) year following the date of Final Acceptance of the Work, the quality and adequacy of all of the work performed as herein described including, without limitation, all work performed and materials supplied by DEVELOPER and/or its Contractor, except to the extent any defect or damage is caused by CITY's maintenance, repairs, operation, alterations, sole negligence, willful misconduct, or normal wear and tear, or acts of third parties after CITY's Final Acceptance of the Improvements.

Neither final payment nor use of the work performed by DEVELOPER or its Contractor shall constitute an acceptance of any work not done in accordance with this warranty nor relieve DEVELOPER of liability in respect to any express warranties or responsibilities for faulty materials or workmanship. DEVELOPER shall remedy any defects in the work and pay for any damage resulting therefrom which shall appear within one (1) year of Final Acceptance of the Improvements.

5. CITY RESPONSIBILITIES

- 5.1 Review and Approval of Improvement Plans. CITY worked with DEVELOPER to promptly review and approve the design plans and specifications, including all necessary modifications, for the Improvements prepared by DEVELOPER.
- 5.2 Acceptance of Improvements. CITY agrees that it shall, after CITY's inspector confirms that the Improvements have been completed in accordance with the Approved Plans and any applicable provisions of the Sunnyvale Municipal Code and CITY policies, promptly accept such completed Improvements.
- 5.3 Payment. Upon CITY's Final Acceptance of the Improvements, CITY shall pay DEVELOPER for the total costs of the Improvements in an amount not to exceed \$222,300.00 upon DEVELOPER submission of complete invoices showing actual costs for the Improvements. The amount of \$222,300.00 is the difference between DEVELOPER's fair share and the estimated design and construction cost breakdown. DEVELOPER may apply for reimbursement upon CITY's Final Acceptance of completion of Improvements, and with invoice documentation of project costs.

6. DISPUTES AND REMEDIES

- 6.1 Disputes and Remedies. In the event any dispute arises regarding the construction or completion of the Improvements that cannot be resolved informally between the Parties, the Parties agree to engage in mediation before the filing of any formal lawsuit; provided, however, that either Party may seek provisional or injunctive

relief, and CITY shall not withhold payment of undisputed reimbursement amounts, pending mediation.

- 6.2 Default and Cure. Neither Party shall be in default under this Agreement unless the non-defaulting Party first provides written notice describing the alleged default in reasonable detail and the alleged default remains uncured for thirty (30) days after receipt of notice; provided, however, that if the default cannot be cured within thirty (30) days, then the defaulting Party shall not be in default so long as it commences cure within such period and diligently prosecutes the cure to completion.

7. MISCELLANEOUS PROVISIONS

- 7.1 Notice. Any notice required to be given by either Party, or which either Party may wish to give, shall be in writing and sent or delivered by one of the following methods: (a) personal delivery, (b) reputable overnight courier, such as Federal Express, or (c) certified or registered mail, postage prepaid, addressed as follows:

To DEVELOPER: The New Home Company Northern California LLC
3130 Crown Canyon Place, Suite 325
San Ramon, CA 94583
Attention: Rodger Miller
Senior Project Manager

To CITY: City of Sunnyvale, Department of Public Works
456 W. Olive Avenue
Sunnyvale, CA 94086
Attention: Director of Public Works

Each Notice shall be deemed given and effective upon receipt, or, in the event of a refusal by the addressee, on the first tender of such notice to the addressee at the designated address. Either party may change its address for notices by delivering written notice in accordance with this Section 7.1.

- 7.2 Amendments. Amendments to this Reimbursement Agreement may only be made by mutual written agreement of the Parties.
- 7.3 Warranty of Authority to Execute Agreement. Each Party to this Reimbursement Agreement represents and warrants that each person whose signature appears hereon has been duly authorized and has the full authority to execute this Agreement on behalf of the entity that is a Party to this Agreement.
- 7.4 Severability. If any term, covenant, condition or provision of this Reimbursement Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions and provisions

of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

7.5 Successors and Assigns. This Reimbursement Agreement and the rights and obligations of the Parties contained herein shall inure to the benefit and be binding upon the successors and assigns of each of the Parties.

7.6 Interpretation. The language of this Reimbursement Agreement shall, in all cases, be construed as a whole, according to its fair meaning and not strictly for or against either Party. Each Party has negotiated this Agreement with the advice and assistance of legal counsel of its own choosing.

It is further agreed that this Agreement is a product of mutual drafting efforts by both CITY and DEVELOPER and, accordingly, the rule that ambiguities in a document shall be construed against the drafter of the document shall have no application to this Agreement. In construing and interpreting this Agreement, the finder of fact shall give effect to the mutual intention of CITY and DEVELOPER, notwithstanding such ambiguity, and may refer to the facts and circumstances under which this Agreement is made and such other extraneous evidence as may assist the finder of fact in ascertaining the intent of the Parties.

7.7 Governing Law. This Reimbursement Agreement shall be governed by the laws of the State of California and venue shall be in the appropriate Superior Court in Santa Clara County, California, or where appropriate, in the United States District Court, Northern District of California, San Jose, California.

7.8 No Waiver. The failure of either Party to insist upon the strict performance of any of the terms, covenants and conditions of this Agreement shall not be deemed a waiver of any right or remedy that either Party may have, and shall not be deemed a waiver of their right to require strict performance of all of the terms, covenants, and conditions thereafter.

7.9 Headings. The headings of each section of this Agreement are for the purposes of convenience only and shall not be construed to either expand or limit the express terms and language of each section.

7.10 Execution in Counterparts; Electronic Signatures. This Reimbursement Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed Agreement. The Parties agree that this Agreement and any amendments hereto may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall have the same meaning as "digital signature" as defined in Government Code Section 16.5.

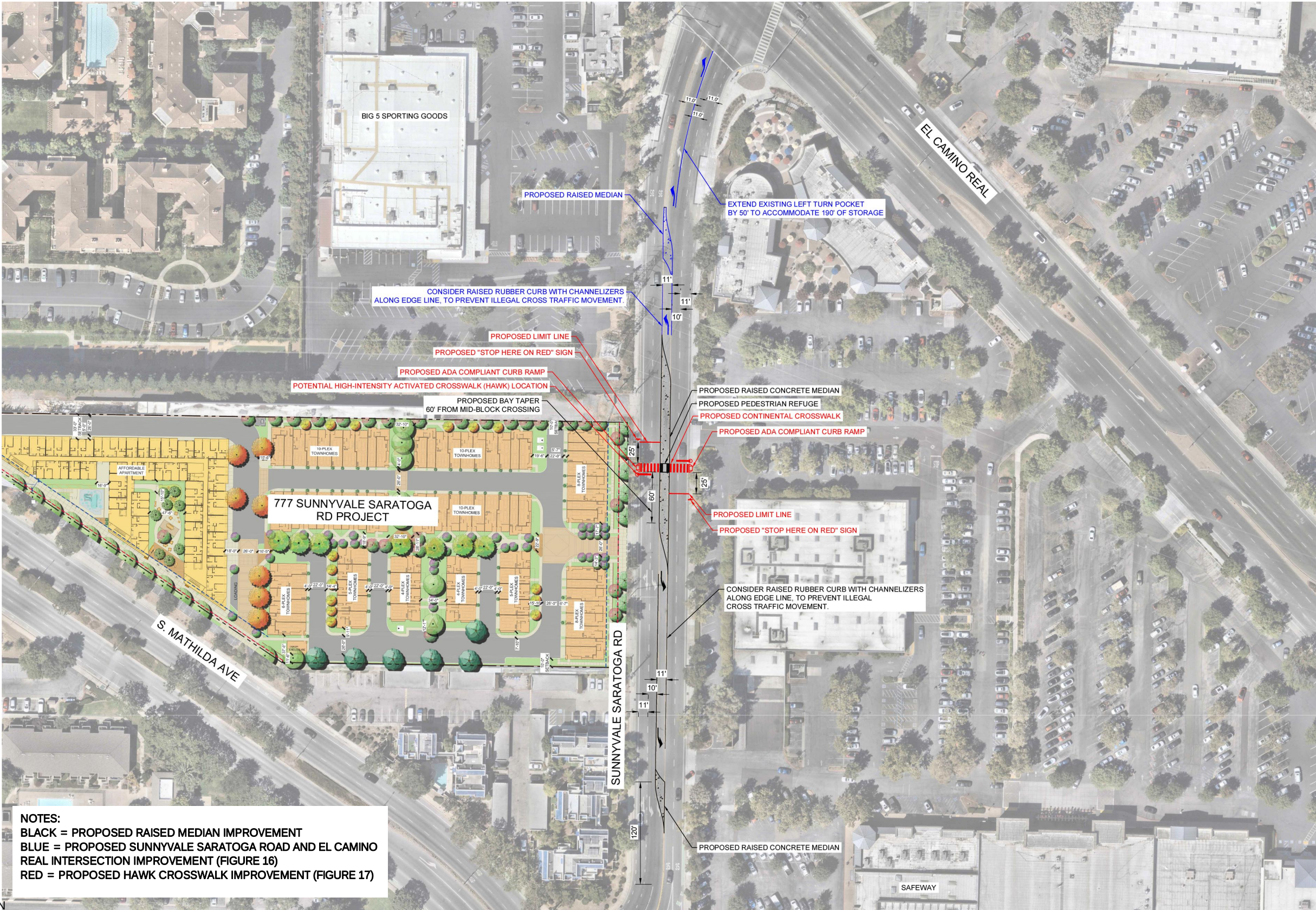
- 7.11 Entire Agreement. This Reimbursement Agreement and all Exhibits attached hereto constitute the entire Agreement between the Parties pertaining to the subject matter contained herein and supersedes all prior or contemporaneous agreements, representations and understandings of the Parties relative thereto.

REMAINDER OF PAGE IS INTENTIONALLY BLANK.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

APPROVED AS TO FORM: _____ SUSAN YOON Assistant City Attorney Date: _____	"CITY" CITY OF SUNNYVALE, a municipal corporation By _____ Tim Kirby City Manager Date: _____
APPROVED AS TO FORM: _____ Counsel for DEVELOPER Date: _____	"DEVELOPER" THE NEW HOME COMPANY NORTHERN CALIFORNIA LLC By _____ Name Title Date: _____

EXHIBIT “A”



SOURCE: KIMLEY-HORN

FIGURE 15
PROPOSED ROADWAY GEOMETRY FOR SUNNYVALE SARATOGA ROAD

777 Sunnyvale Saratoga Road LTA

EXHIBIT “B”

June 16, 2026

PUBLIC MEDIAN IMPROVEMENTS - SUNNYVALE SARATOGA
777 SUNNYVALE SARATOGA
SUNNYVALE, CALIFORNIA

Item	Description	Quantity	Unit	Unit Price	Amount
<u>DEMOLITION</u>					
1	Remove Existing Pavement	3,750	SF	\$ 4.45	\$ 16,688
	Subtotal Demolition				\$ 16,688
<u>MEDIAN IMPROVEMENTS</u>					
2	Fine Grading	1,520	SF	\$ 3.30	\$ 5,016
3	Cut for Curbs	650	LF	\$ 11.00	\$ 7,150
4	6" AC Paving (patching at median curbs)	650	SF	\$ 18.00	\$ 11,700
5	4" AB for median cobble	221	SF	\$ 4.18	\$ 924
6	8" Median Curb <i>(Includes Cushion)</i>	720	LF	\$ 72.00	\$ 51,840
7	Curb Ramp	1	EA	\$ 7,200.00	\$ 7,200
8	Striping <i>(Detail 25 per MUTCD)</i>	660	LF	\$ 8.00	\$ 5,280
	Subtotal Median Improvements				\$ 89,110
<u>WATER SUPPLY</u>					
9	1" Irrigation Service <i>(Includes backflow)</i>	3	EA	\$ 17,485.00	\$ 52,455
10	1" Water Meter	3	EA	\$ 1,123.00	\$ 3,369
	Subtotal Water Supply				\$ 55,824
<u>MISCELLANEOUS</u>					
11	Street Trees	8	EA	\$ 250.00	\$ 2,000
12	Median Landscaping	2,900	SF	\$ 3.00	\$ 8,700
13	Median Irrigation	425	LF	\$ 8.00	\$ 3,400
14	Traffic Control	1	LS	\$ 47,000.00	\$ 47,000
	Subtotal Miscellaneous				\$ 61,100
SUBTOTAL COST					\$ 222,721
15% CONTINGENCY					\$ 33,408
<u>SOFT COST</u>					
15	Median Design Construction Drawings	1	LS	\$ 20,000.00	\$ 20,000
16	Median Improvement Staking <i>(Assumes 3 Trips)</i>	1	LS	\$ 9,000.00	\$ 9,000
	Subtotal Soft Costs				\$ 29,000
TOTAL PUBLIC IMPROVEMENT COST (to the nearest \$1,000)					\$ 285,000