

PLACER COUNTY

REDEVELOPMENT AGENCY

MEMORANDUM

TO: Honorable Members of the Board of Supervisors
FROM: Thomas M. Miller, County Executive Officer
James LoBue, Deputy Director Redevelopment
DATE: July 12, 2011
SUBJECT: Multi-Purpose Trail Easements and Landscape Maintenance Agreements for the North Auburn Highway 49 Streetscape Project

ACTION REQUESTED

Adopt a resolution authorizing the Director of Public Works to execute multi-purpose trail easements and landscape maintenance agreements for the North Auburn Highway 49 Streetscape Improvement project.

BACKGROUND

In 2009, the Redevelopment Agency (Agency) Board approved a Master Plan for streetscape improvements in the Highway 49 corridor of the North Auburn Redevelopment Project Area. At that time, the Agency also began design of a first phase of improvements. The Agency has now finalized the design for the Phase I project utilizing Bennett Engineering. Final plans include new sidewalks, landscape, curb and gutter, a prefabricated pedestrian bridge, and retaining walls (hardscape) as needed on the east side of Highway 49 between New Airport Road and Education Street.

At a prior meeting on June 7, 2011, your Board authorized the Director of Public Works to execute a State Highway 49 Right of Way Landscape Maintenance Agreement with Caltrans to cover the ongoing maintenance of constructed improvements. This request will move the responsibility for maintenance of the landscape improvements from the County to private property owners. The Director of Public Works would be authorized to sign the landscape maintenance agreements with the private property owners. In addition, the County would retain the responsibility to maintain hardscape improvements for the Highway 49 Streetscape. The Director of Public Works would be authorized to sign the agreements with private property owners to insure the County has the authority to enforce the required maintenance of the public improvements installed by the Agency. Maintenance costs are projected to be nominal for the hardscape features. The Landscape Maintenance Agreements will go into effect once they are signed and the Multi-Purpose Trail Easement when it is recorded.

ENVIRONMENTAL

A Mitigated Negative Declaration for the project was prepared in compliance with the California Environmental Quality Act for Phase I and adopted by the Agency Board on July 13, 2010. The

Notice of Determination was posted July 21, 2010. The Agency also undertook review pursuant to the National Environmental Policy Act which resulted in a determination of Categorically Excluded and the review was certified May 17, 2010.

FISCAL IMPACT

The Agency will be funding all construction costs. Phase I construction costs will be financed with already budgeted tax increment and tax allocation bond proceeds from the North Auburn Redevelopment Project Area. There is a long term fiscal impact to the County's General Fund and/or Road Fund based on the county's maintenance of the hardscape improvements into the future. Potential County costs would include any costs of maintaining the sidewalk, retaining walls, curb and gutter, interpretive panels, and pedestrian bridge. Any future landscape maintenance costs would be borne by the individual property owners, whose obligation will be secured with recorded landscape maintenance agreements.

Attachment: Resolution
Map
Draft Landscape Maintenance Agreement and Multi-Purpose Trail Easement on file with the Clerk of the Board's Office.

cc: Karin Schwab, Deputy County Counsel

**Before the Placer County
Board of Supervisors
County of Placer, State of California**

In the matter of:

Authorizing the Director of Public Works to execute Multi-Purpose Trail Easements and Landscape Maintenance Agreements for the North Auburn Highway 49 Streetscape Improvement Project

Resol. No:.....

Ord. No:.....

First Reading:

The following Resolution was duly passed by the Board of Supervisors of the County of Placer at a regular meeting held _____, by the following vote on roll call:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

Attest:
Clerk of said Board

Chair, Board of Supervisors

WHEREAS, the Redevelopment Plan for the North Auburn Redevelopment Project Area (Project Area) was adopted by the Placer County Board of Supervisors on June 24, 1997 by Ordinance No. 4832-B and as subsequently amended from time to time;

WHEREAS, the Redevelopment Agency (Agency) is responsible for administering the Redevelopment Plan to effectuate redevelopment efforts within the Project Area;

WHEREAS, the Agency Board has approved a Master Plan for streetscape improvements within the State Highway 49 corridor in the Project Area;

WHEREAS, the Agency Board has determined the proposed Highway 49 Streetscape Phase I Project (Project) would contribute to the Agency's achievement of the redevelopment goals including the removal of blight, improvement of substandard infrastructure, and support the local business community;

WHEREAS, without redevelopment assistance, the proposed improvements would not occur or be significantly delayed;

WHEREAS, in compliance with the California Environmental Quality Act, on July 13, 2010, the Agency prepared and adopted a Mitigated Negative Declaration for the proposed physical improvements of the Project, the Notice of Determination was posted July 21, 2010. A review under the National Environmental Policy Act resulted in a determination of Categorically Excluded was certified May 17, 2010;

WHEREAS, Placer County proposes to maintain hardscape improvements installed by the Agency;

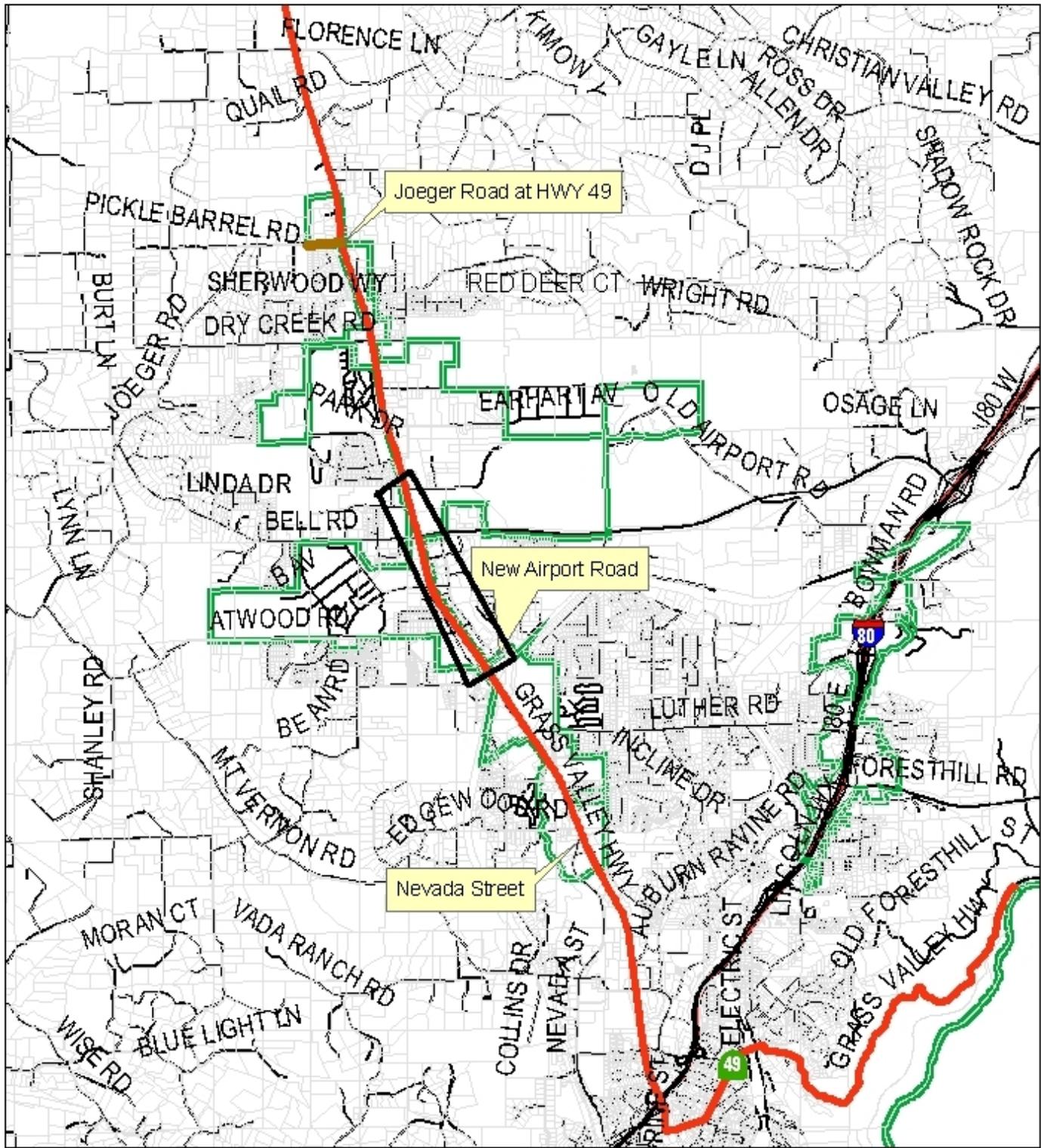
WHEREAS, landscape maintenance agreements between the County and private property owners are proposed to require owners to maintain the landscape improvements;

WHEREAS, Multi-Purpose Trail Easements between the County and private property owners are proposed to allow the County to install and maintain the hardscape improvements; and

WHEREAS, easement documents and landscape maintenance agreements are required to begin construction of the Project and ensure maintenance by private property owners of landscape and the County for hardscape.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors authorizes the Director of Public Works to execute the Multi-Purpose Trail Easements and Landscape Maintenance Agreements on behalf of the County.

BE IT FURTHER RESOLVED, by the Board of Supervisors, that this Resolution shall become effective immediately upon adoption.



Phase 1

**Highway 49 Streetscape Project
Master Plan Boundaries
Joeger Road to Nevada Street
Phase 1 of Project
Education Street to New Airport Road**



**AGREEMENT FOR LANDSCAPE MAINTENANCE
FOR THE HIGHWAY 49 STREETScape BEAUTIFICATION PROJECT
WITHIN THE COUNTY OF PLACER**

THIS AGREEMENT is made and executed effective this ____ day of _____, 2011, by and between the County of Placer, acting through its Community Development Resource Agency, hereinafter referred to as "COUNTY," and PROPERTY OWNER NAME, hereinafter referred to as "OWNER," together referred to as "PARTIES".

THIS AGREEMENT affects real property in the COUNTY OF PLACER known as Assessor Parcel Number APN. OWNER certifies that he/she is the fee title owner or owner's authorized representative of said property and is authorized to execute THIS AGREEMENT.

WITNESSETH

RECITALS:

1. PARTIES desire to work together to allocate their respective obligations relative to newly constructed or revised improvements within the COUNTY'S/STATE'S right of way by the Highway 49 Streetscape Beautification Project.
2. This AGREEMENT addresses OWNER responsibility for MAINTENANCE of landscaping, irrigation systems, litter and weed removal (collectively the "LANDSCAPING") placed within the County and State rights of way as shown on Exhibit A, attached to and made a part of this AGREEMENT.

Section I

In consideration of the mutual covenants and promises herein contained, COUNTY and OWNER agree as follows:

- a) PARTIES have agreed to an allocation of maintenance responsibilities that includes, but is not limited to, inspection, providing emergency repair, replacement, & maintenance, (collectively hereinafter "MAINTAIN/MAINTENANCE") of LANDSCAPING as shown on said Exhibit "A."
- b) When a planned future improvement is constructed and/or a minor revision has been effected with COUNTY'S consent and/or STATE'S consent or initiation within the limits of COUNTY'S right of way and/or within the limits of STATE'S right of way herein described which affects PARTIES' division of maintenance responsibility as described herein, PARTIES will agree upon and provide a new dated and revised Exhibit "A" which will be made a part hereof by an amendment to this AGREEMENT when executed and will thereafter supersede the attached original Exhibit "A" to thereafter become a part of this AGREEMENT.

Section II

OWNER agrees that OWNER shall, at the exclusive expense of OWNER, maintain all landscaped areas as specified in Exhibit "B" of this AGREEMENT, which is made a part this AGREEMENT by reference herein, and that COUNTY shall bear no legal or financial liability for performance of any MAINTENANCE responsibility(ies) stated therein. PARTIES do hereby also agree to the following specific performance requirements for MAINTENANCE in addition to all MAINTENANCE responsibilities specified in Exhibit "B" of this AGREEMENT:

- a) OWNER will submit a one-time Encroachment Permit application for routine OWNER MAINTENANCE functions as required by this AGREEMENT. Individual Encroachment Permits shall be obtained for any substantive repair activities and changes to the scope of work allowed by this AGREEMENT prior to the start of any work within COUNTY'S right of way and/or STATE'S right of way.
- b) OWNER'S contractors will also obtain Encroachment Permits prior to the start of any work within COUNTY'S right of way and/or STATE'S right of way.

Section III

COUNTY agrees to do the following:

- a) Provide OWNER with timely written notice of unsatisfactory conditions that require correction by OWNER.
- b) Ensure that the costs of relocation, reconstruction or replacement of LANDSCAPING resulting from future public and private projects and encroachment permittees are borne by the parties responsible for these activities that result in the need to relocate, reconstruct or replace the LANDSCAPING.

Section IV

1. **HOLD HARMLESS AND INDEMNIFICATION AGREEMENT**

The OWNER shall save, keep, hold harmless, defend, and indemnify PLACER COUNTY from all damages, costs, or expenses in law or equity that may at any time arise or be set up because of damages to property or personal injury received by reason of or in the course of performing work which may be occasioned by any willful or negligent act or omissions of the OWNER, any of the OWNER'S employees, or any subcontractors.

The OWNER shall be responsible for any liability imposed by law and for death, injury, or damage to property of any person including, but not limited to, workmen, subcontractors, and

the public, resulting from any cause whatsoever during the progress of the work or at any time before its completion and final acceptance.

If any judgment is rendered against PLACER COUNTY for any injury, death, or damage caused by OWNER as a result of work performed or completed, pursuant to this agreement, OWNER shall, at its own expense, satisfy and discharge any judgment.

As used above, the term PLACER COUNTY means PLACER COUNTY, its officers, agents, employees, and volunteers.

2. INSURANCE:

OWNER shall file with the COUNTY concurrently herewith a Certificate of Insurance, in companies acceptable to COUNTY, with a Best's Rating of no less than A-VII showing.

3. WORKERS' COMPENSATION AND EMPLOYERS LIABILITY INSURANCE:

Workers' Compensation Insurance shall be provided as required by any applicable law or regulation. Employer's liability insurance shall be provided in amounts not less than one million dollars (\$1,000,000) each accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit for bodily injury by disease, and one million dollars (\$1,000,000) each employee for bodily injury by disease.

If there is an exposure of injury to PROVIDER'S employees under the U.S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

Each Workers' Compensation policy shall be endorsed with the following specific language:

Cancellation Notice - "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer."

OWNER shall require all CONTRACTORS to maintain adequate Workers' Compensation insurance. Certificates of Workers' Compensation shall be filed forthwith with the County upon demand.

4. GENERAL LIABILITY INSURANCE:

A. Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of OWNER, providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

- (1) Products and completed operations;

- (2) Contractual liability insuring the obligations assumed by OWNER in this Agreement; and
- (3) Broad form property damage (including completed operations)

Except with respect to bodily injury and property damage included within the products and completed operations hazards, the aggregate limits, where applicable, shall apply separately to OWNER'S work under the Contract.

B. One of the following forms is required:

- (1) Comprehensive General Liability;
- (2) Commercial General Liability (Occurrence); or
- (3) Commercial General Liability (Claims Made).

C. If OWNER carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:

- One million dollars (\$1,000,000) each occurrence
- Two million dollars (\$2,000,000) aggregate

D. If OWNER carries a Commercial General Liability (Occurrence) policy:

- (1) The limits of liability shall not be less than:
 - One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
 - One million dollars (\$1,000,000) for Products Completed Operations
 - Two million dollars (\$2,000,000) General Aggregate
- (2) If the policy does not have an endorsement providing that the General Aggregate Limit applies separately, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be two million dollars (\$2,000,000).

E. Special Claims Made Policy Form Provisions:

OWNER shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of COUNTY, which consent, if given, shall be subject to the following conditions:

- (1) The limits of liability shall not be less than:
 - One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)

→One million dollars (\$1,000,000) aggregate for Products Completed Operations

→Two million dollars (\$2,000,000) General Aggregate

- (2) The insurance coverage provided by OWNER shall contain language providing coverage up to six (6) months following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims-made policy.

5. ENDORSEMENTS:

Each Comprehensive or Commercial General Liability policy shall be endorsed with the following specific language:

- A. "The County of Placer, its officers, agents, employees, and volunteers are to be covered as insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement."
- B. "The insurance provided by the OWNER, including any excess liability or umbrella form coverage, is primary coverage to the County of Placer with respect to any insurance or self-insurance programs maintained by the County of Placer and no insurance held or owned by the County of Placer shall be called upon to contribute to a loss."
- C. "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer."

6. AUTOMOBILE LIABILITY INSURANCE:

Automobile Liability insurance covering bodily injury and property damage in an amount no less than one million dollars (\$1,000,000) combined single limit for each occurrence.

Covered vehicles shall include owned, non-owned, and hired automobiles/trucks.

Legal Relations and Responsibilities:

- a) Nothing within the provisions of this AGREEMENT is intended to create duties or obligations to or rights in third parties not parties to this AGREEMENT, or affect the legal liability of either PARTY to this AGREEMENT by imposing any standard of care respecting the design, construction and MAINTENANCE of these COUNTY roadway improvements and/or STATE roadway improvements or COUNTY facilities different from the standard of care imposed by law.
- b) If during the term of this AGREEMENT, OWNER should cease to MAINTAIN the LANDSCAPING to the satisfaction of COUNTY as provided by this AGREEMENT, COUNTY may either undertake to perform that MAINTENANCE

on behalf of OWNER at OWNER'S expense or direct OWNER to remove or itself remove LANDSCAPING at OWNER'S sole expense and restore COUNTY'S right of way and/or STATE'S right of way to its prior or a safe operable condition. OWNER hereby agrees to pay said COUNTY expenses within thirty (30) days of receipt of billing by COUNTY. However, prior to COUNTY performing any MAINTENANCE or removing LANDSCAPING, COUNTY will provide written notice to OWNER to cure the default and OWNER will have thirty (30) days within which to effect that cure. Should OWNER renege on repayment of expenses incurred by COUNTY for performance MAINTENANCE required by OWNER, PARTIES agree that COUNTY may use any available legal remedy to recover costs of MAINTENANCE, including placement of property lien or encumbrance.

c) Termination

This AGREEMENT may be terminated by timely mutual written consent by the PARTIES, and OWNER'S failure to comply with the provisions of this AGREEMENT will be grounds for a Notice of Termination by COUNTY.

d) Term of Agreement

This AGREEMENT shall become effective on the date first shown on its face sheet and shall remain in full force and effect until amended or terminated at any time upon mutual consent of PARTIES or until terminated by COUNTY for cause.

IN WITNESS WHEREOF, PARTIES hereto have set their hands and seals the day and year first above written.

COUNTY OF PLACER
Community Development Resource Agency

PROPERTY OWNER NAME

By: _____

(Notary acknowledgement required for each signature)

By: _____
Ken Grehm, Director Public Works

Approved as to form and procedure:

- * Approved as to form:
- * Approved as to form and procedure:

County Counsel
County of Placer

Attorney (or Counsel)

Approval by COUNTY'S Attorney is not required unless changes are made to this form, in which case the draft will be submitted for County review and approval by COUNTY'S Attorney as to form and procedures.

(Attach EXHIBIT "A" and EXHIBIT "B")

Project Name:
North Auburn Highway 49 Streetscape Project

Recording requested by and Return to:
CDRA - Engineering and Surveying Department
3091 County Center Drive
Auburn, CA 95603-2614
Phone: 530.745.3110
Attention: Dan Dottai

THIS SPACE IS RESERVED
FOR THE RECORDER'S USE

COUNTY OF PLACER
OFFER OF DEDICATION
MULTI-PURPOSE TRAIL EASEMENT

For the receipt of one dollar (\$1.00) or other good and valuable consideration,

the undersigned GRANTOR(S), hereby irrevocably offers for dedication to the Public, an Easement for Multi-Purpose Trail purposes for non-motorized ingress and egress together with the right of construction, maintenance, and all appurtenances pertaining thereto upon, over, under and across all that real property situated in the County of Placer, State of California, bounded and described as follows:

(Any and all interest in the property conveyed by grantor to the County of Placer pursuant to this instrument runs with the land and is binding on the heirs, assigns and successors of the grantor.)

(See Attached Exhibits "A" & "B")

GRANTOR(S)

Dated this ____ Day of _____, 20____ ,

Sign name

Trustee / Beneficiary

Print name and title

Recording Reference Number

Sign name

Print name and title

See following page for Acknowledgement

ACKNOWLEDGEMENT

<p>State of California } County of Placer }</p> <p>On _____ before me, _____ (name, title), 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.</p> <p>I certify under the PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.</p> <p>WITNESS my hand and official seal.</p> <p style="text-align: center;">(Seal) _____ Signature</p>	<p style="text-align: center;">CAPACITY CLAIMED BY SIGNER</p> <p><input type="checkbox"/> INDIVIDUAL(S) SIGNING FOR ONESELF/THEMSELVES</p> <p><input type="checkbox"/> CORPORATE OFFICER(S) _____ TITLE(S) _____ COMPANY</p> <p><input type="checkbox"/> PARTNER(S) _____ PARTNERSHIP</p> <p><input type="checkbox"/> ATTORNEY-IN-FACT _____ PRINCIPAL(S)</p> <p><input type="checkbox"/> TRUSTEE(S) _____ TRUST</p> <p><input type="checkbox"/> OTHER _____ TITLE(S) _____ ENTITY(IES) REPRESENTATIVE</p>
--	---

CONSENT TO RECORDATION:

The County of Placer hereby consents to the recordation of the Offer of Dedication attached hereto. The County does not accept said offer at this time, but reserves the right to do so in the future, pursuant to authority conferred by Ordinance 5152-B.

 DATE

 SIGN NAME

 PRINT NAME AND TITLE

ACCEPTANCE (1): BY AUTHORIZED AGENT:

This is to certify that the interest in real property conveyed by the deed or grant deed dated _____, 20____, from _____
 To the County of Placer, a government agency, is hereby accepted by the undersigned agent on behalf of the Board of Supervisors of the County of Placer pursuant to authority conferred by Ordinance 5152-B adopted on January 15, 2002, and the Grantee consents to the recordation thereof by it's duly authorized agent. Placer County does not accept maintenance responsibilities within this Multi-Purpose Easement.

 DATE

 SIGN NAME

 PRINT NAME AND TITLE