

# MEMORANDUM

## DEPARTMENT OF PUBLIC WORKS County of Placer

TO: BOARD OF SUPERVISORS

DATE: October 21, 2008

FROM: KEN GREHM / PETER KRAATZ

SUBJECT: **HIGHWAY 65/SUNSET BOULEVARD INTERCHANGE - MEMORANDUM OF UNDERSTANDING FOR HIGHWAY 65 JOINT POWER AUTHORITY (JPA) AND INTERAGENCY AGREEMENT WITH REDEVELOPMENT AGENCY**

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### ACTION REQUESTED / RECOMMENDATION

1. Adopt a Resolution approving the Memorandum of Understanding (MOU) for the "Timing, Sequencing and Funding of Highway 65 Interchange Projects" and authorizing the Public Works Director to advance funds from the Sunset District Traffic Impact Fee Trust Fund to the Highway 65 JPA;
2. Adopt a Resolution approving the Interagency Agreement with the Placer County Redevelopment Agency,
3. Authorize the Board Chairman to sign the MOU and Interagency Agreements.

### BACKGROUND / SUMMARY

The Department of Public Works (DPW) is overseeing the design and construction of a project that will be replacing the existing at-grade signalized intersection at State Route 65 and Sunset Blvd with a grade separated interchange. This project will remove the last signalized intersection on State Route 65 between Interstate 80 until you reach the City of Lincoln and alleviate congestion along this important transportation corridor.

An initial JPA MOU, executed in 1990, established the "Bizz Johnson" Highway 65 Joint Powers Authority and a set of interchange projects within the cities of Rocklin, Roseville and Placer County. This initial MOU also set a project delivery and funding schedule for the interchanges in Rocklin and Roseville. In 2000, the MOU was amended to reflect completion of the Blue Oaks Interchange in Rocklin, reimbursement for actual construction costs and funding for the Pleasant Grove Interchange in Roseville. Since then, Roseville has completed construction of the Pleasant Grove Interchange and Placer County has completed design of the Sunset Interchange and is ready to proceed to construction.

The interchange is estimated to cost \$32 million, of which \$30.3 million will be funded by the JPA. The JPA fund currently contains approximately \$17 million, leaving a \$15 million financing shortfall. The United Auburn Indian Community has agreed to fund \$4.5 million for impacts of their planned expansion, reducing the shortfall to \$10.5 million. To fund this remaining shortfall, each jurisdiction (Placer County, City of Roseville, City of Rocklin) has agreed to commit \$3.5 million to the JPA and the project, which funds will be reimbursed to each agency as JPA fees are collected from new development.

The County's share (\$3.5 million) of the advance funding contribution is proposed to be provided by the Sunset District Traffic Impact Fee Trust Fund which contains the Highway 65/Sunset Boulevard Interchange as an approved project. Future repayment of the advance funding contribution by the JPA will be returned to the Sunset Fee District Trust Fund. No other Sunset projects will be delayed because of this contribution.

This latest MOU, "the Revised Plan", includes specific terms for the agencies to fund the current shortfall for the Sunset Interchange; provide a framework for reimbursement for the Sunset Interchange, Phase 2 of the Pleasant Grove Interchange and Phase 2A of the Galleria/Stanford Ranch Road Interchange; and all members to receive interest on reimbursed amounts for their advance funding contributions.

The Redevelopment Agency has committed \$6 million for projects contained in the Sunset District of the County's traffic impact fee program which includes the interchange project. The Interagency Agreement between the County and the Redevelopment Agency provides a payment of \$2.5 million towards the total \$6 million commitment.

#### **ENVIRONMENTAL**

The Placer County Board of Supervisors approved the Mitigated Negative Declaration for this project and a Notice of Determination was filed on May 23, 2006.

#### **FISCAL IMPACT**

The Interchange project is estimated to cost \$32 million. The Sunset Fee District has allocated \$630,000 to the project and will also provide the \$3.5 million advance contribution which will be repaid by the Highway 65 JPA in the future as the JPA collects its own traffic impact fees. The Sunset District Trust Fund currently has an available balance of \$6.1 million, which will increase to \$8.6 million after the Redevelopment Agency contribution.

Attachments: Resolution for JPA  
Resolution for Interagency Agreement  
Draft MOU – JPA  
Draft Interagency Agreement  
Location Map

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

In the matter of: ADOPT A RESOLUTION  
APPROVING AND AUTHORIZING THE CHAIRMAN OF  
THE BOARD OF SUPERVISORS TO APPROVE THE  
MEMORANDUM OF UNDERSTANDING FOR THE  
"TIMING, SEQUENCING AND FUNDING OF HIGHWAY  
65 INTERCHANGE PROJECTS", WITH COUNTY  
COUNSEL REVIEW AND APPROVAL, AND AUTHORIZE  
THE DIRECTOR OF DPW TO ADVANCE FUNDS FROM  
THE SUNSET DISTRICT TRAFFIC IMPACT FEE TRUST  
FUND TO THE HIGHWAY 65 JPA.

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

\_\_\_\_\_  
Chairman, Board of Supervisors

WHEREAS, the initial MOU was executed in 1990 and established the "Bizz Johnson" Highway 65 Joint Powers Authority and a set of interchange projects within the cities of Rocklin, Roseville and Placer County; and

WHEREAS, in 2000, the MOU was amended, the "Current Plan", to reflect completion of the Blue Oaks Interchange in Rocklin, reimbursement for actual constructions costs and funding for the Pleasant Grove Interchange in Roseville; and

WHEREAS, This latest MOU (revised plan), includes specific terms for the agencies to fund the current shortfall for the Sunset Interchange, Phase 2 of the Pleasant Grove Interchange and Phase 2A of the Galleria/Stanford Ranch Road Interchange; and all members to receive interest on reimbursed amounts for their advance funding contributions.

BE IT HEREBY RESOLVED by the Board of Supervisors of the County of Placer, State of California, that this Board authorizes the Chairman of the Board of Supervisors to sign the Memorandum of Understanding and authorizes the Director of Public Works to advance funds from the Sunset District Traffic Impact Fee Trust Fund to the Highway 65 JPA.

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

In the matter of: A RESOLUTION APPROVING  
AND AUTHORIZING THE CHAIRMAN TO  
EXECUTE THE INTERAGENCY DESIGN,  
CONSTRUCTION MANAGEMENT, AND  
CONSTRUCTION AGREEMENT FOR THE  
SUNSET BOULEVARD/STATE ROUTE 65  
INTERCHANGE 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

\_\_\_\_\_  
Chairman, Board of Supervisors

BE IT HEREBY RESOLVED by the Board of Supervisors of the County of Placer, State of California, that this Board approves and authorizes the Chairman to approve a \$2.5 million interagency design, construction management, and construction agreement with Placer County Redevelopment Agency for the Sunset Blvd/State Route 65 Interchange project and authorize the director of Public Works or his designee to execute the agreement.

**MEMORANDUM OF UNDERSTANDING  
FOR THE TIMING, SEQUENCING AND FUNDING OF  
HIGHWAY 65 INTERCHANGE PROJECTS**

**“Bizz Johnson” Highway Interchange Joint Powers Authority,  
City of Rocklin, City of Roseville  
and  
Placer County**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made effective as of the 16<sup>th</sup> day of September, 2008, by and among the **“Bizz Johnson” Highway Interchange Joint Powers Authority (“JPA”)**, the **City of Rocklin (“Rocklin”)**, the **City of Roseville (“Roseville”)**, and the **County of Placer (“County”)** and supersedes all previous Timing, Sequencing and Funding Plans adopted by the JPA's Board of Directors.

1. General Provisions.

A. Purpose. The purposes of this MOU are:

- i. To acknowledge the completion of Phase I of the Pleasant Grove Interchange by Roseville and Phase I of the Blue Oaks Interchange by Rocklin, and the JPA’s full reimbursement to Roseville and Rocklin for Non-JPA Interchange Contributions for those interchanges; and
- ii. To establish the terms for the timing, sequencing and funding of the Sunset Interchange, Pleasant Grove Interchange Phase II Improvement and Galleria Interchange Phase IIA Improvement through the JPA.

B. Definitions.

**“Advance Funding Contribution”** means amounts expended for the design and construction of an Interchange Project by a JPA Participant to the extent such amounts are JPA traffic mitigation fees which were paid to a JPA Participant by agreement for a specific plan area or other project within the area subject to the JPA's traffic mitigation fee ordinance and resolution, as such may be amended from time to time. Any amounts paid or advanced by property owner(s) shall be considered traffic mitigation fees, and shall not be considered payments in excess of traffic mitigation fees, until, with respect to property located in the area subject to the JPA's traffic mitigation fee ordinance and resolution, the subject property owners have fully paid those estimated JPA traffic mitigation fees for projected development of the applicable area.

**“Annual Operations and Maintenance Expense”** means, for the applicable fiscal year, an amount equal to the JPA's then-current annual budget for that fiscal year. For example, the Annual Operations and Maintenance Expense on December 31,

2008, shall be the entire amount of the JPA's budget for fiscal year 2008/2009.

**"Current Estimated Cost,"** in connection with the Interchange Projects, shall mean the current estimated cost for such Interchange Projects established from time to time by a majority vote of the JPA's Board of Directors.

**"Interchange Project(s)"** shall mean, individually and collectively, the Sunset Interchange, Pleasant Grove Interchange Phase II Improvements and Galleria Interchange Phase IIA Improvements, which are defined as follows:

**"Sunset Interchange"** means those improvements located within the State right-of-way associated with the construction of the ultimate interchange located at Sunset Boulevard and State Route 65 in Placer County and generally consistent with the Project Report for that interchange dated November 2007, including improvements required and approved by Caltrans for safe and efficient interchange operations.

**"Pleasant Grove Interchange Phase II Improvements"** means those improvements located within the State right-of-way associated with the construction of Phase II of the interchange located at Pleasant Grove Boulevard and State Route 65 in Placer County and generally consistent with the Project Study Report for that interchange dated March, 1997, including improvements required and approved by Caltrans for safe and efficient interchange operations.

**"Galleria Interchange Phase IIA Improvements"** means those phased improvements located within the State right-of-way associated with the construction of the ultimate interchange located at Galleria Boulevard/Stanford Ranch Road and State Route 65 in Placer County and generally consistent with the Traffic Operations Analysis for the Galleria Boulevard/SR 65 Improvements Project dated December 23, 2004, including improvements required and approved by Caltrans for safe and efficient interchange operations. Phase IIA improvements are planned operational improvements to the southbound SR 65 to southbound Galleria Boulevard off ramp and southbound Galleria Boulevard.

**"JPA"** means the "Bizz Johnson" Highway Interchange Joint Powers Authority created by the JPA Participants in 1990 pursuant to the Joint Powers Agreement for the Financing and Construction of Interchanges on State Highway 65.

**"JPA Fund"** is the account maintained by the JPA for the purpose of holding those amounts collected by the JPA to fund the design and construction of the Interchange Projects and to pay the operation and maintenance expenses of the JPA. For purposes of this MOU, the amount in the JPA Fund shall include (i) amounts in the JPA's account, (ii) amounts available for withdrawal from the JPA's SCIP account pursuant to that certain Fee Collection and Disbursement Agreement (the "SCIP Agreement"), dated October 1, 2006, among the JPA, Roseville, Rocklin and the

California Statewide Communities Development Authority ("CSCDA"), and (iii) any JPA traffic mitigation fees which have been collected by the JPA Participants on behalf of the JPA but which have not yet been transferred to the JPA, or to CSCDA for deposit in the JPA's SCIP account. The JPA Fund shall also include all unexpended Annual Operations and Maintenance Expenses from any prior year(s). With respect to any payment provided in this MOU, the JPA shall not be required to pay any amounts until the JPA Fund balance is sufficient for such payments.

**"JPA Participants"** means the County, Rocklin and Roseville.

**"Non-JPA Interchange Contribution"** means the amounts expended for design and construction of an Interchange Project by a JPA Participant or advanced by a JPA Participant in accordance with this MOU. Such amounts may include payments made to a JPA Participant by property owners pursuant to development agreements.

- C. Obligations of JPA Participants. Any payments made by the JPA to a JPA Participant pursuant to this MOU shall be made subject to all provisions of this MOU, including restrictions on the use of such payments by a JPA Participant. The JPA Participant shall segregate such payments and shall utilize all interest earned on such amount for the benefit of the Interchange Project for which such payment was made. The JPA Participant shall hold such payments in trust for the purposes of this MOU and shall further satisfy those obligations of the JPA pursuant to law, the JPA Agreement, and the JPA's traffic mitigation fee ordinance and resolution, as such may be amended from time to time, regarding the Interchange Project for which payment was made. The JPA Participants shall collect all JPA traffic mitigation fees on behalf of the JPA and shall transfer all such fees to the JPA.

2. Sunset Interchange Funding Allocation.

- A. The County has prepared final construction documents for the Sunset Interchange and intends to begin construction in 2008 with funding provided from the JPA Fund, the Non-JPA Interchange Contributions (as provided in Section 2.B) and the United Auburn Indian Community (the "**UAIC JPA Contribution**").
- B. The County, Roseville and Rocklin each agree to pay to the JPA a Non-JPA Interchange Contribution, which in combination with the JPA Fund funding identified in Section 2.A and other County-derived funding, including the UAIC JPA Contribution, is intended to fully fund the costs of construction of the Sunset Interchange. The estimated cost as of date of approval of this MOU is \$32 million. Based on this estimated cost and the amount available in the JPA Fund as of July 1, 2008, each jurisdiction's Non-JPA Interchange Contribution equal share amount is estimated as of the date of approval of this MOU to be \$3.5 million. The County, Roseville, and Rocklin each acknowledge that the final amount of each jurisdiction's Non-JPA Interchange Contribution equal share amount may ultimately be higher or lower, based on the actual and final cost of construction of the Sunset Interchange,

but will not exceed \$3.85 million. By execution of this MOU, each JPA Participant hereby commits its Non-JPA Interchange Contribution to the JPA and agrees to make the foregoing Non-JPA Interchange Contribution to the JPA no later than January 1, 2009.

- C. The JPA will commit to the construction of the Sunset Interchange all monies available in the JPA Fund as of July 1, 2008, exclusive of two times the Annual Operations and Maintenance Expense (the "**JPA Fund Contribution**"). Following execution and delivery of this MOU, the JPA will place the JPA Fund Contribution in a separate interest-bearing account for the construction of the Sunset Interchange. The Non-JPA Interchange Contributions from the JPA Participants also will be deposited in said account when received by the JPA.
- D. Following award of the contract, the County shall diligently pursue construction of the Sunset Interchange to completion. The County shall exhaust the County-derived funding, including the UAIC JPA Contribution, prior to using funds from the JPA. The County may request funding from the JPA for the Sunset Interchange at least thirty (30) days in advance of the anticipated need for such funding and shall deliver to the JPA documentation substantiating the request and documentation of all expenses incurred in a form reasonably satisfactory to the JPA. The JPA shall promptly pay the amounts requested by the County; provided that the JPA may withhold funding if the County fails to deliver the required documentation in a form reasonably satisfactory to the JPA.
- E. If construction of the Sunset Interchange is not completed within five years of the first payment from the JPA Fund, subject to extension for delay caused by events and occurrences outside the reasonable control of the County, the JPA may cease funding construction of the Sunset Interchange and, following reimbursement of all Non-JPA Interchange Contributions to the JPA Participants pursuant to Section 6, the JPA Board may reallocate the remaining funds to other Interchange Projects, subject to unanimous approval by the JPA Board, or may take any other action permitted by law, the JPA Agreement, and the JPA's traffic mitigation fee ordinance and resolution, as such may be amended from time to time.

3. Pleasant Grove Interchange Phase II Improvements Funding

Roseville is currently proceeding with the construction of Phase II Improvements of the Pleasant Grove Interchange with 100 percent of the funding provided from Non-JPA Interchange Contributions by Roseville. The current estimated cost for the Phase II Improvements is \$7.8 million.

4. Galleria Interchange Phase IIA Improvements Funding

Roseville is currently proceeding with final construction documents for Phase IIA Improvements of the Galleria Interchange with 100 percent of the funding provided from

Non-JPA Interchange Contributions by Roseville. The current estimated cost for the Phase IIA Improvements is \$1.3 million.

5. Credit for Advance JPA Contributions

The JPA Participants acknowledge and agree that, to the extent that a property owner pays money to a JPA Participant which is used to fund that JPA Participant's Advance Funding Contribution, that property owner shall be entitled to and shall receive a credit against its obligation to pay the JPA traffic mitigation fees equal to the amount of such payment. Such credits shall not include interest.

6. Reimbursement of Non-JPA Interchange Contributions

The JPA Participants acknowledge and agree that to the extent that Non-JPA Interchange Contributions are provided by a JPA Participant for the construction of any of the Interchange Projects included within this MOU, the JPA shall provide reimbursement to each JPA Participant on a pro-rata basis as follows: Each JPA Participant's pro-rata reimbursement shall be established as a ratio of that Participant's Non-JPA Interchange Contribution divided by the total Non-JPA Interchange Contributions of all JPA Participants. Interest shall accrue on unreimbursed Non-JPA Interchange Contribution amounts at a rate equal to the rate of Annual Construction Cost Increases applied to the JPA Impact Fee program each year commencing on January 1, 2009. Reimbursement payments to the JPA Participants shall be credited first to interest and then to the principal amount of their respective Non-JPA Interchange Contributions.

Based on total estimated Non-JPA Funding contributions of \$19.6 million for the design and construction costs for all Interchange Projects as of the date of approval of this MOU, the Non-JPA Interchange Contribution of each Participant shall be as set forth in the following Table:

	Sunset Interchange	Pleasant Grove Interchange	Galleria Interchange	Total of all Non-JPA Interchange Contributions
Placer County	\$3.5 Million			\$3.5 Million
Roseville	\$3.5 Million	\$7.8 Million	\$1.3 Million	\$12.6 Million
Rocklin	\$3.5 Million			\$3.5 Million
TOTAL				\$19.6 Million

Based on the estimate of Non-JPA Interchange Contributions set forth above, each JPA Participant shall be entitled to pro-rata reimbursement at the following percentages:

Placer County -	\$3.5 million / \$19.6 million = 17.86 percent
Roseville -	\$12.6 million / \$19.6 million = 64.28 percent
Rocklin -	\$3.5 million / \$19.6 million = 17.86 percent

7. Timing of Reimbursements

Beginning January 1, 2009, and subject to Placer County, Roseville and Rocklin's timely Non-JPA Interchange Contributions identified in Section 2.B, all funds deposited in the JPA Fund after July 1, 2008, (exclusive of two times the then-current Annual Operations and Maintenance Expenses) shall be allocated, on a quarterly basis, as reimbursement in accordance with Section 6 of this MOU. Reimbursement shall continue on a quarterly basis until such time that all of the JPA Participants have been fully reimbursed for their Non-JPA Interchange Contributions, plus any interest as identified in Section 6.

8. Amendments

This MOU may be amended at any time by a written instrument executed by all of the parties hereto; provided, however, that once a third party has advanced traffic mitigation fees or made excess payments, no amendment may be adopted which would directly or indirectly reduce or eliminate the reimbursement and JPA fee credit provisions contained herein.

9. Term of MOU; Termination.

This MOU shall remain in full force and effect until the earlier to occur of the following:

- A. Termination of this MOU pursuant to the provisions of Section 2.C, or
- B. Completion of the Interchange Projects and performance of the JPA's reimbursement obligations hereunder.

10. Entire Agreement.

This MOU is intended as the complete integration of all understandings between the parties, constitutes the entire agreement between the parties pertaining to the subject matter contained in it, and supersedes all prior or contemporaneous oral or written agreements, representations, statements, documents, or understandings of the parties. No prior or contemporaneous addition, deletion, or other amendment shall have any force or effect unless embodied in writing.

11. Notices.

All notices and other communications under this MOU shall be in writing and shall be deemed to have been duly given (i) on the date of delivery, if delivered personally to the party to whom notice is given, or if made by telecopy directed to the party to whom notice is to be given at the telecopy number listed below, or (ii) at the earlier of actual receipt or the second business day following deposit in the United States mail, postage prepaid. Notices and other communications shall be directed to the parties at the addresses shown below:

Placer County: Ken Grehm, Director  
Placer County Department of Public Works  
3091 County Center Drive  
Auburn, CA 95603

Roseville: Rob Jensen  
Public Works Director  
311 Vernon Street  
Roseville, CA 95678

Rocklin: Larry Wing  
City Engineer  
3970 Rocklin Road  
Rocklin, CA 95677

JPA: c/o Rob Jensen  
Public Works Director  
311 Vernon Street  
Roseville, CA 95678

12. Waiver.

No waiver of any of the provisions of this MOU shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

13. Effect of Captions and Headings.

The captions and headings of this MOU are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

14. Counterparts. This MOU may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15. Severability.

Any provision of this MOU which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement, except as necessary to carry out the intent of the parties in entering into this MOU.

16. Authority.

Each of the persons signing this MOU on behalf of a party hereto represents that he or she is authorized to sign the MOU on behalf of such party and that all approvals, resolutions and consents which must be obtained to bind such party have been obtained that no further approvals, acts or consents are required to bind such party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have entered into this MOU effective as of the date first above written.

ATTEST:

COUNTY OF PLACER

\_\_\_\_\_  
Clerk of the Board, Placer County

By \_\_\_\_\_  
Chairman

Approved as to Form:

\_\_\_\_\_  
County Counsel

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ATTEST:

CITY OF ROCKLIN  
A Municipal Corporation

\_\_\_\_\_  
City Clerk, City of Rocklin

By \_\_\_\_\_  
Mayor

Approved as to Form:

\_\_\_\_\_  
City Attorney

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ATTEST:

CITY OF ROSEVILLE  
A Municipal Corporation

\_\_\_\_\_  
City Clerk, City of Roseville

By \_\_\_\_\_  
City Manager

Approved as to Form:

\_\_\_\_\_  
City Attorney

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ATTEST:

"BIZZ JOHNSON" HIGHWAY INTERCHANGE JOINT  
POWERS AUTHORITY  
A Joint Powers Agency

\_\_\_\_\_  
Secretary

By \_\_\_\_\_  
Chair

Approved as to Form:

\_\_\_\_\_  
JPA Attorney

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Agreement No.: 2008/2009-003  
Agreement Description: Highway 65 / Sunset Boulevard Interchange Project

**FUNDING AGREEMENT**  
(Highway 65/Sunset Boulevard Interchange Project)

THIS FUNDING AGREEMENT (this "**Agreement**") is entered into effective as of \_\_\_\_\_ ("**Effective Date**") by and between Placer County Redevelopment Agency, a public body corporate and politic ("**Agency**") and Placer County, a political subdivision of the State of California ("**County**") by and through its Department of Public Works ("**DPW**"). Agency and County are hereinafter referred to collectively as the "**Parties**."

**RECITALS**

A. Agency and County desire to implement the Highway 65/Sunset Boulevard Interchange Project (the "**Project**"). The Project is located within the State of California right-of-way associated with the construction of the ultimate interchange located at Sunset Boulevard and State Route 65 in Placer County.

B. The Project is located in the Sunset Industrial Redevelopment Project Area (the "**Project Area**"). The Agency has determined that the Project will be of benefit to the Project Area because it will accommodate the increased traffic demand generated by existing and approved development in the Project Area. The Project meets the following Project Area Redevelopment Plan Goal: "Eliminate or mitigate constraints to development including accessibility constraints that interfere with proper development by providing street, interchange, a railroad overpass or other improvements".

C. The Agency has committed up to \$6 million in funding toward the Sunset District Traffic Fee Trust Fund to support infrastructure projects that benefit the Project Area. The Project is a project that benefits the Project Area and is included within the Sunset District Traffic Fee Trust Fund program. The Agency's funding toward this Project will be deducted from the Agency's \$6 million overall funding commitment to the Sunset District Traffic Fee Trust Fund program.

D. The County is entering into a separate MEMORANDUM OF UNDERSTANDING FOR THE TIMING, SEQUENCING AND FUNDING OF

HIGHWAY 65 INTERCHANGE PROJECTS with the Bizz Johnson Highway Interchange Joint Powers Authority (JPA).

E. The JPA agreement calls for the County to provide a contribution to the JPA in the amount of \$3.5 million for the construction of interchange projects considered under the JPA agreement.

F. The Project is one of the interchange projects considered for funding under the JPA agreement.

G. The County desires to utilize the Agency funds deposited within the Sunset District Traffic Fee Trust Fund for its \$3.5 million contribution to the JPA.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Responsibilities of the Parties.

The principal contacts for the Parties shall be the following:

Agency: Michele Perez, Senior Redevelopment Specialist  
3091 County Center Drive, Suite 260  
Auburn, CA 95603  
Phone: (530) 745-3171

DPW: Peter Kraatz, Deputy Director  
10825 Pioneer Trail, Suite 105  
Truckee, CA 96161  
Phone: (530) 582-6230

2. Funding Sources and Payment.

Without limiting the generality of the foregoing, the Parties acknowledge and agree that unless otherwise expressly agreed upon in writing, the Agency shall have no obligation to provide funding to the Sunset District Traffic Fee Trust Fund for the Project or otherwise to the County pursuant to this Agreement in excess of **Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00)**. The Agency shall utilize funds generated from its Project Area as its contribution under this Agreement. Pursuant to California Redevelopment Law (Health and Safety Code Section 33000 et seq.), Agency funds shall not be used to cover operation and maintenance costs.

The Agency shall make one lump sum payment to the Sunset District Traffic Fee Trust Fund to satisfy its obligations under this Agreement.

3. Records; Audits.

The County will maintain throughout the term of this Agreement (as defined in Section 9.1), and for two (2) years thereafter, complete detailed records regarding all work on the Project and all work performed pursuant to this Agreement. Upon reasonable notice, Agency shall have the right to audit or inspect such records.

4. Insurance Requirements.

It is agreed that Agency and County shall each maintain at all times during the performance of this Agreement insurance coverage or self-insurance in the amount of not less than One Million Dollars (\$1,000,000) to cover all of its operations, including general liability, automobile liability, and workers' compensation.

In the event that either or both Parties discontinues its policy of insurance or self-insurance, that Party agrees to procure and continue in force and effect insurance coverage as set forth in Exhibit "A" of this Agreement.

5. Prevailing Wage.

County shall carry out and cause the Project Contractor, if hired, to carry out the construction of the Project in conformity with all Applicable Laws, including without limitation, all applicable federal and state labor laws and standards. County shall cause the Project Contractor and the subcontractors to pay prevailing wages in the construction of the Project as those wages are determined pursuant to California Labor Code Section 1720 *et seq.* and the regulations adopted pursuant thereto (collectively, the "**Prevailing Wage Laws**") and to comply with all other applicable provisions of the Prevailing Wage Laws. County shall cause the Project Contractor and subcontractors to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to Prevailing Wage Laws. Copies of the currently applicable per diem prevailing wages are available from the Department of Industrial Relations at [www.dir.ca.gov](http://www.dir.ca.gov) on the Internet. During the construction of the Project, County shall cause the Project Contractor to post at the Project site the applicable prevailing rates of per diem wages. County shall, and shall require the Project Contractor and subcontractors to indemnify, hold harmless and defend the Agency from and against all Claims which directly or indirectly, in whole or in part, are caused by, arise from, or relate to the failure or alleged failure of any person or entity (including County's contractor and the subcontractors) to pay prevailing wages as determined pursuant to Prevailing Wage Laws in connection with construction of the Project, the failure or alleged failure to comply with any requirement of competitive bidding for the construction or operation of the Project, or the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to the Prevailing Wage Laws, or any act or omission of County related

to this Agreement with respect to the payment or requirement of payment of prevailing wages or any requirement of competitive bidding for the construction of the Project, whether or not any insurance policies shall have been determined to be applicable to any such Claims. The representations, warranties and covenants contained in this Section shall survive the expiration or termination of this Agreement.

6. Equal Opportunity.

During construction of the Project there shall be no discrimination or harassment on the basis of race, religion, color, creed, sex, sexual orientation, marital status, physical disability (including HIV and AIDS), mental disability, medical condition, age, denial of family care leave, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in construction of the Project. County shall direct its contractors and subcontractors to refrain from discrimination on such basis. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f) set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement. Contractors shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

7. Indemnity.

County shall indemnify, defend and hold harmless Agency and its elected and appointed officials, employees, agents and contractors (collectively, "**Indemnities**") from and against any and all loss, liability, cost, claim, cause of action, demand, judgment, expense, (including reasonable attorneys' fees) or damage (collectively "**Claims**") arising from or related to County's performance or failure to perform its obligations pursuant to this Agreement, except to the extent the same are attributable to the gross negligence or willful misconduct of the Indemnities.

Agency shall indemnify, defend and hold harmless County and its elected and appointed officials, employees, agents and contractors (collectively, "**County Indemnities**") from and against any and all Claims arising from or related to Agency's performance or failure to perform its obligations pursuant to

this Agreement, except to the extent the same are attributable to the gross negligence or willful misconduct of County Indemnities.

To the maximum extent permitted by law, County shall require all consultants and contractors engaged in design, construction management, construction or other work on the Project to indemnify, defend and hold harmless the Indemnities and the County Indemnities from all Claims arising from or related to the design or construction of the Project.

This Section 7 shall survive the expiration or earlier termination of this Agreement.

8. Events of Default; Remedies.

An Event of Default under this Agreement shall occur if a Party fails to fulfill or perform any obligation required to be fulfilled or performed by such Party hereunder and the failure of such Party to cure such default within thirty (30) days after receipt of written notice thereof (or in the case of a default that cannot be reasonably cured within such period, the failure to commence to cure such default within thirty (30) days and thereafter to proceed with due diligence to cure such default). Upon the occurrence of an Event of Default hereunder, the non-breaching Party may initiate mediation of the controversy, claim, or dispute in accordance with the rules and procedures of the American Arbitration Association, and the other Party shall participate in good faith. The Parties shall bear the cost of the mediation equally and each shall pay its own attorneys' fees and expenses in such mediation. If the Parties are unable to mediate successfully, the non-breaching Party may take any action available to it in law or in equity, including without limitation, pursuit of an order for specific performance. The remedies afforded hereunder are cumulative. Failure to provide notice of any default shall not constitute a waiver of such default. It is expressly understood and agreed that no breach of this Agreement shall entitle either Party to cancel, rescind or otherwise terminate this Agreement. The foregoing limitation shall not affect, in any manner, any other right or remedy which either Party may have by reason of any breach of this Agreement.

9. Miscellaneous.

9.1 Term of this Agreement. The term of this Agreement shall commence on the Effective Date and unless sooner terminated pursuant to the terms hereof, shall expire five (5) years from the Effective Date of this Agreement. The County shall diligently pursue construction of the Project to completion. If construction of the Project is not completed by the term of this Agreement, the County shall either A) return to the Agency all unused funds contributed under this Agreement, plus interest on the unused portion which shall be calculated at the rate of the Annual Construction Cost Index in effect on January 1, 2009, or B) submit to the Agency within one hundred twenty (120)

days of the expiration of this Agreement, a proposal to utilize said funds for a different project contemplated under the Sunset District Traffic Fee Trust Fund program. The Agency shall have ninety (90) days from the date of receipt of the request from the County to approve the use of Agency funds for a different project. The County acknowledges that the Agency must make certain findings pursuant to California Redevelopment Law in order to utilize Agency funds for any other purpose not specifically outlined within this Agreement.

9.2. The County acknowledges that any funds received by the County as reimbursement for non-JPA funds contributed towards the Project costs and as contemplated under the JPA Agreement, whose draft form is attached as Exhibit B, shall be returned to the Sunset District Traffic Fee Trust Fund for use on other projects within the Sunset Industrial Area.

9.3 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

(i) personal delivery, in which case notice is effective upon delivery;

(ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;

(iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;

(iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a non-business day.

AGENCY:

Placer County Redevelopment Agency  
3091 County Center Drive, Suite 260  
Auburn, CA 95603  
Attn: Jim LoBue, Deputy Director Redevelopment  
Phone: (530) 745-3150  
Fax: (530) 745-3152

COUNTY:

Placer County Department of Public Works  
10825 Pioneer Trail, Suite 105  
Truckee, CA 96161  
Attn.: Peter Kraatz, Deputy Director  
Phone: (530) 581-6216  
Fax: (530) 581-6239

9.4 Governing Law; Venue. This Agreement is subject to the laws and jurisdiction of the State of California. In the event that any court action should be brought in conjunction with this Agreement, it shall be subject to interpretation under the laws of the State of California and any legal proceedings shall be brought under the jurisdiction of the Superior Court of Placer County, State of California. The parties hereby waive any federal court removal rights that they may have.

9.5 Severability. If any term, provision, covenant or condition contained in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement shall continue in full force and effect.

9.6 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, and all of which taken together shall constitute one and the same instrument.

9.7 Amendments. This Agreement may be modified or amended, in whole or in part, only by an instrument in writing, executed and acknowledged by the Parties.

9.8 Captions; Construction. The section headings used in this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement 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. In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

9.9 Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior oral and written agreements with respect thereto.

9.10 No Third Party Beneficiaries. This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any rights in any person not a party hereto.

9.11 Further Assurances. The Parties agree to execute, acknowledge and deliver to the other such other documents and instruments, and to undertake such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

9.12 Due Authorization. Each Party represents and warrants that such Party's execution, performance and delivery of this Agreement has been duly authorized by all requisite actions on the part of such Party, and that the person(s) executing this Agreement on behalf of such Party have been duly authorized to do so.

9.13 No Assignment. This Agreement may not be assigned in whole or in part absent the prior written consent of the Parties.

9.14 No Waiver. No waiver of, acquiescence in or consent to any breach of any term, covenant or condition hereof shall be construed as, or constitute a waiver of, acquiescence in, or consent to, any other, further or succeeding breach of the same or any other term, covenant or condition.

**This section left intentionally blank.**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

**AGENCY:**

PLACER COUNTY REDEVELOPMENT  
AGENCY, a public body, corporate and politic

By: \_\_\_\_\_  
Rich Colwell  
Chief Assistant CEO-Redevelopment  
Director

**COUNTY:**

PLACER COUNTY, a political subdivision of  
the State of California

By: \_\_\_\_\_  
Ken Grehm  
Director, Public Works Department

**Approved As to Form**

\_\_\_\_\_  
Scott Finley, County Counsel

\_\_\_\_\_  
Karin Schwab, Agency Counsel

**Exhibit A**  
**Highway 65/Sunset Boulevard Interchange Project**

1. Design, Construction Management and Construction

DPW will provide the general administration, planning, engineering, procurement, permitting, and construction of the Project in addition to handling required Board of Supervisor memos. Copies of memos will be forwarded to the Agency prior to presentation at a board meeting.

DPW will ensure that all documents will conform to the form, regulations, and requirements of the County, Agency, and all other agencies with jurisdiction over the Project. DPW or its designee shall prepare submittals for and shall obtain all necessary permits and approvals for the Project from all applicable permitting agencies.

DPW will handle the public bid process to ensure compliance with funding source requirements and regulations. DPW shall solicit competitive bids for the Project pursuant to all applicable local, state, and federal requirements, including without limitation, all required County procurement procedures.

DPW will be the primary contact for issues related to the Project from the date of this agreement until the Notice of Completion is filed.

2. Change Orders.

DPW and the Agency agree that the expenditures listed in **Exhibit C** will not require separate approval by Agency prior to engaging in services. Expenditures outside and / or above those shown in Exhibit C shall be the sole responsibility of DPW. Agency shall reimburse DPW within **thirty (30) days** following Agency receipt of DPW invoices submitted monthly during construction and accompanied by such documentation as Agency may reasonably require. DPW invoices shall identify the time period covered by the invoice, a description of the work performed, and the costs incurred.

3. Project Closeout

A Notice of Completion or Acceptance will be filed within 10 days of the Project completion. Copies of all notices will be forwarded to the Agency prior to the final disbursement of monies.

**Exhibit B**  
**Highway 65/Sunset Boulevard Interchange Project**

1. Design and Construction

Information on the Agency's funding source requirements will be provided as requested.

2. Change Orders and Payment Process

The Agency will reimburse DPW within **thirty (30) days** following Agency receipt of DPW invoices submitted monthly during construction and accompanied by such documentation as Agency may reasonably require. DPW invoices shall identify the time period covered by the invoice, a description of the work performed, and the costs incurred.

3. Project Closeout

The Agency will disburse the final payment upon receipt of evidence the Notice of Completion or Acceptance has been recorded with the County Recorder and received project acceptance by the Board of Supervisors.

**Exhibit C**  
**Highway 65/Sunset Boulevard Project**  
**DPW And Agency Budget**

<b>CATEGORY</b>	<b>ESTIMATED PROJECT BUDGET</b>
Design	\$2,038,000
Construction Management	\$2,567,458
Construction and Construction Contingency	\$28,508,200
<b>Total Estimated Project Budget</b>	<b>\$33,113,658</b>
<b>Agency Contribution</b>	<b>(\$2,500,000)</b>
<b>DPW Estimated Contribution</b>	<b>\$30,613,658</b>

Scope of Work:

The scope of work shall include the. Agency funds shall only be used for third party consultant and construction contracts pertaining to design, construction management, and construction components of the project and whose costs were incurred after July 1, 2008. Agency funds shall not pay for DPW staff time, overhead or administrative costs.

Other DPW funding for this Project will come from County Traffic Impact Fees, the Highway 65 Joint powers Authority and funding from the cities of Rocklin and Roseville.

**Exhibit D**  
**Insurance Requirements**

In the event County or Agency discontinues its policy of self-insurance, County and Agency agrees to procure and continue in force and effect insurance coverage as set forth below. DPW agrees to obtain from both the Contractors and/or subcontractors separate Certificates of Insurance, in companies acceptable to County, with a Best's Rating of no less than A:VII showing.

**A. WORKER'S COMPENSATION AND EMPLOYERS LIABILITY INSURANCE:**

Worker's 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 the Project Construction Manager's and/or the Project General Contractor'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 Worker's Compensation policy shall be endorsed with the following specific language:

Cancellation Notice - "This policy shall not be canceled or materially changed without first giving thirty (30) days prior written notice to the County of Placer."

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

**B. GENERAL LIABILITY INSURANCE:**

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

- (1) Contractual liability insuring the obligations assumed by the Contractor in the subsequent agreements entered into by and between each with the County.

- ii. One of the following forms is required:
  - (1) Comprehensive General Liability;
  - (2) Commercial General Liability (Occurrence); or
  - (3) Commercial General Liability (Claims Made).
  
- iii. If the Contractor 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
  - One million dollars (\$1,000,000) aggregate
  
- iv. If the Contractor 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
    - One million dollars (\$1,000,000) 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).
  
- v. Special Claims Made Policy Form Provisions:

Neither the Contractor shall 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
  - One million dollars (\$1,000,000) General Aggregate
  
- (2) The insurance coverage provided by the Contractor shall contain language providing coverage up to six (6) months following the completion of the contract(s) entered into with County in order to

provide insurance coverage for the hold harmless provisions herein if the policy is a claims-made policy.

C. ENDORSEMENTS:

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

1. "The County of Placer and the Placer County Redevelopment Agency, its respective 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."
2. "The insurance provided by [the Project Construction Manager] [Project General Contractor], 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 or the Placer County Redevelopment Agency and no insurance held or owned by the County of Placer or the Placer County Redevelopment Agency shall be called upon to contribute to a loss."
3. "This policy shall not be canceled or materially changed without first giving thirty (30) days' prior written notice to the County of Placer."

D. 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.

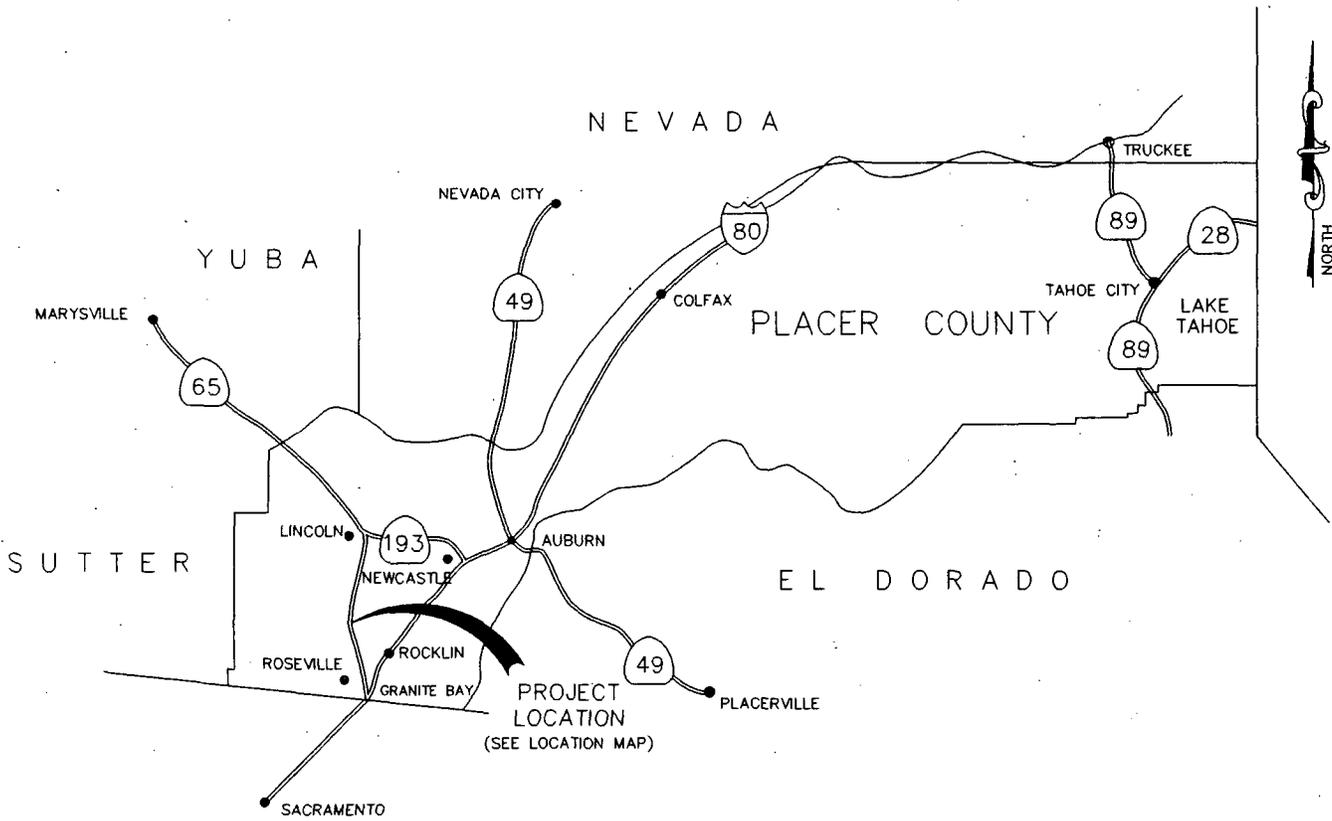
Covered vehicles should include owned, non-owned, and hired automobiles/trucks.

E. PROFESSIONAL LIABILITY INSURANCE (ERRORS AND OMISSIONS)

County shall require all outside Project architects, landscape architects, engineers and other design professionals to maintain professional liability insurance in an amount not less than Two Million Dollars (\$2,000,000) covering errors and omissions, with a deductible of not more than \$50,000 per claim and in a form approved by Agency. The insurance coverage provided by any and all design professionals 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.

Prior to commencement of each phase of construction, County shall furnish Agency with certificates of insurance in form acceptable to Agency evidencing

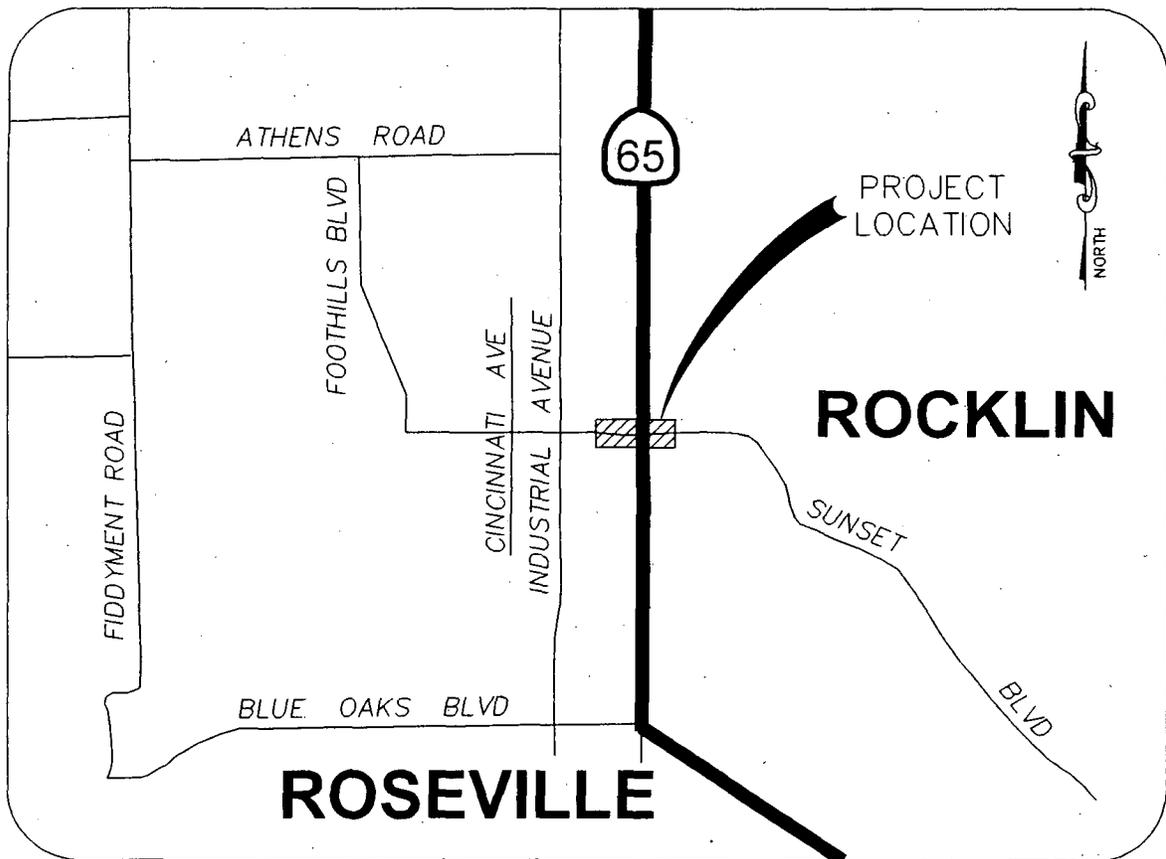
the required insurance coverage and duly executed endorsements evidencing additional insured status. The certificates shall contain a statement of obligation on the part of the carrier to notify County and Agency of any material change, cancellation, termination or non-renewal of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation, termination or non-renewal. Coverage provided pursuant to this Section shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by Agency or County, and the policies shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the Agency. County shall provide Agency with certified copies of the required insurance policies upon request of Agency.



SACRAMENTO

### VICINITY MAP

NTS



### LOCATION MAP

NTS