

**MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNTY OF
TEHAMA AND THE RESOURCE CONSERVATION DISTRICT OF TEHAMA
COUNTY FOR THE PERFORMANCE OF MITIGATION AND MONITORING
RESPONSIBILITIES RELATING TO THE BOWMAN ROAD @ SOUTH FORK
COTTONWOOD CREEK BRIDGE PROJECT**

This **MEMORANDUM OF UNDERSTANDING** (“MOU”) is dated _____ of _____, 2017 (“Execution Date”) between the **County of Tehama, on behalf of the Tehama County Public Works** (“TCPW”) and **Resource Conservation District of Tehama County** (“RCD”). This MOU is made in reference to the following facts:

RECITALS:

- (a) TCPW has the authority to construct and maintain roads and bridges, including performing associated environmental mitigation and monitoring activities, pursuant to, among other provisions, Streets and Highways Code sections 900 et seq., and Public Contract Code sections 20390 et seq. and 20400 et seq. Pursuant to this authority, TCPW has constructed the Bowman Road @ South Fork Cottonwood Creek Bridge in 2012-13 which resulted in the loss of riparian habitat.
- (b) Army Corps of Engineers permit number SPK-2003-00395, issued July 11th, 2012, and California Department of Fish and Game permit 1600-2012-0027-R1, issued May 4th, 2012 (collectively the “Permits”), both require riparian habitat restoration as described in the “Bowman Road at South Fork Cottonwood Creek Bridge Replacement Project, Riparian Habitat Mitigation and Monitoring Plan” (“Mitigation Plan”), January 2012” attached hereto as Exhibit “A”.
- (c) The above regulatory authorizations require the planting and monitoring of certain vegetation in a designated area located within the County right-of-way (the “Mitigation Area”), as more fully set forth in the Mitigation Plan and the Permits.
- (d) To fulfill the above permit requirements, TCPW wishes to retain RCD to perform the responsibilities set forth in the Mitigation Plan in accordance with the terms of the Permits, and RCD wishes to undertake those responsibilities.
- (e) RCD is a public entity organized and existing under Division 9 (commencing with Section 9001) of the Public Resources Code.
- (f) RCD is authorized to perform the environmental mitigation and monitoring activities set forth in the Mitigation Plan, and to contract with TCPW to fund the performance of these activities, pursuant to, among other provisions, Public Resources Code sections 9403, 9403.5, 9408, 9409, and 9410.
- (g) TCPW has federal and state funds available to fund the activities described in the Mitigation Plan.
- (h) TCPW and RCD have the power, common to both, to carry out the mitigation and monitoring activities set forth in the Mitigation Plan.
- (i) Under the Joint Exercise of Powers Act (Gov. Code, §§ 6500 et seq.), TCPW and RCD are authorized to enter into an agreement to jointly exercise any power common to both entities. Government Code section 6504 further provides that “advances of public funds may be made for

the purpose set forth in the agreement, such advances to be repaid as provided in said agreement.”

- (j) Providing an advancement of funds to RCD, in the form of an all-inclusive flat fee payment of \$142,560, in exchange for RCD’s agreement to perform the mitigation and monitoring activities set forth in the Mitigation Plan ensures that TCPW will comply with its legal obligations relating to the Bowman Road @ South Fork Cottonwood Creek Bridge, thereby serving a public purpose of the County of Tehama.
- (k) The purpose of this MOU is to establish the terms that will apply to the provision of services by RCD within both the RCD and TCPW for the mutual benefit of both agencies.

THEREFORE, THE PARTIES SHALL JOINTLY EXERCISE THEIR COMMON POWER TO CARRY OUT MITIGATION PLAN ACTIVITIES AS FOLLOWS:

1. The above recitals are true and correct, and are hereby incorporated into this MOU.
2. This MOU is authorized by Government Code sections 6500 et seq. and Public Resources Code section 9408.
3. Pursuant to Government Code section 6504, TCPW shall provide RCD with an advancement of funds, in the form of an all-inclusive flat fee of \$142,560 for all services rendered by RCD under this MOU. TCPW shall make a payment in full of the entire flat fee within thirty (30) days after execution of this agreement by both parties.
4. The advanced funds shall be used by RCD exclusively to perform the responsibilities set forth in the Mitigation Plan and Permits.
5. RCD shall maintain an accounting of all funds advanced pursuant to this MOU and shall provide copies of such documentation and records to TCPW or the Tehama County Auditor-Controller quarterly, or more frequently upon request.
6. RCD shall perform all functions and fulfill all responsibilities set forth in the Mitigation Plan, in accordance with all applicable federal, state, county, district, and municipal laws, ordinances, regulations, and rules, and in accordance with the terms of the aforementioned Permits. RCD shall pay all costs and expenses associated with such mitigation and monitoring activities, agrees that TCPW has no obligation, whatsoever, to compensate or reimburse RCD for any expenses, direct or indirect costs, expenditures, or charges of any nature other than the flat fee set forth in Section 3.
7. RCD agrees that it shall either perform or contract for the performance of all mitigation and monitoring activities required under the Mitigation Plan and Permits (including without limitation any Remedial Measures required under Section 5 of the Mitigation Plan). TCPW shall have no liability, monetary or otherwise, to any cooperators, subcontractors, providers of services or recipients of service under this Agreement.
8. With seven (7) days notice, and with a time convenient to both TCPW and RCD, TCPW personnel may observe the mitigation activities being done at the Mitigation Area, and shall have the right to provide comments to RCD personnel who shall be solely responsible for all aspects of the mitigation activities.
9. RCD shall provide TCPW with all information and documentation (including draft reports) necessary to allow TCPW to make any reports to state or federal agencies required under the Mitigation Plan or the Permits, and upon request of TCPW shall make those reports on TCPW’s behalf.

10. This Agreement shall become effective as of the date signed by both parties, and shall remain in effect until RCD's satisfactory completion of mitigation and monitoring activities set forth in the Mitigation Plan and Permits. As more fully set forth in the Mitigation Plan and Permits, RCD's responsibilities hereunder shall include a minimum of ten (10) growing seasons after completion of the planting activities described in the Mitigation Plan, and any additional period of monitoring or monitoring required by any state or federal agency in accordance with the terms of the Mitigation Plan or the Permits.
11. RCD shall, during the entire term of this MOU, be construed to be an independent contractor and nothing in this contract is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow TCPW to exercise discretion or control over the professional manner in which RCD performs the services which are the subject matter of this contract. RCD staff and subcontractors performing services under this MOU shall at all times remain employees of RCD, and shall not be deemed employees of TCPW for any purpose. RCD shall be solely responsible for any and all compensation, payroll taxes, withholdings, workers' compensation and any other insurance or benefits of any kind for any RCD employee providing services under this MOU.
12. RCD shall hold harmless, defend, and indemnify TCPW, its agents, officers, and employees, against all claims, suits, actions, costs, expenses (including but not limited to reasonable attorney's fees, expert fees, litigation costs, and investigation costs), damages, judgments or decrees by reason of any person's or persons' bodily injury, including death, or property (including property of TCPW) being damaged by the negligent acts, willful acts, or errors or omissions of RCD, or any person employed by or under RCD in any capacity, during the performance of Mitigation Plan services or any other services or activities provided for herein, except when the injury or loss is caused by the sole negligence or intentional wrongdoing of TCPW.
13. RCD shall secure and maintain in full force and effect during the full term of this MOU commercial general liability insurance or participation in a self-insurance program, including coverage for owned and non-owned automobiles and other insurance necessary to protect the public, with limits of liability of not less than \$1 million combined single limit bodily injury and property damage. Policies shall be written by carriers reasonably satisfactory to TCPW. On request, a certificate evidencing the insurance requirements of this paragraph shall be provided.
14. Each party executing this MOU and each person executing this MOU in any representative capacity, hereby fully and completely warrants to all other parties that he or she has full and complete authority to bind the person or entity on whose behalf the signing party is purporting to act.
15. This MOU supersedes all previous agreements or understandings, and constitutes the entire understanding between the parties with respect to the above referenced services, terms of compensation, and otherwise. This MOU shall not be amended, except in a writing that is executed by authorized representatives of both parties.
16. Each party executing this Agreement and each person executing this Agreement in any representative capacity, hereby fully and completely warrants to all other parties that he or she has full and complete authority to bind the person or entity on whose behalf the signing party is purporting to act. Without limiting the generality of the foregoing, Tribe warrants and represents that it has obtained all approvals necessary to enter into this MOU under applicable tribal and federal law.

17. This agreement shall be deemed to be made in, and shall be governed by and construed in accordance with the laws of the State of California (excepting any conflict of laws provisions which would serve to defeat application of California substantive law).

IN WITNESS WHEREOF, RCD and TCPW have executed this Memorandum of Understanding on the day and year set forth below.

Date: _____ COUNTY OF TEHAMA

By: _____
Gary Antone, PE, PLS
Director of Public Works

Date: _____ RESOURCE CONSERVATION DISTRICT OF TEHAMA COUNTY

By: _____
Chairperson

APPROVED AS TO FORM:

County Counsel
County of Tehama