

MEMORANDUM OF UNDERSTANDING
BETWEEN THE COUNTY OF TEHAMA COUNTY AND THE CITY OF RED BLUFF

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is dated 5-22-18 and made between the **COUNTY OF TEHAMA** (“Tehama”) and the **CITY OF RED BLUFF** (“City”). This MOU is made in reference to the following facts:

RECITALS:

- (A) WHEREAS, In the Transportation Equity Act for the 21st Century (TEA-21) of 1998 Tehama County (County) received funding for a High Priority Project described in law as “Construct new I-5 Interchange with Highway 99W, Tehama Co.” On February 9, 1999, the Federal Highway Administration (FHWA) concurred with the County’s request to interpret the original TEA-21 language to mean “construct an interconnecting road between I-5 and Road 99W, north of Flores Avenue, and a site study for an additional interchange with I-5, Tehama County.” On February 28, 2014 another request was made to change the project description, and on June 3, 2015 FWHA approved the County’s request to “Reconstruct I-5 Interchange with Highway 99W, Tehama Co”, and
- (B) WHEREAS, the total funds available for construction from the Federal Highway Demonstration High Priority Project #0769(001) is \$1,433,904, and
- (C) WHEREAS, the 2016 Regional Transportation Plan, as adopted by the Tehama County Transportation Commission on December 11, 2015, specified PPNO 2569 “99W & Gyle Road to South Main Street & I-5 Overcrossing” as a regional project, and
- (D) WHEREAS, the 2018 Regional Transportation Improvement Program, as adopted by the Tehama County Transportation Commission on December 11, 2017, includes the estimated cost of preliminary engineering, environmental clearance, construction engineering, and construction activities for the Project, and
- (E) WHEREAS the City is desirous of the South Main Street improvements from the south city limit to the Interstate 5 Overcrossing, and
- (F) WHEREAS County is agreeable to provide advertising services for a consultant to provide engineering services for the project, and
- (G) WHEREAS, the parties hereto find that utilizing the Project funds for the improvement of South Main Street as specified in the Project within the incorporated area of the City of Red Bluff is vital to the public interest;
- (H) WHEREAS, contemporaneous with the approval of this MOU, the Tehama County Board of Supervisors has adopted a Resolution by four-fifths vote, Pursuant to Streets and Highways Code section 1680 et seq. and has found that the improvement of South Main Street as specified in the Project is of general County interest and that

County aid shall be extended therefor; and

- (I) WHEREAS, the parties desire to enter into an MOU authorizing Tehama to proceed with the 99W & Gyle Road to South Main Street & I-5 Overcrossing Project.

THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The above recitals are hereby incorporated into this Agreement.
2. This MOU is authorized by Government Code section 6500 et seq., and Streets and Highways Code sections 1680-1685, and 1803.
3. Tehama agrees to provide preliminary engineering, environmental clearance, construction engineering, and construction services, and contract with the successful bidder to perform all work and pay all costs, without the right to reimbursement from City, necessary to complete the 99W & Gyle Road to South Main Street & I-5 Overcrossing as specified in the Project. This MOU shall not create a mandatory or otherwise enforceable obligation on the part of Tehama to provide any additional activities after Tehama provides City the final notice of completion of as specified in the Project.
4. City agrees to grant to Tehama, at no cost to Tehama, any temporary right of way or easement that is necessary for the improvement of South Main Street as specified in the Project. City agrees to issue any encroachment, excavation, or construction permit or any other special permit or other approval necessary for Tehama and or its agents to perform as provided hereunder. City further agrees to execute any additional documents necessary to effectuate completion of the Project.
5. Nothing herein shall require Tehama to perform any action under this MOU if Tehama has insufficient available personnel and or funds to perform such action.
6. This Agreement shall become effective as of May 22, 2018, and shall remain in effect until Tehama provides to City a final notice of completion of the improvement of South Main Street as specified in the Project, unless it is otherwise terminated due to the conditions set forth herein.
7. Tehama in its sole discretion may terminate this agreement within 30 days after providing written notice of intent to terminate. This right may be exercised by the Tehama County Director of Public Works.
8. Tehama 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 City to exercise discretion or control over the professional manner in which Tehama performs the services which are the subject matter of this contract. Tehama staff performing

services under this MOU shall at all times remain employees of Tehama, and shall not be deemed employees of City for any purpose. Tehama 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 Tehama employee providing services under this MOU. This provision shall survive the termination or expiration of this MOU.

9. The improvement of South Main Street as specified in the Project and performed by the successful bidder for the Project, including all materials, products, and workmanship provided or installed as part of said Project and work, is provided "as-is" and "with all faults," without any warranty of any kind by Tehama. Tehama makes no representations regarding the condition or merchantability of any part of the Project or work or its fitness for any particular purpose, even if Tehama is aware of City's intended use of South Main Street after completion of the Project. City agrees to accept and use said portion of South Main Street at its own risk, and expressly agrees to assume all risks arising from the use of the roadway or any portion thereof. Tehama shall not be responsible for any loss, injury, or damage to the roadway or to any persons or property arising from the work performed as specified in the Project. City shall be solely responsible for any future maintenance and improvement of any portion thereof that City deems unsatisfactory. This provision shall survive the termination or expiration of this MOU.
10. The aggregate cumulative monetary liability of Tehama hereunder for all claims arising under or relating to this Agreement, notwithstanding the form (e.g. contract, tort, or otherwise) in which any action is brought, shall be limited to the actual cost for the preliminary engineering, environmental clearance, construction engineering, and construction services for improvement of South Main Street as specified in the Project, at the time of breach, which is not to exceed \$1.0 Million total, less any expended amounts, and the Parties agree termination pursuant to Section 7 of this Agreement shall not constitute a breach. No damages or compensation of any sort shall be paid to City by Tehama for delay, disruption, halting, suspension, temporary abandonment, or cessation of the Project, no matter from what cause. This provision shall survive the termination or expiration of this MOU.
11. In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties hereto pursuant to Government Code section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead the parties agree, pursuant to Government Code section 895.4, as follows:

City shall hold harmless, defend, and indemnify Tehama, 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 Tehama) being damaged by the negligent acts, willful acts, or errors or omissions of City, or any person employed by

or under City in any capacity, during the provision of services provided for herein, except when the injury or loss is caused by the sole negligence or intentional wrongdoing of Tehama. The provisions of Section 2778 of the California Civil Code are made a part hereof as if incorporated herein.

This provision shall survive the termination or expiration of this MOU.

12. City and Tehama shall each secure and maintain in full force and effect during the full term of this agreement 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 each party. On request, a certificate evidencing the insurance requirements of this paragraph shall be provided.
13. 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.
14. Neither party intends that City shall have a cause of action against Tehama, and/or the successful bidder for the Project, as a third party beneficiary under any future agreement that Tehama may execute or enter into with respect to the Project. The parties expressly acknowledge that it is not their intent to create any rights or obligations for City through this Agreement. The parties agree that this Agreement does not create, by implication or otherwise, any specific, direct or indirect obligation, duty, promise, benefit and/or special right to City, their successors and permitted assigns, and legal or equitable rights, remedy, or claim under or in respect as to any future Agreement Tehama may execute in connection with the Project.
15. All actions to be performed pursuant to this MOU shall be performed in accordance with all applicable federal, state, county, district, and municipal laws, ordinances, regulations, and rules.
16. 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.
17. Any notice required to be given pursuant to the terms and provisions of this MOU shall be in writing and shall be sent first class mail to the following addresses:

TEHAMA COUNTY

Timothy J. McSorley, Director
9380 San Benito Ave.
Gerber, CA 96035

CITY OF RED BLUFF
Robin Kampmann
555 Washington Street
Red Bluff, CA 96080

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

COUNTY OF TEHAMA

By: Candy Carlson
Chairperson
Tehama County Board of Supervisors

Date: _____

CITY OF RED BLUFF


By: Daniele Eyestone
Mayor
City of Red Bluff

Date: 5-1-18