

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY AGENDA

MAY 16, 2006 – SPECIAL MEETING

Yuba County Government Center
Board of Supervisors' Chambers
915 Eighth Street, Suite 109A
Marysville, California

Unless otherwise indicated

No other business shall be conducted at this meeting. The public shall have an opportunity to address the Board only with respect to items set forth in this agenda. Each individual or group will be limited to no more than five minutes

2:30 P.M. I CALL TO ORDER

II ROLL CALL – Directors Rick Brown, Mary Jane Griego, Dan Logue, Richard Webb

III ACTION ITEMS

- A. Receive presentation and demonstration of Three Rivers Levee Improvement Authority (TRLIA) website.
- B. Approve employment agreement among TRLIA, County of Yuba, and Paul Brunner and authorize the Chairman to execute same.
- C. Approve agreement with Jones and Stocker Associates in the amount of \$19,624 for negative declaration preparation on Yuba County Floodplain Management Ordinance and authorize the Chairman to execute same.
- D. Approve second amendment with Bender Rosenthal Inc. in the amount of \$469,303 for Phase 4 Feather River Right of Way acquisition and authorize the Chairman to execute same.
- E. Approve funding agreement between Three Rivers Levee Improvement Authority, County of Yuba, and Dunmore Orchard LLC and authorize the Chairman to execute same.
- F. Ratify first agreement with Kleinfelder in the amount of \$9,600 for geotechnical exploration services performed and authorize the Chairman to execute same.
- G. Approve Second Implementation Agreement in regard to State Reclamation Board Permit No. 17782 with any conforming and clarifying changes required after review and approval of agreement by State Reclamation Board and authorize the Chairman to execute same.
- H. Approve minutes of meetings held April 4, 5, 11, 18, and 25 and May 2, 2006.

IV BOARD AND STAFF MEMBERS' REPORTS

V. CLOSED SESSION

Threatened litigation pursuant to Government Code §54956.9(b) – One Case

VI ADJOURN

The County of Yuba

PERSONNEL / RISK MANAGEMENT OFFICE

BEVERLY J. BARNES, PERSONNEL DIRECTOR / RISK MANAGER



915 8th STREET, SUITE 113
MARYSVILLE, CA 95901

(530) 749-7860 - Phone
(530) 749-7864 - Fax

TO: Board of Directors, Three Rivers Levee Improvement Authority

FROM: Beverly J. Barnes, Personnel Director/Risk Manager *Beverly J. Barnes*

DATE: May 16, 2006

RECOMMENDATION: Approve the attached employment agreement among the Three Rivers Levee Improvement Authority, The County of Yuba, and Paul G. Brunner and authorize Chair to execute same.

BACKGROUND: The Three Rivers Levee Improvement Authority was formed in April 2004 and exists to provide for flood control improvements located in the County for constituents in the unincorporated areas of Yuba County, including improvements to the levee system and related drainage improvements. Since its inception, the County Administrative Officer for the County of Yuba has been the Executive Director of the Authority.

DISCUSSION: TRLIA has been very successful in planning and executing their objectives of levee repair work in Yuba County. Current projects are slated to be completed in 2008. Because the current Executive Director, Kent McClain will be retiring in June, and the continued complexity of the projects planned, the authority felt it necessary to establish an Executive Director position that was dedicated to these projects, and not other County business such as the CAO's position requires.

The attached contract is the employment agreement among the Three Rivers Levee Improvement Authority, The County of Yuba, and Paul G. Brunner. Mr. Brunner has over 20 years experience in environmental program management and design and is a registered Civil Engineer. It is our recommendation that this employment agreement be approved, and the Chair authorized to sign the agreement. It is scheduled to be approved by the County of Yuba Board at their scheduled meeting this morning.

Fiscal Impact: Approximately \$12,300 salary and benefits, already included in the budget

**EMPLOYMENT AGREEMENT AMONG THE THREE RIVERS
LEVEE IMPROVEMENT AUTHORITY,
THE COUNTY OF YUBA,
AND PAUL G. BRUNNER**

This Employment Agreement ("Agreement") is entered into on this ____ day of May, 2006 among the Three Rivers Levee Improvement Authority ("Authority"), established in April 2004, and the COUNTY OF YUBA ("County"), a political subdivision of the State of California, and Paul G. Brunner ("Employee").

RECITALS

WHEREAS, the Authority and the County will enter into an agreement providing that the Authority's employees are considered both County and Authority employees; and

WHEREAS, the Authority desires to employ Employee as its Executive Director; and

WHEREAS, Employee desires to serve as the Executive Director of Authority beginning June 1, 2006; and

WHEREAS, the County Administrative Officer ("CAO") shall be considered the Employee's supervisor, but the CAO shall provide an evaluation to the Employee and shall terminate or discipline the Employee only in accordance with the direction of the Authority; and

WHEREAS, the Authority, Employee, and the County desire to agree in writing to the terms and conditions of Employee's employment as the Authority's Executive Director; and

This Agreement shall be the sole and exclusive basis for an employment relationship among Employee, Authority, and County.

AGREEMENT

1. Incorporation of Recitals.

The foregoing recitals and the introductory paragraph are hereby incorporated into this Agreement.

2. Duties of Employee.

A. Employee agrees to serve as the Executive Director of the Authority and shall perform the functions and duties as specified in the class specification for the Executive Director (attached hereto and incorporated herein by reference as Exhibit A) and all other

applicable laws, rules and regulations now in effect or hereafter adopted, and to perform other legally permissible and proper duties and functions as the Authority may from time to time assign.

B. Employee shall perform the assigned duties to the best of his/her ability in accordance with the highest professional and ethical standards of the profession and shall comply with all general rules and regulations established by the County and all directives of the Authority.

C. Employee shall not engage in any activity or take any position (paid or otherwise) that is, may become, or may in any degree present a conflict of interest or appear to present a conflict of interest with the duties inherent in the position of the Authority's Executive Director. Employee shall not engage in any activity that is, or may become, a prohibited contract, or which may create an incompatibility of office as defined under state law.

D. Employee agrees to complete economic interest disclosure forms as required by law and in connection with the performance of any services under this Agreement, which shall be filed in accordance with laws and regulations relating to disclosure forms during the term of this Agreement and thereafter as may be required by law or regulation.

3. Duties of Authority and County.

The parties agree that Employee shall be an at-will employee of both the Authority and the County. Employee or the Authority may terminate this employment relationship at any time during the term of this Agreement with or without cause and as described more fully below.

A. County Administrative Officer. The County Administrative Officer ("CAO") shall be Employee's official County supervisor. The CAO shall authorize Employee's payroll as well as vacation, sick and other applicable leave time. Employee shall not be required to implement specific programs or perform specific tasks requested solely by the CAO; such direction shall be given by the Authority. The CAO shall not have the individual authority to evaluate, discipline, release, or terminate Employee.

B. Rights and Benefits. The County shall provide Employee with the same rights and benefits as provided to County management employees, and as they may be amended from time to time and as such rights and benefits may be modified by this Agreement. County shall be responsible for addressing all of Employee's rights and benefits questions with respect to County employment.

C. Authority's Responsibilities. The Authority shall provide overall managerial and supervisory direction to Employee. Employee's questions concerning individual projects and assignments are to be directed to the Chair of the Authority.

D. Approval of Authority. Upon a majority vote of Authority members present and voting at an Authority meeting, the Authority shall recommend to the CAO Employee's evaluation, discipline, release, or termination, and the CAO shall follow any such recommendation.

E. Agreement between County and Authority. The specific duties and obligations of the County and the Authority will be further specified in an Agreement between the County and the Authority. In the event of any inconsistency between this Agreement and the Agreement between the County and the Authority, this Agreement shall control.

4. Term. The term of this Agreement shall be from the date Employee executes this Agreement and shall continue until June 30, 2008, and may be extended by agreement of both parties. Nothing is preventing the parties from modifying this agreement should future funding be secured.

5. Resignation and Termination.

A. Resignation. Employee may resign at any time during the term of this Agreement and agrees to provide the Authority with thirty (30) days advance written notice of the effective date of his/her resignation.

B. No Promise of Continued Employment. There is no express or implied promise made to Employee by either Authority or County for any form of continued employment. All parties agree that Employee is an at-will employee who serves at the pleasure of the Authority and whose employment may be terminated at any time without cause.

C. Release of Employee from Authority Service. Authority may release Employee from Authority employment at any time upon written notice and after a majority vote of the all the Authority members. An Authority decision to release Employee may be made in closed session consistent with the Ralph M. Brown Act and subsequently announced in a public meeting. The Authority shall transmit its decision to release Employee to the CAO, who shall immediately take the appropriate measures to remove Employee from his service as the Authority's Executive Director.

- a. In recognition of employee's professional status and integrity, Employee and the Board shall prepare a joint public statement to be made by the Board at the public meeting when the Board action of termination is announced.
- b. Employee shall have the option to resign his office instead of being terminated if an action by the Authority to terminate has been taken in closed session. Employee shall be given a time certain, not less than five working days, by which such resignation in writing shall be

delivered to the Clerk of the Board and, in the event such resignation is timely delivered, the public announcement as provided for in paragraph 5C(a), above, will reflect that Employee has resigned. Such resignation in lieu of termination shall not affect the right to receive payment under this contract as hereinafter set forth.

- c. A decision by the Board to terminate Employee for cause may be made in closed session consistent with the Ralph M. Brown Act and announced at a public meeting. Cause is defined as failure to perform the duties outlined in section 2 of this agreement. In the event of termination for cause Employee shall have the right to a name clearing public hearing.
- d. The CAO and the County shall also comply with all applicable local, state, and federal laws, regulations, policies, and procedures with respect to any discipline or termination of Employee, except to the extent that they contradict the terms of this Agreement.
- e. Should the employee be terminated without cause, the employee will be paid six months severance pay, or if less than six months remain on the contract, the employee will be paid the full amount of the remaining portion of the contract as severance pay.

6. Salary

A. Commencing with the date of appointment set forth above, Employee shall be compensated according to the Yuba County Classification System - Basic Salary Schedule which identifies the base gross monthly rate of the Executive Director at eight thousand three hundred thirty four dollars (\$8334.00). Employee shall be hired at the Merit Index rate equivalent to the completion of at least 2 years service – 1.1030 equaling \$9193.00 and the SCD shall be temporarily adjusted to reflect the advanced Index Rate. Employee will continue to receive annual Index Rate increases until their Index Rate equals 1.2160 (equivalent to four years of service). Additionally, an increase equal to any cost of living increase given to miscellaneous employees shall also be given to Employee.

7. Performance Evaluation.

A. Initial Performance Evaluation. The Authority shall perform an initial performance evaluation of Employee within the first ten ninety days (90) days of the term of this Agreement. The purpose of this evaluation is to establish the Authority's goals and expectations of the new Executive Director. All members of the Authority will go over the evaluation with the employee during a closed meeting session. Upon approval of a majority of the Authority members, the Authority Chair shall transmit the evaluation to the CAO, who shall complete and file the evaluation with the County.

B. Subsequent Performance Evaluations. Following the Initial Performance Evaluation specified in Section 6(A) above, the Authority shall thereafter perform a performance evaluation of Employee on an annual basis. All members of the Authority will go over each evaluation with the employee during a closed meeting session. Upon approval of a majority of the Authority members, the Authority Chair shall transmit the evaluation to the CAO, who shall complete and file the evaluation with the County.

C. Right to More than an Annual Evaluation. Nothing in this Section 6 or County rules, policies, or procedures shall prohibit the Authority from evaluating Employee on a more frequent basis.

8. Other Benefits

A. The Authority or County shall provide the employee a vehicle to use to conduct Authority duties. The employee can take this vehicle home when Authority duties make it impractical for employee to return to office that day. Employee would return vehicle to work site the following workday. The Authority or County will be responsible for the insurance, maintenance, and operational costs of this vehicle.

B. The Authority or County shall provide the employee with a cell phone to use for County or Authority duties. The employee can use the cell phone for limited personal use. The Authority or County will be responsible for the maintenance, and operational costs of this phone.

C. The Authority or County shall reimburse employee for mileage costs associated with using employee's personal vehicle for Authority or County business. The reimbursement rate will be the same as used for Yuba County employees.

D. Since this is a term position the waiting period for the following benefits are waived and effective the first day of the contract the employee is granted:

- 1) 12 days of sick leave per year
- 2) 15 days of vacation time per year. In 2006 the employee has already made significant personal vacation plans for 2 October thru 17 October, which the County and Authority approve.

9. Notices

Any notices required by this Agreement shall be in writing and either given in person to the recipient or by first class mail, postage prepaid, and addressed as follows:

TO AUTHORITY: Three Rivers Levee Improvement Authority
915 8th Street, Suite 115
Marysville, CA 95901
Attn: Chair

TO COUNTY: County of Yuba
915 8th Street, Suite 115
Marysville, CA 95901
Attn: County Administrator

TO EMPLOYEE: Paul G. Brunner
8186 Joe Rodger Road
Granite Bay, CA 95746

9. Assignment.

This Agreement is not assignable by any of the parties. Any agreement to the contrary by any of the parties shall be void.

10. Governing Law and Choice of Forum.

This Agreement shall be administered and interpreted under California law as if drafted equally among all parties. Any litigation arising from this Agreement shall be brought in the Superior Court of Yuba County.

11. Severability

In the event that any portion of this Agreement is finally held or determined to be illegal or void by a Court having jurisdiction, the remainder of the Agreement shall remain in full force and effect unless the parts found to be void are wholly inseparable from the remaining portion of the Agreement.

IN WITNESS WHEREOF, Authority, County, and Employee have caused this Agreement to be signed and executed as of the dates of their respective signatures.

DATE: _____

AUTHORITY

BY: _____
Richard Webb, Chair

DATE: _____

COUNTY

BY: _____
Chairman

DATE: May 10, 2006

EMPLOYEE
BY: Paul G. Brunner
Paul G. Brunner



THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

GOVERNMENT CENTER – 915 8TH STREET, SUITE 115
MARYSVILLE, CA 95901-5273
(530) 749-7575 (530) 749-7312 Fax

May 2, 2006

TO: Three Rivers Levee Improvement Authority Board
FROM: Brian D. Boxer, Environmental Project Manager
SUBJECT: Consider Contractual Agreement with Jones and Stokes Associates for
CEQA Services

Recommended Action

Approve a contract with Jones and Stokes Associates for preparation of a Negative Declaration on the Yuba County Floodplain Management Ordinance. The work will be performed on a time and materials basis, not to exceed \$19,624.

Discussion

TRLIA is currently anticipates that portions of Yuba County may be designated A-99 on updated FEMA flood insurance maps that may be issued in 2007. The current Yuba County Floodplain Management Ordinance applies to the A-99 zone, but does not provide any specific development policies for the A-99 zone. FEMA requires that local governments adopt development policies specific to the A-99 zone. The revised Floodplain Management Ordinance would be adopted by the Yuba County Board of Supervisors. The adoption of revisions to the County Floodplain Management Ordinance may be subject to the provisions of the California Environmental Quality Act (CEQA), thus Yuba County would serve as the Lead Agency for CEQA. In the opinion of TRLIA staff, the appropriate CEQA document to consider the environmental effects of proposed revisions to the Ordinance is a Negative Declaration. Jones and Stokes Associates has conducted extensive environmental consulting work in the vicinity and for TRLIA, and has provided a proposal to provide the necessary services in a timely and cost-effective manner. It is proposed that TRLIA contract for, and TRLIA staff would oversee, the preparation of the Negative Declaration, on behalf of Yuba County.

Fiscal Impact

The funding for this contract has not been previously accounted for in the project budget, but is within the project funding contingency.

**AGREEMENT FOR
PROFESSIONAL SERVICES**

THIS AGREEMENT for CEQA Services ("Agreement") is made as of the Agreement Date set forth below by and between the Three Rivers Levee Improvement Authority ("TRLIA"), a California Joint Powers Authority, and

_____ Jones & Stokes Associates, _____
"CONSULTANT"

In consideration of the Services to be rendered, the sums to be paid, and each and every covenant and condition contained herein, the parties hereto agree as follows:

OPERATIVE PROVISIONS

1. SERVICES.

The CONSULTANT shall provide those services described in Attachment "A". Provision A-1. CONSULTANT shall provide said services at the time, place and in the manner specified in Attachment "A", Provisions A-2 through A-3.

2. TERM.

Commencement Date: Date of this Agreement

Termination Date: December 31, 2006

Notwithstanding the term set forth above, and unless this contract is terminated by either party prior to its termination date, the term of this Agreement shall be automatically extended from the termination date for ninety days. The purpose of this automatic extension is to allow for continuation of services, and to allow TRLIA time in which to complete a novation or renewal contract for CONSULTANT and TRLIA approval.

CONSULTANT understands and agrees that there is no representation, implication, or understanding that the services provided by CONSULTANT pursuant to this Agreement will be purchased by TRLIA under a new agreement following expiration or termination of this Agreement, and CONSULTANT waives all rights or claims to notice or hearing respecting any failure to continue purchase of all or any such services from CONSULTANT.

3. PAYMENT.

TRLIA shall pay CONSULTANT for services rendered pursuant to this Agreement at the time and in the amount set forth in Attachment "B". The payment specified in Attachment "B" shall be the only payment made to CONSULTANT for services rendered pursuant to this Agreement. CONSULTANT shall submit all billings for said services to TRLIA in the manner specified in Attachment "B" and TRLIA shall submit payment to Consultant within 30 days of receipt of invoice.

4. FACILITIES, EQUIPMENT AND OTHER MATERIALS AND OBLIGATIONS OF TRLIA.

CONSULTANT shall, at its sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this Agreement, unless an exception to this requirement is provided in Attachment "A", Provision A-4.

5. ADDITIONAL PROVISIONS.

Those additional provisions unique to this Agreement are set forth in Attachment "C".

6. GENERAL PROVISIONS.

The general provisions set forth in Attachment "D" are part of this Agreement. Any inconsistency between said general provisions and any other terms or conditions of this Agreement shall be controlled by the other term or condition insofar as it is inconsistent with the general provisions.

7. DESIGNATED REPRESENTATIVES.

Kent McClain is the representative of the TRLIA and will administer this Agreement for the TRLIA. Chris Elliot is the authorized representative for CONSULTANT. Changes in designated representatives shall occur only by advance written notice to the other party.

8. ATTACHMENTS.

All attachments referred to herein are attached hereto and by this reference incorporated herein. Attachments include:

- Attachment A - Services
- Attachment B - Payment
- Attachment C - Additional Provisions
- Attachment D - General Provisions
- Attachment E - Consultant's Proposal for CEQA Services related to this agreement

9. TERMINATION. TRLIA and CONSULTANT shall each have the right to terminate this Agreement upon ten (10) days written notice to the other party.

IN WITNESS WHEREOF, the parties hereto have executed this

Agreement on _____, 2006.

"TRLIA"

"CONSULTANT"

Chair TRLIA Board

Christopher C. Elliott
Project Director, Jones & Stokes

ATTEST:
DONNA STOTTLEMEYER, CLERK OF
THE BOARD OF SUPERVISORS

APPROVED AS TO FORM:
DANIEL G. MONTGOMERY
TRLIA COUNSEL

ATTACHMENT A

A.1 SCOPE OF SERVICES AND DUTIES.

The services to be provided by CONSULTANT and the scope of CONSULTANT's duties are detailed in the "Scope of Services" section within Attachment E.

A.2. TIME SERVICES RENDERED.

Commencing from the date of this agreement until December 31, 2006.

A.3. MANNER SERVICES ARE TO BE PERFORMED.

As an independent CONSULTANT, CONSULTANT shall be responsible for providing services and fulfilling obligations hereunder in a professional manner. TRLIA shall not control the manner of performance.

A.4. FACILITIES FURNISHED BY TRLIA.

CONSULTANT shall, at his/her sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this Agreement.

ATTACHMENT B

PAYMENT

TRLIA shall pay CONSULTANT as follows:

B.1 CONTRACT FEE. TRLIA shall reimburse CONSULTANT on a time-and-expenses basis, based on the CONSULTANTS' 2005 Fee Schedule for Environmental Project Management Services included within Attachment E, to a maximum not to exceed **Nineteen thousand six hundred and twenty four dollars (\$19,624)** without the approval, by TRLIA, of a formal written amendment to this Agreement. CONSULTANT shall submit requests for payment after completion of services or no later than the tenth (10th) day of the month following rendering of services.

B.2 TRAVEL COSTS. TRLIA shall not pay CONSULTANT for meals, lodging or other travel costs not included in this Agreement unless said costs are approved in advance by the TRLIA representative in which case TRLIA shall pay its per diem rates in effect on the date of invoice upon presentation of invoices.

B.3 AUTHORIZATION REQUIRED. Services performed by CONSULTANT and not authorized in this Agreement shall not be paid for by TRLIA. Payment for additional services shall be made to CONSULTANT by TRLIA if, and only if, this Agreement is amended by both parties in advance of performing additional services.

ATTACHMENT C

OTHER TERMS

There are no applicable provisions under this Attachment C for this Agreement.

ATTACHMENT D

GENERAL PROVISIONS

D.1 INDEPENDENT CONSULTANT STATUS. At all times during the term of this Agreement, the following apply:

D.1.1 All acts of CONSULTANT shall be performed as an independent CONSULTANT and not as an agent, officer or employee of TRLIA. It is understood by both CONSULTANT and TRLIA that this Agreement is by and between two independent consultants and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association.

D.1.2 CONSULTANT shall have no claim against TRLIA for employee rights or benefits, including, but not limited to, seniority, vacation time, vacation pay, sick leave, personal time off, overtime, medical, dental or hospital benefits, civil service protection, disability retirement benefits, paid holidays or other paid leaves of absence.

D.1.3 CONSULTANT is solely obligated to pay all applicable taxes, deductions and other obligations, including, but not limited to, federal and state income taxes, withholding and Social Security taxes, unemployment and disability insurance and Workers' Compensation and Medi-Care payments.

D.1.4 As an independent CONSULTANT, CONSULTANT is not subject to the direction and control of TRLIA except as to the final result contracted for under this Agreement. TRLIA may not require CONSULTANT to change its manner of doing business, but may require it to redirect its efforts to accomplish what it has agreed to do.

D.1.5 CONSULTANT may provide services to others during the same period service is provided to TRLIA under this Agreement.

D.1.6 If in the performance of this Agreement any third persons are employed by CONSULTANT, such persons shall be entirely and exclusively under the direction, supervision and control of CONSULTANT. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the CONSULTANT.

D.1.7 As an independent CONSULTANT, CONSULTANT hereby indemnifies

and holds TRLIA harmless from any and all claims that may be made against TRLIA based on any contention by any Consultant employees or subconsultants that an employer-employee relationship exists by reason of this Agreement.

D.2 LICENSES, PERMITS, ETC. CONSULTANT represents and warrants to TRLIA that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONSULTANT to practice its profession. CONSULTANT represents and warrants to TRLIA that CONSULTANT shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for CONSULTANT to practice its profession at the time the services are performed. Failure of the CONSULTANT to comply with this provision shall authorize the TRLIA to immediately terminate this agreement notwithstanding Operative Provision No. 9.

D.3 TIME. CONSULTANT shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of CONSULTANT's obligations pursuant to this Agreement. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.

D.4 INSURANCE. Prior to rendering services provided by the terms and conditions of this Agreement, CONSULTANT or its subconsultants shall acquire and maintain during the term of this Agreement, insurance coverage, through and with an insurer acceptable to TRLIA, naming the TRLIA and any related agency governed by the Board of Supervisors which is letting the contract or for whom the services under the contract are being provided, and TRLIA's, or related agency's, officials, employees, and volunteers as additional insured, (hereinafter referred to as "the insurance"), with the exception of Professional Errors and Omissions Liability Insurance. The limits of insurance herein shall not limit the liability of the CONSULTANT hereunder.

D.4.1 TERM. Policies of insurance shall be in effect during the term of this Agreement and shall provide that they may not be canceled without first providing TRLIA with thirty (30) days written notice of such intended cancellation. If CONSULTANT fails to maintain the insurance provided herein, TRLIA may secure such insurance and deduct the cost thereof from any funds owing to CONSULTANT.

D.4.2 MINIMUM SCOPE OF INSURANCE. CONSULTANT shall procure insurance covering general liability, automobile liability, and workers' compensation. Coverage shall be at least as broad as:

- (a) Insurance Services Office (ISO) Commercial General Liability Occurrence form number CG 0001 or equivalent ISO form. A non-ISO form must be reviewed and approved by the TRLIA Risk Manager prior to acceptance of the Agreement.
- (b) Insurance Services Office Business Auto Coverage form

number CA 0001 0187 covering Automobile Liability, code I "any auto" and Endorsement CA 0029.

(c) Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

(d) If this Agreement is for the provision of professional services, Professional Errors and Omissions Liability Insurance, with a standard insurance industry coverage form subject to TRILIA approval.

D.4.3 OTHER INSURANCE PROVISIONS. The policies are to contain, or be endorsed to contain the following provisions:

(a) General Liability and Automobile Liability Coverages.

(i) The TRILIA and the public entity awarding the contract if other than the TRILIA, and their officials, employees and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the CONSULTANT; products and completed operations of the CONSULTANT; premises owned, leased, occupied, or used by the CONSULTANT; or automobiles owned, leased, hired, or borrowed by the CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to the TRILIA, its officials, employees or volunteers.

(ii) The CONSULTANT's insurance coverage shall be primary insurance as respects the TRILIA, its officials, employees and volunteers and any other insureds under this Agreement. Any insurance or self-insurance maintained by the TRILIA, its officials, employees and volunteers or other insureds shall be excess of the CONSULTANT's insurance and shall not contribute with it.

(iii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the TRILIA, its officials, employees and volunteers or other insureds under this Agreement.

(iv) The insurance policy required by this clause shall be endorsed to state that the CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(b) Worker's Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the TRIIA, its officials, employees and volunteers or other insureds under this Agreement.

(c) All Coverages. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by mail has been given to the TRIIA.

D.4.4 ACCEPTABILITY OF INSURERS. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

D.4.5 MINIMUM LIMITS OF INSURANCE. CONSULTANT shall maintain limits no less than:

(a) **Commercial General Liability: One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.** If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit.

(b) **Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury or property damage.**

(c) **Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of One Million Dollars (\$1,000,000) per accident.**

(d) **Professional Errors and Omissions Liability (if required):** Policy limits of not less than One Million Dollars (\$1,000,000) per incident and One Million Dollars (\$1,000,000) annual aggregate, with deductible or self-insured portion not to exceed Fifty Thousand Dollars (\$50,000). Coverage may be made on a claims-made basis with a "Retro Date" either prior to the date of the Agreement or the beginning of the Agreement services. If claims-made, coverage must extend to a minimum of twelve-months beyond completion of the services. If coverage is canceled or non-renewed and not replaced with another claims-made policy form with a "Retro Date" prior to the Agreement effective date, the CONSULTANT must purchase "extended reporting" coverage for a minimum of twelve (12) months after completion of services.

D.4.6 SUBCONSULTANTS. In addition to the above policies, if CONSULTANT hires a subconsultant under this Agreement CONSULTANT shall include all subconsultants as insureds under its policies or shall furnish separate certificates and endorsements for each subconsultant. All coverages for subconsultants shall be subject to all applicable requirements stated herein. If CONSULTANT requires subconsultants to provide insurance coverage, then CONSULTANT shall be named as an additional insured under such policy or policies.

D.4.7 DEDUCTIBLES AND SELF-INSURED RETENTIONS. Except as otherwise provided in this Agreement, any deductibles or self-insured retentions must be declared to and approved by the TRLIA. At the option of the TRLIA either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the TRLIA, its officials, employees and volunteers; or, the CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D.4.8 VERIFICATION OF COVERAGE.

(a) CONSULTANT shall furnish TRLIA with Certificates of Insurance and with original endorsements effecting coverage required by this clause. The certificate(s) and endorsement(s) for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificate(s) and endorsement(s) are to be on forms provided by the TRLIA or on forms received and approved by the TRLIA before work commences. TRLIA reserves the right to require complete, certified copies of all required insurance policies at any time.

(b) CONSULTANT shall not render services under the terms and conditions of this Agreement unless each type of insurance coverage and endorsement is in effect and CONSULTANT has delivered the certificate(s) of insurance and endorsement(s) to TRLIA as previously described. If CONSULTANT shall fail to procure and maintain said insurance, TRLIA may, but shall not be required to, procure and maintain the same, and the premiums of such insurance shall be paid by CONSULTANT to TRLIA upon demand. The policies of insurance provided herein which are to be provided by CONSULTANT shall be for a period of time sufficient to cover the term of the Agreement, including TRLIA's acceptance of CONSULTANT's work. It is understood and agreed that thirty (30) days prior to the expiration of any policy of insurance, CONSULTANT will deliver to TRLIA certificate(s) and endorsement(s) evidencing a renewal or new policy to take the place of the policy expiring.

D.5 INDEMNITY. CONSULTANT shall defend, indemnify, and hold harmless TRLIA, its elected and appointed councils, boards, commissions, officers, agents, and employees from any liability for damage or claims for damage for personal injury, including death, as well as for property damage, to the extent damages arise from the willful misconduct or negligent acts or omissions of CONSULTANT in the performance of services rendered under this Agreement by CONSULTANT, or any of CONSULTANT's officers, agents, employees, Consultants, or subconsultants.

D.6 CONSULTANT NOT AGENT. Except as TRLIA may specify in writing, CONSULTANT shall have no authority, express or implied, to act on behalf of TRLIA in any capacity whatsoever as an agent. CONSULTANT shall have no authority, express or implied, pursuant to this Agreement to bind TRLIA to any obligation whatsoever.

D.7 ASSIGNMENT PROHIBITED. CONSULTANT may not assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no legal effect.

D.8 PERSONNEL. CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. In the event that TRLIA, in its sole discretion, at any time during the term of this Agreement, desires the removal of any person or persons assigned by CONSULTANT to perform services pursuant to this Agreement, CONSULTANT shall remove any such person immediately upon receiving written notice from TRLIA of its desire for removal of such person or persons.

D.9 STANDARD OF PERFORMANCE. CONSULTANT shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged. All products of whatsoever nature which CONSULTANT delivers to TRLIA pursuant to this Agreement shall be prepared in a workmanlike manner and shall conform to the standards or quality normally observed by a person practicing in CONSULTANT's profession.

D.10 POSSESSORY INTEREST. The parties to this Agreement recognize that certain rights to property may create a "possessory interest", as those words are used in the California Revenue and Taxation Code, §107. For all purposes of compliance by TRLIA with Section 107.6 of the California Revenue and Taxation Code, this recital shall be deemed full compliance by the TRLIA. All questions of initial determination of possessory interest and valuation of such interest, if any, shall be the responsibility of the TRLIA Assessor and the contracting parties hereto. A taxable possessory interest may be created by this contract; and if created, the party in whom such an interest is vested will be subject to the payment of property taxes levied on such an interest.

D.11 TAXES. CONSULTANT hereby grants to the TRLIA the authority to deduct from any payments to CONSULTANT any TRLIA imposed taxes, fines, penalties and related charges which are delinquent at the time such payments under this Agreement are due to CONSULTANT.

D.12 TERMINATION. Upon termination of this Agreement as otherwise provided herein, CONSULTANT shall immediately cease rendering service upon the termination date and the following shall apply:

D.12.1 CONSULTANT shall deliver copies of all writings prepared by it pursuant to this Agreement. The term "writings" shall be construed to mean and include: handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing and form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.

D.12.2 TRLIA shall have full ownership and control of all such writings or other communications delivered by CONSULTANT pursuant to this Agreement.

D.12.3 TRLIA shall pay CONSULTANT the reasonable value of services rendered by CONSULTANT to the date of termination pursuant to this Agreement not to exceed the amount documented by CONSULTANT and approved by TRLIA as work accomplished to date; provided, however, TRLIA shall not in any manner be liable for lost profits which might have been made by CONSULTANT had CONSULTANT completed the services required by this Agreement. In this regard, CONSULTANT shall furnish to TRLIA such financial information as in the judgment of the TRLIA is necessary to determine the reasonable value of the services rendered by CONSULTANT. In the event of a dispute as to the reasonable value of the services rendered by CONSULTANT, the decision of the TRLIA shall be final. The foregoing is cumulative and does not affect any right or remedy which TRLIA may have in law or equity.

CONSULTANT may terminate its services under this Agreement upon thirty (30) days written notice to the TRLIA, without liability for damages, if CONSULTANT is not compensated according to the provisions of the Agreement or upon any other material breach of the Agreement by TRLIA.

D.13 NON-DISCRIMINATION. Throughout the duration of this Agreement, CONSULTANT shall not unlawfully discriminate against any employee of the CONSULTANT or of the TRLIA or applicant for employment or for services or any member of the public because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, age, sex or sexual orientation. CONSULTANT shall ensure that in the provision of services under this Agreement, its employees and applicants for employment and any member of the public are free from such discrimination. CONSULTANT shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900, et seq.). The applicable regulations of the Fair Employment Housing Commission implementing Government Code Section 12900, set forth in Chapter 5, 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. CONSULTANT shall also abide by the Federal Civil Rights Act of 1964 and all amendments thereto, and all administrative rules and regulations issued pursuant to said Act. CONSULTANT shall give written notice of its obligations under this clause to any labor agreement. CONSULTANT shall include the non-discrimination and compliance provision of this paragraph in all subcontracts to perform work under this Agreement.

D.14 REHABILITATION ACT OF 1973/AMERICANS WITH DISABILITIES ACT OF 1990. In addition to application of the non-discrimination provision of this Agreement, above,

CONSULTANT agrees to comply with all provisions of section 504 et seq. of the Rehabilitation Act of 1973, and with all provisions of the Americans with Disabilities Act of 1990, and all amendments thereto, and all administrative rules and regulations issued pursuant to said Acts, pertaining to the prohibition of discrimination against qualified handicapped and disabled persons, in all programs or activities, as to employees or recipients of services.

D.15 OWNERSHIP OF INFORMATION. All professional and technical information developed under this Agreement and all work sheets, reports, and related data shall become the property of TRLIA, and CONSULTANT agrees to deliver reproducible copies of such documents to TRLIA on completion of the services hereunder. The TRLIA agrees to indemnify and hold CONSULTANT harmless from any claim arising out of reuse of the information for other than this project. CONSULTANT shall retain copies of said documents for their records

D.16 WAIVER. A waiver by any party of any breach of any term, covenant or condition herein contained or a waiver of any right or remedy of such party available hereunder at law or in equity shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained or of any continued or subsequent right to the same right or remedy. No party shall be deemed to have made any such waiver unless it is in writing and signed by the party so waiving.

D.17 COMPLETENESS OF INSTRUMENT. This Agreement, together with its specific references and attachments, constitutes all of the agreements, understandings, representations, conditions, warranties and covenants made by and between the parties hereto. Unless set forth herein, neither party shall be liable for any representations made express or implied.

D.18 SUPERSEDES PRIOR AGREEMENTS. It is the intention of the parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, representations, or agreements, written or oral, between the parties hereto.

D.19 ATTORNEY'S FEES. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fee, which may be set by the Court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such party may be entitled.

D.20 CAPTIONS. The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

D.21 DEFINITIONS. Unless otherwise provided in this Agreement, or unless the context otherwise requires, the following definitions and rules of construction shall apply herein.

D.21.1 NUMBER AND GENDER. In this Agreement, the neuter gender includes the

feminine and masculine, and the singular includes the plural, the word "person" includes corporations, partnerships, firms or associations, wherever the context so requires.

D.21.2 MANDATORY AND PERMISSIVE. "Shall" and "will" and "agrees" are mandatory. "May" is permissive.

D.22 TERM INCLUDES EXTENSIONS. All references to the term of this Agreement or the Agreement Term shall include any extensions of such term.

D.23 SUCCESSORS AND ASSIGNS. All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

D.24 MODIFICATION. No modification or waiver of any provision of this Agreement or its attachments shall be effective unless such waiver or modification shall be in writing, signed by all parties, and then shall be effective only for the period and on the condition, and for the specific instance for which given.

D.25 COUNTERPARTS. This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

D.26 OTHER DOCUMENTS. The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

D.27 PARTIAL INVALIDITY. If any term, covenant, condition or provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provision and/or provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

D.28 JURISDICTION. It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a Court of competent jurisdiction in the County of Yuba, State of California.

D.29 CONTROLLING LAW. The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

D.30 TIME IS OF THE ESSENCE. Time is of the essence of this Agreement and each covenant and term a condition herein.

D.31 AUTHORITY. All parties to this Agreement warrant and represent that they have the

power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, estates or firms represented or purported to be represented by such entity(s), person(s), estate(s) or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Further, by entering into this Agreement, neither party hereto shall have breached the terms or conditions of any other contract or agreement to which such party is obligated, which such breach would have a material effect hereon.

D.32 CONFLICT OF INTEREST. Neither a TRLIA employee whose position in TRLIA enables such employee to influence the award of this Agreement or any competing Agreement, nor a spouse or economic dependent of such employee, shall be employed in any capacity by CONSULTANT herein, or have any other direct or indirect financial interest in this Agreement.

CONSULTANT may be subject to the disclosure requirements of the TRLIA conflict of interest code if in a position to make decisions or influence decisions that could have an effect on the CONSULTANT's financial interest. The TRLIA Administrator shall determine in writing if CONSULTANT has been hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in the Yuba TRLIA Conflict of Interest Code.

D.33 NOTICES. All notices and demands of any kind which either party may require or desire to serve on the other in connection with this Agreement must be served in writing either by personal service or by registered or certified mail, return receipt requested, and shall be deposited in the United States Mail, with postage thereon fully prepaid, and addressed to the party so to be served as follows:

If to "TRLIA":

TRLIA
County of Yuba
Attn: Kent McClain
915 8th Street, Suite 119
Marysville, CA 95901

With a copy to:

TRLIA Counsel
County of Yuba
915 8th Street, Suite 111
Marysville, CA 95901

If to "CONSULTANT":

Jones & Stokes Associates
Attn: Chris Elliott
2600 V Street
Sacramento, CA 95818

Plumas Lakes Development in A-99 Approval Project CEQA Initial Study/Negative Declaration for Yuba County

Task 1.0. CEQA Phase 1—Initial Study

1.1 Draft Project Description

Jones & Stokes will prepare a project description reflective of the level of detail typically found in an initial study project description. Jones & Stokes staff will work closely with Three River's Levee Improvement Authority's (TRILA) environmental project manager to prepare an accurate and thorough project description. Our current understanding of the project is that Yuba County wishes to approve modifications to the Yuba County Floodplain Management Ordinance that specifies conditions for development in the A-99 flood zone. Although the Plumas Lakes area, Linda, and Olivehurst are currently not mapped within the floodplain, the Federal Emergency Management Agency (FEMA) may designate these areas as A-99 in the near future. To allow development consistent with previously adopted general and specific plans, Yuba County seeks to modify the ordinance pertaining to the requirements of development in A-99 designated areas. The ordinance would be modified to distinguish between an A-99 zone and a designated floodplain zone, which would allow construction in an A-99 zone to proceed without some of the restrictions imposed on development in the 100-year floodplain. Yuba County anticipates that shortly after these areas are designated as A-99, the necessary repairs to the flood control system will result in re-mapping these areas as outside the floodplain. Currently, Yuba County believes an Initial Study/Negative Declaration will fully disclose the environmental impacts of allowing this additional development. The project description will describe the extent of the development, background information, and timing of the proposed approval of the ordinance and associated development in the potential A-99 area.

We assume that the TRILA environmental project manager and the County recognize the controversial nature of allowing additional development within an A-99 zone and that certifying a Negative Declaration or Mitigated Negative Declaration may be legally challenged and an outcome of such a challenge may require preparing an Environmental Impact Report if the Yuba County wishes to move forward with the project.

1.2 Draft Initial Study

Concurrent with Task 1.1, Jones & Stokes will begin preparing the other sections of the initial study. The initial study will include an introduction, environmental setting, and impacts and mitigation measures if significant impacts are identified. We propose that the initial study address each of the topics indicated in the environmental checklist form in the State California Environmental Quality Act (CEQA) Guidelines. The impacts and mitigation chapter will include a discussion of the criteria for determining significance of an impact, impact mechanisms, and the impact assessment. As the analysis is being conducted, Jones & Stokes will keep the environmental project manager informed regarding the status and the conclusions of the impact analysis. We have assumed that the IS will be drafted based on existing data sources and that the analysis will not require an excessive collection effort or new field surveys.

If significant impacts are identified, the project team will propose mitigation to reduce those impacts to a less-than-significant level. We will develop mitigation that can be readily incorporated into a mitigation reporting and monitoring plan.

Our pre-project evaluation suggests that the primary environmental issue associated with the project is temporary increased hazards as a result of flooding, and increases in population.

Deliverables:

- Draft Initial Study (5 copies)

1.3 Yuba County Review—Yuba County review of Draft Initial Study

Comments/Assumptions:

- Assume a one-week review.

1.4 Prepare Initial Study

Under this task, Jones & Stokes will incorporate Yuba County's comments into a final version of the initial study. If necessary, we will meet with Yuba County staff to review the draft initial study and discuss Yuba County comments.

Deliverables:

- Initial Study (25 copies)

Task 2.0. CEQA Phase II—Negative Declaration and Notices

2.1 Prepare Administrative Draft Mitigated Negative Declaration

We have assumed that a mitigated negative declaration will be prepared for the project. The draft negative declaration will include a brief description of the project and proposed findings that the project will not result in a significant impact on the environment.

Deliverables:

- Draft Mitigated Negative Declaration (5 copies)

2.2 Yuba County Review

Yuba County review Draft Mitigated Negative Declaration.

Comments/Assumptions:

- Assume a three day review.

2.3 Prepare Mitigated Negative Declaration

Jones & Stokes will incorporate Yuba County's comments into a mitigated negative declaration.

Deliverables:

- Mitigated Negative Declaration (25 copies)

2.4 File the Notice of Intent

Once the draft is complete, Jones & Stokes will print and distribute copies of the IS to the appropriate parties and file necessary notices with the State Clearinghouse, the Yuba County Clerk, and the local newspaper.

Deliverables:

- Notice of Intent will be published in the Appeal-Democrat newspaper for a cost of approximately \$525.

2.5 30-Day Public Review

Public review period for Agency review and other interested parties.

2.6 Review Comments

Jones & Stokes will assist Yuba County in reviewing and considering agency and public comments on the Negative Declaration. Jones & Stokes will assist in preparing the administrative record on how agency and public comments were considered by the Yuba County.

Deliverables:

Comment responses prepared for administrative record.

2.7 Negative Declaration adopted by Yuba County Supervisors

After public comments are addressed, Yuba County Supervisors will adopt the Negative Declaration.

2.8 File Notice of Determination

Jones & Stokes will file the Notice of Determination with the State Clearinghouse and the County Clerk. Jones & Stokes will also file the required filing fee of \$25 for the County and the required review fee of \$1,250 for the Department of Fish and Game.

2.9 Prepare Mitigation Reporting and Monitoring Plan

Yuba County must prepare and adopt a mitigation reporting and monitoring plan within two months of adopting the negative declaration. The mitigation reporting and monitoring plan will describe the mitigation measures, how the measures will be implemented, who will be responsible for implementing the measures, and performance standards.

Deliverables:

Mitigation Reporting and Monitoring Plan (5 copies)

Comments and Assumptions:

We assume that the mitigation reporting and monitoring plan would be prepared based on final mitigation adopted in the negative declaration, however, the proposed plan could be included in the review draft of the initial study at Yuba County's discretion.



THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

GOVERNMENT CENTER – 915 8TH STREET, SUITE 115
MARYSVILLE, CA 95901-5273
(530) 749-7575 (530) 749-7312 Fax

May 16, 2006

TO: Three Rivers Levee Improvement Authority Board
FROM: Ric Reinhardt, Program Manager *Ric Reinhardt*
SUBJECT: Consider Contractual Agreement with Bender Rosenthal, Inc. for TRLIA
Phase 4 Feather River Right of Way Acquisition

Recommended Action

Approve an amendment to the existing contract with Bender Rosenthal, Inc. (BRI) for the TRLIA Phase 4 - Feather River Right of Way Acquisition. The specific contract terms are detailed in the attached document (i.e., the contract document).

Discussion

The Phase 4 Feather River section of the TRLIA project comprises the east bank levee of the Feather River from the Bear River setback levee to the Yuba River (Approximately 13.6 miles). A problem identification study recently completed by Kleinfelder, under contract to TRLIA, confirmed inadequacies in certain reaches of the levee. Current contract efforts are evaluating the feasibility of a setback levee from project levee mile (PLM) 17.1 to 23.6. Current efforts are also completing an Environmental Impact Report for the entire Feather Phase 4 reach. The decision has already been made to strengthen in place the remainder of the Feather levee. These portions are Levee Mile 13.3 to 17.1 and 23.6 to 26.1, a total of 6.3 miles of levee. It is proposed to construct the strengthen in place portion of the levee in 2007. The Board has already approved a contract with GFI for design and preparation of contract documents for remediation of these sections of levee. Adequate right of way (ROW) will have to be acquired to construct the designed remediation. This effort with BRI is to accomplish all ROW planning and management, appraisals, acquisition, relocation assistance, and condemnation support for acquisition of ROW identified for the strengthen in place portions of the Feather River. Additional ROW acquisition will be required in the reach of the possible Feather River setback levee once the decision is made on the remediation measure to implement in that reach. That future ROW effort is not included in the scope of this contract amendment.

Fiscal Impact

The contract amendment would increase the existing contract by \$469,303 for services on a time-and-expenses basis, to a maximum amount not exceeding \$1,717,181 without prior authorization by TRLIA. The Reclamation Board adopted a resolution at their April 21 Board meeting that lifted the building permit restriction. Approval of this resolution has provided an additional level of assurance that the Phase 4 finance plan will be implemented in June/July of this year. The BRI contract amendment is a time and materials contract that can be terminated without penalty. The exposure for work to be completed through July is estimated at \$80,000.

SECOND AMENDMENT
TO
AGREEMENT BETWEEN
THREE RIVERS LEVEE IMPROVEMENT AUTHORITY
AND
BENDER ROSENTHAL, INC

THIS SECOND AMENDATORY AGREEMENT is made and entered into this _____ day of May 2006, by and between the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY ("TRLIA"), a Joint Powers Authority, TRLIA and BENDER ROSENTHAL, INC. ("SUB CONSULTANT")

RECITALS:

WHEREAS, TRLIA and SUB CONSULTANT entered into a agreement to provide basic services dated March 1, 2005, ("AGREEMENT");

WHEREAS, TRLIA and SUB CONSULTANT entered into the first Amendatory Agreement to provide basic services dated March 1, 2006.

WHEREAS, Attachment B.1 of the AGREEMENT, state that modifications or amendments to the terms of the AGREEMENT shall be in writing and executed by both parties;

WHEREAS, the TRLIA and CONTRACTOR desire to amend the Agreement;

NOW, THEREFORE, the TRLIA and CONTRACTOR agree as follows:

1. Exhibit A of the AGREEMENT shall be amended to perform those additional services described in Exhibit A attached to this SECOND AMENDMENT.
2. Article 4 of the AGREEMENT shall be revised to increase the price ceiling for basic services by \$469,303 from \$1,247,878.00 to: \$1,717,181.00.
3. Article 2 of the AGREEMENT shall be revised to extend the "TERM" of the contract from May 30, 2006 to June 30, 2007.

All other terms and conditions contained in the Agreement shall remain in full force and effect.

This Amended agreement is hereby executed on this _____ day of _____, 2006.

"TRLIA"

"SUB CONSULTANT"

BY: _____
"THREE RIVERS LEVEE
IMPROVEMENT AUTHORITY"

BY: _____
"BENDER ROSENTHAL, INC."

APPROVED AS TO FORM,

The County of Yuba

OFFICE OF THE COUNTY ADMINISTRATOR

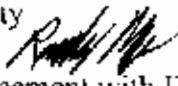
GOVERNMENT CENTER - 916 8TH STREET, SUITE 116
MARYSVILLE, CALIFORNIA 95901-5273



ROBERT BENDORF
COUNTY ADMINISTRATOR
RANDY MARGO
ASSISTANT COUNTY ADMINISTRATOR
JOHN FLEMING
ECONOMIC DEVELOPMENT COORDINATOR
GRACE M. MULL
ADMINISTRATIVE ANALYST
TEENA L. CARLQUIST
EXECUTIVE ASSISTANT

(530) 749-7575
FAX (530) 749-7312

May 16, 2006

TO: Three Rivers Levee Improvement Authority
FROM: Randy Margo, Deputy Executive Director 
SUBJECT: Consider Approval of Levee Funding Agreement with Dunmore Homes

Recommended Action

Approve attached levee funding agreement between the Three Rivers Levee Improvement Authority (TRLIA) and Dunmore Orchard LLC.

Reason for Recommendation

The Dunmore development is located in East Linda and within the 200-year flood plain zone, as determined by a hydraulic analysis from MBK Engineers. Consequently, the development benefits from levee improvements currently being made on the Yuba River. As a result, Dunmore Orchard LLC has agreed to fund a negotiated levee fee of \$2,950 per housing unit.

Background

County staff and consultants have been developing an impact fee program to assist in financing levee improvements within the southwest area of Yuba County. Since the additional work needed on the levees along with the cost for these improvements (commonly referred to as Phase 4) have just recently been identified, some developers in this area have previously obtained approved tentative maps that do not have any conditions requiring the payment of impact fees. Dunmore Orchard LLC is a developer that has an approved tentative map without a condition to pay a levee impact fee or annex into a levee community facility district. Consequently, County and TRLIA staff members have been meeting with representatives of Dunmore Orchard LLC to discuss a mutually beneficial approach to financing levee improvements that will benefit property owners occupying the homes in this area.

Discussion

The attached agreement stipulates that Dunmore Orchard LLC will pay funds to TRLIA for its Levee Improvement Program to satisfy any fees that would otherwise be required from the developer for the Program. In addition, the developer will not be required to

join the Community Facilities District anticipated to fund the Levee Improvement Program. Furthermore, TRLIA, the County of Yuba, and Dunmore Orchard LLC acknowledge that the funds to be collected under this Agreement may be more or less than would be collected under the Levee Improvement Impact Fee.

Under the terms of the agreement, Dunmore Orchard LLC agrees to pay TRLIA the sum of \$2,950 per housing unit, which shall be used by TRLIA solely for the purposes of the Levee Improvement Program. The developer shall provide funding to TRLIA as follows:

1. For Tract 6, Dunmore Orchard LLC shall pay \$2,950 each for 121 units (for a total of \$356,950) at recordation of final map.
2. For Tract 7, Dunmore Orchard LLC shall pay \$2,950 each for 81 units (for a total of \$238,950) at recordation of final map.
3. For Tract 8, Dunmore Orchard LLC shall pay \$2,950 each for each unit at recordation of final map (total estimated number of 47 units).

In consideration of the funding provided under this agreement, TRLIA and the County of Yuba agree that the development will not be included in any Community Facilities District (CFD) or other financing vehicle created by TRLIA. In addition, TRLIA and the County of Yuba agree that any levee impact fee adopted by either agency will not apply to this development.

Dunmore Orchard LLC does agree to support the creation of any necessary legal structure to fund the maintenance of the levees, so long as the initial costs per housing unit per year does not exceed \$100 and any future annual Consumer Price Index increases.

This agreement does not obligate the County to provide any or all necessary discretionary approvals for the developer to build this development. However, the County agrees that its staff will work to expedite the processing of issuance of bonds for County of Yuba CFD No. 2005-1.

Fiscal Impact

Approval of this agreement will result in an aggregate amount for the Levee Improvement Program of approximately \$734,550.

**LEVEE FUNDING AGREEMENT
REGARDING THE ORCHARD
WITH DUNMORE ORCHARD, LLC**

THIS LEVEE FUNDING AGREEMENT (the "**Agreement**") dated May 2, 2006 for convenience, is entered into by and between the COUNTY OF YUBA, a political subdivision of the State of California (the "**County**"), the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, a joint powers authority providing levee improvements in southern Yuba County (the "**TRLIA**"), and Dunmore Orchard, LLC, a California Limited Liability Company ("**Developer**"), with respect to the following facts:

RECITALS:

A. Along with other companies, Developer is developing a residential subdivision commonly known as The Dunmore Orchard (the "**Development**"). The Development is described in Exhibit A-1 and shown on Exhibit A-2, which are attached hereto and made a part hereof. The Development is intended to be developed with approximately 249 single family dwelling units by the Developer.

B. TRLIA is currently in the process of designing and installing capital improvements to the overall levee system for southern Yuba County ("**Levee Improvement Program**"), which improvements TRLIA believes will benefit the Development and other property within the County. TRLIA has completed Phase 1 of the Levee Improvement Program and is in the process of completing construction of Phases 2 and 3 thereof. As the next step in this program, TRLIA will soon begin the design for Phase 4, which Phase 4 improvements, along with Phase 1 and 2 improvements, TRLIA believes will benefit the Development. TRLIA, in cooperation with County, is in the process of developing a funding source to fund the design and implementation of the remainder of the Levee Improvement Program. Funding for Phase 4 of the Levee Improvement Program will likely include adoption by the County of a Levee Improvement Impact Fee.

C. Developer is willing to pay funds to TRLIA for its Levee Improvement Program, as satisfaction of any fees that would be otherwise required from Developer for the Levee Improvement Program, and without need for Developer to join the Community Facilities District that will be formed to fund the Levee Improvement Program. The Parties acknowledge that the funds to be collected under this Agreement may be more or less than would be collected under the Levee Improvement Impact Fee.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties hereto agree as follows:

1. Recitals. Each of the above recitals is incorporated herein and is true and correct.

2. Advance Funding for Levee Program.

(a) Consistent with the schedule contained in subsection (b) of this Section, Developer shall provide to TRLIA the sum of \$2,950 per unit for the Development, which funds shall be used by TRLIA solely for the purposes of the Levee Improvement Program.

(b) Developer shall provide funding to TRLIA as follows:

(i) For Tract 6, Dunmore Orchard, LLC shall pay \$2,950 each for 121 units (for a total of \$356,950) at recordation of final map.

(ii) For Tract 7, Dunmore Orchard, LLC shall pay \$2,950 each for 81 units (for a total of \$238,950) at recordation of final map.

(iii) For Tract 8, Dunmore Orchard, LLC shall pay \$2,950 each for each unit at recordation of final map (total estimated number of 47 units).

3. Satisfaction of Levee Funding Obligation. In consideration of the funding provided under this Agreement, County and TRLIA agree that the Development will not be included in any Community Facilities District or other financing vehicle created by TRLIA or County for purposes of funding the Levee Improvement Program. County and TRLIA further agree that any levee impact fee adopted by the County or TRLIA to fund the Levee Improvement Program will not apply to the Development. Notwithstanding the previous two sentences, the Developer agrees, as to any units controlled by it, to not protest inclusion in a district, improvement area, or other legal structure designed to fund ongoing levee maintenance on the facilities constructed and improved under the Levee Improvement program. Developer agrees to support the creation of any necessary legal structure to fund such maintenance so long as the initial cost per unit per year does not exceed \$100 and any increases are relative to the Consumer Price Index. Developer understands that County staff intends to recommend that similarly situated developers will also be required to fund levee maintenance.

4. No Reimbursement. Developer acknowledges that no reimbursement of any portion of the amount advanced hereunder shall be due or payable to Developer from the County or TRLIA (i) whether or not a levee impact fee is adopted, or (ii) whether an adopted levee impact fee is less than the amount funded under this Agreement.

5. Notwithstanding the acceptance of the funding by County and TRLIA, this Agreement does not obligate the County to provide any or all necessary discretionary approvals for Developer to build the Development; nor may the County use the fact that the Development is not included in a Community Facilities District or other financing vehicle for levee improvements to deny any or all necessary discretionary approvals for Developer. However, County agrees that its staff will work to expedite the processing of issuance of bonds for County of Yuba CFD No. 2005-1.

6. Notices. Any notice to be provided pursuant to this Agreement shall be delivered to the following addresses:

TRLIA: _____	County: _____
--------------	---------------

Executive Director Three Rivers Levee Improvement Authority County of Yuba Government Center 915 Eighth Street, Suite 115 Marysville, California 95901-5273	Community Development Director County of Yuba 915 Eighth Street, Suite 115 Marysville, California 95901-5273
	Dunmore Orchard, LLC Kenneth R Allred Vice President of Land Northern California Division 8781 Sierra College Blvd, Suite 100 Granite Bay, CA 95746

Each party may change its address for delivery of notice by delivering written notice of such change of address to the other party.

7. Assignment. Developer may not assign any rights or interests in this Agreement except as all or a portion of the Development is sold.

8. Severability. Each provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of the Agreement, so long as the provisions determined to be illegal or invalid do not materially alter the essential terms of this Agreement.

9. Entire Agreement. This Agreement (including all Exhibits attached hereto) is the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. This Agreement may not be amended or terminated except by written instrument signed by the parties.

10. Attorney Fees. In the event any action is initiated by either party seeking to enforce any of the terms or provisions of this Agreement, the prevailing party in such action shall be entitled to an award of its reasonable attorneys' fees and costs from the other party hereto.

11. Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.

12. No Third Party Beneficiaries. No person or entity shall be deemed to be a third party beneficiary hereof, and nothing in this Agreement (either express or implied) is intended to confer upon any person or entity, other than the County, TRIJA, and the Developer, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

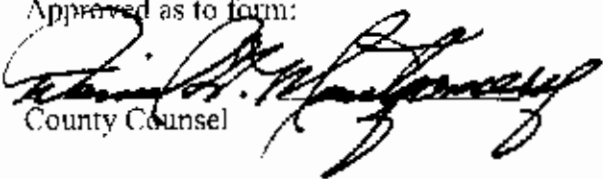
COUNTY OF YUBA, a political subdivision
of the State of California

By: _____
Name: _____
Title: _____

Attest:

Clerk of the Board

Approved as to form:


County Counsel

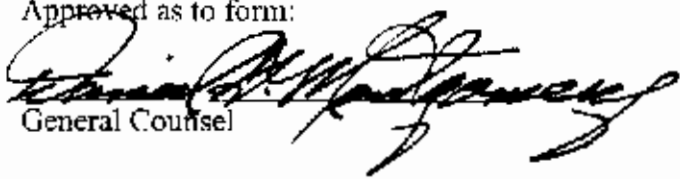
THREE RIVERS LEVEE IMPROVEMENT
AUTHORITY, a joint powers authority of the
State of California

By: _____
Name: _____
Title: _____

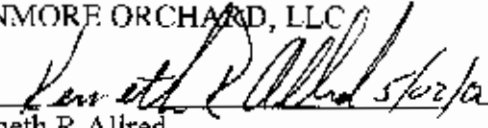
Attest:

Clerk of the Board

Approved as to form:


General Counsel

DUNMORE ORCHARD, LLC

By: 
Kenneth R Alfred
Vice President of Land, Northern California
Division

EXHIBITS:

- Exhibit "A-1" - Legal Description of Property
- Exhibit "A-2" - Map of Property



EXHIBIT A-1

Order No. 1204-1154
UPDATE
Version 2

EXHIBIT "A" LEGAL DESCRIPTION

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF YUBA, UNINCORPORATED AREA, AND IS DESCRIBED AS FOLLOWS:

A PORTION OF THE EAST ONE-HALF OF THE SOUTHWEST QUARTER AND A PORTION OF THE WEST ONE-HALF OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 15 NORTH, RANGE 4 EAST, M.D.M., YUBA COUNTY, CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH ONE-QUARTER SECTION CORNER OF SAID SECTION 28, SAID CORNER BEING MARKED UPON THE GROUND BY A 2.5" BRASS TOPPER AND THE TRUE POINT OF BEGINNING FOR THE HEREIN DESCRIBED PARCEL OF LAND THENCE NORTH 88 DEGREES 29 MINUTES 48 SECONDS EAST, ALONG THE SOUTH LINE OF SAID SECTION A DISTANCE OF 1326.35 FEET, TO THE SOUTHEAST CORNER OF THE WEST ONE-HALF OF THE SOUTHEAST QUARTER OF SECTION 28; THENCE NORTH 00 DEGREES 10 MINUTES 35 SECONDS WEST ALONG THE EAST LINE OF SAID WEST ONE-HALF, A DISTANCE OF 2648.98 FEET, TO THE NORTHEAST CORNER OF SAID WEST ONE-HALF; THENCE SOUTH 88 DEGREES 28 MINUTES 02 SECONDS WEST, ALONG THE NORTH LINE OF SAID SOUTHEAST QUARTER, 1102.36 FEET, TO A POINT FROM WHICH THE NORTHWEST CORNER OF SAID SOUTHEAST QUARTER, AS MARKED UPON THE GROUND BY A 1.25 INCH CAPPED IRON PIPE STAMPED L.S. 4208 BEARS SOUTH 88 DEGREES 28 MINUTES 02 SECONDS WEST, 234.01 FEET; THENCE SOUTH 01 DEGREE 31 MINUTES 58 SECONDS EAST, LEAVING SAID NORTH LINE, 113.05 FEET, TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE SOUTH, HAVING A RADIUS OF 980.00 FEET, AND A CENTRAL ANGLE OF 00 DEGREES 51 MINUTES 47 SECONDS, AND A LONG CHORD THAT BEARS SOUTH 88 DEGREES 20 MINUTES 41 SECONDS EAST, 14.76 FEET; THENCE EASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 14.76 FEET, TO THE END OF SAID CURVE; THENCE SOUTH 01 DEGREE 13 MINUTES 25 SECONDS WEST, 40.00 FEET; THENCE SOUTH 03 DEGREES 46 MINUTES 45 SECONDS WEST, 75.07 FEET; THENCE SOUTH 07 DEGREES 13 MINUTES 53 SECONDS WEST, 38.59 FEET; THENCE SOUTH 15 DEGREES 42 MINUTES 54 SECONDS WEST, 610.00 FEET; THENCE SOUTH 15 DEGREES 39 MINUTES 24 SECONDS WEST, 61.02 FEET; THENCE SOUTH 13 DEGREES 31 MINUTES 39 SECONDS WEST, 63.45 FEET; THENCE SOUTH 10 DEGREES 28 MINUTES 04 SECONDS WEST, 65.45 FEET; THENCE SOUTH 07 DEGREES 20 MINUTES 42 SECONDS WEST, 65.45 FEET; THENCE SOUTH 84 DEGREES 12 MINUTES 59 SECONDS EAST, 100.00 FEET, TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE EASTERLY, HAVING A RADIUS OF 1101.00 FEET, AND A CENTRAL ANGLE OF 01 DEGREE 07 MINUTES 35 SECONDS, AND A LONG CHORD THAT BEARS NORTH 06 DEGREES 20 MINUTES 49 SECONDS EAST, 21.64 FEET; THENCE NORTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 21.64 FEET, TO THE END OF SAID CURVE; THENCE SOUTH 83 DEGREES 05 MINUTES 24 SECONDS EAST, 140.17 FEET; THENCE SOUTH 04 DEGREES 51 MINUTES 03 SECONDS WEST, 73.12 FEET; THENCE SOUTH 00 DEGREES 31 MINUTES 00 SECONDS WEST, 75.01 FEET; THENCE SOUTH 00 DEGREES 36 MINUTES 46 SECONDS EAST, 979.00 FEET; THENCE SOUTH 89 DEGREES 23 MINUTES 14 SECONDS WEST, 475.00 FEET, TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 27.00 FEET, AND A CENTRAL ANGLE OF 90 DEGREES 00 MINUTES 00 SECONDS; THENCE SOUTHWESTERLY ALONG SAID CURVE AN ARC DISTANCE OF 42.41 FEET, TO THE END OF SAID CURVE; THENCE SOUTH 00 DEGREES 36 MINUTES 46 SECONDS EAST, 308.02 FEET, TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 27.00 FEET, AND A CENTRAL ANGLE OF 90 DEGREES 46 MINUTES 54 SECONDS; THENCE SOUTHEASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 42.78 FEET, TO THE END OF SAID CURVE;

CLTA Preliminary Report

EXHIBIT "A"
LEGAL DESCRIPTION continued

THENCE SOUTH 01 DEGREE 23 MINUTES 40 SECONDS EAST, 37.00 FEET, TO A POINT ON THE SOUTH LINE OF SECTION 28; THENCE NORTH 88 DEGREES 36 MINUTES 20 SECONDS EAST, ALONG SAID LINE, 221.66 FEET TO THE POINT OF BEGINNING.

THE BASIS OF BEARING FOR THIS LEGAL DESCRIPTION IS THE CALIFORNIA COORDINATE SYSTEM, ZONE 2, N.A.D. 83 AS ESTABLISHED BY GPS FROM PID 2036, EPOCH 1991.35
ALL DISTANCES ARE GRID, TO CONVERT GRID DISTANCE TO SURFACE DISTANCE, MULTIPLY BY THE COMBINATION FACTOR OF 1.000085.

EXCEPTING FROM A PORTION OF THE ABOVE DESCRIBED PROPERTY AN UNDIVIDED 1/2 INTEREST IN AND TO ALL MINERALS, OIL, GAS AND OTHER HYDROCARBONS AS CONTAINED IN THE DEED TO STOCK PETROLEUM CO., INC., A CORPORATION RECORDED MARCH 31, 1982 IN BOOK 773 OF OFFICIAL RECORDS, AT PAGE 228.

APN: 019-230-093

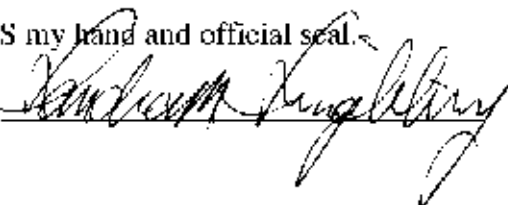
ACKNOWLEDGEMENT

State of California
County of Sutter

On April 14, 2006, before me, Sandra M. Singleterry personally appeared Kenneth R Allred, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature





THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

GOVERNMENT CENTER – 915 8TH STREET, SUITE 115
MARYSVILLE, CA 95901-5273
(530) 749-7575 (530) 749-7312 Fax

May 16, 2006

TO: Three Rivers Levee Improvement Authority Board
FROM: Ric Reinhardt, Program Manager *Ric Reinhardt*
SUBJECT: Ratify Agreement with Kleinfelder for Geotechnical Exploration Services

Recommended Action

Ratify work accomplished by Kleinfelder for Geotechnical Exploration Services. The specific scope of the explorations is detailed in the attached document (i.e., the scope of work). Amount of this effort did not exceed \$10,000.

Discussion

Design of the Yuba River Levee remediation between the UPRR and Simpson Lane requires raising of the levee. In one area of this levee raise, wood chips have been placed on the water side of the levee and these chips obscure the levee slope. The water side slope of the levee needed delineation so that the most efficient and effective way to raise the levee could be determined. This is the reach of levee work that is being accelerated for construction this summer. This delineation had to be done quickly so that construction of this reach this summer was not jeopardized. An effective boring program was outlined and accomplished by Kleinfelder that allows the designers to determine the location of the water side levee slope in this reach and also gives some indication if hazardous materials are evident in the wood chips.

Fiscal Impact

The price for this exploration effort did not exceed \$10,000.

FIRST AMENDMENT
TO
AGREEMENT BETWEEN
THREE RIVERS LEVEE IMPROVEMENT AUTHORITY
AND
KLEINFELDER INC.

THIS FIRST AMENDATORY AGREEMENT is made and entered into this ____ day of May 2006, by and between the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY (TRLIA), a Joint Powers Authority, and KLEINFELDER INC. ("CONTRACTOR").

RECITALS:

WHEREAS, the TRLIA and CONTRACTOR entered into an agreement to provide basic services dated April 19, 2005 ("AGREEMENT");

WHEREAS, Article B.3 of the AGREEMENT, states that modifications or amendments to the terms of the AGREEMENT shall be in writing and executed by both parties;

WHEREAS, the TRLIA and CONTRACTOR desire to amend the AGREEMENT;

NOW, THEREFORE, the TRLIA and CONTRACTOR agree as follows:

1. Exhibit A of the AGREEMENT shall be amended to perform those additional services described in the attachment to this FIRST AMENDMENT.
2. Article B.1 of the AGREEMENT shall be amended to increase the price ceiling for basic services by \$9,600 from \$520,000 to: **\$529,600.**
3. Article A.2 of the AGREEMENT shall be amended to extend the "TERM" of the contract from May 30, 2006 to July 31, 2006.

All other terms and conditions contained in the Agreement shall remain in full force and effect.

This AMENDED AGREEMENT is hereby executed on this ____ day of May 2006.

AUTHORITY

CONTRACTOR

BY: _____
"THREE RIVERS LEVEE
IMPROVEMENT AUTHORITY"

BY: _____
"KLEINFELDER INC."

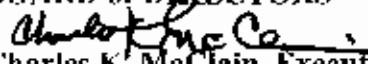
APPROVED AS TO FORM:
DANIEL G. MONTGOMERY

THREE RIVERS LEVEE IMPROVEMENT
AUTHORITY COUNSEL



THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

Government Center
915 Eighth Street, Suite 115
Marysville, CA 95901-5273
(530) 749-7575 (530) 749-7312 Fax

DATE: May 16, 2006
TO: BOARD of DIRECTORS
FROM: 
Charles K. McClain, Executive Director
SUBJECT: Second Implementation Agreement; Permit No. 17782

Recommended Action

Recommend approval of the attached "Second Implementation Agreement In Regard To State Reclamation Board Permit No. 17782" with any conforming and clarifying changes required after review and approval of the Agreement by the State Reclamation Board.

Background

The Three Rivers Levee Improvement Authority has previously executed an Implementation Agreement which laid out the TRLLIA's, RD 784's, and the County's agreement to the terms negotiated with the State Reclamation Board in regard to existing limits on building within the Plumas Lake Specific Plan and the North Arboga Study Area. TRLLIA has presented testimony to the State Reclamation Board that the limitation on the ability to issue building permits in 2006 is hindering its ability to implement a financing plan for Phase 4 Work, resulting in a delay of the flood control improvements required to provide 200 year protection to the lands within RD 784.

At its April 21, 2006 meeting, the State Reclamation Board approved a resolution by which the Reclamation Board expressed its intent to allow the building permit limitation for 2006 to be lifted under certain circumstances, thus allowing for the acceleration of certain Phase 4 Work and the completion of the Levee Improvement Program to achieve 200 year protection for the lands within RD 784 by 2008. The attached agreement is the vehicle to agree to the certain conditions proposed to and accepted by the State Reclamation Board, thus allowing for the lifting of the building permit limitation for 2006

Discussion

The attached Agreement would be a three way contract between Three Rivers, the County, and Reclamation District 784. The State Reclamation Board would be a third party beneficiary of this Agreement with rights of enforcement. The landowners would not be parties to this Agreement as all landowners obligations would be contained in the Phase 4 Funding Agreement being developed. Under this Second Implementation Agreement, there are two major categories of obligations: those of TRLLIA and those of the County:

TRLIA

In the Agreement, TRLIA commits to continue to use reasonable diligence to complete the Phase 4 Yuba Acceleration Work in 2006 and all elements of the Levee Improvement Program by 2008.

County

In the Agreement, County commits to continue to use reasonable diligence to inform residents within RD 784 of the risk of flooding and to further refine and improve the County's Evacuation Plan and Prehazard Mitigation Plan. County also agrees to limit the issuance of new final maps and building permits if the landowners default on their commitment to fund the \$135 million for levee improvements. While this is a distasteful obligation, it does constitute a lifting of the previously imposed more onerous requirement. County also agrees to implement any ordinance or resolutions required to implement the terms of this Agreement. Finally, County agrees that the building permit limitation will not be lifted until the Phase 4 Funding Agreement is executed.

Indemnity

This Agreement does include an indemnity provision. This indemnity provision is identical to the last one approved, both in language and scope (in other words, it does not commit TRLIA, County, or RD 784 to anything not already committed to).

The State Reclamation Board will be considering this Agreement at its May 19th meeting. Because the Reclamation Board may request changes to the Agreement at that meeting, it is requested that any approval by this Board be subject to conforming and clarifying changes to conform the Agreement to the final version approved by the State Reclamation Board.

Fiscal Impact

This Agreement results in no additional costs and clears the way for increased revenues into the TRLIA program as a result of the Phase 4 Funding Program.

**SECOND IMPLEMENTATION AGREEMENT
IN REGARD TO
STATE RECLAMATION BOARD PERMIT NO. 17782**

This Second Implementation Agreement ("Agreement"), dated for convenience this th day of May, 2006, is by and among the County of Yuba ("County"), the Three Rivers Levee Improvement Authority ("TRLIA"), and Reclamation District 784 ("RD 784").

1. **Definitions.** As used in this Agreement, the following terms shall have the following meanings:

a. **"Affected Area"** shall mean certain lands located within the Plumas Lake Specific Plan and the North Arboga Study Area, all as illustrated on Exhibit A, attached hereto and made a part hereof. As to any lands not included within the Affected Area, this Agreement shall have limited force and effect, as described herein.

b. **"Levee Improvement Program"** means the phase 1 work constructed by TRLIA in 2004, Phase 2 Work, Phase 3 Work, and Phase 4 Work, including all associated legal, environmental mitigation and restoration, land acquisition, and engineering support efforts.

c. **"Landowners"** shall mean those persons or entities holding an interest in lands within the Affected Area seeking building permits for use on those lands within the Affected Area, prior to completion of the Phase 4 Work.

d. **"Parties"** shall refer to all signatories to this Agreement.

e. **"Party"** shall refer to one signatory to this Agreement.

f. **"Phase 2 Work"** shall mean improvements to the existing levees along portions of the Western Pacific Interceptor Canal from station 0+00 to 332+50 and the right bank of the Bear River from station 130+00 to 169+00, and the construction of a landside seepage berm along the left (south) levee of the Yuba River from Highway 70 to the UPRR.

g. **"Phase 3 Work"** shall mean construction of the Setback levee on Bear River from approximately one mile north of Bear and Feather Rivers confluence to a point approximately two miles along the Bear River, including degradation of the remaining unimproved Bear River Levee.

h. **"Phase 4 Work"** shall mean work on the Feather and Yuba River Levees including Phase 4 Yuba Work and Phase 4 Feather Work.

i. **"Phase 4 Yuba Acceleration Work"** shall mean improvements to the existing left (south) Yuba River levee from the UPRR to Simpson Lane.

j. "Phase 4 Yuba Work" shall mean improvements to the existing left (south) Yuba River levee upstream of the UPRR, including Phase 4 Acceleration Work.

k. "Phase 4 Feather Work" shall mean improvements to the existing left (east) Feather River levee from the Bear River Setback levee to the Yuba River and may include a possible Feather Setback levee from Star Bend to Murphy Road.

l. "Potential Failure" shall mean either a failure to implement the financing program identified in section 4 below, or an inability by TRLIA, the County, and the Landowners to provide funding for the Levee Improvement Program consistent with the Cash Flow Schedule contained in Exhibit B (contained herein and hereby made a part hereof).

m. "UPRR" shall mean the Union Pacific Railroad, equivalent to Yuba River Project Levee Mile 0.92.

2. **Recitals.** This Agreement is made in regard to the following facts:

a. The County is a political subdivision of the State of California with planning and zoning authority over the Affected Area.

b. RD 784 is a Reclamation District formed under Water Code sections 50000 *et seq.* with certain responsibilities to maintain levees which provide some protection from flood for the Affected Area.

c. TRLIA is a Joint Powers Agency created by the County and RD 784 on April 6, 2004 with the purpose of assisting in providing improvements to the levee system located in the County and related to drainage improvements, and for other purposes.

d. Landowners hold interests in land within the Affected Area with various land use entitlement at various stages.

e. On September 23, 2004, TRLIA submitted to the State Reclamation Board ("Board") an amended application for Permit No. 17782, which permit would authorize improvements to the existing Project Levees along portions of the Western Pacific Interceptor Canal (from station 0+00 to 332+50) and the right bank of the Bear River (from station 130+00 to 169+00), and which would also authorize the construction of a new setback levee along portions of the right bank of the Bear River (from station 131+00 to a point approximately one mile north of the confluence of the Bear and Feather Rivers) and other work.

f. At its December 17, 2004 meeting, the Board issued Permit No. 17782 with Special Condition 13 that stated:

This permit is not valid until the public safety issue regarding the continued increase in human habitation in an area with known flood risk has been resolved to the satisfaction of the Board.

g. To provide assistance to TRLIA in determining what was required to achieve Board satisfaction pursuant to Special Condition 13, the Board created an Ad Hoc Committee

which met with TRLIA during seven public sessions. Throughout the two month period during which these sessions took place, TRLIA also held a series of meetings with the Landowners to assure that Landowner interests were represented in any proposals that might be presented to satisfy the Board. During these meetings with Landowner representatives, TRLIA and the Landowners were able to formulate a proposal which, on February 18, 2005, a majority of the Board agreed satisfied condition 13.

h. On February 22, 2005, the County adopted Ordinance No. 1340 (entitled "Interim Ordinance of the County of Yuba Controlling Issuance of Building Permits in the Plumas Lake Specific Plan Area and North Arboga Study Area and Directing Conditions of All New Tentative Maps in the Plumas Lake Specific Plan and North Arboga Study Area") to begin implementation of the proposal approved by the Board on February 18, 2005. As required by the Ordinance, the Ordinance was published in the Marysville Appeal-Democrat on March 4, 2005. Minor amendments, to conform Ordinance No. 1340 to the proposal made to and accepted by the Board, were made to Ordinance No. 1340 by the County on March 15, 2005 pursuant to Ordinance No. 1343.

i. In April of 2005, Yuba County, TRLIA, RD 784, and a number of other parties including certain holders of interest in land within the Affected Area, executed the Implementation Agreement in regard to State Reclamation Board Permit No. 17782 and County of Yuba Ordinance Nos. 1340 and 1343 ("Implementation Agreement"). While the State Reclamation Board was not a party to the Implementation Agreement, it was an express third party beneficiary of certain provisions of the Implementation Agreement.

j. By its terms, the Implementation Agreement obligated Yuba County and the landowner parties to limit the issuance of building permits within the Affected Area during 2005 and 2006 until such time as TRLIA completed Phase 2 Work and Phase 3 Work and presented certain information to the State Reclamation Board regarding Phase 4 Work.

k. TRLIA has presented testimony to the State Reclamation Board that the limitation on the ability to issue building permits in 2006 is hindering its ability to implement a financing plan for Phase 4 Work, resulting in a delay of the flood control improvements required to provide 200 year protection to the lands within RD 784.

l. At its April 21, 2006 meeting, the State Reclamation Board adopted Resolution No. 2006-____, by which the State Reclamation Board expressed its intent to allow the building permit limitation for 2006 to be lifted under certain circumstances, thus allowing for the acceleration of certain Phase 4 Work and the completion of the Levee Improvement Program to achieve 200 year protection for the lands within RD 784 by 2008.

m. The Parties now desire to enter into this Agreement to agree to the certain conditions proposed to and accepted by the State Reclamation Board, thus allowing for the lifting of the building permit limitation for 2006.

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

3. **Limits on Granting of Building Permits in the Affected Area.**

a. **Building Permits for 2006 and Beyond.** Upon satisfaction of the conditions specified in Section 3(e) below, and except as provided in Section 3(c) below, the building permit limitation for 2006 imposed by the Implementation Agreement shall no longer be binding upon the Parties or the Landowners.

b. **Notice of Potential Failure to Finance Program.** In the event of a Potential Failure, TRLIA shall take the following step to remedy the Potential Failure and to inform the State Reclamation Board of the possibility of the Potential Failure:

(1) Within 14 days after identification of a Potential Failure, TRLIA shall provide written notice to the State Reclamation Board of the Potential Failure. This notice shall include a description of the Potential Failure and an assessment of the potential impact of the Potential Failure, if not remedied, upon the completion schedule for the Levee Improvement Program.

(2) After notice is provided to the State Reclamation Board, TRLIA and the Landowners shall have 30 days in which to prepare and present a plan for corrective action. The plan shall be presented to the State Reclamation Board staff and/or the Three Rivers Subcommittee of the State Reclamation Board, at the election of the State Reclamation Board.

(3) The State Reclamation Board Staff and/or Subcommittee may consider the plan and forward the plan to the entire Reclamation Board at its next regularly scheduled meeting for consideration.

c. **Curative Actions to Address Potential Failure.** In the event of a Potential Failure, and after receipt and consideration of the plan developed pursuant to section 3(b)(2) above, the State Reclamation Board may request the following escalating levels of curative action to address the Potential Failure:

(1) Level 1: Continue to monitor and consider action at future date.

(2) Level 2: Require implementation of presented plan.

(3) Level 3: Notify TRLIA and the County to stop recording final maps in the Affected Area.

(4) Level 4: Notify TRLIA and the County to stop the issuance of building permits in the Affected Area.

d. **Implementation of Curative Actions.** Upon request by the State Reclamation Board pursuant to Section 3(c) above, TRLIA and the County shall take all necessary steps to implement the curative action requested by the State Reclamation Board. In addition to the steps to be taken pursuant to the previous sentence, the County may implement any of the curative actions identified under Section 3(c) above in order to address a Potential Failure, even if not so requested by the State Reclamation Board.

e. **Conditions for the Lifting of the 2006 Building Permit Limitations.** The building permit limitation for 2006 shall be lifted upon satisfaction of all of the following conditions:

- (1) Execution of this Second Implementation Agreement by County, TRLIA, and RD 784 and approval of this Second Implementation Agreement by the State Reclamation Board;
- (2) Execution of the Phase 4 Funding Agreement, as described by section 4 below, by the County, TRLIA, RD 784, and the number of Landowners sufficient to raise the required \$135 million;
- (3) The placement of the first call amount of \$20 million in an escrow account for use for Phase 4 Yuba Acceleration Work; and
- (4) Adoption by County of any ordinances or resolutions necessary to effectuate the commitments made by the County in this Agreement and in the Phase 4 Funding Agreement (described in Section 4 below), including without limitation the requirement that Landowners provide, at no cost to all new residents in the Affected Area, flood insurance through the completion of the Levee Improvement Program or 2010 (whichever occurs first).

4. **Financing Program.**

a. **Development of Funding Agreement.** In order to assure the necessary and timely funding of all construction required for Phase 4 Work, along with unexpected costs associated with Phase 2 Work and Phase 3 Work, the Landowners agree that as a condition of the lifting of the building permit limitation currently in effect for 2006, the Landowners will enter into an Agreement for Phase 4 Funding and Reimbursement of Costs for Levee Improvements ("Phase 4 Funding Agreement") which will require the Landowners to pay certain costs for the Levee Improvement Program as identified in Exhibit B.

b. **Elements of the Funding Agreement.** The Phase 4 Funding Agreement shall include the following elements:

- (1) It shall ensure that, consistent with Exhibit B, funding is available from the Landowners in the amount needed for the Phase 4 Work, including unexpected costs for Phase 2 Work and Phase 3 Work. The Parties shall operate using the Cash Flow Schedule contained in Exhibit B unless a revised Cash Flow Schedule with new call dates is adopted by TRLIA;
- (2) A commitment by the Landowners to provide, at no cost to all new residents in the Affected Area, flood insurance through the completion of the Levee Improvement Program or 2010 (whichever occurs first); and
- (3) Inclusion of the following waiver and release provision:

As a condition of this Agreement, all Landowners release, waive, and abandon any and all claims, demands, rights, causes of action, and

proceedings, they may now or hereafter have against the County, TRLIA, and RD 784, or their agents, officers, and employees, to attack, set aside, void or annul implementation of this Agreement or Ordinance Nos. _____, as they may be amended. Each of the Landowners has been advised by counsel regarding, and hereby expressly waives, any protection or benefit provided by California Civil Code section 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

5. **Additional Commitments by County and TRLIA.**

a. TRLIA commits to continue to use reasonable diligence to complete the Phase 4 Yuba Acceleration Work in 2006 and all elements of the Levee Improvement Program by 2008.

b. County commits to continue to use reasonable diligence to inform residents within RD 784 of the risk of flooding and to further refine and improve the County's Evacuation Plan and Prehazard Mitigation Plan.

6. **Hold Harmless and Waiver/Release.** The County, TRLIA, and RD 784 agree jointly and severally to defend, indemnify and hold the State of California, including its agencies, departments, boards, and commissions, and their respective officers, agents, employees, successors and assigns, safe and harmless of and from all claims and damages arising out of the Project, and to discharge this obligation to the extent allowed by law. For purposes of this section, "Project" shall mean the levees from Station 130+00 to Station 169+00 on the right bank of the Bear River, from Station 0+00 to 332-50 on the right bank of WPIC, and a new backup levee approximately 2 miles in length from approximately Station 131+00 on the Bear River to the Feather River levee approximately 1 mile north of the confluence with the Bear River, all as modified pursuant to Permit No. 17782, and any other areas where work is performed under Reclamation Board Permit No. 17782. Work performed by TRLIA on these levees shall be deemed part of the Project, even if not authorized by the Permit. This section shall not preclude the County, TRLIA, and RD 784 from contracting to apportion indemnity and the responsibility to defend amongst themselves, but such apportionment shall not limit the rights of the State of California to full defense and indemnification from these three Parties.

7. **Successors and Assigns; Recordation.**

a. **Successors and Assigns.** The provisions of this Agreement shall apply to, be binding upon, and inure to the benefit of, all assigns of the Parties.

b. **Recordation.** The Parties agree to cooperate in the recording of any release required to address the lifting of the building permit limitation on Landowners.

8. **Third Party Beneficiaries.** This Agreement is not intended to, and shall not be

construed to, create any right on the part of a third party to bring an action to enforce any of the terms of this Agreement except that the Board shall be a third party beneficiary of Sections 3 and 4 of this Agreement, and in regard to those sections shall have all rights of a third party beneficiary.

9. **Standard Provisions.**

a. **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of California, without regard to conflicts of laws principles. Any action to compel arbitration or to enforce the arbitrator's decision shall be venued in Sacramento Superior Court.

b. **Arbitration.** All disputes arising out of this Agreement shall be submitted to final and binding arbitration. A Party seeking to arbitrate a dispute arising out of this Agreement must notify the other Parties to the dispute in writing of its intent to arbitrate any claim for breach or enforcement of any provision of this Agreement within 30 days of discovery of the last event giving rise to the claim for breach or enforcement. Any such timely and properly noticed claim for breach or enforcement of any provision of this Agreement shall be submitted to binding arbitration through the American Arbitration Association in accordance with the National Rules for Commercial Disputes. The costs of the arbitration shall be split between the disputing parties. At the conclusion of the arbitration, the arbitrator may award the prevailing Party some or all of the arbitration costs, but no attorneys' fees incurred in connection with the arbitration shall be awarded. The decision of the arbitrator shall be final and conclusive, and the Parties waive the right to a trial de novo or appeal excepting only for the purpose of enforcing the arbitrator's decision

c. **Entire Agreement; Amendment.** This Agreement constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all prior and contemporaneous agreements and understandings of the Parties regarding the subject matter hereof. This Agreement may not be amended except by the mutual written consent of all of the Parties.

a. **Waiver.** Any provision of this Agreement may be waived at any time by the Party entitled to the benefit thereof, but only by a writing signed by such Party stating that it waives such provision. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision nor shall any waiver constitute a continuing waiver.

b. **Severability.** If any provision of this Agreement is held invalid or unenforceable, the other provisions of this Agreement shall remain in full force and effect provided that the severance of the invalid or unenforceable provisions does not result in a material failure of consideration under this Agreement to any party hereto.

c. **Headings.** The headings of this Agreement are included for convenience only and shall not affect the construction or interpretation of the Agreement.

d. **Counterparts.** This Agreement may be executed in one or more counterparts, including facsimile, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to constitute one and the same instrument.

e. **Authority.** The undersigned certify that they are fully authorized by the Party or Parties whom they represent to enter into the terms and conditions of this Agreement and able to legally bind such Party or Parties hereto.

f. **Interpretation.** This Agreement shall be deemed to have been prepared equally by all of the Parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for any one Party on the basis that another Party prepared it.

g. **Notices.** All notices and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (1) on the date delivered by hand; (2) the next business day following the date sent by overnight delivery service or sent by facsimile; or (3) on the third day after mailing if deposited in the U.S. mail. Any notice to be given to the County should be addressed as follows:

County Administrator
County of Yuba
915 Eighth Street, Suite 115
Marysville, California 95901-5273

with a copy to:
County Counsel
County of Yuba
915 Eighth Street, Suite 115
Marysville, California 95901-5273

or to such other addresses as the County may specify from time to time. Any notice to be given to TRLIA should be addressed as follows:

Executive Director
Three Rivers Levee Improvement Authority
County of Yuba Government Center
915 Eighth Street, Suite 115
Marysville, California 95901-5273

With a copy to:
TRLIA Special Counsel
Downey Brand LLP
Atten: Scott Shapiro
555 Capitol Mall, 10th Floor
Sacramento, California 985814

or to such other addresses as the County or TRLIA may specify from time to time. Any notice to be given to RD 784 should be addressed as follows:

Board of Directors
Reclamation District 784

1594 Broadway Ave
Marysville, California 95901

With a copy to:
District Counsel
Atten: Carl Lindmark
The Miller Building
500 Olive Street, Suite 7
Marysville, CA 95901

or to such other addresses as RD 784 may specify from time to time.

IN WITNESS WHEREOF, the Parties agree to the provisions set forth herein as evidenced by the signature of their authorized representatives below:

Date: _____

COUNTY OF YUBA

Attest and witness:

by: _____

by: _____
Chair, Board of Supervisors

Date: _____

THREE RIVERS LEVEE IMPROVEMENT
AUTHORITY

Attest and witness:

by: _____

by: _____
Chair

Date: _____

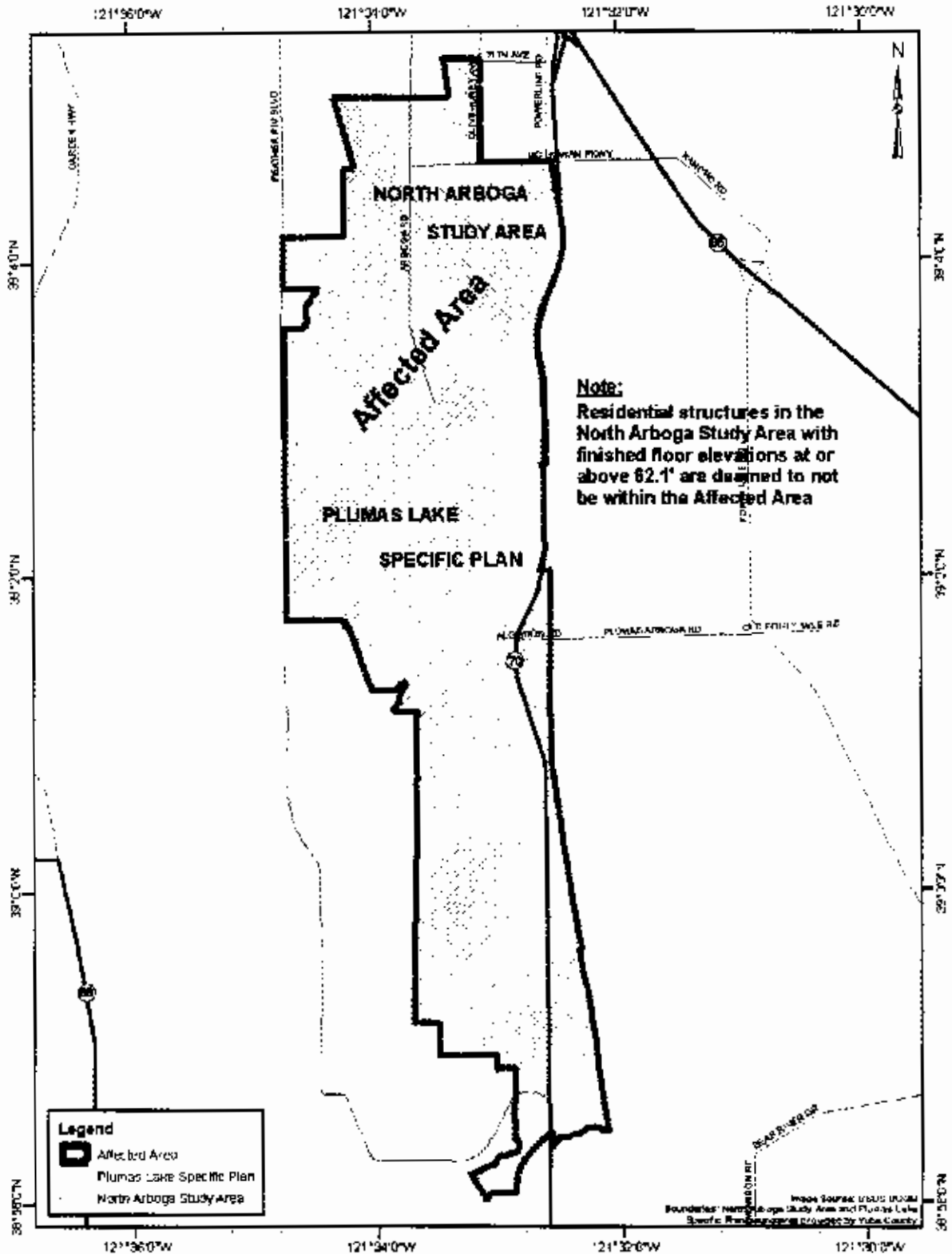
RECLAMATION DISTRICT 784

Attest and witness:

by: _____

by: _____
President

EXHIBIT A



MBK
ENGINEERS

2450 Alhambra Boulevard, 204 Floor
 Sacramento, California 95817-1125
 (916) 436-1400

Affected Area
 (certain lands within Plumas Lake Specific Plan and North Arbooga study Area)



EXHIBIT B

Cash Flow Schedule

July 2006	\$ 20 M
October 2006	\$ 10 M
March 2007	\$ 30 M
October 2007	\$ 20 M
<u>March 2008</u>	<u>\$ 55 M</u>
Total	\$135 M