

## **AGREEMENT FOR PAYMENTS RELATED TO CONSTRUCTION OF PUMP STATION 3**

THIS AGREEMENT for Payments Related to Construction of Pump Station 3 ("Agreement") is entered into and effective this 4th day of December, 2007 ("Effective Date"), by and between the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY of Yuba County, a political subdivision of the State of California ("TRLIA"), and RECLAMATION DISTRICT 784, a political subdivision of the State of California ("RD 784") to provide for payments by RD 784 to TRLIA in recognition of TRLIA's relocation of PUMP STATION NO. 3 ("PS 3"). TRLIA and RD 784 are referred to collectively herein as the "Parties."

### **RECITALS**

- A. RD 784 is collecting impact fees to finance interior drainage improvements pursuant to the *Reclamation District 784 Master Drainage Plan, September 2002*;
- B. The Master Drainage Plan includes the reconstruction of PS 3;
- C. As of the Effective Date of this Agreement, RD 784 has already collected \$927,000 for the PS 3 relocation;
- D. RD 784 continues to collect impact fees for Drainage Basin B, 34.85 % of which is budgeted for the reconstruction of PS 3;
- E. Once necessary approvals by TRLIA's Board of Directors have been secured, TRLIA shall relocate PS 3 during construction of the Feather Setback Levee according to specifications already established by RD 784 and agreed to by TRLIA. The Parties acknowledge that TRLIA will not start the relocation of PS 3 until the Board has taken actions necessary to commence reconstruction activities;
- F. The Parties acknowledge that although TRLIA is a joint powers authority whose members include RD 784, this Agreement is a separate transaction that is unrelated to the joint powers authority relationship between the Parties; and
- G. The purpose of this Agreement is to provide for the provision of funds by RD 784 to TRLIA in recognition of TRLIA's relocation of PS 3, and, in particular, for including an additional redundant pump and associated equipment, as required by RD 784, in the design of the relocated PS 3.

### **AGREEMENT**

The Parties agree as follows:

## 1. Payments

1.1 Within ten business days of the effective date of this Agreement, RD 784 shall transfer \$927,000 to TRLIA for the PS 3 relocation.

1.2 Within 30 days after the execution of a construction contract for the relocation of PS 3, RD 784 shall transfer to TRLIA any funds collected for the PS 3 relocation that were not transferred under Section 1.1.

1.3 After execution of a construction contract for the relocation of PS 3, RD 784 shall make semi-annual payments to TRLIA on February 1<sup>st</sup> and August 1<sup>st</sup> equal to 34.85% of the Drainage Basin B impact fees collected by RD 784 during the preceding six months.

1.4 Payments pursuant to Section 1.2 shall continue until the total of such payments reaches an amount equal to the final bid for the relocation of PS 3, not to exceed \$5,073,000. This Agreement shall terminate upon the earlier of the following conditions: (a) RD 784 has made total payments in the amount of \$5,073,000 to TRLIA; or (b) the Parties mutually agree that the drainage impact fee program is no longer effective. The Parties will initially review the effectiveness of the drainage impact fee program 15 years after the Effective Date of this Agreement and every five years thereafter.

1.5 If TRLIA has not executed a construction contract for the relocation of PS 3 within 18 months after the Effective Date of this Agreement, TRLIA shall, within 30 days of such date, reimburse RD 784 in an amount equal to the amount transferred to TRLIA under Section 1.1, with interest. The interest charged shall be equal to the pool rate as established by Yuba County..

## 2. Miscellaneous Provisions

2.1 Governing Law and Venue. This Agreement shall be governed by the laws of the State of California.

2.2 Authority. Each signatory of this Agreement represents that they are authorized to enter into this Agreement on behalf of the Party for which they sign. Each Party represents that it has legal authority to enter into this Agreement and to perform all obligations under this Agreement.

2.3 Amendment. This Agreement may be amended or modified only by a written instrument executed by each of the Parties to this Agreement.

2.4 Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes any prior oral or written agreement, understanding or representation relating to the subject matter of this Agreement.

2.5 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties' respective representative, successors and assigns.

2.6 Necessary Action. Each Party agrees to execute and deliver additional documents and instruments and to take any additional actions as may be reasonably required to carry out the purposes of this Agreement.

2.7 Arbitration. All disputes arising out of this Agreement that can not be resolved between the parties 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. Before arbitration commences, the parties shall each pay half of the expected cost of the arbitration. At the conclusion of the arbitration, the arbitrator may award the prevailing party some or all of the arbitration costs including attorneys fees. The decision of the arbitrator shall be final and conclusive, and the parties waive the right to a trial de novo or appeal.

2.8 Notices. All notices, requests, demands or other communications required or permitted under this Agreement shall be in writing unless provided otherwise in this Agreement and shall be deemed to have been duly given and received on: (i) the date of service if served personally or served by facsimile transmission on the Party to whom notice is to be given at the address(es) provided below; (ii) on the first date after mailing, if mailed by Federal Express, U.S. Express Mail or other similar overnight courier service, postage prepaid and addressed as provided below; or (iii) on the third day after mailing if mailed to the Party to whom notice is to be given by first class mail, registered or certified, postage prepaid, addressed as follows:

To TRLIA:

Three Rivers Levee Improvement Authority  
1114 Yuba Street, Suite 218  
Marysville, CA 95901  
Telephone: (530) 749-7841  
Facsimile: (530) 749-6990  
Attention: General Manager

To RD 784:

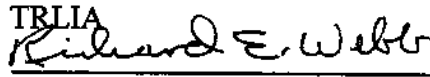
Reclamation District 784  
1594 Broadway  
Marysville, CA 95901  
Telephone: (530)  
Facsimile: (530)  
Attention: District Manager

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on  
December 4, 2007.

THREE RIVERS LEVEE  
IMPROVEMENT AUTHORITY



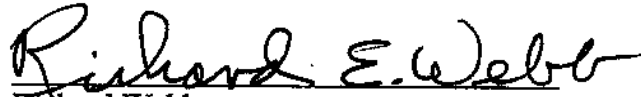
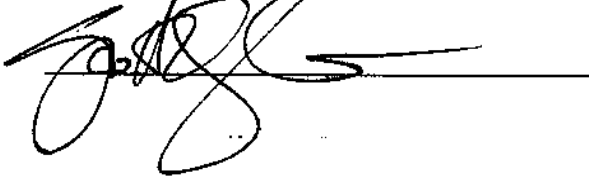
Paul G. Brunner P.E.  
Executive Director

TRLIA  


Chairman

APPROVED AS TO FORM:

SCOTT L. SHAPIRO  
THREE RIVERS LEVEE  
IMPROVEMENT AUTHORITY  
GENERAL COUNSEL



Richard Webb  
President, Board of Directors  
RD 784

APPROVED AS TO FORM:

CARL LINDMARK  
RECLAMATION DISTRICT 784  
GENERAL COUNSEL



The foregoing instrument is a Correct Copy  
of the original on file in this office  
ATTEST: DONNA STOTTEMEYER  
Clerk of the Board of Supervisors of the  
County of Yuba, State of California

By 

Date: December 7, 2007