OCTOBER 19, 2004

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

Unless otherwise indicated.

2:00 P.M.  I  CALL TO ORDER

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

III  BOARD AND STAFF MEMBERS’ REPORTS

III  ACTION ITEMS

A.  Minutes:  Approve minutes of the meeting of October 5, 2004.

B.  Appraisal Services:  Approve agreement with Seervers, Jordan, Ziegenmeyer for appraisal services related to Community Facilities District 2004-1 and authorize Chairman to execute same.

C.  Feasibility Report:  Approve Report on Feasibility of Reclamation District 784 Supplemental Flood Control Improvements of the Yuba-Feather Supplemental Flood Control Project and authorize submittal to California Department of Water Resources.

D.  Market Feasibility Services:  Approve agreement with Paquin Research, Inc. to provide market feasibility services related to Community Facilities District 2004-1 and authorize Chairman to execute same.

IV  PUBLIC COMMUNICATIONS:  Any person may speak about any subject of concern provided it is within the jurisdiction of the Levee Improvement Authority and is not already on today’s agenda. The total amount of time allotted for receiving such public communication shall be limited to a total of 15 minutes and each individual or group will be limited to no more than 5 minutes.

V  ADJOURN
THREE RIVERS LEVEE IMPROVEMENT AUTHORITY
COUNTY OF YUBA

MINUTES - BOARD OF DIRECTORS

OCTOBER 5, 2004

A meeting of the Board of Directors of the Three Rivers Levee Improvement Authority was held on the above date, commencing at 3:30 p.m., within the Government Center, Marysville, California, with a quorum being present as follows: Directors Rick Brown, Mary Jane Gizzo and Richard Webb. Director Dan Logue was absent. Also present were Executive Director Kent McClain, County Counsel Daniel Montgomery, and Clerk of the Board of Supervisors Donna Stottlemeyer. Chairman Webb presided.

ACTION ITEMS

A. Minutes: Upon motion of Director Griego, seconded by Director Webb, and carried with Director Logue being absent, the Board approved the minutes of the meetings of August 31, September 7, and September 14, 2004, as written.

B. MBK Engineers: Upon motion of Director Griego, seconded by Director Brown, and carried with Director Logue being absent, the Board approved a contract amendment with MBK Engineers to provide project management support services through January 31, 2005 and authorized the Chairman to execute same.

C. Design Grant Application: Following presentation by Assistant County Administrator Randy Margo and Project Manager Rice Reinhardt, upon motion of Director Griego, seconded by Director Brown, and carried with Director Logue being absent, the Board adopted Resolution No. 04-10 which is entitled: "RESOLUTION AUTHORIZING DEPARTMENT OF WATER RESOURCES DESIGN GRANT APPLICATION FOR THE WESTERN PACIFIC INTERCEPTOR CANAL, UPPER BEAR RIVER AND YUBA RIVER LEVEE IMPROVEMENTS."

D. Community Facilities District 2004-1/Special Tax Levy: Following presentation by Assistant County Administrator Randy Margo and Consultant Paul Thimmig, Chairman Webb opened the public hearing and inquired if anyone wished to address this issue. With no on coming forward, Chairman Webb closed the public hearing.

10/5/04
Upon motion of Director Griego, seconded by Director Brown, and carried with Director Logue being absent, the public hearing was closed and the Board adopted Resolution No. 04-09, which is entitled: "RESOLUTION DECLARING RESULTS OF SPECIAL ELECTION AND DIRECTING RECORDING OF NOTICE OF SPECIAL TAX LIEN," and the Board waived the first reading and introduced an ordinance levying special taxes within Three Rivers Levee Improvement Authority Community Facilities District No. 2004-1 (South County Area.)

E. Correspondence: Received from the Department of Water Resources the approved Reclamation Board Permit No. 17828 GM.

PUBLIC COMMUNICATIONS

No one came forward.

ADJOURNMENT

There being no further business to come before the Three Rivers Levee Improvement Authority the meeting was adjourned at 4:10 p.m. by Chairman Webb.

__________________________
Chairman

ATTEST: DONNA STOTTLEMEYER
CLERK OF THE BOARD OF SUPERVISORS
AND EX-OFFICIO SECRETARY OF THE PUBLIC AUTHORITY

__________________________
Approved:

10/5/04
October 19, 2004

TO: Three Rivers Levee Improvement Authority
FROM: Randy Margo, Assistant County Administrator
SUBJECT: Contract to Provide Appraisal Services Related to Plumas Lake Development

Recommended Action

Approve Contract to provide appraisal services related to levee improvements in the newly formed Mello-Roos Community Facilities District for levee improvements.

Reason for Recommended Action

An appraisal study is needed to evaluate the property value available as collateral to secure the underlying bonded debt for infrastructure improvements in the newly formed Mello-Roos Community Facilities District.

Discussion

Last week, your Board approved the creation of a Mello-Roos Community Facilities District to improve the levees surrounding the South Yuba Basin Area. A bond sale is anticipated by the end of January 2005 in order to finance the proposed levee improvements for this area. Bond investors require an appraisal study to evaluate the value of the properties being obligated as collateral for repaying the bonded debt.

A competitive process took place last spring to select a firm to conduct an appraisal study for the levee community facilities district. The firm Severs, Jordan and Ziegennmyer has extensive experience in the Sacramento area performing these types of studies and was considered to be the top firm by the selection committee.

Fiscal Impact

Funding for this contract will come from fees paid by the developers and a grant/loan from the Yuba County Water Agency. No County funds will be used for this contract.
AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT for Consulting services ("Agreement") is made as of the Agreement Date set forth below by and between the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY of Yuba, a political subdivision of the State of California ("the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY"), and

GEEVERS, JORDAN, ZIEGENMEYER
"CONTRACTOR"

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 CONTRACTOR shall provide those services described in Attachment "A". Provision A-1. CONTRACTOR 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: October 19, 2004
Termination Date: January 21, 2005

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 THREE RIVERS LEVEE IMPROVEMENT AUTHORITY time in which to complete a renewal or renewal contract for CONTRACTOR and THREE RIVERS LEVEE IMPROVEMENT AUTHORITY approval.

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

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY shall pay CONTRACTOR 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 CONTRACTOR for services rendered pursuant to this Agreement. CONTRACTOR shall submit all billings for said services to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY in the manner specified in Attachment "B".

4. **FACILITIES, EQUIPMENT AND OTHER MATERIALS AND OBLIGATIONS OF THREE RIVERS LEVEE IMPROVEMENT AUTHORITY.**

CONTRACTOR 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.**

Charles K. McClain, Executive Director, is the representative of the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY and will administer this Agreement for the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY. Kevin Ziegenmeyer, Partner, is the authorized representative for CONTRACTOR. 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
9. **TERMINATION.** THREE RIVERS LEVEE IMPROVEMENT AUTHORITY and CONTRACTOR shall each have the right to terminate this Agreement upon 30 days written notice to the other party.

   IN WITNESS WHEREOF, the parties hereto have executed this Agreement on _____________, 2004.

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY OF YUBA

__________________________
Chairman

Name and Title

AT:TEST:
DONNA STOTTERMeyer,
SECRETARY

APPROVED AS TO FORM:
DANIEL G. MONTGOMERY

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY COUNSEL

Page 3 of 3.
A.1 SCOPe OF SERVICES AND DUTIES.

The services to be provided by CONTRACTOR and the scope of CONTRACTOR's duties include the following:

See attached "CONTRACT FOR APPRAISAL SERVICES"
A.2. TIME SERVICES RENDERED.

See attached “CONTRACT FOR APPRAISAL SERVICES”

A.3. MANNER SERVICES ARE TO BE PERFORMED.

As an independent contractor, CONTRACTOR shall be responsible for providing services and fulfilling obligations hereunder in a professional manner. THREE RIVERS LEVY IMPROVEMENT AUTHORITY shall not control the manner of performance.

A.4. FACILITIES FURNISHED BY THREE RIVERS LEVY IMPROVEMENT AUTHORITY.

CONTRACTOR 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

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY shall pay CONTRACTOR as follows:

B.1 BASE CONTRACT FEE. THREE RIVERS LEVEE IMPROVEMENT AUTHORITY shall pay CONTRACTOR a contract fee not to exceed Fifty thousand dollars ($50,000); CONTRACTOR shall submit requests for payment after completion of services or no later than the tenth (10th) day of the month following provision of services.

In no event shall total compensation paid to CONTRACTOR under this Provision B.1 exceed Fifty thousand dollars ($50,000) without an amendment to this Agreement approved by the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY Board of Supervisors.

B.2 TRAVEL COSTS. THREE RIVERS LEVEE IMPROVEMENT AUTHORITY shall not pay CONTRACTOR for meals, lodging, or other travel costs not included in this Agreement unless said costs are approved in advance by the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY representative (Operative Provision 7) and then THREE RIVERS LEVEE IMPROVEMENT AUTHORITY shall pay THREE RIVERS LEVEE IMPROVEMENT AUTHORITY per diem rates in effect on the date of invoice upon presentation of invoices.

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

B.4 ADDITIONAL SERVICES. Notwithstanding the foregoing, Contractor shall be compensated for additional services as set forth in paragraph seven (7) of the attached “Contract for Appraisal Services”.

Attachment B – Page 1 of 1.
ATTACHMENT C

OTHER TERMS

The Contract for Appraisal Services attached to this agreement is incorporated herein by this reference, however, only those provisions of the Contract for Appraisal Services referenced in Attachments A and B shall have any force or effect.
D.1 INDEPENDENT CONTRACTOR STATUS. At all times during the term of this Agreement, the following apply:

D.1.1 All acts of CONTRACTOR shall be performed as an independent contractor and not as an agent, officer or employee of THREE RIVERS LEVEE IMPROVEMENT AUTHORITY. It is understood by both CONTRACTOR and THREE RIVERS LEVEE IMPROVEMENT AUTHORITY that this Agreement is by and between two independent contractors 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 CONTRACTOR shall have no claim against THREE RIVERS LEVEE IMPROVEMENT AUTHORITY 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 CONTRACTOR 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 contractor, CONTRACTOR is not subject to the direction and control of THREE RIVERS LEVEE IMPROVEMENT AUTHORITY except as to the final result contracted for under this Agreement. THREE RIVERS LEVEE IMPROVEMENT AUTHORITY may not require CONTRACTOR 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 CONTRACTOR may provide services to others during the same period service is provided to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY under this Agreement.

D.1.6 If in the performance of this Agreement any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision and control of CONTRACTOR. 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 CONTRACTOR.
D.1.7 As an independent contractor, CONTRACTOR hereby indemnifies and holds THREE RIVERS LEVEE IMPROVEMENT AUTHORITY harmless from any and all claims that may be made against THREE RIVERS LEVEE IMPROVEMENT AUTHORITY based on any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

D.2 LICENSES, PERMITS, ETC. CONTRACTOR represents and warrants to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONTRACTOR to practice its profession. CONTRACTOR represents and warrants to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY that CONTRACTOR 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 CONTRACTOR to practice its profession at the time the services are performed. Failure of the CONTRACTOR to comply with this provision shall authorize the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY to immediately terminate this agreement notwithstanding Operating Provision No. 9.

D.3 TIME. CONTRACTOR shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of CONTRACTOR’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, CONTRACTOR or its subcontractors shall acquire and maintain during the term of this Agreement, insurance coverage, through and with an insurer acceptable to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, naming the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY 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 THREE RIVERS LEVEE IMPROVEMENT AUTHORITY’s, or related agency’s, officials, employees, and volunteers as additional insured (hereinafter referred to as “the insurance”). The limits of insurance herein shall not limit the liability of the CONTRACTOR hereunder.

D.4.4 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 THREE RIVERS LEVEE IMPROVEMENT AUTHORITY with thirty (30) days written notice of such intended cancellation. If CONTRACTOR fails to maintain the insurance provided herein, THREE RIVERS LEVEE IMPROVEMENT AUTHORITY may secure such insurance and deduct the cost thereof from any funds owing to CONTRACTOR.

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

Attachment D – Page 2 of 12.
(a) Insurance Services Office (ISO) Commercial General Liability Occurrence form number CO 0001 or equivalent ISO form. A non-ISO form must be reviewed and approved by the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY Risk Manager prior to acceptance of the Agreement.
(b) Insurance Services Office Business Auto Coverage form number CA 0001 0187 covering Automobile Liability, code 1 "any state 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 coverage form subject to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY 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 THREE RIVERS LEVEE IMPROVEMENT AUTHORITY and the public entity awarding the contract or other than the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, 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 CONTRACTOR; products and completed operations of the CONTRACTOR; premises owned, leased, occupied, or used by the CONTRACTOR; or automobiles owned, leased, hired, or borrowed by the CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, its officials, employees or volunteers.

(ii) The CONTRACTOR's insurance coverage shall be primary insurance as respects the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, its officials, employees and volunteers and any

Attachment D - Page 3 of 12.
other insureds under this Agreement. Any insurance or self-insurance maintained by the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, its officials, employees and volunteers or other insureds shall be excess of the CONTRACTOR’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 THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, 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 CONTRACTOR’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 THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, 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 certified mail, return receipt requested, has been given to the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY.

1.4.4 ACCEPTABILITY OF INSURERS. Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A-VII.

Attachment D – Page 4 of 12.
D.4.5 MINIMUM LIMITS OF INSURANCE. CONTRACTOR 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 Two Thousand Five Hundred Dollars ($2,500). Coverage may be made on a claims-made basis with a “Retro Date” either prior to the date of this 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 CONTRACTOR must purchase “extended reporting” coverage for a minimum of twelve (12) months after completion of services.

D.4.6 SUBCONTRACTORS. In addition to the above policies, if CONTRACTOR hires a subcontractor under this Agreement CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein. If CONTRACTOR requires subcontractors to provide insurance coverage, then CONTRACTOR 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 THREE RIVERS LEVEE IMPROVEMENT AUTHORITY. At the option of the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, its officials, employees and volunteers or, the CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D.4.8 VERIFICATION OF COVERAGE.

(a) CONTRACTOR shall furnish THREE RIVERS LEVEE IMPROVEMENT AUTHORITY 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 THREE RIVERS LEVEE IMPROVEMENT AUTHORITY or on forms received and approved by the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY before work commences. THREE RIVERS LEVEE IMPROVEMENT AUTHORITY reserves the right to require complete, certified copies of all required insurance policies at any time.

(b) CONTRACTOR shall not render services under the terms and conditions of this Agreement unless each type of insurance coverage and endorsement is in effect and CONTRACTOR has delivered the certificate(s) of insurance and endorsement(s) to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY as previously described. If CONTRACTOR shall fail to procure and maintain said insurance, THREE RIVERS LEVEE IMPROVEMENT AUTHORITY may, but shall not be required to, procure and maintain the same, and the premiums of such insurance shall be paid by CONTRACTOR to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY upon demand. The policies of insurance provided herein which are to be provided by CONTRACTOR shall be for a period of time sufficient to cover the term of the Agreement, including THREE RIVERS LEVEE IMPROVEMENT AUTHORITY’s acceptance of CONTRACTOR’s work. It is understood and agreed that thirty (30) days prior to the expiration of any policy of insurance, CONTRACTOR will deliver to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY certificate(s) and endorsement(s)
D.5 INDEMNITY. CONTRACTOR shall defend, indemnify, and hold harmless THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, 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, which may arise from the intentional or negligent acts or omissions of CONTRACTOR in the performance of services rendered under this Agreement by CONTRACTOR, or any of CONTRACTOR's officers, agents, employees, contractors, or subcontractors.

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

D.7 ASSIGNMENT PROHIBITED. CONTRACTOR 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. CONTRACTOR shall assign only competent personnel to perform services pursuant to this Agreement. In the event that THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, in its sole discretion, at any time during the term of this Agreement, desires the removal of any person or persons assigned by CONTRACTOR to perform services pursuant to this Agreement, CONTRACTOR shall remove any such person immediately upon receiving written notice from THREE RIVERS LEVEE IMPROVEMENT AUTHORITY of its desire for removal of such person or persons.

D.9 STANDARD OF PERFORMANCE. CONTRACTOR 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 CONTRACTOR is engaged. All products of whatever nature which CONTRACTOR delivers to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY pursuant to this Agreement shall be prepared in a first class and workmanlike manner and shall conform to the standards or quality normally observed by a person practicing in CONTRACTOR'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 THREE RIVERS LEVEE IMPROVEMENT AUTHORITY with Section 107.6 of the California Revenue and Taxation Code, this notation shall be deemed full compliance by the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY. All questions of initial determination of possessory interest.

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and valuation of such interest, if any, shall be the responsibility of the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY. Assessor and the contracting parties hereof. A taxable possessory interest may be created by this contract; and if created, the party in whom such an interest invested will be subject to the payment of property taxes levied on such an interest.

D.11 TAXES. CONTRACTOR hereby grants to the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY the authority to deduct from any payments to CONTRACTOR any THREE RIVERS LEVEE IMPROVEMENT AUTHORITY imposed taxes, fees, penalties and related charges which are delinquent at the time such payments under this Agreement are due to CONTRACTOR.

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

D.12.1 CONTRACTOR 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 THREE RIVERS LEVEE IMPROVEMENT AUTHORITY shall have full ownership and control of all such writings or other communications delivered by CONTRACTOR pursuant to this Agreement.

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

CONTRACTOR may terminate its services under this Agreement upon thirty (30) days written notice to the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, without liability for damages, if CONTRACTOR is not compensated according to the provisions.

Attachment D – Page 8 of 12.
of the Agreement or upon any other material breach of the Agreement by THREE RIVERS LEVEE IMPROVEMENT AUTHORITY.

D.13 NON-DISCRIMINATION. Throughout the duration of this Agreement, CONTRACTOR shall not unlawfully discriminate against any employee of the CONTRACTOR or of the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY 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. CONTRACTOR 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. CONTRACTOR 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. CONTRACTOR 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. CONTRACTOR shall give written notice of its obligations under this clause to any labor agreement. CONTRACTOR 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, CONTRACTOR 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 THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, and CONTRACTOR agrees to deliver reproducible copies of such documents to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY on completion of the services hereunder. The THREE RIVERS LEVEE IMPROVEMENT AUTHORITY agrees to indemnify and hold CONTRACTOR harmless from any claim arising out of reuse of the information for other than this project.

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.

Attachment D – Page 9 of 12.
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’ fees, 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 "agree" 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.

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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 THREE RIVERS LEVEE IMPROVEMENT AUTHORITY 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 therein.

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(ies), 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 THREE RIVERS LEVEE IMPROVEMENT AUTHORITY employee whose position in THREE RIVERS LEVEE IMPROVEMENT AUTHORITY 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 CONTRACTOR herein, or have any other direct or indirect financial interest in this Agreement.

CONTRACTOR may be subject to the disclosure requirements of the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY conflict of interest code if in a position to make decisions or influence decisions that could have an effect on the CONTRACTOR's financial interest. The THREE RIVERS LEVEE IMPROVEMENT AUTHORITY Administrator shall determine in

Attachment D – Page 11 of 12.
writing if CONTRACTOR 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 THREE RIVERS LEVEE IMPROVEMENT AUTHORITY 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 "THREE RIVERS LEVEE IMPROVEMENT AUTHORITY":
With a copy to:

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY
Charles K. McClain, Executive Director
915 8th Street, Suite 115
Marysville, CA 95901

If to "CONTRACTOR":
Kevin Ziegenmeyer, Partner
Seevers, Jordan Ziegenmeyer
3825 Atherton Road, Suite 500
Rocklin, CA 95765
October 19, 2004

TO: Three Rivers Levee Improvement Authority

FROM: Randy Mago, Assistant County Administrator

SUBJECT: Consider Report on Feasibility of Reclamation District 784 Supplemental Flood Control Improvements of the Yuba-Feather Supplemental Flood Control Project

Recommended Action

Adopt and submit feasibility report to California Department of Water Resources.

Purpose of Recommended Action

In order to obtain State Water Bond Act of 2000 (Proposition 13) funding for design and engineering work pertaining to levee improvements in the South Yuba County Basin, a feasibility study needs to be adopted and approved by the local lead agencies and the California Department of Water Resources.

Discussion

The feasibility report examines the technical and economic merits of improvements to Reclamation District 784’s levees as integral elements of the overall Yuba-Feather Supplemental Flood Control Program. Yuba County Water Agency undertook the study as part of its overall approach to enhance flood protection in Yuba County. The study evaluates a comprehensive plan for improving levees, including levee raising and strengthening and setback levees. The report also provides a financial framework for completing the project, and a timeframe for construction work to be finished by the end of October 2006.

This report also has been provided to the Yuba County Water Agency for its consideration of adoption and submittal to the Department of Water Resources.

Fiscal Impact

Funding for proposed projects consists of a combination of local developer money ($24,658,000) and Proposition 13 funds ($37,594,000).
October 11, 2004
Project No. 053333

Mr. Curt Aikeops
General Manager
Yuba County Water Agency
1402 D Street
Marysville, CA 95901

Mr. Charles K. McClain
Executive Director
Three Rivers Levee Improvement Authority
Yuba County Government Center
915 8th Street, Suite 115
Marysville, CA 95901

Dear Curt and Kent:

Re: Report on Feasibility of RD 784 Supplemental Flood Control Improvements, October 2004

Enclosed are nine and five copies of the subject report for review and adoption by your respective Boards of Directors and transmittal to the Department of Water Resources for its acceptance. A draft letter of transmittal is also enclosed. Written and oral comments on the draft report, August 2004, have been taken into consideration in this report.

The report demonstrates the technical and economic merits of the improvements to RD 784 levees and as integral elements of the Yuba- Feather Supplemental Flood Control Program. It proposes that the estimated cost of $62,252,000 be financed by $37,594,000 from the Water Act of 2000 and $24,658,000 of local funds. An estimated $11,218,000 can be allocated to the environmental enhancement provisions of the Act.

A staged Southern Setback Levee along the right levee of the Lower Bear River can be constructed by the end of October 2006, provided that all reviews, permits, property acquisition, and approvals are secured on expedited schedules. In addition, tight construction contract schedules will be required. Portions of the existing levee are scheduled for removal in 2007 after the U.S. Army Corps of Engineers certifies the setback levee as a project levee.

Planning and formulation of this program has been challenging and satisfying. It is rewarding to determine that there are cost-effective means to greatly improve flood protection for RD 784. It has been a pleasure to work with you and all team members in this effort.

Sincerely,

BOOKMAN-EDMONSTON

Hercules W. Gregory
Managing Executive Engineer
October 19, 2004

TO: Three Rivers Levee Improvement Authority
FROM: Randy Margo, Assistant County Administrator
SUBJECT: Contract to Provide Market Feasibility Services Related to Plumas Lake Development

Recommended Action

Approve Contract to provide market feasibility services related to levee improvements in the newly formed Mello-Roos Community Facilities District for levee improvements.

Reason for Recommended Action

A market feasibility study is needed to market the bonds for infrastructure improvements in the newly formed Mello-Roos Community Facilities District.

Discussion

Last week, your Board approved the creation of a Mello-Roos Community Facilities District to improve the levees surrounding the South Yuba Basin Area. A bond sale is anticipated by the end of January 2005 in order to finance the proposed levee improvements for this area. Bond investors typically require a market feasibility study to understand the likely cash flow and value of the properties repaying the debt for the bonds.

A competitive process took place last spring to select a firm to conduct a market feasibility study for the levee community facilities district. The firm, Paquin Research Inc. (dba as the Gregory Group) has extensive experience in the Sacramento area performing these types of studies and was considered to be the top firm by the selection committee.

Fiscal Impact

Funding for this contract will come from fees paid by the developers and a grant/loan from the Yuba County Water Agency. No County funds will be used for this contract.
AGREEMENT FOR
PROFESSIONAL SERVICES

THIS AGREEMENT for Consulting services ("Agreement") is made as of the Agreement Date set forth below by and between the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY of Yuha, a political subdivision of the State of California ("the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY"), and

PAQUIN RESEARCH, INCORPORATED (The Gregory Group dba) "CONTRACTOR"

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 CONTRACTOR shall provide those services described in Attachment "A", Provision A-1. CONTRACTOR 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: October 13, 2004

Termination Date: January 31, 2005

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 THREE RIVERS LEVEE IMPROVEMENT AUTHORITY time in which to complete a novation or renewal contract for CONTRACTOR and THREE RIVERS LEVEE IMPROVEMENT AUTHORITY approval.

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

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY shall pay CONTRACTOR 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 CONTRACTOR for services rendered pursuant to this Agreement. CONTRACTOR shall submit all billings for said services to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY in the manner specified in Attachment "B".

4. FACILITIES, EQUIPMENT AND OTHER MATERIALS AND OBLIGATIONS OF THREE RIVERS LEVEE IMPROVEMENT AUTHORITY.

CONTRACTOR 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.

Charles K. McClain, Executive Director, in the representative of the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY and will administer this Agreement for the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY. Greg Paquin, President, is the authorized representative for CONTRACTOR. 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
9. **TERMINATION.** THREE RIVERS LEVEE IMPROVEMENT AUTHORITY and CONTRACTOR shall each have the right to terminate this Agreement upon 30 days written notice to the other party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on ______________, 2004.

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY OF YUBA

________________________
Chairman

Paquin Research, Inc. (The Gregory Group dba)
Name and Title

ATTEST:
DONNA STOTTERMeyer,
SECRETARY

APPROVED AS TO FORM:
DANIEL G. MONTGOMERY
THREE RIVERS LEVEE IMPROVEMENT AUTHORITY COUNSEL

Page 3 of 3.
A.1 **SCOPE OF SERVICES AND DUTIES.**

The services to be provided by CONTRACTOR and the scope of CONTRACTOR's duties include the following:

See Appendix
A.2. TIME SERVICES RENDERED.

See Appendix.

A.3. MANNER SERVICES ARE TO BE PERFORMED.

As an independent contractor, CONTRACTOR shall be responsible for providing services and fulfilling obligations hereunder in a professional manner. THREE RIVERS LEVEE IMPROVEMENT AUTHORITY shall not control the manner of performance.

A.4. FACILITIES FURNISHED BY THREE RIVERS LEVEE IMPROVEMENT AUTHORITY.

CONTRACTOR 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

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY shall pay CONTRACTOR as follows:

B.1 BASE CONTRACT FEE. THREE RIVERS LEVEE IMPROVEMENT AUTHORITY shall pay CONTRACTOR a contract fee not to exceed Fourteen thousand dollars ($14,000); CONTRACTOR shall submit requests for payment after completion of services or no later than the tenth (10th) day of the month following provision of services. In no event shall total compensation paid to CONTRACTOR under this Provision B.1 exceed Fourteen thousand dollars ($14,000) without an amendment to this Agreement approved by the Yuba THREE RIVERS LEVEE IMPROVEMENT AUTHORITY Board of Supervisors.

B.2 TRAVEL COSTS. THREE RIVERS LEVEE IMPROVEMENT AUTHORITY shall not pay CONTRACTOR for meals, lodging or other travel costs not included in this Agreement unless said costs are approved in advance by the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY representative (Operative Provision 7) and then THREE RIVERS LEVEE IMPROVEMENT AUTHORITY shall pay THREE RIVERS LEVEE IMPROVEMENT AUTHORITY per diem rates in effect on the date of invoice upon presentation of invoices.

B.3 AUTHORIZATION REQUIRED. Services performed by CONTRACTOR and not authorized in this Agreement shall not be paid for by THREE RIVERS LEVEE IMPROVEMENT AUTHORITY. Payment for additional services shall be made to CONTRACTOR by THREE RIVERS LEVEE IMPROVEMENT AUTHORITY if, and only if, this Agreement is amended by both parties in advance of performing additional services.
ATTACHMENT C
OTHER TERMS

See Appendix
ATTACHMENT D

GENERAL PROVISIONS

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

D.1.1 All acts of CONTRACTOR shall be performed as an independent contractor and not as an agent, officer or employee of THREE RIVERS LEVEE IMPROVEMENT AUTHORITY. It is understood by both CONTRACTOR and THREE RIVERS LEVEE IMPROVEMENT AUTHORITY that this Agreement is by and between two independent contractors 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 CONTRACTOR shall have no claim against THREE RIVERS LEVEE IMPROVEMENT AUTHORITY 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 CONTRACTOR 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 contractor, CONTRACTOR is not subject to the direction and control of THREE RIVERS LEVEE IMPROVEMENT AUTHORITY except as to the final result contracted for under this Agreement. THREE RIVERS LEVEE IMPROVEMENT AUTHORITY may not require CONTRACTOR 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 CONTRACTOR may provide services to others during the same period service is provided to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY under this Agreement.

D.1.6 If in the performance of this Agreement any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision and control of CONTRACTOR. 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 CONTRACTOR.

Attachment D – Page 1 of 12.
D.1.7 As an independent contractor, CONTRACTOR hereby indemnifies and holds THREE RIVERS LEVEE IMPROVEMENT AUTHORITY harmless from any and all claims that may be made against THREE RIVERS LEVEE IMPROVEMENT AUTHORITY based on any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

D.2 LICENSES, PERMITS, ETC. CONTRACTOR represents and warrants to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONTRACTOR to practice its profession. CONTRACTOR represents and warrants to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY that CONTRACTOR 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 CONTRACTOR to practice its profession at the time the services are performed. Failure of the CONTRACTOR to comply with this provision shall authorize the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY to immediately terminate this agreement notwithstanding Operative Provision No. 9.

D.3 TIME. CONTRACTOR shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of CONTRACTOR'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, CONTRACTOR or its subcontractors shall acquire and maintain during the term of this Agreement, insurance coverage, through and with an insurer acceptable to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, naming the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY 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 THREE RIVERS LEVEE IMPROVEMENT AUTHORITY's, or related agency's, officials, employees, and volunteers as additional insured, (hereinafter referred to as “the insurer”). The limits of insurance herein shall not limit the liability of the CONTRACTOR 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 THREE RIVERS LEVEE IMPROVEMENT AUTHORITY with thirty (30) days written notice of such intended cancellation. If CONTRACTOR fails to maintain the insurance provided herein, THREE RIVERS LEVEE IMPROVEMENT AUTHORITY may secure such insurance and deduct the cost thereof from any funds owing to CONTRACTOR.

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

Attachment D – Page 2 of 12.
(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 THREE RIVERS LEVEE IMPROVEMENT AUTHORITY Risk Manager prior to acceptance of the Agreement.

(b) Insurance Services Office Business Auto Coverage form number CA 0001 0187 covering Automobile Liability, code 1 "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 coverage form subject to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY 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 THREE RIVERS LEVEE IMPROVEMENT AUTHORITY and the public entity awarding the contract if other than the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, 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 CONTRACTOR; products and completed operations of the CONTRACTOR; premises owned, leased, occupied, or used by the CONTRACTOR; or automobiles owned, leased, hired, or borrowed by the CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, its officials, employees or volunteers.

(ii) The CONTRACTOR's insurance coverage shall be primary insurance as respects the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY,
its officials, employees and volunteers and any other insureds under this Agreement. Any insurance or self-insurance maintained by the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, its officials, employees and volunteers or other insureds shall be excess of the CONTRACTOR’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 THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, 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 CONTRACTOR’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 THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, 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 certified mail, return receipt requested, has been given to the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY.

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. CONTRACTOR 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

Attachment D – Page 4 of 12.
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 Two Thousand Five Hundred Dollars ($2,500). 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 CONTRACTOR must purchase "extended reporting" coverage for a minimum of twelve (12) months after completion of services.

D.4.6 SUBCONTRACTORS. In addition to the above policies, if CONTRACTOR hires a subcontractor under this Agreement CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein. If CONTRACTOR requires subcontractors to provide insurance coverage, then CONTRACTOR 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 THREE RIVERS LEVEE IMPROVEMENT AUTHORITY. At the option of the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, its officials, employees and volunteers; or, the

Attachment D – Page 5 of 12.
CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

**D.4.8 VERIFICATION OF COVERAGE.**

(a) CONTRACTOR shall furnish THREE RIVERS LEVEE IMPROVEMENT AUTHORITY 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 THREE RIVERS LEVEE IMPROVEMENT AUTHORITY or on forms received and approved by the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY before work commences. THREE RIVERS LEVEE IMPROVEMENT AUTHORITY reserves the right to require complete, certified copies of all required insurance policies at any time.

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

**D.5 INDEMNITY.** CONTRACTOR shall defend, indemnify, and hold harmless THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, 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, which may arise.
from the intentional or negligent acts or omissions of CONTRACTOR in the performance of services rendered under this Agreement by CONTRACTOR, or any of CONTRACTOR's officers, agents, employees, contractors, or subcontractors.

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

D.7 ASSIGNMENT PROHIBITED. CONTRACTOR 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. CONTRACTOR shall assign only competent personnel to perform services pursuant to this Agreement. In the event that THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, in its sole discretion, at any time during the term of this Agreement, desires the removal of any person or persons assigned by CONTRACTOR to perform services pursuant to this Agreement, CONTRACTOR shall remove any such person immediately upon receiving written notice from THREE RIVERS LEVEE IMPROVEMENT AUTHORITY of its desire for removal of such person or persons.

D.9 STANDARD OF PERFORMANCE. CONTRACTOR 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 CONTRACTOR is engaged. All products of whatsoever nature which CONTRACTOR delivers to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY pursuant to this Agreement shall be prepared in a first class and workmanlike manner and shall conform to the standards or quality normally observed by a person practicing in CONTRACTOR'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 THREE RIVERS LEVEE IMPROVEMENT AUTHORITY with Section 107.6 of the California Revenue and Taxation Code, this recital shall be deemed full compliance by the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY. All questions of initial determination of possessory interest and valuation of such interest, if any, shall be the responsibility of the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY 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. CONTRACTOR hereby grants to the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY the authority to deduct from any payments to CONTRACTOR any THREE RIVERS LEVEE IMPROVEMENT AUTHORITY imposed taxes, fines, penalties and related charges which are delinquent at the time such payments under this Agreement are due to CONTRACTOR.

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

D.12.1 CONTRACTOR 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 THREE RIVERS LEVEE IMPROVEMENT AUTHORITY shall have full ownership and control of all such writings or other communications delivered by CONTRACTOR pursuant to this Agreement.

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

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

D.13 NON-DISCRIMINATION. Throughout the duration of this Agreement, CONTRACTOR shall not unlawfully discriminate against any employee of the CONTRACTOR.
or of the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY 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. CONTRACTOR 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. CONTRACTOR 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. CONTRACTOR 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. CONTRACTOR shall give written notice of its obligations under this clause to any labor agreement. CONTRACTOR 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, CONTRACTOR 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 THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, and CONTRACTOR agrees to deliver reproducible copies of such documents to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY on completion of the services hereunder. The THREE RIVERS LEVEE IMPROVEMENT AUTHORITY agrees to indemnify and hold CONTRACTOR harmless from any claim arising out of reuse of the information for other than this project.

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' fees, 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 THREE RIVERS LEVEE IMPROVEMENT AUTHORITY 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 THREE RIVERS LEVEE IMPROVEMENT AUTHORITY employee whose position in THREE RIVERS LEVEE IMPROVEMENT AUTHORITY 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 CONTRACTOR herein, or have any other direct or indirect financial interest in this Agreement.

CONTRACTOR may be subject to the disclosure requirements of the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY conflict of interest code if in a position to make decisions or influence decisions that could have an effect on the CONTRACTOR’s financial interest. The THREE RIVERS LEVEE IMPROVEMENT AUTHORITY Administrator shall determine in writing if CONTRACTOR 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 County 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 "THREE RIVERS LEVEE IMPROVEMENT AUTHORITY":
   With a copy to:

   THREE RIVERS LEVEE IMPROVEMENT AUTHORITY
   Charles K. McClain, Executive Director
   915 8th Street, Suite 115
   Marysville, CA  95901

If to "CONTRACTOR":
   Greg Paquin, President
   Paquin Research, Inc.  dba The Gregory Group
   381 South Lexington Drive, Suite 108
   Folsom, CA  95630
October 1, 2004

Mr. Randy Margo
Assistant County Administrator
Mr. James S. Kennedy
County Treasurer-Tax Collector
County of Yuba
915 8th Street, Suite 103
Marysville, CA 95901-5273

Mr. Tom Johnsen
Fieldman, Rolapp & Associates
2100 Main Street, Suite 210
Irvine, CA 92614

Subject: Market Feasibility Services Related to the Three Rivers Levee Improvement Authority CFD Located in Yuba County, California

Dear Randy, James and Tom:

We are pleased to present this proposal for Market Feasibility services related to development of the Three Rivers Levee Improvement Authority CFD located in Yuba County, California. The purpose of this proposal is to establish our agreement to conduct real estate feasibility services on your behalf. This letter contains Background and Philosophy, Scope of Services, Fee and Time Requirements, and Limiting Conditions to conduct this analysis.

I. BACKGROUND AND PHILOSOPHY

As we understand it, you are interested in Market Feasibility services related to development within the Three Rivers Levee Improvement Authority CFD located in Yuba County. The subject area includes a total of approximately 2,078 gross developable acres and is planned to offer several product types including single-family and multi-family parcels. The focus of this effort is to provide conclusions and recommendations related to lot sizes and lot size distribution, product type and configuration, pricing and absorption for each of the parcels.
Our analysis will be forward-looking, projecting supply and opportunity into the future. We will interact in a team environment in an effort to integrate the market data and recommendations effectively with planning and decision-making efforts. In our experience, this sets the forum for combining the best individual ideas into a cohesive team product. This will be important as you formulate an approach to future development.

II. SCOPE OF SERVICES

We rely upon our experience with similar development situations from the regional market area to form a basis from which research will be conducted, as well as information supplied by you. In addition, we will relate the success and failure of other development efforts that we have observed and apply lessons learned to the challenges faced in today's competitive development environment. To most effectively address market opportunities and challenges, the following Scope of Services will be performed:

- An inspection, assessment and analysis of the locational characteristics of the subject site
- Provide a completed report that includes ten to fifteen pages of text as well as charts, tables and graphs as supporting documentation.

Specifically, as related to each product type (single-family and multi-family), the following items will be performed:

Single-Family For-Sale Units

- Analyze market trends and competitor positions (pricing and absorption, product type and distribution, lot size, premiums, special taxes, etc.) of new-home developments within the subject market area to consider new product opportunities at the subject site. The primary market area is considered to be Yuba and Sutter Counties, with secondary influences from the market areas of Lincoln, Roseville, Rocklin, Natomas and Woodland.
- Access homebuyer preferences in the surveyed projects as evidenced by sales activity to add perspective to buyer profile/target market.
- Analyze proposed developments within the competitive market area to include a listing of the projects, the total number of units that have been submitted, have approved tentative maps and have approved final maps (and where available, the developer name, project statuses, development timing, etc.) Proposed information will be gathered from Yuba and Sutter Counties.
- Provide recommendations in regard to the market feasibility of the proposed residential project to include:
  - Project unit counts, home sizes and pricing for each parcel;
  - Project absorption potential for each parcel;
  - Target market;
For-Rent Apartment Units

- Analyze market trends and competitor positions (rents and occupancy, product type and distribution, bedroom and bathroom counts, density, project features, premiums, incentives, etc.) of for-rent apartment projects within the subject market area to consider new product opportunities at the subject site. The primary market area is considered to be within the immediate area of the subject site.
- Access renter preferences in the surveyed projects as evidenced by rent activity and occupancy to add perspective to render profile target market.
- Provide an analysis of proposed for-rent apartment projects within the immediate area of the subject site to include location, developer, number of units, density, approval status, etc.
- Provide recommendations in regard to the market feasibility of the proposed residential project to include:
  - Project unit sizes and rental rates;
  - Absorption and occupancy potential;
  - Target market;

III. FEES AND TIME REQUIREMENTS

The total fee for this assignment is $14,000. We require a signed contract and a retainer of 50 percent of the agreed upon fee ($7,000) in order to begin work. The final 50% payment ($7,000) is due upon delivery of the final report.

Any fee amount unpaid 30 days after the invoice date will be assessed a bi-monthly service charge of 1.5 percent per month. Two bound copies of the final report are included in the fee. Additional copies will be billed at $75 per copy. Any additional work outside the scope of this proposal will be billed on a professional time and materials basis at a rate of $300 per hour.

The Gregory Group will be reimbursed for out-of-pocket expenses, which will be billed at cost plus a 20 percent handling charge, with expenses not to exceed $1,400.

If work is stopped on this effort for any reason, you will be responsible only for the fees and expenses incurred to that date. Upon written confirmation by both parties that the study is closed, you will be invoiced for the amount due. If the report is delayed once primary data has been collected, it may be necessary to collect the primary data again. If this is determined to be true, then additional time and cost may be required. However, no extra time or cost will be incurred without the written approval of both parties.

IV. LIMITING CONDITIONS

This letter sets forth our understanding of the terms and objectives of our engagement and the nature and limitations of the services we will provide.
You are responsible for representations about its plans and expectations and for disclosure of the significant information that might affect the ultimate realization of the projected results.

There will be differences between projected and actual results because events and circumstances frequently do not occur as expected, and the differences may be material.

We will not express any form of assurances on the achievability of any pricing or absorption estimates or reasonableness of the underlying assumptions.

We have no responsibility to update our report for the events and circumstances after the date of our report.

Payment of any and all fees and expenses is not in any way contingent upon any factor other than providing services outlined in this letter.

The use of this report is limited to you for internal analysis and discussion purposes. The Gregory Group cannot be responsible for the use to which clients put the information provided.

The Gregory Group authorizes the County of Yuba and the Three Rivers Levee Improvement Authority to potentially use the market absorption study in preparation of the preliminary and final Official Statements.

The Gregory Group will sign a certificate at the transaction's closing asserting that the market absorption information is complete, accurate, and has been properly presented within the disclosure documents as stated within the signed and agreed upon proposal and as of a specific and reasonable time period.

* * * * *
Please call us with any questions. We look forward to being of service.

Sincerely,

THE GREGORY GROUP

Greg Paquin
President

ACCEP TANCE

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

Signature: ___________________________

Date: ___________________________