I  CALL TO ORDER

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

III  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.

IV  CONSENT AGENDA: All matters listed under the Consent Agenda are considered to be routine and can be enacted in one motion.

   A. Approve minutes of the special meetings of October 23 and 30, 2007.

V  ACTION ITEMS

   A. Approve Mitigation Purchase Agreement with Wildlands Inc. in the amount of $5,332,000 for giant garter snake mitigation, authorize Chairman to execute same upon review and approval of Counsel, and authorize Executive Director to take necessary actions to implement.

   B. Approve three reimbursement agreements with Reclamation District 784 for reconstruction of Pump Station Number 3 and 6 and construction of discharge pipe crossing for Pump Station Number 10 and authorize Executive Director to execute same upon review and approval of Counsel. (Continued from October 23, 2007)

VI  BOARD AND STAFF MEMBERS’ REPORTS

   A. Update on California Department of Fish and Game Proposition 13
   B. Executive Director Update
   C. Board/Staff Comments/Reports

VII  CLOSED SESSION

Conference with Real Property Negotiator pursuant to Government Code §54956.8 - Property: APN 020-360-002 (Khang) Negotiating Parties: TRLIA/Bob Morrison Negotiation: Price and Terms of Payment

VIII  ADJOURN
A meeting of the Board of Directors of the Three Rivers Levee Improvement Authority was held on the above date, commencing at 2:00 p.m., within the Government Center, Marysville, California, with a quorum being present as follows: Directors Rick Brown, Mary Jane Griego, and Dan Logue. Directors Jerry Crippen and Rick Webb were absent. Also present were Executive Director Paul Brunner, Program Manager Ric Reinhardt, Co-Counsel Andrea Clark, and Deputy Clerk of the Board of Supervisors Ellen DeLemos. Vice-chairman Logue presided.

**ACTION ITEMS**

A. **Minutes:** Upon motion of Director Griego, seconded by Director Brown, and carried with Directors Crippen and Webb being absent, the Board approved the minutes of the regular meeting of October 16, 2007 as written.

B. **Reclamation District 784 Agreements/Pump Station Number 3 and 6:** Executive Director Paul Brunner recapped reimbursement agreements with Reclamation District 784 and responded to Board inquiries.

Directors Crippen and Webb joined the meeting at 2:05 p.m.

Following Board discussion, upon motion of Director Logue, seconded by Director Griego, and unanimously carried, the Board continued the matter to November 6, 2007 to receive agreements and legal review.

Director Webb left the meeting at 2:11 p.m. Vice-chairman Logue presided.

C. **Feather River Levee Setback Project/Teichert Construction:** Program Manager Ric Reinhardt recapped a contract in the amount of $67,200 for Schedule A of Feather River Levee Setback Project and responded to Board inquiries.

Construction Manager Doug Handen recapped the pre-qualification process including bonding and list of previous jobs.
Vice-chairman Logue opened the floor for public comment. No one came forward.

Following Board discussion, upon motion of Director Logue, seconded by Director Crippen, and following a roll call vote with Directors Logue and Crippen voting in the affirmative and Directors Griego and Brown voting in opposition, the motion to award a contract to Teichert Construction for Schedule A of Feather River Levee Setback project failed.

Following Board discussion and consensus, the matter was continued to October 30, 2007.

BOARD AND STAFF MEMBERS' REPORTS

Reports were received on the following:

Executive Director Paul Brunner:
- Financial Audit for Fiscal Year 2006/07
- State Reclamation Board meeting held October 19, 2007
- Review of financial plan

CLOSED SESSION

The Board retired into closed session at 3:01 p.m. to discuss the following:

Conference with Real Property negotiator pursuant to Government Code §54956.8 – Property: APN 014-370-006 and 014-370-039 (Anderson, Gene R.)/Negotiating Parties: TRLIA/Bob Morrison Negotiation: Price and Terms of Payment

Director Crippen did not join closed session.

The Board returned from closed session at 3:06 p.m. with all Board and staff members present as indicated above, except Director Crippen. There was no announcement from closed session.
ADJOURNMENT

There being no further business to come before the Three Rivers Levee Improvement Authority the meeting was adjourned at 3:07 p.m. by Chairman Webb.

______________________________
Chairman

ATTEST: DONNA STOTTLMEYER
CLERK OF THE BOARD OF SUPERVISORS
AND SECRETARY OF THE PUBLIC AUTHORITY

______________________________
Approved:
THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

MINUTES – BOARD OF DIRECTORS

OCTOBER 30, 2007 – SPECIAL MEETING

A meeting of the Board of Directors of the Three Rivers Levee Improvement Authority was held on the above date, commencing at 3:00 p.m., within the Government Center, Marysville, California, with a quorum being present as follows: Directors Rick Brown, Mary Jane Griego, Dan Logue and Jerry Crippen. Director Richard Webb was absent. Also present were Executive Director Paul Brunner, Counsel Scott Shapiro, and Deputy Clerk of the Board of Supervisors Ellen DeLemos. Vice-chairman Logue presided.

ACTION ITEMS

1) Teichert Construction/Feather River Levee Setback Project: Executive Director Paul Brunner recapped contract with Teichert Construction for Schedule A of the Feather River Levee Setback Project and responded to Board inquiries.

Mr. Mark Stacy, Vice President Teichert Construction, acknowledged the Board for the opportunity to address their concerns.

Following Board discussion, upon motion of Director Griego, seconded by Director Crippen, and carried with Director Webb being absent, the Board awarded a contract to Teichert Construction for Schedule A of Feather River Levee Setback Project in the amount of $67,200 and authorized the Vice-chairman to execute same.

BOARD AND STAFF MEMBERS’ REPORTS

Executive Director Paul Brunner:
• Update on submission of financial plan
• First amendment to the 2nd Funding Agreement to be brought forward at December Board meeting
• Board meeting scheduled November 6, 2007
• Future workshop for assessment district

APPROVE CONTRACT
ADJOURNMENT

There being no further business to come before the Three Rivers Levee Improvement Authority the meeting was adjourned at 3:13 p.m. by Vice-chairman Logue.

______________________________
Chairman

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

______________________________
Approved: _____________________
November 6, 2007

TO: Three Rivers Levee Improvement Authority Board
FROM: Paul Brunner, Executive Director
        Anja Kelsey, Environmental Manager
SUBJECT: Wildland’s Contract for Giant Garter Snake Mitigation –Gilsizer Slough

Recommended Action:

Consider approval of Giant Garter Snake Mitigation contract to Wildland’s in the amount of $5,332,000 for the Feather River Levee Setback Project (Segment 2). Authorize the chairman to sign once general counsel has reviewed and approved the contract and authorize the executive director to take the necessary actions to implement the contract.

Background:

As a result of the Feather River Levee Repair Project (FRLRP), Segment 2 Setback construction, it is estimated that the impact to the Giant Garter Snake (GGS) will be significant; approximately one hundred to one hundred and thirty five acres of total mitigation compensation will need to be provided as part of the project. The level of these impacts was evaluated based on Stage 1 impacts; levee foundation and embankment, and State 2; levee degradation. Although a majority of the impacts to GGS will occur as a result of flood inundation of the setback area from degradation, recently TRLIA has been given direction by the U.S. Army Corps of Engineers (Corps) to review this part of the FRLRP as a single project for permitting purposes. Consequently, TRLIA is required to provide both the Corps and the U.S. Fish and Wildlife Service (Service) with mitigation assurance for the entire project as soon as possible in order for these agencies to expedite the permit process. Therefore, approval of adequate and appropriate compensatory mitigation values is a key milestone in continuing the permit approval process for the FRLRP.

Wildland’s Inc. and TRLIA staff believes that Gilsizer Slough Preserve (Preserve) will provide appropriate and adequate compensation for TRLIA’s GGS impact. The Preserve is located in Sutter County on approximately 500 acres. Of that, TRLIA will receive mitigation credits for approximately 135 acres. Although the final purchase price is dependent on the approved Biological Opinion granted by the Service and the Corps, the proposed contract contains a payment schedule that provides TRLIA the maximum flexibility to pay expenses.

Discussion:

The total estimated cost for the mitigation purchase in the proposed Wildlands contract is $5,332,000. The contract is divided into a series of payments: $5,000 as the first down
payment (anticipated to be Nov 2008), $95,000 as the second payment (anticipated to be by Jan/Feb 2008), $100,000 as the third payment by 1 April 2008, and $250,000 as the fourth payment by 15 September 2008. The final balance of the estimated cost, $4,882,000 will be due prior to December 31st, 2008.

The 2nd Department of Fish and Game, Proposition 13 Funding Grant Award for $7.4 million (being executed now), provides TRLIA with the ability to be reimbursed for mitigation activities at approximately 70% of the expensed cost. Also, the Department of Water Resources, Proposition 1E Grant Award, provides TRLIA with the ability to be reimbursed in full for mitigation activities. The award to TRLIA for the Proposition 1E grant in the Environmental category, although still being reviewed by the Department of Water Resources, is $4.0 million.

**Fiscal Impact:**

TRLIA Staff anticipates a plan to pay for the mitigation values in full by using a combination of funding mechanisms between the two state grants, both DFG Proposition 13 and DWR Proposition 1E. Both of these State grants are expected to be fully executed in the next few months. The first anticipated deposit of $5,000 in November 2008 is within the current TRLIA cash flow.

Staff believes that the remaining payment schedule sufficiently delays payment to assure prior execution of the proposed grant agreements with the State. Should the State not provide those grant agreements and decline to fund the project, TRLIA’s only liability would be the $5,000 first deposit, which according to the terms of the contract is non-refundable.

While not overlapping reimbursements schedules between the F&G and DWR grants, it is Staff’s intention to request reimbursement of funds based on the availability of funds from each grant and providing maximum flexibility for reimbursement of other activities covered by each grant.
MITIGATION PURCHASE AGREEMENT

By and Between

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

AND

WILDLANDS, INC.

Dated: _____________, 2007
MITIGATION PURCHASE AGREEMENT  
(TRLIA-GGS)

This Mitigation Purchase Agreement ("Agreement") is made and entered into this ___ day of __________, 2007, ("Effective Date") by and between the Three Rivers Levee Improvement Authority ("Authority") and Wildlands, Inc., ("Wildlands"), who agree as follows:

1. Background and General.

1.1. The Authority. Authority is a joint powers authority created by the County of Yuba and Reclamation District 784.

1.2. The Project. Authority is in the process of constructing and improving levees in South Yuba County (the "Project"). The Project will unavoidably and adversely impact certain protected species including the giant garter snake ("GGS"). As a part of the approval process for the Project, Authority must obtain approvals from, among other agencies, the United States Fish and Wildlife Service ("USFWS") and the California Department of Fish and Game ("CDFG") to compensate for such impacts by preserving, creating, enhancing and/or restoring GGS habitat or by purchasing sufficient suitable mitigation values to offset these identified impacts. USFWS, CDFG and perhaps other regulatory agencies, to the extent they are involved in approving the Project, are sometimes collectively referred to as the "Applicable Agencies."

1.3. Wildlands' Business. Wildlands is the operator of compensatory mitigation projects for impacts to wetlands, protected species and/or protected habitat, and is in the business of locating properties suitable for mitigating such impacts (each, a "Mitigation Site").

1.4. The Preserves. Wildlands is in the process of expanding an existing GGS project commonly referred to as the "Gilsizer Slough Preserve" and is establishing additional mitigation values and credits (collectively, "Mitigation Values") thereon. The Gilsizer Slough Preserve is sometimes simply referred to as the "Preserve".

1.5. Mitigation Activities To Date. As of the Effective Date:

1.5.1. Preserve. Wildlands is in the process of establishing the Preserve for mitigating impacts to GGS through the creation/restoration GGS habitat. A description of the Preserve is attached hereto as Exhibit A.

A. Habitat Restoration Activities. Wildlands has constructed over 410 acres of GGS habitat on the Preserve and has undertaken substantial activities towards developing additional Mitigation Values at the Preserve. These include, for example, such activities as performing wildlife surveys and resource mapping, soils reconnaissance to explore habitat preservation and restoration potential, and other activities.
B. Development Narrative. Wildlands has prepared a written description of the development objectives for the Preserve (the "Development Narrative") which includes design goals and objectives, descriptions of targeted compensatory habitats, generalized mapping of habitats, water management strategies and long-term vegetation management techniques and funding mechanisms.

(1) Based on the Development Narrative, the Preserve is anticipated to yield GGS Mitigation Values which are expected by the Parties to be sufficient to comply with the terms and conditions of the USFWS Biological Opinion for the Project (the "Biological Opinion"), which was prepared for the Corps as a formal consultation on the Project permit application under Section 404 (the "404 Permit").

(2) Wildlands has submitted or will be submitting the Development Narrative and a habitat mitigation and monitoring plan (the "HMMP") for approval by the Applicable Agencies in order to allow development of the Preserve for GGS habitat.

1.6. Purpose. The purpose of this Agreement is to provide for the purchase by Authority and sale by Wildlands of Mitigation Values to from the Preserve.

2. Allocation; Purchase Price.

2.1. Allocation of Mitigation Values. Upon payment to Wildlands of the Second Deposit as defined in Section 3, Wildlands shall set aside, for the exclusive use of Authority, the Mitigation Values from the Preserve equal to the following (collectively, the "Allocated Mitigation"):

<table>
<thead>
<tr>
<th>Preserve</th>
<th>Impacts Mitigated</th>
<th>Amount of Mitigation Values</th>
<th>Cost per Mitigation Value</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gilsizer Slough</td>
<td>GGS</td>
<td>137.6 acres</td>
<td>$38,750</td>
<td>$5,332,000</td>
</tr>
<tr>
<td>Purchase Price</td>
<td></td>
<td></td>
<td></td>
<td>$5,332,000</td>
</tr>
</tbody>
</table>

3. Purchase Price; Payment. The "Purchase Price" for the Allocated Mitigation shall be determined by multiplying the Amount of Mitigation Values by the Cost per Mitigation Value in accordance with Section 2.1. The $5,332,000 Purchase Price shall be paid as follows:

3.1. First Deposit. No later than ten (10) business days from the Effective Date, Authority shall pay Wildlands $5,000 (the "First Deposit"). The First Deposit shall be non-refundable upon payment and it shall be credited to the Purchase Price.

3.2. Second Deposit. No later than ten (10) business days after USFWS approves the Mitigation Values at the Preserve Authority shall pay Wildlands an additional
$95,000 ("Second Deposit"). The Second Deposit shall be non-refundable upon payment and it shall be credited to the Purchase Price.

3.3. **Third Deposit.** No later than (i) April 1, 2008, or (ii) 60 days after the Second Deposit is due if such due date is later than April 1, 2008, Authority shall pay Wildlands $100,000 ("Third Deposit"). The Third Deposit shall be non-refundable upon payment and shall be credited to the Purchase Price.

3.4. **Fourth Deposit.** Authority shall pay Wildlands $250,000 ("Fourth Deposit") (which will be non-refundable upon payment and it shall be credited to the Purchase Price) on the later of the following events to occur:

3.4.1. **Construction Notice.** Ten (10) business days after Wildlands sends Authority a notice ("Construction Notice") that Wildlands is commencing construction on the Preserve; or

3.4.2. **September 15, 2008.**

3.5. **Balance.** The balance of the Purchase Price shall be paid no later than December 1, 2008.

4. **Preserve Activities.**

4.1. **Qualification. Continued Qualification of Preserve.** Wildlands shall qualify and shall maintain the qualification of the Preserve by performing the following:

4.1.1. **Analysis and Verification.** To the extent they have not already done so, Wildlands' specialists will review, analyze and verify the biological attributes, soil types and conditions, hydrological resources and other factors to the degree required to submit the Preserve to the Applicable Agencies as a suitable location for the Allocated Mitigation described above.

4.1.2. **Mitigation Site Documentation.** To the extent not otherwise available or previously prepared and submitted with respect to the Preserve, Wildlands will prepare and submit the following documentation to the Applicable Agencies:

(A) The Development Narrative

(B) The HMMP

(C) The various legal and administrative documents which are necessary to enable the Preserve to be endorsed by the Applicable Agencies, which may include, by way of example, a conservation easement affecting the Mitigation Site.
(D) Permits and surveys required by the Applicable Agencies in order to approve the documents described above, including, without limitation, those required to implement such documents.

4.1.3. Development Arrangements. To the extent Wildlands has not already done so, Wildlands will enter into such arrangements as may be necessary or convenient to enable Wildlands to develop the Allocated Mitigation on the Preserve.

4.2. Development of Preserve. To the extent Wildlands has not already done so, Wildlands will cause the Preserve to be developed in the manner described in the HMMP for that Preserve. In that regard, Wildlands shall be responsible for:

4.2.1. Permits, Etc. Obtaining permits, performing surveys or studies, or preparation of other documents which are required for implementation of the HMMP.

4.2.2. Construction and Other Work. Construction or other work on the Preserve required by the HMMP.

4.3. Maintenance of the Preserve. Wildlands shall provide for the long-term maintenance of the Preserve, as required by the HMMP for that Preserve. Wildlands shall monitor and make reports to the appropriate agency or agencies on the status of the Preserve; and Wildlands shall be fully and completely responsible for satisfying any and all conditions placed on the Preserve by the Applicable Agencies. Consistent with Section 5.1 below, Authority shall have no financial obligation beyond those contained in Section 3 for maintenance of the Preserve.

5. Limitation of Obligations, Rights of Authority.

5.1. Limitation of Obligations. Authority’s obligations shall be limited to the payments described above. Authority shall have no obligation whatsoever by reason of the use of the Preserve for the Allocated Mitigation, to support, pay for, monitor, report on, sustain, continue in perpetuity or otherwise be obligated or liable for the success or continued expense or maintenance in perpetuity of the Preserve. As set forth above, Wildlands shall be fully and completely responsible therefore and for satisfying any and all conditions placed on the Preserve by the Applicable Agencies.

5.2. Limitation of Rights to Preserve. Nothing in this Agreement shall result in Authority having any right, title or interest in any one or more of the Preserve greater than that specifically granted by this Agreement. Authority’s sole right shall be to have Wildlands’ obligations with respect to the Preserve serve as the required mitigation for the Project if and when the Allocated Mitigation or the appropriate portion thereof, is approved for sole use by the Applicable Agencies.

5.3. Joint Use. At the time specified in Section 2 above, Wildlands shall reserve the Allocated Mitigation for the sole use of Authority or its successors or assigns. This reservation shall in no way restrain Wildlands from selling to others mitigation values at the
Preserve in addition to the Allocated Mitigation, so long as the additional mitigation values have been authorized for sale by the Applicable Agencies, and so long as the aggregate number of mitigation values sold to all parties, including Authority, from a particular Preserve, does not exceed the aggregate number of mitigation values authorized for sale by the Applicable Agencies from that particular Preserve.

6.4. **Project Approvals.** Authority alone shall be responsible for obtaining the approval of the Applicable Agencies to mitigate the impacts of the Project with the Allocated Mitigation. In that regard, Wildlands has made and makes no representation, warranty or guaranty that the Applicable Agencies will approve the Preserve as suitable mitigation for the Project. Notwithstanding the foregoing, Wildlands shall reasonably cooperate with Authority's efforts to obtain the Applicable Agencies' approval for use of the Allocated Mitigation in connection with the Project by providing information required by the Applicable Agencies and executing documents required by the Applicable Agencies.

6.5. **Limitations on Assignment; Transfer.** Authority acknowledges that Wildlands is not willing to sell the Allocated Mitigation which could be resold in competition with the remaining the Mitigation Values available for sale from the Preserve. Accordingly, Authority shall be prohibited from transferring any Mitigation Values to a third party other than RD 784 or Yuba County without the consent and approval of Wildlands, which Wildlands may withhold in its sole discretion.

7. **Wildlands' Right To Create a Conservation Bank; Mitigation Bank.** Wildlands specifically reserves the right to create a Mitigation or Conservation Bank on the Preserve. Should Wildlands elect to do so, in Wildlands' sole discretion: (a) the Allocated Mitigation shall be provided in the form of Conservation Bank Credits or Mitigation Bank Credits; (b) Authority shall have no obligations with respect to the Conservation Bank or Mitigation Bank; (c) Authority shall have no rights to any proceeds or excess credits of the Conservation Bank or Mitigation Bank.

8. **Miscellaneous Provisions.**

8.1. **Ownership of Documents.** All work papers, drawings, internal memoranda of any kind, photographs, and any written or graphic material, however produced, prepared by Wildlands in connection with its performance of services hereunder shall be, and shall remain after termination of this Agreement, the property of Wildlands and may be used by Wildlands for any purpose whatsoever. Wildlands agrees to return to Authority upon termination of this Agreement all documents, drawings, photographs and other written or graphic material, however produced, received from Authority and used by Wildlands in the performance of its services hereunder.

8.2. **Notices.** Any notices, requests, demands or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally (FedEx and similar services shall be considered to be personal service) or by telephone facsimile or other electronic transmission (provided that the sender of a telephone facsimile or other electronic transmission
has received a return receipt signed by the party so notified, or has other written evidence of receipt), and upon the second business day after mailing, if mailed to the party to whom notice is to be given, by first-class mail, registered or certified, postage prepaid, return receipt requested, and properly addressed as follows:

**Wildlands, Inc.**
3855 Atherton Road
Rocklin, CA 95765
Attn: Mark Heintz, VP General Counsel
Phone: (916) 435-3555
Fax: (916) 435-3556
Email: mheintz@wildlandsinc.com

**Three Rivers Levee Improvement Authority**
One-Stop Center
1114 Yuba Street, Suite 218
Marysville, CA 95901
Attn: Paul Brunner, Executive Director
Phone: 530-749-5679
Mobile: 530-701-7361
Email: pbrunner@co.yuba.ca.us

With a copy to: Scott Shapiro, Esq
Downey Brand
555 Capitol Mall, Tenth Floor
Sacramento, CA 95814
Phone: (916) 444-1000
Fax: (916) 444-2100
Email: sshapiro@downeybrand.com

Any party may change its address for purposes of this section by giving the other party written notice of the new address in the manner set forth above.

8.3. **Modification.** No waiver, alteration, modification or termination of this Agreement shall be valid unless made in writing.

8.4. **Choice of Law: Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any suit, action or proceeding brought under the scope of this Agreement shall be brought and maintained to the extent allowed by law in the County of Sacramento, California.

8.5. **Interpretation; Entire Agreement.** The headings or captions to the sections of this Agreement are not a part of the Agreement and shall have no effect upon the construction or interpretation of any part thereof. This Agreement sets forth the entire understanding between the parties as to the subject matter of the Agreement and merges all prior discussions, negotiations, letters of understanding or other promises, whether oral or in writing.
8.6. **Resolution of Disputes: Arbitration.** Any dispute, controversy or claim arising out of or relating to this Agreement, including any dispute relating to interpretation of or performance under the Agreement ("Dispute"), shall be resolved in the manner set forth in this Section 8.6, which shall be in lieu of litigation in any court, and the parties specifically waive any right to a jury trial of any Dispute between them.

8.6.1. **Negotiation.** The parties will attempt in good faith to resolve the Dispute promptly by negotiations between senior representatives of the parties who have Authority to settle the Dispute (each a "Representative").

8.6.2. **Arbitration.** In the event the Representatives are not able to resolve the Dispute within 30 days following the date one party first notifies the other party of the Dispute in writing, the Dispute shall be resolved by binding arbitration before a retired judge of the Superior Court, Appellate Court or Supreme Court of the State of California (the "Arbitrator") in accordance with the following provisions:

A. The parties stipulate and agree that any and all necessary parties may be joined in the arbitration, but the parties agree to proceed with arbitration of all Disputes between themselves even if other parties refuse to participate. The parties specifically waive any objection to arbitration based on the failure or refusal of any other party to be joined.

B. The arbitration shall be initiated by written notice (the "Arbitration Notice") of a demand to arbitrate by registered or certified mail sent by one party to the other party. The Arbitration Notice shall include a plain statement of the Dispute and the relief requested. It shall attach the documents the party demanding arbitration relies upon and a detailed statement of the expected testimony of witnesses, including expert witnesses. Within 30 days of receipt of the Arbitration Notice, the responding party shall provide its own plain statement of the Dispute, together with documents it intends to rely upon and the expected testimony of witnesses, including expert witnesses. The parties shall each advance one-half of the Arbitrator's fee, as fixed and required by the Arbitrator in order to initiate the arbitration, although they shall ultimately bear responsibility for such fee as determined by the Arbitrator.

C. The parties shall attempt to agree on an Arbitrator. If they are unable to agree, either party may petition the presiding judge of the Superior Court for the County of Sacramento to appoint the Arbitrator.

D. The Arbitrator shall have the power to grant all legal and equitable remedies, including, but not limited to, injunction, specific performance, reformation, cancellation, accounting and compensatory damages, except only that punitive damages shall not be awarded. The Arbitrator shall issue a binding decision within 30 days of the conclusion of the arbitration. The Arbitrator's decision shall be conclusive and binding, and it may be confirmed thereafter as a judgment by the Superior Court of the State of California, subject only to challenge on the grounds set forth in California Code of Civil Procedure Section 1286.2. The validity and enforceability of the Arbitrator's decision is to be determined exclusively by the California courts pursuant to the provisions of this Section 8.6.
E. The Arbitrator shall award reasonable attorneys' fees and costs, including the Arbitrator's fees and expert fees, to the "Prevailing Party." For purposes of this section, the "Prevailing Party" shall be the party which obtains a net monetary recovery, exclusive of attorneys' fees and costs UNLESS the net monetary recovery is equal to or less than the amount of a written offer from the opposing party made after the negotiations described in Section 8.6.1. The Arbitrator shall have exclusive and binding Authority to determine entitlement to attorneys' fees and costs, including Arbitrator's and experts' fees, under this section.

F. The arbitration shall be conducted in Sacramento County, California. Any party may be represented by counsel or other authorized representative.

8.7. Attorneys' Fees. In the event any of the parties shall commence legal proceedings for the purpose of enforcing any provision or condition hereof, or by reason of any breach arising under the provisions hereof, then the successful party in such proceeding shall be entitled to court costs and reasonable attorneys' fees to be determined by the Court or Arbitrator. Without limiting the generality of the foregoing, the prevailing party shall be entitled to recover its attorneys' fees and other legal expenses incurred in connection with a bankruptcy or other insolvency-related proceeding of the other party (and including such fees and expenses incurred in efforts, whether successful or not, to obtain adequate protection, annulment, modification or termination of the automatic stay).

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

Three Rivers Levee Improvement Authority

By: ___________________________ Dated: ________________ 2007
Name:  
Title: 

WILDLANDS, INC.

By: ___________________________ Dated: ________________ 2007
Name: 
Its: 

APPROVED AS TO FORM:

Scott L. Shapiro, General Counsel, TRLIA
Gilsizer Slough Preserve Expansion

Project Location

Wildlands, Inc.

Exhibit A  Map 2
TO: Three Rivers Levee Improvement Authority Board
FROM: Paul Brunner, Executive Director
Larry Dacus, Design Manager
SUBJECT: Consider Approval of Reimbursement Agreements with Reclamation District 784 for Reconstruction of Pump Station 6, Reconstruction of Pump Station 3, and Construction of a Discharge Pipe Crossing for Pump Station 10.

Recommended Action

Approve three agreements with Reclamation District (RD) 784 for reimbursement to TRLIA and authorize the TRLIA Executive Director to sign the agreements and execute once General Counsel has reviewed and approved. These reimbursement agreements are for reconstruction of Pump Station No. 6, reconstruction of Pump Station No. 3, and construction of a discharge pipe crossing for Pump Station No. 10.

Discussion

RD 784 considered and approved their President to enter into agreements with TRLIA to reimburse TRLIA for the reconstruction of Pump Stations No. 5 and 6 and construction of the discharge pipe crossing of Pump Station No. 10 at its October 2, 2007 Board Meeting.

As part of the levee improvements for RD 784, TRLIA has already reconstructed Pump Station No. 6. As part of the proposed Feather Setback Levee TRLIA plans to reconstruct Pump Station No. 3 in 2008. RD 784 has requested that TRLIA include a discharge pipe crossing in the construction of the Feather Setback Levee for its future Pump Station No. 10. TRLIA plans to include this requested discharge pipe crossing work in its setback contract, which is planned to occur in 2008.

Construction of these facilities is included in RD 784's Master Drainage Plan. Impact fees for construction of the Drainage Master Plan facilities have been and continue to be collected by RD 784 as development occurs. The agreements would reimburse impact fees already collected for the facilities as the facilities are constructed by TRLIA. Future fees for these facilities would be provided to TRLIA as the impact fees are collected by RD 784.

10/23/07: BOD: Continued to November 6, 2007/ed
Approval to execute these agreements would provide TRLIA additional funds for construction work that has already been accomplished and for work to be constructed in 2008 (see fiscal impact below for breakout).

**Fiscal Impact**

These agreements should provide TRLIA approximately $1,649,500 in 2008 and approximately $6,656,125 in the future as development occurs. One agreement would provide immediate reimbursement of approximately $185,000 for the already constructed Pump Station 6 and approximately $1,583,125 of future reimbursement. Pump Station 3 reimbursement agreement would be $927,000 when construction occurs, currently planned for 2008 with $5,073,000 in future reimbursements. The third agreement for the pipe crossing would provide reimbursement of $537,500 after it is constructed, currently planned for 2008. This would be the total amount for the discharge pipe crossing.

Future reimbursements for Pump Station 3 and 6 would occur as development occurs. Due to the unpredictability of this future development, it is unknown when the future funds would be made available to TRLIA.
<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>Station 10</th>
<th>Pump</th>
<th>Station 6</th>
<th>Pump</th>
<th>Station 3</th>
<th>Pump</th>
</tr>
</thead>
<tbody>
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RD784 Funding to TRILIA
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 ____ day of _____, 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.

AGREEMENT

The Parties agree as follows:
1. Payments

1.1 RD 784 shall transfer $927,000 to TRLIA upon the execution of a construction contract for the relocation of PS 3.

1.2 Starting with the first quarter after execution of a construction contract for the relocation of PS 3, RD 784 shall make quarterly payments to TRLIA equal to 34.85% of the Drainage Basin B impact fees collected by RD 784 in the preceding quarter. Such payments shall be made within 10 business days of the end of each quarter.

1.3 Payments pursuant to Section 1.2 shall continue until the total of such payments reaches $5,073,000. Once this total has been reached this Agreement shall terminate.


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 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
AGREEMENT FOR PAYMENTS RELATED TO CONSTRUCTION OF PUMP STATION 6

THIS AGREEMENT for Payments Related to Construction of Pump Station 6 ("Agreement") is entered into and effective this ___ day of ____, 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 reconstruction of PUMP STATION NO. 6 ("PS 6"). 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 6;

C. As of the Effective Date of this Agreement, RD 784 has already collected $185,000 for the PS 6 reconstruction;

D. RD 784 continues to collect impact fees for Drainage Basin C, 6.49% of which is budgeted for the reconstruction of PS 6;

E. TRLIA has already performed the reconstruction work for PS 6 as part of its Phase 2 construction for improvements to RD 784 levees;

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 construction of PS 6.

AGREEMENT

The Parties agree as follows:

1. Payments
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 ______________________, 2007.

THREE RIVERS LEVEE  
IMPROVEMENT AUTHORITY

Paul G. Brunner P.E  
Executive Director  
TRLIA

Richard Webb  
President, Board of Directors  
RD 784

APPROVED AS TO FORM:

SCOTT L. SHAPIRO  
THREE RIVERS LEVEE  
IMPROVEMENT AUTHORITY  
GENERAL COUNSEL

APPROVED AS TO FORM:

CARL LINDMARK  
RECLAMATION DISTRICT 784  
GENERAL COUNSEL
1.1 RD 784 shall transfer $185,000 to TRLIA within ten business days of the effective date of this Agreement.

1.2 Starting with the first quarter of 2008, RD 784 shall make quarterly payments to TRLIA equal to 6.49% of the Drainage Basin C impact fees collected by RD 784 in the preceding quarter. Such payments shall be made within 10 business days of the end of each quarter.

1.3 Payments pursuant to Section 1.2 shall continue until the total of such payments reaches $1,768,125. Once this total has been reached this Agreement shall terminate.


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 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 ____________________, 2007.

THREE RIVERS LEVEE
IMPROVEMENT AUTHORITY

______________________________  ________________________________
Paul G. Brunner P.E  Richard Webb
Executive Director  President, Board of Directors
TRLIA  RD 784

APPROVED AS TO FORM:
SCOTT L. SHAPIRO  CARL LINDMARK
THREE RIVERS LEVEE  RECLAMATION DISTRICT 784
IMPROVEMENT AUTHORITY  GENERAL COUNSEL

GENERAL COUNSEL
AGREEMENT FOR PAYMENTS RELATED TO CONSTRUCTION OF A SETBACK LEVEE PIPE CROSSING

THIS AGREEMENT for Payments Related to Construction of a Setback Levee Pipe Crossing ("Agreement") is entered into and effective this ________________ day of ________________, 2007 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 related to construction of a discharge pipe crossing of the Feather Setback Levee ("Pipe Crossing"). 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 construction of a new Pump Station 10, whose discharge pipes (the Pipe Crossing) will cross the proposed Feather Setback levee;

C. The Parties agree that it is advantageous to construct this Pipe Crossing simultaneously with construction of the setback levee;

D. TRLIA intends to construct the Pipe Crossing consistent with plans and specifications to be provided by RD 784. The Parties acknowledge that TRLIA will not start reconstruction of the Pipe Crossing until the Board has taken actions necessary to commence reconstruction activities;

E. 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

F. The purpose of this Agreement is to provide for the provision of funds by RD 784 to TRLIA in recognition of TRLIA’s future construction of the Pipe Crossing.

AGREEMENT

The Parties agree as follows:

1. Payments
1.1 RD 784 shall pay TRLIA an amount equal to the final bid for construction of the Pipe Crossing, not to exceed $537,500, upon the execution of a construction contract for the Pipe Crossing. In the event that the final design includes more than two pipes crossing the levee, this payment will increase by an amount based upon bids received, cost estimates from engineering consultants or other reasonable calculations.


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 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
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 ____________, 2007.

THREE RIVERS LEVEE
IMPROVEMENT AUTHORITY

Paul G. Brunner P.E
Executive Director
TRLIA

Richard Webb
President, Board of Directors
RD 784

APPROVED AS TO FORM:

SCOTT L. SHAPIRO
THREE RIVERS LEVEE
IMPROVEMENT AUTHORITY
GENERAL COUNSEL

CARL LINDMARK
RECLAMATION DISTRICT 784
GENERAL COUNSEL
November 6, 2007

TO: Three Rivers Levee Improvement Authority Board
FROM: Paul Brunner, Executive Director
Anja Kelsey, Environmental Manager
SUBJECT: Department of Fish and Game FY 2008 Proposition 13 Contract

MEMO TO THE BOARD

Background:

The Costa-Machado Act of 2000 provided $20,000,000 for the Department of Fish and Game (DFG) to be used for environmental measures pertaining to flood control projects undertaken pursuant to the Costa-Machado Water Act (Prop 13 funding). TRLIA entered into discussions with the DFG and jointly agreed that $19,000,000 would be provided for flood projects in Southern Yuba County.

On February 7, 2006 the TRLIA Board adopted Resolution 06-01 that stated “the TRLIA Board of Directors agree to enter into a contract with DFG, and designate the Executive Director of TRLIA (and, in the absence of the Executive Director, his/her authorized TRLIA representative) as the Board’s representative to execute the contract and related documents, and function as TRLIA’s official representative in future negotiations with DFG.

During discussions with DFG the $19 million was split into two separate efforts, based on state funding issues. On March 24, 2006, TRLIA entered into an agreement with the California Department of Fish and Game for the release of funds from Proposition 13, in the amount of $11.2 million. The first grant award was allocated for environmental mitigation and restoration costs associated with Phase 2 and 3 of the Bear and WPIC construction work. In the FY 07/08 State budget the DFG has been allocated the second portion of Prop 13 funding. At the onset of the Department of Fish and Game’s budget in FY 2008, TRLIA originally was to receive $7.8 million, but due to State budget cuts, the Governor’s final version contained $7.4 million. This second grant amount is anticipated to be used for any continuing restoration activities in the Bear Setback Restoration Area as well as for mitigation and restoration activities associated with the Feather River Levee Repair Project (FRLRP).

Discussion:

Over the past months since the FY07/08 State budget was approved TRLIA staff has negotiated the second grant award. This second DFG Prop 13 grant has been reviewed and approved by TRLIA General Counsel. Based on the prior TRLIA Board designation
(Resolution 06-04) the Executive Director has signed the agreement. The agreement is now at DFG for signature.

The Grant will cover FRLRP activities in addition to other outstanding operations and maintenance (O&M) activities associated with the Bear River Setback Restoration Area. Other highlights include full reimbursement to TRLIA for the long term endowment for maintenance and monitoring of the Bear Setback Restoration site, an amount estimated to be $2,000,000.00.

This grant award, while separate from the Department of Water Resources, Proposition 1E award, will be used in combination with environmental funds in the Proposition 1E award. It will be most advantageous for TRLIA to be able to seek full reimbursement for mitigation activities associated with the Feather River Setback from the Proposition 1E funds as well as seeking reimbursement for activities associated with restoration in the Feather Setback area where applicable.

Specifically, DFG Proposition 13 funds will be used to reimburse TRLIA for Giant Garter Snake offsite mitigation purchases, onsite Feather River Setback Restoration actions, onsite and ongoing Bear River Setback Restoration O&M activities, and funding for the Long Term Endowment to the Centers for Natural Lands Management (CNLM) for long term operations and maintenance of the Bear River Setback Area.

To the extent possible, DFG Proposition 13 funds will also be used to reimburse TRLIA for land acquisition purchases that result in a direct environmental beneficial end use. The Proposition 13 funds do not fully reimburse TRLIA for all environmental expenses all at once however they do offset them significantly -reimbursing 70% of the local share and 30% of other shared costs.

**Fiscal Impact:**

This agreement will provide $7.4 million that has been anticipated in the TRLIA cash flow to pay upcoming TRLIA expenses. TRLIA has forecasted a series of direct costs that are to be offset with the signing of this contract. The direct fiscal impact of this grant funding relates to TRLIA's ability to pay for its mitigation and restoration obligations as laid out in the existing Bear and WPIC U.S. Army Corps of Engineers 404 permit as well as the 404 permit for the FRLRP.
Conserving California's Wildlife Since 1870

STATE OF CALIFORNIA
STANDARD AGREEMENT
STD. 213 (Rev 06/03)

AGREEMENT NUMBER

REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:
   STATE AGENCY'S NAME:
   Department of Fish and Game
   CONTRACTOR'S NAME:
   Three Rivers Levee Improvement Authority (TRLIA)

2. The term of this Agreement is: August 1, 2005 through June 30, 2008

3. The maximum amount of this Agreement is: Seven Million and Four Hundred Thousand Dollars

4. The parties agree to comply with the terms and conditions of the following exhibits which are:
   Exhibit A - Scope of Work 5 pages
   Exhibit A-1 Memorandum of Understanding 4 pages
   Exhibit B - Budget Detail and Payment Provisions 3 pages
   *Exhibit C - General Terms and Conditions GTC 304, 1pages
   Exhibit D - DFG Additional Provisions 7 pages

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be reviewed at: www.ois.dgs.ca.gov/standard+language

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)
Three Rivers Levee Improvement Authority (TRLIA)

BY (Authorized Sign) DATE BY (Authorized TRLIA Counsel) DATE

PRINTED NAME AND TITLE OF PERSONS SIGNING
Paul Brunner, Executive Director Scott Shapiro, General Counsel, TRLIA

ADDRESS
1114 Yuba Street, STE 218
Marysville, CA 95901

STATE OF CALIFORNIA

AGENCY NAME
Department of Fish and Game

BY (Authorized Signature) DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS
1416 Ninth Street
Sacramento, CA 95814
EXHIBIT A – SCOPE OF WORK

1. Contractor agrees to provide the State Department of Fish and Game (DFG) assistance in addressing the concerns regarding flood control for the Feather River, Bear River, Yuba River and Western Pacific Interceptor Canal Levee Improvement Project as described herein:

   by supervising the overall levee improvement effort, including funding, preliminary studies, design, permitting, construction and environmental mitigation/restoration activities.

2. The services performed under this contract are applicable to the study area defined as that portion of the Yuba-Feather River flood protection for Reclamation District 784, located in the southern portion of Yuba County. Reclamation District 784 is comprised of the following boundaries: Yuba River to the north, Feather River to the east, Bear River to the south, and the Western Pacific Interceptor Canal to the east.

3. The services shall be provided (time frame, i.e. working hours, Monday-Friday, except holidays or to be determined by the Contract manager).

4. The Project Officials during the term of this agreement will be:

   **DFG Contract Manager**
   Kent Smith
   Department of Fish and Game
   Phone: (916) 358-2382
   Email: ksmith@dfg.ca.gov

   **Contract Project Director**
   Brian Boxer, PBS&J
   Three Rivers Levee Improvement Authority
   Phone: (916) 325-4800
   Fax: (916) 325-4810
   Email: bboxer@pbsj.com

   Direct all inquiries to:

   **Project Manager**
   Kent Smith
   Department of Fish and Game
   1701 Nimbus Road
   Rancho Cordova, CA 95670
   Phone: (916) 358-2030
   Fax: (916) 358-2912
   Email: ksmith@dfg.ca.gov

   **Contractor**
   Paul Brunner
   Three Rivers Levee Improvement Authority
   Government Center
   1114 Yuba Street, STE 218
   Marysville, CA 95901
   Phone: (530) 749-5679
   Fax: (530) 749-6990
   Email: pbrunner@co.yuba.ca.us

   The parties may change their Contract Manager or project Director upon providing ten (10) days written notice to the other party.

5. **Background and Objectives**

   The Project is a sub-portion of the Yuba-Feather Supplemental Flood Control Project (Y-FSFCP), and is intended to provide additional flood protection for Reclamation District 784.
The project is intended to be a partially funded, as appropriate, through Chapter 5, Article 8 (Yuba Feather Flood Protection Program) of the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Act (Costa-Machado Water Act of 2000).

Section 79068.14 of the Costa-Machado Water Act of 2000 provides $20,000,000 for appropriations by the Department of Fish and Game (DFG), to be used if DFG determines that any flood control project undertaken pursuant to the Costa-Machado Water Act of 2000 would result in a reduction of, or damage to, fish, wildlife, and riparian habitat of a comparable type to that which was reduced or damaged. All mitigation measures required for impacts associated with any flood control project will take precedence over any proposed enhancement measures.

Section 79068.6 of the Costa-Machado Water Act of 2000 provides $70,000,000 for appropriations by the Department of Water Resources (DWR) to fund flood protection projects such as the Y-FSFCP. These funds support flood protection projects to be implemented by a local public entity along the Yuba and Feather Rivers and their tributaries, and the Colusa Drain and its tributaries.

Section 79068.6 of the Costa-Machado Water Act of 2000 states that any land acquired pursuant to this section shall be acquired from willing sellers.

The project has been determined to cause environmental impacts through the California Environmental Quality Act (CEQA) in the Environmental Impact Report for the Feather River Levee Repair Project, certified in February 2007 (State Clearinghouse No.2006062071). Mitigation for the impacts will be accomplished through Section 79068.14 of the Costa-Machado Water Act of 2000, and this contract.


This project is divided into sub-components including, but not limited to, onsite property acquisition (restoration of an unspecified number of acres, mitigation of approximately 150 acres), off-site restoration and offsite mitigation. A brief description of these components is as follows:

Component 1: Onsite Property Acquisition

In this flood control project, property is required for mitigation and environmental restoration purposes. Some of this will be used for restoration and its cost will be assigned to enhancement without any cost-sharing requirement. Property that is used for mitigation is cost-shared with the grantee at 70 percent grant and 30 percent local. Joint-use property, or property that is used for both flood control and environmental enhancement, is cost-shared in relation to established cost allocation procedures based on benefits limited by the cost of achieving the same benefits by a single-purpose alternative. For this project, 14.2 percent of the joint-use costs are assigned to environmental enhancement.
Component 2: Offsite Restoration

Offsite restoration includes work performed by the private sector under contract with the grantee that has been implemented as part of restoration efforts under the Feather-Bear Rivers Levee Project. This includes riparian plantings along the Feather River setback area and the long term monitoring and maintenance of those plantings. This will also include the long term maintenance and monitoring costs and endowment to be initiated by TRLLA and its contractors. The costs thereof are shared -70 percent grant and 30 percent local funds.

Component 3: Offsite Mitigation

Offsite mitigation is limited to mitigation measures that cannot be reasonably implemented on project lands. This includes giant garter snake habitat, Valley Elderberry Longhorn Beetle habitat and seasonal wetlands. The measures will be implemented by the private sector under contract with the grantee. The costs thereof are shared - 70 percent grant and 30 percent local funds.

7. Work to be Performed Under this Agreement

The Contractor shall be responsible for performing the work as set forth herein:

Prepare products and a final report as specified in this Exhibit. The Project Director shall promptly notify the Contract Manager of events or proposed changes that could affect the scope, budget, or completion dates within this agreement.

Component 1: Onsite Property Acquisition

Onsite Property Acquisition and subsequent to the Feather River Setback Levee, implementation will result in placing 1600 acres into the floodplain. This contract will provide funding for acquisition of property that is used for both flood control and environmental enhancement, and this acquisition will be cost-shared in relation to established cost allocation procedures based on benefits limited by the cost of achieving the same benefits by a single-purpose alternative.

Upon purchase of onsite property, ultimate restoration and mitigation activities for the species and habitats listed above shall be implemented onsite where applicable. Management plans and assurances to protect and provide for long-term management shall be approved by DFG prior to release of any additional funds.

Component 2: Offsite Restoration

Feather River Setback Monitoring and Maintenance and Bear River Setback Long Term Maintenance and Monitoring

Ongoing efforts as a result of the Feather-Bear Rivers Levee Setback Project for riparian habitat restoration require the development of a new restoration and mitigation area within the newly created Feather River Setback, part of the Feather River Levee Repair Project (FRLRP). This effort, to be undertaken by a private contractor to the grantee, will include the restoration of approximately 600 acres of existing orchard land to Swainson’s hawk foraging habitat, Valley Oak Riparian Forest, Riparian Scrub, Riparian Woodlands, Valley...
Oak forest, Seasonal Wetlands, Seasonal Ponds, Willow Scrub, Emergent Wetlands, and fish stranding in the created floodplain of the Feather River, west of Feather River Boulevard.

Ongoing efforts as a result of the Feather-Bear Rivers Levee Setback Project for riparian habitat restoration require long term monitoring and maintenance of the Bear River Levee setback area. This effort, to be undertaken by a private contractor to the grantee, includes an escrow endowment to ensure the continuing restoration of approximately 300 acres of existing orchard land to Swainson’s hawk foraging habitat, Valley Oak Riparian Forest, Riparian Scrub, Riparian Woodlands, Valley Oak forest, Seasonal Wetlands, Seasonal Ponds, Willow Scrub, Emergent Wetlands, and fish stranding in the created floodplain near the confluence of the Feather and Bear Rivers.

Component 3: Offsite Mitigation

Giant Garter Snake

Mitigation for permanent impacts of the FRLRP to giant garter snake habitat is anticipated to require the purchase of 100-120 acres of giant garter snake habitat in a U.S. Fish and Wildlife Service and DFG-approved conservation bank. Offsite mitigation credits shall be secured and developed for giant garter snake through the implementation of a habitat mitigation and monitoring plan, and assurances to protect and provide for long-term management shall be approved by DFG prior to release of funds.

Additionally, to accomplish giant garter snake mitigation, the grantee shall enter into a contract with a private contractor providing the mitigation credits and/or values (A portion of this cost will be subject to grant share, which is reimbursable under this contract, and the remainder will be local share). The purpose of this contract is to ensure funding for the acquisition and long-term management of habitat consistent with the requirements to mitigate for 100-120 acres of giant garter snake habitat. At the time that the mitigation is put in place, should the actual cost of land and long-term management be determined to exceed the amount in the escrow account, the grantee agrees to make up the difference in order to ensure that the mitigation requirement is fully implemented. All general mitigation bank requirements shall be required to include a Conservation Easement and the financial structure to ensure management in perpetuity.
8. Reports

All plans and reports completed under elements 7-9, as described below, shall be provided in print (on recycled paper) and electronically (CD media), except for Monthly Status Reports, of which will be required two hard copied only. Intermediate review drafts may be produced for DFG review by mutual agreement. Unless otherwise agreed to by the DFG, text shall be in MS Word, spreadsheets shall be in MS Excel, and GIS materials shall be in ArcView.

Mitigation and Enhancement (Restoration) Construction Plan

Prepare a Mitigation and Enhancement (Restoration) Construction Plan and timetable with associated costs, schedules, deadlines, and milestone. Develop detailed schedules for the interaction, timing, and scope of all subcontractor work. Construction management plan shall include the names and contact information for all critical personnel and all subcontractor personnel having management, accounting, and supervisory responsibilities for implementing the final project.

Monthly Status Reports

Not later than one month after commencement of the project, and monthly through the contract, the Project Manager shall provide written status reports to the Contract Manager. Monthly status reports shall update the Contract Manager on the project schedule, status of tasks, planned activities for the next reporting period, and shall forecast anticipated project expenditures for the next reporting period.

Final Report

Not later than six months after the conclusion of the project, the Project Manager shall submit a final report to the Contract Manager that documents the completion of all mitigation and enhancement (restoration) activities associated with the Feather River, Bear River, Yuba River, and the Western Pacific Interceptor Canal Levee Improvement Project.

WHEREAS, Chapter 5, Article 8, Section 79068.6 of the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Act (Costa-Machado Water Act 2000), provides $70,000,000 for appropriations by the Department of Water Resources (DWR) to fund flood protection projects for the Yuba Feather Flood Protection Program. These funds shall fund flood protection projects to be implemented by a local public entity along the Yuba and Feather Rivers and their tributaries, and the Colusa Drain and its tributaries.

WHEREAS, Section 79068.14 of Chapter 5, Article 8 provides $20,000,000 for appropriations by the Department of Fish and Game (DFG). These funds are to be used by DFG if it determines that any flood control project undertaken pursuant to Chapter 5, Article 8 (Yuba Feather Flood Protection Program) would result in a reduction of, or damage to, fish, wildlife, or riparian habitat, to protect, improve, restore, create, or enhance fish, wildlife, and riparian habitat of a comparable type to that which was reduced or damaged.

WHEREAS, Section 79068.8 of Chapter 5, Article 8 provides that before any state funds, including the DFG funds set aside by Section 79068.14, may be expended, DWR or The Reclamation Board must recommend the project for implementation.

WHEREAS, it is mutually beneficial to delineate and define the types of measures that could be implemented using all or a portion of the $20,000,000 provided to DFG.

NOW, THEREFORE, it is mutually agreed that the following procedures shall be established and followed by both agencies.

1. Types of Activities to be Funded
   a) Definition of Project: Chapter 5, Article 8 uses various terms for flood protection projects, including flood protection, flood control, and flood damage reduction. Whenever the word Project is used in this agreement it is intended to include flood protection projects, flood control projects, or flood damage reduction projects identified in Section 79068.8.

   b) The type of activities being proposed that could be funded using the funds provided under Section 79068.14 of Chapter 5, Article 8 are
to protect, improve, restore, create, or enhance fish, wildlife, and riparian habitat. DWR and DFG agree that the types of activities that could be funded using these funds must have a nexus or connection to the type of fish, wildlife or riparian habitat that is being reduced or damaged by the implementation of the new Project.

c) All environmental mitigation that does not address impacts to fish, wildlife, or riparian habitat will be funded from funds other than the $20,000,000 provided to DFG.

d) Generally, the funds are to be used for mitigation of fish and wildlife impacts from new Projects, not past projects. However, work that rectifies past project impacts while actually mitigating for the new Project would be acceptable as long as a clear nexus is evident.

e) Mitigation measures are those which are required by the final environmental document to compensate for reduction of, or damage to, fish, wildlife, or riparian habitat which resulted from Projects undertaken pursuant to Article 8. These Project mitigation costs will be cost shared the same as those costs related to implementation measures for the Project.

f) Enhancement measures are all other measures to protect, improve, restore, create or enhance fish, wildlife, and riparian habitat. Funding for all mitigation measures for a Project shall be identified and set aside prior to any enhancement funding being awarded related to that Project. Those measures which have a clear nexus to flood damage reduction measures, but are not required for mitigation are eligible for 100 percent funding using the funds provided under Section 79068.14 of Chapter 5, Article 8.

2. DWR will provide DFG with the most current schedules for all feasibility studies, designs or implementation Projects funded under the Yuba Feather Flood Protection Program. DWR will ensure that all applicable meeting attendance and submittals will be highlighted to DFG. DFG will have the opportunity to attend all meetings involving any Project funded by the Program that they believe is necessary or important to warrant such meeting attendance.

3. DFG may meet or talk with any of the contractors working on the mitigation or enhancement efforts for any Project funded by the Yuba Feather Flood Protection Program; however, the DWR Program Manager for the Yuba Feather Flood Protection Program, or his or her
representative, needs to be kept informed of the meeting and any agreements reached at the meeting.

4. DWR shall promptly share with DFG all coordination documents and will give DFG the opportunity to review them in a mutually agreed upon time schedule. DFG review shall focus on any mitigation or enhancement measures proposed by the local project proponent. Changes in timeframes must be agreed upon by both the DWR and DFG representatives.

5. DWR and DFG share a mutual intent to optimize funds provided under Section 79068.14 of Chapter 5, Article 8 for implementation. The parties agree to make a good faith effort to spend no more than ten percent of the funds provided by Section 79068.14 for design of the mitigation or enhancement measures that have been previously agreed to by DFG. Design shall include all efforts taking the approved mitigation or enhancement measures from the feasibility study level to the stage where the measures can be implemented or constructed.

6. DWR and DFG agree that the local project proponent will be responsible for operation and maintenance of any fish, wildlife, or riparian habitat mitigation measures to the extent required under Section 79068.8(d). Neither DFG nor DWR will be directly responsible for such operation, maintenance, or construction. However, at the sole discretion of DFG, the local project proponent may share the responsibility for carrying out the operation, maintenance, and construction of such measures with other persons or entities, which may include DFG. The responsibility for operation and maintenance for enhancement measures will be determined on a case-by-case basis as those measures are developed. DWR and DFG understand that the costs of operation and maintenance for any features will not be funded from the Subaccount provided under Chapter 5, Article 8.

7. DFG will provide the funds for implementation of approved fish, wildlife, or riparian habitat mitigation or enhancement measures directly to the local public project proponent who would be responsible for construction or implementation of the specific measures. The mitigation or enhancement measures may be in the same design package as the Project; however, they will be clearly identified, and a licensed contractor will be required to provide a bid price for these measures.

8. This MOU will remain effective as long as any of the Yuba Feather Flood Protection Program funds set aside by Section 79068.14 remains undischussed, or unless it is terminated in writing by one or both parties. This MOU may be amended by mutual agreement in writing.
APPROVED BY:

DEPARTMENT OF WATER RESOURCES

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

PEGGY BERNARDY, Chief Counsel
Office of the Chief Counsel
Date 8-4-03

MICHAEL K. SPEAR, Interim Director
Date 8-13-03

DEPARTMENT OF FISH AND GAME

ROBERT C. HIGHT, Director
Date June 24-03

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

MICHAEL R. VALENTINE, General Counsel
Office of the General Counsel
Date June 19, 2003
1. Invoicing and Payment

A. For services satisfactorily rendered, upon receipt and approval of the invoices, the State agrees to compensate the Contractor for actual expenditures occurred in accordance with the rates specified herein the Scope of Work, which is attached hereto and made a part of this Agreement.

B. The Contractor shall be paid monthly in arrears, upon submission of an original and two copies of the invoice, which properly details all charges, expenses, and direct and indirect costs. Invoices shall be submitted to:

   Contract Manager: Kent Smith
   Region/Division: Sacramento Valley – Central Sierra Region
   Address: 1701 Nimbus Road, Suite A
             Rancho Cordova, CA 95670

C. The original and one approved copy of the invoice will be forwarded to the DFG’s Accounting Claims Section by the Contract Manager. Payment of any invoice will be made only after receipt of a complete, supported, documented, and accurately addressed invoice. Failure to use the address exactly as provided above may result in return of the invoice to the Contractor. All invoices must be approved by the Contract Manager.

D. Payments made prior to satisfactory completion of all work required by the Agreement. Shall not exceed, in the aggregate, 90 percent of the total earned with the balance to paid upon satisfactory completion of the task of Agreement, and provided further that the DFG shall retain from the Contractor’s earnings for each period for which payment is made, an amount equal to 10 percent of such earnings, pending satisfactory completion of the task of Agreement.

E. The invoice shall contain the following information:

   1. The word “invoice” shall appear in a prominent location at the top of the page(s);
   2. Printed name of the Contractor;
   3. Business address of the Contractor including P.O. Box, City, State, and Zip Code;
   4. Name of the Region/Division of the DFG being billed;
   5. The date of the invoice and the time period covered;
   6. The number of the agreement upon which the claim is based; and
7. An itemized account of the services for which the DFG is being billed. Include all of the following:

a. The time period covered by the invoice, i.e., the terms "from" and "to;"

b. A description of the services performed;

c. The method of computing the amount due will be the Line item budget/cost reimbursement method. Payments will be made by the State to the Contractor in arrears upon receipt of an itemized invoice showing the time period covered and the work items accomplished. The invoice must be itemized using the categories and following the format of the attached budget.

d. The total amount due. This should be in a prominent location in the lower right-hand portion of the last page and clearly distinguished from other figures or computations appearing on the invoice; the total amount due shall include all costs incurred by the Contractor under the terms of this agreement; and

e. The original signature of the Contractor (not required of established firms or entities using preprinted letterhead invoices).

2. Contract Written Prior to Approval of the Budget Act/Budget Contingency Clause

A. It is mutually understood between the parties that this agreement may have been written prior to the approval of the Budget Act for the mutual benefit of both parties in order to avoid program and fiscal delays.

B. This budget is valid and enforceable only if sufficient funds are made available by the Budget Act for the Fiscal Year(s) involved for the purposes of this program. In addition, this agreement is subject to any additional restrictions, limitations, or conditions enacted by the Legislature and contained in the Budget Bill of any statute enacted by the Legislature which may affect the provisions, terms, or funding of this agreement in any manner.

C. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to the Contractor or to furnish any other considerations under this Agreement and the Contractor shall not be obliged to perform any provisions of this Agreement.

D. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer and Agreement amendment to the Contractor to reflect the reduced amount.
3. **Prompt Payment Clause**

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

4. **Budget Flexibility**

Subject to the prior review and the approval of the Contract Manager, line items shifts of up to $25,000 or 10 percent of the annual contract total, whichever is less, may be made up to a cumulative maximum of $50,000 per fiscal year. Line items shifts may be proposed/requested either by the State or the Contractor in writing and must not increase or decrease the total contract amount allocated per fiscal year.
Property Acquisition
Property is required for flood control, mitigation, and environmental restoration/mitigation. Property in the existing Feather River floodway has easements for flood flows. Some of it may be used for restoration and its cost is assigned to enhancement without any cost sharing requirement. Property is used for mitigation is cost-shared with the grantee at 70 percent grant and 30 local share. Joint-use property, or property that is used for both flood control and environmental enhancement, is cost-shared in relation to established cost allocation procedures based on benefits limited by the cost of achieving the same benefits by a single-purpose alternative. For this project, 14.2 percent of the joint-use costs are assigned to environmental enhancement.

Offsite Mitigation
Offsite mitigation is limited to mitigation measures that cannot be reasonably implemented on project lands. This includes giant garter snake habitat. The measures will be implemented by the private sector under contract with the grantee. The costs thereof are shared - 70 percent grant and 30 percent local funds.

Offsite Restoration
Offsite restoration is required for ongoing long term monitoring and maintenance activities in the Bear River setback area. This includes ongoing riparian habitat plantings. The measures will be implemented by the private sector under contract with the grantee. The costs thereof are shared - 70 percent grant and 30 percent local funds.

Onsite Mitigation
Onsite mitigation measures are implemented within the project floodway for Swainson’s hawk habitat and Clean Water Act Section 404. The costs are for improvements including grading, land preparation, irrigation systems, and maintenance during the establishment period. The costs thereof are shared 70 percent grant and 30 percent local funds.

Restoration and Enhancement
This category includes all of the work needed to establish the approved plan and plantings on project lands. This includes seed collection from local plants, plant material, land clearing, grading, field preparation, irrigation systems, planting, maintenance, management, and monitoring during the establishment period.
1. **EXCISE TAX:** The State of California is exempt from federal excise taxes, and no payment will be made for any taxes levied on employees' wages. The State will pay for any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Agreement. California may pay any applicable sales and use tax imposed by another state.

2. **AVAILABILITY OF FUNDS:** Work to be performed under this agreement is subject to availability of funds through the State's normal budget process.

3. **LICENSES AND PERMITS:** The Contractor shall be an individual or firm licensed to do business in California and shall obtain at his/her expense all license(s) and permit(s) required by law for accomplishing any work required in connection with this contract.

If you are a Contractor located within the State of California, a business license from the city/county in which you are headquartered is necessary; however, if you are a corporation, a copy of your incorporation documents/letter from the Secretary of State's Office can be submitted. If you are a Contractor outside the State of California, you will need to submit to the Department of Fish and Game a copy of your business license or Incorporation papers for your respective state showing that your company is in good standing in that state.

In the event any license(s) and/or permit(s) expire at any time during the term of this contract, Contractor agrees to provide the Department of Fish and Game a copy of the renewed license(s) and/or permit(s) within 30 days following the expiration date. In the event that the Contractor fails to keep in effect at all times all required license(s) and permit(s), the State may, in addition to any other remedies it may have, terminate this contract upon occurrence of such event.

4. **RIGHTS IN DATA:** The Contractor agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes and other written or graphic work produced in the performance of this Agreement are subject to the rights of the State as set forth in this section. The State shall have the right to reproduce, publish, and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Contractor may copyright the same, except that, as to any work which is copyrighted by the Contractor, the State reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish and use such work, or any part thereof, and to authorize others to do so.

5. **SETTLEMENT OF DISPUTES:** Unless otherwise provided in this agreement, any dispute concerning a question of fact arising under this agreement which cannot be resolved informally shall be decided by the following two-step procedure.

The Contractor must provide written notice of the particulars of such disputes to the Contract Manager or his/her duly appointed representative. The Contract Manager must respond in writing within ten (10) working days of receipt of the written notice of dispute. Should the Contractor disagree with the Contract Manager's decision, the Contractor may appeal to the second level. Pending the decision on appeal, the Contractor shall proceed diligently with the performance of this agreement in accordance with the Contract Manager's decision.

The second level appeal must indicate why the Contract Manager's decision is unacceptable, attaching it to the Contractor's original statement of the dispute which supporting documents, along with a copy of the Contract Manager's response. This letter shall be sent to the Department of Fish and Game, Deputy Director, or his/her duly appointed representative. The second level appeal must be filed within fifteen (15) working days upon receipt of the Contract Manager's decision. Failure to submit an appeal within the period specified shall constitute a waiver of all such rights to an adjustment of this agreement. The Deputy Director or designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director or designee shall be returned to the Contractor within fifteen (15) working days of the receipt of the appeal. The decision of the Deputy Director or his/her designee will be final.
6. **PROPERTY ACQUISITIONS:** Property, as used in this section, shall include:

   a. **Equipment** — Tangible property (including furniture) with a unit cost of $500.00 or more and a useful life of four (4) years or more. Actual cost includes the purchase price plus all costs to acquire, install and prepare the equipment for its intended use.

   b. **Furniture** — Standard office furnishings including desks, chairs, bookcases, credenzas, tables, etc.

   c. **Portable Assets** — Items considered "highly desirable" because of their portability and value; e.g., calculators, typewriters, Dictaphones, cameras and microscopes.

   d. **Electronic Data Processing (EDP) Equipment** — All computerized and auxiliary automated information handling including system design and analysis, conversion of data, computer programming, information storage and retrieval, voice, video and data communications, requisite system controls, simulation and all related interactions between people and machines.

The Contractor may purchase property under this Agreement only if specified in Exhibit "B" (Budget Detail and Payment Provisions). Any property purchased by the Contractor with funds provided under this Agreement shall be the property of the State during the customary depreciable life thereof. The Contractor shall promptly report any such purchase to the Contract Manager and to the State’s Property Officer (Property Officer). Should this Agreement be terminated for any reason, or upon expiration and failure to negotiate hereof, all such property shall be returned to the State within the timeframe negotiated between the Contractor and the State.

Prior written authorization by the Contract Manager shall be required before the Contractor will be reimbursed for any property purchased not specified in the Budget. The Contractor shall provide to the Contract Manager all particulars regarding the necessity for such property and the reasonableness of the cost.

Before property purchases made by the Contractor are reimbursed by the State, the Contractor shall submit paid vendor receipts identifying the Agreement number, purchase price, description of the item, serial number, model number, and location including street address where property will be used during the term of this Agreement. Said paid receipts shall be attached to Contractor’s invoices.

The Contractor shall keep accurate and appropriate records of all property purchased with Agreement funds and at the time of purchase prepare a Property Purchased with State Funds report and submit one copy to the Contract Manager and one copy to the Property Officer. A copy must be retained by the Contractor.

The State reserves the right at any time to evaluate the cost of property and reimburse at an amount equal to costs reflected in but not limited to Agreements the State Department of General Services, Procurement Division has negotiated with vendors who supply the same type of property.

All property shall be tagged after acquisition by the Contractor in accordance with instructions provided. The purpose of tagging assets is to designate the assets as belonging to the State. Whenever property is lost, stolen, or destroyed, the Contractor shall immediately report the loss, theft or destruction to the local law enforcement agency (or the California Highway Patrol (CHP) if the crime occurs on either state-owned or state leased property) and to the Contract Manager and prepare a Property Survey Report. In the case of stolen property, the Contractor shall also complete a CHP Report of Crime on State Property form (Std. 99), obtain a copy of the law enforcement agency’s report and submit these to the Contract Manager. The Contractor shall adjust their property records and retain a copy of the Property Survey Report as documentation.
Losses of State property due to fraud or embezzlement shall be reported in the same manner as described above. The Contractor shall be charged with any loss and damages to State property due to the Contractor's negligence.

Contractor shall, at the request of the State, submit an inventory of property furnished or purchased under the terms of this Agreement. Such inventory will be required not more frequently than annually.

Upon termination, expiration or failure to negotiate renewal of this Agreement, all property purchased with Agreement funds shall promptly be returned to the State. The Contractor shall prepare an Inventory of State Furnished Property report and submit to the State and shall at that time query the Contract Manager as to the State's requirements, including the manner and method, in returning said property to the State. Final disposition of such property shall be at State expense in accordance with instructions from the Contract Manager to be issued immediately after receipt of the final inventory.

State policies and procedures applicable to procurement with nonfederal funds shall apply to procurement by Contractor under this Agreement provided that procurements conform to applicable State law and the standards identified in this section. These include but are not limited to statutes applicable to State agencies, statutes applicable to State college and university public works projects, the California Constitution governing University of California contracting, the State Administrative Manual (SAM), statutes applicable to specific local agencies, applicable city and county charters and implementing ordinances including policies and procedures incorporated in local government manuals or operating memoranda.

7. **INCOME RESTRICTIONS:** The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor under this Agreement shall be paid by the Contractor to the State, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the State under this Agreement.

8. **CONFIDENTIALITY OF DATA:** All financial, personal, technical, and other data and information relating to the California State Department of Fish and Game operations which are designated confidential by the California State Department of Fish and Game and made available to the Contractor in order to carry out this Agreement, or which becomes available to the Contractor in carrying out this Agreement, shall be protected by the Contractor for the protection of the Contractor's data and information are deemed by the California State Department of Fish and Game's confidential information, such methods and procedures may be used, with written consent of the California State Department of Fish and Game, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the contractor outside the scope of this Agreement or is rightfully obtained from third parties.

9. **RIGHT TO TERMINATE:** The State reserves the right to terminate this agreement subject to 30 days written notice to the Contractor. Contractor may submit a written request to terminate this agreement only if the State should substantially fail to perform its responsibilities as provided herein.

However, the agreement can be immediately terminated for cause. The term "for cause" shall mean that the Contractor fails to meet the terms, conditions, and/or responsibilities of the contract. In this instance, the contract termination shall be effective as of the date indicated on the State's notification to the Contractor.

The Contractor shall not incur any new obligations beyond the date of termination and shall cancel all outstanding obligations relating to this contract. The State shall reimburse the Contractor for any reasonable non-cancelable project costs properly incurred by the Contractor prior to termination date.
This agreement may be suspended or cancelled without notice, at the option of the Contractor, if the Contractor or State's premises or equipment are destroyed by fire or other catastrophe, or so substantially damaged that it is impractical to continue service, or in the event the Contractor is unable to render service as a result of any action by any governmental authority.

10. **DVBE PARTICIPATION AND REPORTING REQUIREMENTS:** (when required) The Contractor agrees to use the DVBE subcontractors or suppliers originally identified by the Contractor unless the Contractor requests substitution in writing beforehand to the Contract Manager and the Contract Manager has approved such substitution. At a minimum, the request must include:
   a. A written explanation of the reason for the substitution; and
   b. The identity of the person or firm substituted.

The request and the Contract Manager's approval is not to be construed as an excuse for noncompliance with any other provision of law, including but not limited to the subletting and subcontracting Fair Practices Act or any other Agreement requirements relating to the substitution of subcontractors.

Failure to adhere to at least the level of participation for DVBE proposed by the Contractor may be cause for Agreement termination and recovery of damages under the rights and remedies due the State.

11. **DISCLOSURE REQUIREMENTS:** Any document or written report prepared in whole or in part pursuant to this Agreement shall contain a disclosure statement indicating that the document or written report was prepared through an Agreement with the State. The disclosure statement shall include the Agreement number and dollar amount of all Agreements and subcontracts relating to the preparation of such documents or written reports. The disclosure statement shall be contained in a separate section of the document or written report.

If the Contractor or subcontractor(s) are required to prepare multiple documents or written reports, the disclosure statement may also contain a statement indicating that the total Agreement amount represents compensation for multiple documents or written reports.

The Contractor shall include in each of its subcontracts for work under this Agreement a provision which incorporates the requirements stated within this Section.

12. **USE OF SUBCONTRACTORS:** If the Contractor desires to accomplish part of the services through the use of one or more subcontractors then the following conditions must be met:
   1) The Contractor shall submit any subcontracts to the State for prior approval;
   2) The Agreement between the primary Contractor and the subcontractor must be in writing;
   3) The subcontract must include specific language which establishes the rights of the auditors of the State to examine the records of the subcontractor relative to the services and materials provided under the contract; and
   4) Upon termination of any subcontract, the State shall be notified immediately in writing.

Further, any subcontract in excess of $10,000 entered into as a result of this agreement shall contain all applicable provisions stipulated in this agreement.

13. **POTENTIAL SUBCONTRACTOR:** Nothing contained in this Agreement or otherwise shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Contractor of its responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and of persons directly employed or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.
14. TRAVEL AND PER DIEM: Contractor agrees that all travel and per diem paid its employees under this Agreement shall be at rates not to exceed those amounts paid to the State's represented employees under collective bargaining agreements currently in effect. No travel outside the State of California shall be reimbursed unless prior written authorization is obtained from the State.

15. NOVATION: If the Contractor proposes any novation Agreement, the State shall act upon the proposal within 60 days after receipt of the written proposal. The State may review and consider the proposal, consult and negotiate with the Contractor, and accept or reject all or part of the proposal. Acceptance or rejection may be made orally within the 60-day period, and confirmed in writing within five days. No novation shall become operative or otherwise binding on the State pursuant to this paragraph in the absence of a formal Agreement amendment which has been approved in accordance with all applicable State policy, laws and procedures.

16. PRIORITY HIRING CONSIDERATIONS: (agreements over $200,000) The Contractor agrees to give priority consideration in filling vacancies in positions funded by the agreement to qualified recipients of aid under Welfare and Institutions Code Section 11200.

17. LIABILITY INSURANCE: (when required) When Contractor submits a signed contract to the State, Contractor shall furnish to the State a certificate of insurance, stating that there is liability insurance presently in effect for the Contractor of not less than $1,000,000 per occurrence for bodily injury and property damage liability combined.

The certificate of insurance will include provisions a, b, and c, in their entirety:

a. That the insurer will not cancel the insured's coverage without 30 days prior written notice to the State.

b. That the State of California, its officers, agents, employees, and servants are included as additional insured, buy only insofar as the operations under this contract are concerned.

c. That the State will not be responsible for any premiums or assessment on the policy.

Contractor agrees that the bodily injury liability insurance herein provided for shall be in effect at all times during the term of this contract. In the event said insurance coverage expires at any time or times during the term of this contract, Contractor agrees to provide prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the contract, or for a period of not less than one year. New certificates of insurance are subject to the approval of the Department of General Services, and the Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event that the Contractor fails to keep in effect all times insurance coverage as herein provided, the State may, in addition to any other remedies it may have, terminate this contract upon occurrence of such event.

The Department of Fish and Game will not provide for nor compensate the Contractor for any insurance premiums or costs for any type or amount of insurance.

The insurance required above shall cover all Contractor supplied personnel and equipment used in the performance of this Agreement. If subcontractors performing work under this Agreement do not have insurance equivalent to the above, Contractor liability shall provide such coverage for the subcontractor, except for coverage for error, mistake, omissions, or malpractice, which shall be provided by the subcontractor if such insurance is required by the State.
18. **WORKER’S COMPENSATION INSURANCE:** (when required) Contractor certifies and is aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers’ Compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor affirms to comply with such provisions before commencing the performance of the work of this contract.

19. **COMPUTER SOFTWARE:** Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.

20. **INSPECTION:** The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made by the State of the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require his subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the State representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

21. **FORCE MAJEURE:** Neither party shall be liable to the other for any delay in or failure of performance, nor shall any such delay in or failure of performance constitute default, if such delay or failure is caused by "Force Majeure". As used in this section, "Force Majeure" is defined as follows: Acts of war and acts of god such as earthquakes, floods, and other natural disasters such that performance is impossible.

22. **FORCED, CONVICT, AND INDENTURED LABOR:** No foreign-made equipment, materials, or supplies furnished to the State pursuant to this contract may be produced in whole or in part by forced labor, convict labor, or indentured labor. By submitting a bid to the State or accepting a purchase order, the Contractor agrees to comply with this provision of the contract. This requirement does not apply to public works contracts.

23. **CONSULTANT – STAFF EXPENSES:** The Contractor represents that it has or shall secure at its own expense, all staff required to perform the services described in this Agreement. Such personnel shall not be employees of or have any contractual relationship with the California State Department of Fish and Game or any other governmental entity.

24. **CONTRACTOR’S DUTIES, OBLIGATIONS AND RIGHTS:** The Contractor is hereby apprised that California Public Contract Code sections 10355 through 10382 are applicable and relative to the Contractor’s duties, obligations, and rights in performing the agreement.

25. **EVALUATION OF CONTRACTOR:** (over $5,000) Performance of the Contractor under this Agreement will be evaluated. The evaluation shall be prepared on a Contract/Contractor Evaluation Sheet (Std. 4), and maintained in the Agreement file.

If Contractor did not satisfactorily perform the work or service, a copy of the negative evaluation form will be submitted to the Contractor and the Department of General Services, Legal Division, within fifteen (15) days of the completion of the evaluation. The Contractor will have thirty (30) days to prepare and send statements defending its performance under the agreement. The evaluation of the Contractor shall not be a public record.
26. **PROGRESS REPORTS OR MEETINGS (when required):** Contractor shall submit progress reports or attend meetings with State personnel not more often than monthly to allow the State to determine if the Contractor is on the right track, whether the project is on schedule, provide communication to interim findings, and afford occasions for airing of difficulties or special problems encountered so that remedies can be developed quickly. At the conclusion of this agreement, Contractor shall hold a final meeting with the State during which Contractor shall present his findings, conclusions, and recommendations.

27. **Legal Contracts (only)***

   In accordance with (Public Contract Code Section 10353.5) the Contractor shall:

   - Agree to adhere to legal cost and billing guidelines designed by the State Agency
   - Adhere to litigation plans designated by the State Agency
   - Adhere to case phasing of activities designated by the State Agency
   - Submit and adhere to legal budgets as designated by the State Agency
   - Maintain legal malpractice insurance in an amount not less than the amount designated by the State Agency
   - Submit to legal bill audits and law firm audits if requested by the State Agency. The audits may be conducted by employees and designees of the State Agency or by any legal cost control provider retained by the State Agency for this purpose.
   - Submit to a legal cost and utilization review, as determined by the State Agency.