CALL TO ORDER: Welcome to the Three Rivers Levee Improvement Authority (TRLIA) meeting. As a courtesy to others, please turn off cell phones, pagers, or other electronic devices which might disrupt the meeting. Thank you.

I ROLL CALL – Directors Rick Brown, Jerry Crippen, Don Graham, Mary Jane Griego, John Nicoletti

II ELECTION OF OFFICERS: Chair and Vice-chair

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. Prior to this time, speakers are requested to fill out a “Request to Speak” card and submit it to the Clerk of the Board of Supervisors.

IV CONSENT AGENDA: Matters listed are considered to be routine and can be enacted by one motion.

A Approve minutes of the meetings December 18, 2012.

V ACTION ITEMS

A Adopt resolution adopting the Uniform Public Construction Cost Accounting Act an alternative to the public bidding requirement currently applicable for construction contracts.

VI BOARD AND STAFF MEMBERS’ REPORTS

A Availability of Draft Environmental Assessment for Feather River Levee Repair Project Segments 1 and 3

B Selection of River Partners to transplant Elederberry for Feather River Levee Repair Project Segment 3

VII CLOSED SESSION

A Pending litigation pursuant to Government Code §54956.9(a) - TRLIA vs. Luis, et al/ YCSCCVED 10-0000903

VIII ADJOURN

The complete agenda is available at the Yuba County Government Center, 915 8th Street, Suite 109 Marysville, and www.trlia.org. Any disclosable public record related to an open session item on the agenda and distributed to all or a majority of the Board less than 72 hours prior to the meeting is available at Suite 109 during normal business hours. In compliance with the Americans with Disabilities Act, the meeting room is wheelchair accessible and disabled parking is available. If you have a disability and need disability-related modifications or accommodations to participate in this meeting, please contact the Clerk of the Board's office at (530) 749-7510 or (530) 749-7353 (fax). Requests must be made one full business day before the start of the meeting.
THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

DECEMBER 18, 2012 MEETING

MINUTES

A meeting of the Board of Directors of the Three Rivers Levee Improvement Authority (TRLIA) 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, Jerry Crippen, Don L. Graham, Mary Jane Griego, and John Nicoletti. Also present were Executive Director Paul Brunner, Counsel Andrea Clark, and Secretary/Clerk of the Board of Supervisors Donna Stottlemyer. Chair Griego presided.

I  ROLL CALL – Directors Rick Brown, Jerry Crippen, Don Graham, Mary Jane Griego, John Nicoletti – All Present

II  PUBLIC COMMUNICATIONS: No one came forward.

III  CONSENT AGENDA: Matters listed are considered to be routine and can be enacted by one motion.

MOTION: Move to approve    MOVED: John Nicoletti    SECOND: Jerry Crippen
AYES: Rick Brown, Jerry Crippen, Don Graham, Mary Jane Griego, John Nicoletti
NOES: None    ABSTAIN: None    ABSENT: None

A. Approve minutes of the meeting of November 27, 2012. Approved as written.

B. Approve amendment number eighteen to agreement with MBK Engineers extending term to December 31, 2013 and authorize Executive Director to execute. Approved.

IV  ACTION ITEMS

A. Approve amendment number eleven to agreement with Bender Rosenthal, Inc. in the amount of $498,550 for right of way services and authorize Executive Director to execute. Executive Director Paul recapped right-of-way projects and responded to Board inquiries.

MOTION: Move to approve    MOVED: John Nicoletti    SECOND: Rick Brown
AYES: Rick Brown, Jerry Crippen, Don Graham, Mary Jane Griego, John Nicoletti
NOES: None    ABSTAIN: None    ABSENT: None

B. Approve amendment number two to agreement with AECOM Technical Services, Inc. in the amount of $44,955 for elderberry shrub environmental services and authorize Executive Director to execute. Executive Director Paul recapped the need for services and responded to Board inquiries.

MOTION: Move to approve    MOVED: John Nicoletti    SECOND: Rick Brown
AYES: Rick Brown, Jerry Crippen, Don Graham, Mary Jane Griego, John Nicoletti
NOES: None    ABSTAIN: None    ABSENT: None
C. Approve amendment number fourteen to agreement with Bookman-Edmonston/GEI Consultants in the amount of $433,813 for final design and construction management and authorize Executive Director to execute. Executive Director Paul recapped the need for services regarding segment three toe access corridor and segment one seepage berm and responded to Board inquiries.

    MOTION: Move to approve
    MOVED: John Nicoletti
    SECOND: Rick Brown

    AYES: Rick Brown, Jerry Crippen, Don Graham, Mary Jane Griego, John Nicoletti
    NOES: None
    ABSTAIN: None
    ABSENT: None

D. Approve amendment number seven with The Handen Company, Inc. in the amount of $127,020 for construction management and authorize Executive Director to execute. Executive Director Paul recapped the services provided and responded to Board inquiries.

    MOTION: Move to approve
    MOVED: John Nicoletti
    SECOND: Jerry Crippen

    AYES: Rick Brown, Jerry Crippen, Mary Jane Griego, John Nicoletti
    NOES: None
    ABSTAIN: Don Graham
    ABSENT: None

V BOARD AND STAFF MEMBERS’ REPORTS

Executive Director Paul Brunner: Cash flow projections provided to Yuba Levee Finance Authority

VI CLOSED SESSION: The Board retired into closed session at 2:38 p.m. to discuss the following except Director Crippen who recused himself due to a conflict:

A. Pending litigation pursuant to Government Code §54956.9(a) - TRLIA vs. Luis, et al/ YCSCCVED

The Board returned from closed session at 2:54 p.m. with all present as indicated above except Director Crippen.

There was no reportable action.

VII ADJOURN: 2:54 p.m. by Chair Griego

__________________________________________
Chair

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

__________________________________________
Approved:
January 15, 2013

TO: Three Rivers Levee Improvement Authority Board

FROM: Andrea Clark, Agency Counsel

SUBJECT: Adoption of Alternative Bidding Procedures

**Recommended Action**

Approve the attached resolution adopting the Uniform Public Construction Cost Accounting Act, an alternative to the public bidding requirements currently applicable to TRLIA for construction contracts.

**Background**

TRLIA is a joint powers authority whose members are Yuba County and Reclamation District 784. In accordance with Government Code section 6509, the powers of TRLIA are subject to the restrictions that are imposed upon Yuba County.

The County is required to follow public bidding procedures applicable to counties with fewer than 500,000 residents when entering contracts for public projects. However, the County is permitted to opt, and has opted, into the alternative procedures provided by the Uniform Public Construction Cost Accounting Act (sections 22030-22045 of the Public Contract Code). TRLIA, in order to accomplish its purpose, also contracts out various work and services and will continue to do so as the Upper Yuba Project and Goldfields project progress. At this time, TRLIA has not elected to opt into the alternative public bidding procedure, and thus continues to be subject to the provisions that apply to counties with fewer than 500,000 residents.

The bidding requirements under the currently applicable procedures are similar to the alternative procedures, but they set out different contract amount thresholds that govern when the informal and formal bidding requirements apply. While the main procedure requires informal bidding for contracts over $4,000 and formal bidding for contracts over $10,000, the alternative procedure requires informal bidding only when the contract amount is more than $45,000, and formal bidding only when the contract amount is more than $175,000. Exceptions for emergency work are available under either procedure. In other words, formal bidding under the alternative procedures will not apply unless the contract amount is more than $175,000.
Because the alternative bidding procedures provide for a higher minimum contract amount triggering public bidding requirements, TRLIA can expedite the award timeframe for more of its construction contracts by opting into the alternative bidding procedures.

The alternative procedure gives TRLIA the benefit of being able to use its informal bidding procedures more often than under the standard procedure—specifically, for contracts up to $175,000 instead of $10,000. This will allow TRLIA to expedite the award timeframe for more of its contracts. Further, under the alternative procedure, TRLIA will maintain a list of qualified bidders for informal projects, increasing TRLIA’s awareness of potential bidders and potentially resulting in greater competition through initial outreach.

The procurement procedures are similar under either the standard procedure or the alternative procedure. Each requires adoption of procedures governing procurement, notice of the bidding opportunity directly to interested bidders and/or through publication, and (generally) award to the lowest responsible bidder. Under either procedure, TRLIA has the authority to award emergency contracts without competitive bidding, if necessary and appropriate. While the language defining “public projects” differs, in substance, each procedure applies to the types of projects for which TRLIA is likely to contract. Specifically, opting into the alternative procedures will offer clarity on the types of contracts that trigger public bidding requirements for TRLIA’s anticipated work in the Yuba Goldfields, in a manner that ensures TRLIA’s compliance with state law on public bidding. From a procurement perspective, there is little if any downside to adopting the alternative procedure, and potentially significant upside through the ability to use the informal process more broadly.

To adopt the alternative procedures, TRLIA must:

(a) Elect to become subject to the uniform construction cost accounting standards of the Uniform Public Construction Cost Accounting Act, and notify the State Controller that the agency has made this election.

(b) By resolution, opt into the alternative procedures of that Act.

(c) Adopt an informal bidding ordinance, which will govern the selection of contractors for public works projects of up to $175,000. Public Contract Code 22032 sets the basic requirements for this ordinance, which may be adopted after the resolution adopting the cost accounting standards.

Staff recommends that TRLIA opt into the alternative procedures.

**Attachment**

Proposed resolution
RESOLUTION NO. 2012-___

A RESOLUTION BY THE BOARD OF DIRECTORS OF THE THREE RIVERS LEVEE IMPROVEMENT AUTHORITY ADOPTING BIDDING AND COST ACCOUNTING PROCEDURES UNDER THE CALIFORNIA UNIFORM COST ACCOUNTING ACT

WHEREAS, Three Rivers Levee Improvement Authority ("TRLIA") is a joint powers authority whose members include Yuba County and Reclamation District 784; and

WHEREAS, in accordance with Government Code Section 6509, the powers of TRLIA are subject to the restrictions that are imposed upon Yuba County; and

WHEREAS, Yuba County is required by default to follow public bidding procedures applicable to counties with fewer than 500,000 residents when entering contracts for public projects; and

WHEREAS, under Uniform Public Construction Cost Accounting Act (Public Contract Code Section 22000 et seq) public agencies may adopt an alternative bidding process for public projects, provided that they meet certain requirements under that Act; and

WHEREAS, pursuant to Sections 22030 and 22010 of the Public Contract Code public agencies that wish to adopt the alternative bidding procedures of the Uniform Public Construction Cost Accounting Act must also adopt the uniform construction cost accounting standards of that Act; and

WHEREAS, Section 22034 of the Public Contract Code provides that local agencies that have adopted the uniform cost accounting procedures shall also adopt an informal bidding ordinance governing the selection of contractors to perform public projects of $175,000 or less; and

WHEREAS, TRLIA desires to adopt the alternative bidding and uniform construction cost accounting requirements of the Uniform Public Construction Cost Accounting Act.

NOW, THEREFORE, be it resolved that the Board of Directors of the Three Rivers Levee Improvement Authority:

1) Elects under Public Contract Code Section 22030 to become subject to the uniform construction cost accounting procedures of the Uniform Public Construction Cost Accounting Act, commencing with Public Contract Code Section 22000 or any successor statute, and to the policies and procedures manual and cost accounting review procedures promulgated by the California Uniform Construction Cost Accounting Commission, as each may be amended from time to time.

2) Directs staff to notify the California State Controller of TRLIA's election to become subject to the uniform construction cost accounting procedures.
3) Adopts the alternative bidding procedures of Public Contract Code Sections 22030 et seq.

4) Directs staff to develop a proposed informal bidding Ordinance, consistent with the requirements of Public Contract Code Section 22034.

5) This Resolution shall be effective on the date that the Ordinance adopting an informal bidding process as required by Public Contract Code Section 22034, is effective.

PASSED AND ADOPTED this 15th day of January, 2013, by the Board of Directors of the Three Rivers Levee Improvement Authority by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

________________________________________
Chair

ATTEST: DONNA STOTTHEMEYER,
CLERK OF THE BOARD

________________________________________
APPROVED AS TO FORM: GENERAL COUNSEL
SCOTT SHAPIRO

________________________________________
January 15, 2013

TO:       Three Rivers Levee Improvement Authority Board

FROM:    Andrea Clark, Agency Counsel

SUBJECT:  Availability of Environmental Assessment Document for Review

**Recommended Action**

No action needed – this staff report is informational only.

**Background**

The Feather River Levee Repair Project (FRLRP) consists of levee improvements along segments of the existing Feather River and Yuba River levees in southern Yuba County. TRLIA recently recognized that additional work was needed in some areas of Segment 3 of the East Feather River Levee to comply with USACE on vegetation management at the toes of levees and recent new criteria requirements for urban levees by the California Department of Water Resources (DWR) with respect to urban levees. Consequently, TRLIA now plans to construct a 1.1-mile-long (5,808-foot-long), 20-foot-wide toe access corridor on the landside of Segment 3 north of Island Avenue to meet existing state and federal requirements for levee access. This work would also involve drainage improvements to provide an accessible levee toe corridor during significant rain storms and clearing of vegetation and other obstructions (e.g., existing fences and debris). Approximately 12 elderberry shrubs would also be removed and transplanted to the U.S. Fish and Wildlife Service approved elderberry mitigation area (known as the Feather River Elderberry Transplant area (FRET)) in Segment 2.

Under the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers (Corps) must assess the environmental impacts of its actions. Here, a draft Supplemental Environmental Assessment (EA) to the Feather River Levee Repair Project (FRLRP) has been prepared by the Corps to satisfy the requirements of NEPA. The FRLRP, as approved and authorized, has been constructed. The actions assessed in the supplemental EA are components of the previously authorized project. The EA document does not change the project originally described in the FONSI for Segments 1 and 3 or the ROD for Segment 2, but proposes refinements and clarifications to certain project actions that require further environmental analysis.
In compliance with NEPA, the draft EA must be released for public review. It is anticipated that the EA is out for public review starting the week of January 14, 2013. Once the public has had an opportunity to review the EA, the Corps will either prepare a Finding of No Significant Impact (FONSI) or proceed with preparation of an EIS. The draft EA concludes that the proposed actions, with mitigation incorporated, would have no adverse effects on species listed under the Endangered Species Act and either no effect or no significant effects on other environmental resources. Thus it recommends a FONSI.

The draft EA will be available for review by the public at TRLIA’s offices, the Yuba County Library and on its website at www.trlia.org.
THREE RIVERS LEVEE IMPROVEMENT AUTHORITY
1114 Yuba Street, Suite 218
Marysville, CA 95901
Office (530) 749-7841 Fax (530) 749-6990

February 15, 2013

TO: Three Rivers Levee Improvement Authority Board
FROM: Paul G. Brunner, Executive Director
Larry Dacus, Design Manager
SUBJECT: Selection of a Contractor to Transplant Elderberry Shrubs from the Segment 3 Toe Access Corridor

Recommended Action: None – this an informational report to the TRLIA Board

Background:
The Three Rivers Levee Improvement Authority (TRLIA) has been developing a project to provide a toe access corridor (TAC) that will meet new Department of Water Resources criteria along the land side of the Feather River East Levee north of Island Avenue. During plan development it was discovered that land owners had encroached onto State property. A series of hearings by the Central Valley Flood Protection Board (CVFPB) has been held and a plan to remove encroached fences and construct the TAC was approved by the CVFPB. Construction of the TAC will also require the removal and transplanting of 12 elderberry shrubs. TRLIA issued a Request for Proposals (RFP) to transplant these shrubs on December 4, 2012.

Discussion:
TRLIA received two proposals in response to the December 4, 2012 RFP for the transplanting of elderberry shrubs (River Partners and Restoration Resources). Both of these organizations have extensive experience in elderberry shrub transplanting and general restoration projects, so both meet the experience criteria. Both of these organizations have performed shrub transplanting for TRLIA in the past. Selection is based on cost for transplanting. The respective bids were:

River Partners $25,200
Restoration Resources $29,760

TRLIA plans to award the transplant contract to River Partners under the Executive Director's contracting authority.

Fiscal Impact:
This work is part of the TRLIA EIP Feather River Levee Repair Project funding agreement. The State cost share for Segment 3 is 70%.

Attachments:
1. River Partners Contract
AGREEMENT FOR
PROFESSIONAL SERVICES

This Agreement for Professional Services ("Agreement") is made as of the Agreement Date set forth below by and between the Three Rivers Levee Improvement Authority, a joint exercise powers agency established pursuant to the laws of California ("TRLIA"), and River Partners, a California non-profit corporation ("Contractor") (each a "party" and collectively "the parties").

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

OPERATIVE PROVISIONS

1. SERVICES.

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

2. TERM.

Commencement Date: February 1, 2013
Termination Date: December 31, 2013

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

Contractor understands and agrees that there is no representation, implication, or understanding that the services provided by Contractor pursuant to this Agreement will be purchased by TRLIA under a new agreement following expiration or termination of this Agreement.

3. PAYMENT.

TRLIA shall pay Contractor for services rendered pursuant to this Agreement at the time and in the amount set forth in Attachment "B". The payment specified in Attachment "B" shall be the only payment made to Contractor for services rendered pursuant to this Agreement. Contractor shall submit all billings for said services to TRLIA in the manner specified in Attachment "B".
4. FACILITIES, EQUIPMENT AND OTHER MATERIALS AND OBLIGATIONS OF THREE RIVERS LEVEE IMPROVEMENT AUTHORITY.

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

5. GENERAL PROVISIONS.

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

6. DESIGNATED REPRESENTATIVES.

Paul G. Brunner, Executive Director, is the representative of the TRLIA and will administer this Agreement for the TRLIA. John Carlon is the authorized representative for Contractor. Changes in designated representatives shall occur only by advance written notice to the other party.

7. ATTACHMENTS.

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

Attachment A - Services
Attachment B - Payment
Attachment C - General Provisions
8. **TERMINATION.** TRLIA and Contractor shall each have the right to terminate this Agreement upon 30 days written notice to the other party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on _______________________, 2013.

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

______________________________
Paul G. Brunner, P.E.
Executive Director

RIVER PARTNERS

______________________________
John Carlon
President

ATTEST:
DONNA STOTTMEMEYER,
SECRETARY

APPROVED AS TO FORM:
SCOTT L. SHAPIRO

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY GENERAL COUNSEL

______________________________
[Signature]
ATTACHMENT A

A.1 SCOPE OF SERVICES AND DUTIES.

The services to be provided by Contractor and the scope of Contractor's duties are described in the Scope of Work titled Transplant Elderberry Shrubs From Segment 3 Toe Access Corridor to the FRET, which is Exhibit 1 to this Attachment A.

A.2 TIME SERVICES RENDERED.

See Exhibit 1.

A.3 MANNER SERVICES ARE TO BE PERFORMED.

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

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

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

PAYMENT

TRLIA shall pay Contractor as follows:

B.1 BASE CONTRACT FEE. TRLIA shall pay Contractor a contract fee not to exceed $25,200; Contractor shall submit requests for payment after completion of services or no later than the tenth (10th) day of the month following provision of services. In no event shall total compensation paid to Contractor under this Provision B.1 exceed $25,200 without an amendment to this Agreement approved by the TRLIA Board of Directors.

B.2 TRAVEL COSTS. TRLIA shall not pay Contractor for meals, lodging or other travel costs not included in this Agreement unless said costs are approved in advance by the TRLIA representative designated by Operative Provision No. 6, and then TRLIA shall pay TRLIA per diem rates in effect on the date of invoice upon presentation of invoices.

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

GENERAL PROVISIONS

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

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

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

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

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

C.1.5 If in the performance of this Agreement any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the Contractor.

C.1.6 As an independent contractor, Contractor hereby indemnifies and holds TRLIA harmless from any and all claims that may be made against TRLIA based on any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

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

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

C.4 INSURANCE. Prior to rendering services provided by the terms and conditions of this Agreement, Contractor or its subcontractors shall acquire and maintain during the term of this Agreement, insurance coverage, through and with an insurer acceptable to TRLIA, naming the TRLIA and TRLIA's officials and employees as additional insured (excluding workers' compensation and professional liability insurance). The limits of insurance herein shall not limit the liability of the Contractor hereunder.

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

C.4.2 MINIMUM SCOPE OF INSURANCE. Contractor shall procure the following insurance forms:

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

(b) Insurance Services Office Business Auto Coverage form number CA 0001 0187 covering Automobile Liability, code 1 “any auto” and Endorsement CA 0029.

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

(d) If this Agreement is for the provision of professional services, Professional Errors and Omissions Liability Insurance, a coverage form subject to TRLIA approval.
C.4.3 OTHER INSURANCE PROVISIONS. The policies are to contain, or be endorsed to contain the following provisions:

(a) General Liability and Automobile Liability Coverages.

(i) The TRLIA and its officials and employees are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased, occupied, or used by the Contractor; or automobiles owned, leased, hired, or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the TRLIA and its officials and employees.

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

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

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

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

Attachment C – Page 3 of 11.
(c) All Coverages. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or below minimum limits required under this Agreement except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the TRLIA.

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

C.4.5 MINIMUM LIMITS OF INSURANCE. Contractor shall maintain limits no less than:

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

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

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

(d) Professional Errors and Omissions Liability (if required): Policy limits of not less than One Million Dollars ($1,000,000) per claim and One Million Dollars ($1,000,000) annual aggregate, with deductible or self-insured portion not to exceed Two Thousand Five Hundred Dollars ($2,500). Coverage may be made on a claims-made basis with a “Retro Date” either prior to the date of the Agreement or the beginning of the Agreement services. If claims-made, coverage must extend to a minimum of twelve-months beyond completion of the services. If coverage is canceled or non-renewed and not replaced with another claims-made policy form with a “Retro Date” prior to the Agreement effective date, the Contractor must purchase “extended reporting” coverage for a minimum of twelve (12) months after completion of services.

C.4.6 SUBCONTRACTORS. In addition to the above policies, if Contractor hires a subcontractor under this Agreement Contractor shall include all
subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein. If Contractor requires subcontractors to provide insurance coverage, then Contractor shall be named as an additional insured under such policy or policies (excluding workers’ compensation and professional liability insurance).

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

C.4.8 VERIFICATION OF COVERAGE.

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

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

C.5 INDEMNITY. Contractor shall defend, indemnify, and hold harmless TRLIA, its
elected and appointed councils, boards, commissions, officers, agents, and employees from and against any liability for damage or claims for damage for personal injury, including death, as well as for property damage, which may arise from the intentional misconduct, recklessness, or negligent acts or omissions of Contractor in the performance of services rendered under this Agreement by Contractor, or any of Contractor’s officers, agents, employees, contractors, or subcontractors.

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

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

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

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

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

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

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

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

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

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

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

C.13 NON-DISCRIMINATION. Throughout the duration of this Agreement, Contractor shall not unlawfully discriminate against any employee of the Contractor or of the TRLIA or applicant for employment or for services or any member of the public because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, age, sex or sexual orientation. Contractor shall ensure that in the provision of services under this Agreement, its employees and applicants for employment and any member of the public are free from such discrimination. Contractor shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900, et seq.). The applicable regulations of the Fair Employment Housing Commission implementing Government Code Section 12900, set forth in Chapter 5, Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor shall also abide by the Federal Civil Rights Act of 1964 and all amendments thereto, and all administrative rules and regulations issued pursuant to said Act. Contractor shall give written notice of its obligations under this clause to any labor agreement. Contractor shall include the
non-discrimination and compliance provision of this paragraph in all subcontracts to perform work under this Agreement.

C.14 REHABILITATION ACT OF 1973/AMERICANS WITH DISABILITIES ACT OF 1990. In addition to application of the non-discrimination provision of this Agreement, above, Contractor agrees to comply with all provisions of section 504 et seq. of the Rehabilitation Act of 1973, and with all provisions of the Americans with Disabilities Act of 1990, and all amendments thereto, and all administrative rules and regulations issued pursuant to said Acts, pertaining to the prohibition of discrimination against qualified handicapped and disabled persons, in all programs or activities, as to employees or recipients of services.

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

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

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

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

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

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

C.21 DEFINITIONS. Unless otherwise provided in this Agreement, or unless the context

Attachment C – Page 8 of 11.
otherwise requires, the following definitions and rules of construction shall apply herein.

C.21.1 NUMBER AND GENDER. In this Agreement, the neuter gender includes the feminine and masculine, and the singular includes the plural, the word "person" includes corporations, partnerships, firms or associations, wherever the context so requires.

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

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

C.23 SUCCESSORS AND ASSIGNS. All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto,

shall be binding upon and inure to the benefit of such party, its successors and assigns.

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

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

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

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

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

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

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

C.31  **AUTHORITY.** All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, estates or firms represented or purported to be represented by such entity(s), person(s), estate(s) or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Further, by entering into this Agreement, neither party hereto shall have breached the terms or conditions of any other contract or agreement to which such party is obligated, which such breach would have a material effect hereon.

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

Contractor may be subject to the disclosure requirements of the TRLIA conflict of interest code if in a position to make decisions or influence decisions that could have an effect on the Contractor’s financial interest. The TRLIA Administrator shall determine in writing if Contractor has been hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in the Yuba County Conflict of Interest Code.
C.33 NOTICES. All notices and demands of any kind which either party may require or desire to serve on the other in connection with this Agreement must be served in writing either by personal service or by registered or certified mail, return receipt requested, and shall be deposited in the United States Mail, with postage thereon fully prepaid, and addressed to the party so to be served as follows:

If to TRLIA:

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY  
Paul G. Brunner, Executive Director  
1114 Yuba Street, Suite 218  
Marysville, CA 95901

If to Contractor:

RIVER PARTNERS  
John Carlon  
580 Vallombrosa Avenue  
Chico, CA 95926
Exhibit 1

Scope of Work
Transplant Elderberry Shrubs
From Segment 3 Toe Access Corridor to the FRET

Contractor shall remove and transplant 12 impacted elderberry shrubs according to USFWS Guidelines from the landside toe access corridor along the Feather River East Levee and into the Feather River Elderberry Transplant (FRET) area. Fences that have to be temporarily removed for access will be restored to a similar manner as before removal.

Construction Schedule
TRLIA expects to have the USFWS BO by February 15, 2013. The selected contractor will need to accomplish transplanting of elderberry shrubs before February 28, 2013. The selected contractor will have a minimum of 5 working days to complete the transplants.