THREE RIVERS LEVEE IMPROVEMENT AUTHORITY
Yuba County Government Center, Board Chambers
915 Eighth Street, Suite 109A
Marysville, California

AUGUST 7, 2012 – 3:30 P.M.

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 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.

III CONSENT AGENDA: All matters listed under the consent agenda are considered to be routine and can be enacted by one motion.

A. Approve minutes of the July 17, 2012 meeting.

IV ACTION ITEMS

A. Adopt resolution approving agricultural lease agreement with Heer/Atwal Orchards and authorizing Executive Director to negotiate final terms and execute same.

B. Adopt resolution declaring certain property identified as APN 018-190-111 and 112 as surplus property and authorizing the same for disposition.

C. Approve Amendment No. 1 to agreement with ENGEIO Inc. in the amount of $350,000 for engineering services for Goldfields high ground evaluation and authorize Executive Director to execute same.

D. Approve Amendment No. 1 to agreement with AECOM Technical Services, Inc. in the amount of $25,000 for environmental services related to elderberry shrub transplanting and authorize Executive Director to execute same.

V BOARD AND STAFF MEMBERS’ REPORTS

VI 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

JULY 17, 2012

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, Assistant Counsel Andrea Clark, and Clerk of the Board of Supervisors/Secretary 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: All matters listed under the consent agenda 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 June 19, 2012. Approved as written.

IV  ACTION ITEMS

A. Authorize issuance of bid documents for construction of Levee Landslide Improvement, Upper Yuba Levee Improvement project with at tentative bid opening date of August 24, 2012. Executive Director Paul Brunner recapped location, design, timelines, and responded to Board inquiries.

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

B. Adopt resolution approving agricultural lease with Sunrise Orchards and delegating authority to Executive Director to negotiate final terms and execute lease. Special Counsel Kelly Pope provided a Power Point presentation regarding:
   o Acquisition of property
   o Prior public bidding process
   o Proposed lease
   o Benefits of lease

MOTION: Move to adopt MOVED: John Nicoletti SECOND: Don Graham
AYES: Rick Brown, Jerry Crippen, Don Graham, Mary Jane Griego, John Nicoletti
NOES: None ABSTAIN: None ABSENT: None
Adopted Resolution No. 2012-10, entitled: "A REOSLUTION BY THE BOARD OF DIRECTORS OF THREE RIVERS LEVEE IMPROVEMENT AUTHORITY APPROVING AGRICULTURAL LEASE WITH SUNRISE ORCHARDS, AND DELEGATING AUTHORITY TO EXECUTIVE DIRECTOR TO NEGOTIATE FINAL TERMS AND EXECUTE AGRICULTURAL LEASE."

C. Approve recommendation to amend the basic salary schedule as it relates to the Executive Director position to a base monthly salary of $9,828 effective July 1, 2012.

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

V BOARD AND STAFF MEMBERS’ REPORTS

Executive Director Paul Brunner:
- Annual Tax Reports for Community Facilities District No. 2006-1 and 2006-2 continued to next meeting
- Release of video documentary Meeting the Challenge
- Meeting with FEMA staff regarding certification package preparation held July 17, 2012

VI CLOSED SESSION: The Board retired into closed session at 2:25 p.m.

A. Potential litigation pursuant to Government Code §54956.9(b) – One Case

The Board returned from closed session at 2:38 p.m. with all present as indicated above.

VII ADJOURN: 2:38 p.m. by Chair Griego.

_______________________________________________
Chair

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

_______________________________________________
Approved:
August 7, 2012

TO: Three Rivers Levee Improvement Authority Board
FROM: Paul Brunner, Executive Director
        Kelly Pope, Special Counsel
SUBJECT: Approve Agricultural Lease Agreement with Heer/Atwal Orchards

Recommended Action:

Approve Attached Resolution by the Board of Directors of Three Rivers Levee Improvement Authority Approving Agricultural Lease Agreement with Heer/Atwal Orchards, and Delegating Authority to Executive Director to Negotiate Final Terms and Execute Agricultural Lease.

Background:

In October 2008, using eminent domain, the Three Rivers Levee Improvement Authority ("TRLIA") acquired approximately 39.53 acres of real property (Assessor’s Parcel No. 014-290-034), located on Anderson Avenue in Marysville, California (the "Uppal Property"). The Uppal Property was acquired for the purpose of installing and constructing the Three Rivers Phase 4 Levee Repair Project (the "Project").

Now that construction of the Project is complete, a portion of the Uppal Property that was previously used as a staging area during construction is no longer needed for the Project or any other use by TRLIA (the "Surplus Property"), and therefore qualifies as surplus land. The Surplus Property comprises approximately 23.406 acres, and is more particularly described in Exhibit A to the attached proposed Resolution. Accordingly, on October 18, 2011, the TRLIA Board adopted Resolution No. 2011-10 declaring the Surplus Property as surplus and authorizing the Executive Director to commence the procedures for disposing of surplus land pursuant to California Government Code sections 54220-54232.

Pursuant to California Government Code section 54222, TRLIA was required to send a written offer to sell or lease the Surplus Property to certain specified government agencies. Any interested agency to which an offer was sent has 60 days to notify TRLIA in writing that it wishes to purchase the Surplus Property. (Cal. Govt. Code § 54222(f).) If no written notice is received within 60 days of sending out offers then TRLIA may dispose of the Surplus Property without further regard to California Government Code sections 54220-54232.
TRLIA sent the written offer required by Government Code section 54222 to the requisite government agencies in July 2012. TRLIA has since been advised that none of the requisite government agencies is interested in purchasing or leasing the Surplus Property.

**Discussion:**

Mr. Sarbdeep Atwal, owner of Heer/Atwal Orchards, has informed TRLIA staff that he may be interested in purchasing the Surplus Property. However, he is concerned about the quality of the soil that was replaced on the Surplus Property after TRLIA used the previously existing soil on the property for borrow. Accordingly, he would like to enter into a one-year lease of the Surplus Property in order to plant row crops so that he can test the property's suitability for agriculture.

If Mr. Atwal is successful in growing row crops on the Surplus Property, TRLIA may be able to obtain a higher price when it ultimately sells the property than it could obtain if it attempted to sell the property now. Additionally, during the term of the lease, Mr. Atwal will provide a valuable service of maintenance and upkeep of the Surplus Property, including weed abatement, trash removal, pest control, and prevention of trespass.

The California Government Code (Sections 25526 to 25535) generally requires TRLIA to go through a public bidding process in order to lease property. However, there are exceptions to the public bidding requirements. One of those exceptions is set forth in Government Code section 25537.

Section 25537(b) authorizes TRLIA to lease its real property to third parties without a public bidding process where all of the following requirements are met:

- the actual monthly rental in the executed lease does not exceed a dollar limit that may be established by ordinance of the board, or, if no ordinance is adopted, does not exceed ten thousand dollars ($10,000);

- the term of the executed lease does not exceed 10 years; and

- the lease is not renewable.

Section 25537(b) further requires that notice of the lease be given pursuant to Government Code section 6061, posted in the office of the County Clerk. If the lease involves residential property, notice must also be given to housing sponsors (as defined by section 50074 and 50074.5 of the California Health and Safety Code). The notice shall describe the property proposed to be leased, the terms of the lease, the location where offers to lease the property will be accepted, the location where the lease will be executed, and any county officer authorized to execute the lease.

The Agricultural Lease with Heer/Atwal Orchards attached to the proposed Resolution meets all of the requirements of Government Code section 25537(b) because the monthly rent will not exceed $10,000, the term of the lease will be only 1 year, and the lease is not renewable.

It is appropriate to follow the procedures set forth in section 25537(b) because the rental value of the Surplus Property is very low, and does not in staff's estimation justify the time and expense of a public bidding process.
At or near the completion of this lease TRLIA will competitively sell the property. This issuance of this lease does not provide an advantage to acquire the property.

In order to test the suitability of the Surplus Property for agriculture, and therefore increase TRLIA’s ultimate ability to obtain the best sales price for the property, staff recommends that the Board approve the Agricultural Lease with Heer/Atwal Orchards, and authorize the Executive Director to negotiate final terms, and sign the lease on TRLIA’s behalf after notice of the lease is provided as required by Government Code sections 6061 and 25537(b).

**Fiscal Impact:**

The rental amount in the proposed Agricultural Lease is the lesser of three percent (3%) of the gross income from the property over the course of the applicable prior twelve-month period, or an amount equal to $10,000 per month. Per the Feather EIP Funding Agreement, TRLIA will share the revenues with the State. TRLIA’s share of the revenue is approximately 17.5%.

**Attachment:**

- Proposed Resolution
RESOLUTION NO. 2012-___

A RESOLUTION BY THE BOARD OF DIRECTORS OF
THREE RIVERS LEVEE IMPROVEMENT AUTHORITY
APPROVING AGRICULTURAL LEASE WITH HEER/ATWAL ORCHARDS, AND
DELEGATING AUTHORITY TO EXECUTIVE DIRECTOR TO NEGOTIATE FINAL
TERMS AND EXECUTE AGRICULTURAL LEASE

WHEREAS, Three Rivers Levee Improvement Authority ("TRLIA") is the owner
of approximately 23.406 acres of real property located on Anderson Avenue in
Marysville, California (Assessor’s Parcel No. 014-290-034) (the “Property”). The
Property is more particularly described in the Agricultural Lease attached as Exhibit A
hereto and incorporated herein by reference; and

WHEREAS, TRLIA acquired the Property for the purpose of installing and
constructing the Three Rivers Phase 4 Levee Repair Project (the “Project”); and

WHEREAS, on October 18, 2011, the TRLIA Board adopted Resolution No.
2011-10 declaring the Property as surplus and authorizing the Executive Director to
commence the procedures for disposing of surplus land pursuant to California
Government Code sections 54220-54232; and

WHEREAS, TRLIA has sent a written offer to sell or lease the Property to certain
specified government agencies pursuant to Government Code section 54222 and been
advised that none of these agencies are interested in purchasing or leasing the Property;
and

WHEREAS, Heer/Atwal Orchards has offered to lease the Property under terms
that are acceptable to TRLIA.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board of Directors of the Three Rivers Levee Improvement Authority hereby
approves the Agricultural Lease attached as Exhibit A hereto.

2. The Board hereby authorizes and directs the Executive Director to negotiate final
terms for the Agricultural Lease attached as Exhibit A hereto, and to execute the
Agricultural Lease attached as Exhibit A hereto after notice of the lease is provided as
required by California Government Code sections 6061 and 25537(b).
PASSED AND ADOPTED this _______ day of __________, 2012, by the Board of Directors of Three Rivers Levee Improvement Authority by the following vote:

AYES: 

NOES: 

ABSENT: 

ABSTAIN: 

__________________________
Chairperson

ATTEST: DONNA STOTTLMEYER,
CLERK OF THE BOARD

__________________________
APPROVED AS TO FORM: GENERAL COUNSEL
SCOTT SHAPIRO

__________________________
AGRICULTURAL LEASE

1. **Parties.** This Lease (hereinafter, “Lease”), dated for reference purposes only
   2012 is made by and between Three Rivers Levee Improvement Authority, a
   joint powers agency of the State of California (“Landlord”) and Heer/Atwal Orchards (“Tenant”).

2. **Premises.** Landlord hereby leases to Tenant and Tenant hereby leases from
   Landlord for the term, and upon all of the conditions set forth herein, that certain real property
   located in the County of Yuba (the “County”), State of California (the “State”), consisting of
   23.406 acres, more or less, of Assessor’s Parcel Number 014-290-034 and more particularly
   described on **Exhibit A** (the “Premises”).

3. **Term.** The term of this Lease shall commence upon September 1, 2012 and
   terminate on August 31, 2013. The term of this Lease shall be non-renewable. Notwithstanding
   the foregoing, Landlord may terminate this Lease at any time on 60 days notice if Landlord finds
   it necessary to do so in meeting Landlord’s needs, including any federal or state requirements. If,
   prior to the time for harvesting, Landlord should terminate this Lease, Landlord agrees to
   reimburse Tenant for all reasonable and/or actual costs expended by Tenant pursuant to this
   Lease in the production of that portion of the crop affected by any such termination. If
   termination is made due to default, Landlord shall not be liable for any reimbursements to
   Tenant. Landlord shall not be liable for loss of anticipated profits. Tenant agrees to maintain an
   accurate record of all expenditures for labor and materials made in connection with this
   cultivation of, or capital improvements to, the Premises in order that Landlord may verify the
   amount of reimbursement to be made to Tenant. Tenant shall support all such expenditures with
   appropriate, receipted, written vouchers.

4. **Rent.**

   41. **Rent.** Tenant shall pay to Landlord, in addition to providing a valuable
       service of maintenance and upkeep of the Property, including maintenance of any wells and
       pumps, weed abatement, trash removal, pest control, and prevention of trespass, an annual rent
       for the Premises in the amount of the lesser of three percent (3%) of the Gross Income from the
       Property over the course of the applicable prior twelve-month period, or an amount equal to
       $10,000 per month. Rent shall be due on August 31, 2013. Rent shall be payable at the
       Landlord’s address stated below or to such other persons or at such other places as Landlord may
       designate in writing.

   42. **Additional Responsibilities.** In addition to the rent reserved by Paragraph
       4.1, Tenant shall be responsible for paying to the parties respectively entitled to such amounts, the
       annual cost of irrigation water, utilities, insurance premiums, operating charges, and any other
       charges, costs and expenses which arise or may be contemplated under any provisions of this
       Lease during the term.

   43. **No Abatement of Rent.** It is the intention of the parties that this Lease
       shall not be terminable for any reason by Tenant, except as provided in Paragraphs 3 and 14,
       and that Tenant shall in no event be entitled to any abatement of or reduction in rent payable
       under this Lease, except as expressly provided in this Lease. Any present or future law to the
       contrary shall not alter this agreement of the parties.
4.4. **Gross Income.** "Gross income" or "gross receipts," as used in this Lease, shall include all income resulting from occupancy of the Premises from whatever source derived whether received or to become due. Provided, however, gross income shall not include federal, state, or municipal taxes collected from the consumer (regardless of whether the amount thereof is stated to the consumer as a separate charge) and paid over periodically by Tenant to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by Tenant in computing gross income. Gross income shall not include refunds for goods returned for resale on the Premises or refunds of deposits. The amount of such taxes and refunds shall be clearly shown on the books and records of Tenant. The percentage rent shall be calculated and paid by Tenant on the basis of said gross income whether the income is received by Tenant or by any sublessee, permittee or licensee, or their agents, and all gross income received by any sublessee, permittee, licensee, or other party as a result of occupancy of said Premises or the operation thereof shall be regarded as gross income of Tenant for the purpose of calculating the percentage rent hereunder required to be paid by Tenant to Landlord, except as may be otherwise specified by or pursuant to this Lease.

5. **Use.**

5.1. **Use.** The Premises shall be used and occupied for agricultural and related purposes only. Any other use of the Premises is prohibited. All crops must be harvested by the end of the Lease term. Tenant waives the provisions of Section 1932 and 1933 (4) of the Civil Code of California. Multiple year crops which produce beyond the term of this Lease, are planted at the sole risk and responsibility of Tenant and such planting does not convey any right of Tenant or responsibility of Landlord to extension of this Lease beyond the Lease expiration or termination date or any right to compensation for any multiple year crops which produce beyond the term of the Lease or after Lease termination. Landlord shall not be held accountable to Tenant for any crops harvested by Landlord or third parties beyond the term of this Lease or the termination of the Lease.

5.2. **Compliance with Law.** Tenant shall, at Tenant's expense, comply promptly with all applicable statutes, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements in effect during the term or any part of the term hereof, regulating the use by Tenant of the Premises. Tenant shall not use nor permit the use of the Premises in any manner that will tend to create waste or a nuisance.

5.3. **Flood Plain.** Tenant acknowledges that the Premises is in a flood plain and subject to flooding. Tenant assumes all risk that the Premises may flood during the term of this Lease.

5.4. **No Warranty of Suitability of the Soil.** Landlord does not warrant suitability of the soil for growing authorized crops, nor the absence of deleterious organisms or chemicals in the soil.

5.5. **Water Availability.** It is understood and agreed by the parties that Landlord does not guarantee the availability, quality or quantity of water on the Premises.

6. **Lease Subject to Existing Rights of Others.** This Lease is subject to all existing
and future easements, servitudes, licenses and rights-of-way for canals, ditches, levees, roads, highways and telegraph, telephone and electric power lines, railroads, pipelines and other purposes, whether recorded or not. Landlord makes no warranty of title to the Premises.

7. **Maintenance, Repairs and Alterations.**

7.1. **Tenant’s Obligations.** Tenant, at Tenant’s sole cost, shall keep the Premises in good order and condition during the term of this Lease. All operations incident to this use of the Premises shall be carried out according to the best course of agricultural practices in the vicinity. On default of Tenant to use the Premises as required by this Lease, Landlord reserves the right, after having given 10 days’ notice, to take reasonably necessary remedial measures at the expense of Tenant, for which Tenant shall reimburse Landlord on demand. Tenant will make reasonably diligent efforts to prevent the spread of all noxious weeds on the Premises and will take commercially reasonable measures in accordance with customary good farming practices to protect the Premises from infestations of pests. Tenant will make reasonably diligent efforts to prevent infestations of organisms that may produce disease in crops grown on the Premises during and after the term of this Lease.

7.2. **Surrender.** On the last day of the term of this Lease, or on any sooner termination, Tenant shall surrender the Premises to Landlord in reasonably the same condition as when received. Tenant shall remove any of Tenant’s own equipment or any equipment placed by Tenant on the Premises but not any wells or pumps.

7.3. **Landlord’s Obligations.** Landlord shall have no obligation, in any manner whatsoever, to repair and maintain the Premises. Tenant expressly waives the benefit of any statute now or hereinafter in effect which would otherwise afford Tenant the right to make repairs at Landlord’s expense or to terminate this Lease because of Landlord’s failure to keep the Premises in good order, condition and repair.

7.4. **Alterations and Additions.**

(a) Tenant shall not, without Landlord’s prior written consent, which consent shall not be unreasonably withheld, make any alterations, improvements or additions on or about the Premises, except for that which is required for the agricultural use of the Premises. Should Tenant make any alterations, improvements or additions Landlord may condition its approval on Tenant agreeing to remove any or all of such improvements at the end of the term of this Lease.

(b) Tenant agrees that in no event shall Landlord be required to perform any maintenance on or make improvements, repairs or alterations to the Premises of any nature whatsoever, or to pay or reimburse Tenant for any part of the cost thereof.

(c) Tenant shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Tenant at or for use in the Premises which claims are or may be, secured by any mechanics’ or materialmen’s lien against the Premises or any interest in the Premises.
(d) Unless Landlord requires their removal, as set forth in Paragraph 7.4(a), all alterations, improvements or additions, which may be made on the Premises, shall become the property of Landlord and remain upon and be surrendered with the Premises at the expiration of the term. Notwithstanding the provisions of this paragraph, Tenant's machinery and equipment, other than that which is affixed to the Premises so that it cannot be removed without material damage to the Premises, shall remain the property of Tenant and may be removed by Tenant subject to the provisions of Paragraph 7.2.


8.1. Compliance with Environmental Requirements. Tenant expressly agrees, at all times and in all respects, to comply with all federal, state and local laws, regulations, ordinances, other requirements, permits and orders issued in relation thereto, which are designed to protect public health and safety, worker health and safety, or the environment, including, but not limited to, management of hazardous materials and/or hazardous waste (collectively referred to hereinafter as "Environmental Requirements"). For this purpose, "management" includes, but is not limited to, use, storage, handling and transportation. Tenant expressly agrees not to store hazardous waste on the Premises, treat hazardous waste on the Premises or dispose of, or bury any waste, including hazardous waste, on the Premises.

8.2. Handling of Pesticides and Fertilizer. Tenant expressly agrees to use and handle pesticides and fertilizers in compliance with all Environmental Requirements which are designed to regulate pesticides and fertilizers, including, but not limited to, requirements pertaining to re-entry or pre-harvest intervals. No poison, herbicide, or pesticide other than those approved by the United States Department of Agriculture and by the California Department of Agriculture shall be applied to the Premises or crops growing thereon. The use of the pesticide aldicarb (also known as Temik) is prohibited. Landlord reserves the right to prohibit the application of a listed pesticide, fertilizer, or soil amendment, but not without recommending an effective and suitable replacement. No soil sterilant or semi-sterilant, experimental poisons, herbicides, pesticides, fertilizers, or other foreign chemical or substance shall be applied to the Premises, or the crops growing thereon, without the prior written consent of Landlord. No pesticide or agricultural chemical shall be used by Tenant if it results in a plant-back restriction or other provision which would place any limitation on the use of the Premises which extend beyond the term of the Lease without the prior written consent of Landlord. The use of pesticides should be minimized. Tenant shall provide Landlord a copy of Tenant's County Pesticide Permit prior to planting each crop year. Tenant agrees to keep true and correct records of the time, place, and all other information and data pertaining to the quantity, kind, use, and method of application of any poison, herbicide, pesticide, fertilizer, or other foreign chemical or substance and to furnish Landlord true and correct copies thereof upon demand.

8.3. Contamination. Tenant expressly agrees, at all times and in all respects, to comply with all federal, state and local laws, regulations, ordinances, other requirements, and permits and orders issued in relation thereto which concern any contamination, release, pollution, nuisance or waste, whether toxic or nontoxic chemical or biological, which may result from Tenant's operation on, and use of, the Premises during the term of this Lease, whether created or maintained by Tenant, its agents, servants or employees, or whether Tenant assists in the creation or maintenance thereof.
9. Insurance.

9.1 Liability Insurance. Tenant shall, at Tenant’s expense, obtain and keep in force during the term of this Lease a policy of Combined Single Limit, Bodily Injury and Property Damage insurance insuring Landlord and Tenant against any liability arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant to the Premises. Such insurance shall be a combined single limit policy in an amount not less than $1 Million per occurrence. The policy shall insure performance by Tenant of the indemnity provisions of this Paragraph 9. The limits of such insurance shall not, however, limit the liability of Tenant under this Lease. Landlord shall be an additional named insured on the policy of insurance.

9.2 Insurance Policies. Insurance required hereunder shall be in companies holding a “General Policyholders Rating” of at least “A-VIP” in the most current issue of “Best’s Insurance Guide”. At Landlord’s request, Tenant shall deliver to the Landlord copies of policies of such insurance or certificates evidencing the existence and amount of such insurance with loss payable clauses as required by this Paragraph 9 concurrently with the execution and delivery of this Lease. No such policy shall be subject to cancellation or reduction of coverage or other modification except after 30 days’ prior written notice to Landlord. Tenant shall not do or permit to be done anything which shall invalidate the insurance policy referred to in this Paragraph 9. Should Tenant fail to maintain the insurance coverage required by this Lease, Landlord shall make demand upon Tenant to cure such default and if it is not cured within 15 days of notice thereof, then Landlord may purchase such coverage and charge Tenant for the costs incurred by Landlord and Tenant shall reimburse Landlord for such costs within 30 days.

9.3 Indemnity. Tenant shall defend, indemnify and hold harmless Landlord from and against any and all claims arising from Tenant’s use of the Premises, or from the conduct of Tenant’s business or from any activity, work or things done, permitted or suffered by Tenant in or about the Premises or elsewhere and shall further defend, indemnify and hold harmless Landlord from and against any and all claims arising from the failure of Tenant to perform any obligation on Tenant’s part to be performed under the terms of this Lease, or arising from any negligence of the Tenant, or any of Tenant’s agents, contractors, or employees, and from and against all costs, attorney’s fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against Landlord by reason of any such claim, Tenant upon notice from Landlord shall defend the same at Tenant’s expense by counsel reasonably satisfactory to Landlord.

10. Real Property Taxes.

10.1 Payment of Taxes. Tenant shall pay the real property tax applicable to the Premises, assessments or charges that may be levied upon the interests in this Lease. Tenant understands that this Lease may create a possessory interest subject to property taxation and Tenant may be subject to the payment of property taxes levied on such interest assessed against the Premises during the term of this Lease.

10.2 Personal Property Taxes.

(a) Tenant shall pay prior to delinquency all taxes assessed against and
levied upon trade fixtures, furnishings, equipment and all other personal property of Tenant contained in the Premises or elsewhere. When possible, Tenant shall cause such trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Landlord.

(b) If any of Tenant’s personal property shall be assessed with Landlord’s real property, Tenant shall pay Landlord the taxes attributable to Tenant within 30 days after receipt of a written statement setting forth the taxes applicable to Tenant’s property.

11. **Utilities.** Tenant shall pay for power, telephone or other utilities provided to the Premises at Tenant’s request or for Tenant’s use.

12. **Subletting and Assignment.**

12.1. **Sublease.** Tenant may not sublease the Premises, without Landlord’s prior written consent, which Landlord may withhold in Landlord’s sole discretion.

12.2. **Assignment.** Tenant may not assign this Lease, in whole or in part, without Landlord’s prior written consent, which Landlord may withhold in Landlord’s sole discretion.

13. **Defaults: Remedies.**

13.1. **Defaults.** The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Tenant.

(a) The vacating or abandonment of the Premises by Tenant. Notwithstanding the forgoing, Tenant’s failure to farm the Premises or allow some or all field to lie fallow to comply with governmental programs, due to uneconomic conditions for growing crops or good agricultural practices shall not be deemed vacating or abandoning the Premises, provided that Tenant maintains such fallow ground in accordance with the provisions of Paragraph 7.1 with respect to weeds.

(b) The failure by Tenant to make any payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of five days after written notice thereof from Landlord to Tenant.

(c) The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, other than described in paragraph (b) above, where such failure shall continue for a period of 30 days after written notice of the default from Landlord to Tenant; provided, however, that if the nature of Tenant’s default is such that more than 30 days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within the 30-day period and thereafter diligently prosecutes such cure to completion.

(d) (i) The making by Tenant of any general arrangement or assignment for the benefit of creditors; (ii) Tenant becomes a “debtor” as defined in 11 U.S.C. Section 101 or any successor statute thereto (unless, in the case of a petition filed against Tenant, the petition
is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant’s assets located at the Premises or of Tenant’s interest in this Lease, where possession is not restored to Tenant within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant’s assets located at the Premises or of Tenant’s interest in this Lease, where such seizure is not discharged within 30 days. Provided, however, if any provision of this Paragraph 13.1(d) is contrary to any applicable law, such provision shall be of no force or effect.

13.2. Remedies. In the event of any such default by Tenant, in addition to any other remedies available to Landlord at law or in equity, Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder. If Landlord shall elect to terminate this Lease, then Landlord may recover from Tenant any amount necessary to compensate Landlord for all the detriment proximately caused by Tenant’s failure to perform Tenant’s obligation under this Lease or which in the ordinary course of things would be likely to result from such failure.

13.3. Re-entry. In the event of any such default by Tenant, Landlord shall also have the right, with or without terminating this Lease, to re-enter the Premises and remove all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant. No re-entry or taking possession of the Premises by Landlord pursuant to this Paragraph 13.3 shall be construed as an election to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination of this Lease be decreed by a court of competent jurisdiction.

13.4. Cumulative Rights. All rights, options and remedies of Landlord contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Landlord shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Lease. No waiver of any default of Tenant hereunder shall be implied from any acceptance by Landlord of any rent or other payments due hereunder or any omission by Landlord to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect defaults other than as specified in the waiver. The consent or approval of Landlord to or of any act by Tenant requiring Landlord’s consent or approval shall not be deemed to waive or render unnecessary Landlord’s consent or approval to or of any subsequent similar acts by Tenant.

13.5. Default by Landlord. Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than 30 days after written notice by Tenant to Landlord and to the holder of any first mortgage or deed of trust covering the Premises whose name and address shall have been furnished to Tenant in writing, specifying in what respect Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord’s obligation is such that more than 30 days are required for performance then Landlord shall not be in default if Landlord commences performance within such 30-day period and thereafter diligently prosecutes the same to completion.

14. Condemnation. If the whole or any part of the Premises shall be condemned or taken by any public authority under the power of eminent domain, then the terms of this
Lease shall cease as to the parts taken, from the day that possession of such portion shall vest in the condemnor. If in excess of 50% of the Premises shall be so taken, Tenant may, at its option, upon 10 days written notice, declare this Lease terminated.

15. **Estoppel Certificate.** Tenant shall at any time upon not less than 10 days' prior written notice from Landlord execute, acknowledge and deliver to Landlord a statement in writing (a) that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, if any, and (b) acknowledging that there are not, to Tenant’s knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any are claimed; and (c) such other information as may be reasonably requested regarding this Lease. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises.

16. **Severability.** The invalidity of any provision of this Lease as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision of this Lease.

17. **Interest on Past-due Obligations.** Except as expressly provided in this Lease, any amount due to Landlord not paid when due shall bear interest at the maximum rate than allowable by law from the date on which Landlord delivers notice to Tenant of late payment. Payment of such interest shall not excuse or cure any default by Tenant under this Lease, provided, however, that interest shall not be payable on late charges incurred by Tenant.

18. **Time of Essence.** Time is of the essence.

19. **Incorporation of Prior Agreements; Amendments.** This Lease contains all agreements of the parties with respect to any matter mentioned in this Lease. No prior agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of the modification. Except as otherwise stated in this Lease, Tenant hereby acknowledges that Landlord and any employees and or agents of any of such persons have not made any oral or written warranties or representations to Tenant relative to the condition or use by Tenant of the Premises and Tenant acknowledges that Tenant shall materially comply with all applicable laws and shall be responsible for the legal use and adaptability of the Premises and the compliance thereof with all applicable laws and regulations in effect during the term of this Lease except as otherwise specifically stated in this Lease.

20. **Notices.** Any notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery, by certified mail or overnight delivery by a nationally recognized, reputable delivery service (e.g., Federal Express, UPS, etc.), and if given personally or by mail, shall be deemed sufficiently given if addressed to Tenant or to Landlord at the address noted below the signature of the respective parties, as the case may be. Either party may by notice to the other specify a different address for notice purposes. A copy of all notices required or permitted to be given to Landlord shall be concurrently
transmitted to such party or parties at such addresses as Landlord may from time to time designate by notice to Tenant.

21. **Waivers.** No waiver by Landlord of any provision of this Lease shall be deemed a waiver of any other provision of this Lease or of any subsequent breach by Tenant of the same or any other provision. Landlord’s consent to, or approval of, any act shall not be deemed to render necessary the obtaining of Landlord’s consent to or approval of any subsequent act by Tenant. The acceptance of rent hereunder by Landlord shall not be a waiver of any preceding breach by Tenant of any provision of this Lease, other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord’s knowledge of such preceding breach at the time of acceptance of such rent.

22. **Holding Over.** If Tenant, with Landlord’s consent, remains in possession of the Premises or any part thereof after the expiration of the term hereof, such occupancy shall be a tenancy from month to month upon all the provisions of this Lease pertaining to the obligations of Tenant, but all options and rights of first refusal, if any, granted under the terms of this Lease shall be deemed terminated and be of no further effect during said month to month tenancy.

23. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

24. **Covenants and Conditions.** Each provision of this Lease performable by Tenant shall be deemed both a covenant and a condition.

25. **Succession and Choice of Law.** Subject to any provisions of this Lease restricting assignment or subletting by Tenant and subject to the provisions of Paragraph 12, this Lease shall bind the parties, their personal representatives, successors and assigns. This Lease shall be governed by the laws of the State of California.

26. **Subordination.**

26.1. If Landlord encumbers the Premises, this Lease, at Landlord’s option, shall be subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation or security now or hereafter placed upon the real property of which the Premises are a part and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. Notwithstanding such subordination, Tenant’s right to quiet possession of the Premises shall not be disturbed if Tenant is not in default and so long as Tenant shall pay the rent and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms.

26.2. Tenant agrees to execute any documents required to effectuate an attornment, non-disturbance and subordination to the lien of any mortgage, deed of trust or ground lease, as the case may be. Tenant’s failure to execute such documents within 10 days after written demand shall constitute a material default by Tenant hereunder, or, at
Landlord’s option, Landlord shall execute such documents on behalf of Tenant as Tenant’s attorney-in-fact. Tenant does hereby make, constitute and irrevocably appoint Landlord as Tenant’s attorney-in-fact and in Tenant’s name, place and stead, to execute such documents in accordance with this Paragraph.

26.3 Tenant shall not do any act which shall in any way encumber the title of Landlord in and to the Premises, nor shall the interest or estate of Landlord in the Premises be in any way subject to any claim by way of lien or encumbrance, whether by operation of law or by virtue of any express or implied contract by Lessee. Any claim to, or lien upon, the Premises arising from any act or omission of Tenant shall accrue only against the leasehold estate of Tenant and shall be subject and subordinate to the paramount title and rights of Landlord in and to the Premises.

27. **Attorney’s Fees.** If either party herein brings an action to enforce the terms of this Lease or declare rights under this Lease, the prevailing party in any action, on trial or appeal, shall be entitled to such party’s reasonable attorney’s fees to be paid by the losing party as fixed by the court.

28. **Landlord’s Access.** Landlord and Landlord’s agents shall have the right to enter on the Premises at reasonable times for any reasonable purpose. Landlord shall indemnify and hold Tenant harmless from all liability relating to such entry, except for liability which results from Tenant’s negligence or willful acts.

29. **Signs.** Except for signs which relate to agriculture products actually used by Tenant on the Premises, Tenant shall not place any sign upon the Premises without Landlord’s prior written consent which consent shall not be unreasonably withheld. Landlord shall be allowed to place such signs upon the Premises as Landlord may from time to time desire.

30. **Merger.** The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, or a termination by Landlord, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such subtenancies.

31. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other under the provisions of this Lease, the party against whom the obligation to pay the money is asserted shall have the right to make payment “under protest” and such payment shall not be regarded as a voluntary payment, and there shall survive the right on the part of said party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of such party to pay such sum or any part thereof, such party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease.

32. **Waiver of California Code Sections.** Tenant waives the provisions of Civil Code Sections 1932(2) and 1933(4) with respect to the destruction of the Premises, Civil Code Sections 1932(1), 1941 and 1942 with respect to Landlord’s repair duties and Tenant’s right of repair, and Code of Civil Procedure Section 1265.130, allowing either party to petition
the Superior Court to terminate this Lease in the event of a partial taking of the Premises for public or quasi-public use by statute, by right of eminent domain, or by purchase in lieu of eminent domain, and any right of redemption or reinstatement of Tenant under any present or future case law or statutory provision (including Code of Civil Procedure Sections 473, 1174(c) and 1179 and Civil Code Section 3275) if Tenant is dispossessed from the Premises for any reason. This waiver applies to future statutes enacted in addition or in substitution to the statutes specified herein, and this waiver shall apply even though Tenant may be the subject of a voluntary or involuntary petition in bankruptcy.

33. **Waste.** Tenant shall not commit, or permit others to commit, on the Premises waste, or nuisance, or any other act that could disturb the quiet enjoyment of Landlord on adjacent property.

34. **No Relocation Benefits.** Tenant acknowledges the following: Tenant commenced occupancy of the Premises after Landlord acquired possession to it. Landlord acquired the Premises for a public project (the Feather River Levee Improvement Project), Tenant may be required to vacate the Premises to allow construction of the public project, and Tenant is not entitled to receive any payments under either the State or the Federal Uniform Relocation Assistance Act. (Cal. Gov’t Code §§ 7260, et seq.; 42 U.S.C. §§ 4601, et seq.)

35. **Mineral Rights.**

36.1 The exclusive right to conduct seismic and other geophysical surveys and otherwise to prospect for, drill for, produce, mine, extract and remove oil and gas upon and from the Premises, the exclusive right to drill upon, to drill through and otherwise to use the Premises to produce, mine, extract, and remove water from adjacent or neighboring lands, and the exclusive right to inject in, store under, and thereafter withdraw from the Premises oil and gas, whether produced from the Premises or elsewhere, together with the right to drill and operate whatever wells, construct, install, operate, maintain and remove whatever other facilities and do whatever else may be reasonably necessary on and in the Premises for the full enjoyment and exercise of the above rights, and the unrestricted right of ingress and egress on the Premises for all such purposes, may be reserved or owned by other parties or may be transferred by Landlord to other parties.

36.2 Tenant agrees not to interfere, in any way, with the interests of any person or persons that may presently or in the future hold oil, gas, or other mineral interests upon or under the Premises; nor shall Tenant, in any way, interfere with the rights of ingress and egress of said interest holders.

36. **Cropping Programs and Agreements.** Tenant shall not, without prior written consent of Landlord, enter into any soil conservation, Federal farm program or cropping agreement affecting the Premises, irrespective of whether such agreement shall be proposed or submitted under or in compliance with any Federal, state, county, or municipal law, or by private arrangement. Tenant shall, upon written request of Landlord, enter into and execute any and all such soil conservation, Federal farm program or cropping agreements affecting the Premises. If any Federal or state programs regulating crop acreage or crop production are imposed during the term of this Lease, the acreage or production rights resulting from said program, as applied to the Premises, shall remain with and inure to
the benefit of the Landlord.

37. **Ownership of Facilities.** Upon expiration of this Lease, or sooner termination, any and all irrigation facilities upon the Premises, including but not limited to any wells, pumps, electric motors, pipelines, valves, and water gates, but excepting portable sprinkler irrigation facilities and tail water pumps provided by Tenant, shall become the property of the Landlord free of cost to Landlord. Ownership and removal of facilities or improvements placed on Premises with prior written approval of Landlords shall be as stated in the written approval. All other facilities or improvements placed on the Premises by Tenant which are required to comply with generally recommended farming practices shall become the property of Tenant so long as this Lease is in effect and shall be removed by Tenant upon termination of this Lease.

**LANDLORD**

Three Rivers Levee Approval Authority

Date: ____________________________ By: ____________________________

Paul G. Brunner, Executive Director

**TENANT**

Heer/Atwal Orchards

Date: ____________________________ By: ____________________________

Sarbdeep Atwal
August 7, 2012

TO: Three Rivers Levee Improvement Authority Board
FROM: Paul Brunner, Executive Director
SUBJECT: Disposal of Excess Lands – Sohal Parcel

Recommended Action:

Approve Attached Resolution by the Board of Directors of Three Rivers Levee Improvement Authority Declaring Certain Real Property as Surplus and Authorizing the Same for Disposition.

Background:

In May 2011, using eminent domain, the Three Rivers Levee Improvement Authority (“TRLIA”) acquired approximately 75.395 acres of real property (currently identified by Assessor’s Parcel Nos. 018-190-111 and 112), located on the south side of the Upper Yuba River Levee in Yuba County, California (the “Sohal Property”). The Sohal Property was acquired for the purpose of improving/repairing the Three Rivers Upper Yuba River Levee Improvement Project (the “Project”).

Now that construction of the Project is largely complete, the majority of the Sohal Property that was previously used as a borrow site during construction is no longer needed for the Project or any other use by TRLIA (the “Surplus Property”), and therefore qualifies as surplus land. The Surplus Property comprises approximately 72.822 acres, and is more particularly described in Exhibit A and depicted in Exhibit B to the attached proposed Resolution.

TRLIA will continue to use approximately 2.573 acres of the Sohal Property that was acquired for the Project for operation and maintenance of the levee. That portion of the Sohal Property is therefore not a part of the attached proposed Resolution.

Discussion:

The disposition of surplus land is governed by California Government Code sections 54220-54232. “Surplus land” means land owned by any local agency that is determined to be no longer necessary for the agency’s use, except property being held by the agency for the purpose of exchange. TRLIA, as a Joint Powers Authority, falls under the definition of “local agency.” The Surplus Property is no longer necessary for TRLIA’s use now that construction of the Project is largely complete, and the Surplus Property is not being held by TRLIA for the purpose of...
exchange. Accordingly, the Surplus Property is suitable to be declared surplus land, and to be disposed of in conformance with California Government Code sections 54220-54232.

Prior to disposing of the Surplus Property, California Government Code section 54222 requires TRLIA to send a written offer to sell or lease the Surplus Property as follows:

- A written offer to sell or lease for the purpose of developing low and moderate-income housing shall be sent to any local public entity, as defined in Section 50079 of the Health and Safety Code, within whose jurisdiction the surplus land is located. Housing sponsors, as defined by Section 50074 of the Health and Safety Code, shall be sent, upon written request, a written offer to sell or lease surplus land for the purpose of developing low and moderate-income housing.

- A written offer to sell or lease for park and recreational purposes or open-space purposes shall be sent (1) to any park or recreation department of any city within which the Surplus Property may be situated; (2) to any park or recreation department of the county within which the Surplus Property is situated; (3) to any regional park authority having jurisdiction within the area in which the Surplus Property is situated; and (4) to the State Resources Agency or any agency that may succeed to its powers.

- If the Surplus Property is suitable for school facilities construction or use by a school district for open-space purposes, a written offer to sell or lease the Surplus Property shall be sent to any school district in whose jurisdiction the Surplus Property is located.

- If the Surplus Property is in an area designated as an enterprise zone pursuant to Section 7073, a written offer to sell or lease for enterprise zone purposes shall be sent to the nonprofit neighborhood enterprise association corporation in that zone.

- A written offer to sell or lease for the purpose of developing property located within an infill opportunity zone designated pursuant to Section 65088.4 or within an area covered by a transit village plan adopted pursuant to the Transit Village Development Planning Act of 1994 (Article 8.5 (commencing with Section 65460) of Chapter 3 of Division 1 of Title 7) shall be sent to any county, city, city and county, community redevelopment agency, public transportation agency, or housing authority within whose jurisdiction the Surplus Property is located.

Any interested agency to which an offer is sent will have 60 days to notify TRLIA in writing that it wishes to purchase the Surplus Property. (Cal. Govt. Code § 54222(f).) If no written notice is received within 60 days of sending out offers then TRLIA may dispose of the Surplus Property without further regard to California Government Code sections 54220-54232.

If TRLIA timely receives written notice from an entity desiring to purchase or lease the Surplus Property, then TRLIA and the entity shall enter into good faith negotiations to determine a mutually satisfactory sales price or lease terms. If TRLIA and the interested agency cannot agree upon price or terms after a good faith negotiations period of not less than 60 days, TRLIA may dispose of the Surplus Property without further regard to California Government Code sections 54220-54232.
TRLIA will need to obtain approval from the State of California Department of Water Resources to enter into any contract to sell or lease the Surplus Property.

**Fiscal Impact:**

If TRLIA ultimately sells or leases the Surplus Property, revenue will initially come to TRLIA. Per the Project EIP Funding Agreement, TRLIA will share the revenues with the State. TRLIA’s share of the revenue is approximately 30%.

**Attachment:**

- Proposed Resolution
RESOLUTION NO. 2012—

A RESOLUTION BY THE BOARD OF DIRECTORS OF
THREE RIVERS LEVEE IMPROVEMENT AUTHORITY
DECLARING CERTAIN REAL PROPERTY AS
SURPLUS AND AUTHORIZING THE SAME FOR DISPOSITION

WHEREAS, Three Rivers Levee Improvement Authority ("TRLIA") is the owner of approximately 75.395 acres of real property (currently identified by Assessor’s Parcel Nos. 018-190-111 and 112), located on the south side of the Upper Yuba River Levee in Yuba County, California (the “Property”); and

WHEREAS, TRLIA acquired the Property for the purpose of installing and constructing the Three Rivers Upper Yuba River Levee Improvement Project (the “Project”); and

WHEREAS, approximately 72.822 acres of the Property (“Surplus Property”) that was used as a borrow site for construction of the Project is no longer needed for the Project. The Surplus Property is more particularly described in Exhibit A and depicted in Exhibit B attached hereto and incorporated herein by reference; and

WHEREAS, the Surplus Property is no longer necessary for TRLIA’s use; and

WHEREAS, the Surplus Property is currently suitable to be declared as surplus, and be disposed of in conformance with California Government Code Sections 54220-54232.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board of Directors of the Three Rivers Levee Improvement Authority hereby declares the Surplus Property as surplus.

2. The Board hereby authorizes and directs the Executive Director to commence the procedures for disposing of surplus land pursuant to California Government Code Sections 54220-54232.

PASSED AND ADOPTED this ______ day of ________, 2012, by the Board of Directors of Three Rivers Levee Improvement Authority by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:
ATTEST: DONNA STOTTLEMEYER, CLERK OF THE BOARD

Chairperson

APPROVED AS TO FORM: GENERAL COUNSEL
SCOTT SHAPIRO

[Signature]
Exhibit A

All that real property situate in the County of Yuba, State of California, being a portion of the lands being vested in Three Rivers Levee Improvement Authority, as described in the Final Order of Condemnation, dated May 2, 2011 and recorded in Document 2011-005293, Official Records of Yuba County and being more particularly described as follows:

Parcel A-1

Beginning at a point on the West line of Parcel 3, as shown on Parcel Map No. 95-11, filed in the office of the County Recorder of Yuba County in Book 66 of Maps, Page 45, marked by a 1-1/2" iron pipe tagged LS 3341, marking the center of Section 15, Township 15 North, Range 4 East, M.D.M. and from which a 1/2" rebar with plastic cap stamped LS 3341, marking the Northeast corner of said Section 15 bears North 44°52'09" East, 3787.33 feet; thence along the West line of said Parcel 3, South 00°33'30" East, 309.85 feet; thence leaving said West line, North 89°04'49" East, 885.08 feet; thence North 88°02'26" East, 742.04 feet; thence North 00°51'04" East, 303.92 feet; thence North 00°31'18" East, 423.19 feet; thence North 00°02'30" West, 270.95 feet to a point on the North line of said Parcel 3; thence along said North line, South 88°05'46" West, 1633.65 feet to the Northwest corner of said Parcel 3; thence along the West line of said Parcel 3, South 00°08'00" West, 673.49 feet to the Point of Beginning.

Parcel B-1

Beginning at the Northwest corner of Parcel 4, as shown on Parcel Map No. 95-11, filed in the office of the County Recorder of Yuba County in Book 66 of Maps, Page 45, from which a 1/2" rebar with plastic cap stamped LS 3341, marking the Northeast corner of Section 15, Township 15 North, Range 4 East bears North 68°20'12" East, 2040.42 feet, and from which a 1-1/2" iron pipe tagged LS 3341, marking the center of said Section 15 bears South 22°16'51" West, 2094.71 feet; thence along the Northwesterly, West and South lines of said Parcel 4, South 40°34'50" West, 1217.26 feet to the West line of said Parcel 4; thence along said West line, South 00°08'00" West, 340.32 feet to the Southwest corner of said Parcel 4; thence along the South line of said Parcel 4, North 88°05'46" East, 1633.65 feet; thence leaving said South line, North 00°02'30" West, 204.69 feet; thence North 00°37'23" West, 307.55 feet; thence North 00°33'11" West, 728.30 feet to a point on the North line of said Parcel 4; thence along said North line, South 87°55'58" West, 830.12 feet to the Point of Beginning.

EXCEPTING THEREFROM all that portion of the hereinabove described Parcel B-1 lying Northwesterly of the following described line:

Commencing at the Northwest corner of Parcel 4, as shown on Parcel Map No. 95-11, filed in the office of the County Recorder of Yuba County in Book 66 of Maps, Page 45 from which a 1/2" rebar with plastic cap stamped LS 3341, marking the Northeast corner of Section 15, Township 15 North, Range 4 East bears North 68°20'12" East, 2040.42 feet, and from which a 1-1/2" iron pipe tagged LS 3341, marking the center of said Section 15 bears South 22°16'51" West, 2094.71 feet; thence along said North line, North 87°55'58" East, 116.02 feet to the Point of Beginning and the Northerly terminus of the herein described line; thence leaving said North line of Parcel 4, South 39°26'53" West, 343.65 feet; thence South 42°45'22" West, 125.40 feet; thence South 40°46'44" West, 636.46 feet; thence South 43°01'04" West, 230.07 feet; thence South 42°37'03" West, 18.84 feet; thence South 38°47'00" West, 30.60 feet to a point on the West line of said Parcel 4 and the Southerly terminus of the line described herein.

The parcels described herein contain an aggregate area of 72.822 acres, more or less.

See Exhibit ‘B’ attached hereto and made a part of this description.

The basis of bearings for this description is the California Coordinate System, Zone II, NAD 83 (Epoch 2007.00). Distances contained herein are ground distances. To obtain grid distances, multiply the distance by 0.99991703.

End of Description

Prepared by CTA Engineering & Surveying under the supervision of the undersigned.

Kevin A. Heeney, PLS 5914.  
08/01/2012  
Date
August 7, 2012

TO: Three Rivers Levee Improvement Authority Board
FROM: Paul Brunner, Executive Director  
Larry Dacus, Design Manager
SUBJECT: Approve 1st Contract Amendment with ENGEO Incorporated for Engineering Services

**Recommended Action:**
Approve a $350,000 1st contract amendment with ENGEO Incorporated for additional effort to provide engineering services for the Yuba Goldfields High Ground Evaluation.

**Background:**
In November 2011, the TRLIA Board approved a contract award to ENGEO Incorporated for engineering services for the Yuba Goldfields High Ground Evaluation not to exceed $500,000 and delegated authority to Executive Director to negotiate the contract. The final negotiated contract amount was for $500,000. ENGEO evaluations have provided a great deal of information regarding the material composition of the Goldfields and the definition of an embankment geometry which could serve as “high ground” in the Goldfields. The location of existing areas that already meet this definition or would meet it with some fill activities has also been identified. Alternatives for 100-year protection have been formulated and evaluated and a preliminary recommendation for 100-year protection developed.

**Discussion:**
The evaluation of the Goldfields has been complicated. The scope of work for ENGEO continues to evolve as more is learned about the Yuba Goldfields and the various constraints involved. Additional effort is required to perform explorations and evaluations to certify some existing portions of the Goldfields for the 100-year flood and to continue to provide engineering evaluations of alternatives as TRLIA develops a final 200-year solution. TRLIA will also require an engineering report for the evaluations accomplished to include with the Feasibility Report being prepared for the California Department of Water Resources (DWR). The attached Exhibit 1 provides more detail on the additional effort required.

**Fiscal Impact:**
This amendment would increase the contract by $350,000 for services on a time and expenses basis, to a maximum amount not exceeding $850,000 ($500,000 previous contract amount + $350,000). DWR has approved a grant for $2,000,000 for the Goldfields Feasibility Report. These Grant funds will be used to pay for this additional effort.

**Attachments:**
1. ENGEO Incorporated Amendment 1
2. Exhibit 1, ENGEO Incorporated. Additional Scope of Work
AMENDMENT NO. 1

AGREEMENT FOR PROFESSIONAL SERVICES
FOR
ENGINEERING SERVICES
BETWEEN
THREE RIVERS LEVEE IMPROVEMENT AUTHORITY AND
ENGEIO INCORPORATED

THIS FIRST AMENDATORY AGREEMENT is made effective August ______, 2012, by and between Three Rivers Levee Improvement Authority ("TRLIA") and ENGEIO Incorporated ("the Consultant"), who agree as follows:

1. **Recitals.** This Amendment is made with reference to the following background recitals:

   1.1. Effective December 1, 2011 the parties entered into an Agreement for Professional Services relating to Engineering Services for TRLIA’s Construction Program.

   1.2. Article C.24 of the AGREEMENT, states that modifications or amendments to the terms of the AGREEMENT shall be in writing and executed by both parties;

   1.3. TRLIA and the CONSULTANT desire to amend the AGREEMENT;

NOW, THEREFORE, TRLIA and the CONSULTANT agree as follows.

2. **First Amendment to Agreement.** The Professional Services Agreement is hereby amended as follows:

   2.1. The scope of services (Attachment A to the Agreement for Professional Services between TRLIA and ENGEIO) is amended by the addition of effort to the original tasks. These additional efforts are described in Exhibit 1 attached to this amendment agreement.

   2.2. The payment, budget, and not-to-exceed amounts, Condition B.1 in Attachment B to the Agreement for Professional Services between TRLIA and ENGEIO Incorporated, are amended to include the additional amount of $350,000 for a total contract amount of $850,000.

   2.3. Operative Provision 2 is amended to extend the Termination Date of the contract from December 31, 2012 to June 30, 2013.

Attachment 1
3. **No Effect on Other Provisions.** Except for the amendments in Section 2, the remaining provisions of the Professional Services Agreement shall be unaffected and remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on ______________________, 2012.

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

__________________________________
Paul G. Brunner
Executive Director

__________________________________
EN GEO INCORPORATED

Josef Tootle, GE
Principal

ATTEST:
DONNA STOTTELMEYER
CLERK OF THE BOARD OF DIRECTORS

__________________________________
APPROVED AS TO FORM:
SCOTT L. SHAPIRO
GENERAL COUNSEL

[Signature]
July 25, 2012

Mr. Paul Brunner
Three Rivers Levee Improvement Authority
1114 Yuba Street, Suite 218
Marysville, CA 95901

Subject: Yuba Goldfields Geotechnical Evaluation
Yuba County, California

REQUEST FOR BUDGET INCREASE

Dear Mr. Brunner:

As you know, we have been making good progress on the Yuba Goldfields Geotechnical Evaluation and are moving closer to final alternatives for 100-year certification. Since we are at approximately 90 percent of our allocated budget, we respectfully request a budget increase to cover additional future work.

Our current contract dated November 28, 2011, for $500,000 extends from December 1, 2011, to December 31, 2012. We have essentially completed all but three Subtasks in our original scope of work and expect that more work will be needed to achieve TRLIA’s desired goals of 100-year certification and a 200-year finding. The remaining Subtasks from our original scope include:

- Subtask 2.5 Exploratory Borings [OPTIONAL]
- Subtask 3.9 Geotechnical report, with recommendations, in support of LOMR/200-Year
- Subtask 3.11 Professional Opinion for Certification

We anticipate that exploratory borings will be necessary to achieve certification, though the layout and number is not yet known. Once a final alternative is selected, we can determine the appropriate number of explorations and develop a budget. In addition, though we have not yet prepared a formal geotechnical report (Subtask 3.9), we prepared a technical memorandum on high ground that has been distributed to the agencies.

Our scope of work continues to evolve as we learn more about the Yuba Goldfields and the various constraints involved. We have prepared weekly progress reports since last December and have provided a separate progress report with each monthly invoice. We hope that these have been adequate to monitor our progress.
Three Rivers Levee Improvement Authority
Yuba Goldfields Geotechnical Evaluation
REQUEST FOR BUDGET INCREASE

We anticipate that our current budget will be exceeded by mid to late August 2012 and, therefore, request an increase in our budget. We anticipate that our future work will include the following general items:

1. Attendance at meetings with the TRLIA team and various agencies
2. Responding to BOSC and agency
3. Preparation for and attendance at several BOSC meetings
4. Performing additional engineering analysis, as needed
5. Developing final alternatives
6. Performing field exploration to confirm subsurface conditions on selected alignment
7. Preparing a geotechnical report to support MBK study (all research has been completed)

Since the full scope of the field exploration is not yet known, we suggest increasing the overall budget by $200,000 to cover these future activities through the end of the year, excluding the field exploration (Item 6 above). Once the number of explorations that are actually needed is determined, we will prepare a budget estimate for your review. At this time, we anticipate that the field exploration may be in the range of $100,000 to $150,000.

If this request is agreeable, please forward an appropriate addendum for our review and signature. If you have any questions regarding this letter, please call and we will be glad to discuss them with you.

Sincerely,

ENGEO Incorporated

[Signatures]

Mark M. Gilbert, GE
Principal

Josef J. Tootle, GE
Principal

mmg/jjt/jf
August 7, 2012

TO: Three Rivers Levee Improvement Authority Board
FROM: Paul Brunner, Executive Director
        Larry Dacus, Design Manager
SUBJECT: Approve 1st Contract Amendment with AECOM Technical Services, Inc. for Environmental Services

**Recommended Action:**
Approve a $25,000 1st contract amendment with AECOM Technical Services, Inc. for additional effort to provide environmental documentation for elderberry shrub transplanting during implementation of the Feather River Levee Repair Project Segment 3 toe access corridor.

**Background:**
In January 2012, the TRLIA Board approved a contract award to AECOM Technical Services, Inc. for environmental services in the Yuba Goldfields and along the Bear and Feather Rivers. This approval was for a maximum initial contract price of $100,000 without additional Board approval. TRLIA has been developing a project to improve the toe access corridor along the Feather River East Levee north of Island Avenue. Implementation of this toe access corridor will require the transplanting of elderberry shrubs. This transplanting action requires the preparation of a CEQA document and a biological assessment (BA).

**Discussion:**
TRLIA is attempting to transplant these shrubs (approximately 12) during the dormant season for elderberry shrubs from November 1 to February 15. A stem survey has been completed and an encroachment permit application for these transplants will soon be submitted to the Central Valley Flood Protection Board. The CEQA document and BA will need to be prepared very quickly to improve the chances of doing these transplants in the dormant season which greatly reduces the mitigation requirements.

**Fiscal Impact:**
This amendment would increase the contract by $25,000 for services on a time and expenses basis, to a maximum amount not exceeding $125,000 ($100,000 previous contract amount + $25,000). Ensuring that these transplants occur in the dormant season will save funding required for future associate planting. 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. AECOM Technical Services, Inc. Amendment 1
2. Exhibit 1, AECOM Technical Services, Inc. Amended Scope of Work
AMENDMENT NO. 1

AGREEMENT FOR PROFESSIONAL SERVICES
FOR
ENVIRONMENTAL SERVICES
BETWEEN
THREE RIVERS LEVEE IMPROVEMENT AUTHORITY AND
AECOM TECHNICAL SERVICES, INC.

THIS FIRST AMENDATORY AGREEMENT is made effective August _____, 2012, by and between Three Rivers Levee Improvement Authority (“TRLIA”) and AECOM Technical Services, Inc. (“the Consultant”), who agree as follows:

1. **Recitals.** This Amendment is made with reference to the following background recitals:

   1.1. Effective February 2, 2012 the parties entered into an Agreement for Professional Services relating to Environmental Services for TRLIA’s Construction Program.

   1.2. Article C.23 of the AGREEMENT, states that modifications or amendments to the terms of the AGREEMENT shall be in writing and executed by both parties;

   1.3. TRLIA and the CONSULTANT desire to amend the AGREEMENT;

NOW, THEREFORE, TRLIA and the CONSULTANT agree as follows.

2. **First Amendment to Agreement.** The Professional Services Agreement is hereby amended as follows:

   2.1. The scope of services (Attachment A to the Agreement for Professional Services between TRLIA and AECOM Technical Services, Inc.) is amended by the addition of effort to the original tasks described in Exhibit 1 attached to this amendment agreement.

   2.2. The payment, budget, and not-to-exceed amounts, Condition B.1 in Attachment B to the Agreement for Professional Services between TRLIA and AECOM Technical Services, Inc. are amended to include the additional amount of $25,000 for a total contract amount of $125,000.

3. **No Effect on Other Provisions.** Except for the amendments in Section 2, the remaining provisions of the Professional Services Agreement shall be unaffected and remain in full force and effect.

Attachment 1
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on 
_____________________________, 2012.

THREE RIVERS LEVEE 
IMPROVEMENT AUTHORITY

Paul G. Brunner 
Executive Director

AECOM TECHNICAL SERVICES, 
INC.

Phil Dunn 
Vice President

ATTEST: 
DONNA STOTTLEMEYER 
CLERK OF THE BOARD OF DIRECTORS

APPROVED AS TO FORM: 
SCOTT L. SHAPIRO 
GENERAL COUNSEL

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EXHIBIT 1

Environmental Scope of Work
Amendment 1

Add the following Task:

Task 3: Environmental Compliance for Feather River Levee Segment 3 Toe Access Corridor

The current Feather River Levee Segment 3 toe access corridor on the land side of the levee does not meet Central Valley Flood Protection Board requirements for minimum width of the corridor. Modifying the corridor to meet these requirements would require removal of elderberry shrubs along the existing fence line between the toe access corridor and private property. Drainage modifications required to accommodate the widened access road will require U.S. Army Corps of Engineers (USACE) permission pursuant to the requirements of Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. 408), often referred to as “Section 408 Authorization.”

AECOM will provide the following services in support of environmental compliance for the proposed access corridor widening.

Subtask 3A. EIR Addendum
TRLIA, as lead agency for the project under CEQA, has determined that these refinements to the Feather River Levee Project (FRLP) constitutes clarifications to the Feather River Levee Repair Project EIR and has conservatively decided to prepare an EIR addendum in accordance with Section 15164 of the State CEQA Guidelines.

AECOM will prepare a draft EIR Addendum (Addendum No. 5) in accordance with the CEQA Guidelines. The addendum will include analysis of the impacts of project actions to environmental resources under CEQA. AECOM will provide an electronic copy of the Draft Addendum to TRLIA for review, and incorporate TRLIA’s comments into a Final Addendum.

Subtask 3A Deliverables:
Draft Addendum: 1 electronic copy; Final Addendum: 1 electronic copy and 2 hard copies.
Subtask 3A Cost: $12,500.00

Subtask 3B. Biological Assessment
Because the project will require Section 408 permission from USACE, a Section 7 consultation with U.S. Fish and Wildlife Service (USFWS) will be required for elderberry shrub removal. Preparation of a Biological Assessment (BA) is required as the first step in conducting Section 7 consultation.

AECOM will prepare a Biological Assessment (BA) in accordance with USFWS guidelines. The BA will include a summary of consultation to date, a description of the proposed action, a
description of the environmental baseline, an account of each species addressed, an assessment of project effects, an analysis of alternative actions, and an effect determination for each species. Species anticipated to be addressed in the BA include: valley elderberry longhorn beetle. The BA will be used by USACE to initiate consultation with USFWS. AECOM will provide a draft copy of the BA electronically to TRLIA for review, incorporate TRLIA’s comments into the final BA, and submit an electronic copy and two hard copies of the final BA to TRLIA for submittal to USACE.

**Subtask 3B Deliverables:**
Draft BA: 1 electronic copy; final BA: 1 electronic copy and 2 hard copies.
Subtask B Cost: $12,500.00

**Total Task 3 Cost:** The cost for this task is $25,000.00.