



# THREE RIVERS LEVEE IMPROVEMENT AUTHORITY AGENDA

**FEBRUARY 8, 2005**

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

**Unless otherwise indicated.**

2:00 P.M.

I **CALL TO ORDER**

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

III **CLOSED SESSION**

Threatened litigation pursuant to Government Code §54956.9(b) – One Case

IV **BOARD AND STAFF MEMBERS' REPORTS**

V **ACTION ITEMS**

A. Minutes: Approve minutes of the special meeting of January 18, 2005.

B. Project Management Services: Approve seventh amendment to agreement for professional services with MBK Engineers and authorize Chairman to execute same.

VI **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.

VII **ADJOURN**

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

MINUTES – BOARD OF DIRECTORS

JANUARY 13, 2005 – SPECIAL MEETING

A meeting of the Board of Directors of the Three Rivers Levee Improvement Authority was held on the above date, commencing at 3:33 p.m., within the Government Center, Marysville, California, with a quorum being present as follows: Directors Rick Brown, Mary Jane Griego, Dan Logue, and Richard Webb. Also present were Executive Director Kent McClain, County Counsel Daniel Montgomery, and Clerk of the Board of Supervisors/Secretary Donna Stottlemeyer. Chairman Webb presided.

CLOSED SESSION

The Board retired into closed session at 3:34 to discuss threatened litigation pursuant to Government Code §54956.9(b) – One Case.

Director Brown left closed session at 4:05. p.m.

The Board reconvened in open session at 4:14 p.m. with all Board and staff members present as indicated above, except Director Brown. There was no announcement from closed session.

ADJOURNMENT

There being no further business to come before the Three Rivers Levee Improvement Authority the meeting was adjourned at 4:14 p.m. by Chairman Webb.

\_\_\_\_\_  
Chairman

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

\_\_\_\_\_  
Approved: \_\_\_\_\_

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

MINUTES – BOARD OF DIRECTORS

JANUARY 18, 2005 – SPECIAL MEETING

A meeting of the Board of Directors of the Three Rivers Levee Improvement Authority was held on the above date, commencing at 3:05 p.m., within the Government Center, Marysville, California, with a quorum being present as follows: Directors Mary Jane Griego, Dan Logue, and Richard Webb. Director Rick Brown was absent. Also present were Executive Director Kent McClain, County Counsel Daniel Montgomery, and Clerk of the Board of Supervisors/Secretary Donna Stottlemeyer. Chairman Webb presided.

BOARD AND STAFF MEMBERS' REPORTS

Directors Griego and Webb reported on the 9 a.m. meeting with the Reclamation Board work group regarding permitting conditions.

ACTION ITEMS

- A. Minutes: Upon motion of Director Logue, seconded by Director Griego, with Director Brown being absent, the Board approved the minutes of the meetings of January 4, 11, 12, and 13, 2005 as written. APPROVE MINUTES
- B. Phase II Levee Repairs: Upon motion of Director Logue, seconded by Director Griego, with Director Brown being absent, the Board approved a revised scope, schedule and fee proposal for the Phase II Levee Repairs as submitted by HDR. APPROVE SCOPE
- C. Bookman-Edmonston Agreement: Upon motion of Director Logue, seconded by Director Griego, with Director Brown being absent, the Board approved an agreement with Bookman Edmonston to perform engineering and related services necessary to construct the setback levee on the Bear River in an amount of \$2,671,000 and authorized the Executive Director to execute same. APPROVE AGREEMENT

ADJOURNMENT

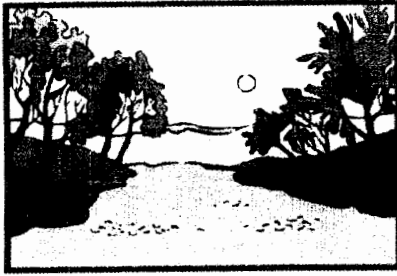
There being no further business to come before the Three Rivers Levee Improvement Authority the meeting was adjourned at 4:10 p.m. by Chairman Webb.

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Chairman

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

Approved: \_\_\_\_\_



# THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

Government Center

915 Eighth Street, Suite 115

Marysville, CA 95901-5273

Telephone: (530) 749-7575

Fax: (530) 749-7312

February 8, 2005

TO: Three Rivers Levee Improvement Authority Board  
FROM: Randy Margo, Assistant County Administrator  
SUBJECT: Amendment to MBK Engineers Contract

## **Recommended Action**

Extend the scope and cost ceiling for MBK Engineers to provide project management support services through April 30, 2005.

## **Discussion**

The purpose of this contract amendment is to have MBK Engineers continue its work in securing appropriate permits and approvals from State and Federal in order to construct levee improvements in the South Yuba Basin. This contract extension will allow the Authority to have continued support while determining its long term staffing needs.

## **Fiscal Impact**

The total cost of this contract amendment is \$35,000, increasing the cost ceiling for this contract from \$294,950 to \$329,950.



Water Resources • Flood Control • Water Rights

JOSEPH D. COUNTRYMAN, P.E.  
GILBERT COSIO, JR., P.E.  
MARC VAN CAMP, P.E.

ANGUS NORMAN MURRAY  
1913 - 1985

CONSULTANTS:  
JOSEPH I. BURNS, P.E.  
DONALD E. KIENLEN, P.E.

January 26, 2005

RECEIVED

JAN 27 2005

ADMINISTRATION

Randy Margo  
Three Rivers Levee Improvement Authority  
915 8th Street, Ste. 115  
Marysville, CA 95901

**Subject: Agreement for Professional Services 7<sup>th</sup> Amendment to Scope of Work for Project Management Support for the Three Rivers Levee Improvement Authority**

Dear Mr. Margo:

Enclosed is a scope of work for MBK Engineers to provide a range of project management and technical support for your effort to improve the flood protection for Reclamation District No. 784. This scope is intended to provide you and your Board with information on the level of effort that I anticipate is needed to complete coordination with the Reclamation Board and transfer design oversight responsibilities to staff that you will be hiring.

The intent of this 7<sup>th</sup> amendment is to provide the same level of support until new staff is hired and then transition responsibilities to the new program manager. MBK's project management support is expected to be completed by April 30, 2005. As of December 31, 2004, we had \$37,448.30 remaining in our contract. Therefore, an increase in our contract ceiling of \$35,000 will provide adequate funding based on anticipated levels of effort defined in the attached scope of work. The total cost for this amendment is \$35,000. This would increase the cost ceiling for this contract from \$294,950 to \$329,950. The contract service period would be extended until April 30, 2005.

Please call if you have any questions.

Sincerely,  
MBK ENGINEERS

Ric Reinhardt, PE

RR/pp  
5141/RANDY MARGO 01.26.05.DOC

## Project Management Activities

1. Management meetings (once per month) – Prepare agenda, attend meeting, prepare meeting minutes. **Effort - 5 hrs/month.**
2. Contract oversight – Work with consultants on contract issues and review of monthly billings. **Effort – 2 hrs/month.**
3. Technical team meetings – Attend weekly team meetings. **Effort – 21 hrs/month.**
4. Review of design team technical products and coordination on technical issues. **Effort – 10 hrs/month.**
5. Coordination with Reclamation Board – Meet with staff and coordination on permit issues. **Effort – 4 hrs/month.**
6. Coordination with the Corps on FEMA certification issues. **Effort – 8 hrs/month.**
7. Prepare design grant invoices, progress reports, coordination with DWR, and prepare implantation funding requests. **Effort – 8 hrs/month.**
8. General Coordination – Coordination on project issues with JPA staff, coordination on Bear River Orchard, floodplain mapping outreach, land use adjacent to levees, public meetings, prepare PowerPoint presentations, coordination and meetings with stakeholders, and JPA Board meetings. **Effort – 10 hrs/month.**

Time: Principal Engineer	68 hrs @ \$150/h	\$10,200
Expenses		\$ 300
Total		\$ 10,500

## Reclamation Board Technical Support

1. Risk Analysis – Prepare risk analysis to support Reclamation Board Permit. Dr. David Ford will be a subconsultant for this effort.
2. Risk of Loss – Prepare risk of loss of life summary. Dr. David Bowles will be a subconsultant for this effort.

Time: Principal Engineer	60 hrs @ \$150/h	\$9,000
Dr Ford		\$11,000
Dr Bowles		\$1,500
Expenses		\$ 300
Total		\$ 21,800

## Mapping Support

1. Prepare and update map that shows all of the projects and features in RD 784 and for the Marysville Ring Levee. **Effort – 5 hrs/month.**
2. Prepare maps as needed for presentations and meetings. **Effort – 6 hrs/month.**

Time: Principal Engineer	1 hr @ \$150/h	\$150
Junior Engineer	10 hrs @ \$70/hr	\$ 700
Expenses		\$ 500
Total		\$1,350

Total cost for this level of effort is estimated at \$11,850 per month. The Reclamation Board support is not included and is estimated at one month of effort for a total of \$21,800.

## Agreement for Professional Services – Standard Terms and Conditions

This Agreement for professional services is entered into between MBK Engineers, hereinafter referred to as the CONSULTANT and Three Rivers Levee Improvement Authority, hereinafter referred to as the CLIENT.

For and in consideration of the mutual covenants and conditions herein, CLIENT and CONSULTANT do hereby agree as follows:

### 1. Covenant for services

The CLIENT does hereby retain the CONSULTANT to perform the professional services identified herein. The CONSULTANT does hereby agree to perform such services for the CLIENT upon the terms and conditions set for in this AGREEMENT.

### 2. Scope of service

The CONSULTANT will provide all goods and services as set forth in the Scope of Work, attached hereto and incorporated by reference in this AGREEMENT as Attachment A.

### 3. Standard of care

CONSULTANT will strive to perform services under this AGREEMENT in a manner consistent with that level of care and skill ordinarily exercised by members of the same profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in this AGREEMENT, or in any report, opinion, document, or otherwise.

CLIENT understands that the standard of care CONSULTANT is required to uphold can only be determined after the fact, through appropriate research by qualified experts. CLIENT agrees that, should it for any reason become necessary to identify the standard of care applicable to CONSULTANT's services, CLIENT shall cause CLIENT's expert to use those research methods agreed to by the American Society of Civil Engineers, American Institute of Architects, National Society of Professional Engineers, Interprofessional Council on Environmental Design, American Association of Engineering Societies, and other respected national, regional, and international organizations, as related in the document, *Recommended Practices for Design Professionals Engaged as Experts in the Resolution of Construction Industry Disputes*.

### 4. Definitions

When used in this AGREEMENT, the words and phrases listed below are defined as indicated, unless noted otherwise elsewhere in this AGREEMENT:

#### *Agreement*

This contract, including all appendixes, addenda, and any documents incorporated by reference.

#### *Any Claim*

This term, when used in a provision indicating CLIENT's obligation to waive claims against CONSULTANT or to hold CONSULTANT harmless from any claim arising from certain specified events, means "any claim in contract, tort, or statute alleging negligence, errors, omissions, strict liability, statutory liability, breach of contract, breach of warranty, negligent misrepresentation, or other acts giving rise to liability."

#### *Certify, Certification*

Wherever these or derivative words are used in the AGREEMENT, or in any document developed or arising out of this AGREEMENT or services furnished by CONSULTANT thereunder, they shall mean CONSULTANT's furnishing an opinion of conditions based upon testing, analyses, or observation CONSULTANT has performed. CONSULTANT's certification of a condition's existence does not guarantee such condition exists, nor does it relieve other party of responsibilities or obligations such party has accepted by contract or custom.

#### *Claims*

See "Any Claim," above.

#### *Client*

Three Rivers Levee Improvement District.

#### *Consultant*

The firm of MBK Engineers, subsidiaries and affiliates, and all officers and employees thereof.

#### *Substantial Completion*

Substantial completion of CONSULTANT's services shall have been accomplished when CONSULTANT submits a final report and recommendations or final plans and specifications. If the AGREEMENT calling for these services is terminated before the services are completed, substantial completion will have occurred on the date termination goes into effect.

## 5. Billing and payment

CLIENT recognizes that timely payment of CONSULTANT's invoices is a material part of the consideration for which CONSULTANT requires to perform the services indicated in this AGREEMENT.

CLIENT shall pay CONSULTANT for services rendered in U.S. funds drawn upon U.S. banks, in accordance with the rates and charges set forth herein. Routine invoices will be submitted by CONSULTANT from time to time, but no more frequently than every two (2) weeks, and shall be due and payable within thirty (30) calendar days of invoice date. If CLIENT objects to any portion of an invoice, CLIENT shall so notify CONSULTANT within fourteen (14) calendar days of the invoice date, identify the cause of the objection, and pay when due that portion of the invoice not in dispute.

CLIENT shall pay an additional charge of one-and-one-half (1.5) percent (or the maximum percentage allowed by law, whichever is lower) of the invoiced amount per month for any payment received by CONSULTANT more than thirty (30) calendar days from the date of the invoice, excepting any portion of the invoiced amount in dispute and resolved in favor of CLIENT. Payment thereafter shall first be applied to accrued interest and then to the principal unpaid amount.

Payment of invoices is in no case subject to unilateral discounting or set-offs by CLIENT.

Application of the percentage rate indicated above as a consequence of CLIENT's late payments does not constitute any willingness on CONSULTANT's part to finance CLIENT's operation, and no such willingness should be inferred. If CLIENT fails to pay undisputed invoiced amounts within thirty (30) calendar days of the date of the invoice, as set forth hereinabove, CONSULTANT may at any time thereafter, without waiving any other claim against CLIENT and without thereby incurring any liability to CLIENT, suspend this AGREEMENT (as provided for in Section 9, SUSPENSION) or terminate this AGREEMENT (as provided for in Section 10, TERMINATION).

Accordingly, the CONSULTANT will provide all goods and services as set forth in the Scope of Work for the price described in the CONSULTANT's Cost Proposal, attached hereto and incorporated by reference in this AGREEMENT as Attachment B.

## 6. Limitation of liability

CLIENT and CONSULTANT agree to allocate certain of the risks so that, to the fullest extent permitted by law, CONSULTANT's total aggregate liability to CLIENT is limited to \$50,000 or to the proceeds available from CONSULTANT's required insurance coverages, whichever is higher, for any and all injuries, damages, claims, losses, expenses, or claim

expenses (including attorneys' and expert witness' fees) arising out of this AGREEMENT from any cause or causes. Such causes include, but are not limited to, CONSULTANT's negligence, errors, omissions, strict liability, statutory liability, breach of contract, breach of warranty, negligent misrepresentation, or other acts giving rise to liability based upon contract, tort, or statute.

## 7. Insurance

CONSULTANT maintains workers' compensation and employer's liability insurance of a form and in the amount required by California state law; general liability and automotive liability insurance with limits of one million dollars (\$1,000,000), and professional liability insurance with a limit of one million dollars (\$1,000,000).

CLIENT recognizes that the insurance market can be erratic and that no CONSULTANT can guarantee an ability to maintain the coverages indicated above. CONSULTANT warrants that CONSULTANT will endeavor to do so, within a context of prudent business practices, and will notify CLIENT of any change in coverage no later than ten (10) calendar days after CONSULTANT becomes aware of such change. If any of CONSULTANT's coverages is withdrawn, or if CONSULTANT decides to forgo coverage because a replacement policy will afford inadequate protection and/or will require a significantly increased premium when compared to prior coverage, CONSULTANT and CLIENT shall confer about alternatives available, if any, and shall bargain in good faith in an attempt to achieve conditions acceptable to both.

## 8. Indemnification

CONSULTANT agrees to hold harmless and indemnify CLIENT from and against liability to the extent caused by CONSULTANT's negligent performance of the services.

CONSULTANT's opinion of certain conditions that CONSULTANT has evaluated on CLIENT's behalf may diminish the value of property. In order to establish an atmosphere where CONSULTANT feels free to report CONSULTANT's opinions, recommendations for remedial measures, et al., without fear of reprisal, CLIENT shall, to the fullest extent permitted by law, waive any claim against CONSULTANT, and indemnify, defend, and hold CONSULTANT harmless from any claim or liability for injury or loss arising from the theory that CONSULTANT's findings, conclusions, opinions, recommendations, plans, or specifications diminished the value of a property. CLIENT shall also compensate CONSULTANT for any time spent or expenses incurred by CONSULTANT in defense of any such claim. Such compensation shall be based

upon CONSULTANT's prevailing fee schedule and expense reimbursement policy.

CONSULTANT shall indicate to CLIENT the information needed for rendering services hereunder, and CLIENT shall provide to CONSULTANT as much of such information that is available to CLIENT. CLIENT shall inform CONSULTANT of reports or other materials prepared by others that relate to CONSULTANT's portion of the work, and CLIENT shall furnish these to CONSULTANT or otherwise help CONSULTANT gain access to them. CLIENT recognizes that CONSULTANT is unable to ensure the sufficiency of such information, either because doing so is impossible, or because of errors or omissions others may have committed when assembling the information. Accordingly, CLIENT shall, to the fullest extent permitted by law, waive any claim against CONSULTANT, and indemnify, defend, and hold CONSULTANT harmless from any claim or liability for injury or loss arising from alleged errors, omissions, or inaccuracies in documents or other information provided to CONSULTANT by CLIENT. CLIENT also shall compensate CONSULTANT for any time spent or expenses incurred by CONSULTANT in defense of any such claim. Such compensation shall be based upon CONSULTANT's prevailing fee schedule.

#### **9. Suspension**

If payment of CONSULTANT's invoices is not maintained on a thirty- (30-) calendar-day-current basis by CLIENT, CONSULTANT may, upon fourteen (14) calendar days' written notice to CLIENT, suspend further services until payment is restored to a current basis, or CONSULTANT may terminate this AGREEMENT. CLIENT may suspend CONSULTANT's services upon fourteen (14) calendar days' written notice. Any suspension by CLIENT exceeding forty-five (45) calendar days shall, at CONSULTANT's option, make this AGREEMENT subject to renegotiation or termination. Any suspension shall extend the performance schedule by an amount of time satisfactory to both CLIENT and CONSULTANT, and CLIENT shall compensate CONSULTANT for services performed and expenses incurred prior to the suspension date, plus suspension charges. Suspension charges shall include, but shall not be limited to, fees for service and expenses for putting analyses and documents in order, rescheduling and reassigning personnel and/or equipment, and issuing necessary or customary notices to appropriate government agencies. Compensation to CONSULTANT shall be based upon CONSULTANT's prevailing fee schedule.

#### **10. Termination**

CLIENT or CONSULTANT may terminate this AGREEMENT without penalty. The party initiating

termination shall so notify the other party, and termination shall become effective fourteen (14) calendar days after receipt of the termination notice. Irrespective of which party effects termination or the cause thereof, CLIENT shall within thirty (30) calendar days of termination pay CONSULTANT's fees for services rendered and costs incurred, in accordance with CONSULTANT's prevailing fee schedule. These fees and costs shall include those outstanding at the time of termination.

#### **11. Ownership of instruments of professional service**

Plans, specifications, reports, software, calculations, field data, field notes, estimates, and similar documents and materials prepared by or for CONSULTANT as instruments of professional service are CONSULTANT's property. CONSULTANT shall retain these instruments of professional service for five (5) years following submission of final project deliverables, during which period CONSULTANT's instruments of professional service will be made available for CLIENT's review at any reasonable time.

CLIENT agrees that instruments of professional service provided by CONSULTANT to CLIENT may not under any circumstances be altered by any party except CONSULTANT. CLIENT warrants that CONSULTANT's instruments of service will be used only and exactly as submitted by CONSULTANT.

CLIENT understands that CONSULTANT may become liable to third-parties that ill-advisedly rely on CONSULTANT's instruments of professional service under the mistaken assumption that their third-party needs are identical to CLIENT's or that, although their needs differ from CLIENT's, CONSULTANT would nonetheless have performed the identical services to satisfy those different needs. To help prevent problems from arising in this respect, CLIENT shall inform CONSULTANT of any specific third-parties or types of third-parties that CLIENT believes may ask to rely on CONSULTANT's instruments of professional service, and CLIENT shall not under any circumstance permit such reliance except with the express consent of CONSULTANT. CONSULTANT may withhold its consent if the third-party does not agree, in writing, (1) to be bound by the terms of this AGREEMENT, including without limitation, any provision limiting CONSULTANT's liability hereunder, (2) to use such information only for the purposes contemplated by CONSULTANT in performing its services, and (3) to be bound by the qualifications and limitations expressed in the opinions, conclusions, certificate, or report involved. CLIENT's payment of CONSULTANT's invoices, as provided for herein, shall not be made contingent on CONSULTANT's agreeing to permit third-party reliance against CONSULTANT's preferences, and CONSULTANT

shall be compensated by CLIENT for whatever additional service and/or risk stems from third-party reliance, if the third-party does not provide compensation per terms and conditions herein. In addition, CLIENT shall, to the fullest extent permitted by law, waive any claim against CONSULTANT, and indemnify, defend, and hold CONSULTANT harmless from any claim or liability for injury to loss allegedly arising from any third-party's reliance on CONSULTANT's instruments of services without CONSULTANT's specific authorization to do so. CLIENT also shall compensate CONSULTANT for any time spent or expenses incurred by CONSULTANT in defense of any such claim. Such compensation shall be based upon CONSULTANT's prevailing fee schedule.

**12. Dispute resolution**

All claims, disputes, or controversies arising out of, or in relation to the interpretation, application, enforcement, or implementation of this AGREEMENT or provision of the services indicated herein shall be decided through mediation. The parties further agree that OWNER will require, as a condition for participation in the project and their agreement to perform labor or services, that all contractors, all subcontractors at all tiers, and all suppliers whose portion of the work amounts to five thousand dollars

(\$5,000) or more, and their insurers and sureties, shall agree to this procedure.

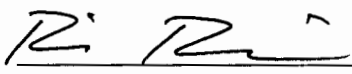
Should legal action be brought by one party against the other, the nonprevailing party shall reimburse the prevailing party for the prevailing party's documented legal costs, in addition to whatever other judgments or settlement sums may be due. Such legal costs shall include, but not be limited to, reasonable attorney's fees, court costs, forensic consultant and expert witness fees, and other documented expenses, as well as the value of time spent by the prevailing party and those in that party's employ to research the issues in question, discuss matters with attorneys and others, prepare for depositions, respond to interrogatories, and so on. Insofar as CONSULTANT is concerned, the value of time spent and expenses incurred shall be computed based upon CONSULTANT's prevailing fee schedule.

**13. Governing law**

Unless otherwise provided, the substantive law of the state of California will govern the validity of this AGREEMENT, its interpretation and performance, and remedies for contract breach or any other claims related to this AGREEMENT.

**IN WITNESS WHEREOF**, the parties hereto have caused this AGREEMENT to be executed by their undersigned officials as duly authorized.

**MBK Engineers**

By:   
Name and title: Ric Reinhardt, Principal  
Date: January 26, 2005  
Federal ID number: 94-2282149

Three Rivers Levee Improvement Authority.

By: \_\_\_\_\_  
Name and title: \_\_\_\_\_  
Date: \_\_\_\_\_