



THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

APRIL 19, 2005 (Tuesday) – SPECIAL MEETING

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

Unless otherwise indicated.

1:00 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 ACTION ITEMS

A. Approve minutes of the regular meeting of April 5, 2005.

B. Approve proposed changes in scope of work for Phase II and IV levee projects.

C. Authorize payment of invoice from BE/GEI in the amount of \$263,168.29 for engineering services related to design of the Bear River Setback Levee.

D. Approve contract with Kleinfelder, Inc. for Phase IV Problem Identification Study and Preliminary Alternative Analysis and authorize chairman to execute same.

E. Approve contract with Downey Brand LLP for legal services, authorize Chairman to execute same, and authorize the Auditor-Controller to pay invoices in the amount of \$77,426.78.

F. Approve Implementation Agreement amongst County of Yuba, Three Rivers Levee Improvement Authority, Reclamation District No. 784, and State of California and authorize Chairman to execute same.

G. Approve Advanced Funding Agreement amongst County of Yuba, Three Rivers Levee Improvement Authority, Reclamation District No. 784, and landowners and authorize Chairman to execute same.

V CLOSED SESSION

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

VI ADJOURN

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

MINUTES – BOARD OF DIRECTORS

APRIL 5, 2005

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

Reports were received on the following:

Executive Director Kent McClain:

- Advised of the need for a special meeting on April 19, 2005 regarding potential litigation

Chairman Webb directed a special meeting be called on April 19, 2005 at 1:00 p.m.

ACTION ITEMS

- A. Minutes: Upon motion of Director Logue, seconded by Director Griego, and carried with Director Brown being absent, the Board approved the minutes of the special meeting of March 15, 2005 as written. APPROVE MINUTES
- B. Invoice Payment: Following presentation by Assistant County Administrator Randy Margo and Board inquiries regarding levee improvement progress, upon motion of Director Logue, seconded by Director Griego, and carried with Director Brown being absent, the Board authorized the Auditor-Controller to pay invoices in the total amount of \$693,950.54 for Phase II and III levee improvement services from the following: AUTHORIZE INVOICE PAYMENT
- Bookman-Edmonston for \$95,548.96
 - EPS for \$39,506.50
 - HDR for \$476,454.77
 - MBK Engineers for \$82,440.31

C. MBK Engineers: Following presentation by Assistant County Administrator Randy Margo and Board inquiries, upon motion of Director Griego, seconded by Director Logue, and carried with Director Brown being absent, the Board approved a contract amendment in the amount of \$108,200 with MBK Engineers for project management services, mapping support, hydraulic modeling, and erosion studies for project levee work within the Yuba Basin area and authorized the Chairman to execute same.

APPROVE
AMNDMNT.

PUBLIC COMMUNICATIONS

No one came forward.

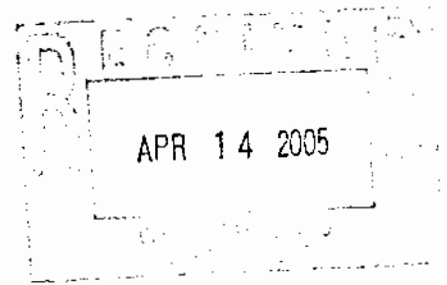
ADJOURNMENT

There being no further business to come before the Three Rivers Levee Improvement Authority the meeting was adjourned at 3:50 p.m. by Chairman Webb.

Chairman

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

Approved: _____



April 19, 2005

TO: Three Rivers Levee Improvement Authority Board
FROM: Randy Margo, Deputy Executive Director
SUBJECT: Consider approving Proposed Changes in the Scopes of Work for Phases 2 and 4 of proposed TRLIA Levee Project

Recommended Action

Approve the proposed changes in scopes of work for Phases 2 and 4 of proposed TRLIA Levee project.

Reason for Recommended Action/Discussion

Based on the recommendations by the United States Army Corps of Engineers (USACE), and following detailed discussions between USACE's reviewers and the Project Team, it was decided that the portion of the seepage berm proposed along the south bank levee of the Yuba River extending easterly from the Union Pacific Railroad required further study and analysis. The approximate location of this section of the berm is indicated on Figure 1, and a more detailed view is provided on Figure 2. Due to the potential that construction this section of the berm could impact the underseepage gradients in the vicinity of the residential communities located to the east of the proposed berm, it would be prudent to remove this section from the construction planned within Phase 2, and add this to the scope of work for Phase 4 to allow for further study of the problem.

Fiscal Impact

Since the proposed change merely involves moving the construction of a section of the berm from one phase to another, no significant fiscal impact is anticipated.

Attachments:

- Figure 1 – Approximate Location of Subject Berm Section
- Figure 2 – Detailed Map of Subject Berm Section

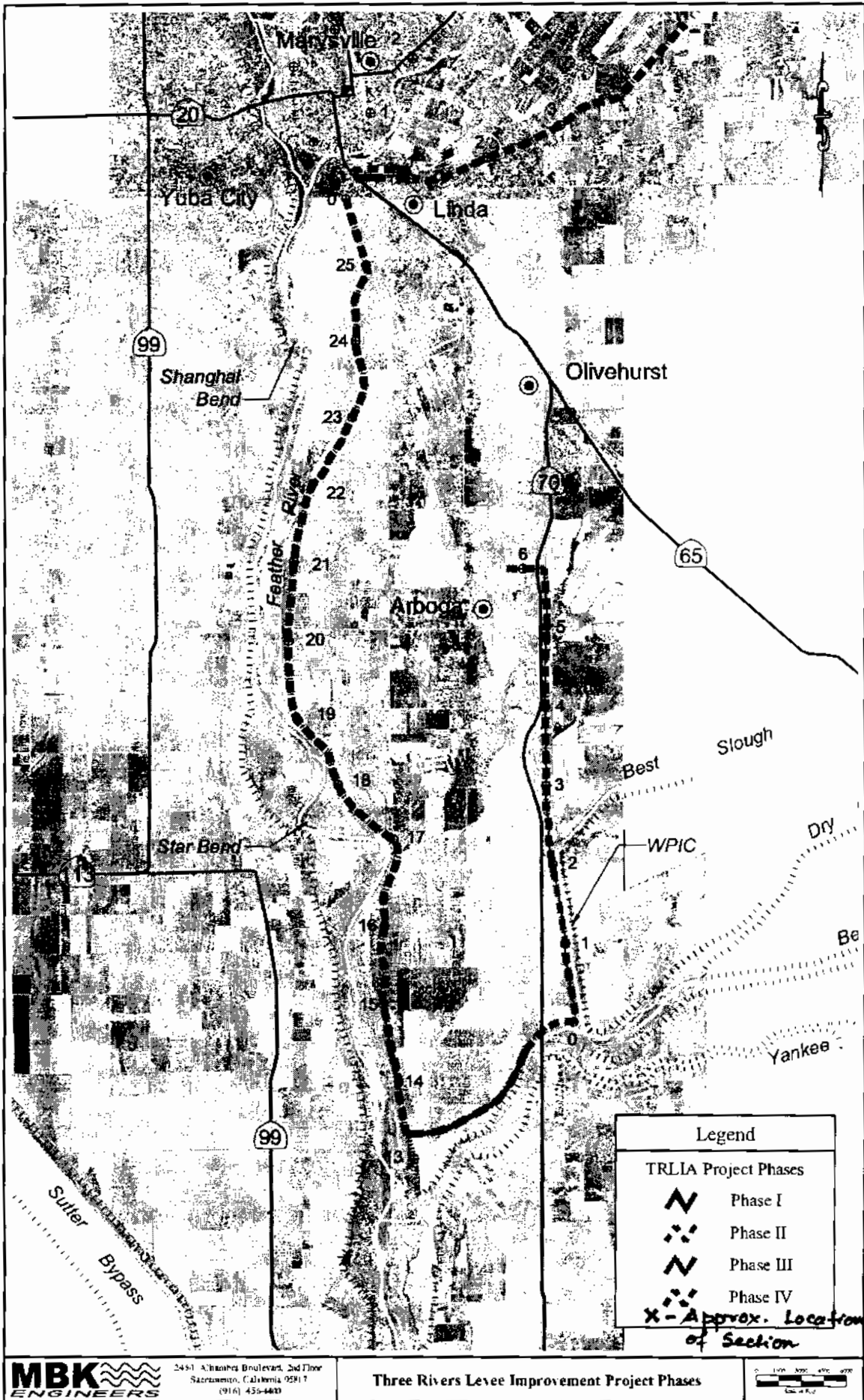
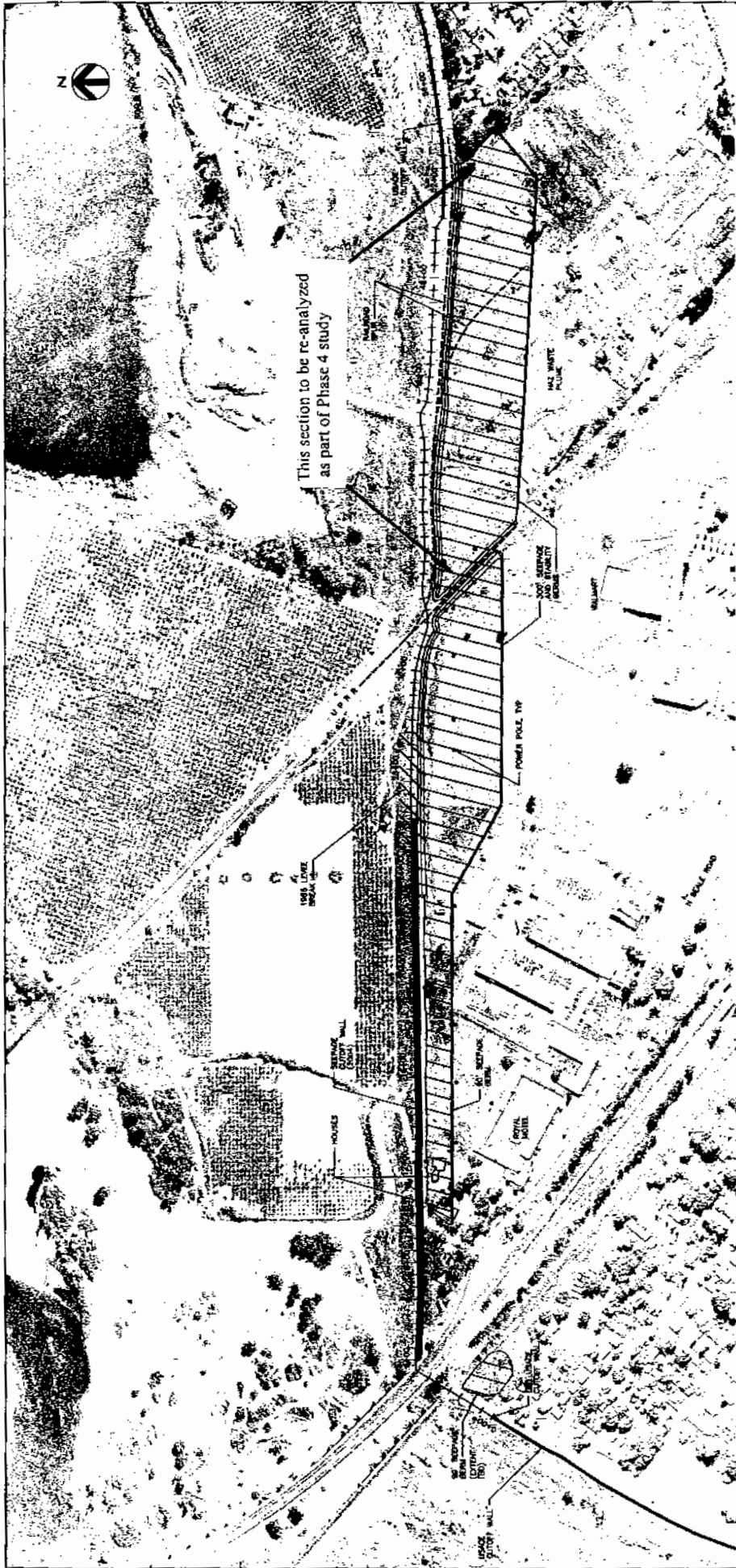


FIGURE 1



THREE RIVERS LEVEL IMPROVEMENT AUTHORITY
 BEAR RIVER, WPIC AND YUBA LEVEL REPAIR PROJECT
 PLAN - RECOMMENDED YUBA LEVEL REPAIRS

HR

FIGURE 2

CONCEPTUAL

LEVEL	STATION	ISSUE	PROPOSED REMEDIATION(S)
YUBA	1+00 - 1+40	UNDERSEEPAGE AND UNDERMINING	90'-FOOT WIDE SEEPAGE BERM
YUBA	4+00 - 24+00	UNDERSEEPAGE	OUTROFF WALL 60 FEET DEEP (COMPLETED 350')
YUBA	8+00 - 28+00	UNDERSEEPAGE	90'-FOOT WIDE SEEPAGE BERM
YUBA	28+00 - 32+00	UNDERSEEPAGE AND UNDERMINING	90'-FOOT WIDE SEEPAGE BERM
YUBA	32+00 - 51+00	UNDERSEEPAGE AND UNDERMINING	90'-FOOT WIDE SEEPAGE BERM

April 19, 2005

TO: Three Rivers Levee Improvement Authority Board
FROM: Randy Margo, Deputy Executive Director
SUBJECT: Approve for payment, BE/GEI's Invoice No. 701247, dated April 4, 2005,
for engineering Services related to the Design of the Bear river Setback
Levee

Recommended Action

Approve for payment, BE/GEI's Invoice No. 701247 in the amount of \$263,168.29, dated April 4, 2005, for Engineering Services related to the Design of the Bear River Setback Levee.

Reason for Recommended Action

BE/GEI has been working on a fast-track schedule to complete the design work for the components of the Bear River Setback levee, in order that certain components of the levee can be constructed during the 2005 construction season. To ensure the positive cashflow that BE/GEI would need to continue work on this first track schedule, it is imperative that they receive payment for completed work as quickly as possible, once their completed invoice has been received and reviewed by TRLIA.

Discussion

The subject invoice covers professional services rendered by BE/GEI through March 27, 2005. TRLIA staff has reviewed the invoice and its back-up documents, and has deemed that the charges detailed on the invoice are in conformance with the approved scope of work and reflect services rendered by BE/GEI for the Bear River Setback Levee.

Fiscal Impact

The work covered by this invoice represents approximately 12 percent of the total approved budget for the design activities. The project work is progressing on schedule.

April 19, 2005

TO: Three Rivers Levee Improvement Authority Board
FROM: Randy Margo, Deputy Executive Director
SUBJECT: Consider Contractual Agreement with Kleinfelder, Inc., for TRLIA Phase 4 Problem Identification Study and Preliminary Alternatives Analysis

Recommended Action

Approve contract with Kleinfelder, Inc., for TRLIA Phase 4 Problem Identification Study and Preliminary Alternatives Analysis. The specific terms of the contract, and Kleinfelder's scope of work are detailed in the attached document.

Reason for Recommended Action

Phase 4 of the TRLIA project comprises the east bank Feather River levee between the Bear and Yuba rivers, and the south bank levee of the Yuba River between the Union Pacific Railroad tracks east of Highway 70 and the Yuba goldfields. In January 2005, the United States Army Corps of Engineers identified these levee stretches as potentially not meeting FEMA base-flood (i.e., 100-year flood) criteria from the standpoint of underseepage. The problem identification study is TRLIA's first step towards remedying these levees, if deficient.

Discussion

Kleinfelder, Inc., has an excellent reputation for performing this type of work. In addition, due to its involvement in the ongoing Phase 2 design work and other similar projects, the firm is familiar with the hydraulic issues and geotechnical influencing the levees within RD 784, and possesses the resources and staff necessary to complete this work under a compact timeframe.

Fiscal Impact

The contract has been drawn so as to reimburse Kleinfelder for its services on a time-and-expenses basis, to a maximum amount not exceeding \$520,000 without prior authorization by TRLIA.

**AGREEMENT FOR
PROFESSIONAL SERVICES**

THIS AGREEMENT for _____ ("Agreement") is made as of the Agreement Date set forth below by and between the Three Rivers Levee Improvement Authority ("TRLIA"), a California Joint Powers Authority, and

Kleinfelder, Inc.
"CONSULTANT"

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

OPERATIVE PROVISIONS

1. SERVICES.

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

2. TERM.

Commencement Date: Date of this Agreement

Termination Date: May 30, 2006

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

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

3. PAYMENT.

TRLIA shall pay CONSULTANT for services rendered pursuant to this Agreement at the time and in the amount set forth in Attachment "B". The payment specified in Attachment "B" shall be the only payment made to CONSULTANT for services rendered pursuant to this Agreement. CONSULTANT shall submit all billings for said services to TRLIA in the manner specified in Attachment "B".

4. FACILITIES, EQUIPMENT AND OTHER MATERIALS AND OBLIGATIONS OF TRLIA.

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

5. ADDITIONAL PROVISIONS.

Those additional provisions unique to this Agreement are set forth in Attachment "C".

6. GENERAL PROVISIONS.

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

7. DESIGNATED REPRESENTATIVES.

Kent McClain is the representative of the TRLIA and will administer this Agreement for the TRLIA. Ray Costa is the authorized representative for CONSULTANT. Changes in designated representatives shall occur only by advance written notice to the other party.

8. ATTACHMENTS.

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

Attachment A - Services
Attachment B - Payment
Attachment C - Additional Provisions
Attachment D - General Provisions
Attachment E – Consultant’s Proposal (dated March 30, 2005) for Geotechnical Services related to this agreement

9. **TERMINATION.** TRLIA and CONSULTANT shall each have the right to terminate this Agreement upon ten (10) days written notice to the other party.

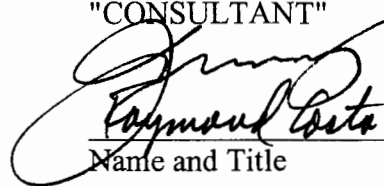
IN WITNESS WHEREOF, the parties hereto have executed this

Agreement on _____, 2005.

"TRLIA"

Chair, Board of Supervisors

"CONSULTANT"

 SR. V.P.
Raymond Costa Sr. VP

Name and Title

ATTEST:
DONNA STOTTEMEYER, CLERK OF
THE BOARD OF SUPERVISORS

APPROVED AS TO FORM:
DANIEL G. MONTGOMERY
TRLIA COUNSEL





THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

Government Center
915 Eighth Street, Suite 115
Marysville, CA 95901-5273
Telephone: (530) 749-7575 Fax: (530) 749-7312

April 19, 2005

TO: Three Rivers Levee Improvement Authority
FROM: Charles K. McClain, Executive Director *CKM*
SUBJECT: Consider Approval of Agreement for Legal Services and Payment of
Invoices

Recommended Action

1. Approve agreement with Downey Brand LLP for legal services pertaining to representation of TRLIA before the Reclamation Board of the State of California and for related services with other federal, state and private entities.
2. Authorize Auditor-Controller to pay attached invoices totaling \$77,426.68 from the 805 Trust Fund.

Reason for Recommended Action

TRLIA initially authorized the Executive Director to hire Downey Brand LLP for legal representation before the State of California's Reclamation Board. The attached agreement follows that authorization along with the invoices for work performed through February 28, 2005.

Discussion

Your Board authorized the Executive Director to hire Downey Brand LLP for legal representation before the State of California's Board of Reclamation last fall. The attached agreement documents the services rendered during recent months. In addition to representation before the Reclamation Board, Downey Brand LLP has provided significant strategic advice related to flood protection issues within Yuba County and represented TRLIA in conjunction with developer funding for levee improvements.

Fiscal Impact

Invoices for the months of December, January, and February, total \$77,426.68 and will be paid from the 805 Trust Fund leaving a fund balance of \$4,763,270.88

**AGREEMENT FOR
PROFESSIONAL SERVICES**

THIS AGREEMENT FOR LEGAL SERVICES ("Agreement") is made as of the Agreement Date set forth below by and between THREE RIVERS LEVEE IMPROVEMENT AUTHORITY ("TRLIA"), a Joint Powers Agency, and DOWNEY BRAND LLP.

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

OPERATIVE PROVISIONS

1. SERVICES.

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

2. TERM.

Commencement Date: This Agreement shall be retroactively effective to the date TRLIA first retained CONTRACTOR, via a letter of retention send by CONTRACTOR.

Termination Date: This Agreement shall terminate when a notice of termination is provided by either party.

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

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

3. PAYMENT.

TRLIA shall pay CONTRACTOR for services rendered pursuant to this Agreement at the time and in the amount set forth in Attachment "B". The payment specified in Attachment "B" shall be the only payment made to CONTRACTOR for services rendered pursuant to this Agreement. CONTRACTOR shall submit all billings for said services to TRLIA in the manner specified in Attachment "B".

4. FACILITIES, EQUIPMENT AND OTHER MATERIALS AND OBLIGATIONS OF TRLIA.

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

5. ADDITIONAL PROVISIONS.

Those additional provisions unique to this Agreement are set forth in Attachment "C".

6. GENERAL PROVISIONS.

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

7. DESIGNATED REPRESENTATIVES.

Charles K. McClain is the representative of TRLIA and will administer this Agreement for TRLIA. Scott L. Shapiro is the authorized representative for CONTRACTOR. Changes in designated representatives shall occur only by advance written notice to the other party.

8. ATTACHMENTS.

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

- Attachment A - Services
- Attachment B - Payment
- Attachment C - Additional Provisions
- Attachment D - General Provisions

9. **TERMINATION.** TRLIA and CONTRACTOR shall each have the right to terminate this Agreement upon ten (10) days written notice to the other party.

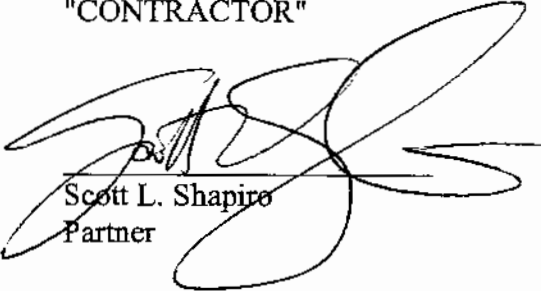
IN WITNESS WHEREOF, the parties hereto have executed this

Agreement on April 13, 2005.

"TRLIA"

"CONTRACTOR"

Executive Director (or)
Chair, Board of Directors



Scott L. Shapiro
Partner

ATTEST:
DONNA STOTTEMEYER, CLERK OF
THE BOARD OF DIRECTORS

APPROVED AS TO FORM:
DANIEL G. MONTGOMERY
AGENCY COUNSEL

ATTACHMENT A

A.1 SCOPE OF SERVICES AND DUTIES.

The services to be provided by CONTRACTOR and the scope of CONTRACTOR's duties include the following, all deemed to be duties within the term "Special Counsel:"

- Representation of TRLIA before the Reclamation Board of the State of California.
- Development of strategy related to short and long term flood protection for the lands within TRLIA.
- Development of all non-construction contracts necessary in order to implement short and long term flood protection.
- Representation of TRLIA with those owning land within TRLIA.
- Representation of TRLIA on issues associated with FEMA mapping.
- Representation of TRLIA on issues associated with funding for levee improvements.
- Representation of TRLIA with state and federal departments and the state legislation on issues of flood control policy.

A.2. TIME SERVICES RENDERED.

Services shall be rendered in a timely manner and when required under the circumstances.

A.3. MANNER SERVICES ARE TO BE PERFORMED.

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

A.4. NO FACILITIES FURNISHED BY TRLIA.

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

ATTACHMENT B

PAYMENT

TRLIA shall pay CONTRACTOR as follows:

B.1 BASE CONTRACT FEE. TRLIA shall pay CONTRACTOR a fee which shall be based upon CONTRACTOR'S current rate schedule. At the time that this Agreement is executed, Scott L. Shapiro's hourly rate is \$275.00. CONTRACTOR shall submit requests for payment monthly, no later than the fifteenth (15th) day of the month following provision of services.

B.2 TRAVEL COSTS. TRLIA shall pay CONTRACTOR for meals, lodging or other travel costs required in the normal scope of representation.

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

ATTACHMENT C

OTHER TERMS

This Agreement shall be interpreted consistent with the retainer letter executed by Downey Brand LLP (Contractor) and Charles K. McClain on behalf of TRILIA.

ATTACHMENT D

GENERAL PROVISIONS

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

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

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

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

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

D.1.5 CONTRACTOR may provide services to others during the same period service is provided to TRLIA under this Agreement.

D.1.6 If in the performance of this Agreement any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision and control of CONTRACTOR. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the CONTRACTOR.

D.1.7 As an independent contractor, CONTRACTOR hereby waived and releases

TRLIA from any and all claims that may be made against TRLIA based on any contention that an employer-employee relationship exists by reason of this Agreement.

D.2 LICENSES, PERMITS, ETC. CONTRACTOR represents and warrants to TRLIA that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONTRACTOR to practice its profession. CONTRACTOR represents and warrants to TRLIA that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for CONTRACTOR to practice its profession at the time the services are performed. Failure of the CONTRACTOR to comply with this provision shall authorize the TRLIA to immediately terminate this agreement notwithstanding Operative Provision No. 9.

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

D.4 INSURANCE. Prior to rendering services provided by the terms and conditions of this Agreement, CONTRACTOR or its subcontractors shall acquire and maintain during the term of this Agreement, insurance coverage. The limits of insurance herein shall not limit the liability of the CONTRACTOR hereunder.

D.4.1 TERM. Policies of insurance shall be kept in effect during the term of this Agreement

D.4.2 MINIMUM SCOPE OF INSURANCE. CONTRACTOR shall procure insurance covering general liability and workers' compensation.

D.5 CONTRACTOR NOT AGENT. Except as TRLIA may specify in writing or through action of its Board, CONTRACTOR shall have no authority, express or implied, to act on behalf of TRLIA in any capacity whatsoever as an agent. CONTRACTOR shall have no authority, express or implied, pursuant to this Agreement to bind TRLIA to any obligation whatsoever.

D.6 ASSIGNMENT PROHIBITED. CONTRACTOR may not assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no legal effect.

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

of such person or persons.

D.8 STANDARD OF PERFORMANCE. CONTRACTOR shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which CONTRACTOR is engaged. All products of whatsoever nature which CONTRACTOR delivers to TRLIA pursuant to this Agreement shall be prepared in a first class and workmanlike manner and shall conform to the standards or quality normally observed by a person practicing in CONTRACTOR's profession.

D.9 TERMINATION. Upon termination of this Agreement as otherwise provided herein, CONTRACTOR shall immediately cease rendering service upon the termination date and the following shall apply:

D.9.1 CONTRACTOR shall deliver copies of all writings prepared by it pursuant to this Agreement, if so requested by TRLIA. The term "writings" shall be construed to mean and include: handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing and form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.

D.9.2 TRLIA shall have full ownership and control of all such writings or other communications delivered by CONTRACTOR pursuant to this Agreement.

D.9.3 TRLIA shall pay CONTRACTOR the reasonable value of services rendered by CONTRACTOR to the date of termination pursuant to this Agreement not to exceed the amount documented by CONTRACTOR and approved by TRLIA as work accomplished to date; provided, however, TRLIA shall not in any manner be liable for lost profits which might have been made by CONTRACTOR had CONTRACTOR completed the services required by this Agreement. In this regard, CONTRACTOR shall furnish to TRLIA such financial information as in the judgment of the TRLIA is necessary to determine the reasonable value of the services rendered by CONTRACTOR. In the event of a dispute as to the reasonable value of the services rendered by CONTRACTOR, the decision of the TRLIA shall be final. The foregoing is cumulative and does not affect any right or remedy which TRLIA may have in law or equity.

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

D.10 NON-DISCRIMINATION. Throughout the duration of this Agreement, CONTRACTOR shall not unlawfully discriminate against any employee of the CONTRACTOR or of the TRLIA or applicant for employment or for services or any member of the public

because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, age, sex or sexual orientation. CONTRACTOR shall ensure that in the provision of services under this Agreement, its employees and applicants for employment and any member of the public are free from such discrimination.

D.11 OWNERSHIP OF INFORMATION. All professional and technical information developed under this Agreement and all work sheets, reports, and related data shall become the property of TRLIA, and CONTRACTOR agrees to deliver reproducible copies of such documents to TRLIA on completion of the services hereunder, and upon request by TRLIA. TRLIA agrees to indemnify and hold CONTRACTOR harmless from any claim arising out of reuse of the information for other than this project.

D.12 WAIVER. A waiver by any party of any breach of any term, covenant or condition herein contained or a waiver of any right or remedy of such party available hereunder at law or in equity shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained or of any continued or subsequent right to the same right or remedy. No party shall be deemed to have made any such waiver unless it is in writing and signed by the party so waiving.

D.13 COMPLETENESS OF INSTRUMENT. This Agreement, together with its specific references and attachments, constitutes all of the agreements, understandings, representations, conditions, warranties and covenants made by and between the parties hereto. Unless set forth herein, neither party shall be liable for any representations made express or implied.

D.14 SUPERSEDES PRIOR AGREEMENTS. It is the intention of the parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, representations, or agreements, written or oral, between the parties hereto.

D.15 ATTORNEY'S FEES. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fee, which may be set by the Court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such party may be entitled.

D.16 CAPTIONS. The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

D.17 DEFINITIONS. Unless otherwise provided in this Agreement, or unless the context otherwise requires, the following definitions and rules of construction shall apply herein.

D.17.1 NUMBER AND GENDER. In this Agreement, the neuter gender includes the feminine and masculine, and the singular includes the plural, the word "person" includes corporations, partnerships, firms or associations, wherever the context so requires.

D.17.2 MANDATORY AND PERMISSIVE. "Shall" and "will" and "agrees" are mandatory. "May" is permissive.

D.18 TERM INCLUDES EXTENSIONS. All references to the term of this Agreement or the Agreement Term shall include any extensions of such term.

D.19 SUCCESSORS AND ASSIGNS. All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

D.20 MODIFICATION. No modification or waiver of any provision of this Agreement or its attachments shall be effective unless such waiver or modification shall be in writing, signed by all parties, and then shall be effective only for the period and on the condition, and for the specific instance for which given.

D.21 COUNTERPARTS. This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

D.22 OTHER DOCUMENTS. The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

D.23 PARTIAL INVALIDITY. If any term, covenant, condition or provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provision and/or provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

D.24 JURISDICTION. It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a Court of competent jurisdiction in the of Yuba, State of California.

D.25 CONTROLLING LAW. The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

D.26 TIME IS OF THE ESSENCE. Time is of the essence of this Agreement and each covenant and term a condition herein.

D.27 AUTHORITY. All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated

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

D.28 CONFLICT OF INTEREST. Neither a TRLIA employee whose position in TRLIA enables such employee to influence the award of this Agreement or any competing Agreement, nor a spouse or economic dependent of such employee, shall be employed in any capacity by CONTRACTOR herein, or have any other direct or indirect financial interest in this Agreement.

CONTRACTOR may be subject to the disclosure requirements of the TRLIA conflict of interest code if in a position to make decisions or influence decisions that could have an effect on the CONTRACTOR's financial interest. The Executive Director shall determine in writing if CONTRACTOR has been hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in the Yuba County Conflict of Interest Code.

D.33 NOTICES. All notices and demands of any kind which either party may require or desire to serve on the other in connection with this Agreement must be served in writing either

by personal service or by registered or certified mail, return receipt requested, and shall be deposited in the United States Mail, with postage thereon fully prepaid, and addressed to the party so to be served as follows:

If to "TRLIA":

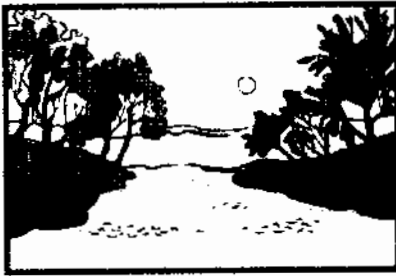
Executive Director
c/o County of Yuba
Attn: Executive Officer
915 8th Street
Suite ~~115~~ 115
Marysville, CA 95901

With a copy to:

District Counsel
c/o County of Yuba County Counsel
915 8th Street
Suite 111
Marysville, CA 95901

If to "CONTRACTOR":

Scott L. Shapiro
Downey Brand LLP
555 Capitol Mall, 10th Floor
Sacramento, CA 95814



THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

Government Center
915 Eighth Street, Suite 115
Marysville, CA 95901-5273
Telephone: (530) 749-7575 Fax: (530) 749-7312

April 19, 2005

TO: Three Rivers Levee Improvement Authority
FROM: Charles K. McClain, Executive Director *Charles K. McClain*
SUBJECT: Consider Approval of Implementation Agreement *FOR*

Recommended Action

Approve Implementation Agreement with State of California's Board of Reclamation regarding Board Permit No.17782 and County of Yuba Ordinances No. 1340 and 1343.

Purpose of Recommended Action

The Implementation Agreement serves to satisfy the remaining conditions necessary for State Reclamation Board Permit No.17782 to be effective.

Background

In order to proceed with levee construction projects within the South Yuba Basin Area, the Three Rivers Levee Improvement Authority (TRLIA) needed to obtain approval through the form of a permit from the State Reclamation Board. The Reclamation Board expressed concern over allowing residential development to occur in an area that had a known risk of flooding. As a result, the Reclamation Board conditioned issuance of a permit to work on the levee improvement projects "...until the public safety issue regarding the continued increase in human habitation in an area with known flood risk has been resolved to the satisfaction of the Board." After a series of meetings since the summer of 2004, agreement was reached among TRLIA, the County of Yuba, Reclamation District 784, affected landholders and the State Board of Reclamation, pending approval by the local agencies and landholders of the Implementation Agreement and the Advance Funding Agreement. The Advance Funding Agreement is provided in a separate document to you.

The Reclamation Board also protested the possibility of additional liability that could result from thousands of new homes being constructed within an area that has historically flooded, mindful of the recent Paterno Decision resulting in a \$475 million judgment against the state as a result of the Yuba River flood of 1986 and the \$47 million negotiated settlement for the 1997 Feather River flood. Consequently, language in the Implementation Agreement, consistent with the requirement of the Reclamation Board,

requires the local agencies including the County of Yuba, TRLIA, and RD 784 to "...defend, indemnify and hold the State of California, including its agencies, departments, boards, commissions, and their respective officers, agents, employees, successors and assigns, safe and harmless of and from all claims and damages arising out of the Project, and to discharge this obligation to the extent allowed by law."

Discussion

The focus of negotiations among the local agencies and the State Board of Reclamation centered around two issues; building within the Plumas Lake Specific Plan Area and indemnifying the State of California for liability that might result from or related to work performed on the levees. Initially, the Board requested a building moratorium within the area until the levees were certified to a minimum of 200-year flood protection. The local agencies expressed concern over the ability to finance levee improvements without allowing building to proceed; developers have not expressed any willingness to finance state required 30 percent local matching funds to draw down money from the State Water Bond Act of 2000 without the ability to continue building. Moreover, the Reclamation Board inserting itself into local land use decisions in which it had no known legal authority troubled the County. After much discussion a compromise prevailed, whereby a building limitation was agreed to by all affected parties that provides for a total of no more than 800 building permits for residential occupancy during calendar year 2005, and 700 building permits during calendar year 2006. In addition, no further building permits can be issued by the County within the affected area until Phase 3 construction work is complete (the setback levee project) and an implementation plan is submitted to the Reclamation Board for Phase 4 project work (Feather & Yuba Rivers). Approval of the Implementation Agreement formally approves the building limitation provisions.

The indemnification requirement is similar in many respects to the language within the State Water Bond Act of 2000 (Proposition 13), as both documents require the agencies obtaining grant funds to take legal responsibility for any liability that might arise from action in performing levee project work. Therefore, the County of Yuba's liability could exceed its financial capacity to function if claims of similar or higher amounts to the Yuba and Feather River flood events were to occur and if the state sought indemnity from the County. However, given the inability to obtain a permit without agreement to this provision, and thereby putting public safety and property at greater risk, with no mechanism for addressing that risk, staff reluctantly supports approval of the indemnification language.

Fiscal Impact

Agreement to the liability language could result in financial peril to the County.

April 14, 2005 noon

RECORDING REQUESTED BY
AND
WHEN RECORDED MAIL TO

NAME Scott Shapiro c/o Downey Brand LLP
MAILING ADDRESS 555 Capitol Mall, 10th Floor
CITY, STATE ZIP CODE Sacramento, CA 95814

NO FEE FOR RECORDING - GOVERNMENT CODE § 27383
(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

**IMPLEMENTATION AGREEMENT
IN REGARD TO
STATE RECLAMATION BOARD PERMIT NO. 17782
AND
COUNTY OF YUBA ORDINANCES NO. 1340 & 1343**

This Implementation Agreement ("Agreement"), dated for convenience this ____ day of April, 2005, is by and among the County of Yuba ("County"), the Three Rivers Levee Improvement Authority ("TRLIA"), Reclamation District 784 ("RD 784"), the Building Industry Association of Superior California ("BIA"), and the Landowners (as defined below).

1. **Definitions.** As used in this Agreement, the following terms shall have the following meanings:
 - a. **"Affected Area"** shall mean certain lands located within the Plumas Lake Specific Plan and the North Arboga Study Area, all as illustrated on Exhibit A, attached hereto and made a part hereof. As to any lands not included within the Affected Area, this Agreement shall have no force and effect.
 - b. **"Completed"** when referring to Phase 3 Work shall mean the earlier of: (i) a filed notice of completion by the general contractor performing the Phase 3 Work, or (ii) a determination of substantial completion by the Reclamation Board General Manager that the Phase 3 Work provides the intended flood protection, even if non-flood protection aspects of Phase 3 Work remain to be completed later.
 - c. **"Landowners"** shall mean those persons or entities holding an interest in lands within the Affected Area, and having the authority to bind all persons or entities holding an interest in those same lands, all as listed on Exhibit B, attached hereto and made a part hereof.
 - d. **"Parties"** shall refer to all signatories to this Agreement.
 - e. **"Party"** shall refer to one signatory to this Agreement.

f. **"Phase 2 Work"** shall mean improvements to the existing levees along portions of the Western Pacific Interceptor Canal from station 0+00 to 332+50 and the right bank of the Bear River from station 130+00 to 169+00, and the construction of a new setback levee along portions of the right bank of the Bear River from station 131+00 to a point approximately one mile north of the confluence of the Bear and Feather Rivers.

g. **"Phase 3 Work"** shall mean construction of the Setback levee on Bear River from approximately one mile north of Bear and Feather Rivers confluence to a point approximately two miles along the Bear River, including degradation of the remaining unimproved Bear River Levee.

h. **"Phase 4 Work"** shall mean further work on the Feather and Yuba River Levees arising out of the Problem Identification Study currently being contracted by TRLIA.

2. **Recitals.** This Agreement is made in regard to the following facts:

a. The County is a political subdivision of the State of California with planning and zoning authority over the Affected Area.

b. RD 784 is a Reclamation District formed under Water Code sections 50000 *et seq.* with certain responsibilities to maintain levees which provide some protection from flood for the Affected Area.

c. TRLIA is a Joint Powers Agency created by the County and RD 784 on April 6, 2004 with the purpose of assisting in providing improvements to the levee system located in the County and related to drainage improvements, and for other purposes.

d. Landowners hold interests in land within the Affected Area with various land use entitlement at various stages, ranging from the lands' inclusion within an approved specific plan to the adoption of a final subdivision map for that land.

e. On September 23, 2004, TRLIA submitted to the State Reclamation Board ("Board") an amended application for Permit No. 17782, which permit would authorize improvements to the existing Project Levees along portions of the Western Pacific Interceptor Canal (from station 0+00 to 332+50) and the right bank of the Bear River (from station 130+00 to 169+00), and which would also authorize the construction of a new setback levee along portions of the right bank of the Bear River (from station 131+00 to a point approximately one mile north of the confluence of the Bear and Feather Rivers) and other work.

f. Through a series of Board hearings and meetings it became apparent that the Board sought to condition issuance of Permit No. 17782 upon some limitation of growth within the Affected Area until certain levee improvements were complete. At its December 17, 2004 meeting, the Board issued Permit No. 17782 with Special Condition 13 that stated:

This permit is not valid until the public safety issue regarding the continued increase in human habitation in an area with known flood risk has been resolved to the satisfaction of the Board.

g. To provide assistance to TRLIA in determining what was required to achieve Board satisfaction pursuant to Special Condition 13, the Board created an Ad Hoc Committee which met with TRLIA during seven public sessions. Throughout the two month period during which these sessions took place, TRLIA also held a series of meetings with the Landowners to assure that Landowner interests were represented in any proposals that might be presented to satisfy the Board.

h. During these meetings with Landowner representatives, TRLIA and the Landowners were able to formulate a proposal which, on February 18, 2005, a majority of the Board agreed satisfied condition 13.

i. On February 22, 2005, the County adopted Ordinance No. 1340 (entitled "Interim Ordinance of the County of Yuba Controlling Issuance of Building Permits in the Plumas Lake Specific Plan Area and North Arboga Study Area and Directing Conditions of All New Tentative Maps in the Plumas Lake Specific Plan and North Arboga Study Area") to begin implementation of the proposal approved by the Board on February 18, 2005. As required by the Ordinance, the Ordinance was published in the Marysville Appeal-Democrat on March 4, 2005. Minor amendments, to conform Ordinance No. 1340 to the proposal made to and accepted by the Board, were made to Ordinance No. 1340 by the County on March 15, 2005 pursuant to Ordinance No. 1343.

j. The Parties now desire to enter into this Agreement in furtherance of Ordinances No. 1340 and 1343, to provide for the implementation of the proposal approved by the Board on February 18, 2005, and to satisfy the remaining conditions necessary for Permit No. 17782 to be effective.

NOW, THEREFORE, in consideration of the mutual promises herein made, the Parties agree as follows:

3. **Limits on Granting of Building Permits in the Affected Area.**

a. **Building Permits for 2005.**

(1) A total of no more than 800 building permits for residential occupancy during the 2005 calendar year will be issued by the County within the Affected Area.

(2) Of the 800 building permits, 253 building permits have been issued (between January 1, 2005 and February 28, 2005) in the Affected Area (within the North Arboga Study Area: 18 to KB Home North Bay Inc; within the Plumas Lake Specific Plan: 116 to Beazer Homes Holding Corp., 19 to Cresleigh, 72 to Homes by Towne, and 28 to KB Home North Bay Inc.).

(3) Of the remaining 547 building permits for 2005, eight are hereby reserved for allocation by the County's Community Development Department, on a first come, first served basis, for individual residential construction not associated with a subdivision ("Local Use"). Any of the eight building permits reserved for Local Use and not pulled by December 1, 2005 shall be added to the building permits to be allocated under Section 3(f). Consistent with Section

3(f)(1) of this Agreement, by December 10, 2005 the County shall provide notice to the BIA of the availability of non-used Local Use building permits so that they may be re-allocated consistent with the method contained in Section 3(f) of this Agreement. Once the BIA provides notice of the re-allocation to the County pursuant to Section 3(f)(3) of this Agreement, the County shall use its best efforts to issue the re-allocated building permits within 10 business days.

(4) The 539 remaining building permits for 2005 shall be allocated by the County as set forth on Exhibit C, attached hereto and made a part hereof.

(5) Each Landowner shall have until October 1, 2005 to pull all building permits allocated to that Landowner for 2005. Any building permit not pulled by a Landowner by October 1, 2005 shall result in a return of the building permit allocation to the pool of available building permits. Pursuant to Section 3(f)(1), by October 10, 2005, the County shall notify the BIA of any building permits not pulled so that they may be re-allocated consistent with the method contained in Section 3(f) of this Agreement. Once the BIA provides notice of the re-allocation to the County pursuant to Section 3(f)(3) of this Agreement, the County shall use its best efforts to issue the re-allocated building permits within 10 business days.

b. Building Permits for 2006 and Beyond.

(1) Except as provided in Section 3(b)(5) below, a total of no more than 700 building permits will be issued by the County within the Affected Area during the 2006 calendar year.

(2) Landowners applying for the 700 building permits to be issued in 2006 may not apply to the County for such building permits until December 1, 2005. In addition, final inspections for the 700 homes to be built pursuant to these building permits shall not be scheduled to take place sooner than April 15, 2006.

(3) Of the 700 building permits for 2006, eight shall again be reserved for Local Use. The remaining 692 building permits shall be allocated by the County as set forth on Exhibit D, attached hereto and made a part hereof.

(4) Each Landowner shall have until October 1, 2006 to pull all building permits allocated to that Landowner for 2006. Any building permit not pulled by a Landowner by October 1, 2006 shall result in a return of the building permit allocation to the pool of available building permits. Pursuant to Section 3(f)(1), by October 10, 2006, the County shall notify the BIA of any building permits not pulled so that they may be re-allocated consistent with the method contained in Section 3(f) of this Agreement. Once the BIA provides notice of the re-allocation to the County pursuant to Section 3(f)(3) of this Agreement, the County shall use its best efforts to issue the re-allocated building permits within 10 business days.

(5) No further building permits (beyond the 800 for 2005 and 700 for 2006) will be issued by the County in the Affected Area until Phase 3 Work is Completed and an

implementation plan for Phase 4 Work (including elements for funding, scope of work, and timeline) has been presented to the Board.

(6) Notwithstanding the previously stated limitation of 700 building permits to be issued during the 2006 calendar year, once Phase 3 Work is Completed, and after an implementation plan for Phase 4 Work has been presented to the Board, the County shall no longer be limited in its ability to issue building permits within the Affected Area. Once such limitation is lifted and unless otherwise constrained, Landowners shall be issued building permits for the Affected Area in the normal course of business for the County's Community Development Department.

c. **Changed Conditions.** In the event that the Board (or its successor) reconsiders the limitation on the issuance of building permits in the Affected Area, the Parties agree to negotiate in good faith to revise this Agreement to conform to any new, or no longer applicable, condition.

d. **Model Homes.** Each Landowner holding building permits for 2005 or 2006 shall be permitted to apply for and receive from the County up to five additional building permits, per community, for the construction of model homes. Such building permits shall have, as a condition of issuance, a requirement that the Landowners may not sell the model home for residential occupancy until Phase 3 Work is Completed. The building permits for model homes shall also require that the Landowners hold the County, RD 784, TRLIA, the Board and the State of California harmless for any damage to the model homes resulting from flood or other damage. The Landowners hereby acknowledge that standard insurance held by the Landowners likely will not cover damage to model homes as a result of flood.

e. **Applied For But Not Issued Building Permits.** The County agrees that, for all building permit applications it has received for the Affected Area to date and for which it will not issue a building permit pursuant to the allocation in Exhibit C, it will return to the Landowner by April 15, 2005 the building permit application along with all fees paid by the Landowner.

f. **Reallocation of Unused Building Permits.** Any building permit available for reallocation under Sections 3(a)(3), 3(a)(5), or 8(b) of this Agreement shall be reallocated as follows:

(1) Consistent with Section 3(a)(3), 3(a)(5), and 8(b) of this Agreement, the County shall provide notice to the Senior Vice-President of the BIA of the number of building permit allocations available for re-allocation.

(2) The BIA shall use best efforts to promptly provide notice to all Landowners, consistent with Exhibit B (as that information may be updated from time to time), of the availability of additional building permit allocations. In the notice, the BIA shall designate a date by which any Landowner wishing to enter a lottery for the additional building permits shall submit to the BIA a list of all lots within the Affected Area on which the Landowner is ready to build ("Qualified Lots"). The list shall be accompanied by a sworn statement of the Landowner that the Qualified Lots have all necessary approvals (including

recorded Final Map and Approved Master Plan) along with paving to the lot and operational fire hydrants.

(3) Immediately after the designated date, the BIA shall, through a lottery which allocates entries based on numbers of Qualified Lots and which excludes any Landowner that has forfeited a building permit allocation, randomly select the Landowners to whom the available building permit allocations will be distributed. The BIA shall promptly provide notice of the results of the lottery to all Landowners and the County.

(4) The BIA's obligations under this Section 3(f) shall not result in liability for claims or damages should any Landowner fail to receive the notice to be provided under Section 3(f)(2).

g. **Transferability of Building Permits.** All building permits shall run with the land for which they are pulled, such that building permits shall be transferable to the purchaser of the underlying land. In addition, building permit allocations for 2005 and 2006 shall be transferable as between Landowners (and between different properties for a single Landowner); provided that such transfers shall not include a monetary component; provided further, that this shall not preclude the transferor from requiring reimbursement from the transferee of any fees or payments previously made under the Advanced Funding Agreement for the transferred building permit allocation. Transfers under this subsection shall not be effective until the Landowner provides notice of such transfer to the County, using the form contained in Exhibit E (attached hereto and made a part hereof), and records the form as to the property.

h. **Permits Issued in Error.**

(1) If the County issues a building permit in error, such that the issuance of the building permit is inconsistent with the allocations provided in Exhibits C and D, the County shall, within 10 days of discovering the error, contact the Landowner to whom the building permit was issued in error and inform that Landowner of the invalidity of the issued building permit.

(2) Any Landowner issued a building permit in error, as described in Section 3(h)(1) above, hereby (i) waives any and all rights to claim a vested right to that building permit or the residence to be constructed pursuant to that building permit, and (ii) releases, waives, and abandons any and all claims, demands, rights, causes of action, and proceedings, it may now or hereafter have against the County arising out of the erroneously issued building permit. The Landowner shall cooperate with the County to return the erroneously issued building permit.

4. **Limits on Newly Approved Tentative Maps.** For all applications for tentative maps in the Affected Area that have not been approved as of February 22, 2005, the County shall, when approving those tentative maps, impose upon those maps a condition that will preclude those maps from becoming final until Phase 3 Work is Completed. The limitations of this subsection shall not preclude the County from (i) continuing to accept applications for tentative maps in the Area, (ii) approving any tentative maps, (iii) processing to final map any tentative maps in the Area approved prior to February 22, 2005, (iv) approving large lot final maps, as these maps are

sought for financing purposes and do not result in subdivision of land into individual lots eligible for the issuance of building permits; or (v) approving modifications to tentative maps and final maps approved prior to February 22, 2005, if so requested by the applicant.

5. **Hold Harmless and Waiver/Release.**

a. **Waiver and Release from Landowner to County, TRLIA, and RD 784.** As a condition of this Agreement, all Landowners release, waive, and abandon any and all claims, demands, rights, causes of action, and proceedings, they may now or hereafter have against the County, TRLIA, and RD 784, or their agents, officers, and employees, to attack, set aside, void or annul implementation of this Agreement or Ordinance Nos. 1340 and 1343, as they may be amended. Each of the Landowners has been advised by counsel regarding, and hereby expressly waives, any protection or benefit provided by California Civil Code section 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

b. **Indemnification from County, TRLIA, and RD 784 to State of California.** The County, TRLIA, and RD 784 agree jointly and severally to defend, indemnify and hold the State of California, including its agencies, departments, boards, and commissions, and their respective officers, agents, employees, successors and assigns, safe and harmless of and from all claims and damages arising out of the Project, and to discharge this obligation to the extent allowed by law. For purposes of this section, "Project" shall mean the levees from Station 130+00 to Station 169+00 on the right bank of the Bear River, from Station 0+00 to 332+50 on the right bank of WPIC, and a new backup levee approximately 2 miles in length from approximately Station 131+00 on the Bear River to the Feather River levee approximately 1 mile north of the confluence with the Bear River, all as modified pursuant to Permit No. 17782, and any other areas where work is performed under Reclamation Board Permit No. 17782. Work performed by TRLIA on these levees shall be deemed part of the Project, even if not authorized by the Permit. This section shall not preclude the County, TRLIA, and RD 784 from contracting to apportion indemnity and the responsibility to defend amongst themselves, but such apportionment shall not limit the rights of the State of California to full defense and indemnification from these three Parties.

c. **No Impact on Landowners.** Section 5(b) shall have no impact on Landowners' rights or obligations.

6. **Successors and Assigns; Recordation.**

a. **Successors and Assigns.** Except as provided in subsection 6(c), the provisions of this Agreement shall apply to, be binding upon, and inure to the benefit of, all successors and assigns of the Parties. Except as to the right of a Landowner to assign its reimbursement rights under the Advanced Funding Agreement as more fully described in Section 13(b) of the Advanced Funding Agreement, and except as to the obligations to pay the Advanced Funding

Amount and to receive credit for such payment when a building permit allocation is transferred as more fully described in Section 13(c) of the Advanced Funding Agreement, the provisions of the Advanced Funding Agreement shall be binding upon, and inure to the benefit of, all successors and assigns of the parties thereto.

b. **Recordation.** Landowners agree that, as covenantors under Civil Code section 1468, they shall record this agreement for each parcel of land within the Affected Area for which they hold a relevant ownership interest. Each parcel affected is particularly described in Exhibit B. No building permits shall be issued to the Landowners under Section 3 of this Agreement until proof is presented to the satisfaction of the County, TRLIA, and RD 784, as covenantees, that this Agreement has been recorded as to all such parcels. Such recordation shall be coordinated as a single recording, the cost of which shall be borne by the Landowners.

c. **Termination of Obligations.** The provisions of this Agreement shall automatically terminate and shall no longer apply to any land with a residence sold to a homeowner after the County's final inspection for that residence. The provisions of this Agreement shall also automatically terminate for the Landowners, unless otherwise extended in a writing of the Parties, after Completion of Phase 3 Work. The Parties agree to cooperate in executing any necessary instruments to record the termination, and upon request of the Landowners the County shall immediately record notice of the termination once Phase 3 Work is Completed. The obligations under subsection 5(b) shall not terminate upon the conditions identified above.

7. **Third Party Beneficiaries.** This Agreement is not intended to, and shall not be construed to, create any right on the part of a third party to bring an action to enforce any of the terms of this Agreement except that the Board shall be a third party beneficiary of Sections 3 and 4 of this Agreement, and in regard to that section shall have all rights of a third party beneficiary.

8. **Agreement for Advanced Funding.**

a. In order to assure the necessary and timely funding of all construction required for Phase 2 Work, Phase 3 Work, and Phase 4 Work (including additional funding to supplement that funding already planned for Phase 4 Work), the Landowners agree that as a condition of accepting the remaining 539 building permits for 2005 and the 692 building permits for 2006 (both excluding Local Use), the Landowners will enter into the Agreement for Advanced Funding and Reimbursement of Costs for Levee Improvements ("Advanced Funding Agreement") which will require the Landowners to pay an advance funding amount for each issued building permit, a form of which is attached hereto and incorporated herein as Exhibit F. All Parties will execute this Advance Funding Agreement simultaneously with the execution of this Agreement.

b. Consistent with Section 10 of the Advanced Funding Agreement, the failure of a Landowner to make any payment required under the Advanced Funding Agreement (including the Cash Discount Payment and the Advanced Funding Amount) shall result in the immediate relinquishment by the Landowner of the Landowner's remaining building permit allocation under this Agreement. Upon failure to make such a payment, TRLIA shall notify the County of the

failure of the Landowner to make such payment and the County shall provide notice to the BIA so that the building permit allocation may be re-allocated consistent with the method contained in Section 3(f) of this Agreement. Once the BIA provides notice of the re-allocation to the County pursuant to Section 3(f)(3) of this Agreement, the County shall use its best efforts to issue the re-allocated building permits within 10 business days.

9. **Standard Provisions.**

a. **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of California, without regard to conflicts of laws principles. Any action to compel arbitration or to enforce the arbitrator's decision shall be venued in Sacramento Superior Court.

b. **Arbitration.** All disputes arising out of this Agreement shall be submitted to final and binding arbitration. A Party seeking to arbitrate a dispute arising out of this Agreement must notify the other Parties to the dispute in writing of its intent to arbitrate any claim for breach or enforcement of any provision of this Agreement within 30 days of discovery of the last event giving rise to the claim for breach or enforcement. Any such timely and properly noticed claim for breach or enforcement of any provision of this Agreement shall be submitted to binding arbitration through the American Arbitration Association in accordance with the National Rules for Commercial Disputes. Before arbitration commences, if the dispute is between one or more Landowners (on the one hand) and the County, RD 784, and TRLIA (on the other hand) the Landowners shall jointly pay the American Arbitration Association half of the expected cost of the arbitration and the County, RD 784, and TRLIA shall jointly pay the other half of the expected cost of the arbitration. If the dispute is between Landowners, then the Landowners that are party to the dispute shall, before arbitration commences, pay equal shares of the entire expected cost of the arbitration. At the conclusion of the arbitration, the arbitrator may award the prevailing Party some or all of the arbitration costs, but no attorneys' fees incurred in connection with the arbitration shall be awarded. The decision of the arbitrator shall be final and conclusive, and the Parties waive the right to a trial de novo or appeal excepting only for the purpose of enforcing the arbitrator's decision

c. **Entire Agreement; Amendment.** This Agreement constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all prior and contemporaneous agreements and understandings of the Parties regarding the subject matter hereof; Provided, that this shall not affect the validity of the Advanced Funding Agreement. This Agreement may not be amended except by the mutual written consent of all of the Parties.

d. **Waiver.** Any provision of this Agreement may be waived at any time by the Party entitled to the benefit thereof, but only by a writing signed by such Party stating that it waives such provision. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision nor shall any waiver constitute a continuing waiver.

e. **Severability.** If any provision of this Agreement is held invalid or unenforceable, the other provisions of this Agreement shall remain in full force and effect provided that the severance of the invalid or unenforceable provisions does not result in a material failure of consideration under this Agreement to any party hereto.

f. **Headings.** The headings of this Agreement are included for convenience only and shall not affect the construction or interpretation of the Agreement.

g. **Counterparts.** This Agreement may be executed in one or more counterparts, including facsimile, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to constitute one and the same instrument.

h. **Authority.** The undersigned certify that they are fully authorized by the Party or Parties whom they represent to enter into the terms and conditions of this Agreement and able to legally bind such Party or Parties hereto.

i. **Interpretation.** This Agreement shall be deemed to have been prepared equally by all of the Parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for any one Party on the basis that another Party prepared it.

j. **Notices.** All notices and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (1) on the date delivered by hand; (2) the next business day following the date sent by overnight delivery service or sent by facsimile; or (3) on the third day after mailing if deposited in the U.S. mail. Any notice to be given to the County or TRLIA should be addressed as follows:

County Administrator
County of Yuba
915 Eighth Street, Suite 115
Marysville, California 95901-5273

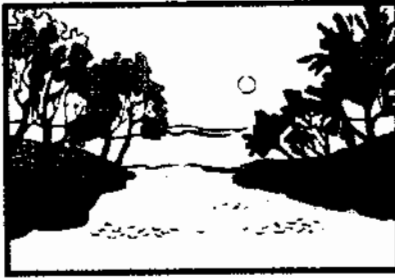
or to such other addresses as the County or TRLIA may specify from time to time. Any notice to be given to RD 784 should be addressed as follows:

Board of Directors
Reclamation District 784
1594 Broadway Ave
Marysville, California 95901

or to such other addresses as RD 784 may specify from time to time. Any notice to be given to BIA should be addressed as follows:

Building Industry Association
Atten: Senior Vice President
1536 Eureka Road
Roseville, California 95661
Phone: (916) 677-5717
Facsimile: (916) 677-5734

or to such other address as BIA may specify from time to time. Any notice to be given to the Landowners should be addressed to each Landowner at such address as set forth on Exhibit B to this Agreement, or to such other addresses as the Landowner may specify from time to time.



THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

Government Center
915 Eighth Street, Suite 115
Marysville, CA 95901-5273
Telephone: (530) 749-7575 Fax: (530) 749-7312

April 19, 2005

TO: Three Rivers Levee Improvement Authority
FROM: Charles K. McClain, County Administrator *Charles K. McClain*
SUBJECT: Consider Approval of Advance Funding Agreement

Recommended Action

Approve Advance Funding Agreement among the County of Yuba, Three Rivers Levee Improvement Authority (TRLIA) Reclamation District 784 (RD 784) and the landowners.

Reason for Recommended Action

The Advance Funding Agreement is intended to provide sufficient money in a timely manner to improve the levee system protecting people and property within the boundaries of Reclamation District 784 with no funding commitments on the part of TRLIA or the County.

Background

On May 28, 2003, the California Department of Water Resources and the United States Army Corps of Engineers first informed local agencies of potential problems concerning levees on the Bear River and Western Pacific Interceptor Canal. Local agencies and property developers within the Plumas Lake Specific Plan Area quickly mobilized to determine the extent of levee issues by funding studies to review the adequacy of the levee system. An organizational entity was formed through the creation of the TRLIA to administer flood protection capital projects within the boundaries of Reclamation District 784. Subsequently, a Mello-Roos Community Facility District (CFD) was formed to provide a mechanism for meeting a 30 percent local funding requirement to draw down a grant from the State Water Bond Act of 2000, otherwise known as Proposition 13. CFD funding was to occur through the issuance of bonded debt, with appraised land value from developer owned property serving as collateral for the proposed indenture. Under the tax rate methodology approved by the development group, payment could occur in the form of a prepayment of the present value of projected debt based on the gross developable acreage for each landowner, or an additional amount after the debt had been issued for those landowners developing their property after the debt had been issued.

Preliminary engineering analysis indicated an estimated cost for the three-phased approach of approximately \$62 million. Developers were to finance up to \$27 million through a combination of prepayments or debt service payments, with the prepayment amounts of \$14,000 per acre and debt service payments at \$22,500 per acre. The balance of the funding was to come from Proposition 13 funds. Phase 1 of work involved a stretch on the Yuba River next to the 1986 flood break, which was considered by the engineers to be the greatest risk to public safety. This project was completed last November for approximately \$2.3 million with funding coming from prepayments by those developers who had begun constructing homes within the Plumas Lake Specific Plan Area. Financing for the other levee projects was divided into Phase 2 and Phase 3. In January 2005, the U.S. Army Corps of Engineers expressed concern over its ability to certify for 100-year flood protection a 5-mile stretch of the Feather River between Marysville and Shanghi Bend as well as an area on the Yuba River between Simpson Lane and the Yuba Goldfields. This new information has resulted in TRLIA pursuing a 4th Phase of levee improvement project work.

Discussion

Current engineering estimates for Phases 2-4 costs total \$96.1 million. The Advance Funding Agreement specifies the sequence, amounts, conditions, and obligations whereby developers agree to provide an additional local contribution of \$21 million over the original amount of \$27 million for a total of \$48 million. This will result in a 50 percent local match of the total \$96.1 million of anticipated project costs. There are no County or RD 784 funds obligated under this agreement. Furthermore, this Agreement calls for developer cash payments or letters of credit approved by County Counsel on an accelerated basis. For example, if cash needs arise during the coming months, TRLIA can require developers to pay the advance funding amount. Staff is currently discussing the length of time notification will occur prior to obtaining advance funding and will present the outcome of those discussions to you at the Board meeting. There is also a provision in the agreement that allows TRLIA to seek additional developer funding should the current engineering estimates prove to be inaccurate, subject to negotiations in good faith among the parties to the agreement. The Agreement establishes a Landholder Escrow Committee to review funding requests submitted by the County's Director of Public Works or designee.

Fiscal Impact

Neither TRLIA, the County of Yuba, or Reclamation District 784 have any financial obligations concerning the \$48 million of local landowner funds.

**AGREEMENT FOR ADVANCED FUNDING AND
REIMBURSEMENT OF COSTS FOR LEVEE IMPROVEMENTS**

This Agreement for Advanced Funding and Reimbursement of Costs for Levee Improvements ("Agreement"), dated for convenience this ____ day of April, 2005, is by and among the County of Yuba, a political subdivision of the State of California ("County"), Reclamation District 784, a Reclamation District formed under Water Code sections 50000 *et seq* ("RD 784"), the Three Rivers Levee Improvement Authority, a joint powers authority created by the County and RD 784 ("TRLIA"), and the Landowners (as that term is defined below).

RECITALS:

WHEREAS, Landowners intend to develop homes on certain land located within the area generally known as the Plumas Lake Specific Plan and the North Arboga Study Area (the "Affected Area") situated in the unincorporated area of Yuba County as shown and generally described in Exhibit A, which is attached hereto, and by this reference made a part hereof;

WHEREAS, various studies have identified freeboard deficiencies on the Bear River and Western Pacific Interceptor Canal levees, and geotechnical issues with the Yuba River and Feather River levees;

WHEREAS, California voters approved the Costa-Machado Water Act of 2000, which allocated \$90,000,000 for improved flood protection and environmental enhancement in the Feather River watershed and Colusa Drain ("Prop. 13");

WHEREAS, TRLIA and Landowners established a Community Facilities District 2004-1 Three Rivers Levee Improvement Authority (South County Area) (the "District") to assist in financing the required "local share" of funds required by Prop 13 for Phase 2 Work and Phase 3 Work (as defined below);

WHEREAS, the District expected to issue a public or private bond and provide net proceeds of approximately \$27 million to be applied towards Phase 2 Work and Phase 3 Work, and such debt would be serviced and repaid by Landowner payments charged on a per acre basis at time of recordation of final map;

WHEREAS, pursuant to Constitutional and statutory requirements the District adopted a "Rate, Method of Apportionment, and Manner of Collection of Special Tax" (the "Special Tax Formula") that includes the requirement to pay a "Cash Discount Payment" (as defined below) or, in the alternative and under certain circumstances, a "Maximum One-Time Special Tax" (as such terms are used in the Special Tax Formula) to fund flood control improvements;

WHEREAS, a portion of Phase 2 Work required TRLIA to seek an encroachment permit from the State Reclamation Board (the "Board"), which permit when issued included a Special Condition that stated:

This permit is not valid until the public safety issue regarding the continued increase in human habitation in an area with known flood risk has been resolved to the satisfaction of the Board.

WHEREAS, in order to satisfy the Board's Special Condition, County adopted Ordinances 1340 and 1343, and entered into an agreement with RD 784, Landowners, and TRLIA, such that the County would limit the issuance of building permits within the Affected Area until the Completion of Phase 3 Work (as defined below). That certain Implementation Agreement in Regard to State Reclamation Board Permit No. 17782 and County of Yuba Ordinances 1340 and 1343 by and between County, TRLIA, RD 784 and the Landowners (the "Implementation Agreement") will be executed by all parties thereto in conjunction with the execution of this Agreement;

WHEREAS, the limitation on the issuance of building permits and other issues associated with the Department of Water Resource's anticipated issuance of a request for a Letter of Map Revision to FEMA may postpone or prevent the District's ability to conduct the anticipated public or private bond sale to timely generate the proceeds necessary to provide the "local share" required for Prop 13 funds required for Phase 2 Work and Phase 3 Work. In addition, the potential for Phase 4 Work (as defined below) and the necessary funding of such is also of interest to the Parties;

WHEREAS, on November 4, 2003, the County, RD 784, Yuba County Water Agency ("YCWA"), and certain owners of land within the Affected Area executed a Funding Agreement for Plumas Lake Specific Plan Area Flood Control Levee Improvements ("2003 Funding Agreement") which provided for the payment of certain fees by those owner of land, which fees were to be used to fund studies on the adequacy of the Bear River and Western Pacific Interceptor Canal Levees;

WHEREAS, the Parties now acknowledge that the funds previously raised under the 2003 Funding Agreement and previously raised and to be raised by Landowners making the Cash Discount Payment will not be sufficient to fund the required Phase 2 Work, Phase 3 Work, and the potential Phase 4 Work, and also will not raise funds prior to the needed expenditures to improve the levees; and

WHEREAS, in order to assure the necessary and timely funding of all construction required for Phase 2 Work, Phase 3 Work, and up to \$20 million for Phase 4 Work, the Landowners agree that as a condition of accepting the remaining building permits for 2005 and 2006 as set forth in the Implementation Agreement, in addition to paying the Cash Discount Payment, the Landowners will also pay an advance funding fee for each building permit issued, which shall be credited toward future obligations of the Landowners with the remainder to be reimbursed to Landowners, as provided for herein below.

NOW, THEREFORE, in consideration of the mutual promises herein made, the Parties agree as follows:

1. **Recitals.** The recitals are incorporated herein as if set forth in full.
2. **Definitions.** As used in this Agreement, the following terms shall have the following meanings:

a. **"Advanced Funding Amount"** shall mean the amount to be paid by Landowners pursuant to Section 5(c) for each building permit issued pursuant to the Implementation Agreement so as to assure the timely funding of levee improvements.

b. **"Cash Discount Payment"** shall mean the \$14,000 payment, per Gross Developable Acre (as that term is defined in the Special Tax Formula), that once paid at recordation of final map fulfills the special tax obligation required by the District for that parcel.

c. **"Completion of Phase 3 Work"** shall mean the earlier of: (i) a filed notice of completion by the general contractor performing the Phase 3 Work, or (ii) a determination of substantial completion by the Reclamation Board General Manager that the Phase 3 Work provides the intended flood protection, even if non-flood protection aspects of Phase 3 Work remain to be completed later.

d. **"Equal Acreage Basis"** shall mean an apportionment which calculates the total number of acres for which all Landowners paid the Advanced Funding Amount and apportions funds based upon the number of acres paid for by a Landowner in relation to the total number of acres paid for by all Landowners.

e. **"Escrow Holder"** shall mean the entity selected by the Landowner Escrow Committee to hold the Levee Improvement Fund created pursuant to section 6(a) of this Agreement.

f. **"Fair Share Funding Study"** shall be a study conducted by TRLIA as provided in Section 8(a) to determine the cost of the Levee Improvement Program (as defined below) attributable to the beneficiaries of flood control.

g. **"Landowners"** shall mean those persons or entities holding an interest in lands within the Affected Area, and having the authority to bind all persons or entities holding an interest in those same lands, all as listed on Exhibit B, attached hereto and made a part hereof.

h. **"Landowners Escrow Committee"** shall be a committee of Landowner representatives constituted pursuant to Section 16 of this Agreement.

i. **"Loaded Par Amount"** shall mean an amount determined pursuant to Section 8(b) of this Agreement which represents the fees to be imposed upon certain acres to both pay for and finance the Levee Improvement Program. The Loaded Par Amount will increase by 3% every year on the anniversary of the amount being set.

j. **"Par Amount"** shall mean an amount determined pursuant to Section 8(b) of this Agreement, upon completion of the Fair Share Funding Study, which represents the fees to be imposed upon certain acres to pay for the Levee Improvement Program.

k. **"Parties"** shall refer to all signatories to this Agreement.

l. **"Party"** shall refer to one signatory to this Agreement.

m. **"Phase 1 Work"** shall mean the improvements to the Yuba River Levee conducted under State Reclamation Board Permit No. 17828 that were completed October 31, 2004 and certain geotechnical investigations and related studies performed in anticipation of Phase 2 Work and Phase 3 Work;

n. **"Phase 2 Work"** shall mean improvements to the existing levees along portions of the Western Pacific Interceptor Canal from station 0+00 to 332+50 and the right bank of the Bear River from station 130+00 to 169+00, and the construction of a new setback levee along portions of the right bank of the Bear River from station 131+00 to a point approximately one mile north of the confluence of the Bear and Feather Rivers.

o. **"Phase 3 Work"** shall mean construction of the Setback levee on Bear River from approximately one mile north of Bear and Feather Rivers confluence to a point approximately two miles along the Bear River, including degradation of the remaining unimproved Bear River Levee.

p. **"Phase 4 Work"** shall mean further work on the Feather and Yuba River Levees arising out of the Problem Identification Study currently being contracted by TRLIA.

q. **"Reimbursement Amount"** shall mean the amount which the District will reimburse a Landowner, and which shall be determined pursuant to Section 10(a) of this Agreement.

r. **"Returned Funds"** shall mean any funds from the Levee Improvement Fund returned by the Escrow Holder to the Landowners because of completion of the Levee Improvement Program or termination of the Levee Improvement Program by TRLIA.

3. **Levee Improvement Program.** The County, TRLIA, and RD 784 agree to use best efforts to implement a program for the improvement of the levees protecting RD 784 including Phase 2 Work, Phase 3 Work, Phase 4 Work (as such may be later identified), and all associated technical and legal work (including costs associated with the allocation of building permits and development of funding options, collectively "Levee Funding Implementation Costs"), all as necessary for continued development within the Affected Area (collectively the "Levee Improvement Program"). In implementing the Levee Improvement Program, the County, TRLIA, and RD 784 shall use their best efforts to complete the Levee Improvement Program in the shortest time possible and at the lowest cost possible, provided, that such efforts shall be consistent with reasonable flood engineering standards.

4. **Cost Estimates for Levee Improvement Program.** The parties agree that Exhibit C to this Agreement, which is attached hereto and by this reference made a part hereof, is the estimated total cost for the Levee Improvement Program and the best available information at the time this Agreement became effective. The actual costs are not known at this time due to the preliminary status of the various components of the Levee Improvement Program, as follows: (1) right-of-way and land acquisition; (2) fish and wildlife mitigation and permitting; (3) planning, engineering and design; (4) construction; (5) construction management; and (6) unforeseeable delays and costs.

5. Funding for Levee Improvement Program.

a. Payments made under 2003 Funding Agreement.

(1) **Crediting of such Payments.** Except as provided in Section 5(a)(2) of this Agreement, any payments made by a Landowner under the 2003 Funding Agreement shall be credited to the benefit of the Landowner under this Agreement. Such payments shall be credited to obligations of the Landowner pursuant to Section 8(c) of this Agreement, and such crediting shall relieve County, TRLIA, RD 784, and YCWA of any and all obligation to repay any of the payments made by Landowners under the 2003 Funding Agreement.

(2) **Purchase of Property by Landowner Since 2003 Funding Agreement.** To the extent that a Landowner's predecessor-in-interest executed the 2003 Funding Agreement and made the required payment under that Agreement, the Landowner may elect, consistent with the transaction which transferred the relevant property to the Landowner, whether TRLIA shall credit the payment made by the Landowner's predecessor-in-interest toward the Landowner's obligations pursuant to Section 8(c) of this Agreement, or whether TRLIA shall repay to the Landowner's predecessor-in-interest the payments made under the 2003 Funding Agreement, consistent with that agreement.

b. Pre-Existing Obligation for District Payment.

(1) For any Landowner that has recorded a final small lot subdivision map but not paid the Cash Discount Payment at recordation of final map the Landowner shall make such Cash Discount Payment to the District prior to the issuance of any building permits allocated to such Landowner pursuant to the Implementation Agreement; provided, that this Section 5(b)(1) shall not apply to KB Home North Bay Inc.'s Hawes Ranch subdivision because said subdivision is not included in the District. Payment of the Cash Discount Payment will be in addition to the Advance Funding Amount.

(2) For any Landowner that does not have a recorded final small lot subdivision map, but has a building permit allocation pursuant to the Implementation Agreement, the Cash Discount Payment for the subdivision shall be paid to the District not less than 30 days following TRLIA's notice as discussed in Section 5(d) below, for the tentative or small lot final subdivision map that includes any Gross Developable Acres on which the Landowner expects to have building permits issued pursuant to the Implementation Agreement.

c. Advance Funding Amount.

(1) Consistent with Section 6(b) below, each Landowner shall advance to the Levee Improvement Fund the sum of \$_____ (the "Advanced Funding Amount") prior to the issuance of and for each building permit, including model home building permits, to be issued in accordance with the Implementation Agreement. To the extent that model home building permits were issued to a Landowner after February 21, 2005 and the Landowner has not yet paid the Advanced Funding Amount for those model homes, the Landowner shall pay the Advanced Funding Amount before the issuance of any further building permits pursuant to the

Implementation Agreement. The Landowners shall not be required to pay an Advanced Funding Amount for any building permit issued prior to February 21, 2005. The Advanced Funding Amount is calculated so as to provide necessary advance funding by the Landowners for Phase 2 Work, Phase 3 Work, and up to \$20 million for Phase 4 Work. Each Landowner shall provide written evidence to the County, as set forth in Section 6(b) below, that such Advanced Funding Amount has been deposited in the Levee Improvement Fund. The amount may be deposited in cash, or by an irrevocable standby letter of credit in a form and from a guarantor subject to approval by Yuba County County Counsel ("Letter of Credit"). The Advance Funding Amount shall be the same amount for all allocated building permits issued in 2005 and 2006 pursuant to the Implementation Agreement.

(2) Based on the building permits allocated under the Implementation Agreement for 2005 and 2006, Landowners' allocated building permits by the Implementation Agreement are collectively committing to provide up to \$_____ advance funding towards the Levee Improvement Program pursuant to this Agreement.

(3) To the extent that a Landowner receives a reallocated building permit allocation pursuant to Section 3(f) of the Implementation Agreement and the Advanced Funding Amount has not already been paid for that building permit allocation, the receiving Landowner shall pay (or cause to be paid) the Advanced Funding Amount prior to the issuance of the reallocated building permit.

d. Acceleration of Advance Funding Amount.

(1) Notwithstanding Section 5(c) above, Landowners may be required to provide all or a portion of the Advance Funding Amount at a date prior to the time of issuance of a building permit. Such acceleration of the obligation to pay the Advanced Funding Amount (or some portion thereto) shall only occur in the event that the balance in the Levee Improvement Fund (including amounts secured by all Letters of Credit) is not sufficient to award a necessary contract in furtherance of the Levee Improvement Program and shall be made only to the extent reasonably necessary to meet the program objectives of the Levee Improvement Program. In such a case, and only after concurrence by the Landowner Escrow Committee, which concurrence shall not be reasonably withheld, TRLIA shall notify all Landowners of the need for acceleration of advanced funding. Such acceleration shall occur on a building permit allocation basis.

(2) If the need arises for accelerated funding, TRLIA shall give the Landowners not less than 90 days notice prior to the date the Landowner will be called upon to pay the Advance Funding Amount. In the event of a need for accelerated funding in 2005, TRLIA shall first seek accelerated funding from those Landowners who have not yet paid the Advanced Funding Amount for their entire 2005 building permit allocation. In the event that acceleration of additional funding is required, TRLIA shall call on all Landowners still holding building permit allocations under the Implementation Agreement, and the Landowners shall pay based on the number of building permit allocations still held by the Landowner. The request for accelerated funding shall be for an amount not greater than the Advance Funding Amount

multiplied by the Landowner's remaining building permit allocation for 2005 and 2006 as provided in the Implementation Agreement.

(3) To the extent that TRLIA accelerates the obligation of a Landowner to pay the Advanced Funding Amount for some or all of the Landowner's remaining building permit allocation, the Landowner shall have no further obligation to pay the Advanced Funding Amount when the Landowner is issued the building permits associated with the accelerated payment.

e. **Additional Funding.** In the event that the Parties identify a need for additional advance funds required to complete the Levee Improvement Program beyond the total amount identified in Section 5(c)(2), all Parties agree to negotiate in good faith to identify an additional source of funds for the Levee Improvement Program; provided, that this requirement to negotiate is not a commitment of additional funds from the Landowners.

f. **Levee Improvement Financing Analysis Conversion Rate.** All payments required to be made under the Special Tax Formula (including the Cash Discount Payment and the Maximum One-Time Special Tax) and all payments that will be required under a modified or newly created district pursuant to Section 11(a) of this Agreement were and are based upon Gross Developable Acres. In contrast, the Advanced Funding Amount is based upon numbers of building permits issued. The Levee Improvement Financing Analysis (attached hereto as Exhibit D and made a part hereof) incorporates all payments that have previously been made and all payments required under this Agreement. Because the Advanced Funding Amount is based upon building permits, the estimates provided in Exhibit D for all required payments are also based upon building permits, assuming a conversion rate of 3.75 building permits to the Gross Developable Acre. However, the Parties acknowledge that the estimates are for planning purposes only and that the calculation of the Landowner's obligations (other than the Advanced Funding Amount) once the Par Amount is set pursuant to Section 8(b) of this Agreement will be performed on a Gross Developable Acre basis.

6. **Levee Improvement Fund.**

a. **Establishment of Fund.** Landowner Escrow Committee shall establish with Escrow Holder a fund for the purpose of holding the Advanced Funding Amount provided by Landowners, and making the Advanced Funding Amount available for TRLIA to use towards the costs and expenses of the Levee Improvement Program (the "Levee Improvement Fund").

b. **Depositing of Advanced Funding Amounts.** Each Landowner shall deposit all Advanced Funding Amounts into the Levee Improvement Fund and Escrow Holder shall also hold all Letters of Credit. Escrow Holder shall provide written notice to Landowners of the amount of Advanced Funding Amounts or Letters of Credit deposited by the Landowner so that Landowner may provide notice of such deposit to the County at time of issuance of building permits. The County shall accept any such written notice provided by the Escrow Holder as conclusive evidence that deposits into the Levee Improvement Fund by the Landowner have been made.

c. **Investment of Levee Improvement Funds.** Escrow Holder shall invest the funds held in a manner in which funds are earning income, the capital is preserved, and Escrow Holder has all needed funds available upon 15 days notice. Investments shall be limited to government securities, cash, corporate bonds that are rated AAA, and FDIC-insured certificates of deposit. Escrow Holder shall limit investments to those which allow for the prompt conversion of such investments to cash so that funds are available consistent with Section 7(a) of this Agreement.

d. **Maintenance of Fund.** Any costs incurred in the maintenance of the Levee Improvement Fund by Escrow Holder shall be paid for out of the moneys contained within the fund; provided, that the Landowner Escrow Committee shall use its best efforts to work with the Escrow Holder to minimize such costs.

7. Disbursements from Levee Improvement Fund; Outside Funds.

a. **Request for Disbursement.** In order to provide the Escrow Holder with sufficient time to release funds from the Levee Improvement Fund, the Director of Public Works for the County, or its designee, shall provide the Landowner Escrow Committee 45 days notice of the need for a disbursement from the Levee Improvement Fund along with information supporting the request in a form acceptable to the Landowner Escrow Committee. Within 15 days of providing such notice, the Director of Public Works for the County, or its designee, shall consult with the Landowner Escrow Committee. Following such consultation, and approval by the Landowner Escrow Committee if Landowner Escrow Committee so agrees, the Landowner Escrow Committee shall provide not less than 15 days notice to Escrow Holder, along with authorization to release funds, when a portion of the Levee Improvement Fund is required for TRLIA's costs and expenses associated with the Levee Improvement Program. Upon such authorization, Escrow Holder shall disburse from the Levee Improvement Fund to TRLIA the sums required to pay the costs and expenses related to the Levee Improvement Program.

b. **Election to Replace Letters of Credit.** If Escrow Holder needs the funds represented by all or a portion of a Letter of Credit for a disbursement under Section 6(a) above, prior to calling on such Letter of Credit, or prior to calling on a portion of such letter of credit, the Escrow Holder shall first provide Landowner with 10 days notice so that Landowner may elect to deposit cash to replace all or a portion of the Letter of Credit. If Landowner does not elect to deposit cash to replace all or a portion of the Letter of Credit, Escrow Holder shall call on all or a portion of the Letter of Credit as necessary to disburse needed funds.

c. **Priority of Available Funds.** To the extent permitted under California law, available money from Prop 13 and other funds held by County, RD 784 and TRLIA allocated towards the Levee Improvement Program shall be utilized first before any Advanced Funding Amount from the Landowners are utilized.

d. **Additional Outside Sources of Funds.** So as to minimize Landowners' ultimate obligations for the Levee Improvement Program, County, TRLIA, and RD 784 shall use best efforts to identify and obtain additional sources of funds, such as grants, loans, state bond funds, development impact fees, special taxes, additional bond funds and other mechanisms, such as

local assessment districts or any other funding mechanism available under state law which seek funds from development projects that benefit from the Levee Improvement Program but do not currently assist in the funding of the Levee Improvement Program; provided that this shall not be construed as an obligation on the part of County to expend general funds in furtherance of the Levee Improvement Program; provided further, that this shall not be construed as obligating funds raised through local assessment districts that are necessary for the operation and maintenance of flood control facilities.

8. Determination of Landowner Obligations; Crediting of Funds Paid by Landowners. The purpose of this Section 8 is to establish the obligations of each of the Landowners in regard to the Levee Improvement Program and to determine the crediting of all funds paid by the Landowners toward these obligations.

a. **Fair Share Funding Study.** In order to determine the cost of the Levee Improvement Program attributable to the beneficiaries of flood control, TRLIA shall conduct the Fair Share Funding Study. The study shall be conducted from special tax proceeds of the District and developer impact fees. The study shall take into account the costs and expenses for the Levee Improvement Program to date (including any fees paid under the 2003 Funding Agreement which have not yet been repaid), and the best available estimates for remaining Phase 2 Work, Phase 3 Work, and potential Phase 4 Work, and shall evaluate what costs remain to complete the Levee Improvement Program. In addition, the study will evaluate what properties (not owned by the Landowners) that benefit from the Levee Improvement Program are legally available to contribute towards the funding of the Levee Improvement Program. The study will consider the amounts necessary to provide for the reimbursement of Landowners that paid the Advanced Funding Amount as provided for herein. The study shall be conducted as soon as reliable data exists as to the likely cost of the Levee Improvement Program, but in no event shall be completed later than June 30, 2006.

b. **Par Amount and Loaded Par Amount.**

(1) Based upon the Fair Share Funding Study, TRLIA shall determine the Par Amount. The Par Amount shall be calculated as the equitable fair share allocated to each Gross Developable Acre of land within the Affected Area for the Levee Improvement Program.

(2) TRLIA shall also determine the Loaded Par Amount which shall include the Par Amount and also an additional amount to cover the financing load imposed by the District associated with the administration and financing (including the payment of interest under Section 10(b) or the sale of bonds) of the Levee Improvement Program.

c. **Application of Funds Paid by Landowners.** Funds paid by Landowners pursuant to Sections 5(a), 5(b), 5(c), and 5(d) (collectively "Total Funds") shall be credited as follows and in the following order:

(1) Total Funds shall first be credited such that if a Landowner previously recorded a final map within the Affected Area for property which the Landowner owned or held an option, and previously paid the Cash Discount Payment of \$14,000 for each acre within that

final map, but has not yet been issued building permits for all acres within that final map, the funds paid by the Landowner will first be credited so as to ensure the Landowner pays the Par Amount for all acres for which building permits had not yet been issued; provided, that the Landowner shall have no obligation to pay more than the Cash Discount Payment of \$14,000 for any acres for which building permits were issued prior to February 21, 2005.

(2) Total Funds shall next be credited so that the Landowner prepays the Par Amount for all acres owned by the Landowner that are included within approved tentative maps within the Affected Area that, as of February 21, 2005, had not been recorded as final maps. To the extent that the Landowner holds an option to purchase land with an approved tentative map within the Affected Area, the Landowner may elect to credit funds to the pre-payment of the Par Amount for those acres.

(3) If, after the crediting of Total Funds pursuant to Sections 8(c)(1) and 8(c)(2) some funds paid by the Landowner remain, those funds shall be returned to the Landowner consistent with Section 9(a) or reimbursed to the Landowner consistent with Section 10.

d. **Election of Landowner to Elect to Pre-pay Par Amount on Future Acres.** As to any acres within approved tentative maps owned or optioned by the Landowner and for which the Landowner does not pre-pay the Par Amount pursuant to Section 8(c)(2), Landowner shall have the right, in the Landowner's sole discretion, to elect to pre-pay the Par Amount for any such acres. At the earlier of setting the Par Amount or calling for accelerated payment of the Advance Funding Amount for all remaining allocated building permits, TRLIA shall notify all Landowners of the opportunity to make such election, and each Landowner shall have 30 days to make such election and to notify TRLIA. Following such notice, each Landowner shall have 30 additional days to make such pre-payment.

e. **Satisfaction of Obligations for Levee Improvement Program**

(1) **Once Building Permit Issued.** By making the Cash Discount Payment at recordation of final map or pursuant to Section 5(b)(1) of this Agreement for an acre within the Affected Area for which Building Permits were issued prior to February 21, 2005, the Landowner has satisfied all obligations under this Agreement and under the Special Tax Formula in regard to that acre. The crediting of funds pursuant to Section 8(c)(1), 8(c)(2), and 8(d) (which results in the payment of the Par Amount for an acre) shall satisfy all obligations of the Landowner for the Levee Improvement Program as to such acre for which such funds were credited if building permits have been issued for such acre.

(2) **Prior to Issuance of Building Permit.** To the extent that prepayment has been made under Section 8(c)(1), 8(c)(2), or 8(d) for an acre owned or optioned by a Landowner, but a building permit is not yet issued for a residential unit on such acre, TRLIA may revise the Par Amount for such acre so as to increase the obligation of the Landowner for that acre if required in furtherance of the Levee Improvement Program; provided, that to the extent that such prepayment has been made under Section 8(c)(1), 8(c)(2), or 8(d) for an acre owned or optioned

by a Landowner, the Landowner shall have no obligation to pay the load associated with such Par Amount or revised Par Amount even as a result of such revision.

9. **Timing of Reimbursement.** THE TIMING OF THE REIMBURSEMENT IS HIGHLY SPECULATIVE BASED ON THE KNOWN POTENTIAL DELAYS, INCLUDING BUT NOT LIMITED TO INCREASED COSTS OR DELAYS OF THE LEVEE IMPROVEMENT PROGRAM, DESIGNATION OF ALL OR SOME OF THE AFFECTED AREA INTO A SPECIAL FLOOD HAZARD AREA, ATTEMPTED LIMITATIONS ON THE ISSUANCE OF BUILDING PERMITS BY THE STATE RECLAMATION BOARD, AND THE POTENTIAL OF IMPLEMENTATION OF THE COUNTY'S FLOODPLAIN MANAGEMENT ORDINANCE.

a. **Timing of Return of Unspent Funds.** Any funds collected from the Advanced Funding Amounts and not spent by TRLIA shall promptly be returned by TRLIA to the Levee Improvement Fund, and then distributed by the Escrow Holder to the Landowners that paid into the Levee Improvement Fund on an Equal Acreage Basis, upon either of the two following conditions:

(1) A determination by TRLIA, in consultation with the Landowners, that the funds will not be needed for completion of the Levee Improvement Program; or

(2) A determination by TRLIA, in consultation with the Landowners, that the Levee Improvement Program should be terminated because of an unforeseen circumstance that makes the continuance of the Levee Improvement Program unreasonable, impracticable, or cost prohibitive.

b. **Timing of Events to trigger Reimbursement.** Reimbursement of funds pursuant to Section 10 shall occur when any funds identified in Section 10(c) of this Agreement are available to TRLIA and where such funds are not needed to complete the Levee Improvement Program;

10. **Reimbursement by TRLIA to Landowners.** TRLIA shall provide reimbursement to the Landowners of any funds not otherwise obligated as follows:

a. **Amount of Reimbursement.** TRLIA shall calculate the Reimbursement Amount by subtracting from any funds remaining pursuant to Section 8(c)(3) any funds returned to the Landowner pursuant to Section 9(a) and then adding interest accrued pursuant to Section 10(b). The Reimbursement Amount may be reflected in a mathematical formula as follows:

$$\text{Reimbursement Amount} = (a + b + c) - (d + e) - f * 7.5\% \text{ per annum}$$

where a = any payments made consistent with the 2003 Funding Agreement (see Section 5(a))

where b = any Cash Discount Payments made or to be made under Section 5(b)

where c = any Advanced Funding Amount payments made under Sections 5(c) and 5(d)

where d = crediting of funds under Section 8(c)(1) toward Cash Discount Payment on acres for which building permits already issued

where e = crediting of funds under Section 8(c)(2) to pay or pre-pay Par Amount as to remaining acres owned or optioned by Landowner
where f = any funds returned to the Landowner pursuant to Section 9(a)

b. **Interest Component.** In calculating the Reimbursement Amount TRLIA shall use an interest rate equal to 7.5% (compounded annually) until such time as the District's issuance of public or private bonds, and thereafter shall use the same rate as established in the public or private bond sale. Interest shall accrue for the balance determined under Section 10(a) from the first day of the month following the deposit of the Advance Funding Amount. If a Landowner to be repaid had deposited a Letter of Credit, then interest shall only accrue from the first day of the month following (i) the actual disbursement of Letter of Credit funds to the Levee Improvement Fund, or (ii) the delivery by such Landowner of funds pursuant to Section 7(b) of this Agreement.

c. **Source of Funds for Reimbursement.** The following funds, if available and not otherwise committed under this Agreement, shall be used by TRLIA to provide reimbursement to the Landowners: (1) proceeds from a public or private bond sale; (2) fees and special taxes paid at recordation of final maps; (3) fees and special taxes paid upon issuance of additional building permits after the Completion of Phase 3 Work; and (4) any additional outside sources of funds obtained under Section 7(d), if permitted by those funding sources; provided that Proposition 13 funds shall not be used for the payment of interest under Section 10(b) of this Agreement if prohibited by law.

d. **Priority of Reimbursement.** The year of payment of the Advanced Funding Amount (e.g., 2005 or 2006) shall not affect the priority of reimbursement. As funds for reimbursement become available, TRLIA shall pay the Reimbursement Amount on an Equal Acreage Basis based on the acres for which Advanced Funding Amounts were paid.

11. **Modification of District or Creation of New District**

a. **TRLIA Obligations Concerning District.** Based on the results of the Fair Share Funding Study, TRLIA shall promptly use its best efforts to modify the District or create an additional community facilities district, or other funding mechanism, in order to provide for the collection by TRLIA of the Par Amount or Loaded Par Amount from all benefited owners of land as required to complete the Levee Improvement Program and provide for the reimbursement of advanced funds by Landowners.

b. **Landowner Obligations Concerning District.** Landowners shall consent to the modified or additional community facilities district or other mechanism to the extent it is consistent with the terms of this Agreement, including the payments to be made under this Agreement. Where this Agreement provides obligations of the Landowner beyond those of the existing District, this Agreement shall control.

c. **County Obligation Concerning District and Issuance of Building Permits: Obligation to Condition New Tentative Maps and Requirement to Join District.**

(1) The County currently includes as a condition of approval for tentative subdivision maps within RD 784 that prior to the recordation of the final subdivision map the owner/applicant enters into the "Funding Agreement for Plumas Lake Specific Plan Area Flood Control Levee Improvements" (Resolution 03-514) and execute an agreement committing to waive the right to protest against formation of a community facilities district and agreeing, in the event a community facilities district is formed, to pay the owner/applicant's pro rata share of costs associated with the study, design, construction and related implementation and administration of levee improvements and other solutions relating to deficiencies in the levee system providing flood protection within the area being subdivided (the "District Costs").

(2) Based on the need to have additional property in the District to provide sufficient acreage to meet underwriting criteria to issue a bond, or secure such other financing, in order to spread the costs of the Levee Improvement Program, and to comply with the requirements of this Agreement for reimbursement of Landowners, the County shall consider an ordinance which requires that within 120 days of approval of a tentative subdivision map, such owners/applicant's will join the District. No payment shall be required by owner/applicant to join the District. Payment of District special tax amounts shall continue to be a requirement of recordation of the final subdivision map; provided however, an owner/applicant that does not join the District within 120 days after the approval of the tentative subdivision map shall be required to pay 200% of the then-required District amount to pay the District Costs prior to recordation of the final subdivision map.

(3) The County agrees to use its best efforts to issue all building permits allocated under the Implementation Agreement consistent with that Implementation Agreement once the Landowner complies with all relevant County requirements and makes all payments required by this Agreement.

12. **Obligation in Regard to Bond Sale.** In evaluating the relevant information in determining whether or not to initiate a bond sale, TRLIA shall use its best efforts to effectuate the earliest repayment to Landowners of any amounts to be reimbursed under Section 10.

13. **Assignment of Rights Under this Agreement.**

a. **Assignment of Rights Generally.** Except as provided in Sections 13(b) and 13(c) below, the Landowner's rights and burdens under this Agreement shall run with the land, such that the rights and burdens shall be transferred to any purchaser of the acres for which Landowner has made payments under this Agreement.

b. **Assignment of Right to Reimbursement.**

(1) **Assignment of Right.** Landowner's rights to receive the Reimbursement Amount under this Agreement are personal, and thus Landowner may assign such rights under this Agreement to an assignee, subject to and in accordance with the terms of this Section 13(b). All assignments of the right to reimbursement pursuant to this Section shall be subject to TRLIA's prior written consent, which consent shall not be unreasonably withheld or delayed; provided, that TRLIA shall consent to any assignment which (i) represents the entire

Reimbursement Amount owed to the Landowner, or (ii) is for an amount equal to or greater than \$100,000.

(2) **Acknowledgement of Agreement; Assumption and Release.** In addition to the approval of TRLIA, any such assignment shall be subject to an express written acknowledgement by the assignee, whereby said assignee agrees to be subject to all the provisions of this Agreement. Any assignment by Landowner shall release Landowner of all obligations associated with the acres for which the assignment is made.

(3) **Disputes Between Landowner and Assignee.** Landowner and any assignee thereof acknowledge and agree that in the event of any dispute between Landowner and/or any assignee regarding the legal ownership of the rights to reimbursements hereunder, TRLIA may withhold any cash reimbursement unless and until either (i) all parties to the dispute have executed an agreement in a form acceptable to the Yuba County County Counsel specifying the legal ownership of such rights and the manner in which such rights will be exercised, which agreement shall contain acceptable indemnification and defense provisions, or (ii) one of the parties has obtained a court order determining as against the disputing parties the legal ownership of such rights and the manner in which such rights will be exercised.

c. **Transfer of obligations with transfer of building permit allocation.** To the extent that a Landowner elects to transfer a building permit allocation pursuant to the Implementation Agreement, the obligation to pay the Advanced Funding Amount for such building permit allocation, and the application of such payment toward the transferee Landowner's financial obligations (including crediting toward payment of Par Amount for future acres), shall transfer as well.

14. **Failure to Pay Advanced Funding Amounts.** Recognizing the need to provide for the funding of the Levee Improvement Program as provided in this Agreement, Landowners agree that if any amounts required under Section 5 above is not paid within 30 days after notice has been provided, any building permits allocated to such Landowner pursuant to the Implementation Agreement not yet issued shall be reallocated to other Landowners as provided for in the Implementation Agreement. Such Landowner who did not meet its obligation to pay the Advance Funding Amount pursuant to this Agreement shall only be relieved of this obligation if the Landowner to whom the building permit allocation is reallocated makes the required payment and accepts the reallocated building permits.

15. **Meet and Confer.** The Parties desire to work together in an efficient manner to assure that the Levee Improvement Program progresses in a timely fashion. Toward that end, representatives and consultants of County, TRLIA and RD 784, shall meet and confer regularly with all interested Landowner representatives to discuss the various components of the Levee Improvement Program, including but not limited to the following: (1) right-of-way and land acquisition; (2) fish and wildlife mitigation and permitting; (3) planning, engineering and design; (4) construction; (5) construction management; (6) projected timing; (7) projected costs; (8) additional studies; and (9) matters related to state and federal regulation of the Affected Area, such as State Reclamation Board, Department of Water Resources, and Federal Emergency Management Agency ("FEMA").

16. **Landowner Escrow Committee.**

a. **Composition of Committee.** There is hereby constituted a Landowner Escrow Committee which shall have as its members one representative each from Beazer Homes Holding Corp., Cassano-Kamilos Homes, Cresliegh Homes, Forecast Homes, Homes by Towne, KB Home North Bay Inc., Matthews Land (California Homes), Meritage Homes, Western Pacific Housing, and Wheeler Ranch II. The Landowner Escrow Committee shall be chaired by the representative from KB Homes North Bay Inc., or by that representative's designee.

b. **Procedure for Operation of Committee.** All actions under this Agreement required to be taken, or allowed to be taken, by the Landowner Escrow Committee shall be taken only where at least six members of the committee are participating in a meeting of the committee and then only upon a unanimous vote of those participating members. The meetings of the Landowner Committee shall be open to all Landowners. Notice of all meetings of the Landowner Escrow Committee shall be provided by the chair via e-mail to a representative of each Landowner and, where practicable, the notice shall be sent at least 5 business days prior to the meeting.

c. **Release and Waiver of Claim Against Landowner Escrow Committee.** Landowners hereby release, waive, and abandon any and all claims, demands, rights, causes of action, and proceedings, they may now or hereafter have against the Landowner Escrow Committee arising out of this Agreement, except where such claims, demands, rights, causes of action, and proceedings arise out of the intentional, willful, fraudulent, or reckless misconduct of the committee or its members. Each of the Landowners has been advised by counsel regarding, and hereby expressly waives, any protection or benefit provided by California Civil Code section 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

17. **Additional Provisions.**

a. **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of California, without regard to conflicts of laws principles. Any action to compel arbitration or to enforce an arbitrator's decision pursuant to Section 17(n) shall be venued in Sacramento Superior Court.

b. **Time is of the Essence.** For purposes of this Agreement, time is of the essence.

c. **Effective Date.** This agreement shall become effective upon execution by all Parties.

d. **Term of this Agreement.** This Agreement shall be in effect until such time as all Reimbursement Amounts are forgiven by or repaid to the Landowners.

e. **Entire Agreement; Amendment.** This Agreement, and Exhibit A, Exhibit B, Exhibit C and Exhibit D attached hereto, constitute the entire Agreement among the Parties with respect to its subject matter and supersedes all prior and contemporaneous agreements and understandings of the Parties regarding the subject matter hereof; provided, that this shall not affect the validity of the Implementation Agreement. This Agreement may not be amended except by the mutual written consent of all of the Parties.

f. **Waiver.** Any provision of this Agreement may be waived at any time by the Party entitled to the benefit thereof, but only by a writing signed by such Party stating that it waives such provision. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision nor shall any waiver constitute a continuing waiver.

g. **Severability.** If any provision of this Agreement is held invalid or unenforceable, the other provisions of this Agreement shall remain in full force and effect provided that the severance of the invalid or unenforceable provisions does not result in a material failure of consideration under this Agreement to any party hereto.

h. **Headings.** The headings of this Agreement are included for convenience only and shall not affect the construction or interpretation of the Agreement.

i. **Counterparts.** This Agreement may be executed in one or more counterparts, including facsimile, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to constitute one and the same instrument.

j. **Authority.** The undersigned certify that they are fully authorized by the Party or Parties whom they represent to enter into the terms and conditions of this Agreement and able to legally bind such Party or Parties hereto.

k. **Interpretation.** This Agreement shall be deemed to have been prepared equally by all of the Parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for any one Party on the basis that another Party prepared it.

l. **Notices.** All notices and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (1) on the date delivered by hand; (2) the next business day following the date sent by overnight delivery service or sent by facsimile; or (3) on the third day after mailing if deposited in the U.S. mail to the following addresses:

(1) Any notice to be given to the County or TRLIA should be addressed as follows (or to such other address as County or TRLIA may specify from time to time):

County Administrator
County of Yuba
915 Eighth Street, Suite 115
Marysville, California 95901-5273

(2) Any notice to be given to RD 784 should be addressed as follows (or to such other address as RD 784 may specify from time to time):

Board of Directors
Reclamation District 784
1594 Broadway Ave
Marysville, CA 95901

(3) Any notice to be given to the Landowners should be addressed to each Landowner at such address as set forth on Exhibit B to this Agreement, or to such other addresses as the Landowner may specify from time to time.

m. **Successors.** This Agreement shall bind the successors and permitted assigns of the County, TRLIA, RD 784, and Landowners in the same manner as if they were expressly named.

n. **Arbitration.** All disputes arising out of this Agreement shall be submitted to final and binding arbitration. A Party seeking to arbitrate a dispute arising out of this Agreement must notify the other Parties to the dispute in writing of its intent to arbitrate any claim for breach or enforcement of any provision of this Agreement within 1 year of discovery of the last event giving rise to the claim for breach or enforcement. Any such timely and properly noticed claim for breach or enforcement of any provision of this Agreement shall be submitted to binding arbitration through the American Arbitration Association in accordance with the National Rules for Commercial Disputes. Before arbitration commences, if the dispute is between one or more Landowners (on the one hand) and the County, RD 784, and TRLIA (on the other hand) the Landowners involved or named in the dispute shall jointly pay the American Arbitration Association half of the expected cost of the arbitration and the County, RD 784, and TRLIA shall jointly pay the other half of the expected cost of the arbitration. If the dispute is between Landowners, then the Landowners that are party to the dispute shall, before arbitration commences, pay equal shares of the entire expected cost of the arbitration. At the conclusion of the arbitration, the arbitrator may award the prevailing Party some or all of the arbitration costs, but no attorneys' fees incurred in connection with the arbitration, shall be awarded. The decision of the arbitrator shall be final and conclusive, and the Parties waive the right to a trial de novo or appeal excepting only for the purpose of enforcing the arbitrator's decision

IN WITNESS WHEREOF, the Parties agree to the provisions set forth herein as evidenced by the signature of their authorized representatives below:

Date: _____

COUNTY OF YUBA

Attest and witness:

by: _____

by: Charles K. McClain, County Administrator