

BENDER ROSENTHAL, INC.

COMMERCIAL VALUATION AND RIGHT OF WAY SERVICES

FIRST AMENDMENT TO AGREEMENT BETWEEN THREE RIVERS LEVEE IMPROVEMENT AUTHORITY AND BENDER ROSENTHAL, INC.

THIS FIRST AMENDATORY AGREEMENT is made and entered into this 1st day of March 2006, by and between the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY ("TRLIA"), a Joint Powers Authority, TRLIA and BENDER ROSENTHAL, INC. ("SUB CONSULTANT")

RECITALS:

WHEREAS, TRLIA and SUB CONSULTANT entered into a agreement to provide basic services dated March 1, 2005, ("AGREEMENT");

WHEREAS, Attachment B.1 of the AGREEMENT, state that modifications or amendments to the terms of the AGREEMENT shall be in writing and executed by both parties;

WHEREAS, the TRLIA and CONTRACTOR desire to amend the Agreement;

NOW, THEREFORE, the TRLIA and CONTRACTOR agree as follows:

1. Exhibit A of the AGREEMENT shall be amended to perform those additional services described in Exhibit A attached to this FIRST AMENDMENT.
2. Article 4 of the AGREEMENT shall be revised to increase the price ceiling for basic services by ~~\$397,878.00~~ from ~~\$650,000.000~~ to: \$1,247,878.00 ✓ *UMA 4/6/06*

All other terms and conditions contained in the Agreement shall remain in full force and effort.

This Amended agreement is hereby executed on this 1st day of March 2006.

"TRLIA"

"SUB CONSULTANT"

BY: *Charles K. ...*
"THREE RIVERS LEVEE
IMPROVEMENT AUTHORITY"

BY: *[Signature]*
"BENDER ROSENTHAL, INC."

APPROVED AS TO FORM,

[Signature]

BENDER ROSENTHAL, INC.

COMMERCIAL VALUATION AND RIGHT OF WAY SERVICES

January 13, 2006

Mr. Kevin Mallen, P.E.
Three Rivers Levee Improvement Authority
C/O County of Yuba
Department of Public Works
915 8th Street, Suite 125
Marysville, CA 95901

RE: Three Rivers Levee Improvements – Phase 4 Right of Way Acquisition
Yuba River

Dear Mr. Mallen:

Bender Rosenthal, Inc. (BRI) is pleased to submit this revised scope for Right of Way Acquisition for Phase 4 of the TRLIA project. We have focused this scope on the ROW acquisition for the phase 4 work along the Yuba River. We are pleased to include Cooper Thorne & Associates (CTA) on our team for Right of Way Engineering and Plat and Legal services.

The attached proposal is based on our knowledge of the project / real estate market gained as your consultant over the last year and during various team meetings regarding the phase 4 projects. It outlines our understanding of your needs, plus our approach in continuing to meet those needs.

The proposal includes eleven areas of the right of way process that may be required for the project to succeed. They include:

1. Right of Way (ROW) Planning and Management
2. Rights of Entry for Environmental and Geotechnical Work
3. Right of Way Engineering (Land Net)
4. Plats and Legals / ROW Filed Staking
5. Appraisals
6. Appraisal Review
7. Acquisition
8. Relocation Assistance
9. Title and Escrow Support
10. Condemnation Support
11. Construction Support

BRI offers full service multi-dimensional Right of Way / Real Estate services under one roof, with experience second to none. The appraisal staff includes, in addition to the two principals, another MAI-designated appraiser and a six-person research and support staff. An additional ten person staff specialize in right-of-way acquisition and relocation activities. All staff are fully licensed to meet

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federal, state, and local requirements. Experience on prior projects similar to yours provides a full understanding of the project development process. The firm is a woman majority-owned company and the scope of the proposal covers all the major real estate issues facing the project. It includes a schedule of how we propose to proceed and a detailed staffing plan to meet that schedule. Both Bob Morrison and myself are available to discuss the proposal with you. Please let us know what else we can do to provide you assistance.

Sincerely



CYDNEY G. BENDER REENTS, MAI
President

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- A. BUDGET SPREADSHEET**
- B. COOPER THORNE SCOPE**
- C. PARCEL LIST AND SPREADSHEET**

I. PROJECT UNDERSTANDING

The Three Rivers Levee Improvement Authority is responsible for improving the levees along the Feather River, Bear River and Western Pacific Irrigation Canal (WPIC). The levee improvements are being completed in four phases. Phase one included urgent repairs to the levees at specific locations along the three levees and was completed in 2004. Phase two is scheduled for completion in Summer of 2006 and includes improvements to the Bear River, Feather River and the WPIC. Phase three construction should be completed in Fall of 2006 and includes the setback levees along the Bear River.

Based on discussions with the project team, BRI is assuming Phase four includes improvements along a portion of the Yuba and the Feather Rivers. The following is a summary of the construction activities and ROW needs for the Yuba River ONLY:

Yuba River:

- UPRR to Simpson Lane - *Seepage Berm near UPRR & Slurry Wall through Levee. Project Extends 50 feet beyond Simpson Lane to the east.*
 - 63 properties abut the levee and will need to be delineated in the land net
 - The following are BRI's assumptions for real property right acquisition:
 - Temporary 50 - foot easement along toe levee on water side, plus access roads on water side. Affecting 9 parcels.
 - Permanent rights from concrete factory
 - Temp. rights from western aggregates rail road spur.
- Yuba - Simpson to Gold Fields - *Toe ditch filling on the water in various locations. All work with existing levee footprint.*
 - **No Additional ROW assumed at this time.**

BRI understands that the Phase 4 improvements along Section 9 of the Yuba River have the highest priority. The goal is to begin the construction along that section of the levee by May 15, 2006. The remainder of the right of way needs will be identified once the feasibility studies on the Feather River are completed in the summer of 2006.

BRI has reviewed a copy of the assessor parcel maps and a developed a list of all the parcels abutting the Yuba and Feather River levee project. That information was used in developing the scope and estimate for the project, and is available upon request.

II. RIGHT OF WAY SCOPE OF SERVICES

The following scope is for the ROW Planning and Management, Rights of Entry, Appraisal, Appraisal Review, Acquisition, Relocation Assistance, Title/Escrow Support, Condemnation Support, and Construction Services.

Task 1 - ROW Planning and Management

This task includes attendance at weekly project development team meetings, monthly schedule and progress updates, and coordination efforts with the PDT and ROW teams throughout the life of the project. This also includes development of the of a right of way budgets for various alternatives studied.

Deliverables:

- 1.1 Developing a ROW Project Management Plan which includes scope, cost, schedule, risk, quality, and communication plans for the entire project.
- 1.2 Running weekly BRI staff meetings through the appraisal and acquisition phase of the project.
- 1.3 Attending Weekly PDT meetings.
- 1.4 Providing Monthly progress updates to PDT and TRLIA staff.
- 1.5 Coordinating design issues between engineering team and ROW team.
- 1.6 Developing ROW Certification.
- 1.7 ROW budgets for various alternatives.

Task 2 - Rights of Entry for Engineering / Environmental Studies

Bender Rosenthal Inc. proposes to develop all necessary contracts and letters based on TRLIA process for Rights of Entry. We will meet with the owners, and convey documents until the Right of Entry is signed. Three contacts with property owners are included in this scope. If a Right of Entry is not signed by the property owner, BRI will provide all necessary documentation to TRLIA to file a request with the courts for a Right of Entry.

BRI will coordinate with the engineer, in order to expedite the process for gaining the Rights of Entry. Prior to negotiations with the property owners, the engineer will provide the environmental study area delineation on aerials as well as any other graphic representations for the owners. BRI will also require a project description and generic timing information on a fact sheet for distribution to the property owners and others involved in the Rights of Entry process. As part of the negotiations with the property owners, BRI recommends a \$100 administrative fee be paid to the property owners to help facilitate obtaining the right of entry. BRI will let the property owners know that any damage to the property as a result of the technical studies will be replaced / repaired to the owner's satisfaction.

If access is declined, BRI will provide the owner contact log to TRLIA for future court action. Steps within the Right of Entry process are outlined below:

1. Review of the project concept and design with staff and other consultants;
2. Preparation of Right of Entry's and cover letter documents;
3. Phone contact with property owner to set up time to meet and discuss the proposed Right of Entry.
4. Meet with the property owners to discuss the project in general; review of maps and project descriptions with the property owner and obtain signed ROE

5. Right of Entry activities are based on settlement by the third contact. A recommendation to TRLIA will be made after *impasse* has been reached.
6. Deliver signed Right of Entry or deliver a memorandum explaining *impasse* or unclosed (i.e. *impasse*) calls.

Deliverable:

- Signed Rights of Entry, or Memorandum explaining *impasse* with contact log for 15 parcels along Yuba River. This assumes no ROE needed on residential properties abutting Yuba Levee.
- Signed Rights of Entry, or Memorandum explaining *impasse* with contact log for 44 parcels along Feather River

Task 3 – Land Net - 63 Parcels along the Yuba River between UPRR and Simpson Lane.

Please see Cooper Thorne Scope of Work in appendix of this proposal.

Task 4 – Plats and Legals / Right of Way Field Staking (11 -Parcels along the Yuba River between UPRR and Simpson Lane)

Please see Cooper Thorne scope of Work in appendix of this proposal.

Task 5 - Appraisal Services (11 Parcels along the Yuba River)

As the first order of work within this task, BRI will develop an updated right of way estimate based on preliminary design prior to commencement of the appraisals.

BRI will develop complete appraisals for the Project that will state the estimated fair market value of the fee simple interest in each referenced property. The appraisal reports will be summary appraisal reports that will be prepared in conformance with and subject to the requirements of the Code of Professional Ethics and the Standards of Professional Practice of the Appraisal Institute, which fully incorporate the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation. Jurisdictional exceptions may apply in some cases.

Plats and Legals for each of the properties to be appraised will be provided to BRI by the TRLIA. Some of the items that may affect the appraisal process include:

- Complexity of the valuation;
- Impact of the interests to be acquired (e.g. Temporary Construction Easements)
- Damage Analysis (Severance Damage, Cost to Cure, **Crop Damage**, etc.)

The primary steps in completion of fair market value appraisals of the property rights to be acquired include but are not limited to the following:

- 5.1 Onsite physical inspection of the subject property with the owner.
- 5.2 Visual inspection of the comparable market data.

- 5.3 Study of community and neighborhood in which the subject is located.
- 5.4 Collection of data from appropriate governmental agencies.
- 5.5 Market investigation of vacant and improved comparable data.
- 5.6 Verification of market data with sources knowledgeable with the pertinent details of the transaction.
- 5.7 Analysis of all appropriate data in the before and after condition to arrive at an opinion of value.
- 5.8 Preparation of report.

Deliverables:

- Appraisals of 11 parcels along Yuba River in Section 9
- Crop Damage Analysis on up to 4 properties
- Right of Way Estimate

Assumptions:

- Title Reports, Plat Maps, Legal Descriptions, and property surveys will be provide by others.
- **Staking will be provided by Cooper Thorne & Associates**
- TRLIA will be the condemning authority.
- Right of Way Appraisal maps, provided upon receipt of plats/legals.

Task 6 - Independent Appraisal Review (11 Parcels)

Per Federal and State regulations, (Uniform Act) a qualified reviewing appraiser shall examine all appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary correction or revisions. In addition, the review appraiser shall certify that the opinion of fair market value is reasonably supported by an acceptable appraisal. BRI is pleased to include Mr. Mike Lahodny as the independent reviewer for the project. Mr. Lahodny will ensure the appraisals meet all Federal and State regulations.

Deliverables:

- Review certification for each appraisal.

Task 7 - Acquisition Services (11 parcels)

Bender Rosenthal Inc. proposes to develop all necessary contracts, conveyance documents and escrow instructions necessary to make offers based on TRLIA's process. We will meet with the owners, and convey documents until acceptance or impasse is reached. In addition, BRI will work with UPRR and the PDT to determine the specific property rights needed for the project from UPRR, and then acquire any long-term rights necessary.

Steps within the acquisition process are outlined below:

1. Review of the project concept and design with staff and other consultants;
2. Review of appraisals, title reports, maps and descriptions of the required parcels;
3. Field review the project with the Project Manager or other designated person;

4. Preparation of right-of-way contracts and other acquisition documents;
5. Meet with the property owners to discuss the project in general; review of maps and legal descriptions; confirm information about occupants/owners and make the official First Written Offer to owner. Acquire tenant consent to easement.
6. Acquisition activities are based on settlement by the third contact. A recommendation to TRLIA will be made after *impasse* has been reached. To reach *impasse* there are three requirements:
 - A. Go through the *acquisition steps* outlined below; plus
 - B. Make at least three contacts with owner (personal call, letter or phone call) in any combination; plus
 - C. Spend up to eight hours working on the parcel acquisition.

The acquisition steps when offering compensation to the property owner include:

- A. Owner accepts offer. (Close)
- B. Owner rejects offer.
 1. Owner refuses to counter. (Impasse)
 2. Owner makes counter proposal.
 - a. Client accepts counter. (Close)
 - b. Client rejects counter. (Impasse)
 - c. Client makes new offer.
 1. Owner accepts new offer. (Close)
 2. Owner does not accept new offer. (Impasse)
7. Deliver signed right-of-way contract and signed and acknowledged grant deed for closed transaction. Deliver a memorandum explaining impasse or unclosed (i.e. impasse) calls.
8. Final report, including transfer of all pertinent correspondence and files, to TRLIA.

Deliverables:

- Acquisition of 11 parcels along Yuba River, Section 9
- Acquire up to 1 Tenant Consents.
- Final Reports, or
- Memorandums explaining impasse.

Assumptions and Limiting Conditions:

- Escrow payments and escrow fees are by others.
- Utility coordination, permitting and utility relocation by others.
- None of the proposed acquisitions will require TRLIA Board approval (implying that Bender Rosenthal Inc. would not be responsible for attendance at board hearing or meetings).
- Expert witness testimony is not included within the work scope but is available.
- Bilingual translation and communication are not included.
- Cooperative agreements and memorandums of understanding by others.
- Environmental document is complete.
- UPRR Coordination completed by others.
- No permanent rights are required from the railroad.

To commence the assignment, BRI will require the following information:

- Project Engineering, including proposed plans for the proposed project;
- Example Purchase Agreement;
- Deed (with acknowledgement); and
- Escrow Instruction.

Task 8 - Relocation Assistance (RAP) (As needed)

It is anticipated that no parcels will require relocation assistance in Phase 4 of the project, therefore it is not included in this scope of work. If relocation is required, BRI is available to complete that task.

The following is the scope for Relocation Assistance for the three tenants listed above:

1. Conduct personal, on site interviews of prospective displacee's to ascertain relocation housing needs and special requirements including need for handicapped access or bilingual services (please refer to assumptions).
2. Complete a detailed relocation housing study. (relocation impact memorandum)
3. Inform displaced persons of available relocation assistance and explain relocation process.
4. Provide advisory assistance to displacee's including referrals to community service resources.
5. Physically assist displacee's in locating replacement housing including transportation if needed.
6. Provide referrals to replacement housing.
7. Refer displacee's to public housing and other public services as necessary, including but not limited to Section 8 housing.
8. Distribute Relocation Assistance brochures 90 and 30-Day Notices to Vacate, and other notices as required. (*If you do not have one developed, we can certainly help develop the appropriate notices*).
9. Determine eligibility for and proposed amount of relocation benefits, including moving payments, rental/down payments assistance, and replacement housing payments.
10. Inspect replacement dwellings to determine if they meet "decent, safe and sanitary" requirements.
11. Monitor the move to replacement site, as necessary.
12. Prepare necessary payment documentation and deliver benefit checks and other appropriate payments to claimants.
13. Provide displacee's with on going advisory services to minimize tenant hardship.
14. Meet with TRLIA staff and/or consultants to coordinate relocation activities.
15. Maintain current and accurate files and records of all contacts with each displacee and include them in a Final Report.

Deliverable:

- Relocation impact memorandum.
- Relocation assistance

ASSUMPTIONS:

- No second moves or interim relocation.
- No storage cost of business inventory.
- Standard relocation limited to one tenant.

Task 9 - Title / Escrow Support (63 Parcels for Title reports / 11 Escrows)

In order to facilitate the closing of the various right of way transactions, the TRLIA is requesting escrow and title support as part of the scope of work. BRI is very knowledgeable in this area and has the staff necessary to help the TRLIA with their title and escrow needs. This task is very difficult to quantify for a scope. For example, we have been very instrumental in providing lender's additional information as it relates to a proposed acquisition (especially if the acquisition has little or no affect to the real estate). This has eliminated the Bank's desire to charge for an additional appraisal. However, it is very difficult to "mandate" a lender to address a partial reconveyance of a deed of trust. Tasks to be considered include:

1. Order Title Reports from Fidelity Title
2. Upon opening escrow Prepare and fax Request for Invoice and Demand to the Title Company.
3. Copy and forward a copy of escrow, grant deed and purchase agreement to TRLIA for "acceptance" of the agreement. TRLIA to forward to title company
4. Receive executed purchase agreement from TRLIA. Forward an executed copy to property owner
5. Prepare transmittal to forward closed file to TRLIA Project Manager
6. Research and secure reconveyance documents
7. Research and secure Trust Certificates

Deliverable:

- 63 Title Reports
- 11 escrows

Assumptions:

- All Escrow and Title Fees paid by TRLIA or others.
- BRI will contract with escrow company and bill TRLIA

Task 10 - Condemnation Support

BRI will provide skilled acquisition services that should minimize the number of parcels that proceed to condemnation. However, given the number of properties involved, it is likely that some will become subject to the Eminent Domain Process. While many of the owners of parcels subject to legal action typically settle, it has been our experience that inclusion of a condemnation process description and budget is important, since these services may ultimately prove to be necessary. In order to assist the TRLIA in the eminent domain process, BRI will provide the following services:

- 10.1 Prepare letter to property owners emphasizing that their property will be going to a resolution of necessity.
- 10.2 Prepare up to 5 Board Packages for TRLIA staff review. Once approved, TRLIA staff will forward to the Board a Resolution of Necessity (RON). Items included in the package include:
 - Board Letter indicating the parcels involved in the RON
 - Board Resolution for all parcels involved
 - Attachments: maps and legal descriptions for each parcel
 - Notice of Hearing Letter (15 day notice letter) for each parcel
- 10.3 Present issues related to RON at Board Meeting (up to 5 RONs or 2 board meetings)

Deliverables:

- 1 Board Packages and letters as outlined above.
- 1 RON presentations at 1 board meetings.

Assumptions:

- Expert witness testimony will be paid on a case by case basis. Hours and fee will be negotiated based on a scope of work change based on the attached fee schedule.

Task 11 - Construction Support

This task covers the Right of Way needs for the project during the construction phase. The task includes:

1. Work with property owners to resolve construction complaints and issues.
2. Monitor contractor to insure construction stays within ROW limits.
3. Confirm if any property owner's claims are valid.
4. Review owner claims orders for continuity with purchase agreement to avoid double payment.
5. Obtaining release of construction claim forms from each property owners once project construction complete.

Deliverables:

- Up to 6 Claim Reviews.
- 11 Release from Claim forms signed by property owners.

III. PROPOSED SCHEDULE

The estimated timeline for the Right of Way portion of the project is 8 months for BRI to complete the ROW work needed for the Phase 4 portion of the project. We propose this very aggressive schedule in order to meet the TRLIA's need to advertise this project in July 2005.

Item	Yuba River Segment 9
NTP	January 12, 2006
Task 1 – ROW Project Man.	January 12, 2006 – June 30, 2006
Task 2 – ROE for Eng. Studies	January 12, 2006– March 31, 2006
Task 3 - Land Net	January 12 2006 – Feb. 28, 2006
Task 4 – Plat and Legals	Feb. 15, 2006 – March 1, 2006
Task 5 - Appraisals	March 1, 2006 – April 15, 2006
Task 6 – Appraisal Review	April 1, 2006 - April 22, 2006
Task 7 - Acquisition	April 1, 2006 – May 15, 2006
Task 8 – Relocation Assistance.	NA
Task 9 – Title/Escrow Support	January 12, 2006 – June 30, 2006
Task 10– Condemnation Support	May 15, 2006 – November 2006
Task 11 – Construction Support	May 15, 2006 – May 2007

Schedule Assumptions

- Yuba River, Segment 9 right of way needs for will be identified by February 15, 2006.
- Yuba River, Segment 9 no land side parcels will be affected other than western aggregates, and the concrete factory
- Yuba River, Segment 9 property owners will Rights of Entry to construct

IV. PROPOSED BUDGET

The attached detailed budget is for the Tasks 1 thru Task 11. The estimate was based on beginning the project as soon as possible, and staffing up immediately to meet the project schedule outlined above. The total cost for work proposed along the Yuba is:

Title Reports (63 @ \$550 each)	\$37,650
Surveying	\$111,625
ROW Services	\$248,603
Total	\$397,878

The following are the assumptions behind the budget:

1. Full documentation to Federal and State standards for all tasks.
2. No expert witness testimony.
3. The actual costs may differ from task to task, but the overall budget will not exceed the "Total Budget" shown in the above spreadsheet.
4. No Coordination with State or Federal right of way departments, other than listed in scope.
5. No significant severance damage analysis required for the appraisals. This fee also assumes that no significant structures, or improvements will be acquired, other than those listed in the scope.

V. CHANGE OF SCOPE

A change in scope may result in the following instances:

- A change in engineering after property has been inspected by appraiser, requiring a new inspection.
- A change in engineering after completion of the appraisal.
- Addition of a parcel.
- Addition of easements, takes, or other property rights.
- An increase in the number of damage analyses required.
- An appraisal requiring additional expertise, such as an architect/engineer to determine if a building meets the building codes or will be structurally sound in the “after condition”.

VI. CURRENT RATE SCALE

Below are our standard 2006 rates for additional services required. These costs may vary depending on changes in the scope in work:

Stephen A. Rosenthal, MAI	\$165/hr.*
Cydney G. Bender, MAI	\$165/hr.*
David Wraa, MAI	\$165/hr.*
Project Manager	\$150/hr.
Senior Appraiser	\$115/hr.
Senior Acquisition Agent	\$105/hr.
Relocation Specialist	\$105/hr.
Acquisition Agent – Level 2	\$ 90/hr.
Acquisition Agent – Level 1	\$ 75/hr.
Other Associated Professional Staff	\$ 85/hr.
Researchers	\$ 65/hr.
Administrative/Production	\$ 55/hr.

- \$250 per hour for court or briefing preparation, depositions, any pre-trial conferences, court appearances, etc., should these ever become necessary.
- 5% increase in rates every year of contract