

REVISED FINAL EXECUTION DOCUMENT

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

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

This Second Agreement for Advanced Funding and Reimbursement of Costs for Levee Improvements ("Agreement"), dated for convenience this 29th day of August, 2006 (however, this Agreement is not effective until the Effective Date as defined below in Section 20.C.), 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 Participants (as that term is defined below).

RECITALS:

A. Participants 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 on **Exhibit A**, which is attached hereto, and by reference made a part hereof.

B. New construction began in the Affected Area in 2002 based on the Plumas Lake Specific Plan approved in 1991.

C. Various studies conducted since 2003 have identified freeboard and geotechnical deficiencies on the Bear River, Western Pacific Interceptor Canal, Yuba River and Feather River levees.

D. 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 owners of land, which fees were to be used to fund studies on the adequacy of the Bear River and Western Pacific Interceptor Canal Levees.

E. In 2004, TRLIA and certain owners of land established Community Facilities District 2004-1 Three Rivers Levee Improvement Authority (South County Area) (the "CFD 2004-1") to assist in financing the "local share" of funds required for grants administered under Proposition 13 (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")) for reimbursement of costs incurred in connection with Phase 2 Work and Phase 3 Work (as such terms are defined below).

F. The State Reclamation Board has issued Permit No. 17782 authorizing 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 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

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and Feather Rivers), and also has issued Permit No. 17921 authorizing the construction of 2,500 linear feet of seepage berm at two sites along the landside slope of the left (south) bank levee of the Yuba River extending west from the UPRR crossing to a downstream point approximately 150 feet west of Highway 70.

G. 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 satisfy some of the conditions of State Reclamation Board Permit 17782. 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.

H. In April of 2005, Yuba County, TRLIA, RD 784, and a number of other parties including certain owners of land, or interests therein, within the Affected Area, executed the Implementation Agreement in regard to State Reclamation Board Permit No. 17782 and County of Yuba Ordinance Nos. 1340 and 1343 ("Implementation Agreement"). While the State Reclamation Board was not a party to the Implementation Agreement, it was an express third party beneficiary of certain provisions of the Implementation Agreement.

I. By its terms, the Implementation Agreement obligated the County and the landowner parties to limit the issuance of building permits within the Affected Area during 2005 and 2006 until such time as TRLIA completed Phase 2 Work and Phase 3 Work and presented certain information to the State Reclamation Board regarding Phase 4 Work (as such term is defined below).

J. To implement the Implementation Agreement, the County, TRLIA, RD 784 and certain land owner parties entered into the Agreement for Advanced Funding and Reimbursement of Costs for Levee Improvements, dated April 19, 2005 ("2005 Advanced Funding Agreement"), which linked advances of funds for the Levee Improvement Program (as defined in Section 3, below) to an allocation and issuance of a limited number of building permits.

K. The Parties now acknowledge that the funds previously raised under the 2003 Funding Agreement, CFD 2004-1 and the 2005 Advanced Funding Agreement will not be sufficient to fund the required Phase 2 Work, Phase 3 Work, and the Phase 4 Work, along with certain contingency amounts.

L. TRLIA has presented testimony to the State Reclamation Board that the limitation on the ability of the County to issue building permits in 2006 and in future years will preclude the issuance of bonds, thereby severely limiting its ability to implement a financing plan for Phase 4 Work, resulting in a delay of the flood control improvements required to provide 200 year protection to the lands within the Affected Area, including substantial portions of RD 784.

M. At its April 21, 2006 meeting, the State Reclamation Board adopted Resolution No. 2006-14, under which the State Reclamation Board expressed its intent to allow the building permit limitation for 2006 to be lifted upon satisfaction of certain conditions, thus allowing for

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the acceleration of certain Phase 4 Work and the completion of the Levee Improvement Program to achieve 200 year protection for the Affected Area and lands within RD 784 by 2008.

N. At its May 19, 2006 meeting, the State Reclamation Board approved the Second Implementation Agreement In Regard to State Reclamation Board Permit No. 17782, by and between County, TRLIA and RD 784, dated May 23, 2006 ("Second Implementation Agreement"). While the State Reclamation Board is not a party to the Second Implementation Agreement, it is an express third party beneficiary to the provisions of the Second Implementation Agreement. The Second Implementation Agreement was approved by County on May 23, 2006, by TRLIA on May 16, 2006 and by RD 784 on May 16, 2006.

O. TRLIA and Participants intend to establish Community Facilities District 2006-1 Three Rivers Levee Improvement Authority (South County Area) (the "CFD 2006-1") to issue bonds to finance the required Phase 2 Work, Phase 3 Work, and Phase 4 Work.

P. In order to assure the necessary and timely funding by the Participants of up to a maximum of \$135 million for all remaining construction required for Phase 2 Work, Phase 3 Work, and Phase 4 Work, the Participants agree that as a condition of lifting the building permit restriction as set forth in the Second Implementation Agreement, there is a need to develop a financing program to complete the Levee Improvement Program, establish a community facilities district, commit to providing, at no cost to all new residents in the Affected Area, flood insurance, as outlined below, and other obligations.

Q. On August 1, 2006, the County adopted Ordinance No. 06-439 (entitled "An Ordinance of the Board of Supervisors of the County of Yuba Implementing State Reclamation Board Resolution No. 06-14 and Establishing a Funding Mechanism for Flood Protection Improvements") (the "Implementing Ordinance") to satisfy the requirements of the Second Implementation Agreement.

R. On August 15, 2006, the County, TRLIA, and RD 784 agreed to proposed changes to this Agreement in light of new cost estimates and a softening real estate market.

S. On August 29, 2006, the County agreed to provide certain funding to TRLIA to facilitate the cash flow of the Levee Improvement Project. On the same day YCWA agreed to provide a loan of \$2,000,000 to the Levee Improvement Program for purposes of satisfying the first Capital Call in compliance with the Second Implementation Agreement.

T. The Parties now desire to formalize in this Agreement certain conditions proposed to and accepted by the State Reclamation Board allowing for the lifting of the building permit limitation for 2006 as set forth in the Second Implementation Agreement and to implement the funding program for the Levee Improvement Program.

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

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AGREEMENT

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. "**Bond**" shall mean a debt instrument issued by TRLIA to support the Levee Improvement Program.
 - B. "**Builder Bonds**" shall mean Capital Appreciation Bonds to be repaid by CFD special taxes, once building permits are issued, that may be purchased by Participants within each Tax Zone as a means of paying their Levee Obligations, or issued by the overlay CFD discussed in Section 7.A.(1)c., below to the extent such funds are available.
 - C. "**Capital Appreciation Bonds**" shall be bonds that accrue interest and under which all interest and principal is scheduled to be paid in one payment at maturity, and for which no reserve fund or capitalized interest shall be required.
 - D. "**Capital Call(s)**" shall mean the five scheduled requests for funding required to be satisfied by each Participant or other outside funding and any additional requests approved in accordance with the provisions of this Agreement.
 - E. "**Capital Call Amount(s)**" shall mean the periodic amounts to be paid by Participants or outside funding pursuant to this Agreement as approved by the Participant Escrow Committee.
 - F. "**Catch-up Capital Call**" shall mean the portion of the Levee Obligation and the portion of the Pro-Rata Deferred Participant Obligation immediately payable by a Deferred Participant or Future Participant upon joining (or rejoining in the case of a Participant that has defaulted on a prior Capital Call) as a Participant. The Levee Obligation component of the Catch-up Capital Call payment shall be equal to the total acreage included within the boundaries of an approved tentative map for land within the Affected Area which is owned or controlled by the person or entity making the payment, multiplied by the then current amount of the TRLIA Levee Impact Fee multiplied by the percentage of the TRLIA Levee Impact Fee included in Capital Calls made prior to the date of computation. See Exhibit H, attached hereto and incorporated herein by reference, for an example of how the Catch-Up Capital Call amount will be determined. If a new Participant enters the Financing Program after the Capital Call Period, the Catch-up Capital Call for that Participant shall equal its entire Levee Obligation and Pro-Rata Deferred Participant Obligation.
 - G. "**Capital Call Period**" shall mean the period of time during which all scheduled Capital Calls are to be paid by Participants, not to exceed a total of \$135 million in Capital Call Amounts.
 - H. "**Completion**" shall mean the earlier of: (i) the date on which a notice of completion is recorded by the general contractors performing the Phase 4 Work, or (ii) the date on which a determination of substantial completion is made by the Reclamation Board General

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Manager that the Phase 4 Work provides the intended flood protection, even if non-flood protection aspects of Phase 4 Work remain to be completed later.

I. **"Curative Action"** shall mean the actions that the County is authorized to implement in the Affected Area, including ability to stop the recordation of final subdivision maps and the issuance of building permits in the event of a Potential Default, as provided in Section 19 of this Agreement.

J. **"Deferred Participant"** shall mean those persons or entities who own real property within the Affected Area and who have an approved parcel, final or tentative subdivision map covering such real property as of the Effective Date (as defined in Section 20.C., below) of this Agreement and who voluntarily choose not to be a Participant.

K. **"Deferred Participant Obligation"** shall mean the Levee Obligation required of a specific Deferred Participant.

L. **"Escrow Holder"** shall mean the entity selected by the Participant Escrow Committee to hold the Levee Improvement Fund created pursuant to Section 13.A. of this Agreement.

M. **"Feather River Setback Levee"** shall mean the optional setback levee that might be constructed by TRLIA as part of the Phase 4 Work, if non-Participant funding is secured, and which would be a newly constructed levee on the left (east) bank of the Feather River approximately 5.7 miles long between Star Bend and Shanghai Bend designed to replace approximately 6.1 miles of the existing Feather River levee.

N. **"Final Fair Share Funding Study"** shall be a study conducted by TRLIA as provided in Section 16.A. to determine the cost of the Levee Improvement Program attributable to the beneficiaries of flood control.

O. **"Final Par Amount"** shall mean an amount determined pursuant to Section 16.B. of this Agreement, upon completion of the Final Fair Share Funding Study, which represents the fees to be imposed upon certain land to pay for the Levee Improvement Program.

P. **"Financing Program"** means the program by which property owners or holders of an equity interest in property in the Affected Area shall become parties, to advance the funds necessary for the Levee Improvement Program, as memorialized in this Agreement.

Q. **"Future Participant"** shall mean those persons or entities who own real property within the Affected Area and which real property is not included within the boundaries of an approved final, parcel or tentative subdivision map as of the end of the Open Enrollment Period, as defined in Section 20.Q.

R. **"Impact Fee Bonds"** are bonds that can be purchased by Participants to cover their Pro-Rata Deferred Participant Obligation, secured by the revenue from the TRLIA Levee Impact Fee.

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S. **"Interim Levee O&M Support"** shall mean financial and consulting support provided by TRLIA to RD 784 to assist with the operation and maintenance of the RD 784 levees and to comply with other restrictions associated with the Levee Improvement Program, not to exceed \$750,000 for the period from the Effective Date of this Agreement until January 30, 2008, unless and until a greater amount is approved by the Participant Escrow Committee in consultation with TRLIA.

T. **"Levee Improvement Fund"** shall have the meaning set forth in Section 13 of this Agreement.

U. **"Levee Improvement Program"** shall have the meaning set forth in Section 3.A. of this Agreement.

V. **"Levee Obligation"** shall mean the following:

(1) **For an Original Participant:** The remaining fair share cost of the Levee Improvement Program as identified in column 4 of Exhibit E, the TRLIA Financing Proforma. The Levee Obligation for each Participant was calculated by first dividing the total Levee financial obligation of \$181,454,548 by the 2482 project acres available for Levee funding, and then multiplying that amount by the number of available project acres for each Participant (column 1). The results of this calculation are listed in column 3 of Exhibit E. Subtracting the Advance Funding paid by each Participant (column 9) from the calculations listed in column 3 generates the remaining Levee Obligation, as listed in column 4. Once a tentative map is included as a Participant in the Financing Program, the parcels included are no longer subject to the standard terms of the TRLIA Levee Impact Fee.

(2) **For a Deferred or Future Participant:** The amount of the then current TRLIA Levee Impact Fee in effect when the Deferred Participant or Future Participant becomes a Participant, or that portion due within a Catch-up Capital Call and subsequent Capital Calls. The remaining Levee Obligations listed in column 4 of Exhibit E for Deferred Participants only apply during the Open Enrollment Period discussed in Section 20.Q.2, after which the Levee Obligations will be subject to any increased costs for the Levees and changes to the TRLIA Levee Impact Fee. As is the case for the Original Participants, once all or a portion of a tentative map owned by a Deferred or Future Participant is included as a Participant in the Financing Program, the parcels included are no longer subject to the standard terms of the TRLIA Levee Impact Fee.

W. **"Non-Participant"** shall mean either a Deferred Participant or a Future Participant.

X. **"Original Participant"** shall mean those persons or entities who own real property within the Affected Area, and whose names and real properties within the Affected Area are set forth on **Exhibit B**, attached hereto and made a part hereof, who have executed this Agreement on or before the Effective Date of this Agreement and who timely deposit the Capital Call Amounts as required by this Agreement or who are not required to make any further Capital Call payments because the required Capital Call Amounts have been prepaid, as shown on **Exhibit E**. In addition, an Original Participant may also be a holder of a non-fee title interest in

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property as of the Effective Date of this Agreement who voluntarily agrees to take on the obligations of a Participant during the Open Enrollment Period identified in Section 13 below. Any such Original Participant shall have any Capital Call Amounts paid credited towards the obligation of an Original Participant, or an affiliate, in the event that they do not become holders of a fee title interest; for example, the KB first take-down as identified in Exhibit E.

Y. **"Participant"** (and collectively, **"Participants"**) shall mean (i) each Original Participant; and (ii) each subsequent purchaser of all or a portion of a Participant's property, who shall then become a Participant hereunder by execution of an assignment and assumption agreement, in form and content acceptable to TRLIA and the Participant Escrow Committee; and (iii) each other party (or successor) that owns real property within the Affected Area and who was either a Deferred Participant or a Future Participant as of the Effective Date of this Agreement, and who subsequently elects to execute this Agreement and to assume the obligations of a Participant and remains current on those obligations. Each owner of real property which is included within the boundaries of an approved parcel, final or tentative subdivision map shall constitute a separate Participant for the purpose of participation in this Agreement. Accordingly, if a Participant owns multiple properties subject to different maps, such Participant shall be treated separately with respect to each of its mapped properties and such Participant may make separate elections with respect to the participation of such properties under this Agreement.

Z. **"Participant Escrow Committee"** shall be a committee of Participant representatives constituted pursuant to Section 14 of this Agreement.

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

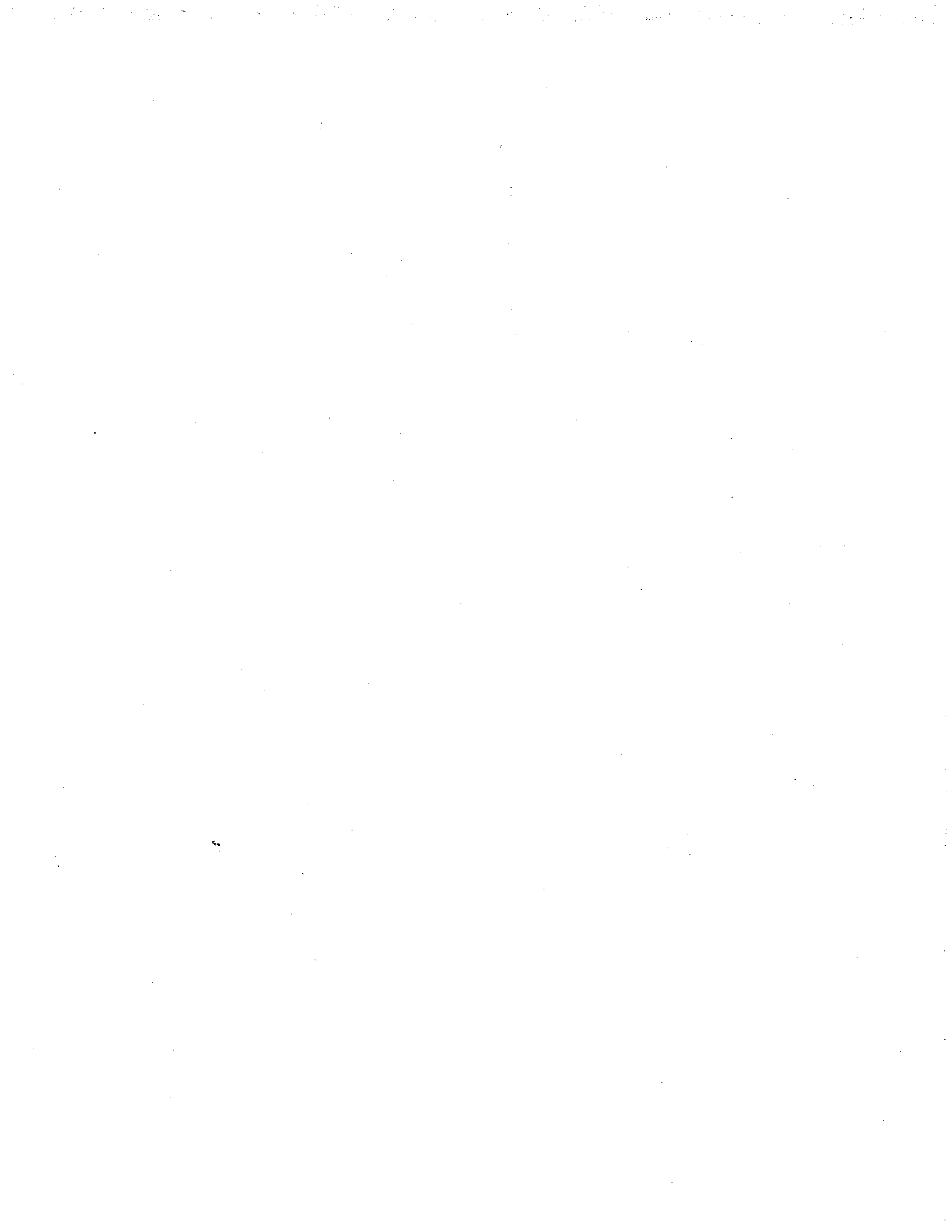
BB. **"Party"** shall refer to any one signatory to this Agreement.

CC. **"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 and previously funded;

DD. **"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 landside seepage berm along the left (south) levee of the Yuba River from Highway 70 to the UPRR and previously funded.

EE. **"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.

FF. **"Phase 4 Work"** shall mean work on the Feather and Yuba River Levees including Phase 4 Yuba Work and Phase 4 Feather Work for which \$20,000,000 was identified and provided to TRLIA through the 2005 Advanced Funding Agreement.



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GG. "**Phase 4 Yuba Acceleration Work**" shall mean improvements to the existing left (south) Yuba River levee from the UPRR to Simpson Lane.

HH. "**Phase 4 Yuba Work**" shall mean improvements to the existing left (south) Yuba River levee upstream of the UPRR, including without limitation the Phase 4 Yuba Acceleration Work.

II. "**Phase 4 Feather Work**" shall mean strengthening in place improvements to the existing left (east) Feather River levee from the Bear River Setback levee to the Yuba River and may include a possible Feather River Setback Levee from Star Bend to Shanghai Bend, only if the cost difference between the Feather River strengthening in place work described above and the Feather River Setback Levee is funded with non-Participant resources, in accordance with Section 12, below. Participant funding provided pursuant to this Agreement may not be utilized for design, engineering, construction or any other costs of the Feather River Levee Setback pending future agreement of the Parties, except that costs for environmental review that considers the Feather River Levee Setback as an alternative may be utilized.

JJ. "**Potential Default**" shall mean either a failure to implement the financing program identified in this Agreement, or an inability by TRLIA, the County, and the Participants to provide funding for the Levee Improvement Program consistent with the Initial Capital Call Schedule contained in **Exhibit D**, attached hereto and made a part hereof, or a cost increase to the Levee Improvement Program beyond the means of TRLIA and the Participants to fund, any of which may result in an inability to timely complete the Levee Improvement Program within the time schedule outlined in **Exhibit C-1**, attached hereto and made a part hereof.

KK. "**Pro-Rata Deferred Participant Obligation**" shall mean the pro-rata share (of Remaining Project Acres, as displayed in Column 2 of **Exhibit E** for all Participants, including Deferred Participants that become Participants) of the total Levee Obligations of all remaining Deferred Participants that must be covered by each Participant, multiplied by the then current total Deferred Participation Obligation, multiplied by the portion of funded Capital Calls made to date. (If any Original Participant does not make required Capital Calls then this pro-rata share may increase. Likewise, as Deferred Participants or Future Participants become Participants this amount may decrease.) When paid as part of a Catch-up Capital Call by a Deferred Participant or Future Participant, the Pro-Rata Deferred Participant Obligation shall be paid through the purchase of Impact Fee Bonds from the then current Participants on a pro-rata basis. See **Exhibit H**, attached hereto and incorporated herein by reference, for an example of how the Pro-Rata Deferred Participant Obligation will be determined.

LL. "**TRLIA Levee Impact Fee**" or "**Levee Impact Fee**" shall mean the impact fee for funding of the Levee Improvement Program adopted by the County on May 16, 2006, including any and all applicable compounded interest and premiums outlined therein, as the same may be amended consistent with Section 9.F., below. The requirement to pay the TRLIA Levee Impact Fee is satisfied through execution of and compliance with this Agreement.

MM. "**UPRR**" shall mean the Union Pacific Railroad property at the point located on Yuba River Project Levee Mile 0.92.

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3. LEEVE IMPROVEMENT PROGRAM.

A. The County, TRLIA, and RD 784 agree to use best efforts to implement a program for the improvement of the levees protecting the Affected Area, including portions of RD 784, including without limitation Phase 2 Work potential cost overruns, Phase 3 Work potential cost overruns, Phase 4 Work, Interim Levee O&M Support, and all associated technical, political, and legal work and development and implementation of funding options, including the O&M Plan, all as necessary or appropriate for continued development within the Affected Area, plus any amounts that may be awarded by a court of competent jurisdiction for work funded pursuant to this Agreement, and costs of the Final Fair Share Funding Study, as discussed in Section 16.A. (all, collectively the "Levee Improvement Program").

B. 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 reasonably possible and at the lowest cost possible, in light of the desired schedule and in accordance with public contracting requirements of state and local law; provided, that such efforts shall be consistent with reasonable flood engineering standards and lead to levee certification; and provided further, that the County, TRLIA, and RD 784 shall have no obligation to execute any construction or other contract in furtherance of the Levee Improvement Program until such time as the County, TRLIA, or RD 784 holds the funds to cover obligations under such contracts or the necessary funds are held in the Levee Improvement Fund (as defined in Section 13, below), and the contract has been approved pursuant to Section 13.D., below.

4. COST ESTIMATES FOR LEEVE IMPROVEMENT PROGRAM.

A. The Parties agree that **Exhibit C-2**, which is attached hereto and by this reference made a part hereof, identifies the estimated total cost for the Levee Improvement Program and is based on the best available information at the time of execution of this Agreement.

B. The actual costs are not known at this time due to the uncertainties associated with the various components of the Levee Improvement Program, including but not limited to the following: (1) right-of-way and land acquisition; (2) environmental mitigation and permitting; (3) planning, engineering and design; (4) construction; (5) construction management; (6) changes to the Levee Improvement Program; (7) regulatory changes; (8) unforeseeable delays and costs; and (9) Interim O&M Levee Support.

C. This Agreement provides a maximum of \$135 million in total Capital Call Amounts (as defined in Section 6.A.(1)a., below) towards the Levee Improvement Program, subject to reduction as set forth in Section 6.A.(5) below. The \$135 million amount is comprised of \$90 million for construction and all soft costs (design, engineering, legal, bond issuance, environmental permitting, accounting, etc.) and \$45 million for contingency. These estimates were developed by Kleinfelder Inc. and MBK Engineers and are based on the *Problem Identification Report, TRLIA Phase 4, Feather River and Yuba River Left Bank Levees, Reclamation District 784, Yuba County, California*, prepared by Kleinfelder Inc., dated February 20, 2006 as amended by the *GEI Summary of Alternatives, Phase 4 Feather River Levee Costs (Alternative 1 – Levee Strengthening)*, dated July 25, 2006. These estimates were used by

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TRLIA to formulate a cash flow analysis for the Levee Improvement Program, which cash flow analysis is more particularly described in Exhibit C-2.

5. PRIOR LANDOWNER FUNDING FOR LEVEE IMPROVEMENT PROGRAM.

A. Except as otherwise provided in this Section 5, upon the execution of this Agreement by all of the parties to the 2005 Advanced Funding Agreement, the 2005 Advanced Funding Agreement, including all of the actual and potential credits and reimbursements described in the 2005 Advanced Funding Agreement, shall be superseded by this Agreement and shall hereafter be of no further force or effect as to the Parties to this Agreement.

B. Based on the Fair Share Funding Study, dated July 24, 2006, completed by Economic and Planning Systems, Inc., the Parties agree that Towne Development of Plumas Lake, LLC is owed money based on overpayments pursuant to the 2005 Advanced Funding Agreement. The Parties further agree that notwithstanding the provisions of the 2005 Advanced Funding Agreement, the overpayment by Towne Development of Plumas Lake, LLC shall be addressed as set forth in Exhibit M, as may be amended by Participants without approval of the County, TRLIA or RD 784, including payment out of the Landowner Escrow Account established pursuant to the 2005 Advanced Funding Agreement or the Levee Improvement Fund, as determined by the Participant Escrow Committee, within thirty (30) days after the deposit in full by Participants of the first Capital Call into the Levee Improvement Fund.

C. All "Reimbursements Amounts" as defined in and owed pursuant to the 2005 Advanced Funding Agreement, except as paid under Section 5.B., above, shall be deemed paid, with required interest, to the party to whom such amounts are owed by reducing, pro tanto, the amounts owed by such Party under this Agreement.

D. In the event that a party to the 2005 Advanced Funding Agreement does not enter into this Agreement, then all Parties shall seek a release from such party upon the payment of any amounts due and owing pursuant to the 2005 Advanced Funding Agreement, if any.

E. Following execution of this Agreement, TRLIA agrees to take such actions as are necessary to release the lien of CFD 2004-1 from those portions or parcels of the Affected Area owned in fee by (or controlled by) those Participants who are signatories to this Agreement.

F. All building permits paid for under the 2005 Advanced Funding Agreement shall, upon proper application, be immediately issued by the County without effect on the number of building permits issued under Section 6.B.(1) of this Agreement.

6. OBLIGATIONS OF PARTICIPANTS.

A. **Capital Call.**

(1) *Capital Call Amount.*

a. Each Participant shall advance to the Levee Improvement Fund (as defined below) the sum as determined by the Participant Escrow Committee for each Capital Call (the "Capital Call Amounts"). The preliminary schedule of Capital Calls and the aggregate

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of all estimated Capital Call Amounts are set forth in **Exhibit D**, attached hereto and made a part hereof.

b. The initial pro forma schedule of Participant Capital Call Amounts is displayed in **Exhibit E**, attached hereto and made a part hereof. **Exhibit E** is based on the list of Original Participants. **Exhibit E** shall be updated by the Participant Escrow Committee, as additional Participants execute this Agreement and prior to each Capital Call.

c. Each Capital Call, except the first, shall consist of a Levee Obligation payment and a Pro-Rata Deferred Participant Obligation payment. The Levee Obligation may be paid through the payment of cash or through the purchase of a Builder Bond, as discussed below in Section 7.B. The Pro-Rata Deferred Participant Obligation shall be paid through the purchase of Impact Fee Bonds, as discussed below in Section 7.C.

d. Capital Call Amounts may be adjusted pursuant to Section 6.A.(5), below.

e. The first Capital Call shall consist entirely of Levee Obligation payments (or when Bonds are involved, only Builder Bonds), while the second Capital Call shall consist of a larger portion of Deferred Participant Obligation (or when Bonds are involved, Impact Fee Bonds) to bring the proportions of each in line to reflect the ratio of the total remaining Levee Obligations to the total remaining Deferred Participant Obligations. The overall ratio of Levee Obligation and Pro-Rata Deferred Participant Obligation within the third and each subsequent Capital Call (or when Bonds are involved, the overall ratio of Builder Bonds to Impact Fee Bonds purchased for each Capital Call) shall be based on the ratio of the total remaining Levee Obligations for Participants to the total remaining Deferred Participant Obligations on the date of the Capital Call.

f. The Parties acknowledge that to the extent that Phase 2 Work and Phase 3 Work costs increase, less than \$135 million will be available under this Agreement for Phase 4 Work.

(2) *Process for Capital Call.*

a. The Parties shall work in good faith to process the first two Capital Calls scheduled for 2006 in a timely manner. Other than the 2006 Capital Calls, the following steps shall be followed prior to a disbursement of a Capital Call from the Levee Improvement Fund (as defined in Section 13 below) to TRLIA to either cover costs of the program or to be placed into an escrow for a bond closing:

(i) 120 days prior: TRLIA shall notify the Participant Escrow Committee of the necessary Capital Call and provide information on funds received from sources identified under Section 6.A.(5), below. Participant Escrow Committee shall commence the preparation of an updated Proforma showing Levee Obligations and Pro-Rata Deferred Participant Obligations;

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(ii) 100 days prior: Participant Escrow Committee shall complete the preparation of an updated proforma ("Proforma") showing Levee Obligations and Pro-Rata Deferred Participant Obligations;

(iii) 90 days prior: Participant Escrow Committee shall send notice to all Participants with Capital Call Amounts required, along with a copy of the updated Proforma. If no dispute with updated Proforma obligations is filed by Participant with the Chair of the Participant Escrow Committee within 10 days of mailing, then the Proforma will be deemed approved;

(iv) 45 days prior: Participants shall deposit Capital Call Amount into the Levee Improvement Fund;

(v) 1 day prior: Disbursement of a portion of the Capital Call Amount by Participant Escrow Committee to the bond sale escrow for a bond closing. If no bond closing then Participant Escrow Committee shall deliver notice to TRLIA that it holds funds in the Levee Improvement Fund to then be disbursed as provided for in Section 15.

b. Participants, by and through action of the Participant Escrow Committee, may solely waive the TRLIA notice requirements set forth in Section 6.A.(2)a. in the event that a disbursement is accelerated or if the timing of a Capital Call does not reasonably allow for such advanced notice. However, all Parties shall endeavor to meet the notice requirements outlined above. Notwithstanding the foregoing, the Parties hereby waive the notice requirements set forth above for the first two Capital Calls scheduled for 2006, and shall cooperate to ensure that the 2006 Capital Calls are paid in a timely manner.

c. The Parties agree that the second Capital Call is required for the design of the Phase 4 Feather Work, which is not necessary until the decision is made on the Feather River Setback Levee. Therefore, the Parties agree that the second Capital Call will not be due until November 22, 2006.

(3) *Acceleration of Capital Call Amount.*

a. Notwithstanding Section 6.A.(1), above, Participants may be required to provide all or a portion of the subsequent Capital Call Amount at a date prior to the next scheduled Capital Call. Such acceleration of the obligation to pay the Capital Call Amount (or some portion thereof) shall only occur in the event that the balance in the Levee Improvement Fund is not sufficient to fund the Levee Improvement Program, including the use of loan funds available to TRLIA from the County, as described in Recital S. Such acceleration shall be made only to the extent reasonably necessary to fund the Levee Improvement Program and only after approval by the Participant Escrow Committee, which approval shall be in its sole discretion.

b. If the need arises for accelerated funding, TRLIA shall give the Participants not less than 120 days notice prior to the date the Participant will be called upon to pay the Capital Call Amount and shall follow the other steps outlined above in Section 6.A.(2)a, except as provided in Section 6.A.(2)b.

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(4) *Failure to Pay Capital Call Amounts.*

a. In the event of a Potential Default, all Participants shall be subject to the Curative Actions imposed, as set forth in Section 19.B., regardless of any individual Participant's satisfaction of a given Capital Call.

b. There shall be no lifting of the Curative Action until the given Capital Call is made for the aggregate amount required by the Participants. In the event that a Potential Default and imposition of Curative Action results in increased costs to TRLIA not otherwise covered by the prior Capital Call, the Participants agree to accelerate a further Capital Call to cover such increased costs, if necessary, to the extent other resources are not available.

c. Original Participants and Participants who fail to timely deposit the required Capital Call Amount shall immediately be transferred to Deferred Participant status and lose all of the benefits outlined in this Agreement for Original Participants and Participants; e.g., the impact fee lock, and will be subject to the twelve month delay on issuance of building permits, as outlined below.

(5) *Change in Capital Call Amount.*

a. The Capital Call Amounts listed in **Exhibit E** are based on an assumption that, other than the loan from YCWA, no additional funding will be available from any other non-Participant sources to fund such Capital Call Amounts until after the Levee Improvement Program has been completed. No Original Participant will be required to pay more than the amounts listed for such Original Participant in **Exhibit E**.

b. Notwithstanding the above, with the approval of the Participant Escrow Committee, the Capital Call Amounts for an individual Participant may increase in the event that other Participants default on their obligations to make Capital Calls; provided the total aggregate Capital Call Amount required by all the Participants will not exceed the amount set forth in Exhibit E.

c. Except as provided in Section 6.A.(5).e. below in regard to the YCWA loan, the total amount of a Participant's Levee Obligation and its share of the Deferred Participants Obligation shall be decreased for a given Capital Call by the Participant Escrow Committee, in consultation with the TRLIA Executive Director, from the amounts shown in **Exhibit E** when any of the following occur:

(i) Deferred Participants or Future Participants become Participants by payment of their Catch-up Capital Calls.

(ii) Additional funding is made available to TRLIA for any aspect of the Levee Improvement Program, other than funds solicited and accepted for the Feather River Setback Levee, from federal, state, or other sources, as discussed below in Section 11.B., or fee revenue is collected through the TRLIA Levee Impact Fee from landowners subject to this fee, including the Levee Obligation paid by a Deferred Participant who, at final map recordation, has not yet become a Participant. The Participants acknowledge that TRLIA has and is engaging in a coordinated effort to obtain funds from AB 140, AB 142, and other sources,

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to fund the incremental cost of the Feather River Setback Levee and further acknowledge that certain funds received in the future may be dedicated to the Feather River Setback Levee but not expended until such time as adequate funding from third party sources for the Feather River Setback Levee is timely assured and reliable.

(iii) A third party buys Private Placement Bonds or Conventional Bonds, as defined below in Section 10.C., secured by special taxes within a Participant's Tax Zone, as explained further in Section 10 below. For example, if TRLIA is able to sell a Private Placement Bond or a Conventional Bond for a particular Tax Zone, the net proceeds of such Bonds shall be utilized first to retire any outstanding Builder Bonds for that Tax Zone, in chronological order based on the date on which the Builder Bonds were first purchased. Once all outstanding Builder Bonds for that Tax Zone have been retired, the net proceeds of such Private Placement or Conventional Bonds shall be used to reduce the next future Capital Call Amount for the Participant that has been assigned to that Tax Zone, which would give the Participant dollar for dollar credit towards the expected Levee Obligation for that Capital Call. If there are remaining credits for the Private Placement and Conventional Bonds after the subsequent Capital Call Amount has been reduced to \$0, then the Participant will have its future Capital Call Amounts reduced until all of the credits associated with the Private Placement Bond and Conventional Bonds have been utilized.

(iv) Proceeds from payments of any "Annual Special Tax" (defined herein as an annual special tax paid by owners of parcels within CFD 2006-1 for which one or more building permits have been issued) in cases when such Annual Special Taxes are not utilized to pay debt service on bonds issued by TRLIA.

(v) Costs for the Levee Improvement Program are below the projected level, such that the full amount of the \$135 million in funding provided through this Agreement is not necessary to complete the Levee Improvement Program.

d. In the event that a given Capital Call is decreased, the total Capital Call Amount of \$135 million shall still apply, and may be utilized in the event of increased costs of the Levee Improvement Program. In addition, the building permit authorization will continue to apply, as outlined below in Section 6.B., until the Completion of the Levee Improvement Program.

e. In the event that any landowner elects to become an Original Participant during the Open Enrollment Period as provided in Section 20.Q. below, or a Future Participant or Deferred Participant acts to become a Participant prior to the second Capital Call, the funds from such election or act shall first be used to satisfy any outstanding obligation to YCWA under the loan made to the Levee Improvement Program as discussed in Recital S above. Any such funds not needed to satisfy such outstanding obligation may be credited to the Original Participants, and the Participant Escrow Committee agrees to work in good faith to refund, pro rata, such amounts to the Original Participants if sufficient time exists for such refund prior to the second Capital Call. Further, in the event that any such obligation to YCWA remains at the time of the second Capital Call, the second Capital Call shall be increased by the amount necessary to repay such obligation to YCWA.

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B. Final Map and Building Permit Authorizations.

(1) Any Participant that satisfies its payment obligation at the time of each Capital Call shall be authorized to record final maps for all or a part of its property and to have a certain proportional number of building permits issued immediately upon request, except as provided in Sections 11.F. and 19, below. **Exhibit I**, attached hereto and incorporated herein by reference, outlines the assumed initial building permit authorizations, assuming the Capital Calls remaining; however, the Parties understand and agree that the information contained in Exhibit J will need to be updated at each Capital Call.

(2) TRLIA, in consultation with the Participant Escrow Committee, shall compute the number of building permits that can be released to a Participant as a result of these Capital Calls, based on the payment requirements for future residential development. The payment for each dwelling unit shall be equivalent to the sum of the total projected Capital Calls assigned to each Participant, divided by the total remaining residential units within the Participant's project, as reflected on Exhibit E.

(3) As residential building permits are issued, a Participant shall be credited for all amounts paid under previous Capital Calls in that Tax Zone, so actual payments by the Participant at the time of building permit issuances shall only occur once all of these Capital Call credits have been expended. If all of the credits from previous Capital Calls have been expended on a series of dwelling units and payments are now required in order to obtain additional building permits, the payments made at that point for the additional dwelling unit building permits shall be credited towards any future Capital Calls in the Tax Zone.

(4) An example of how a Participant might pay its payments is outlined in **Exhibit J**, attached hereto and incorporated herein by reference.

(5) Transferability of Building Permit Authorizations. Except as provided in Section 2.X. herein, all building permit authorizations shall run with the land, such that building permits shall only be transferable to the purchaser of the underlying land. Building permit authorizations shall not be transferable as between Participants, except in the event of a sale of a portion of a Participant's property to a subsequent purchaser, who shall then become a Participant hereunder, as provided for under Section 18.A.(2) of this Agreement. Transfers of building permit authorizations under this subsection (5) shall not be effective until the transferring Participant and the new Participant provide to the County notice of such transfer of the building permit authorizations to the new Participant, using the form contained in **Exhibit K**, attached hereto and made a part hereof, and records the form as to the property being purchased.

(6) Building Permits Issued in Error. If the County issues a building permit in error pursuant to this Agreement, such that the issuance of the building permit is inconsistent with the Participant's building permit authorizations provided in this Section 6.B. and **Exhibit I** hereto, or certifications provided by the Participant or other information, the County shall, within 10 days of discovering the error, contact the Participant to whom the building permit was issued in error and inform that Participant of the invalidity of the issued building permit. So long as the Participant is not in breach of any material term of this Agreement and has timely deposited its share of all Capital Calls then required hereunder, such Participant, to preserve the right to use

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such permit, may pay the then Levee Impact Fee for such erroneously issued building permit within ten (10) days of its receipt of such notice, which payment shall be credited against the Participant's next Capital Call required hereunder. Unless the Levee Impact Fee is timely paid by Participant, any Participant issued a building permit in error hereby (i) waives any and all right 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 Participant shall cooperate with the County to return the erroneously issued building permit unless the then Levee Impact Fee is timely paid as provided for above.

7. ADDITIONAL PARTICIPANT OBLIGATIONS.

A. **Community Facilities Districts.**

(1) *Community Facilities District 2006-1 ("CFD 2006-1").* TRLIA and Parties that wish to join CFD 2006-1 shall cooperate to establish the CFD 2006-1 in a timely manner. CFD 2006-1 shall cover some of the Participants, with each Participant being assigned its own zone ("Tax Zone") and CFD special tax rates within the CFD 2006-1 Rate and Method of Apportionment. Participants may elect to join the CFD 2006-1 or may become a Participant without joining the CFD 2006-1. Where this Agreement provides obligations of the Participant beyond those of the CFD 2006-1, this Agreement shall control.

a. [THIS SUBSECTION INTENTIONALLY LEFT BLANK.]

b. Maximum Annual Special Tax. The "Maximum Annual Special Tax" shall be the amount that will be an Annual Special Tax lien against each parcel. TRLIA shall modify the Maximum Annual Special Tax rates within a Tax Zone, or within a final map within a Tax Zone, at the request of a Participant, as long as the modification occurs prior to the recordation of any affected final map and does not cause total effective property tax rates to exceed 1.8% of the average projected home sales price of homes to be constructed on land included within the boundaries of such final map. Notwithstanding the above, any modifications to the Maximum Annual Special Tax rates applicable to land which is included within the boundaries of any final maps within a given Tax Zone must be completed prior to the sale of the first Private Placement Bond or Conventional Bond (as defined in Section 10) secured by the annual special taxes against such land within the boundaries of such final map. The calculation of the Maximum Annual Special Tax is briefly outlined herein and the final form will be in the Rate and Method of Apportionment adopted during the proceedings for the establishment of CFD 2006-1.

c. Separate Community Facilities District. Original Participants in the CFD 2006-1 may request, and if requested, TRLIA and County, as appropriate, agree to use its best effort to establish a separate overlay CFD on such Original Participants' properties, subject to applicable law, to fund other in-tract non-Levee related public improvements and County capital improvement impact fees, as well as to fund levee payments made pursuant to the 2005 Advanced Funding Agreement. Any such separate overlay CFD may be created utilizing the same protocols (e.g., escalating debt service, value to lien requirements, total tax rate not to

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exceed 1.8%, etc.) as are used in the underlying CFD 2006-1. If the Original Participants request that TRLIA establish such overlay CFD, TRLIA and County agree to reasonably cooperate, and take all steps required for the establishment of said separate overlay CFD, subject to all applicable formation procedures, after the first Capital Call, but in no event later than the second Capital Call, unless a delay is requested by an Original Participant. In such event, TRLIA and County also agree to use best efforts to issue Builder Bonds through the overlay CFD not later than November 30, 2006, or the second Capital Call, whichever is earlier, unless a delay is requested by an Original Participant. If issued, these Builder Bonds may be refunded or repaid by or through Private Placement Bonds or Conventional Bonds, if criteria discussed below in Section 10 are satisfied. The Participants acknowledge that the use of overlay CFDs may reduce the capacity for issuance of Builder Bonds to pay Capital Call obligations. Nothing in this Section shall prevent either Deferred Participants or Future Participants from establishing similar overlay CFDs for their properties, after becoming a Participant hereunder and subject to approval by TRLIA or the County, in its sole discretion, as appropriate.

B. Payment of Levee Obligation; Description of Builder Bonds.

(1) Whenever a Participant needs to respond to a Capital Call, it will be able to contribute its Levee Obligation to the Levee Improvement Fund by:

- a. Paying cash; or
- b. Paying cash (with optional later purchase of Builder Bonds), with written instructions to convert the cash to Builder Bonds at the next sale of Builder Bonds; or
- c. Purchasing Builder Bonds, which will be secured by CFD 2006-1 special taxes in its own Tax Zone from developed property (i.e., property for which building permits are issued); or
- d. Any combination of (a), (b) or (c), above, in the Participant's sole discretion, assuming there is sufficient tax rate capacity for (b) and (c), above.

(2) Builder Bonds will be the only security sold to an Original Participant for the initial Capital Call. Private Placement Bonds and Conventional Bonds (as defined below) may be sold for all subsequent Capital Calls, if criteria discussed below in Section 10 are satisfied and investors are identified.

(3) Starting with the second Capital Call (currently scheduled for November 2006), Participants shall be required to pay cash or purchase Builder Bonds and Impact Fee Bonds, with the latter being used to fund a Participant's Pro-Rata Deferred Participant Obligation, as described below in Section 7.C. The amount of Builder Bonds issued shall be limited by the 1.8% property tax rate ceiling allowed against property included within that Participant's final maps, based on the projected average residential sales price within each final map.

(4) The annual compounded tax-exempt interest rate on all Builder Bonds shall be 300 basis points above the 5-Year Treasury Yield Curve Rate, commonly referred to as "Constant Maturity Treasury" rates ("5 Year CMT") in effect at the time of issuance, as may be

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identified in Section H.15 of the Federal Reserve System statistical releases, which can be located at <http://www.federalreserve.gov/releases/h15/data.htm>. The Builder Bonds may be sold at a lower rate by TRLIA if a buyer other than a Participant is identified.

(5) The Builder Bonds are expected to be issued as 30 year (nominal maturity) Capital Appreciation Bonds that will accrue interest but will not require periodic payments of such interest until maturity or redemption. Interest on the Builder Bonds will be compounded semi-annually. Interest computation on the Builder Bonds will be on a "30/360" basis, consisting of twelve equal months of thirty days each, and a year of 360 days. Accrued interest from date of issue to date of retirement or redemption will be added to the payment obligation due at retirement or redemption, as the case may be.

(6) Builder Bonds are subject to mandatory redemption on any date at their accreted value, without prepayment premium, from any source of funds. Such redemption may be refunded through Private Placement Bonds or through conventional bonds ("Conventional Bonds"). From time to time, the Participant Escrow Committee shall coordinate with the Participants to determine the Tax Zones for which the sale of Private Placement Bonds or Conventional Bonds would be currently appropriate. If the total amount of such bonds suitable for sale equals \$3,000,000 or more, the Participant Escrow Committee shall prepare a list of the specific Tax Zones proposed to secure these bond issues of Private Placement Bonds or Conventional Bonds, and shall forward such list to TRLIA. This list shall be reviewed by TRLIA, which shall make best efforts to pursue the sale of each of the proposed bonds that satisfy the issuance criteria discussed in Section 10, below.

(7) TRLIA will require call option flexibility with calls on specified dates, payable at the accreted value without prepayment penalty. It is expected that calls of the Builder Bonds could be made in increments as small as \$5,000.

(8) Builder Bonds are proposed to be sold in \$500,000 minimum denominations (and multiples of \$1 above that, except for those Participants whose total purchase is less than \$500,000, in which case the Builder Bond would be in the denomination of the particular Participant's total purchase).

(9) Builder Bonds will be issued accompanied by a "traveling" "sophisticated-investor-letter" which would limit the transferability of the bonds to future owners of property subject to the special tax, or to such investors that may be approved by TRLIA. Builder Bonds shall also be transferable to affiliates of Participants, future property owners within each Tax Zone as successors to Participants, or to affiliates of these future property owners.

(10) There will be no obligation on TRLIA to foreclose on any Participant's property securing the payment of special taxes pledged to the payment of Builder Bonds.

(11) For any Tax Zone, it is possible that some Private Placement Bonds, and even some Conventional Bonds, will be issued before all of the Capital Calls have been exercised, in which case they will be used to refund Builder Bonds, in some cases even before the scheduled dates of the remaining Capital Calls. Once all outstanding Builder Bonds have been refunded or repaid, net proceeds of Private Placement Bonds or Conventional Bonds will be

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credited toward any future Capital Calls. Under these circumstances, Participants will not need to pay all of their future Capital Calls, nor will they need to purchase all of their projected Builder Bonds.

(12) The amount of Private Placement Bonds or Conventional Bonds that may be sold within a Tax Zone will be a function of the Maximum Annual Special Tax rates set for that Tax Zone, as well as the interest rates in the municipal bond market at the time of each bond sale. If the amount of Private Placement Bonds or Conventional Bonds ultimately supported by a Tax Zone is less than the total amount of Builder Bonds issued for that Tax Zone, unless the Participant for such property can amend, subject to County approval, the rate of special taxes within its Tax Zone to support such Bonds consistent with the 1.8% property tax rate ceiling, the excess Builder Bonds (the "Excess Builder Bonds") shall not be redeemable, and shall be extinguished. Of the Builder Bonds purchased by a property owner or its successors and affiliates within a Tax Zone, the last Builder Bonds purchased shall be declared to be the Excess Builder Bonds in cases where the annual special taxes do not support all of the outstanding Builder Bonds. For example, if a Participant purchases \$2,000,000 in Builder Bonds and such Bonds accrete in value to \$3,000,000, however the annual special tax rates ultimately set for that property can only support \$1,800,000 in payments, then the accreted value of the last \$1,200,000 purchased would be the Excess Builder Bonds.

(13) For Participants that are willing to provide individual collateral (e.g., a letter of credit), TRLIA will use reasonable efforts to seek willing investors for a variable rate or fixed rate interest bond issue in the conventional marketplace in lieu of issuing Builder Bonds.

(14) Participants acknowledge that the issuance of Builder Bonds has certain risks associated that are outlined generally in Exhibit G, attached hereto and incorporated herein by reference.

(15) Participants acknowledge that to the extent that their Tax Zone does not have remaining tax capacity within the 1.8% maximum percentage threshold, the Levee Component of their remaining Capital Calls will have to be made in cash payments to the Levee Improvement Fund, and Participants may be required to mitigate any remaining obligations to special districts, such as the Olivehurst Public Utility District or school district, through cash payments.

C. Payment of Pro-Rata Deferred Participant's Obligation; Description of Impact Fee Bonds.

As part of each Capital Call, excluding the first, to assure that TRLIA receives adequate financing to build the Levees in a timely manner, each Participant will be required to fund its Pro-Rata Deferred Participant Obligation, as set forth in Exhibit E, as may be amended from time to time.

(1) In exchange for this payment, Participant shall receive, at its request, "Impact Fee Bonds" issued by TRLIA or the County, which shall be repaid in accordance with Section 8.C. as Deferred Participants and Future Participants pay their Catch-up Capital Calls, or

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their TRLIA Levee Impact Fee when they record a final map, or through other sources of revenue that may be made available to TRLIA from time to time.

(2) The annual compounded tax-exempt interest rate on the Impact Fee Bonds shall be 400 basis points above the then current 5 year CMT in effect at the time of issuance. The Impact Fee Bonds may be sold by TRLIA at a lower rate if a buyer other than a Participant is identified.

(3) Impact Fee Bonds are proposed to be sold in \$500,000 minimum denominations (and multiples of \$1 above that, except for those Participants whose total purchase is less than \$500,000, in which case the Impact Fee Bond would be in the denomination of the particular Participant's total purchase).

(4) TRLIA will require call premiums during the first three years after the purchase of Impact Fee Bonds, based on the requirements associated with the TRLIA Levee Impact Fee. It is expected that calls of the Impact Fee Bonds could be made in increments as small as \$5,000, other than in connection with redemption under Section 8.C.(1)b.

(5) Impact Fee Bonds will be issued accompanied by a "traveling" "sophisticated investor letter". Impact Fee Bonds shall be transferable only to affiliates of Participant, future property owners within each Tax Zone as successors to Participant, or to affiliates of these future property owners.

(6) [THIS SUBSECTION INTENTIONALLY LEFT BLANK.]

(7) The Impact Fee Bonds are expected to be issued as 30 year (nominal maturity) Capital Appreciation Bonds that will accrue interest but will not require periodic payments of such interest until maturity or redemption. Interest on the Impact Fee Bonds will be compounded semi-annually. Interest computation on the Impact Fee Bonds will be on a "30/360" basis, consisting of twelve equal months of thirty days each, and a year of 360 days. Accrued interest from date of issue to date of retirement or redemption will be added to the principal due at retirement or redemption, as the case may be.

D. Flood Insurance. Each Participant shall provide, at no cost to all new residents (including the initial sale by the Participant and all subsequent resales) of homes constructed by such Participant within the Affected Area since 2003 (i.e., homes for which building permits were issued from and after January 1, 2003), flood insurance and renewals of flood insurance only through the Completion of the Levee Improvement Program or until December 31, 2010 (whichever occurs first). The County and TRLIA will reasonably cooperate in assisting Participants to fulfill this requirement, including but not limited to providing for notice of resales of homes within the Affected Area to be provided to Participants. The renewals and subsequent issuance of flood insurance provided by the Participants shall satisfy the minimum requirements of the National Flood Insurance Program for a standard dwelling policy.

E. Notice Requirements to New and Existing Homeowners. Participants shall take the following steps to increase the awareness of flood risk by new and existing purchasers of homes within the Affected Area:

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(1) At the time of execution of a sales contract for a new home within the Affected Area, Participant shall distribute an informational packet prepared by TRLIA under Section 9.K. on the status of the Levee Improvement Program. Purchasers will then be requested to sign an acknowledgment sheet that they have received the packet and are aware of the flood risks associated with the Affected Area.

(2) At the time of closing on a new home within the Affected Area, Participant shall require execution by the new purchaser of the home of a Notice of Acknowledgement stating that the purchaser understands that the Participant (home builder) is purchasing flood insurance for the purchaser of the home (including the terms of that insurance and the period for which that insurance will be purchased) and that the purchaser of the home has received an information packet on the Levee Improvement Program and the risk of purchasing a home within the Affected Area.

(3) Four times a year until certification of all levees required under the Levee Improvement Program, TRLIA shall prepare and distribute through the mail to new and existing purchasers of new homes within the Affected Area an information packet on the Levee Improvement Program and any information provided by the County or TRLIA to the Participants on steps that such purchasers may take to reduce the risk of flooding to homes within the Affected Area, such as being aware of the County's pre-hazard mitigation program, time-inundation maps, and hazard evacuation routes. Participant shall reasonably assist TRLIA to provide such information packets.

8. OBLIGATION FOR NON-PARTICIPANTS.

A. **Deferred Participant's Obligations.** A Deferred Participant does not need to become a Participant in order to record a final map, but does need to become a Participant prior to issuance of any building permits.

(1) *Payment Options at Map Recordation.*

a. During the Capital Call Period.

(i) Full Payment Option.

1) A Deferred Participant may pay its entire then existing Levee Obligation applicable to the property included within a final map in cash at the time of recordation of that final map. The size of the payment for the Levee Obligation shall be based on the acreage included within the final map, multiplied by the then current amount of the TRLIA Levee Impact Fee per acre.

2) To the extent that this payment represents an acceleration in that Deferred Participant's Levee Obligation component of the Catch-up Capital Calls required within the Tax Zone when the Deferred Participant becomes a Participant, the subsequent Capital Call will be reduced in size, with a credit being given for the amount of Participant's Levee Obligation payments made to date. For example, if a Deferred Participant records a final map on Day 1 that consists of 60% of the dollar amount of its Tax Zone's total projected Levee Obligation and pays that amount, then that Deferred Participant shall have no

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further obligation to pay the Levee Obligation component of its Capital Calls until it has exhausted the credits against future Capital Calls for all of its accelerated payments. (Future Capital Calls will be required prior to issuance of building permits to assure payment of the Participants' Pro-Rata Deferred Participant Obligation.) The Participant's next required Levee Obligation payment shall occur when payments are required for the last 40% of that Participant's Tax Zone's total Levee Obligation.

(ii) Partial Payment Option.

1) A Deferred Participant can choose to become a Participant at any time prior to final map recordation and pay its Catch-up Capital Call. This can be accomplished by annexing into CFD 2006-1, creating an individual Tax Zone and purchasing Builder Bonds and Impact Fee Bonds in order to become current on its Levee Obligation and its Pro-Rata Deferred Participant Obligation, respectively; or

2) A Deferred Participant may also become a Participant by making cash payments at any time prior to recordation of a final map to cover its Catch-up Capital Call (both the Levee Obligation component and the Pro-Rata Deferred Participant Obligation component).

b. After the Capital Call Period.

(i) Full Payment Option. If a Deferred Participant records a final subdivision map after the completion of the Capital Call Period, it shall be required to make its Levee Obligation payment for the entire final map at the time of recordation of such final map.

(ii) Partial Payment Option. There shall be no Partial Payment Option after the completion of the Capital Call Period.

(2) *Payment Requirements for Issuance of a Building Permit.*

a. During the Capital Call Period.

(i) In order for a Deferred Participant to pull a building permit, it will need to become a Participant by making the Catch-up Capital Call payment and then make subsequent Capital Calls as required, and executing this Agreement.

(ii) Those Deferred Participants who have selected the Section 8.A.(1)a.(i)) option will also have to pay the Pro-Rata Deferred Participant Obligation component of their Catch-up Capital Call, through the purchase of Impact Fee Bonds, in order to pull building permits. Those Deferred Participants who have become Participants under Section 8.A.(1)b. have already satisfied this requirement for all of the building permits to be issued in accordance with Section 6.B.

(iii) No matter which alternative a Deferred Participant has selected to become a Participant, there shall be a 12-month (365 day) delay on the issuance of

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building permits after the date on which it becomes a Participant through the payment of the full Catch-up Capital Call, as set forth in the Implementing Ordinance.

(iv) The 12-month (365 day) delay on issuance of building permits shall be enforced for all Deferred Participants until the earlier of (a) such time that all remaining Impact Fee Bonds have been paid off in full, or (b) three years after the certification of the levee improvements.

b. After the Capital Call Period.

(i) Full Payment Option. If a Deferred Participant becomes a Participant after the completion of the Capital Call Period, it shall be required to make its payment for the entire Catch-up Capital Call, thereby allowing the issuance of a building permit within the final map, subject to the 12-month delay as provided below.

(ii) Partial Payment Option. There shall be no Partial Payment Option after the completion of the Capital Call Period.

(iii) No matter which alternative a Deferred Participant has selected to become a Participant, there shall be a 12-month (365 day) delay on the issuance of building permits after the date on which it becomes a Participant through the payment of the full Catch-up Capital Cal, a set forth in the Implementing Ordinance.

(iv) The 12-month (365 day) delay on issuance of building permits shall be enforced for all Deferred Participants until the earlier of (a) such time that all remaining Impact Fee Bonds have been paid off in full, or (b) three years after the certification of the levee improvements.

(3) *Termination of Pro-Rata Deferred Participant Obligation Requirement.* Notwithstanding the above, if and when all Impact Fee Bonds have been redeemed, the Pro-Rata Deferred Participant Obligation shall no longer be required of Deferred Participants.

(4) *Annexing into CFD No. 2006-1.* All Deferred Participants may choose to annex into the CFD 2006-1 so long as the annexation is completed prior to the issuance of their first building permit within a tentative map. Notwithstanding the above, if a Deferred Participant only owns a portion of its tentative map prior to the issuance of its first building permit within the tentative map, it shall only be able to annex the portion of such tentative map that it owns in fee.

B. Future Participants Obligations. A Future Participant will need to become a Participant in order to record a final map.

(1) *Payment Options at Map Recordation During the Capital Call Period.* A Future Participant may become a Participant at any time by payment of the Catch-up Capital Call and then make subsequent Capital Calls as required.

a. All Future Participants shall be required to become Participants upon recording their first final map. At that point, a Future Participant may either:

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(i) pay cash for the entire Catch-up Capital Call due at the time of recordation of the first final map (including the purchase of Impact Fee Bonds for its Pro-Rata Deferred Participant Obligation), or

(ii) annex its entire tentative map into CFD 2006-1 and pay for its entire Catch-up Capital Call by purchasing Builder Bonds to pay its Levee Obligation, and purchasing Impact Fee Bonds to pay its Pro-Rata Deferred Participant Obligations, so long as the annexation is completed prior to the first building permit being issued within a tentative map. Notwithstanding the above, if a Future Participant only owns a portion of its tentative map prior to the issuance of its first building permit within the tentative map, it shall only be required to annex the portion of such tentative map that it owns in fee.

b. A Future Participant shall pay its Catch-up Capital Call to become current with the other Participants, and then make subsequent Capital Calls as required. For example, if one Capital Call remains when the Catch-up Capital Call is made, the first payment will cover all but the final Capital Call, subject to the same obligations and permit release restrictions imposed on Participants under Sections 6.B., above.

c. There shall be a 12-month delay on the issuance of building permits after the date on which a Future Participant has become a Participant through the payment of the full Catch-up Capital Call, as set forth in the Implementing Ordinance. This delay on building permit issuances shall be enforced for all Future Participants until the earlier of (a) such time that all remaining Impact Fee Bonds have been paid off in full, or (b) three years after the certification of the Levees.

(2) *Payment Requirement at Map Recordation After the Capital Call Period.* If a Future Participant becomes a Participant after the completion of the Capital Call Period, it shall be required to make its entire Catch-up Capital Call payment at the time of recordation of its first final map, thereby allowing the issuance of all building permits within the final map.

(3) *Termination of Pro-Rata Deferred Participant Obligation Requirement.* Once the Capital Call Period is completed, or all Impact Fee Bonds have been redeemed, whichever is earlier, there shall be no more Pro-Rata Deferred Participant Obligations collected.

C. Uses of Revenue Collected From Deferred Participants and Future Participants Through Their Catch-Up Capital Calls.

(1) *Deferred Participants Revenue.* As stated previously under Section 8.A., upon recording a final map, each Deferred Participant shall be required to pay the Levee Obligation applicable to the real property included in that final map, or it may become a Participant and pay a Catch-up Capital Call that covers the Levee Obligation, as well as its Pro-Rata Deferred Participant Obligation. Furthermore, those Deferred Participants who only pay their Levee Obligation at final map recordation shall be required to pay their remaining Catch-up Capital Call amount for their tentative map, including their Pro-Rata Deferred Participant Obligation, prior to issuance of their first building permit for construction of a single family structure on such property.

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a. *Levee Obligation Revenues.* Except as provided in Section 6.A.(5).e. above, the revenues from the Levee Obligation payments made by Deferred Participants' as part of their Catch-up Capital Calls shall be applied in the following order, based on the date of sale of each series of Impact Fee Bonds issued to earlier Participants:

(i) First, to redeem Impact Fee Bonds from the Original Participants or their transferees; and

(ii) Second, if additional Levee Obligation revenues remain, to redeem Impact Fee Bonds owned by Deferred Participants and Future Participants who became Participants prior to the subject Deferred Participant. These redemptions shall be made first for the Impact Fee Bonds owned by Deferred Participants and Future Participants who became earlier Participants in the first year of the Financing Program, then to Deferred Participants and Future Participants who became Participants in the second year of the Financing Program, etc.; and

(iii) Third, if additional Levee Obligation revenues remain, reimburse earlier Participants for any excess payments that were not financed through Builder Bonds based on the Final Par Amount ("Excess Levee Payments," as discussed under Section 17, below; and see Exhibit H for an example). These reimbursements shall be paid first to the Original Participants, then to Deferred Participants and Future Participants who became Participants in the first year of the Financing Program, then to Deferred Participants and Future Participants who became Participants in the second year of the Financing Program, etc.; and

b. *Pro-Rata Deferred Participant Obligation Revenues.* The revenues from the Pro-Rata Deferred Participant Obligation payments made by Deferred Participants' as part of their Catch-up Capital Calls shall be applied in the following order, based on the date of sale of each series of Impact Fee Bonds issued to earlier Participants:

(i) First, to purchase Impact Fee Bonds the proceeds of which will be used to redeem Impact Fee Bonds held by the Original Participants or their transferees; and

(ii) Second, if additional Pro-Rata Deferred Participant Obligation revenues remain, purchase Impact Fee Bonds the proceeds of which will be used to redeem Impact Fee Bonds held by Deferred Participants and Future Participants who became Participants prior to the subject Deferred Participant. The Deferred Participants and Future Participants whose Impact Fee Bonds are to be redeemed shall be paid pro-rata in chronological order, based on the year they first became Participants. Therefore, all of the Impact Fee Bonds for Deferred Participants and Future Participants who became Participants in the first year must be redeemed in full from revenues paid by other Deferred Participants and Future Participants who join the Program later, prior to the second year's Deferred Participants and Future Participants being redeemed in full, etc.; and

(iii) As discussed in Sections 8.A.(3), once all Impact Fee Bonds have been redeemed, no Pro-Rata Deferred Participant Obligation revenues shall be collected from Deferred Participants.

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(2) *Future Participant's Revenue.* As stated previously under Section 8.B., upon recording a final map, each Future Participant shall be required to become a Participant and pay the entire Levee Obligation and Pro-Rata Deferred Participant Obligation for that final map, or become a Participant and pay the entire Catch-up Capital Call.

a. Levee Obligation Revenues. The revenues from the Levee Obligation payments made by Future Participants as part of their Catch-up Capital Calls shall be applied in the same manner as set forth in Section 8.C.(1)a.

b. Pro-Rata Deferred Participant Obligation Revenues. The revenues from the Pro-Rata Deferred Participant Obligation payments made by Future Participants as part of their Catch-up Capital Calls shall be applied in the same matter as set forth in Section 8.C.(1)b.

(3) *Timing for Impact Fee Bond Redemption and Repayment.* All payments due to Participants who own Impact Fee Bonds shall be distributed or credited to each of them prior to the 15th day of the month that immediately follows the month in which a Deferred Participant or Future Participant has made its payments.

9. OBLIGATIONS OF TRLIA, RD 784 AND COUNTY.

A. **Permanent Operations and Maintenance Funding.** TRLIA, County and RD 784 shall use best efforts to develop a plan for the operations and maintenance of the RD 784 levees, including developing a long-term and adequate funding source that does not exceed \$100 per year per residential parcel (collectively, the "O&M Plan") so as to meet the levee certification requirements of FEMA and Prop. 13 funding requirements of the State of California. TRLIA, the County, and RD 784 shall use best efforts to develop the O&M Plan and produce a draft of the required engineers report by December 15, 2006, and conduct a landowner vote by July 2007, so that any new assessment may be placed on the 2007-08 tax roll in a timely manner. Participants shall reasonably and in good faith cooperate in the development of this O&M Plan.

B. **Evacuation and Prehazard Mitigation Program.** County commits to continue to use reasonable diligence to inform residents within the Affected Area, including portions of RD 784, of the risk of flooding and to further refine, improve, and make available the County's Evacuation Plan and Prehazard Mitigation Plan, including the development of time inundation maps to support evacuation planning efforts, prior to the 2006-2007 flood season.

C. **Condition for New, Extended and Amended Tentative Subdivision and Parcel Maps.**

(1) County shall condition tentative maps for all Future Participants and new maps or extensions or amendments to existing maps for Deferred Participants so that Future Participants and Deferred Participants are required to assume the obligations of Participants hereunder and to pay the amounts required to be paid hereunder upon final map recordation, and thereafter, all of these Future Participants and Deferred Participants shall be subject to the same obligations imposed on Participants under Section 6.

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(2) The County shall continue to require Future Participants and Deferred Participants to become Participants at least until all Impact Fee Bonds have been redeemed or paid off, reimbursements for all Excess Levee Payments have been funded and all Participants' payments have been reduced to the Final Par Amount, as set forth in Section 16, below.

D. Accounting, Auditing and Reporting.

(1) TRLIA and County shall use best efforts to properly account for all sums paid to and grants received by TRLIA and County for the Levee Improvement Program. To this end, TRLIA and County shall retain an outside consulting firm to keep records, prepare monthly reports with content reasonably acceptable to the Participant Escrow Committee, and assist in administration of all funds received for the Levee Improvement Program. TRLIA shall deliver such reports to the Participant Escrow Committee, except as such may be privileged and confidential. TRLIA shall also provide the reports set forth below in Section 15.B. monthly to the Participant Escrow Committee. The Participant Escrow Committee shall provide all such reports from TRLIA to the Participants upon receipt.

(2) The Participants have the right, upon not less than three (3) business days notice, at all reasonable times, to inspect the books and records of the TRLIA and County pertaining to the Levee Improvement Program, as pertinent to the purposes of this Agreement.

(3) TRLIA shall, annually at the completion of each fiscal year, have prepared by a qualified independent auditor, and deliver to Participants, an audited financial statement pertaining to the Levee Improvement Program, including all revenues and expenditures of TRLIA relating thereto for the prior year's period.

E. **Development Agreement; County Impact Fees.** In consideration for the Original Participants' commitment to fund the Levee Improvement Program as provided for herein, County agrees to lock the TRLIA Levee Impact Fee and the County Public Facilities Fee, as such term is defined in Section 13.15 of the Yuba County Ordinance Code, for the Original Participants in the amounts set forth in County Ordinance No. 1369, adopted May 2, 2006, and shall not impose or exact any new development impact fees on Original Participants for a period of seven (7) years following the Effective Date of this Agreement. County agrees to negotiate with the Original Participants, in good faith, with the intent to mutually agree upon the terms and conditions of a Development Agreement, pursuant to Government Code Section 65864 et seq., to implement this Section, within a reasonable time period.

F. Modifications to the TRLIA Levee Impact Fee.

(1) As permitted by law, County shall not decrease the TRLIA Levee Impact Fee at least until all Impact Fee Bonds have been paid off, reimbursements for all Excess Levee Payments have been funded and all Participants' payments have been reduced to the Final Par Amount, as set forth in Section 16, below.

(2) The County shall continue to require Deferred Participants, Future Participants and landowners of property covered by the TRLIA Levee Impact Fee, but outside of the Affected Area, to pay the TRLIA Levee Impact Fee at least until all Impact Fee Bonds have been paid or redeemed, reimbursements for all Excess Levee Payments have been funded and all

