No other business shall be conducted at this meeting. The public shall have an opportunity to address the Authority only with respect to items set forth in this agenda. Each individual or group will be limited to no more than five minutes. Prior to this time, speakers are requested to fill out a “Request to Speak” card and submit it to the Clerk of the Board.

I  ROLL CALL – Directors Atwal, Brown, Ledbetter, Lofton, Vasquez

II  PUBLIC COMMUNICATIONS: Any person may speak about any subject of concern within the jurisdiction of TRLIA which is not on today’s agenda. The total amount of time allotted shall be limited to a total of 15 minutes and each individual or group will be limited to no more than 5 minutes. Prior to this time, speakers are requested to fill out a “Request to Speak” card and submit it to the secretary.

III  ACTION ITEMS

A. Adopt resolution authorizing Executive Director to execute Development Agreements and any subsequent agreements substantially in conformance to the updated terms, upon review and approval of General Counsel.

B. Approve contract with Wood Rogers, Inc. with sub-consultant ENGEO, Inc. for Engineering and Design Services for the North Training Wall Project; and authorize Executive Director to execute upon review and approval of General Counsel.

C. Approve contract with Flow West L.L.C., with sub-consultant HDR for Ecological Design Services for the North Training Wall Project; and authorize Executive Director to execute upon review and approval of General Counsel.

D. Approve and authorize Executive Director to release the Bid Package for the 200-Year Goldfields Project.

IV  BOARD/STAFF REPORTS

Miscellaneous Reports

V  ADJOURN
THREE RIVERS LEVEE
IMPROVEMENT AUTHORITY
1114 Yuba Street, Suite 218
Marysville, CA 95901
Office (530) 749-7841 Fax (530) 749-6990

February 18, 2020

TO: Three Rivers Levee Improvement Authority Board of Directors
FROM: Paul Brunner, Executive Director
       Seth Wurzel, Financial Consultant
SUBJECT: Approval of Development Agreements with Landowners

Recommended Action:
Approve the attached resolution updating the Executive Director’s previously delegated authority to execute the attached Development Agreements (DA’s) and any subsequent agreements substantially in conformance to the updated terms in the attached DA’s and subject to General Counsel’s review and approval.

Discussion:
On June 16, 2009, the TRLIA Board of Director’s approved Resolution No. 2009-11 which authorized the Executive Director to execute a series of DA’s (seven at that time) with certain developers in Plumas Lake and any future DA’s that were substantially in conformance with the terms presented in the seven DA’s presented to the Board at that time. At this time, a new Developer (Ethan Conrad) has requested that the County and TRLIA execute a similar DA, however, because certain conditions have changed over the past 11 years, TRLIA staff desires changes to the terms of the template DA previously approved by Resolution 2009-11. The following discussion provides additional background and context for this recommendation.

Background:
In 2007 & 2008 the Yuba County Board of Supervisors took a number of actions to move forward with securing the remaining local funds needed to match Proposition 1E grant funding to construct the Feather River Levee Improvement Project (FRLIP). The Proposition 1E funds for the FRLIP, along with additional State and local funding were, at the time, anticipated to provide all of the funding necessary to complete the levee improvements to all of the levees within Reclamation District 784.

Prior to securing the remaining funds needed to complete the all of the levee improvements, local landowners had been providing the needed local funds to advance levee improvement construction. Through a series of funding agreements, impacts and CFD’s, local landowners had generated more than $70.4 million. As a condition of landowner participation in these funding agreements, the County agreed to approve a development agreement with each landowner who previously executed and provided funding under these advance funding programs. In addition, TRLIA agreed to the form two Mello-Roos Community Facilities Districts (CFD’s) and issuance builder bonds back to the developers.

103816.1
In April of 2007, TRLIA completed the formation of the two CFDs and issued the builder bonds. The amount of bonds issued was equivalent to the funds advanced by the developer at the time of the bond sale. TRLIA issued, in aggregate between the two CFDs, $23.6 million of “builder bonds.” Due to market conditions and the development risk at the time of the bond sales, the bonds issued by the CFDs were not marketable to the general public. The only buyers for the bonds were developers themselves.

The strategy for the arrangement was for the developers to hold the builder bonds until the levee improvements were complete and sufficient vertical development took place which, when achieved, would provide adequate security for the issuance of private placement or conventional bonds. Then, the builder bonds would be refunded by TRLIA, with interest, and new, more traditional, bonds could be sold. Notwithstanding the current economic situation regarding the bonds and development in Plumas Lake along with more recent discussions that have taken place in coordination with the Yuba Water Agency, this arrangement continues to be the current status of the CFD’s and associated Builder Bonds.

In order to transition from the terms of the prior funding agreements, TRLIA and the County utilized the DA mechanism to effectively unwind all prior obligations under those funding agreements and effectively “reset” the mutual understanding between the developers, the County and TRLIA with respect to the levee improvement funding program.

The purpose of the Development Agreements executed in 2009 can be summarized as follows.

1) To release all of the parties (Developers, TRLIA and County) from the conditions of the prior funding agreements and carry forward only those provisions the parties wish to carry forward into a new agreement, which, with respect to TRLIA include:
   a. Terms associated with the developer’s obligation to provide flood insurance for new residents until the later of December 31, 2010 or the completion of the levee improvements.
   b. The developer’s notice requirements of flood risk to new home purchasers.
   c. The financial reporting requirements of TRLIA to the developers.

2) To set forth terms associated with the issuance of refunding bonds by the two TRLIA CFDs.

3) To clarify the use of the Special Tax revenues being levied by the two TRLIA CFDs either toward the fulfillment of remaining Levee Fee obligations or the redemption of outstanding builder bonds.

Only certain provisions in the DAs pertain to TRLIA and the obligations it is assuming through their execution. The most significant of the provisions were the obligations associated with the refunding of the outstanding builder bonds associated with TRLIA CFDs 2006-1 & 2006-2. As part of the 2009 DA’s, TRLIA agreed to certain terms associated with the issuance of refunding bonds. Those terms were reviewed by TRLIA’s Bond Counsel, TRLIA’s Special Tax Consultant and TRLIA’s Municipal Advisor in 2009. There are no recommended changes to those policies at this time.

In addition to the terms associated with the redemption of builder bonds, through the DAs, TRLIA clarified the use of Special Tax revenue currently being collected by the CFD’s. In general, for projects with a remaining levee fee obligations and outstanding builder bonds, the taxes collected from the TRLIA CFD’s first goes to pay the remaining fee obligation, then goes to redeem outstanding builder bonds. The Projects receive credit toward their fee obligations for the Special Taxes collected. And, for projects with no remaining fee obligation, the Special
Taxes will go to redeem builder bonds. This process continues today and there is no recommended changes to the DA’s as it relates to the CFD’s special tax collection and use process.

**Present Situation:**
As noted above, because of the extended time duration since the approval of the 2009 DA template, several provisions in the DA are no longer relevant. Therefore, TRLIA staff recommends that the Board approve the attached updated DA and delegate the authority to the Executive Director to execute similar DA’s, should they come forward from the County for approval by TRLIA. It is important to note that TRLIA’s participation in these DA’s is only relevant to the extent the subject development was part of the original advance funding program for the levee improvements. The changes to the DA relevant to the previously approved 2009 DA template can be summarized as follows:

1) Within Exhibit C – The obligation for the developer to provide flood insurance until December 31, 2010 has been removed since it is no longer relevant.

2) Within Exhibit C – The obligation for the Developer to provide an informational packet prepared by TRLIA has been removed. Further the obligation for TRLIA to provide informational packets four times per year until the certification of the improvements has been removed. Both of these requirements have been removed because the levee improvement program has achieved 100-year certification and TRLIA does not have the ongoing resources to provide such information.

3) Within Exhibit C – TRLIA’s obligation to assure levee maintenance is completed until certification has been removed. This obligation is no longer relevant because, under the current DA, the developer is no longer providing advance funding.

4) Within Exhibit C additional language regarding the status of the levee improvement program has been added.

**Fiscal Impact:**
The delegation of authority to execute the DA’s, as it is currently exists through Resolution 2009-11 imposes no new financial obligations by TRLIA in terms of ongoing requirements associated with the obligations being carried over from the prior advance funding agreements. The proposed changes would, however, reduce TRLIA’s obligations with respect to ongoing noticing. As a result, the recommendation would have a reduced Fiscal Impact to TRLIA.

1 Attachment:

1. Resolution No 2020-__ - “A Resolution by the Board of Directors of Three Rivers Levee Improvement Authority Authorizing Execution of Development Agreements”

2. DA2019-0002 – ETHAN CONRAD PROPERTIES, INC. (DEVELOPER) RELATIVE TO THE DEVELOPMENT KNOWN AS THOROUGHBRED ACRES
RESOLUTION NO. 2020-___

A RESOLUTION BY THE BOARD OF DIRECTORS OF
THREE RIVERS LEVEE IMPROVEMENT AUTHORITY AUTHORIZING
EXECUTION OF DEVELOPMENT AGREEMENTS

WHEREAS, the Three Rivers Levee Improvement Authority (the "Authority"), a joint exercise of powers authority of which the County of Yuba (the "County") and Reclamation District 784 ("RD 784") are the members has entered into agreements with various landowners in the Southern area of the County, in order to secure local funding for the levee improvements; and

WHEREAS, as a condition of landowner participation in these funding agreements, the County agreed to approve a development agreement with each participating developer; and

WHEREAS, in April 2007, pursuant to the terms of the Second Funding Agreement for Advance Funding and Reimbursement of Costs for Levee Improvements, in order to allow the landowners party to that agreement to finance flood control improvements, TRLIA issued approximately $23.6 million in builder bonds which were sold directly to landowner participants in the funding agreements; and

WHEREAS, in June 2009, TRLIA approved Resolution 2009-11 approving seven Development Agreements that provided the terms and conditions related to the issuance of refunding bonds to participating developers, release the developers from their obligations under the prior funding agreements and establish terms associated with refunding the builder bonds to participating developers once levee improvements are complete; and

WHEREAS, TRLIA Resolution 2009-11 also delegated authority to the Executive Director to execute additional Development Agreements with terms in substantial conformance to those Development Agreements approved subject to review by Agency Counsel;

WHEREAS, TRLIA wishes to execute additional Development Agreements with modified terms at this time;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Three Rivers Levee Improvement Authority as follows:

The Executive Director of the Authority is hereby authorized to execute the attached Development Agreement and any subsequent agreements substantially in conformance with the terms of the attached agreements and subject to review and conforming changes by General Counsel.

* * * * * * *
PASSED AND ADOPTED this 18th day of February, 2020, by the Board of Three Rivers Levee Improvement Authority by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

______________________________
CHAIRPERSON

ATTEST: RACHEL FERRIS,
CLERK OF THE BOARD

______________________________
APPROVED AS TO FORM: GENERAL COUNSEL
ANDREA P. CLARK

Andrea P. Clark
DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE COUNTY OF YUBA, THE THREE RIVERS LEVEE IMPROVEMENT AUTHORITY AND ETHAN CONRAD PROPERTIES, INC. (DEVELOPER)
RELATIVE TO THE DEVELOPMENT KNOWN AS
THOROUGHBRED ACRES

This document, including exhibits, totals _ _ pages.
REFERENCE SHEET

Project:
Thoroughbred Acres -- TSTM2003-0037

Developer:
Ethan Conrad Properties, Inc.

Developer's Address for Purpose of Written Notice:
1300 National Drive, Suite 100
Sacramento, CA 95834

Landowner:
Same as above.

Term:
The Term of the Development Agreement, as provided for in section 1.8 begins thirty (30) days after the Board of Supervisors enacts the Adopting Ordinance (noted below) and expires on May 19, 2024, twenty (20) years from the original date of approval of TSTM 2003-0037.

Entitlements:
As referred to in Recital 5 shall mean TSTM 2003-0037 and all associated final maps.

CEQA document:
This project is located within the North Arboga Study Area. On May 19, 2004 the Yuba County Planning Commission adopted a Mitigated Negative Declaration for the Thoroughbred Acres project (TSTM2003-0037). This Agreement is consistent with the project evaluated in the Initial Study/Mitigated Negative Declaration and therefore no further environmental review is required.

Adopting Ordinance:
As referred to in Section 1.3 (a), shall mean Ordinance No. ______________ enacted by the Board of Supervisors on ______________, 20__.

Exhibits which are attached to this Development Agreement are as follows:
A. Legal Description
B. Assumption Agreement
C. Special Conditions and Requirements
D. Sample Notice of Termination
E. Credit and Reimbursement Policy
## TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>ARTICLE 1</th>
<th>GENERAL PROVISIONS</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 1.1</td>
<td>The Project</td>
<td>2</td>
</tr>
<tr>
<td>Section 1.2</td>
<td>Subject Property</td>
<td>2</td>
</tr>
<tr>
<td>Section 1.3</td>
<td>Definitions</td>
<td>2</td>
</tr>
<tr>
<td>Section 1.4</td>
<td>Exhibits</td>
<td>3</td>
</tr>
<tr>
<td>Section 1.5</td>
<td>Incorporation of Recitals</td>
<td>4</td>
</tr>
<tr>
<td>Section 1.6</td>
<td>Parties to Agreement</td>
<td>4</td>
</tr>
<tr>
<td>Section 1.7</td>
<td>Project is a Private Undertaking</td>
<td>4</td>
</tr>
<tr>
<td>Section 1.8</td>
<td>Term of Agreement</td>
<td>4</td>
</tr>
<tr>
<td>Section 1.9</td>
<td>Assignment and Assumption</td>
<td>4</td>
</tr>
<tr>
<td>Section 1.10</td>
<td>Covenants Running with the Land</td>
<td>5</td>
</tr>
<tr>
<td>Section 1.11</td>
<td>Amendment to Agreement (Developer and County)</td>
<td>5</td>
</tr>
<tr>
<td>Section 1.12</td>
<td>Amendment to Agreement (Landowner and County)</td>
<td>5</td>
</tr>
<tr>
<td>Section 1.13</td>
<td>Releases</td>
<td>6</td>
</tr>
<tr>
<td>Section 1.14</td>
<td>Notices</td>
<td>6</td>
</tr>
<tr>
<td>Section 1.15</td>
<td>Reimbursement for Agreement Expense of County</td>
<td>6</td>
</tr>
<tr>
<td>Section 1.16</td>
<td>Recordation of Agreement</td>
<td>6</td>
</tr>
<tr>
<td>Section 1.17</td>
<td>Applicable Law</td>
<td>6</td>
</tr>
<tr>
<td>Section 1.18</td>
<td>Invalidity of Agreement/Severability</td>
<td>6</td>
</tr>
<tr>
<td>Section 1.19</td>
<td>Third Party Legal Challenge</td>
<td>7</td>
</tr>
<tr>
<td>Section 1.20</td>
<td>Waiver of Claims</td>
<td>7</td>
</tr>
<tr>
<td>Section 1.21</td>
<td>Priority of Enactment</td>
<td>7</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARTICLE 2</th>
<th>THE PROJECT AND DEVELOPMENT OF THE SUBJECT PROPERTY</th>
<th>8</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 2.1</td>
<td>Limited Vested Right</td>
<td>8</td>
</tr>
<tr>
<td>Section 2.2</td>
<td>No Moratorium, Quotas, Restrictions, or Other Growth Limitations</td>
<td>8</td>
</tr>
<tr>
<td>Section 2.3</td>
<td>Permitted Uses and Development Standards</td>
<td>9</td>
</tr>
<tr>
<td>Section 2.4</td>
<td>Application, Processing and Inspection Fees</td>
<td>9</td>
</tr>
<tr>
<td>Section 2.5</td>
<td>Impact Fees</td>
<td>9</td>
</tr>
<tr>
<td>Section 2.6</td>
<td>Reserved Powers</td>
<td>9</td>
</tr>
<tr>
<td>Section 2.7</td>
<td>Obligation and Rights of Mortgage Lenders</td>
<td>10</td>
</tr>
<tr>
<td>Section 2.8</td>
<td>Tolling and Extension During Legal Challenge or Moratoria</td>
<td>10</td>
</tr>
<tr>
<td>Section 2.9</td>
<td>Timing of Construction and Completion</td>
<td>11</td>
</tr>
<tr>
<td>Section 2.10</td>
<td>Property Tax</td>
<td>11</td>
</tr>
<tr>
<td>Section 2.11</td>
<td>Airport Compatibility</td>
<td>11</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARTICLE 3</th>
<th>DEFAULT</th>
<th>12</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 3.1</td>
<td>General Provisions</td>
<td>12</td>
</tr>
<tr>
<td>Section 3.2</td>
<td>Annual Review</td>
<td>12</td>
</tr>
<tr>
<td>Section 3.3</td>
<td>Developer Default Limited to Property/Entity; Separate Obligations of Owners</td>
<td>13</td>
</tr>
<tr>
<td>Section 3.4</td>
<td>Default by County</td>
<td>13</td>
</tr>
</tbody>
</table>

*Development Agreement Between the County of Yuba and Thoroughbred Acres*
THIS DEVELOPMENT AGREEMENT ("Agreement") is made by and between the COUNTY OF YUBA, a political subdivision of the State of California ("County"), the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, a joint powers authority ("TRLIA") and Ethan Conrad Properties, Inc. ("Developer") pursuant to the authority of Article 2.5, Chapter 4, Division Title 7 (§ 65864 et seq. of the Government Code) relating to Development Agreements.

RECOLLS

1. In order to strengthen the public land use planning process, to encourage private participation in the process, to reduce the economic risk of development and to reduce the waste of resources, the Legislature adopted the Development Agreement Law (Gov. Code, § 65864 et seq.)

2. The Development Agreement Law permits cities and counties to contract with private interests for their mutual benefit in a manner not otherwise available to the contracting parties. Such agreements, as authorized by the Development Agreement Law and by common law, assure property developers that they may proceed with their projects with the assurance that approvals granted by public agencies will not change during the period of development. Cities and counties are equally assured that costly infrastructure such as roads, sewers, fire protection facilities, etc., will be available in a timely manner.

3. The parties have, in good faith, negotiated the terms hereinafter set forth which carry out the legislative purpose set forth above and will assure the parties to this Agreement of mutually desirable development in a manner consistent with the CEQA document, the Entitlements, and this Agreement.

4. Developer owns in fee (or holds an option to purchase for a term that is or may be extended for at least the term of this Agreement) the Subject Property as more particularly described on Exhibit A hereto, located in the County.

5. County, in response to Developer's application(s), after public hearings and extensive environmental analysis, has granted approval of the Entitlements, as described on the Reference Sheet.

6. In support of the various Entitlements described in paragraph 5 above, and in accord with the California Environmental Quality Act ("CEQA") and State and County guidelines, County has accepted and ratified a CEQA document, as described on the Reference Sheet.

7. Development of the Subject Property pursuant to the terms and conditions of the Entitlements, the General Plan and appropriate environmental determinations will provide for orderly growth and development consistent with the County's General Plan and other development policies and programs.

8. The Planning Commission considered this Agreement, and recommended its adoption to the Board of Supervisors.
9. Having duly considered this Agreement and having held the noticed public hearings, County finds and declares that the provisions of this Agreement are consistent with the maps and text of the County's General Plan.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1

GENERAL PROVISIONS

Section 1.1. The Project. The Project is defined as set forth on the Reference Sheet.

Section 1.2. Subject Property. The Subject Property is more specifically described in Exhibit A, which is incorporated herein and made part of this Agreement.

Section 1.3. Definitions. As used in the Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section.

(a) Adopting Ordinance means the ordinance which approves this Agreement.

(b) Applicable Laws means the General Plan, Specific Plan (if applicable), County Laws, rules, ordinances, regulations, and official policies governing the processing of entitlements, the permitted uses of the Subject Property, the density or intensity of use, the rate and timing of development, design, improvements, reservation or dedication of land for public improvements, fees, exactions, construction and building setbacks, occupancy and specifications applicable to the Subject Property in effect on the Effective Date of this Agreement.

(c) Assumption Agreement means an agreement substantially conforming to the model assumption agreement described in Exhibit B, or other agreement in a form approved by the County Counsel, executed by a Landowner with the Developer, expressly assuming various obligations relating to the development of the Project, or portion thereof.

(d) CEQA means the California Environmental Quality Act section 21000 et seq., of the Public Resources Code of the State of California.

(e) Completed Lots shall mean any single-family residence, any other residential dwelling unit(s), or any non-residential building, and the lot or parcel upon which such residence or building is located, when it has been approved by the County for occupancy.

(f) County means the County of Yuba or, if the context otherwise requires, the Board of Supervisors for the County of Yuba, or its designee.

(g) County Laws means ordinances, resolutions, rules, regulations, policies, motions, directives, mitigation measures, conditions, standards, specifications, dedications, fees, taxes (including without limitation general, special and excise taxes), assessments, liens, other exactions and impositions, and any other actions having the force of law, that are enacted or adopted by County, or by its electorate through the initiative or referendum process.
(h) **Current Fees** means those County development impact fees in effect as of the **Effective Date** and any currently incorporated adjustments or increases therein adopted as of the **Effective Date**.

(i) **Developer** shall mean that person or entity that has applied for this Development Agreement as defined on the Reference Sheet.

(j) **Director** means the Community Development Director for the County, or his/her designee.

(k) **Effective Date** means the effective date of the Adopting Ordinance.

(l) **Entitlements** shall mean those approvals listed on the Reference Sheet of this Agreement, approved copies of which are on file with the Board of Supervisors.

(m) **General Plan** means the General Plan of the County, including the text and maps, as may have been amended in connection with the Project.

(n) **Landowner** is a party who has acquired any portion of the Subject Property from the Developer who, unless otherwise released as provided in this Agreement, shall be subject to the applicable provisions of this Agreement.

(o) **New Fees** means those development impact fees adopted by the County after the **Effective Date** of this Development Agreement.

(p) **Planning Commission** shall mean the County's Planning Commission, or its designee.

(q) **Reserved Powers** shall mean those powers explicitly reserved to the County by this Agreement.

(r) **Revenue Bonds** means the Yuba Levee Financing Authority Revenue Bonds, Series A and Taxable Revenue Bonds, Series B.

(s) **Subject Property** means the property described in Section 1.2, or the remaining portions thereof after releases from the provisions of this Agreement have been executed as authorized by this Agreement.

(t) **TRLIA** means the Three Rivers Levee Improvement Authority.

(u) **YCWA** means the Yuba County Water Agency.

Section 1.4. **Exhibits.** The Exhibits listed herein are incorporated into this Agreement and made a part hereof. The Exhibits are:

- **Exhibit A**  Subject Property
- **Exhibit B**  Assumption Agreement
- **Exhibit C**  Special Conditions and Requirements
Section 1.5. **Incorporation of Recitals.** Recitals 1 through 9 are incorporated herein, including all exhibits referred to in the Recitals. In the event of inconsistency between the Recitals and the provisions of Articles 1 through 5, the provisions of Articles 1 through 5 shall prevail.

Section 1.6. **Parties to Agreement.** The parties to this Agreement are:

(a) **The County of Yuba.** A political subdivision of the State of California exercising general governmental functions and powers. The principal office of the County is located at 915 8th Street, Marysville, California 95901.

(b) **Three Rivers Levee Improvement Authority.** A joint powers authority created by the County and RD 784. The principal office of TRLIA is located at the County of Yuba Government Center, 915 Eighth Street, Suite 115, Marysville, California 95901.

(c) **Developer.** Developer owns in fee or has an equitable interest in the Subject Property.

(d) **Landowner.** From time to time, as provided in this Agreement, Developer may sell or otherwise lawfully dispose of a portion of the Subject Property to a Landowner who, unless otherwise released, shall be subject to the applicable provisions of this Agreement related to such portion of the Subject Property.

Section 1.7. **Project is a Private Undertaking.** It is agreed among the parties that the Project is a private development and that the County has no interest therein except as authorized in the exercise of its governmental functions.

Section 1.8. **Term of Agreement.** This Agreement shall commence upon the Effective Date of the Adopting Ordinance approving this Agreement and shall continue in force for the period shown on the Reference Sheet under "Term." Upon the expiration of the Term as provided for in this section, this Agreement shall automatically terminate and be of no further force and effect; provided however, such termination shall not affect the rights or duties arising from the entitlements for the Subject Property which were approved prior to, concurrently with, or subsequent to the approval of this Agreement.

Section 1.9. **Assignment and Assumption.** Developer shall have the right to sell, assign, or transfer this Agreement with all the rights, title and interests therein to any person, firm or corporation at any time during the term of this Agreement. The conditions and covenants set forth in this Agreement and incorporated herein shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties. Developer shall provide County with a copy of the Assumption Agreement. Express written assumption by such purchaser, assignee or transferee, to the satisfaction of the County Counsel, of the obligations and other terms and conditions of this Agreement with respect to the Subject Property or such
portion thereof sold, assigned or transferred, shall relieve the Developer selling, assigning or transferring such interest of such obligations so expressly assumed. Any such assumption of Developer's obligations under this Agreement shall be deemed to be to the satisfaction of the County Counsel if executed in the form of the Assumption Agreement attached hereto as Exhibit B and incorporated herein by this reference, or such other form as shall be approved by the County Counsel.

Section 1.10. Covenants Running with the Land. Each and every purchaser, assignee or transferee of an interest in the Subject Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Subject Property or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of a Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Subject Property sold, assigned or transferred to it. Provided however, notwithstanding anything to the contrary above, if any such sale, assignment or transfer relates to a completed residential unit or non-residential building which has been approved by the County for occupancy, this Agreement shall automatically terminate with respect to the Completed Lot. The termination of this Agreement for any Completed Lot shall not be construed to terminate or modify any assessment district or Mello-Roos community facilities district lien affecting such Completed Lot at the time of termination. Upon the request of a Developer, County shall execute such documents as are reasonably requested to remove this Agreement from the public records as it affects each Completed Lot. The County may charge a reasonable fee to process this request.

Section 1.11. Amendment to Agreement (Developer and County). This Agreement may be amended by mutual consent of the parties in writing, in accordance with the provisions of Government Code section 65868, provided that: any amendment which relates to the term, permitted uses, density, intensity of use, height and size of proposed buildings, or provisions for reservation and dedication of land shall require a noticed public hearing before the parties may execute an amendment. Unless otherwise provided by law, all other amendments may be approved without a noticed public hearing.

Any amendment entered into between the County and the Developer shall require the signature of each owner of any portion of the Subject Property to the extent the amendment modifies this Agreement as to that other owner's property.

Section 1.12. Amendment to Agreement (Landowner and County). This Agreement may also be amended, subject to the provisions of Government Code section 65868, between a Landowner who has acquired a portion of the Subject Property from Developer and County as to the portions of the Subject Property then owned by Landowner.

Any amendment entered into between the County and a Landowner shall require the signature of each Landowner of any portion of the Subject Property or the Developer to the extent the amendment modifies the Agreement as to that Landowner's or the Developer's property.
Section 1.13. Releases. Developer, and any subsequent Landowner, shall be deemed released from all further obligations relating to the sold, assigned, or transferred property, upon the date that the County Clerk receives a copy of the Assumption Agreement provided for in Section 1.9.

Section 1.14. Notices. Notices, demands, correspondence, and other communication to County and Developer shall be deemed given if dispatched by prepaid first-class mail to the principal offices of the parties as designated in Section 1.6(a). Notice to the County shall be to the attention of both the County Administrator and the Director. Notices to subsequent Landowners shall be required to be given by the County only for those Landowners who have given the County written notice of their address for such notices. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

Section 1.15. Reimbursement for Agreement Expense of County. Developer agrees to reimburse County for a pro-rata share of the reasonable and actual expenses over and above fees paid by Developer as an applicant, specifically incurred by County for the modification of the County’s form development agreement into the form of this Agreement, including recording fees, publishing fees, and reasonable staff and consultant costs not otherwise included within application fees then due and payable to the County. Such reimbursement shall be paid to the County within 10 days following invoice by the County. Developer shall also pay any and all delinquent installments of property tax then due for the Subject Property.

Section 1.16. Recordation of Agreement. The County Clerk shall cause a copy of this Agreement to be recorded with the County Recorder not later than ten (10) days after the effective date following execution of this Agreement by the County. Developer hereby covenants that during the period following execution and the recording of this Agreement by the County, Developer shall not, without prior written approval by the County Counsel, cause or allow to be recorded against the Subject Property any instrument affecting the priority, validity or enforceability of this Agreement.

Section 1.17. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

Section 1.18. Invalidity of Agreement/Severability. If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If any provision of this Agreement shall be determined by a court to be invalid and unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any federal or state statute, which became effective after the Effective Date, the remaining provisions shall continue in full force and effect.

Section 1.19. Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity other than a party or a Landowner, challenging this Agreement, the Entitlements or any approval subsequently granted by the County for the development of the Subject Property, then the parties and any Landowner agree to cooperate with each other in good faith in connection with the defense of the same. County may elect to tender the defense of any lawsuit filed by a third person or entity to Developer.
and/or Landowner(s) (to the extent the litigation, in part or in whole, seeks to overturn or invalidate this Agreement, the Entitlements or any subsequent approval granted for the Subject Property held by or granted to Developer and/or Landowner), and, in such event, Developer and/or such Landowner(s) shall indemnify, hold the County harmless from and defend the County from all costs and expenses incurred in the defense of such lawsuit, including, but not limited to, damages, attorneys' fees and expenses of litigation awarded to the prevailing party or parties in such litigation. For purposes of this section only, "County" shall include all employees, consultants and agents acting on behalf of the County. Neither party shall settle any such lawsuit without the consent of the other party. The County may elect to participate in the litigation, in which case the Developer and/or Landowner agree to reimburse the County for its litigation costs and fees, including the retention of outside legal counsel and all staff costs. It is the intent of the Parties that the County's participation not result in unnecessary duplication of legal services, but rather that the County's active involvement in the litigation be limited to supervising the preparation of the administrative record or discovery as applicable, monitoring of litigation, and responsive pleadings regarding issues which, in the sole opinion of the County, involve broader County concerns then those immediately affecting the Landowner and/or Developer. Upon written demand of the County, Developer and/or Landowner shall deposit with the County such sums as may be specified by the County as its estimated litigation costs and fees for the following thirty day period. Both parties shall act in good faith, and shall not unreasonably withhold consent to settle. In the event that the County elects to settle a claim, and Developer refuses to also settle, County at its sole option may require Developer to post security in a form and amount reasonably acceptable to the County, for the performance of Developer's duties under this section. If the Developer, within 30 days of receiving written notice from County, fails to post this security, the Developer shall settle the claim on terms as previously approved by the County. This provision shall survive the termination of this Agreement.

Section 1.20. Waiver of Claims. Developer waives, as to the Subject Property only, any and all existing claims that it may have against the County, its agents, employees and consultants, arising out of the adoption and/or application of development requirements and standards, impact fees, the adoption of this Agreement or approval of the Entitlements and all of the proceedings, acts or determinations made prior thereto.

Section 1.21. Priority of Enactment. In the event of conflict between the Development Agreement, the Entitlements and the County Laws, the parties agree that the following sequence of approvals establishes the relative priority of approvals, each approval superior to the approvals listed thereafter: (1) Exhibit C to this Agreement; (2) the Development Agreement; (3) the Entitlements and (4) the County Laws. In the event of a conflict between two or more of the foregoing documents, the language of that document which is superior in priority as provided above shall govern.

ARTICLE 2

THE PROJECT AND DEVELOPMENT OF THE SUBJECT PROPERTY

Section 2.1. Limited Vested Right. During the Term of and subject to the terms of this Agreement the Developer's rights shall be vested only as to the Entitlements. "Vested" shall
mean that except as to express limitations and reservations contained in this Agreement, Developer has a fully vested right to develop the Property in accordance with the terms and conditions of this Agreement and the Entitlements, and Developer's Entitlements shall not be subject to changes in Applicable Laws. In the event that the County grants an approval or permit in the implementation of the Project, the approval or permit shall be pursuant to Applicable Laws and shall also be considered vested. This section shall not be construed to limit the authority, or obligation of the County to hold necessary public hearings, or to limit the discretion of the County or any of its officers or officials with regard to rules, regulations, ordinances, laws and entitlements, which require the exercise of discretion by the County or any of its officers or officials in accordance with the Applicable Laws, or those reserved powers set forth in Section 2.6. The foregoing shall not be deemed to limit Developer's rights to seek a modification or amendment to the Entitlements.

Section 2.2. No Moratorium, Quotas, Restrictions, or Other Growth Limitations.
Except as otherwise provided by the terms and conditions of this Agreement or the Entitlements, no ordinance, resolution, rule, regulation of policy of County shall be applied, imposed or enacted by County, by resolution, ordinance, initiative, or otherwise, which in any way relates to the rate, timing or sequencing of the development or use of the Subject Property, or any improvements related thereto, including without limitation, any no-growth or slow-growth moratoriums or annual development allocations, quotas or limitations, or in any way conflicts with the permitted uses, density and intensity of uses, maximum building height and size set forth in the Entitlements; provided, however, Developer shall be subject to any such growth limitation ordinance, resolution, rule; regulation or policy which is adopted on a uniformly applied, County-wide basis and directly concerns an immediate, verifiable adverse risk to public health or safety, in which case County shall treat Developer in a uniform, equitable and proportionate manner with all properties which are zoned consistent with Developer's zoning set forth in the Entitlements. Without limitation of the foregoing, any future County rules, ordinances, regulations or policies, whether by specific reference to the development of the Subject Property or as part of a general enactment that directly or indirectly applies to the development of the Subject Property, shall be considered to conflict with this Agreement if it has any one or more of the following effects: (a) limits or reduces the number of lots or square footage which may be developed on the Subject Property, the density or intensity of use allowed under the Entitlements, (b) imposes or increases any fees, exactions or other monetary obligation from what is set forth in Applicable Law, the Entitlements or the terms of this Agreement, (c) limits utilities, services or related facilities or rights to use such utilities, services or privileges for the Subject Property or that condition development or construction on the availability of public services and/or facilities (for example, the presence of a specified traffic level of service or water or sewer availability) other than as set forth in the Entitlements, (d) limits or controls in any manner the growth or other rate, timing, phasing, or sequencing of the approval or development of the Subject Property, whether by moratorium, growth restriction, or any mechanism by which the development is tied to the availability of public services, and/or facilities or otherwise, (e) limits the maximum height, bulk and size of proposed buildings from what is set forth in Applicable Law, (f) applies to the Subject Property any future County law otherwise allowed by this Agreement that is not applied on a County-wide basis to all substantially similar developments and properties, (g) changes any land use designation or permitted use vested by this Agreement on the Subject Property without the consent of

Development Agreement between the County of Yuba and Thoroughbred Acres

- 8
Developers, (h) requires the issuance of additional permits or approvals by County other than those required by Applicable Laws, or (i) limits the processing of, or the obtaining of, any subsequent entitlements or approvals necessary for the development of the Subject Property as contemplated by this Agreement.

Section 2.3. **Permitted Uses and Development Standards.** The permitted uses and development standards shall be those as set forth in and permitted by the County General Plan adopted June 7, 2011, the Yuba County Airport Land Use Compatibility Plan adopted May 7, 2011, Entitlements, County Zoning, Applicable Laws and subdivision and land development standards as of the Effective Date.

Section 2.4. **Application, Processing and Inspection Fees.** Application fees, processing fees, and inspection fees that are revised during the term of this Agreement shall apply to the development pursuant to this Agreement, provided that such revised fees apply generally to similar private projects or works within County.

Section 2.5. **Impact Fees.** [Intentionally Omitted—See Exhibit C: Special Conditions and Requirements]

Section 2.6. **Reserved Powers.** Notwithstanding any other provision of this Agreement, and without limitation as to any other requirements or exceptions contained in this Agreement, the County retains the authority to take the following actions and apply the same to the Subject Property:

(a) The authority of the Board of Supervisors to adopt regulations to protect the County and its citizens from an immediate and significant adverse risk to health and safety. This shall include, but not be limited to, lack of sufficient sewer and/or water facilities, but not school facilities.

(b) Adopt new or amended building codes (as may be amended by the County), including, but not limited to, the Uniform Building Code, Uniform Fire Code, Uniform Mechanical Code, Uniform Plumbing Code, National Electrical Code, Uniform Housing Code, and Uniform Sign Code, that generally apply equally to all buildings, structures and real property in the County.

(c) Adopt land use regulations, ordinances, policies, programs, resolutions or fees generally applicable to similar development projects adopted or undertaken by County as and only to the extent necessary to comply with state or federal laws, or regulations, provided that in the event that such state or federal laws or regulations prevent or preclude compliance with one or more provisions of this Agreement, such provision or provisions shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.

(d) Adopt county land use regulations, ordinances, policies, programs or resolutions adopted after the Effective Date, which are in conflict with the Applicable Laws, but the application of which to the development of the Subject Property has been consented to in writing by the Developer and/or the applicable Landowner by later separate document, which consent Developer and/or Landowner may withhold in their sole and exclusive discretion.
Section 2.7. **Obligation and Rights of Mortgage Lenders.** The holder of any mortgage, deed of trust or other security instrument with respect to the Subject Property, or any portion thereof, shall not be obligated under this Agreement to construct or complete improvements or to guarantee such construction or completion, but, in the event such holder takes title to the Subject Property through foreclosure of a mortgage or a deed of trust, or deed-in-lieu of such foreclosure, said holder shall be bound by all of the terms and conditions of this Agreement which pertain to the Subject Property or such portion thereof in which it holds an interest. Any such holder who comes into possession of the Subject Property, or any portion thereof, pursuant to a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, shall take the Subject Property, or such portion thereof, subject to any pro rata claims for payments or charges against the Subject Property, or such portion thereof, which accrue prior and subsequent to the time such holder comes into possession. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Subject Property, or any portion thereof, to any uses, or to construct any improvements thereon, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

Upon foreclosure or deed-in-lieu thereof, a lender has no obligation to pay any amounts related to the Subject Property, unless said lender or successor-in-interest elects to use the Entitlements to develop the Subject Property.

Section 2.8. **Tolling and Extension During Legal Challenge or Moratoria.**

(a) If this Agreement, any of the Entitlements or any subsequent entitlements, approvals or permits required to implement the Entitlements (such as any required fill permit) are subjected to legal challenge by a third party, other than Developer, and Developer cannot or elects not to proceed with development of the Subject Property during such litigation, the Term of this Agreement and timing for obligations imposed pursuant to this Agreement shall, upon written request of Developer to County, be extended and tolled during such litigation until the entry of final order or judgment upholding this Agreement, the Entitlements, subsequent entitlements, approvals and/or other permits required to implement the Entitlements, or the litigation is dismissed by stipulation of the parties.

(b) If this Agreement, any of the Entitlements or any subsequent entitlements, approvals or permits required to implement the Entitlements are subjected to moratoria, and Developer cannot or elects not to proceed with the development of the Subject Property during such moratoria, the Term of this Agreement and timing for obligations imposed pursuant to this Agreement shall, upon written request of Developer to County, be extended and tolled during such moratoria. Moratoria shall be defined as restrictions, moratorium or de facto moratoria on approval or recordation of final maps, issuance of building permits, final inspections or certificates of occupancy, or approval or issuance of other such entitlements or permits, at the time of the transfer which would limit the reasonable ability to construct in a similar fashion a development project previously approved by the County.

Section 2.9. **Timing of Construction and Completion.** Notwithstanding any provision of this Agreement to the contrary, there is no requirement that Developer initiate or complete development of the Subject Property or any particular phase of development of the
Subject Property within any particular period of time, and County shall not impose such a requirement on any subsequent approval. The parties acknowledge that Developer cannot at this time predict when, or the rate at which or the order in which, phases will be developed. Such decisions depend upon numerous factors that are not within Developer's control, such as market orientation and demand, interest rates, competition, and other similar factors. In light of the foregoing, the parties agree that Developer shall be able to develop in accordance with Developer's own time schedule as such schedule may exist from time to time, for whatever reason, and that Developer shall determine the order in which portions of the Subject Property shall be developed. Without limiting any of the foregoing, the parties specifically desire to avoid the consequences of the holding of the California Supreme Court in *Pardee Construction Co. v. County of Camarillo* (1984) 37 Cal.3d 465, which held that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over any parties' agreement; consequently, the parties agree that Developer shall have the right to develop the Subject Property in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment. Nothing in this Section 2.9 shall exempt Developer from completing work required by a subdivision agreement, road improvement agreement or similar agreement in accordance with the terms thereof.

Section 2.10. **Property Tax.** Developer shall pay all installments of property tax applicable to the Subject Property prior to such installments becoming delinquent.

Section 2.11. **Airport Compatibility.** Prior to map recordation creating additional parcels for any phase or portion of the Project, a determination shall be made to ensure compatibility with the Yuba County Airport Land Use Compatibility Plan adopted May 7, 2011. For portions of the Project located within Zones 2 and 4 on the Compatibility Policy Map: Safety (Exhibit F), the Developer shall submit a Substantial Compliance Final Tract Map to the Airport Land Use Commission and CDSA to determine conformance to the Compatibility Plan.

**ARTICLE 3**

**DEFAULT**

Section 3.1. **General Provisions.** Subject to extensions of time by mutual consent in writing, any failure to perform any term or provision of this Agreement by County, by Developer or by Landowner not released from this Agreement to perform any term or provision of this Agreement, shall constitute a default in the event (a) the party alleging such default or breach gives the other party or Landowner not less than sixty (60) days notice in writing specifying the nature of the alleged default and the manner in which said default may be cured, and (b) the said other party does not cure the breach or default within said sixty (60) days (or, if the cure cannot be accomplished within 60 days, if said other party does not commence the cure within 60 days and diligently prosecute the cure thereafter). During any such sixty (60) day period, the party or Landowner charged shall not be considered in default for purposes of termination or institution of legal proceedings.

After notice and expiration of the sixty (60) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party or
Landowner to this Agreement may, at his/her option, institute legal proceedings pursuant to this Agreement or give notice of his/her intent to terminate this Agreement pursuant to California Government Code section 65868 and any regulations of the County implementing said Government Code section. Following notice of intent to terminate, or prior to instituting legal proceedings, the matter shall be scheduled for consideration and review in the manner set forth in Government Code sections 65865, 65867, and 65868 and County regulations implementing said sections by the County within thirty (30) calendar days.

Following consideration of the evidence presented in said review before the County and an additional 30-day period to cure, either party alleging the default by the other party or Landowner may institute legal proceedings or may give written notice of termination of this Agreement to the other party; provided, however, a Landowner may only give such notice with respect to such portion of the Subject Property in which Landowner owns an interest.

Section 3.2. Annual Review. The County shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance by Developer and Landowner with the terms of this Agreement. Such periodic review by the Director, unless referred to the Planning Commission or the County Board of Supervisors shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code section 65865.1. Each said review shall be completed within sixty (60) days of the first meeting of the Planning Commission and the County Board of Supervisors, respectively, at which such review is undertaken, unless said period is extended by mutual consent of the County and Developer. Failure to complete said review within the prescribed period shall be deemed a finding of good faith substantial compliance. Notice of such annual review shall include the statement that any review, the result of which the local agency finds and determines on the basis of substantial evidence, that the Developer has not complied in good faith with the terms or conditions of the Development Agreement, may result in amendment or termination of this Agreement in accordance with Government Code section 65865.1. The County may charge the Developer a reasonable fee for such annual review to defray the cost to the County to process and conduct such annual review.

The County shall deposit in the mail or fax to Developer and/or Landowner a copy of all staff reports and, to the extent practical, related exhibits concerning contract performance at least seven (7) days prior to such periodic review. Developer or Landowner shall be entitled to appeal a determination of the Director to the Commission and then to the Board of Supervisors. Any appeal must be filed within ten (10) days of the decision of the Director, or the Commission, as the case may be. Developer or Landowner shall be permitted an opportunity to be heard orally and/or in writing regarding its performance under this Agreement before the Commission, Board of Supervisors, and/or Director, as the case may be.

Section 3.3. Developer Default Limited to Property/Entity; Separate Obligations of Owners. Except as specified herein in Section 3.1, no default hereunder in performance of a covenant or obligation with respect to a particular portion of the Subject Property shall constitute a default applicable to any other portion of the Subject Property, and any remedy arising by reason of such default shall be applicable solely to the portion of Subject Property where the default has occurred. Similarly, the obligations of the Developer and Landowners shall be
severable and no default hereunder in performance of a covenant or obligation by any one of them shall constitute a default applicable to any other owner who is not affiliated with such defaulting owner, and any remedy arising by reason of such default shall be solely applicable to the defaulting owner and the portion of the Subject Property owned thereby.

Section 3.4. Default by County. In the event the County does not accept, review, approve or issue necessary development permits or entitlements for use in a timely fashion as defined by this Agreement, or as otherwise provided in this Agreement, or the County otherwise defaults under the terms of this Agreement, Developer and/or Landowner may give written notice thereof to the County and if not cured within sixty (60) days following receipt of such notice, Developer shall have all rights and remedies provided herein or under applicable law, including without limitation the right to pursue actions for mandamus, specific performance, or injunctive or declaratory relief to enforce this Agreement. Notwithstanding the foregoing sentence, the County, Developer and Landowner each waives any and all rights to seek monetary damages from any other party as a result of any breach or alleged breach of such other party’s obligations hereunder, excluding (a) any claim for refunds of fees or excess fee payments imposed inconsistent with this Agreement, and (b) County claims regarding payment of fees, taxes, assessment and other charges, including Levee Fees. In the event the County is in default under the terms of this Agreement, any resulting delays in Developer's performance caused thereby shall not constitute grounds for termination or cancellation of this Agreement.

Section 3.5. Default by and Remedies of TRLIA. TRLIA’s rights and obligations under this Agreement are specifically limited to those rights and obligations specifically attributed to TRLIA as set forth in Exhibit C to this Agreement. TRLIA is considered a third party beneficiary of Exhibit C and shall have a right to enforce all obligations of Developer as set forth in Exhibit C to this Agreement. In the event that TRLIA defaults under the terms of this Agreement, Developer and/or Landowner may give written notice thereof to TRLIA with a copy to the County, and if not cured within sixty (60) days following receipt of such notice, Developer’s sole remedy shall be the right to pursue actions for mandamus, specific performance, or injunctive or declaratory relief against TRLIA to enforce this Agreement. Notwithstanding the foregoing sentence, TRLIA, Developer and Landowner each waives any and all rights to seek monetary damages from any other party as a result of any breach or alleged breach of such other party's obligations hereunder, excluding any claim for refunds of fees or excess fee payments imposed inconsistent with this Agreement. In the event TRLIA is in default under the terms of this Agreement, any resulting delays in Developer's performance that are directly caused thereby shall not constitute grounds for termination or cancellation of this Agreement.

Section 3.6. Cumulative Remedies of Parties/Waiver of Right to Damages. In addition to any other rights or remedies, County, Developer and any Landowner may institute legal or equitable proceedings to cure, correct or remedy any default, to specifically enforce any covenant or agreement herein, to enjoin any threatened or attempted violation of the provisions of this Agreement. Notwithstanding the foregoing sentence, the County, Developer and Landowner each waives any and all rights to seek monetary damages from the other party as a result of any breach or alleged breach of such other party's obligations hereunder, excluding any claim for refunds of fees or excess fee payments imposed inconsistent with this Agreement.

Development Agreement Between the County of Yuba
and Thorougbred Acres

- 13
ARTICLE 4

TERMINATION

Section 4.1. **Termination Upon Completion of Development.** This Agreement shall terminate upon the expiration of the Term as defined on the Reference Sheet or when the Subject Property has been fully developed and all of the Developer's obligations in connection therewith are satisfied. Upon termination of this Agreement, the County shall record a notice of such termination in a manner substantially similar to the form attached hereto as **Exhibit D.** This Agreement shall automatically terminate and be of no further force or effect as to Completed Lots.

Section 4.2. **Effect of Termination on Developer Obligations.** Termination of this Agreement as to the Developer of the Subject Property or any portion thereof shall not affect any of the Developer's obligations to comply with the County General Plan and the terms and conditions of any applicable zoning, or subdivision map or other land use entitlements approved with respect to the Subject Property, any other covenants or any other development requirements specified in this Agreement to continue after the termination of this Agreement, or obligations to pay assessments, liens, fees, or taxes. Termination of this Agreement shall not affect Developers rights and duties under Exhibit C to this Agreement.

Section 4.3. **Effect of Termination on County.** Upon any termination of this Agreement, as provided for under the terms and conditions of this Agreement, as to the Developer of the Subject Property, or any portion thereof, the entitlements, conditions of development, limitations on fees and all other terms and conditions of this Agreement shall no longer be vested hereby with respect to the Subject Property affected by such termination (provided vesting of entitlements, conditions or fees applicable to the Subject Property shall be governed by planning and zoning law) and the County shall no longer be limited, by this Agreement, to make any changes or modifications to such entitlements, conditions or fees applicable to such property. Except as may be set forth in section 1.10 of Exhibit C, termination of this Agreement shall not affect County or TRLIA rights and duties under Exhibit C to this Agreement.

ARTICLE 5

STANDARD TERMS AND CONDITIONS

Section 5.1. **Venue.** Venue for all legal proceedings shall be in the Superior Court for the County of Yuba.

Section 5.2. **Waiver.** A waiver by any party of any breach of any term, covenant or condition herein contained or a waiver of any right or remedy of such party available hereunder at law or in equity shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained or of any continued or subsequent right to the same right or remedy. No party shall be deemed to have made any such waiver unless it is in writing and signed by the party so waiving.
Section 5.3. **Completeness of Instrument.** This Agreement, together with its specific references and attachments, constitutes all of the agreements, understandings, representations, conditions, warranties and covenants made by and between the parties hereto. Unless set forth herein, neither party shall be liable for any representations made express or implied.

Section 5.4. **Supersedes Prior Agreements.** It is the intention of the parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, representations or agreements, written or oral, between the parties hereto.

Section 5.5. **Captions.** The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

Section 5.6. **Number and Gender.** In this Agreement, the neuter gender includes the feminine and masculine, and the singular includes the plural, the word "person" includes corporations, partnerships, firms or associations, wherever the context so requires.

Section 5.7. **Mandatory and Permissive.** "Shall" and "will" and "agrees" are mandatory. "May" is permissive.

Section 5.8. **Term Includes Extensions.** All references to the term of this Agreement or the Agreement Term shall include any extensions of such term.

Section 5.9. **Successors and Assigns.** All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

Section 5.10. **Modification.** No, modification or waiver of any provisions of this Agreement or its attachments shall be effective unless such waiver or modification is in writing, signed by all parties, and then shall be effective only for the period and on the condition, and for the specific instance for which given.

Section 5.11. **Counterparts.** This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

Section 5.12. **Other Documents.** The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

Section 5.13. **Partial Invalidity.** If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provision and/or provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
Section 5.14. Controlling Law. The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

Section 5.15. Time Is of the Essence. Time is of the essence of this Agreement and each covenant and term a condition herein.

Section 5.16. Authority. All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, estates or firms represented or purported to be represented by such entity (s), person(s), estate(s) or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Further, by entering into this Agreement, neither party hereto shall have breached the terms or conditions of any other contract or agreement to which such party is obligated, which such breach would have a material effect hereon.

Section 5.17. Document Preparation. This Agreement will not be construed against the party preparing it, but will be construed as if prepared by all parties.

Section 5.18. Advice of Legal Counsel. Each party acknowledges that it has reviewed this Agreement with its own legal counsel, and based upon the advice of that counsel, and freely entered into this Agreement.

Section 5.19. Estoppel Certificate. Within thirty (30) days following any written request which either party may make from time to time, and upon payment of a fee to the County to reimburse the County for its reasonable expenses associated herewith, the other party to this Agreement shall execute and deliver to the requesting party a statement certifying that:

(a) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications; and

(b) there are not current unsecured defaults under this Agreement or specifying the date, nature of any default and manner of cure.

This certificate may be executed by the Director.

Section 5.20. Attorneys Fees and Costs. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs, which may be set by the Court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such party may be entitled.

Section 5.21. Consent/Subordination. Unless waived in writing by the County Counsel, Developer shall furnish proof satisfactory to the County, prior to approval of the Agreement that all persons possessing a legal interest in the Subject Property have consented to the recording of this Agreement in the County Recorder's Office against the Subject Property. Unless waived in writing by the County Counsel, the County shall require subordination by all
lenders of record as a condition precedent to the County approval of the Agreement. The County shall have no duty to subordinate its interest in this Agreement.

Section 5.22. Calculation of Time Periods. All calculation of time periods shall be based upon calendar days unless a different intent is clearly stated.
IN WITNESS WHEREOF, this Agreement was executed by the parties thereto on the dates set forth in the Preamble.

COUNTY: COUNTY OF YUBA, a political subdivision of the State of California

By: ___________________________

Name: _________________________

Title: ___________________________

ATTEST:

By: ___________________________

Name: _________________________

Title: County Clerk

APPROVED AS TO FORM:

By: ___________________________

Name: _________________________

Title: County Counsel

DEVELOPER:

By: ___________________________

Name: _________________________

Title: ___________________________

APPROVED AS TO FORM:

By: ___________________________

Name: _________________________

Title: Counsel
TRLIA:
Three Rivers Levee Improvement Authority
a joint powers authority

By: ________________________________

Name: ______________________________

Title: _______________________________

APPROVED AS TO FORM:

By: ________________________________

Name: ______________________________

Title: Counsel
LIST OF EXHIBITS

Exhibit A  Legal Description of Subject Property
Exhibit B  Assumption Agreement
Exhibit C  Special Conditions and Requirements
Exhibit D  Sample Notice of Termination
Exhibit E  Credit and Reimbursement Policy
EXHIBIT A

SUBJECT PROPERTY

LEGAL DESCRIPTION  Real property in the unincorporated area of the County of Yuba, State of California, described as follows

Parcel One:


Parcel Two:

PORTION OF SECTION 17, TOWNSHIP 14 NORTH, RANGE 4 EAST, M.D.B. & M. AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON PIN SET FOR THE NORTHWEST CORNER OF SECTION 17: THENCE RUNNING NORTH 88° 45' EAST 767.5 FEET TO A STAKE; THENCE SOUTH 11° WEST 469.9 FEET TO A STAKE; THENCE SOUTH 28° 30' WEST 195.5 FEET TO A STAKE; THENCE SOUTH 88° 45' WEST 596.2 FEET TO THE CENTER OF MARYSVILLE-ARBOGA ROAD AND THENCE NORTHERLY ALONG THE CENTER LINE OF SAID ROAD 620.5 FEET TO THE POINT OF BEGINNING.

APN: 013-771-001-000 through 013-771-009-000
013-772-001-000 through 013-772-018-000
013-773-001-000 through 013-773-018-000
013-774-013-000 through 013-774-022-000
013-781-001-000 through 013-781-023-000
EXHIBIT B

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (hereinafter "this Agreement") is entered into this ___ day of _____________, 20___, by and between ______________ (hereinafter called "Owner") and ______________ (hereinafter "Assignee").

RECATALS

A. On ______________, 20___, the County of Yuba and Owner entered into that certain agreement entitled "Development Agreement," approved by Ordinance ______________ (hereinafter "Agreement"), relative to the development known as ______________ (hereinafter "Subject Property").

B. Owner entered into a purchase and sale agreement whereby a portion of the Subject Property will be sold to Assignee, which portion of the Subject Property is identified and described in Exhibit A, attached hereto and incorporated herein by this reference (hereinafter the "Assigned Parcel(s)").

C. Owner desires to assign all of its interests, rights and obligations under the Agreement with respect to the Assigned Parcel(s).

D. Assignee desires to assume all Owner's interests, rights and obligations under the Agreement with respect to the Assigned Parcel(s).

NOW, THEREFORE, Owner and Assignee hereby agree as follows:

1. Owner hereby assigns effective as of Owner's conveyance of the Assigned Parcel(s) to Assignee, all of the rights, interest, burdens and obligations of Owner under the Agreement with respect to the Assigned Parcel(s). Owner retains all the rights, interest, burdens and obligations under the Agreement with respect to all other property within the Subject Property owned thereby.

2. Assignee hereby assumes all of the burdens and obligations of Owner under the Agreement, and agrees to observe and fully perform all of the duties and obligations of Owner under the Agreement, and to be subject to all the terms and conditions thereof, with respect to the Assigned Parcel(s), it being the express intention of both Owner and Assignee that, upon the execution of this Agreement and conveyance of the Assigned Parcel(s) to Assignee, Assignee shall be come substituted for Owner as the "Developer" under the Agreement with respect to the Assigned Parcel(s).

3. All of the covenants, terms, and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

Development Agreement Between the County of Yuba and Thoroughbred Acres

Exhibit B – Page 1
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

ASSIGNOR / OWNER

By: ____________________________

Name: ____________________________

Title: ____________________________

ASSIGNEE

By: ____________________________

Name: ____________________________

Title: ____________________________
EXHIBIT C

SPECIAL CONDITIONS AND REQUIREMENTS

This Exhibit C is attached to and made a part of that certain Development Agreement dated as of [insert date], 20__ (the “Development Agreement”), by and between the County, TRLIA and the Developer named therein. For purposes of this Exhibit C, “Developer” shall mean Ethan Conrad Properties, Inc. The terms and conditions of this exhibit shall survive should the Development Agreement terminate prior to completion of reimbursements required herein.

Section 1.1 Background. Developer, or Developer's predecessor in interest as owners of the subject Property, was a party to (a) that certain Agreement For Advanced Funding and Reimbursement of Costs for Levee Improvements dated April 19, 2005 (“2005 Advanced Funding Agreement”) and (b) the Second Agreement for Advanced Funding and Reimbursement of Costs for Levee Improvements, dated as of August 29, 2006, ("Second Funding Agreement"), (the 2005 Advance Funding Agreement and the Second Funding Agreement being sometimes collectively referred to herein as the “Funding Agreements”), which relates to the construction of certain flood protection improvements benefitting the Plumas Lake Specific Plan and the North Arboga Study Area, which area is generally described as the South Yuba Basin. In order to pay for costs associated with levee improvements in the South Yuba Basin, on November 18, 2008, the Board of Supervisors of the County of Yuba adopted Ordinance No. 1465, enacting the Three Rivers Levee Impact Fee ("Levee Fee"). The Levee Fee was based on the then estimated cost to complete the levee improvements. As a party to the Funding Agreements, Developer advanced funded certain amounts for the Levee Fee to be used for the levee improvements described above. By making advanced payments pursuant to the Second Funding Agreement, Developer became authorized under the terms of the Second Funding Agreement to record final maps and to have a certain number of building permits issued upon request for the Project.

At the time of the execution of the Second Funding Agreement, the anticipated levee improvements included strengthening in place improvements to the existing left (east) Feather River levee from the Bear River Setback levee to the Yuba River. In early 2008, however the decision was made to change certain portions of the levee improvement project to include a setback levee from the Star Bend to Shanghai Bend, the Feather River Setback Levee. By doing this, the state of California committed to providing more than $135 million in funding, pursuant to Prop 1E and 84. Due to the receipt of the State grant funds, the amount of local funds needed to complete the levee improvements was reduced. This reduction caused the Levee Fee to be reduced. The Levee Fee was reduced with the adoption of Ordinance No. 1465 by the Board of Supervisors of the County of Yuba on November 18, 2008.

Due to the reduction of the Levee Fee, Developer claims a right of reimbursement and/or credit. This right is based on prior advanced funding made in excess of the amount required under the Levee Fee, as adjusted by Ordinance No. 1465 (herein “Prior Advanced Funding”).

The County of Yuba has adopted certain policies to address the claimed rights of reimbursement or credit for Prior Advanced Funding. Those policies are set forth in the Three Rivers Levee Credit and Reimbursement Policies and Procedures (the "Credit and Reimbursement Policy").

*Development Agreement Between the County of Yuba and Thoroughbred Acres*  
Exhibit C – Page 1
The Credit and Reimbursement Policy is hereby incorporated into and made a part of the Agreement, and is attached as Exhibit E. To the extent there is any inconsistency between this Agreement and the Credit and Reimbursement Policy as to the timing, manner or amount of credit or reimbursement due, the Credit and Reimbursement Policy shall control.

Section 1.2 Use of Credits. The Parties to this Agreement agree that the Credit and Reimbursement Policy sets forth the amount of credit and reimbursement owed the Developer in connection with Prior Advanced Funding. The Credit and Reimbursement Policy shall control as to the amount of credit or reimbursement due and how any credit or reimbursement will be applied.

Section 1.2.1. For those units included in the Project for which Developer has applied for a building permit after April 19, 2005 and on or before October 21, 2008, the Levee Fee shall be levied at the current rate as set forth in Ordinance No. 1465 and the Developer shall receive full credit for such fees from the amount advance funded, as more specifically set forth in the Credit and Reimbursement Policy.

Section 1.2.2. For those units for which the Developer has applied for a building permit after October 21, 2008, Developer shall receive credit for the Levee Fee imposed on the Project on a proportionate basis for the remainder of the Project. For those building permits applied for after October 21, 2008, Developer will pay a portion of the Levee Fee at the rate set forth in Ordinance No. 1465 and at the time and in the manner required herein, based on the relative proportionality between the remainder of the Project not able to be funded from credit and the total remaining acreage left in the Project after all previously absorbed units, all consistent with the provisions of the Credit and Reimbursement Policy. The County will calculate the amount of the Levee Fee due after the credit at the time the individual building permits are issued for each unit to be constructed on the Project pursuant to a building permit applied for after October 21, 2008. The amount of the credit and how it will be applied is more specifically set forth in the Credit and Reimbursement Policy.

Section 1.2.3. To the extent that the Developer is developing multiple projects which were subject to the Second Funding Agreement and one project has advanced funded Levee Fees in excess of its total obligation and is due reimbursement, that reimbursement may be applied and added to the credit of any of Developer's other projects that will have a remaining obligation to pay Levee Fees. The manner in which the credit from a project that has paid fees in excess of its total obligation may be applied to the credit of Developer's other projects is set forth in Appendix A of the Credit and Reimbursement Policy.

Section 1.3. Reimbursement of Levee Fees. If the amount owed to Developer for Prior Advanced Funding in excess of obligations owed under the current Levee Fee is not satisfied by application of credit to the Project or transfer of the credit to another project as set forth in Section 1.2.3., the remaining amount due will be reimbursed to Developer, solely from Levee Fees collected from others, and then only as follows:

Section 1.3.1. Before Levee Certification. Prior to certification by the Federal Emergency Management Agency (FEMA) of those levees to be constructed or improved
pursuant to the Levee Improvement Program defined in Section 3 of the Second Funding Agreement, including the Feather River Setback Levee (the "Levee" or "Levees"), no reimbursement of Prior Advanced Funding will be made to the County, YCWA or Developer from any Levee Fees collected. Levee Fees collected through and until such certification date will be used to directly fund improvements to the Levees. However, it is understood by all parties that, to the extent Levee Fees are collected prior to such certification date, this funding may go to offset the additional required contribution of funds to the TRLIA Levee Improvement Program by the County and YWCA consistent with the intent of the July 22, 2008 Agreement Concerning Levee Impact Fees Among County of Yuba, Yuba County Water Agency, and Yuba Levee Financing Authority.

Section 1.3.2. After Certification of the Levees and before March 1, 2015. During the time period between when the Levees are certified by FEMA and before March 1, 2015 twice per year distribution of Levee Fee revenue not needed to pay any Levee improvement costs incurred prior to such certification but not yet paid will occur. The revenues collected before March 1, 2015 will be split between those parties determined by the County to be due reimbursements (including the County and YCWA on a proportionate basis, based upon the aggregate principal amount of their outstanding reimbursement. Table 6 of the Credit and Reimbursement Policy sets forth an example of the proportionality of outstanding reimbursements due.

Section 1.3.3. From and After March 1, 2015 and until all Reimbursements are Complete. Commencing on March 1, 2015 twice per year distributions of Levee Fee revenue will occur as follows: (a) initially, 100% of the revenues collected will go to fund the scheduled debt service due on the borrowing to fund levee improvements secured by lease and installment payment obligations of the County and YCWA and (b) any remaining Levee Fee revenue will be split between those parties determined by the County to be due reimbursements (including the County and YCWA) on a proportionate basis, based upon the aggregate principal amount of their outstanding reimbursement.

Section 1.3.4. Interest. Any reimbursement owed to Developer, as well as to County or YWCA, will accrue interest at a rate of 5.534% per annum. Interest will be calculated on a monthly compounding rate.

Section 1.3.5. Acknowledgment. Except as set forth in this Exhibit C and the Credit and Reimbursement Policy. Developer acknowledges and agrees that no other reimbursement or Credit is due for funds advanced under prior agreements concerning construction of the Levees, including the 2005 Funding Agreement and/or the Second Funding Agreement.

Section 1.3.6. Inspection of Records. Developer shall have the right to review and inspect records of the County with respect to Levee Fees and other revenue sources available to make payments or reimbursements to Developer under this Section 1.3. Developer must give the County reasonable notice of any such request.
Section 1.4. Extension of Tentative Map Life. The expiration date of any existing tentative map within the Subject Property, subject to the Credit and Reimbursement Policy, is extended for twenty (20) years from the original approval date, inclusive of any and all other extensions which may be provided by law.

Section 1.5. County Imposed Development Fees. The County shall not impose any New Fees relating to the Project for ten (10) years from August 11, 2009. Notwithstanding the forgoing, the County may impose New Fees as follows: (a) any Traffic Impact (Road Improvements) component of the County-Wide Capital Facility Fee; (b) any traffic impact fee associated with the South Yuba Transportation Improvement Authority; (c) and any fees levied for the purpose of offsetting the cost of regional park improvements, provided, however, that the cumulative new fees levied for regional park improvements shall not exceed Two Thousand Dollars ($2,000) per dwelling unit contained in the Project. To the extent a New Fee is levied against the Project pursuant to one of the exclusions listed herein, that New Fee shall be imposed and levied in a manner consistent with all applicable State and local laws and regulations. Development impact fees imposed by entities other than the County or by the County on behalf of other entities are not subject to this provision.

Section 1.6. Impact Fee Lock. The County shall not increase any Current Fees relating to the Project for 10 years from August 11, 2009. Notwithstanding the forgoing, the County may increase Current Fees as follows: (a) any currently incorporated escrowed accounted with and incorporated into the Current Fee; (b) any increase to the current Traffic Impact (Road Improvements) component of the County-Wide Capital Facility Fee; (c) any change or increase to the current PLSP/NASA Road Improvement Fee; (d) and any change or increase to the South Yuba Transportation Improvement Authority Traffic Impact Fee. To the extent a Current Fee levied against the Project is changed or increased pursuant to one of the exclusions listed herein, that change or increase shall be imposed and levied in a manner consistent with all applicable State and local laws and regulations. Development impact fees imposed by entities other than the County or by the County on behalf of other entities are not subject to this provision.

Section 1.7. Developer to Receive Benefit of Reduction in Fees. Notwithstanding any of the other terms of this Agreement, any reduction to Current Fees or New Fees that is applied to development within the County generally shall be applied to the Project.

Section 1.8. Deferral of Collection of Impact Fees. The balance of the Levee Fee due after application of credit as described in 1.2 above with respect to units in the Project, shall be calculated for each unit at the time a building permit is issued for that unit, but the collection by the County of the amount due shall be deferred until the final inspection of the unit for which the building permit is issued (in a manner consistent with Yuba County Ordinance No. 1461). The duration of this fee deferral will be for ten (10) years from August 11, 2009. The collection of all other development impact fees and County-Wide Capital Facility Fees will be deferred in a manner consistent with the Yuba County Ordinance No. 1461, except that the duration of the deferral will be ten (10) years from August 11, 2009. Following any such deferral period, all fees will be due and payable as and when levied in accordance with County policy. Development impact fees imposed by entities other than the County or by the County on behalf of other entities are not subject to this provision.
Section 1.9. Builder Bonds. In the event that the Developer is the registered owner of any Builder Bonds (as such term is defined in the Second Funding Agreement) issued by TRLIA for CFD 2006-1 or CFD 2006-2 (as such community facilities districts are described in Section 7.A.(1) of the Second Funding Agreement), the County and TRLIA agree to take all reasonable actions on its part necessary or appropriate, at the written request and cost of the Developer, in the redemption or refunding of such bonds, so long as any such request is consistent with the procedures and requirements described in Appendix B to the Three Rivers Levee Impact Credit and Reimbursement Policy. The County and TRLIA acknowledge and agree that all special tax revenues collected by TRLIA from special tax levies for CFD 2006-1 and CFD 2006-2 shall be disposed of by TRLIA as provided in Section 4.01 of the respective Fiscal Agent Agreement for the Builder Bonds for the respective community facilities district, in the rate and method of apportionment for the respective community facilities district and, to the extent not inconsistent with the foregoing, as described in Appendix C to the Credit and Reimbursement Policy.

Section 1.10. Failure of Consideration. The terms and conditions set forth in Sections 1.4 through 1.8 of this Exhibit C are granted by the County in consideration of the Developer’s agreement to the credit and reimbursement terms in Section 1.2 and 1.3 et seq. If any term of the credit and reimbursement policies as set forth in Sections 1.2 and 1.3 et seq. is deemed invalid or a legal challenge to any such terms is made by Developer, then there shall be deemed a failure of consideration and the provisions of Section 1.4 through 1.8 shall be void and unenforceable by Developer.

Section 1.11.1 Evacuation and Prehazard Mitigation Program. County commits to continue to use reasonable diligence to inform residents within the Project, including portions of Reclamation District 784, of the risk of flooding and to further refine, improve, and make available the County’s Evacuation Plan and Prehazard Mitigation Plan.

Section 1.11.2 Accounting, Auditing and Reporting.

(a) 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.

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

(c) Upon request each year by Developer, TRLIA shall deliver to Developer the audited financial statement prepared by a qualified independent auditor pertaining to the Levee Improvement Program for each fiscal year, including all revenues and expenditures of TRLIA relating thereto for the prior year’s period. The audited financial statement shall be delivered to Developer within 30 days following submission of such statement to the TRLIA Board.
Section 1.12. **Status of Second Funding Agreement.** The County, TRLIA and the Developer hereby acknowledge and agree that following State Approval all rights, duties, or obligations set forth in, or required by, the Second Funding Agreement as applied to each of them are hereby terminated and neither of the Funding Agreements is of any force or effect as to the County, TRLIA and Developer. "State Approval" shall mean receipt by TRLIA of a letter from the Central Valley Flood Protection Board which confirms that TRLIA has satisfied all of its obligations under the Second Implementation Agreement (referenced in Recital N to the Second Funding Agreement). The parties hereby acknowledge that State Approval has occurred. The County, TRLIA, and the Developer further acknowledge and agree that (i) this Development Agreement supersedes both the 2005 Advanced Funding Agreement (referenced in Recital J to the Second Funding Agreement) as well as the Second Funding Agreement, (ii) all reimbursable amounts that may have been due to the Developer under the 2005 Advanced Funding Agreement have been deemed paid, and (iii) all funding advanced by the Developer to TRLIA under the Second Funding Agreement shall be applied pursuant to this Development Agreement. All obligations, rights and duties set forth in the Second Funding Agreement that apply to the County, TRLIA and Developer are hereby superseded by this Development Agreement.

Notwithstanding anything in this Section 1.12 to the contrary, if a third party that was not a party to either Funding Agreements (meaning any party other than a party to this Agreement or a successor or related entity) shall make a claim under or to enforce the Second Funding Agreement against any party hereto, then solely for purposes of defending against, responding to, and/or making cross or counter claims in connection with the third party claim, the Second Funding Agreement shall not be deemed terminated, but only to the extent necessary to defend against, respond to, and/or make such cross or counter claims in connection with the third party claim.
EXHIBIT D

NOTICE OF TERMINATION

THIS NOTICE OF TERMINATION (hereinafter "this Notice") is given this ___ day of _____________________, 20___, by the County of Yuba (hereinafter "County") for the benefit of ________________________, (hereinafter "Owner").

1. On _____________________, 20___, the County of Yuba and __________________ entered into that certain agreement entitled "Development Agreement," approved by Ordinance __________________ (hereinafter "Agreement"), relative to the development known as ________________________ (hereinafter "Subject Property").

2. Owner has fully performed all its duties with respect to that portion of the Subject Property, which portion of the Subject Property is identified and described in Exhibit A, attached hereto and incorporated herein by this reference (hereinafter the "Released Property").

3. Pursuant to Section 4.1 of the Development Agreement, the Development Agreement is no longer in effect with respect to the Released Property.

COUNTY OF YUBA

By: __________________________

Name: _________________________

Title: _________________________

[NOTE: SIGNATURE MUST BE NOTARIZED]
NOTARY

State of California
County of ________________

On ________________, 20__, before me, ________________, Notary Public, personally appeared ______________________________, personally known to me (or proved on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

________________________
Notary Signature

WITNESS MY HAND AND OFFICIAL SEAL.
February 18, 2020

TO: Three Rivers Levee Improvement Authority Board

FROM: Paul Brunner, Executive Director

SUBJECT: Contract Approval – Wood Rodgers & ENGEO for Engineering and Design Services for the North Training Wall Project

Recommended Action:
Approve contract for Wood Rodgers, with subconsultant ENGEO, to provide civil and geotechnical engineering and design services for the North Training Wall (NTW) Project.

Background:
In 2019, Yuba County requested that TRLIA implement a project to reduce the flood risk to the community of Hallwood by strengthening the NTW and tying into high ground at the upstream limit of the project. A briefing to the TRLIA Board given in October 2019 provided background on the need for flood risk reduction and recently constructed interim repair, and also presented an implementation approach for the NTW project. Shortly thereafter, TRLIA submitted a funding request to the Yuba Water Agency (YWA) to fund implementation of the project. YWA approved $500,000 for TRLIA to assemble a consultant team for preliminary engineering and design, environmental survey and compliance, ecological enhancement and multi-benefit design, and evaluation of current and future grant funding opportunities. In January 2020, following an RFQ and selection process, the TRLIA Board approved the selection of the Wood Rodgers and ENGEO consultant team to provide engineering and design services.

Separate from this action, the TRLIA Board approved execution of a contract with Wood Rodgers in January 2020 for construction management services on the Goldfields 200 Project. If the NTW scope of work is approved, the two scopes (design serviced for the NTW and construction management services for Goldfields 200) will be included in a Wood Rodgers contract that includes both tasks.

Discussion:
Following the TRLIA Board’s approval of the Wood Rodgers and ENGEO consultant team, TRLIA and the team developed a scope of work for preliminary design and engineering for the NTW Project (attached). Specific tasks included in the scope of work are project management and coordination, bathymetric surveying, preliminary geotechnical engineering services, and preparation of preliminary 30% design plans. This work will be completed in 2020. Future work by the team will be performed under future contract amendments, pending funding.
Fiscal Impact:
This work is estimated to cost $271,900. YWA has provided $500,000 in grant funding to support preliminary effort for the NTW. It is recognized that the scoped amount is substantial in comparison to the amount available grant funds, however this effort will be used to inform future funding requests. Expenditures will be tracked monthly to ensure no work in excess of $500,000 is performed by the collective team.

ATTACHMENT:
Wood Rodgers ENGEO Contract (included in the Wood Rodgers Contract that also has a Construction Management task).
AGREEMENT FOR
ENGINEERING SERVICES

THIS AGREEMENT for engineering services ("Agreement") is made as of the Agreement Date set forth below by and between the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, a political subdivision of the State of California ("the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY"), and Wood Rodgers, Incorporated (the "CONSULTANT").

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

OPERATIVE PROVISIONS

1. SERVICES.

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

2. TERM.

Commencement Date: February 19, 2020

Termination Date: December 31, 2021

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

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

3. PAYMENT.

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

4. FACILITIES, EQUIPMENT AND OTHER MATERIALS AND OBLIGATIONS OF THREE RIVERS LEVEE IMPROVEMENT AUTHORITY.

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

5. GENERAL PROVISIONS.

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

6. DESIGNATED REPRESENTATIVES.

Paul G. Brunner, Executive Director, is the representative of the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY and will administer this Agreement for the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY. Jonathan Kors, Vice President, is the authorized representative for CONSULTANT. Changes in designated representatives shall occur only by advance written notice to the other party.

7. ATTACHMENTS.

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

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

8. TERMINATION. THREE RIVERS LEVEE IMPROVEMENT AUTHORITY and CONSULTANT shall each have the right to terminate this Agreement upon 30 days written notice to the other party.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on
______________________, 20__.

THREE RIVERS LEVEE
IMPROVEMENT AUTHORITY

Wood Rodgers, Incorporated

____________________
Paul G. Brunner, P.E.
Executive Director

____________________
Jonathan Kors, P.E.
Vice President

ATTEST:
RACHEL FERRIS,
SECRETARY

APPROVED AS TO FORM:
ANDREA P. CLARK
THREE RIVERS LEVEE IMPROVEMENT
AUTHORITY GENERAL COUNSEL

____________________

Page 3 of 16
ATTACHMENT A

A.1 SCOPE OF SERVICES AND DUTIES.

The services to be provided by CONSULTANT and the scope of CONSULTANT's duties are described in the Scope of Work titled Subject: Three Rivers Levee Improvement Authority (TRLIA) Goldfields 200-Year Setback Levee Construction Project and Subject: Three Rivers Levee Improvement Authority (TRLIA), Proposal for Yuba Goldfields North Training Wall Project Preliminary Design which is an appendix to this Attachment A.

A.2. TIME SERVICES RENDERED.

See Appendix.

A.3. MANNER SERVICES ARE TO BE PERFORMED.

As an independent CONSULTANT, CONSULTANT shall be responsible for providing services and fulfilling obligations hereunder in a professional manner: THREE RIVERS LEVEE IMPROVEMENT AUTHORITY shall not control the manner of performance.

A.4. FACILITIES FURNISHED BY THREE RIVERS LEVEE IMPROVEMENT AUTHORITY.

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

PAYMENT

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY shall pay CONSULTANT as follows:

B.1 BASE CONTRACT FEE. THREE RIVERS LEVEE IMPROVEMENT AUTHORITY shall pay CONSULTANT a contract fee not to exceed $1,001,848; CONSULTANT shall submit requests for payment after completion of services or no later than the tenth (10th) day of the month following provision of services. In no event shall total compensation paid to CONSULTANT under this Provision B.1 exceed $1,001,848 without an amendment to this Agreement approved by the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY Board of Directors.

B.2 TRAVEL COSTS. THREE RIVERS LEVEE IMPROVEMENT AUTHORITY shall not pay CONSULTANT for meals, lodging or other travel costs not included in this Agreement unless said costs are approved in advance by the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY representative (Operative Provision 7) and then THREE RIVERS LEVEE IMPROVEMENT AUTHORITY shall pay THREE RIVERS LEVEE IMPROVEMENT AUTHORITY per diem rates in effect on the date of invoice upon presentation of invoices.

B.3 AUTHORIZATION REQUIRED. Services performed by CONSULTANT and not authorized in this Agreement shall not be paid for by THREE RIVERS LEVEE IMPROVEMENT AUTHORITY. Payment for additional services shall be made to CONSULTANT by THREE RIVERS LEVEE IMPROVEMENT AUTHORITY if, and only if, this Agreement is amended by both parties in advance of performing additional services.
ATTACHMENT C

GENERAL PROVISIONS

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

C.1.1 All acts of CONSULTANT shall be performed as an independent CONSULTANT and not as an agent, officer or employee of THREE RIVERS LEVEE IMPROVEMENT AUTHORITY. It is understood by both CONSULTANT and THREE RIVERS LEVEE IMPROVEMENT AUTHORITY that this Agreement is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association.

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

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

C.1.4 As an independent consultant, CONSULTANT is not subject to the direction and control of THREE RIVERS LEVEE IMPROVEMENT AUTHORITY except as to the final result contracted for under this Agreement. THREE RIVERS LEVEE IMPROVEMENT AUTHORITY may not require CONSULTANT to change its manner of doing business, but may require it to redirect its efforts to accomplish what it has agreed to do.

C.1.5 CONSULTANT may provide services to others during the same period service is provided to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY under this Agreement.

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

C.1.7 As an independent CONSULTANT, CONSULTANT hereby indemnifies and holds THREE RIVERS LEVEE IMPROVEMENT AUTHORITY harmless from any and all claims that may be made against THREE RIVERS LEVEE IMPROVEMENT AUTHORITY based on any contention by any third party that an employer-employee relationship exists by reason of this Agreement.
C.2 LICENSES, PERMITS, ETC. CONSULTANT represents and warrants to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONSULTANT to practice its profession. CONSULTANT represents and warrants to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY that CONSULTANT shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for CONSULTANT to practice its profession at the time the services are performed. Failure of the CONSULTANT to comply with this provision shall authorize the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY to immediately terminate this agreement notwithstanding Operative Provision No. 9.

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

C.4 INSURANCE. Prior to rendering services provided by the terms and conditions of this Agreement, CONSULTANT or its subconsultants shall acquire and maintain during the term of this Agreement insurance coverage through and with an insurer acceptable to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, naming the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY and any related agency governed by the Board of Directors which is letting the contract or for whom the services under the contract are being provided, and THREE RIVERS LEVEE IMPROVEMENT AUTHORITY'S, or related agency's, officials, employees, and volunteers as additional insured (excluding workers' compensation and professional liability insurance), (hereinafter referred to as "the insurance"). The limits of insurance herein shall not limit the liability of the CONSULTANT hereunder.

C.4.1 TERM. Policies of insurance shall be in effect during the term of this Agreement and shall provide that they may not be canceled without first providing THREE RIVERS LEVEE IMPROVEMENT AUTHORITY with thirty (30) days written notice of such intended cancellation. If CONSULTANT fails to maintain the insurance provided herein, THREE RIVERS LEVEE IMPROVEMENT AUTHORITY may secure such insurance and deduct the cost thereof from any funds owing to CONSULTANT.

C.4.2 MINIMUM SCOPE OF INSURANCE. CONSULTANT shall procure insurance covering general liability, automobile liability, and workers' compensation. Coverage shall be at least as broad as:

(a) Insurance Services Office (ISO) Commercial General Liability Occurrence form number CG 0001 or equivalent ISO form. A non-ISO form must be reviewed and approved by the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY Risk Manager prior to acceptance of the Agreement.
(b) Insurance Services Office Business Auto Coverage form number CA 0001 0187 covering Automobile Liability, code 1 “any auto” and Endorsement CA 0029.

(c) Workers’ Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

(d) If this Agreement is for the provision of professional services, Professional Errors and Omissions Liability Insurance, with a coverage form subject to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY approval.

C.4.3 OTHER INSURANCE PROVISIONS. The policies are to contain, or be endorsed to contain the following provisions:

(a) General Liability and Automobile Liability Coverages.

(i) The THREE RIVERS LEVEE IMPROVEMENT AUTHORITY and the public entity awarding the contract if other than the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, and their officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the CONSULTANT; products and completed operations of the CONSULTANT; premises owned, leased, occupied, or used by the CONSULTANT; or automobiles owned, leased, hired, or borrowed by the CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, its officials, employees or volunteers.

(ii) The CONSULTANT’S insurance coverage shall be primary insurance as respects the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, its officials, employees and volunteers and any other insureds under this Agreement. Any insurance or self-insurance maintained by the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, its officials, employees and volunteers or other insureds shall be excess of the CONSULTANT’S insurance and shall not contribute with it.
(iii) Any failure to comply with reporting provisions
of the policies shall not affect coverage provided to
THREE RIVERS LEVEE IMPROVEMENT
AUTHORITY, its officials, employees and
volunteers or other insureds under this Agreement.

(iv) The insurance policy required by
this clause shall be endorsed to state that the
CONSULTANT'S insurance shall apply separately
to each insured against whom claim is made or suit
is brought, except with respect to the limits of the
insurer’s liability.

(b) Worker’s Compensation and Employers Liability
Coverage. The insurer shall agree to waive all rights of
subrogation against the THREE RIVERS LEVEE
IMPROVEMENT AUTHORITY, its officials, employees and
volunteers or other insureds under this Agreement.

(c) All Coverages. Each insurance policy required by this
clause shall be endorsed to state that coverage shall not be
suspended, voided, canceled by either party, reduced in coverage
or below minimum limits required under this Agreement except
after thirty (30) days prior written notice by certified mail, return
receipt requested, has been given to the THREE RIVERS LEVEE
IMPROVEMENT AUTHORITY.

C.4.4 ACCEPTABILITY OF INSURERS. Insurance is to be placed with
insurers with a current A.M. Best’s rating of no less than A:VII.

C.4.5 MINIMUM LIMITS OF INSURANCE. CONSULTANT shall maintain
limits no less than:

(a) Commercial General Liability: One Million Dollars
($1,000,000) combined single limit per occurrence for bodily
injury, personal injury and property damage. If Commercial
General Liability Insurance or other form with general aggregate
limit is used, either the general aggregate limit shall apply
separately to this Agreement or the general aggregate limit shall be
twice the required occurrence limit.

(b) Automobile Liability: $1,000,000 combined single limit
per accident for bodily injury or property damage.

(c) Workers’ Compensation and Employers Liability:
Workers’ Compensation limits as required by the Labor Code of
the State of California and Employers Liability limits of One Million Dollars ($1,000,000) per accident.

(d) Professional Errors and Omissions Liability (if required): Policy limits of not less than One Million Dollars ($1,000,000) per claim and One Million Dollars ($1,000,000) annual aggregate, with deductible or self-insured portion not to exceed Two Thousand Five Hundred Dollars ($2,500). Coverage may be made on a claims-made basis with a “Retro Date” either prior to the date of the Agreement or the beginning of the Agreement services. If claims-made, coverage must extend to a minimum of twelve-months beyond completion of the services. If coverage is canceled or non-renewed and not replaced with another claims-made policy form with a “Retro Date” prior to the Agreement effective date, the CONSULTANT must purchase “extended reporting” coverage for a minimum of twelve (12) months after completion of services.

C.4.6 SUBCONSULTANTS. In addition to the above policies, if CONSULTANT hires a subconsultant under this Agreement CONSULTANT shall include all subconsultants as insureds under its policies or shall furnish separate certificates and endorsements for each subconsultant. All coverages for subconsultant shall be subject to all of the requirements stated herein. If CONSULTANT requires subconsultant to provide insurance coverage, then CONSULTANT shall be named as an additional insured under such policy or policies (excluding workers’ compensation and professional liability insurance).

C.4.7 DEDUCTIBLES AND SELF-INSURED RETENTIONS. Except as otherwise provided in this Agreement, any deductibles or self-insured retentions must be declared to and approved by the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY. At the option of THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, either the insurer shall reduce or eliminate such deductions or self-insured retentions as respects THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, its officials, employees and volunteers; or, the CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

C.4.8 VERIFICATION OF COVERAGE.

(a) CONSULTANT shall furnish THREE RIVERS LEVEE IMPROVEMENT AUTHORITY with Certificates of Insurance and with original endorsements effecting coverage required by this clause. The certificate(s) and endorsement(s) for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificate(s) and endorsement(s) are to be on forms provided by the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY or on forms received and approved by the THREE RIVERS LEVEE IMPROVEMENT
AUTHORITY before work commences. THREE RIVERS LEVEE IMPROVEMENT AUTHORITY reserves the right to require complete, certified copies of all required insurance policies at any time.

(b) CONSULTANT shall not render services under the terms and conditions of this Agreement unless each type of insurance coverage and endorsement is in effect and CONSULTANT has delivered the certificate(s) of insurance and endorsement(s) to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY as previously described. If CONSULTANT shall fail to procure and maintain said insurance, THREE RIVERS LEVEE IMPROVEMENT AUTHORITY may, but shall not be required to, procure and maintain the same, and the premiums of such insurance shall be paid by CONSULTANT to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY upon demand. The policies of insurance provided herein which are to be provided by CONSULTANT shall be for a period of time sufficient to cover the term of the Agreement, including THREE RIVERS LEVEE IMPROVEMENT AUTHORITY’S acceptance of CONSULTANT’S work. It is understood and agreed that thirty (30) days prior to the expiration of any policy of insurance, CONSULTANT will deliver to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY certificate(s) and endorsement(s) evidencing a renewal or new policy to take the place of the policy expiring.

C.5 INDEMNITY. CONSULTANT shall defend, indemnify, and hold harmless THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, its elected and appointed councils, boards, commissions, officers, agents, and employees from any liability for damage or claims for damage for personal injury, including death, as well as for property damage, to the extent arising out of the negligence, recklessness, or willful misconduct of CONSULTANT in the performance of services rendered under this Agreement by CONSULTANT, or any of CONSULTANT'S officers, agents, employees, or subconsultants.

C.6 CONSULTANT NOT AGENT. Except as THREE RIVERS LEVEE IMPROVEMENT AUTHORITY may specify in writing, CONSULTANT shall have no authority, express or implied, to act on behalf of THREE RIVERS LEVEE IMPROVEMENT AUTHORITY in any capacity whatsoever as an agent. CONSULTANT shall have no authority, express or implied, pursuant to this Agreement to bind THREE RIVERS LEVEE IMPROVEMENT AUTHORITY to any obligation whatsoever.

C.7 ASSIGNMENT PROHIBITED. CONSULTANT may not assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no legal effect.
C.8 PERSONNEL. CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. In the event that THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, in its sole discretion, at any time during the term of this Agreement, desires the removal of any person or persons assigned by CONSULTANT to perform services pursuant to this Agreement, CONSULTANT shall remove any such person immediately upon receiving written notice from THREE RIVERS LEVEE IMPROVEMENT AUTHORITY of its desire for removal of such person or persons.

C.9 STANDARD OF PERFORMANCE. CONSULTANT shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged. All products of whatsoever nature which CONSULTANT delivers to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY pursuant to this Agreement shall be prepared in a first class and workmanlike manner and shall conform to the standards or quality normally observed by a person practicing in CONSULTANT’S profession.

C.10 POSSESSORY INTEREST. The parties to this Agreement recognize that certain rights to property may create a "possessor interest", as those words are used in the California Revenue and Taxation Code, §107. For all purposes of compliance by THREE RIVERS LEVEE IMPROVEMENT AUTHORITY with Section 107.6 of the California Revenue and Taxation Code, this recital shall be deemed full compliance by the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY. All questions of initial determination of possessory interest and valuation of such interest, if any, shall be the responsibility of the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY Assessor and the contracting parties hereto. A taxable possessory interest may be created by this contract; and if created, the party in whom such an interest is vested will be subject to the payment of property taxes levied on such an interest.

C.11 TAXES. CONSULTANT hereby grants to the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY the authority to deduct from any payments to CONSULTANT any THREE RIVERS LEVEE IMPROVEMENT AUTHORITY imposed taxes, fines, penalties and related charges which are delinquent at the time such payments under this Agreement are due to CONSULTANT.

C.12 TERMINATION. Upon termination of this Agreement as otherwise provided herein, CONSULTANT shall immediately cease rendering service upon the termination date and the following shall apply:

C.12.1 CONSULTANT shall deliver copies of all writings prepared by it pursuant to this Agreement. The term "writings" shall be construed to mean and include: handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing and form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.

C.12.2 THREE RIVERS LEVEE IMPROVEMENT AUTHORITY shall have full ownership and control of all such writings or other communications delivered by CONSULTANT pursuant to this Agreement.
C.12.3 THREE RIVERS LEVEE IMPROVEMENT AUTHORITY shall pay CONSULTANT the reasonable value of services rendered by CONSULTANT to the date of termination pursuant to this Agreement not to exceed the amount documented by CONSULTANT and approved by THREE RIVERS LEVEE IMPROVEMENT AUTHORITY as work accomplished to date; provided, however, THREE RIVERS LEVEE IMPROVEMENT AUTHORITY shall not in any manner be liable for lost profits which might have been made by CONSULTANT had CONSULTANT completed the services required by this Agreement. In this regard, CONSULTANT shall furnish to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY such financial information as in the judgment of the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY is necessary to determine the reasonable value of the services rendered by CONSULTANT. In the event of a dispute as to the reasonable value of the services rendered by CONSULTANT, the decision of the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY shall be final. The foregoing is cumulative and does not affect any right or remedy which THREE RIVERS LEVEE IMPROVEMENT AUTHORITY may have in law or equity.

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

C.13 NON-DISCRIMINATION. Throughout the duration of this Agreement, CONSULTANT shall not unlawfully discriminate against any employee of the CONSULTANT or of the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY or applicant for employment or for services or any member of the public because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, age, sex or sexual orientation. CONSULTANT shall ensure that in the provision of services under this Agreement, its employees and applicants for employment and any member of the public are free from such discrimination. CONSULTANT shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900, et seq.). The applicable regulations of the Fair Employment Housing Commission implementing Government Code Section 12900, set forth in Chapter 5, Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. CONSULTANT shall also abide by the Federal Civil Rights Act of 1964 and all amendments thereto, and all administrative rules and regulations issued pursuant to said Act. CONSULTANT shall give written notice of its obligations under this clause to any labor agreement. CONSULTANT shall include the non-discrimination and compliance provision of this paragraph in all subcontracts to perform work under this Agreement.

C.14 REHABILITATION ACT OF 1973/AMERICANS WITH DISABILITIES ACT OF 1990. In addition to application of the non-discrimination provision of this Agreement, above, CONSULTANT agrees to comply with all provisions of section 504 et seq. of the Rehabilitation Act of 1973, and with all provisions of the Americans with Disabilities Act of 1990, and all amendments thereto, and all administrative rules and regulations issued pursuant to said Acts,
pertaining to the prohibition of discrimination against qualified handicapped and disabled persons, in all programs or activities, as to employees or recipients of services.

C.15 OWNERSHIP OF INFORMATION. All professional and technical information developed under this Agreement and all work sheets, reports, and related data shall become the property of THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, and CONSULTANT agrees to deliver reproducible copies of such documents to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY on completion of the services hereunder. The THREE RIVERS LEVEE IMPROVEMENT AUTHORITY agrees to indemnify and hold CONSULTANT harmless from any claim arising out of reuse of the information for other than this project.

C.16 WAIVER. A waiver by any party of any breach of any term, covenant or condition herein contained or a waiver of any right or remedy of such party available hereunder at law or in equity shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained or of any continued or subsequent right to the same right or remedy. No party shall be deemed to have made any such waiver unless it is in writing and signed by the party so waiving.

C.17 COMPLETENESS OF INSTRUMENT. This Agreement, together with its specific references and attachments, constitutes all of the agreements, understandings, representations, conditions, warranties and covenants made by and between the parties hereto. Unless set forth herein, neither party shall be liable for any representations made express or implied.

C.18 SUPERSEDES PRIOR AGREEMENTS. It is the intention of the parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, representations, or agreements, written or oral, between the parties hereto.

C.19 ATTORNEY'S FEES. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fee, which may be set by the Court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such party may be entitled.

C.20 CAPTIONS. The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

C.21 DEFINITIONS. Unless otherwise provided in this Agreement, or unless the context otherwise requires, the following definitions and rules of construction shall apply herein.

C.21.1 NUMBER AND GENDER. In this Agreement, the neuter gender includes the feminine and masculine, and the singular includes the plural, the word "person" includes corporations, partnerships, firms or associations, wherever the context so requires.

C.21.2 MANDATORY AND-permissive. "Shall" and "will" and "agrees" are mandatory. "May" is permissive.
C.22 TERM INCLUDES EXTENSIONS. All references to the term of this Agreement or the Agreement Term shall include any extensions of such term.

C.23 SUCCESSORS AND ASSIGNS. All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

C.24 MODIFICATION. No modification or waiver of any provision of this Agreement or its attachments shall be effective unless such waiver or modification shall be in writing, signed by all parties, and then shall be effective only for the period and on the condition, and for the specific instance for which given.

C.25 COUNTERPARTS. This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

C.26 OTHER DOCUMENTS. The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

C.27 PARTIAL INVALIDITY. If any term, covenant, condition or provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provision and/or provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

C.28 JURISDICTION. It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a Court of competent jurisdiction in the County of Yuba, State of California.

C.29 CONTROLLING LAW. The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

C.30 TIME IS OF THE ESSENCE. Time is of the essence of this Agreement and each covenant and term a condition herein.

C.31 AUTHORITY. All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, estates or firms represented or purported to be represented by such entity(s), person(s), estate(s) or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Further, by entering into this Agreement, neither party hereto shall have breached the terms or conditions of any other contract or agreement to which such party is obligated, which such breach would have a material effect hereon.
C.32 CONFLICT OF INTEREST. Neither a THREE RIVERS LEVEE IMPROVEMENT AUTHORITY employee whose position in THREE RIVERS LEVEE IMPROVEMENT AUTHORITY enables such employee to influence the award of this Agreement or any competing Agreement, nor a spouse or economic dependent of such employee, shall be employed in any capacity by CONSULTANT herein, or have any other direct or indirect financial interest in this Agreement.

CONSULTANT may be subject to the disclosure requirements of the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY conflict of interest code if in a position to make decisions or influence decisions that could have an effect on the CONSULTANT’S financial interest. The THREE RIVERS LEVEE IMPROVEMENT AUTHORITY Administrator shall determine in writing if CONSULTANT has been hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in the Yuba County Conflict of Interest Code.

C.33 NOTICES. All notices and demands of any kind which either party may require or desire to serve on the other in connection with this Agreement must be served in writing either by personal service or by registered or certified mail, return receipt requested, and shall be deposited in the United States Mail, with postage thereon fully prepaid, and addressed to the party so to be served as follows:

If to "THREE RIVERS LEVEE IMPROVEMENT AUTHORITY":

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY
Paul G. Brunner, Executive Director
1114 Yuba Street, Suite 218
Marysville, CA 95901

If to "CONSULTANT":

Wood Rodgers, Inc.
Jonathan Kors, P.E., Vice President
3301 C Street, Building 100-B
Sacramento, CA 95816
January 15, 2020

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

SUBJECT: Three Rivers Levee Improvement Authority (TRLIA) Goldfields 200-year Setback Levee Construction Project

Dear Mr. Brunner,

In support of the TRLIA Goldfields 200-year Setback Levee Construction Project (Project), Wood Rodgers, Inc. (Wood Rodgers) proposes to provide Resident Engineering and Office Engineering services to the Construction Management team to be led by Mr. Doug Handen, Construction Manager (CM). In this role, Wood Rodgers will provide construction contract administration, construction management coordination, and construction documentation support directly to the CM. Construction civil inspection is anticipated to be provided by MHM, Inc. (MHM) and geotechnical inspection is anticipated to be provided by ENGEIO, Inc. (ENGEIO). GEI Consultants, Inc. (GEI) will provide mitigation monitoring services relating to environmental compliance.

The work is anticipated to occur in accordance with the schedule distributed by Ms. Claire Marie Turner of MBK, Inc. (MBK) during the meeting held at ENGEIO’s office on December 13, 2019. The schedule indicates that Project bidding and contracting will occur in February and March of 2020 and construction will commence in May of 2020. All Project work is anticipated to be completed by the end of 2020. The overall duration of construction is, therefore, anticipated to total 10 months. Should extensions to the construction schedule occur, adjustments to Wood Rodgers’ proposed budget for the work may be required. Wood Rodgers’ personnel are proposed to be on site during construction for single-shifts (days) and, on occasion, weekends (Saturday only).

Wood Rodgers’ work on the Project will be carried out under the direction of the CM, and the anticipated roles and responsibilities of the individuals of Wood Rodgers proposed team are outlined below. The anticipated hours for each of these individuals is identified in Wood Rodgers’ proposed budget, attached as Table 1. Although not directly contracted with MHM, ENGEIO and GEI, Wood Rodgers will provide direction of and oversight for MHM, ENGEIO, and GEI in their respective roles on the Project.
A. Proposed CM Team Services

1. Principal-In-Charge

Mr. Jonathan Kors, Wood Rodgers' Principal-In-Charge (PIC) will oversee and provide Quality Control for the work of the Resident Engineer (RE), Office Engineer (OE), and Project Coordinator (PC) described below. Mr. Kors has served in both of these roles during his 24-year career, and will actively coordinate with them routinely to ensure that these roles are carried out as required. The PIC will be the primary point of contact for all contractual matters associated with the work.

2. Resident Engineer

Mr. Carlos Contreras will provide RE services during construction of the Project. This work entails the coordination of Office Engineer activities (to be provided by Wood Rodgers) and Construction Inspectors (to be provided by others) in order to ensure that construction is progressing in accordance with the Project design. The RE will not direct the work of the contractor and will not oversee or inspect Project work. If, during routine observation of the work, the OE identifies work that is not in conformance with the contract documents, he will notify the CM.

The Resident Engineer will facilitate routine construction coordination meetings on behalf of the CM team, review progress payment submittals, coordinate the processing of construction submittals and Requests for Information (RFIs), review and confirm Project As-Built records are being maintained by the Contractor, and perform other tasks necessary for coordination and documentation of construction. Communication between the construction management team and the construction contractor will be facilitated through the RE. The Resident Engineer will ultimately be in responsible charge of construction certification and close-out documentation on behalf of the CM.

3. Office Engineer

Mr. Joshua Kaup will provide Office Engineer (OE) services during construction of the Project. The primary responsibility of the OE will be to process submittals, RFIs, and design clarifications/revisions for approval by the CM team. Other OE responsibilities include soliciting input from the CM, geotechnical designers, agency reviewers, or others with review and approval responsibility. The OE will provide documentation of construction progress meetings, manage and log RFIs, maintain a submittal log, manage construction testing reports and inspection forms, and provide construction status reports under the direction of the RE. The OE may also prepare design clarifications and revisions on behalf of the design engineer when and where required. The OE will not direct the work of the construction contractor and will not provide inspection services on the Project. If, during routine observation of the work, the OE identifies work that is not in conformance with the contract documents, he will
notify the RE and the RE will notify the CM. The OE will document construction progress with photos and video throughout the duration of the work.

4. Project Coordinator

The PC will provide assistance to the RE and OE when required to perform routine copying, filing, documents QA review, binding, and submitting and transmitting Project information.

B. Construction Documentation Work Products

In addition to providing professional services as outlined above, Wood Rodgers will be the primary author and lead consultant for preparing construction close-out documents. Construction close-out documents are anticipated to include Project Certification, a Construction Completion Report, and Project Record Drawings and Specifications.

1. Project Certification

Project certification will be a short document that describes Wood Rodgers’ role in design, construction administration, and construction observation and will certify that the work was completed in conformance with the Project Design and the Standards and Regulations in force at the time of construction. This certification will be based upon Wood Rodgers’ role on the Construction Management Team, and will rely on the work of others (including project inspectors, construction testing providers, the Contractor, and others with direct oversight and knowledge of the performance of the work) to provide certification of their work on the Project. It is anticipated that these other firms will certify their respective work on the Project. The certification will be adequate for meeting the US Federal Emergency Management Agency’s (FEMA) 100-year and DWR Urban Level of Flood Protection 200-year standards.

The certification document will be stamped with the Professional Registration and signature of the RE and/or PIC.

2. Construction Documentation Report (CDR)

At the completion of construction, Wood Rodgers will prepare a Draft Construction Documentation Report and a Final Construction Documentation Report. The CDR will contain all pertinent information relating to construction of the Project including references to the construction contract documents and design criteria, a discussion of quality control during construction, a summary of construction correspondence, the submittal log, the RFI log, a discussion of environmental monitoring and compliance, and a summary of all field changes. Appendices within the CDR will contain all quality control sampling and testing results, field inspector reports, punch lists and completion items, and other pertinent information relating to construction completion.
A set of Project Record Drawings, as described in Section 3 below, will be included in the Appendices.

Up to ten (10) copies of the Draft Construction Completion Report and ten (10) copies of the Final Construction Completion Report will be distributed to the DWR, USACE, TRLIA, and other agencies as appropriate by Wood Rodgers.

3. Record Drawings

Using red-line as-built drawings as well as specifications maintained during construction and completed at the end of construction by the Contractor, Wood Rodgers will prepare a Record Set of Construction Drawings and Specifications for inclusion in the Construction Documentation Report. The completed Record Drawings will cloud approved changes and will reference the appropriate RFI or Field Clarification where the change was initiated by these documents. The drawings will be certified as providing an accurate depiction of the construction as completed by the Contractor and Construction Management Team.

Up to twenty (20) copies of the Draft Record Drawings and twenty (20) copies of the Final Record Drawings will be distributed to the DWR, USACE, TRLIA, and other agencies as appropriate by Wood Rodgers.

Wood Rodgers proposes to perform the above CM Team Services on a Time-and-Materials basis not to exceed the total fee estimate included in Table 1 without prior written authorization from Three Rivers Levee Improvement Authority. Also attached please find Exhibit A – Wood Rodgers Invoicing Payment & Liability Policies and Exhibit B – Wood Rodgers 2020 Fee Schedule.

Wood Rodgers appreciates the opportunity to be of service to TRLIA on this Project. Should you have any questions or need additional information, please contact me at 916-326-5294 or via email: jkors@woodrodgers.com.

Sincerely,

Jonathan Kors
Vice President

Enclosures
## Goldfields 200-year Setback Levee - Construction Management

Total Fee Estimate - Wood Rodgers

<table>
<thead>
<tr>
<th>BID PHASE</th>
<th>BID PHASE</th>
<th>CONTRACT</th>
<th>CONSTRUCTION</th>
<th>CLOSE OUT</th>
<th>CLOSE OUT</th>
</tr>
</thead>
<tbody>
<tr>
<td>FEB</td>
<td>MAR</td>
<td>APR</td>
<td>MAY</td>
<td>JUNE</td>
<td>JULY</td>
</tr>
<tr>
<td>Work Days</td>
<td>19</td>
<td>22</td>
<td>22</td>
<td>20</td>
<td>22</td>
</tr>
<tr>
<td>Weekend Days</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Hours Per Day</td>
<td>8</td>
<td>8</td>
<td>8</td>
<td>10</td>
<td>8</td>
</tr>
<tr>
<td>% Time (Assumptions for all total)</td>
<td>10%</td>
<td>10%</td>
<td>25%</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Base Rate</th>
<th>Base w/ Vehicle</th>
<th>BUDGETED HOURS</th>
<th>TOTAL HOURS</th>
<th>TOTAL COST</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal Engineer</td>
<td>350</td>
<td>6</td>
<td>30</td>
<td>10</td>
</tr>
<tr>
<td>Proj. Coordinator</td>
<td>250</td>
<td>2</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>Associate Engineer</td>
<td>150</td>
<td>16</td>
<td>44</td>
<td>44</td>
</tr>
<tr>
<td>Engineer</td>
<td>165</td>
<td>18</td>
<td>44</td>
<td>44</td>
</tr>
</tbody>
</table>

As-Built and CDR Reproduction, Distribution and other Direct Costs: $10,000

Total: $731,048
1. "Reimbursable expenses" are not included in proposal costs, and shall include actual expenditures made by Wood Rodgers Inc. in the performance of its services (blueprints, reproductions, etc.) and shall be billed at vendor invoice.

2. Invoices are submitted monthly by Wood Rodgers, Inc. Client shall notify Wood Rodgers, Inc. in writing of any and all objections, if any, to an invoice within ten (10) days of the date of the invoice. Otherwise, the invoice shall be deemed proper and accepted by the Client. Amounts invoiced are due and payable upon receipt. Client's account shall be considered delinquent if Wood Rodgers, Inc. does not receive full payment within thirty (30) days after the invoice date.

3. A service charge shall be applied to delinquent accounts at the rate of 1.5% per month. Payment thereafter shall be applied first to accrued interest and then to unpaid principal. Client shall pay all costs and expenses, including without limitation, reasonable attorney's fees, incurred by Wood Rodgers, Inc. in connection with collection of delinquent accounts of Client.

4. If a delinquency occurs, Wood Rodgers, Inc. may choose to suspend work upon ten- (10) days written notice to Client. Wood Rodgers, Inc. shall recommence work once such delinquency is completely cured and any and all attendant collection costs, fees, or other amounts required to be paid by Client under this contract are paid in full. If a delinquency by Client occurs and Wood Rodgers, Inc. chooses not to suspend work, no waiver or estoppel shall be implied. Client agrees and understands that if Wood Rodgers, Inc. suspends its work pursuant to this paragraph, Wood Rodgers, Inc. shall not be liable for any costs or damages, including but not limited to delay and consequential damages, to the Client, other owner of the property where such work is being performed, or any other third party, that may arise from or be related to such work suspension. Client agrees to indemnify and hold Wood Rodgers, Inc. harmless from and against any and all damages, costs, attorney's fees, and/or other expenses which Wood Rodgers, Inc. may incur as a result of any claim by any person or entity arising out of such suspension of work.

5. When non-standard billing is requested by Client, time spent by office administrative personnel in preparation of such billing shall be considered an extra cost to the project and shall be billed as such.

6. In providing services under this Agreement, Wood Rodgers, Inc. will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

7. Client and Wood Rodgers, Inc. recognize the risks, rewards and benefits of the project and Wood Rodgers, Inc. total fee for services. The risks have been allocated such that Client and Wood Rodgers, Inc. agrees that, to the fullest extent permitted by law, Wood Rodgers, Inc. total liability to Client and to all construction contractors and subcontractors on the project for any and all injuries, claims, losses, expenses, damages or claims arising out of this agreement from any cause or causes shall not exceed the total aggregate liability of $732,648. Such causes include but are not limited to Wood Rodgers, Inc. negligence, errors, omissions, strict liability, and breach of contract and breach of warranty.

8. This agreement and the applicable Services Authorization & Agreement or Proposal/Contract constitute the entire agreement between the parties and there are no conditions, agreements or representations between the parties except as expressed in said documents. It is not the intent of the parties to this agreement to form a partnership or joint venture.
<table>
<thead>
<tr>
<th>CLASSIFICATION</th>
<th>STANDARD RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal Engineer/Geologist/Surveyor/Planner/GIS/LA* II</td>
<td>$250</td>
</tr>
<tr>
<td>Principal Engineer/Geologist/Surveyor/Planner/GIS/LA* I</td>
<td>$220</td>
</tr>
<tr>
<td>Associate Engineer/Geologist/Surveyor/Planner/GIS/LA* III</td>
<td>$205</td>
</tr>
<tr>
<td>Associate Engineer/Geologist/Surveyor/Planner/GIS/LA* II</td>
<td>$195</td>
</tr>
<tr>
<td>Associate Engineer/Geologist/Surveyor/Planner/GIS/LA* I</td>
<td>$185</td>
</tr>
<tr>
<td>Engineer/Geologist/Surveyor/Planner/GIS/LA* III</td>
<td>$175</td>
</tr>
<tr>
<td>Engineer/Geologist/Surveyor/Planner/GIS/LA* II</td>
<td>$165</td>
</tr>
<tr>
<td>Engineer/Geologist/Surveyor/Planner/GIS/LA* I</td>
<td>$150</td>
</tr>
<tr>
<td>Assistant Engineer/Geologist/Surveyor/Planner/GIS/LA*</td>
<td>$115</td>
</tr>
<tr>
<td>CAD Technician III</td>
<td>$150</td>
</tr>
<tr>
<td>CAD Technician II</td>
<td>$130</td>
</tr>
<tr>
<td>CAD Technician I</td>
<td>$115</td>
</tr>
<tr>
<td>Project Coordinator</td>
<td>$130</td>
</tr>
<tr>
<td>Administrative Assistant</td>
<td>$95</td>
</tr>
<tr>
<td>1 Person Survey Crew</td>
<td>$210</td>
</tr>
<tr>
<td>2 Person Survey Crew</td>
<td>$305</td>
</tr>
<tr>
<td>3 Person Survey Crew</td>
<td>$390</td>
</tr>
<tr>
<td>Consultants, Outside Services, Materials &amp; Direct Charges</td>
<td>Cost Plus 5%</td>
</tr>
<tr>
<td>Overtime Work</td>
<td>Rate Plus 50%</td>
</tr>
</tbody>
</table>

*LA = Landscape Architect

Blueprints, reproductions, and outside graphic services will be charged at vendor invoice. Auto mileage will be charged at the IRS standard rate, currently 58 cents per mile.

Fee Schedule subject to change January 1, 2021.
January 31, 2020

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

Dear Mr. Brunner,

Subject: Three Rivers Levee Improvement Authority, Proposal for Yuba Goldfields North Training Wall Project Preliminary Design

Originally constructed by the California Debris Commission in 1899, the North Training Wall (NTW) was established for the purpose of managing mining debris in the Yuba River and it was not intended to serve as a flood control feature. Moreover, this reach of the river is not a part of the Sacramento River Flood Control Project and, therefore, not subject to US Army Corps of Engineers (USACE) oversight. The facility is not maintained by any local or state agency and, in recent years, the NTW has experienced a loss of material that could result in its failure. Such a failure would impact the community of Hallwood, which is located north and east of the city of Marysville.

In 2019, Wood Rodgers, Inc. (Wood Rodgers) developed alternatives for a long-term solution and identified a preferred alternative that forms the basis for the Yuba River NTW Project (Yuba Goldfields North Training Wall - Community of Hallwood Flood Risk Evaluation, Alternative 1). A separate project for restoring fisheries habitat within the Lower Yuba River is underway by the US Fish and Wildlife Service Anadromous Fish Restoration Program entitled: The Hallwood Floodplain and Side Channel Restoration Project. This project may provide opportunities for environmental restoration or other collaborative benefits for the subject project.

In response to its Summary of Qualifications dated January 3, 2020, the team of Wood Rodgers and ENGEIO, Incorporated (ENGEIO) was selected by the Three Rivers Levee Improvement Authority (TRLIA) to provide consulting services for Preliminary Engineering of the Yuba River North Training Wall Project (Project). An initial scoping meeting was held between MBK Engineers (MBK), Wood Rodgers, and ENGEIO on Friday, January 17, 2020. The attached Scope of Work (SOW) reflects the discussions and preliminary scoping decisions made during that meeting.

The primary purpose of the Preliminary Design is to advance the Project to a point where sufficient detail can be developed to accurately estimate Project construction costs and to pursue funding from potential grant opportunities. The design work identified in this SOW targets a 30-percent level of design.
Wood Rodgers’ proposed SOW for the NTW Project Preliminary Design follows below.

**SCOPE OF WORK**

**Task 1 – Perform Project Management and Coordination**

Under Task 1, Wood Rodgers will perform Project management-related activities that are necessary to carry out the work. As the prime consultant, Wood Rodgers will be the primary contact for MBK and TRLIA and will manage ENGEO as its subconsultant. Project Management activities will include internal coordination, quality assurance reviews, internal meetings, status reporting, invoicing, and correspondence. Monthly design and program team meetings are also included under Task 1. These meetings are anticipated to occur on a one-hour-per-month basis and will extend through the duration of the design period. A total Project duration of six (6) months is anticipated for this task.

**Task 2 – Perform Bathymetric Surveying**

It is assumed that recent topography prepared by either Teichert Aggregates, Inc., or the Yuba Water Agency is available for use on the Project. Topographic mapping in the inundated areas of existing tailing ponds located north of the NTW is not available, but is necessary to complete civil and geotechnical analyses. Under Task 2, Wood Rodgers will perform bathymetric surveys to collect this data. Wood Rodgers will obtain up to eighteen (18) bathymetric survey cross sections extending from the existing high water line at the NTW to approximately 400 feet landward of the NTW (into the pond area of previous mining), as shown below on Exhibit 1. Up to sixteen (16) bathymetric cross sections will be spaced approximately every 100 feet to develop design topography where the toe of NTW Alternative 1 was shown to extend into the pond. Two (2) additional bathymetric cross sections will be obtained at other locations within the pond so support geotechnical analyses.

Wood Rodgers will use the survey control points that were referenced for the topographic mapping provided by either the Yuba Water Agency or Teichert Aggregates in order to ensure consistency across land and bathymetric surveys.
Depending on the site conditions (water levels, obstructions and vegetation) at the time of the survey, a small personal raft or aluminum boat equipped with dual frequency sonar will be used.

**Task 3 – Perform Preliminary Geotechnical Engineering Services**

Preliminary geotechnical engineering services will be provided by ENGEIO. As outlined in ENGEIO’s proposal (**Attachment 1**), the investigation and analysis will include research, field reconnaissance, preliminary evaluation, and preparation of a 30-percent Geotechnical Basis of Design Report (GBODR) to support the preliminary design of the NTW. No new geotechnical explorations are planned for the preliminary design (30-percent) phase.

**Task 4 – Prepare Preliminary Design Plans (30-Percent Completion)**

Under Task 4, Wood Rodgers will prepare preliminary design plans for restoring long-term stability to the NTW. The preliminary design plans will utilize the most recently developed topographic mapping by either the Yuba Water Agency or Teichert Aggregates along with the bathymetric surveys completed under Task 2. The NTW will be reconstructed to provide an embankment consisting of a 3 horizontal to 1 vertical (3H:1V) waterside slope, a 5H:1V landside slope, a 50-foot-wide crown, and a minimum of five feet of freeboard above the 200-year design water surface elevation (DWSE). The DWSE for the Project will be provided by MBK.

The Hallwood-Cordua Canal is located at the upstream end of the Project. The canal includes an embankment on the southwest side of the canal to contain the irrigation flows. The elevations of this embankment will be reviewed to determine if the existing embankment is sufficiently high to be considered a high-ground tie-in point. If it is sufficiently high, the design will construct a widened embankment of adequate width to contain the 200-year DWSE and provide a minimum of three feet of freeboard.
If it is determined that the elevations of the existing embankment will not provide the required freeboard, the NTW will be extended across the Hallwood-Cordua Canal to tie into high ground on the northeast side of the canal. The NTW will be located at an existing access road crossing located downstream of the Hallwood-Cordua Canal fish screen. Under this case, new culverts will be designed within the extended NTW to convey the Hallwood-Cordua Canal flows through the NTW. These culverts will include positive closure structures meeting the requirements of the USACE and DWR Urban Levee Design Criteria (ULDC).

At the downstream end of the Project, the NTW will tie into the raised access road for the Teichert Aggregates facility, which currently provides flood protection for the community of Hallwood.

Certification of the NTW is not a part of this Project. It is anticipated that a certification package will be completed after construction. As part of this certification, an analysis of the Teichert Aggregate access road should be performed to certify that it meets the Federal Emergency Management Agency (FEMA) requirements for 100-year flood protection.

FEE PROPOSAL

Wood Rodgers’ proposed Fee Estimate for the work is included in Table 1 (attached). Wood Rodgers proposes to perform the above Scope of Work on a Time-and-Materials basis not to exceed the total fee included in Table 1 without prior authorization by MBK. Attached please find Exhibit A – Wood Rodgers Invoicing Payment & Liability Policies, and Exhibit B – Wood Rodgers 2020 Fee Schedule.

If you agree with the proposed Scope of Work, schedule, and Fee Estimate, please forward a contract for signature at your earliest convenience.

Wood Rodgers appreciates the opportunity to be of service to TRLIA on this project.

Sincerely,

Jonathan Kors, PE
Vice President

Enclosures
### Table 1

**Three Rivers Levee Improvement Authority**  
Yuba Goldfields North Training Wall Project Preliminary Design  
Proposed Budget

<table>
<thead>
<tr>
<th>Task No.</th>
<th>Task Description</th>
<th>Direct Labor Classifications</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Project Engineer</td>
<td>Associate Engineer</td>
</tr>
<tr>
<td>1</td>
<td>Preliminary Project Management and Coordination</td>
<td>10</td>
<td>20</td>
</tr>
<tr>
<td>2</td>
<td>Preliminary Geotechnical Surveying</td>
<td>1</td>
<td>10</td>
</tr>
<tr>
<td>3</td>
<td>Preliminary Geotechnical/Engineering Services</td>
<td>3</td>
<td>11</td>
</tr>
<tr>
<td>4</td>
<td>Phase Preliminary Design/Plans (60% Percent Complete)</td>
<td>24</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>TOTAL TASKS 1-4</td>
<td>66</td>
<td>320</td>
</tr>
<tr>
<td></td>
<td>Total Cost (M&amp;O + Materials)</td>
<td>$11,500</td>
<td>$14,000</td>
</tr>
</tbody>
</table>
INVOICING PAYMENT & LIABILITY POLICIES

1. "Reimbursable expenses" are not included in proposal costs, and shall include actual expenditures made by Wood Rodgers Inc. in the performance of its services (blueprints, reproductions, etc.) and shall be billed at vendor invoice.

2. Invoices are submitted monthly by Wood Rodgers, Inc. Client shall notify Wood Rodgers, Inc. in writing of any and all objections, if any, to an invoice within ten (10) days of the date of the invoice. Otherwise, the invoice shall be deemed proper and accepted by the Client. Amounts invoiced are due and payable upon receipt. Client’s account shall be considered delinquent if Wood Rodgers, Inc. does not receive full payment within thirty (30) days after the invoice date.

3. A service charge shall be applied to delinquent accounts at the rate of 1.5% per month. Payment thereafter shall be applied first to accrued interest and then to unpaid principal. Client shall pay all costs and expenses, including without limitation, reasonable attorney’s fees, incurred by Wood Rodgers, Inc. in connection with collection of delinquent accounts of Client.

4. If a delinquency occurs, Wood Rodgers, Inc. may choose to suspend work upon ten- (10) days written notice to Client. Wood Rodgers, Inc. shall recommence work once such delinquency is completely cured and any and all attendant collection costs, fees, or other amounts required to be paid by Client under this contract are paid in full. If a delinquency by Client occurs and Wood Rodgers, Inc. chooses not to suspend work, no waiver or estoppel shall be implied. Client agrees and understands that if Wood Rodgers, Inc. suspends its work pursuant to this paragraph, Wood Rodgers, Inc. shall not be liable for any costs or damages, including but not limited to delay and consequential damages, to the Client, other owner of the property where such work is being performed, or any other third party, that may arise from or be related to such work suspension. Client agrees to indemnify and hold Wood Rodgers, Inc. harmless from and against any and all damages, costs, attorney’s fees, and/or other expenses which Wood Rodgers, Inc. may incur as a result of any claim by any person or entity arising out of such suspension of work.

5. When non-standard billing is requested by Client, time spent by office administrative personnel in preparation of such billing shall be considered an extra cost to the project and shall be billed as such.

6. In providing services under this Agreement, Wood Rodgers, Inc. will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

7. Client and Wood Rodgers, Inc. recognize the risks, rewards and benefits of the project and Wood Rodgers, Inc. total fee for services. The risks have been allocated such that Client and Wood Rodgers, Inc. agrees that, to the fullest extent permitted by law, Wood Rodgers, Inc. total liability to Client and to all construction contractors and subcontractors on the project for any and all injuries, claims, losses, expenses, damages or claim expenses arising out of this agreement from any cause or causes shall not exceed the total aggregate liability of $269,200. Such causes include but are not limited to Wood Rodgers, Inc. negligence, errors, omissions, strict liability, and breach of contract and breach of warranty.

8. This agreement and the applicable Services Authorization & Agreement or Proposal/Contract constitute the entire agreement between the parties and there are no conditions, agreements or representations between the parties except as expressed in said documents. It is not the intent of the parties to this agreement to form a partnership or joint venture.
<table>
<thead>
<tr>
<th>CLASSIFICATION</th>
<th>STANDARD RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal Engineer/Geologist/Surveyor/Planner/GIS/LA* II</td>
<td>$250</td>
</tr>
<tr>
<td>Principal Engineer/Geologist/Surveyor/Planner/GIS/LA* I</td>
<td>$220</td>
</tr>
<tr>
<td>Associate Engineer/Geologist/Surveyor/Planner/GIS/LA* III</td>
<td>$205</td>
</tr>
<tr>
<td>Associate Engineer/Geologist/Surveyor/Planner/GIS/LA* II</td>
<td>$195</td>
</tr>
<tr>
<td>Associate Engineer/Geologist/Surveyor/Planner/GIS/LA* I</td>
<td>$185</td>
</tr>
<tr>
<td>Engineer/Geologist/Surveyor/Planner/GIS/LA* III</td>
<td>$175</td>
</tr>
<tr>
<td>Engineer/Geologist/Surveyor/Planner/GIS/LA* II</td>
<td>$165</td>
</tr>
<tr>
<td>Engineer/Geologist/Surveyor/Planner/GIS/LA* I</td>
<td>$150</td>
</tr>
<tr>
<td>Assistant Engineer/Geologist/Surveyor/Planner/GIS/LA*</td>
<td>$115</td>
</tr>
<tr>
<td>CAD Technician III</td>
<td>$150</td>
</tr>
<tr>
<td>CAD Technician II</td>
<td>$130</td>
</tr>
<tr>
<td>CAD Technician I</td>
<td>$115</td>
</tr>
<tr>
<td>Project Coordinator</td>
<td>$130</td>
</tr>
<tr>
<td>Administrative Assistant</td>
<td>$95</td>
</tr>
<tr>
<td>1 Person Survey Crew</td>
<td>$210</td>
</tr>
<tr>
<td>2 Person Survey Crew</td>
<td>$305</td>
</tr>
<tr>
<td>3 Person Survey Crew</td>
<td>$390</td>
</tr>
<tr>
<td>Consultants, Outside Services, Materials &amp; Direct Charges</td>
<td>Cost Plus 5%</td>
</tr>
<tr>
<td>Overtime Work</td>
<td>Rate Plus 50%</td>
</tr>
</tbody>
</table>

*LA = Landscape Architect

Blueprints, reproductions, and outside graphic services will be charged at vendor invoice. Auto mileage will be charged at the IRS standard rate, currently 58 cents per mile.

Fee Schedule subject to change January 1, 2021.
February 18, 2020

TO: Three Rivers Levee Improvement Authority Board

FROM: Paul Brunner, Executive Director

SUBJECT: Contract Approval – FlowWest & HDR for Ecological Design Services for the North Training Wall Project

Recommended Action:
Approve contract for FlowWest, with sub-consultant HDR to provide ecological design services for the North Training Wall (NTW) Project.

Background:
In 2019, Yuba County requested that TRLIA implement a project to reduce the flood risk to the community of Hallwood by strengthening the NTW and tying into high ground at the upstream limit of the project. A briefing to the TRLIA Board given in October 2019 provided background on the need for flood risk reduction and recently constructed interim repair, and also presented an implementation approach for the NTW project. Shortly thereafter, TRLIA submitted a funding request to the Yuba Water Agency (YWA) to fund implementation of the project. YWA approved $500,000 for TRLIA to assemble a consultant team for preliminary engineering and design, environmental survey and compliance, ecological enhancement and multi-benefit design, and evaluation of current and future grant funding opportunities. In January 2020, following an RFQ and selection process, the TRLIA Board approved the selection of the FlowWest and HDR consultant team to provide ecological enhancement and multi-benefit design services.

Discussion:
Following the TRLIA Board’s approval of the FlowWest and HDR consultant team, TRLIA and the team developed a scope of work for preliminary design and engineering for the NTW Project (attached). Specific tasks included in the scope of work are project management and coordination, design of ecological enhancement measures, habitat improvement measures, incorporation of design features within on-going projects in the area, and compilation of design documentation reports. This work will be completed in 2020. Future work by the team will be performed under future contract amendments, pending funding.

Fiscal Impact:
This work is estimated to cost $202,436. YWA has provided $500,000 in grant funding to support preliminary effort for the NTW. It is recognized that the scoped amount is substantial in comparison to the amount available grant funds, however this effort will be used to inform future
funding requests. Expenditures will be tracked monthly to ensure no work in excess of $500,000 is performed by the collective team.

ATTACHMENT:
FlowWest Contract & Scope of Work
AGREEMENT FOR
PROFESSIONAL SERVICES

THIS AGREEMENT for professional services ("Agreement") is made as of the Agreement Date set forth below by and between the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, a political subdivision of the State of California ("the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY"), and FlowWest L.L.C. (the "CONSULTANT").

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

OPERATIVE PROVISIONS

1. SERVICES.

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

2. TERM.

Commencement Date: February 19, 2020

Termination Date: December 31, 2021

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

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

3. PAYMENT.

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

Page 1 of 16
4. FACILITIES, EQUIPMENT AND OTHER MATERIALS AND OBLIGATIONS OF THREE RIVERS LEVEE IMPROVEMENT AUTHORITY.

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

5. GENERAL PROVISIONS.

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

6. DESIGNATED REPRESENTATIVES.

Paul G. Brunner, Executive Director, is the representative of the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY and will administer this Agreement for the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY. Paul Frank, P.E., Principal Engineer, is the authorized representative for CONSULTANT. Changes in designated representatives shall occur only by advance written notice to the other party.

7. ATTACHMENTS.

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

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

8. TERMINATION. THREE RIVERS LEVEE IMPROVEMENT AUTHORITY and CONSULTANT shall each have the right to terminate this Agreement upon 30 days written notice to the other party.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on __________, 20__.

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

______________________________

Paul G. Brunner, P.E.
Executive Director

______________________________

Paul Frank, P.E.
Principal Engineer

ATTEST:
RACHEL FERRIS,
SECRETARY

______________________________

APPROVED AS TO FORM:
ANDREA P. CLARK
THREE RIVERS LEVEE IMPROVEMENT AUTHORITY GENERAL COUNSEL

______________________________

Andrea P. Clark
ATTACHMENT A

A.1 SCOPE OF SERVICES AND DUTIES.

The services to be provided by CONSULTANT and the scope of CONSULTANT's duties are described in the Scope of Work titled *Scope of Work: Ecological Design Services To Support The North Training Wall Project and Other Services for the Three Rivers Levee Improvement Authority*, which is an appendix to this Attachment A.

A.2. TIME SERVICES RENDERED.

See Appendix.

A.3. MANNER SERVICES ARE TO BE PERFORMED.

As an independent CONSULTANT, CONSULTANT shall be responsible for providing services and fulfilling obligations hereunder in a professional manner: THREE RIVERS LEVEE IMPROVEMENT AUTHORITY shall not control the manner of performance.

A.4. FACILITIES FURNISHED BY THREE RIVERS LEVEE IMPROVEMENT AUTHORITY.

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

PAYMENT

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY shall pay CONSULTANT as follows:

B.1 BASE CONTRACT FEE. THREE RIVERS LEVEE IMPROVEMENT AUTHORITY shall pay CONSULTANT a contract fee not to exceed $202,436; CONSULTANT shall submit requests for payment after completion of services or no later than the tenth (10th) day of the month following provision of services. In no event shall total compensation paid to CONSULTANT under this Provision B.1 exceed $202,436 without an amendment to this Agreement approved by the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY Board of Directors.

B.2 TRAVEL COSTS. THREE RIVERS LEVEE IMPROVEMENT AUTHORITY shall not pay CONSULTANT for meals, lodging or other travel costs not included in this Agreement unless said costs are approved in advance by the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY representative (Operative Provision 7) and then THREE RIVERS LEVEE IMPROVEMENT AUTHORITY shall pay THREE RIVERS LEVEE IMPROVEMENT AUTHORITY per diem rates in effect on the date of invoice upon presentation of invoices.

B.3 AUTHORIZATION REQUIRED. Services performed by CONSULTANT and not authorized in this Agreement shall not be paid for by THREE RIVERS LEVEE IMPROVEMENT AUTHORITY. Payment for additional services shall be made to CONSULTANT by THREE RIVERS LEVEE IMPROVEMENT AUTHORITY if, and only if, this Agreement is amended by both parties in advance of performing additional services.
ATTACHMENT C

GENERAL PROVISIONS

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

C.1.1 All acts of CONSULTANT shall be performed as an independent CONSULTANT and not as an agent, officer or employee of THREE RIVERS LEVEE IMPROVEMENT AUTHORITY. It is understood by both CONSULTANT and THREE RIVERS LEVEE IMPROVEMENT AUTHORITY that this Agreement is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association.

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

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

C.1.4 As an independent consultant, CONSULTANT is not subject to the direction and control of THREE RIVERS LEVEE IMPROVEMENT AUTHORITY except as to the final result contracted for under this Agreement. THREE RIVERS LEVEE IMPROVEMENT AUTHORITY may not require CONSULTANT to change its manner of doing business, but may require it to redirect its efforts to accomplish what it has agreed to do.

C.1.5 CONSULTANT may provide services to others during the same period service is provided to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY under this Agreement.

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

C.1.7 As an independent CONSULTANT, CONSULTANT hereby indemnifies and holds THREE RIVERS LEVEE IMPROVEMENT AUTHORITY harmless from any and all claims that may be made against THREE RIVERS LEVEE IMPROVEMENT AUTHORITY based on any contention by any third party that an employer-employee relationship exists by reason of this Agreement.
C.2 LICENSES, PERMITS, ETC. CONSULTANT represents and warrants to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONSULTANT to practice its profession. CONSULTANT represents and warrants to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY that CONSULTANT shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for CONSULTANT to practice its profession at the time the services are performed. Failure of the CONSULTANT to comply with this provision shall authorize the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY to immediately terminate this agreement notwithstanding Operative Provision No. 9.

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

C.4 INSURANCE. Prior to rendering services provided by the terms and conditions of this Agreement, CONSULTANT or its subconsultants shall acquire and maintain during the term of this Agreement insurance coverage through and with an insurer acceptable to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, naming the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY and any related agency governed by the Board of Directors which is letting the contract or for whom the services under the contract are being provided, and THREE RIVERS LEVEE IMPROVEMENT AUTHORITY'S, or related agency’s, officials, employees, and volunteers as additional insured (excluding workers’ compensation and professional liability insurance), (hereinafter referred to as “the insurance”). The limits of insurance herein shall not limit the liability of the CONSULTANT hereunder.

C.4.1 TERM. Policies of insurance shall be in effect during the term of this Agreement and shall provide that they may not be canceled without first providing THREE RIVERS LEVEE IMPROVEMENT AUTHORITY with thirty (30) days written notice of such intended cancellation. If CONSULTANT fails to maintain the insurance provided herein, THREE RIVERS LEVEE IMPROVEMENT AUTHORITY may secure such insurance and deduct the cost thereof from any funds owing to CONSULTANT.

C.4.2 MINIMUM SCOPE OF INSURANCE. CONSULTANT shall procure insurance covering general liability, automobile liability, and workers’ compensation. Coverage shall be at least as broad as:

(a) Insurance Services Office (ISO) Commercial General Liability Occurrence form number CG 0001 or equivalent ISO form. A non-ISO form must be reviewed and approved by the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY Risk Manager prior to acceptance of the Agreement.
(b) Insurance Services Office Business Auto Coverage form number CA 0001 0187 covering Automobile Liability, code 1 "any auto" and Endorsement CA 0029.

(c) Workers’ Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

(d) If this Agreement is for the provision of professional services, Professional Errors and Omissions Liability Insurance, with a coverage form subject to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY approval.

C.4.3 OTHER INSURANCE PROVISIONS. The policies are to contain, or be endorsed to contain the following provisions:

(a) General Liability and Automobile Liability Coverages.

(i) The THREE RIVERS LEVEE IMPROVEMENT AUTHORITY and the public entity awarding the contract if other than the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, and their officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the CONSULTANT; products and completed operations of the CONSULTANT; premises owned, leased, occupied, or used by the CONSULTANT; or automobiles owned, leased, hired, or borrowed by the CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, its officials, employees or volunteers.

(ii) The CONSULTANT’S insurance coverage shall be primary insurance as respects the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, its officials, employees and volunteers and any other insureds under this Agreement. Any insurance or self-insurance maintained by the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, its officials, employees and volunteers or other insureds shall be excess of the CONSULTANT’S insurance and shall not contribute with it.
(iii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, its officials, employees and volunteers or other insureds under this Agreement.

(iv) The insurance policy required by this clause shall be endorsed to state that the CONSULTANT’S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

(b) Worker’s Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, its officials, employees and volunteers or other insureds under this Agreement.

(c) All Coverages. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or below minimum limits required under this Agreement except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY.

C.4.4 ACCEPTABILITY OF INSURERS. Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A:VII.

C.4.5 MINIMUM LIMITS OF INSURANCE. CONSULTANT shall maintain limits no less than:

(a) Commercial General Liability: One Million Dollars ($1,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit.

(b) Automobile Liability: $1,000,000 combined single limit per accident for bodily injury or property damage.

(c) Workers’ Compensation and Employers Liability: Workers’ Compensation limits as required by the Labor Code of
the State of California and Employers Liability limits of One Million Dollars ($1,000,000) per accident.

(d) Professional Errors and Omissions Liability (if required): Policy limits of not less than One Million Dollars ($1,000,000) per claim and One Million Dollars ($1,000,000) annual aggregate, with deductible or self-insured portion not to exceed Two Thousand Five Hundred Dollars ($2,500). Coverage may be made on a claims-made basis with a “Retro Date” either prior to the date of the Agreement or the beginning of the Agreement services. If claims-made, coverage must extend to a minimum of twelve-months beyond completion of the services. If coverage is canceled or non-renewed and not replaced with another claims-made policy form with a “Retro Date” prior to the Agreement effective date, the CONSULTANT must purchase “extended reporting” coverage for a minimum of twelve (12) months after completion of services.

C.4.6 SUBCONSULTANTS. In addition to the above policies, if CONSULTANT hires a subconsultant under this Agreement CONSULTANT shall include all subconsultants as insureds under its policies or shall furnish separate certificates and endorsements for each subconsultant. All coverages for subconsultant shall be subject to all of the requirements stated herein. If CONSULTANT requires subconsultant to provide insurance coverage, then CONSULTANT shall be named as an additional insured under such policy or policies (excluding workers’ compensation and professional liability insurance).

C.4.7 DEDUCTIBLES AND SELF-INSURED RETENTIONS. Except as otherwise provided in this Agreement, any deductibles or self-insured retentions must be declared to and approved by the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY. At the option of THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, either the insurer shall reduce or eliminate such deductions or self-insured retentions as respects THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, its officials, employees and volunteers; or, the CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

C.4.8 VERIFICATION OF COVERAGE.

(a) CONSULTANT shall furnish THREE RIVERS LEVEE IMPROVEMENT AUTHORITY with Certificates of Insurance and with original endorsements effecting coverage required by this clause. The certificate(s) and endorsement(s) for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificate(s) and endorsement(s) are to be on forms provided by the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY or on forms received and approved by the THREE RIVERS LEVEE IMPROVEMENT
AUTHORITY before work commences. THREE RIVERS LEVEE IMPROVEMENT AUTHORITY reserves the right to require complete, certified copies of all required insurance policies at any time.

(b) CONSULTANT shall not render services under the terms and conditions of this Agreement unless each type of insurance coverage and endorsement is in effect and CONSULTANT has delivered the certificate(s) of insurance and endorsement(s) to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY as previously described. If CONSULTANT shall fail to procure and maintain said insurance, THREE RIVERS LEVEE IMPROVEMENT AUTHORITY may, but shall not be required to, procure and maintain the same, and the premiums of such insurance shall be paid by CONSULTANT to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY upon demand. The policies of insurance provided herein which are to be provided by CONSULTANT shall be for a period of time sufficient to cover the term of the Agreement, including THREE RIVERS LEVEE IMPROVEMENT AUTHORITY’S acceptance of CONSULTANT’S work. It is understood and agreed that thirty (30) days prior to the expiration of any policy of insurance, CONSULTANT will deliver to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY certificate(s) and endorsement(s) evidencing a renewal or new policy to take the place of the policy expiring.

C.5 INDEMNITY. CONSULTANT shall defend, indemnify, and hold harmless THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, its elected and appointed councils, boards, commissions, officers, agents, employees and members from any liability for damage or claims for damage for personal injury, including death, as well as for property damage, arising out of the negligence, recklessness, or willful misconduct of CONSULTANT in the performance of services rendered under this Agreement by CONSULTANT, or any of CONSULTANT’S officers, agents, employees, or subconsultants.

C.6 CONSULTANT NOT AGENT. Except as THREE RIVERS LEVEE IMPROVEMENT AUTHORITY may specify in writing, CONSULTANT shall have no authority, express or implied, to act on behalf of THREE RIVERS LEVEE IMPROVEMENT AUTHORITY in any capacity whatsoever as an agent. CONSULTANT shall have no authority, express or implied, pursuant to this Agreement to bind THREE RIVERS LEVEE IMPROVEMENT AUTHORITY to any obligation whatsoever.

C.7 ASSIGNMENT PROHIBITED. CONSULTANT may not assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no legal effect.
C.8 PERSONNEL. CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. In the event that THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, in its sole discretion, at any time during the term of this Agreement, desires the removal of any person or persons assigned by CONSULTANT to perform services pursuant to this Agreement, CONSULTANT shall remove any such person immediately upon receiving written notice from THREE RIVERS LEVEE IMPROVEMENT AUTHORITY of its desire for removal of such person or persons.

C.9 STANDARD OF PERFORMANCE. CONSULTANT shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged. All products of whatsoever nature which CONSULTANT delivers to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY pursuant to this Agreement shall be prepared in a first class and workmanlike manner and shall conform to the standards or quality normally observed by a person practicing in CONSULTANT'S profession.

C.10 POSSESSORY INTEREST. The parties to this Agreement recognize that certain rights to property may create a "possessory interest", as those words are used in the California Revenue and Taxation Code, §107. For all purposes of compliance by THREE RIVERS LEVEE IMPROVEMENT AUTHORITY with Section 107.6 of the California Revenue and Taxation Code, this recital shall be deemed full compliance by the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY. All questions of initial determination of possessory interest and valuation of such interest, if any, shall be the responsibility of the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY Assessor and the contracting parties hereto. A taxable possessory interest may be created by this contract; and if created, the party in whom such an interest is vested will be subject to the payment of property taxes levied on such an interest.

C.11 TAXES. CONSULTANT hereby grants to the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY the authority to deduct from any payments to CONSULTANT any THREE RIVERS LEVEE IMPROVEMENT AUTHORITY imposed taxes, fines, penalties and related charges which are delinquent at the time such payments under this Agreement are due to CONSULTANT.

C.12 TERMINATION. Upon termination of this Agreement as otherwise provided herein, CONSULTANT shall immediately cease rendering service upon the termination date and the following shall apply:

C.12.1 CONSULTANT shall deliver copies of all writings prepared by it pursuant to this Agreement. The term "writings" shall be construed to mean and include: handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing and form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.

C.12.2 THREE RIVERS LEVEE IMPROVEMENT AUTHORITY shall have full ownership and control of all such writings or other communications delivered by CONSULTANT pursuant to this Agreement.
C.12.3 THREE RIVERS LEVEE IMPROVEMENT AUTHORITY shall pay
CONSULTANT the reasonable value of services rendered by CONSULTANT to the date
of termination pursuant to this Agreement not to exceed the amount documented by
CONSULTANT and approved by THREE RIVERS LEVEE IMPROVEMENT
AUTHORITY as work accomplished to date; provided, however, THREE RIVERS
LEVEE IMPROVEMENT AUTHORITY shall not in any manner be liable for lost
profits which might have been made by CONSULTANT had CONSULTANT completed
the services required by this Agreement. In this regard, CONSULTANT shall furnish to
THREE RIVERS LEVEE IMPROVEMENT AUTHORITY such financial information as
in the judgment of the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY is
necessary to determine the reasonable value of the services rendered by CONSULTANT.
In the event of a dispute as to the reasonable value of the services rendered by
CONSULTANT, the decision of the THREE RIVERS LEVEE IMPROVEMENT
AUTHORITY shall be final. The foregoing is cumulative and does not affect any right
or remedy which THREE RIVERS LEVEE IMPROVEMENT AUTHORITY may have
in law or equity.

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

C.13 NON-DISCRIMINATION. Throughout the duration of this Agreement,
CONSULTANT shall not unlawfully discriminate against any employee of the CONSULTANT
or of the THREE RIVERS LEVEE IMPROVEMENT AUTHORITY or applicant for
employment or for services or any member of the public because of race, religion, color, national
origin, ancestry, physical or mental disability, medical condition, marital status, age, sex or
sexual orientation. CONSULTANT shall ensure that in the provision of services under this
Agreement, its employees and applicants for employment and any member of the public are free
from such discrimination. CONSULTANT shall comply with the provisions of the Fair
Employment and Housing Act (Government Code Section 12900, et seq.). The applicable
regulations of the Fair Employment Housing Commission implementing Government Code
Section 12900, set forth in Chapter 5, Division 4 of Title 2 of the California Code of Regulations
are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
CONSULTANT shall also abide by the Federal Civil Rights Act of 1964 and all amendments
thereto, and all administrative rules and regulations issued pursuant to said Act. CONSULTANT
shall give written notice of its obligations under this clause to any labor agreement.
CONSULTANT shall include the non-discrimination and compliance provision of this paragraph
in all subcontracts to perform work under this Agreement.

C.14 REHABILITATION ACT OF 1973/AMERICANS WITH DISABILITIES ACT OF
1990. In addition to application of the non-discrimination provision of this Agreement, above,
CONSULTANT agrees to comply with all provisions of section 504 et seq. of the Rehabilitation
Act of 1973, and with all provisions of the Americans with Disabilities Act of 1990, and all
amendments thereto, and all administrative rules and regulations issued pursuant to said Acts,
pertaining to the prohibition of discrimination against qualified handicapped and disabled persons, in all programs or activities, as to employees or recipients of services.

C.15 OWNERSHIP OF INFORMATION. All professional and technical information developed under this Agreement and all work sheets, reports, and related data shall become the property of THREE RIVERS LEVEE IMPROVEMENT AUTHORITY, and CONSULTANT agrees to deliver reproducible copies of such documents to THREE RIVERS LEVEE IMPROVEMENT AUTHORITY on completion of the services hereunder. The THREE RIVERS LEVEE IMPROVEMENT AUTHORITY agrees to indemnify and hold CONSULTANT harmless from any claim arising out of reuse of the information for other than this project.

C.16 WAIVER. A waiver by any party of any breach of any term, covenant or condition herein contained or a waiver of any right or remedy of such party available hereunder at law or in equity shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained or of any continued or subsequent right to the same right or remedy. No party shall be deemed to have made any such waiver unless it is in writing and signed by the party so waiving.

C.17 COMPLETENESS OF INSTRUMENT. This Agreement, together with its specific references and attachments, constitutes all of the agreements, understandings, representations, conditions, warranties and covenants made by and between the parties hereto. Unless set forth herein, neither party shall be liable for any representations made express or implied.

C.18 SUPERSEDES PRIOR AGREEMENTS. It is the intention of the parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, representations, or agreements, written or oral, between the parties hereto.

C.19 ATTORNEY’S FEES. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys’ fee, which may be set by the Court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such party may be entitled.

C.20 CAPTIONS. The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

C.21 DEFINITIONS. Unless otherwise provided in this Agreement, or unless the context otherwise requires, the following definitions and rules of construction shall apply herein.

C.21.1 NUMBER AND GENDER. In this Agreement, the neuter gender includes the feminine and masculine, and the singular includes the plural, the word "person" includes corporations, partnerships, firms or associations, wherever the context so requires.

C.21.2 MANDATORY AND PERMISSIVE. "Shall" and "will" and "agrees" are mandatory. "May" is permissive.
C.22 TERM INCLUDES EXTENSIONS. All references to the term of this Agreement or the Agreement Term shall include any extensions of such term.

C.23 SUCCESSORS AND ASSIGNS. All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto,

shall be binding upon and inure to the benefit of such party, its successors and assigns.

C.24 MODIFICATION. No modification or waiver of any provision of this Agreement or its attachments shall be effective unless such waiver or modification shall be in writing, signed by all parties, and then shall be effective only for the period and on the condition, and for the specific instance for which given.

C.25 COUNTERPARTS. This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

C.26 OTHER DOCUMENTS. The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

C.27 PARTIAL INVALIDITY. If any term, covenant, condition or provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provision and/or provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

C.28 JURISDICTION. It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a Court of competent jurisdiction in the County of Yuba, State of California.

C.29 CONTROLLING LAW. The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

C.30 TIME IS OF THE ESSENCE. Time is of the essence of this Agreement and each covenant and term a condition herein.

C.31 AUTHORITY. All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, estates or firms represented or purported to be represented by such entity(s), person(s), estate(s) or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Further, by entering into this Agreement, neither party hereto shall have breached the terms or conditions of any other contract or agreement to which such party is obligated, which such breach would have a material effect hereon.
C.32 CONFLICT OF INTEREST. Neither a THREE RIVERS LEVEE IMPROVEMENT AUTHORITY employee whose position in THREE RIVERS LEVEE IMPROVEMENT AUTHORITY enables such employee to influence the award of this Agreement or any competing Agreement, nor a spouse or economic dependent of such employee, shall be employed in any capacity by CONSULTANT herein, or have any other direct or indirect financial interest in this Agreement.

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

C.33 NOTICES. All notices and demands of any kind which either party may require or desire to serve on the other in connection with this Agreement must be served in writing either by personal service or by registered or certified mail, return receipt requested, and shall be deposited in the United States Mail, with postage thereon fully prepaid, and addressed to the party so to be served as follows:

If to "THREE RIVERS LEVEE IMPROVEMENT AUTHORITY":

THREE RIVERS LEVEE IMPROVEMENT AUTHORITY
Paul G. Brunner, Executive Director
1114 Yuba Street, Suite 218
Marysville, CA 95901

If to "CONSULTANT":

FlowWest, LLC
Paul Frank, P.E., Principal Engineer
1624 Franklin Street, Suite 901
Oakland, CA 94612
**SCOPE OF WORK: ECOLOGICAL DESIGN SERVICES TO SUPPORT THE NORTH TRAINING WALL PROJECT AND OTHER SERVICES FOR THE THREE RIVERS LEVEE IMPROVEMENT AUTHORITY**

**BACKGROUND**

FlowWest and its subcontractor HDR are being retained by TRLIA to assist with design of ecological features to be incorporated in the North Training Wall Project (NTW), and to assist in identifying multi-objective actions that can be combined with the NTW, the Hallwood Side Channel Project, the Yuba Goldfields Project, and related projects of interest to TRLIA and its partners.

FlowWest and HDR will work in concert with MBK and other consultants serving TRLIA to provide ecological design services as part of the NTW project, and will assist TRLIA with identifying and applying for grant funding.

**SCOPE OF WORK**

**Task 1 – Review available reports, data, and studies, and conduct initial site visit.**
- Review project information, including the NTW alternatives report, the Hallwood Project EA and BOD report, and the 200-year Goldfields Levee Project.
- Identify habitat features proximate to the NTW, and outline possible relationships between efforts.
- Attend project kick-off meeting and conduct one site visit.

**Task 2 – Identify and evaluate ecological or habitat features to augment the NTW alternatives.**
- Find synergistic opportunities to provide additional juvenile rearing habitat, without weakening NTW re-enforcement.
- Identify other opportunities/projects.
  - River Partners, DWR, YWA
- Evaluate the viability/feasibility of recommended actions.
- Prepare technical memorandum regarding opportunities and constraints for ecological uplift associated with the NTW.

**Deliverables:**
- Technical memorandum summarizing opportunities and constraints to ecological enhancement of the NTW, describing ecological goals of the project, and potential for integration with other projects/efforts.

**Task 3 – Identify grant opportunities and assist with grant application processes.**
- Identify potential grant opportunities.
- Assist TRLIA with applications for up to 2 grant programs.

**Deliverables:**
- Initial list of grant opportunities, available funding, and outline of application considerations and requirements.
• Authoring relevant sections of grant applications for up to 2 grant opportunities.

**Task 4 - Meetings and coordination.**
- Monthly project coordination meetings.
  - Project Team (all consultants).
  - Ecological Design Team.
- Strategic coordination with YWA and/or other funding partners such as DWR, in consideration of related efforts such as the Voluntary Agreement process.
- Project duration is assumed to be 9 months.

**Task 5 - Project management.**
- General administrative support, contract administration coordination, and invoicing activities.
- QA/QC and related activities.

**Optional Tasks**

**Task 6 – Vegetation surveys and mapping to inform ecological design and benefits assessment.**
- Review existing information, particularly Technical Memoranda associated with YRDP Relicensing.
- Conduct NTW vegetation surveys.
- Develop vegetation maps for the project area.
- Identify opportunities for non-native vegetation removal/remediation.

**Task 7 – Additional Services outside of North Training Wall Project.**
- FlowWest and HDR will assist TRLIA and its partners with additional related services outside of the NTW as needed.

| Budget Summary for the NTW Ecological Design Project |
|--------------------------------------------|----------------|--------------|
| Task Description                          | Total Cost     | FlowWest     | HDR*         |
| 1  Task 1: Review Available Data and Site Visit | $28,209        | $13,209      | $15,000      |
| 2  Task 2: Identify and Evaluate Ecological Features | $60,114        | $30,114      | $30,000      |
| 3  Task 3: Grant Assistance                | $25,223        | $20,223      | $5,000       |
| 4  Task 4: Meetings and Coordination       | $30,215        | $15,215      | $15,000      |
| 5  Task 5: Project Management              | $10,009        | $5,009       | $5,000       |
| 6  Task 6: Optional, Vegetation Mapping    | $16,166        | $1,166       | $15,000      |
| 7  Task 7: Optional Additional Assistance  | $25,000        | $25,000      |              |
| 5% Markup on Subcontractor Labor           | $6,800         | $6,800       |              |
| Direct Costs                              | $700           | $700         |              |
| **TOTAL**                                 | **$202,436**   | **$117,436** | **$85,000**  |

*These preliminary cost estimates are for general planning purposes only, are subject to review and approval by HDR management, and do not represent budget estimates for contracting purposes.

**Direct costs embedded in the task cost estimates.**
February 18, 2020

TO:       Three Rivers Levee Improvement Authority Board
FROM:     Paul Brunner, Executive Director

SUBJECT:  Approve Release of Bid Package for Goldfields 200-Year Project

Recommended Action:
Authorize Executive Director to issue the 200-Year Goldfields Levee project bid package.

Discussion:
The Goldfields 200-Year project is scheduled for construction beginning in Spring 2020. TRLIA staff is requesting permission to begin the construction bidding process. The bidding schedule is as follows, which has been compressed by two weeks since the January TRLIA Board meeting to facilitate an earlier construction start:

- TRLIA Board approves contract bidding: February 18 (today)
- Advertise for bids: February 19
- Bid Opening: March 31
- TRLIA Board approves lowest responsive bid: April 7
- Issue Notice to Proceed: April 21
- Construction: May-end of October 2020

The bid package is comprised of several volumes including, but not limited to:

- Volume 1: Contract Specifications, and Special Provisions (includes bid schedule)
- Volume 2: Technical Specifications
- Volume 3: Project Improvement Plans
- Volume 4: Geotechnical Data Report

The contract bid package will be available to prospective bidders on February 19, 2020 electronically from TRLIA’s website, and in paper format at the offices of TRLIA, Wood Rodgers, and ENGEO. The TRLIA team will conduct a pre-bid meeting and site visit for prospective bidders.

Several activities are ongoing to facilitate construction including completion of permitting and right-of-way acquisition. All right-of-way acquisitions are anticipated to be completed prior to Board approval of lowest bid. Outstanding approvals affecting construction at this time include the following, with expected receipt provided:
CVFPB Encroachment Permit    March
Section 404 Permit       April-May
Section 401 Permit      March
Section 1600 Permit    March
Right-of-Way           March

**Fiscal Impact:**
This action is fully funded by local and state funds (Prop 1E). The state funds are from the TRLIA Urban Flood Risk Reduction (UFRR) funding agreement. The state cost is 85%. The preparation of the bids is at the expense of contract bidders. The preparation of the bid package by the TRLIA team was performed under existing tasks and contracts. The award of this contract is planned to occur in April, with TRLIA Board approval.