

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
BOARD ACTION SUMMARY

DEPT: Parks and Recreation

BOARD AGENDA #: \*B-8

AGENDA DATE: August 29, 2017

**SUBJECT:**

Approval to Award a Professional Engineering Design Contract to Black Water Consulting Engineers and Use of Committed Fund Balance for the Phase 2 Frank Raines Public Water System Improvements Project

**BOARD ACTION AS FOLLOWS:**

No. 2017-475

On motion of Supervisor Olsen, Seconded by Supervisor Withrow  
and approved by the following vote,

Ayes: Supervisors: Olsen, Withrow, Monteith, DeMartini, and Chairman Chiesa

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1)  Approved as recommended

2)  Denied

3)  Approved as amended

4)  Other:

MOTION:

ATTEST: Elizabeth A. King  
ELIZABETH A. KING, Clerk of the Board of Supervisors

File No.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
AGENDA ITEM**

DEPT: Parks and Recreation

Urgent

Routine

BOARD AGENDA #: \*B-8

AGENDA DATE: August 29, 2017

CEO CONCURRENCE: *phc*

4/5 Vote Required: Yes  No

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**SUBJECT:**

Approval to Award a Professional Engineering Design Contract to Black Water Consulting Engineers and Use of Committed Fund Balance for the Phase 2 Frank Raines Public Water System Improvements Project

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**STAFF RECOMMENDATIONS:**

1. Approve the Professional Design Services Agreement with Blackwater Consulting Engineers, Inc., for the engineering design of the Phase 2 Frank Raines Regional Public Water System Improvements, for a not to exceed amount of \$90,782.
2. Authorize the Director of Parks and Recreation, or designee, to execute the Agreement with Black Water Consulting Engineers, Inc., and to sign any necessary documents.
3. Authorize the Director of Parks and Recreation, or designee, to sign amendments to the Agreement for an overall total, not-to-exceed amount of \$99,860, which includes a contingency of \$9,078.
4. Approve the use of General Fund committed fund balance in the amount of \$99,860.
5. Direct the Auditor-Controller to make the necessary budget adjustments, per the attached budget journal and standard journal.

**DISCUSSION:**

On February 28, 2006, the Board designated and committed in specific reserves a sum of \$1,000,000 associated with Parks Water System Improvements, to address known issues within the Parks and Recreation Department's water systems. Improvements included public water system improvements at Frank Raines Regional Park (FRRP) and Woodward Reservoir Regional Park (WRRP). In 2007, funds from the South San Joaquin Irrigation District were identified for completion of the WRRP improvements leaving the full \$1,000,000 allocation available for the FRRP Water Project.

Phase 1 of the FRRP water system improvements were necessary as a result of a California Department of Public Health (CDPH) compliance order that was issued due to the presence of contaminants in the water system. The Phase 1 project consisted of relocating the water treatment plant closer to the existing water cistern and installing a new Water Filtration

## Approval to Award a Professional Engineering Design Contract to Black Water Consulting Engineers and Use of Committed Fund Balance for the Phase 2 Frank Raines Public Water System Improvements Project

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System. This project was completed in April 2014 leaving a remaining balance of \$518,281 to be used for the design and construction of Phase 2 of this project.

Phase 2 of the project includes running potable water to the Day Use Area, demolishing the existing restrooms and installing a restroom at the Day Use Area. The two original restrooms were in existence prior to 1953 and although the restrooms are still standing, they have been vandalized and closed due to potable water issues since 2005. In 2013, the Department constructed a playground area that draws families, visitors from the Off-Highway Vehicle Park and passerby's to enjoy the park. Portable restrooms have been made available; however, due to the remote location of the park, the cost of service to the portable restrooms is very high. With the increased visitation to the Day Use Park, a new Americans with Disabilities Act compliant restroom will provide a much needed amenity to the area.

In preparation for the project to run potable water to the Day Use Area, the Department of Parks and Recreation, in partnership with the General Services Agency (GSA) Purchasing Division, issued a Solicitation of Qualifications (SOQ) on April 14, 2017, for this project. The SOQ period closed on April 28, 2017, and the GSA Purchasing Division conducted the opening of the proposals on the closing date.

On April 28, 2017, two consultants submitted their qualifications for review. All consultants were evaluated and scored on qualifications only. The consultants that submitted proposals are as follows:

1. Myriad Engineering
2. Blackwater Consulting Engineers, Inc.

The initial evaluation was completed by an evaluation committee consisting of three evaluators: two members from the Department of Parks and Recreation, and one from the Department of Public Works. The consultants were initially evaluated on the following criteria:

1. Proponents response;
2. Knowledge capability;
3. Experience;
4. Technical ability;
5. Ability to serve; and
6. Communication.

Staff then conducted oral interviews of the two firms. The overall score from the above criteria and the oral interview process was used to rank proposals in the following order:

<u>Ranking</u>	<u>Consultant</u>
1.	Blackwater Consulting Engineers, Inc.
2.	Myriad Engineering

On June 21, 2017, the GSA Purchasing Division issued a letter of intent to award to Blackwater Consulting Engineers, Inc., and contract terms have been agreed upon.

Approval to Award a Professional Engineering Design Contract to Black Water Consulting Engineers and Use of Committed Fund Balance for the Phase 2 Frank Raines Public Water System Improvements Project

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**POLICY ISSUE:**

The Board of Supervisors' approval is required for the use of the committed fund balance.

**FISCAL IMPACT:**

The Parks Water System Improvements has a committed fund balance of \$612,887. The Black Water Consulting Engineers' contract in the amount of \$90,782 and the contingency of \$9,078 totals \$99,860, leaving \$513,027 in General Fund committed fund balance for the construction of the project.

**Source(s) of Funding:**

General Fund Committed Fund Balance	\$ 99,860	
<b>Funding Total:</b>		\$ 99,860
<b>Net Cost to County General Fund</b>		\$ -

**Fiscal Year:**

FY2017-2018
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**Budget Adjustment/Appropriations needed:**

Yes
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**Fund Balance as of July 31, 2017:**

General Fund Committed Fund Balance	\$ 612,887
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**BOARD OF SUPERVISORS' PRIORITY:**

The recommended actions are consistent with the Board's priorities of providing A Well Planned Infrastructure System and the Efficient Delivery of Public Services by upgrading and improving recreational facilities and resources at the Frank Raines Regional Park.

**STAFFING IMPACT:**

Existing staff will oversee the work related to this project.

**CONTACT PERSON:**

Jami Aggers, Director  
 Merry Mayhew, Assistant Director

Telephone: 209-525-6770  
 Telephone: 209-525-6770

**ATTACHMENT(S):**

- A. Black Water Consulting Engineers Contract
- B. Budget Journal
- C. Standard Journal

# Attachment A



Agreement Number A062917

**DEPARTMENT OF PARKS AND RECREATION**

3800 Cornucopia Way, Suite C

Modesto, CA 95358

Phone: (209) 525-6770

Fax: (209) 525-6773

**STANISLAUS COUNTY  
PROFESSIONAL DESIGN SERVICES AGREEMENT**

This Agreement is made and entered into by and between the County of Stanislaus, a political subdivision of the State of California, hereinafter referred to as "County" and Black Water Consulting Engineers, Inc. hereinafter referred to as "Consultant", on August 29<sup>th</sup>, 2017 ("The Agreement").

**NOW, THEREFORE**, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

**1.0 PROFESSIONAL SERVICES TO BE PROVIDED BY CONSULTANT**

1.1. Scope of Services: Consultant shall provide the professional services described in the County's Scope of Work, which incorporates Consultant's Response to County's RFP (the "Response"), attached hereto as Exhibit "A" and incorporated herein by reference.

1.2. Professional Practices: All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also represents that it is familiar with all laws that may affect its performance of this Agreement and shall advise County of any changes in any laws that may affect Consultant's performance of this Agreement.

1.3. Representations: Consultant represents that it has reviewed the Scope of Work and that in its professional judgment the services to be performed under this Agreement can be performed within the maximum fee set forth herein below and within the time specified in the Project Schedule attached hereto. Consultant represents that it is qualified to perform the professional services required by this Agreement and possesses the necessary licenses and permits required to perform said services. Consultant represents that it has no interest and shall not acquire any interest direct or indirect which conflicts, or has the appearance of conflicting, in any manner or degree with the performance of the work and services under this Agreement.

1.4. Compliance with Laws. Consultant agrees that it shall perform the services required by this Agreement in compliance with all applicable Federal and California laws including, but not limited to, those laws related to minimum hours and wages; occupational health and safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement.

1.5. Non-Discrimination. During the performance of this Agreement, Contractor and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any Federal, State or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religious creed, color, national origin, ancestry, physical or mental disability including perception of disability, medical condition, genetic information, pregnancy related condition, marital status, gender/sex, sexual orientation, gender identity, gender expression, age (over 40), political affiliation or belief, or military and veteran status. Contractor and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal

opportunity, including without limitation the County's non-discrimination policy; the Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101 and 1102; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.

1.6. Non-Exclusive Agreement. Consultant acknowledges that County may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.7. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of County. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense.

1.8. Covenant Against Contingent Fees. Consultant warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the consultant; to solicit or secure this agreement; and that he/she has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this agreement. For breach or violation of this warranty, the local agency shall have the right to annul this agreement without liability, or at its discretion; to deduct from the agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

## 2.0 COMPENSATION AND BILLING

2.1. Compensation. Consultant shall be paid in accordance with the fee schedule set forth in Exhibit "C", attached hereto and made a part of this Agreement (the "Fee Schedule"). Consultant's compensation shall in no case exceed **Ninety Thousand Seven Hundred Eighty-Two Dollars (\$90,782.00)**. Consultant will be compensated on a time and materials basis, based on the hours worked by the Consultant's employees or subcontractors at the hourly rates specified in the Fee Schedule. The Fee Schedule rates include direct salary costs, employee benefits, and overhead. The rates stated in the Fee Schedule are not adjustable during the term of this Agreement. The County may retain ten percent of all periodic or progress payments made to the Consultant until completion and acceptance of all work tasks and County shall have right to withhold payment from Consultant for any unsatisfactory service until such time service is performed satisfactorily.

2.2. Reimbursements. In addition to the aforementioned fees, Consultant will be reimbursed for any expenses specifically set forth in each Project Scope of Work. All such reimbursement amounts are limited to those costs and expenses that are reasonable, necessary and actually incurred by the Consultant in connection with the services provided. The County shall not pay a mark up on any item of reimbursement. The County shall not pay for any item of overhead such as telephone, facsimile, postage, etc. All requests for reimbursement shall be accompanied by a copy of the original invoice.

2.3. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in Exhibits A unless the County or the Project Manager for this Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

2.4. Method of Billing. Consultant may submit invoices to County's Project Manager for approval on a progress basis, but no more often than once each calendar month. Said invoice shall be based on the total of all Consultants' services that have been completed to County's sole satisfaction.

County shall pay Consultant's invoice within forty-five (45) days from the date County receives said invoice. Each invoice shall describe in detail, the services performed and the associated percentage of tasks completed. Any additional services approved and performed pursuant to this Agreement shall be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.5. Records and Audits. Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to County or its Project Manager for inspection and/or audit at mutually convenient times for a period of three (3) years from the termination of this Agreement.

### **3.0 TIME OF PERFORMANCE**

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days after County delivers its Notice to Proceed. Said services shall be performed in strict compliance with the Project Schedule approved by County as set forth in Exhibit "A", attached hereto and incorporated herein by this reference. The Project Schedule may be amended by mutual agreement of the parties. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

### **4.0 TERM OF CONTRACT AND TERMINATION**

4.1. Term. This Agreement shall commence upon approval by the County's Board of Supervisors and continue until the work required herein is completed, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

4.2. Notice of Termination. The County reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the County.

4.3. Compensation. In the event of termination, County shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of County's written notice of termination. Compensation for work in progress shall be prorated as to the percentage of work completed as of the effective date of termination in accordance with the fees set forth in Exhibit "C". In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the County or in the possession of the Consultant.

4.4. Documents. In the event of termination of this Agreement, all documents prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the County within ten (10) days of delivery of termination notice to Consultant, at no cost to County.



Any use of uncompleted documents without specific written authorization from Consultant shall be at County's sole risk and without liability or legal expense to Consultant.

## 5.0 INSURANCE REQUIREMENTS

Coverage Required: Contractor shall obtain, and maintain at all times during the term of this Agreement, insurance coverage in the amounts and coverage specified in the attached "Exhibit B."

## 6.0 INDEMNIFICATION

6.1. Indemnification: To the fullest extent allowed by law, Consultant shall defend, indemnify, and hold harmless the County and its officers, directors, officials, agents, employees, volunteers and representatives (collectively, "Indemnitee") from and against any and all claims, suits, actions, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred, (collectively, "losses") which are founded upon, arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the alleged negligence, recklessness, or willful misconduct of Consultant, its officers, agents, employees, volunteers, representatives, contractors and subcontractors, excluding, however, such liabilities caused in part by the sole negligence, active negligence or willful misconduct of the County, its agents, employees, and representatives. These indemnification obligations shall not be limited by any assertion or finding that (1) the person or entity indemnified is liable by reason of non-delegable duty, or (2) the losses were caused in part by the negligence of, breach of contract by, or violation of law by Indemnitee. Nothing in this Agreement, including the provisions of this paragraph, shall constitute a waiver or limitation of any rights which Indemnitee may have under applicable law, including without limitation, the right to implied indemnity.

6.2. Duty to Defend: The duty of Consultant to indemnify and save harmless as set forth herein, shall include both the duty to indemnify and at Consultant's own cost and expense the duty to defend as set forth in Section 2778 of the California Civil Code and as limited in section 2782.8 of the California Civil Code. This duty to defend arises immediately when such claim is made and shall be independent of any finding of negligence and shall arise regardless of any claim or assertion that Indemnitee caused or contributed to the Losses. Consultant shall provide legal counsel acceptable to the County.

6.3. Duty to Cooperate: Each party shall notify the other party within ten (10) days in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement. Specifically, Consultant shall take all steps necessary to assist the County in the defense of any claim brought by a contractor hired to construct the Project regarding any errors, flaws, and/or omissions in the plans or specifications of the Project.

6.4. Patent Rights: Consultant represents that professional services provided by Consultant pursuant to this Agreement does not infringe on any other copyrighted work. Consultant shall defend, indemnify and hold harmless the County from all loss, cost, damage, expense, liability or claims, including attorneys' fees, court costs, litigation expenses and expert consultant or witness fees, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by the County of any articles or services supplied under this agreement.

6.5. The foregoing provisions shall survive the term and termination of this Agreement.

## 7.0 GENERAL PROVISIONS

7.1. Entire Agreement: This Agreement constitutes the entire Agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

7.2. Representatives. The Director of the Stanislaus County Department of Parks and Recreation, or his designee, shall be the representative of County for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the County, called for by this Agreement, except as otherwise expressly provided in this Agreement. Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

7.3. Project Managers. County shall designate a Project Manager to work directly with Consultant in the performance of this Agreement. Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with County during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings called by County.

7.4. Designated Personnel: A material covenant of this agreement is that the Consultant shall assign the individuals designated below to perform the functions designated so long as they continue in the employ of the Consultant. The designated individuals shall, so long as their performance continues to be acceptable to County, remain in charge of the services for the Project from beginning through completion of services.

- a. Project Manager: Aja Verburg

7.5. Removal of Personnel or Sub-Consultants: If the County, in its sole discretion at any time during the term of this agreement, desires the removal of any person or sub-consultant assigned by Consultant to perform services, then the Consultant shall remove such person or consultant immediately upon receiving notice from the County.

7.6. Notices: Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

**If to County:**

Stanislaus County  
Department of Parks and Recreation  
Attn: Stephanie Musso  
3800 Cornucopia Way, Suite C  
Modesto, California 95358  
Phone: (209) 525-6786  
Fax: (209) 525-6773

**If to Consultant:**

Black Water Consulting Engineers  
Aja Verburg, P.E.  
604 Standiford Avenue, Suite N  
Modesto, CA 95350  
Phone: (209) 322-1820  
Fax: (209) 222-4088

7.7. Attorneys' Fees: In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

7.8. Governing Law: This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Stanislaus County, California.

7.9. Assignment: Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without County's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of County's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

7.10. Independent Contractor: Consultant is and shall be acting at all times as an independent contractor and not as an employee of County. Consultant shall secure, at his expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder. Consultant hereby indemnifies and holds County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

7.11. Confidentiality: The Consultant agrees to keep confidential all information obtained or learned during the course of furnishing services under this Agreement and to not disclose or reveal such information for any purpose not directly connected with the matter for which services are provided.

7.12. Ownership of Documents: Any interest, including copyright interests, of Consultant or its contractors or subconsultants in studies, reports, memoranda, computational sheets, drawings, plans or any other documents, including electronic data, prepared in connection with the Services, shall be the property of County. To the extent permitted by law, work product produced under this Agreement shall be deemed works for hire and all copyrights in such works shall be the property of the County. In the event that it is ever determined that any works created by Consultant or its subconsultants under this Agreement are not works for hire, Consultant hereby assigns to County all copyrights to such works. With the County's prior written approval, Consultant may retain and use copies of such works for reference and as documentation of experience and capabilities.

7.13. Reuse of Design Documents: Should the County desire to reuse the documents specified above and not use the services of the Consultant, then the County agrees to require the new consultant to assume any and all obligations for the reuse of the documents, and the County releases Consultant and its subconsultants from all liability associated with the reuse of such documents.

7.14. Public Records Act Disclosure: Consultant has been advised and is aware that all reports, documents, information and data including, but not limited to, computer tapes, discs or files furnished or prepared by Consultant, or any of its subcontractors, and provided to County may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 et. seq.). Exceptions to public disclosure may be those documents or information that qualifies as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs County of such trade secret. The County will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The County shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

7.15. Responsibility for Errors: Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the County's representative, regarding any services rendered under this Agreement at no

additional cost to County. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to County, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of County and to participate in any meeting required with regard to the correction.

7.16. Order of Precedence: In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail. If, and to the extent this Agreement incorporates by reference any provision of the RFP or the Response, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over both the Response and the RFP and the Response shall govern over the RFP.

7.17. Costs: Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

7.18. No Third Party Beneficiary Rights: This Agreement is entered into for the sole benefit of County and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

7.19. Construction: The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

7.20. Amendments: This Agreement may be amend only by a writing executed by the parties hereto or their respective successors and assigns.

7.21. Waiver: The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

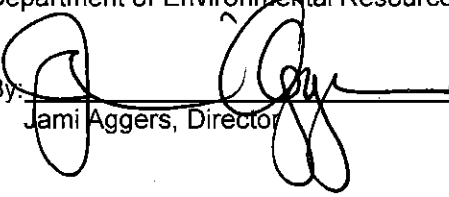
7.22. Severability: If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party is materially impaired, which determination as made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

7.23. Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

7.24. Corporate Authority: The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so, the parties hereto are formally bound to the provisions of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers:

**COUNTY OF STANISLAUS**  
Department of Environmental Resources

By:  \_\_\_\_\_  
Jami Aggers, Director


"County"

**BLACK WATER CONSULTING ENGINEERS, INC.**

By:  \_\_\_\_\_  
Jeffery M. Black  
President

"Consultant"

APPROVED AS TO FORM:  
John P. Doering, County Counsel

By:  \_\_\_\_\_  
Amanda DeHart, Deputy County Counsel

**EXHIBIT A****SCOPE OF WORK****A. BACKGROUND**

Stanislaus County Frank Raines Regional Park is located approximately 18 miles west of Patterson on Del Puerto Canyon Road. The Park offers picnic areas, 34 full hook-up campsites, restrooms and a recreational hall. The park has a water treatment plant, waste water treatment plant and lift station in order to offer potable water and sanitary sewer system for the above facilities.

The County has a need to obtain engineering services for the Design for Potable Water for the Day-Use Area at Frank Raines Regional Park project.

**B. SCOPE OF WORK**

Consultant shall provide all the labor, qualified personnel, materials and equipment to perform the services in this Scope of Work.

**Task 1. Data Collection and Review and Field Investigation**

- 1.1. Collect and Review Record Data, Reports, As-builts - Consultant shall coordinate with the owners of buried utilities in the vicinity of the site and request record drawings that reflect the approximate locations of these utilities. The collected information shall be shown on the base drawing for the site.
- 1.2. Field investigation - Consultant shall coordinate with subconsultant to complete pre-design field investigations which shall include a topographic survey and geotechnical investigation.
  - 1.2.1. Survey Control and Topographic Survey - Northstar Engineering Group, Inc., Consultant's hired subconsultant, shall complete surveying services. This task shall include establishing survey control and performing a topographic survey along the proposed alignment and at the day-use area site of the proposed connection to the planned restroom facility. The survey control shall be based on the NAD 83 horizontal datum and the NAVD 88 vertical datum. (Datums shall be established using the latest NGS CORS data.) The coordinate reference system used shall be California State Plane Coordinates - Zone 3, US Survey Feet. Three (3) horizontal control points shall be set on-site during the topographic survey. Consultant's subconsultant shall perform a detailed design level field survey from right-of-way to right-of-way along Del Puerto Canyon Road of existing physical features, improvements, visible utilities, hardscape, and drainage features. All field surveying and flagging is subject to prevailing wage. Consultant shall provide County with Certified Payroll Records from Northstar Engineering Group, Inc. for all work performed that is subject to prevailing wage.
  - 1.2.2. Geotechnical - Kleinfelder, Inc., Consultant's hired subconsultant, shall complete a geotechnical investigation to evaluate the soil conditions and perform two (2) soil borings at Del Puerto Canyon Road and the day-use area with the findings and recommendations presented in the geotechnical report. All soil boring and sampling is subject to prevailing wage. Consultant shall provide County with Certified Payroll Records from Kleinfelder, Inc. for all work performed that is subject to prevailing wage.
  - 1.2.3. Deliverables: Topographic mapping in AutoCAD 2016 DWG file format and PDF format; Geotechnical Report. Information reviewed and obtained shall be incorporated into the design documents.

**Task 2. Design Documents**

Consultant shall prepare design documents for the proposed improvements including, but not limited to the following, as requested by the County:

- a. Addition of one (1) treatment filter for existing water treatment system to increase treatment capacity in the existing treatment building at the Deer Creek Canyon campground site.
  - b. Replacement of the existing booster pumps to self-priming pumps to increase useable stored water in the existing storage tank at the Deer Creek Canyon campground water treatment site.
  - c. Modification of the existing Deer Creek Canyon campground water system piping configuration at the hydropneumatic tank to improve system operations.
  - d. Design of a 4-inch water pipeline from the Deer Creek Canyon campground to the day-use park new restroom facility with a connection to the existing water system loop.
  - e. Design improvements at the day-use site water and sewer piping to accommodate the new prefabricated restroom facility. The County shall provide all restroom facility design documents, as provided by the vendor/manufacturer and provide the location and invert elevation of the sewer inlet to the septic system. Design shall include site grading to accommodate the new restroom facility. Building demolition notes and piping modifications to the existing sewer piping to cap service laterals to existing restroom facilities shall be included. Improvements shall include an Add Alternative item of new electrical conduit into the water pipeline trench. Conduit shall be 2" installed from the water line attachment point at the campground to the utility closet inside the restroom. Pull boxes, per code, also shall be included in the item.
- 2.1. Conceptual Design (50% Plans) - Consultant shall prepare 50-percent design level plans consisting of preliminary drawings identifying the proposed layout of all major ancillary components. A cost estimate for construction shall be provided for County review to ensure sufficient budget is available for the proposed improvements.
- 2.1.1. The plan sheet size shall be 24"x36". Plan sheets shall use uniform drafting standards. Standard Caltrans abbreviations shall be used throughout. The plans will be drawn at a scale of 1 inch = 40 feet on 24-inch by 36-inch sheets. AutoCAD Civil 3D files will be saved in the 2017 version for any files requested and submitted to the County. Plan sheets shall use uniform drafting standards. Standard Caltrans abbreviations shall be used throughout. Plan sheets shall also be provided in PDF format.
  - 2.1.2. Deliverables: 50% Design Plans and Cost Estimate (three full-sized hard copies).
- 2.2. 90-Percent Design - Consultant shall prepare 90-percent design level plans and cost estimate incorporating County comments on the 50% Conceptual Design. Review by County Department of Public Works is anticipated.
- 2.2.1. At a minimum, plans shall include existing site/infrastructure layout, proposed site/infrastructure layout, plan and details for proposed piping and electrical work, and any other information relevant to the Project's improvements. If necessary, the Consultant shall have the improvement plans reviewed by the Stanislaus County Building Department and/or any other applicable agency. The Consultant shall be responsible for all electrical and utilities design. A qualified licensed electrical engineer shall perform all electrical design. Electrical design may include, but not

be limited to, single line diagrams, details, notes, material specifications, and any other information necessary to successfully bid on and construct the project improvements. It is assumed that the existing electrical infrastructure will support the proposed improvements, and that no Turlock Irrigation District improvements are required. The design plans shall include:

- a. Station, offset and coordinates of all piping and related infrastructure, and actual quantity calculations used for the construction bid documents;
- b. Station, offsets and coordinates for all items of work requiring field staking;
- c. Coordinates and description of intervisible control points;
- d. Drawing layers shall be named to indicate the contents of that layer; and
- e. Electronic files shall be named to indicate sheet number.
- f. In tabular format on a plan sheet:
  - i. Coordinates and description of intervisible control points;
  - ii. Coordinates of all items of work require field staking; and
  - iii. Benchmark information shall be provided on each sheet.

2.2.2. The plan sheet size shall be 24"x36". Plan sheets shall use uniform drafting standards. Standard Caltrans abbreviations shall be used throughout. The plans will be drawn at a scale of 1 inch = 40 feet on 24-inch by 36-inch sheets. AutoCAD Civil 3D files will be saved in the 2017 version for any files requested and submitted to the County. Plan sheets shall use uniform drafting standards. Standard Caltrans abbreviations shall be used throughout. Plans and Submittals shall be provided in PDF format as well.

2.2.3. Estimate: Consultant shall submit an engineer's itemized construction cost estimate that includes written bid item measurement and payment recommendations. The project estimate shall use Caltrans standard bid item descriptions wherever possible. Estimates shall use as a basis, wherever possible, historic and current cost data from County construction projects or industry historic and current cost data for like projects. Escalation factors shall be used to adjust cost data. Estimates shall be prepared using quantities extended by unit prices to the greatest extent possible. Lump-sum bid items shall only be used where appropriate. Contractor fees for permits, inspection, utility services and other known items of work shall be included in the cost estimate as allowances.

2.2.4. Deliverables: 90% Design Plans and Cost Estimate (three full-sized hard copies).

2.3 Final Design (100% Submittal) - The 100% plans shall, at a minimum, include all County comments identified in the 90-percent design submittal review, structural calculations and details, approved materials list (per coordination with County personnel), and any other information necessary to successfully construct Project's improvements. Where applicable, the plans shall identify equipment model/type. The County shall review the 100% PS&E submittal to ensure all comments have been addressed and the project's needs have been met. Once all PS&E deliverables have been prepared to County's satisfaction, the Consultant shall have improvement plans signed by all relevant agencies. Consultant shall prepare 100-percent design level plans, specifications (Special Provisions/Technical Specifications), and cost estimate incorporating County comments on the 90-percent design to successfully bid and construct the project. Final documents shall be stamped and signed by a license California Civil Engineer. Project specifications and cost estimate shall include an item for Contractor traffic control plan identifying detour routes, flagger(s), and signage for various phases of construction. The County shall complete front-end specifications.

2.3.1. Estimate: The estimate shall be 100% complete and account for all possible costs associated with construction of project's improvements. County shall use the final



engineer's estimate as a basis for the "Contractor's Bid Sheet." The Consultant shall ensure that every item listed in the bid sheet is comprehensively described in the Special Provision Specifications (SP). All items described on the Contractor's Bid Sheet must have their own Measurement & Payment section in the SP. The Consultant shall be responsible for the accuracy of all bid quantities shown on the final engineer's estimate.

- 2.3.2. Deliverables: 100% Final Design Plans, Specifications, and Cost Estimate (one original hard copy and one electronic copy of the final signed and stamped of each) in PDF format.

### **Task 3. Project Management and Administration**

- 3.1. Consultant anticipates a total of two (2) deliverable review meetings.
- 3.2. Consultant anticipates a total of three (3) site visits - one (1) data collection visit, one (1) mandatory pre-bid visit, and one (1) site visit during construction.
- 3.3. This task shall include project management activities including communication with County staff, biweekly progress conference calls, all written correspondence, managing allocation of Consultants resources and staff, administration, invoicing, records, and overhead.
- 3.4. Task 3.1 Deliverables: Meeting Minutes, Invoices.

### **Task 4. Construction Phase**

- 4.1. Bidding Assistance - Consultant shall review and provide comments on the final bid documents before County issues the bid solicitation and attend the pre-bid conference, with the County and any contractors who are preparing to bid on the project. Consultant shall be available to assist County in responding to requests for information during the bidding process and provide County with written technical responses to the bidder's questions. Consultant shall assist County with the review of the approved lowest responsible and responsive bidder's bid response to provide comments to the County for potential clarifications on the bid. Consultant shall act in an advisory role during the construction phase to provide clarity and answer any questions the County has related to the Construction project.
- 4.2. Submittal Review - Consultant shall receive and review contractor's submittals for compliance with the contract documents. Submittals and responses shall be recorded and original documents shall be provided to the County (assumes 5 submittals).
- 4.3. As-Built Plans - Upon completion of all construction activities, the Consultant shall be responsible for preparing final record drawings based on as-built markups provided by the Contractor. The Consultant shall modify final plans to show final location and layout of all mechanical, electrical, and instrumentation equipment, piping and conduits, structures, and other facilities. As-built record drawings shall reflect change orders, accommodations, and adjustments to all improvements constructed.
- 4.4. Deliverables: RFI Responses during bidding and construction, Submittal Review, As-Built Plans.

### **Task 5. Water System Permit Update**

- 5.1. Consultant shall complete an Application for Domestic Water Supply Permit Amendment and required documents, and coordinate with the State Water Resources Control Board (SWRCB) Division of Drinking Water (DDW) to update the water system permit for the

additional treatment capacity and service connection to the day-use park.

5.2. Task 5.1 Deliverables: Application for Domestic Water Supply Permit Amendment.

Any additional services not specifically noted in this scope of work requested by the County may be provided by the Consultant on a time and materials basis per the Consultants current rate schedule or at a fixed fee agreed upon by both parties.

Exclusions:

1. Environmental Document.
2. Boundary or property survey.
3. Construction Management and administration will be performed by County staff.
4. Design for new power service.

**C. AGREEMENT PERIOD**

This Agreement shall commence upon the signing of this Agreement and continue until **December 21, 2018**, or until the work required herein is completed, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

**D. PREVAILING WAGE**

Consultant shall comply with all the provisions of state and local laws relating to contracts for the prosecution of public works. Pursuant to law, the County has ascertained the general prevailing rate of per diem wages in the locality of the work for each craft or type of workman required for performance of the contract, which rates are as stated in the Invitation to Bidders, and the Consultant shall be required to pay not less than said prevailing rates. Consultant is required to post a copy of these prevailing wage rates at the job site.

Pursuant to Labor Code section 1771, the work under this Agreement is subject to the provisions of Article 2 (commencing with section 1770) of Chapter 1 of Part 7 of Division 2 of the Labor Code, and the Consultant shall pay all workers the general prevailing rate of per diem wages applicable to the work to be done for straight time, overtime, Saturday, Sunday and holiday work. These wage rates, which are set forth by the Director of the Department of Industrial Relations, are now on file with the Department of Public Works and are a part of this Agreement. The Consultant shall post a copy of these prevailing wage rates on the job site.

**REGISTRATION WITH THE DEPARTMENT OF INDUSTRIAL RELATIONS.** No Consultant or subcontractor may be listed on a bid proposal for a public work project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)]. No Consultant or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

CONSULTANT HEREBY ATTESTS THAT CONSULTANT AND ALL SUBCONTRACTORS ARE REGISTERED WITH THE DEPARTMENT OF INDUSTRIAL RELATIONS ("DIR"). Senate Bill 854 requires that all Consultants performing work on any public works project valued at more than \$1,000.00 must be registered with the DIR, and that all said Consultants submit certified payroll reports directly to the DIR, unless excused. Failure to comply with this sections constitutes a material breach of this contract.

**PAYROLL RECORDS.** Pursuant to and in accordance with the provisions Labor Code section 1776, the Consultant shall keep accurate payroll records of employees performing work under this Agreement and shall make available for inspection certified copies such payroll records.

**E. COMPENSATION**

The Consultant shall be compensated for the services provided under this Agreement as follows:

Consultant shall be compensated for the completion of the fixed fee portions of the services described in Exhibit A, and the not to exceed amounts for each task as set forth below in Exhibit C attached hereto and, by this reference, made a part hereof. The not to exceed lump sum amounts for each task are comprised of the hourly billable rates set forth in Exhibit C. In addition to the aforementioned fees, Consultant shall be reimbursed for the following expenses, plus any expenses agreed to by the parties as set forth in a Schedule of Rates – Exhibit C attached hereto, that are reasonable, necessary and actually incurred by the Consultant in connection with the services:

- (a) Any filing fees, permit fees, or other fees paid or advanced by the Consultant;
- (b) Expenses, fees or charges for printing, reproduction or binding of documents at actual costs; and
- (c) Travel expenses shall be reimbursed in accordance with the County's travel policy, which is incorporated herein by reference. No mark-up is allowed on travel reimbursement.

Fees plus reimbursable expenses shall not exceed the amounts set forth in Exhibit C and a copy of the original invoice for the items listed in a, b or c above shall be attached to the invoice submitted to the County for reimbursement. Payments shall be based upon work documents submitted by the Consultant to the County and accepted by the County, as being satisfactory to County's needs, not work in process. The County shall not pay a markup on any of the above items listed in a, b or c or any item identified in Exhibit C. Items such as a telephone, fax, postage or freight are already included in the billable hourly rate.

**F. INVOICE TO ADDRESS**

1. The terms of payment are Net 30 days after approval of invoices.
2. Consultant shall submit a detailed invoice for work actually completed. The invoice is to include but not be limited to the following information: hours worked by Consultant's Staff, the title of the Staff, billable rate, actual copies of equipment rental invoices, detailed information on equipment being rented, and reimbursable items that are reasonable, necessary and actually incurred by the Consultant in connection with the services. All invoices including reimbursable items shall have appropriate back up documents (i.e. copies of receipts) attached to the invoices. No mark-up is allowed on reimbursable items and travel reimbursement and copies of all receipts must accompany the invoice. Consultant shall be compensated for services rendered and accepted under this Agreement and shall be paid monthly, in arrears, on a time and materials basis not to exceed the per task totals for work performed and services provided.
3. Maintenance and Weekly Submission of Certified Payroll Records. The Consultant and each of its Sub-consultants shall maintain accurate, complete and current payroll records as required by the Labor Compliance Programs (LCP). Each payroll record shall contain or be verified by a written declaration as required by Labor Code Section 1776. During the progress of the prevailing wage work, until Final Payment is due, the Consultant and its Sub-consultants shall maintain and submit Certified Payroll Records on a weekly basis. No later than 5:00 P.M. on each Monday during the Work, the Consultant shall submit Certified Payroll Records for the Consultant and its Sub-consultants for all persons providing or performing any Work in the immediately preceding week. The original copies of Certified Payroll Records shall be submitted by the Consultant to the Contract Administrator or such

other person or entity as directed by the County; concurrently with the Consultant's delivery of the original copies, a duplicate copy of each Certified Payroll record submitted by the Consultant to the Contract Administrator shall be transmitted to the County's Department of Parks and Recreation. The Certified Payroll Records maintained and submitted hereunder shall be in strict conformity with requirements established in the LCP. A material obligation of the Consultant under the Contract Documents is the Consultant's and its Sub-consultants's strict compliance with requirements of the LCP relating to maintenance and submission of Certified Payroll Records. The Consultant's submittal of weekly Certified Payroll Records in strict conformity with requirements of the LCP is an express condition precedent to the County's obligation to disburse any Progress Payment to the Consultant and the Consultant's entitlement to receipt of any Progress Payment.

4. Invoices shall be mailed or delivered to the County department indicated below. The remit address is:

Stanislaus County  
Department of Parks and Recreation  
3800 Cornucopia Way Suite C  
Modesto, CA 95358  
Attn: Bill Newlin

#### **G. REPRESENTATIVE**

The County's Project Manager is William Newlin, Special Projects Coordinator for Stanislaus County Department of Parks and Recreation, (209) 525-6763.

#### **H. SAFETY REQUIREMENTS**

All services must comply with current California State Division of Industrial Safety Orders and OSHA.

#### **I. PROTECTION OF EXISTING FACILITIES**

Consultant shall take every precaution to protect all public and private property during the performance of this Agreement. Any damages caused by Consultant's personnel or equipment will be promptly repaired to the condition existing before the damage or be replaced. All such costs for such repairs or replacement shall be the sole responsibility of the Consultant.

#### **J. WORK SCHEDULE**

Consultant is obligated to perform in a timely manner the services and work provided for under this Agreement and the County hereby gives the Consultant notice to proceed with the work as of the effective date of this Agreement. It is understood by Consultant that the performance of these services and work shall require the Consultant to perform the services and work in conformance with a work schedule agreed to by the parties in Exhibit C attached hereto and made a part of this Agreement.

#### **K. SITE AVAILABILITY**

The site hours of availability for project shall be from 7:00 a.m. to 5:00 p.m. or a mutually agreed upon time between County and Consultant.

#### **L. PROJECT WORK EFFORT**

The Consultant shall perform services and shall provide staff who are adequate to meet the anticipated workload for the project.

**M. MULTI-YEAR CONTRACT**

If funds are not appropriated or otherwise made available to support continuation in any fiscal year succeeding the first fiscal year, the County shall have the right to terminate this contract and the Consultant is not entitled to recover any costs not incurred prior to termination.

**N. EXPERTISE**

The Consultant shall provide staff and expertise in all areas defined within this Agreement through their own staff or by the use of designated sub-consultants. The Consultant shall utilize sub-consultants identified in their quote/proposal with the expertise in all areas as defined in this Agreement. On occasion, the Consultant may need to hire specialty sub-consultants not previously identified in their quote/proposal. In either case, County reserves the right to approve the use of sub-consultant firms proposed for specialty work.

The Consultant may provide staff with varying levels of expertise; however, work performed by subordinate staff members shall only be done under the direction of the designated responsible engineers, specified in the contract with the expertise in the required technical areas.

**O. REMOVAL OF UNSATISFACTORY EMPLOYEES**

If, in the opinion of the County, an employee of the Consultant is incompetent or disorderly, refuses to perform in accordance with the terms and conditions of the contract, threatens or uses abusive language while on County property, or is otherwise unsatisfactory, that employee shall be removed from all work under this contract.

**P. COMPLIANCE WITH OSHA**

The Consultant shall be responsible for strict compliance with all requirements of the California Occupational Safety and Health Act (OSHA) which are applicable to the work to be accomplished pursuant to this contract. OSHA shall be construed to include, but not be limited to, all applicable safety orders issued by the Division of Industrial Safety, State of California. In the event the Consultant or any of the Consultant's employees shall observe any violation of OSHA in or on the premises on which the Consultant is to perform work, pursuant to this contract, the Consultant shall immediately give written notice to the County of such violation.

## EXHIBIT B

### Insurance Requirements for Professional Services

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

#### MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** If the Consultant or the Consultant's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any of the work or services under the Agreement Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.  
(Not required if consultant provides written verification it has no employees)
4. **Professional Liability (Errors and Omissions)** Insurance appropriate to the Consultant's profession, with limits not less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

#### ***Application of Excess Liability Coverage***

Consultants may use a combination of primary, and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the Required Insurance provisions.

#### ***Other Insurance Provisions***

The insurance policies are to contain, or be endorsed to contain, the following provisions:

***Additional Insured Status***

The County, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used).

***Primary Coverage***

For any claims related to this contract, the **Consultant's insurance coverage shall be primary** insurance primary coverage at least as broad as ISO CG 20 01 04 13 as respects the County, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

**Reporting:** Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials, employee's, agents or volunteers.

***Notice of Cancellation***

Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the County.**

***Waiver of Subrogation***

Consultant hereby grants to County a waiver of any right to subrogation which any insurer of said Consultant may acquire against the County by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

***Self-Insured Retentions***

Self-insured retentions must be declared to and approved by the County. The County may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or County.

***Acceptability of Insurers***

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the County.

***Claims Made Policies***

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.

2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

**Verification of Coverage**

Consultant shall furnish the County with a copy of the policy declaration and endorsement page(s), original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All **certificates and endorsements are to be received and approved by the County before work commences**. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

**Subcontractors**

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that County is an additional insured on insurance required from subcontractors.

**Special Risks or Circumstances**

County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**Insurance Limits**

The limits of insurance described herein shall not limit the liability of the Consultant and Consultant's officers, employees, agents, representatives or subcontractors. Consultant's obligation to defend, indemnify and hold the County, its officers, officials, employees, agents and volunteers harmless under the provisions of this paragraph is not limited to or restricted by any requirement in the Agreement for Consultant to procure and maintain a policy of insurance.

APPROVED AS TO INSURANCE CONTENT:

Stanislaus County

Chief Executive Office – Risk Management Division

By: Kevin Watson

Name: Kevin Watson

Title: Liability & Insurance Manager

Date: 8/15/2017



**EXHIBIT C**

**CONSULTANTS FEE SCHEDULE**

**1. PRICE SCHEDULE:**

The Consultant shall provide all the supervision, labor, equipment, materials and tools necessary to perform the services identified in Exhibit A – Scope of Work and in accordance with the rate schedule below. The below fee schedule is in effect through the end of this Agreement.

**2. HOURLY BILLABLE RATES**

2.1. The Consultant shall be compensated on a time and material basis based on the hourly rates, and the not to exceed amounts for each task as set forth below. The following hourly billable rates include: labor, benefits, taxes, overhead/general & administrative (G&A), profit, and ancillary charges such as copies, faxes, telephones, postage, paper clips, binders, company cars, fuel, insurance, vehicle or equipment maintenance, cellular phone charges, computer charges (CADD, word-processing, mapping), etc.

TITLE/DESCRIPTION	HOURLY RATE
<b>ENGINEERING</b>	
Principal/Project Manager	\$180.00
QA/QC Manager	\$180.00
Senior Engineer	\$160.00
Assistant Engineer	\$125.00
EIT Engineer	\$105.00
<b>TECHNICAL STAFF</b>	
Designer	\$100.00
Senior CAD Technician	\$85.00
CAD Technician	\$65.00
<b>FIELD SERVICES</b>	
Construction Inspector	\$115.00
Construction Manager	\$165.00
<b>ADMINISTRATION</b>	
Office/Administration	\$65.00
<b>EXPERT WITNESS</b>	<b>\$180.00</b>

**3. REIMBURSABLE RATES**

3.1. Below is a detailed breakdown of Reimbursable Expenses

TITLE/DESCRIPTION	RATE
Direct Costs	Cost Plus 10%
Subconsultants	Cost Plus 10%
Mileage	In Accordance with the County's Travel Policy

**4. PROJECT PRICE**

The below project pricing is devised to allow the County the ability to identify costs associated with the frequency of tasks performed in a given calendar year. The Consultant shall be compensated based on the billable hourly rates set forth above to perform the work associated with each task, not to exceed the amounts listed below. Maximum Total Task Price includes fees, travel expenses and

reimbursable expenses that are reasonable, necessary and actually incurred by the Consultant in connection with the services. Travel expenses shall be reimbursed in accordance with the County's travel policy.

4.1. A Summary breakdown of the Project fees is as follows

<b>TASK</b>	<b>TASK DESCRIPTION</b>	<b>MAXIMUM TOTAL TASK PRICE</b>
1	Data Collection and Review and Field Investigation	\$32,027
2	Design Documents	\$35,760
3	Project Management and Administration	\$8,340
4	Construction Phase	\$8,375
5	Water System Permit Update	\$6,280
<b>PROJECT TOTAL</b>		<b>\$90,782</b>

4.2. The next page contains a detailed breakdown of the Hourly fees for Tasks 1-5:

Detailed Fee Schedule

		Black Water								Sub-Consultants			
Billing Rate \$/hr		\$180	\$160	\$125	\$180	\$85	\$65						
Job Title	Project Manager	Senior Eng.	Assistant Eng.	QA/QC Manager	Senior CAD Tech.	Office/Admin	BW Total Hrs.	BW Fee	Northstar Engineering (Survey)	Kleinfelder (Geo-technical)	Sub-consultant Total	Sub-consultant Markup (10%)	Total Fee
<b>Task 1</b>	<b>Field Investigations</b>												
1.1	Field Investigations	4					4	\$720	\$14,270	\$12,500	\$26,770	\$2,677	\$30,167
1.1	Info Collection, Review	2	4	4	2		12	\$1,860					\$1,860
<b>Total Task 1</b>		<b>6</b>	<b>4</b>	<b>4</b>	<b>2</b>	<b>0</b>	<b>16</b>	<b>\$2,580</b>	<b>\$14,270</b>	<b>\$12,500</b>	<b>\$26,770</b>	<b>\$2,677</b>	<b>\$32,027</b>
<b>Task 2</b>	<b>Design Plans</b>												
2.1	50% Design	4	24	40	4	48	120	\$14,360					\$14,360
2.2	90% Design	4	24	24	4	48	104	\$12,360					\$12,360
2.3	Final Design PS&E	4	16	24	4	24	72	\$9,040					\$9,040
<b>Total Task 2</b>		<b>12</b>	<b>64</b>	<b>88</b>	<b>12</b>	<b>120</b>	<b>296</b>	<b>\$35,760</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$35,760</b>
<b>Task 3</b>	<b>Project Management and Administration</b>												
3.1	Meetings (2)	6				2	8	\$1,210					\$1,210
3.2	Site Visits (3)	12				2	14	\$2,290					\$2,290
3.3	Project Management	24				8	32	\$4,840					\$4,840
<b>Total Task 3</b>		<b>42</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>12</b>	<b>54</b>	<b>\$8,340</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$8,340</b>
<b>Task 4</b>	<b>Construction Phase</b>												
4.1	Bidding Assistance	2	16	8	2		28	\$4,280					\$4,280
4.2	Submittal Review (5)	2	2	5	2	2	13	\$1,795					\$1,795
4.3	As-Built Plans	2	4		2	8	20	\$2,300					\$2,300
<b>Total Task 4</b>		<b>6</b>	<b>22</b>	<b>13</b>	<b>6</b>	<b>8</b>	<b>61</b>	<b>\$8,375</b>	<b>\$0</b>	<b>\$0</b>	<b>\$</b>	<b>\$0</b>	<b>\$8,375</b>
<b>Task 5</b>	<b>Permitting</b>												
5.1	Water System Permit Update	2	16	24	2		44	\$6,280					\$6,280
<b>Total Task 5</b>		<b>2</b>	<b>16</b>	<b>24</b>	<b>2</b>	<b>0</b>	<b>44</b>	<b>\$6,280</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$6,280</b>
<b>TOTAL (Tasks 1-5)</b>		<b>68</b>	<b>106</b>	<b>129</b>	<b>22</b>	<b>128</b>	<b>471</b>	<b>\$61,335</b>	<b>\$14,270</b>	<b>\$12,500</b>	<b>\$26,770</b>	<b>\$2,677</b>	<b>\$90,782</b>

# Attachment B

Database  
Balance Type  
Data Access Set

FMSDBPRD.CO.STANISLAUS.CA.US.PROD  
Budget  
County of Stanislaus

DO NOT CHANGE  
DO NOT CHANGE  
DO NOT CHANGE

Ledger  
Budget  
Category  
Source  
Currency  
Period

\* List - Text County of Stanislaus  
List - Text LEGAL BUDGET  
\* List - Text Budget - Upload  
\* List - Text DER AM  
\* List - Text USD  
List - Text AUG-17

DO NOT CHANGE  
DO NOT CHANGE  
DO NOT CHANGE

Batch Name  
Journal Name  
Journal Description  
Journal Reference  
Organization  
Chart Of Accounts

Text  
Text DER AM JV21664 08/14/17  
Text To incr contract for Proj Engineering  
Text  
List - Text Stanislaus Budget Org  
Accounting Flexfield

DO NOT CHANGE  
ENTER AS MMM-YY (ALL CAPS FOR MMM) EX: NOV-11

DO NOT CHANGE  
DO NOT CHANGE

Upl	Fund (4 char)	Org (7 char)	Account (5 char)	GL Project (7 char)	Location (6 char)	Misc. (6 char)	Other (6 char)	Debit incr appropriations decr est revenue * Number	Credit decr appropriations incr est revenue * Number	Line Description Text	
	2135	0035712	63280	0011412					99860	Incr Contracts for Project	
	2135	0035712	46600	0011412					99860	Incr Operating Transfers	
	0100	0035110	85850	0011412					99860	Incr Operating Transfers	
									199720	99860	

Totals: 199720 99860

Tip: This is not the end of the Template. Unprotect the sheet and insert as many rows as needed.

Explanation: Operating Transfer from Parks Admin to the Parks Project Fund and establish appropriations for an engineering contract for the Frank Raines Water System Phase 2 water line to Day Use Area. The increased Net County Cost usage in Parks Admin will be funded by General Fund Balance previously committed for this purpose.

Requesting Department <i>Matthew Mayhew</i>	Supervisor's Approval <i>[Signature]</i>	Data Entry Keyed by	Auditors Office Only Prepared By <i>[Signature]</i>
Prepared by <i>8/21/17</i>	Date <i>8/21/17</i>	Date	Date <i>8/21/2017</i>

# Attachment C

Database	FMSDBPRD.CO.STANISLAUS.CA.US.PROJ	DO NOT CHANGE
Balance Type	Actual	DO NOT CHANGE
Data Access Set	County of Stanislaus	DO NOT CHANGE
Ledger	* List - Text County of Stanislaus	DO NOT CHANGE
Category	* List - Text Reclass	
Source	* List - Text AC GL MAF	
Currency	* List - Text USD	DO NOT CHANGE
Accounting Date	* List - Date 8/21/2017	ENTER AS MM/DD/YY EX: 11/01/11
Batch Name	Text	
Journal Name	Text JV190523	
Journal Description	Text Reclassify Fund 0100 committed fund b:	
Journal Reference	Text Parls Board Agenda Item for August 29,	
Chart Of Accounts	Accounting Flexfield	DO NOT CHANGE

Upl	Fund (4 char) * List - Text	Org (7 char)	Account (5 char)	GL Project (7 char)	Location (6 char)	Misc (6 char)	Other (5 char)	Debit  * Number	Credit  * Number	Line Description  Text
	0100	0000000	03676	0000000	000000	000000	00000		99860	Reduce Fund Balance committe
	0100	0000000	03610	0000000	000000	000000	00000		0 99860	Increase unassigned fund balar

Totals: 99860 99860  
 Tip: This is not the end of the Template. Unprotect the sheet and insert as many rows as needed.

**Explanation:**  
 Release \$99,860 of General Fund 0100 committed fund balance in order to fund the engineering contract for trhe Frank Raines Water System Phase 2 water line to Day Use Area

Prepared by		Keyed by	Mike Firpo
Date	8/21/17	Date	8/21/2017
Supervisor's Approval		Author's Office Only	
		Prepared By	Approved By



DEPARTMENT OF PARKS AND RECREATION
3800 Cornucopia Way, Suite C, Modesto, CA 95358
Phone: (209) 525-6700
Fax: (209) 525-6773

AMENDMENT NO. 1

TO

STANISLAUS COUNTY PROFESSIONAL DESIGN SERVICES AGREEMENT
WITH
BLACK WATER CONSULTING ENGINEERS, INC.

This Amendment No. 1 to the Professional Design Services Agreement ("Amendment No. 1") by and between the County of Stanislaus ("County") and Black Water Consulting Engineers, Inc. ("Consultant") is made and entered into on August 30, 2018.

Whereas, the County and Consultant entered into an Agreement for Professional Design Services dated August 29, 2017 ("the Agreement"); and

Whereas, Paragraph 7.20 - Amendments of the Agreement provides that the Agreement may be amended in writing by mutual consent of both parties; and

Whereas, on August 29, 2017, the Stanislaus County Board of Supervisors approved the Director of the Department of Parks and Recreation to sign amendments to this Agreement for an overall total not to exceed amount of \$99,860; and

Whereas, Task 1 was completed \$1,262.80 under budget and Task 4 is being reduced by \$4,285, allowing for an additional \$5,547.80 to be transferred from Tasks 1 and 4 to Tasks 2, 3, and 5; and

Whereas, the County has a need to increase funding to this Agreement by an additional \$9,078, in order to allow for additional design modifications, project management, and permitting; and

Whereas, this amendment is for the mutual benefit of County and Consultant;

Now, therefore, the County and Consultant agree as follows:

- 1. Section 2 Compensation and Billing, Item 2.1- Compensation of the Agreement is amended to read as follows:

"Consultant shall be paid in accordance with the fee schedule set forth in Exhibit "C", attached hereto and made a part of this Agreement (the "Fee Schedule"). Consultant's compensation shall in no case exceed Ninety-Nine Thousand, Eight Hundred Sixty Dollars (99,860.00). Consultant will be compensated on a time and materials basis, based on the hours worked by the Consultant's employees or subcontractors at the hourly rates specified in the Fee Schedule. The Fee Schedule rates include direct salary costs, employee benefits, and overhead. The rates stated in the Fee Schedule are not adjustable during the term of this Agreement. The County may retain ten percent of all periodic or progress payments made to the Consultant until completion and acceptance of all work tasks and County shall have right to withhold payment from Consultant for any unsatisfactory service until such time service is performed satisfactorily."

- 2. Exhibit A Scope of Work, Task 2, shall be amended to include the following:

"2.4. Treatment Filtration Evaluation and Design

Due to changes in manufacturing, membrane cartridge units are no longer available for the existing treatment unit at Frank Raines. Additional treatment approved for treatment of surface water is required to supply potable water to the day use park area. The County has requested Consultant to evaluate the three-stage Harmsco Filtration System as an alternative treatment system for the Frank



Raines Water System.

Consultant shall evaluate the three-stage Harmsco Filtration System and one other system approved for surface water treatment for replacement of the existing membrane treatment system. Consultant shall prepare detailed design documents for the replacement system. The design changes shall consist of updating the plans and technical specifications, and Engineer's estimate.

2.5 Chlorine Contact Chamber

The County has historically had to reduce system flows in order to meet required chlorine residuals. As such, the County has requested Consultant to include additional pipe length between the treatment building and the water storage tank in order to increase chlorine contact time.

Consultant shall calculate additional pipe length to meet required chlorine contact time and prepare detailed design documents for the additional pipe between the treatment building and the storage tank. The design changes shall consist of updating the plans, technical specifications, and Engineer's estimate."

3. Exhibit A Scope of Work Task 4 shall be amended to read as follows:

**"Task 4. Construction Phase**

4.1. Bidding Assistance - Consultant shall review and provide comments on the final bid documents before County issues the bid. Consultant shall be available to assist County in responding to requests for information during the bidding process and provide County with written technical responses to the bidder's questions. Consultant shall act in an advisory role during the construction phase to provide clarity and answer any questions the County has related to the Construction project.

4.2. Submittal Review - Consultant shall receive and review contractor's submittals for compliance with the contract documents. Submittals and responses shall be recorded and original documents shall be provided to the County (assumes 5 submittals).

4.3. As-Built Plans - Upon completion of all construction activities, the Consultant shall be responsible for preparing final record drawings based on as-built markups provided by the Contractor. The Consultant shall modify final plans to show final location and layout of all mechanical, electrical, and instrumentation equipment, piping and conduits, structures, and other facilities. As-built record drawings shall reflect change orders, accommodations, and adjustments to all improvements constructed.

4.4. Deliverables: RFI Responses during bidding and construction, Submittal Review, As-Built Plans.

4.5. The total requested fee has been reduced for this task assuming Consultant will not attend the pre-bid conference meeting and the County will be responsible for completing review and approval of the received bids."

4. Exhibit A Scope of Work Task 5 shall be amended to include the following:

"5.3 Consultant shall prepare a Project Report which shall be necessary for the new treatment system. Historical water system usage data shall be provided by the County for Consultant's calculation of water system demands."

5. Exhibit C Fee Schedule Section 4.1 Summary Breakdown of Project Fees shall be amended to read as follows:

"

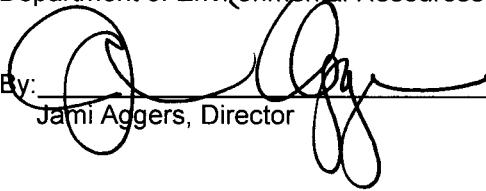
TASK	TASK DESCRIPTION	MAXIMUM TOTAL TASK PRICE
1	Data Collection and Review and Field Investigation	\$30,764.20
2	Design Documents	\$41,765.08

<b>4.1 SUMMARY BREAKDOWN OF PROJECT FEES (CONTINUED)</b>		
<b>TASK</b>	<b>TASK DESCRIPTION</b>	<b>MAXIMUM TOTAL TASK PRICE</b>
3	Project Management and Administration	\$9,501.87
4	Construction Phase	\$4,090
5	Water System Permit Update	\$13,738.85
<b>PROJECT TOTAL</b>		<b>\$99,860.00</b>

6. Except as stated herein, all other terms and conditions of the Agreement remain unchanged.

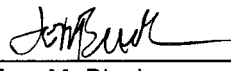
In witness whereof, the parties have executed this Amendment on the date written above.

**COUNTY OF STANISLAUS**  
Department of Environmental Resources

By:  \_\_\_\_\_  
Jami Aggers, Director

"County"

**BLACK WATER CONSULTING ENGINEERS, INC.**

By:  \_\_\_\_\_  
Jeffery M. Black  
President

"Consultant"

APPROVED AS TO FORM:  
John P. Doering, County Counsel

By:  \_\_\_\_\_  
Amanda DeHart, Deputy County Counsel