

**FEATHER RIVER RECREATION AND PARK DISTRICT
1875 FEATHER RIVER BLVD., OROVILLE, CA 95965**

DISTRICT BOARD MEETING
Special Board Meeting
March 8, 2018

Location: FRRPD Conference Room

Agenda Closed Session 9:15am/Open Session Immediately Following

In accordance with the Americans with Disabilities Act, if you need a special accommodation to participate in the meeting, please contact the District Administrative Office at (530)533-2011 at least 48 hours in advance of the meeting.

1. CALL THE MEETING TO ORDER

2. ROLL CALL

Chairperson Victoria Smith _____
Vice Chairman Gary Emberland _____
Director Scott Kent Fowler _____
Director Marcia Carter _____
Director Don Noble _____

3. PLEDGE OF ALLEGIANCE

4. ADJOURNMENT TO CLOSED SESSION

4A Pursuant to Government Code section 54957, Public Employee Employment – Title:
General Manager

5. ANNOUNCEMENT FROM CLOSED SESSION

6. CONSENT AGENDA

6A Approve as recommended by the PP&P Committee job description changes: title change
Aquatics Specialist to Pool Manager

6B Approve appointment Chairperson Vicki Smith to RDA Oversight Committee

6C Approve Authorization to allow FRRPD to give Park Watch members/volunteers hats and shirts

6D Approve MOU agreement between FRRPD and Pioneer School District in Berry Creek (*Appendix A*)

7. ITEMS PULLED FROM THE CONSENT AGENDA

8. ACTION ITEMS

8A. Review Riverbend Bend Phase I submitted bids. Bid close date 3/6/18, documents will be presented during meeting

Present: Melton Design

Requested action: Award contract or decline to award contract

VOTE

Chairperson Smith _____

Vice-Chairman Emberland _____

Director Fowler _____

Director Carter _____

Director Noble _____

8B. Review and approve Melton Design Group agreement for services to restoration of Riverbend Park Phase II. (Appendix B)

Present: Melton Design

Requested action: approve agreement

VOTE

Chairperson Smith _____

Vice Chair Emberland _____

Director Fowler _____

Director Carter _____

Director Noble _____

9. NON-ACTION ITEMS

10. PUBLIC COMMENT

At this time, the Board will extend the courtesy of the Hearing Session to interested parties who wish to speak on items not on the agenda. State law prohibits the Board from taking action on any item presented if is not listed on the agenda, except under special circumstances as defined in the Government Code. You are limited to three (3) minutes. The Chairperson will invite anyone in the audience wishing to address the Board on a matter not listed on the agenda to state your name for the record and make your presentation. The Board will not and cannot take any action except for a brief response by the Board or staff to a statement or question relating to a non-agenda item

11. UNFINISHED BUSINESS

10. BOARD ITEMS FOR NEXT AGENDA

11. ADJOURNMENT

Time: _____

APPENDIX A

**AGREEMENT Between
PIONEER UNION ELEMENTARY SCHOOL DISTRICT
And
FEATHER RIVER RECREATION AND PARK DISTRICT**

THIS AGREEMENT ("Agreement") is made January 10, 2018 ("Effective Date"), by and between PIONEER UNION ELEMENTARY SCHOOL DISTRICT, a California public school district ("PUESD"), and FEATHER RIVER RECREATION AND PARK PUESD, a municipal corporation of the State of California ("FRRPD"), herein referred to individually as "Party" and collectively as the "Parties."

RECITALS

WHEREAS, PUESD owns the property located at 300 Rockefeller Road, Berry Creek, CA 95916, upon which the Bald Rock Community Day School is located ("Property"), Butte County parcel number 071-440-005.

WHEREAS, the Property is not currently an active school site.

WHEREAS, FRRPD desires use of the Property for operation of its community center and park program (collectively, "Program").

WHEREAS, community recreation programs are authorized under Education Code section 10900 to promote and preserve the health and general welfare of the people of the state and to cultivate the development of good citizenship by provision for adequate programs of community recreation, and to authorize public entities having powers to provide recreation, to organize, promote, and conduct programs of community recreation as will contribute to the attainment of general educational and recreational objectives for children and adults of the state.

WHEREAS, Section 10905 of the Education Code authorizes the governing bodies of any two or more public authorities may enter into agreements with each other, and may do any and all things necessary or convenient to aid and cooperate in carrying out the purposes of the community recreation statutes.

WHEREAS, pursuant to Education Code, section 17527 *et seq.*, PUESD is authorized to rent or lease its property via a joint use agreement "to make vacant classrooms or other space in operating school buildings available ... to other school PUESDs, educational agencies, except private educational institutions which maintain kindergarten or grades 1 to 12, inclusive, governmental units, nonprofit organizations, community agencies, professional agencies, commercial and noncommercial firms, corporations, partnerships, businesses, and individuals"

WHEREAS, the joint use statutes of Section 17527 *et seq.*, authorize the PUESD to make available onsite and offsite facilities, utilities, and improvements.

WHEREAS, to carry out the purposes of the community recreation statutes of Section 10900 *et seq.*, the Parties desire to enter into a joint use agreement whereby, when not in use by PUESD, PUESD desires to make the Property available for use by the FRRPD for its Program.

WHEREAS, pursuant to section 17529 of the Education Code, PUESD has determined that this Agreement and FRRPD's joint use of the Property for its Program as set forth

herein will not: (1) interfere with the educational programs or activities of the PUESD or any school or class conducted on the Property or in any building; (2) unduly disrupt the residents in the surrounding neighborhood; or (3) jeopardize the safety of the students at the Property.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the Parties agree as follows:

AGREEMENT

Section 1. Title to Property.

The Parties acknowledge that title to the Property is held by PUESD.

Section 2. Use of Property.

PUESD agrees to allow FRRPD use of the Property solely for the operation of FRRPD's Program pursuant to the terms, covenants, and conditions set forth herein.

(a) Times of Use.

(i) Except as otherwise stated herein, FRRPD shall be permitted use of the Property, year-round, for operation of FRRPD's Program during the Term of this Agreement, except during the times reserved for PUESD use ("PUESD's Times of Use").

(ii) The Parties understand and agree that the Property exists primarily for the instruction and benefit of PUESD students and other educational purposes of PUESD. The Parties further understand and agree that PUESD programs may, from time-to-time, conflict with the above-stated PUESD's Times of Use for the Property, and that, in such event, PUESD use shall take priority. At this time, PUESD has no current or planned use of the Property.

(ii) The Parties may meet annually, before each school year, to designate times for PUESD's use of the Property for its programs and for PUESD's Times of Use for its Program. Each Party shall provide the other with written notification of the dates and times that its programs are scheduled and that it desires to use the Property. If the schedules conflict, the Parties shall work cooperatively to reschedule FRRPD's conflicting use for a different time, if feasible.

(b) PUESD Rules for Use of Property and Property. All users of PUESD facilities, including FRRPD and those using the Property under the FRRPD's Program, are required to use them in accordance with the PUESD's current policies, and any rules and restrictions related to community use of PUESD's grounds and facilities. PUESD shall not be responsible for providing any equipment for FRRPD's use of the Property.

Section 3. Condition of Property.

The Property is rented to FRRPD on an "as is", "where-is", and "with-any-and-all-faults" basis. PUESD shall not be required to make or construct any alterations including structural changes, additions, or improvements to the Property. PUESD shall have no maintenance or repair obligations with respect to the Property except those standard maintenance and repair obligations the PUESD conducts at the Property and on the Property. FRRPD hereby expressly waives the provisions of Civil Code sections 1932(1), 1941, and 1942, including all rights to make repairs at the expense of PUESD. FRRPD acknowledges that neither the

PUESD nor PUESD's agents have made any representation or warranty as to the suitability of the Property to the conduct of FRRPD's Program. Any statement, agreements, warranties, or representations not expressly contained herein shall in no way bind PUESD, and FRRPD expressly waives all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Agreement. After each period of use, FRRPD shall ensure that the Property is left in clean and usable condition, litter removed.

Section 4. Term.

The term of this Agreement shall commence on January 10, 2018, 2017, and shall remain in effect for ten (10) years, if not sooner terminated pursuant to the terms of this Agreement, ending on January 10, 2028 at 11:59 p.m. ("Term"). FRRPD agrees to yield and peaceably deliver possession of the Property to PUESD in the condition required under this Agreement on the date of expiration of Term of the Agreement or earlier termination of this Agreement, whatsoever the reason for such termination.

Section 5. Renewal.

This Agreement may automatically renew for two (2) additional five (5) year terms ("Renewed Term"). If either Party wishes to cancel this Agreement prior to the renewal term, it shall notify the other Party in writing at least ninety (90) days before the expiration of the Term, and the other Party shall respond within (30) days of such notice. Prior to the commencement of the Renewed Term, the PUESD's Board of Trustees ("Board") shall make the findings required by Education Code section 17529.

Section 6. Use Payments.

For and in consideration of the use of the Property and the Property for FRRPD's Program for the Term of this Agreement, FRRPD agrees to pay PUESD initial monthly payments of Zero Dollars (\$0.00) ("Rent"), which amount was negotiated and agreed by the Parties. FRRPD's obligation to pay the Rent shall commence on the Effective Date. The first payment shall be due when FRRPD executes this Agreement and thereafter due on or before the first day of each month of the Term of this Agreement.

(a) Adjustment. The amount of Rent may be adjusted upon one hundred eighty (180) days prior notice by PUESD.

(b) Maintenance. FRRPD shall pay to PUESD its fair share of maintenance fees and costs. *(with FRRPD having the right to perform said maintenance)*

(c) Utilities. All Utilities for the Property shall be transferred into FRRPD's name, and FRRPD will bear sole responsibility for all utilities.

(d) Place of Payment. All Rent, utility and maintenance costs, that become due and payable under this Agreement shall be paid to PUESD at PUESD's office, located at 286 Rockerfeller Road, Berry Creek, CA 95916, or any other place or places that PUESD may designate by written notice to FRRPD, with attention to the Superintendent.

Section 7. Termination.

(a) Termination for Cause. Either Party may terminate this Agreement for cause, immediately after the expiration of any applicable cure period. Cause shall include the following, without limitation, and the Parties shall have the cure periods provided below:

(i) A Default or material violation of this Agreement by either Party if such violation shall continue for thirty (30) days after written notice is given by either Party to the other Party of such violation; or

(ii) If, in the reasonable judgment of PUESD, FRRPD's acts or omissions: (1) Interfere with the educational programs or activities of the PUESD or any school or class conducted on the Property or in any building; (2) represent an immediate threat to the health, welfare or safety of PUESD's students, staff, or the public; (3) violate applicable laws, codes, rules, regulations, or ordinances or PUESD policies; (4) subject or expose PUESD and/or its Board to liability to others for personal injury or property damage; or (5) unduly disrupt the residents in the surrounding neighborhood, then PUESD shall have the right, in its sole discretion, to terminate this Agreement immediately, unless, at PUESD's sole option, FRRPD cures such default within twenty-four (24) hours of notice of termination.

If PUESD terminates for cause, FRRPD's rights to use of the Property shall terminate upon FRRPD's receipt of notice of termination from PUESD, unless otherwise specified herein. FRRPD shall surrender and vacate the Property in the condition required under this Agreement, and PUESD may reenter and take possession of the Property and eject FRRPD, or any other person or persons claiming any right under or through FRRPD. Any termination under this Section shall not release FRRPD from the payment of any sum then due PUESD or from any claim for damages or Rent or Interest previously accrued or then accruing against FRRPD.

(b) Restoration of Property. Upon expiration or earlier termination of this Agreement, FRRPD shall be responsible for removing FRRPD's personal property and equipment, and restoring the Property, and other portions of the Property that were affected by FRRPD's occupancy of the Property, to its condition required at the conclusion of each period of use with no damage thereto, reasonable wear and tear accepted, free and clear of all liens, claims, encumbrances, and clouds on PUESD's title.

(c) No Limitation of Rights. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to PUESD and/or FRRPD.

Section 8. Destruction.

(a) If the Property is damaged or destroyed so as, in PUESD's judgment, to hinder FRRPD's normal operations, Rent shall abate in proportion to the loss of use from the date such damage or destruction occurs until FRRPD is able to commence normal operations. FRRPD waives any statutory rights to terminate this Agreement on account of damage or destruction as set forth above.

(b) Likewise, from time-to-time, maintenance of the Property may be required which necessitates the closure of the Property. PUESD shall make a good faith effort to schedule such closure(s) at times other than when in use by FRRPD pursuant to this Agreement, however, in the event the closure must occur during FRRPD's Times of Use, PUESD shall provide FRRPD with advance notice, if feasible, of the closure, and the Parties will work cooperatively to reschedule FRRPD's use for a different time, if feasible. In the event the closure is necessary due to an emergency or other incident requiring closure occurring during FRRPD's use of the Property, Rent shall not be abated, and FRRPD shall be

responsible for payment of full Rent hereunder, and shall reimburse PUESD for any additional costs or expenses incurred by PUESD as a result of such closure.

Section 9. Program Staffing & Background Verification; Safety of Children.

(a) FRRPD shall be solely responsible for the administration and operation of its Program, including, without limitation, the enrollment of participants, the recruitment, employment, and training of employees and volunteers, the payment of employment, income, sales, and taxes as required, and the collection of fees. FRRPD shall be responsible for verifying the qualifications, credentials, certificates, and licenses of its staff, agents, consultants, and/or subcontractors who may provide services in conjunction with FRRPD's activities on the Property. FRRPD shall at all times retain active, qualified, competent, and experienced personnel to supervise FRRPD's operation and to represent and act for FRRPD. FRRPD shall require its personnel to be properly dressed, clean, courteous, efficient, and neat in appearance at all times.

(b) FRRPD shall develop and observe security measures to protect the safety and well-being of anyone enrolled in the Program or otherwise on the Property, including but not limited to emergency contact information and sign-in/sign-out procedures.

Section 10. Prohibited Uses.

(a) In addition to the uses and activities prohibited in Section 2(b) above, the following uses and types of activities are prohibited on the Property: (1) Any use or activity which involves the possession, serving, consumption, use, and/or sale of ~~alcoholic beverages~~, illegal drugs, intoxicants, narcotics, tobacco products, including, without limitation, vaporized or e-cigarettes, and/or restricted substances; (2) Any use or activity which involves gambling and/or the conducting of games of chance; (3) Any use or activity which is inconsistent with the use of the Property for the Program expressly stated herein, the use of the Property for school purposes, or which otherwise interferes with PUESD activities or the regular conduct of schoolwork; (4) Any use or activity which is discriminatory against any group or individual protected under local, state, or federal antidiscrimination laws or PUESD policy; (5) Any use or activity that includes fighting, quarrelling, abusive language, or noise which may be offensive to other uses, activities, or the neighborhood; (6) Any use or activity for the commission of any crime or any act prohibited by law or PUESD policy, nor shall the Property be used for any unlawful purpose; (7) Any use or activity which is inimical or contrary to public morals, good manners, taste and/or welfare or which is morally objectionable as unsuitable for a public educational facility; (8) Any use or activity which would, in the sole discretion of PUESD, unduly disrupt the residents in the surrounding neighborhood; (9) Any use or activity which would, in the sole discretion of PUESD, injure any person or damage the Property, school facilities, grounds, equipment, or other school or PUESD property; (10) Any use or activity which may cause an increase in the existing rate of insurance upon the Property or cause the cancellation of any insurance policy covering the Property; (11) No unleashed animals of any kind are allowed on the Property except as provided in California Civil Code sections 54, 54.1, and 54.2; (12) Firearms, including pellet guns, BB guns, or sling shots, and other weapons or explosive devices are prohibited on any PUESD property, including school facilities and grounds; and (13) FRRPD shall not commit or suffer to be committed, any waste upon the Property, or place any harmful substances, whether solid, liquid or gaseous, in the plumbing, sewer, or storm water drainage system of the Property.

Use of alcoholic beverages is subject to FRRPD Rules.

(b) FRRPD agrees to respond immediately to concerns expressed by neighbors or PUESD relating to the operation of the Program, or use of the Property, including, without limitation, noise concerns. FRRPD shall keep the Property clear of all liens, encumbrances, and/or clouds on the PUESD's title to any portion of the Property. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Property except in trash containers designated for that purpose. Additionally, FRRPD shall comply with all environmental and hazardous materials laws, and shall not cause or permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of in or about the Property. As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government. The term "Hazardous Materials" includes, without limitation, petroleum products, asbestos, PCBs, and any material or substance which is: (i) defined as hazardous or extremely hazardous pursuant to Title 22 of the California Code of Regulations, Division 4.5, Chapter 11, Article 4, section 66261.30, *et seq.*; (ii) defined as "hazardous waste" pursuant to section (14) of the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.*, or (iii) defined as a "hazardous substance" pursuant to section 10 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601, *et seq.* As used herein, the term "hazardous materials law" means any statute, law, ordinance, or regulation of any governmental body or agency, including, without limitation, the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board, and the California Department of Health Services, which regulates the use, storage, release, or disposal of any Hazardous Material.

(c) No alterations or additions shall be made to the Property by FRRPD, nor shall PUESD furniture or equipment be moved except by authorized PUESD personnel, without first submitting a written request describing in detail the proposed change and receiving written approval from PUESD's Superintendent or designee to proceed. If approval is given, it is the responsibility of FRRPD to return the Property to its original condition upon the expiration or termination of this Agreement. Failure to do so will result in PUESD billing FRRPD for the costs incurred by PUESD in restoring same, including costs of any additional or special services or labor required in so doing, and FRRPD shall reimburse PUESD for such costs within fifteen (15) days of receipt of a written invoice from PUESD.

unless mutually agreed to

Any and all approved, permanent improvements to the property completed by FRRPD shall become the property of the school district at the conclusion of the initial term and both five (5) year renewals.

If FRRPD terminates the agreement prior to the conclusion of the initial term and both five (5) year renewals, all approved permanent improvements to the property completed by the FRRPD shall become the property of PUESD.

If PUESD terminates the agreement prior to the conclusion of the initial term and both five (5) year renewals, FRRPD shall be eligible for prorated reimbursement by PUESD for any and all approved, permanent improvements to the property completed by FRRPD.

(d) FRRPD and its users must park in designated parking locations on Property.

The occurrence of any of the foregoing prohibited uses, or any violation of the terms stated in Section 2 (Use of Property), shall be sufficient cause for termination of the Agreement by PUESD.

Section 11. Hold Harmless/Indemnification.

To the fullest extent permitted by California law, FRRPD shall defend, indemnify, and hold harmless PUESD, its Board and members of the Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (the "Indemnified Parties") from any and all losses, liabilities, claims, suits, damages, expenses, costs, recourses, and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising out of, connected with, or resulting from the operation, condition, use or occupancy of the Property and all areas appurtenant thereto, FRRPD's Program, the performance of this Agreement, or from any activity, work, or thing done, permitted, or suffered by FRRPD, its agents, contractors, employees, representatives, officers, trustees, servants, tenants, licensees, invitees, concessionaires, or volunteers in conjunction with the performance of this Agreement, unless caused wholly by the sole negligence or willful misconduct of the Indemnified Parties; and in case any action or proceeding be brought against PUESD, FRRPD, upon notice from PUESD, shall defend the same at FRRPD's expense by counsel approved in writing by PUESD. PUESD shall have no liability for damage to property or other items belonging to FRRPD or its participants, nor for any personal injuries or death arising out of the use of the Property by FRRPD or its participants, the operation of FRRPD's Program, or the performance of this Agreement.

Section 12. Insurance.

(a) **Commercial General Liability Insurance.** FRRPD shall, during the Term of this Agreement, maintain in force, a combined, single-limit liability commercial general insurance policy in the amount of not less than Two Million Dollars (\$2,000,000) with PUESD, its Board, employees and agents, at FRRPD's expense, named as additional insureds under such policy. Such policy shall provide for a thirty (30) day written notice to PUESD of any cancellation or reduction of coverage. FRRPD agrees to provide PUESD a certificate of insurance evidencing this coverage in a form satisfactory to PUESD upon execution of this Agreement, upon each policy renewal, and upon request of PUESD during the Term of this Agreement.

(b) **Workers' Compensation Insurance.** During the Term of this Agreement, FRRPD shall comply with all provisions of law applicable to FRRPD with respect to obtaining and maintaining workers' compensation insurance. Prior to the commencement and any renewal of this Agreement and FRRPD's occupancy of the Property, FRRPD shall provide PUESD, as evidence of this required coverage, a certificate in a form satisfactory to PUESD on or before the commencement or renewal date, providing that insurance coverage shall not be canceled or reduced without thirty (30) days prior written notice to PUESD.

(c) **Other.** Each insurance policy required by this Agreement shall: (i) not be cancelled, limited in scope of coverage or non-renewed until after thirty (30) days written notice has been given to PUESD; and (ii) contain a clause waiving all rights of subrogation against PUESD, its Board, members of the Board, and elective or appointive officers or employees, when acting within the scope of their employment or appointment. The Parties agree that any insurance maintained by PUESD will apply in excess of, and not contribute with insurance provided by the policies required by this Agreement. FRRPD acknowledges that the insurance to be maintained by PUESD on the Property will not insure any of FRRPD's equipment or property or any improvements installed by FRRPD. PUESD shall have no duty or responsibility for the protection, safeguarding, security or care of any personal

property or equipment left (or stored with prior written permission) by FRRPD at the Property.

Section 13. Notice.

Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and personally delivered or deposited in the United States mail, postage prepaid, return receipt required, or sent by overnight delivery service, with a courtesy copy of said notice sent via email, addressed as follows:

<p><u>If to PUESD:</u></p> <p>PIONEER UNION ELEMENTARY SCHOOL PUESD 286 Rockefeller Road Berry Creek, CA 95916-9724 Attn: Superintendent Phone: (530) 589-1633 Email: _____</p>	<p><u>If to FRRPD:</u></p> <p>FEATHER RIVER RECREATION AND FRRPD 1875 Feather River Blvd. Oroville, CA 95965 Attn: _____ Phone: (____) ____-____ Fax: (____) ____-____ Email: _____</p>
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Any notice sent by overnight delivery service shall be effective the next business day following delivery thereof to the overnight delivery service. Any notice mailed shall be effective five (5) days after deposit in the United States mail. A copy of all correspondence shall be emailed to admin@berrycreekca.org.

Section 14. Sublease and Assignment.

FRRPD shall not assign its rights, duties or privileges under this Agreement, nor shall FRRPD sublease or attempt to confer any of its rights, duties or privileges under this Agreement on any third party, without the written consent of PUESD. Any such attempt without PUESD written consent shall be void.

Section 15. Independent Status.

This Agreement is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association.

Section 16. Entire Agreement of Parties.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

Section 17. California Law.

This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Butte County, California.

Section 18. Attorneys' Fees.

In the event of any dispute under this Agreement, or the default by any Party of that Party's obligations hereunder, then the prevailing Party shall be entitled to recover, in addition to all other sums which may be due under the terms of this Agreement, all costs of suit, including reasonable attorneys' fees.

Section 19. Counterparts.

This Agreement and all amendments and supplements to it may be executed in counterparts and all counterparts together, whether original signature, via facsimile or scanned PDF copy, shall be construed as one complete document.

Section 20. Inspection.

PUESD's employees and agents shall have the right at all times to inspect the Property to determine if the FRRPD is complying with the provisions of this Agreement.

Section 21. Reservation of Rights.

The Property is accepted by FRRPD subject to any and all existing easements and encumbrances. PUESD reserves the right to install, lay, construct, maintain, repair, and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, and connections; water, oil, and gas pipelines; telephone and telegraph power lines; and the applications and appurtenances necessary or convenient for connection therewith, in, over, upon, through, across and along the Property or any part thereof, and to enter the Property for any and all such purposes. PUESD also reserves the right to grant franchises, easements, rights of way, and permits, in, over, upon, through, across, and along any and all portions of the Property. Likewise, PUESD reserves the right to grant joint use agreements, leases, licenses, joint occupancy agreements, and enter into other contracts concerning use of the Property to third parties as long as they do not interfere with FRRPD's use of the Property. Notwithstanding the foregoing, no rights reserved by PUESD shall be exercised as to interfere unreasonably with the use and operation of the Property by FRRPD as permitted under this Agreement.

Section 22. Construction Related Accessibility Standards.

In accordance with Civil Code section 1938, PUESD states that the Property has not undergone inspection by a Certified Access Specialist (CASP).

Section 23. Authority.

Each person signing this Agreement, below, represents and warrants that he/she is duly authorized and has legal capacity to execute this Agreement. Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized, and this Agreement is valid and a legal agreement binding on such Party and is enforceable in accordance with its terms.

Section 24. Right of First Refusal.

If PUESD decides to sell the Property, FRRPD shall be given the right of first refusal for purchase of the Property.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates indicated below.

PUESD:	FRRPD:
PIONEER UNION ELEMENTARY SCHOOL DISTRICT, a California public school district	FEATHER RIVER RECREATION AND PARK DISTRICT, a municipal corporation of the State of California
By: <u><i>Patsy Oxford</i></u>	By: _____
Print Name: <u>Patsy Oxford</u>	Print Name: _____
Print Title: <u>Superintendent</u>	Print Title: _____
Date: <u>1-10-2018</u>	Date: _____



LANDSCAPE ARCHITECTURAL SERVICE AGREEMENT BETWEEN CONSULTANT AND CLIENT

This AGREEMENT, effective as of the ____ day of _____ 2018 shall be

BETWEEN the Feather River Recreation and Park District (FRPPD)
 Client: 1875 Feather River Blvd.
 Oroville, CA 95966

and the Melton Design Group, Inc. (MDG)
 Consultant: 309 Wall Street
 Chico, CA 95928

Project: Riverbend Park Phase Two 2018

Client Contact: Tom Lando, Interim General Manager, (530) 533-2011, tlando@frrpd.com

Consultant Contacts: Shawn Rohrbacker, Project Manager, (530) 680-2390, shawn@meltondg.com
 Greg Melton, Principal Landscape Architect, (530) 518-7593, greg@meltondg.com

PROJECT UNDERSTANDING

Thank you for the opportunity to provide landscape architectural services for the Feather River Recreation and Park District. Under this Agreement, Melton Design Group will produce Phase 2 construction documents for repairs and improvements to Riverbend Park due to the damage that occurred from the flooding of the Feather River, January through June 2017.

Services include small topographic surveys to supplement detailed areas that were not surveyed during Phase 1. NorthStar will provide both the survey work and updates to existing environmental permits. PACE Engineering will continue to provide electrical engineering.

Phase 2 Construction Documents will include all remaining repairs to that are covered through FRRPD's insurance policy. Improvements that are not covered through insurance will be included as add alternates in case bids are low enough to include extra improvements.

The Scope of Services will include the following general tasks. See the Section 1 of this Agreement for a more detailed outline of Consultant services.

1. Phase Two Repairs:

Construction Drawings, Bid Documents and Construction Administration.

- A. Spray Park – Base bid according to replacement of existing spray park with upgrades per code
- B. Boat Launch Dock – replacement of previous dock
- C. Dog Park – Repair existing dog park
- D. Exercise Fitness Stations – replace old stations (4 total) with simple, low maintenance parcourse.
- E. ADA Improvements according to the 2016 Building Code
 - a. Replace sidewalks and parking stalls that do not meet code.
 - b. Add an accessible ramp to the stage.
 - c. ADA signs and some small restroom improvements.
- F. Beach – grading, sand and spray system.
- G. Salmon Run Road – fix low area flooded during dam release.



- H. Add Alternates:
 - a. Boat Dock – hinge and release system to let dock rise with the level of the river.
 - b. Spray Park – More Spray Elements and Shaded Picnic Areas.
 - c. Beach – expand to boat launch. Add landscape.
 - d. Second Dog Park near core use area
 - e. Culvert at Salmon Run Rd.
 - f. Playground in old water play area location
 - g. New Stage with Bandshell
 - h. South Park Trails according to recent Land Water Conservation Fund grant application
 - i. Accessible Picnic Tables on Small Overlooks at beach
- 2. Separate Bids to determine insurance compensation for items not being replaced according to previous existing conditions:
 - A. Tough Sheds – will not be replacing. 3 total.
 - B. Fish Cleaning Station – insurance only covers repairing old station. A different, simpler model is being installed in Phase One.
 - C. Exercise Stations – simpler models to be installed on DG or concrete pads.
- 3. Topographic Survey – Supplemental ground surveys will be provided to pick up any necessary details that were not a part of the Phase 1 aerial survey.
- 4. CEQA Exemption Documentation for insurance and FEMA related replacement, repairs and mitigation.
- 5. Insurance Agency and FEMA Agency Coordination – attend update meetings. Provide planning and construction documents to support insurance claim and FEMA disbursements.
- 6. Construction Documents for Future Improvements; as options to add to this contract to be shovel ready for grant applications and other funding opportunities.
 - A. Parking Lot at soccer fields
 - B. Soccer Field 4 – grading, irrigation, turf, paths, shade structure, parking and restroom
 - C. BMX Park – graded soil, fence, maintenance water and basic signage

SECTION 1 - CONSULTANT BASIC SERVICES

Consultant Basic Services for the Project are as described below.

Task 1 – Project Set Up, Coordination and Insurance Agency Management

- 1.1 Kick off Meeting – Meet with FRRPD to confirm objectives and program for the Project, to establish parameters for the design effort and confirm interim and final deliverables.
 - A. Review Project Team Coordination for duration of Project.
 - B. Establish the Project Schedule to best fit the Client’s proposed timeline and the agreed upon scope of services.
 - C. Refine project program and confirm with Client input.
 - D. Present contract for approval at District Board Meeting.
- 1.2 Project Coordination during Design Process
 - A. Prepare all meeting agendas, notices, presentation materials and minutes.
 - B. Hold appropriate number of meetings with Client.
 - C. Provide monthly status reports.
 - D. Provide design schedule with updates as required.

E. Insurance Agency and FEMA Agency Coordination – attend update meetings. Provide planning and construction documents to support insurance claim and FEMA disbursements.

1.3 Provide separate bids to insurance Agency

(Tough Sheds, Fish Cleaning Station and Exercise Stations)

1. Research, contact and acquire three contractors to provide bids
2. Highlight and make notes on as-built plans to provide direction for bidders
3. Provide contractors with digital plan set and bid form
4. Receive bids from contractors
5. Submit bids to Client and insurance agency

Task 2 – Phase Two Construction Documents

2.1 Confirm elements to be repaired according to existing damage assessment

2.2 Incorporate Phase One repairs as ongoing or existing conditions

2.3 Topographic Survey – Supplemental ground surveys will be provided to pick up any necessary details that were not a part of the Phase 1 aerial survey.

2.4 Construction Drawings and Specifications

A. Title Sheet – Drawing index, project location maps, contacts and general notes

B. Erosion Control Plan

C. Demolition Plan

D. Construction and Layout Plan

1. Identify all park elements that are to be repaired or replaced.
2. Include directions to facilities and equipment per FEMA requirements.
3. Specify product materials, size, color and finish.
4. Referenced construction installation detail sheets.

E. Grading and Drainage Plan – spot elevations, contours and drainage system

F. Utility Plan – potable water and sanitary sewer connections for water play area

G. Landscape Construction Details – hardscape items such as concrete pads, curbs and seatwalls

H. Planting Plan and Installation Details

I. Irrigation Plan and Installation Details

J. Electrical and Lighting Plans with Installation Details

2.5 Technical Specifications - CSI Division 1 through 16 as needed per project elements, development standards and permit requirements.

2.6 Cost Estimates – Adjust existing Estimated Cost of Construction as Construction Documents are approved through the Submittal Process.

2.7 Submittal Process and Final Construction Documents

A. Meet with FRRPD staff to review documents at 35%, 75% and 95% completion.

B. Adjust Construction Drawings and Technical Specifications per Client comments

C. Provide Final Bid Set of Construction Documents; Construction Drawings, Technical Specifications, and Bid Documents in hardcopy and electronic format to Client.

Task 3 – Bid Administration

3.1 Produce Bid Forms and Contractor Contract Documents – Add Bid Forms and Contractor Contracts, General Conditions, and Special Provisions to construction drawings and specifications.

These documents together will be the Construction Contract Documents and will comprise the construction contract between FRRPD and the contractor.

- 3.2 Pre-Bid Meeting and Bid Questions – Attend the pre-bid meeting and respond to contractor requests for clarification during the bid process.
- 3.3 Addendums - After a question and answer period addendums will follow as needed to complete package and clarify bid.
- 3.4 Award Bid – provide consultation to Client in awarding contract according to bids received and contractor qualifications for the Project.

Task 4 – Construction Administration

The purpose of this task is to review construction submittals and key periods of installation to best verify and/or provide direction for construction to meet the intent of the design. This Agreement assumes FRRPD will hire a separate Construction Manager to perform daily inspections, typically requiring about 20 hours a week.

- 4.1 Pre-construction meeting to review construction documents with contractor.
- 4.2 Review product submittals, material tests and shop drawings for conformance to specifications. Respond with approval documents or specify necessary changes.
- 4.3 ASI (Architects Supplemental Information) – issue as needed
- 4.4 RFI (Requests for Information) – respond to contractor requests
- 4.5 Issue Memorandum Directives and Field Orders to contractor
- 4.6 Change Orders – review proposals from contractor and provide recommendations to Client
- 4.7 Weekly Site Meetings – review progress of construction and upcoming schedule.
- 4.8 Field Observations per plans and specifications.
Typical observations include site visits to report layout, finish grade work, concrete formwork, concrete finish, structure inspections, layout, punch lists and final observations. Field Reports will follow each observation and be submitted to the Client and contractor with approval of the work or suggested remedies for construction work that does not follow the Construction Documents.
- 4.9 Report administrative documents as needed to Client and contractor.
- 4.10 Contractor Payment Request – review payment requests to confirm completed work.
- 4.11 Review contractor as-build drawings and close out documents, note edits and/or approvals.
- 4.12 Issue a Notice of Completion when contractor work is complete.

Task 5 – CEQA Exemption Documentation

It is anticipated that repair, maintenance, replacement or reconstruction activities for the restoration of Riverbend Park facilities resulting from the 2017 storm and flood damage would qualify as either a Categorical Exemption or a Ministerial Project per CEQA. If a project is a Categorical Exemption, NorthStar staff will prepare a Notice of Exemption (NOE) for the proposed project pursuant to CEQA Guidelines Section 15062 and Appendix E. The NOE shall include a brief description of the project, location map, finding that the project is exempt from CEQA and a brief statement of reasons supporting the finding. The NOE will be submitted to the District for review and signature. The NOE will be filed with the County Clerk once the project has been approved. In addition, if any of the project activities are state funded, the NOE will be filed with the Office of Planning and Research (OPR). Project activities will likely fall under the following categories: 15301-Existing Facilities, 15302-Replacement or Reconstruction, 15303-New Construction or Conversion of Small Structures, 15304-Minor Alterations to Land, and/or 15311-Accessory Structures.

Task 6 – Construction Documents for Future Improvements (Optional)

Construction Documents for each area listed below will follow the same format outlined in Task 2 of this Agreement. This task is optional. Please see Section 4 – Basis of Compensation for additional information.

- 6.1 Parking Lot at soccer fields – grading, asphalt, concrete and landscape
- 6.2 Soccer Field 4 – grading, irrigation, turf, paths, shade structure, parking and restroom
- 6.3 BMX Park – graded soil, fence, maintenance water and basic signage

SECTION 2 - ADDITIONAL SERVICES

Services not described above are Additional Services and shall be provided if authorized in writing by Client. Additional Services include but are not limited to:

1. Geotechnical engineering or reports.
2. Preparation of owning or operating cost studies, life cycle cost analyses, energy effectiveness studies, and operation and maintenance manuals.
3. Work involving use permits, general plan amendments or other forms of land use entitlements, including representation at Planning Commission hearings or other governmental jurisdiction meetings that go beyond the stipulated review process and required meetings with governmental authorities having jurisdiction as described in the Construction Document Phase.
4. Preparation of Storm Water Pollution Prevention Plans (SWPPP).
5. Preparation of Parcel Maps, easement plats and/or legal descriptions, American Land Title Association (ALTA) surveys and maps or flood studies.
6. Work involving environmental impact reports.
7. Preparation of plans, studies or documents relating to obtaining a National Pollutant Discharge Elimination System (NPDES) Permit.
8. Analysis or design of improvements or extensions of off-site utilities made necessary by the proposed Project.
9. Time and reimbursable expenses involving visits to similar existing facilities made at Client's request.
10. Civil engineering or design for off-site improvements.
11. Work involving hydrology studies or design of on or off-site detention or retention facilities for storm water.
12. Renderings, models, computer generated animations or other forms of presentation materials, that go beyond the stipulated study model outlined in the Schematic Design Phase.
13. Work required due to default of Contractors or serious deficiencies in the work of Contractors or construction subcontractors.
14. Consultants work involving Change Orders, other than those required due to minor conflicts in the design drawings, shall be performed on an hourly rates and charges basis.
15. Work required due to the discovery of hazardous materials.
16. Changes to the Project requested by Client or other parties after approval of 35% Construction Documents.
17. Construction staking.
18. Preparation of Record Documents.

SECTION 3 - CLIENT'S RESPONSIBILITIES

1. Client shall, at his own expense, provide full information concerning its design objectives, constraints and criteria.

2. Client, with consultation from Consultant, shall make application to all agencies having jurisdiction over the Project and shall pay all plan review fees, permit fees, application fees and development fees.
3. Client shall arrange for material testing as required by law or the Contract Documents.
4. Client shall designate an individual to act as the prime liaison with Consultant and sub consultants. Client shall furnish required information, review Consultant’s work for conformity with Client’s objectives and render approvals and decisions as expeditiously as necessary for the orderly progress of Consultant’s services.
5. Client, with consultation from Consultant, shall develop a Project budget including reasonable contingencies for unknown conditions, bidding, minor defects or omissions in the design documents and escalation in the price of materials and labor.

SECTION 4 - BASIS OF COMPENSATION

Compensation due Consultant for services described in Section 1 shall be a not to exceed figure shown as the total of this Task Summary:

Task 1 – Project Set Up, Coordination and Insurance Agency Management	\$17,500
Task 2 – Phase Two Construction Documents	\$161,000
Task 3 – Bid Administration	\$5,000
Task 4 – Construction Administration	\$16,800
Task 5 – CEQA Exemption Documentation	\$1,700
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Sub Total	\$202,000
Reimbursable Expenses (estimated at 5%)	\$10,100
Contingency	\$15,000
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TOTAL (Not to exceed)	\$227,100

Optional Task 6 – Future Improvement Construction Documents	
6.1 Parking Lot at soccer fields	\$37,000
6.2 Soccer Field 4	\$48,000
6.3 BMX Park	\$4,500
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Sub-Total	\$89,500
MDG Donation – minus 33% (only invoice employee pay)	-\$29,500
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Optional Task 6 Total	\$60,000

Initial to Include Task 6 from this Agreement: _____

Initial to Delete Task 6 from this Agreement: _____

Charges for Services described in Section 1 shall be billed monthly and in proportion to the work actually completed. For Additional Services, provided under Section 2, compensation shall be on an hourly rates and charges basis in accordance with the attached Schedule of Hourly Rates and Charges.

Client shall be responsible for payment of Reimbursable Expenses, which include actual expenditures made by the Consultant in the interest of the Project for all in house printing, color prints, foam core, travel, and submittals to Team, review prints, presentations and submittals per the attached Schedule of Rates.



Client agrees to pay Consultant within thirty (30) days after the date of billing. Payments due Consultant and unpaid under this Agreement shall bear interest on the unpaid balance at a rate of 1.5% per month. If payment is not received within thirty (30) days, Consultant may, at his discretion, stop work until payment is received.

SECTION 5 - MISCELLANEOUS PROVISIONS

1. The Agreement shall be governed by the laws of the State of California, except it is conclusively presumed that both parties had an equal part in the drafting of this Agreement.
2. Client and Consultant bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement. Neither Client nor Consultant shall assign or otherwise transfer his interest in this Agreement without written consent of the other except that Consultant reserves the right to retain duly licensed persons, firms or corporations as engineering or design consultants for portions of the Work herein provided for.
3. If any one or more of the terms, provisions, or conditions of this Agreement are declared invalid, unenforceable, or void by a court of competent jurisdiction, none of the remaining terms, provisions, or conditions shall be affected and shall be valid and enforceable.
4. Notwithstanding any other provisions in this Agreement to the contrary, nothing herein contained shall be construed as:
 - a. Constituting a guarantee, warranty or assurance, either express or implied, that the Consultant services will yield or accomplish a perfect outcome for the Project; or
 - b. Obligating Consultant to exercise professional skill or judgment greater than that which can reasonably be expected from other Consultants currently practicing under like circumstances; or
 - c. An assumption by Consultant of the liability of any other party.
5. In the event of any litigation arising from or related to this agreement or the services provided under this agreement, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs incurred, including staff time, court costs, attorneys' fees, and all other related expenses in such litigation.
6. Landscape Architects are regulated by the State of California. Any questions concerning a Landscape Architect may be referred to:
Landscape Architects Technical Committee
2420 Del Paso Road, Suite 105
Sacramento, California 95834
(916) 575-7285

Please let us know if you have any questions concerning this Agreement. If the above meets your approval, please sign and return a copy to our office.

Sincerely,



Greg Melton, CEO
Melton Design Group

Client Signature

Date

Print Name and Title



MELTON DESIGN GROUP - 2018 SCHEDULE OF RATES

PERSONNEL

Principal Landscape Architect	\$157.50/hour
Associate Landscape Architect	\$136.50/hour
Project Manager	\$126.00/ hour
GIS Specialist	\$105.00/hour
Irrigation Specialist	\$115.50/ hour
Irrigation Associate	\$ 73.50/ hour
Graphic Designer	\$ 99.00/ hour
Drafting Technician I	\$ 81.00/ hour
Drafting Technician II	\$ 70.00/ hour
Administration	\$ 60.00/ hour

REIMBURSABLE EXPENSES

Black and White Plan Print	\$.80 / square foot
Color Plan Print	\$ 4.25 / square foot
Premium Color Glossy Plan Print	\$ 6.30 / square foot
Foam Core	\$11.50 each
B & W Copies, 8.5 X 11	\$.27 each
B & W Copies, 11 X 17	\$.47 each
Color Copies 8.5 x 11	\$ 1.15 each
Color Copies 11 X 17	\$ 2.20 each
Binding Covers 8.5 x 11	\$ 2.65 each
Binding Covers 11 x 17	\$ 5.35 each
Flash Drive	\$ 7.35 each
Overnight Mail	Cost Plus 15%
Courier	Cost Plus 15%
Photography	Cost Plus 15%
Soils Analysis	Cost Plus 15%
Travel / Automobile	\$ 0.545 / mile

Note: Rates subject to change annually

