Contract Number 100

SAP Number

Exhibit D

Revised 10/18/17



Community Development and Housing

Department Contract Representative	Gary Hallen
Telephone Number	909-387-4411
Contractor	Bloomington Park Developer LLC –
	Bloomington Recreation and Park
	District
Contractor Representative	Stan Smith
Telephone Number	(949) 660-7272
Contract Term	9/25/2020
Original Contract Amount	\$635,000
Amendment Amount	\$4,745,000
Total Contract Amount	\$5,380,000
Cost Center	6210002496 - 6210002480 -
	6250002584 - 6210002498 -
	6250002584

Briefly describe the general nature of the contract: The Bloomington Community was identified as an investment and revitalization opportunity area as part of the Board vision in revitalizing unincorporated areas of the County. Revitalization efforts included the adoption of Valley Corridor Specific Plan (VCSP). VCSP encourages opportunities for healthier living, including pedestrian-oriented activity centers that highlight Bloomington's cultural, historical, and community assets. To further the VCSP vision, the County has designed the third phase of the Bloomington Affordable Housing Development (Development Project), including the relocation of the Ayala Park. The approval of the General Fund Loan, Purchase and Sale Agreement, and Amendment No. 1 to Agreement No. 18-760 with Bloomington Park Developer, LLC, provides the remaining financing and authorizations for the Bloomington Park Developer, LLC to relocate Ayala park from its existing location to the Bloomington Affordable Housing Development.

FOR COUNTY USE ONLY		
Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
· Augurgbrigat	>	· Can Do
Suzanne Bryant, Deputy County Counsel		Gary Hallen, Director
Date 12-2-10	Date	Date 12/2/2019
		. / [

Non-Standard Contract Coversheet

FIRST AMENDMENT TO THE CONSULTING AND DEVELOPMENT SERVICES AGREEMENT (Phase III – Bloomington Mixed Use Development)

This First Amendment to the Consulting and Development Services Agreement (the "First Amendment") is entered into as of December 10, 2019, by and among the County of San Bernardino, a political subdivision of the state of California (the "County" or "Owner"), Bloomington Park Developer, LLC, a California limited liability company (the "Consultant"), and the Bloomington Recreation and Park District, a California special district (the "Park District" or "District") with reference to the following facts:

RECITALS

A. Capitalized terms used in this First Amendment, but not defined, shall have the meaning set forth in certain that certain Consulting and Development Services Agreement (Contract #18-760), dated as of October 16, 2018 (the "Services Agreement").

B. The County and the Consultant are parties to the Services Agreement which governs the design and the development of the public park that will be constructed on the Park Parcel.

C. Under the Services Agreement, the County provided the Park Predevelopment Funds to pay for Predevelopment Activities and agreed to secure additional funds to fully fund the construction of the Park Improvements. The County has secured and is hereby agreeing to commit One Million Three Hundred Sixty-Five Thousand Dollars (\$1,365,000) to pay for the construction of the Park Improvements (as defined herein) (the "County Park Construction Funds").

D. In addition, the District has agreed to contribute Three Million Three Hundred and Eighty Thousand Dollars (\$3,380,000) to pay for the construction of the Park Improvements (the "District Park Construction Funds", and collectively with the County Park Construction Funds, the "Park Construction Funds").

E. As allowed under Section 5.4 of the Services Agreement, the scope and scale of the Park Improvements required to be constructed and the budget for construction of the Park Improvements have been refined to maximize the improvements to be constructed based on the available Park Construction Funds.

F. As required under Section 4.2 of the Services Agreement, the County and the Consultant have developed a proposed update to the Development Schedule for the construction and completion of the Park Improvements.

G. Under Section 9.1 of the Services Agreement, the parties agreed on the amount of the Development Management Fee to be paid to the Consultant for the services to be rendered under the Services Agreement. As contemplated under Section 4.2 of the Services Agreement, the parties have agreed that it would be mutually beneficial to increase the Development

Management Fee as a result of the expanded scope of services to be provided by the Consultant under the Services Agreement, as modified by this First Amendment.

H. To implement and effectuate the Services and construction of the public park, the County, the District and the Consultant desire to enter into this First Amendment to:

- 1. Add the Park District as a party to the Agreement and to set out the Park Districts duties, obligations and liabilities under the Services Agreement;
- 2. Document the commitment by the County to contribute the County Park Construction Funds;
- 3. Document the commitment by the Park District to contribute the District Park Construction Funds;
- 4. Amend this Services Agreement to govern the disbursements of the Park Construction Funds;
- 5. Approve and incorporate into the Services Agreement the Approved Park Development Budget containing a detail of the scope of the Park Improvements to be constructed based on the available Park Construction Funds, subject to the potential revisions contemplated herein associated with the Enhanced Park Improvements;
- 6. Adopt and incorporate into the Services Agreement the revised Development Schedule for the construction of the Park Improvements, subject to the potential revisions contemplated herein associated with the Enhanced Park Improvements;
- 7. To increase the total Development Management Fee to be paid to the Consultant under the Services Agreement; and
- 8. To make additional non-substantive revisions to effectuate the terms of this First Amendment.

NOW, THEREFORE, the County, the District and the Consultant agree as follows:

ARTICLE I.

AMENDMENTS TO SERVICES AGREEMENT

Section 1.1 <u>Addition of Park District as Party</u>. The Park District hereby agrees to be bound to the rights, duties, and obligations contained in the Services Agreement, and through execution of this First Amendment is hereby made a party to the Services Agreement. The duties, rights and obligations of the Park District under the Services Agreement shall be limited by the terms of this First Amendment.

Section 1.2 <u>Amendment to Section 1.1(i)</u>. Section 1.1(i) of the Services Agreement is hereby deleted in its entirety and replaced and amended to read as follows:

"(i) "Development Schedule" means the schedule of Development Services to be carried out by or on behalf of the Owner and the District in connection with the Development Matters, consisting of the development of the Park Improvements, as prepared by the Consultant and approved by the Owner. Updates to the Development Schedule, including those necessary to accommodate the construction of the Enhanced Park Improvements, must be approved by the Owner pursuant to Section 4.2(c) below, and any amendments to the Development Schedule will be appended to this Agreement by this reference and be incorporated into this Agreement. "

Section 1.3 <u>Amendment to Section 1.1(n)</u>. Section 1.1(n) of the Services Agreement is hereby deleted in its entirety and replaced and amended to read as follows:

"(n) "Park Costs" means the total of all costs and expenses of Owner and the Consultant with respect to the Development Matters for the Park and set forth in the Approved Park Development Budget for the Park. As of the Effective Date of this First Amendment, the County has secured the Park Predevelopment Funds, the County has secured the County Park Construction Funds, and the District has secured the District Park Construction Funds. The Park Construction Funds are sufficient to fully fund the Park Costs, including, without limitation, the construction of the Park Improvements. The Owner intends to continue to make best efforts to secure additional funding to fund the construction of the Enhanced Park Improvements (as defined in Section 5.5 below)."

Section 1.4 <u>Amendment to Section 1.1(0)</u>. Section 1.1(0) of the Services Agreement is hereby deleted in its entirety and replaced and amended to read as follows:

"(o) "Park Improvements" means generally the park improvements to be constructed on behalf of the Owner as part of the Development Matters, consistent with the Park Development Budget attached hereto as Attachment II. The scope and scale of the Park Improvements may be further refined to include the Enhanced Park Improvements, as set forth in Section 5.5, below."

Section 1.5 <u>Amendment to Section 2.1(b)</u>. Section 2.1(b) of the Services Agreement is hereby deleted in its entirety and replaced and amended to read as follows:

"(b) The purposes of this Agreement, as more specifically set forth herein, are to: (1) govern the use of the Park Predevelopment Funds (as defined in Section 7.1 hereof); (2) govern the use of the County Construction Funds (as defined in Section 7.1 hereof); (3) govern the use of the Park District Construction Funds (as defined in Section 7.1.1 hereof); (4) provide for the orderly completion of the Predevelopment Activities and the disbursement of the Park Predevelopment Funds; (5) provide for the orderly completion of the Park Construction Funds; (6) set the parameters for the determination for any additional refinements to the parameters of the Park Improvements; (7) determine the feasibility and identify the sources of financing for the construction of the Park Improvements; and (8) subject to the terms of Section 5.4, govern the construction of the Park Costs."

Section 1.6 <u>Amendment to Section 3.2</u>. Section 3.2 of the Services Agreement is hereby deleted in its entirety and replaced and amended to read as follows:

"Nothing contained in this Agreement shall constitute or be deemed or construed to create a partnership or joint venture between the Owner, the District, and the Consultant."

Section 1.7 <u>Addition of Section 3.3</u>. Section 3.3 is hereby added to the Services Agreement to read as follows:

"Section 3.3 <u>District Obligations</u>. Nothing contained in this Agreement shall constitute or be deemed or construed to create any obligation by the District other than to provide the District Park Construction Funds to the Owner which the Owner will be responsible to disburse pursuant to the terms of Article 7 of the Services Agreement (as modified by the First Amendment)."

Section 1.8 <u>Amendment to Section 4.1</u>. Section 4.1 of the Services Agreement is hereby deleted in its entirety and replaced and amended to read as follows:

"The term of this Agreement shall commence on the Effective Date and shall continue, unless sooner terminated as provided in this Agreement, until the first to occur of the Completion Date, the Expiration Date or such other date as may be specified in writing by the Owner, the District, and the Consultant. As of the date of this First Amendment, the Owner, the District, and the Consultant have agreed to the Approved Development Budget and an update to the Development Schedule based on the available Park Construction Funds. The Consultant hereby agrees to complete all services required under this Agreement not later than the Expiration Date and pursuant to the terms of the Development Schedule attached hereto, as such may be amended from time to time."

Section 1.9 <u>Amendment to Section 4.2(b)</u>. Section 4.2(b) of the Services Agreement is hereby deleted in its entirety and replaced and amended to read as follows:

"(b) The Development Schedule attached as <u>Exhibit D</u> to the Services Agreement summarized the schedule for various Predevelopment Activities required to be performed by the Consultant under the Services Agreement. The Development Schedule attached to this First Amendment as <u>Attachment I</u>, incorporated herein by this reference, summarizes the schedule for the commencement and completion of the Park Improvements based on the Approved Park Development Budget and for the completion of Development Services to be carried out by or on behalf of the Owner and the District in connection with the Development Matters. The Consultant, in consultation with the Owner and the District, shall propose updates to the Development Schedule for the construction and completion of the Enhanced Park Improvements pursuant to Section 5.5, if and to the extent additional funding is identified for such improvements. Updates to the Development Schedule proposed under this Section must be reasonably approved by the Owner pursuant to Section 4.2(c) below, and any amendments to the Development Schedule will be appended to and incorporated to the Services Agreement," Section 1.10 <u>Amendment to Section 5.1</u>. Section 5.1 of the Services Agreement is hereby deleted in its entirety and replaced and amended to read as follows:

"(a) The initial Predevelopment Activities to be performed by the Consultant for the Park were set forth in the Approved Park Development Budget attached to the Services Agreement as <u>Exhibit C</u>.

(b) The Owner secured the Park Predevelopment Funds to pay for the Predevelopment Activities, and the Consultant was authorized to proceed to complete the Predevelopment Activities; which as of the date of this First Amendment have been completed.

(c) The Owner and the District have committed the Park Construction Funds to finance the Park Costs and are hereby electing to expand the Development Services to be provided by the Consultant under this Agreement to include the construction of the Park Improvements, as defined in this First Amendment. The Development Services to be provided by Consultant under this Agreement, other than the Predevelopment Activities, must be proceeded by a written notice to proceed from the Owner to the Consultant.

(d) The Owner, at its sole and absolute discretion, may make available additional funding to pay for the Enhanced Park Improvements, as defined in this First Amendment, and identified in the Approved Development Budget, and may elect to expand the Development Services that the Consultant shall perform under this Agreement. If and to the extent the Development Services are expanded to include the Enhanced Park Improvements, the Consultant shall not receive any additional compensation other than the compensation set forth in Section 9.1 hereof "

Section 1.11 <u>Amendment to Section 5.4</u>. Section 5.4 of the Services Agreement is hereby deleted in its entirety and replaced and amended to read as follows:

"(a) As of the date of this First Amendment, the parties have revised the Park Scope and Financing Proposal in the form attached here to as <u>Attachment II</u>, incorporated herein by this reference; which replaces and supersedes <u>Exhibit E</u> of the Services Agreement. The revised Park Scope and Financing Proposal incorporates the Park Construction Funds made available for the construction of the Park Improvements under this First Amendment and constitutes the "Approved Park Development Budget". The Consultant's responsibility and obligation to complete the Development Services required hereunder and cause construction of the Park Improvements shall be limited to the amount of funding available to the Owner which shall be reflected in the Approved Park Development Budget.

(b) Consultant shall submit any material revision to the Approved Park Development Budget to the Owner for its review and approval prior to undertaking any work not covered by the Approved Park Development Budget. The Owner shall review any revisions to the Approved Park Development Budget and shall either approve or disapprove the revisions to the Approved Park Development Budget Park in writing within fifteen (15) days of receipt, which approval shall not be unreasonably withheld. If disapproved, the Owner shall give specific reasons in writing for disapproval and the required revisions to the previously submitted Approved Park Development Budget. If the revisions to the Approved Park Development Budget are disapproved, Consultant shall resubmit, a revised Park Scope and Financing Proposal within fifteen (15) days of notification of disapproval. The Owner shall either approve or disapprove the submitted revised Park Scope and Financing Proposal within fifteen (15) days of the date such revised Park Scope and Financing Proposal is received by the Owner which approval shall not be unreasonably withheld. Consultant shall provide or require its general contractor to provide latent defect insurance for a ten (10) year period commencing after Completion of the Park Improvements naming the County and Park District as additional insureds.

(c) Notwithstanding anything to the contrary herein, the Consultant may transfer or reallocate funds among line items in the Approved Park Development Budget by providing written notice to the Owner so long as the Consultant has not fully depleted the contingency that is approved under the Approved Park Development Budget. If the Developer has fully depleted the contingency in the Approved Park Development Budget, the Consultant shall not transfer or reallocate funds among line items in the Approved Park Development Budget, without first obtaining the Owner prior written approval, which approval shall not be unreasonably conditioned, withheld or delayed.

(d) The Owner intends to continue to make reasonable efforts to obtain or otherwise provide additional revenues, grants, loans or funds to pay for the Enhanced Park Improvements."

Section 1.12 <u>Amendment to Section 5.5</u>. Section 5.5 of the Services Agreement is hereby deleted in its entirety and replaced and amended to read as follows:

"(a) The Owner's consultant has prepared a Site Map attached to this First Amendment as Attachment III, which depicts and establishes the scope of the Park Improvements (including Enhanced Park Improvements) and served as a basis for Consultant's application for the land use approvals and will serve as the basis for the preparation of the Design Development Documents related to the Park Improvements. Owner, at its reasonable discretion, may identify upgrades or expansions to the Park Improvements required to be constructed under the Services Agreement, from the list of improvements identified in the Approved Park Development Budget, referred to as the "Enhanced Park Improvements." No later than September 1, 2020, or such other later date that the parties mutually agree upon in writing, the Owner will provide Consultant the list of "Enhanced Park Improvements" selected from among the improvements listed in the Approved Park Development Budget attached hereto as Attachment II, that the Owner has secured financing to fund. Consultant shall only be responsible to construct the Enhanced Park Improvements to the extent that the Owner provides sufficient additional funding to complete the Enhanced Park Improvements, and subject to any revisions to the Development Schedule approved pursuant to Section 4.2 of the Services Agreement."

Section 1.13 <u>Amendment to Section 5.7</u>. Section 5.7 of the Services Agreement is hereby deleted in its entirety and replaced and amended to read as follows:

"(a) Consultant has caused preparation by the selected licensed architect of schematic design documents for the Park Improvements (including the Enhanced Park Improvements). Within the time set forth in the Development Schedule, Consultant shall cause the preparation of the Design Development Documents for the Park Improvements (including the Enhanced Park Improvements) and shall submit such Design Development Documents to the Owner for review. During the preparation of the Design Development Documents, Consultant shall communicate and consult informally, and shall hold regular progress meetings, as frequently as necessary to ensure that the formal submittal of any plan or related document to the Owner can receive prompt consideration. The Design Development Documents shall be consistent with and in substantial conformity with the Site Map (including the Enhanced Park Improvements). The Design Development Documents shall consist of drawings, outline specifications and other documents to fix and describe the size, quality, and character of the Park Improvements. Specifically the Design Development Documents shall indicate estimated structural dimensions, and delineation of site features and elevations, materials and colors, landscaping and other features. Key details shall be provided in preliminary form, prior to formal submission.

(b) The Owner shall review the Design Development Documents and either approve or disapprove the Design Development Documents within thirty (30) days after receipt which approval shall not be unreasonably withheld. Any disapproval shall state in writing the specific reasons for the disapproval and specify in reasonable detail all of the changes the Owner requests be made in order to obtain approval. Consultant shall thereafter submit revised Design Development Documents within fifteen (15) days of notification of disapproval. The Owner shall either approve or disapprove the submitted revised Design Development Documents within fifteen (15) days of the date such revised Design Development Documents are received by the Owner, and shall approve the revised Design Development Documents if the requested changes have been made."

Section 1.14 <u>Amendment to Section 7.1</u>. Section 7.1 of the Services Agreement is hereby deleted in its entirety and replaced and amended as follows:

"(a) The Owner financed the approved Predevelopment Activities for the Park and committed an amount not to exceed Six Hundred Thirty-Five Thousand Dollars (\$635,000) (the "Park Predevelopment Funds") to pay for such expenses. Consultant shall use the Park Predevelopment Funds solely to conduct Predevelopment Activities consistent with the Approved Park Development Budget. Notwithstanding anything to the contrary, any Park Predevelopment Funds not used to fund Predevelopment Activities shall be used toward Park Costs consistent with the Approved Park Development Budget. All costs shall be reimbursed to the Consultant pursuant to Section 7.4 below.

(b) The Owner agrees to make available the County Park Construction Funds in an amount not to exceed One Million Three Hundred Sixty-Five Thousand Dollars (\$1,365,000) to finance the Park Costs, which amount may be increased pursuant to subsection (d) below. Consultant shall use the County Park Construction Funds solely to fund Park Costs consistent with the Approved Park Development Budget. All costs shall be reimbursed to the Consultant pursuant to Section 7.4 below. All of the Park

Predevelopment Funds and all of the County Park Construction Funds shall be disbursed prior any other funds.

(c) In addition, the District agrees to make available the District Park Construction Funds in an amount not to exceed Three Million Three Hundred Eighty Thousand Dollars (\$3,380,000) to finance Park Costs. Consultant shall use the District Park Construction Funds solely to fund Park Costs consistent with the Approved Park Development Budget. The District's shall transfer the District Park Construction Funds directly to the Owner, within five (5) business days of the District's receipt of a written request from the Owner. The Owner shall be responsible for disbursing the District Park Construction Funds to the Consultant pursuant to Section 7.3(b) below. All costs shall be reimbursed to the Consultant pursuant to Section 7.4 below.

(d) The Owner, the District and Consultant agree that the Park Construction Funds committed as of the date of the First Amendment are sufficient to pay for the Park Costs as such costs are reflected in the Approved Park Development Budget. Except as expressly set forth in this Agreement to the contrary, all Park Costs set forth in the Approved Park Development Budget shall be the responsibility of the Owner and the District, but the District's liability shall be limited solely to contributing the District Park Construction Funds. The Owner may increase the County Park Construction Funds, at is sole and absolute discretion, by committing additional funds for the construction of the Enhanced Park Improvements in accordance with Section 5.5.

(e) To the extent the Consultant advances costs on behalf of the Owner for any activities contemplated under this Agreement, the Consultant shall be reimbursed for such costs with no mark-up, pursuant to the procedures set forth in Section 7.4."

Section 1.15 <u>Amendment to Section 7.3(b)</u>. Section 7.3(b) of the Services Agreement is hereby deleted in its entirety and replaced and amended as follows:

"(b) The Owner and the District shall not be obligated to disburse any portion of the Park Construction Funds or take any other action hereunder unless the following conditions precedent are satisfied as of the initial disbursement and remain satisfied prior to each such disbursement of the such funds.

(1) The Owner and District have issued a written notice to proceed to the Consultant.

(2) All requirements set forth in Section 7.3(a) have been and continue to be satisfied.

(3) The Owner has received a copy of the General Contractor's Construction Contract as required pursuant to Section 6.2.

(4) Consultant has obtained all permits and approvals necessary for the construction of the Park Improvements.

(5) There exists no Default nor any act, failure, omission or condition that would constitute an event of Default under this Agreement, or under any other agreement between the Owner and Consultant or its Affiliates.

(6) Consultant has furnished the Owner with evidence of the insurance coverage meeting the requirements of Section 11.1 below.

(7) There exists no material adverse change in the financial condition of Consultant from that disclosed by Consultant to the Owner prior to the date of this Agreement.

(8) The Owner has received a written draw request from the Consultant, including certification that the condition set forth in Section 7.3(b)(1) continues to be satisfied, and setting forth the proposed uses of funds consistent with the Approved Park Development Budget for the Park, the amount of funds needed, and, where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred."

Section 1.16 <u>Amendment to Section 7.4</u>. Section 7.4 of the Services Agreement is hereby deleted in its entirety and replaced and amended as follows:

"(a) The Consultant shall prepare check requests and draw requests for authorization by the Owner. The Owner shall make all disbursements of Park Predevelopment Funds for Predevelopment Activities and Park Construction Funds for Park Costs to the extent such disbursement is consistent with the Approved Park Development Budget, subject to any future amendments required under this Agreement. The Owner will make a good faith effort to approve draw down of the funds under each draw request within forty-five (45) calendar days after receipt of a properly completed draw request with all necessary supporting documentation.

(b) The Owner will approve draw down of the proceeds by Consultant once the work to be paid is performed. Consultant shall submit draw requests to the Owner under Section 7.3 above, not more frequently than one time each calendar month, on a date to be agreed to by both parties. The draw requests shall be in a form containing sufficient detail and with sufficient supporting documentation to permit the Owner to confirm that the work to be funded by the draw request has been performed and all applicable conditions of Section 7.3 have been satisfied. The draw requests shall also contain a statement of the total costs incurred by Consultant since the date of Consultant's last draw request, and the amount of those costs paid by Consultant.

(c) It is the intent of the parties that the Park Predevelopment Funds satisfy in full the Predevelopment Activities set forth in the Approved Park Development Budget. It is the intent of the parties that the Park Construction Funds satisfy in full the Park Costs, including, without limitation, the cost of constructing the Park Improvements set forth in the Approved Park Development Budget. Notwithstanding anything to the contrary herein, in no event shall the Consultant be required to use its own funds to pay the costs of any Development Services rendered pursuant to this Agreement. (d) Notwithstanding any other provisions of this Agreement, the Owner shall have no further obligation to approve a draw following: (1) termination of this Agreement; or (2) notification by the Owner to Consultant of a Default under the terms of this Agreement. Any unexpended proceeds disbursed to Consultant shall be returned to Owner on termination of the Services Agreement. Notwithstanding anything to the contrary herein, the Owner shall be responsible for reimbursing contractors, subcontractors or materialmen for services rendered under this Agreement for Predevelopment Activities or Development Matters completed up to the date of termination, so long as such costs are consistent with the Approved Park Development Budget."

Section 1.17 <u>Amendment to Section 7.5</u>. Section 7.5 of the Services Agreement is hereby deleted in its entirety and replaced and amended as follows:

"In performing its functions under this Agreement, each Party shall act diligently and in good faith and shall cooperate fully in all matters relating to the Park. The Owner and the District shall act as expeditiously as possible on all requests by the Consultant for approval and execution of any contract, agreement or other document pertaining to the Park. In exercising its rights of approval, each Party shall act reasonably and in good faith."

Section 1.18 <u>Amendment to Section 9.1</u>. Section 9.1 of the Services Agreement is hereby deleted in its entirety and replaced and amended as follows:

"(a) As compensation for the services to be rendered to the Owner by the Consultant pursuant to this Agreement, the Owner shall pay a Development Management Fee in the amount not to exceed Five Hundred Thousand Dollars (\$500,000), subject to subsection (d) below, and by the terms specified in <u>Exhibit B</u> of the Services Agreement, which is incorporated into this Agreement by this reference.

The Owner will disburse the Development Management Fee in two components. (b) The "Construction Component" of the Development Management Fee shall include up to Four Hundred Fifty Thousand Dollars (\$450,000) (the Development Management Fee less a ten percent (10%) retention) within forty five (45) days following submission and approval by the Owner of a request for payment. The Consultant shall be eligible to request monthly draws of the Construction Component in an amount equal Four Hundred Fifty Thousand Dollars (\$450,000) divided by the Park Improvement construction period approved under the updated Development Schedule as required under Section 4.2 (b) above. For purposes of example, if the parties approve a nine (9) month construction period for the Park Improvements approved under the Development Schedule, then the Construction Component of the Development Management Fee would be disbursed in nine (9) equal payments of Fifty Thousand Dollars (\$50,000). The "Retention Component" of the Development Management Fee shall include Fifty Thousand Dollars (\$50,000), which will be retained by the Owner until the Completion of all the Park Improvements according to the approved Design Documents and delivery by the Consultant of all documentation deemed necessary by the Owner to establish Consultant's compliance with the requirements under Section 6.8 of this Agreement.

(c) Consultant costs related to staffing, in house copying/printing, local travel, and telephone are included in fee. Third party costs, non-local travel and out of pocket costs directly associated with the Park are not included in fee. The Consultant shall not incur such reimbursable costs in excess of a total of Ten Thousand Dollars (\$10,000) without the prior written consent of the Owner.

(d) The Consultant hereby agrees to contribute Four Hundred Thousand Dollars (\$400,000) of the Development Management Fee to capitalize the Community Center Maintenance and Operation Reserve Account, as such term is defined in the Facility Lease Agreement between Consultant and Park District. The Consultant agrees to capitalize and fund the reserve accounts required here under on a pro-rata basis from each distribution of Development Management Fee within five (5) business days of each such distribution until the full Four Hundred Thousand Dollars (\$400,000) have been paid by Consultant, the final component is expected to be paid within five (5) business days of the payment of the Retention Component to Consultant. The requirements shall bind all successors claiming any portion of the Development Management Fee."

Section 1.19 <u>Amendment to Article 10</u>. Article 10 is hereby amended to add Section 10.3 to read as follows:

"Section 10.3 Of District.

The District represents and warrants to the Consultant that the District has the power and authority to enter into this Agreement and perform the District's duties and obligations under this Agreement in accordance with the terms and conditions of this Agreement."

Section 1.20 <u>Amendment to Section 12.3</u>. Section 12.3 of the Services Agreement is hereby deleted in its entirety and replaced and amended as follows:

"Section 12. 3 Default by Owner or District.

(a) The Owner shall be in default under this Agreement if the Owner fails to perform any of the Owner's duties and obligations under this Agreement and does not cure or remedy such failure to perform within fifteen (15) days after receipt of written notice from the Consultant with respect to the default; provided, however, that, if such failure to perform shall necessitate longer to cure than such fifteen (15) day period, then such cure period shall be extended for such period of time as is reasonably necessary to cure such failure to perform if the Owner commences such cure within fifteen (15) days after receipt of written notice from the Consultant and thereafter proceeds diligently and in good faith to cure.

(b) The District shall be in default under this Agreement if the District fails to perform any of the District's duties and obligations under this Agreement and does not cure or remedy such failure to perform within fifteen (15) days after receipt of written notice from the Owner or Consultant with respect to the default; provided, however, that, if such failure to perform shall necessitate longer to cure than such fifteen (15) day period, then such cure period shall be extended for such period of time as is reasonably necessary to cure such failure to perform if the District commences such cure within fifteen (15) days after receipt of written notice from the Owner or Consultant and thereafter proceeds diligently and in good faith to cure."

Section 1.21 <u>Amendment to Section 12.4</u>. Section 12.4 of the Services Agreement is hereby deleted in its entirety and replaced and amended as follows:

"(a) Upon the occurrence of default by Owner or the District under this Agreement, the Consultant may pursue any one or more of the following remedies, separately or concurrently or in a combination, without further notice or demand whatsoever:

(1) The Consultant may terminate this Agreement by giving the Owner and District written notice of such termination, in which event this Agreement shall be terminated at the time designated by the Consultant in the notice of termination to the Owner and District. Any termination hereunder shall not excuse Owner or District from paying for costs incurred pursuant to the Approved Park Development Budget prior to such termination.

(2) The Consultant may seek specific performance by the Owner and District solely with regards to the Owner's and District's obligation to pay for costs incurred for Development Services being performed and only to the extent and in the amounts in the Approved Park Development Budget. The Consultant hereby agrees that the District's liability shall be limited to the contribution of the District Park Construction Funds."

Section 1.22 <u>Amendment to Section 13.3</u>. Section 13.3 of the Services Agreement is hereby amended as follows to add subsection (b):

"(b) Owner shall provide the District with copies of all material and information provided to the Owner by the Consultant under this Section 13.3."

Section 1.23 <u>Amendment to Section 14.1</u>. Section 14.1 of the Services Agreement is hereby amended to add the address of the Park District as follows:

"PARK DISTRICT:

San Bernardino County Special Districts Department c/o Bloomington Recreation and Park 222 W. Hospitality Lane, 2nd Floor San Bernardino, CA 92415 Attn: Director"

Section 1.24 <u>No Other Changes to the Services Agreement</u>. Except as expressly modified by this First Amendment, all other provisions of the Services Agreement remain unmodified and continue in full force and effect.

Section 1.25 <u>Conflicts with the Services Agreement</u>. In the event of any conflict between this First Amendment and the Services Agreement, the provisions of this First Amendment shall prevail.

Section 1.26 <u>Effective Date</u>. This First Amendment shall be effective on the date first set forth above.

Section 1.27 <u>Successors and Assigns</u>. This First Amendment shall be binding on and inure to the benefit of the legal representatives, heirs, successors and assigns of the parties.

Section 1.28 <u>California Law</u>. This First Amendment shall be governed by and construed in accordance with the laws of the State of California.

Section 1.29 <u>Counterparts: Multiple Originals</u>. This First Amendment may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

[Signature Page(s) Follow.]

IN WITNESS WHEREOF, the Owner, Consultant, and Park District have entered into this First Amendment as of the date first set forth above.

OWNER:

COUNTY OF SAN BERNARDINO, a political subdivision of the State of California

By:

Curt Hagman, Chairman Board of Supervisors

Date: DEC 1 0 2019

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARDUNG LYNNAMONELL Clerk of the Board of Supervisor By: APPROVED AS ORM:

MICHELLE D. BLAKEMORE County Counsel

bryand By: izanne Bryant,

Deputy County Counsel

12-5-19

Date:

CONSULTANT:

Bloomington Park Developer, LLC, a California limited Liability company

> The Related Companies of California, LLC, a California limited liability company, its By: Sole Member

Frank Cardone, President By:

PARK DISTRICT:

Bloomington Recreation and Park District, a California Special District

By: 1 Luther Snoke, Interim Director Special Districts Department

ATTACHMENT I

AMENDED EXHIBIT D OF SERVICES AGREEMENT APPROVED DEVELOPMENT SCHEDULE

This Schedule of Performance ("Schedule") summarizes the schedule for various activities under the Consulting and Development Services Agreement (the "Services Agreement") to which this <u>Exhibit D</u> is attached. The description of items in this Schedule is meant to be descriptive only, and shall not be deemed to modify in any way the provisions of the Services Agreement to which such items relate. Section references herein to the Services Agreement are intended merely as an aid in relating this Schedule to other provisions of the Services Agreement and shall not be deemed to have any substantive effect.

Whenever this Schedule requires the submission of plans or other documents at a specific time, such plans or other documents, as submitted, shall be complete and adequate for review by the Owner or other applicable governmental entity within the time set forth herein. Prior to the time set forth for each particular submission, Consultant shall consult with County staff informally as necessary concerning such submission in order to assure that such submission will be complete and in a proper form within the time for submission set forth herein.

Notwithstanding anything to the contrary herein, administrative, non-substantive changes to this <u>Exhibit D</u> may be made by the authorized County representative, upon consultation with County Counsel, without further approval of the Board of Supervisors.

Action <u>Community Engagement- Public Park</u>. Owner (with cooperation of Consultant) to conduct any additional Community Workshop. [§5.9]

<u>Submission – Conceptual Site Map</u>. Consultant shall submit any updates to the Conceptual Site Map for County approval. [§5.5]

<u>Review of Conceptual Site Map</u>. The County shall approve or disapprove any revisions to the Conceptual Site Map. [§5.5]

Demolition. Consultant to demolish all existing improvements. [5.11] <u>Submission – Financing Proposal</u>. Consultant shall prepare and submit the updates to the Scope and Financing Proposal for Owner approval. [§5.4] Date

Deemed completed.

Deemed completed. Opportunity is provided in §5.5 for resubmission and further review of a disapproved revisions to the Site Map related to the inclusion of Enhanced Park Improvements.

Deemed completed.

Deemed Complete.

Deemed complete, subject to revisions associated with additional funding for Enhanced Park Improvements.

Attachment I-1

Action

<u>Review of Financing Proposal</u>. The Owner shall approve or disapprove the updates to the Scope and Financing Proposal. [§5.4]

Environmental Review. Consultant shall perform any additional environmental studies required by the Owner in connection with its environmental review of the Development in accordance with NEPA. [§5.6]

<u>Application – Land Use Approvals</u>. Consultant shall apply for the Land Use Approvals and shall provide evidence of the same to the Owner. [§5.8]

<u>Submission – Design Development</u> <u>Documents</u>. Consultant shall prepare and submit the Design Development Documents for Owner approval. [§5.7]

<u>Review Design Development Documents</u>. The Owner shall approve or disapprove the Design Development Documents. [§5.7]

<u>Update to Development Schedule</u>, the Consultant, in consultation with the Owner, shall develop a proposed update to the Development Schedule for the construction and completion of the Park Improvements [§4.2]

<u>Review Development Schedule</u>. The Owner shall approve or disapprove the updates to the Development Schedule. [§4.2]

Commencement of Construction of Park Improvements.

Completion of Construction of Park Improvements.

Date

Deemed completed.

Deemed completed.

Deemed completed.

February 1, 2020. Opportunity is provided in §5.7 for resubmission and further review of a disapproved Design Development Documents.

Within 30 days after receipt of the Design Development Documents. Opportunity is provided in §35.7 for resubmission and further review of disapproved Design Development Documents.

Deemed completed. Opportunity is provided in Section 4.2 for updates to Development Schedule for construction of Enhanced Park Improvements.

Within 15 days after receipt of the proposed updates to the Development Schedule. Opportunity is provided in §4.2 for resubmission and further review of disapproved Development Schedule.

No later than April 1, 2020.

No later than July 1, 2021, as may be amended pursuant to Section 4.1.

Attachment I-2

Action

Expiration Date.

Date the Park Improvements have been completed and the Park Owner has accepted title to the Park Improvements. Date

Five (5) years after the Effective Date, unless automatically extended by the *force majeure* provisions of Section 14.12 or by mutual agreement of the Parties.

Attachment I-3

ATTACHMENT II

AMENDED <u>EXHIBIT E</u> OF SERVICES AGREEMENT PARK SCOPE AND FINANCING PROPOSAL

Attachment II-1

EXHIBIT E Revised Park Scope and Financing Proposal

Description	Standard	Enhanced
Description	Park Improvements	Park Improvements
HARD COSTS		
Moblization-Demo And Clearing		
Mobilization	\$35,000	\$35,000
Clear And Grub	\$23,750	\$23,750
Moblization-Demo And Clearing	\$58,750	\$58,750
Grading/Drainage/Sewer/Water	· •	
SWPPP Measures	\$26,000	\$26,000
PM-10 Dust Control Measures	\$15,000	\$15,000
Earthwork	\$138,120	\$138,120
Fine Grading	\$49,500	\$49,500
Grading/Drainage/Sewer/Water	\$228,620	\$228,620
Playground		
Play Equipment - Tot Lot	\$75,000	\$75,000
Play Equipment - Child Play	\$50,000	\$100,000
Concrete Curb At Play Area	\$15,050	\$15,050
3" Concrete Base	\$31,640	\$31,640
Sign	\$3,600	\$3,600
Catch Basin	\$5,000	\$5,000
Water Play	\$0	\$600,000
Rubber Matting	\$0	\$76,840
Concrete Water Play	<u>\$0</u>	\$29,475
Playground	\$180,290	\$936,605
Feen Play		·
Play Equipment	\$ 0	\$45,000
Concrete Curb At Play	\$0	\$6,125
Rubber Matting	\$ 0	\$27,200
3" Concrete Base	\$0	\$10,560
Catch Basin	\$0	\$1,300
Table Tennis	\$0	\$6,500
Corn Hole	\$0	\$1,750
Game Table	\$0 \$0	\$4,350
Foosball	\$0	\$6,750
Decomposed Granite 3"	\$0	\$5,170
Concrete Curb 6"X6"	\$0	\$980

	Standard	Enhanced
Description	Park Improvements	Park Improvements
Site Features		•
Picnic Table - 6'	\$20,00	0 \$44,550
Picnic Table - Ada	\$9,00	
Bench	\$3,00	
Sign - Entrance	\$15,00	
Trash Receptacle - Metal	\$9,60	
Trash Enclosure & Gates	\$22,15	
DrinkingFountain	\$15,40	
Drinking Fountain(Sump)	\$1,50	
Barbecue Grill - Standard	\$1,50	
Barbecue Grill - Group	\$2,20	
Ash Container	\$2,20	
Decomposed Granite At Tree Wells		
Flag Poles (20')	\$1,17	
Flag Poles (30')	\$10,00 \$6,50	
Relocate Monument		
Game Table	\$5,00	, .
Table Tennis	\$	
Corn Hole	\$	
	\$	· · · · ·
Group Barbecue Counter Bocce Ball	\$	
Decomposed Granite At Game Tables	\$	
Concrete Curb At D.G.	\$	
Boulders (2-3' Dia.)	\$	
Boulders (4-6' Dia.)	\$	· · · · · ·
	e Features \$128.52	
30	e Features \$128,52	0 \$225,950
Exercise Stations		
Decomposed Granite 3"	\$5,63	5 \$5,635
Concrete Curb 6" X 6"	\$2,24	
ExerciseEquipment	S	
Exercis	se Stations \$7,87	
Devilities Field		
Parking Lot Asphalt Paving (3" W/ 4" Base) W/Seal Coat	\$225,000	
Concrete Curb - 6"		
Striping - Single Line Stalls	\$32,76	•
Striping (Disabled) - Emblem & Sign	\$15,40 \$3,00	-
Ada Ramps		
Ada Wheelstops	\$5,50	
Provide And Install Stop Signs	\$4,50	
	\$350	
Provide And Install Directional Arrows	\$1,400	
Stop Bar And Letters	\$500	
Curb Paint	\$1,08	
Permeable Paving (Parking Stalls)	\$(and the second
Pa	rking Lot \$289,490	\$333,260

Description	Standard Park Improvements	Enhanced Park Improvements
Street Improvements		
Curb And Gutter-8"	\$9.3 # 0	#0.050
Asphalt & Base - Street Section	\$8,250	\$8,250
Grind And Overlay At Marygold	\$28,100 \$20,000	\$28,100
Concrete Paving- 4"	\$20,000	\$20,000
Ada Ramps	\$12,985	\$12,985
Striping	\$5,000	\$5,000
Street Improvements	\$1,375 \$75,710	\$1,375 \$75,710
Hardscape		
Concrete Paving- 4"	\$250,000	PO20 710
Concrete Paving- 4" Concrete Paving- 4" Stamped & Colored	\$250,000	\$253,715
Concrete Paving- 4" Stramped & Colored	\$0	\$20,400
Rubberized Walk	\$0	\$67,410
Concrete Curb 6"x6"	\$0 *0	\$7,110
Hardscape	\$0 \$250,000	\$8,120 \$356,755
Basketball		
6" Colored Concrete	\$0	\$57,750
Pole / Backboard / Hoops / Nets	\$0	\$6,000
Striping Basketball	<u>\$0</u> \$0	\$1,680 \$65,430
Daskeidan	ንዊ	
Walls / Fences		• .
Pilaster 6'	\$14,400	\$27,000
Tubular Steel Fence 6'	\$22,400	\$22,400
Tubular Steel Double Pedestrian Gate	\$5,000	\$5,000
Tubular Steel Double Vehicle Gate	\$9,500	\$9,500
Tubular Steel Single Pedestrian Gate	\$2,500	\$2,500
Split Face Block Wall (6'), 1 Side	\$67,850	\$67,850
Tubular Steel Fence At Dog Park 6'	\$35,275	\$35,275
Tubular Steel Single Pedestrian Gate	\$10,000	\$10,000
PVC Split - Rail Fence (2-Rail)	. \$0	\$10,005
Walls/Fences	\$166,925	\$189,530
Landscaping		.•
Soil Prep / Fine Grading	\$50,770	\$50,770
Weed Abatement	\$25,385	\$25,385
90 Day Maintenance Period	\$25,385	\$25,385
Root Barrier (Linear)	\$5,000	\$5,000
1 Gallon Shrub	\$37,500	\$30,000
5 Gallon Shrub	\$22,500	\$56,250
Trees (15 Gal.)	\$15,750	\$15,750
Trees (24" Box)	\$14,625	\$14,625
Trees (36" Box)	\$7,500	\$7,500
Turf Hydroseed	\$21,250	\$21,250
Wood Mulch-3"	\$22,680	\$22,680
Palms	\$0	\$132,000
Landscaping	\$248,345	\$406,595

Description		Standard Park Improvements	Enhanced Park Improvements
			tark improvements
Irrigation			
Rotor Areas		\$63,751	\$63,75
Hardline Drip Areas		\$61,238	\$61,231
Controller		\$15,000	\$15,00
Fertigation		\$5,500	\$5,50
Backflow Preventer		\$4,000	\$4,000
Booster Pump		\$15,000	\$15,00
Master Valve		\$1,500	\$1,50
Flow Meter		\$650	\$650
Irrigatio	n	\$166,638	\$166,638
Architecture-Community Space			
Pre-Fab Restroom		\$100,000	C165 000
Large Picnic Shelter		\$12,000	\$165,000 \$12,000
Pavillion		\$100,000	\$12,000
Medium Picnic Shelter		\$70,000	
Large Picnic Shelter		\$80,000	\$140,000
Trellis - Curved		\$70,000	\$160,000
Trellis - Straight		\$120,000	\$70,000
Equipment Enclosure-Water Play		\$120,000	\$120,000
Shade Sails At Dog Park		\$0	\$25,000
Shade Sails At Play Areas		\$0 \$0	\$32,010
Architecture-Community Space	e	\$552,000	\$164,010 \$988,020
Lighting / Electrical			
Security Walkway / Lights		¢00.000	
Conduit, Conductor & Misc. Items		\$90,000	\$90,000
-		\$150,000	\$150,000
Parking Lot Lights		\$85,000	\$85,000
Flagpole Lights		\$4,500	\$4,500
Play Area Lights Basketball Lights		\$0	\$34,000
Lighting/Electrica	1	\$0 \$329,500	\$17,000 \$380,500
Subtotal Hard Cost Construction	n	\$2,682,663	\$4,610,923
Contractor - Mark-Up		,	
Contractor Contingency	1.00%	\$26,827	\$46,109
General Conditions	6.00%	\$162,569	\$279,422
Contractor Overhead	3.00%	\$86,162	\$148,094
Contractor Profit	5.00%	\$143,603	\$246,823
Contractor Insurance	1.00%	\$31,018	\$53,314
Construction Contingency	5.00%	\$156,642	\$269,234
Contractor - Mark-Up	•	\$606,821	\$1,042,995
Total Hard Costs	-	\$3,289,484	\$5,653,918

Description	Standard Park Improvements	Enhanced Park Improvements
SOFT COSTS	· · · · · ·	
Predevelopment Work: Architecture		.
	\$145,000	\$145,00
Civil Engineering	\$110,000	\$110,00
Environmental Engineering (Phase I And II)	\$10,000	\$10,00
Geotechnical Engineering	\$15,000	\$15,00
NEPA / CEQA Reports Archeo/Paleo/OalBio Monitoring	\$50,000	\$50,00
Acoustical Engineering	\$12,500	\$12,50
Traffic Engineering	\$5,000	\$5,00
Utility Consultant	\$5,000	\$5,00
Other Consultants	\$7,500	\$7,50
Blueprinting / Printing / Copying	\$15,000	\$15,00
Planning/Zoning Applications + Processing Fees	\$5,000	\$5,00
Legal Fees	\$25,000	\$25,00
Demolition And Remediation	\$25,000	\$25,00
Demotition And Remediation	\$205,000	\$205,00
	\$635,000	\$635,00
Fees & Permtis		
Plan Check & Permit Fees	\$30,000	\$30,00
Other Development Impact Fees	\$30,000	\$30,00
Fees & Permtis	\$60,000	\$60,00
Offsite Wet Utilities		
Sewer-From Valley Blvd - Deepend Manhole	\$42,500	\$42,50
Water Irrigation Line Booster	\$25,000	\$25,00
Water Irrigation-3" Line From Valley	\$43,000	\$43,00
Water Domestic-From Valley Blvd	\$21,000	\$21,00
Storm Drain	\$164,000	\$164,00
Offsite Wet Utilities	\$295,500	\$295,50
Offsite Rule 20 Dry Utilities		
SoCal Gas	\$5,000	\$5,00
Rule 20 (including SCE, ATT, Charter)	\$395,000	\$395,00
Offsite Rule 20 Dry Utilities	\$400,000	\$400,00
Marygold Utilities		
Marygold: Street Lights	\$20,000	¢30.00
Marygold: Trenching	\$50,000	\$20,00 \$50.00
Marygold Utilities	\$70,000 \$70,000	\$50,00 \$70,00
Development Management Fees (Developer Fee) Development Management Fees	\$500,000	¢500.00
Development Management Fees	\$500,000	\$500,00 \$500,00
	· ·	······································
Soft Cost Contingency Soft Cost Contingency	\$120.016	\$507 .50
Soft Cost Contingency Soft Cost Contingency	<u>\$130,016</u> \$130,016	\$207,382 \$207,382
		· · · · · · · · · · · · · · · · · · ·
Total Soft Costs	\$2,090,516	\$2,167,88

Description	Standard Park Improvements	Enhanced Park Improvements
TOTAL SOURCES		
Park Construction Funds		
Park Predevelopment Funds	\$635,000	\$635,000
County Park Construction Funds	\$1,365,000	\$1,365,000
District Park Construction Funds	\$3,380,000	\$3,380,000
TOTAL SOURCES	\$5,380,000	\$5,380,000
TOTAL USES		
Total Hard Costs	\$3,289,484	\$5,653,918
Total Soft Costs	\$2,090,516	\$2,167,882
TOTAL USES	\$5,380,000	\$7,821,800
Shortfall	\$0	-\$2,441,800

-\$2,441,800

TOTAL SOURCES AND USES SUMMARY

ATTACHMENT III

SITE MAP

Attachment III-1



