



Contract Number

16-258 A-7

SAP Number

Big Bear Valley Recreation and Park District

Department Contract Representative
Telephone Number

Donald Day
(909) 386-8811

Contractor
Contractor Representative
Telephone Number
Contract Term
Original Contract Amount
Prior Authorized Amendments
Prior Authorized Change Orders
Total Prior to this Amendment
Total Amendment Amount
Total Contract Amount
Cost Center

M.S. Construction Management Group
Mike Saghafi
(949) 278-5589

\$8,544,000.00
\$1,405,902.37
\$685,806.63
\$10,635,709.00
\$30,889.44
\$10,666,598.44
30.30.0002

IT IS HEREBY AGREED AS FOLLOWS:

CONSTRUCTION AGREEMENT

AMENDMENT NO. 7
CONTRACT NO. 16-258

WHEREAS, the Big Bear Valley Recreation and Park District ("District") and M.S. Construction Management Group ("Contractor") entered into Contract No. 16-258 ("Contract") on May 24, 2016, whereby Contractor agreed to perform the construction services for the Big Bear Alpine Zoo Project ("Project"); and

WHEREAS, on September 27, 2016, the District and Contractor executed Administrative Change Order C-1 to add \$48,589.63 to the Contract Sum and 7 days to the Contract Time to address the over-excavation of 4' of unsuitable soils under Buildings 10, 20, 60, and 65 and the import and placement of 3" minus crushed rock at 12"-24" depths for proper stabilization; and

WHEREAS, on January 23, 2018, the District and Contractor executed Amendment No. 1 to add \$150,000 to the Contract Sum and 90 days to the Contract Time to accommodate the inclusion of a Grizzly Stream feature; and

WHEREAS, on November 19, 2018, the District and Contractor executed Administrative Change Order C-2 to accommodate additional work required due to design flaws, and District-requested changes in work; and

WHEREAS, the Administrative Change Order C-2 added \$106,103.59 to the Contract Sum but added no days to the Contract Time; and

WHEREAS, on October 8, 2019, the District and Contractor executed Amendment No. 2 and Change Order C-3 to add \$661,603.73 to accommodate additional work required due to unforeseen site conditions, plan omissions, building and animal code requirements and plan conflicts and added 264 calendar days to the contract time; and

WHEREAS, on December 17, 2019, the District and Contractor executed Amendment No. 3, Change Order C-4 and CCD-Change Order C-5 to add \$474,841.57 to accommodate additional work required due to unforeseen site conditions, plan omissions, building and animal code requirements and plan conflicts and added 176 calendar days to the contract time; and

WHEREAS, on March 24, 2020, the District and Contractor executed Amendment No. 4 and Change Order C-6 to add \$374,937.24 to accommodate additional work required due to unforeseen site conditions, plan omissions, building and animal code requirements and plan conflicts; and

WHEREAS, on April 21, 2020, the District and Contractor executed Amendment No. 5 to accommodate additional work required due to unforeseen site conditions, plan omissions, building and animal code requirements and plan conflicts as well as encompass any and all previous changes to the project prior to the date of the amendment and extend the final completion date to August 26, 2020; and

WHEREAS, on July 13, 2020, the District and Contractor executed Administrative Change Order C-7 to add \$44,789.99 to accommodate additional work required due to unforeseen site conditions, plan omissions, building and animal code requirements and plan conflicts; and

WHEREAS, on August 25, 2020, the District and Contractor executed Amendment No. 6 to add \$89,130 to the Contract Sum and added no days to the Contract Time to accommodate unforeseen site condition and plan omissions; and

WHEREAS, since the execution of Amendment No. 6, the Project has encountered building and animal code requirements, constructability issues, plan omissions, and plan conflicts thereby adding cost to the Project; and

WHEREAS, these conditions and the extent of these conditions were unforeseen and could not have been anticipated at the time of bid or execution of the Agreement, and these conditions have necessitated the execution of this Amendment; and

WHEREAS, the Parties seek by this Amendment No. 7 to resolve all remaining outstanding issues arising from the Project in order to close-out and complete the Contract, including but not limited to, outstanding change order requests and liquidated damages; and

NOW, THEREFORE, the Contract is hereby amended as follows:

1. Delete Section 3.1, CONTRACT TIME, and replace with the following:

The Date of Commencement of the Work shall be fixed in a Notice to Proceed issued by the District. Contractor agrees to promptly commence the Work after the Notice to Proceed is issued by the District and to achieve Final Completion of the entire Work by September 15, 2020. ("Contract Time"). The Contract Time is predicated on restarting construction after winter weather delays on April 29, 2020, and finishing no later than September 15, 2020.

2. Delete Section 4.1.1, Total Compensation, and replace with the following:

4.1.1 Total Compensation. District shall pay the Contractor, and Contractor agrees to accept, in current funds for the Contractor's complete performance of the Work in accordance with the Contract Documents the Contract Sum of:

Original Contract Amount	\$8,544,000.00
Administrative Change Order C-1 dated September 27, 2016.....	\$48,589.63
Amendment No. 1 dated January 23, 2018.....	\$150,000.00
Administrative Change Order C-2 dated November 9, 2018.....	\$106,103.59
Amendment No. 2, Change Order C-3 dated October 8, 2019	\$661,603.73
Amendment No. 3, Change Order C-4 and C-5 dated December 17, 2019	\$474,841.57
Amendment No. 4, Change Order C-6 dated March 24, 2020	\$374,937.24
Amendment No. 5 dated April 21, 2020	\$141,713.15
Administrative Change Order C-7 dated July 13, 2020	\$44,789.99
Amendment No. 6, dated August 25, 2020.....	\$89,130.10
Amendment No. 7 dated February 1, 2021, as follows:	

1. Labor, equipment and materials for relocation of existing underground water lines – BBZ P112
ADDS \$1,157.51
2. Labor, equipment and materials to raise south edge of black bear pool – BBZ P134R
ADDS \$11,631.56
3. Labor, equipment and materials for installation of two drain boxes near Building 60– BBZ P135
ADDS \$4,499.55
4. Labor, equipment and materials for elevation issues at lower storage shed building – BBZ P137
ADDS \$641.50
5. Labor, equipment and materials for elevation issues at upper storage shed building – BBZ P139

	<u>ADDS</u>	<u>\$1,256.17</u>
6.	Labor, equipment and materials for underground gas line – BBZ P108 <u>ADDS</u>	<u>\$1,042.09</u>
7.	Labor, equipment and materials to fill borehole with slurry and concrete – BBZ P111 <u>ADDS</u>	<u>\$6,891.34</u>
8.	Labor, equipment and materials to remove existing sign and foundations – BBZ P113 <u>ADDS</u>	<u>\$1,958.38</u>
9.	Labor, equipment and materials to remove and replace wet soil base – BBZ P114 <u>ADDS</u>	<u>\$4,209.65</u>
10.	Labor, equipment and materials to remedy elevation issues between building 45 and 55 – BBZ P136 <u>ADDS</u>	<u>\$4,591.85</u>
11.	Labor, equipment and materials for RFI 178, to remove base and replace dirt at bioswale – BBZ P140 <u>ADDS</u>	<u>\$6,693.03</u>
12.	Labor, equipment and materials for relocation of mow curb at Grizzly – BBZ P141 <u>ADDS</u>	<u>\$1,029.32</u>
13.	Labor, equipment and materials for revision to IT Racks – COR 82 <u>DEDUCTS</u>	<u>(\$2,484.75)</u>
14.	Relocation of Building 10 Transformer – BBZP107 <u>ADDS</u>	<u>\$1,221.70</u>
15.	Infiltration of Basin Manhole – BBZP110R <u>ADDS</u>	<u>\$10,805.85</u>
16.	T&M Relocate Drain Boxes at Building 10 – BBZP117 <u>ADDS</u>	<u>\$1,482.67</u>
17.	Building 10 ADA Ramp Rails – BBZP125R <u>ADDS</u>	<u>\$11,804.58</u>
18.	T&M RFI167 Work Along Club View Drive – BBZP138 <u>ADDS</u>	<u>\$2,457.44</u>
19.	Final Liquidated Damages from September 16, 2020 to October 5, 2020; 20 days x \$2,000 per day <u>DEDUCTS</u>	<u>(\$40,000.00)</u>

TOTAL CONTRACT SUM \$10,666,598.44

3. The compensation (time and cost) set forth in this Amendment shall constitute the total compensation due the Contractor for the work or change defined in the Amendment as well as for the overall Project, including impact on unchanged work. By signing the Amendment, the Contractor acknowledges and agrees that the stipulated compensation includes payment for all work contained in the Amendment and Contract, plus all payment for the interruption of schedules, extended overhead costs, delay and all impact, ripple effect or cumulative impact on all other work under the Contract. Once this Amendment is fully executed, it shall constitute a full mutual accord and satisfaction for the scope of work the subject of this Amendment and the Contract, and that the time and/or cost under the Amendment constitutes the total equitable adjustment to which the Contractor is entitled under the Contract.
4. By its signature below, Contractor, on behalf of itself, as well as on behalf of each of its agents, employees, successors, beneficiaries and assigns, if any, hereby forever releases, acquits, and discharges the District, the County of San Bernardino ("County"), as well as each of their past and present elected and appointed officials, directors, officers, agents, employees, successors, subsidiaries, beneficiaries and assigns, if any, from any and all claims, demands, actions, defenses, liabilities, obligations, and indebtedness, with respect to any and all breaches of contract, breaches of duty or any relationship, acts, omissions, misfeasances, malfeasances, causes or causes of action, debts, sums of money, accounts, compensation, contracts, controversies, promises, damages, costs, losses and expenses, of every type, kind, nature, description or character, whatsoever, whether in law or in equity, whether contractual, common law, statutory, federal, state, or otherwise, whether known or unknown, whether suspected to exist or not, whether liquidated or unliquidated, each as though fully set forth herein at length, which Contractor has ever had, or hereafter may have or claim to have, by reason of, arising out of, or connected with or related to any acts, omissions, transactions, or occurrences, arising out of the Contract and the Project ("Released Claims").
 - a. Contractor acknowledges, represents, and warrants that there may be claims arising out of the Released Claims by reason of acts, omissions, transactions or occurrences, against the District and the County, as well as against their past and present elected and appointed officials, directors, officers, agents, employees, successors, subsidiaries, beneficiaries and assigns, if any, of which, at the time this Amendment is executed, it has no knowledge or suspicion. Contractor hereby agrees and represents that this Amendment is specifically intended to, and does, extend to any and all such claims, whether or not known, claimed, or suspected by it. Therefore, Contractor, on behalf of itself, as well as on behalf of each of its agents, employees, successors, beneficiaries and assigns, if any, hereby expressly waives the benefits of Section 1542 of the California Civil Code which provides:

Section 1542. GENERAL RELEASE; EXTENT. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

5. Contractor hereby acknowledges, represents, and warrants, to the District as follows:
 - a. The person signing this Amendment as, or on behalf of, Contractor understands the meaning and effect of Section 1542 of the California Civil Code set forth above.
 - b. WITH REGARD TO SECTION 1542 OF THE CALIFORNIA CIVIL CODE, CONTRACTOR AGREES TO ASSUME THE RISK OF ANY AND ALL UNKNOWN, UNANTICIPATED OR MISUNDERSTOOD DEFENSES, CLAIMS, CAUSES OF ACTION, CONTRACTS, LIABILITIES, INDEBTEDNESS AND OBLIGATIONS WHICH ARE RELEASED BY THE RELEASES CONTAINED IN THIS AMENDMENT NO. 7 (THE "CONTRACTOR RELEASES") IN FAVOR OF THE DISTRICT AND CONTRACTOR HEREBY WAIVES AND RELEASES ALL RIGHTS AND BENEFITS WHICH HE MIGHT OTHERWISE HAVE UNDER THE AFOREMENTIONED SECTION 1542 OF THE CALIFORNIA CIVIL CODE WITH REGARD TO THE RELEASE OF SUCH UNKNOWN, UNANTICIPATED OR MISUNDERSTOOD DEFENSES, CLAIMS, CAUSES OF ACTION, CONTRACTS, LIABILITIES, INDEBTEDNESS AND OBLIGATIONS.
 - c. The Contractor Releases set forth in this Amendment shall not be construed to be and do not constitute an admission of any liability on the part of District. Said Contractor Releases shall constitute an absolute bar to any claim of any kind, whether any such claim is based on contract,

tort, warranty, mistake or any other theory, whether legal, statutory or equitable. Contractor specifically agrees that any attempt to assert a claim barred by said Contractor Releases shall subject the party asserting said claim to the provisions of applicable law setting forth the remedies for the bringing of groundless, frivolous, or baseless claims or causes of action.

- d. The Contractor Releases set forth in this Amendment shall inure to the benefit of the past and present elected and appointed officials, directors, officers, agents, employees, successors, subsidiaries, beneficiaries and assigns, if any, of the District and County.
6. All other terms and conditions of the Contract, as amended by Administrative Change Orders C-1, C-2, Change Order C-3, Change Order C-4, CCD-Change Order C-5, Change Order C-6, Administrative Change Order C-7, Amendment No. 1, Amendment No. 2, Amendment No. 3, Amendment No. 4, Amendment No. 5, and Amendment No. 6 shall remain unchanged.
7. General Terms.
 - a. Pursuant to Evidence Code Section 1123, this Amendment is enforceable, binding, admissible in a court of law, and may be disclosed by any party hereto.
 - b. Each individual executing this document on behalf of a party hereto hereby warrants and represents that he or she has been duly authorized to do so.
 - c. This Amendment, and all documents executed by the Parties, either concurrently herewith or subsequent hereto as provided for herein, shall represent the entire understanding and agreement among the Parties, and the same may not be altered or amended except by a subsequent written agreement executed by all of the Parties, or their respective successors, executors or administrators. The Parties acknowledge and agree that no representations, express or implied, have been made or relied upon in executing and agreeing to be bound by this Amendment, except as specifically set forth herein.
 - d. This Amendment and all documents and instruments required hereunder shall be governed by and construed in accordance with the laws of the State of California.
 - e. The terms, covenants, promises, conditions and representations contained in this Amendment shall inure to and be binding upon the successors and assigns of all of the Parties and each of them. Except as otherwise expressly provided for herein, this Amendment is not intended to be for the benefit of any person other than the Parties.
 - f. If any provision of this Amendment shall be held prohibited by or invalidated under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating or rendering ineffective the remainder of such provision, or any other provision of this Amendment.
 - g. Each of the Parties hereby acknowledges the opportunity to receive advice of legal counsel regarding this Amendment prior to executing it.
 - h. This Amendment supersedes any and all prior and contemporaneous, verbal and written, agreements between or among any of the Parties with respect to the subject matter of this Amendment.
 - i. The Parties agree that this Amendment may be executed in counterparts, each of which shall be deemed to be an original, but both of which together shall constitute one and the same instrument, and that a photocopy or facsimile may serve as an original. If this Amendment is executed in counterparts, no signatory hereto shall be bound until both the parties have fully executed a counterpart of this Amendment. The Parties shall be entitled to sign and transmit an electronic signature of this Amendment (whether by facsimile, PDF, or other email transmission), which signature shall be binding on the party whose name is contained therein. Each Party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Amendment upon request.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment No. 7 to be executed by their respective authorized officers.

BIG BEAR VALLEY RECREATION AND PARK DISTRICT

►

Curt Hagman, Chairman, Board of Directors

Dated: _____
SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIR OF THE BOARD

Lynna Monell
Clerk of the Board of Directors

By _____
Deputy

M.S. CONSTRUCTION MANAGEMENT GROUP

(Print or type name of corporation, company, contractor, etc.)

By ►

(Authorized signature - sign in blue ink)

Name _____
(Print or type name of person signing contract)

Title _____
(Print or Type)

Dated: _____

Address _____

FOR COUNTY USE ONLY

Approved as to Legal Form

►
Sophie A. Akins, Deputy County Counsel

Date _____

Reviewed for Contract Compliance

►
Donald Day, Division Manager

Date _____

Reviewed/Approved by District

►
Trevor Leja, Deputy Director

Date _____