

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number
19-820 A2

SAP Number

Real Estate Services Department

Department Contract Representative	Terry W. Thompson, Director
Telephone Number	(909) 387-5252
Contractor	David Weiner Trust
Contractor Representative	Scott Beard
Telephone Number	(909) 875-2210
Contract Term	June 24, 2021 to December 22, 2021
Original Contract Amount	\$1,299,000
Amendment Amount	
Total Contract Amount	\$1,299,000
Cost Center	1161161000
GRC/PROJ/JOB No.	
Internal Order No.	

Briefly describe the general nature of the contract:

Second Amendment to the Purchase and Sale Agreement and Escrow Instructions for Auction Sales, Contract No. 19-820, with the David Wiener Trust, to authorize the extension of the Entitlement Period for a term not to exceed December 22, 2021, to provide the Buyer with the time necessary to complete certain entitlements for four parcels consisting of approximately 3.62 acres situated at the southeast corner of Cedar Avenue and Slover Avenue in the unincorporated Bloomington area, under contract with the David Wiener Trust resulting from a public auction held on October 30, 2019.

FOR COUNTY USE ONLY

Approved as to Legal Form

▶ SEE SIGNATURE PAGE

Robert F. Messinger,
Chief Assistant County Counsel

Date _____

Reviewed for Contract Compliance

▶

Date _____

Reviewed/Approved by Department

▶ *Brandon Ocasio*

Brandon Ocasio, Manager, Acquisitions Division

Date *6/21/21*

**SECOND AMENDMENT TO
PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS
FOR AUCTION SALES**

This SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (this "**Second Amendment**") is dated as of June 22, 2021 (the "**Effective Date**"), and is entered into by and between the **County of San Bernardino**, a body corporate and politic of the State of California ("**SELLER**") and the David Weiner Trust ("**BUYER**").

RECITALS

- A. SELLER is the owner of the fee simple interest in that certain property (APNs 0257-211-01, 02, 03 and 0257-221-01) located at 18720 Wrangler Drive in the unincorporated area of Bloomington, California consisting of approximately 3.62 acres of land, (the "**Property**"), as shown on Exhibit "A", attached hereto and made a part hereof by this reference.
- B. BUYER, the highest bidder, in accordance with California Government Code Section 25531, "Oral Bids", is able to acquire from the SELLER, the Property for the highest bid price of \$1,299,000.
- C. On December 15, 2020 BUYER and SELLER executed a First Amendment to the Purchase and Sale Agreement and Escrow Instructions to allow BUYER to extend the Entitlement Period for an additional six months to expire on June 23, 2021 ("**First Extended Entitlement Period**") upon payment of the \$300,000 Escrow Extension Deposit prior to the last day of said First Extended Entitlement Period.
- D. The parties now agree to allow BUYER an additional six-month Entitlement Period extension to expire on December 22, 2021 ("**Second Extended Entitlement Period**") at no cost.

NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions of this Agreement, the SELLER and BUYER hereby agree as follows:

Section 1. Recitals.

The recitals set forth above are true and correct and incorporated herein by this reference.

Section 2. Section 6 of the Agreement is amended to read as follows:

- (a) As used herein, "**Close of Escrow**" means and refers to the close of Escrow for the Property and the transfer of fee title to the Property by the SELLER to the BUYER pursuant to grant deed in the form of Exhibit "C" attached hereto (the "**Deed**"). The Close of Escrow shall take place on the Closing Date. The "**Closing Date**" shall mean the date on which the conditions set forth in this Agreement for the Close of Escrow and for the transfer of the Property have been satisfied, and the Deed is recorded by the Escrow Holder. The Property shall be transferred to BUYER at the Close of Escrow; provided that, within the periods of time set forth in this Agreement: (i) BUYER has not terminated this Agreement, (ii)

SELLER is satisfied that the requirements under the California Environmental Quality Act, as amended, shall have been complied with, and (iii) all other conditions of the Close of Escrow set forth in this Agreement, including without limitation as set forth in Sections 6(b), 6(c), and 6(d) below, have been met and BUYER has paid, or caused to be paid to the Escrow Holder all applicable Escrow costs relating to such closing.

(b) The Close of Escrow shall occur on a date that is no later than fifteen (15) days after the expiration of the Entitlement Period, or if the BUYER elects to exercise its right to extend the Entitlement Period up to an additional six (6) months pursuant to Section 2(c) hereof, the Close of Escrow shall occur on a date that is no later than fifteen (15) days after the expiration of the First Extended Entitlement Period, or if the BUYER further elects to exercise its right to extend the Entitlement Period up to an additional six (6) months pursuant to Section 2(d) hereof, the Close of Escrow shall occur on a date that is no later than fifteen (15) days after the expiration of the Second Extended Entitlement Period.

(c) The BUYER may elect to extend the Entitlement Period up to an additional six (6) months (to a date that is eighteen months (18) months following the Opening of Escrow) in exchange for the BUYER's one-time payment of \$300,000.00 (Three Hundred Thousand Dollars) ("**Escrow Extension Deposit**") which amount will be paid directly to SELLER and added to the Deposit. To be effective to extend the Entitlement Period for that additional six (6) month period, BUYER shall deliver the Escrow Extension Deposit to SELLER prior to the last day of the additional six (6) month period which date is June 23, 2021, and such Escrow Extension Deposit will be non-refundable, but shall be applied toward the Purchase Price.

(d) The BUYER may further elect to extend the Entitlement Period up to an additional six (6) months (to a date that is twenty-four months (24) months following the Opening of Escrow) which date is December 22, 2021 (referred to herein as the Second Extended Entitlement Period), at no cost.

In the event all of the conditions set forth in Section 6(c) are not satisfied or waived as of the date that is fifteen (15) days following expiration of the First Extended Entitlement Period, as the same may be extended upon the terms set forth herein or as set forth in Section 17 ("**Outside Closing Date**"), BUYER may terminate this Agreement and/or exercise such rights and remedies, if any, that it may have pursuant to the terms of this Agreement. Likewise, in the event all of the conditions set forth in Section 6(d) are not satisfied or waived as of the Outside Closing Date, SELLER may terminate this Agreement and/or exercise such rights and remedies, if any, that it may have pursuant to the terms of this Agreement.

Section 3. This Second Amendment may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Second Amendment. The parties shall be entitled to sign and transmit an electronic signature of this Second 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 Second Amendment upon request

Section 4. Except as otherwise amended by this Second Amendment, all terms and conditions of the Agreement remain in full force and effect.

REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, the parties hereto have duly executed this Second Amendment as of the dates set forth below.

BUYER:

DAVID WIENER TRUST

By: _____

Date: _____

By: _____

Date: _____

SELLER:

COUNTY OF SAN BERNARDINO

By: 
By: Leonard X. Hernandez
Title: Chief Executive Officer

Date: 6/21/21

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 Supervisors

By: _____
Deputy

Date: _____

APPROVED AS TO LEGAL FORM:

Michelle D. Blakemore, County Counsel
San Bernardino County, California

By: 
Robert Messinger
Chief Assistant County Counsel

Date: 6/21/21

IN WITNESS WHEREOF, the parties hereto have duly executed this Second Amendment as of the dates set forth below.

BUYER:

DAVID WIENER TRUST

By: 

Date: 6.23.2021

By: _____

Date: _____

SELLER:

COUNTY OF SAN BERNARDINO

By: Leonard X. Hernandez
Title: Chief Executive Officer

Date: _____

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 Supervisors

By: _____
Deputy

Date: _____

APPROVED AS TO LEGAL FORM:

Michelle D. Blakemore, County Counsel
San Bernardino County, California

By: _____
Robert Messinger
Chief Assistant County Counsel

Date: _____

ACCEPTANCE BY ESCROW HOLDER

The undersigned hereby acknowledges that it has received a fully executed copy of the foregoing First Amendment to Purchase and Sale Agreement and Escrow Instructions (“Agreement”) and agrees to act as Escrow Holder thereunder and to be bound by and perform the terms thereof as such terms apply to Escrow Holder. Escrow Holder agrees that in the event of a conflict between the Agreement and any supplemental escrow instructions executed by the parties, the Agreement shall control. The escrow number assigned for this Agreement is _____.

_____, 2021

Fidelity National Title,
BOC License No.: _____

By: _____
Janette DeLap, Escrow Officer



County of San Bernardino

DELEGATED AUTHORITY – DOCUMENT REVIEW FORM

This form is for use by any department or other entity that has been authorized by Board of Supervisors/Directors action to execute grant applications, awards, amendments or other agreements on their behalf. All documents to be executed under such delegated authority must be routed for County Counsel and County Administrative Office review prior to signature by designee.

Note: This process should NOT be used to execute documents under a master agreement or template, or for construction contract change orders. Contact your County Counsel for instructions related to review of these documents.

Complete and submit this form, along with required documents proposed for signature, via email to the department's County Counsel representative and Finance Analyst. If the documents proposed for signature are within the delegated authority, the department will submit the requisite hard copies for signature to the County Counsel representative. Once County Counsel has signed, the department will submit the signed documents in hard copy, as well as by email, to CAO Special Projects Team for review. If approved, the department will be provided routing instructions as well as direction to submit one set of the executed documents to the Clerk of the Board within 30 days.

For detailed instructions on submission requirements, reference Section 7.3 of the Board Agenda Item Guidelines as the Delegation of Authority does not eliminate the document submission requirements.

Department/Agency/Entity: Real Estate Services Department

Contact Name: Brandon Ocasio Telephone: 909-387-5106

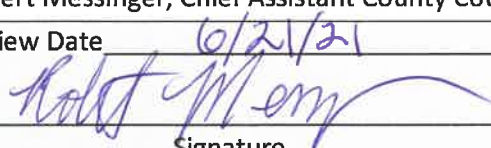
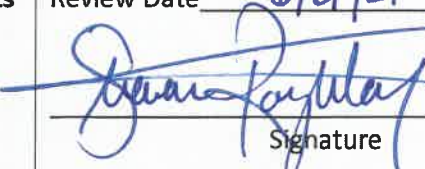
Agreement No.: 19-820 Amendment No.: 2 Date of Board Item 5/18/21 Board Item No.: 101

Name of Contract Entity/Project Name: David Wiener Trust

Explanation of request/Special Instructions:
See attached Word document.

Insert check mark that the following required documents are attached to this request:

- Documents proposed for signature (Note: For contracts, include a signed non-standard contract coversheet for contracts not submitted on a standard contract form).
- Board Agenda item that delegated the authority

Department Routed to County Counsel	County Counsel Name: Robert Messinger, Chief Assistant County Counsel	Date Sent: 6/21/21
Reviewing County Counsel Use Only	Review Date <u>6/21/21</u>  Signature	Determination: <input checked="" type="checkbox"/> Within Scope of Delegated Authority <input type="checkbox"/> Outside Scope of Delegated Authority
CAO-Special Projects Use Only	Review Date <u>6/21/21</u>  Signature	Disposition: <input checked="" type="checkbox"/> Route for signature to: <input type="checkbox"/> Chair <input checked="" type="checkbox"/> CEO <input type="checkbox"/> Department <input type="checkbox"/> Return to Department for preparation of agenda item

DELEGATED AUTHORITY – DOCUMENT REVIEW FORM
Real Estate Services Department
David Weiner Trust – June 21, 2021

Explanation of Request/Special Instructions:

On August 20, 2019 (Item No. 49), the Board declared 3.62 acres of land in Bloomington surplus and authorized its sale by public auction, held October 30, 2019. The David Wiener Trust submitted the highest bid. The Agreement (PSA) was executed on December 17, 2019 (Item No. 48) with an Entitlement Period through December 23, 2020. In December 2020, it was clear the Developer would need more time. Therefore, a six-month extension, through June 23, 2021, with a First Amendment to the PSA was approved by the Board on December 15, 2020 in a closed session meeting. A \$300,000 Deposit is due for this First Extended Entitlement Period by June 22, 2021. Near the conclusion of the First Extended Entitlement Period, it became clear that still more time is needed. A Second Extended Entitlement Period, through December 22, 2021, is being requested. On May 18, 2021 (Item No. 101), the Board of Supervisors delegated specified authority to the CEO with respect to executing contract amendments. It is reasonable to proceed pursuant to this authority because until recently, the County has been subject to the Governor's COVID orders, which caused multiple delays for the development community in conducting business, including the ability of the David Weiner Trust/Scott Beard to timely perform under the relevant Purchase and Sale Agreement.