

**AMENDMENT NO. 1 TO FIRST AMENDED AND RESTATED
PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS**

This AMENDMENT NO. 1 TO FIRST AMENDED AND RESTATED PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (this “**Amendment No. 1**”) is dated and effective as of the date the last of the parties hereto executes this Amendment No. 1 (the “**Amendment No. 1 Effective Date**”) and is entered into by and between the **San Bernardino County Flood Control District**, a public body, corporate and politic of the State of California (“**Seller**”) and the **City of Highland**, a California municipal corporation (“**Buyer**”).

RECITALS

- A. On January 17, 2018, Buyer and Seller entered into that certain Purchase and Sale Agreement and Joint Escrow Instructions (“Original Agreement”) pertaining to the purchase and sale of certain real property comprising approximately 20.19 acres of Seller-owned vacant land (“Property”), situated on the northeast corner of Greenspot Road and State Route 210 in the City of Highland, County of San Bernardino, State of California, as the Property is more specifically described in the Original Agreement, on the terms and conditions set forth in the Original Agreement. On July 12, 2019, the parties executed a First Amendment to the Original Agreement to extend the Entitlement Period (as defined in the Original Agreement) from July 17, 2019 to January 17, 2020 on the terms and conditions set forth in said amendment.
- B. On January 28, 2020, Buyer and Seller entered into the First Amended and Restated Purchase and Sale Agreement and Joint Escrow Instructions (“Restated PSA”) to: (i) acknowledge that certain elements of the Original Agreement, as amended, have been performed by either Buyer or Seller and that duplicate performance under the Restated PSA is not required; and (ii) update the terms of the Original Agreement, including (but not limited to) selling the Property in two (2) separate transactions with a sale of a southerly portion of approximately 11.58 acres (“South Parcel”) and a northerly portion of approximately 8.61 acres (“North Parcel”), as the South Parcel and North Parcel are more specifically described in the Restated PSA, on the terms and conditions stated in the Restated PSA. Concurrent with the Restated PSA, on January 28, 2020, the parties entered into a Habitat Mitigation Reimbursement Agreement (“Reimbursement Agreement”) for Buyer to perform certain habitat mitigation work (“Habitat Mitigation Work”), as more specifically set forth in Section 4.1 of the Restated PSA and Section 1.3.4 of the Reimbursement Agreement, with said work to be completed by Buyer within five (5) years after the mutual execution of the Reimbursement Agreement or by January 27, 2025 (“Mitigation Work Completion Deadline”), which is a condition precedent to Seller performing “Seller Work” as defined in Section 4.10.b.4 of the Restated PSA, on the North Parcel.
- C. The South Parcel Closing Date occurred on February 28, 2020, and the South Parcel was conveyed to Buyer on that date in accordance with the Restated PSA.
- D. By letter dated October 21, 2024, Buyer advised Seller of the occurrence of an “Enforced Delay,” as defined in Section 6.9 of the Reimbursement Agreement, with respect to the City’s performance of the Habitat Mitigation Work, resulting in a twelve (12) month delay to the Mitigation Work Completion Deadline and a corresponding delay to the North Parcel Closing Date, as defined in the Restated PSA, which was acknowledged by Seller’s

governing body on November 19, 2024 and resulted in an extended Mitigation Work Completion Deadline and North Parcel Closing Date through January 27, 2026.

E. The parties now desire to extend the North Parcel Closing Date by mutual agreement for eighteen (18) months from January 27, 2026 to July 27, 2027, delete all references to Seller Work along with the existing Exhibit "E" in the Restated PSA, and add new Buyer obligations regarding "Buyer Work" (as defined herein) along with a new Exhibit "E" attached hereto to change the party responsible for said work from Seller to Buyer on the terms and conditions set forth in this Amendment No. 1. The Restated PSA, as amended by this Amendment No. 1, shall collectively be referred to as the Restated PSA

NOW, THEREFORE, in consideration of the foregoing recitals and the terms and conditions contained herein, Seller and Buyer hereby agree that, as of the Amendment No. 1 Effective Date, the Restated PSA shall be and is hereby amended as follows:

1. The recitals set forth above are true and correct and incorporated herein by this reference.
2. Add a new Section 2.2.d to the Restated PSA, which shall read as follows:

2.2 Payment of Consideration.

d. Additional Escrow Extension Fee. As consideration for the eighteen (18) month extension of the North Parcel Closing Date from January 27, 2026 to July 27, 2027, Buyer shall pay an additional escrow extension fee in the sum of Fifty Thousand and 00/100 Dollars (\$50,000.00) (the "Additional Escrow Extension Fee"), which shall be paid directly to Seller by the fifth (5th) business day after the Amendment No. 1 Effective Date. The Additional Escrow Extension Fee is not refundable and shall not be applied to the North Parcel Purchase Price.
3. Section 4.1 of the Restated PSA is hereby deleted in its entirety and replaced with a new Section 4.1 which shall read as follows:

4.1 Opening of Escrow; Closing Date. The South Parcel Closing Date occurred on February 28, 2020 and the South Parcel was conveyed to Buyer in accordance with the Restated PSA. Closing of the sale of the North Parcel of the Property shall take place through Escrow. The Close of Escrow with respect to the North Parcel shall occur as soon as reasonably practicable after Buyer completes the Buyer Work (as defined in paragraph 4.10.b.4 below) in accordance with this Amendment No. 1, which is subject to Buyer's prior completion of the Habitat Mitigation Work by no later than the Mitigation Work Completion Deadline, as such terms are amended in Amendment No. 1 to the Reimbursement Agreement, which is executed concurrent with this Amendment No. 1 to the Restated PSA, but in no event shall the Close of Escrow for the North Parcel occur later than July 27, 2027 (the "**North Parcel Closing Date**"). The terms "**Close of Escrow**" and/or the "**Closing**" shall mean the date the transaction contemplated herein for Seller's conveyance of the North Parcel to Buyer actually occurs, but in no event later than the North Parcel Closing Date as provided in this Amendment No.1.
4. Section 4.10.a.2 of the Restated PSA is hereby deleted in its entirety and replaced with a new Section 4.10.a.2 which shall read as follows:

4.10 Conditions to Close of Escrow.

a. Conditions to Seller's Obligations.

2. Surplus Land Act. Seller has received a written letter of concurrence from the California Department of Housing and Community Development (HCD) that the North Parcel is Exempt Surplus Land under the Surplus Land Act and at least thirty (30) days have passed following the receipt of such concurrence letter.
5. Section 4.10.b.4 and Exhibit E of the Restated PSA are hereby deleted in its entirety and replaced with a new Section 4.10.b.4 below, which shall read as follows, and a new Exhibit E, which is attached to this Amendment No. 1 and incorporated herein by reference:

4.10 Conditions to Close of Escrow.

b. Conditions to Buyer's Obligations.

4. Buyer Work.

- i. On or before the North Parcel Closing Date, and provided that Buyer shall have first completed the Habitat Mitigation Work and delivered the Mitigation Work Completion Notice to Seller on or before the Mitigation Work Completion Deadline and shall have received the necessary permits from all relevant authorities and governmental agencies and the Seller, Buyer shall have, at its sole cost and expense but subject to reimbursement as set forth in Section 4.10.b.4.ii below: (A) removed and hauled offsite the material that comprises the entire existing raised 6-8 foot raised dirt and rock berms from the Property, and (B) graded the area from which such berms have been removed to match the lowest adjacent grade surrounding the berm area within the removal areas depicted in Exhibit "E", Buyer Work-Berm Removal Areas, attached to and made a part of the Restated PSA, which shall be performed in accordance with a mutually agreed scope of work, as set forth in Section 4.10.b.4.ii below (collectively, the "Buyer Work").
- ii. In order to receive reimbursement from Seller for costs incurred by Buyer for the Buyer Work pursuant to Section 4.10.b.4.i, Buyer shall, no later than thirty (30) days prior to the commencement of the Buyer Work, submit to Seller a detailed scope of work for the Buyer Work along with a commercially reasonable cost proposal for such work. If Seller provides written approval to Buyer of such scope at the proposed cost, Seller shall reimburse Buyer for

the Buyer Work up to such proposed cost, provided that the Parties hereby acknowledge and agree that, notwithstanding anything to the contrary herein, Seller's reimbursement obligation for the Buyer Work shall in no event exceed Eight Hundred Thirty Five Thousand and 00/100 Dollars (\$835,000) ("Buyer Work Reimbursement Cap"). To the extent that such proposed cost exceeds the Buyer Work Reimbursement Cap, such excess proposed cost shall be at Buyer's sole cost and expense and without reimbursement by Seller. Upon the occurrence of either the North Parcel Closing Date or the termination date of this Agreement in accordance with Section 4.10.b.4.iii(B), Buyer shall submit such contracts, receipts, invoices, and other documents as Seller may reasonably request to ascertain the reimbursable cost incurred by Buyer for the Buyer Work up to such time. If Seller deems the submission complete and in compliance with the terms of this Agreement, Seller will remit a reimbursement payment to the Buyer in the amount of the approved reimbursement but not to exceed the Buyer Work Reimbursement Cap by the forty-fifth (45th) business day following the later of Buyer's submission and Seller's verification, which obligation shall survive the Closing or termination of this Agreement. For clarity, Buyer and Seller acknowledge and agree that the costs reimbursable by Seller to Buyer for the Buyer Work, which is subject to the Buyer Work Reimbursement Cap and Buyer's prior completion of the Habitat Mitigation Work (which if not first completed shall relieve Seller of its reimbursement obligations herein for the Buyer Work), are completely separate from and in addition to the Reimbursable Mitigation Costs, which is subject to the Mitigation Cost Cap (as defined in the Reimbursement Agreement).

- iii. In the event Buyer does not complete the Buyer Work by the North Parcel Closing Date (as amended herein), Buyer may elect, upon written notice to Seller and Escrow Holder to: (A) waive the completion of the Buyer Work as a Buyer closing condition and complete its acquisition of the North Parcel as otherwise provided in the Restated PSA, in which case Seller shall reimburse in accordance the submission process in Section 4.10.b.4.ii for the costs of the Buyer Work incurred by Buyer up to the North Parcel Closing Date, but subject to the Buyer Work Reimbursement Cap and Buyer's prior completion of the Habitat Mitigation Work; however,

Seller shall be relieved of any obligation to reimburse Buyer for the cost of the Buyer Work incurred by Buyer after the North Parcel Closing Date, or (B) elect to terminate the Restated PSA, in which case, Escrow for the North Parcel shall be canceled, the Restated PSA shall be automatically terminated and be of no further force or effect as of the North Parcel Closing Date other than Buyer's Termination Obligations and those obligations that expressly survive the termination of the Restated PSA. If Buyer fails to timely make such an election, Buyer shall be deemed to have elected to terminate the Restated PSA in accordance with this subsection.

6. Add a new Section 8.15 to the Restated PSA, which shall read as follows:
 - 8.15. Electronic Signatures. This Amendment No. 1 and any subsequent amendments 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 agreement. The parties shall be entitled to sign and transmit an electronic signature of this amendment (whether by facsimile, PDF or other mail 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.
7. Except as specifically amended by this Amendment No. 1, all terms and conditions of the Restated PSA shall remain the same, are hereby incorporated by reference, and are in full force and effect. In the event of any conflict between the Restated PSA and this Amendment No. 1, the terms and conditions of this Amendment No. 1 shall control.

REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment No. 1 as of the dates set forth below.

BUYER:

CITY OF HIGHLAND

By: _____ Date: _____
Carlos Zamano, City Manager

APPROVED AS TO LEGAL FORM:

By: _____ Date: _____
Maricela Marroquin
City Attorney

SELLER:

**SAN BERNARDINO COUNTY FLOOD
CONTROL DISTRICT**

By: _____ Date: _____
Dawn Rowe
Chair, Board of Supervisors

APPROVED AS TO LEGAL FORM:

Laura Feingold, County Counsel
San Bernardino County, California

By: _____
Agnes Cheng
Deputy County Counsel

Date: _____

EXHIBIT "E" – CITY REMOVAL WORK – BERM REMOVAL AREAS

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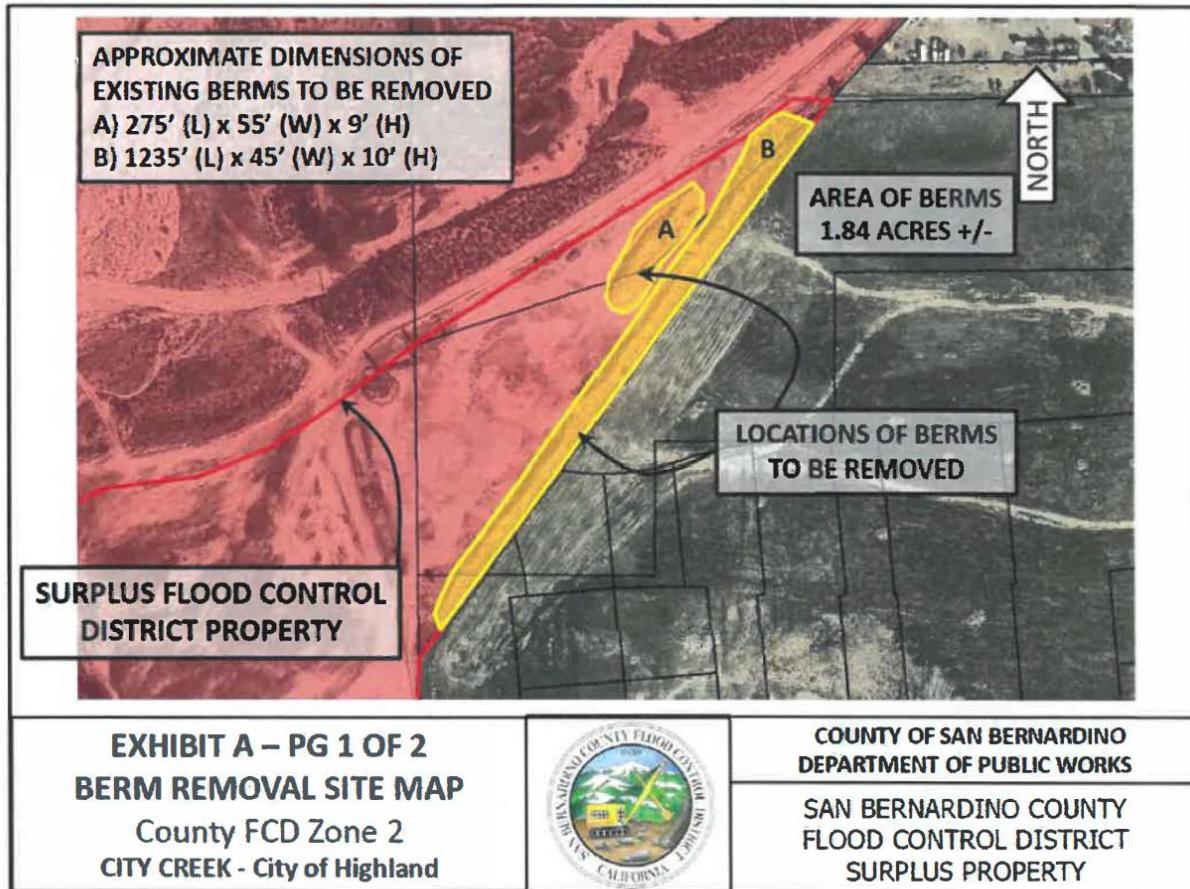


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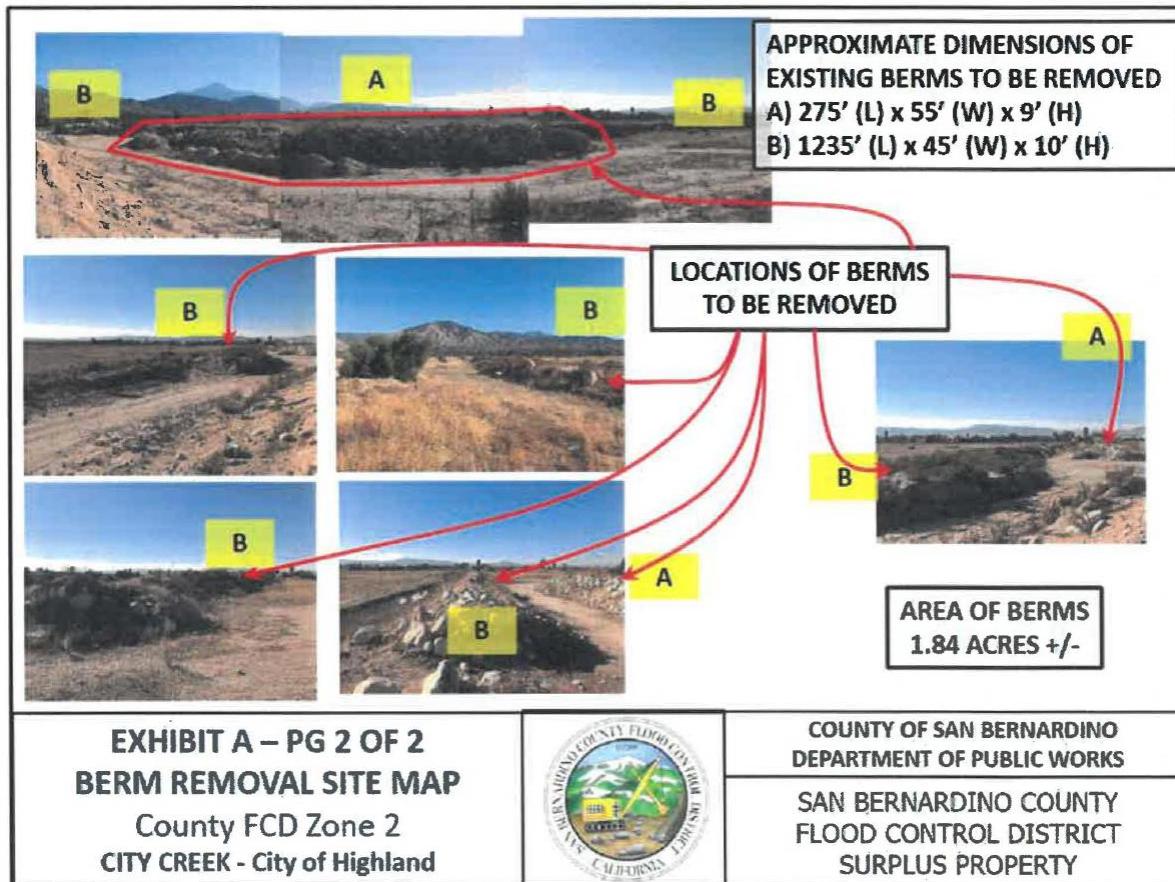


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