



October 21, 2024

Terry W. Thompson
Director of Real Estate Services Department
County of San Bernardino
385 North Arrowhead Avenue, Third Floor
San Bernardino, CA 92415

via Email and Overnight Mail

Subject: Request to Extend the Purchase and Sale Agreement (PSA), and Habitat Mitigation Reimbursement Agreement (Mitigation Work Completion Deadline) for 12 months [SBCFCD 8.6 Acres – PSA Escrow #30043651 (City/County) & #30043652 (City/TREH)]

Dear Terry,

This letter is intended to formally request a twelve (12) month extension of the Purchase and Sale Agreement and Joint Escrow Instructions (initially dated January 17, 2018 and amended on July 12, 2019, collectively the "Original Agreement", and as further amended by the "First Amended and Restated Purchase Agreement" (entered into on January 28, 2020) and Habitat Mitigation Reimbursement Agreement (approved on January 28, 2020) by and between the San Bernardino County Flood Control District and the City of Highland with respect to a 8.6 acre parcel located in the City of Highland ("Subject Project").

According to Section 4.1 of the First Amended and Restated Purchase and Sales Agreement (PSA), and Section 1.3.7 of the Habitat Mitigation Reimbursement Agreement, escrow must close no later than five (5) years from the effective date of the Reimbursement Agreement. Therefore, escrow for the Subject Property is expected to close no later than January 28, 2025.

Summary of the mitigation progress made to date

Immediately upon the City's purchase of the Subject Property from the County, the City will be selling the Subject Property to TREH Partners XV, LLC ("TREH Partners") through a double escrow. TREH Partners is currently in escrow on a private property located contiguous to the Upper Santa Ana River Basin ("Mitigation Property") for the purpose of using the property as replacement property for Mitigation (related to the Flood Control Property on Greenspot Road) that is required by State and Federal Fish & Wildlife Services ("F&WS"). The parties appear to agree with the resource agencies' recommendations, and an uplift and maintenance agreement, and conservation easement will be entered into for the Mitigation Property. The San Bernardino Valley Water Conservation District ("SBVWCD") also appears to be willing to take on the Mitigation Property and incorporate it into their existing conservation plan also located along the Upper Santa Ana Wash Basin. TREH Partners needs to finalize the Take Permit with the

Mayor
Penny Lilburn

Mayor Pro Tem
Larry McCallon

City Council
Jesse Chavez-Cordova

City Council
Anaeli Solano

City Council
John P. Timmer

City Manager
Carlos Zamano

27215 Base Line, Highland, CA 92346

Tel: (909) 864-6861 • Fax: (909) 862-3180 • Web: www.cityofhighland.org

State F&WS and the Habitat Conservation Plan with the United States F&WS. The State F&WS recently conducted an onsite inspection of the Mitigation Property, and they responded positively as it relates to potential mitigation.

As of June 2024, the City and TREH Partners have submitted invoices to the County for reimbursement in accordance with Section 3.1.3 of the Habitat Mitigation Agreement in the amount of \$230,817.33 (remaining reimbursement balance is \$1,269,182.67).

Factors supporting a twelve (12) month extension

According to the Habitat Mitigation Reimbursement Agreement, Section 6.9 (Time is of the Essence/Force Majeure) an Enforced Delay is defined as “...acts of governmental authorities, ... epidemics, quarantine restrictions, ... shortages of materials... and any other matters beyond the reasonable control of the party claiming the extension.” If an Enforced Delay occurs, extension of the Mitigation Work Completion Deadline for a period equal to the cumulative period of the Enforced Delays can be justified. The City of Highland and TREH Partners assert and respectfully submit for the County’s consideration that the COVID-19 pandemic, COVID lockdown and stay-at-home mandates, and the ensuing impacts qualify as an Enforced Delay which tolled the escrow closing date for at least fifteen (15) months, triggering the Force Majeure clause under the Habitat Mitigation Reimbursement Agreement and justifying the request for extension for at least a like period. While the Enforced Delay lasted at least fifteen (15) months, the City is only seeking a twelve (12) month extension of the Original Agreement and the Habitat Mitigation Reimbursement Agreement.

The COVID-19 pandemic was unanticipated when the parties approved the Original Agreement (on January 17, 2018) and the First Amended and Restated Purchase Agreement and Habitat Mitigation Reimbursement Agreement (on January 28, 2020).

The following are provided for the County’s consideration to satisfy the elements of an Enforced Delay:

1. As COVID-19 spread throughout the world and as its devastating impacts became known, on March 19, 2020 (after the aforementioned agreements were executed), the State of California ordered a state-wide COVID-19 lockdown and imposed a strict stay-at-home mandate. During the lockdown, the City of Highland and TREH Partners were effectively put on hold while the State, the United States, and other nations figured out how to deal with the pandemic; literally everyone was affected and everything ground to an abrupt halt.
2. During the entire lockdown, the City of Highland and TREH Partners were prevented or prohibited from conducting, engaging in or otherwise pursuing their normal business activities. TREH Partner’s consultants and agencies associated with the implementation of the Habitat Mitigation Agreement were also prevented or prohibited from doing their work or making any progress on the Habitat Mitigation work throughout the lockdown.
3. When the State of California finally ended the COVID-19 lockdown and lifted the strict stay-at-home mandate on June 15, 2021, and very gradually began easing pandemic-era closures and restrictions, many government agencies and businesses had to “gear up” and were not fully completely functional for a very long period. COVID-19 and its variants

were still circulating widely, and regular flare-ups of the disease triggered additional intermittent closures. Even after the lockdown officially ended and strict stay-at-home mandates were lifted, severe work backlogs and labor and material shortages prevented or significantly impeded progress on the Habitat Mitigation Work.

4. Today, more than 3 years later, COVID-19 variants are still circulating, and material and labor shortages continue. COVID-19's lingering impact continues to affect many aspects of the Habitat Mitigation Work, delaying its completion for a period at least equal to the 15-month term of the lockdown, if not longer. Also, it is the City's understanding that TREH Partners had a meeting on October 3, 2023, with Luther Snoke, CEO of the County, representatives from County Supervisor Dawn Roe's office, and other attendees including Brendon Briggs. At that meeting the group acknowledged the many delays attributable directly to COVID-19 and its aftermath which significantly impacted the parties' work and progress associated with the Habitat Mitigation Work.

Based on the facts outlined above, the City of Highland requests the Original Agreement and Habitat Mitigation Reimbursement Agreement be extended until January 27, 2026. Please note that while the Enforced Delay lasted at least fifteen months the City is only seeking a twelve (12) month extension.

Should you have any question concerning the City's request please contact me at (909) 864-6861, Ext 215, or email at lmainez@cityofhighland.org.

Sincerely,



Lawrence A. Mainez
Community Development Director/
Housing Authority Assist Executive Director

Cc: Carlos Zamano, City Manager
Alondra Munoz, City Clerk
Kim Stater, Assistant Community Development Director
Maricela Marroquin, City Attorney (Richards/Watson/Gershon)
Tom Robinson, TREH Partners LLC