

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS  
OF THE SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT  
AND RECORD OF ACTION**

**December 17, 2019**

**FROM**

**BRENDON BIGGS, Interim Chief Flood Control Engineer, Flood Control District  
TERRY W. THOMPSON, Director, Real Estate Services Department**

**SUBJECT**

First Amended and Restated Purchase and Sale Agreement and Joint Escrow Instructions and Habitat Mitigation Reimbursement Agreement with the City of Highland

**RECOMMENDATION(S)**

Acting as the governing body of the San Bernardino County Flood Control District (District):

1. Approve the First Amended and Restated Purchase and Sale Agreement and Joint Escrow Instructions, with the City of Highland to sell 11.58 acres of District property in fee for \$2,500,000 to close escrow in January, 2020 and to sell 8.61 acres of District property in fee for \$2,000,000 to close escrow upon the mitigation of impacted San Bernardino Kangaroo Rat habitat and completion of specified grading work, but in no event beyond five years; and to amend certain other terms and conditions of the Purchase and Sale Agreement and Joint Escrow Instructions, Contract No. 18-17.
2. Approve a Habitat Mitigation Reimbursement Agreement, authorizing the City of Highland to remove two flood control berms situated on the northerly 8.61-acre portion of the District property and to perform the mitigation for San Bernardino Kangaroo Rat habitat as necessitated by the berm removal, and authorize the District to reimburse the City of Highland up to, but not exceeding, \$1,600,000 for the cost to perform both the berm removal and the related habitat mitigation.
3. Authorize the Chairman of the Board of Supervisors to execute two Grant Deeds to convey the fee simple interest in and to the District's property consisting of the southerly property comprised of approximately 11.58 acres, and the northerly property comprised of approximately 8.61 acres, to the City of Highland, a California municipal corporation.
4. Authorize the Director of the Real Estate Services Department to execute escrow instructions and any other documents necessary to complete this transaction.

(Presenter: Terry W. Thompson, Director, 387-5252)

**COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES**

**Ensure Development of a Well-Planned, Balanced, and Sustainable County.**

**Pursue County Goals and Objectives by Working with Other Agencies.**

**FINANCIAL IMPACT**

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). The District will receive revenue for Zone 2 (1920002522) in the amount of \$2,500,000 for the sale of the fee simple interest in and to the southerly property being conveyed to the City of Highland (City) and the District will receive revenue for Zone 2 (1920002522) in the amount of \$2,000,000 for the sale of the fee simple interest in and to the northerly property being

**First Amended and Restated Purchase and Sale Agreement and Joint Escrow Instructions and Habitat Mitigation Reimbursement Agreement with the City of Highland  
December 17, 2019**

conveyed to the City. The District will incur costs associated with reimbursement to the City for performance of the berm removal on the northerly District property that is not to exceed \$100,000. The District, will also reimburse the City an amount not to exceed \$1,500,000 for the City's costs associated with mitigation for sensitive San Bernardino Kangaroo Rat (SBKR) habitat necessitated by the berm removal. The City will assume responsibility for payment of all escrow and title fees incurred for this transaction. Once conveyed to the City, the District will not be responsible for any ongoing maintenance and liability associated with the fee simple area of the property being conveyed.

**BACKGROUND INFORMATION**

The recommended actions will approve a First Amended and Restated Purchase and Sale Agreement and Joint Escrow Instructions (First Amended PSA) with the City and authorize the conveyance of fee simple interests in and to the District property in two separate transactions for the same revenue as provided in the original purchase and sale agreement. The approval of a Habitat Mitigation Reimbursement Agreement is also recommended which will provide for the City to undertake the removal of the two berms situated on the northerly 8.61 acres and to mitigate for the SBKR as necessitated solely by the berm removal, and provides for the City to be reimbursed up to \$1,600,000 for the work associated with the berm removal and related SBKR mitigation.

The District operates various regional flood control facilities in the City covering over four acres including City Creek, which originates at the foothills of the San Bernardino National Forest abutting State Route 330, and runs through East Highlands and under State Route 210 to Greenspot Road/Fifth Street Interchange. Bledsoe Creek flows from the northeasterly quadrant to the City into the City Creek Spreading Grounds where they both converge with the Plunge Creek Levees just below the Interchange. While City Creek then turns and flows west past the Interchange through San Bernardino, the converging systems continue southwest and flow into the Santa Ana River.

Within the larger flood control system is approximately 20.19 acres of vacant flat, irregularly shaped land situated on the northeast corner of Greenspot Road/Fifth Street Interchange off State Route 210 Freeway (SR 210). The District has used this land for stockpiling materials dredged from the local flood control basins and streams, and has also used the land for equipment training.

On December 16, 2008 (Item No. 92), the Board of Supervisors approved entering into a Memorandum of Understanding between the District and the City authorizing the District to negotiate the sale of this approximately 20-acre land exclusively with the City's Redevelopment Agency. The sale was contingent on the District identifying a replacement stockpile area. In 2014, the District was able to obtain the necessary permitting for the replacement stockpile area on District land near the southwest corner of Greenspot Road/Fifth Street and SR 210.

Through these intervening years, the City had the land appraised several times, and the District requested the Real Estate Services Department (RESO) review these appraisal reports. The City, however, also had difficulty securing a reliable developer for the gateway corridor which includes over 50 additional acres fronting Greenspot Road/Fifth Street between the District land and Webster Street. Around June 2014, the City approved the Greenspot Village and Marketplace Specific Plan and the lifestyle shopping center site plan, which allows for additional retail uses and multi-family housing. Subsequently, the City selected a new development team

**First Amended and Restated Purchase and Sale Agreement and Joint Escrow Instructions and Habitat Mitigation Reimbursement Agreement with the City of Highland  
December 17, 2019**

to further the ultimate design and construction of this gateway corridor. Negotiations ensued with a new valuation, and considerations provided for mitigation measures and topography.

On January 9, 2018 (Item No. 39), the Board of Supervisors approved the PSA to convey the fee simple interest in and to 20.19 acres of land for \$4,500,000 for development purposes upon completion of the entitlement period estimated to be 18 months. Pursuant to the PSA, the City elected to extend the entitlement period for the additional six-months by paying the \$100,000 Escrow Extension Fee.

Prior to closing the sale, the District notified RESD and the City about the recent identification of the endangered SBKR on the site which precluded the District from completing its task removal of the berm; this task was necessary to complete the original transaction. To allow for the necessary SBKR mitigation, the District and the City propose entering into the First Amended and Restated Purchase and Sale Agreement and Joint Escrow Instructions, which provides for two separate transactions as follows: 1) sell approximately 11.58 acres fronting Greenspot Road and comprising the southerly portion of the Property to the City for \$2,500,000, which would allow the City to proceed with development plans on that portion; and, 2) sell the remaining approximate 8.61 acres comprising the northerly portion of the Property to the City for \$2,000,000 following the City's completion of the removal of the existing berm as well as completing any SBKR mitigation necessary to proceed with the berm removal.

The District and the City further propose entering into the Habitat Mitigation Reimbursement Agreement which specifically authorizes the City to perform the actual berm removal on the northerly portion of the District property and to perform all mitigation necessitated by the berm removal, and to authorize the District to reimburse the City for costs associated with both the berm removal and SBKR mitigation at an amount not to exceed \$1,600,000.

The First Amended PSA sets forth the closing on the southerly 11.58 acres to occur in January 2020 and the closing on the northerly 8.61 acres to occur when the berm removal work and SBKR habitat mitigation has been completed but in no event beyond five years

Approval of the First Amended PSA affords the City the opportunity to close on a key piece of its planned development along Greenspot Road, while allowing the City the necessary time to process its removal of the existing two berms situated within the northerly 8.709 acres and mitigate for the endangered SBKR pursuant to federal regulations. The District's reimbursement amounts to the City are capped for the SBKR mitigation to not exceed \$1,500,000 and the two berm removals not to exceed \$100,000.

**PROCUREMENT**

Not applicable.

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Robert Messinger, Principal Assistant County Counsel, and Sophie Akins, Deputy County Counsel, 387-5455) on November 22, 2019; San Bernardino County Flood Control District (David Doublet, Deputy Director, 387-7918) on November 21, 2019; Purchasing (Michelle Churchill, Supervisor Buyer, 387-2070) on November 21, 2019; Finance (Monique Amis, Administrative Analyst, 387-4883 and Jessica Trillo, Administrative Analyst, 387-4222) on November 26, 2019; and County Finance and

**First Amended and Restated Purchase and Sale Agreement and Joint  
Escrow Instructions and Habitat Mitigation Reimbursement Agreement  
with the City of Highland  
December 17, 2019**

Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on November 26, 2019.

(MDC: 677-0671)

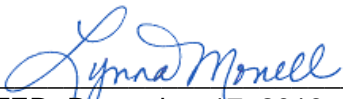
**First Amended and Restated Purchase and Sale Agreement and Joint  
Escrow Instructions and Habitat Mitigation Reimbursement Agreement  
with the City of Highland  
December 17, 2019**

Record of Action of the Board of Supervisors  
San Bernardino County Flood Control District

**OFF CALENDAR**

Moved: Robert A. Lovingood Seconded: Josie Gonzales  
Ayes: Robert A. Lovingood, Janice Rutherford, Dawn Rowe, Curt Hagman, Josie Gonzales

Lynna Monell, CLERK OF THE BOARD

BY   
DATED: December 17, 2019



cc: File- Flood  
la 12/26/2019