

RESOLUTION NO. OBSARDA2017-003

**A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR
AGENCY OF THE HIGHLAND REDEVELOPMENT AGENCY
APPROVING THE ASSIGNMENT FROM THE SUCCESSOR AGENCY
TO THE CITY OF (1) A MEMORANDUM OF UNDERSTANDING
BETWEEN THE HIGHLAND REDEVELOPMENT AGENCY AND THE
SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT AND (2)
AN EXCLUSIVE NEGOTIATING AGREEMENT BETWEEN THE CITY
OF HIGHLAND, THE SUCCESSOR AGENCY AND TREH PARTNERS
XV LLC**

RECITALS:

A. The Highland Redevelopment Agency (the "Former Agency") was a duly constituted redevelopment agency pursuant to provisions of the Community Redevelopment Law set forth in Section 33000 et seq. of the Health and Safety Code of the State of California

B On December 16, 2008, the Former Agency entered into a Memorandum of Understanding with the San Bernardino County Flood Control District ("District") entitled "Memorandum of Understanding Between the Highland Redevelopment Agency (RDA) and the San Bernardino County Flood Control District (District) Regarding the Sale of District Property (Property) Located at the Northeast Quadrant of the 210 FWY and Greenspot Road in the City of Highland" ("MOU") regarding the Former Agency's intent to purchase from the District a portion of the real property identified as Assessor Parcel No. 1201-831-01 in the City Creek Wash Area in the City of Highland ("Property").

C. Pursuant to AB X1 26 (which became effective in June 2011), and the California Supreme Court's decision in *California Redevelopment Association, et al v Ana Matosantos, et al* (53 Cal. 4th 231 (2011)), the Former Agency was dissolved as of February 1, 2012, and the Successor Agency was constituted as the successor entity to the Former Agency, and an oversight board of the Successor Agency (the "Oversight Board") was established.

D. Pursuant to Health and Safety Code Section 34175(b), all assets, properties, contracts, leases, books and records, buildings, and equipment of the Former Agency transferred to the Successor Agency by operation of law.

E. On April 22, 2014, the Successor Agency, the City, and TREH Partners XV LLC, a California Limited Liability Company ("TREH Partners") entered into an Exclusive Negotiating Agreement ("ENA") whereby the parties agreed to negotiate, on an exclusive basis, for TREH Partners to purchase the Property from the Successor Agency upon the Successor Agency's purchase of the Property from the District. The term of the ENA was scheduled to expire on December 31, 2014.

F. On December 31, 2014, the Successor Agency, the City, and TREH Partners, entered into a first extension of the ENA extending the ENA period by six months with the term expiring on June 30, 2015.

G. On April 28, 2015, the Successor Agency, the City, and TREH Partners, entered into a second extension of the ENA extending the ENA period by one year with the term expiring on June 30, 2016.

H. On February 23, 2016, the Successor Agency, the City, and TREH Partners, entered into a third extension of the ENA extending the ENA period by nine months with the term expiring on March 30, 2017.

I. On February 27, 2017, the Successor Agency, the City, and TREH Partners, entered into a fourth extension of the ENA extending the ENA period by two years with the term expiring on March 31, 2019.

J. The Successor Agency, the City, and the District now desire to have the City assume the Successor Agency's rights, interests, duties, and obligations under the MOU. The Successor Agency, the City, and TREH Partners desire to have the City assume the Successor Agency's rights, interests, duties, and obligations under the ENA.

K. On April 11, 2017, the Successor Agency adopted its Resolution No. 2017-003, authorizing the Successor Agency to assign to the City, all of the Successor Agency's rights, interest, duties, and obligations under the MOU and ENA, subject to the Oversight Board's approval of the assignment.

L. On April 11, 2017, the City Council adopted its Resolution No. 2017-013, accepting such assignment of the MOU and ENA, subject to the Oversight Board's approval of the assignment.

NOW, THEREFORE, THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE HIGHLAND REDEVELOPMENT AGENCY HEREBY FINDS, DETERMINES, RESOLVES, AND ORDERS AS FOLLOWS:

Section 1. The above recitals are true and correct and are a substantive part of this Resolution.

Section 2. The Oversight Board hereby approves the Successor Agency's execution and delivery of the Assignment of the MOU, substantially in the form attached hereto as Exhibit "A", and the Assignment of the ENA, substantially in the form attached hereto as Exhibit "B".

PASSED, APPROVED AND ADOPTED this 13th day of April, 2017.


Larry McCallon
Chair

ATTEST:

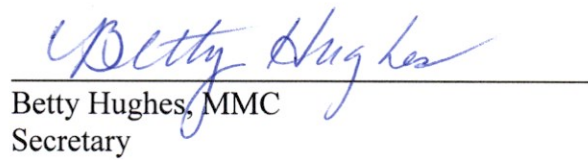

Betty Hughes, MMC
Secretary

EXHIBIT - A

Successor Agency assignment of the San Bernardino County Flood Control District MOU to the City of Highland

ASSIGNMENT OF MEMORANDUM OF UNDERSTANDING

This Assignment of the “Memorandum of Understanding Between the Highland Redevelopment Agency (RDA) and the San Bernardino County Flood Control District (District) Regarding the sale of District Property (Property) Located at the Northeast Quadrant of the 210 FWY and Greenspot Road in the City of Highland” (this “Assignment”), dated as of April 11, 2017, is entered into by and among the Successor Agency of the Highland Redevelopment Agency (the “Successor Agency”), the City of Highland (the “City”), and the San Bernardino County Flood Control District (the “District”).

Herein, the Successor Agency, the City, and the District are collectively referred to as the “Parties,” with each being a “Party.”

Recitals

A. The Highland Redevelopment Agency (the “Former Agency”) was a duly constituted redevelopment agency pursuant to provisions of the Community Redevelopment Law set forth in Section 33000 et seq. of the Health and Safety Code of the State of California.

B. On December 16, 2008, the Former Agency and the San Bernardino County Flood Control District (“District”) entered into a “Memorandum of Understanding Between the Highland Redevelopment Agency (RDA) and the San Bernardino County Flood Control District (District) Regarding the sale of District Property (Property) Located at the Northeast Quadrant of the 210 FWY and Greenspot Road in the City of Highland” (“MOU”) regarding the Former Agency’s intent to purchase from the District a portion of the real property identified as Assessor Parcel No. 1201-331-01 in the City Creek Wash Area in the City of Highland.

C. Pursuant to AB X1 26 (enacted in June 2011) and the California Supreme Court’s decision in *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, 53 Cal 4th 231 (2011), the Former Agency was dissolved as of February 1, 2012, the Successor Agency was constituted as the successor entity to the Former Agency, and an oversight board of the Successor Agency (the “Oversight Board”) was established.

D. Pursuant to Health and Safety Code Section 34175(b), all assets, properties, and contracts of the Former Agency have transferred to the control of the Successor Agency by operation of law.

E. The Parties now desire to have the City assume the Successor Agency’s rights, interests, duties, and obligations under the MOU.

NOW, THEREFORE, THE PARTIES, FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES AND AGREEMENTS CONTAINED HEREIN, DO AGREE AS FOLLOWS:

Section 1. Assignment and Delegation by Successor Agency.

(a) The Successor Agency assigns to the City, all of the Successor Agency’s rights, interests, duties, and obligations under the MOU

(b) The City agrees to such assignment and agrees to assume all such rights, interests, duties, and obligations under the MOU.

(c) This assignment will only be effective if it is approved by the Oversight Board. If the assignment is approved, the City shall provide to the District a copy of the Oversight Board's resolution approving the assignment.

Section 2. Notices.

All notices and other communications provided under the MOU may be in hard copy, electronic or telephonic form (including e-mail, fax or similar means) and shall be given to the party to whom sent at the address set forth below or other address, e-mail address, fax number as such party may hereafter specify. Each such notice or communication shall be effective (i) if given by fax, e-mail or other electronic means, when such communication is transmitted to the specified address and an answerback or confirmation is received, (ii) if given by certified or registered mail, return receipt requested, on the date of receipt appearing on the return postal receipt for notices given by certified or registered mail, (iii) if given by hand delivery, when delivered at the specified address. The address for receipt of notices may be changed upon written notice delivered in a manner consistent with this section.

If to City: City of Highland
 27215 Base Line
 Highland, California 92346
 Attention: Joseph Hughes, City Manager/Executive Director
 jhughes@cityofhighland.org
 (909) 864-8732

If to District: San Bernardino County Flood Control District
 825 E. Third Street
 San Bernardino, CA 92415
 Attention: Gerry Newcombe, Director
 (909) 387-7906

Section 3. Miscellaneous Provisions.

(a) The MOU may be amended from time to time by written instruments executed by the City and the District.

(b) This Assignment shall be binding on and inure to the benefit of the Parties hereto, their heirs, executors, administrators, successors in interest and assigns.

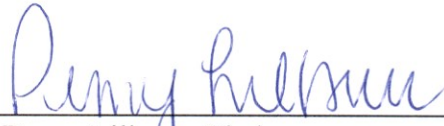
(c) The MOU shall not be assignable by any Party without the prior written consent of the other Parties.

(d) This Assignment shall be governed by, interpreted under, construed and enforced in accordance with, the laws of the State of California.

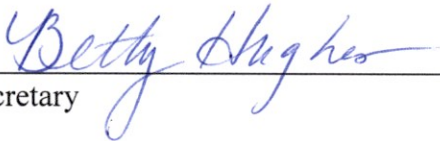
(e) This Assignment may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same agreement.

IN WITNESS WHEREOF, the Parties have caused this Assignment to be executed by their duly authorized officers.

**SUCCESSOR AGENCY TO HIGHLAND
REDEVELOPMENT AGENCY**

By 
Penny Lilburn, Chairperson

ATTEST:


Secretary

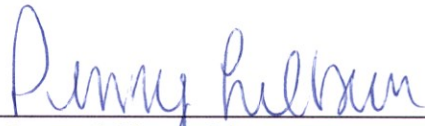
APPROVED:

**OVERSIGHT BOARD OF THE
SUCCESSOR AGENCY TO THE
HIGHLAND REDEVELOPMENT
AGENCY**

By 
Chair

Date: 04/13/2017

CITY OF HIGHLAND

By 
Penny Lilburn, Mayor

ATTEST:


Betty Hughes, MMC
City Clerk

**SAN BERNARDINO COUNTY FLOOD
CONTROL DISTRICT, a political subdivision
of the State of California**

By _____
Chairman, Board of Directors

ATTEST:

EXHIBIT - B

Successor Agency assignment of the TREH Partners ENA to the City of Highland

ASSIGNMENT OF EXCLUSIVE NEGOTIATING AGREEMENT

This Assignment of the Exclusive Negotiating Agreement (this "Assignment"), dated as of April 11, 2017, is entered into by and among the Successor Agency of the Highland Redevelopment Agency (the "Successor Agency"), the City of Highland (the "City"), and TREH Partners XV LLC, a California limited liability company ("TREH Partners").

Herein, the Successor Agency, the City, and TREH Partners are collectively referred to as the "Parties," with each being a "Party."

Recitals

A. The Highland Redevelopment Agency (the "Former Agency") was a duly constituted redevelopment agency pursuant to provisions of the Community Redevelopment Law set forth in Section 33000 et seq. of the Health and Safety Code of the State of California.

A. On December 16, 2008, the Former Agency and the San Bernardino County Flood Control District ("District") entered into a "Memorandum of Understanding Between the Highland Redevelopment Agency (RDA) and the San Bernardino County Flood Control District (District) Regarding the sale of District Property (Property) Located at the Northeast Quadrant of the 210 FWY and Greenspot Road in the City of Highland" ("MOU") regarding the Former Agency's intent to purchase from the District a portion of the real property identified as Assessor Parcel No. 1201-331-01 in the City Creek Wash Area in the City of Highland ("Property").

B. Pursuant to AB X1 26 (enacted in June 2011) and the California Supreme Court's decision in *California Redevelopment Association, et al v Ana Matosantos, et al.*, 53 Cal.4th 231 (2011), the Former Agency was dissolved as of February 1, 2012, the Successor Agency was constituted as the successor entity to the Former Agency, and an oversight board of the Successor Agency (the "Oversight Board") was established.

C. Pursuant to Health and Safety Code Section 34175(b), all assets, properties, and contracts of the Former Agency have transferred to the control of the Successor Agency by operation of law.

D. On April 22, 2014, the Successor Agency, the City, and TREH Partners XV LLC, a California Limited Liability Company ("TREH Partners") entered into an Exclusive Negotiating Agreement ("ENA") whereby the parties agreed to negotiate, on an exclusive basis, for TREH Partners to purchase the Property from the Successor Agency. The term of the ENA was scheduled to expire on December 31, 2014.

E. On December 31, 2014, the Successor Agency, the City, and TREH Partners, entered into a first extension of the ENA extending the ENA period by six months with the term expiring on June 30, 2015.

F. On April 28, 2015, the Successor Agency, the City, and TREH Partners, entered into a second extension of the ENA extending the ENA period by one year with the term expiring on June 30, 2016.

G. On February 23, 2016, the Successor Agency, the City, and TREH Partners, entered into a third extension of the ENA extending the ENA period by nine months with term expiring on March 30, 2017.

H. On February 27, 2017, the Successor Agency, the City, and TREH Partners, entered into a fourth extension of the ENA extending the ENA period by two years with the term expiring on March 31, 2019

I. In 2017, the Department of Finance notified Successor Agency staff that it would not be approving either the Successor Agency's purchase of the Property from the District, or sale of the Property to TREH Partners, as enforceable obligations. The Department of Finance recommended that the City take over the Successor Agency's obligations under the ENA.

J. The Parties desire to have the City assume the Successor Agency's rights, interests, duties, and obligations under the ENA.

NOW, THEREFORE, THE PARTIES, FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES AND AGREEMENTS CONTAINED HEREIN, DO AGREE AS FOLLOWS:

Section 1. Assignment and Delegation by Successor Agency.

(a) The Successor Agency assigns to the City, all of the Successor Agency's rights, interests, duties, and obligations under the ENA.

(b) The City agrees to such assignment and agrees to assume all such rights, interests, duties, and obligations under the ENA

(c) This Assignment will only be effective if it is approved by the Oversight Board. If the Assignment is approved, the City shall provide to TREH Partners a copy of the Oversight Board's resolution approving the Assignment.

Section 2. Miscellaneous Provisions.

(a) The ENA may be amended from time to time by written instruments executed by the City and TREH Partners.

(b) This Assignment shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors in interest and assigns.

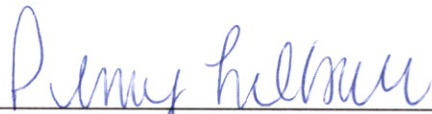
(c) The ENA shall not be assignable by any Party without the prior written consent of the other Parties.

(d) This Assignment shall be governed by, interpreted under, construed and enforced in accordance with, the laws of the State of California.

(e) This Assignment may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts shall together constitute but one and the same agreement.

IN WITNESS WHEREOF, the Parties have caused this Assignment to be executed by their duly authorized officers

**SUCCESSOR AGENCY TO HIGHLAND
REDEVELOPMENT AGENCY**

By 
Penny Lilburn, Chairperson

ATTEST:


Secretary

APPROVED:

**OVERSIGHT BOARD OF THE
SUCCESSOR AGENCY TO THE
HIGHLAND REDEVELOPMENT
AGENCY**

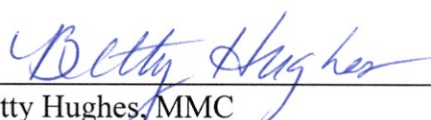
By 
Chair

Date: 04.13.17

CITY OF HIGHLAND

By 
Penny Lilburn, Mayor

ATTEST:


Betty Hughes, MMC
City Clerk

**TREH PARTNERS XV LLC, a California
limited liability company**

By 
Thomas N. Robinson II
Manager

ATTEST:


LISA SANDOW
EXECUTIVE ASSISTANT

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)
CITY OF HIGHLAND)

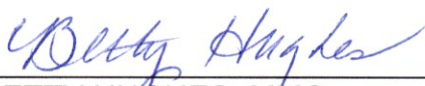
I, BETTY HUGHES, Secretary of the Oversight Board of the Successor Agency to the Highland Redevelopment Agency of the City of Highland, California, do hereby certify Oversight Board of the Successor Agency to the Redevelopment Agency Resolution No OBSARDA2017-003 was duly and regularly adopted by the Oversight Board of the Successor Agency to the Highland Redevelopment Agency, Highland, California, at a special meeting thereof held on the 13th day of April, 2017, by the following vote.

AYES: Haller, Huff, Mainez, McCallon, Saks

NOES None

ABSTAIN None

ABSENT: Christakos, Viricel



BETTY HUGHES, MMC
SECRETARY