



COUNCIL AGENDA: 6/20/23  
FILE: 23-930  
ITEM: 8.2

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Nanci Klein  
John Ristow

**SUBJECT:** SEE BELOW

**DATE:** May 30, 2023

Approved

Date

6/6/23

**COUNCIL DISTRICT: 3**

**SUBJECT: PURCHASE AND SALE AGREEMENT FOR PROPERTY LOCATED AT  
517 WEST SAINT JOHN STREET**

## RECOMMENDATION

Adopt a resolution:

- (a) Authorizing the City Manager, or designee, to negotiate and execute a Purchase and Sale Agreement between the City of San José and Arlethea K. Thorson, Trustee of the Survivor's Trust of the Loren and Arlethea Thorson 1999 Trust, and Richard and Joan Della Maggiore, Trustees of the Richard Della Maggiore and Joan Della Maggiore Revocable Living Trust dated November 13, 1991, for the acquisition of the property known as 517 West Saint John Street, identified as Assessor's Parcel Number 259-29-091, in the amount of \$5,100,000 plus closing costs estimated at \$10,000 and tenant relocation costs estimated at \$275,000;
- (b) Authorizing the City Manager, or her designee, to issue an I.R.S. Section 1033 exchange letter to the sellers; and
- (c) Authorizing the City Manager, or her designee, to execute all other documents necessary to effectuate the transfer of property to the City.

## SUMMARY AND OUTCOME

The pending development of existing surface parking lots is expected to exacerbate a shortage of public parking spaces in the Diridon Station/SAP Center area. This is a significant issue for the ongoing operations of events using the SAP Center. The City is contractually obligated to

provide public parking spaces made available for use by patrons of the SAP Center, including the construction of a public parking facility. Acquisition of the subject property, located at as 517 West Saint John Street, is necessary for the City to consolidate the properties needed for the construction of a public parking facility on properties described as Lot E. (See **Attachment A - Lot E Parking Facility Footprint.**) The total cost to acquire this property is anticipated to be \$5,100,000, plus closing costs estimated at \$10,000, and tenant relocation costs estimated at \$275,000. Once the negotiated property transaction is complete, the City would dismiss the related eminent domain action to acquire the property.

## **BACKGROUND**

In 2016, a dispute with Sharks Sports & Entertainment LLC (SSE) arose over Trammel Crow's planned redevelopment of property on Delmas Avenue near the SAP Center. A settlement of this dispute between the City, SSE, and Trammel Crow was executed on December 1, 2016 (2016 Settlement Agreement). The City and SSE are parties to the Second Amended and Restated Arena Management Agreement dated August 15, 2018, first amended on December 14, 2018, and amended for a second time on June 8, 2021 (AMA). The AMA incorporated terms of the 2016 Settlement Agreement and provided that the City must ensure certain available parking requirements for SAP Center patrons.

In the AMA, the City committed to providing 6,350 parking spaces within one-half mile of the SAP Center, of which 3,175 parking spaces shall be available within one-third mile of SAP Center, with provisions for up to 400 additional employee parking spaces within one-third of a mile of SAP Center. The Lot E footprint is located within one-third mile of SAP Center, and has been planned and located in the manner which is most compatible with the greatest public good and the least private injury to assemble the parking necessary for the surrounding uses.

The 2016 Settlement Agreement specified that Trammel Crow would contribute \$4,000,000 to be restricted for the acquisition of properties necessary to construct Lot E north of the SAP Center. The City agreed to "use its best efforts" to purchase the necessary properties with the funds provided. The 2016 Settlement Agreement also specified that SSE lease its adjacent property to the City for \$1 per month.

Pursuant to Section 3.1 of the First Amendment to the AMA, the City must acquire all parcels within Lot E, including the subject property, to facilitate the construction of the Lot E public parking facility, and therefore fulfill the City's 2016 Settlement Agreement obligation for the provision of adequate public parking proximate to SAP Center.

On October 31, 2017, City Council approved the acquisition of the 525 West Saint John Street property located at the northeast corner of North Montgomery Street and West Saint John Street for a purchase price of \$2,966,436. This acquisition provided two of the parcels necessary for the construction of Lot E.

## **ANALYSIS**

### ***517 West Saint John Street***

The subject property is a 19,166 square foot property (0.44 acres) located at the northwest corner of West Saint John Street and North Autumn Street. (See **Attachment B** - Subject Property Assessor's Parcel Map.) The property is owned by Arlethea K. Thorson as to a 50 percent interest and the Trustees and Successor Trustees of the Richard Della Maggiore and Joan Della Maggiore Trust as to the other 50 percent interest. The site has a General Plan designation of Downtown and zoning of Downtown Primary Commercial. The property is within the Diridon Station Area Plan. Per a City-commissioned appraisal, the highest and best use of the property is for the construction of a high-density commercial project as allowed by the Downtown General Plan designation, Downtown Primary Commercial zoning designation, and the Diridon Station Area Plan.

The site is currently improved with an approximately 10,020 square foot industrial building. A tile business and SSE both lease space on the property. Staff engaged Overland, Pacific, & Cutler for relocation services to determine appropriate relocation benefits due to the tenants. The City's required relocation payments will be calculated by Overland, Pacific, & Cutler. The recommendations in this memorandum will authorize the City Manager to proceed with the final relocation plan for the businesses on this property, as drafted by Overland, Pacific, & Cutler in conformance with California relocation law, provided the relocation payments do not exceed the City Manager's contract authority of \$350,000. Relocation costs based on preliminary assessments are estimated at \$275,000.

The City first made an offer to acquire the property for \$1,700,000 on November 1, 2016. The offer price was based on an appraisal of fair market value commissioned by the City at the time. The City's offer was ultimately rejected, and the property owner did not provide a counteroffer at the time. The City made a revised offer to purchase the property for an updated purchase price of \$2,370,000 on October 23, 2018. The City's offer was rejected, and the property owner countered at \$7,666,400 (\$400 per square foot), which was more than three times the appraised fair market value at the time.

The City again made a revised offer to purchase the property for an updated purchase price of \$4,800,000 on October 26, 2021, based on an appraisal update. The City received a counteroffer of \$5,500,000 on January 18, 2022, based on an appraisal report commissioned by the property owner.

A City-commissioned review appraisal of the property owner's appraisal concluded that it did not adequately account for the property's inclusion in the Diridon Station Area Plan. The Diridon Station Area Plan, adopted May 25, 2021, has several applicable development regulations including maximum building height and use considerations for properties within the Outer Safety Zone of the San José Mineta International Airport, which prohibits any use that is mostly occupied by children, the disabled, or the elderly to protect the public's safety. Non-residential uses are encouraged over residential uses. The property owner's appraisal considered comparable

sales that included residential use, which provide an inappropriately high basis for the valuation of the property. However, in an effort to avoid the potential use of eminent domain, the City made a subsequent higher offer for the purchase price of \$5,000,000. Staff received a phone call response from the property owner indicating that they are not interested in selling the property for the City's final offer.

On October 18, 2022, City Council approved and adopted a resolution of public interest and necessity required for the acquisition through condemnation of 517 West Saint John Street, which authorized the City to acquire the subject property and exercise the power of eminent domain. Subsequent to the City's declaration of a Resolution of Necessity to acquire the property via eminent domain, the owner contacted staff with a counteroffer for a purchase price of \$5,100,000. This is \$300,000 above the City's appraised value, and \$400,000 below the owner's appraised value of \$5,500,000. The City has since commenced eminent domain proceedings to preserve its ability to acquire the property in case this transaction is not completed. Staff recommends accepting this settlement offer to avoid the need to complete the condemnation legal proceedings, which is expensive for the landowner and the City, and limit the City's use of its condemnation authority.

### **Climate Smart San José Analysis**

The recommendation in this memorandum aligns with one or more Climate Smart San José energy, water, or mobility goals. Specifically, the proposed garage will be available to the public (shared) at a cost, and is expected to serve various local needs, including parking for transit riders accessing Diridon Station; patrons of the SAP Center; and local businesses and amenities (e.g., Arena Green, Little Italy). Having the parking be shared and priced at market rate aligns with the City's strategy to make efficient use of parking resources and to charge for them, helping to reveal the full cost of driving. The Lot E garage will also partially offset parking expected to come offline nearby, due to new development and transit projects, making much of this parking a replacement of, rather than an addition to, existing spaces.

### **EVALUATION AND FOLLOW-UP**

Approval of the recommendations will direct staff to negotiate and execute a Purchase and Sale Agreement, complete title and environmental due diligence, and prepare a compliant relocation assistance plan for the current occupants prior to completing the acquisition of 517 West Saint John Street. These actions will avoid the use of eminent domain to acquire the property.

Staff will continue to pursue the acquisition of the other necessary properties to construct the Lot E garage, 150 North Montgomery Street, which is currently subject to an eminent domain proceeding, 170 North Montgomery Street, and 151 North Autumn Street, which is owned by SSE and must be purchased by the City per the AMA.

After the City acquires all the necessary land, the Public Works Department will be responsible for the delivery of Lot E public parking.

**COST SUMMARY/IMPLICATIONS**

The purchase of the subject property, \$5,100,000 plus closing costs estimated at \$10,000, and tenant relocation expenses estimated at \$275,000, will be funded by the Greater Downtown Parking Inventory appropriation in the General Purpose Parking Capital Fund. Funds for additional land acquisition, construction of the new parking facility, and the associated operations and maintenance costs will be proposed as part of future City Council actions.

The funds available in the General Purpose Parking Capital Fund for capital projects depend on revenue received from the garage, lot and meter activity, and associated revenue. Although parking activity has increased over the last couple of years, it remains below pre-pandemic levels and is anticipated to take several more years to return to pre-pandemic levels. As a result, while the General Purpose Parking Fund has adequate reserves to fund this memorandum’s recommended actions, funding is limited in the near term to fully provide for the acquisition of the remaining parcels (150 and 170 North Montgomery Street and 151 North Autumn Street) and the construction phase of the Lot E public parking structure.

**BUDGET REFERENCE**

The table below identifies the fund and appropriation proposed to fund the purchase of property recommended as part of this memorandum.

<b>Fund #</b>	<b>APPN #</b>	<b>Appn. Name</b>	<b>Total Appn.*</b>	<b>Amount for Contract</b>	<b>2023-2024 Proposed Capital Budget Page</b>	<b>Last Budget Action (Date, Ord. No.)</b>
559	7885	Greater Downtown Parking Inventory	\$2,200,000	\$5,385,000	695	N/A

\* The 2023-2024 Capital Budget was released on April 26, 2023 and scheduled for City Council approval on June 13, 2023 and adoption on June 20, 2023. A recommendation to rebudget \$4.8 million for this project from 2022-2023 is included in the Manager’s Budget Addendum #60, *Recommended Amendments to the 2023-2024 Proposed Operating and Capital Budgets* to ensure there is sufficient funding for this purchase.

**COORDINATION**

This memorandum has been coordinated with the City Attorney’s Office, the City Manager’s Budget Office, and the Departments of Environmental Services, Planning, Building, and Code Enforcement, and Public Works.

**PUBLIC OUTREACH**

This memorandum will be posted on the City’s Council Agenda website for the June 20, 2023 City Council meeting.

**COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

**CEQA**

Initial Study/Addendum to the Downtown Strategy 2040 Final Environmental Impact Report for the Lot E Parking Structure Project (Resolution No 78942).

**PUBLIC SUBSIDY REPORTING**

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City’s Open Government Resolution.

/s/  
JOHN RISTOW  
Director of Transportation

/s/  
NANCI KLEIN  
Director of Economic Development  
and Cultural Affairs

For questions, please contact Kevin Ice, Senior Real Estate Manager, Office of Economic Development and Cultural Affairs, at (408) 535-8197 or Jessica Zenk, Deputy Director, Department of Transportation, at (408) 535-3543.

**ATTACHMENTS**

- Attachment A: Lot E Parking Facility Footprint
- Attachment B: Subject Property Assessor’s Parcel Map

**ATTACHMENT A**

**Lot E Parking Facility Footprint**



