



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Kim Walesh

**SUBJECT: PURCHASE AND SALE  
AGREEMENT FOR COLEMAN  
AVENUE PROPERTY**

**DATE:** September 7, 2018

Approved

*D. DSYL*

Date

*9/7/18*

**COUNCIL DISTRICT: 3**

## RECOMMENDATION

Adopt a resolution:

- a) Declaring the City property located at 1123 Coleman Avenue, APN 230-46-084 plus portions of APN 230-46-071 and APN 230-46-072, surplus to the needs of the City.
- b) Authorizing the City Manager to negotiate and Execute a Purchase and Sale Agreement with Coleman Airport Partners (CAP) for approximately 12.674-acres of land located at 1123 Coleman Avenue, APN 230-46-084 plus portions of APN 230-46-071 and APN 230-46-072, as well as any related documents necessary to effectuate the land transaction consistent with the attached Term Sheet. The sale price is \$24,843,575 or \$45 per square foot of land.

## OUTCOME

Adoption of these recommendations facilitates job and revenue growth at the Coleman Airport property, provides funds necessary to construct soccer fields that is the last remaining project of the 2000 Measure P General Obligation Bond, provides General Fund resources, and resolves the outstanding AIG option on former Redevelopment properties near Diridon Station, related to the former consideration of potential baseball stadium.

## BACKGROUND

The following is a summary of actions that enabled the development of the Coleman property with commercial, stadium, and recreation uses, highlighting those actions that are most relevant to the recommendations in the staff report.

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**Subject: Purchase and Sale Agreement for Coleman Avenue Property**

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In 2005, the City of San Jose purchased 74.8-acres of land located at 1125 Coleman Avenue from FMC, financed through a combination of bonds issued by the City of San Jose Financing Authority, a loan from the Housing and Urban Development (HUD) and a Brownfields Economic Development Initiative grant from HUD (a link to the December 16, 2014 memorandum describing project funding: <http://sanjoseca.gov/DocumentCenter/View/38144>). The property has been known as the "Airport West" property and the "Coleman" property. The original purchase of land was intended to support construction of the Airport in the short term and to facilitate economic development, including job and revenue growth, in the long term. Approximately 51-acres of the Airport West property were used by the Airport for construction lay-down and other related Airport uses through fiscal year 2010.

After the City's acquisition of the property, the City received a proposal from Coleman Airport Partners, LLC ("CAP" or "Developers" who included Deke Hunter, Ed Storm, Lew Wolff and John Fisher) for purchase and development of the property. In May 2008, the City Council approved a Memorandum of Understanding with the Developers that outlined the price, option period, and uses on the property including an 18,000 seat Major League Soccer Stadium and a commercial development with Office R&D, hotel, and retail uses. The commercial development portion of the project was required to provide 5,000 parking spaces for the San Jose Earthquakes games and events.

On June 23, 2009, Council approved a Memorandum of Understanding (MOU) with Earthquakes Soccer, LLC to develop a 2.6-acre practice field. On January 25, 2010 the City and the Earthquakes entered into a lease for the soccer practice field. The lease payment for the soccer practice fields is \$24,000 annually and the lease expires in December of 2023. In early 2011, staff from the Department of Parks, Recreation, and Neighborhood Services, and the Office of Economic Development identified the Airport West property as an appropriate site for a soccer complex funded through Measure P bond proceeds. Identifying City-owned property for the fields was strategic because the project budget did not contemplate land acquisition. On May 29, 2012, the City Council approved inclusion of the City soccer fields at the Airport West site. On June 19, 2012 the City Council authorized award of a design-build contract for the soccer fields. Changes in environmental regulations and the discovery of asbestos in on-site soils significantly altered the scope of work and on December 16, 2014 Council terminated the design build agreement, and directed Public Works to develop design plans and re-bid the project. On January 8, 2016, the City Council deferred proceeding with the Coleman Soccer fields in order to evaluate the potential to create a larger soccer field complex on the east side of Coleman Avenue within the city land known as Guadalupe Gardens Park. On November 9, 2017 staff reported to the Neighborhood Services & Environment Committee that, after several months of working towards the placement of the fields in the Guadalupe Gardens, staff had been unable to identify a path forward for the project. While there were several challenges in placing the soccer fields at this location, the most significant challenge was related to State and local guidelines for development within an airport "inner safety zone" as defined by Caltrans and the County Airport Land Use Commission (ALUC). An inner safety zone is an area close to the ends of an airport's runways in which land uses and density should be restricted due to the risk of an aircraft accident or emergency landing. At that time, PRNS began considering building the soccer complex on the Airport West site as originally planned, while also evaluating other properties that might be

suitable for a soccer complex. As additional consideration was given to the Airport West site as a location for a soccer complex, it became apparent that the location was less than ideal, given its geographic location and the extensive proposed commercial development.

In March of 2018, the Developers completed the purchase of the land designated for commercial development. With the March transaction, the City retired all remaining debt on the Airport West property. The Hunter Storm group has signed a lease with the 8x8 company for 160,000 square feet of space and Roku has signed a lease for 600,000 square feet of space. The Developer is in discussions with additional tenants that could result in the full R&D occupancy at the property if the Developer can purchase the soccer field land.

## ANALYSIS

### Benefit of Selling Site to the Adjacent Property Owner

Since 2005, the City has envisioned an amenity-rich jobs environment at the Airport West site. Approximately 41-acres of land have been zoned for 1.5 million square feet of Office R&D, a hotel, and up to 50,000 square feet of retail. Full build out of the site could accommodate 6,000 jobs. The site is located adjacent to the San Jose Mineta International Airport, the Santa Clara Caltrain Station, and Avaya Stadium. The development project is required to provide 5,000 parking spaces to accommodate parking for Avaya Stadium.

The opportunity to maximize density, fully build out the site, and accommodate the shared parking requirement for Avaya Stadium is best achieved by selling the remainder of the site to the adjacent property owner. The City has a provision enabling direct sale to an adjacent property owner. Section 4.20.070 of the Municipal Code states that surplus real property for which the City has paid or given consideration of any kind may be sold to the owner of property adjacent to such surplus city property through direct negotiation at the fair market value of such real property.

As mentioned above, the Developer has commitments for 760,000 square feet of the 1.5 million square feet of Office R&D entitled for the site. CAP is in discussions with other tenants that could achieve the full build out of the Office R&D entitlement, but achieving the intended density on site will be not be feasible without the ability to purchase the remaining 10 acres of land. Sharing the 5,000 parking spaces with Avaya Stadium requires that the bulk of the Office R&D workers leave the premises on event days by 6:00 p.m. Due to heavy traffic in the area, the Earthquakes have found that a growing portion of event goers arrive at Avaya by 5:00 p.m., park their cars and go to one of the nearby restaurants to have dinner prior to events. Tenants and prospective tenants are aware of parking activities at Avaya and are concerned that shared parking requirements will impede operations of businesses located at the Coleman property. Office R&D tenants have also expressed concern about the limited space for parking due to security concerns. The proposed sale of roughly 10-acres of the 12.674-acres of City-owned land at Coleman Avenue will provide a cushion of space to allow the full build-out of the intended density at the Airport West site. Without access to the additional land, the Developer

will likely under build the Office, R&D component of the site by 350,000 to 400,000 square feet to retain more surface parking or build larger parking garages.

In addition, CAP is also seeking to purchase the 2.6-acres of land the Earthquakes currently lease for the Earthquakes practice field. On January 25, 2010 the City Council approved a lease for the Earthquakes practice field on the 2.6-acres of City owned land. The lease term ends on January 24, 2025. At the time the Earthquakes were practicing on property at Santa Clara University and the University could not continue to provide practice space for the Earthquakes. The Earthquakes management team searched for nearby land for development of a practice soccer field, the team was unsuccessful in securing an alternate location. It is necessary for the Earthquakes to have a practice field near the Stadium. The practice field, like the Stadium field is a grass field. The team cannot practice on the Stadium field to keep the Stadium field in a condition ready for game day play. The Earthquakes wish to own their practice field to support ongoing team operations.

#### Alternative, Better Location for City Soccer Fields

As previously mentioned PRNS has been planning to construct a soccer complex since the voters approved the “San Jose Safe Neighborhood Parks and Recreation Bond” in the year 2000. Measure P included funding for, among other things, “constructing new recreational sport facilities.” At this time, all bond-funded projects have been completed with the exception of two. The Arcadia Softball Complex is under construction and is anticipated to open for public use in summer 2019. The soccer complex is the last project to be delivered under the Measure P bond measure.

Since at least 2011, PRNS has been intending to use roughly 10 acres of City property at 1125 Coleman Road for construction of four artificial turf soccer fields with night lighting, concessions, and other ancillary improvements. As noted in the Background, the project went through numerous iterations at this location, but ultimately construction of the soccer complex has not progressed and PRNS does not believe this location is ideal for a soccer complex. In 2017 PRNS commissioned a study of various potential properties that might support a soccer complex. The preferred location would provide:

- A minimum of four soccer championship size fields to support tournament play with run-out zones, team seating, lighting, and scoreboards.
- Space and utility access to support a restroom and concession building.
- Adequate parking for four fields assuming 60 spaces per field.
- Adequate room for a gathering space including picnic tables, play areas and shade.

Based on the analysis completed, the former Agnews Hospital property was identified as a preferred location for a soccer complex. In addition to being of adequate size to accommodate four full size soccer fields and the necessary supporting amenities, there are limited athletic

fields in North San Jose so fields in this location will provide a key service to the community. This site was not owned by the City in 2011, so it was not an option for consideration at that time.

The Agnews property has the added benefit of being located adjacent to the future Santa Clara Unified School District facility that is proposed on the non-city owned portion of the former Agnews Hospital Site. The school complex use is highly compatible with a city soccer complex and the opportunity for shared use of facilities is being evaluated.

Staff recognizes that community engagement is critical and has not yet been completed around the Agnews site as of this Council action. If sale of the Coleman property is approved, PRNS will engage the North San Jose community, and the River Oaks Neighborhood in particular. PRNS needs to understand the community expectations for non-soccer related amenities and determine how these may be accommodated in the design. Based on the initial analysis completed under direction of PRNS, the Department of Public Works has developed initial concept plans and cost estimates for the development of a soccer complex at the Agnews Site.

The expected costs of development of the Agnews site for a soccer complex is \$36 million to \$42 million. The high estimate and range in costs is due to the many unknowns regarding the final scope of work. Specifically, the costs to complete the demolition and site cleanup are not known at this time. Once the project becomes more defined, the cost estimate will become more defined as well. Currently the cost estimate includes funding for neighborhood park features such as a playground and walking path. It is anticipated that this project can be designed and built within three years of receiving City Council approval to proceed.

If sale of the Airport West Property is authorized, then PRNS and Public Works will work diligently to complete development of a soccer complex and other park amenities. Work to be completed includes the following:

1. Community engagement to consider neighborhood -related park amenities that may be included with the soccer complex. The amount of funding available for neighborhood park amenities will depend upon the final estimate for the soccer complex.
2. Coordination with the Santa Clara Unified School District. Some initial discussions on this topic have been completed, but PRNS will proceed with these discussions.
3. Completion of the demolition of the buildings. This work has been on-going but was recently stalled due to the need for additional coordination with the Environmental Protection Agency on PCB's in the windows caulking.
4. Development of construction plans and specifications for the competitive bidding of the construction, concurrent with a finalized project cost estimate. It is anticipated that this project can be designed and built within three-years of receiving City Council approval to proceed.

The Administration understands that there are legal implications regarding how quickly the money must be spent because bond money was spent on the Coleman site. In light of this, Public Works is committed to bringing the soccer site to construction and beneficial use as quickly as possible. Additionally, the sale proceeds associated with the bond project acreage are legally required to be spent on parks and recreation capital projects, so if there are any savings from the development of the soccer complex at Agnews, staff will make recommendations for the use of these savings on other parks and recreation capital project priorities.

#### Declaring the City Property Located at 1123 Coleman Avenue Surplus to the Needs of the City

As mentioned above, Chapter 4.20 of the Municipal Code, Section 20.070, allows sale of surplus real property to the owner of adjacent property through direct negotiation at the fair market value of the property (FMV). Coleman Airport Partners (CAP) owns the property immediately adjacent to both the roughly 10-acre parcel and the 2.6-acre practice field. Also, section 4.20.100 of the Municipal Code, states that the City Council may, for purposes of economic development, convey any city-owned real or personal property through direct negotiation. The purchase price for such property shall be the fair market value, unless the City Council determines that a public purpose will be served by the sale of the property at less than fair market value. It is intended that the property located at 1123 Coleman Avenue shall be sold at fair market value (FMV).

#### Sale Terms

Staff has negotiated the following terms and conditions to guide the development of a Purchase and Sale Agreement with Coleman Airport Partners (CAP) or their affiliate:

**Purchase Price:** \$24,843,575 or \$45 per square foot for 12.674-acres (552,079 square feet) of land.

**Condition:** Property to be sold "As-Is." No reduction in price is provided for any required remediation of asbestos or any other hazardous material that may be found on site.

**Due Diligence:** 45 days.

**Close of Escrow:** To occur on or before December 15, 2018.

**Road Construction:** CAP or affiliate will construct Champions Drive and Way, previously a City obligation associated with the proposed soccer fields complex.

**Disposition of Athletics Investment Group (AIG) Option:** As a condition of the proposed Purchase and Sale Agreement for the Airport West Property, upon Council adoption of the Resolution authorizing the City Manager to negotiate and execute a Purchase and Sale Agreement, AIG will seek to dismiss the associated law suits on the option sites in the Diridon area and relinquish any options on the property sites. If the Court for any reason does not release the actions, AIG will relinquish the options and irrevocably quit claim its interests to the City.

**Legal Fees:** The City will be responsible for paying any legal fees associated with the pending appeal in the Stand For San Jose matter and the dismissal of the associated law suit currently in Superior Court, based on a mutually agreed upon amount. The City will not be responsible for any AIG legal fees.

**Potential Parking Lease on Airport Property East of Coleman Avenue:** The City will facilitate Earthquakes efforts to enter into a lease Agreement on Guadalupe River Park master planned land owned by the Airport for parking on up to four acres of land in support of Avaya Stadium operations.

#### Fair Market Value

To ascertain the Fair Market Value of the 1123 Coleman property, staff searched LoopNet for comparable properties in and around the Coleman Avenue Airport area that were sold in the last two-years. There were very few land-only parcels in the area. The bulk of the properties were comprised of land and buildings. There were two land-only transactions with sale prices in the low \$40-dollar range to the low \$50-dollar range. Staff believes the following factors diminish the value of the property from the high end of the comparable range.

- The property is deed restricted due to hazardous materials on site generated by prior industrial uses on site; the property cannot be used for housing.
- The property is significantly impacted by height restrictions associated with its immediate proximity to the Airport. The overall allowable floor area ratio (FAR) of .75 entitled on site is considerably less than the FAR allowed in North San Jose, Downtown, or Diridon Station Area where other Office R&D projects are under consideration at FARs of 4 or higher.
- Further diminishment of the site FAR due to the requirement to provide 5,000 parking spaces for Avaya Stadium, as a result limiting the capacity for Office R&D development on-site. For many Office R&D users there is a perceived reduction of value in the site because of the requirement for shared parking that raises security concerns for tenants or proposed tenants.
- The roughly 10-acre portion of the property is located at the rear of the property; the property has no visibility to Coleman Avenue.

#### Athletics Investment Group (AIG) Option

AIG has an option for approximately 4.88-acres of land in the Diridon area. AIG's principal owner is John Fisher, the principal owner of Coleman Airport Partners (CAP). The property at Diridon was intended to be incorporated into the proposed development of a new stadium for the Oakland Athletics baseball team in San Jose. The Option provided that AIG was to purchase the roughly 4.88-acres for approximately \$7 million dollars to facilitate construction of the proposed baseball stadium. If the land were to be used for other than a baseball stadium, the developers and the City would reach agreement on the fair market value of the property. The developers would pay the fair market value of the land as ultimately determined, deducting the \$7 million if paid for acquisition of land for a baseball stadium. Option was executed in 2014 for an initial period of four years with an additional three one-year period. If the extensions were executed, the Option would terminate in 2021.

The opportunity to relocate the Athletics Baseball team has not materialized and the Oakland A's are working to build a new stadium in Oakland. The AIG option in effect today inhibits the sale

of the roughly 4.88-acres subject to the AIG option in accord with current Council direction, approving the Exclusive Negotiations Agreement (ENA) for purchase of the Successor Agency to the Redevelopment Agency (SARA) Diridon parcels. As a condition of the sale of the Airport West property to Coleman Airport Partners, CAP will seek to dismiss lawsuits associated with the AIG option and/or quitclaim CAP's interests in the AIG option to the City.

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

Staff will work with the developer to ensure that the Purchase and Sale Agreement and associated documents are completed in a timely fashion to adhere to the specified timeline for the Close of Escrow as identified in this memorandum. Staff will work with the Developer for the timely relinquishment of the AIG option as outlined above. Staff will work with the Developer to facilitate future conversations with staff from the Airport and the Guadalupe River Park Conservancy to discuss the potential for parking on land east of Coleman Avenue.

Budget actions associated with the sale proceeds will be brought forward after the close of escrow.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's website and available for public review 10 days prior to the September 18, 2018 City Council meeting date, at which this item is scheduled to be heard.

### **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office, the City Manager's Budget Office, the Parks and Recreation Department, the Public Works Department and the Finance Department.

### **COMMISSION RECOMMENDATION/INPUT**

Commission review of the proposed sale of the City-owned land located at 1123 Coleman Avenue is not required for disposition of City property.

### **FISCAL/POLICY ALIGNMENT**

The project aligns with the City's Economic Development Strategy # 11 "Revise Key Land Use and Transportation Policies to Reflect the new Realities for the San Jose Economy" and Strategy # 12 "Encourage Sporting Teams, Events, and Facilities, Professional as well as Amateur."



### **COST SUMMARY/IMPLICATIONS**

There is no outstanding City debt on the Airport West property. All associated debt was eliminated when the Developer purchased the last approximately 19-acres of land designated for commercial development in March of 2018. As mentioned above the purchase price for the property is \$24,843,575 or \$45 per square foot for 12.674-acres of City owned land. This includes approximately \$19.7 million for roughly a 10-acre site associated with the bond project for community soccer fields and roughly \$5.1 million for the 2.6-acre site associated with the leased soccer fields to the Earthquakes.

After the close of escrow, staff will recommend the allocation of \$19.7 million of the sale proceeds to ensure the completion of the Agnews Soccer Complex and/or other parks projects. Combined with existing funding allocated in the 2019-2023 Adopted Capital Improvement Program of \$21 million, allocating \$19.7 million in sale proceeds toward the project will allow for a maximum project budget of \$40.7 million, which is near the top of the preliminary project budget range of \$36 - \$42 million. The completion of the soccer fields project will complete the entirety of the Measure P bond measure program. Proceeds of \$5.1 million associated with the sale of the land previously leased for Earthquakes practice fields will be recommended to be allocated to the General Fund for future allocation as part of the 2019-2020 budget development process.

### **CEQA**

Determination of Consistency with the FMC/Coleman Avenue Environmental Impact Report (SCH# 1999122059), the Airport West Stadium and Great Oaks Place Project Environmental Impact Report (SCH# 2009052053), the Envision San Jose 2040 General Plan Final Environmental Impact Report (SCH# 2009072096), the Envision San Jose 2040 General Plan Final Supplemental Environmental Impact Report (SCH# 2009072096), and addenda thereto (File No. PP18-083).

/s/

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Director of Economic Development

For questions, please contact Nanci Klein, Assistant Director of Economic Development, at (408) 535-8184.