



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Kim Walesh  
Jim Shannon

**SUBJECT:** ACQUISITION OF 1591 SENTER RD      **DATE:** February 13, 2020

Approved

Date

2/14/2020

**COUNCIL DISTRICT: 7**

## RECOMMENDATION

- a. Adopt a resolution authorizing the City Manager to negotiate and execute: (a) an Agreement with AV San Jose, LLC for the purchase by the City of 4.95 acres located at the southwest corner of East Alma Avenue and Senter Road, identified as Assessor's Parcel Number 477-38-016, for a price of \$8,500,000, inclusive of a \$100,000 buyer holdback for qualified environmental remediation expenses; and (b) all other documents necessary to effectuate the property transfer to the City.
- b. Adopt the following Fiscal Year 2019-2020 Appropriation Ordinance Amendments in the General Fund:
  - 1) Decrease the Fire Training Center Replacement Reserve in the amount of \$8,500,000; and
  - 2) Increase the Fire Training Center Relocation City-Wide Capital Improvements appropriation to the Fire Department in the amount of \$8,500,000.

## OUTCOME

Approval will authorize the City to negotiate and execute a purchase and sale agreement to acquire the property 4.95-acre property informally known as 1591 Senter Road. This acquisition will link under contiguous City ownership the Municipal Stadium/Sharks Ice properties to the north and the Central Service Yard property to the south.

Soil remediation would commence upon City ownership, using the holdback fund in escrow established out of the City's purchase price to cover costs up to \$100,000. This work is anticipated to take up to two years to complete and cost up to \$100,000.

If acquired, this parcel will remove the gap between two City-owned properties, allowing for a better and greater use of contiguous City-owned parcels. Currently, the City's operational needs for the Central Service Yard are increasing and the additional land would allow the Central Service Yard to accommodate these increasing needs.

## **BACKGROUND**

### **Purchase and Sale**

In 2017, the current owner of the property, AV San Jose LLC, received entitlements for a roughly 90,000 square foot ministorage project. A ministorage use is allowable in the Monterey Corridor area and does not interfere with adjacent uses. To obtain a Site Development permit for the ministorage project, the developer was required to dedicate an 18' wide trail to the City, roughly 0.79 acres of land or roughly 31,000 square feet of land. The functional parcel was decreased from 4.95 acres or roughly 215,970 square feet of land to 4.2 acres of land or roughly 185,000 square feet. The property owner had completed hazardous material remediation and had commenced grading on site.

Purchase of the property has been contemplated multiple times. The former Union Pacific Property sits between the City's holdings which include Shark's Ice and the Giants, San Jose Municipal Stadium on one side and the City's Central Service Yard on the other. From a real estate perspective, it is beneficial for the City to own the full property from Alma to Phelan and from 10<sup>th</sup> Street to Senter Road. Owning the full property will afford the City the ability to accommodate operational needs at the Central Service Yard, as City service demands continue to grow.

## **ANALYSIS**

In July 2019, staff commissioned an appraiser to value the property. The appraiser indicated the highest and best use of the property is as vacant land or low-intensity industrial/commercial development, such as the "proposed" use of mini-storage. Staff reviewed the appraisal report and found that the appraiser did not include the cost nor consider the value of entitlements already issued on the property for public/self-storage, which would increase the value of the property. The ministorage use is well suited to the odd, crescent shaped configuration of the site. No other industrial use other than ministorage could practically be accommodated and generate a reasonable rate of return on site. The City's Appraiser also did not attribute value to the 18' of trail dedicated to the City. The City will assume ownership of the full 4.95 acres and the trail is intended ultimately to be part of a walking and biking trail system that will be operational connecting east-west through Downtown San Jose.

In October 2019, City's appraiser submitted an appraisal report to include the cost and value of existing entitlements, pricing the property at \$6,560,000. The Seller indicates that they are poised to proceed with constructing the self-storage facility if the City does not acquire the property and disagrees with the price of \$9,000,000.

After many discussions, City staff and Seller came to an agreement that \$8,500,000 is the fair market value of the property. Staff and Seller believe that there is value in their planned construction of the self-storage facility. Public/self-storage facilities yield good return on investment and are fairly low maintenance. Staff and Seller agree that should be considered in



the valuation of the property since the property would be used for this purpose, if not for the City's acquisition.

Anticipated terms of the Purchase and Sale Agreement for the property include:

**Purchase Price - \$8,500,000**

**Costs and Fees** – City and Seller shall each pay fifty percent (50%) of the cost of any transfer taxes, recording fees, the Title Policy, escrow fees and any other closing costs.

**Closing Date** – The Closing Date shall occur sixty (60) calendar days after mutual execution of this Agreement.

**Escrow "Hold Back" for Soil Remediation** – Seller will agree to "Hold Back" \$100,000 of the Purchase Price shall remain in escrow to pay for costs associated with soil remediation.

There is soil contamination on the property, characterized by a Phase II Environmental Site Assessment report obtained by the City. The \$100,000 escrow hold-back fund will be used to remediate this contamination, and, per the purchase and sale agreement, could be used for the following expenditures:

- Regulatory oversight fees from the Santa Clara County Department of Environmental Health.
- Soil Management Plan (SMP) that documents risk management practices for contractors working with contaminated soil.
- Dust mitigation monitoring costs associated with site contaminants, excluding routine construction dust monitoring costs.
- Services of an environmental consultant to be on-site periodically during construction to implement the SMP and dust monitoring.
- Additional off-site soil disposal costs for soil that is "contaminated" versus soil that is "clean" and can be accepted at a local Class III landfill.
- A Final Completion Report, or similar report, documenting the work performed as required by County Health.
- In limited instances testing may occur for landfill disposal acceptance and potentially for confirmation testing as soil is moved for placement purposes.

**As-Is Acquisition** – The sale is acknowledged to be an "As-Is" sale, with the exception of the \$100,000 hold back.

**1033 Letter** – The City will provide to the Seller a letter that indicates that staff would recommend the Council consider the use of condemnation, should the City not successfully reach agreement with the Property Owner. A 1033 Letter affords the Seller certain tax advantages from the transfer of the property.

Soil remediation is expected to take up to two years and cost up to \$100,000. While this is an estimate of high-end costs, there is risk that total costs exceed this figure and additional funds must be spent to remediate soil contamination on site. The seller's liability for environmental remediation is limited to the \$100,000 in funds agreed to be held in escrow. Any remediation expense incurred in excess of \$100,000 will be the sole responsibility of the City.

The 1591 Senter property is a desirable location for a multitude of City projects, some of which are described above. City's Parks, Recreation, and Neighborhood Services department also plan to construct a 14-foot wide trail on the property, if acquired. However, the recommendation in this memorandum does not authorize any specific use or project on the property. Should the City acquire the property, any such project would be subject to future discretionary action and CEQA review.

#### Other Terms of Agreement

These include an additional 45-day due diligence window for the City upon execution, closing within 60 days of execution, and the seller's termination of construction agreements relating to the mini storage project entitled on the property.

### **CONCLUSION**

The City's purchase of the 1591 Senter property is a strategic opportunity that would allow City to own contiguous parcels along Senter Road, between Phelan Avenue and E. Alma Avenue. Acquisition of this property will complement the City's management of both the Sharks Ice/Municipal Stadium and the Central Service Yard holdings and will allow greater flexibility for potential projects relating to the above, or other, city uses.

Approval of the recommendation in this memo will direct staff to complete negotiations on a purchase and sale agreement for the 5-acre 1591 Senter Road property. Closing would occur within 60 days of execution of the purchase and sale agreement.

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

Staff will work with the property owner to complete the transaction. Future use of the property will adhere to all City requirements.

### **CLIMATE SMART SAN JOSE**

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda Website for the February 25, 2020 meeting.

### **COORDINATION**

The memorandum has been coordinated with the City Attorney's Office, as well as the Departments of Public Works; Planning, Building and Code Enforcement; Parks, Recreation and Neighborhood Services, and the Fire Department.

### **COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

### **COST SUMMARY/IMPLICATIONS**

This recommendation includes appropriation adjustments to fund the \$8.5 million purchase of this property using resources associated with the Fire Training Center Relocation, which is anticipated to be relocated to the Central Service Yard. As described above, however, the recommendation in this memorandum does not authorize any specific use or project on the property. Should the City acquire the property, any such project would be subject to future discretionary action and CEQA review.

### **BUDGET REFERENCE**

Fund #	Appn #	Appn. Name	Current Total Appn	Rec. Budget Action	2019-2020 Adopted Operating Budget Page	Last Budget Action (Date, Ord. No.)
001	417L	Fire Training Center Relocation	\$3,500,000	\$8,500,000	N/A	10/22/19, Ord. 30325
001	8553	Fire Training Center Replacement Reserve	\$36,835,000	(\$8,500,000)	N/A	10/22/19, Ord. 30325



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**CEQA**

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/  
KIM WALESH  
Deputy City Manager  
Director of Economic Development



JIM SHANNON  
Budget Director

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

Attachment

ATTACHMENT

