



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nanci Klein
Matt Cano
David Tindall

**SUBJECT: PURCHASE AND SALE
AGREEMENT FOR
300 ENZO DRIVE**

DATE: March 1, 2021

Approved

Date

3/4/2021

COUNCIL DISTRICT: 2

RECOMMENDATION

Adopt a resolution authorizing the City Manager, or his designee, to negotiate and execute:

- (a) A Purchase and Sale Agreement with Mersho Investments LLC, a California limited liability company for the City's as-is purchase of 4.77 acres of land, containing a 97,831 square foot manufacturing/warehouse building, located at 300 Enzo Drive, further identified as Assessor's Parcel Number 678-06-022, for the price of \$18,500,000, for the future potential use as a Police Academy and Training Center; and
- (b) All other necessary documents to complete the property transfer to the City.

OUTCOME

Approval of the recommendation in this memorandum would authorize the City Manager, or his designee, to negotiate and execute a Purchase and Sale Agreement with Mersho Investments LLC, a California limited liability company, to acquire the property located at 300 Enzo Drive (APN 678-06-022) for a new Police Academy and Training Center.

BACKGROUND

In 2002, Measure O, the "9-1-1, Fire, Police, Paramedic and Neighborhood Security Act" ("Neighborhood Security Act Bond Measure") was approved, which included the construction of a South San Jose Police Substation ("Substation"). The Substation on Great Oaks Parkway was built with the anticipation of gaining efficiencies through decentralizing police services, and enhancing community presence specifically improving response times to high priority calls in the Southern Patrol Division.

In 2014-2015, as a cost savings measure approved by City Council, the Substation was repurposed to temporarily house the Training Unit, which moved out of a leased building and into the Substation to deliver Department training. In 2015-2016, the Police Academy temporarily moved to the Substation to allow the Department to prepare to hire larger numbers of police recruits to help restore staffing levels.

On September 11, 2018, the Mayor and City Council approved a report from City staff approving project categories for a pending November 2018 General Obligation Bond Measure. A potential project included in the approved report was a “new police training center.” On November 6, 2018, the City of San José voters passed Measure T — the Disaster Preparedness, Public Safety and Infrastructure Bond, which authorized the City to issue up to \$650 million in general obligation bonds to fund public safety, emergency and disaster responses, infrastructure, and roads. It was identified that \$175 million of the General Obligation bond are to fund public safety projects.

The Police Academy and Training Unit continues to operate out of the Substation on Great Oaks Parkway. The Commission on Peace Officer Standards and Training (POST) has allowed the Department to operate at this location with the understanding that a new facility would be acquired. To meet POST requirements, staff have been working to identify properties that will be used as a permanent solution and that would accommodate proper Training and Academy space needs. Additionally, securing a permanent location for these units will allow the Substation to be used for its original intent of gaining efficiencies through decentralizing police services, enhancing community presence, and improving response times to calls in the Southern Division.

In April 2020, staff identified a potential site at 300 Enzo Drive, further identified as Assessor’s Parcel Number 678-06-022 (“Property”), when it was listed for sale for \$18,500,000. The Property is currently owned by Mersho Investments LLC, a California limited liability company (“Seller”) and consists of a 97,831 square foot two-and-a half story building built in 1998 situated on a 4.77-acre lot. It is located in an industrial portion of the Edenvale district in south San Jose, in close proximity to the Coyote Creek Trail, the Police Substation and Highway 101.

In June 2020, the property was relisted for sale at a price of \$21,500,000. After negotiations, City staff and Seller came to an agreement and Seller accepted City’s offer to purchase the Property for \$18,500,000.

ANALYSIS

A City-commissioned appraisal report dated April 2020 valued the Property at \$21,300,000. Staff also conducted its own analysis on recent Industrial Flex property sales in the South San Jose submarket and found that prices have been trending upward on a per square foot basis throughout 2019 and 2020. Market rents for Industrial Flex properties in the South San Jose submarket also trended upwards, increasing by approximately \$1.51 per square foot per year

when comparing annual rents per square foot in the fourth quarters of 2019 and 2020. Given the above, staff has determined that \$18,500,000 is a fair market price for the Property.

Staff has completed due diligence on the Property and found no environmental or title issues. On August 2020, Environmental Services Department staff conducted a Phase I environmental review on the Property and found agricultural history on the site. However, the site is developed with paved parking and a building so there is no exposure to shallow soil and potential residual pesticides, if any are present. Therefore, Staff has determined no environmental remediation will be required and there is no risk to health and safety posed by the agricultural history on the Property given the anticipated use of the Property. If modifications are made to the Property that include earthwork, the soil will be evaluated for pesticides and mitigated, if required, to ensure health and safety of the occupants.

Should the City acquire the Property, the planning, design, and construction of any police training facility development may be subject to future discretionary action of the Council and may require additional CEQA review.

Staff has negotiated the following key terms to incorporate into a Purchase and Sale Agreement (“PSA”) with Seller:

| | |
|------------------------|--|
| Seller: | Mersho Investments LLC, a California limited liability company |
| Buyer: | City of San Jose, a municipal corporation of the State of California |
| Property: | 300 Enzo Drive, San Jose, CA 95138 (APN 678-06-022) consisting of a 97,831 square foot industrial building on 4.77 acres of land. |
| Purchase Price: | Eighteen Million Five Hundred Thousand Dollars (\$18,500,000) |
| Cost and Fees: | Closing costs shall be paid according to Santa Clara County custom. Seller shall pay the cost of any escrow charges, any documentary transfer taxes, and the City’s C.L.T.A. Title Policy. City and Seller shall split evenly any City transfer taxes, and other closing costs incidental to conveying the Property to the City. |
| Closing Date: | The Closing Date shall occur thirty (30) days after mutual execution of the PSA. |

- Leaseback:** The PSA will include a three month, no-cost, non-exclusive occupancy agreement to allow the Seller access to the property for the purpose of relocating its operations subject to standard City Right of Entry provisions.
- Stand Still:** Seller shall not initiate nor carry on negotiations for the lease or sale of the Property with any party other than the City unless either (1) Buyer or Seller fail to enter into a binding PSA by 30 days from the acceptance of these terms, or (2) Buyer and Seller agree in writing to abandon City's Offer to Purchase.
- As-Is Acquisition:** The sale is acknowledged to be an "As-Is" sale.
- 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. An IRS §1033 Letter affords the Seller certain tax advantages from the transfer of the property due to the potential of acquiring the property via condemnation.

The existing building delivers on POST's requirement to keep separate the Training and Academy functions with the available layout. The final design, improvements, and operations are to be determined after full design of the project is complete.

The nearby Coyote Creek trail will accommodate the need for running activities in the training program and provides a cost savings by not requiring additional land for a track. Other outdoor training activities (scenario, driving/maneuvering, exercise, marching, etc.) would be accommodated by utilizing a portion of the Subject Property's outdoor space/parking area. Once the property is acquired, it is anticipated to take two to three years for the property to be ready for occupancy.

Due to the need to utilize a large portion of the Property's parking area for outdoor training activities, available parking on site may be significantly impacted. To accommodate this, if needed, the following options are being considered:

1. Lease a portion of land from Caltrans on Rue Ferrari (1/4 mile from the Property). This site would require paving, fencing, and lighting improvements.
2. Lease parking space area from surrounding properties and transport participants to the facility.

Staff will make future budget recommendations to add funding from the Measure T funded Charcot Storm Drain Improvement project savings, once the cost estimate is finalized.

CONCLUSION

Approval of the recommendation will direct staff to complete negotiations and execution of a Purchase and Sale Agreement for the 300 Enzo Property for the relocation of the Police Academy and Training Center.

EVALUATION AND FOLLOW-UP

The acquisition of the subject Property is anticipated to be completed within 30 days, upon execution of the Agreement. The Public Works Department will be responsible for delivery of the Police Academy and Training Center Relocation project. The construction contract for this project is anticipated to come to Council for approval in October 2022.

CLIMATE SMART SAN JOSE

The recommendation in this memo aligns with one or more 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 March 16, 2021 Council Meeting.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, Department of Planning, Building and Code Enforcement, Environmental Services Department, and the City Manager's Budget Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

FISCAL/POLICY ALIGNMENT

The proposed project aligns with City's General Plan and Measure T Bond program.

COST SUMMARY/IMPLICATIONS

All costs to facilitate the recommended land acquisition of \$18,500,000 will be funded by Measure T – Police Training Center Relocation appropriation in the Public Safety and Infrastructure Bond. With a current project budget of \$43.8 million, after accounting for land acquisition costs, approximately \$25 million is remaining for project management, design, and construction costs. As staff transitions into the design phase, a more refined cost estimate will be developed. As discussed above, it is anticipated that the Measure T funded Charcot Storm Drain Improvement project is likely to have savings that will need to be reallocated toward this project.

Additional resources will be needed for furniture, fixtures, and equipment – which is not eligible to be paid with general obligation bond proceeds – as well as funding for ongoing operations and maintenance (O&M) costs such as custodial services, utilities, and staffing at the new academy and training facility. The cost estimate for the furniture, fixtures and equipment will be known once the design improvements for the new facility are finalized. At this time the O&M costs are preliminarily estimated at approximately \$2.1 million annually and does not include any lease costs or purchase of land for parking. Once the Police Academy and Training Units vacate the Police Substation, a phased approach will be taken to convert the Substation back to the original intent of gaining efficiencies through decentralizing police services, enhancing community presence, and improving response times to calls in the Southern Division. It is expected there will be one-time costs associated with the first phase of this transition, as well as increased ongoing O&M costs of a fully activated Substation which is estimated to cost approximately \$3.2 million more annually. For planning purposes, the total addition O&M cost of \$5.3 million for both the new academy and training facility and the Substation is tentatively scheduled to occur in 2023-2024 and will be incorporated in 2022-2026 Five-Year General Fund Forecast, which will be released in February 2021. Once the scope of these projects are refined, the annual operations and maintenance costs will be brought forward for City Council certification prior to awarding the construction contract.

BUDGET REFERENCE

The table below identifies the fund and appropriations to fund the purchase of Property recommended as part of this memorandum.

| Fund # | Appn # | Appn. Name | Current Total Appn | Amount for Purchase | 2020-2021 Adopted Capital Budget Page | Last Budget Action (Date, Ord. No.) |
|--------|--------|---|--------------------|---------------------|---------------------------------------|-------------------------------------|
| 498 | 415D | Measure T – Police Training Center Relocation | \$23,149,000 | \$18,500,000 | V-489 | 10/20/2020 Ord. No. 30494 |

CEQA

Exempt, File No. ER21-017, CEQA Guideline Section 15061(b)(3).

/s/
NANCI KLEIN
Director of
Economic Development

/s/
MATT CANO
Director of
Public Works

/s/
DAVID TINDALL
Acting Chief,
Police Department

For questions, please contact Kevin Ice, Senior Manager, Real Estate Services at kevin.ice@sanjoseca.gov or David French, Public Works Division Manager at David.french@sanjoseca.gov.

Attachment

Exhibit A
Aerial Map of Property

