



**DATE:** May 7, 2019

**CATEGORY:** New Business

**DEPT.:** Community Development

**TITLE:** **Approval of, and Appropriation of Funds for, a Long-term Lease with Option to Purchase of Real Property Located at Southwest Corner of East Evelyn Avenue and Pioneer Way (APN 160-65-008)**

### **RECOMMENDATION**

Take the following actions to appropriate funds and approve a long-term lease, with an option to purchase, for the unimproved real property located at the southwest corner of East Evelyn Avenue and Pioneer Way (APN 160-65-008):

1. Approve a long-term lease with an option to purchase for the real property described above from the Santa Clara Valley Transportation Authority.
2. Approve a midyear capital improvement project entitled "Lease/Purchase of Evelyn Lot."
3. Appropriate \$11,715,000 from the Housing Impact Fund to the new capital project for the lease of the property (\$11,000,000) and incidental and administrative costs (\$715,000). (Five votes required)
4. Appropriate \$2,130,000 from the Housing Impact Fund to the new capital project for the purchase option of the property (\$2,000,000) and incidental and administrative costs (\$130,000). (Five votes required)
5. Appropriate an additional \$120,000 from the Housing Impact Fund for consultant services and other costs associated with negotiating the acquisition and marketing the property. (Five votes required)
6. Authorize the City Manager or his designee to execute all documents and take all necessary actions related to the long-term lease, and exercising of the purchase option for the property.
7. Authorize the City Manager to execute minor amendments to the lease or option to purchase so long as the fiscal impact is less than \$100,000.

## **BACKGROUND**

On March 20, 2018, September 25, 2018, and most recently April 9, 2019, City staff met with the City Council in Closed Session to receive direction on price and terms for the acquisition of a 2.091-acre parcel located at the corner of East Evelyn Avenue and Pioneer Way.



## **ANALYSIS**

As directed by Council, staff continued negotiations with the Santa Clara Valley Transportation Authority (VTA) negotiations team and agreed to the terms outlined in this report which are consistent with Council direction. The purpose of this agenda item is to present the terms of the lease to the City Council for approval. The VTA Board of Directors reviewed and approved these terms on April 4, 2019.

### **Ground Lease**

The City and the VTA Board will enter into a long-term, 65-year lease. The City will have both an option to purchase the property and an option to extend the lease for an additional 34 years. At the lease execution, the City will prepay \$11 million to the VTA. An additional \$2 million payment will be due when the Purchase Option is exercised no later than the end of the tenth-year anniversary of the lease execution (Year 11 of the

lease). The City can exercise the purchase option as early as the first anniversary of the lease execution (Year 2 of the lease) and no later than the tenth-year anniversary (Year 11 of the lease). If the Option is not exercised, the City would continue to lease the property and owe an additional \$2 million payment no later than the end of the tenth anniversary (Year 11).

### Affordability Levels

Currently, VTA's Joint Development Policy caps affordability levels in developments at 60 percent area median income (AMI) for households with at least half the units at 50 percent AMI or below. The VTA has conducted economic modeling of the site that includes units up to 120 percent AMI, and VTA and City staff discussions have included a range of income levels up to the 120 percent AMI level. City staff proposed, and the VTA agreed to, allowing units to serve households up to 120 percent AMI on the entire site with a "weighted" average of 80 percent AMI, which would provide greater flexibility to meet various affordable housing goals, including serving the "missing middle."

### Additional Terms

During the course of negotiations, additional items were introduced by both City and VTA staff for consideration. The proposed to items include:

1. Safe parking on the site.

The City has proposed using the property as a temporary safe parking site for residents living in vehicles after the execution of the long-term lease. VTA will allow use of the lot as a safe parking site for a maximum of 24 months. In the past week, additional discussions were held with VTA about the possibility of entering into an interim lease of the site prior to the execution of the long-term lease allowing the City to gain access to the site earlier. VTA is open to the opportunity but, currently, staff from the two agencies have not agreed to terms.

2. VTA employee preference for the affordable housing.

VTA, as an employer, is also concerned about providing affordable housing for its employees. As with any employer in the City, VTA employees could apply for the affordable units at this site provided they meet the income eligibility and other program requirements. The City will continue to work with the VTA to ensure its employees are aware of this opportunity.

3. Affordable Housing Development Guarantee/VTA Ground Lease Option.

One of the primary goals for the VTA Board is the development of affordable housing on the site. To provide assurance that the goal will be achieved, the City must complete certain predevelopment activities in order to exercise its Purchase Option. The predevelopment activity is a City Council action to appropriate predevelopment funds for the projects and a funding reservation for not less than the amount per unit needed to adequately subsidize the City's portion of the affordable housing development for the entire site. Staff believes this goal is achievable within the first 24 months of the lease, allowing the City to exercise the purchase option early in the process.

In the unlikely event the City has not issued any building permit or commenced active construction within 10 years of acquiring ownership of the site, VTA could automatically exercise an option to lease the property back from the City. Prior to exercising the lease-back option, VTA will notify the City of its intent to exercise the lease-back option. The City may request to extend the time frame to achieve building permit issuance and active construction for an additional two years, which can be granted at the sole discretion of the VTA. If VTA were to exercise its option, the City would receive a prorated share of the funds paid to VTA for the purchase as the lease-back payment.

4. Minimum development density of 75 units per acre.

The minimum density of the development on the site shall be 75 units per acre, with some flexibility based on unit sizes, population type, and product type. City staff believes this is reasonable as recent affordable housing projects have met or exceeded this density.

5. Participation on Request for Qualifications (RFQ)/Request for Proposals (RFP) evaluation panel.

In addition to reviewing the RFQ/RFP prior to formal release, VTA will be a nonvoting member on the City's RFQ/RFP evaluation panel and provide technical assistance and feedback during the RFQ and RFP process. Council will retain sole discretion to select the development partner. Additionally, if the City has not exercised the purchase option prior to the entitlement process, VTA would also review architectural quality and developer proposals and provide input. As with

the RFQ/RFP process, the City would retain final approval authority. If the City exercises the purchase option, all VTA approval and review rights terminate.

### **FISCAL IMPACT**

Funding of the lease/purchase will not impact the General Operating Fund. The proposed funding would come from the City's Affordable Housing Impact Fund, which generates revenue from the payment of Housing Impact Fees. Sufficient funds are available in this fund.

### **ALTERNATIVES**

1. Choose not to appropriate funding for the lease with option to purchase.
2. Provide direction on preferred changes to the price and terms.
3. Provide other direction.

### **PUBLIC NOTICING**

The meeting agenda and Council report have been posted on the City's website and announced on Channel 26 cable television. Notices have been sent to all property owners and tenants within a 750' radius of the site along with other interested parties.

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