



## CITY MANAGER'S OFFICE

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## CITY COUNCIL STAFF REPORT

Regular Meeting: March 30, 2021

### **SUBJECT**

Adopt a resolution approving the purchase of property at 10455 Torre Avenue, Cupertino (APN 369-40-009).

### **RECOMMENDED ACTION**

The following actions are recommended:

1. Adopt the draft resolution, approving purchase of the property at 10455 Torre Avenue, Assessors' Parcel Number 369-40-009, from Rudd Charitab Stephen Unitrust (Seller), in the amount of \$4,450,000, authorizing the City Manager to execute all necessary documents and related steps to complete the acquisition.
2. Approve increased budget appropriation of \$4,450,000 in the General Fund-Non Departmental program for the purchase of the property.

### **DISCUSSION**

#### *Background*

The property located at 10455 Torre Avenue, Cupertino (APN 369-40-009) has been offered for sale. On March 8, 2021, the City Council met in closed session to give direction to its negotiators regarding price and terms of payment for potential acquisition of the property. The City retained Patty Steele of Newmark Knight Frank as the City's broker to represent it in the negotiations. On March 9 the City tendered a letter of intent to the seller in the amount of \$4,100,000. Seller received multiple offers. On March 10 seller sent a counter to multiple parties, including the City, of \$4,350,000 or greater, 21 days due diligence, and close of escrow in 30 days; seller gave one day to respond. On March 11 the City tendered an offer of \$4,450,000 and the offer was accepted.

The City and seller negotiated the Purchase and Sale Agreement (PSA). On March 16, the Planning Commission convened a special meeting to adopt a resolution

finding that the City's potential acquisition and use of the property is in conformance with the General Plan pursuant to Government Code 65402(a), and that the acquisition and use is exempt under CEQA. On March 16, City Council authorized the Mayor to execute the Purchase and Sale Agreement (PSA) consistent with direction given on price/terms of payment and authorized Mayor and City Manager to take all actions consistent with the PSA as necessary to close escrow, so long as due diligence does not reveal an issue that the Mayor and City Manager deem material.

#### *Description of the Property*

The property is located at the northwest corner of Torre Avenue and Pacifica Drive, across the street from Library Field, and near the Civic Center (see Figure 1). County records show the lot size to be approximately 20,909 sq. ft. (0.48 acres) and the existing freestanding one-story building (built in 1979) is approximately 4,715 sq. ft. The project was approved as an office building in 1977 with permit no. 26-U-76. The property has 20 unisize parking spaces as well as one ADA accessible space.

The Tract Map No. 5220 (Attachment B) indicates there is a 10 foot Public Utility Easement (PUE) that runs along the easterly and southern property lines (adjacent to the public streets) with a 5 foot wide Private Storm Drain Easement that runs parallel and is adjacent to the PUE. An approximately 15-foot-wide Private Drive Easement runs along the north and west property lines (on the interior of the block). These easements allow for shared access between the properties to the north and west (see Figure 2 below). The building and the parking stalls are situated within the property and do not appear to encroach within the easement areas.



**Figure 1: Site Location**

The site is within the Heart of the City Special Area. It is specifically located in the



**Figure 2:** Subject Site

City Center node of the City Center subarea. The uses envisioned in this subarea are identified in Policy LU-16.1.1. They include: A mix of uses including, office, hotel, retail, residential and civic uses. The ground floor of buildings along the street should be activated with pedestrian-oriented, active uses including retail, restaurants, and entries. The General Plan land use designation of the site is: Commercial / Office / Residential. The zoning for the site is P(OP) (Planned Development zoning district with Professional Office uses).

Currently, records indicate the building to be fully tenanted and the occupants of the building appear to be law offices. The property is surrounded by other professional office uses such as dentists, lawyers and doctors offices.

#### *The City's Potential Uses of the Property*

City Hall was constructed in 1966 and has many building systems that are at the end of their useful life. Prior to COVID19 the occupancy of the building was at maximum while also not offering adequate community spaces. The FY21 City workplan has a project to “Investigate Alternatives to City Hall” with the objective to find alternatives to building a new City Hall at its present location. As properties have become available, the City Manager and staff have reviewed the sites with no good alternatives found to date. Finding a location close to the Civic Center and an appropriate size have been challenges. The proximity of this property to the Civic Center, and its central location within the city, lends itself for City uses, including a satellite City Hall facility, potentially reducing capacity concerns at the existing City Hall.

Due diligence work is currently underway and is scheduled to be completed prior to the due diligence period end date of April 6, 2021.

Moreover, the City may be interested in continuing the existing month-to-month private office leases of the property on an interim basis while the City completes its use plans for the property. While City staff do not yet have access to the terms of the existing leases, it is assumed that the existing leases would generate at least adequate rental income to offset the City’s management and maintenance costs for

the property. The City would need to arrange adequate management of the property and its occupants to begin at closing and until the City occupies the property.

#### *Purchase Price; Closing and Other Costs*

As described above, the negotiated purchase price for the property is \$4,450,000. The purchase amount is compatible with appraisal work completed for the property.

Per the PSA, the City completed a \$100,000 deposit into escrow. If the City closes on the purchase of the property, the deposit will be applied to the purchase price. If the City elects to terminate the transaction during the 21-day due diligence period, the deposit will be returned to the City. If the City defaults under the purchase and sale agreement after the due diligence period, the seller may claim the deposit as liquidated damages.

The City will be responsible for a share of the closing costs, which are expected to be less than \$2,500. The City will also be responsible for the costs of its consultants performing due diligence (as discussed below).

#### *As Is Acquisition; Condition of the Property*

The City will purchase the property on an “as is” basis, solely in reliance on the City’s own investigations of the condition of the property. The seller will not make any representations or warranties regarding the condition of the property. The City will have a 21-day period to conduct all due diligence it deems necessary and appropriate to inform itself about the condition of the property and decide whether to proceed with the transaction.

As part of the City’s due diligence, City staff plan to conduct the following investigations:

- Appraisal. As described above, staff have ordered an appraisal to confirm whether the offered purchase price is consistent with the property’s fair market value.
- Building Inspection. The condition of the existing building is not yet known and a full inspection will occur to assess the structure and public access as part of the due diligence. The scope is expected to include items such as building systems (e.g., roof, plumbing, electrical, HVAC), fire/life safety, seismic, and ADA.

- Environmental. The environmental condition of the property and the building are not yet known. City staff plan to have a Phase 1 environmental survey report prepared.
- Lease/Tenants/Occupancy. City staff have been told that that property is leased and that the leases are on a month-to-month basis; it appears that the tenants are primarily law offices. While City staff do not yet have access to the terms of the existing leases, it is assumed that the existing leases would generate at least adequate rental income to offset the City's management and maintenance costs for the property. It is also assumed that if the tenancies are month-to-month, the City will have wide discretion to terminate the leases when it is ready to occupy the property for its own uses but there is some risk that the tenants could dispute the City's right to terminate the leases and/or claim entitlement to relocation assistance benefits. As part of the City's due diligence, staff plans to review all of the existing leases, and confirm their terms and the City's rights and obligations as landlord. The purchase and sale agreement requires seller to deliver to City tenant estoppel certificates.
- Title. The title condition of the property has not yet been fully-vetted but the staff has received a preliminary title report and will complete its review prior to the end of the City's due diligence period.
- Operations/Use. As described above, City staff have not yet conducted a thorough assessment of uses and configurations of the property for the City's purposes. This assessment could begin during the City's due diligence period but may extend until after closing.

Staff recommends that the City Council adopt the resolution and authorize the City Manager to execute all necessary documents and related steps to complete the purchase.

#### Environmental Review

Pursuant to the provisions of the California Environmental Quality Act of 1970 (Public Resources Code section 21000 et seq.) ("CEQA"), together with the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.) ("CEQA Guidelines"), the proposed acquisition of the Property is exempt from environmental review pursuant to the categorical exemption in CEQA Guidelines section 15301 (Existing Facilities) since the proposed acquisition does will not revise the existing use of the property or footprint of the existing structure. Additionally, the acquisition would be exempt from CEQA pursuant to section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposed acquisition will have a significant effect on the environment.

Sustainability Impact

No sustainability impact.

Fiscal Impact

The agreed upon purchase price is four million, four hundred fifty thousand dollars (\$4,450,000.00). Certain costs related to escrow and consultants to perform due diligence are described above. The City's unassigned fund balance (savings) in the General Fund will fund the purchase of the property. Unassigned fund balance was most recently estimated at \$33.9 million in the City's Fiscal Year 2020-21 Mid-Year Financial Report.

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Attachment:

A – Draft Resolution