



Board Agenda Item 6

DATE: June 22, 2021

TO: Board of Supervisors

SUBMITTED BY: Robert W. Bash, Director of Internal Services/Chief Information Officer

SUBJECT: Purchase of 333 W. Pontiac Way

RECOMMENDED ACTION(S):

1. **Approve and authorize the Chairman to execute the Purchase/Sale Contract (PSA) for the County's purchase of 333 W. Pontiac Way, Clovis, CA 93612 (APN 493-070-82S) (the Property) from Botfee, LLC, for \$4,575,000.**
2. **Authorize and direct the Director of Internal Services/Chief Information Officer (ISD Director) to execute the final form of the PSA, with an expected closing date on or before June 30, 2021 (and initialing approval of the "sale as-is" clause), subject to final approval by the County Counsel as to legal form (Counsel Approval), and by the County Auditor-Controller/Treasurer-Tax Collector as to accounting form (ACTTC Approval).**
3. **Authorize Internal Services Department (the Department) to undertake additional due diligence investigations, including any further environmental studies or appraisals of the Property, as deemed necessary or appropriate by staff, in connection with the County's purchase of the Property.**
4. **Authorize and direct the ISD Director, or his designee, to take any action as he deems necessary or appropriate, all of which shall be consistent with the PSA, and the foregoing Board approvals and actions, to:**
 - a. **Open, carry out, and close escrow for the County's purchase of the Property from Seller; deliver the County's \$25,000 deposit; execute and deliver the County's acceptance of Seller's Grant Deed; and, obtain title insurance in favor of the County for the Property in the amount of the purchase price of the Property at escrow closing;**
 - b. **Review, approve, execute and/or deliver any agreements, documents, certificates, notices, and instruments, and any amendments to any of the foregoing (subject to Counsel Approval, and, if applicable, ACTTC Approval), and to take any other actions to initiate, carry out, and finalize the County's purchase of the Property from the Seller; and,**
 - c. **Perform any other obligations, or exercise any other rights of County under the PSA to finalize the County's purchase of the Property.**

Approval of the recommended actions will authorize the acquisition of the Property, which includes one building and other improvements, and a parking area. The purchase price of the Property is \$4,575,000, with a deposit of \$25,000. The recommended purchase of the Property includes a Declaration of Reciprocal

Easement, Covenants and Restrictions (CC&R's) recorded against the property, in which common area maintenance is performed, and the property owners of the properties within the development are levied fees based on property size. This item pertains to a location in District 3.

ALTERNATIVE ACTION(S):

Your Board could direct the Department to pursue another facility option. Non-approval of the recommended actions, however, would result in a lost opportunity to acquire a property that satisfies the Department's needs. The Department would remain at the location incurring ongoing rent, increasing the rates charged to user departments.

FISCAL IMPACT:

There is no increase in Net County Cost associated with the recommended actions. The purchase price of the Property is \$4,575,000, and will exercise the purchase option contained in Lease Agreement No. 16-457, which is included in the Department's FY 2020-21 Budget. The deposit amount is \$25,000, which will be applied to the purchase price at closing.

DISCUSSION:

On July 12, 2016, the Board approved Lease Agreement No. 16-457 with Option to Purchase the Property. The Department's Information Technology Division (ISD - IT) has occupied the Property since July 2016, and the Department completed renovations at the Property to establish infrastructure of a Data Center. Upon completion of the renovations, the Data Center was relocated from the County's 10th Street property to the newly renovated area.

The lease contains a purchase option, which may be exercised any day after completion of the second year of the lease term, as long as the County gives the Seller a six-month notice of its intent to exercise the purchase option.

The recommended purchase includes the Property, located at 333 W. Pontiac Way, Clovis, CA 93612 (northeast corner of Peach and Pontiac Way), which consists of approximately 4.788 acres. The building was constructed in 1993, underwent renovations in 2002, and has office space of 39,300 square feet and approximately 254 parking spaces.

The recommended PSA requires the seller to pay off an existing deed of trust on the Property of \$3,600,000. The recommended PSA specifies that the due diligence period is thirty days from the effective date of the PSA, during which time the County's deposit is refundable, or until close of escrow, whichever is shorter. At the end of the due diligence period, the County's deposit becomes non-refundable. The closing date is June 30, 2021, or as otherwise mutually agreed by the parties. The cost of the closing escrow, including costs for the ALTA title policy, shall be divided equally between the Seller and the County. The County shall be solely responsible for all costs to record the deed, all costs to obtain any title policy endorsements and binders, and the increased premium for an ALTA Extended Coverage Policy.

The recommended PSA also provides that this purchase and sale may be part of a tax-free exchange under Section 1031 of the Internal Revenue Code for the Seller. The County agrees to take all reasonable steps to facilitate such an exchange by the Seller.

The recommended purchase of the Property includes CC&R's, which have been recorded against the Property. These CC&R's provide that the owners of the other properties in the development subject to the CC&R's, Pontiac 7 LLC, Pontiac 3 & 5 LLC, Pontiac 4 LLC, Pontiac 2 LLC, BotFee LLC, 201 Pontiac LLC, and 380 Ashlan LLC, or any affiliated company controlled by one of these owners, have the initial power to appoint the manager of the development. These are all entities controlled by the Seller. The CC&R's also require that if the County desires to make any changes to the exterior of the Property, the County will have to

obtain the approval of the manager before making any such improvements.

The maintenance that will be performed pursuant to the CC&R's includes: maintaining the ground surfaces, the driveways and parking areas, installing and maintaining any signage, removing all debris and sweeping the common area, operating and maintaining all exterior lighting, landscaping and maintaining the irrigation systems, contracting for security, maintaining the storm drains, ensuring that the exteriors of the buildings are maintained in harmony with each other, and collecting the common area expenses from the owners.

The CC&R's provide that the voting rights shall be determined by the square footage of all buildings in the development, and approvals shall be by a majority vote of all owners. This means that the Seller and its related entities, and their successors, will control all voting on all matters governed by these CC&R's. The CC&R's may only be amended by an affirmative vote of owners owning at least 70% of the total building square footage in the development.

The CC&R's also contain several non-standard provisions, including non-standard indemnification provisions in favor of the manager of the development, requirement for binding arbitration for any disputes related to the CC&R's, a requirement that the non-prevailing party in any disputes pay the prevailing party's attorney's fees and costs, and a requirement that in the case of condemnation or damage to a mortgaged portion of the common area, that the insurance proceeds be paid to a trustee for disbursement of those proceeds for repair of the common area.

The recommended PSA requires that the County pay all utility charges for the operation of the lights and lighting within the existing International Flag Pavilion (with such lighting hours to be as historically and/or reasonably maintained by Seller), and perform any and all necessary maintenance of and/or repairs to and make any required replacements to the Flag Pavilion Utility Line. The Property is subject to several easements for cross-drainage and irrigation for private irrigation purposes.

The proposed purchase is exempt from California Environmental Quality Act (CEQA) review. CEQA Guidelines, sections 15060(c)(2),(3) and 15378(a) state that where an action is not a "project" (meaning the whole of the action which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment), that action is not subject to CEQA. The proposed acquisition does not result in a direct or indirect change in the environment because the Property is a fully developed site. If and when further development is proposed at this site, the County will review such development consistent with CEQA. Therefore, at this time, the proposed acquisition is not considered the approval of a project under CEQA and is, therefore, exempt from CEQA review. (Pub. Res. Code §21065, CEQA Guidelines §§15060(c),(2)(3) and 15378(a).

The acquisition of the Property will be funded through earmarked funding.

REFERENCE MATERIAL:

BAI # 47, July 12, 2016

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Purchase/Sale Contract

On file with Clerk - Declaration of Reciprocal Easements, Covenants and Restrictions

CAO ANALYST:

Sonia M. De La Rosa