



Board Agenda Item 5

DATE: September 22, 2020

TO: Board of Supervisors

SUBMITTED BY: Dawan Utecht, Director, Department of Behavioral Health
Robert W. Bash, Director of Internal Services/Chief Information Officer

SUBJECT: Sale and Purchase Agreement of 5555 E. Olive, and
5520 E. Hedges, Fresno, CA 93727

RECOMMENDED ACTION(S):

1. **Approve the form of the Real Estate Sale Contract with Seller (Purchase Agreement) for the County's purchase of 5555 E. Olive Ave. and 5520 E. Hedges Ave., Fresno, CA 93727 (APN 455-223-12) (Property) from Pacific Bell Telephone Company (Seller), for the sum of \$9,500,000, which includes the assumption of a lease of a portion of the Property by AT&T Services, Inc., for up to 18 months after the County's purchase of the Property, assumption of an existing cell tower license, and three easement agreements granting easements to the Seller for existing communication equipment.**
2. **Authorize and direct the Director of Internal Services/Chief Information Officer (Director of ISD/CIO) to execute the final form of the Purchase Agreement, with an expected closing date on or before December 14, 2020 (and initialing approval of the "sale as-is" clause), subject to prior, final review and approval as to legal form by the County Counsel, and, as applicable, as to accounting form by the County Auditor-Controller/Treasurer-Tax Collector.**
3. **Authorize staff 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 Director of ISD/CIO, or his designee, to take any action as he deems necessary or appropriate, all of which shall be consistent with the Purchase Agreement, 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 \$500,000 deposit; 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 prior review and approval as to legal form by County Counsel, and, if applicable, as to accounting form by the County Auditor-Controller/Treasurer-Tax Collector), 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 Purchase Agreement to finalize the County's purchase of the Property.**
5. **Adopt Budget Resolution increasing the FY 2020-21 appropriations for Capital Facilities Org 1055 in the amount of \$9,500,000 (4/5 vote).**
6. **Adopt Budget Resolution increasing the FY 2020-21 appropriations and estimated revenues for DBH Org 5630 in the amount of \$9,500,000 (4/5 vote).**
7. **Adopt Budget Resolution increasing the FY 2020-21 appropriations and estimated revenues for County Buildings Org 0131 in the amount of \$9,500,000 (4/5 vote).**

Approval of Recommended Actions 1 through 4 will authorize the acquisition of the Property at 5555 E. Ave. and 55220 E. Hedges Ave., Fresno, CA 93727. The Property includes two buildings and improvements, and a parking area. The purchase price of the Property is \$9,500,000. The purchase of the Property includes the assumption of a lease of a portion of the property by AT&T Services, Inc., which will be phased out over an eighteen-month period. The recommended Purchase Agreement includes the assumption of a cell tower license with Omnipoint Communications, Inc. on the Property. The recommended Purchase Agreement also includes three easement agreements with the Seller, in which the Seller will retain and maintain certain communications equipment, access to certain designated equipment rooms in the Property, and have exclusive access to a data kit in the Property, all of which the Seller represents are necessary to the continued operation of seller's business.

Approval of Recommended Action 5 will increase appropriations in FY 2020-21 for Capital Facilities Org 1055 in the amount of \$9,500,000 and Recommended Action 6 and 7 will increase FY 2020-21 appropriations and estimated revenues for the DBH Org 5630 and County Buildings Org 0131 each in the amount of \$9,500,000.

The Property purchase (\$9,500,000) is being financed with Mental Health Services Act (MHSA) Capital Facilities funds.

This item pertains to a location in District 3.

ALTERNATIVE ACTION(S):

Your Board could direct the Department to continue to pursue other facility options. Non-approval of the recommended actions, however, would result in a lost opportunity to acquire a property that would satisfy many Departmental needs.

FISCAL IMPACT:

There is no increase in Net County Cost associated with the recommended actions. The purchase price of the Property is \$9,500,000, which will be financed with MHSA Capital Facilities funds, including the County's share of estimated closing costs (\$50,000). Approval of the fourth recommended action will increase FY 2020-21 appropriations in the Capital Facilities Org 1055 in the amount of \$9,500,000 using the available fund balance of the MHSA Special Revenue Fund 0040 to fund an Operating Transfer Out to the DBH Org 5630. Approval of the fifth recommended action will increase FY 2020-21 appropriations and estimated revenues in the DBH Org 5630 in the amount of \$9,500,000 through an Operating Transfer In from Capital Facilities Org 1055 to fund an Operating Transfer Out to the County Buildings Org 0131. Approval of the sixth recommended action will increase FY 2019-20 appropriations and estimated revenues in the County Buildings Org 0131 in the amount of \$9,500,000 through an Operating Transfer In from DBH Org 5630 for the purchase of the Property.

DISCUSSION:

Department adult behavioral health programs currently located on the UMC Campus will need to be relocated due to the sale of that property. The Department also plans to relocate the majority of children's behavioral health programs, currently located in leased space at the Heritage Center, to the Property, as well as other programs to be determined.

The Purchase Agreement includes an assumption of Lease of a portion of the Property for up to eighteen months to AT&T Services, Inc., to allow time for the relocation of current operations at the location. That lease shall consist of a lease of the building at 5555 E. Olive for 12 months, and then the leased premises shall be decreased for the remaining 6 months of the lease. Additionally, the Seller will retain easements related to Fiber Optic telecommunication conduits and equipment that will remain at the location. The recommended Purchase Agreement also includes the assumption of a cell tower license with Omnipoint Communications, Inc. on the Property.

The tenant of the Lease will pay the County \$85,737 per month in rent for the first twelve months of the Lease, and then \$40,657.50 per month for the final six months of the Lease term. The Lease includes a non-standard Waiver of Subrogation provision. However, Risk Management has reviewed the non-standard Waiver of Subrogation provision, and has confirmed with the County's excess insurance carrier that if the property is scheduled on the County's list of properties, the property will still be covered even with this language.

Seller has certain obligations and responsibilities in regards to the Property, pursuant to the Amended Final Judgment and Permanent Injunction on Consent in The People of the State of California v. Pacific Bell Telephone Company d/b/a AT&T California, AT&T Corp., and AT&T Services, Inc. (2017) Case No. RG 14748856 (Consent Judgement). This is a consent judgment against the Seller in regards to multiple properties owned by Seller related to improper disposal of certain waste items (batteries, waste electronic devices, and aerosol cans). The Court shall continue to monitor the waste disposal practices of the Seller until the Seller petitions the Court to have the Property removed as a covered facility under the Consent Judgement, which may occur anytime after November 24, 2019, provided the Seller is in compliance with its obligations.

The recommended acquisition of the Property and subsequent relocation of adult and children's programs will allow for expansion of clinical services at the new location. The relocation of children's programs will release space at the Heritage Center allowing the remaining contracts division staff currently located on the UMC Campus to be co-located at the Heritage Center.

The acquisition of the Property will be funded through MHSA Capital Facilities funds which are earmarked for the purchase, construction, or renovation of facilities consistent with MHSA objectives.

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. 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).)

ATTACHMENTS INCLUDED AND/OR ON FILE:

- On file with Clerk - Form of Sale and Purchase Agreement and Escrow Instructions
- On file with Clerk - Budget Resolution (Org 1055)
- On file with Clerk - Budget Resolution (Org 5630)

On file with Clerk - Budget Resolution (Org 0131)

CAO ANALYST:

Ronald Alexander