

Memorandum


TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Rosalynn Hughey
Omar Passons
Matt Loesch
Jim Shannon

SUBJECT: SEE BELOW

DATE: January 26, 2024

Approved



Date

1/26/24

COUNCIL DISTRICT: 4

SUBJECT: AGREEMENTS WITH SANTA CLARA VALLEY TRANSPORTATION AUTHORITY AND STATE OF CALIFORNIA FOR AN INTERIM SHELTER/HOUSING COMMUNITY AT THE CERONE PROPERTY AND APPROVE THE CERONE, CHERRY AVENUE, AND VIA DEL ORO INTERIM SHELTER/HOUSING COMMUNITIES CURRENTLY IN DEVELOPMENT AS COMMITTED ADDITIONS TO THE GENERAL FUND

RECOMMENDATION

- (a) Adopt a resolution authorizing the City Manager, or her designee, to negotiate and execute all necessary agreements, subject to the appropriation of funds:
 - (1) To site an interim shelter/housing community on the Santa Clara Valley Transportation Authority Cerone property, and to implement the requirements of the ground lease; and
 - (2) To support the State of California in its efforts to fund portions of the project at the Santa Clara Valley Transportation Agency Cerone property.
- (b) Approve the Cerone, Cherry Avenue, and Via Del Oro interim shelter/housing communities currently in development as “Committed Additions” to the 2024-2025 General Fund Base Budget, certifying that all operating and maintenance costs associated with these projects will be included in future Five-Year General Fund Forecasts, beginning with the 2025-2029 Forecast.

SUMMARY AND OUTCOME

On October 5, 2023, the Santa Clara Valley Transportation Authority (VTA) Board of Directors unanimously approved the use of a portion of the Cerone Yard property for up to 200 units

January 26, 2024

Subject: Agreements with Santa Clara Valley Transportation Authority and State of California for an Interim Shelter/Housing Community at the Cerone Property and Approve the Cerone, Cherry Avenue, and Via Del Oro Interim Shelter/Housing Communities Currently in Development as Committed Additions to the General Fund

Page 2

serving not more than 200 people in an interim or temporary housing community. The interim shelter/housing community will be developed pursuant to the City's Shelter Crisis Declaration and Proclamation of a Local Emergency (RES2023-379)¹, San José Municipal Code Title 5, and Government Code section 8698 *et seq.* One of the actions included in this memorandum will enable the City Manager or her designee to negotiate and execute a lease agreement with the VTA for use of the Cerone property, and to enter into an agreement(s) with the State of California for the transfer of funds to support project development.

The second recommendation would add the Cerone, Cherry Avenue, and Via Del Oro interim shelter/housing communities as Committed Additions to the General Fund Base Budget, which will align and prioritize budgetary resources to build, operate, and maintain these sites on an ongoing basis. Including these sites as Committed Additions also provides necessary clarity about future financial obligations as the City begins the 2024-2025 budget development process.

BACKGROUND

On June 6, 2023, the City Council identified the VTA property, commonly known as the Cerone Yard located near Zanker Road in north San José (City Council District 4), as a preferred location to site the Governor's Small Home Initiative units in San José to help address the local unsheltered homelessness crisis consistent with the Community Plan to End Homelessness. Also in June, to facilitate action by VTA, Mayor Mahan and Councilmembers Foley and Jimenez, in their role as VTA Board Directors, requested that VTA staff take actions to facilitate mutually acceptable agreements between the VTA and City to use unoccupied lands at the Cerone Yard for these interim shelter/housing facilities.

On July 11, 2023, VTA staff requested that the City provide VTA with a proposal that outlined the City's plan for the interim shelter/housing community, including details about the concept, size, scope, terms, operations, and safety. On July 28, 2023, the City Manager's Office transmitted the City's proposal to VTA, addressing details requested by VTA. The concept plan and scope were coordinated with the State of California's (State) Department of General Services as part of the Governor's Small Home Initiative, as the State will fund a portion of the project. However, it is anticipated that members of the community with lived experience of homelessness, worker representatives from the VTA, and other staff from both the VTA and the City will contribute additional design consideration through committees established pursuant to the VTA Board's authorizing vote. On August 30, 2023, the City Manager's Office, in coordination with VTA staff and City Council representatives on the VTA Board, conducted an employee forum with VTA employees at the Cerone Yard to provide information about why the City was proposing the project and its scope. This employee forum was attended by over 100 employees and was intended to understand any employee concerns with siting at this location, as

¹ <https://records.sanjoseca.gov/Resolutions/RES2023-379.pdf>

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Page 3

well as to provide accurate information directly to employees about the City's approach to managing and results at existing interim shelter/housing communities.

On September 7, 2023, the VTA Board considered the City's proposal and directed that VTA staff work with the City to develop and negotiate a draft agreement for a 200 unit or person interim shelter/housing community on the Cerone property and return to the Board by October 5, 2023. On October 5, 2023, the VTA Board approved the VTA staff recommendation for a 200 unit or person community at the Cerone Yard that included numerous requirements and terms to ensure a high quality, safe, and well-coordinated plan, project design, and ongoing operation.

As part of the negotiation subsequent to the VTA Board approval, the VTA coordinated obtaining approval from the Federal Transit Administration to eliminate a large potential lease cost. The VTA also recognized its workers' desire for additional site security improvements and negotiated the inclusion in the lease a dollar amount sufficient to cover certain improvements. The estimated cost of the total lease with VTA over the initial five-year term is \$1.75 million.

ANALYSIS

The approval of the Cerone site in City Council District 4 for a 200 unit or person community by the VTA Board is a major milestone for the City in its efforts to site interim shelter/housing communities at scale, across San José, to meaningfully and urgently address the homelessness crisis. Achieving this milestone positions the City, VTA, and the State to progress to the numerous next steps necessary to successfully design, build, open, and operate this community. To that end, the City must negotiate and execute numerous agreements with VTA and the State to control the agreed upon areas of the site, to enter the site for due diligence and environmental clearance purposes, to complete design and construction, to develop an operating plan, and to effectively open the site and temporarily house people with appropriate services.

This next section of this memorandum details the anticipated and/or potential agreements that require negotiation and approval/execution with VTA and the State, and the associated scope and terms.

VTA Lease Agreement for Use of the Cerone Property

On October 5, 2023, the VTA Board authorized its General Manager to negotiate and execute a ground lease agreement for a 200 unit or person shelter/housing community on the Cerone site (Lease), and to perform other analyses and due diligence related to the site and agreement terms. The negotiated terms in the Lease presented to the VTA Board on October 5, 2023 were the result of collaboration and work by both VTA and City senior staff. Although most terms were resolved at that time, a few items required further work, including clarification of whether the

Federal Transit Administration would allow for a below market lease rate and how site and security-related improvements to the site would be addressed.

As noted, in the time since the approval, City and VTA staff have substantially completed negotiations, and upon City Council action of staff recommendations, will proceed to execute the Lease and begin necessary due diligence.

The significant terms and parameters of the Lease with VTA are as follows.

1. Use of up to 7.2 acres of undeveloped land on the southern portion of the Cerone Yard.
2. Initial term of five years with an option for five additional years at mutual discretion.
3. The Federal Transit Administration concurred that, given the use and terms, fair market rent is not required. However, given the site and security concerns raised by VTA and its employees, the City would agree to make payments to VTA over the five-year period totaling \$1.75 million, or \$350,000 annually, to offset the cost of specific capital security improvements to the Cerone site that will be incurred by the VTA. The City and VTA agreed to this price term due to their shared interests in the success of the project and VTA's commitment to its workers safety.
4. The City has a due diligence and development period of 90 days to complete necessary steps with the State and to investigate the site to ensure the interim community can be built.
5. The City's site development plan must be approved by VTA 90 days before construction begins, which shall not be unreasonably withheld.
6. The VTA must approve a management and security plan 30 days before occupancy by program participants, which shall not be unreasonably withheld.
7. As with all City-operated interim communities, the plan will include the provision of supportive social services, efforts to assist with finding permanent housing, efforts to connect to employment opportunities, and safety and operational considerations.
8. Establishment of a Community Advisory Committee, similar to what the City operates for other interim shelter/housing facilities, with representation from VTA and its employee unions.
9. Establishment of a joint Safety Advisory Committee, with relevant City and VTA security experts and representation from VTA employee unions.

State Agreement(s) to Support Development of the Community

In addition to the agreement with VTA to lease a portion of the Cerone Yard site, the City must also enter into agreements with the State's Department of General Services to ensure the proper development of the interim community. These agreements focus on necessary funding transfers from the State to the City as part of the Governor's Small Homes Initiative as well as the

potential for utilizing other existing State agreements for products or services that may accelerate the City's delivery of this site.

Initially, the State indicated it would fund, build, and transfer responsibility of the site to the City as part of the Governor's Small Homes Initiative. Staff has since been informed that instead the State will fund a fixed dollar amount of approximately \$12.7 million towards the City's completion of the interim housing community at Cerone. After executing the lease of a portion of the Cerone Yard site, the City will plan to enter into necessary agreements with designers and construction contractors for completion of this project utilizing the most appropriate process available.

Staff recommendation authorizes the City Manager or her designee to negotiate and execute such funding transfers and other agreements in the best interest of the City to move the Cerone interim housing community forward. Once the agreement is executed, actions to recognize and appropriate the funding will be recommended as part of a future budget process. However, it is important to note that the \$12.7 million from the State will not be sufficient to construct units for 200 people at Cerone. While staff continues to evaluate building and design options, additional financial contributions likely ranging from \$5 to \$10 million from the City or other funding sources will be necessary.

Committed Additions to the General Fund

Staff recommendation to include the Cerone, Cherry Avenue, and Via Del Oro interim shelter/housing communities currently in various stages of development as "Committed Additions" to the 2024-2025 General Fund Base Budget – certifying that all operating and maintenance costs associated with these projects will be included in future Five-Year General Fund Forecasts, beginning with the 2025-2029 Forecast – is critical to provide clarity of future financial obligations as the City begins the 2024-2025 budget development process.

As initially described in Manager's Budget Addendum (MBA) #3, *Fiscal Sustainability of Interim Housing Operations and Maintenance Costs*², which was included in the City Council-approved Mayor's June Budget Message for Fiscal Year 2022-2023, a new interim housing site or an expansion of an existing interim housing site would become a Committed Addition concurrent with City Council approval of a contract to move forward with development. Though this memorandum does not recommend awarding a construction contract, the Cerone site, along with the Cherry Avenue and Via del Oro sites – two other interim housing sites under development – are all recommended to become Committed Additions due to: 1) past direction and current expectation of the City Council for these sites to be delivered; and 2) work continues to proceed on all sites so that construction can begin as soon as possible. As a result of these expectations, the Administration needs to include their future costs in the City's General Fund

² MBA #3: <https://www.sanjoseca.gov/home/showpublisheddocument/85667/637878137024730000>

Base Budget, as needed, to clarify the estimated amount of General Fund resources that will be required during the 2024-2025 budget development process.

EVALUATION AND FOLLOW-UP

Once funding from the State is secured and site design is finalized, staff will return to the City Council requesting authorization to execute a construction contract or design-build contract for the delivery of the Cerone site, and appropriation of the relevant funding. Further, staff will also return to seek approval of a future operating contract once the service level has been defined and contractor bids received and evaluated.

COST SUMMARY/IMPLICATIONS

As described above, the Cerone site lease agreement with VTA is expected to cost \$1.75 million over a five-year period, or \$350,000 annually; payment is expected to begin no earlier than 2024-2025. The agreement with the State will provide funding of approximately \$12.7 million for development and construction of up to 200 units or beds at the Cerone site. While the total project cost is still under development as staff continues to evaluate site design and the type of modular units, an additional \$5 to \$10 million will likely be needed to facilitate construction. For budgeting purposes, a planning level estimate for construction will be included in an Interim Housing Forecast that will be included in the 2024-2025 City Manager's Budget Request and 2025-2029 Five-Year General Fund Forecast scheduled for release on February 28, 2024. The lease payment, the City's contribution for construction, and future operating and maintenance costs – ranging from \$6 to \$7 million depending on the final site design, operating model, and bids – would be paid from the City's suite of resources used to fund its Interim Housing portfolio. While the City has a sufficient amount of existing funding to construct Cerone, provided that the State provides \$12.7 million, additional funding will be required in 2024-2025 to completely buildout and operate the City's Interim Housing portfolio (detailed below). The City continues to pursue State grants and partnership with the County of Santa Clara (County) to offset costs of operations.

The Five-Year Forecast will incorporate a comprehensive updated forecast of the City's current and future Interim Housing portfolio costs, including the Cerone, Cherry Avenue, and Via Del Oro sites. As described in MBA #3 referenced above, the City's approach to funding interim housing first identifies available Federal, State, County, philanthropic, or other external resources that the City Manager determines has a high likelihood of being received and is eligible to pay for one-time and ongoing interim housing costs. To the extent that external resources are not sufficient to pay for all costs over a 10-year horizon, the City would first use the 15% Homeless Support allocation from Measure E revenues, and then use the General Fund to address any remaining shortfall.

This approach of first identifying and leveraging external resources and limiting General Fund contributions to the extent feasible was recently reaffirmed by the City Council with its approval of the memorandum from Councilmembers Davis, Torres, and Ortiz³ that was approved along with the Mayor's June Budget Message for Fiscal Year 2024-2025, directing staff to develop a funding plan that limits impacts to the General Fund, prioritizes the preservation of the existing Measure E allocations in accordance with City Council policy, and explores cost sharing agreements with other partners, such as the County and the Santa Clara County Housing Authority. Inclusion of future interim housing costs in the Five-Year Forecast is an important precursor to updating the interim housing funding plan, which will be issued as an MBA in the 2024-2025 budget development process.

However, though staff is working to engage new partners and continue to advocate for additional Federal and State funding, the costs of ultimately delivering and sustaining over 1,250 Emergency Interim Housing beds, approximately 300 hotel beds, and approximately 120 supportive parking spaces is substantial and will require substantial ongoing contributions from the General Fund. A preliminary analysis completed in November 2023 estimated that a General Fund contribution of approximately \$38 million would be needed to sustain the Interim Housing portfolio in 2024-2025, and would grow to approximately \$70 million by 2028-2029. These figures are expected to change with the release of the 2025-2029 Five-Year Forecast as all expenditures and revenue assumptions are reevaluated, but a significant level of General Fund investment is necessary to sustain this important community service.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the February 6, 2024 City Council meeting.

In addition, City staff participated in a townhall for VTA workers prior to the public VTA Board meeting and provided an update on the project in a *Your Thoughts, Your Voice* engagement session with current and formerly unhoused residents and others. In addition, prior Cerone being considered as a site by the City Council, staff conducted a virtual community meeting to describe

³ Memorandum from Councilmembers Davis, Torres, and Ortiz:

<https://sanjose.legistar.com/View.ashx?M=F&ID=12076277&GUID=47E37878-3D28-45F3-BCD4-663C9FC2B088>

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Page 8

the site and its recommended use as an interim shelter/housing community. Councilmember Cohen participated in the meeting.

COMMISSION RECOMMENDATION AND INPUT

No commission recommendation or input is associated with this action.

CEQA

Determination of Consistency with Mitigated Negative Declaration for the Emergency Interim Housing Programs project (Resolution RES2023-380), File No. ER22-198.

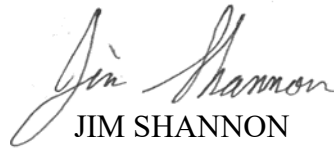
PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/
ROSALYNN HUGHEY
Deputy City Manager, City Manager's office

/s/
MATT LOESCH
Director of Public Works

/s/
OMAR PASSONS
Deputy City Manager, City Manager's office


JIM SHANNON
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