



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nanci Klein

SUBJECT: 1300 BERRYESSA ROAD
LEASE AGREEMENT

DATE: May 25, 2023

Approved

Date

5/26/2023

COUNCIL DISTRICT: 3

RECOMMENDATION

- (a) Adopt a resolution authorizing the City Manager, or her designee, to negotiate and execute a Lease Agreement between Terreno Berryessa LLC, a Delaware limited liability company, as Landlord, and the City of San José, as Tenant, commencing June 30, 2023, for the use of approximately 6.325 acres (275,517 square feet) of land located at 1300 Berryessa Road in San José, with an initial term of 122 months at a total base rental cost of \$15,213,988.03, and an estimated total triple net expense of \$3,697,439.46. The total cost of the lease over the 122-month term is an estimated \$18,911,427.49.
- (b) Adopt a resolution adopting the Addendum to the Negative Declaration prepared for the Incidental Safe Parking Use Amendments to Title 20 of the San Jose Municipal Code and Addenda thereto, analyzing the addition of the 1300 Berryessa Road site for incidental safe parking use in accordance with the California Environmental Quality Act.

SUMMARY AND OUTCOME

Approval of this recommendation will allow the City of San José to negotiate and execute a Lease Agreement with Terreno Berryessa LLC, a Delaware limited liability company for the use of approximately 6.325 acres (275,517 square feet) of land for the development of a project to support unhoused individuals, which could include a safe-parking program for recreational vehicles (RV) and cars with a safe storage facility, or other emergency interim housing programs.

BACKGROUND

The City of San José, as part of the regional Supportive Housing System, invests in numerous programs¹ to prevent people from experiencing homelessness, shelter people experiencing homelessness, and end homelessness for people through permanent housing. The City and County continue to invest significantly in homelessness prevention and permanent housing. As a result, the 2023 homeless census revealed an overall decrease of 4.7% in San José's population experiencing homelessness as well as an 10.7% decrease – to 4,411 from 4,975 in 2022. These results reveal the importance of near-term strategies like the interim housing presented here while continuing to build permanent affordable housing.

The county-wide Community Plan to End Homelessness goal is to create 2,000 new emergency or transitional units countywide by 2025. The City has been working to expand its portfolio of alternative spaces that includes interim shelter, hotel rooms, and other parking programs. In total, the City Council has approved a total of 1,090 opportunities that are in various stages of development as of May 2023. Despite the City's dedication and progress, the available supply of shelter, supportive parking, and affordable housing is still far below the need.

Emergency interim housing programs were initially developed and implemented to quickly provide private and secure non-congregate shelter for vulnerable individuals and families. These sites typically provide modular sleeping units with individual showers and restroom facilities within each participant room; shared kitchen and laundry; office space for staff to provide services; a perimeter fence; onsite security; pet accommodations; communal gardens; onsite parking; full Americans with Disabilities Act Standards for Accessible Design accommodations; and are close to public transportation. Each interim housing site has an onsite operator and support services designed to transition participants to stable housing. Participants are expected to abide by a code of conduct and site rules.

Safe parking programs create a designated and secure place for car and RV dwellers to park and sleep and increase access to available services. Safe parking programs are one type of crisis response program designed to address the immediate needs of people living unsheltered while individuals and families seek permanent housing. Safe parking sites allow people who live in vehicles to legally park in a secure lot without being subjected to potential citation and/or towing if parked on public streets. Safe parking programs typically have portable toilets and hygiene stations, and participants typically have access to case management and supportive services to help them progress toward stable housing.

¹ [Homelessness Programs Dashboard](https://www.sanjoseca.gov/your-government/departments-offices/housing/homelessness-program-dashboard): <https://www.sanjoseca.gov/your-government/departments-offices/housing/homelessness-program-dashboard>

ANALYSIS

Since December of 2022, City staff have worked to locate sites large enough to provide temporary shelter spaces for individuals experiencing homelessness. With the assistance of Newmark Knight Frank, City staff have identified an approximately 6.325-acre (275,517 square feet) parcel of land located at 1300 Berryessa Road in San José (Property). The site is generally level and unimproved and is suitable for the City’s intended uses.

The owner of the property is Terreno Berryessa, LLC, which is a subsidiary of Terreno Realty Corporation, which is a national, publicly traded real estate investment trust (Landlord). Its stock is traded on the New York Stock Exchange under the symbol TRNO.

Landlord and City have executed a non-binding letter of intent agreement based the following terms for the lease of the Property.

Property Address:	1300 Berryessa Road San José, CA 95133
Landlord:	Terreno Berryessa, LLC, a Delaware limited liability company
Agency and Commissions:	The City of San José is represented by Joe Kelly and Phil Mahoney of Newmark Knight Frank, and Landlord is represented by Craig Kovaleski, Jim Kovaleski, and Fred Eder. The parties acknowledge that compensation due Newmark Knight Frank will be paid by Landlord via separate agreement.
Rentable Area of Premises:	Approximately 6.325 acres (275,517 square feet)
Term:	One Hundred Twenty-Two (122) months
Commencement Date:	June 30, 2023
Rent Start Date:	July 1, 2023
Expiration Date:	August 31, 2033
Allowed Uses:	Development of a project to support unhoused individuals, such as a safe-parking RV facility, or other emergency interim housing program.
Option to Extend Lease:	One five-year option to renew lease at the end of the Term subject to future City Council authorization.
Security Deposit:	One Hundred One Thousand Eight Hundred Sixty-Nine Dollars (\$181,869.00).

NNN Operating Expenses: Estimated at \$0.11 per square foot.

Base Rent:

Year:		Monthly Base Rent (Blended):	Base Rent/SF (Blended):
1	June 30, 2023 – June 30, 2024	\$89,537.50	\$0.32
2	July 1, 2024 – June 30, 2025	\$111,205.58	\$0.40
3	July 1, 2025 – June 30, 2026	\$115,097.77	\$0.42
4	July 1, 2026 – June 30, 2027	\$119,126.19	\$0.43
5	July 1, 2027 – June 30, 2028	\$123,295.61	\$0.45
6	July 1, 2028 – June 30, 2029	\$127,610.96	\$0.46
7	July 1, 2029 – June 30, 2030	\$132,077.34	\$0.48
8	July 1, 2030 – June 30, 2031	\$136,700.05	\$0.50
9	July 1, 2031 – June 30, 2032	\$141,484.55	\$0.51
10	July 1, 2032 – June 30, 2033	\$146,436.51	\$0.53
11	July 1, 2033 – August 31, 2033	\$151,561.78	\$0.55

Landlord shall abate the base rent for the first two months of the lease and City will only pay the triple net (NNN) operating expenses in the amount of \$30,306.87 per month. The annual rent, including base rent and estimated NNN operating costs, for the first full fiscal year (2023-2024), is approximately \$1.44 million. Annual rent for fiscal year 2024-2025 is approximately \$1.7 million, escalating 3.5% each year thereafter. The proposed lease term is for ten years and two months (122 months) with one five-year option to extend the lease at market rate but no less than 4% higher than the last month’s rent. Other terms of the Lease include indemnifications in favor of the Landlord and may also include a provision awarding attorneys’ fees to the prevailing party in the event of a dispute, both of which are consistent with standard commercial leases.

The Lease Agreement will allow for the Property to be used for the development of a project to support unhoused individuals, which could include a safe-parking program for RVs and cars with a safe storage facility, or other emergency interim housing programs. Currently, 76-85 RVs and 35 cars are being planned for the safe-parking program. The site is expected to be completed and ready for occupancy by spring 2024.

A safe parking program for cars and RVs including storage, has been evaluated for this site in accordance with the California Environmental Quality Act (CEQA) and the CEQA Guidelines. The safe parking program has been evaluated in an Addendum to the Initial Study/Negative Declaration (IS/MND) for the Incidental Safe Parking Use Municipal Code Amendments (adopted by the City Council on February 26, 2019, by Resolution 78990), and Addenda thereto. While the Lease Agreement includes support for emergency interim housing programs, a Programmatic Initial Study is currently being prepared in accordance with CEQA and the CEQA

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Guidelines to address impacts associated with the City's implementation of these programs. Once adopted, any future emergency interim housing project within the City will be evaluated for consistency with this programmatic CEQA document.

City staff reviewed landlord-provided environmental reports that concluded that there are no significant environmental conditions on the Property from past site uses. Environmental Services Department staff generally concur with the reports provided, but recommend soil sampling and testing to determine if there are any potential contaminants in the shallow soil such as naturally occurring asbestos that need to be addressed during construction for construction worker safety and soil disposal management. The potential contaminants, if present, do not pose a health risk concern to the future occupants as the entire Property will be paved, preventing any potential exposure. In addition, preparation of a health risk assessment has been initiated to evaluate for minimum public health and safety impacts of the neighboring industrial businesses (e.g., air quality) on the Property. The lease will allow for a due diligence period in which the City may break the lease if either the health risk assessment or soils testing shows the Property is unsuitable for people to reside on it, or if the soils testing determines that the condition of the property would add more than \$300,000 to the cost of construction.

City staff reviewed a Preliminary Title Report prepared by Chicago Title Company and determined that the exceptions listed are acceptable and would not significantly impact the City's proposed use of the Property.

This memorandum is specific to the lease agreement. There are additional costs to construct, operate, and maintain the supportive parking program that are referenced below. A more detailed accounting of the construction and operational cost implications for supportive parking on 1300 Berryessa are discussed in the memorandum for item 8.4 of the June 6, 2023, Council meeting, titled City Initiatives Roadmap - Emergency Interim Housing and Supportive Parking.

In addition to lease costs, the site will require approximately \$4.3 million in infrastructure improvements that includes site grading and paving, soil off haul, fence installation, trenching for utilities, utility connections, implementing storm water requirements and demolition of existing structures.

The site will be maintained by the Public Works Department, which will be responsible for ensuring that the physical site is maintained and that repairs are completed, including fencing repairs, electrical systems maintenance, and general site work. Public Works will be able to absorb this site under its current staffing model should the parcel be utilized as an RV lot. It is estimated that the site will need approximately \$100,000 annually for repairs. Should the operations of the parcel expand, Public Works will require additional staffing and non-personal/equipment support.

The City would contract with a nonprofit operator to manage the site and provide services. The estimated annual cost for services and operations of this site is \$3.2 million. The total cost to lease, operate and maintain the site over a five-year period exceeds \$24 million.

EVALUATION AND FOLLOW-UP

Staff will negotiate and execute an agreement to lease 1300 Berryessa Avenue for ten years. Staff will return to Council for approval to exercise the Option to Extend Lease for five years if staff recommends exercising the Option.

COST SUMMARY/IMPLICATIONS

The total base rent for the 122-month term at 1300 Berryessa Road beginning June 30, 2023, through August 31, 2033 is \$15,213,988.03. The total estimated triple net (NNN) expenses for the 122-month term is \$3,697,439.46. The total of base rent and estimated NNN expenses for the 122-month term is \$18,911,427.49.

As 1300 Berryessa Road will serve as a future safe parking site for homeless residents, the ongoing annual lease payments, starting at \$1.4 million in 2023-2024, will be paid from the Measure E – 15% allocation for Homeless Support Programs (HSP). As described in Manager’s Budget Addendum (MBA) #19, *Updated Interim Housing Budgetary Forecast*², the ongoing Measure E 15% allocation is estimated at \$7.1 million in 2023-2024 and 2024-2025, and increases to \$9.3 million beginning in 2025-2026. While this allocation will provide an ongoing funding source for the lease of 1300 Berryessa Road, it will not be sufficient to pay for all of the ongoing operating and maintenance costs for this future safe parking site and other interim housing sites.

In addition to a portion of Measure E revenues, the City currently leverages a wide range of funding sources to pay for interim housing and safe parking sites, including State sources (e.g., Project HomeKey and Homeless Housing Assistance and Prevention), Federal sources (e.g., American Rescue Plan Fund), and other support from the City’s General Fund. The interim housing sites that the City has currently committed to fund on an ongoing basis is preliminarily forecasted to cost over \$40 million annually by 2029-2030. The addition of the lease cost and RV parking on 1300 Berryessa would increase this amount by approximately \$6 million annually by 2029-2030.

Based on prior City Council direction to reduce unsheltered homeless and deliver up to three new interim housing facilities and RV parking on this site, ongoing expenses are preliminarily forecasted to reach nearly \$60 million annually. Because most of the external funds do not come from ongoing sources, an ongoing allocation from the General Fund will be required beginning in 2024-2025 in the amount of \$5 million, and rising to \$45 million by 2029-2030.

² MBA #19: <https://www.sanjoseca.gov/home/showpublisheddocument/98310>

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, the City Manager's Office, the City Manager's Budget Office, and the Departments of Planning, Building, and Code Enforcement, Public Works, Housing, and Environmental Services.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the June 6, 2023 City Council meeting.

COMMISSION RECOMMENDATION AND INPUT

No commission recommendation or input is associated with this action.

CEQA

Lease Agreement: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended resulting in no physical changes to the environment). RV Safe Parking Program: Addendum to the Negative Declaration for the Incidental Safe Parking Use Municipal Code Amendments (adopted by Council on February 26, 2019 by Resolution No. 78990) and Addenda thereto, File No. ER23-081.

Any other future projects on the site would require review under CEQA.

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/
NANCI KLEIN
Director of Economic Development and
Cultural Affairs
Director of Real Estate

For questions, please contact Kevin Ice, Senior Real Estate Manager, at kevin.ice@sanjoseca.gov.