



## COMMUNITY DEVELOPMENT DEPARTMENT

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### CITY COUNCIL STAFF REPORT

Meeting: February 6, 2024

#### Subject

Exclusive Negotiation Agreement (ENA) with an affordable housing developer on a City owned parcel within the Mary Avenue right-of-way (APN: 326-27-053)

#### Recommended Action

Consider the Draft Agreement attached (Attachment A) and decide whether to enter into the Agreement.

#### Reasons for Recommendation

##### ***Background:***

Since Fiscal Year (FY) 2020-21, the City of Cupertino's City Work program prioritized engaging with philanthropic organizations to develop extremely low-income housing (ELI) for the intellectually and developmentally disabled (IDD) community. The FY 2021-22 City Work Program narrowed down this item to excess City-owned property within the Mary Avenue right-of-way (the "Project Site").

On August 18, 2022, the City of Cupertino issued a request for proposals (RFP) from qualified and experienced housing developers interested in developing an affordable housing project on a city-owned surplus property of approximately .79 acres. A Site Map of the Project, as well as a Vicinity Map, is provided as Figure 1. This RFP was a solicitation of competitive proposals to develop 100% affordable housing with a preference for the intellectually and developmentally disabled (IDD) populations. By the October 18, 2022, deadline, one developer had submitted a proposal.

Staff recommends entering into an Exclusive Negotiation Agreement ("ENA") with the nonprofit public benefit corporations Cupertino Rotary Housing Corporation, Housing Choices Coalition for Persons with Developmental Disabilities, Inc., and Charities Housing Development Corporation of Santa Clara County (collectively, the "Developer") to negotiate the terms of a ground lease at the City-owned properties located at APN: 326-27-053.



### *Analysis*

As part of the RFP process, respondents were required to demonstrate relevant experience, financial capabilities and conceptual development, financing and operations plans. The submittal requirements included the following:

- Statement of Interest
- Applicant Qualifications
- Project Description
- Financial Terms
- Other items, including, but not limited to, an outreach plan and proposed tenant selection plan.

### *The Developer Proposal*

The Developer team consists of registered California non-profits focused on affordable housing development, both locally and regionally. Highlights of the Developer team include the following:

- Charities Housing:  
A San Jose-based nonprofit 501(c) (3) public benefit corporation that for decades has developed, owned, and managed housing in Santa Clara County for extremely low and very low-income individuals, families, senior and folks with special needs, totaling over 1,400 units. In 2017, the City of Cupertino approved Charities Housing's proposal for the Veranda, an affordable senior housing development on Stevens Creek Blvd that opened in 2019.
- The Cupertino Rotary Housing Corporation:  
A Cupertino-based nonprofit 501(c) (3) public benefit corporation established for the purpose of developing low-income housing in Cupertino.
- Housing Choices Coalition for Persons with Developmental Disabilities:  
Housing Choices is a San Jose-based nonprofit 501 (c) (3) public benefit corporation that supports people with developmental and other disabilities with finding and retaining affordable housing in their community. Currently, they provide housing stability services at 18 different multi-family affordable housing properties, with nearly 300 units set-aside for households that include a person with a developmental or other disability. Housing Choices has additional commitments for another 364 rental units set-aside for people with developmental and other disabilities at 23 new affordable housing projects in differing stages of development.

The proposal envisions a 100% affordable, 40-unit, two-story, apartment development. The individual apartments will be a mix of studio, one-, and two-bedroom units with one three-bedroom staff unit. The proposal is structured as a Special Needs project, using the Tax Credit criteria, which requires a minimum of 45% (18 units) to be reserved for a special needs population, in this case, IDD.

The remaining 21 apartments will serve extremely low and very low-income residents of the community. The affordability levels of the proposed units will range from 30% to 50% of the Area Median Income (AMI). The exact affordability mix by unit type is still to be determined, but the average affordability level for the entire development will not exceed 40% AMI. The applicant team has partnered with local architect Peter Ko of KO Architects.

If the ENA is approved by City Council, conceptual plans and drawings would be presented to the public for community input at future public meetings, which will further inform project design and scope as well as the necessary steps for environmental review. Staff will continue to report the status of the proposal to City Council with updates as appropriate.

#### Exclusive Negotiation Agreement ("ENA") Terms

The ENA establishes a one-year negotiation period between the City and the Developer. While in effect, the City shall not negotiate with any other entity for the sale, lease, or development of the site. The Developer will hold public outreach meetings in coordination with the City, develop the scope, and present plans to the City for review

and approval. Both parties will work to develop the terms of a ground lease, disposition and development agreement (DDA), affordability covenants, and related documents. The City may terminate the ENA if the developer does not comply with or perform any provisions of this Agreement, or if progress is not being made in negotiations as determined by the City in good faith, but otherwise in the City's sole and absolute discretion. The agreement authorizes the City Manager to extend the ENA period if it is determined that the Developer has met all its obligations pursuant to this Agreement and that the parties are making sufficient progress toward the negotiation of a mutually acceptable Disposition and Development Agreement and Ground Lease. A draft Term Sheet (Attachment B) has also been provided for City Council's review.

#### Sustainability Impact

No sustainability impact.

#### Fiscal Impact

As stated in the Developer conceptual proposal, the City is proposed to contribute approximately \$5 million in funding. However, this amount is subject to available funds in the City's Below Market Rate fund, as well as the final scope of the project at the conclusion of the ENA period including commitments from the various funding sources, which could substantially decrease (or alternately increase) as a result. In addition to funding, the City may be asked to waive certain permitting and plan review fees. Such terms will be evaluated and negotiated during the ENA period and will be subject to City Council review and approval.

Finally, the City would contribute land for a nominal fee or limited ground lease payments over a 99-year ground lease term, which is common for 100% affordable projects.

The Mary Ave. parcel for ELI/Developmental Disability Housing Council work program item was originally adopted in Fiscal Year 2019-20 (FY20) at \$150,000 (page 360 of FY20 Final Budget) in the Housing Services, BMR Affordable Housing budget as a special project (265-72-711 750-052). Those funds remained unspent and unencumbered for FY20 and FY21 and were carried over in both years. As part of the FY22 Final adopted budget (page 429) an additional \$100,000 was allocated bringing total funding to date to \$250,000. This amount has been set aside to cover predevelopment costs such as creation of the new parcel and recording the map. To date a total of \$14,703.62 has been spent or encumbered for Parcel Map and Legal Review.

#### California Environmental Quality Act

The execution of this agreement is not considered a project under CEQA.

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Reviewed by: Benjamin Fu, Director of Community Development

Approved for Submission by: Matt Morley, Assistant City Manager  
Christophe Jensen, City Attorney

Attachments:

A - Draft Exclusive Negotiation Agreement

B - Draft Term Sheet