



DATE: February 22, 2022

CATEGORY: Consent

DEPT.: Community Development

TITLE: **Programmatic Memorandum of Understanding Between County of Santa Clara and City of Mountain View**

RECOMMENDATION

1. Approve the key terms for a Memorandum of Understanding between the City and County for 2016 Measure A and other funding in the amount of \$80 million to support affordable housing projects in Mountain View.
2. Authorize the City Manager or designee to execute the Memorandum of Understanding and any related documents.

BACKGROUND

In September 2017, Council supported a strategy to facilitate the development of 200 to 250 units of rapid rehousing/permanent supportive housing over the next several years to address the needs of the unsheltered. The strategy included the use of City housing funds as well as maximizing external funding sources, particularly the County's 2016 Measure A Affordable Housing Bond.

2016 Measure A Affordable Housing Bond

The Measure A Affordable Housing Bond, implemented by the County's Office of Supportive Housing (OSH), was approved by voters in 2016 to generate up to \$950 million for the acquisition, construction, or improvement of property to provide affordable housing, largely for individuals at risk of becoming unhoused or who are currently experiencing homelessness. Since its passage, the majority of 2016 Measure A funds have been committed, largely to new affordable housing developments throughout the County, and OSH is currently evaluating a robust pipeline of additional projects throughout the region as well.

2016 Measure A-funded developments are typically required to meet various program requirements, including having a certain percentage of a project's units be permanent supportive housing (PSH) units, rapid rehousing (RRH) units, extremely low-income

units, or a combination of the three. As defined by the Measure A program, “rapid rehousing” connects families and individuals to permanent affordable housing supported by case management, targeted supportive services, and rental subsidies. “Permanent supportive housing” provides permanent affordable housing (typically with deeper affordability levels than RRH) and supportive services to individuals and families who have disabling conditions.

City’s Affordable Housing Investment Strategy

To meet the City’s strategy of providing 200 to 250 PSH/RRH units throughout the City, and the County’s interest in supporting these units in Mountain View, staff has pursued a programmatic approach to getting County funds for City pipeline projects. This approach allows the County to earmark a set amount of 2016 Measure A and other capital funds to fund units across multiple developments throughout the City that would collectively meet 2016 Measure A goals, instead of a project-by-project approach that is typical to affordable housing funding. Over the past year and a half, City and County staff have worked closely to develop a Memorandum of Understanding (MOU) that would specify the total amount of County funding for Mountain View and the projects to be funded. The Analysis section below discusses the funding amounts and the funded projects in greater detail.

There are several benefits to an MOU approach. First, it provides greater funding clarity for projects. This benefit is very important as development costs continue to rise, funding becomes increasingly competitive, and demand for outside funding, like Measure A, increases. Second, the MOU helps streamline the process by reducing the amount of project-by-project negotiations for funding. Third, the MOU provides a degree of flexibility from Measure A guidelines. Instead of meeting all of the guidelines project-by-project, the MOU will allow the selected projects in the portfolio to collectively meet County goals. Finally, the MOU will help both the City and County advance the regional Community Plan to End Homelessness (which the City endorsed in December 2020) by providing new housing opportunities to the unsheltered or those at risk of becoming unsheltered.

In the MOU, the County agrees to use its best efforts to provide Measure A, No Place Like Home (State funds that are directly allocated to the County to fund supportive housing), and other capital funds to specified Mountain View developments, plus additional funds for projects in Mountain View’s housing pipeline. The eventual funding commitments will be contingent upon the project meeting the County’s standard terms and conditions for affordable housing development, including due diligence on the soundness and feasibility of the project and compliance with laws, including the California

Environmental Quality Act. The funding will also be contingent on the County’s funding availability.

ANALYSIS

Table 1 shows the four developments with proposed funding amounts totaling \$53.7 million that will be included in the MOU. In addition to these identified developments, the County will set aside an additional \$26,250,000 for upcoming pipeline developments to reach up to 200 PSH/RRH units funded in Mountain View. The City has several additional projects in the pipeline that would meet the MOU goals and would fully utilize the \$26.25 million in funds. To provide the City flexibility, rather than specifying which of these projects will receive the funds, the funds will be accessed based on project readiness. As noted below, some of the projects have already been appropriated funding by the County. For the rest, the County agrees to use its best efforts to provide the specified funding. In total, the proposed County funds set-aside for Mountain View projects is \$80 million, composed primarily of 2016 Measure A funds, as well as *No Place Like Home* funds and other County sources.

Table 1: MOU Developments

Project Name	Location	County Contribution	City Contribution	Supported Units (RRH or PSH)	Total Units in the Project
Lot 12	California and Bryant Streets	\$9.75 million (appropriated)	\$12.25 million + land value (reserved)	20	120
La Avenida	1100 La Avenida	\$19 million (appropriated)	\$15 million (appropriated)	30	101
Montecito	1265 Montecito Avenue	\$18 million (set aside)	\$16 million (reserved)	41	85
Crestview Hotel	901 East El Camino Real	\$7 million (appropriated)	\$3.7 million (reserved)	Approximately 45	45 to 67 (TBD)
Pipeline Projects	-	\$26.25 million (set aside)	TBD	Up to 64	TBD
Total	-	\$80 million	\$46.95 million (not including Pipeline Projects)	Up to 200	Approximately 373 (not including Pipeline Projects)

Key Terms

In addition to the funding set-asides above, the following are other key MOU terms related to: site ownership; land use control, including ground lease duration and the City option to acquire sites; and the MOU term.

Site Ownership

The County of Santa Clara Board of Supervisors has directed County staff to acquire properties funded through 2016 Measure A. The 2016 Measure A Notice of Funding Availability (NOFA) states that if the County contribution is higher than that of the jurisdiction (i.e., city or town) where the project is located, the County will own the property. However, if the jurisdiction already owns the site, the jurisdiction will continue to own the site even if the County contribution is greater than the jurisdiction's contribution. If the funding amounts stay the same as those listed in Table 1, above, this means that the County would own the sites for La Avenida, Montecito, and the Crestview Hotel. Lot 12 is, and will continue to be, owned by the City.

In the past, City staff has explored providing additional funding to any affordable development funded through the City's NOFA process that was also seeking County Measure A funding in order for the City to own the land for the purpose of retaining ultimate land use authority (see additional discussion below). When considering NOFA funding for Charities Housing's 1265 Montecito Avenue development on June 22, 2021, the City Council voted not to provide additional funding to pursue site ownership. Some of the reasons noted by the Council in making this decision included the following:

- The City has multiple affordable housing projects in its pipeline, and increasing funding for existing projects would impact the ability to fund the other projects in the City's pipeline.
- Projects funded by Measure A would require City land use approval even if the site were to be owned by the County.

Land Use Control

As noted above, affordable housing developments funded by Measure A will be subject to the City's land use authority, requiring the City's approval of land use entitlements and building permits, regardless of the site owner. However, if the County owns the property and, in the future, decides to use the property for governmental purposes other

than affordable housing, the County can supersede the City's land use authority under the intergovernmental immunity doctrine.

It is anticipated that the La Avenida, Montecito, and Crestview Hotel projects will include ground leases with the County to use the site as affordable housing. Under County ownership, at the end of its ground lease with an affordable housing developer, if the County chose to develop a site for another public use in the County's governmental capacity, intergovernmental immunity may apply, meaning the site would not be subject to City land use authority.

To address this issue, the MOU includes two key provisions to increase the ability for the sites to be used for affordable housing for the long term and remain subject to City land use authority:

- *Ground Lease Duration* – The MOU states that the landowner (City or County) would enter into ground leases with affordable housing providers that would preserve the sites for affordable housing for a minimum of 65 years, with developer options to extend the term to 99 years.
- *City Option to Acquire Sites* – The MOU also gives the City an option to acquire the land for continued use as affordable housing in the event the County decides to sell the land. The land price would be the then-fair market value appraised for an affordable housing use. The option agreement would be recorded on each County-owned property included in the MOU. This option would limit the possibility of the land being sold to another public agency that could also exercise intergovernmental immunity and pursue uses not subject to City land use authority. This provision does not, however, preclude the County from retaining and using the land for a public purpose, exempt from City land use authority, after the ground lease expires.

Term

The MOU will be in effect for a term of 10 years or until the last funding of one of the planned developments, whichever is sooner. After that point, the shared understanding regarding funding and unit commitments expires.

FISCAL IMPACT

County funds in the amount of \$80 million will be earmarked for affordable housing developments in Mountain View. The MOU will not have any impact on the City General

Fund as affordable housing funds are generated by housing impact fees to be used specifically for affordable developments. The City Council is responsible for appropriating funding for affordable housing developments using City funds. As noted above, the MOU notes existing City funding commitments for the Lot 12, Montecito, La Avenida, and Crestview Hotel developments. City funding for pipeline projects seeking the \$26.25 million County set-aside will be determined as they move through the City's NOFA and entitlement process.

ENVIRONMENTAL COMPLIANCE

The MOU acknowledges that any funding commitments are subject to compliance with all legal requirements, including, but not limited to, procedures regarding the purchase of real property and compliance with the California Environmental Quality Act. Nothing in the MOU should be interpreted as supplanting or forgoing required environmental reviews nor requiring any approvals or findings in those reviews.

PUBLIC NOTICING

The Council's agenda is advertised on Channel 26. The agenda and this report appear on the City's website.

Prepared by:

Vera Gil
Project Manager – Affordable Housing

Micaela Hellman-Tincher
Housing and Neighborhood Services
Manager

Approved by:

Aarti Shrivastava
Assistant City Manager/
Community Development Director

Audrey Seymour Ramberg
Assistant City Manager

VG-MHT/4/CAM
843-02-22-22CR
201079

Attachment: 1. Memorandum of Understanding