

STAFF REPORT



THE CITY OF
NOVATO
CALIFORNIA

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MEETING

DATE: June 26, 2018

TO: City Council

FROM: Regan M. Candelario, City Manager
Michael Antwine, Assistant City ManagerSUBJECT: **MEMORANDUM OF UNDERSTANDING WITH NOVATO UNIFIED
SCHOOL DISTRICT REGARDING THE FEASIBILITY OF A JOINT
WORKFORCE HOUSING DEVELOPMENT****REQUEST**

Consider and possibly take action to authorize the City Manager to enter into a Memorandum of Understanding with the Novato Unified School District regarding the investigation and exploration of the potential for development of joint workforce housing project for public employees, including, without limitation, City of Novato, Novato Police Department, Novato Unified School District and Novato Fire District employees.

DISCUSSION

The current high and rising costs of housing in Novato and Marin County have resulted in a limited and inadequate supply of housing units that create a barrier for Novato Unified School District (NUSD) and City of Novato employees to access housing they can afford near their place of employment.

The City of Novato and NUSD desire to compete to be among the most desirable employers in Marin County, retain experienced and talented employees, attract top talent for future employment, enhance staff's work-life balance by providing housing near their workplace, promote and facilitate community engagement by and with employees by providing housing in the community they serve and to add value to NUSD and the City of Novato as a workplace. To make the best use of available NUSD and City of Novato resources to achieve these goals, NUSD approached the City of Novato with an interest to explore potential joint development of workforce housing for their employees ("Housing"), including, without limitation, City of Novato, Novato Police Department, NUSD and Novato Fire District employees.

NUSD owns a parcel of approximately 21 acres (APN 124-010-08) of currently undeveloped land on San Andreas Drive ("District Property") and the City of Novato owns an adjacent parcel of approximately 4 acres (APN 124-010-09) of currently undeveloped land ("City Property"). NUSD has identified the District Property as potentially suitable for development of Housing and the City of Novato wishes to investigate whether it may be legally possible or potentially suitable to develop Housing on the City Property.

Since the spring of 2017, NUSD Superintendent and staff have expended over 100 hours of NUSD time, as well as incurring costs for legal and other professional consultation, toward evaluating, researching and gathering information on the possibility of developing the District Property for workforce housing, including, though not exclusively, meeting with developers to understand the possibilities for developing the District Property, meeting with local residents to learn their concerns and to build consensus, and surveying NUSD employees to understand their needs.

NUSD and the City of Novato have the desire to enter into a Memorandum of Understanding (MOU) regarding the investigation of the feasibility of a joint workforce housing development to obtain greater knowledge and understanding of the needs of employees, neighborhood compatibility, the feasibility of using the District Property and/or the City Property for Housing and methods for, and feasibility of, funding, developing and administering the Housing. Please note that the NUSD Board took action to approve this MOU in this form with a unanimous vote of 7-0 on Tuesday June 19.

The Marin Community Foundation and the Ginny & Peter Haas, Jr. Fund have each generously donated \$23,000 for a total of \$46,000 and the City of Novato has budgeted a \$20,000 allocation to cover up to a total of \$66,000 (“Available Funds”) to be expended toward the costs of an Initial Feasibility Study and Technical Studies (“Studies”) for the District Property and City Property as follows:

- i) Title Report and copies of all easements
- ii) Boundary Survey (identify encroachments)
- iii) Aerial Topographic Survey
- iv) Preliminary Geotechnical Investigation
- v) Phase 1 Environmental Study
- vi) Biological Assessment
- vii) Archeological Records & Initial Surface survey

It is anticipated that the Studies will be conducted between June-November 2018. The City will be responsible for the coordination, contracting and completion of the Feasibility Study through and to the extent of the Available Funds. In the event that the Studies or any component thereof requires additional funding, the City of Novato and NUSD shall confer and negotiate in good faith, subject to each Party’s determination of its best interests, toward funding the completion of the Studies.

The MOU between NUSD and the City of Novato does not bind either party to any particular use of the District Property or City Property or to make either property available for the development of the contemplated Housing. No obligation is implied or shall be inferred from the approval or execution of the MOU as to the suitability or availability of the District Property or City Property for the construction of the contemplated Housing, including any obligation to expend or encumber any funds not expressly specified in the MOU nor any obligation to finance, develop or administer any housing, or to grant, sell, lease, license, transfer or encumber any real property.

Upon the completion of the Studies or as many thereof as are funded and completed, NUSD and the City of Novato will negotiate in good faith with the mutual intention, if feasible and deemed by each to be in its best interests, to collaborate on the following further steps:

- a) Discuss and determine further administrative structures for possible development of Housing, including, without limitation, potential engagement of a Housing Development Manager to oversee and coordinate further work;
- b) Analyze and evaluate methods/structures for financing, development and administration of Housing, including, without limitation, methods of construction and Housing management;
- c) Analyze and evaluate policies for apportionment of the total number of Housing units in the project between NUSD and the City of Novato and determine the criteria for eligibility of the Housing;
- d) Conduct public outreach and community communications;
- e) Conduct workforce outreach and communications;
- f) Develop a schedule for further investigation, processing of necessary entitlements and potential development of the Housing;

As the owner of the District Property which comprises approximately 80% of the property being considered, the District will take the lead role in the foregoing steps. Subject to the limitations and legal requirements as set forth hereinafter, the City of Novato, to the extent possible, shall provide any reasonable assistance to NUSD in taking the foregoing steps, as necessary due to the City of Novato's interest in the City Property and its interests in the Housing.

The City of Novato and NUSD intend, and shall take all reasonable steps, subject to the best interests of each Party as its governing body may determine, to accomplish the following goals within the time set forth below:

- a) June - November 2018: Complete Feasibility and Technical Study steps described above and identify areas for further feasibility investigation and development, if any.
- b) November - December 2018: Commence the further steps described above and identify areas for further feasibility investigation and development, if any.
- c) January 2019: Determine administrative structures and Project financing necessary and appropriate for further development of Housing, including, without limitation, potential engagement of a Housing Development Manager to oversee and coordinate further work.
- d) February-April 2019: Develop and agree upon policies for apportionment of the total number of Housing units between the City of Novato and NUSD and determination of eligibility for the Housing if any shall be developed.

The term of the MOU shall be for two years, expiring May 22, 2020. The MOU may be terminated at any time, by either the City of Novato or NUSD in the event a Party determines in good faith

that its best interests cannot be served by continuing with the obligations in the MOU. Such early termination shall be effective only after the City of Novato and NUSD have met and conferred in good faith toward effecting the mutual intention expressed in the MOU. In no event shall early termination be deemed a breach of the MOU, nor cause for any claim of damages by either Party.

The City of Novato will retain full discretion to approve, approve with conditions or changes, deny or take any other action in accordance with applicable law and any and all applications for Housing will be processed by the City, in accordance with the requirements of state and local law, including, but not limited to, the California Environmental Quality Act, the Subdivision Map Act, the state Planning and Zoning Law and the Novato Municipal Code.

FISCAL IMPACT

There is no additional fiscal impact associated with the approval of this MOU as the \$20,000 contribution from the City of Novato has already been allocated in the FY 17/18 budget. In the event that the Feasibility Study or any component thereof requires additional funding, NUSD and the City of Novato shall confer and negotiate in good faith, subject to each party's determination of its best interests, toward funding the completion of the Feasibility Study. This additional funding allocation, if needed, will be brought before the City Council for approval.

RECOMMENDATION

Authorize the City Manager to enter into the Memorandum of Understanding with the Novato Unified School District.

ALTERNATIVE

1. Do not authorize the City Manager to enter into the MOU; provide direction to staff.

ATTACHMENT

1. Draft Memorandum of Understanding with the Novato Unified School District

**MEMORANDUM OF UNDERSTANDING
REGARDING INVESTIGATION AND EXPLORATION OF POTENTIAL FOR DEVELOPMENT
OF JOINT WORKFORCE HOUSING
BY AND BETWEEN NOVATO UNIFIED SCHOOL DISTRICT AND THE CITY OF NOVATO**

RECITALS

WHEREAS, the Novato Unified School District (“District”) and the City of Novato (the “City”) jointly desire to investigate and explore the potential for development of joint workforce housing for public employees (“Housing”), including, without limitation, District, City, Novato Police Department and Novato Fire Protection District employees; and

WHEREAS, District owns about 21 acres of currently undeveloped land on San Andreas Drive in the San Marin neighborhood which the District has identified as potentially suitable for development of Housing (“District Property”); and

WHEREAS, City of Novato owns about 4 acres of currently undeveloped land adjacent to the District Property, which the City wishes to investigate as to whether it may be legally possible or potentially suitable for development of Housing (the “City Property”); and

WHEREAS, the current high and rising costs of housing in Novato and Marin County have resulted in a limited and inadequate supply of housing units that create a barrier for District and City of Novato employees to access housing they can afford near to their places of employment; and

WHEREAS, the Parties jointly desire and intend to further investigate and explore the possibility and feasibility of proposing and processing a Housing development on the District and/or City Property in order to potentially provide additional housing which could serve the needs of public employees in Novato; and

WHEREAS, the Parties jointly desire and intend to:

- Compete to be among the most desirable employers in Marin County
- Retain trained, experienced and talented employees
- Attract top talent for future employment
- Enhance staff’s work-life balance by providing housing near the workplace
- Promote and facilitate community engagement by and with employees by providing housing in the community they serve
- Add value to the District and the City as a workplace

- Make the best use of available District and City resources to achieve the foregoing goals; and

WHEREAS, the Parties require greater knowledge and understanding of the needs of employees, the feasibility of using the District Property and/or the City Property for Housing, neighborhood compatibility and methods for and feasibility of funding, developing and administering the Housing; and

WHEREAS, since the spring of 2017, District Superintendent and staff have been researching and gathering information on the possibility of developing the District Property for workforce housing, including, though not exclusively, meeting with developers to understand the possibilities for developing the District Property, meeting with local residents to learn their concerns and to build consensus, and surveying District employees to understand their needs, comprising over 100 hours of District time, as well as incurring costs for legal and other professional consultation, toward evaluating and furthering Housing at the District Property.

NOW, THEREFORE, the parties hereto agree to the following:

1) Initial Feasibility and Technical Studies

- a) The Marin Community Foundation and the Ginny & Peter Haas, Jr. Fund have each generously donated \$23,000 for a total of \$46,000 and the City of Novato has budgeted a \$20,000 allocation to cover up to a total of \$66,000 (“Available Funds”) to be expended toward the costs of an Initial Feasibility Study and Technical Studies (“Studies”) for the District Property and City Property as follows:
 - i) Title Report, copies of all easements and relevant documents and review of same as well as review and analysis of any existing restrictions which may exist on use of the City Property;
 - ii) Boundary Survey and identification of encroachments;
 - iii) Aerial Topographic Survey;
 - iv) Preliminary Geotechnical Investigation;
 - v) Phase 1 Environmental Study;
 - vi) Biological Assessment;
 - vii) Archeological Records & Initial Surface survey;
- b) It is anticipated that the Studies will be conducted between June-November 2018. The City will be responsible for the coordination, contracting and completion of the

Feasibility Study through and to the extent of the Available Funds. In the event that the Studies or any component thereof requires additional funding, the Parties shall confer and negotiate in good faith, subject to each Party's determination of its best interests, toward funding the completion of the Studies or any of them.

- 2) Upon the completion of the Studies or as many thereof as are funded and completed, , District and the City will negotiate in good faith with the mutual intention, if feasible and deemed by each to be in its best interests, to collaborate on the following further steps:
 - a) Discuss and determine further administrative structures for possible development of Housing, including, without limitation, potential engagement of a Housing Development Manager to oversee and coordinate further work;
 - b) Analyze and evaluate methods/structures for financing, development and administration of Housing, including, without limitation, methods of construction and Housing management;
 - c) Analyze and evaluate policies for apportionment of the total number of Housing units in the project between the Parties and determination of the criteria for eligibility of the Housing;
 - d) Conduct public outreach and community communications;
 - e) Conduct workforce outreach and communications;
 - f) Develop a schedule for further investigation, processing of necessary entitlements and potential development of the Housing;
 - g) As the owner of the District Property which comprises approximately 80% of the property being considered, the District will take the lead role in the foregoing steps. Subject to the limitations and legal requirements as set forth hereinafter, the City, to the extent possible, shall provide any reasonable assistance to the District in taking the foregoing steps, as necessary due to the City's interest in the City Property and its interests in the Housing.
- 3) The Parties intend, and shall take all reasonable steps, subject to the best interests of each Party, as its governing body may determine, to accomplish the following goals within the time set forth below.
 - a) June - November 2018: Complete Feasibility and Technical Study steps described in Section 1, above, and identify areas for further feasibility investigation and development, if any.

- b) November - December 2018: Commence the further steps described in Section 2, above, and identify areas for further feasibility investigation and development, if any.
 - c) January 2019: Determine administrative structures and Project financing necessary and appropriate for further development of Housing, including, without limitation, potential engagement of a Housing Development Manager to oversee and coordinate further work.
 - d) February-April 2019: Develop and agree upon policies for apportionment of the total number of Housing units between the Parties and determination of eligibility for the Housing if any shall be developed.
- 4) The Parties hereto agree and understand that this Memorandum of Understanding does not bind either party to any particular use of the District Property or City Property or to make either property available for the development of the contemplated Housing. No obligation is implied or shall be inferred from the approval or execution of this Memorandum of Understanding as to the suitability or availability of the District Property or City Property for the construction of the contemplated Housing, including any obligation to expend or encumber any funds not expressly specified in this Memorandum of Understanding, nor any obligation to finance, develop or administer any housing, or to grant, sell, lease, license, transfer or encumber any real property. The Parties hereto expressly understand and agree that as the land use regulatory authority for any discretionary land use entitlement relating to any proposed development of Housing on the District Property and/or the City Property, the City is not by the approval and execution of this Memorandum of Understanding, relinquishing its land use authority or pre-determining or committing to the approval of any discretionary land use entitlement. It is understood and agreed that the City retains full discretion to approve, approve with conditions or changes, deny or take any other action in accordance with applicable law and that any and all applications for Housing will be processed by the City, in accordance with the requirements of state and local law, including, but not limited to, the California Environmental Quality Act, the Subdivision Map Act, the state Planning and Zoning Law and the Novato Municipal Code.
- 5) The term of this Agreement shall be for two years, expiring May 22, 2020. This Agreement may be terminated at any time, by either Party, in the event a Party determines in good faith that its best interests cannot be served by continuing with the obligations in this Agreement. Such early termination shall be effective only after the Parties have met and conferred in good faith toward effecting the mutual intention expressed herein. In no event shall early termination be deemed a breach of this Agreement, nor cause for any claim of damages by either Party.

- 6) This Agreement constitutes the entire Agreement between the parties with reference to the subject matter hereof and all prior negotiations and understandings between the parties are merged into, superseded and voided by this Agreement. No obligation is implied or shall be inferred from this Agreement, including, without limitation, any obligation to expend or encumber any funds not expressly specified herein, finance, develop or administer any Housing, or grant, sell, lease, license, transfer or encumber any real property.
- 7) Neither Party may assign or transfer this Agreement, or any part thereof, without the prior written consent of the other Party.
- 8) This Agreement may not be altered, amended or modified or changed in any respect or particular whatsoever except by a writing duly executed by all parties hereto.
- 9) This Agreement is by and between the parties named herein and no third party is intended either by expression or implication to be benefited by this Agreement.
- 10) This Agreement shall be binding on all successors and assigns of the parties to this Agreement.
- 11) Any forbearance on the part of a Party or its successor in interest, to enforce the terms and provisions of this Agreement in the event of a breach shall not be deemed a waiver of the Party's right regarding any subsequent violation or breach.
- 12) If any of the provisions of this Agreement are found by a court of law to be of no force or effect, the validity of all other provisions shall be unaffected.
- 13) Each Party has reviewed and revised, or had the opportunity to review and revise this Agreement; accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any amendment of it.
- 14) Each person executing this Agreement represents that the execution of this Agreement has been duly authorized by the Party on whose behalf the person is executing the Agreement and that such person is authorized to execute the Agreement on behalf of such Party.
- 15) Notices issued pursuant to this agreement shall be sent to the following addresses (or to a subsequent address of which notice has been provided in writing):

If to District: Jim Hogeboom, Superintendent
 Novato Unified School District

1015 Seventh Street
Novato, CA 94945

If to City:

Regan M. Candelario, City Manager
City of Novato
922 Machin Ave
Novato, CA 94945

Superintendent
Novato Unified School District

City Manager
City of Novato