

## **RESOLUTION NO. 2010- 015**

Adopted by the Redevelopment Agency  
of the City of Sacramento

March 23, 2010

### **7<sup>TH</sup> AND H: AUTHORIZING AN EXCLUSIVE RIGHT TO NEGOTIATE (ERN) WITH MERCY HOUSING CALIFORNIA, AND DECLARING INTENT TO DONATE LAND TO DEVELOPMENT PROJECT UNDER CERTAIN CONDITIONS**

#### **BACKGROUND**

- A. In September of 2006 the Redevelopment Agency adopted the Single Room Occupancy Preservation and Efficiency Apartment Replacement Action Plan, which calls for the Agency to develop 200 new efficiency apartments in the downtown redevelopment area within five years.
- B. In September of 2006 the Redevelopment Agency adopted the Ten Year Plan to End Chronic Homelessness, calling for 1) development of 280 new permanent supportive housing units within five years; and 2) prevention of homelessness through the development of new efficiency apartments in the downtown redevelopment area.
- C. In September of 2008, the Agency purchased a half-acre site at 7th and H from the City of Sacramento, issued a Request for Qualifications for developers to create a new deeply affordable, high quality, high density housing project at that location, and ranked Mercy Housing California's (MHC) team as the development group most qualified to realize the City's vision for 7th and H. The Agency and MHC entered into an Exclusive Right to Negotiate, which expired in September 2009.
- D. The Agency and MHC wish to enter into a second ERN to afford MHC the opportunity to seek potential funding, including Affordable Housing Program funds from the Federal Home Loan Bank of San Francisco. The new ERN will demonstrate site control for purposes of the application.
- E. The 2008 Request for Qualifications seeking a developer for the new project at 7<sup>th</sup> and H declared the Agency's intent to contribute the land at no cost to the project, because of covenants and conditions and development costs. In order to facilitate the application for funds to the FHLB, the Agency wishes to affirm its intent to donate the land should a project be negotiated and ultimately approved by the appropriate governing bodies.
- F. This ERN is not approval of the proposed, or any other, project. The Agency must exercise its independent legislative authority in making any and all findings and determinations required of them by law concerning the project. The ERN, as attached, does not restrict the legislative authority of the Agency in any manner, whatsoever,

and does not obligate the Agency to enter into the DDA or to take any course of action with respect to the proposed project.

- G. The proposed action is not a project as defined by California Environmental Quality Act (CEQA) Guidelines Section 15378; therefore, the action is not subject to environmental review under CEQA. There is no federal funding or other federal involvement associated with this action; therefore, the National Environmental Policy Act (NEPA) does not apply.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE REDEVELOPMENT AGENCY RESOLVES AS FOLLOWS:**

- Section 1. The background statements, including the environmental statements above, are determined to be true and correct.
- Section 2. The Executive Director, or her designee, is authorized to execute the attached Exclusive Right to Negotiate with Mercy Housing California.

**Table of Contents:**

Exhibit A: Exclusive Right to Negotiate

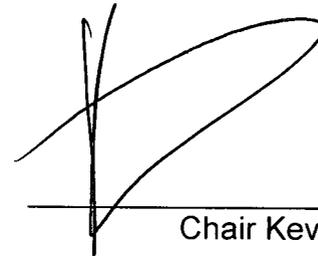
Adopted by the Redevelopment Agency of the City of Sacramento on March 23, 2010 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: None.



Chair Kevin Johnson

Attest:

  
Shirley Concolino, Secretary

**SECOND AGREEMENT FOR EXCLUSIVE RIGHT TO NEGOTIATE (“ERN”)  
7TH AND H STREET RESIDENTIAL**

THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO (“Agency”) and MERCY HOUSING CALIFORNIA, (“Developer”), have entered into this Second Agreement for Exclusive Right to Negotiate (“Agreement”) as of \_\_\_\_\_, (“Effective Date”) upon the follow terms:

1. **RECITALS.** This Agreement is based upon the following recitals, facts and understandings of the Parties:

a. Developer desires to negotiate with Agency to develop certain real property (“Property”) located in the City of Sacramento, County of Sacramento, State of California, as described in the Legal Description attached and incorporated in this Agreement by this reference. The Property is within Railyards Redevelopment Project Area (“Project Area”) and is owned by the Agency. The development of the Property (“Project”) is consistent with Railyards Redevelopment Project Plan (“Redevelopment Plan”) and its implementing documents, has been identified by the Agency as important to the furtherance of the Project Area and the elimination of blighting conditions in the Project Area and increasing the stock of affordable housing available to the Project Area and to Downtown Sacramento.

b. The Parties desire to investigate the feasibility of the Project and to negotiate a Disposition and Development Agreement (“DDA”) for transfer, financing and development of the Property.

c. The development of the Site, the completion of the Project and the fulfillment generally of this Agreement are for the purpose of community improvement and welfare, for the benefit of the Project Area and in accord with the public purposes and provisions of any applicable federal, state and local laws and requirements under which the Project is to be undertaken.

2. **Identity of Parties. THE LEGAL IDENTITIES OF THE PARTIES TO THIS AGREEMENT AND THEIR ADDRESSES ARE AS FOLLOWS:**

a. Developer is Mercy Housing California, a nonprofit corporation, organized and doing business in the State of California. The principal office of Developer is located at 3120 Freeboard, Suite 202, West Sacramento, CA 95691. Developer shall make full disclosure to Agency of the identity of all principals, officers, stockholders, partners, joint venturers, and entities in Developer. Initially, the principal of Developer is Greg Sparks, Vice President.

b. Agency is the Redevelopment Agency of the City of Sacramento, a public body, corporate and politic, organized under California law and functioning within the jurisdiction of the City of Sacramento. The principal office of Agency for purposes of this agreement is located at 801 12<sup>th</sup> Street, Sacramento, California 95814.

Notices to any party shall be personally delivered or sent by first class mail to its principal office address. Notices to Agency shall be clearly marked “Attention: 7th and H Street Residential”.

3. **EXCLUSIVE NEGOTIATION.** During the term of this Agreement, the parties shall negotiate exclusively with each other, and in good faith, regarding the Property and the Project. The parties acknowledge and agree that neither party is obligated by this Agreement or otherwise to undertake the Project or any other Project on the Property and that no party has a cause of action against the other arising under this Agreement for failure to approve or undertake the Project.

4. **TERM.** This Agreement shall be effective as of the Effective Date, and shall terminate upon the earlier of completion of all obligations hereunder or one hundred and sixty (160) days after the Effective Date unless extended by written agreement of the parties.

5. **LEGISLATIVE ACTION.** Agency and Developer acknowledge that the Agency must exercise its independent legislative authority in making any and all findings and determinations required of them by law concerning the Project. This Agreement does not restrict the legislative authority of the Agency in any manner, whatsoever, and does not obligate the Agency to enter into the DDA or to take any course of action with respect to the Project.

a. Except as expressly stated in this Agreement, if this Agreement terminates without execution of a DDA, each party shall bear its own costs related to this Agreement.

b. Developer acknowledges that Agency and the City of Sacramento are separate legal entities, and that the Project is also subject to independent review by the City in proper exercise of its jurisdiction, including without limitation, review by the City's Planning Department, Design Review/Preservation Board and Building Department. If the Proposal is disapproved by final action of the governing bodies of the Agency, as a result of CEQA review or otherwise as may be required in this Agreement or by law, this Agreement shall terminate as of the date of such disapproval.

6. **CEQA REVIEW.** In accordance with the California Environmental Quality Act ("CEQA"), Agency as responsible agency shall review and consider the environmental documentation as prepared by the lead agency and will further consider the environmental effects of the Project prior to considering action to approve the proposed DDA.

a. Nothing in this Agreement shall be construed to limit the application of CEQA to the Project or to changes in the Project or to control the actions of Agency in meeting its respective CEQA obligations. In fulfilling its obligations under CEQA, the Agency shall act independently and without regard to its respective obligations under this Agreement. Agency shall not be liable, in any respect, to Developer or any third party beneficiary of this Agreement for its action or inaction in fulfilling its CEQA obligations.

b. Agency will not consider the approval of the Project unless and until it has fully reviewed and considered the environmental impacts of the proposed Project in accordance with CEQA. After CEQA review, Agency is not, and shall not be considered to be, obligated by this Agreement, or otherwise to approve a DDA or any other agreement,. After CEQA review, Agency is not obligated, by this Agreement or otherwise, to adopt findings of overriding considerations for the approval of the Project or take any other action in support of the proposed Project. After CEQA review, Agency is not precluded, by this Agreement or otherwise, from rejecting the Project or from imposing mitigation measures as a condition of Project approval, which measures mitigate or avoid direct or indirect environmental effects of the Project.

c. Upon Agency request, Developer shall supply data and information both to determine the impact of the development on the environment and to assist in the preparation of the environmental documents for the proposed Project.

7. **SCHEDULE OF PERFORMANCES.** The parties shall perform the following stated obligations at the times specified in the following schedule (“Schedule of Performances”):

<b>Responsible Party</b>	<b>Action</b>	<b>Due Date</b>
Developer	Submit Deposit	Within ten (10) days following the Effective Date
Developer	Submit an application for Affordable Housing Program funds from FHLB	April 10, 2010
Developer and Agency	Meet and confer concerning progress of the foregoing actions; Developer to submit progress reports at each meeting	At least once each month during the term of this Agreement, as it may be extended, commencing not later than twenty (20) days of the Effective date
Developer	Submit information as requested by Agency and City staff for review of Developer’s proposal, for environmental review inclusion in presentation to governing bodies	Within five (5) business days of request, or as deemed reasonable by the parties
Developer	Conduct Community outreach meetings to obtain neighborhood input	March through June 2010
Developer	Continue working with City regarding entitlements and environmental review	Currently through completion of task
Developer	Submission of proposed financing, operations and program plan	Continuing through May 15, 2010
Developer	Submit an application for State Mental Health Services Act funds to CalHFA	June 2010
Developer	Prepare an application for Low Income Housing Tax Credits	To be ready when applications are to be submitted for the second round in 2010
Developer and Agency	Continue design, underwriting, services plan and construction cost analysis along with the negotiation of the DDA	May 24, 2010
Developer and Agency	If agreement reached, DDA submitted to Governing Board and Council	June 2010

8. **EXTENSION.** Upon written request of Developer, Agency shall reasonably consider recommendation to its governing board, an extension of the initial term of this Agreement if Developer has acted diligently and in good faith in performing its obligations under this Agreement and if there is a reasonable likelihood that the parties can negotiate a mutually acceptable DDA. Approval of such extension shall be at the sole discretion of the Agency’s governing bodies.

9. **DEPOSIT FEE.** Developer shall deliver to Agency a deposit of One Thousand Dollars and No Cents (\$1,000.00) (“Deposit”)

a. Prior to execution of the DDA for the Project or termination of negotiations between Agency and Developer, Agency may expend the Deposit solely for payment of all third-party fees, costs and expenses (the "Third Party Costs") for predevelopment activities for the Project incurred by Agency, including, without limitation, costs related to preparation of the environmental documentation for the Project and supporting studies other than fees for Agency outside legal counsel for the negotiation or preparation of documents for the transactions contemplated by this Agreement. Fifteen days prior to any such expenditures, Agency shall provide the Developer with a schedule of anticipated expenditures on the Third Party Costs. The parties anticipate that Third Party Costs will not exceed \$1000. If the actual expenditures exceed the anticipated amount the parties shall meet and confer with respect to the budget for such costs, and Agency is not obligated to continue with the Project until Developer has deposited such additional funds as may reasonably be needed to pay such remaining Third Party Costs. It is agreed and understood that the required Deposit is a Deposit only, and that to the extent that the costs of the Project exceed the Deposit, Developer is responsible for the payment of any and all such additional costs.

If the Agency fails to approve a proposed DDA that has been negotiated under this Agreement, which is duly before it for consideration and which has been executed by the Developer, Agency will refund to Developer the Deposit remaining after payment of such Third Party Costs incurred to the date of the hearing regarding approval of the DDA.

b. If Developer and Agency agree in writing to terminate the negotiations, the Deposit remaining after such Third Party Costs will be refunded to the Developer

c. If the terms of the DDA are otherwise not finalized during the negotiation period, the Deposit is the property of the Agency, without restriction as to its use, unless the Agency agrees in writing to extend the negotiation period.

10. **DEFAULTS.** Either of the Agency or the Developer shall be in default of this Agreement if it (a) fails to fulfill its obligations when due, which failure is not caused by the other party, (b) does not negotiate the DDA in good faith and upon the terms stated in this Agreement, (c) does not reasonably cooperate with the other in fulfilling the other's obligations under this Agreement, or (d) refuses to execute the DDA when negotiations are completed and deposit any funds then required of it for the DDA (except if the Agency has disapproved the project after public hearing in exercise of its legislative authority or in accordance with CEQA in exercise of its independent review).

The defaulting party shall have thirty (30) days to cure the default. Should the defaulting party fail to cure the default within the thirty (30) days, the non-defaulting party may terminate this Agreement by written notice to the defaulting party, and may pursue equitable remedies available to it for such default. Should the Agency be in default, the Developer is entitled to the unencumbered remainder of the Deposit, if any. In the event of such a default by Developer, Agency may retain the Deposit and may terminate the Agreement.

a. After termination of this Agreement for default of Developer, Developer shall have no rights under this Agreement to participate in the development of the Project, and the Agency shall have the absolute right to pursue development of the Project, in any manner it deems appropriate.

b. The remedies contained in this Section 10 are the sole exclusive remedies for default of this Agreement, and neither party may claim, as a result of a default of this Agreement, any damages, whether monetary, non-monetary, consequential or otherwise.

11. **DISPOSITION AND DEVELOPMENT AGREEMENT.** In addition to other provisions stated in this Agreement, the DDA will address, without limitation, the following provisions (a) use covenants to run with the land; (b) payment and performance bonding and other completion assurances; (c) insurance and indemnities, including hazardous materials indemnities; (d) anti-discrimination provisions; (e) performance assurances such as the deposit; (f) limitation on transfers prior to Project completion; (g) compliance with CEQA mitigation; (h) Agency's rights to revest the Property upon Developer default; (j) extension fees for delay in construction, and liquidated damages; (k) Agency's rights to cure defaults, assume loans and complete construction; (l) delayed transfer of title to land; and (m) loan guarantees and additional securities.

12. **PREDEVELOPMENT COSTS.** Developer shall bear all predevelopment costs relating to actions of Developer under this Agreement. There is a separate agreement, the Predevelopment Agreement by and between the Agency and Developer that specifies what, if any, predevelopment activities or costs for planning, environmental architectural, engineering and legal services, and other costs associated with preparation of Developer's Proposal and the DDA.

13. **ASSIGNMENT.** This Agreement is not assignable by either party in whole or in part without the prior written consent of the other parties.

14. **APPLICABLE LAW; VENUE.** This Agreement shall be construed in accordance with the law of the State of California, and venue for any action under this Agreement shall be in Sacramento County, California.

15. **ATTORNEYS' FEES.** In the event of any dispute between the parties, whether or not such dispute results in litigation, the prevailing party shall be reimbursed by the other party for all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees, witness and expert fees and investigation costs. A party receiving an award after arbitration or an order or judgment after hearing or trial shall not be considered a prevailing party if such award, order or judgment is not substantially greater than the other party's offer of settlement made in advance of the arbitration, hearing or trial.

EXECUTED as of the date first written above, in Sacramento, California.

AGENCY: **REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO** Approved as to form:

By: \_\_\_\_\_  
LaShelle Dozier, Executive Director

\_\_\_\_\_  
Agency Counsel

DEVELOPER: **MERCY HOUSING CALIFORNIA** Approved as to form:

By: \_\_\_\_\_  
Greg Sparks, Vice President

By: \_\_\_\_\_  
Counsel for Developer