MEETING DATE: March 4, 2020

ITEM # 3

SUBJECT:

CONSIDERATION OF AMENDMENT TO PURCHASE AND SALE AGREEMENT FOR THE SALE OF CITY-OWNED PROPERTY TO MERCY HOUSING CALIFORNIA 87, L.P. FOR THE PERMANENT SUPPORTIVE HOUSING DEVELOPMENT

INITIATED OR REQUESTED BY: [ ] Council [X] Staff [ ] Other

REPORT COORDINATED OR PREPARED BY:
Raul Huerta, Senior Program Manager
Economic Development and Housing

ATTACHMENT [X] Yes [ ] No [ ] Information [ ] Direction [X] Action

OBJECTIVE
The objective of this report is to facilitate the City Council's consideration of an Amendment to the Purchase and Sale Agreement (PSA) for the sale of City-owned property to Mercy Housing California 87, L.P. for the permanent supportive housing (PSH) development; which would revise the terms of the Agreement to allow Mercy Housing to close early on the City-owned site, however, maintains all requirements associated with project entitlements, planning approvals, and securing building permits and commencing construction by April 27, 2020, (the funding deadline to begin construction on the PSH project).

RECOMMENDED ACTION
Staff respectfully recommends that the City Council:

1. Authorize the City Manager or his designee to execute the Amendment to Purchase and Sale Agreement (PSA) with Mercy Housing California 87, L.P., in substantially the form shown in Attachment 1; and
2. Take any other actions necessary to effectuate the transaction described in this staff report, including but not limited to modifying the Amendment to PSA subject to the approval of the City Attorney.

BACKGROUND
On October 5, 2018, the City Council approved an Option Agreement with Mercy Housing California (Mercy Housing) for the sale of a City-owned site for the development of a Permanent Supportive Housing (PSH) project. The PSH project would provide West Sacramento's first permanent supportive housing and include up to 85 units that would specifically target individuals experiencing, or at risk of experiencing, homelessness. On March 20, 2019, the City Council adopted Resolution 19-21 approving the PSA for the sale of the City-owned property to Mercy Housing, in addition to loan documents, related to the PSH project. Subsequently, Mercy Housing acquired an adjacent privately-owned property (Private Property) for the PSH project with funding that was approved by the City.

Mercy Housing has since secured all remaining financing for the development of the PSH project, including $850,000 in Affordable Housing Program funds, 60 project-based homeless vouchers from Yolo County Housing, $5.2 million in HCD No Place Like Home funds and a reservation of $32.9 million in Federal and State 9% low income housing tax credits. With the award of the low-income housing tax credits, Mercy must be ready to obtain building permits within 180 days of award; Mercy Housing has submitted all required plans and paid all required fees for plan check review.

ANALYSIS
The PSA anticipated closing escrow on the real estate transaction concurrently with closing of construction financing for the PSH project, allowing Mercy Housing to pay the City for the cost of the City-owned property and initiate construction. Additionally, a lot merger would also need to be recorded with the Yolo County Clerk-Recorder’s Office (Clerk-Recorder) immediately after close of escrow to create one parcel with the City-owned site and the adjacent Private Property that Mercy Housing acquired for the PSH project.

Fidelity National Title Company has informed Mercy Housing and City staff that attempting to record the lot merger concurrently with the construction financing creates timing problems and title insurance issues given that obtaining formal recording of the lot merger by Clerk-Recorder can take up to 30 days. As a result, Mercy Housing has requested that it be allowed to close escrow on the City-owned site early. The Mercy Board has approved the use of internal funds to close escrow allowing Mercy Housing to record the lot merger with the Clerk-Recorder, prior to closing on the construction financing.
The Amendment to the PSA revises the terms of the Agreement to allow Mercy Housing to close early on the City-owned site, however, maintains all requirements associated with project entitlements, planning approvals, and securing building permits and commencing construction by April 27, 2020, (the funding deadline to begin construction on the PSH project).

Environmental Considerations
On March 20, 2019, the City Council made a finding that the proposed PSH project is within the scope of the previously certified Environmental Impact Report (EIR) prepared for the General Plan 2035, and no new or substantially more adverse impacts would occur through implementation of the proposed project. As a result, no new environmental document is required consistent with State of California Environmental Quality Act (CEQA) Guidelines Sections 15162 and 15168(c)(2).

Commission Recommendation
No commission recommendation was solicited for this amendment. However, the Economic Development and Housing Commission unanimously voted to recommend that Council approve the 2017 and 2018 CDBG Annual Action Plans at the May 2017 and May 2018 meetings, respectively, that allocated a total of $1,041,157 toward the completion of the PSH Project.

Strategic Plan Integration
This item is in support of the Council's 2019 Strategic Plan Top Priority Management Agenda item, "Homelessness and Community Impacts."

Alternatives
The Council's primary alternative is to reject the recommended action. Staff does not recommend this alternative as Mercy Housing must be prepared to begin construction by April 27, 2020 to meet funding deadlines. If Mercy Housing is prevented from closing escrow early on the City-owned property and processing the lot merger, it would jeopardize the project's funding.

Coordination and Review
The Amendment for the PSA was prepared in coordination with Mercy Housing and the City Attorney's Office.

Budget/Cost Impact
Upon close of escrow for the City-owned property, Mercy Housing will be required to pay the City the appraised value of $720,000, which will be deposited into the General Fund.

ATTACHMENT
Amendment to PSA
AMENDMENT TO PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS

This Amendment to Purchase and Sale Agreement and Joint Escrow Instructions ("Amendment") is executed as of March ___, 2020, by the City of West Sacramento, a California municipal corporation ("Seller" or "City") and Mercy Housing California 87, L.P., a California limited partnership ("Purchaser"). Seller and Purchaser are hereafter referred to individually as a "Party," or collectively, as the "Parties."

RECITALS

A. Seller and Purchaser entered into a Purchase and Sale Agreement and Joint Escrow Instructions dated March 29, 2019 (the "Purchase Agreement") for the purchase of approximately 1.75 acres of vacant real property located at 1801 W. Capitol Ave., 1731 W. Capitol Ave., and 1725 W. Capitol Ave., in the City of West Sacramento, County of Yolo, State of California, identified as APNs 067-270-006, 067-270-005, and a portion of 067-270-004 (the "Property"). All capitalized terms not defined herein shall have the meanings ascribed to them in the Purchase Agreement.

B. According to the terms of the Purchase Agreement, Purchaser was to obtain a lot line adjustment or merger, as well as all building permits and construction funding for its Project at or prior to Close of Escrow.

C. Seller and Purchaser desire to enter into this Amendment in order to amend the requirements for Close of Escrow to allow Purchaser to Close of Escrow prior to completion of the items in Recital B.

NOW, THEREFORE, in consideration of the mutual obligations set forth in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties to this Amendment agree as follows:

AGREEMENT

1. Amended Closing Requirements.

1.1 Merger. Section 7.2.2 of the Purchase Agreement shall be deleted and replaced in its entirety with the following:

7.2.2 Lot Line Adjustment/Merger. Prior to Close of Escrow, Purchaser shall complete a record of survey for the Property and the Adjacent Property, and provide to Seller for Seller's review and approval. Purchaser shall submit a lot line adjustment or merger application with the City to combine the properties, which may occur after Close of Escrow, but in no event later than April 27, 2020. All survey, engineering, and other costs in connection with such documents and approvals shall be the responsibility of Purchaser.

1.2 Entitlements. Section 8.1 of the Purchase Agreement shall be deleted and replaced in its entirety with the following:

8.1 Project Entitlements and Planning Approvals. By April 27, 2020, Purchaser shall receive all Project approvals from the City Planning
Department, including final approval of all construction plans, drawings, specifications and other documents required to obtain all entitlements, required building permits, and governmental approvals for the construction of the Project improvements, and any other government approvals for the construction of the Project improvements, and including lot line adjustment/merger approvals (collectively, the "Project Approvals").

1.3 Financing Plan. Section 8.2 of the Purchase Agreement shall be deleted and replaced in its entirety with the following:

8.2 Financing Plan. Purchaser shall be responsible for, and pay, all costs of developing the Project and constructing all Project improvements. Purchaser intends to finance the Project through a combination of a construction loan, Seller loans, and other funding sources, including Project-based vouchers, tax credit financing, No Place Like Home funding, CDBG Program funds, and private funds. Purchaser shall provide evidence of all committed funding and a final budget/proforma showing sources and uses of funds, including construction financing and adequate reserves. Purchaser shall close on all Project funding (other than the construction loan and any permanent takeout funding sources) at or before Close of Escrow. Purchaser shall provide copies of all loan or grant documents for Seller's approval prior to Close of Escrow, except for copies of construction loan documents which shall be provided prior to closing on the construction loan.

1.4 Timeline. Section 8.4 of the Purchase Agreement shall be deleted and replaced in its entirety with the following:

8.4 Project Timeline for Construction and Completion. Purchaser shall commence construction ("Commencement of Construction") by May 31, 2020, and shall diligently prosecute construction of the Project to completion and obtain a Certificate of Compliance pursuant to Section 8.11 within seven hundred thirty (730) days after Commencement of Construction.

1.5 Seller Approvals. Section 10.2.1 of the Purchase Agreement shall be deleted and replaced in its entirety with the following:

10.2.1 Seller Approvals. Seller's approval of, and the completion of, all pre-closing items in Sections 7.2, 8.2, and 8.3 herein;

1.6 Lot Line Adjustment/Merger Documents. Section 11.2.3 of the Purchase Agreement shall be deleted in its entirety.

1.7 Recording. Section 11.4.1 of the Purchase Agreement shall be deleted and replaced in its entirety with the following:

11.4.1 Record the Grant Deed;
2. MISCELLANEOUS.

2.1 No Other Amendments. The Parties agree that there are no amendments to the Purchase Agreement other than this Amendment, and that all other terms and conditions of the Purchase Agreement are in full force and effect.

2.2 Conflict. In the event of conflict between the terms of the Purchase Agreement and this Amendment, the parties intend that the terms contained in this Amendment shall control and prevail.

2.3 Counterparts. This Amendment may be executed in several counterparts, and may be delivered by facsimile or other means of electronic transmission, each of which shall be deemed an original.

SELLER:

City of West Sacramento,
a California municipal corporation

By: __________________________
    Aaron Laurel, City Manager

PURCHASER:

Mercy Housing California 87, L.P.,
a California limited partnership

By: 1721 West Capitol LLC,
a California limited liability company
    Its: managing general partner

By: Mercy Housing Calwest,
a California nonprofit public
    benefit corporation
    Its: member/manager

By: __________________________
    Name: ______________________
    Title: ________________________

ATTEST:

By: __________________________
    Kryss Rankin, City Clerk

APPROVED AS TO FORM:

By: __________________________
    Jeffrey A. Mitchell, City Attorney