

COOPERATIVE AGREEMENT REGARDING DEDICATED STREET AREAS IN YESLER TERRACE PLAT

This Cooperative Agreement Regarding Dedicated Street Areas in Yesler Terrace Plat (“Agreement”) is made between The Housing Authority of the City of Seattle (“SHA”), a public body corporate and politic under the laws of the State of Washington, and The City of Seattle (“City”), a Washington municipal corporation.

RECITALS

A. In connection with redevelopment of Yesler Terrace, SHA submitted a preliminary plat application to subdivide SHA’s Yesler Terrace property (the “Plat”). The preliminary plat application was approved by the Hearing Examiner on August 30, 2013 under Hearing Examiner file no. MUP-13-016(SD) (the “Preliminary Plat Approval”). The preliminary plat incorporates the street layout concept given approval by the City Council in Clerk File (CF) 311389. In connection with the proposed final plat, the City Council will be asked to accept dedication of certain public right-of-way areas within Yesler Terrace. The Preliminary Plat Approval requires SHA to enter into this Agreement as a condition to final plat approval.

B. Yesler Terrace will be redeveloped in phases. This phased development allows the existing low income housing units to remain in place for a period of time within unimproved public right-of-way that has been dedicated as part of the final plat, but not yet physically improved as streets and sidewalks, in furtherance of the provisions of the Cooperative Agreement between the City and SHA, authorized by Ordinance 123961.

C. The City and SHA wish to allow this phased redevelopment, and the temporary location of structures within dedicated but not-yet-improved right-of-way areas, so long as the City has no responsibility or liability for those structures or the relocation of tenants living within them, and so long as SHA is obligated to remove those structures within a defined period of time.

D. RCW Chapter 35.83 authorizes agreements between cities and public housing authorities related to housing developments.

NOW, THEREFORE, the parties agree as follows:

1. The following definitions apply for purposes of this Agreement:

“ACC” means the annual operating subsidy provided to SHA by the Department of Housing and Urban Development (“HUD”) under Section 9 of the U.S. Housing Act.

“Dedicated Street Areas” means the areas dedicated to the City as right-of-way in connection with Final Plat Approval.

“Final Plat Approval” means approval, by ordinance, of the final plat of the area that was the subject of the Preliminary Plat Approval.

“Public Housing” means housing the operation of which is subsidized by an ACC, available to persons eligible under Section 3 of the U.S. Housing Act.

“Removal Date for a Structure” means the latter of: the date all dwelling units in the Structure cease to be occupied as Public Housing; the date HUD issues written approval to demolish the Structure (if such approval is required); or the date the City of Seattle issues a permit to demolish the Structure.

“Structure” means a building located within the Dedicated Street Areas as of the effective date of this Agreement and all appurtenances that are or have ever been related to the operation of the building, including but not limited to foundations, utilities, impervious surfaces, and other infrastructure.

“U.S. Housing Act” means the United States Housing Act of 1937, as amended, 42 U.S.C. Section 1437 et seq, as it may be amended in the future.

2. No later than 30 days after the date all dwelling units in a Structure cease to be occupied as Public Housing, SHA shall apply to HUD for approval to demolish the Structure (if such approval is required) and shall apply to the City for all applicable permits related to the demolition of the Structure.

3. The City grants permission for each of the Structures to remain in place until the earlier of: (1) eighteen months after the Removal Date for a Structure; or (2) 20 years after the effective date of this Agreement.

SHA at its sole expense shall remove each of the Structures prior to the earlier of: (1) eighteen months after the Removal Date for a Structure; or (2) 20 years after the effective date of this Agreement. Removal of a Structure shall include: (1) removal of the Structure; (2) clean up of any environmental contamination that has resulted from the Structure, or its operation, in accordance with and to the standard required by all applicable federal, state, and local environmental regulations; (3) grading of all disturbed area to match adjacent grades; and (4) installation of temporary restoration as required by the Seattle Department of Transportation (SDOT) that includes but is not limited to temporary erosion and sedimentation control for Dedicated Street Areas and temporary erosion and sedimentation control as per Seattle Department of Planning and Development (DPD) requirements for affected areas of private property. At the May 20, 2013 Board meeting, the SHA Board of Commissioners allocated, through Resolution #5035, \$3,000,000 in dedicated cash reserves to pay for infrastructure improvements associated with Yesler Terrace redevelopment. The cost to remove Structures from the Dedicated Street Areas is included in this reserve amount; provided that the amount in the reserve account does not limit the amount or extent of SHA’s obligation to remove, at its sole expense, each of the Structures.

The portion of the dedicated cash reserves that SHA’s Financial Policy Oversight Committee has identified as being allocated towards the cost of removal of the Structures shall not be used for an alternative purpose unless the Financial Policy Oversight Committee, in consultation with SDOT, determines the removal commitment has been met, including the full scope of removal activities.

4. The City shall have no responsibility to maintain, repair, abate, or remove any of the Structures. SHA shall maintain sole responsibility to maintain, repair, abate, or remove the Structures.

5. The City shall have no responsibility to provide any relocation or other assistance to the residents in Structures. SHA shall maintain sole responsibility for relocation and related rights of such residents, as required by applicable law and consistent with the City-SHA Cooperative Agreement authorized by Ordinance 123961.

6. SHA shall maintain Dedicated Street Areas until such time as all infrastructure facilities and improvements required to be constructed within a given portion of the Dedicated Street Areas by the Preliminary Plat Approval have been constructed and the City has inspected and accepted them. Where SHA has removed Structures from Dedicated Street Areas but the required infrastructure facilities and improvements have not yet been constructed, maintenance by SHA shall include maintenance of temporary restoration installed pursuant to Section 3 above.

7. SHA releases the City, its officials, officers, employees, and agents from any and all claims, actions, suits, liability, loss, costs, expense, attorneys' fees, or damages of every kind and description arising out of or by reason of the presence of Structures within, or the use or occupation of, those portions of the Dedicated Street Areas where the infrastructure facilities and improvements required to be constructed by the Preliminary Plat Approval have not been accepted by the City, including but not limited to claims resulting from injury, damage, or loss to SHA or SHA's property.

SHA agrees to at all times defend, indemnify, and hold harmless the City, its officials, officers, employees, and agents from and against all claims, actions, suits, liability, loss, costs, expense, attorneys' fees, or damages of every kind and description, excepting only damages that may result from the sole negligence of the City, that may accrue to, be asserted by, or be suffered by any person or property including, without limitation, damage, death or injury to members of the public or to SHA's officers, agents, employees, contractors, invitees, tenants, tenants' invitees, licensees, or successors and assigns, arising out of or by reason of:

(a) the existence, condition, construction, reconstruction, modification, maintenance, operation, use, or removal of any Structure within those portions of the Dedicated Street Areas where the infrastructure facilities and improvements required to be constructed by the Preliminary Plat Approval have not been accepted by the City;

(b) the use, occupation, or restoration by any person or entity of those portions of the Dedicated Street Areas where the infrastructure facilities and improvements required to be constructed by the Preliminary Plat Approval have not been accepted by the City;

(c) anything that has been done or may at any time be done by SHA in carrying out its obligations under this Agreement; or

(d) SHA failing or refusing to strictly comply with every provision of this Agreement.

If any suit, action, or claim of the nature described above is filed, instituted, or begun against the City, SHA shall upon notice from the City defend the City, with counsel acceptable to the City, at the sole cost and expense of SHA, and if a judgment is rendered against the City in any suit or action, SHA shall fully satisfy the judgment within 90 days after the action or suit has been finally determined, if determined adversely to the City. If it is determined by a court of competent jurisdiction that Revised Code of Washington (“RCW”) 4.24.115 applies to this Agreement, then in the event claims or damages are caused by or result from the concurrent negligence of the City, its agents, contractors, or employees, and SHA, its agents, contractors, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of SHA or SHA’s agents, contractors, or employees.

8. Until the infrastructure facilities and improvements required to be constructed by the Preliminary Plat Approval within all portions of the Dedicated Street Areas have been accepted by the City, SHA shall obtain and maintain in full force and effect, at its own expense, insurance and/or self-insurance that protects SHA and the City from claims and risks of loss from perils that can be insured against under commercial general liability (“CGL”) insurance policies in conjunction with:

(a) the existence, condition, construction, reconstruction, modification, maintenance, operation, use, or removal of any Structure within those portions of the Dedicated Street Areas where the infrastructure facilities and improvements required to be constructed by the Preliminary Plat Approval have not been accepted by the City;

(b) the use, occupation, or restoration by any person or entity of those portions of the Dedicated Street Areas where the infrastructure facilities and improvements required to be constructed by the Preliminary Plat Approval have not been accepted by the City; and

(c) claims and risks in connection with activities performed by SHA in connection with this Agreement.

Minimum insurance requirements are CGL insurance written on an occurrence form at least as broad as the Insurance Services Office (“ISO”) CG 00 01. The City requires insurance coverage to be placed with an insurer admitted and licensed to conduct business in Washington State or with a surplus lines carrier pursuant to RCW Chapter 48.15. If coverage is placed with any other insurer or is partially or wholly self-insured, such insurer(s) or self-insurance is subject to approval by the City’s Risk Manager.

Minimum limits of liability shall be \$10,000,000 per Occurrence; \$10,000,000 General Aggregate; \$10,000,000 Products/Completed Operations Aggregate, including Premises Operation; Personal/Advertising Injury; Contractual Liability. Coverage shall include the “City of Seattle, its officers, officials, employees and agents” as additional insureds for primary and non-contributory limits of liability subject to a Separation of Insureds clause.

Within 60 days after the effective date of this Agreement, SHA shall provide to the City, or cause to be provided, certification of insurance coverage including an actual copy of the blanket or designated additional insured policy provision per the ISO CG 20 12 endorsement or equivalent. The insurance coverage certification shall be delivered or sent to the Director of SDOT or to such address as the Director may specify in writing from time to time. SHA shall provide a certified complete copy of the insurance policy to the City promptly upon request.

9. GENERAL PROVISIONS

9.1 Amendment. No modification to or amendment of this Agreement shall be effective unless a written amendment, approved by the City Council by ordinance, is executed by the authorized representatives of SHA and the City.

9.2 Choice of Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Washington.

9.3 Severability. The invalidity or unenforceability of any clause, part or provision of this Agreement shall not affect the validity or enforceability of any other portions of this Agreement.

9.4 No Third Party Beneficiaries. Nothing in this Agreement is intended to confer any rights or remedies on any persons or entities other than SHA and the City.

9.5 Notice. Any notice provided for under this Agreement shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return-receipt requested, addressed as follows, or to such other address as the receiving party specifies in writing:

If to the City:

Mayor
City of Seattle
PO Box 94749
Seattle, WA 98124-4749

And to:

Seattle Department of Transportation
Street Use and Urban Forestry
P.O. Box 34996
Seattle, WA 98124-4996

If to SHA:

Executive Director
Seattle Housing Authority
190 Queen Anne Avenue N.
Seattle, WA 98109

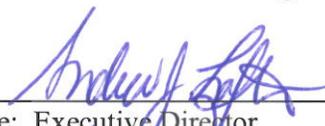
9.6 Effective Date. This Agreement shall become effective and binding upon the later of the following dates: (i) execution by both parties; or (ii) the effective date of the ordinance(s) granting Final Plat Approval and accepting the Dedicated Street Areas.

Executed as of the dates shown below.

THE CITY OF SEATTLE, a Washington municipal corporation

By: _____
Title: Mayor of the City of Seattle
Date: _____

THE HOUSING AUTHORITY OF THE CITY OF SEATTLE, a public body corporate and politic under the laws of the State of Washington

By:  _____
Title: Executive Director
Date: 8/7/2014

STATE OF WASHINGTON

COUNTY OF KING

} ss.

I certify that I know or have satisfactory evidence that **EDWARD B. MURRAY** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of The City of Seattle, a Washington municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this _____ day of _____, 2014.

Printed Name _____
NOTARY PUBLIC in and for the State of Washington,
residing at _____
My Commission Expires _____

STATE OF WASHINGTON

COUNTY OF KING

} ss.

I certify that I know or have satisfactory evidence that Andrew J. Lofton is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Executive Director of The Housing Authority of the City Of Seattle, a public body corporate and politic under the laws of the State of Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 7th day of August, 2014.



Rebecca Anne Taylor
Printed Name REBECCA ANNE TAYLOR
NOTARY PUBLIC in and for the State of Washington,
residing at RENTON, WA
My Commission Expires 4-19-16

08/07/2014 final