

MOTION NO. M2014-92

Agreement of Cooperation between Sound Transit, the City of Seattle, MHNW 9 Othello East LP and Mercy Housing Northwest for the development of Myrtle Street Apartments, a TOD, at Othello Station

MEETING:	DATE:	TYPE OF ACTION:	STAFF CONTACT:
Capital Committee	11/13/2014	Recommendation to the Board	Ric Ilgenfritz, PEPD Executive Director
Board	11/20/2014	Final Action	Sarah Lovell, Transit-Oriented Development Manager

PROPOSED ACTION

Authorizes the chief executive officer to execute an agreement of cooperation with the City of Seattle, MHNW 9 Othello East LP and Mercy Housing Northwest, to share information about the Myrtle Street Apartments, a TOD project at Othello Station, and creates a process for corrective action if the developer defaults under its loan obligations to the City or if the project falls behind schedule.

KEY FEATURES SUMMARY

- The proposed action authorizes a four-party agreement regarding transit-oriented development (TOD) near the Othello Station.
- MHNW 9 Othello East LP and Mercy Housing Northwest are the developer of Myrtle Street Apartments, a TOD project, at Othello Station in Seattle.
- The agreement provides for the City and the developer to keep Sound Transit informed about the status of the project, including meeting certain milestones during the design and permitting stages. If the developer has not obtained a building permit by December 1, 2017, or if the developer defaults under its loan obligations to the City, Sound Transit may call a meeting of the parties to discuss corrective action.
- The agreement will terminate when the developer closes on its construction loan, which is anticipated in 2016.
- Motion No. M2014-89 authorizes Sound Transit to enter into a purchase and sale agreement for this property between Sound Transit as seller and MHNW 9 Othello East LP as buyer. This agreement is contingent on the Capital Committee approving Motion No. M2014-89 to sell the property for TOD.

BACKGROUND

The Sound Transit TOD program’s standard practice is to remain under contract with a buyer until the buyer has received a building permit for the proposed TOD project. Delaying closing until the buyer has a building permit allows Sound Transit to remain a party to permit activities on TOD properties and allows Sound Transit to pursue other development opportunities if the buyer is unable to move forward with the project. In this transaction, Mercy Housing Northwest, has applied for and received a loan from the City of Seattle Office of Housing’s Equitable TOD program (ETOD) for acquisition funding, but a portion of those funds must be spent by the end of 2014. The Office of Housing in its capacity as lender will impose certain affordability covenants on the property to ensure that the property is developed as affordable housing.

Sound Transit’s Request For Proposal stated that Sound Transit may retain a right of reversion in the event that the purchaser has not broken ground within three years after signing the Purchase and Sale Agreement so that Sound Transit could pursue another development opportunity, if necessary. Mercy

Housing Northwest and the City of Seattle have indicated that this provision is incompatible with the terms of the City's ETOD Loan Program and would make acquisition funding difficult to obtain.

In consideration of Sound Transit agreeing to sell the property without a reversionary interest, and in furtherance of the parties' shared goal to develop the property for TOD, the parties have negotiated this agreement to share information about the project and to create a process for corrective action if the developer defaults under its loan obligations to the City or the project falls behind schedule. The agreement identifies designated representatives for the parties to serve as the single point of contact throughout the project and who are charged with negotiating corrective actions, if needed. If the designated representatives are unable to reach agreement then the dispute may be elevated to a higher level.

The parties agree to share information about the project in an open and transparent manner and to use good faith to resolve any delays or setbacks in the design, permitting, or construction of the project. However, this agreement does not form a partnership or constitute a joint venture between the parties, nor does it limit or condition the City of Seattle's regulatory authority to issue the permits needed for this project.

The agreement terminates when the developer closes on its construction financing, which is anticipated in 2016.

FISCAL IMPACT

This agreement does not constitute a monetary transaction and does not have a fiscal impact on Sound Transit. However, given the Agency's involvement in the agreement at the point of loan default, if in the unlikely circumstance Sound Transit financial involvement was considered, any fiscal action would be brought before the Board for review and approval

PUBLIC INVOLVEMENT

Mercy Housing Northwest is charged with conducting public involvement work regarding this project.

TIME CONSTRAINTS

If approved, this agreement will be signed together with the Purchase and Sale Agreement for the Othello TOD property, as outlined in Motion No. M2014-89. The federal Housing and Urban Development Community Cornerstones funding that the City has made available for the land acquisition must be spent by the end of 2014. Delaying Motion No. M2014-89 and this accompanying agreement would mean that the buyer may decline to purchase the property.

PRIOR BOARD/COMMITTEE ACTIONS

Resolution No. R2013-32: Approved the chief executive officer's declaration of surplus real property acquired for the Initial Segment Project, including the method of disposition for using future proceeds from selling or leasing the property and use the proceeds to reduce the gross project cost of another FTA eligible capital transit project.

Resolution No. R2013-30: Adopted a revised Real Property Excess, Surplus, and Disposition Policy and superseded Resolution No. R99-35.

Resolution No. R2012-24: Established a policy to guide assessment and facilitation of transit-oriented development (TOD) during planning, design, construction and operation of the high-capacity transit system and supersedes Motion No. M99-60 and Motion No. 98-25.

Resolution No. R99-35: Adopted the Surplus Real Property Disposition Policy, Procedures and Guidelines for the disposition of surplus real property.

ENVIRONMENTAL REVIEW

JI 11/10/2014

LEGAL REVIEW

JRV 11-10-14

MOTION NO. M2014-92

A motion of the Board of the Central Puget Sound Regional Transit Authority authorizing the chief executive officer to execute an agreement of cooperation with the City of Seattle, MHNW 9 Othello East LP and Mercy Housing Northwest, to share information about the Myrtle Street Apartments, a TOD project at Othello Station, and creates a process for corrective action if the developer defaults under its loan obligations to the City or if the project falls behind schedule.

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MOTION:

It is hereby moved by the Board of the Central Puget Sound Regional Transit Authority that the chief executive officer is authorized to execute an agreement of cooperation with the City of Seattle, MHNW 9 Othello East LP and Mercy Housing Northwest, to share information about the Myrtle Street Apartments, a TOD project at Othello Station, and creates a process for corrective action if the developer defaults under its loan obligations to the City or if the project falls behind schedule.

APPROVED by the Board of the Central Puget Sound Regional Transit Authority at a regular meeting thereof held on November 20, 2014.



Dow Constantine
Board Chair

ATTEST:



Marcia Walker
Board Administrator