



REQUEST FOR HOUSING AUTHORITY ACTION

MEETING DATE:

DECEMBER 15, 2020

TITLE:

**APPROVE A FIRST AMENDMENT TO
THE OPTION AGREEMENT WITH
WASHINGTON SANTA ANA HOUSING
PARTNERS, L.P. FOR THE
DEVELOPMENT OF THE CROSSROADS
AT WASHINGTON UP TO \$157,386 IN
REIMBURSEMENTS**

EXECUTIVE DIRECTOR

RECORDING SECRETARY USE ONLY:

APPROVED

- ☐ As Recommended
☐ As Amended

CONTINUED TO _____

RECOMMENDED ACTION

Authorize the Executive Director of the Housing Authority to execute a First Amendment to Option Agreement with Washington Santa Ana Housing Partners, L.P., a California limited partnership for the development of the Crossroads at Washington affordable housing project located at 1126 and 1146 E. Washington Avenue, Santa Ana, CA 92701, (APNs 398-092-13 and 398-092-14) including a maximum reimbursement amount not to exceed \$157,386 (if required), subject to non-substantive changes approved by the Executive Director and Housing Authority General Counsel.

EXECUTIVE SUMMARY

On February 18, 2020, City Council approved a Joint Powers Agreement with the County of Orange to mutually develop the Crossroads at Washington project located at 1126 and 1146 E. Washington Avenue, Santa Ana, CA 92701 as joint property owners. City Council also approved an Option Agreement and 65-year Ground Lease for the development of the combined property (Exhibit 1). Since that date, the developer has conducted various environmental assessments on behalf of the City and County as joint owners. The environmental assessments have determined that the combined property owned by the City and County is environmentally contaminated. Due to this unforeseen circumstance, the developer is seeking a reimbursement agreement to pay a portion of the predevelopment and environmental assessment costs they have incurred so far on behalf of the City and County, only if they are unable to proceed with the project. The First Amendment to the Option Agreement commits the City and County to pay \$314,772, payable equally in a 50-50 split, if the developer elects not to proceed with the project and declines the City and County's award of affordable housing funds and the 65-year Ground Lease of the environmentally contaminated property for the development of the project.

DISCUSSION

The Crossroads at Washington (the "Project") is a proposed multifamily affordable housing development at 1126 and 1146 E. Washington Avenue, Santa Ana, CA 92701. The approximately 2.286-acre site includes two parcels (identified in Table 1) owned by the County of Orange (the

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“County”) and the Housing Authority of the City of Santa Ana (the “Authority”). Both parcels are currently vacant and free of building structures or occupants. However, the sites were previously used for agriculture, industrial storage and vehicular services. Various contractors and businesses, including transit agencies, auto repair services, and trucking companies, occupied the Authority parcel from 1966 to 1991. The County parcel was developed with a materials/equipment storage area between 1972 and 1989. The northwestern portion of the entire site was primarily occupied by vehicle service facilities that used onsite gasoline, diesel fuel underground storage tanks and fuel dispensers. Between 2007 and 2019, various contractors and services leased both parcels (e.g., ARB Underground, Christiansen Amusement, etc.).

Table 1 – Property Ownership

Property Owner	Assessor's Parcel Number	Acres
Housing Authority of the City of Santa Ana	398-092-14	1.456
County of Orange	398-092-13	0.83
Total		2.286

Washington Santa Ana Housing Partners, L.P. (the “Developer”), a California limited partnership formed by The Related Companies of California LLC and A Community of Friends, the County and the Authority entered into an Option Agreement on February 25, 2020, which provided site control for the Developer to apply for funding.

The Developer has invested significant staff time and financial resources in this Project to secure funding and compete for Low-Income Housing Tax Credits from the California Tax Credit Allocation Committee (“TCAC”) while conducting comprehensive environmental due diligence. To date, the Developer has incurred over \$695,000 in third-party predevelopment expenses and over \$500,000 in staff overhead costs specific to this project. This includes environmental assessments and \$214,772 of non-refundable payments for the required TCAC Allocation Fee (\$107,386) and TCAC Performance Deposit (\$107,386). The Developer is committed to investing more staff time to the Project.

The First Amendment to the Option Agreement provides for reimbursement to the Developer for a portion of the costs should the Project not move forward in the future. While additional investigations are warranted with outside environmental health agency involvement, the Developer will need to request additional reimbursement in the future once further environmental assessment costs have been identified. These costs will be documented in a future Second Amendment to the Option Agreement.

Environmental Assessments

The Developer retained Altec Testing & Engineering, Inc. (“Altec”) during the due diligence period to conduct environmental investigations for the sites. An initial Phase I environmental investigation was conducted on October 19, 2019, indicating the likely presence of hydrocarbon contamination on the site in view of past uses that would require some offsite disposal of soil, a manageable mitigation. A Phase II Environmental Site Assessment (“Phase II ESA”) Report was warranted based on the Phase I findings and was prepared by Altec on February 19, 2020. The Phase II ESA Report identified unexpected contaminants (e.g., Tetrachloroethylene, also known as PCE)

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and recommended additional environmental investigations to determine the vertical and horizontal extent of the soil contamination on the County and Authority properties. Subsequently, the County retained Geosyntec Consultants, Inc. to provide environmental peer review services and to act as the County's consultant with respect to environmental issues on the site, for the benefit of both the County and the Authority.

Additional environmental assessments in May and September concluded that the levels of contaminants might warrant environmental oversight by a public agency. As a preemptive measure, all parties agreed to reach out to the Orange County Health Care Agency ("OCHCA") to serve as the oversight agency under its voluntary environmental oversight program. The involvement of an oversight agency provides regulatory direction on further assessments and mitigation/remediation options for the site. The May and September investigations warrant additional assessments to determine the full extent of contamination before mitigation measures can be pursued.

To date, the Developer has incurred over \$100,000 of additional environmental assessment expenses beyond the original Phase II ESA Report. A project timeline is provided with more details regarding the environmental assessments and testing (Exhibit 2). Table 2 summarizes cost for subsequent site assessment since issuance of the original Phase II ESA Report on February 19, 2020.

Table 2 – Summary of Site Assessment Budgets

Additional Assessments beyond Originally Issued Phase II ESA	Amount
Additional Scope and Cost approved by staff on May 13, 2020	\$59,700
Additional Scope and Cost approved by staff on May 22, 2020	\$6,255
Additional Scope and Cost approved by staff on June 2, 2020	\$1,750
Additional Scope and Cost approved by staff on August 12, 2020	\$50,210
Additional Scope and Cost approved by staff on September 23, 2020	\$11,104
Total	\$129,019

Tax Credit Reservation

Due to the highly competitive nature of receiving tax credit allocations in California (e.g., competitions are typically oversubscribed by 300%), the Developer was unsuccessful in securing a tax credit reservation in its initial California Tax Credit Allocation Committee ("TCAC") application submittal during the 2020 First Competitive Application Funding Round in March 2020. The Developer resubmitted a tax credit application in TCAC's Second Competitive Application Funding Round in July 2020 and was successful in securing a reservation of special, one-time Further Consolidated Appropriations Act, 2020 ("FCAA") federal credits.

As prescribed by the TCAC regulations, if the Developer chooses to accept the reservation of the FCAA credits, the Developer would be subject to \$214,772 of non-refundable payments for the required TCAC Allocation Fee (\$107,386) and TCAC Performance Deposit (\$107,386). If the Developer returns the credits, TCAC would not return the fees. Additionally, the TCAC regulations allow the Developer to return the FCAA credits no later than September 1, 2021 to avoid being assessed negative points for future TCAC applications.

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Unlike typical 9% TCAC projects which require competitive 9% projects to start construction within 180/194 days of the tax credit award, TCAC's September 1, 2021 deadline to return FCAA credits for the Project allows flexibility for the Developer to start construction whenever feasible as long as the Project is completed by December 31, 2023.

First Amendment to the Option Agreement

With the understanding of this context and background, the First Amendment to the Option Agreement provides for reimbursement to the Developer for a portion of these predevelopment and environmental assessment costs should the Project not move forward in the future (Exhibit 3). Specifically, the Developer is seeking reimbursement for the non-refundable TCAC deposits and the incurred environmental assessments after the initial Phase II ESA Report issuance on February 19, 2020 totaling \$314,772, payable 50-50 by the County and the Authority.

The Developer would be reimbursed the non-refundable deposits and environmental assessments only in the event that the following conditions are met:

- (a) On or before August 31, 2021, the Partnership determines that it cannot complete the Project by December 31, 2023 and returns the FCAA Credits to TCAC; and
- (b) (i) The Partnership determines the Crossroads project is not financially feasible and intends to decline the funding commitment of the County and Authority, or
 (ii) The County or Authority terminate its funding commitment for the project pursuant to the terms and conditions of the existing funding commitment.

If the Developer does not move forward with the Project, the Authority would be responsible for \$157,386 of the \$314,772 in reimbursement funds allowed under this First Amendment.

FISCAL IMPACT

If the conditions in the First Amendment to the Option Agreement are met and the project does not proceed, \$157,386 will be made available for expenditure in FY 2020-21 from the Low and Moderate Income Housing Asset Fund, Contract Services account (no. 60718810-62300).

Fiscal Impact Verified By: Kathryn Downs, CPA, Executive Director – Finance and Management Services Agency

Submitted By: Judson Brown, Housing Division Manager – Community Development Agency

Exhibits: 1. Staff Report from February 18, 2020
 2. Project Timeline
 3. First Amendment to Option Agreement

Exhibit 1: Staff Report from February 18, 2020 [Click here](#)

<http://clerk/WebLink/DocView.aspx?dbid=1&id=116458&page=1&cr=1>

PROJECT TIMELINE

Major milestones are highlighted in black.

Date	Milestone
September 24, 2019	County and Developer Sign License Agreement for Site Access – The Developer and County sign a Short Term License Agreement to allow the Developer to access the County’s property for environmental assessment over sixty (60) days.
October 30, 2019	Phase I Environmental Site Assessment (“Phase I ESA”) Report – The Phase I ESA prepared by Altec identified site use history, previous underground storage tank removals, pre-2019 soil assessment activities, and Recognized Environmental Conditions (“RECs”) throughout the site. It recommended additional soil sampling, geophysical assessment and excavation to verify soil conditions and evaluate risks.
December 16, 2019	County and Developer Sign License Agreement for Site Access – Due to the expiration of the original License Agreement for site access, the Developer and County sign a new Short Term License Agreement to allow the Developer to access the County’s property for environmental assessment over seventy-five (75) days.
January 9-15, 2020	Phase II ESA Field Work – Altec’s initial soil assessment based on findings and recommendations from the Phase I ESA.
February 19, 2020	Phase II ESA Report – The Phase II ESA prepared by Altec identified the potential location of an underground storage tank that may not have been removed in 1988 with other underground storage tanks and equipment. The report also verified the existence of soil substances at various depths – some of which exceed the screening levels for occupied residential structures. This includes Arsenic, Lead, Total Petroleum Hydrocarbons (diesel and oil), Tetrachloroethylene (PCE), and Total Recoverable Petroleum Hydrocarbon (TRPH). Specifically, PCE was an unexpected contaminant found at the site and the Phase II ESA Report recommended additional environmental investigations to determine the extent of the vertical and horizontal soil contamination on the County and Authority properties.
February 25, 2020	Option Agreement – Option Agreement executed between the County, the Authority, and Developer (Washington Santa Ana Housing Partners, L.P.)
March 9, 2020	TCAC Financing Application – Developer submitted a tax credit application to TCAC (First Competitive Application

	Funding Round) and was unsuccessful in securing an award of tax credits.
April 29, 2020	<p>Additional Environmental Assessments – Altec provided a proposal for additional site assessment based on findings and recommendations from the Phase II ESA Report dated February 19, 2020. This proposal included three (3) options that range in scope and cost.</p> <ul style="list-style-type: none"> • <u>Option 1:</u> Limited Screening Investigation (not to exceed \$23,050). • <u>Option 2:</u> Limited Assessment to Maximum Depth of 35 feet below ground (not to exceed \$59,700). • <u>Option 3:</u> Comprehensive Assessment to a Maximum Depth of 55 feet below ground (not to exceed \$84,175).
May 13, 2020	<p>Reimbursement Acknowledgement Letter – County and Authority staff authorized further investigations through acknowledging reimbursement to Developer for additional assessment costs on a 50-50 basis not to exceed an aggregate cost of \$100,000 should the Project terminate. At the time of this letter, the County, Authority, and Developer agreed to proceed with Option 2: Limited Assessment to Maximum Depth of 35 feet below ground (not to exceed \$59,700).</p>
May 19, 2020	<p>County Recommended Additional Testing Locations – The additional site assessment scope was expanded to include one (1) additional boring location and sixteen (16) methane gas samples based on recommendations from the County's environmental consultant, GeoSyntec. This increased the total "Option 2" scope by \$6,255 from \$59,700 to \$65,955. The County and Authority approved the additional scope and cost on May 22, 2020.</p>
June 2, 2020	<p>Developer Recommended Additional Testing based on Preliminary Results – The Developer and its environmental consultant, Altec, recommended additional testing to further analyze soils samples at various depths to better define the vertical and horizontal soil conditions. This included fourteen (14) additional collected samples and increased the total "Option 2" scope by \$1,750 from \$65,955 to \$67,705. The County and Authority approved the additional scope on June 2, 2020.</p>
June 18, 2020	<p>Findings from Additional Phase II Environmental Site Assessment – Developer shared findings from the May Phase II assessment with the County and Authority. The Developer, County staff, and Authority staff discussed results on June 25, 2020 and identified next steps:</p> <ul style="list-style-type: none"> • The County and its environmental consultant, GeoSyntec, agree to contact the Orange County Health

	Care Agency as a potential oversight agency for future site assessment. The absence of agency oversight could create issues down the road such as additional work, duplication of previously completed assessments, and potentially additional liability.
July 1, 2020	TCAC Financing Application – Developer submitted an application to the California Tax Credit Allocation Committee for the Second Competitive Application Funding Round. This competitive application round included a one-time allotment of additional 9% federal tax credits through the Further Consolidated Appropriations Act, 2020 (“FCAA”) for multifamily housing projects in designated areas affected by the 2017 and 2018 wildfire disasters throughout California. FCAA credits would not be available in subsequent financing rounds.
July 9, 2020	Orange County Health Care Agency provided Remedial Action Supervision (“RAS”) Form to begin Voluntary Oversight Process – Under direction from County staff and Authority staff, the Developer submitted the RAS form to OCHCA. Developer and its environmental consultant, Altec, began preparing the Site Assessment Work Plan.
August 5-6, 2020	Developer Shared Proposal for Additional Site Assessment with County and City and the County Recommends Additional Testing – This site assessment proposal included five (5) additional PCE borings, twenty (20) additional TPH borings, assumed agency involvement, and included an option for expedited sampling results. If approved, this scope would increase the total Phase II ESA costs from \$67,705 to \$131,611 which exceeded the previously agreed upon \$100,000 reimbursement limit and did not include OCHCA oversight agency fees. In addition to the five (5) additional PCE borings on the City’s property (North Parcel), the County recommended adding two (2) additional PCE borings on the County’s property (South Parcel) to help address the extent of the vertical and horizontal contamination. To keep costs as close to the \$100,000 reimbursement limit but still provide the necessary information to allow the Developer to evaluate the opportunity to accept the FCAA credits and under advisement from Altec and Geosyntec, the Developer submitted a reduced scope for a total cost of

	\$50,210 and resubmitted to the County and City on August 10, 2020 for consideration.
August 12, 2020	County and Authority Staff Approved Additional Site Assessment and Sign Environmental indemnification Letters – The County and City approved the revised scope of work in amount of \$50,210 that increased the Developer's ESA Phase II costs from \$67,705 to \$117,915; however, the County and City did not approve an increase to the \$100,000 reimbursement limit. The County and City subsequently signed Environmental Indemnification Letters for the project in order to involve a third party oversight agency on next steps.
August 19, 2020	OCHCA Confirmed Role as Oversight Agency – Developer submitted RAS Forms to OCHCA on August 14, 2020 to begin the agency oversight process. OCHCA confirmed on August 19, 2020 that it would serve as the oversight agency and provided the RAS Letter so that the Developer may begin sharing environmental reports for review.
September 1, 2020	<p>Developer Submitted Previous Assessment Data to OCHCA – The following items were shared with OCHCA on September 1, 2020 to begin their review:</p> <ul style="list-style-type: none"> • Excel workbook with summary tables of the analytical results. • Set of figures to show where the referenced samples were collected • Summary of lab results Altec generated in January 2020 and May 2020. <p>OCHCA began review of Site Assessment Work Plan on September 2, 2020 and authorized the development team to conduct the additional investigations prior to their complete review of the Site Assessment Work Plan. This timeframe allowed the Developer to evaluate the opportunity to accept the FCAA credits by TCAC deadline.</p>
September 2, 2020	Site Assessment Work Plan submitted to OCHCA – Altec provided the Site Assessment Work Plan and Developer submits to OCHCA for review.
September 9, 2020	OCHCA approved Site Assessment Work Plan and requires additional scope – OCHCA approved the Site Assessment Work Plan with a requirement for additional scope of work on September 9, 2020. Altec quantified OCHCA's additional scope at \$14,053 and Developer requests approval from County and City on September 15, 2020 (this scope was revised and approved on September 23, 2020).

September 23, 2020	<p>County and Authority Staff Approved Additional Scope Required by OCHCA – Based on County and City review, the Developer was able to reduce the cost for OCHCA's required additional scope to \$11,104 on September 22, 2020. The County and City approved this scope on September 23, 2020 that increased the Developer's total ESA Phase II costs from \$117,915 to \$129,019.</p> <p>Site work for borings, probe installations and gas sampling occurred between September 30, 2020 and October 6, 2020.</p>
October 27, 2020	<p>Lab Results from Site Assessment Provided to County and Authority staff – Altec provided lab results, findings and summary narrative to the County and City for review in preparation for a decision on whether or not to accept the FCAA tax credits reservation.</p>
November 9, 2020	<p>Developer Accepted Preliminary Reservation of Tax Credits – Developer Submitted Preliminary Reservation Letter, Carryover Allocation Agreement, and the two non-refundable payments for TCAC Allocation Fee (\$107,386) and TCAC Performance Deposit (\$107,386).</p>
November 16, 2020	<p>Developer and County Discuss Next Steps prior to First Amendment to Option Agreement – Developer, County and both of their environmental consultants discussed next steps and estimated budgets for the next phase of recommended site assessment.</p>

**FIRST AMENDMENT
TO
OPTION AGREEMENT**

THIS FIRST AMENDMENT TO OPTION AGREEMENT (“**Amendment**”) is made November ___, 2020, (“**Effective Date**”) by and between the COUNTY OF ORANGE, a political subdivision of the State of California, the HOUSING AUTHORITY OF THE CITY OF SANTA ANA, a public body, corporate and politic, (respectively, the “**County**” and the “**Agency**,” and collectively “**Optionor**”) and WASHINGTON SANTA ANA HOUSING PARTNERS, L.P., a California limited partnership (hereinafter called “**Optionee**”). Optionor and Optionee may sometimes hereinafter individually be referred to as “**Party**” or jointly as “**Parties**.”

Recitals

- A. Optionor and Optionee are parties to that certain Option Agreement dated February 25, 2020 (“**Option Agreement**”), wherein the Optionor granted Optionee an option to ground lease the Premises, consisting of the Agency Property and the County Property.
- B. Optionee is actively pursuing its due diligence to assess the feasibility of constructing an affordable housing project on the Premises known as Crossroads at Washington (“**Project**”). The Agency and County have made certain commitments to fund and support the Project.
- C. Optionor and Optionee are cooperatively engaged in the ongoing environmental assessment of the Premises to determine the nature and extent of contamination located on the Premises and steps necessary to mitigate or remediate such contamination.
- D. Optionee has applied for financing for the proposed Project and has received a reservation of Further Consolidated Appropriations Act, 2020 (“FCAA”) Credits from the California Tax Credit Allocation Committee for the Project. The reservation of FCAA Credits required non-refundable deposits, comprised of a Performance Deposit in the amount of \$107,386 and an Allocation Fee of \$107,386 for a total of \$214,772, which have been made by Optionee.
- E. Optionor and Optionee desire to amend the Option Agreement to provide for (i) the reimbursement to Optionee of the non-refundable deposits made by Optionee to reserve the FCAA Credits, and (ii) the funding of a portion of the environmental assessments costs incurred in the investigation of the Premises, both on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and in the Option Agreement, and other good and valuable consideration the receipt of which is hereby acknowledged, the Parties agree to amend the Option Agreement as follows:

1. All terms not specifically defined herein shall have the meaning set forth in the Option Agreement.
2. Reimbursement of FCAA Credit Deposits. The County and Agency hereby agree to reimburse Optionee for the FCAA Credit deposits by each making a payment of \$107,386 to Optionee, if each of the following two conditions occur:
 - (a) On or before August 31, 2021, Optionee determines it cannot complete the Project by December 31, 2023, and Optionee returns the FCAA Credits to the California Tax Credit Allocation Committee; and
 - (b)
 - (i) Optionee determines the Project is not financially feasible and intends to decline the funding commitments made by the Agency and County or;
 - (ii) The Agency or County terminate their respective funding commitments in accordance with the applicable terms and conditions of such funding commitments.

Optionee shall provide written notice to the Agency and County of the occurrence of the conditions in (a) and (b) above with appropriate supporting documentation. The Agency and County shall make their respective reimbursements to Optionee within sixty (60) days following receipt of such written notice.
3. Funding of Environmental Assessment Costs. Provided the condition set forth in Section 2 (b) above occurs, Optionor agrees to reimburse Optionee for environmental assessment costs in an amount not to exceed \$100,000, and which amount shall be paid equally (i.e., 50/50) by Agency and County. Prior to the payment of such costs by Optionor, Optionee shall provide Optionor any and all records or reports generated as a part of the environmental assessment of the Agency Property and the County Property. The Agency and County shall make their respective reimbursements to Optionee within sixty (60) days following receipt of written notice that the condition set forth in Section 2 (b) has occurred and after County and City's receipt of the environmental assessment reports and documents.
4. Successors and Assigns. The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of the Parties hereto.
5. Authority. The Parties to this Amendment represent and warrant that it has been duly authorized and, once executed, will constitute the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
6. Ratification. Except as specifically set forth in this Amendment, all terms and provisions of the Option Agreement shall be and remain in full force and effect. To the

extent there are conflicts between the Option Agreement and this First Amendment, this First Amendment shall control.

7. Counterparts. This Amendment may be executed in multiple counterparts, each of which, when taken together shall constitute fully executed originals.

IN WITNESS WHEREOF, the Parties have executed this First Amendment on the day and year first above written.

OPTIONEE:

WASHINGTON SANTA ANA HOUSING, L.P.,
a California limited partnership,

By: Related/Washington Santa Ana
Development Co., LLC, a California
limited liability company,
its Administrative General Partner

By: Frank Cardone
Frank Cardone, President

By: Supportive Housing LLC, a California
limited liability company, its Managing
General Partner

By: A Community of Friends, a
California nonprofit public benefit
corporation, its sole member/manager

By: _____
Dora Leong Gallo
President and CEO


[signatures continue on following page]

APPROVED AS TO FORM:
COUNTY COUNSEL
County of Orange, California

By: _____
Deputy

Date: _____

APPROVED AS TO FORM:
SONIA CARVALHO
AUTHORITY GENERAL COUNSEL

By:  _____
Ryan O. Hodge, Assistant City Attorney

Date 11/24/2020

OPTIONOR

COUNTY OF ORANGE,
a political subdivision of the State of California

Thomas Miller, Chief Real Estate Officer
County of Orange, California

HOUSING AUTHORITY OF THE CITY OF
SANTA ANA ACTING AS THE HOUSING
SUCCESSOR AGENCY
a public body, corporate and politic

Steven A. Mendoza, Executive Director