Housing Authority
www.santa-ana.org/cd
Item # 3

City of Santa Ana
20 Civic Center Plaza, Santa Ana, CA 92701
Staff Report
August 17, 2021

TOPIC: Crossroads at Washington Affordable Housing Project

AGENDA TITLE:

Approve a Second Amendment to the Option Agreement with Washington Santa Ana Housing Partners, L.P. for the development of the Crossroads at Washington for up to $300,000 in backstop funding; approve an additional award of $333,742 of Neighborhood Stabilization Program funds and Seven Project-Based Vouchers to the existing Pre-Loan Commitment Letter for $3,971,440, for a total of $4,305,182, to the Related Companies of California, LLC and A Community of Friends for the development of the Crossroads at Washington

RECOMMENDED ACTION

1. Authorize the Executive Director of the Housing Authority to execute a Second 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) to include an environmental remediation backstop amount not to exceed $300,000 (if required), subject to non-substantive changes approved by the Executive Director and Housing Authority General Counsel.

2. Approve an award of up to seven project-based vouchers and authorize the Executive Director of the Housing Authority to execute an Agreement to enter into a Project-Based Vouchers Housing Assistance Payments Contract 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), subject to non-substantive changes approved by the Executive Director of the Housing Authority and Authority General Counsel.

DISCUSSION

On February 18, 2020, the City Council approved a Joint Powers Agreement with the County of Orange to mutually develop the Crossroads at Washington affordable housing project located at 1126 and 1146 E. Washington Avenue, Santa Ana, CA 92701 as joint property owners. The City Council also approved an Option Agreement and 65-year Ground Lease with the Related Companies of California for the development of the combined property. 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 Housing Authority and County is environmentally contaminated. Due to this unforeseen circumstance, the developer sought a reimbursement agreement to pay a portion of the predevelopment and environmental assessment costs they have incurred so far on behalf of the Housing Authority and County, only if they are unable to proceed with the project. Approved at the December 15, 2020 Housing Authority meeting, the First Amendment to the Option Agreement commited the Housing Authority 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 Housing Authority 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. This Second Amendment to the Option Agreement will commit the Housing Authority and County to pay up to $300,000 for an environmental remediation, payable equally in a 50-50 split, if the Developer, Housing Authority, and County are not able to secure remediation and cleanup funding from the California Department of Toxic Substances Control ("DTSC").

Specifically, 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 "County") and the Housing Authority of the City of Santa Ana (the "Housing Authority"). Both parcels are currently vacant and free of building structures or occupants.

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	0.830
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 of Orange, and the Housing Authority entered into an Option Agreement on February 25, 2020, which provided site control for the Developer to apply for the funding needed to develop the Project.

Since receiving the City and County's financial commitments in July 2019, 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 $764,000 in third-party predevelopment expenses and over $550,000 in staff overhead costs specific to the 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 develop the Project.

The First Amendment to the Option Agreement provided for reimbursement to the Developer for a portion of the costs should the Project not move forward (Exhibit 1). In partnership with the California Department of Toxic Substances Control ("DTSC"), the Housing Authority, and the County, the Developer is coordinating additional site investigations and testing through DTSC's Targeted Site Investigation Plus ("TSI+") program. DTSC and their environmental consultant are currently preparing preliminary lab results and cleanup options based on field investigations of both properties. These findings and recommendations will inform updates to the Project's overall financial feasibility.

The Second Amendment to the Option Agreement will provide for an environmental remediation backstop to support project feasibility if the Developer, Housing Authority, and County are not able to secure additional funding for the cost of remediation and cleanup through a separate DTSC remediation program. The Second Amendment to the Option Agreement will commit the Housing Authority and County to pay up to $300,000 for an environmental remediation, payable equally in a 50-50 split. This remediation backstop will serve as a de facto insurance policy for the Developer in case they are unable to secure funding for the cleanup in order to meet their tax credit reservation deadline to complete the project.

<u>Environmental Assessments</u>
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) and recommended additional environmental investigations to determine the vertical and horizontal extent of the soil contamination on the County and Housing Authority properties. The source of this environmental contamination is currently unknown so the County and City are unable to pursue the contaminator for damages at this time. 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 Housing Authority.

Additional environmental assessments in May and September 2020 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 2020 investigations warranted additional assessments to determine the full extent of contamination before mitigation measures can be pursued. As a result on December 18, 2020, OCHCA advised to transfer their environmental oversight responsibilities to the DTSC.

On April 27, 2021, the County and City staff submitted a Request for Agency Oversight Application to the Department of Toxic Substances Control ("DTSC"). The application was reviewed and accepted by DTSC. A Standard Voluntary Agreement allows DTSC to act as the oversight agency with the ability to facilitate and help coordinate further inspections and investigations, review and approve appropriate remediation measures and documents, and engage the public as necessary. These activities are necessary for the development of the site. After DTSC approves the remediation measures/documents, DTSC will remain as the oversight agency during the remedial activities. On July 20, 2021, City Council authorized the Executive Director of the Housing Authority to execute the Standard Voluntary Agreement up to an amount not to exceed $40,000 with the County and DTSC for the Project.

On February 11, 2021, DTSC selected the Project to be included in their TSI+ program, estimating that approximately $100,000 of additional site assessment services (not retroactive to previously incurred costs) would be provided to conduct a Supplemental Site Investigation with a Human Risk Assessment, and prepare a Cleanup Plan. Funding and associated activities will be assessed and adjusted throughout the duration of the TSI+ program activities. Through this program, DTSC retained GSI Environmental Inc. to evaluate both properties as well as provide findings, cleanup options, and estimated costs for those remediation and cleanup options. TSI+ does not include funding for the remediation, cleanup, or ongoing monitoring; therefore, the Developer will apply for additional funding to cover these additional costs.

The findings and recommendations produced through the TSI+ program will allow the Developer to determine the Project's financial feasibility prior to the September 1, 2021 deadline to accept or return tax credits as further detailed in the section below.

<u>Tax Credit Reservation</u>

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 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 will 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.

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. If the Developer does not complete the Project by December 31, 2023, TCAC will assess the Developer with negative points that could adversely impact their ability to pursue future affordable development anywhere the Developer does business.

Second Amendment to the Option Agreement

With the understanding of this context and background, the Second Amendment to the Option Agreement provides for an environmental remediation backstop to the Developer if the Developer accepts the FCAA Credits, but the Developer, Housing Authority, and County are not able to secure additional remediation and cleanup funding from DTSC (Exhibit 2). This backstop will commit the the Housing Authority and County to pay up to $300,000 for an environmental remediation, payable equally in a 50-50 split.

The Developer would be eligible for the environmental remediation only in the event that the following conditions are met:

(a) On or before August 31, 2021, the Developer determines that it can complete the Project by December 31, 2023 and chooses not to return the FCAA Credits to TCAC; and
(b) The Developer, Housing Authority, and County are unsuccessful in securing additional remediation and cleanup funding from DTSC is not awarded to the Project.

Additionally, if the Developer does not move forward with the Project, the Housing Authority would still be responsible for the terms pursuant to the First Amendment to the Option Agreement.

First Amended and Restated Pre-Loan Commitment

In July 2019, the Housing Authority and City committed $3,971,440 in affordable housing funds consisting of $963,951 in Neighborhood Stabilization Program funds and $3,007,489 in HOME Investment Partnerships Program funds, for the development of the Project. To date, the existing Neighborhood Stabilization Program ("NSP") funds account has accrued an additional $333,742 in interest and repayments. In order to provide additional financial support for the development of the Project because the site is environmentally contaminated, staff is recommending to allocate the remaining balance of NSP funds. The origin of the City's NSP funds is from the American Recovery and Reinvestment Act of 2009 and HUD will rescind these funds if the City does not use them. In addition, staff did not discover the Housing Authority's property is environmentally contaminated until after the original Pre-Loan Commitment was approved by the City Council in July 2019.

In addition, the Developer's costs have increased since their initial award in July 2019. The main changes to their proforma are as follows:

- Operating expenses: John Stewart Management provided an updated operating budget which includes increased material, utility, and vendor prices.
- Construction costs: As part of the Developer's due diligence for updating the proforma, they solicited construction estimates from three general contractors and used the median estimate for their proforma. As has been well documented, construction costs (e.g., lumber, concrete, steel, drywall, labor, etc.) have continued to increase at a rapid pace since staff's last update due to production and supply chain issues.

The Developer's proforma assumes the City/County backstop of the remediation funding but does not include their conditional $1,145,188 Orange County Housing Finance Trust (OCHFT) loan. As such, the Developer has a $2,207,846 financing gap (of which $1,145,188 could be covered by the OCHFT contingent loan) which needs to be addressed. This financing gap was confirmed by Keyser Marston Associates. Due to their financing gap and the September 1, 2021 tax credit deadline, staff is recommending an award of up to seven project-based vouchers (PBVs) to address this financing gap, contingent upon a review of the Developer's proforma prior to closing to determine if a full award of seven PBVs is necessary. If the Developer does not need the full award of seven PBVs, staff will reduce the PBVs according to their need to close.

The First Amended and Restated Pre-Loan Commitment Letter will provide a new commitment of $4,305,182 and seven PBVs to the Developer for the development of the Project (Exhibit 3).

Next Steps

If this item is not approved, the Developer will decline the FCAA tax credits before their September 1, 2021 deadline and it will take at least another year for the Developer to secure their other sources of financing to develop the Project. If approved, staff will support the Developer to secure funding for the environmental remediation. If the Developer is not successful and the Second Amendment to Option Agreement is triggered, staff will return to the City Council to request approval of an appropriation adjustment to pay for the backstop from the Housing Successor Agency funds or another source of eligible funding.

FISCAL IMPACT

If the conditions in the Second Amendment to the Option Agreement are met and the Project does proceed, then an environmental remediation backstop shall be available in an amount not to exceed $300,000, payable equally in a 50-50 split between the Housing Authority and County, if the Developer, Housing Authority, and County are not able to receive remediation and cleanup funding from DTSC. The backstop will be made available for expenditure in FY 2021-22 from the Low and Moderate Income Housing Asset Fund, Contract Services account (no. 60718810-62300). Upon final determination of the amount to be paid by the Housing Authority, staff will seek approval to appropriate a portion of fund balance for the expenditure.

The First Amended and Restated Pre-Loan Commitment Letter commits an additional $333,742 of NSP funds. Upon future approval of the loan agreements, the additional funds will be budgeted and appropriated (as necessary) as follows:

Fiscal Year	Accounting Unit – Account #	Fund Description	Accounting Unit, Account Description	Amount
FY 21-22	14218760-69152 14218761-69152 14218762-69152	Neighborhood Stabilization Program 1, 2, and 3	Loans & Grants	$ 333,742

Each project-based voucher is estimated to be valued at $1,233 monthly or $14,796 annually, based on HUD's renewal funding of vouchers from March 30, 2021. The approximate value of the 7 project-based vouchers on an annual basis totals $103,572. The actual annual expenditure for the 7 project-based vouchers may be different based on when the development of the project is completed and the units are leased. Funds will be budgeted in future fiscal years in the Housing Choice Voucher Program, Project Based Vouchers account (no. 13618760-69171).

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

EXHIBIT(S)

1. Staff Report from December 15, 2020
2. Second Amendment to Option Agreement
3. First Amended and Restated Pre-Loan Commitment Letter

Submitted By:
Steven A. Mendoza, Assistant City Manager