




Revision to ASR and/or Attachments

RECEIVED
2021 AUG 18 AM 8:48
CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

Date: August 17, 2021
To: Clerk of the Board of Supervisors
CC: County Executive Office
From: Frank Kim, Chief Executive Officer 
Re: ASR Control #: 21-000672, Meeting Date: 8/24/21, Item No. # 9
Subject: Approve the Department of Toxic Substances Control Standard Voluntary Agreement

Digitally signed by Frank Kim
 DN: cn=Frank Kim, o=County of Orange, ou=CEO,
 email=frankkim@ocgov.com,
 c=US
 Date: 2021.08.18 08:11:48 -0700

Explanation:

Make revisions to the Legal Entity Taking Action, Recommended Actions, Background Information Section, Financial Impact Section and Attachment B – Second Amendment to Option Agreement

Revised Recommended Action(s)

Direct the Auditor-Controller, upon notification from the Chief Real Estate Officer or designee, to issue checks for payment of a total not to exceed ~~\$1 million~~ \$150,000 for reimbursement to Washington Santa Ana Housing Partners, L.P. consistent with the Second Amendment to Option Agreement.

Make modifications to the:

Subject Background Information Summary Financial Impact

Background Information:

Therefore, the Developer has requested that the County and City of Santa Ana provide assurance that the County and City of Santa Ana will “backstop” its remediation efforts if it accepts the FCAA credits and is unable thereafter to secure outside funding for the environmental remediation. The TSI+ program mentioned above will only fund the environmental assessment phase of the environmental work and not the cleanup phase, which can be much more costly. As outlined above, the Developer does not presently have funding secured for the cleanup phase, but is working with DTSC on an award of funding under its ECRG program. DTSC is optimistic that the Project will be awarded funding under this program. Preliminary environmental cleanup costs are estimated to be approximately ~~\$2 million~~ \$300,000.

First and Proposed Second Amendments

On December 15, 2020, the Board approved potential financial commitments by the County in the amount of \$157,386 to backstop the Optionee on potential additional environmental costs in the amount of \$50,000 (County’s share) and for a non-refundable deposit in the amount of \$107,386 (County’s share) paid by Optionee

August 17, 2021

as part of a special, one-time federal credit award to Optionee. Payment of this backstop will not be required if Optionee successfully develops the Project.

The proposed Second Amendment to the Option Agreement (Second Amendment) as requested by the Developer will provide for an environmental remediation backstop to support Project feasibility if the Developer is unable to secure additional funding for the cost of remediation and cleanup through a separate DTSC remediation program. A copy of the proposed Second Amendment is attached hereto as Attachment B. The Second Amendment will commit the County and City of Santa Ana to pay up to ~~\$2 million~~ **\$300,000** for environmental remediation, payable equally in a 50-50 split. This commitment will only be required in the event: 1) the Developer elects to accept the FCAA credits on or before September 1, 2021; and, 2) the Developer is unable to secure the ERCG program funding or alternative financing for the environmental cleanup prior to the end of May 2022.

Additional Construction Costs and Contingent Financing

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

- 1) Operating expenses: John Stewart Management provided an updated operating budget which includes increased material, utility, and vendor prices.
- 2) 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. Consistent with other construction projects, 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 backstop for the remediation funding but does not include a 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. Due to this financing gap and the September 1, 2021 tax credit deadline, staff for the City of Santa Ana is recommending that it award 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, the City of Santa Ana will reduce the PBVs according to the Developer's needs. Staff for the City of Santa Ana is recommending that the City provide this new commitment of \$4,305,182 and seven PBVs to the Developer for the development of the Project. The hearing on this financing is set for August 17, 2021, before the City of Santa Ana's Housing Authority.

Since the City of Santa Ana is looking to provide financing for this financing gap, the County is not required to provide any additional funding to address the projected increased constructions costs or this OCHFT contingent financing.

Financial Impact:

The Agreement requires an advance payment of \$13,958 from the County and Authority to DTSC no later than 10 days after the full execution of the Agreement. Approval of the Standard Voluntary Agreement will result in costs during FY 2021-22, in the amount of a sum not to exceed \$25,000. Any additional costs in FY 2021-22, if applicable and necessary, would be funded 100 percent from Real Estate Fund 135 which may include an additional ~~\$1 million~~ **\$150,000** County's share of 50% reimbursement to Washington Santa Ana Housing Partners, L.P. consistent with the Second Amendment to Option Agreement.

August 17, 2021

Legal Entity Taking Action:

Board of Supervisors and ~~Orange County Housing Authority~~

Revised Attachments (attach revised attachment(s) and redlined copy(s))

Attachment B – Second Amendment to Option Agreement

Attachment B – Second Amendment to Option Agreement (redline)

**SECOND AMENDMENT
TO
OPTION AGREEMENT**

THIS SECOND AMENDMENT TO OPTION AGREEMENT (“**Second Amendment**”) is made August ___, 2021, (“**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**”), as amended by the First Amendment dated December 15, 2020, wherein the Optionor granted Optionee an option to ground lease the Premises, consisting of the Agency Property and the County Property, as defined in the Option Agreement.
- B. This Second Amendment is intended to and does amend the Option Agreement and the First Amendment.
- C. 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.
- D. 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. Environmental oversight for the Project and possible clean-up of the Property is currently being provided by the California Department of Toxic Substances (“**DTSC**”).
- E. Optionee has applied for financing for the proposed Project and has received and accepted a reservation of Further Consolidated Appropriations Act 2020 federal credits (“**FCAA Credits**”) from the California Tax Credit Allocation Committee for the Project. The deadline to return these accepted FCAA Credits is September 1, 2021. In accepting these FCAA Credits, Optionee has committed to complete the Project by December 31, 2023. The failure of Optionee to complete the Project by December 31, 2023 or to return the FCAA Credits prior to September 1, 2021 will result in the assessment of negative points that could adversely impact Optionee’s ability to pursue future affordable development.

- F. The Project is nearing completion of the environmental assessment phase of work under DTSC's oversight, with environmental cleanup activity to commence upon DTSC's approval of a cleanup plan for the Project. DTSC previously approved the Project to be included in its Targeted Site Investigation Plus ("TSI+") grant program to cover the environmental assessment phase. However, the TSI+ program does not cover environmental remediation costs.
- G. DTSC is currently working on the Equitable Community Revitalization Grants ("ECRG") program, which will provide environmental cleanup cost grant funding, and anticipates release of its notice of availability of funding sometime in September 2021. Optionee plans to apply for ECRG funding but it is anticipated that participation in this program may not result in funding awards until at least January 2022.
- H. Optionee would like assurances from Optionor that Optionor will continue to support and fund the environmental cleanup phase of work in the event that Optionee is unable to obtain the ECRG funding set forth above.
- I. Optionor and Optionee desire to amend the Option Agreement to provide for the funding of a portion of the environmental assessment and cleanup costs incurred in the investigation and cleanup of the Premises in the event that ECRG funding is not received, on the terms and conditions set forth below.
- J. Environmental cleanup costs are currently estimated to be \$300,000.00.

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 by including the following additional terms and conditions as follows:

- 1. All terms not specifically defined herein shall have the meaning set forth in the Option Agreement.
- 2. Funding of Environmental Cleanup. The County and Agency hereby agree to fund the environmental cleanup of the Project in an amount not to exceed \$300,000.00, with the County and Agency each responsible for funding one-half of this amount, if each of the following conditions are met:
 - (a) On or before September 1, 2021, Optionee elects not to return the FCAA Credits from the California Tax Credit Allocation Committee and to commence the environmental cleanup of the Premises; and
 - (b) Optionee is unable to obtain the ECRG funding set forth above after award of the ECRG funding, but in no case later than the end of February 2022, which date may be modified in writing by the County (through the Chief Real Estate Officer), Agency (through the Executive Director of the

Housing Authority), and Optionee; and Optionee is unable to obtain any other applicable funding for the environmental cleanup of the Project by the end of February 2022.

- 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.
3. Funding of Environmental Cleanup Costs. Provided the conditions set forth in Section 2 above occurs, Optionor agrees to reimburse Optionee for actual environmental cleanup costs in an amount not to exceed \$300,000, and which amount shall be paid equally (i.e., 50/50) by County and Agency on a monthly rolling basis upon submission of environmental cleanup cost draw requests submitted by Optionee to the Optionor. Prior to the payment of such costs by Optionor, Optionee shall provide Optionor any and all necessary invoices, records or reports generated as a part of the environmental cleanup effort and to properly substantiate costs associated with each environmental cleanup draw request. The Agency and County shall make their respective reimbursements to Optionee within forty-five (45) days following receipt of written notice that the condition set forth in Section 2 has occurred and after County and Agency's receipt of each environmental cleanup draw request and documentation set forth above to the satisfaction of the County and Agency in their reasonable discretion.
 4. Optionee Right to Enter Premises for Environmental Cleanup. In addition to Optionee's right to enter the Premises as set forth in Section 8 of the Option Agreement, Optionee and its Consultants (as defined in the Option Agreement) shall have the right to enter the Premises for the purposes of this Second Amendment, including but not limited to performing environmental cleanup and other services related thereto.
 5. Construction Contract Documents. Notwithstanding anything to the contrary contained in Section 5(D.) of the Option Agreement, Optionee shall submit to the Optionor the Construction Contract Documents and cost estimates for development of the Premises no later than eight (8) months from the date on which Optionee elects not to return the FCAA Credits (May 1, 2022).
 6. Cleanup Plan. Section 5.G. is hereby added to the Option Agreement as follows:
 "G. Cleanup Plan.
 No later than February 28, 2022, Optionee shall have delivered to Optionor a copy of the Cleanup Plan associated with the DTSC Targeted Site Investigation Plus (TSI+) Program (and approved by DTSC) for any environmental cleanup required in connection with construction of the Project."
 7. 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.

8. 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.
9. 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 Second Amendment, this Second Amendment shall control. The Option Agreement, as amended by the First Amendment and this Second Amendment, is in full force and effect.
10. Counterparts. This Amendment may be executed in multiple counterparts, each of which, when taken together shall constitute fully executed originals.

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IN WITNESS WHEREOF, the Parties have executed this Second 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, 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: August 17, 2021

OPTIONOR

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

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

APPROVED AS TO FORM:
SONIA CARVALHO
AUTHORITY GENERAL COUNSEL

By: _____
Ryan O. Hodge, Assistant City Attorney

Date _____

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

**SECOND AMENDMENT
TO
OPTION AGREEMENT**

THIS SECOND AMENDMENT TO OPTION AGREEMENT (“**Second Amendment**”) is made August ___, 2021, (“**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.**”

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- A. Optionor and Optionee are parties to that certain Option Agreement dated February 25, 2020 (“**Option Agreement**”), as amended by the First Amendment dated December 15, 2020, wherein the Optionor granted Optionee an option to ground lease the Premises, consisting of the Agency Property and the County Property, as defined in the Option Agreement.
- B. This Second Amendment is intended to and does supersede amend the Option Agreement and ~~replace~~ the First Amendment.
- C. 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.
- D. 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. Environmental oversight for the Project and possible clean-up of the Property is currently being provided by the California Department of Toxic Substances (“**DTSC**”).
- E. Optionee has applied for financing for the proposed Project and has received and accepted a reservation of Further Consolidated Appropriations Act 2020 federal credits (“**FCAA Credits**”) from the California Tax Credit Allocation Committee for the Project. The deadline to ~~accept~~return these accepted FCAA Credits is September 1, 2021. ~~Acceptance of In accepting~~ these FCAA Credits ~~by~~, Optionee ~~will commit it has committed~~ to complete the Project by December 31, 2023, ~~to meet federal and state requirement in order. The failure of Optionee to complete the Project by December 31, 2023 or to avoid~~return the FCAA Credits prior to September 1, 2021 will result in the assessment of negative points that could adversely impact Optionee’s ability to pursue

future affordable development.

- F. The Project is nearing completion of the environmental assessment phase of work under DTSC's oversight, with environmental cleanup activity to commence upon DTSC's approval of a cleanup plan for the Project. DTSC previously approved the Project to be included in its Targeted Site Investigation Plus ("**TSI+**") grant program to cover the environmental assessment phase. However, the TSI+ program does not cover environmental ~~assessment~~remediation costs.
- G. DTSC is currently working on the Equitable Community Revitalization Grants ("**ECRG**") program, which will provide environmental cleanup cost grant funding, and anticipates release of its notice of availability of funding sometime in September 2021. Optionee plans to apply for ECRG funding but it is anticipated that participation in this program may not result in funding awards until at least January 2022.
- H. Optionee would like assurances from Optionor that Optionor will continue to support and fund the environmental cleanup phase of work in the event that Optionee is unable to obtain the ECRG funding set forth above.
- I. Optionor and Optionee desire to amend the Option Agreement to provide for the funding of a portion of the environmental assessment and cleanup costs incurred in the investigation and cleanup of the Premises in the event that ECRG funding is not received, on the terms and conditions set forth below.
- J. Environmental cleanup costs are currently estimated to be ~~\$2,000~~300,000.00.

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 by including the following additional terms and conditions as follows:

- 1. All terms not specifically defined herein shall have the meaning set forth in the Option Agreement.
- 2. Funding of Environmental Cleanup. The County and Agency hereby agree to fund the environmental cleanup of the Project in an amount not to exceed ~~\$2,000~~300,000.00, with the County and Agency each responsible for funding one-half of this amount, if each of the following conditions are met:
 - (a) On or before September 1, 2021, Optionee ~~accepts~~selects not to return the FCAA Credits from ~~the~~ California Tax Credit Allocation Committee and to commence the environmental cleanup of the Premises; and
 - ~~(b)~~ Optionee is unable to obtain the ECRG funding set forth above after award of the ECRG funding, but in no case later than the end of May 2022; and

~~(e)~~(b) February 2022, which date may be modified in writing by the County (through the Chief Real Estate Officer), Agency (through the Executive Director of the Housing Authority), and Optionee; and Optionee is unable to obtain any other applicable funding for the environmental cleanup of the Project by the end of ~~May~~February 2022.

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.

3. Funding of Environmental Cleanup Costs. Provided the conditions set forth in Section 2 above occurs, Optionor agrees to reimburse Optionee for actual environmental cleanup costs in an amount not to exceed ~~\$2,000~~300,000, and which amount shall be paid equally (i.e., 50/50) by County and Agency on a monthly rolling basis upon submission of environmental cleanup cost draw requests submitted by Optionee to the Optionor. Prior to the payment of such costs by Optionor, Optionee shall provide Optionor any and all necessary invoices, records or reports generated as a part of the environmental cleanup effort and to properly substantiate costs associated with each environmental cleanup draw request. The Agency and County shall make their respective reimbursements to Optionee within ~~sixty (60)~~forty-five (45) days following receipt of written notice that the condition set forth in Section 2 has occurred and after County and Agency's receipt of each environmental cleanup draw request and documentation set forth above to the satisfaction of the County and Agency in their reasonable discretion.
4. Optionee Right to Enter Premises for Environmental Cleanup. In addition to Optionee's right to enter the Premises as set forth in Section 8 of the Option Agreement, Optionee and its Consultants (as defined in the Option Agreement) shall have the right to enter the Premises for the purposes of this Second Amendment, including but not limited to performing environmental cleanup and other services related thereto.
5. Construction Contract Documents. Notwithstanding anything to the contrary contained in Section 5(D.) of the Option Agreement, Optionee shall submit to the Optionor the Construction Contract Documents and cost estimates for development of the Premises no later than eight (8) months from the date on which Optionee elects not to return the FCAA Credits (May 1, 2022).

6. Cleanup Plan. Section 5.G. is hereby added to the Option Agreement as follows:

"G. Cleanup Plan.

No later than February 28, 2022, Optionee shall have delivered to Optionor a copy of the Cleanup Plan associated with the DTSC Targeted Site Investigation Plus (TSI+) Program (and approved by DTSC) for any environmental cleanup required in connection with construction of the Project."

4.7.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.

5.8.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.

6.9.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 Second Amendment, this Second Amendment shall control. The Option Agreement, as amended by the First Amendment and this Second Amendment, is in full force and effect.

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

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IN WITNESS WHEREOF, the Parties have executed this Second 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, 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 _____

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