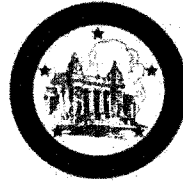


**SUBMITTAL TO THE BOARD OF COMMISSIONERS
HOUSING AUTHORITY
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



ITEM
10.3
(ID # 6082)

MEETING DATE:

Tuesday, February 6, 2018

FROM : HOUSING AUTHORITY:

SUBJECT: HOUSING AUTHORITY: Exclusive Negotiation Agreement between the Housing Authority of the County of Riverside and Desert AIDS Project in Connection with a Proposed Affordable Rental Housing Project, located in the City of Palm Springs, District 4, [\$0]

RECOMMENDED MOTION: That the Board of Commissioners:

1. Approve the attached Exclusive Negotiation Agreement (ENA) between the Housing Authority of the County of Riverside and Desert AIDS Project in connection with the proposed affordable housing project, located in the City of Palm Springs;
2. Authorize the Chairman of the Board of Commissioners to execute the attached ENA; and
3. Authorize the Executive Director or designee to take all necessary steps to implement the attached ENA, including but not limited to, signing subsequent necessary and relevant documents, subject to County Counsel approval.

ACTION: Policy

Robert Field, Assistant County Executive Officer/EDA 1/2/2018

MINUTES OF THE BOARD OF COMMISSIONERS

On motion of Commissioner Tavaglione, seconded by Commissioner Jeffries and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington, Perez and Ashley
Nays: None
Absent: None
Date: February 6, 2018
xc: Housing Authority

Kecia Harper-Ihem
Clerk of the Board

By Deputy

**SUBMITTAL TO THE BOARD OF COMMISSIONERS HOUSING AUTHORITY
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 0	\$ 0	\$ 0	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: N/A			Budget Adjustment:	No
			For Fiscal Year:	17/18

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The Housing Authority of the County of Riverside (HACR) is the current owner of 2.87 acres of land currently being used for parking by the Desert AIDS Project (DAP) and Riverside County Health Center (RCHC), more specifically identified as Assessor Parcel Number 507-100-044 (Property). The Property was originally a 5.37 acre lot that was purchased by the HACR in 2005 and subsequently split into two separate lots; the northern lot was sold to Vista Sunrise Limited Partnership for the development of the Vista Sunrise Apartments and the southern Property was improved as a parking lot and still currently being used for that purpose by DAP and RCHC.

DAP is looking at expanding its campus to better serve its clients and they have identified the HACR Property as an ideal location to build permanent affordable housing for its clients. DAP is proposing to build a 60 unit affordable housing development, restricted for persons earning 80% or less of the area median income for the County of Riverside, with a preference for people living with human immunodeficiency virus (HIV) or acquired immune deficiency syndrome (AIDS). Concurrent with these ENA negotiations, DAP is also negotiating with RCHC to purchase their facility that is currently built on leased land from DAP as part of their efforts to expand the DAP campus. The proposed project set forth in the ENA is in line with the HACR's mission of providing affordable decent, safe and sanitary housing for low income households.

DAP desires to enter into the attached proposed Exclusive Negotiation Agreement (ENA) with the HACR to explore and negotiate in good faith a possible disposition and development agreement, or such other type of agreement as the parties may deem appropriate to specify the rights and obligations of the parties with respect to the sale of the Property and development thereon of the proposed project. The ENA does not constitute a commitment to sell or develop the Property. Any agreement arising out of the ENA will be subject to the prior approval of the Board of Commissioners. DAP will process entitlements and may seek other leveraging sources for the development of the proposed project. The term of the proposed ENA is for approximately 24 months with a 1 year extension, should the parties mutually agree.

County Counsel has reviewed and approved, as to form, the attached ENA. Staff recommends approval of the attached ENA.

Impact on Residents and Businesses

**SUBMITTAL TO THE BOARD OF COMMISSIONERS HOUSING AUTHORITY
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

The potential development of 60 affordable units will have a positive impact on the residents in the County of Riverside as it will create much needed affordable housing in the County as well as create construction, maintenance and property management jobs.

Additional Fiscal Information

No general funds will be used for the proposed ENA. DAP will bear its own costs and expenses incurred in connection with the negotiating and preparing in good faith of a possible disposition and development agreement, or such other type of agreement as the parties may deem appropriate, for the proposed project.

Attachments:

- Exclusive Negotiation Agreement

RF: HM: CH: MW: JG MinuteTraq ID 13754


Nehini Basma, Principal Management Analyst 1/29/2018


Gregory V. Priamos, Director County Counsel 1/23/2018

EXCLUSIVE NEGOTIATION AGREEMENT

THIS EXCLUSIVE NEGOTIATION AGREEMENT ("Agreement") is entered into as of February 6, 2018 by and between the Housing Authority of the County of Riverside, a public entity, corporate and politic ("HACR"), and Desert AIDS Project, a California nonprofit public benefit corporation ("DAP"), on the terms and provisions set forth below:

RECITALS

A. WHEREAS, the Housing Authority of the County of Riverside is a Housing Authority duly created, established and authorized to transact business and exercise its powers, all under and pursuant to the provisions of the Housing Authorities Law which is Part 2 of Division 24 of the California Health and Safety Code (commencing with Section 34200 et seq); and

B. WHEREAS, the HACR is authorized to buy and sell real property;

C. WHEREAS, the HACR owns approximately 2.87 acres of land currently being used for parking by DAP and Riverside County Health Center, more specifically identified as Assessor Parcel Number 507-100-044 (Property);

D. WHEREAS, DAP is proposing to build an affordable housing development on the HACR Property and adjoining property in an effort to expand services offered to citizens of Riverside County;

E. WHEREAS, DAP is a California nonprofit public benefit corporation engaged in, among other things, serving County residents living with HIV and AIDS in the Coachella Valley;

F. WHEREAS, the HACR wishes to explore entering into an agreement with DAP for the potential acquisition of the Property by DAP for use by DAP in connection with DAP's proposed development and construction of an affordable housing development on the HACR Property and adjoining property, that is currently anticipated to include approximately sixty (60) affordable rental housing units to be rented to and occupied by low income households (the "Project");

G. WHEREAS, the HACR desires to encourage and effectuate the development of the Property which will serve to preserve, protect, improve and increase the affordable housing stock and help eliminate blight within the County of Riverside;

H. WHEREAS, facilitating the development of the Property for affordable multi-family rental housing would also assist the County and the State of California in achieving its goals of assisting families of low-income; and

I. WHEREAS, the purpose of this Agreement is to establish the procedures and standards for the negotiation by the HACR and DAP (hereinafter the "Parties") of a Disposition

and Development Agreement (“DDA”) or such other type of agreement as the parties may deem appropriate for the disposition of the Property and development of the Project. This Agreement in itself does not grant DAP or any successor or affiliated entity the right to acquire the Property and/or develop the Project.

NOW, THEREFORE, HACR and DAP hereby mutually agree as follows:

I. Recitals

The aforementioned recitals are incorporated herein by this reference and made a part of this Agreement.

II. Negotiation

A. Good Faith Negotiations

The Parties agree for the Negotiation Period (defined below) to negotiate diligently and in good faith, pursuant to this Agreement, to prepare a DDA to be entered into between the Parties with respect to HACR’s disposition of and DAP’s development of the Property; provided, however, by entering into this Agreement, the Parties are not required to enter into a DDA. HACR agrees for the Negotiation Period, and the Extension Period (defined below), not to negotiate with any other person or entity to enter into any agreement regarding the acquisition, lease, disposition or development of the Property. "Good faith negotiations" as used herein shall mean that the Parties shall use their best efforts to communicate frequently and follow reasonable negotiation procedures to develop a DDA mutually acceptable to the Parties.

Each of the Parties will bear its own costs and expenses, including, but not limited to, attorneys’ fees, incurred or to be incurred in connection with negotiating and preparing this Agreement and the DDA and in carrying out its obligations under this Agreement (the “Direct Costs”).

Nothing in this Agreement shall be deemed a covenant, promise, or commitment by the HACR with respect to the disposition of the Property.

B. Period of Negotiations

The negotiating period shall commence on the Effective Date (defined below) and end February 6, 2020 (“Negotiating Period”), subject to extension. The Negotiating Period may be extended for an additional one-year period (the “Extension Period”) by the written mutual agreement of the Parties. The Executive Director of the HACR, or designee, has the authority, in his discretion, to consent to an extension of the Negotiation Period on behalf of the HACR. In determining whether or not to consent to an extension of the Negotiating Period, the Executive Director may consider the following factors: (i) whether sufficient progress in accomplishing the tasks set forth in the Schedule of Performance, attached hereto as Exhibit C and incorporated herein by this reference, has occurred, and (ii) whether the Parties are continuing to work toward a mutually acceptable DDA. Each Party agrees to endeavor in good faith to expeditiously complete the tasks set forth in the Schedule of Performance which are in such Party’s reasonable control.

If a DDA has not been executed by the Parties by the expiration of the Negotiating Period, including any Extension Period, then this Agreement shall terminate, and upon such termination, neither Party shall have any further rights or obligations under this Agreement except as set forth in Section IX of this Agreement, and the HACR shall be free to negotiate with any other persons or entities with regard to the Property after such termination. If a DDA is executed by the Parties, then, upon such execution, this Agreement shall terminate and all rights and obligations of the Parties shall be as set forth in the fully executed DDA.

The term "Effective Date" used herein shall mean that certain date this Agreement is executed by the Chairman of HACR's Board of Commissioners.

Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Agreement. While it is understood that all Parties will work in good faith, care will also be taken to ensure consistent and regular progress toward timely completion of the obligations set forth herein.

C. DAP Obligations During the Negotiation Period

DAP shall, within the Negotiating Period (including any mutually agreed upon Extension Period) satisfy the following obligations (unless otherwise waived in writing by the HACR's Executive Director or designee):

1. Investigate the projected costs of developing the Project, including the construction of all related on-site and off-site improvements for the Project;
2. Identify and develop a plan to obtain the necessary land use entitlements required for the Project and secure those land use entitlements required herein no later than the dates set forth in the Schedule of Performance attached hereto as Exhibit "C";
3. Agree to participate and/or conduct community meetings as requested by the HACR in relation to the Project;
4. Identify sources of funding and submit funding applications after consultation with HACR staff within the time frames set forth in the attached Schedule of Performance. Evaluate and provide a comprehensive written description of the estimated competitive score and feasibility of all funding applications to be submitted in connection with financing the Project within three (3) months after the Effective Date and every three (3) months thereafter during the term of this Agreement;
5. conduct necessary geotechnical, cultural, traffic and environmental studies and investigations for the development of the residential, service facility and/or commercial uses at the Property;
6. Determine and process any California Environmental Quality Act ("CEQA") documentation, at DAP's expense, including the fees and expenses of any DAP hired

consultants in connection with the preparation of said CEQA documentation required in connection with the proposed sale of the Property to DAP and HACR's approval of a DDA;

7. Contract and pay for the HACR consultant services set forth in Sections II. D. 4 below; provided, however, no such consultant services shall be engaged without DAP's prior written approval, including without limitation a written fee agreement approved and signed by DAP, which shall not be unreasonably withheld, conditioned or delayed;
8. During the Negotiation Period, initiate and submit to the appropriate Governmental Authorities all applications for necessary entitlements (e.g., General Plan amendments, zone changes, parcel maps etc.) required for the development and construction of the Project as contemplated herein. The requirements set forth in this subsection 8 include performing any necessary studies and or plans required for the entitlement process; and
9. Prepare and submit to HACR for its review the following pursuant to the Schedule of Performance attached hereto as Exhibit "C":
 - a. A preliminary and final site plan and architectural/design concept for the proposed development of the Project, showing building layout and dimensions, parking, amenities, landscaping and access.
 - b. A schedule of the development of all structures and improvements proposed for the Project and an estimate of development costs including hard and soft costs.
 - c. A detailed financial plan for the Project containing matters typically contained in such analysis, including, without limitation, a detailed pro forma, development cost budget and sources of equity and debt capital securing construction and long term financing. The estimates and project date shall be in sufficient detail to permit adequate financial analysis by the HACR.
 - d. Copies of all completed reports, studies, analyses, and similar documents, but excluding confidential or proprietary information, prepared or commissioned by DAP with respect to this Agreement and the Project, promptly upon their completion.

D. HACR's Obligations

HACR shall, within the Negotiation Period (and mutually agreed upon Extension Period) satisfy the following obligations:

1. Negotiate exclusively through its staff with DAP for the preparation of the DDA for the Property and Project;

2. Review site plans and, without cost to HACR, use best efforts to assist DAP with securing Project Entitlements (as hereinafter defined), which may be required by the County of Riverside or any other Governmental Authorities (as defined in Section III.A. 4. below);
3. Review DAP's proposal;
4. Prepare a summary report, at DAP's expense, in accordance with Section 33433 of the Health and Safety Code, including the fees and expenses of any consultants to HACR employed in connection with the preparation of said summary report; and
5. Arrange for and obtain, at HACR's expense, publication of notices of the public hearing for consideration of the Section 33433 Report.

III. Proposed Development

A. Development Concept and Essential Terms and Conditions

The proposed development to be negotiated hereunder shall include the development and construction of the Project on the Property of an approximate sixty (60) unit affordable housing development (the "Project").

The essential terms and conditions of any such DDA entered into with DAP shall be in conformance with the following requirements:

1. DAP shall enter into a DDA with HACR in accordance with the Schedule of Performance;
2. DAP shall design and construct the Project on property including the Property, at its own cost and expense, in accordance with a Schedule of Performance to be negotiated as part of the DDA and in accordance with the scope of development and plans and specifications prepared by DAP and approved in writing by HACR, and any CEQA and/or National Environmental Policy Act ("NEPA") requirements;
3. DAP shall design and construct, if applicable, all on-site infrastructure improvements in connection with the Project on the Property and develop a plan for financing the cost of infrastructure improvements;
4. DAP shall secure at its own cost and expense, as required, in accordance with the Schedule of Performance to be negotiated as part of the DDA, an amendment to the General Plan for the City of Palm Springs ("City"), as the case may be, a change of zone for the Property, the request of a density bonus and any and all entitlements (other than grading or building permits or approvals which are simply ministerial and nondiscretionary in nature) (the "Entitlements"), which may be required by the City, County or any other governmental agency with jurisdiction over the construction and development of the Project (the "Governmental Authorities") to allow development of the Project;

5. DAP shall be responsible for marketing the Project;
6. Other terms and conditions applicable to the DDA are as follows:
 - a. It is understood by DAP that design and architectural approval by HACR will be required for the Project and that sketches, plans, working drawings, specifications and similar documents will be required to be submitted for written approval pursuant to the terms and provisions in the DDA
 - b. It is understood that in developing the Property, DAP will coordinate with the HACR the design and architectural theme of the Project to be compatible with other developments in the area.
7. Forty-nine percent (49%) of the housing units developed and operated as part of the Project shall be rented to and occupied by low income households earning 80 percent or less of the area median income for the County of Riverside, as determined by the California Department of Housing and Community Development, adjusted for household size appropriate for the unit. The final affordability, maximum income and lease rate requirements will be established in the DDA and shall conform to Housing Authorities Law.

B. DAP's Findings, Determinations, Studies, and Reports

From time-to-time, as reasonably requested by HACR, DAP shall provide oral Project status, and DAP shall provide bi-monthly written progress reports, unless as otherwise requested by HACR, advising HACR on all matters related to the development, including financial feasibility analyses, construction cost estimates, marketing studies, and similar due diligence matters. Should negotiations not result in a DDA between HACR and DAP, HACR may use the information provided by DAP (excluding any confidential or proprietary information prepared or commissioned by DAP, and subject to the proprietary rights of the authors or preparers, any confidentiality agreements and any privileges recognized by applicable law, subject to the requirements set forth in the California Public Records Act) in any way deemed by HACR to be of benefit to HACR. All costs incurred by DAP in the preparation and presentation of such findings, determinations, studies, reports or other requests by the HACR under this Agreement shall be at the sole expense of DAP.

IV. Purchase Price and/or Other Consideration

The purchase price for the Property to be paid to the HACR by DAP will be established in the DDA

V. Environmental Requirements

Certain State and local environmental requirements under CEQA may be applicable to the proposed Project. HACR's Board of Commissioners will consider the DDA upon submission of HACR's successful negotiations with DAP on the terms and conditions of DAP. Prior to the

disposition of the Property, DAP agrees to determine and process any CEQA documentation, at DAP's sole expense.

DAP shall indemnify and hold harmless the HACR and the County of Riverside, their respective Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, Board of Commissioners, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as "Indemnitees") from any liability whatsoever, based or asserted upon any CEQA challenge related to the Project, except to the extent such liability is caused by the gross negligence or willful misconduct of any Indemnitees. DAP shall pay, at its sole expense, all costs and fees including, but not limited, to attorneys' fees, cost of investigation, defense and settlements or awards, of the Indemnitees in any claim or action based upon such alleged acts or omissions.

VI. Assignment

DAP shall not assign all or any part of this Agreement without the prior written approval of HACR, except to a limited partnership, limited liability company or other entity formed for financing the Project, in which DAP is a co-general partner (if a limited partnership) or a managing member (if a limited liability company); provided, however, any of the aforementioned transfers shall be subject to the approval of documentation by the Executive Director or designee, which approval shall not be unreasonably withheld or delayed. HACR, in its reasonable discretion, may approve an assignment to any other entity if, in the reasonable determination of HACR, the proposed assignee is comparable in all material respects (including experience, character and financial capability) to DAP. Any such change (or assignment of this Agreement in connection therewith) shall be by instruments approved in writing as to form and content by the HACR's Executive Director, or designee, and County Counsel, and if HACR approval is required pursuant to this Section VI, subject to the approval by HACR's Board of Commissioners of evidence of the proposed assignee's qualifications to meet the obligations of DAP under this Agreement. DAP shall promptly notify HACR of any and all changes whatsoever in the identity of the parties in control of DAP or the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information.

VII. Condition of Site

DAP will assume the full and complete responsibility to make all investigations of surface and subsurface conditions as may be necessary or appropriate and to evaluate the suitability of the Property for the proposed Project. Neither HACR nor the County shall make any representations or warranties concerning the Property, its suitability for the use intended by DAP, or the surface or subsurface conditions of the Property.

Upon successful negotiation and approval of the DDA, the Property shall be conveyed to DAP "AS IS", meaning that DAP will own the Property in its present condition, including, but not limited to, the physical condition of the Property and all laws, rules and regulations, whether federal, state or local, having or potentially having any impact on use, subdivision, improvement or other aspects of the Property. If a DDA is executed and approved by HACR, DAP shall be responsible, at its own sole cost and expense, for improvements on the Property in connection with

the construction of the Project, and will do all things necessary to prepare the Property for the construction and development of the Project in accordance with the Entitlements therefore.

VIII. Right of Entry

HACR hereby grants to DAP and its employees, agents and contractors (herein referred to collectively as "DAP Designees") the nonexclusive right to enter upon the Property at any time during the Negotiation Period to perform a survey and certain work, consisting of geotechnical investigation, soil testing, a Phase I Environmental Assessment prepared in compliance with the most recent published American Society for Testing and Materials Phase I Environmental Property Assessment Standard, a Phase II Environmental Investigation and Report, if required, and other due diligence related activities (collectively, "Work"), and for no other purposes without the prior written approval of HACR's Executive Director.

Prior to each entry onto the Property, DAP shall provide twenty four (24) hours advance written notice to HACR to conduct any work. Email communications shall constitute valid written notice provided such notice is (i) submitted twenty four (24) hours in advance, (ii) sent to Juan Garcia at jugarcia@rivco.org, and (iii) delivery of such email notice is confirmed with a documented reply and confirmation from Juan Garcia at jugarcia@rivco.org

Prior to any entry onto the Property for the taking of environmental samples or testing, DAP shall provide HACR with a work plan for on-site activity, including but not limited to a copy of its sampling and testing procedures. Such work plan shall be provided not less than three (3) working days in advance of any environmental testing or sampling activity contemplated under this Agreement.

DAP shall provide to HACR a copy of all results generated by the sampling and testing performed pursuant to this Agreement. DAP acknowledges and agrees for itself and on the behalf of DAP Designees as follows:

- A. DAP will not permit any dangerous condition to be created on the Property as a result of the activities of DAP or DAP Designees;
- B. That all acts and things done by DAP on the Property will be done in a careful and reasonable manner, in accordance with all federal, state and local laws;
- C. DAP will enter the Property entirely at its own cost, risk and expense;
- D. During the term of this Agreement, DAP shall require each and all of DAP's contractors/consultants responsible for the Work under this Agreement with whom DAP enters into a written contract for such Work to maintain, in full force and effect, statutory workers' compensation insurance coverage and a commercial general liability policy in the amount of at least One Million Dollars (\$1,000,000) combined single limit policy. Not less than three (3) working days prior to entry on the Property, DAP shall cause DAP's contractors/consultants with whom DAP enters into a written contract for such Work to provide certificates evidencing such coverage and naming HACR as additionally insured, as its interests may appear;

- E. DAP shall not suffer or permit to be enforced against the Property, or any part thereof, any mechanics', material men's, contractors' or subcontractors' liens or any claim for damage arising from any Work performed by DAP or DAP's designee's use of and activities upon the Property pursuant to this Agreement. DAP shall pay, or cause to be paid, all said liens, claims or demands before any action is brought to enforce the same against the Property.
- F. DAP shall not have any interest in the Property or be entitled to any reimbursement or repayment for any Work performed upon the Property pursuant to this Agreement;
- G. DAP shall take all necessary precautions to prevent the import and/or release into the environment of any hazardous materials which are imported to, in, on or under the Property during the performance of the Work. If hazardous materials are imported onto the Property as a result of the performance of the Work, DAP shall be solely responsible for removing such imported hazardous materials in conformance with all governmental requirements. DAP shall report to HACR, as soon as possible after each incident, any incidents with respect to the environmental condition of the Property; and
- H. DAP shall obtain and maintain all governmental permits and approvals required for the Work conducted under this Agreement and shall comply with all statutes, ordinances, rules, regulations, orders and requirements now in effect or that become effective during the term of this Agreement applicable to its sampling and other activities pursuant to the access granted by this Agreement.

IX. Indemnity

DAP shall indemnify and hold harmless the HACR and the County of Riverside, their respective Agencies, Districts, Special Districts and Departments, their respective directors, officer's, Board of Supervisors, Board of Commissioners, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as "Indemnitees") from any liability whatsoever, based or asserted upon any services of DAP, its officers, employees, subcontractors, consultants, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever arising from the performance of DAP, its officers, agents, employees, subcontractors, agents or representatives under this Agreement, except to the extent such liability is caused by the gross negligence or willful misconduct of any Indemnitees, except in the event of the gross negligence or willful misconduct of the Indemnified parties; provided however, any gross negligence or willful misconduct of Indemnitees will only affect the duty to indemnify for the specific act found to be gross negligence or willful misconduct, and will not preclude a duty to indemnify for any act or omission of DAP. DAP shall pay, at its sole expense, all costs and fees including, but not limited, to attorneys' fees, cost of investigation, defense and settlements or awards, of the Indemnitees in any claim or action based upon such alleged acts or omissions.

With respect to any action or claim subject to indemnification herein by DAP, DAP shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of HACR; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes DAP's indemnification to the Indemnitees as set forth herein.

DAP's obligation hereunder shall be satisfied when DAP has provided to HACR the appropriate form of dismissal relieving HACR and/or the Indemnitees from any liability for the action or claim involved.

The specified insurance limits required in this Agreement shall in no way limit or circumscribe DAP's obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve DAP from indemnifying the Indemnitees to the fullest extent allowed by law. DAP's indemnity obligations contained in this Section IX shall survive the expiration and termination of this Agreement.

X. Default and Remedies

(a) Failure by either Party to negotiate in good faith as provided in this Agreement shall constitute an event of default under this Agreement. The non-defaulting Party shall give written notice of a default to the defaulting Party, specifying the nature of the default and the required action to cure the default. If a default remains uncured forty five (45) days after receipt by the defaulting Party of such notice, the non-defaulting Party may exercise the remedies set forth in subsection (b) below.

(b) Remedies.

(1) HACR Default. In the event of an uncured default by HACR under this Agreement, DAP shall be entitled to terminate this Agreement upon written notice of termination delivered to HACR, in which case following such termination, neither party shall have any further right, remedy or obligation under this Agreement.

(2) DAP Default. In the event of an uncured default by DAP under this Agreement, HACR shall be entitled to terminate this Agreement upon written notice of termination delivered to DAP. Following such termination, neither party shall have any right, remedy or obligation under this Agreement; provided, however, that the indemnification obligations pursuant to Section IX shall survive such termination. DAP and the HACR hereby waive the right to specific performance as a remedy under this Agreement.

(c) Waiver of Default.

Except as otherwise expressly provided in this Agreement, any failure or delay by either Party in asserting any of its rights or remedies as to any default shall not operate as a waiver of said default or of any rights or remedies in connection therewith or of any subsequent default or

any rights or remedies in connection therewith, or deprive such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

XI. DAP Employees and Liabilities

It is understood that persons engaged or employed by DAP as employees, agents, or independent contractors shall be engaged or employed by DAP and not by HACR. DAP alone is responsible for their work, direction, compensation and personal conduct. Nothing included in any provision of this Agreement shall impose any liability or duty upon HACR to persons, firms, or corporations employed or engaged by DAP in any capacity whatsoever, or make HACR liable to any such persons, firms, or corporations, or to any government, for the acts, omissions, liabilities, obligations, and taxes, of whatsoever nature, of DAP or of its employees, agents, or independent contractors.

XII. DAP's Obligation to Refrain from Discrimination; DAP's Obligation Toward Equal Opportunity

DAP covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, that there shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, sex, sexual orientation, age, disability, medical condition, or marital status, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property nor shall DAP itself or any person claiming under or through it, establish or permit such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, subleases, or vendors of the Property.

DAP will not discriminate against any employees or applicants for employment because of race, color, religion, creed, national origin, ancestry, sex, sexual orientation, age, disability, medical condition, or marital status.

XIII. Nonliability of Officials, Officers, Members, and Employees

No member, official, officer, or employee of the HACR or the County shall be personally liable to DAP, or any successor in interest, in the event of any default or breach by the HACR or for any amount which may become due to DAP or to his successor, or on any obligations under the term of this Agreement.

XIV. Waivers; Amendments

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Party to be charged, and all amendments and modifications hereto must be in writing and signed by the appropriate authorities of the HACR and DAP.

XV. Actions By HACR

The Executive Director of HACR or designee(s) are authorized to take such ministerial actions as may be necessary or appropriate to implement the terms, provisions, and conditions of this Agreement as it may be amended from time to time by HACR.

XVI. Real Estate Commissions

HACR shall not be liable for any real estate commissions or brokerage fees which may arise herefrom. HACR and DAP each represents that it has engaged no broker, agent or finder in connection with this transaction, and DAP agrees to hold the HACR harmless from any claim by any broker, agent or finder which it has retained.

XVII. Acknowledgments and Reservations

If the negotiations hereunder culminate into a DDA, such DDA will become effective only after and if it has been considered and approved by HACR's Board of Commissioners and the County Board of Supervisors, as required by law.

a. Not Binding

The Parties acknowledge and agree that this Agreement is for the sole purpose of stating the intention of the Parties to negotiate a DDA. The Parties have not reached agreement on the matters to be set forth in the DDA and do not intend to be bound to the disposition and development of the Property until such time as a final written DDA is executed by both Parties.

The HACR's acknowledgment of this Agreement is merely an agreement to enter into a period of negotiations according to the concepts presented herein, reserving final discretion and approval by the HACR's Board of Commissioners, or any other agencies of the County as to any actions required of them, if any.

b. No Further Obligations

The HACR and DAP agree that neither the HACR nor DAP shall be under any further obligation to each other regarding disposition of the Property or the development of the proposed Project on the Property if this Agreement expires, is terminated for any reason, or a DDA is not executed by both the HACR and DAP.

c. No Agreement

DAP acknowledges and agrees that no provision of this Agreement shall be deemed to be an offer by the HACR, nor an acceptance by the HACR of any offer or proposal from DAP, for the HACR to convey to DAP any interest in all or a portion of the Property or in or to the Property, or for the HACR to provide any financial or other assistance to DAP for development of the Property.

d. No Acquisition

DAP acknowledges and agrees that it has not acquired, nor will acquire, by virtue of the terms of this Agreement, any legal or equitable interest in the Property or any other real or personal property of the HACR.

e. Limitations of this Agreement

Nothing contained in this Agreement shall constitute a waiver, amendment, promise or agreement by the HACR or County (or any of its departments or boards) as to the granting of any approval, permit, consent or other entitlement in the exercise of the HACR or County's regulatory capacity or function. The final form of any proposed DDA to be negotiated may contain matters not contemplated by this Agreement, including, but not limited to, matters necessary to accommodate compliance with law, including without limitation CEQA.

XVIII. Insurance

Without limiting or diminishing the DAP'S obligation to indemnify or hold the HACR harmless, DAP shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverages during the term of this Agreement. As respects to the insurance section only, the HACR herein refers to the Housing Authority of the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Commissioners, employees, elected or appointed officials, agents or representatives as Additional Insureds.

A. Workers' Compensation:

If DAP has employees as defined by the State of California, DAP shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of HACR.

B. Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of DAP's performance of its obligations hereunder. Policy shall name the HACR as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

C. Vehicle Liability:

If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then DAP shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the HACR as Additional Insureds.

If DAP maintains broader coverage and/or higher limits than the minimums shown above, HACR requires and shall be entitled to the broader coverage and/or higher limits maintained by DAP. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to HACR.

F. General Insurance Provisions - All lines:

1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by HACR's Risk Manager. If the HACR's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

2) DAP must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceed \$500,000 per occurrence each such retention shall have the prior written consent of the HACR Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to the HACR, and at the election of the HACR's Risk Manager, DAP'S carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the HACR, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

3) DAP shall cause DAP'S insurance carrier(s) to furnish the HACR with either 1) a properly executed original Certificate(s) of Insurance and certified copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the HACR's Risk Manager, provide Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. *Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that a minimum of thirty (30) days written notice shall be given to the DAP prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. If DAP insurance carrier(s) policies does not meet the minimum notice requirement found herein, DAP shall cause DAP'S insurance carrier(s) to furnish a 30 day Notice of Cancellation Endorsement.*

4) In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the HACR receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. HACR shall not commence operations until the HACR has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.

5) It is understood and agreed to by the parties hereto that DAP'S insurance shall be construed as primary insurance, and the HACR'S insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

6) If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the HACR reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if in the HACR's Risk

Management's reasonable judgment, the amount or type of insurance carried by DAP has become inadequate.

7) DAP shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

8) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the HACR.

9) DAP agrees to notify HACR of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

XIX. HACR to Execute

The persons executing this Agreement or exhibits attached hereto on behalf of the parties to this Agreement hereby warrant and represent that they have the authority to execute this Agreement and warrant and represent that they have the authority to bind the respective parties to this Agreement to the performance of its obligations hereunder.

XX. Notices

Formal notices, demands and communications between the Parties shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested, or sent by express delivery or overnight courier service, to the office of the Parties shown as follows, or such other addresses as the Parties may designate in writing from time to time:

HACR:

Housing Authority of the
County of Riverside
Attention: Assistant Director
5555 Arlington Avenue
Riverside, CA 92504

DAP:

Desert AIDS Project
Attention: Chief Executive Officer
1695 N Sunrise Way
Palm Springs, CA 92262

Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered or the date on which delivery was refused.

XXI. Entire Agreement

This Agreement constitutes the entire agreement of the Parties regarding the subject matter of this Agreement and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the Property.

XXII. Conflict of Interest

No member, official, or employee of the Authority shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested.

XXIII. No Third Party Beneficiaries.

The parties to this Agreement acknowledge and agree that the provisions of this Agreement are for the sole benefit of the HACR and DAP, and not for the benefit, directly or indirectly, of any other person or entity, except as otherwise expressly provided herein. The Parties acknowledge and agree that the County of Riverside is an intended third party beneficiary of this Agreement.

XXIV. Further Assurances.

Each of the Parties hereto shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all necessary acts and things in connection with the performance of their obligations hereunder and to carry out the intent and agreements of the parties.

XXV. Severability

In the event that any of the provisions, or portions thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

XXVI. Jurisdiction and Venue

Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed in the consolidated Courts of Riverside County, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court or jurisdiction.

XXVII. Interpretation and Governing Law

This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the internal laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

XXVIII. Counterparts

This Agreement may be signed by the different parties hereto in counterparts, each of which shall be an original but all of which together shall constitute one and the same agreement.

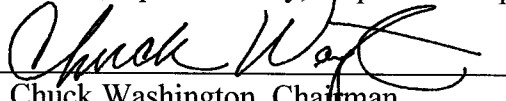
[Remainder of Page Intentionally Blank]

[Signatures on Following Page]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

HACR:

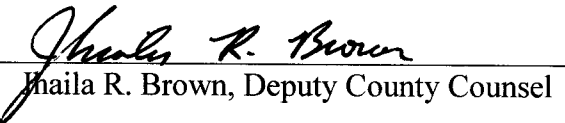
HOUSING AUTHORITY OF THE COUNTY OF RIVERSIDE, a public entity, corporate and politic

By: 
Chuck Washington, Chairman
Board of Commissioners

Date: FEB 06 2018

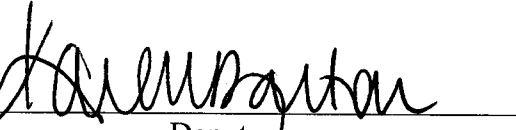
APPROVED AS TO FORM:

GREGORY PRIAMOS
COUNTY COUNSEL

By: 
Jhaila R. Brown, Deputy County Counsel

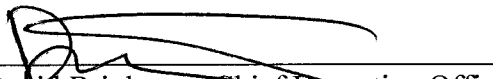
ATTEST:

KECIA HARPER-IHEM
Clerk of the Board

By: 
Deputy

DAP:

Desert AIDS Project,
a California nonprofit public benefit corporation

By: 
David Brinkman, Chief Executive Officer

Date: 1/18/18

Exhibit A
Legal Description

**EXHIBIT "A"
LOT LINE ADJUSTMENT
LEGAL DESCRIPTIONS
NO. LLA 05-13**

EXISTING LEGAL DESCRIPTIONS

PARCEL A

REAL PROPERTY IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL 2 OF PARCEL MAP, AS SHOWN BY MAP ON FILE IN BOOK 17, PAGE 7 OF PARCEL MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, AS FILED FEBRUARY 21, 1975.

EXCEPTING ALL OIL, GAS AND WATER, UNDERLYING OR APPURTENANT TO SAID LAND, BUT WITHOUT THE RIGHT TO ENTER UPON THE SURFACE OF SAID LAND TO DRILL, AS RESERVED IN DEEDS RECORDED APRIL 28, 1964 IN BOOK 3679 PAGE 169 AND MARCH 7, 1975 AS INSTRUMENT NO. 26565 OFFICIAL RECORDS.

SUBJECT TO EXISTING EASEMENTS AND RIGHTS OF WAY OF RECORD.

PARCEL B

REAL PROPERTY IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL 2 OF PARCEL MAP 27976, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS MAP RECORDED IN BOOK 185, PAGES 42 AND 43 OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM THAT PORTION CONVEYED IN THE DEED RECORDED MARCH 20, 1998 AS INSTRUMENT NO. 98-103601 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM ALL MINERALS, OILS, GASES AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN THAT MAY BE WITHIN OR UNDER THE PARCEL OF LAND HEREINABOVE DESCRIBED, WITHOUT, HOWEVER, THE RIGHT TO DRILL, DIG OR MINE THROUGH THE SURFACE THEREOF.

SUBJECT TO EXISTING EASEMENTS AND RIGHTS OF WAY OF RECORD.



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09/13/2005 08:08A
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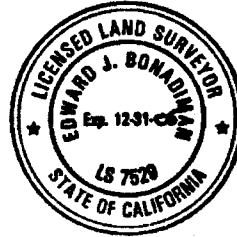
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THIS REAL PROPERTY HAS BEEN DESCRIBED BY ME, OR UNDER MY DIRECTION,
IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYOR'S ACT.

 8-29-05

Edward J. Bonadiman, P.L.S. 7529
Expires 12/31/05



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09/13/2005 08:08A
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Exhibit C

SCHEDULE OF PERFORMANCE

- | | | |
|-----|---|---|
| 1. | Investigate the projected costs of developing the Project, including the construction of all related on-site and off-site improvements for the Project. | Upon approval of ENA and prior to completion of a DDA Development Agreement |
| 2. | Identify and develop a plan to obtain the necessary land use entitlements required for the Project. | Within six (6) months of ENA approval |
| 3. | Agree to participate and/or conduct community meetings as requested by the HACR in relation to the Project. | Ongoing, as needed |
| 4. | Identify sources of funding for Project and commence financing process for Phase I after consultation with HACR staff. Evaluate and provide a comprehensive written description of the estimated competitive score and feasibility of all funding applications to be submitted in connection with financing the Project on a quarterly basis commencing upon the effective date. | Quarterly report commencing upon ENA approval |
| 5. | Conduct necessary studies and investigations for the development of the residential, service facility and/or commercial uses at the Property such as geotechnical, cultural, traffic, and environmental. | Concurrently with Item 6 below |
| 6. | DAP shall initiate and submit application for the necessary entitlements (e.g., General Plan Amendment / Change of Zone / Parcel Map) required for the Project within the negotiation period. The requirements set forth in Section II, subsection C.7. include performing any necessary studies and or plans required for the entitlement process. | Within eighteen (18) months of ENA approval. |
| 7. | A preliminary and final site plan and architectural/design concept for the proposed development of the Project, showing building layout and dimensions, parking, landscaping and access. | Preliminary site plan within twelve (12) months of ENA approval; Final site plan within 18 months of ENA approval |
| 8. | Prepare and submit to HACR for its review a schedule of the development of all structures and improvements proposed for the Project and an estimate of development costs including hard and soft costs. | Within six (6) months of ENA approval |
| 9. | Prepare and submit to HACR for its review a detailed financial plan for the Project containing matters typically contained in such analysis, including, without limitation, a detailed pro forma, development cost budget and sources of equity and debt capital securing construction and long term financing. The estimates and project date shall be in sufficient detail to permit adequate financial analysis by the HACR. | Within nine (9) months of ENA approval |
| 10. | Prepare and submit to HACR for its review copies of all completed reports, studies, analyses, and similar documents, but excluding confidential or proprietary information, prepared or commissioned by DAP with respect to this Agreement and the Project, promptly upon their completion. | Ongoing, as completed |