

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



ITEM: 10.2
(ID # 21066)

MEETING DATE:
Tuesday, March 28, 2023

FROM : HOUSING AUTHORITY:

SUBJECT: HOUSING AUTHORITY: Approve the Form of the Exclusive Negotiation Agreement between the Housing Authority of the County of Riverside and Abode Communities in Connection with a Proposed Affordable Housing Rental Project, Located in the City of Indio, and Authorize the Executive Director, or Designee to Execute the Exclusive Negotiation Agreement; District 4. [\$0]

RECOMMENDED MOTION: That the Board of Commissioners:

1. Approve the attached form of the Exclusive Negotiation Agreement (ENA) between the Housing Authority of the County of Riverside (HACR) and Abode Communities, a California nonprofit public benefit corporation in connection with the proposed affordable housing project, located in the City of Indio;

Continued on Page 2

ACTION:Policy

Heidi Marshall, Director of Housing, Homelessness Prevention 2/14/2023

MINUTES OF THE BOARD OF COMMISSIONERS

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

Ayes: Jeffries, Spiegel, Washington, Perez and Gutierrez
Nays: None
Absent: None
Date: March 28, 2023
xc: Housing Authority

Kimberly A. Rector
Clerk of the Board

By: 
Deputy

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

RECOMMENDED MOTION: That the Board of Commissioners:

2. Authorize the Executive Director, or designee, to sign the ENA, substantially conforming in form and substance to the attached, subject to approval as to form by County Counsel; and
3. Authorize the Executive Director, or designee, to take all necessary steps to implement and administer the attached ENA, including, but not limited to, signing subsequent necessary and relevant documents, exercising the options to extend the ENA for up to two years, and executing amendments to the ENA, subject to approval as to form by County Counsel.

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:	23/24

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The Housing Authority of the County of Riverside (HACR) is the current owner of 8.70 acres of vacant land in the City of Indio. The site is located on the corner of Fred Waring Drive and Hoover Avenue in the City of Indio, and also identified as Assessor Parcel Numbers 608-080-032 (Property). The Property was conveyed to HACR from the County as exempt surplus land in January of 2023.

HACR staff issued Request for Qualifications No. 2021-301 for a collaborative developer partner to develop affordable housing on the Site. Ten proposals were received and after thorough review of both proposals, HACR staff selected Abode Communities, a California nonprofit public benefit corporation (Abode), as its collaborative developer partner. The selection was due to, among other things, Abode's extensive experience in the development of affordable housing, sustained history of leveraging multiple funding sources and excellent reference. The project (Proposed Project) is slated to consist of approximately 176 apartment units which will provide affordable housing to persons and families at the low and very low-income levels. The Proposed Project may also include onsite services for the residents and community.

Abode desires to enter into the attached proposed Exclusive Negotiation Agreement (ENA) with HACR to explore and negotiate in good faith a possible Disposition and Development Agreement and Ground Lease, or such other type of agreement or agreements as the parties may deem appropriate to specify the rights and obligations of the parties with respect to the leasing of the Property and development of the Proposed Project. The ENA does not constitute

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

a commitment to convey, lease or develop the Property. Any agreements arising out of or as a result of the ENA will be subject to the prior approval of the Board of Commissioners and the County of Riverside Board of Supervisors. Under the ENA, Abode 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 two 1-year extensions, should the parties mutually agree.

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 families and satisfies that certain Exchange Agreement by and between the HACR and the County of Riverside dated November 29, 2022.

County Counsel has reviewed and approved as to the form of the ENA. Staff recommends approval of the form of the attached ENA and authorization for the Executive Director, or designee, to execute an ENA that substantially conforms in form and substance to the attached.

Impact on Residents and Businesses

The potential development of 176 units will have a positive impact on the residents in the County of Riverside as it will create much needed affordable housing in the Coachella Valley as well as create construction, maintenance and property management jobs.

Additional Fiscal Information

No general funds will be used for the proposed ENA. Abode 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 and/or Ground Lease for the Indio Apartments Affordable Housing Project.

Attachments:

- Form of Exclusive Negotiation Agreement with Abode Communities.



Brianne Lontajo, Principal Management Analyst 3/21/2023



Ronak Patel, Deputy County Counsel 3/20/2023

WHEN DOCUMENT IS FULLY EXECUTED RETURN

CLERK'S COPY

to Riverside County Clerk of the Board, Stop 1010
Post Office Box 1147, Riverside, Ca 92502-1147
Thank you.

Indio Apartments
Abode Communities ENA
176 Rental Units

EXCLUSIVE NEGOTIATION AGREEMENT

THIS EXCLUSIVE NEGOTIATION AGREEMENT ("Agreement") is entered into as of _____, 2023 by and between the Housing Authority of the County of Riverside, a public body corporate and politic ("HACR"), and Abode Communities, a California nonprofit public benefit corporation or its permitted assignee pursuant to Section VI below ("Abode"), on the terms and provisions set forth below:

RECITALS

A. HACR owns fee interest in that certain real property consisting of approximately 8.70 acres of land located on the corner of Fred Waring Drive and Hoover Avenue, in the City of Indio, identified as Assessor Parcel Numbers 608-080-032, as further described in the Legal Description attached hereto as Exhibit "A" and incorporated herein by this reference ("Property");

B. HACR procured proposals through Request for Qualifications No. 2021-301 ("RFQ") and selected Abode as the successful proposer and collaborative developer partner, due to, among other things, Abode's extensive experience in the development of affordable housing, sustained history of leveraging multiple funding sources, excellent references, and distinguished property management team;

C. Abode is a California nonprofit public benefit corporation engaged in building safe and affordable housing for low-income families;

D. Pursuant to the RFQ, HACR desires to explore entering into an agreement with Abode for the potential acquisition of the Property by Abode for use by Abode in connection with Abode's proposed development and construction of an affordable housing development on the Property and adjoining property, that is currently anticipated to include approximately one hundred seventy-six (176) affordable rental housing units to be rented to and occupied by low income households (the "Project"), which may be developed in three phases ("each a Phase");

E. 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;

F. Facilitating the development of the Property for affordable multi-family rental housing through the conveyance or leasehold interest in the laws of land will also assist the County and the State of California in achieving its goals of assisting families of low-income, including low-income farmworkers and their families; and

G. The purpose of this Agreement is to establish the procedures and standards for the negotiation by the HACR and Abode (hereinafter the "Parties") of a Disposition and Development Agreement with respect to each Phase (each a "DDA") or such other type of agreement as the parties may deem appropriate for the disposition or the leasehold interest as development of the

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proposed Project on the Property. This Agreement in itself does not grant Abode or any successor or affiliated entity the right to acquire the Property and/or develop the Project.

NOW, THEREFORE, HACR and Abode 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 for each Phase to be entered into between the Parties with respect to the development of the Property; provided, however, by entering into this Agreement, the Parties are not required to enter into a DDA for each Phase HACR agrees for the Negotiation Period, and the Extension Period (defined below), if a HACR Board of Commissioners' approved DDA(s) is signed and submitted by Abode to HACR during the Negotiation Period, not to negotiate with any other person or entity to enter into any agreement regarding the acquisition, 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 for each Phase 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 DDAs and in carrying out the obligations under this Agreement (the "Direct Costs").

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

B. Period of Negotiations

The negotiating period shall commence on the Effective Date (defined below) and end August 31, 2024 ("Negotiating Period"), subject to extension. The Negotiating Period may be extended for two additional one-year periods (the "Extension Period") by the written mutual agreement of the Parties. The Executive Director of HACR, or designee, in their reasonable discretion, may consent to an extension of the Negotiation Period on behalf of HACR. In determining whether 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 mutually acceptable DDAs.

If a DDA for each Phase or other such other type of agreement has not been executed by the Parties by the expiration of the Negotiating Period, including any Extension Period, then this Agreement shall terminate, and neither party shall have any further rights or obligations under this Agreement except as set forth in Section IX of this Agreement, and HACR shall be free to negotiate with any other persons or entities with regard to the Property. If a DDA for each Phase 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(s).

The term "Effective Date" used herein shall mean that certain date this Agreement is executed by the Chair of the HACR 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. Abode Obligations During the Negotiation Period

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

1. Investigate the projected costs of developing the Project, including the performance 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 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 on a quarterly basis commencing upon the Effective Date;
5. Conduct necessary geotechnical, cultural, traffic and environmental studies and investigations for the development of the residential, service facility and commercial uses at the Property;
6. Contract and pay for HACR consultant services;
7. Initiate and submit to the appropriate Governmental Authorities all applications for necessary entitlements (i.e., General Plan amendments, zone changes, parcel maps etc.) required for the development and construction of the Project as contemplated herein

within the negotiation period. The requirements set forth in this subsection 7. include performing any necessary studies and or plans required for the entitlement process; and

8. Prepare and submit to HACR for its review the following pursuant to the Schedule of Performance, subject to force majeure delays, 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 each Phase of 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 HACR (which list may be supplemented or amended by Abode from time to time).
 - d. Copies of all completed reports, studies, analyses, and similar documents, but excluding confidential or proprietary information, prepared or commissioned by Abode with respect to this Agreement and the Project, without representation or warranty, 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 Abode for the disposition and development of the leasehold estate in the Property and development of the Project.
2. Determine and process any California Environmental Quality Act ("CEQA") documentation, at Abode's expense, including the fees and expenses of any consultants to HACR employed in connection with the preparation of said CEQA documentation required in connection with the proposed sale of the Property to Abode and HACR's approval of a DDA or similar agreement (collectively, the "CEQA Scope of Work");
3. Review site plans and, without cost to HACR, use best efforts to assist Abode 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), including, without limitation, utilizing HACR's exemption under the California Subdivision Map Act;
4. Review Abode's proposal; and

5. Disposal of Property in accordance with all the applicable laws.

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 in three separate Phases as follows, (i) phase one shall include the construction and development of a community-serving commercial building of approximately 8,700 square feet; (ii) phase two shall include the construction and development of approximately eighty eight (88) affordable units consisting of 26 one-bedroom units, 40 two-bedroom units, and 22 three-bedroom units (one unit will be set-aside for an on-site manager), a resident center with outdoor pavilion, outdoor pool and play area, and related infrastructure such as public improvements and other utilities, and (iii) phase three shall consist of the development and construction of a total of approximately eighty eight (88) affordable rental housing units consisting of 26 one-bedroom units, 40 two-bedroom units, and 22 three-bedroom units (one unit will be set-aside for an on-site manager), for a total upon Project completion of one hundred and seventy six (176) affordable rental housing units, (collectively defined herein as the Project). At a minimum, each unit shall be rented to and occupied by qualified low-income households. The non-residential uses to be developed in phase one will be further defined through an engagement process with HACR.

The essential terms and conditions of any DDA for a Phase entered into with Abode shall be in conformance with the following requirements:

1. Abode shall acquire site control of the Property from HACR with HACR in accordance with the Schedule of Performance; and satisfaction of certain conditions precedent to be negotiated as part of the DDA or other such other type of agreement. The conveyance of the leasehold interest will occur after Abode has satisfactory evidence of committed financing for the development of the applicable Phase as contemplated by the DDA or other such other type of agreement;
2. Abode shall design and construct the Project on the Property, at its own cost and expense, in accordance with a Schedule of Performance to be negotiated as part of the DDA or other such other type of agreement and in accordance with the scope of development and plans and specifications prepared by Abode and approved in writing by HACR;
3. Abode 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. Abode shall secure at its own cost and expense, as required, in accordance with the Schedule of Performance and subject to force majeure delays, to be negotiated as part of the DDA for any Phase or other such other type of agreement, 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. Abode shall be responsible for marketing the Project;
6. Other terms and conditions applicable to the DDA or other such other type of agreement are as follows:
 - a. It is understood by Abode 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, Abode will coordinate with the HACR the design and architectural theme of the Project to be compatible with other developments in the area.
7. A minimum of forty-nine (49%) percent of the housing units developed and operated as part of each Phase shall be rented to and occupied by low-income households earning 80 percent or less of the area median income, 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 for each Phase will be established in the DDA applicable to such Phase or other such other type of agreement and shall conform to the CRL, including, but not limited to the requirements set forth in Health and Safety Code Sections 34176 and 34176.1.
8. HACR shall reasonably cooperate with Abode in the provision of information and assistance in the filing, processing and obtaining of regulatory approvals, and, to the extent required by law, join with the Abode as a co-applicant in the filing for such regulatory approvals; provided, however, that HACR shall have sole and absolute discretion to determine reasonable cooperation and the necessity of HACR being a co-applicant on such approvals. Without limiting the generality of the foregoing, HACR may use its exemption under the California Subdivision Map Act to subdivide the Property in the manner required by the Abode to develop each Phase.
9. A DDA for any Phase shall not be cross-defaulted against any other DDA for another Phase.

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

From time-to-time, as reasonably requested by HACR, Abode shall provide oral Project status, and on the 15th of every month Abode shall provide written progress reports, 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 or other such other type of agreement between HACR and Abode, HACR may use the information provided by Abode (excluding any confidential or proprietary information prepared or commissioned by Abode, 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 Abode 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 Abode.

IV. Purchase Price and/or Other Consideration

The purchase price for each Phase to be paid to the HACR by Abode will be established in the DDA or other such other type of agreement.

V. Environmental Requirements

Certain State and local environmental requirements under California Environmental Quality Act ("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 Abode on the terms and conditions of DDA. The County of Riverside ("County") will act as the "lead agency" under CEQA. Accordingly, Abode agrees to supply information and otherwise cooperate with the County, as requested by County to determine the environmental impact of the proposed Project, and to allow County to prepare such environmental documents as County may determine to be necessary pursuant to CEQA and County's guidelines and procedures.

Abode shall indemnify and hold harmless the HACR and the County, 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. Abode 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.

Nothing contained in this Agreement shall constitute a waiver, amendment, promise or agreement by the HACR or the 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 County's or County's regulatory capacity or function, including, but not limited to any approvals required under CEQA. Abode acknowledges and agrees that since this Agreement relates only to an agreement to negotiate, with no development or construction requirement, any future development of the Property will be subject to separate CEQA environmental review prior to taking any choice limiting action or discretionary action.

VI. Assignment

Abode 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 Abode or a limited liability company wholly owned by Abode 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. 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 Abode. 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 Abode under this Agreement. Abode shall promptly notify HACR of any and all changes whatsoever in the identity of the parties in control of Abode 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

Abode 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. HACR shall not make any representations or warranties concerning the Property, its suitability for the use intended by Abode, or the surface or subsurface conditions of the Property.

Pursuant to the terms and conditions of the DDA for each Phase, the portion of the Property covered by the DDA shall be conveyed to Abode "AS IS", meaning that Abode will be accepting a leasehold interest to 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 possession use, subdivision, improvement or other aspects of the Property. If a DDA is executed and approved by HACR, Abode shall be responsible, at its own sole cost and expense, for Phase improvements in connection with the construction of the Phase, and will do all things necessary to prepare the applicable portion of the Property for the construction and development of the Phase in accordance with the Entitlements therefore.

VIII. Right of Entry

HACR hereby grants to Abode and its employees, agents and contractors (herein referred to collectively as "Abode 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, Abode shall provide twenty-four (24) hours advance written notice to HACR to arrange for access. Email communications shall constitute valid written notice provided such notice is (i) submitted twenty four (24) hours in advance, (ii) sent to Nicole Sanchez at nisanchez@rivco.org, and (iii) delivery of such email notice is confirmed with a documented reply and confirmation from Nicole Sanchez at nisanchez@rivco.org.

Prior to any entry onto the Property for the taking of environmental samples or testing, Abode 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.

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

- A. Abode will not permit any dangerous condition to be created on the Property as a result of the activities of Abode or Abode Designees;
- B. That all acts and things done by Abode on the Property will be done in a careful and reasonable manner, in accordance with all federal, state and local laws;
- C. Abode will enter the Property entirely at its own cost, risk and expense;
- D. That prior to Abode's entry upon the Property and during the term of this Agreement, Abode shall require each and all of Abode's contractors/consultants responsible for the Work under this Agreement with whom Abode 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, Abode shall cause Abode's contractors/consultants with whom Abode 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. Abode 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 Abode or Abode's designee's use of and activities upon the Property pursuant to this Agreement. Abode 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. Abode 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. Abode 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, Abode shall be solely responsible for removing such imported hazardous materials in conformance with all governmental requirements. Abode shall report to HACR, as soon as possible after each incident, any incidents with respect to the environmental condition of the Property; and

- H. Abode 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

Abode 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 Abode, 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 Abode, its officers, agents, employees, subcontractors, agents or representatives under this Agreement. Abode 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 Abode, Abode 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 Abode's indemnification to the Indemnitees as set forth herein.

Abode's obligation hereunder shall be satisfied when Abode 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 Abode'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 Abode from indemnifying the Indemnitees to the fullest extent allowed by law.

The indemnification and hold harmless obligations set forth 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 thirty (30) days after receipt by the defaulting party of such notice, the non-defaulting Party may exercise the remedies set forth in subsection (b) below provided, however, that with respect to any default capable of being cured by Abode but which cannot be cured by Abode within such initial period, the default shall not be deemed to be uncured if Abode commence to cure within such initial period and diligently prosecute the cure to completion, and that the time required to prosecute such cure to completion will not require an extension of the Agreement.

(b) Remedies.

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

(2) Abode Default. In the event of an uncured default by Abode under this Agreement, HACR shall be entitled to terminate this Agreement. 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. Abode 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.

Notwithstanding anything to the contrary contained herein, Abode shall have the right to terminate this Agreement if at any time following the Effective Date Abode determine the Project is economically infeasible or for any other reason in the Abode' sole and absolute discretion. Upon termination of this Agreement, none of the Parties shall have any further rights or obligations hereunder.

XI. Abode Employees and Liabilities

It is understood that persons engaged or employed by Abode as employees, agents, or independent contractors shall be engaged or employed by Abode and not by HACR. Abode 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 Abode 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 Abode or of its employees, agents, or independent contractors.

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

Abode 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 Abode 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.

Abode 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 HACR shall be personally liable to Abode, or any successor in interest, in the event of any default or breach by HACR or for any amount which may become due to Abode 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 HACR and Abode.

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 Abode each represents that it has engaged no broker, agent or finder

in connection with this transaction, and Abode agrees to hold 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 the HACR's Board of Commissioners, 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.

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 HACR as to any actions required of them, if any.

b. No Further Obligations

HACR and Abode agree that neither HACR nor Abode shall be under any further obligation to each other regarding the assembly and 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 HACR and Abode.

c. No Agreement

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

d. No Acquisition

Abode 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 HACR.

e. Limitations of this Agreement

Nothing contained in this Agreement shall constitute a waiver, amendment, promise or agreement by HACR or HACR (or any of its departments or boards) as to the granting of any approval, permit, consent or other entitlement in the exercise of HACR or HACR'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

Concurrently with the execution of this Agreement by Abode, Abode shall procure and keep in full force and effect during the term of this Agreement, including any extensions thereto, the following insurance policies:

1. Worker's Compensation Insurance. If Abode has employees as defined by the State of California, Abode 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 The County of Riverside, and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.
2. Comprehensive General Liability Insurance. Comprehensive General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury, covering claims which may arise from or out of Abode's performance of its obligations hereunder. Policy shall name the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insured. Policy's limit of liability shall not be less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate.
3. Vehicle Liability Insurance. If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then Abode shall maintain liability insurance for all non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. . Policy shall name the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insured or provide similar evidence of coverage approved by County's Risk Manager.
4. 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: VII (A:7) unless such requirements are waived, in writing, by County's Risk Manager. If County'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) Abode's insurance carrier(s) must declare its insurance self-insured retentions. If such self-insured retentions exceed \$500,000 per occurrence such retentions shall have the prior written consent of HACR's Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to HACR, and at the election of HACR's Risk Manager, Abode's carriers shall either: (a) reduce or eliminate such self-insured retention as respects this Agreement with HACR, or (b) procure a bond which guarantees payment of

losses and related investigations, claims administration, and defense costs and expenses.

- 3) Abode shall furnish HACR with copies of the Certificate(s) of Insurance and carrier issued Endorsements effecting coverage as required herein, and 2) if requested to do so in writing by HACR's Risk Manager, provide copies of policies including all Endorsements and all attachments thereto relevant to this agreement, 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 thirty (30) days written notice shall be given to the County of Riverside prior to any cancellation or expiration of such insurance, except ten (10) days notice for cancellation due to nonpayment of premium. In the event of cancellation or expiration, this Agreement shall terminate forthwith, unless the HACR receives, prior to such effective date, another Certificate of Insurance and copies of endorsements, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. Abode shall not commence operations until HACR has been furnished Certificate(s) of Insurance and copies of endorsements and if requested, copies of 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.
- 4) It is understood and agreed to by the parties hereto that Abode's insurance shall be construed as primary insurance, and HACR's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
- 5) 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 which will add additional exposures (such as the use of aircraft, watercraft, cranes, etc.); or, the term of this Agreement, including any extensions thereof, exceeds five (5) years HACR reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverage's currently required herein, if; in HACR's Risk Manager's reasonable judgment, the amount or type of insurance carried by Abode has become inadequate.
- 6) Abode shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.
- 7) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to HACR.
- 8) Abode 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 HACR to execute this Agreement and warrant and represent that they have the HACR 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 County of Riverside
Attention: Director
3403 Tenth Street #300
Riverside, CA 92501

Abode:

Abode Communities
Attention: Chief Executive Officer
1149 S. Hill Street, Suite 700
Los Angeles, CA 90015

With copy to:

Bocarsly Emden Cowan Esmail & Arndt LLP
633 West 5th Street, 64th Floor
Los Angeles, CA 90071
Attn: Nicole Deddens

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 HACR 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 HACR and Abode, 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 HACR is an intended third-party beneficiary of this Agreement.

XXIV. Not Construed Against Drafter

HACR and Abode acknowledge that they have read this Agreement, have had the opportunity to review it with an attorney of their respective choice, and have agreed to all its terms. Under these circumstances, HACR and Abode agree that the rule of construction that a contract be construed against the drafter shall not be applied in interpreting this Agreement and that in the event of any ambiguity in any of the terms or conditions of this Agreement, including any exhibits or schedules hereto and whether or not placed of record, such ambiguity shall not be construed for or against any party hereto on the basis that such party did or did not author same.

XXV. 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.

XXVI. Administration/Agreement Liaison.

HACR 's Executive Director, or designee, shall implement and administer this Agreement on behalf of HACR.

XXVII. 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.

XXVIII. 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.

XXVIV. 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.

XXVV. 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 body, corporate and politic

By: form - do not sign
Heidi Marshall, Executive Director

Date: _____

Abode:

Abode Communities,
a California nonprofit public benefit corporation

By: form - do not sign
Lara Regus, Senior Vice President, Development

Date: _____

APPROVED AS TO FORM:

MINH C. TRAN
COUNTY COUNSEL

By: 
Amrit P. Dhillon, Deputy County Counsel

Exhibit A

Legal Description

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL 2 OF PARCEL MAP 14256, IN THE CITY OF INDIO, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, RECORDED MARCH 13, 1979 IN BOOK 62 OF PARCEL MAPS, PAGES 44 AND 45, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

EXCEPTING THEREFROM THAT PORTION GRANTED TO THE CITY OF INDIO BY DEED RECORDED FEBRUARY 26, 1988 AS INSTRUMENT NO. 50025, OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE SOUTHERLY 42 FEET AS MEASURED A RIGHT ANGLES ALONG THE CURVE CONCAVE TO THE NORTHEAST HAVINO A RADIUS OF 500 FEET, CENTRAL ANGLE OF 24 DEGREES 59' 36" AND LENGTH OF 218.11 FEET; AND SOUTHWESTERLY 82 FEET AS MEASURED AT RIGHT ANGLES, ALONG THE CURVE CONCAVE TO THE NORTHEAST HAVINO A RADIUS OF 540 FEET, CENTRAL ANGLE OF 65 DEGREES 00' 24" AND LENGTH OF 612.67 FEET; AND ALSO WESTERLY 82 FEET, AS MEASURED AT RIGHT ANGLES, ALONG THE WESTERLY BOUNDARY LINE.

APN: 608-080-032-9

Exhibit B

Site Map

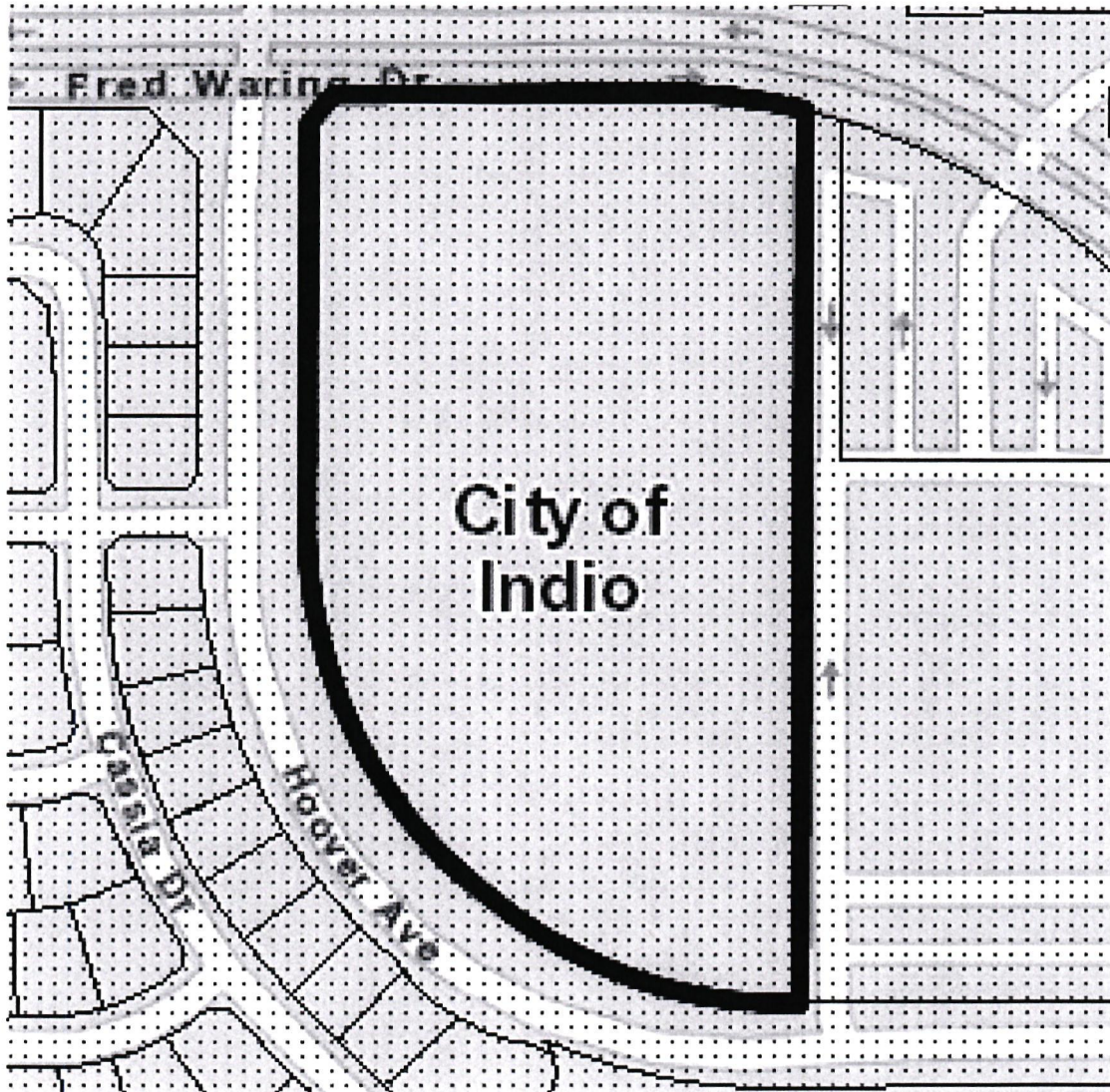


Exhibit C SCHEDULE OF PERFORMANCE

1. Investigate the projected costs of developing the Project, including the performance of all related on-site and off-site improvements for the Project. Upon approval of ENA and prior to completion of DDA
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 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 commercial uses at the Property such as geotechnical, cultural, traffic, and environmental. Within six (6) months of ENA approval
6. Abode shall initiate and submit application for the necessary entitlements (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 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 Abode with respect to this Agreement and the Project, promptly upon their completion. Ongoing, as completed

Indio Apartments
Abode Communities ENA
176 Rental Units